



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

**PETRON LPG DEALERS
 ASSOCIATION and TOTAL GAZ
 LPG DEALERS ASSOCIATION,**
Petitioners,

G.R. No. 199371

Present:

- versus -

CARPIO, *Chairperson,*
 BRION,
 DEL CASTILLO,
 REYES, * *and*
 LEONEN, *JJ.*

**NENA C. ANG, ALISON C. SY,
 NELSON C. ANG, RENATO C. ANG,
 and/or OCCUPANTS OF NATIONAL
 PETROLEUM CORPORATION,**
Respondents.

Promulgated:

03 FEB 2016

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DECISION

DEL CASTILLO, J.:

Facts discovered during surveillance operations conducted by the authorities on the basis of information and evidence provided by the complainants constitute personal knowledge which could form the basis for the issuance of a search warrant.

This Petition for Review on *Certiorari*¹ seeks to set aside the September 2, 2011 Decision² of the Court of Appeals (CA) in CA-G.R. CV No. 89220 and its November 17, 2011 Resolution³ dismissing petitioners' appeal and denying their Motion for Reconsideration, respectively.

Factual Antecedents

Petitioners Petron LPG Dealers Association and Total Gaz LPG Dealers Association, together with other liquefied petroleum gas (LPG) dealers'

* Per Raffle dated February 1, 2016.

¹ *Rollo*, pp. 25-52.

² *Id.* at 53-60; penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr.

³ *Id.* at 61-62.

associations, filed a letter-complaint⁴ before the National Bureau of Investigation–Ilocos Regional Office (NBI-IRO), requesting assistance in the surveillance, investigation, apprehension and prosecution of respondents Nena C. Ang, Alison C. Sy, Nelson C. Ang, Renato C. Ang, and National Petroleum Corporation (Nation Gas) for alleged illegal trading of LPG products and/or underfilling, possession and/or sale of underfilled LPG products in violation of Sections 2 (a) and (c), in relation to Sections 3 and 4 of *Batas Pambansa Blg. 33*⁵ as amended by Presidential Decree No. 1865⁶ (BP 33, as amended), which provide –

Section 2. Prohibited Acts. – The following acts are prohibited and penalized:

- (a) Illegal trading in petroleum and/or petroleum products;
- (b) x x x x
- (c) Underdelivery or underfilling beyond authorized limits in the sale of petroleum products or possession of underfilled liquefied petroleum gas cylinder for the purpose of sale, distribution, transportation, exchange or barter;

x x x x

Sec. 3. Definition of terms. For the purpose of this Act, the following terms shall be construed to mean:

Illegal trading in petroleum and/or petroleum products - -

x x x x

(C) Refilling of liquefied petroleum gas cylinders without authority from said Bureau, or refilling of another company's or firm's cylinders without such company's or firm's written authorization;

x x x x

Sec. 4. Penalties. Any person who commits any act herein prohibited shall, upon conviction, be punished with a fine of not less than twenty thousand pesos (₱20,000) but not more than fifty thousand pesos (₱50,000), or imprisonment of at least two (2) years but not more than five (5) years, or both, in the discretion of the court. In cases of second and subsequent conviction under this Act, the penalty shall be both fine and imprisonment as provided herein. Furthermore, the petroleum and/or petroleum products, subject matter of the illegal trading, adulteration, shortselling, hoarding, overpricing or misuse, shall be forfeited in favor of the Government: Provided, That if the petroleum and/or

⁴ Id. at 111-112.

⁵ An Act Defining and Penalizing Certain Prohibited Acts Inimical to the Public Interest and National Security Involving Petroleum and/or Petroleum Products, Prescribing Penalties therefor and for Other Purposes, promulgated on June 6, 1979.

⁶ Amending Batas Pambansa Blg. 33, x x x, by Including Short-Selling and Adulteration of Petroleum and Petroleum Products and Other Acts in the Definition of Prohibited Acts, Increasing the Penalties therein, and for Other Purposes, issued on May 25, 1983.

petroleum products have already been delivered and paid for, the offended party shall be indemnified twice the amount paid, and if the seller who has not yet delivered has been fully paid, the price received shall be returned to the buyer with an additional amount equivalent to such price; and in addition, if the offender is an oil company, marketer, distributor, refiller, dealer, sub-dealer and other retail outlets, or hauler, the cancellation of his license.

