SUPREME COURT
THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
***Plaintiff-Appellee*,**

-versus-

G.R. No. 81561
January 18, 1991

ANDRE MARTI,
***Accused-Appellant*.**
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D E C I S I O N

BIDIN, *J.*:

This is an Appeal from a Decision[*] rendered by the Special Criminal Court of Manila (Regional Trial Court, Branch XLIX) convicting accused-appellant of violation of Section 21 (b), Article IV in relation to Section 4, Article 11 and Section 2 (e)(i), Article 1 of Republic Act 6425, as amended, otherwise known as the Dangerous Drugs Act.

The facts as summarized in the brief of the prosecution are as follows:

> "On August 14, 1987, between 10:00 and 11:00 a.m., the appellant and his common-law wife, Shirley Reyes, went to the booth of the "Manila Packing and Export Forwarders" in the Pistang Pilipino Complex, Ermita, Manila, carrying with them four (4) gift-wrapped packages. Anita Reyes (the proprietress

and no relation to Shirley Reyes) attended to them. The appellant informed Anita Reyes that he was sending the packages to a friend in Zurich, Switzerland. Appellant filled up the contract necessary for the transaction, writing therein his name, passport number, the date of shipment and the name and address of the consignee, namely, "WALTER FIERZ, Mattacketr II, 8052 Zurich, Switzerland" (Decision, p. 6)

"Anita Reyes then asked the appellant if she could examine and inspect the packages. Appellant, however, refused, assuring her that the packages simply contained books, cigars, and gloves and were gifts to his friend in Zurich. In view of appellant's representation, Anita Reyes no longer insisted on inspecting the packages. The four (4) packages were then placed inside a brown corrugated box one by two feet in size (1' x 2'). Styro-foam was placed at the bottom and on top of the packages before the box was sealed with masking tape, thus making the box ready for shipment (Decision, p. 8).

"Before delivery of appellant's box to the Bureau of Customs and/or Bureau of Posts, Mr. Job Reyes (proprietor) and husband of Anita (Reyes), following standard operating procedure, opened the boxes for final inspection. When he opened appellant's box, a peculiar odor emitted therefrom. His curiosity aroused, he squeezed one of the bundles allegedly containing gloves and felt dried leaves inside. Opening one of the bundles, he pulled out a cellophane wrapper protruding from the opening of one of the gloves. He made an opening on one of the cellophane wrappers and took several grams of the contents thereof (T.S.N., pp. 29-30, October 6, 1987; Emphasis supplied).

"Job Reyes forthwith prepared a letter reporting the shipment to the NBI and requesting a laboratory examination of the samples he extracted from the cellophane wrapper (T.S.N., pp. 5-6, October 6, 1987).

"He brought the letter and a sample of appellant's shipment to the Narcotics Section of the National Bureau of Investigation (NBI), at about 1:30 o'clock in the afternoon of that date, i.e.,

> August 14, 1987. He was interviewed by the Chief of Narcotics Section. Job Reyes informed the NBI that the rest of the shipment was still in his office. Therefore, Job Reyes and three (3) NBI agents, and a photographer, went to the Reyes' office et Ermita, Manila (T.S.N., p. 30, October 6, 1987).
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> "Job Reyes brought out the box in which appellant's packages were placed and, in the presence of the NBI agents, opened the top flaps, removed the styro-foam and took out the cellophane wrappers from inside the gloves. Dried marijuana leaves were found to have been contained inside the cellophane wrappers (T.S.N., p. 38, October 6, 1987; Emphasis supplied).
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> "The package which allegedly contained books was likewise opened by Job Reyes. He discovered that the package contained bricks or cake-like dried marijuana leaves. The package which allegedly contained tabacalera cigars was also opened. It turned out that dried marijuana leaves were neatly stocked underneath the cigars (T.S.N., p. 39, October 6, 1987).
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> "The NBI agents made an inventory and took charge of the box and of the contents thereof, after signing a "Receipt" acknowledging custody of the said effects (T.S.N., pp. 2-3, October 7, 1987).

