

SECOND DIVISION

[G.R. NO. 166061, July 06, 2007]

**ANDY QUELNAN Y QUINO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

TINGA, J.:

This petition for review seeks the reversal of the Decision^[1] of the Court of Appeals in CA-G.R. CR No. 22001 dated 12 November 2004, affirming the Decision^[2] of the Regional Trial Court (RTC), Branch 138, Makati City, in Criminal Case No. 96-1498, that found Andy Quelnan y Quino^[3] (petitioner) guilty of violating Section 16, Article III of Republic Act (R.A.) No. 6425, as amended, otherwise known as The Dangerous Drugs Act of 1972.

The accusatory portion of the Information against petitioner reads:

That on or about the 27th day of August, [sic] 1996, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control 27.7458 grams of Methamphetamine Hydrochloride (Shabu), a regulated drug.

Contrary to law.^[4]

During arraignment, petitioner pleaded not guilty. Trial on the merits ensued.

Witnesses^[5] for the prosecution testified as to the following set of facts:

On 27 August 1996, a team from the Police Assistance and Reaction Against Crime (PARAC) of the Department of Interior and Local Government (DILG), composed of Chief Inspector Carlos Acosta, SPO4 Isagani Ilas, SPO2 Manubay, SPO2 Sanggalang, SPO2 Teodoro Sinag, SPO2 Mario Magno, SPO2 de Leon, SPO2 Cecil Fajardo, SPO3 Marcelo Alcancia, SPO3 Dennis Zarcas, and PO1 Eraldo Lectura,^[6] was formed to implement a search warrant issued by the RTC of Manila on 26 August 1996.^[7]

At around 3:00 p.m., the team proceeded to the Cityland Condominium in South Superhighway, Makati. Upon arrival, they went directly to the Security Office of said building to seek assistance in serving the warrant. Security Officer Celedonio Punsaran (Punsaran) accompanied the group and they proceeded to Unit 615.

At their knocking, a male person naked from the waist up opened the door.^[8] He was later identified as petitioner. SPO2 Sinag presented the search warrant to

petitioner.^[9] Upon entry, the police operatives searched the unit, which was composed of a small room with a plywood divider separating the sala from the bedroom.^[10] In the presence of petitioner and Punsaran, the group started searching the place and eventually found on top of the bedroom table three (3) pieces of transparent plastic sachets containing white crystalline substances later confirmed by the National Bureau of Investigation (NBI) forensic chemist as shabu, plastic tubings, weighing scales, an improvised burner, and empty transparent plastic sachets.^[11] Thereafter, the group prepared a receipt of the properties seized and an Affidavit of Orderly Search allegedly signed by petitioner in their presence and that of Punsaran.^[12]

Meanwhile, the group also went to Unit 418 of the same building to serve the warrant and search the place. The police operatives did not find any occupant in the room.

Petitioner was then brought to the PARAC office for investigation. The pieces of evidence gathered by the police operatives were brought to the NBI for examination. That same day, NBI Forensic Chemist Loreto F. Bravo issued a certification stating that upon examination, the specimen submitted yielded positive for methamphetamine hydrochloride.^[13] The following day, the Arrest Report and Joint Affidavit of Apprehension were executed by the police operatives leading to the arrest and charging of petitioner for violation of Section 16, Article III of R.A. No. 6425.

In his defense, petitioner testified that he is a resident of 150 Legaspi Tower 300, 2600 Roxas Boulevard, Manila.^[14] He also happens to be the registered owner of Unit 615 of Cityland Condominium in Makati City, which he leased to Sung Kok Lee (Lee) beginning May 1996.^[15] On 27 August 1996, at around 3:00 p.m., petitioner went to Unit 615 to collect payment of rental from Lee. Upon knocking at the door, petitioner was greeted by the maid. The maid told him to wait for Lee inside the room while she went out to buy some refreshments. After a while, petitioner heard somebody knocking at the door and he opened it. He saw around 15 to 20 armed men who suddenly barged into the room. The officer in charge asked for a certain Bernard Kim and petitioner introduced himself as the owner of the condominium unit. The police operatives then proceeded to search the house for the next half hour while petitioner was waiting in the sala. Petitioner was also forced to sign some documents at gunpoint. Petitioner was then handcuffed and brought to the PARAC office. Two days later, he was brought to the Makati Prosecutor's Office for inquest and a case was subsequently filed against him.^[16]