Trials of cases arising from this Act shall be terminated within thirty (30) days after arraignment.

When the offender is a corporation, partnership, or other juridical person, the president, the general manager, managing partner, or such other officer charged with the management of the business affairs thereof, or employee responsible for the violation shall be criminally liable; in case the offender is an alien, he shall be subject to deportation after serving the sentence.

If the offender is a government official or employee, he shall be perpetually disqualified from office.

In particular, respondents were alleged to be refilling Shellane, Gasul, Totalgaz, Starflame, and Superkalan Gaz LPG cylinders and selling, distributing and transporting the same without the required written authorization from the alleged respective owners of these cylinders – namely, Pilipinas Shell Petroleum Corporation, Petron Gasul Corporation, Total (Philippines) Corporation, Caltex (Philippines) Corporation (Caltex), and Superkalan Gaz Corporation.

Acting on the letter-complaint, the NBI-IRO – through its agent Marvin de Jemil (De Jemil) – conducted surveillance and test-buy operations. Thus, on November 24, 2005, De Jemil and an undercover NBI asset, Leonardo Antonio (Antonio), proceeded to the sales office of one of Nation Gas's alleged customers in Vigan City, Barba Gas Marketing Center (Barba Gas) – a dealer of LPG and cylinders. De Jemil and Antonio waited until a Barba Gas delivery truck was loaded with Starflame LPG cylinders. The truck then left, with De Jemil's vehicle tailing behind. The truck proceeded to and entered a fenced compound located in Magsingal, Ilocos Sur. The entrance to the compound contained a sign which read "LPG Refilling Plant". De Jemil interviewed residents within the vicinity, and it was learned that the compound belonged to or was occupied by Nation Gas.

De Jemil and Antonio waited at a distance. After about one hour, the Barba Gas truck emerged from the compound. De Jemil then followed the truck back to the Barba Gas sales office at Jose Singson street in Vigan, where the refilled Starflame LPG cylinders were unloaded. The two then proceeded to the test-buy phase of the operation; with an empty eleven-kilogram (11 kg.) Starflame LPG tank in hand, they went to Barba Gas and purchased one of the refilled Starflame LPG cylinders unloaded from the truck. The Barba Gas employee took De Jemil's empty cylinder and replaced it with a filled one. De Jemil paid ₱510.00

for the filled cylinder and received a dated receipt⁷ for the purchase. Thereafter, the filled Starflame LPG cylinder was examined, weighed, inspected, marked, and photographed.

Ruling of the Regional Trial Court

On December 7, 2005, the NBI, through De Jemil, filed two Applications for Search Warrant⁸ to conduct a search of the Magsingal LPG refilling plant. The applications were filed before the Regional Trial Court (RTC) of Bauang, La Union. Judge Ferdinand A. Fe' of RTC Branch 67 propounded the required searching questions, to which De Jemil and Antonio provided the answers.⁹ De Jemil further submitted a sketch and vicinity/location map¹⁰ of the place to be searched; a December 6, 2005 Certification¹¹ or authority to apply for a search warrant issued by his superior, Atty. Rustico Q. Vigilia, NBI-IRO Regional Director; the receipt for the test-buy refilled Starflame LPG cylinder obtained from Barba Gas on November 24, 2005; written Certifications¹² to the effect that Nation Gas is not an authorized LPG refiller of Pilipinas Shell Petroleum Corporation, Petron Gasul Corporation, Total (Philippines) Corporation, Caltex and, Superkalan Gaz Corporation; corporate documents of Nation Gas obtained from the Securities and Exchange Commission (SEC); and photographs¹³ of the Barba Gas delivery truck involved in the refilling operation on November 24, 2005, unloading of the refilled LPG cylinders from the delivery truck after coming from the Magsingal refilling plant, the refilled Starflame LPG cylinder purchased and obtained from the test-buy, and the blank seal covering the test-buy refilled Starflame LPG cylinder – supporting the allegation that the refilling was not authorized as the seal was not a Caltex Starflame seal.

