

## THIRD DIVISION

[G.R. Nos. 76649-51. August 19, 1988.]

**20TH CENTURY FOX FILM CORPORATION**, *petitioner*, *vs.*  
**COURT OF APPEALS, EDUARDO M. BARRETO, RAUL  
SAGULLO and FORTUNE LEDESMA**, *respondents*.

*Siguion Reyna, Montecillo & Ongsiako Law Office* for petitioner.

*B.C. Salazar & Associates* for respondents.

## DECISION

**GUTIERREZ, JR., J :**

The petitioner questions the application of the constitutional provision against illegal searches and seizures to raids conducted in connection with the government's anti-film piracy campaign. The main issue hinges on whether or not the judge properly lifted the search warrants he issued earlier upon the application of the National Bureau of Investigation on the basis of the complaint filed by the petitioner.

In a letter-complaint dated August 26, 1985, petitioner 20th Century Fox Film Corporation through counsel sought the National Bureau of Investigation's (NBI) assistance in the conduct of searches and seizures in connection with the latter's anti-film piracy campaign. Specifically, the letter-complaint alleged that certain videotape outlets all over Metro Manila are engaged in the unauthorized sale and renting out of copyrighted films in videotape form which constitute a flagrant violation of Presidential Decree No. 49 (otherwise known as the Decree on the Protection of Intellectual Property).

Acting on the letter-complaint, the NBI conducted surveillance and investigation of the outlets pinpointed by the petitioner and subsequently filed three (3) applications for search warrants against the video outlets owned by the private respondents. The applications were consolidated and heard by the Regional Trial Court of Makati, Branch 132.

On September 4, 1985, the lower court issued the desired search warrants.

Armed with the search warrants, the NBI accompanied by the petitioner's agents, raided the video outlets and seized the items described therein. An inventory of the items seized was made and left with the private respondents.

Acting on a motion to lift search warrants and release seized properties filed by the private respondents, the lower court issued an order dated October 8, 1985, lifting the three (3) search warrants issued earlier against the private respondents by the court. The dispositive portion of the order reads:

"WHEREFORE, the Court hereby orders that Search Warrants Nos. SW-85-024; issued against Eduardo M. Barreto of the Junction Video, etc., Parañaque, Metro Manila; SW No. 85-025, issued against Raul M. Sagullo of South Video Bug Center, Inc., etc., also of No. 5355 Pres. Avenue BF Homes, Parañaque, Metro Manila; and SW No. 85-026, issued against Fortune A. Ledesma of Sonix Video Services of San Antonio Plaza, Forbes Park, Makati, Metro Manila, be lifted.

"Consequently, the articles listed in the returns of the three search warrants which could not be a basis of any criminal prosecution, now in the possession of the National Bureau of Investigation which under the law must be delivered to this Court, but which the NBI failed to do, are hereby ordered to be returned to their owners through their lawyer, Atty. Benito Salazar or his agents or representatives, against proper receipt, to be forwarded to this Court for record purposes, as proof that said properties have been returned to the possession of the rightful owners." (p. 34, Rollo)

The lower court denied a motion for reconsideration filed by the petitioner in its order dated January 2, 1986.

The petitioner filed a petition for certiorari with the Court of Appeals to annul the October 8, 1985 and January 2, 1986 orders of the lower court. The petition was dismissed.

Hence, this petition.

The main issue hinges on the meaning of "probable cause" within the context of the constitutional provision against illegal searches and seizures (Section 3, Article IV, 1973 Constitution, now, Section 2, Article III, 1987 Constitution).

The petitioner maintains that the lower court issued the questioned search warrants after finding the existence of a probable cause justifying their issuance. According to the petitioner, the lower court arrived at this conclusion on the basis of the depositions of applicant NBI's two witnesses which were taken through searching questions and answers by the lower court.

Section 2, Article III of the present Constitution which substantially reproduces Section 3, Article IV of the 1973 Constitution on illegal searches and seizures provides:

"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."

