



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MARIO VERIDIANO y SAPI,
Petitioner,

G.R. No. 200370

Present:

CARPIO, J., Chairperson,
PERALTA,
MENDOZA,*
LEONEN, and
MARTIRES,** JJ.

-versus-

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:
07 JUN 2017

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DECISION

LEONEN, J.:

Through this Petition for Review on Certiorari,¹ Mario Veridiano y Sapi (Veridiano) assails the Decision² dated November 18, 2011 and Resolution³ dated January 25, 2012 of the Court of Appeals in CA-G.R. CR No. 33588, which affirmed his conviction for violation of Article II, Section 11 of Republic Act No. 9165.⁴

* On official leave.

** On official leave.

¹ Rollo, pp. 8–29, Petition for Review on Certiorari.

² Id. at 31–44. The Decision was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Sesinando E. Villon and Amy C. Lazaro-Javier of the Second Division, Court of Appeals, Manila.

³ Id. at 46–47. The Resolution was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Mario V. Lopez and Amy C. Lazaro-Javier of the Special Second Division, Court of Appeals, Manila.

⁴ Comprehensive Dangerous Drugs Act (2002).

In an Information filed before the Regional Trial Court of San Pablo City, Laguna,⁵ Veridiano was charged with the crime of illegal possession of dangerous drugs. The Information read:

That on or about January 15, 2008, in the Municipality of Nagcarlan, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, not being permitted or authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, control and custody one (1) small heat-sealed transparent plastic sachet containing 2.72 grams of dried marijuana leaves, a dangerous drug.

CONTRARY TO LAW.⁶

On October 9, 2008, Veridiano was arraigned. He pleaded not guilty to the offense charged. Trial on the merits ensued.⁷

During trial, the prosecution presented PO1 Guillermo Cabello (PO1 Cabello) and PO1 Daniel Solano (PO1 Solano) to testify.⁸

According to the prosecution, at about 7:20 a.m. of January 15, 2008, a concerned citizen called a certain PO3 Esteves, police radio operator of the Nagcarlan Police Station, informing him that a certain alias "Baho," who was later identified as Veridiano, was on the way to San Pablo City to obtain illegal drugs.⁹

PO3 Esteves immediately relayed the information to PO1 Cabello and PO2 Alvin Vergara (PO2 Vergara) who were both on duty.¹⁰ Chief of Police June Urquia instructed PO1 Cabello and PO2 Vergara to set up a checkpoint at Barangay Taytay, Nagcarlan, Laguna.¹¹

The police officers at the checkpoint personally knew Veridiano. They allowed some vehicles to pass through after checking that he was not on board.¹² At around 10:00 a.m., they chanced upon Veridiano inside a passenger jeepney coming from San Pablo, Laguna.¹³ They flagged down the jeepney and asked the passengers to disembark.¹⁴ The police officers

⁵ *Rollo*, p. 64, Regional Trial Court Decision.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 10.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 11.

¹⁴ *Id.* at 34.

instructed the passengers to raise their t-shirts to check for possible concealed weapons and to remove the contents of their pockets.¹⁵

The police officers recovered from Veridiano “a tea bag containing what appeared to be marijuana.”¹⁶ PO1 Cabello confiscated the tea bag and marked it with his initials.¹⁷ Veridiano was arrested and apprised of his constitutional rights.¹⁸ He was then brought to the police station.¹⁹

At the police station, PO1 Cabello turned over the seized tea bag to PO1 Solano, who also placed his initials.²⁰ PO1 Solano then made a laboratory examination request, which he personally brought with the seized tea bag to the Philippine National Police Crime Laboratory.²¹ The contents of the tea bag tested positive for marijuana.²²

For his defense, Veridiano testified that he went to the fiesta in San Pablo City on January 15, 2008.²³ After participating in the festivities, he decided to go home and took a passenger jeepney bound for Nagcarlan.²⁴ At around 10:00 a.m., the jeepney passed a police checkpoint in Barangay Taytay, Nagcarlan.²⁵ Veridiano noticed that the jeepney was being followed by three (3) motorcycles, each with two (2) passengers in civilian attire.²⁶

When the jeepney reached Barangay Buboy, Nagcarlan, the motorcyclists flagged down the jeepney.²⁷ Two (2) armed men boarded the jeepney and frisked Veridiano.²⁸ However, they found nothing on his person.²⁹ Still, Veridiano was accosted and brought to the police station where he was informed that “illegal drug was . . . found in his possession.”³⁰

In the Decision dated July 16, 2010,³¹ the Regional Trial Court found Veridiano guilty beyond reasonable doubt for the crime of illegal possession of marijuana. Accordingly, he was sentenced to suffer a penalty of

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 66, Regional Trial Court Decision.

¹⁹ Id. at 11.

²⁰ Id.

²¹ Id. at 35.

²² Id. at 11.

²³ Id.

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ Id. at 11–12.