The trial court issued Search Warrant Nos. 2005-59 and 2005-60,¹⁴ which were served the following day, or on December 8, 2005, at the Magsingal LPG refilling plant. Items specified in the search warrants were seized and duly inventoried and receipted.¹⁵ Thereafter, a Consolidated Return of Search Warrants¹⁶ was filed.

On February 7, 2006, respondents filed a Motion to Quash¹⁷ Search Warrant Nos. 2005-59 and 2005-60, arguing that the issuing court did not comply

⁷ *Rollo*, p. 124.

⁸ *Id.* at 84-91, 97-101.

⁹ *Id.* at 128-151; Transcripts of the question-and-answer inquiry conducted by Judge Fe'.

¹⁰ *Id.* at 113.

¹¹ *Id.* at 96.

¹² *Id.* at 119-123.

¹³ *Id.* at 125-127.

¹⁴ *Id.* at 152-155.

¹⁵ *Id.* at 162-163.

¹⁶ *Id.* at 156-157.

¹⁷ *Id.* at 165-187.

with the requirements for issuance of a valid search warrant; that there is no probable cause to issue the subject search warrants, as the certifications issued by the complainants – to the effect that Nation Gas was not an authorized refiller – was not authenticated, the same being mere private documents which required authentication; that De Jemil and Antonio have no personal knowledge of the charges, as well as the truthfulness and authenticity of said certifications; that the issuing court should not have consolidated the two applications, but should have considered them separately in order to arrive at an independent evaluation thereof; that the seizure of Shellane, Gasul, Total Gaz, and Superkalan cylinders was unlawful since there is no specific allegation and evidence of underfilling or illegal refilling – if at all, the inspection was limited to determining if the cylinders were refilled with or without the authority of the complainants; that as a result, the warrants issued were illegal general warrants; and that the warrants covered machinery and equipment classified as real property.

On August 4, 2006, the issuing court released an Order¹⁸ quashing the subject warrants. It held that De Jemil and Antonio had no personal knowledge that Nation Gas was not an authorized LPG refiller of the complaining LPG companies/associations; that no member or representative of the complainants was presented as witness to the search warrant applications; that there is no evidence of illegal refilling since De Jemil and Antonio did not witness the supposed refilling of Barba Gas's Starflame LPG cylinders – including the test-buy cylinder – by Nation Gas; that the certifications issued by the LPG companies were hearsay and not based on personal knowledge, since the testimonies or depositions of those who issued them were not taken and presented to the issuing court; that Caltex's certification does not at all state that Nation Gas was an unauthorized refiller; and that the testimonies or depositions of those who tested the Starflame cylinder – who merely issued a certification of test results – were not taken and submitted to the court, thus rendering said certification mere hearsay. The issuing court concluded that there is no probable cause to issue the subject warrants, and there is no reasonable ground to believe that an offense has been committed by the respondents. It decreed, thus:

WHEREFORE, premises considered, Search Warrants Nos. 2005-59 and 2005-60 are hereby ordered QUASHED for lack of probable cause.

The objects seized by virtue thereof are declared inadmissible for any purpose. The applicant, NBI Supervising Agent Marvin E. De Jemil, or any of his authorized representatives, who was authorized to temporarily retain possession and custody of the seized goods/objects for safekeeping at the warehouse located at Barangay Dilan, Urdaneta, Pangasinan, is ordered to immediately return all the seized items to the respondents.

¹⁸ Id. at 256-264.