This constitutional right protects a citizen against wanton and unreasonable invasion of his privacy and liberty as to his person, papers and effects. We have explained in the case of *People v. Burgos* (144 SCRA 1) citing *Villanueva v. Querubin* (48 SCRA 345) why the right is so important:

"It is deference to one's personality that lies at the core of this right but it could be also looked upon as a recognition of a constitutionally protected area, primarily one's home, but not necessarily thereto confined. (Cf. *Hoffa v. United States*, 385 US 293 [1966]) What is sought to be guarded is a man's prerogative to choose who is allowed entry to his residence. In that haven of refuge, his individuality can assert itself not only in the choice of who shall be welcome but likewise in the kind of objects he wants around him. There the state, however powerful, does not as such have 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. *Schmerber v. California*, 384 US 757 [1966], *Brennan, J. and Boyd v. United States*, 116 630 [1886]). In the same vein, Landynski in his authoritative work (*Search and Seizure and the Supreme Court* [1966]), could fitly characterize constitutional right as the embodiment of a 'spiritual concept: the belief that to value the privacy of home and person and to afford its constitutional protection against the long reach of government is no less than to value human dignity, and that his privacy must not be disturbed except in case of overriding social need, and then only under stringent procedural safeguards.' (ibid, p. 74)."

The government's right to issue search warrants against a citizen's papers and effects is circumscribed by the requirements mandated in the searches and seizures provision of the Constitution.

In the case of *Burgos, Sr. v. Chief of Staff, AFP* (133 SCRA 800), we defined probable cause for a valid search "as 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." This constitutional provision also demands "no less than personal knowledge by the complainant or his witnesses of the facts upon which the issuance of a search warrant may be justified" in order to convince the judge, not the individual making the affidavit and seeking the issuance of the warrant, of the existence of a probable cause. (*Alvarez v. Court of First Instance*, 64 Phil. 33; *Burgos, Sr. v. Chief of Staff, AFP, supra*).

In the instant case, the lower court lifted the three questioned search warrants against the private respondents on the ground that it acted on the application for the issuance of the said search warrants and granted it on the misrepresentations of applicant NBI and its witnesses that infringement of copyright or a piracy of a particular film have been committed. Thus the lower court stated in its questioned order dated January 2, 1986:

"According to the movant, all three witnesses during the proceedings in the application for the three search warrants testified of their own personal knowledge. Yet, Atty. Albino Reyes of the NBI stated that the counsel or representative of the Twentieth Century Fox Corporation will testify on the video cassettes that were pirated, so that he did not have personal knowledge of the alleged piracy. The witness Bacani also said that the video cassettes were pirated without stating the manner it was pirated and that it was Atty. Domingo that has knowledge of that fact.

"On the part of Atty. Domingo, he said that the re-taping of the allegedly pirated tapes was from master tapes allegedly belonging to the Twentieth Century Fox, because, according to him, it is of his personal knowledge.

"At the hearing of the Motion for Reconsideration, Senior NBI Agent Atty. Albino Reyes testified that when the complaint for infringement was brought to the NBI, the master tapes of the allegedly pirated tapes were shown to him and he made comparisons of the tapes with those purchased by their man Bacani. Why the master tapes or at least the film reels of the allegedly pirated tapes were not shown to the Court during the application gives some misgivings as to the truth of that bare statement of the NBI agent on the witness stand.

"Again as the application and search proceedings is a prelude to the filing of criminal cases under PD 49, the copyright infringement law, and although what is required for the issuance thereof is merely the presence of probable cause, that probable cause must be satisfactory to the Court, for it is a time-honored precept that proceedings to put a man to task as an offender under our laws should be interpreted in *strictissimi juris* against the government and liberally in favor of the alleged offender.

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"This doctrine has never been overturned, and as a matter of fact it had been enshrined in the Bill of Rights in our 1973 Constitution.

"So that lacking in persuasive effect, the allegation that master tapes were viewed by the NBI and were compared to the purchased and seized video tapes from the respondents' establishments, it should be dismissed as not supported by competent evidence and for that matter the probable cause hovers in that grey debatable twilight zone between black and white resolvable in favor of respondents herein.