³¹ Id. at 64–72. The Decision, docketed as Crim. Case No. 16976-SP, was penned by Presiding Judge Agripino G. Morga of Branch 32, Regional Trial Court of San Pablo City.

imprisonment of twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum, and to pay a fine of ₱300,000.00.³²

Veridiano appealed the decision of the trial court asserting that “he was illegally arrested.”³³ He argued that the tea bag containing marijuana is “inadmissible in evidence [for] being the ‘fruit of a poisonous tree.’”³⁴ Veridiano further argued that the police officers failed to comply with the rule on chain of custody.³⁵

On the other hand, the prosecution asserted that “[t]he legality of an arrest affects only the jurisdiction of the court over [the person of the accused].”³⁶ Thus, by entering his plea, Veridiano waived his right to question any irregularity in his arrest.³⁷ With regard to the alleged illegal warrantless search conducted by the police officers, the prosecution argued that Veridiano’s “submissive deportment at the time of the search” indicated that he consented to the warrantless search.³⁸

On November 18, 2011, the Court of Appeals rendered a Decision³⁹ affirming the guilt of Veridiano.⁴⁰

The Court of Appeals found that “Veridiano was caught *in flagrante delicto*” of having marijuana in his possession.⁴¹ Assuming that he was illegally arrested, Veridiano waived his right to question any irregularity that may have attended his arrest when he entered his plea and submitted himself to the jurisdiction of the court.⁴² Furthermore, the Court of Appeals held that Veridiano consented to the warrantless search because he did not protest when the police asked him to remove the contents of his pocket.⁴³

Veridiano moved for reconsideration, which was denied in the Resolution dated January 25, 2012.⁴⁴

On March 16, 2012, Veridiano filed a Petition for Review on Certiorari.⁴⁵

³² Id. at 72.

³³ Id. at 37.

³⁴ Id.

³⁵ Id. at 41.

³⁶ Id. at 88, Brief for the Plaintiff-Appellee.

³⁷ Id.

³⁸ Id.

³⁹ Id. at 31–44.

⁴⁰ Id. at 43.

⁴¹ Id. at 37.

⁴² Id. at 40.

⁴³ Id.

⁴⁴ Id. at 46–47.

⁴⁵ Id. at 8–29.

Petitioner argues that the tea bag containing marijuana leaves was seized in violation of his right against unreasonable searches and seizures.⁴⁶ He asserts that his arrest was illegal.⁴⁷ Petitioner was merely seated inside the jeepney at the time of his apprehension. He did not act in any manner that would give the police officers reasonable ground to believe that he had just committed a crime or that he was committing a crime.⁴⁸ Petitioner also asserts that reliable information is insufficient to constitute probable cause that would support a valid warrantless arrest.⁴⁹

Since his arrest was illegal, petitioner argues that “the accompanying [warrantless] search was likewise illegal.”⁵⁰ Hence, under Article III, Section 2,⁵¹ in relation to Article III, Section 3(2)⁵² of the Constitution, the seized tea bag containing marijuana is “inadmissible in evidence [for] being the fruit of a poisonous tree.”⁵³

Nevertheless, assuming that the seized tea bag containing marijuana is admissible in evidence, petitioner contends that the prosecution failed to preserve its integrity.⁵⁴ The apprehending team did not strictly comply with the rule on chain of custody under Section 21 of the Implementing Rules and Regulations of Republic Act No. 9165.⁵⁵

In a Resolution dated June 13, 2012, this Court required respondent to file a comment on the petition.⁵⁶ In the Manifestation and Motion dated August 1, 2012,⁵⁷ respondent stated that it would no longer file a comment.

The following issues are for this Court’s resolution:

First, whether there was a valid warrantless arrest;

⁴⁶ Id. at 14–18.

⁴⁷ Id. at 14–16.

⁴⁸ Id. at 16.

⁴⁹ Id.

⁵⁰ Id. at 17.

⁵¹ CONST. art. III, sec. 2 provides:

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

⁵² CONST., art. III, sec. 3(2) provides:

Section 3.

....

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

⁵³ *Rollo*, pp. 17–18.

⁵⁴ Id. at 19.

⁵⁵ Id. at 19–21.

⁵⁶ Id. at 106.

⁵⁷ Id. at 107–111, Manifestation and Motion (In Lieu of Comment).

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Second, whether there was a valid warrantless search against petitioner; and

Lastly, whether there is enough evidence to sustain petitioner's conviction for illegal possession of dangerous drugs.

The Petition is granted.

I

The invalidity of an arrest leads to several consequences among which are: (a) the failure to acquire jurisdiction over the person of an accused; (b) criminal liability of law enforcers for illegal arrest; and (c) any search incident to the arrest becomes invalid thus rendering the evidence acquired as constitutionally inadmissible.

Lack of jurisdiction over the person of an accused as a result of an invalid arrest must be raised through a motion to quash before an accused enters his or her plea. Otherwise, the objection is deemed waived and an accused is "estopped from questioning the legality of his [or her] arrest."⁵⁸

The voluntary submission of an accused to the jurisdiction of the court and his or her active participation during trial cures any defect or irregularity that may have attended an arrest.⁵⁹ The reason for this rule is that "the legality of an arrest affects only the jurisdiction of the court over the person of the accused."⁶⁰

Nevertheless, failure to timely object to the illegality of an arrest does not preclude an accused from questioning the admissibility of evidence seized.⁶¹ The inadmissibility of the evidence is not affected when an accused fails to question the court's jurisdiction over his or her person in a timely manner. Jurisdiction over the person of an accused and the

⁵⁸ *People v. Lopez, Jr. y Mancilla*, 315 Phil. 59, 71–72 (1995) [Per J. Kapunan, First Division]. See *Filoteo, Jr. v. Sandiganbayan*, 331 Phil. 531, 578 (1996) [Per J. Panganiban, En Banc]; *Rebellion v. People*, 637 Phil. 339, 345 (2010) [Per J. Del Castillo, First Division].