SO ORDERED.¹⁹

Petitioners filed a Motion for Reconsideration,²⁰ however, the same was denied in a January 11, 2006 Order.²¹

Ruling of the Court of Appeals

Petitioners interposed an appeal before the CA. On September 2, 2011, the assailed Decision was rendered denying petitioners' appeal. The appellate court held, as follows:

The appellants²² argue that aside from the testimony of De Jemil and Antonio, other documents were presented at the time of the hearing on the application for Search Warrant No. 2005-59. They posit that these are sufficient to establish probable cause and as such, there was no need for the presentation of persons who certified that Nation was not authorized to refill the branded LPG cylinders. They point out that probable cause is only concerned with probabilities and the standard for its determination is only that of a reasonable prudent man. They stress that after the surveillances and test-buy operations done by De Jemil and Antonio, the two already acquired personal knowledge of the offenses committed by the respondents-appellees.²³ It is claimed too that the RTC's finding, that the certification did not state Nation was not authorized to refill, was a vain attempt to steer clear of respondents-appellees' lack of authorization. It is alleged further that although De Jemil and Antonio did not sign the inspection report detailing the weight of the LPG cylinder acquired during the test-buy operations, they were physically present and actually involved in the weighing done, giving them personal knowledge of the under filling by Nation. The appellants aver too that there is no proof that those who weighed the acquired cylinder were employed by them.

X X X X

In reviewing what transpired below, the Court's 'task...is not to conduct a *de novo* determination of probable cause but only to determine whether there is substantial evidence in the records supporting the Judge's decision.' This being the rule, the petition must fail.

The determination of probable cause for the issuance of a search warrant requires that the facts surrounding the basis for the application must be within the personal knowledge of the applicant or his witnesses. If this does not obtain, the finding of probable cause of a judge may be set aside and the search warrant issued by him based on his finding may be quashed since 'the Judge must strictly comply with the requirements of the Constitution and the statutory provisions.' The circumstances at hand reveal that there is enough basis for the RTC to quash the Subject Warrants.

¹⁹ Id. at 263-264.

²⁰ Id. at 265-285.

²¹ Id. at 307.

²² Herein petitioners.

²³ Herein respondents.

De Jemil and Antonio relied on sources furnished to them made by persons not presented as witnesses. They, thus, testified as to the truth of facts they had no personal knowledge of. 'Search warrants are not issued on loose, vague or doubtful basis of fact, nor on mere suspicion or belief.' For instance, de Jemil testified as follows:

“Q You said that the gas tanks are under filled, is that correct?

A Yes, your Honor.

Q What you mean to convey is that the gas tanks do not contain the required gas to be put inside the gas tanks required by law?

A Yes, your Honor.

Q How were you able to verify this?

A It was examined and inspected by the personnel of the LPG Dealers Association, your Honor.

x x x

Q Do you know who owns that refilling station in Magsingal?

x x x

A The Nation Petroleum Corporation, your Honor.

Q And you claimed that the refilling is being done in that refilling station...?

A Yes...

Q Why, is it an authorized refilling station for Caltex?

A No, your Honor.

Q ...[W]hat brand of LPG gas is it authorized to make refills?

A He [sic] was not authorized to refill branded LPG cylinders including Caltex LPG cylinders as well as other branded LPG cylinders, your Honor.

x x x

Q Do you have a certification to show that it is not authorized as a refilling center?

A Yes, your Honor.”

while a portion of Antonio's testimony goes:

Q What was the result of the test-buy?

A After [the] testing conducted by Mr. Kenneth Igo and Mr. Alex Dosuhan of the LPG Dealers Association, the examination turned out positive that the LPG cylinder subject of the test-buy was under-filled and that the

Nation Gas was also using [an] unauthorized seal...”

[From] their answers, [it could be gleaned that] De Jemil and Antonio had no personal knowledge that the LPG acquired during the test-buy was under-filled and that Nation had no authorization. They may have seen a truck carrying empty cylinders enter Nation’s premises and exit after with alleged under-filled cylinders but the requirement of the law is more precise. They should have had personal knowledge that the cylinder concerned was under-filled and that Nation lacked authority. It cannot be ignored that both De Jemil and Antonio did not see the subject cylinder being filled [nor] did they test its weight personally. Furthermore, they were just furnished a certification that Nation did not have any right to refill. Indeed, their respective sworn statements read in part as follows:

‘5. I likewise secured a Certification dated 27 August 2005 from Atty. Adarlo who confirmed that Nation Gas is not one of those entities authorized to refill LPG cylinders bearing the brands of Pilipinas Shell Petroleum Corporation, Petron Corporation, Total (Philippines) Corporation, Caltex Philippines, Inc.[,] and Superkalan Gaz Corporation.’