Thereupon, the NBI agents tried to locate appellant but to no avail. Appellant's stated address in his passport being the Manila Central Post Office, the agents requested assistance from the latter's Chief Security. On August 27, 1987, appellant, while claiming his mail at the Central Post Office, was invited by the NBI to shed light on the attempted shipment of the seized dried leaves. On the same day the Narcotics Section of the NBI submitted the dried leaves to the Forensic Chemistry Section for laboratory examination. It turned out that the dried leaves were marijuana flowering tops as certified by the forensic chemist. (Appellee's Brief, pp. 9-11, Rollo, pp. 132-134).

Thereafter, an Information was filed against appellant for violation of RA 6425, otherwise known as the Dangerous Drugs Act.

After trial, the court a quo rendered the assailed decision.

In this appeal, accused/appellant assigns the following errors, to wit:

> "THE LOWER COURT ERRED IN ADMITTING IN EVIDENCE THE ILLEGALLY SEARCHED AND SEIZED OBJECTS CONTAINED IN THE FOUR PARCELS.
>
> "THE LOWER COURT ERRED IN CONVICTING APPELLANT DESPITE THE UNDISPUTED FACT THAT HIS RIGHTS UNDER THE CONSTITUTION WHILE UNDER CUSTODIAL PROCEEDINGS WERE NOT OBSERVED.
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> "THE LOWER COURT ERRED IN NOT GIVING CREDENCE TO THE EXPLANATION OF THE APPELLANT ON HOW THE FOUR PARCELS CAME INTO HIS POSSESSION." (Appellant's Brief, p. 1; Rollo, p. 55)

1. Appellant contends that the evidence subject of the imputed offense had been obtained in violation of his constitutional rights against unreasonable search and seizure and privacy of communication (Sec. 2 and 3, Art. III, Constitution) and therefore argues that the same should be held inadmissible in evidence (Sec. 3 [2], Art. III).

Sections 2 and 3, Article III of the Constitution provide:

> "Section 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause 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 persons or things to be seized.
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> "Section 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of

> the court, or when public safety or order requires otherwise as prescribed by law.
>
> "(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding."

Our present constitutional provision on the guarantee against unreasonable search and seizure had its origin in the 1935 Charter which, worded as follows:

> "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined 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 persons or things to be seized." (Sec. 1 [3], Article III).

was in turn derived almost verbatim from the Fourth Amendment[**] to the United States Constitution. As such, the Court may turn to the pronouncements of the United States Federal Supreme Court and State Appellate Courts which are considered doctrinal in this jurisdiction.

Thus, following the exclusionary rule laid down in Mapp vs. Ohio by the US Federal Supreme Court (367 US 643, 81 S. Ct. 1684, 6 L. Ed. 1081 [1961]), this Court, in Stonehill vs. Diokno (20 SCRA 383 [1967]), declared as inadmissible any evidence obtained by virtue of a defective search and seizure warrant, abandoning in the process the ruling earlier adopted in Moncado vs. People's Court (80 Phil. 1 [1948]) wherein the admissibility of evidence was not affected by the illegality of its seizure. The 1973 Charter (Sec. 4 [2], Art. IV) constitutionalized the Stonehill ruling and is carried over up to the present with the advent of the 1987 Constitution.

In a number of cases, the Court strictly adhered to the exclusionary rule and has struck down the admissibility of evidence obtained in violation of the constitutional safeguard against unreasonable

searches and seizures. (Bache & Co., [Phil.], Inc., vs. Ruiz, 37 SCRA 823 [1971]; Lim vs. Ponce de Leon, 66 SCRA 299 [1975]; People vs. Burgos, 144 SCRA 1 [1986]; Roan vs. Gonzales, 145 SCRA 687 [1987]; See also Salazar vs. Hon. Achacoso, et al., GR No. 81510, March 14, 1990).

It must be noted, however, that in all those cases adverted to, the evidence so obtained were invariably procured by the State acting through the medium of its law enforcers or other authorized government agencies.

On the other hand, the case at bar assumes a peculiar character since the evidence sought to be excluded was primarily discovered and obtained by a private person, acting in a private capacity and without the intervention and participation of State authorities. Under the circumstances, can accused/appellant validly claim that his constitutional right against unreasonable searches and seizure has been violated? Stated otherwise, may an act of a private individual, allegedly in violation of appellant's constitutional rights, be invoked against the State?

We hold in the negative. In the absence of governmental interference, the liberties guaranteed by the Constitution cannot be invoked against the State.