⁵⁹ *People v. Lapitaje*, 445 Phil. 729, 748 (2003) [Per J. Austria-Martinez, En Banc]; *Rebellion v. People*, 637 Phil. 339, 345 (2010) [Per J. Del Castillo, First Division].

⁶⁰ *People v. Escordial*, 424 Phil. 627, 651–652 (2002) [Per J. Mendoza, En Banc] citing *People v. Timon*, 346 Phil. 572 (1997) [Per J. Panganiban, Third Division].

⁶¹ *Homar v. People*, G.R. No. 182534, September 2, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/september2015/182534.pdf>> 9 [Per J. Brion, Second Division]; *Sindac v. People*, G.R. No. 220732, September 6, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/220732.pdf>> 10–11 [Per J. Perlas-Bernabe, First Division]; *People v. Racho*, 640 Phil. 669, 681 (2010) [Per J. Nachura, Second Division]; *People v. Martinez y Angeles*, 652 Phil. 347, 359 (2010) [Per J. Mendoza, Second Division]. See *Antiquera y Codes v. People*, 723 Phil. 425, 432 (2013) [Per J. Abad, Third Division].

constitutional inadmissibility of evidence are separate and mutually exclusive consequences of an illegal arrest.

As a component of the right to privacy,⁶² the fundamental right against unlawful searches and seizures is guaranteed by no less than the Constitution. Article III, Section 2 of the Constitution 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.⁶³

To underscore the importance of an individual's right against unlawful searches and seizures, Article III, Section 3(2) of the Constitution considers any evidence obtained in violation of this right as inadmissible.⁶⁴

The Constitutional guarantee does not prohibit all forms of searches and seizures.⁶⁵ It is only directed against those that are unreasonable.⁶⁶ Conversely, reasonable searches and seizures fall outside the scope of the prohibition and are not forbidden.⁶⁷

In *People v. Aruta*,⁶⁸ this Court explained that the language of the Constitution implies that “searches and seizures are normally unreasonable unless authorized by a validly issued search warrant or warrant of arrest.”⁶⁹ The requirements of a valid search warrant are laid down in Article III, Section 2 of the Constitution and reiterated in Rule 126, Section 4 of the Rules on Criminal Procedure.⁷⁰

⁶² *People v. Cogaed*, 740 Phil. 212, 220 (2014) [Per J. Leonen, Third Division].

⁶³ CONST., art. III, sec. 2.

⁶⁴ CONST., art. III, sec. 3(2) provides:
Section 3.

....

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

⁶⁵ *People v. Aruta*, 351 Phil. 868, 878 (1998) [Per J. Romero, Second Division].

⁶⁶ Id.

⁶⁷ *Valmonte v. De Villa*, 258 Phil. 838, 843 (1989) [Per J. Padilla, En Banc].

⁶⁸ 351 Phil. 868 (1998) [Per J. Romero, Second Division].

⁶⁹ Id. at 878.

⁷⁰ Revised Rules of Criminal Procedure, A.M. No. 00-5-03-SC, Rule 126, sec. 4 provides:

Section 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.

However, *People v. Cogaed*⁷¹ clarified that there are exceptional circumstances “when searches are reasonable even when warrantless.”⁷² The following are recognized instances of permissible warrantless searches laid down in jurisprudence: (1) a “warrantless search incidental to a lawful arrest,”⁷³ (2) search of “evidence in ‘plain view,’” (3) “search of a moving vehicle,” (4) “consented warrantless search[es],” (5) “customs search,” (6) “stop and frisk,” and (7) “exigent and emergency circumstances.”⁷⁴

There is no hard and fast rule in determining when a search and seizure is reasonable. In any given situation, “[w]hat constitutes a reasonable . . . search . . . is purely a judicial question,” the resolution of which depends upon the unique and distinct factual circumstances.⁷⁵ This may involve an inquiry into “the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured.”⁷⁶

II

Pertinent to the resolution of this case is the determination of whether the warrantless search was incidental to a lawful arrest. The Court of Appeals concluded that petitioner was caught *in flagrante delicto* of having marijuana in his possession making the warrantless search lawful.⁷⁷

This Court disagrees. Petitioner’s warrantless arrest was unlawful.

A search incidental to a lawful arrest requires that there must first be a lawful arrest before a search is made. Otherwise stated, a lawful arrest must precede the search; “the process cannot be reversed.”⁷⁸ For there to be a lawful arrest, law enforcers must be armed with a valid warrant. Nevertheless, an arrest may also be effected without a warrant.

There are three (3) grounds that will justify a warrantless arrest. Rule 113, Section 5 of the Revised Rules of Criminal Procedure provides:

⁷¹ 740 Phil. 212 (2014) [Per J. Leonen, Third Division].

⁷² Id. at 227.

