



Republic of the Philippines
COURT OF APPEALS
Manila

FIFTH DIVISION

**FRIENDSHIP DRUG AND
MEDICAL SUPPLY and/or KEH
DIET KUEN M.D. CLINIC
and/or proprietor and/or officers,
occupants, lessors, employees of
Friendship Drug and Medical
Supply at No. 755 Ongpin,
Barangay 296, Zone 28, Binondo,
Manila,**

CA-G.R. SP No. 134461

Members:

**TIJAM, Chairperson
LOPEZ and
GARCIA-FERNANDEZ, JJ.**

Petitioners,

-versus-

**HON. LYLIHA L. ABELLA-
AQUINO, in her capacity as the
presiding judge of Regional Trial
Court of the City of Manila –
Branch 24 and PEOPLE OF THE
PHILIPPINES, ASTRA
ZENECA, & LES
LABORATOIRES SERVIER,**

Promulgated:

February 24, 2015

Respondents.

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DECISION

LOPEZ, J.:

In this petition, assailing the November 15, 2013 Order of the Regional Trial Court of Manila, Branch 24, the petitioners reiterate their motion to quash Search Warrant Nos. 13-21535 and 13-21536 on the grounds that: (1) probable cause is doubtful since the time between the commission of the alleged offense and application for search warrant is too remote; (2) there is no probable cause to search the second floor; (3) there is no probable cause to include Vastarel in the search warrant; (4) the warrants were issued in connection with two offenses; and (5) the applicant was not

deputized by the Bureau of Food and Drugs (BFAD).¹

The facts are undisputed.

IP Manila is a domestic firm engaged in protecting the Intellectual Property Rights of its clients. It employs Market Researchers who gather information regarding counterfeit or pirated products bearing its clients' trademarks and copyrights and other violations of pertinent laws. Among IP Manila's clients are the pharmaceutical companies Astra Zeneca PLC (Astra Zeneca) and Les Laboratoires Servier (Servier).²

On March 13, 2013, Special Investigator Rafael V. Gonzaga of the National Bureau of Investigation-Intellectual Property Rights Division (NBI-IPRD) applied³ for search warrants against "Friendship Drug and Medical Supply and/or Keh Diet Kuen M.D. Clinic" for violation of Sections 11(a) and (j) of R.A. No. 3720, as amended by R.A. No. 9711 otherwise known as the FDA Act of 2009.⁴

1 Rollo, pp. 3-31. Petition for Certiorari.

2 Id., p. 254. Joint Affidavit of Michael Joy E. Edem and Ma. Victoria A. Obeda.

3 The proceedings was before the Regional Trial Court of Manila, Branch 24, presided by Judge Lyliha Abella-Aquino.

4 Sections 11(a) and (j), in relation to Section 12 of R.A. No. 3720, as amended by Republic Act No. 9711, known as the Food and Drug Administration (FDA) Act of 2009, provide:

Section 10. Section 11, subsections (a), (b), (d), (g), (j),(k) and (l) of Republic Act No. 3720, as amended, are hereby further amended to read as follows:

"SEC. 11. The following acts and the causing thereof are hereby prohibited:

"(a) The manufacture, importation, exportation, sale, offering for sale, distribution, transfer, non-consumer use, promotion, advertising, or sponsorship of any health product that is adulterated, unregistered or misbranded.

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"(j) The manufacture, importation, exportation, sale, offering for sale, distribution, transfer, non-consumer use, promotion, advertisement, or sponsorship of any health product which, although requiring registration, is not registered with the FDA pursuant to this Act.

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"The prohibited acts mentioned herein shall cover all applicable health products."