– o X o –

‘5. Pinagbigay-alam sa akin na ang Nation Gas ay walang pahintulot na nagkakarga ng mga Shellane, Petron Gasul, Totalgaz, Caltex Starflame[,], at Superkalan Gaz na tangke ng LPG dahil ang Nation [G]as ay hindi pinahintulutan ng mga nabanggit na mga lehitimong kompanya.’

WHEREFORE, premises considered, the instant petition is DENIED.

SO ORDERED.²⁴

Petitioners filed a Motion for Reconsideration,²⁵ which was denied through the CA’s second assailed Resolution of November 17, 2011. Hence, the instant Petition.

In an August 28, 2013 Resolution,²⁶ this Court resolved to give due course to the Petition.

Issues

Petitioners allege that:

THE COURT OF APPEALS MADE A DECISION NOT IN ACCORD WITH THE REVISED RULES OF COURT AND THE APPLICABLE DECISIONS

²⁴ *Rollo*, pp. 55-59.

²⁵ *Id.* at 67-83.

²⁶ *Id.* at 473-474.

OF THE HONORABLE COURT AS REGARDS THE DETERMINATION OF PERSONAL KNOWLEDGE OF WITNESSES IN SEARCH WARRANT APPLICATIONS. CERTAINLY, THERE IS A NEED TO REVERSE AND SET ASIDE THE RULING OF THE COURT OF APPEALS THAT NBI AGENT DE JEMIL AND HIS WITNESSES HAD NO PERSONAL KNOWLEDGE THAT THE RESPONDENTS COMMITTED ILLEGAL TRADING AND UNDERFILLING OF LIQUEFIED PETROLEUM GAS (LPG) PRODUCTS FOR THE PURPOSE OF DETERMINING PROBABLE CAUSE IN SEARCH WARRANT APPLICATIONS.²⁷

Petitioners' Arguments

In their Petition and Reply²⁸ seeking reversal of the assailed CA dispositions and a declaration of validity as to the subject Search Warrants, petitioners essentially argue that in resolving the appeal, the appellate court failed to consider that in search warrant applications, proof beyond reasonable doubt is not required – rather, only probable cause is needed; that based on the evidence submitted with the applications, such probable cause existed; that De Jemil and Antonio had personal knowledge of the offenses being committed by the respondents, that is, they actually witnessed the illegal refilling and underfilling of the subject test-buy LPG cylinder, as the same was examined and weighed in their presence; that under Section 2(3) of BP 33, as amended, there is a presumption of underfilling when the seal is broken, absent or removed; that while the complainants' witnesses were not introduced into the proceedings, De Jemil and Antonio were nonetheless able to acquire personal knowledge of respondents' illegal acts when they conducted their surveillance and test-buy operations; and that personal knowledge acquired during surveillance and investigation conducted based on the tip of a confidential informant satisfies the requirement of probable cause for the issuance of a search warrant.²⁹

Respondent's Arguments

In their Comment³⁰ seeking denial of the Petition, respondents claim that the Petition raises issues of fact; that under the Rules of Criminal Procedure, the applicant for a search warrant and his witnesses should have personal knowledge of facts in order to establish probable cause; that the issuing court and the CA are unanimous in their findings that the applications for search warrant should be denied; that De Jemil and Antonio have no personal knowledge that the subject test-buy LPG cylinder was refilled by respondents, as they did not enter the premises of the Magsingal LPG refilling plant; that there is no truth to De Jemil and Antonio's claim that they actually examined and weighed the test-buy LPG

²⁷ Id. at 33.

²⁸ Id. at 462-471.