⁷³ The Revised Rules of Criminal Procedure allows a warrantless search incidental to a lawful arrest. RULES OF COURT, Rule 126, sec. 13 provides:
Section 13. *Search incident to lawful arrest.* — A person lawfully arrested may be searched for dangerous weapons or anything that may have been used or constitute proof in the commission of an offense without a search warrant.

⁷⁴ *People v. Cogaed*, 740 Phil. 212, 228 (2014) [Per J. Leonen, Third Division], citing *People v. Aruta*, 351 Phil. 868, 879–880 (1998) [Per J. Romero, Third Division].

⁷⁵ *Valmonte v. De Villa*, 258 Phil. 838, 843 (1989) [Per J. Padilla, En Banc].

⁷⁶ *People v. Racho*, 640 Phil. 669, 676 (2010) [Per J. Nachura, Third Division] citing *People v. Nuevas*, 545 Phil. 356 (2007) [Per J. Tinga, Second Division].

⁷⁷ *Rollo*, p. 37.

⁷⁸ *People v. Racho*, 640 Phil. 669, 676 (2010) [Per J. Nachura, Second Division].

Section 5. *Arrest Without Warrant; When Lawful.* — A peace officer or a private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

The first kind of warrantless arrest is known as an *in flagrante delicto* arrest. The validity of this warrantless arrest requires compliance with the overt act test⁷⁹ as explained in *Cogaed*:

[F]or a warrantless arrest of *in flagrante delicto* to be affected, “two elements must concur: (1) the person to be arrested must execute an overt act indicating that he [or she] has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.”⁸⁰

Failure to comply with the overt act test renders an *in flagrante delicto* arrest constitutionally infirm. In *Cogaed*, the warrantless arrest was invalidated as an *in flagrante delicto* arrest because the accused did not exhibit an overt act within the view of the police officers suggesting that he was in possession of illegal drugs at the time he was apprehended.⁸¹

The warrantless search in *People v. Racho*⁸² was also considered unlawful.⁸³ The police officers received information that a man was in possession of illegal drugs and was on board a Genesis bus bound for Baler, Aurora. The informant added that the man was “wearing a red and white striped [t]-shirt.”⁸⁴ The police officers waited for the bus along the national highway.⁸⁵ When the bus arrived, Jack Racho (Racho) disembarked and waited along the highway for a tricycle.⁸⁶ Suddenly, the police officers approached him and invited him to the police station since he was suspected

⁷⁹ See *People v. Cogaed*, 740 Phil. 212, 238 (2014) [Per J. Leonen, Third Division].

⁸⁰ *Id.* citing *People v. Chua* 444 Phil. 757 (2003) [Per J. Ynares-Santiago, First Division].

⁸¹ *Id.* at 238–239.

⁸² 640 Phil. 669 (2010) [Per J. Nachura, Second Division].

⁸³ *Id.* at 679–680.

⁸⁴ *Id.* at 671–672.

⁸⁵ *Id.* at 672.

⁸⁶ *Id.*

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of having shabu in his possession.⁸⁷ As Racho pulled out his hands from his pocket, a white envelope fell yielding a sachet of shabu.⁸⁸

In holding that the warrantless search was invalid, this Court observed that Racho was not “committing a crime in the presence of the police officers” at the time he was apprehended.⁸⁹ Moreover, Racho’s arrest was solely based on a tip.⁹⁰ Although there are cases stating that reliable information is sufficient to justify a warrantless search incidental to a lawful arrest, they were covered under the other exceptions to the rule on warrantless searches.⁹¹

Rule 113, Section 5(b) of the Rules of Court pertains to a hot pursuit arrest.⁹² The rule requires that an offense has just been committed. It connotes “immediacy in point of time.”⁹³ That a crime was in fact committed does not automatically bring the case under this rule.⁹⁴ An arrest under Rule 113, Section 5(b) of the Rules of Court entails a time element from the moment the crime is committed up to the point of arrest.

Law enforcers need not personally witness the commission of a crime. However, they must have personal knowledge of facts and circumstances indicating that the person sought to be arrested committed it.

*People v. Gerente*⁹⁵ illustrates a valid arrest under Rule 113, Section 5(b) of the Rules of Court. In *Gerente*, the accused was convicted for murder and for violation of Republic Act No. 6425.⁹⁶ He assailed the admissibility of dried marijuana leaves as evidence on the ground that they were allegedly seized from him pursuant to a warrantless arrest.⁹⁷ On appeal, the accused’s conviction was affirmed.⁹⁸ This Court ruled that the warrantless arrest was justified under Rule 113, Section 5(b) of the Rules of Court. The police officers had personal knowledge of facts and circumstances indicating that the accused killed the victim:

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Id. at 667.

⁹¹ Id. This Court cited *People v. Maspil, Jr.*, 266 Phil. 815 (1990) [J. Gutierrez, Jr., Third Division]; *People v. Bagista*, 288 Phil 828 (1992) [J. Nocon, Second Division]; *People v. Balingan*, 311 Phil. 290 (1995) [J. Puno, Second Division]; *People v. Lising*, 341 Phil. 801 (1997) [Per J. Melo, Third Division]; and *People v. Montilla*, 349 Phil. 640 (1998) [Per J. Regalado, En Banc].