Section 11. Section 12, subsection (a) of Republic Act No. 3720, as amended, is hereby further amended to read as follows:

SEC. 12. (a) Any person who violates any of the provisions of Section eleven hereof shall, upon conviction, suffer the penalty of imprisonment ranging from one (1) year but not more than ten (10) years or a fine of not less than Fifty thousand pesos (P50,000.00) but not more than Five hundred thousand pesos (P500,000.00), or both, at the discretion of the court; *Provided*, That if the offender is a manufacturer, importer or distributor of any health product, the penalty of at least five (5) years imprisonment but not more than ten (10) years and a fine of at least Five hundred thousand pesos (P500,000.00) but not more than Five million pesos (P5,000,000.00) shall be imposed; *Provided, further*, That an additional fine of one percent (1%) of the economic value/cost of the violative product or violation, or One thousand pesos (P1,000.00), whichever is higher, shall be imposed for each day of continuing violation; *Provided, finally*, That health products found in violation of the provisions of this Act and other relevant laws, rules and regulations may be seized and held in custody pending proceedings, without hearing or court order, when the director-general has reasonable cause to believe from facts found by him/her or an authorized officer or employee of the FDA that such health products may cause injury or prejudice to the consuming public.

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Should the offense be committed by a juridical person, the Chairman of the Board of Directors, the president, general manager, or the partners and/or the persons directly responsible therefore shall be penalized.

SI Gonzaga attested that NBI-IPRD received a request for assistance to investigate Friendship Drug. On February 23, 2012, he and investigators from IP Manila went to the drugstore, located at No. 755 Ongpin, Barangay 296, Zone 28, Binondo, Manila, and bought Imdur and Coversyl, manufactured by Astra Zeneca and Servier, respectively. They conducted a second test-buy on June 20, 2012 and bought Astra Zeneca's Plendil and Servier's Diamicon.⁵

IP Manila's Market Researchers, Michael Joy Edem and Ma. Victoria Obeda, were presented as witnesses and their joint affidavits were submitted before the RTC. According to them, they bought Plendil and Coversyl from "Friendship Drug and Medical Supply and/or Keh Diet Kuen M.D. Clinic" during the course of a market survey on October 19 and 20, 2011. They noticed, from the blister packs, indications that the products were unregistered or misbranded in violation of Sections 11(a) and (j) of R.A. No. 3720. They reported their findings to Astra Zeneca and Servier and were instructed to coordinate with the proper law enforcement agencies for the necessary action.⁶

Edem and Obeda accompanied SI Gonzaga on several test-buys. The last was on November 20, 2012 when they bought Plendil, Imdur and Coversyl. All the samples were sent to FDA, which certified on February 21, 2013 that the items were unregistered and the labels were not in accordance with Philippine Generic Labeling Requirements. The samples and FDA Certification were presented in court. Also, Edem and Obeda confirmed that the registered owner of Friendship Drug is Keh Diet Kuen as found in the Department of Trade and Industry (DTI) records.⁷

Meanwhile, the RTC issued Search Warrant Nos. 13-21535 and 13-21536, which are similarly worded except for the things to be seized, to wit:

It appearing to the satisfaction of the undersigned after a personal examination under oath of applicant Special Investigator Rafael V. Gonzaga of the National Bureau of Investigation – Intellectual Property Rights Division (NBI-IPRD) and his witnesses, Mr. Michael Joy E. Edem and Ms. Ma. Victoria A. Obeda, Market Researchers of IP Manila Associates, that there is probable cause that the above-named respondents have in their possession and control in premises located at **No. 755 Ongpin, Barangay 296, Zone 28, Binondo, Manila**, the following:

Should the offense be committed by a foreign national, he/she shall, in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

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5 TSN, March 2013, Rollo, pp. 263-267.

6 Id., pp. 268-269, 271-272. Joint Affidavit, id., pp. 254-260.

7 Id., pp. 269-270, 272-274.

a) Unregistered [AstraZeneca/Servier] pharmaceutical products such as but not limited to [“PLENDIL” and “IMDUR”/“COVERSYL”, “DIAMICRON”, and “VASTAREL”], brand drugs;

b) Sundry of such as tags, labels, boxes, packages, wrappers, receptacles, advertisements and other paraphernalia used in the sale, and/or offering for sale, and/or distribution, and/or offering for sale, and/or distribution, and/or transfer of unregistered [AstraZeneca / Servier] pharmaceutical products such as but not limited to [“PLENDIL” and “IMDUR”/“COVERSYL”, “DIAMICRON”, and “VASTAREL”] brand drugs, and;