As this Court held in Villanueva vs. Querubin (48 SCRA 345 [1972]):

"1. This 'constitutional right (against unreasonable search and seizure) refers to the immunity of one's person, whether citizen or alien, from interference by government, included in which is his residence, his papers, and other possessions.

> "There the state, however powerful, does not as such have the access except under the circumstances above noted, for in the traditional formulation, his house, however humble, is his castle. Thus is outlawed any unwarranted intrusion by government, which is called upon to refrain from any invasion of his dwelling and to respect the privacies of his life." (Cf. Schermerber vs. California, 384 US 757 [1966] and Boyd vs. United States, 116 US 616 [1886]; Emphasis supplied).

In Burdeau vs. McDowell (256 US 465 [1921]), 41 S Ct. 547; 65 L.Ed. 1048), the Court there in construing the right against unreasonable searches and seizures declared that:

> "The Fourth Amendment gives protection against unlawful searches and seizures, and as shown in previous cases, its protection applies to governmental action. Its origin and history clearly show that it was intended as a restraint upon the activities of sovereign authority, and was not intended to be a limitation upon other than governmental agencies; as against such authority it was the purpose of the Fourth Amendment to secure the citizen in the right of unmolested occupation of his dwelling and the possession of his property, subject to the right of seizure by process duly served."

The above ruling was reiterated in State vs. Bryan (457 P.2d 661 [1968]) where a parking attendant who searched the automobile to ascertain the owner thereof found marijuana instead, without the knowledge and participation of police authorities, was declared admissible in prosecution for illegal possession of narcotics.

And again in the 1969 case of Walker vs. State (429 S.W.2d 121), it was held that the search and seizure clauses are restraints upon the government and its agents, not upon private individuals, (citing People vs. Potter, 240 Cal. App.2d 621, 49 Cap. Rptr, 892 [1966]; State vs. Brown, Mo., 391 S.W.2d 903 (1965); State vs. Olsen, Or., 317 P.2d 938 [1957]).

Likewise appropos is the case of Bernas vs. US (373 F.2d 517 [1967]). The Court there said:

> "The search of which appellant complains, however, was made by a private citizen — the owner of a motel in which appellant stayed overnight and in which he left behind a travel case containing the evidence[***] complained of. The search was made on the motel owner's own initiative. Because of it, he became suspicious, called the local police,

> informed them of the bag's contents, and made it available to the authorities.
>
> "The fourth amendment and the case law applying it do not require exclusion of evidence obtained through a search by a private citizen. Rather, the amendment only proscribes governmental action."

The contraband in the case at bar having come into possession of the Government without the latter transgressing appellant's rights against unreasonable search and seizure, the Court sees no cogent reason why the same should not be admitted against him in the prosecution of the offense charged.

Appellant, however, would like this court to believe that NBI agents made an illegal search and seizure of the evidence later on used in prosecuting the case which resulted in his conviction.

The postulate advanced by accused/appellant needs to be clarified in two days. In both instances, the argument stands to fall on its own weight, or the lack of it.

First, the factual considerations of the case at bar readily foreclose the proposition that NBI agents conducted an illegal search and seizure of the prohibited merchandise. Records of the case clearly indicate that it was Mr. Job Reyes, the proprietor of the forwarding agency, who made search/inspection of the packages. Said inspection was reasonable and a standard operating procedure on the part of Mr. Reyes as a precautionary measure before delivery of packages to the Bureau of Customs or the Bureau of Posts (TSN, October 6 & 7, 1987, pp. 15-18; pp. 7-8; Original Records, pp. 119-122; 167-168).

It will be recalled that after Reyes opened the box containing the illicit cargo, he took samples of the same to the NBI and later summoned the agents to his place of business. Thereafter, he opened the parcels containing the rest of the shipment and entrusted the care and custody thereof to the NBI agents. Clearly, the NBI agents made no search and seizure, much less an illegal one, contrary to the postulate of accused/appellant.