⁹² *Malacat v. Court of Appeals*, 347 Phil. 462, 479 (1997) [Per J. Davide, En Banc].

⁹³ *In re Salibo v. Warden*, 757 Phil. 630, 656 (2015) [Per J. Leonen, Second Division] citing the Dissenting Opinion of J. Teehankee in *Ilagan v. Enrile*, 223 Phil. 561 (1985) [Per J. Melencio-Herrera, En Banc].

⁹⁴ Id.

⁹⁵ 292-A Phil. 34 (1993) [Per J. Griño-Aquino, First Division].

⁹⁶ Id. at 39.

⁹⁷ Id.

⁹⁸ Id.

*The policemen arrested Gerente only some three (3) hours after Gerente and his companions had killed Blace. They saw Blace dead in the hospital and when they inspected the scene of the crime, they found the instruments of death: a piece of wood and a concrete hollow block which the killers had used to bludgeon him to death. The eye-witness, Edna Edwina Reyes, reported the happening to the policemen and pinpointed her neighbor, Gerente, as one of the killers. Under those circumstances, since the policemen had personal knowledge of the violent death of Blace and of facts indicating that Gerente and two others had killed him, they could lawfully arrest Gerente without a warrant. If they had postponed his arrest until they could obtain a warrant, he would have fled the law as his two companions did.*⁹⁹ (Emphasis supplied)

The requirement that law enforcers must have personal knowledge of facts surrounding the commission of an offense was underscored in *In Re Salibo v. Warden*.¹⁰⁰

In Re Salibo involved a petition for habeas corpus. The police officers suspected Datukan Salibo (Salibo) as one (1) of the accused in the Maguindano Massacre.¹⁰¹ Salibo presented himself before the authorities to clear his name. Despite his explanation, Salibo was apprehended and detained.¹⁰² In granting the petition, this Court pointed out that Salibo was not restrained under a lawful court process or order.¹⁰³ Furthermore, he was not arrested pursuant to a valid warrantless arrest.¹⁰⁴

It is undisputed that petitioner Salibo presented himself before the Datu Hofer Police Station to clear his name and to prove that he is not the accused Butukan S. Malang. When petitioner Salibo was in the presence of the police officers of Datu Hofer Police Station, he was neither committing nor attempting to commit an offense. *The police officers had no personal knowledge of any offense that he might have committed.* Petitioner Salibo was also not an escapee prisoner.¹⁰⁵ (Emphasis supplied)

In this case, petitioner's arrest could not be justified as an *in flagrante delicto* arrest under Rule 113, Section 5(a) of the Rules of Court. He was not committing a crime at the checkpoint. Petitioner was merely a passenger who did not exhibit any unusual conduct in the presence of the law enforcers that would incite suspicion. In effecting the warrantless arrest, the police officers relied solely on the tip they received. Reliable information alone is insufficient to support a warrantless arrest absent any overt act from the

⁹⁹ Id. at 40.

¹⁰⁰ 757 Phil. 630 (2015) [Per J. Leonen, Second Division].

¹⁰¹ Id. at 634–635.

¹⁰² Id. at 635.

¹⁰³ Id. at 654–655.

¹⁰⁴ Id.

¹⁰⁵ Id. at 655.

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person to be arrested indicating that a crime has just been committed, was being committed, or is about to be committed.¹⁰⁶

The warrantless arrest cannot likewise be justified under Rule 113, Section 5(b) of the Revised Rules of Criminal Procedure. The law enforcers had no personal knowledge of any fact or circumstance indicating that petitioner had just committed an offense.

A hearsay tip by itself does not justify a warrantless arrest. Law enforcers must have personal knowledge of facts, based on their observation, that the person sought to be arrested has just committed a crime. This is what gives rise to probable cause that would justify a warrantless search under Rule 113, Section 5(b) of the Revised Rules of Criminal Procedure.

III

The warrantless search cannot be justified under the reasonable suspicion requirement in “stop and frisk” searches.

A “stop and frisk” search is defined in *People v. Chua*¹⁰⁷ as “the act of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon(s) or contraband.”¹⁰⁸ Thus, the allowable scope of a “stop and frisk” search is limited to a “protective search of outer clothing for weapons.”¹⁰⁹

Although a “stop and frisk” search is a necessary law enforcement measure specifically directed towards crime prevention, there is a need to safeguard the right of individuals against unreasonable searches and seizures.¹¹⁰

Law enforcers do not have unbridled discretion in conducting “stop and frisk” searches. While probable cause is not required, a “stop and frisk” search cannot be validated on the basis of a suspicion or hunch.¹¹¹ Law enforcers must have a genuine reason to believe, based on their experience and the particular circumstances of each case, that criminal activity may be

¹⁰⁶ *People v. Tudtud*, 458 Phil. 752, 773 (2003) [Per J. Tinga, Second Division]; *People v. Nuevas*, 545 Phil. 356, 371–372 (2007) [Per J. Tinga, Second Division]; *People v. Racho*, 640 Phil. 669, 678 (2010) [Per J. Nachura, Second Division].

¹⁰⁷ 444 Phil. 757 (2003) [Per J. Ynares-Santiago, First Division].

¹⁰⁸ *Id.* at 773–774.

¹⁰⁹ *Malacat v. Court of Appeals*, 347 Phil. 462, 480 (1997) [Per J. Davide, Jr., En Banc].