²⁹ Citing *Cupcupin v. People*, 440 Phil. 712 (2002) and *People v. Sucro*, 272-A Phil. 362 (1991).

³⁰ *Rollo*, pp. 441-459.

cylinder, as they admitted during the proceedings that it was the LPG dealers' association that inspected and weighed the same; that the surveillance and test-buy operations failed to establish the accusations leveled against respondents, and for this reason, the lack of personal knowledge by De Jemil and Antonio and failure to present the complainants' witnesses were not cured.

Our Ruling

The Court grants the Petition.

In *Del Castillo v. People*,³¹ the relevant principles governing the issuance of a search warrant were discussed, as follows:

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. x x x Probable cause for a search warrant is defined 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. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than bare suspicion; it requires less than evidence which would justify conviction. The judge, in determining probable cause, is to consider the totality of the circumstances made known to him and not by a fixed and rigid formula, and must employ a flexible, totality of the circumstances standard. x x x³²

Petitioners claim that respondents are engaged in the illegal trading and refilling of Shellane, Gasul, Totalgaz, Starflame, and Superkalan Gaz LPG cylinders, as they were not authorized dealers or refillers of Pilipinas Shell Petroleum Corporation, Petron Gasul Corporation, Total (Philippines) Corporation, Caltex, and Superkalan Gaz Corporation. Additionally, they accuse respondents of underfilling LPG cylinders. To prove illegal trading and refilling, they presented written certifications to the effect that Nation Gas was not an authorized LPG refiller of Pilipinas Shell Petroleum Corporation, Petron Gasul

³¹ 680 Phil. 447 (2012).

³² Id. at 456-457.

Corporation, Total (Philippines) Corporation, Caltex, and Superkalan Gaz Corporation. And to prove underfilling, they presented photographs as well as the results of an examination of the refilled Starflame LPG cylinder obtained through De Jemil's test-buy.

The Court finds the evidence presented sufficient to prove probable cause; the issuing court and the CA thus patently erred in quashing the search warrants. Where the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record, the same cannot bind this Court.³³

In *Ty v. NBI Supervising Agent De Jemil*,³⁴ the Court declared that what BP 33, as amended prohibits is the refilling and underfilling of a branded LPG cylinder by a refiller who has no written authority from the brand owner; this proceeds from the principle that the LPG brand owner is deemed owner as well of the duly embossed, stamped and marked LPG cylinders, even if these are in the possession of its customers or consumers. Such illegal refilling/underfilling may be proved by: 1) conduct of surveillance operations; 2) the conduct of a test-buy; 3) written certifications from LPG companies such as Pilipinas Shell Petroleum Corporation, Petron Gasul Corporation, and Total (Philippines) Corporation – detailing and listing the entities duly authorized to deal in or refill their respective LPG cylinders, and excluding a particular LPG trader/refiller from the lists contained in said certifications; and 4) the written report and findings on the test and examination of the test-buy cylinder. Thus, the Court held:

Probable violation of Sec. 2 (a) of BP 33, as amended

First. The test-buy conducted on April 15, 2004 by the NBI agents, as attested to by their respective affidavits, tends to show that Omni illegally refilled the eight branded LPG cylinders for PhP 1,582. This is a clear violation of Sec. 2 (a), in relation to Secs. 3 (c) and 4 of BP 33, as amended. It must be noted that the criminal complaints, as clearly shown in the complaint-affidavits of Agent De Jemil, are not based solely on the seized items pursuant to the search warrants but also on the test-buy earlier conducted by the NBI agents.

Second. The written certifications from Pilipinas Shell, Petron[,] and Total show that Omni has no written authority to refill LPG cylinders, embossed, marked or stamped Shellane, Petron Gasul, Totalgaz[,] and Superkalan Gaz. In fact, petitioners neither dispute this nor claim that Omni has authority to refill these branded LPG cylinders.

Third. Belying petitioners' contention, the seized items during the service of the search warrants tend to show that Omni illegally refilled branded LPG cylinders without authority.

³³ *Baricutro, Jr. v. Court of Appeals*, 382 Phil. 15, 24-25 (2000).

