

SECOND DIVISION

[G.R. No. 117412, December 08, 2000]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. COURT OF APPEALS AND VALENTINO C. ORTIZ, RESPONDENTS.

DECISION

QUISUMBING, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking the reversal of the decision of the Court of Appeals promulgated on September 27, 1994, in CA-G.R. SP No. 301291. The decretal portion of the assailed decision reads:

"WHEREFORE, the petition is GRANTED. Accordingly the respondent court's Order of 25 January 1993 is hereby SET ASIDE and the firearms and ammunition irregularly and unreasonably seized pursuant to the search warrant of 13 August 1992 are declared inadmissible in evidence for any purpose in any proceeding, consequently to be disposed of by the respondent court pursuant to applicable law.

"SO ORDERED."^[1]

The facts of the present case, as adopted from the findings of the Office of the Solicitor General, are as follows:

On August 13, 1992, operatives of the Philippine National Police- Special Investigation Service Command (PNP-CISC) were conducting a surveillance of suspected drug-pushing activities at the Regine Condominium, Makati Avenue, Makati City. Among their targeted suspects was private respondent Valentino "Toto" Ortiz. Spotting the latter alighting from his Cherokee jeep and noting that he had a suspiciously bulging pants pocket,^[2] the police officers immediately moved in and accosted him. Ortiz was frisked and yielded an unlicensed .25 caliber "Raven" automatic pistol SN-930291 with one magazine and seven rounds of live .25 caliber ammunition. A search of his vehicle resulted in the retrieval of a sealed cellophane packet of methylamphetamine hydrochloride or "shabu" from the glove compartment. The police then took private respondent into custody.

Later that same day, the PNP-CISC applied for a search warrant against private respondent for violation of P. D. 1866^[3] with the Metropolitan Trial Court (MTC) of Parañaque, Branch 77. Supporting the application were the depositions of two police officers asserting that they had personal knowledge that private respondent was keeping in his residence at 148-D Peru Street, Better Living Subdivision, Parañaque, Metro Manila, the following unlicensed firearms: "Baby armalite M-16;^[4] Shotgun,

12 g; pistol cal. 9mm; pistol cal. 45 and with corresponding ammunitions (sic)"^[5]

On the same day, the MTC judge issued Search Warrant No. 92-94 commanding the PNP officers "to make an immediate search at any reasonable hour of the day or night of the house/s, closed receptacles and premises above-described and forthwith seize and take possession"^[6] the personal property subject of the offense described in the warrant.

Armed with aforesaid warrant, a PNP CISC-Special Investigation Group (SIG) team, accompanied by a representative of the MTC judge and a barangay security officer, went to private respondent's residence in Parañaque at about 7:30 P.M. of the same date to search said premises. Private respondent's wife and their child's nanny were both present during the search, but neither consented to be a witness to the search. The search resulted in the seizure of the following unlicensed firearms and ammunition:

- "a. One (1) pistol cal. 9mm SN-1928923
- b. One (1) M16 Rifle (Baby Armalite) SN-9015620
- c. One (1) 12 gauge shotgun SN-K593449
- d. Six (6) live ammo. for shotgun.
- e. One hundred eighteen (118) live ammo for pistol cal. 9mm
- f. Sixteen (16) live ammo. for M16 rifle
- g. Thirty (30) live ammo. for pistol cal. 45
- h. One (1) magazine for pistol cal. 9mm
- i. One (1) magazine (short) for M16 rifle."^[7]

Private respondent's wife signed a receipt for the seized firearms and ammunition.

On August 17, 1992, a return of search warrant was executed and filed by the police with the issuing court.

At the preliminary investigation, the investigating state prosecutor ruled the warrantless search of private respondent's person and jeep in Makati invalid for violating his constitutional right against unreasonable searches and seizures.^[8] However, the prosecutor found the search conducted in Parañaque valid.