¹¹⁰ *People v. Cogaed*, 740 Phil. 212, 232 (2014) [Per J. Leonen, Third Division].

¹¹¹ *Malacat v. Court of Appeals*, 347 Phil. 462, 481 (1997) [Per J. Davide, Jr., En Banc].

afoot.¹¹² Reliance on one (1) suspicious activity alone, or none at all, cannot produce a reasonable search.¹¹³

In *Manalili v. Court of Appeals*,¹¹⁴ the police officers conducted surveillance operations in Caloocan City Cemetery, a place reportedly frequented by drug addicts.¹¹⁵ They chanced upon a male person who had “reddish eyes and [was] walking in a swaying manner.”¹¹⁶ Suspecting that the man was high on drugs, the police officers approached him, introduced themselves, and asked him what he was holding.¹¹⁷ However, the man resisted.¹¹⁸ Upon further investigation, the police officers found marijuana in the man’s possession.¹¹⁹ This Court held that the circumstances of the case gave the police officers justifiable reason to stop the man and investigate if he was high on drugs.¹²⁰

In *People v. Solayao*,¹²¹ the police officers were conducting an intelligence patrol to verify reports on the presence of armed persons within Caibiran.¹²² They met a group of drunk men, one (1) of whom was the accused in a camouflage uniform.¹²³ When the police officers approached, his companions fled leaving behind the accused who was told not to run away.¹²⁴ One (1) of the police officers introduced himself and seized from the accused a firearm wrapped in dry coconut leaves.¹²⁵ This Court likewise found justifiable reason to stop and frisk the accused when “his companions fled upon seeing the government agents.”¹²⁶

The “stop and frisk” searches in these two (2) cases were considered valid because the accused in both cases exhibited overt acts that gave law enforcers genuine reason to conduct a “stop and frisk” search. In contrast with *Manalili* and *Solayao*, the warrantless search in *Cogaed*¹²⁷ was considered as an invalid “stop and frisk” search because of the absence of a single suspicious circumstance that would justify a warrantless search.

¹¹² Id.

¹¹³ *People v. Cogaed*, 740 Phil. 212, 233 (2014) [Per J. Leonen, Third Division] citing J. Bersamin, Dissenting Opinion in *Esquillo v. People*, 643 Phil. 577 (2010) [Per J. Carpio-Morales, Third Division].

¹¹⁴ 345 Phil. 632 (1997) [Per J. Panganiban, Third Division].

¹¹⁵ Id. at 638.

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ Id.

¹¹⁹ Id.

¹²⁰ Id. at 647.

¹²¹ 330 Phil. 811 (1996) [Per J. Romero, Second Division].

¹²² Id. at 814–815.

¹²³ Id. at 815.

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ Id. at 819.

¹²⁷ 740 Phil. 212 (2014) [Per J. Leonen, Third Division]

In *Cogaed*, the police officers received information that a certain Marvin Buya would be transporting marijuana.¹²⁸ A passenger jeepney passed through the checkpoint set up by the police officers. The driver then disembarked and signaled that two (2) male passengers were carrying marijuana.¹²⁹ The police officers approached the two (2) men, who were later identified as Victor Cogaed (Cogaed) and Santiago Dayao, and inquired about the contents of their bags.¹³⁰

Upon further investigation, the police officers discovered three (3) bricks of marijuana in Cogaed's bag.¹³¹ In holding that the "stop and frisk" search was invalid, this Court reasoned that "[t]here was not a single suspicious circumstance" that gave the police officers genuine reason to stop the two (2) men and search their belongings.¹³² Cogaed did not exhibit any overt act indicating that he was in possession of marijuana.¹³³

Similar to *Cogaed*, petitioner in this case was a mere passenger in a jeepney who did not exhibit any act that would give police officers reasonable suspicion to believe that he had drugs in his possession. Reasonable persons will act in a nervous manner in any check point. There was no evidence to show that the police had basis or personal knowledge that would reasonably allow them to infer anything suspicious.

IV

Moreover, petitioner's silence or lack of resistance can hardly be considered as consent to the warrantless search. Although the right against unreasonable searches and seizures may be surrendered through a valid waiver, the prosecution must prove that the waiver was executed with clear and convincing evidence.¹³⁴ Consent to a warrantless search and seizure must be "unequivocal, specific, intelligently given . . . [and unattended] by duress or coercion."¹³⁵

The validity of a consented warrantless search is determined by the totality of the circumstances.¹³⁶ This may involve an inquiry into the environment in which the consent was given such as "the presence of coercive police procedures."¹³⁷

¹²⁸ Id. at 221.

¹²⁹ Id.

¹³⁰ Id.

¹³¹ Id. at 221–222.

¹³² Id. at 234.

¹³³ Id. at 45236–237.

¹³⁴ *Caballes v. Court of Appeals*, 424 Phil. 263, 286 (2002) [Per J. Puno, First Division].

¹³⁵ Id. See also *People v. Nuevas*, 545 Phil. 356, 373 (2007) [Per J. Tinga, Second Division].

¹³⁶ Id.

¹³⁷ Id.