"But the glaring fact is that 'Cocoon,' the first video tape mentioned in the search warrant, was not even duly registered or copyrighted in the

Philippines. (Annex C of Opposition p. 152 record). So, that lacking in the requisite presentation to the Court of an alleged master tape for purposes of comparison with the purchased evidence of the video tapes allegedly pirated and those seized from respondents, there was no way to determine whether there really was piracy, or copying of the film of the complainant Twentieth Century Fox." (pp. 37-39, Rollo)

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The lower court, therefore, lifted the three (3) questioned search warrants in the absence of probable cause that the private respondents violated P.D. 49. As found out by the court, the NBI agents who acted as witnesses did not have personal knowledge of the subject matter of their testimony which was the alleged commission of the offense by the private respondents. Only the petitioner's counsel who was also a witness during the application for the issuance of the search warrants stated that he had personal knowledge that the confiscated tapes owned by the private respondents were pirated tapes taken from master tapes belonging to the petitioner. However, the lower court did not give much credence to his testimony in view of the fact that the master tapes of the allegedly pirated tapes were not shown to the court during the application.

All these factors were taken into consideration by the lower court when it lifted the three questioned search warrants. There is no truth, therefore, to the petitioner's allegation that the lower court based its January 2, 1986 order only "on the fact that the original or master copies of the copyrighted films were not presented during the application for search warrants, thus leading it to conclude that it had been "misled by the applicant and his witnesses." (p. 17, Rollo)

The presentation of the master tapes of the copyrighted films from which the pirated films were allegedly copied, was necessary for the validity of search warrants against those who have in their possession the pirated films. The petitioner's argument to the effect that the presentation of the master tapes at the time of application may not be necessary as these would be merely evidentiary in nature and not determinative of whether or not a probable cause exists to justify the issuance of the search warrants is not meritorious. The court cannot presume that duplicate or copied tapes were necessarily reproduced from master tapes that it owns.

The application for search warrants was directed against video tape outlets which allegedly were engaged in the unauthorized sale and renting out of copyrighted films belonging to the petitioner pursuant to P.D. 49.

The essence of a copyright infringement is the similarity or at least substantial similarity of the purported pirated works to the copyrighted work. Hence, the applicant must present to the court the copyrighted films to compare them with the purchased evidence of the video tapes allegedly pirated to determine whether the latter is an unauthorized reproduction of the former. This linkage of the copyrighted films to the pirated films must be established to satisfy the requirements of probable cause. Mere

allegations as to the existence of the copyrighted films cannot serve as basis for the issuance of a search warrant.

Furthermore, we note that the search warrants described the articles sought to be seized as follows:

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"c) Television sets, Video Cassettes Recorders, rewinders, tape head cleaners, accessories, equipments and other machines used or intended to be used in the unlawful reproduction, sale, rental/lease, distribution of the above-mentioned video tapes which she is keeping and concealing in the premises above-described." (p 26, Rollo)

In the case of *Burgos v. Chief of Staff, AFP supra*, we stated:

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"Another factor which makes the search warrants under consideration constitutionally objectionable is that they are in the nature of general warrants. The search warrants describe the articles sought to be seized in this wise:

"1] All printing equipment, paraphernalia, paper, ink, photo equipment, typewriters, cabinets, tables communications/recording equipment, tape recorders, dictaphone and the like used and/or connected in the printing of the 'WE FORUM' newspaper and any related to the 'WE FORUM' newspaper and any and all document/communications, letters and facsimile of prints related to the 'WE FORUM' newspaper.

"2] Subversive documents, pamphlets, leaflets, books, and other publications to promote the objectives and purposes of the subversive organizations known as Movement for Free Philippines, Light-a-Fire Movement and April 6 Movement; and

"3] Motor vehicles used in the distribution/circulation of the 'WE FORUM' and other subversive materials and propaganda, more.

"1] Toyota-Corolla, colored yellow with Plate No. NKA 892;

"2] DATSUN pick-up colored white with Plate No. NKV 969;

"3] A delivery truck with Plate No. NBS 542;

"4] TOYOTA-TAMARAW, colored white with Plate No. NBS 542;

"5] TOYOTA Hi-Lux, pick-up truck with Plate No. NGV 472 with marking 'Bagong Silang.'

