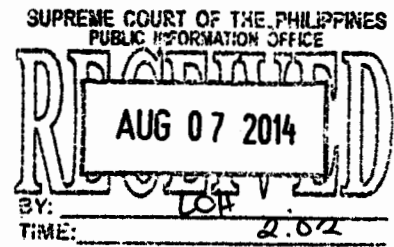




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 23, 2014 which reads as follows:

“G.R. No. 202182 (*People of the Philippines v. Andrew Lopez Alia*). –This is an appeal from the Decision¹ of the Court of Appeals (CA) Cebu City affirming the Decision² of the Regional Trial Court of Cebu City, Branch 13 (RTC), finding appellant guilty of the crime of maintenance of a drug den.

THE INFORMATION

The undersigned accuses ANDREW LOPEZ ALIA for **violation of Section 6, Art. II of R.A. 9165**, known as (The Comprehensive Dangerous Drugs Act of 2002) committed as follows:

That on or about the 21st day of May, 2003, at about 7:30 o'clock in the evening, more or less, at South Poblacion, Municipality of San Fernando, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously **maintain a den** in their [sic] house, where any dangerous drugs [sic] is used or sold in any form.

CONTRARY TO LAW.

Cebu City, Philippines, July 16, 2003.

(Signed)
JASMIN N. DESPI
Associate Prosecution Attorney I³

¹ *Rollo*, pp. 3-17. The Decision dated 5 July 2011 issued by the Court of Appeals (CA) Cebu City Eighteenth Division in CA-G.R. CEB-CR-H.C. No. 00998 was penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Portia Aliño-Hormachuelos and Myra V. Garcia-Fernandez concurring.

² Records, pp. 161-163; in Criminal Case No. CBU-66769 dated 2 October 2007.

³ *Id.* at 1.

RULING OF THE RTC

In a Decision dated 2 October 2007, the RTC found appellant guilty of the crime of maintenance of a drug den. He was sentenced to life imprisonment and ordered to pay a fine of ₱500,000.⁴

The RTC found that Senior Police Officer 1 (SPO1) Reuben Renes and Police Officer (PO) 3 Marjugin Misuari of the San Fernando Police Station had conducted a two-week surveillance of the residence of appellant in San Fernando, Cebu, on the basis of a report that he was operating a drug den.⁵ They noticed people coming in and out of the house, most of them staying inside for 5 to 10 minutes. As part of the surveillance, they conducted a test-buy through a civilian asset, who was able to buy from appellant ₱100 worth of a white crystalline substance. The contents later tested positive for methylamphetamine hydrochloride (*shabu*). It was on the strength of this evidence that they were able to obtain Search Warrant No. 01-2003⁶ for appellant's residence.

On 21 May 2003 around 7:30 p.m., the search was implemented by SPO1 Renes together with Police Inspector Wilfredo Pulvera, PO3 Tiburcio Heramil, PO3 Levi Ortiz and PO2 William Homoc, who were members of the Police Investigation and Intelligence Branch–Cebu Provincial Police Office (PIIB-CPPO). They conducted the search in the presence of a *barangay* councilor, a *barangay tanod* and appellant's brother Ricardo Lopez Alia. Appellant, who saw SPO1 Renes approaching, was able to escape after a brief chase. The following items were found in the former's residence:

1. 26 pieces of plastic packets of *shabu*
2. 20 pieces of rolled aluminum foil strips
3. four disposable lighters
4. two rolls of foil strips
5. two pieces of plastic tube
6. one improvised bamboo sealer⁷

For his part, appellant alleged that at the time of the search, he was living in Liloan, not San Fernando. According to him, the house searched by the police was owned by his mother and leased to a certain Wengweng.

⁴ Id. at 163.

⁵ Id. at 162.

⁶ Id. at 9.

⁷ Id. at 8.

The RTC found these self-serving allegations unworthy of belief, especially since appellant never presented his mother or the lessee to corroborate his testimony. On the basis of the evidence adduced by the police officers, the RTC found that appellant had indeed maintained a drug den in his residence.⁸

RULING OF THE CA

On 5 July 2011, the CA rendered a Decision affirming that of the RTC.⁹ The appellate court found that the prosecution was able to prove beyond reasonable doubt that appellant had used his residence as a den where dangerous drugs were stored and sold.¹⁰

According to the CA, there is no merit in the defense of appellant that he was no longer residing in the house searched by the police officers. After all, they conducted a surveillance of his residence, and a civilian asset was even able to buy *shabu* directly from him.¹¹ The appellate court also noted that appellant did not present any other witness to support his defense.