Mere passive conformity or silence to the warrantless search is only an implied acquiescence, which amounts to no consent at all.¹³⁸ In *Cogaed*, this Court observed:

Cogaed's silence or lack of aggressive objection was a natural reaction to a coercive environment brought about by the police officer's excessive intrusion into his private space. The prosecution and the police carry the burden of showing that the waiver of a constitutional right is one which is knowing, intelligent, and free from any coercion. In all cases, such waivers are not to be presumed.¹³⁹

The presence of a coercive environment negates the claim that petitioner consented to the warrantless search.

V

Another instance of a valid warrantless search is a search of a moving vehicle. The rules governing searches and seizures have been liberalized when the object of a search is a vehicle for practical purposes.¹⁴⁰ Police officers cannot be expected to appear before a judge and apply for a search warrant when time is of the essence considering the efficiency of vehicles in facilitating transactions involving contraband or dangerous articles.¹⁴¹ However, the inherent mobility of vehicles cannot justify all kinds of searches.¹⁴² Law enforcers must act on the basis of probable cause.¹⁴³

A checkpoint search is a variant of a search of a moving vehicle.¹⁴⁴ Due to the number of cases involving warrantless searches in checkpoints and for the guidance of law enforcers, it is imperative to discuss the parameters by which searches in checkpoints should be conducted.

Checkpoints per se are not invalid.¹⁴⁵ They are allowed in exceptional circumstances to protect the lives of individuals and ensure their safety.¹⁴⁶ They are also sanctioned in cases where the government's survival is in danger.¹⁴⁷ Considering that routine checkpoints intrude "on [a] motorist's right to 'free passage'"¹⁴⁸ to a certain extent, they must be "conducted in a

¹³⁸ See *Caballes v. Court of Appeals*, 424 Phil. 263, 285 (2002) [Per J. Puno, First Division]; *People v. Cogaed*, 740 Phil. 212, 239–240 (2014) [Per J. Leonen, Third Division].

¹³⁹ *People v. Cogaed*, 740 Phil. 212, 239 (2014) [Per J. Leonen, Third Division].

¹⁴⁰ *Caballes v. Court of Appeals*, 424 Phil. 263, 278 (2002) [Per J. Puno, First Division].

¹⁴¹ *Id.*

¹⁴² *Id.* at 279.

¹⁴³ *Id.*

¹⁴⁴ See *People v. Manago*, G.R. No. 212340, August 17, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/212340.pdf>> 9 [Per J. Perlas-Bernabe, First Division].

¹⁴⁵ *Valmonte v. De Villa*, 264 Phil. 265, 269 (1990) [Per J. Padilla, En Banc].

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 270.

way least intrusive to motorists.”¹⁴⁹ The extent of routine inspections must be limited to a visual search. Routine inspections do not give law enforcers carte blanche to perform warrantless searches.¹⁵⁰

In *Valmonte v. De Villa*,¹⁵¹ this Court clarified that “[f]or as long as the vehicle is neither searched nor its occupants subjected to a body search, and the inspection of the vehicle is limited to a visual search, said routine checks cannot be regarded as violative of an individual’s right against unreasonable search[es].”¹⁵² Thus, a search where an “officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds, or simply looks into a vehicle, or flashes a light therein” is not unreasonable.¹⁵³

However, an extensive search may be conducted on a vehicle at a checkpoint when law enforcers have probable cause to believe that the vehicle’s passengers committed a crime or when the vehicle contains instruments of an offense.¹⁵⁴

Thus, routinary and indiscriminate searches of moving vehicles are allowed if they are limited to a visual search. This holds especially true when the object of the search is a public vehicle where individuals have a reasonably reduced expectation of privacy. On the other hand, extensive searches are permissible only when they are founded upon probable cause. Any evidence obtained will be subject to the exclusionary principle under the Constitution.

That the object of a warrantless search is allegedly inside a moving vehicle does not justify an extensive search absent probable cause. Moreover, law enforcers cannot act solely on the basis of confidential or tipped information. A tip is still hearsay no matter how reliable it may be. It is not sufficient to constitute probable cause in the absence of any other circumstance that will arouse suspicion.

Although this Court has upheld warrantless searches of moving vehicles based on tipped information, there have been other circumstances that justified warrantless searches conducted by the authorities.

¹⁴⁹ *People v. Vinecarrio*, 465 Phil. 192, 206 (2004) [Per J. Carpio Morales, Third Division].

¹⁵⁰ *People v. Manago*, G.R. No. 212340, August 17, 2016, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/212340.pdf>> 10 [Per J. Perlas-Bernabe, First Division].

¹⁵¹ 264 Phil. 265 (1990) [Per J. Padilla, En Banc].

¹⁵² *Id.* at 270.

¹⁵³ *Valmonte v. De Villa*, 258 Phil. 838, 843 (1989) [Per J. Padilla, En Banc].

¹⁵⁴ *Valmonte v. De Villa*, 264 Phil. 265, 271 (1990) [Per J. Padilla, En Banc]. See *People v. Vinecarrio*, 465 Phil. 192 (2004) [Per J. Carpio-Morales, Third Division].