"In *Stanford v. State of Texas* (379 U.S. 476, 13 L ed 2nd 431), the search warrant which authorized the search for 'books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Parties of Texas, and the operations of the Community Party in Texas,' was declared void by the U.S. Supreme Court for being too general. In like manner, directions to 'seize any evidence in connection with the violation of SDC 13-3703 or otherwise' have been held too general, and that portion of a search warrant which authorized the seizure of any 'paraphernalia which could be used to violate Sec 54-197 of the Connecticut General Statutes [the statute dealing with the crime of conspiracy]' was held to be a general warrant, and therefore invalid (68 Am. Jur. 2d., pp. 736-737). The description of the articles sought to be seized under the search warrants in question cannot be characterized differently." (at pp. 814-815)

Undoubtedly, a similar conclusion can be deduced from the description of the articles sought to be confiscated under the questioned search warrants.

Television sets, video cassette recorders, rewinders and tape cleaners are articles which can be found in a video tape store engaged in the legitimate business of lending or renting out betamax tapes. In short, these articles and appliances are generally connected with, or related to a legitimate business not necessarily involving piracy of intellectual property or infringement of copyright laws. Hence, including these articles without specification and/or particularity that they were really instruments in violating an Anti-Piracy law makes the search warrant too general which could result in the confiscation of all items found in any video store. In fact, this actually happened in the instant case. Thus, the lower court, in its questioned order dated October 8, 1985 said:

"Although the applications and warrants themselves covered certain articles of property usually found in a video store, the Court believes that the search party should have confined themselves to articles that are according to them, evidence constitutive of infringement of copyright laws or the piracy of intellectual property, but not to other articles that are usually connected with, or related to, a legitimate business, not involving piracy of intellectual property, or infringement of copyright laws. So that a television set, a rewriter, and a whiteboard listing Betamax tapes, video cassette cleaners video cassette recorders as reflected in the Returns of Search Warrants, are items of legitimate business engaged in the video tape industry, and which could not be the subject of seizure. The applicant and his agents therefore exceeded their authority in seizing perfectly legitimate personal property usually found in a video cassette store or business establishment." (p. 33, Rollo)

All in all, we find no grave abuse of discretion on the part of the lower court when it lifted the search warrants it earlier issued against the private respondents. We agree with the appellate court's findings to the effect that:

"An assiduous examination of the assailed orders reveal that the main ground upon which the respondent Court anchored said orders was its subsequent findings that it was misled by the applicant (NBI) and its witnesses

'that infringement of copyright or a piracy of a particular film have been committed when it issued the questioned warrants.' Stated differently, the respondent Court merely corrected its erroneous findings as to the existence of probable cause and declared the search and seizure to be unreasonable. Certainly, such action is within the power and authority of the respondent Court to perform, provided that it is not exercised in an oppressive or arbitrary manner. Indeed, the order of the respondent Court declaring the existence of probable cause is not final and does not constitute *res judicata*.

"A careful review of the record of the case shows that the respondent Court did not commit a grave abuse of discretion when it issued the questioned orders. Grave abuse of discretion 'implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.' But far from being despotic or arbitrary, the assailed orders were motivated by a noble desire of rectifying an error, much so when the erroneous findings collided with the constitutional rights of the private respondents. In fact, the petitioner did not even contest the righteousness and legality of the questioned orders but instead concentrated on the alleged denial of due process of law." (pp. 44-45, Rollo)

The proliferation of pirated tapes of films not only deprives the government of much needed revenues but is also an indication of the widespread breakdown of national order and discipline. Courts should not impose any unnecessary roadblocks in the way of the anti-film piracy campaign. However, the campaign cannot ignore or violate constitutional safeguards. To say that the problem of pirated films can be solved only by the use of unconstitutional shortcuts is to denigrate the long history and experience behind the searches and seizures clause of the Bill of Rights. The trial court did not commit reversible error.

WHEREFORE, the instant petition is DISMISSED. The questioned decision and resolution of the Court of Appeals are AFFIRMED.

SO ORDERED.

*Fernan, C.J., Feliciano, Bidin and Cortes, JJ., concur.*