Second, the mere presence of the NBI agents did not convert the reasonable search effected by Reyes into a warrant less search and seizure proscribed by the Constitution. Merely to observe and look at that which is in plain sight is not a search. Having observed that which is open, where no trespass has been committed in aid thereof, is not search (Chadwick vs. State, 429 SW2d 135). Where the contraband articles are identified without a trespass on the part of the arresting officer, there is not the search that is prohibited by the constitution (US vs. Lee 274 US 559, 71 L. Ed. 1202 [1927]; Ker vs. State of California 374 US 23, 10 L.Ed.2d. 726 [1963]; Moore vs. State, 429 SW2d 122 [1968]).

In Gandy vs. Watkins (237 F. Supp. 266 [1964]), it was likewise held that where the property was taken into custody of the police at the specific request of the manager and where the search was initially made by the owner there is no unreasonable search and seizure within the constitutional meaning of the term.

That the Bill of Rights embodied in the Constitution is not meant to be invoked against acts of private individuals finds support in the deliberations of the Constitutional Commission. True, the liberties guaranteed by the fundamental law of the land must always be subject to protection. But protection against whom? Commissioner Bernas in his sponsorship speech in the Bill of Rights answers the query which he himself posed, as follows:

> "First, the general reflections. The protection of fundamental liberties in the essence of constitutional democracy. Protection against whom? Protection against the state. The Bill of Rights governs the relationship between the individual and the state. Its concern is not the relation between individuals, between a private individual and other individuals. What the Bill of Rights does is to declare some forbidden zones in the private sphere inaccessible to any power holder." (Sponsorship Speech of Commissioner Bernas; Record of the Constitutional Commission, Vol. 1, p. 674; July 17, 1986; Emphasis supplied)

The constitutional proscription against unlawful searches and seizures therefore applies as a restraint directed only against the government and its agencies tasked with the enforcement of the law. Thus, it could only be invoked against the State to whom the restraint against arbitrary and unreasonable exercise of power is imposed.

If the search is made upon the request of law enforcers, a warrant must generally be first secured if it is to pass the test of constitutionality. However, if the search is made at the behest or initiative of the proprietor of a private establishment for its own and private purposes, as in the case at bar, and without the intervention of police authorities, the right against unreasonable search and seizure cannot be invoked for only the act of private individual, not the law enforcers, is involved. In sum, the protection against unreasonable searches and seizures cannot be extended to acts committed by private individuals so as to bring it within the ambit of alleged unlawful intrusion by the government.

Appellant argues, however, that since the provisions of the 1935 Constitution has been modified by the present phraseology found in the 1987 Charter, expressly declaring as inadmissible any evidence obtained in violation of the constitutional prohibition against illegal search and seizure, it matters not whether the evidence was procured by police authorities or private individuals (Appellant's Brief, p. 8, Rollo, p. 62).

The argument is untenable. For one thing, the constitution, in laying down the principles of the government and fundamental liberties of the people, does not govern relationships between individuals. Moreover, it must be emphasized that the modifications introduced in the 1987 Constitution (re: Sec. 2, Art. III) relate to the issuance of either a search warrant or warrant of arrest *vis-a-vis* the responsibility of the judge in the issuance thereof (See Soliven vs. Makasiar, 167 SCRA 393 [1988]; Circular No. 13 [October 1, 1985] and Circular No. 12 [June 30, 1987]). The modifications introduced deviate in no manner as to whom the restriction or inhibition against unreasonable search and

seizure is directed against. The restraint stayed with the State and did not shift to anyone else.

Corolarilly, alleged violations against unreasonable search and seizure may only be invoked against the State by an individual unjustly traduced by the exercise of sovereign authority. To agree with appellant that an act of a private individual in violation of the Bill of Rights should also be construed as an act of the State would result in serious legal complications and an absurd interpretation of the constitution.

Similarly, the admissibility of the evidence procured by an individual effected through private seizure equally applies, in *pari passu*, to the alleged violation, non-governmental as it is, of appellant's constitutional rights to privacy and communication.

2. In his second assignment of error, appellant contends that the lower court erred in convicting him despite the undisputed fact that his rights under the constitution while under custodial investigation were not observed.