c) Sales invoices, delivery receipts, official receipts, ledgers, journals, purchase orders and all other books of accounts and documents used in the sale, and/or offering of sale, and/or distribution, and/or transfer of unregistered [AstraZeneca/Servier] pharmaceutical products such as but not limited to [“PLENDIL” and “IMDUR”/“COVERSYL”, “DIAMICRON”, and “VASTAREL”] brand drugs;

in violation of Section 11 (a) and (j) in relation to Section 12 of RA No. 3720, as amended by RA No. 9711, otherwise known as FDA Act of 2009, the abovementioned premises (refer to attached sketch/diagram of the location), which should be seized and brought to the undersigned.

NOW THEREFORE, you are hereby commanded to make an immediate search at any time of the day or night of the place but limited only to the premises herein described and forthwith seize and take possession of the abovementioned articles and bring the same to the undersigned to be dealt with as the law directs, together with detailed inventory of such articles and things seized within forty-eight (48) hours from service hereof.⁸

On March 14, 2013, the NBI conducted a search and seizure operation at 755 Ongpin Street, covering the ground floor where the drugstore was located, and the second floor which was divided into Friendship Drug's storage area and Keh Diet Kuen's clinic. Coversyl, Diamicron and Vastarel were among the seized items.⁹

Friendship Drug filed a Motion to Quash Search Warrants (Motion to Quash), claiming that: (1) probable cause is doubtful since four months has lapsed between the last test-buy on November 20, 2012 and the issuance of the Search Warrants on March 13, 2013; (2) there is no probable cause to

⁸ Id., pp. 150-154.

⁹ Id., p. 155, Receipt/Inventory of Property Seized.

search the second floor because only the drugstore at the ground floor was mentioned during the application; (3) Vastarel should not be included since only Coversyl and Diamicron were bought during the test-buys; (4) the search warrants were issued in connection with two offenses, i.e. Sections 11(a) and (j) of R.A. No. 3720; and (5) SI Gonzaga was not deputized by the Bureau of Food and Drugs (BFAD) to apply for search warrants pursuant to Section 6 (a) of RA 8203.¹⁰

The RTC denied the Motion to Quash.¹¹ Friendship Drug moved for reconsideration but was denied.¹² Hence, this petition for certiorari imputing grave abuse of discretion against the RTC and reiterating the issues raised in the Motion to Quash.¹³

¹⁰ Id., pp. 166-175.

Section 6(a) of R.A. 8203, known as the Special Law on Counterfeit Drugs provides:

SECTION 6. Administrative Proceedings. - The Bureau [referring to the Bureau of Food and Drugs or BFAD] is hereby further authorized to undertake the following administrative actions:

a) Upon verified information on the existence of suspected counterfeit drugs in the possession of any manufacturer, seller or distributor, the duly authorized officers of the Bureau or any officer deputized by the Bureau for the purpose shall segregate, seal and after having obtained a valid search warrant from a competent court, seize such counterfeit drugs and take them into custody; Provided, That in case the suspected counterfeit drugs are found in a private residence, as defined in Section 3 of this Act or in other premises not covered by a valid license to operate issued by the Bureau, the duly authorized officer of the Bureau or deputized officer thereof shall secure a search warrant for the purpose of seizing and taking into custody such suspected counterfeit drugs;

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¹¹ The RTC ratiocinated in its November 15, 2013 Order:

From the records, it is clear that the search warrants were issued after the Court has conducted an examination on the applicant Rafael V. Gonzaga of the NBI and his witness, Mr. Michael Joy Edem and Ms. Maria Victoria A. Obeda; that they presented the test-buy samples purchased from Friendship Drug and Medical Supply at the address located at No. 755 Ongpin Street, Brgy. 296, Zone 90, Binondo, Manila, which are Imdur 30 mg, a product of Astra Zeneca and Coversyl 4mg, which is a product of Servier; that again, they bought from respondent Friendship Drug Plendil, a product of Astra Zeneca and Servier Diamicron drug; that these drugs were sent to the Bureau of Food and Drugs for examination, which issued a Certification that the drugs were unregistered and the labels did not conform with the Philippine Generic labeling requirements; that these witnesses executed a Joint Affidavit which was duly sworn under oath.