Appellant argued that all items seized in the house were inadmissible because the search was conducted without him, its lawful occupant. However, the CA ruled that there was no violation of Section 8, Rule 126¹² of the Rules of Court, because his brother, also a lawful occupant of the house, was present during the search, together with *barangay* councilor Rogelio Manugas and *barangay tanod* Florentino Lariosa.¹³

The CA likewise found no merit in appellant's contention that the police officers had failed to observe the proper procedure under Section

⁸ Id. at 163.

⁹ *Rollo*, p. 16.

¹⁰ Id. at 11.

¹¹ Id. at 11-12.

¹² SECTION 8. *Search of house, room, or premises to be made in presence of two witnesses.* — No search of a house, room, or any other premises shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality. (7a)

¹³ *Rollo*, p. 13.

21¹⁴ of Republic Act No. (R.A.) 9165 (Comprehensive Dangerous Drugs Act of 2002), thereby casting doubt on the integrity and evidentiary value of the seized dangerous drug. On the contrary, the CA found that the prosecution was able to establish the chain showing that the illegal drugs and paraphernalia seized from the den maintained by appellant were the same ones presented in Court.¹⁵

ISSUE

Whether there is proof beyond reasonable doubt that appellant is guilty of the crime of maintenance of a drug den.

OUR RULING

We answer in the affirmative.

Prosecutions of crimes involving dangerous drugs rise and fall based on the credibility of the police officers who conducted the operation leading to the arrest of the accused.¹⁶ Trial courts are in a unique position to rule on the issue of credibility, because they are able to observe the demeanor of police-witnesses firsthand when they are called to the witness stand. It is because of this unique position that factual findings of trial courts, their calibration of the testimonies of witnesses, and their conclusions anchored on their findings are accorded respect, if not conclusive effect.¹⁷ It is more so when their conclusions are affirmed by the CA.¹⁸

Thus, we need not delve into the allegation of appellant that he did not reside in the house subject of the search. The RTC and the CA have both concluded that he resided in that house from the time of the

¹⁴ Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; x x x.

¹⁵ *Rollo*, p. 15.

¹⁶ *People v. Naelga*, G.R. No. 171018, 11 September 2009, 599 SCRA 477.

¹⁷ *People v. Agulay*, G.R. No. 181747, 26 September 2008, 566 SCRA 571.

¹⁸ *Id.*

surveillance conducted by the police officers to the test-buy, and even up to the time that the search warrant was implemented and that he was able to elude the police.

Appellant raises the issue that the search was not conducted in his presence, a lawful occupant of the house. Obviously, the search could not have been conducted in his presence in view of his escape upon the approach of the police. In any case, we note the findings of the RTC and the CA that the search was conducted in the presence of two representatives of the *barangay*, as well as appellant's brother – another lawful occupant – who signed and received a copy of the Receipt of Seized Property.¹⁹

Appellant also argues that the search was rendered illegal by the fact that the police officers who conducted the surveillance and stood as witnesses for the issuance of the search warrant were not part of the team that ultimately implemented the search warrant. First of all, nothing in the rules states that a search warrant should be directed and implemented only by the officers who stood as witnesses for its issuance. Second, it was clear that SPO1 Renes, one of those who conducted the two-week surveillance of the residence of appellant and executed a deposition in support of the application for the search warrant, was part of the team that conducted the search. It was also he who gave chase to appellant when the latter ran upon the approach of the police.

Finally, still clutching at straws, appellant insists that it should be of essential consideration that the packs of *shabu* seized were not found in plain view, as they were found in a container placed inside a cabinet.²⁰

In *United Laboratories, Inc. v. Isip*,²¹ we enunciated that immediately incriminating objects or articles in plain view may be seized by the implementing officer, even though they are not described in the search warrant. The Court stated that the implementing officer is not required to ignore a separate incriminating object in the course of his search for articles described in the search warrant. In those cases, the implementing officer can seize the object in plain view even though it is not included in the warrant.

¹⁹ Records, p. 8.

²⁰ CA rollo, p. 25.