On August 25, 1992, private respondent was charged before the Regional Trial Court of Makati, in Criminal Case No.92-5475, with violating Section 1 of P.D. No. 1866. The information alleged:

"That on or about August 13, 1992 in the Municipality of Parañaque, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, above-named accused, did then and there, wilfully (sic), unlawfully and feloniously have in his possession,

- a. One (1) pistol cal. 9mm SN-1928923
- b. One (1) M16 Rifle (Baby Armalite) SN-9015620
- c. One (1) 12 gauge shotgun SN-K593449
- d. Six (6) live ammo. for shotgun.
- e. One hundred eighteen (118) rds ammo for pistol cal. 9mm
- f. Sixteen (16) live ammos (sic). for M16 rifle
- g. Thirty (30) live ammo for pistol cal. 45

without lawful authority therefore.

CONTRARY TO LAW."^[9]

On September 25, 1992, private respondent moved for reinvestigation alleging that the dismissal of the charges against him arising from the illegal search and seizure in Makati also applied to the search conducted in his house in Parañaque. The trial court denied the same. Private respondent moved for reconsideration and deferral of arraignment, but said motions were likewise denied.

On November 23, 1992, private respondent moved to quash the search warrant on the following grounds: (1) that he was not present when his house was searched since he was then detained at Camp Crame; (2) that the search warrant was not shown to his wife; and (3) that the search was conducted in violation of the witness-to-search rule. The trial court denied the motion to quash for lack of merit.

On February 5, 1993, private respondent filed with the Court of Appeals, CA-G.R. SP No. 30129, for certiorari and prohibition of the order of the trial court denying his motion to quash search warrant.

On September 27, 1994, the appellate court promulgated its decision declaring as inadmissible in evidence the firearms and ammunition seized pursuant to Search Warrant No. 92-94.

Hence, the instant case anchored on the following assignments of error:

I

THE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT
EXECUTION OF THE SEARCH WARRANT AT 7:30 P.M. WAS
UNREASONABLE, DESPITE THE FACT THAT THE WARRANT ITSELF

AUTHORIZED SEARCH AT NIGHT.

II

THE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT THE IMPLEMENTATION OF THE SEARCH WARRANT VIOLATED SECTION 7 RULE 126 OF THE RULES OF CRIMINAL PROCEDURE.

III

THE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT NO RETURN WAS PREPARED WHEN ANNEX "G" WAS PREPARED AND SUBMITTED BY CHIEF INSP. JESUS A. VERSOZA, GROUP COMMANDER OF SIG, CISC, CAMP CRAME.

IV

THE RESPONDENT COURT OF APPEALS ERRED IN CONCLUDING THAT THE PROSECUTION INVOKED A PRESUMPTION WITHOUT SHOWING BY LEGALLY ADMISSIBLE EVIDENCE THAT THE SEARCH WARRANT WAS IMPLEMENTED IN ACCORDANCE WITH LAW.

Petitioner's grounds for this petition may be reduced to one issue: Whether or not the court *a quo* erred in holding that the firearms and ammunition seized from private respondent's house are inadmissible as evidence for being the fruits of an illegal search.

The appellate court ruled the search wanting in due process for having been done at an unreasonable time of the evening causing "inconvenience" to the occupants of private respondent's house, especially as there was no showing how long the nighttime search lasted. The court *a quo* applied the doctrine in *Asian Surety & Insurance Co. v. Herrera*, 54 SCRA 312 (1973), where we invalidated a nighttime search conducted on the basis of a warrant which did not specify the time during which the search was to be made.

Before us, petitioner contends that Asian Surety is inapplicable since the search warrant specified that the search be made at a reasonable hour of day or night.

The rule governing the time of service of search warrants is Section 8 of Rule 126 of the Rules of Court, which provides:

"Sec. 8. *Time of making search.* – The warrant must direct that it be served in the day time, unless the affidavit asserts that the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the day or night."

The general rule is that search warrants must be served during the daytime. However, the rule allows an exception, namely, a search at any reasonable hour of the day or night, when the application asserts that the property is on the person or