Relative to the second ground, explicitly mentioned in the Joint Affidavit of Michael Joy Edem and Maria Victoria A. Obeda is the statement that they bought the drugs at Friendship Drug and Medical Supply and/or Keh Diet Kuen M.D. Clinic, and even if there is any inconsistency, the same is not sufficient to quash the search warrants. There are other references which pointed to the exact location of the subject premises, i.e. the description of the place and the location sketch.

On the third ground, this Court maintains that the search warrants were issued upon probable cause in connection with one specific offense, that is violation of the Food and Drug Act of 2009. A cursory reading of the subject search warrants clearly show that they were issued only for a single specific offense, not two (2) as alleged by respondent; that is, violation of Section 11(a) and (j), in relation to Section 2 of RA No. 3720, as amended by RA No. 971, otherwise known as FDA Act of 2009.

Finally, the contention of respondents that there was no deputization from the Bureau of Food and Drug simply does not hold water. A search warrant is in the nature of a criminal process akin to a writ of discovery. It is a special and peculiar remedy drastic in its nature, and made necessary because of a public necessity". (Malaloan vs. Court of Appeals, 232 SCRA 249). It is addressed to a peace officer. And as correctly pointed out by private complainant, the FDA Act of 2009 does not require the deputization of a peace officer when applying for a search warrant. [Id., pp. 140-142.]

¹² Id., p. 144, February 4, 2014 Order.

¹³ Id., pp. 113-114.

The petition is bereft of merit.

Section 4, Rule 126 of the Rules of Court provides:

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.

The requisites for the issuance of a search warrant are: (1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized.¹⁴

Probable cause means such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched.¹⁵ There is no general formula or fixed rule for the determination of probable cause since it must be decided in light of the conditions obtaining in given situations and its existence depends to a large degree upon the findings or opinion of the judge conducting the examination.¹⁶

Considering the records, We find that the search warrants were based on probable cause. Search Warrant Nos. 13-21535 and 13-21536 were issued after the judge personally examined SI Gonzaga and his witnesses, Michael Joy Edem and Ma. Victoria Obeda, under oath. The judge asked them searching questions regarding the test-buys, which are circumstances personally known to them. The witnesses also submitted their affidavits, the test-buy samples and FDA Certification stating that the samples were unregistered and mislabeled. Clearly, the requirements for determining probable cause are complied with.

Petitioners' claim that probable cause is doubtful, due to the four-month lapse between the last test-buy and the application for Search Warrant, cannot be given credence. We are aware of the maxim that the

14 *People of the Philippines v. Olive Rubio Mamaril*, G.R. No. 171980, October 6, 2010 citing *Abuan v. People*, G.R. No. 168773, 27 October 2006, 505 SCRA 799, 822.

15 *Id.*, citing *Betoy, Sr. v. Coliflores, A.M.* No. MTJ-05-1608, 28 February 2006, 483 SCRA 435, 444.

16 *Id.*, citing *Lastrilla v. Granda*, G.R. No. 160257, 31 January 2006, 481 SCRA 324, 347.

nearer the time at which the observation of the offense is alleged to have been made, the more reasonable the conclusion of establishment of probable cause.¹⁷ Nevertheless, the four-month lapse is justified in this case.

The witnesses attested that they sent the samples to FDA after the last test-buy on November 20, 2012. The FDA's Certification, which is essential in establishing probable cause that the products were unregistered and mislabeled, was issued on February 21, 2013 and received by the applicants for search warrant on February 25, 2013.¹⁸ SI Gonzaga applied for a search warrant on March 13, 2013 or only sixteen days after. Besides, the witnesses attested that Friendship Drug was selling the products since October 2011. They conducted test-buys at four to five-month intervals on February 23, 2012, June 20, 2012 and November 20, 2012. In the circumstances, there is cause to believe that the alleged contraband products were continuously being sold by Friendship Drug until the time of application for search warrant.