Again, the contention is without merit, We have carefully examined the records of the case and found nothing to indicate, as an "undisputed fact", that appellant was not informed of his constitutional rights or that he gave statements without the assistance of counsel. The law enforcers testified that accused/appellant was informed of his constitutional rights. It is presumed that they have regularly performed their duties (Sec. 5[m], Rule 131) and their testimonies should be given full faith and credence, there being no evidence to the contrary. What is clear from the records, on the other hand, is that appellant refused to give any written statement while under investigation as testified by Atty. Lastimoso of the NBI, Thus:

> "Fiscal Formoso:
>
> "You said that you investigated Mr. and Mrs. Job Reyes. What about the accused here, did you investigate the accused together with the girl?

"WITNESS:

"Yes, we have interviewed the accused together with the girl but the accused availed of his constitutional right not to give any written statement, sir." (TSN, October 8, 1987, p. 62; Original Records, p. 240)

The above testimony of the witness for the prosecution was not contradicted by the defense on cross-examination. As borne out by the records, neither was there any proof by the defense that appellant gave uncounselled confession while being investigated. What is more, we have examined the assailed judgment of the trial court and nowhere is there any reference made to the testimony of appellant while under custodial investigation which was utilized in the finding of conviction. Appellant's second assignment of error is therefore misplaced.

3. Coming now to appellant's third assignment of error, appellant would like us to believe that he was not the owner of the packages which contained prohibited drugs but rather a certain Michael, a German national, whom appellant met in a pub along Ermita, Manila: that in the course of their 30-minute conversation, Michael requested him to ship the packages and gave him P2,000.00 for the cost of the shipment since the German national was about to leave the country the next day (October 15, 1987, TSN, pp. 2-10).

Rather than give the appearance of veracity, we find appellant's disclaimer as incredulous, self-serving and contrary to human experience. It can easily be fabricated. An acquaintance with a complete stranger struck in half an hour could not have pushed a man to entrust the shipment of four (4) parcels and shell out P2,000.00 for the purpose and for appellant to readily accede to comply with the undertaking without first ascertaining its contents. As stated by the trial court, "(a) person would not simply entrust contraband and of considerable value at that as the marijuana flowering tops, and the cash amount of P2,000.00 to a complete stranger like the Accused. The Accused, on the other hand, would not simply accept such undertaking to take custody of the packages and ship the same from a complete

stranger on his mere say-so" (Decision, p. 19, Rollo, p. 91). As to why he readily agreed to do the errand, appellant failed to explain. Denials, if unsubstantiated by clear and convincing evidence, are negative self-serving evidence which deserve no weight in law and cannot be given greater evidentiary weight than the testimony of credible witnesses who testify on affirmative matters (People vs. Esquillo, 171 SCRA 571 [1989]; People vs. Sariol, 174 SCRA 237 [1989]).

Appellant's bare denial is even made more suspect considering that, as per records of the Interpol, he was previously convicted of possession of hashish by the Kleve Court in the Federal Republic of Germany on January 1, 1982 and that the consignee of the frustrated shipment, Walter Fierz, also a Swiss national, was likewise convicted for drug abuse and is just about an hour's drive from appellant's residence in Zurich, Switzerland (TSN, October 8, 1987, p. 66; Original Records, p. 244; Decision, p. 21; Rollo, p. 93).

Evidence to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances (People vs. Alto, 26 SCRA 342 [1968], citing Daggers vs. Van Dyke, 37 N.J. Eg. 130; see also People vs. Sarda, 172 SCRA 651 [1989]; People vs. Sunga, 123 SCRA 327 [1983]); Castañares vs. CA, 92 SCRA 567 [1979]). As records further show, appellant did not even bother to ask Michael's full name, his complete address or passport number. Furthermore, if indeed, the German national was the owner of the merchandise, appellant should have so indicated in the contract of shipment (Exh. "B", Original Records, p. 40). On the contrary, appellant signed the contract as the owner and shipper thereof giving more weight to the presumption that things which a person possesses, or exercises acts of ownership over, are owned by him (Sec. 5 [j], Rule 131). At this point, appellant is therefore estopped to claim otherwise.

Premises considered, we see no error committed by the trial court in rendering the assailed judgment.

WHEREFORE, the judgment of conviction finding appellant guilty beyond reasonable doubt of the crime charged is hereby **AFFIRMED**. No costs.

SO ORDERED.

Fernan, *C.J.*, Gutierrez, Jr. and Feliciano, *JJ.*, concur.

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[*] Penned by Judge Romeo J. Callejo.

[**] It reads: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

[***] Forged checks.