In behalf of petitioner, Luis Alvarez, the administrator of Cityland Condominium, testified that Lee was the actual occupant of Unit 615 at the time petitioner was arrested.^[17] Celso Fiesta, petitioner's driver, also stated in court that petitioner resides at Legaspi Tower. On 27 August 1996, he dropped petitioner off at Cityland Condominium between 1:00 and 2:00 p.m. Two and a half hours later, he went back to pick him up. As he was about to park the car, somebody poked a gun at him and introduced himself as PARAC. Fiesta was ordered to get out of the car and the PARAC team searched the vehicle. They found a gun and brought Fiesta to the DILG. He was released the following day.^[18]

After trial, the RTC found petitioner guilty and sentenced him to suffer imprisonment of two (2) years, four (4) months and one (1) day of *prision correccional* as minimum to four (4) years, nine (9) months and ten (10) days of *prision correccional* as maximum.^[19] In convicting petitioner, the trial court relied heavily on the clear, straightforward, and candid testimonies of the prosecution witnesses:

They were all present when the search warrant was implemented at Unit 615 Cityland Condominium. No infirmity or flaw affecting their credibility exists. Further, the Court considered that they are public officers and there was no showing that they were motivated by ill-will testimonies or bad faith to falsely testify against the accused. There was no evidence of intent to harass the accused. The presumption of regularity in the performance of their functions can be fairly applied.^[20]

On appeal, the Court of Appeals affirmed the trial court's ruling, modifying however the penalty to be imposed on petitioner in that he shall suffer the indeterminate penalty of six months of *arresto mayor* as minimum to three (3) years and six (6) months of *prision correccional* as maximum.^[21]

Petitioner now seeks the reversal of said judgment. His conviction or acquittal rests on the validity of the warrantless arrest. The prosecution proffers that petitioner was caught in *flagrante delicto* in possession of the subject *shabu* justifying his warrantless arrest. Another crucial issue arises, that of the validity of the enforcement of the search warrant as basis for the presence of the police operatives in the Cityland Condominium unit. Therefore, these matters may be summarized into two issues for our resolution: whether the search warrant was properly enforced and whether petitioner was validly arrested without warrant.

The issue as to whether the search warrant was validly implemented necessitates a review of the tenor of the search warrant, vis-à-vis the conduct of the police operatives enforcing such warrant. Search Warrant No. 96-585 reads:

REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT
NATIONAL CAPITAL JUDICIAL REGION

PEOPLE OF THE PHILIPPINES,
Plaintiff

-versus - SEARCH WARRANT NO. 96-585
FOR: VIOLATION OF R.A. 6425
BERNARD LIM^[22] (Dangerous Drug Act 1972)
Room 615 Cityland Condominium
South Superhighway, Makati City
Respondent.

SEARCH WARRANT

TO ANY PEACE OFFICER:
GREETINGS:

It appearing to the satisfaction of the undersigned under examining

under oath PNP SPO4 ISAGANI J. ILAS and his witness, that there are [sic] reasonable ground to believe that VIOLATION OF R.A. [No.] 6425 has been committed or is about to be committed and there are good and sufficient reasons to believe that still undetermined Quantity of Met[h]amphetamine Hydrochloride (Shabu) has [sic] in his possession and control.

You are commanded to make an immediate search anytime of the day or night of the premises abovementioned and forthwith seize and take possession of the abovementioned MET[H]AMPHETAMINE HYDROCHLORIDE (SHABU) subject of the offense and bring to this Court said drugs and persons to be dealt with as the law may direct. You are further directed to submit return within ten (10) days from today.