²¹ 500 Phil. 342 (2005).

This case is different, because the search warrant clearly commanded “any officer” to “make an immediate search ... at the house and its premises and forthwith seize and take possession of ... undetermined quantity of methamphetamine hydrochloride commonly known as *shabu*,” as well as “[d]rug paraphernalia.”²² Thus, the police officers in this case could very well make an active and diligent search of dangerous drugs in the house and its premises, and they were not limited to what they might find in plain view.

Appellant also assigned as error the alleged failure of the police officers to observe the statutory requirements regarding the proper handling and custody of the seized items.

Time and again we have pronounced that failure to comply strictly with Section 21 of R.A. 9165 does not necessarily render the items seized or confiscated from the accused inadmissible.²³ What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items – the critical pieces of evidence in the determination of the guilt or innocence of the accused.²⁴

Here, the CA noted that the integrity and evidentiary value of the seized items, particularly the 26 packs of *shabu*, were preserved by the prosecution as shown by the following:

1. PO3 Heramil, the searching officer, found the 26 packs of suspected *shabu* in a container placed inside a cabinet and gave them to PO3 Ortiz, the recording officer.²⁵
2. PO3 Ortiz marked the packs, recorded them, and issued the corresponding Receipt of Property Seized.²⁶
3. Police Inspector Pulvera, the team leader, prepared a request addressed to the Philippine National Police Crime Laboratory for the examination of the contents of the packs. The request and the suspected *shabu* packs were received at the crime laboratory at 11:45 p.m. on 21 May 2003.²⁷
4. Qualitative analyses of the contents of the packs gave positive results for the presence of *shabu*, a dangerous drug.²⁸

²² Records, p. 9.

²³ *People v. Bara*, G.R. No. 184808, 14 November 2011, 660 SCRA 38.

²⁴ *Id.*

²⁵ *Rollo*, p. 15.

²⁶ *Id.*

²⁷ Records, p. 7.

²⁸ *Id.*

5. The 26 packs of *shabu* were presented and identified in court and marked collectively as Exhibit "E."²⁹

We cannot help but agree with the CA that these established facts show that the *shabu* seized from the residence of appellant were the same ones presented and identified in court by the police officers.

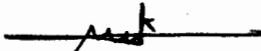
A den, dive or resort is a place where any dangerous drug and/or controlled precursor and essential chemical is administered, delivered, stored for illegal purposes, distributed, sold or used in any form.³⁰ It may be pointed out that the surveillance was initiated based on reports to the police that appellant used his residence as a drug den. What bolstered this report was the successful test-buy in the house, where appellant himself sold *shabu* to the civilian asset of the police. The discovery of the 26 packs of *shabu*, together with drug paraphernalia, in the residence of appellant by virtue of the search warrant ultimately settled the question of whether or not he maintained a drug den.

Based on the foregoing, we find no error on the part of the RTC or the CA in finding appellant guilty beyond reasonable doubt of the crime of maintenance of a drug den. We likewise find that the RTC correctly imposed on him the penalty of life imprisonment and a fine of ₱500,000.³¹

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00998, finding appellant **ANDREW LOPEZ ALIA** guilty beyond reasonable doubt of the crime of maintenance of a drug den, is **AFFIRMED**.

SO ORDERED."

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court

233

²⁹ *Rollo*, p. 15.

³⁰ R.A. 9165, Sec. 3(l).

³¹ Section 6. *Maintenance of a Den, Dive or Resort*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person or group of persons who shall maintain a den, dive or resort where any dangerous drug is used or sold in any form.

The Solicitor General (x)
Makati City

Court of Appeals
6000 Cebu City
(CA-G.R. CEB CR H.C. No. 00998)

The Director
Bureau of Corrections
1770 Muntinlupa City

The Hon. Presiding Judge
Regional Trial Court, Br. 13
6000 Cebu City
(Crim. Case No. CBU-66769)

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PUBLIC ATTORNEY'S OFFICE
Counsel for Accused-Appellant
Regional Special and Appealed Cases Unit
Hall of Justice, Capitol Cmpd.
6000 Cebu City

Judgment Division (x)
Supreme Court

Mr. Andrew Lopez Alia
Accused-Appellant
c/o The Director
Bureau of Corrections
1770 Muntinlupa City

233

SR