At this juncture, We note that petitioners are not questioning the search that encompassed the entire unit located at 755 Ongpin Street. They are questioning, however, the search on the second floor where, according to them, no probable cause exists.

Petitioners' argument is specious. There is probable cause to search the second floor of 755 Ongpin Street. Although the alleged offense was committed only at the drugstore on the ground floor where the test-buys were conducted, the second floor is an adjunct or extension of the store. Hence, it is necessarily included in the search warrant. Moreover, a magistrate's determination of a probable cause for the issuance of a search warrant is given great deference by a reviewing court, as long as there was substantial basis for that determination.¹⁹

Next, the inclusion of Vastarel and other Servier products in Search Warrant No. 13-21536 will not render it void. The law does not require that the things to be seized must be described in precise and minute detail as to leave no room for doubt on the part of the searching authorities.²⁰ The element of time is very crucial in criminal cases²¹ and requiring the peace officers to conduct test-buys on all Servier products would make it virtually impossible to apply for and obtain a warrant, and would render the purpose of the search nugatory.

17 *Asian Surety and Insurance Company, Inc. v. Hon. Jose Herrera*, G.R. No. L-25232, December 20, 1973.

18 TSN, March 2013, Rollo, pp. 269-270, 272-274.

19 *People of the Philippines v. Olive Rubio Mamaril*, supra, citing *People v. Choi*, G.R. No. 152950, 3 August 2006, 497 SCRA 547, 556.

20 *Benjamin V. Kho and Elizabeth Alindogan v. Hon. Roberto L. Makalintal and National Bureau of Investigation*, G.R. No. 94902, April 21, 1999.

21 *Ibid.*

Also, petitioners' argument that the warrants were issued in connection with more than one issue, i.e. Sections 11(a) and (j) of R.A. No. 3720, is not offensive.²² R.A. No. 3720 is a special law that regulates the production, sale and traffic of food, drug and cosmetic to protect the health of the people.²³ The offenses penalized under this law are closely related or belong to the same class or species. Accordingly, one warrant that covers various provisions of a particular law does not violate the rules.²⁴

Finally, petitioners' assertion that SI Gonzaga should be deputized by BFAD before applying for a search warrant is erroneous. The pertinent law in this case is R.A. No. 3720 and not RA 8203 invoked by the petitioners. R.A. 3720 does not require the deputization of an NBI agent in applying for a search warrant. A search warrant is an order in writing directed to a peace officer, commanding him to search for personal property described therein and bring it before the court.²⁵ As a peace officer, NBI agent SI Gonzaga is authorized to apply for a search warrant.

ACCORDINGLY, the petition for certiorari is **DISMISSED**.

SO ORDERED.

MARIO V. LOPEZ
Associate Justice

WE CONCUR:

NOEL G. TIJAM
Associate Justice

MYRA V. GARCIA-FERNANDEZ
Associate Justice

22 See *People of the Philippines v. Roberto Salanguit*, G.R. No. 133254-55, April 19, 2001 citing *People v. Dichoso*, 223 SCRA 174 (1993) referring to the Dangerous Drugs Act. See also *People v. Marcos*, 117 SCRA 995 referring to the Revised Penal Code on articles entitled "Substituting and Altering Trademark, Tradenames, or Service Marks" and "Unfair Competition and Fraudulent Registration of Trademark and Tradename", as cited in *Herrera, Oscar M., Remedial Law*, 2001 Edition, Volume IV.

23 Section 2, R.A. No. 3720.

24 See *People of the Philippines v. Roberto Salanguit*, *supra*, citing *Prudente v. Dayrit*, 180 SCRA 69 (1989) referring to P.D. No. 1866 regarding illegal firearms and explosives. See also *People v. Marcos*, *supra*.

25 Section 1, Rule 126 of the Rules of Court.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

NOEL G. TIJAM
Chairperson, Fifth Division