GIVEN UNDER MY HAND AND SEAL OF THIS COURT, this 26[th] day of August 1996 in Manila, Philippines.

HON. WILLIAM M. BAYHON
Executive Judge, RTC
Branch XXIII, Manila

NOTE: This Search Warrant shall be valid for ten (10) days from date of issue.^[23]

Petitioner assails the improper enforcement of the search warrant in that despite the knowledge that petitioner was not the subject of such warrant, the police operatives proceeded anyway with the search and his resulting arrest. According to him, the Court of Appeals erred in declaring that where a search warrant is issued for the search of specifically described premises and not of a person, the omission of the name of the owner or occupant of such property in the warrant does not invalidate the same. Petitioner contends that this doctrine applies only if the search warrant does not indicate with all certainty the owner or occupant of the premises sought to be searched; on the contrary, the subject search warrant indicated with absolute clarity that the person subject thereof is Kim.

This argument is misplaced. Section 4, Rule 126 of the Revised Rules of Criminal Procedure provides for the requisites for the issuance of search warrant, to wit:

SEC. 4. *Requisites for issuing search warrant.* — A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

Nowhere in said rule or any other provision in the Revised Rules of Criminal Procedure is it required that the search warrant must name the person who occupies the described premises. In *Uy v. Bureau of Internal Revenue*,^[24] the Court has definitively ruled that where the search warrant is issued for the search of specifically described premises only and not for the search of a person, the failure to name the owner or occupant of such property in the affidavit and search warrant does not invalidate the warrant; and where the name of the owner of the premises

sought to be searched is incorrectly inserted in the search warrant, it is not a fatal defect if the legal description of the premises to be searched is otherwise correct so that no discretion is left to the officer making the search as to the place to be searched.

A cursory reading of the search warrant reveals that the police officers were ordered to make an immediate search of the premises mentioned and to seize and take possession of *shabu*. Furthermore, they were directed to bring "persons to be dealt with as the law may direct." While petitioner may not be the person subject of the search, the fact that he was caught *in flagrante delicto* necessitated his valid warrantless arrest. Therefore, the fact that petitioner's name was not indicated in the search warrant is immaterial.

Turning to the second issue, petitioner insists that his apprehension cannot be considered *in flagrante delicto* because he was not in possession of the forbidden drug.

In every prosecution for the illegal possession of *shabu*, the following essential elements must be established: (a) the accused is found in possession of a regulated drug; (b) the person is not authorized by law or by duly constituted authorities; and (c) the accused has knowledge that the said drug is a regulated drug.^[25]

More importantly, the prosecution must prove that the accused had the intent to possess the drug. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom. However, the prosecution must prove that the accused had knowledge of the existence and presence of the drug in the place under his control and dominion, as well as the character of the drug. Since knowledge by the accused of the existence and character of the drug in the place where he exercises dominion and control is an internal act, the same may be presumed from the fact that the dangerous drug is in the house or place over which the accused has control or dominion, or within such premises in the absence of any satisfactory explanation.^[26]

For the trial court, the fact of possession was clearly and convincingly established by the prosecution, to wit:

Prosecution has presented in Court the three (3) plastic sachet[s] containing 27.7458 grams of methamphetamine hydrochloride as well as all paraphernalia seized from the accused consisting of an improvised burner, two (2) pieces of weighing scale, plastic tubing, aluminum foil, empty transparent plastic sachets, Icom radio, Calculator, Cellular phone, disposable lighters, and two (2) pieces [of] blank cartridge. SPO4 Ilas and SPO2 Sinag clearly testified that they were found on top of a table in a room of [sic] Unit 615 in the afternoon of August 27, 1996 at a time when only the accused was inside the premises. Thus, the fact of possession was clearly and convincingly established.^[27]