In *People v. Breis*,¹⁵⁵ apart from the tipped information they received, the law enforcement agents observed suspicious behavior on the part of the accused that gave them reasonable ground to believe that a crime was being committed.¹⁵⁶ The accused attempted to alight from the bus after the law enforcers introduced themselves and inquired about the ownership of a box which the accused had in their possession.¹⁵⁷ In their attempt to leave the bus, one (1) of the accused physically pushed a law enforcer out of the way.¹⁵⁸ Immediately alighting from a bus that had just left the terminal and leaving one's belongings behind is unusual conduct.¹⁵⁹

In *People v. Mariacos*,¹⁶⁰ a police officer received information that a bag containing illegal drugs was about to be transported on a passenger jeepney.¹⁶¹ The bag was marked with "O.K."¹⁶² On the basis of the tip, a police officer conducted surveillance operations on board a jeepney.¹⁶³ Upon seeing the bag described to him, he peeked inside and smelled the distinct odor of marijuana emanating from the bag.¹⁶⁴ The tipped information and the police officer's personal observations gave rise to probable cause that rendered the warrantless search valid.¹⁶⁵

The police officers in *People v. Ayangao*¹⁶⁶ and *People v. Libnao*¹⁶⁷ likewise received tipped information regarding the transport of illegal drugs. In *Libnao*, the police officers had probable cause to arrest the accused based on their three (3)-month long surveillance operation in the area where the accused was arrested.¹⁶⁸ On the other hand, in *Ayangao*, the police officers noticed marijuana leaves protruding through a hole in one (1) of the sacks carried by the accused.¹⁶⁹

In the present case, the extensive search conducted by the police officers exceeded the allowable limits of warrantless searches. They had no probable cause to believe that the accused violated any law except for the tip they received. They did not observe any peculiar activity from the accused that may either arouse their suspicion or verify the tip. Moreover, the search was flawed at its inception. The checkpoint was set up to target the arrest of the accused.

¹⁵⁵ 767 Phil. 40 (2015) [Per J. Carpio, Second Division].

¹⁵⁶ Id. at 62–65.

¹⁵⁷ Id.

¹⁵⁸ Id. at 65.

¹⁵⁹ Id. at 64.

¹⁶⁰ 635 Phil. 315 (2010) [Per J. Nachura, Second Division].

¹⁶¹ Id. 322–323.

¹⁶² Id.

¹⁶³ Id.

¹⁶⁴ Id. at 325.

¹⁶⁵ Id. at 331.

¹⁶⁶ 471 Phil. 379 (2004) [Per J. Corona, Third Division].

¹⁶⁷ 443 Phil. 506 (2003) [Per J. Puno, Third Division].

¹⁶⁸ Id. at 517.

¹⁶⁹ 471 Phil. 379, 384 (2004) [Per J. Corona, Third Division].

There are different hybrids of reasonable warrantless searches. There are searches based on reasonable suspicion as in *Posadas v. Court of Appeals*¹⁷⁰ where this Court justified the warrantless search of the accused who attempted to flee with a *buri* bag after the police officers identified themselves.¹⁷¹

On the other hand, there are reasonable searches because of heightened security. In *Dela Cruz v. People*,¹⁷² the search conducted on the accused was considered valid because it was done in accordance with routine security measures in ports.¹⁷³ This case, however, should not be construed to apply to border searches. Border searches are not unreasonable per se;¹⁷⁴ there is a “reasonable reduced expectation of privacy” when travellers pass through or stop at airports or other ports of travel.¹⁷⁵

The warrantless search conducted by the police officers is invalid. Consequently, the tea bag containing marijuana seized from petitioner is rendered inadmissible under the exclusionary principle in Article III, Section 3(2) of the Constitution. There being no evidence to support his conviction, petitioner must be acquitted.

WHEREFORE, the Decision dated July 16, 2010 of the Regional Trial Court in Criminal Case No. 16976-SP and the Decision dated November 18, 2011 and Resolution dated January 25, 2012 of the Court of Appeals in CA-G.R. CR. No. 33588 are **REVERSED** and **SET ASIDE**. Petitioner Mario Veridiano y Sapi is hereby **ACQUITTED** and is ordered immediately **RELEASED** from confinement unless he is being held for some other lawful cause.

SO ORDERED.


MARVIC M.V.F. LEONEN
 Associate Justice

¹⁷⁰ 266 Phil. 306 (1990) [Per J. Gancayo, First Division].

¹⁷¹ Id. at 307–312.

¹⁷² G.R. No. 209387, January 11, 2016 <
<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/209387.pdf>>
 [Per J. Leonen, Second Division].

¹⁷³ Id. at 22.

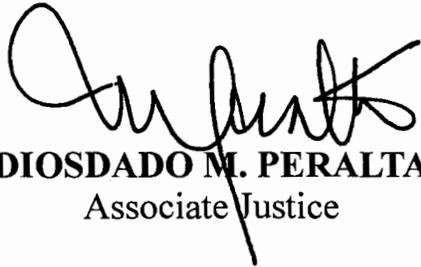
¹⁷⁴ *Dela Cruz v. People*, G.R. No. 209387, January 11, 2016 <
<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/209387.pdf>> 16
 [Per J. Leonen, Second Division].

¹⁷⁵ Id. at 17.

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice

On official leave
JOSE CATRAL MENDOZA
Associate Justice

On official leave
SAMUEL R. MARTIRES
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, Second Division

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