³⁴ 653 Phil. 356 (2010).

x x x x

As petitioners strongly argue, even if the branded LPG cylinders were indeed owned by customers, such fact does not authorize Omni to refill these branded LPG cylinders without written authorization from the brand owners Pilipinas Shell, Petron[,] and Total. In *Yao, Sr. v. People*, a case involving criminal infringement of property rights under Sec. 155 of RA 8293, in affirming the courts *a quo*'s determination of the presence of probable cause, this Court held that from Sec. 155.1 of RA 8293 can be gleaned that 'mere unauthorized use of a container bearing a registered trademark in connection with the sale, distribution or advertising of goods or services which is likely to cause confusion, mistake or deception among the buyers/consumers can be considered as trademark infringement.' The Court affirmed the presence of infringement involving the unauthorized sale of Gasul and Shellane LPG cylinders and the unauthorized refilling of the same by Masagana Gas Corporation as duly attested to and witnessed by NBI agents who conducted the surveillance and test-buys.

Similarly, in the instant case, the fact that Omni refilled various branded LPG cylinders even if owned by its customers but without authority from brand owners Petron, Pilipinas Shell[,] and Total shows palpable violation of BP 33, as amended. As aptly noted by the Court in *Yao, Sr. v. People*, only the duly authorized dealers and refillers of Shellane, Petron Gasul and, by extension, Total may refill these branded LPG cylinders. Our laws sought to deter the pernicious practices of unscrupulous businessmen.

Fourth. The issue of ownership of the seized branded LPG cylinders is irrelevant and hence need no belaboring. BP 33, as amended, does not require ownership of the branded LPG cylinders as a condition *sine qua non* for the commission of offenses involving petroleum and petroleum products. Verily, the offense of refilling a branded LPG cylinder without the written consent of the brand owner constitutes the offense regardless of the buyer or possessor of the branded LPG cylinder.

After all, once a consumer buys a branded LPG cylinder from the brand owner or its authorized dealer, said consumer is practically free to do what he pleases with the branded LPG cylinder. He can simply store the cylinder once it is empty or he can even destroy it since he has paid a deposit for it which answers for the loss or cost of the empty branded LPG cylinder. Given such fact, what the law manifestly prohibits is the refilling of a branded LPG cylinder by a refiller who has no written authority from the brand owner. Apropos, a refiller cannot and ought not to refill branded LPG cylinders if it has no written authority from the brand owner.

Besides, persuasive are the opinions and pronouncements by the DOE: brand owners are deemed owners of their duly embossed, stamped and marked LPG cylinders even if these are possessed by customers or consumers. The Court recognizes this right pursuant to our laws, i.e., Intellectual Property Code of the Philippines. Thus the issuance by the DOE [of] Circular No. 2000-05-007, the letter-opinion dated December 9, 2004 of then DOE Secretary Vincent S. Perez addressed to Pilipinas Shell, the June 6, 2007 letter of then DOE Secretary Raphael P.M. Lotilla to the LPGIA, and DOE Department Circular No. 2007-10-0007 on LPG Cylinder Ownership and Obligations Related Thereto issued on October 13, 2007 by DOE Secretary Angelo T. Reyes.

Fifth. The ownership of the seized branded LPG cylinders, allegedly owned by Omni customers as petitioners adamantly profess, is of no consequence.

The law does not require that the property to be seized should be owned by the person against whom the search [warrant] is directed. Ownership, therefore, is of no consequence, and it is sufficient that the person against whom the warrant is directed has control or possession of the property sought to be seized. Petitioners cannot deny that the seized LPG cylinders were in the possession of Omni, found as they were inside the Omni compound.

x x x x

Probable violation of Sec. 2 (c) of BP 33, as amended

Anent the alleged violation of Sec. 2 (c) in relation to Sec. 4 of BP 33, as amended, petitioners strongly argue that there is no probable cause for said violation based upon an underfilling of a lone cylinder of the eight branded LPG cylinders refilled during the test-buy. Besides, they point out that there was no finding of underfilling in any of the filled LPG cylinders seized during the service of the search warrants. Citing DOE's Bureau of Energy Utilization Circular No. 85-3-348, they maintain that some deviation is allowed from the exact filled weight. Considering the fact that an isolated underfilling happened in so many LPG cylinders filled, petitioners are of the view that such is due to human or equipment error and does not in any way constitute deliberate underfilling within the contemplation of the law.

Moreover, petitioners cast aspersion on the report and findings of LPG Inspector Navio of the LPGIA by assailing his independence for being a representative of the major petroleum companies and that the inspection he conducted was made without the presence of any DOE representative or any independent body having technical expertise in determining LPG cylinder underfilling beyond the authorized quantity.

Again, we are not persuaded.

Contrary to petitioners' arguments, a single underfilling constitutes an offense under BP 33, as amended by PD 1865, which clearly criminalizes these offenses. In *Perez v. LPG Refillers Association of the Philippines, Inc.*, the Court affirmed the validity of DOE Circular No. 2000-06-010 which provided penalties on a per cylinder basis for each violation x x x.

x x x x

The Court made it clear that a violation, like underfilling, on a per cylinder basis falls within the phrase of any act as mandated under Sec. 4 of BP 33, as amended. Ineluctably, the underfilling of one LPG cylinder constitutes a clear violation of BP 33, as amended. The finding of underfilling by LPG Inspector Navio of the LPGIA, as aptly noted by Manila Assistant City Prosecutor Catalo who conducted the preliminary investigation, was indeed not controverted by petitioners.³⁵

³⁵ Id. at 371-381.

An examination of petitioners' evidence in the instant case reveals that it is practically identical to that presented in the *Ty* case. A complaint was filed with the NBI, which conducted surveillance and test-buy operations; written certifications were submitted to the effect that the respondent was not an authorized refiller of the LPG companies' branded cylinders; finally, an inspection of the test-buy cylinder was conducted, and the results thereof embodied in a written document which was submitted as evidence in the proceedings. Moreover, photographs taken indicate that Barba Gas was not an exclusive dealer/distributor of Caltex Starflame cylinders and LPG products, and that the cylinders involved – including the test-buy cylinder – belonged to Caltex, the same being stamped with its Starflame mark.

Thus, applying *Ty* in its entirety to the present case, the Court finds that there exists probable cause for the issuance of search warrants as applied for by petitioners. Probable cause for purposes of issuing a search warrant refers to “such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the item(s), article(s) or object(s) sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched.”³⁶ On the other hand, probable cause for purposes of filing a criminal information refers to “such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondents are probably guilty thereof. It is such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be arrested.”³⁷ Thus, while *Ty* refers to preliminary investigation proceedings, and the instant case is concerned with applications for the issuance of search warrants, both are resolved based on the same degree of proof; the pronouncement in *Ty* may therefore apply to the present controversy.

On the claim of lack of personal knowledge, the Court subscribes to petitioners' argument that facts discovered during surveillance conducted by De Jemil and Antonio – on the basis of information and evidence provided by petitioners – constitute personal knowledge which could form the basis for the issuance of a search warrant. Indeed, as was declared in *Cupcupin v. People*,³⁸ which petitioners cite, the surveillance and investigation conducted by an agent of the NBI obtained from confidential information supplied to him enabled him to gain personal knowledge of the illegal activities complained of.

WHEREFORE, the Petition is **GRANTED**. The September 2, 2011 Decision and November 17, 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 89220 are **REVERSED and SET ASIDE**. The validity of Search

³⁶ *People v. Tuan*, 642 Phil. 379, 399 (2010), citing *People v. Aruta*, 351 Phil. 868, 880 (1998).

³⁷ *People v. Borje*, G.R. No. 170046, December 10, 2014.

³⁸ *Supra* note 29.

Warrant Nos. 2005-59 and 2005-60 is **SUSTAINED**.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice


BEINVENIDO L. REYES
Associate Justice

(On leave)
MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO

Associate Justice

Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice

