EN BANC

G.R. No. 244045 ***(People of the Philippines v. Jerry Sapla y Guerrero, a.k.a. Eric Salibad y Mallari)***

Promulgated: June 16, 2020

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DISSENTING OPINION

LAZARO-JAVIER, *J.*:

This case involves a **police operation** that **netted** a **sack of almost four (4) kilos of marijuana**. The **Majority** acquit appellant based on what essentially is the **distrust** in the **reasonableness** of the police officers' **on-the-spot** judgment call. It is my hope that the decision reached in this case does **not** dishearten the **legitimate enthusiasm** of our police forces in **law enforcement**.

The Majority set aside appellant's conviction for transportation of dangerous drugs in violation of Section 5, Article II of Republic Act 9165 (RA 9165) on ground that the apprehending officers violated appellant's constitutional right against unreasonable searches and seizures; hence, the drugs seized from him were inadmissible in evidence.

With due respect, I cannot concur in the decision to acquit appellant of the charge of transporting **almost four (4) kilos** of **marijuana** through a public jeepney as the lower courts' rulings were fully consistent with valid and binding jurisprudence.

First, the *ponencia* prefaces with this question:

> Can the police conduct a warrantless **intrusive search of a vehicle** on the **sole basis** of an **unverified tip** relayed by an anonymous informant?

In the first place, the police officers here **did not conduct** an **intrusive** search of the passenger jeepney. The object of their surveillance and search was **targeted to a very specific individual**.

Secondly, the police officers **did not rely** on an **unverified** tip. The tip **was verified** by a **subsequent tip describing in detail** the person who was **actually riding** the passenger jeepney and the **sack** he was **actually carrying**. The **tip was also verified** by the **exact match of the tip with the description of the passenger** whom the police officers were targeting and actually approached.

Thirdly, the police officers were **not just relying on the "tip."** They were **acting as well** on the bases of **the exact match as stated *and* their professional experience as regards the route** plied by the passenger jeepney. It is **not as if** the police officers were guarding the premises of a religious institution where the transportation or even possession of marijuana would most likely be improbable. The police officers were situated along the **silk road of marijuana transportation** that **the police officers could not have lightly ignored**. Further, the police officers relied upon **their personal knowledge** of what they were then **perceiving** to be a **suspicious bulky sack** and the **actual contents thereof** through a **visual and minimally intrusive observation thereof** *after appellant's act of opening this sack.* Appellant did **not even** protest that he was carrying only camote crops or cauliflower or broccoli or smoked meat, had this been the case.

Fourthly, there was **urgency** in conducting the search **because** appellant was **then a passenger** in a passenger jeepney **en route to another province**. The **same exceptional urgency** involved in the warrantless search of a motor vehicle **carries over** to the search of a **targeted passenger** and a **targeted baggage** of the passenger in the moving vehicle. It is **not feasible to obtain** a search warrant in the situation presented to the police officers in the present case, **especially** where the passenger jeepney is **in the process** of **crossing boundaries of court jurisdictions**.

Clearly, the police officers **did not just rely upon** one (1) suspicious circumstance and certainly **not just upon** the "tip." This is **not a case** where 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. x x x There was no evidence to show that the police had basis or personal knowledge that would reasonably allow them to infer anything suspicious."* A tip is not sufficient to constitute probable cause **ONLY** in the absence of any other circumstance that will arouse suspicion. **But** that is **not** the situation here.

Second, I do not agree that "our constitutional order does not adopt a stance of neutrality," especially this statement "the law is *heavily* in favor of the accused,"[1] which then cites the presumption of innocence.

To begin with, the reference to the presumption of innocence is inappropriate.

We do not deal here with the calibration of evidence on the merits of the accusation against appellant. The right to be presumed innocent and the concomitant burden of the prosecution to prove guilt beyond a reasonable doubt do not therefore come into play.

The burden of the prosecution was only to prove the search to be reasonable – the standard of proof is simply one of probable cause. Probable

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[1] Italics added.

cause requires a fair probability that contraband or evidence of a crime will be found – whether a fair-minded evaluator would have reason to find it more likely than not that a fact (or ultimate fact) is true, which is quantified as a fifty-one percent (51%) certainty standard (using whole numbers as the increment of measurement).[2] What probable cause entails was described sharply in this manner:

> The Court of Appeals held that the DEA agents seized respondent when they grabbed him by the arm and moved him back onto the sidewalk. 831 F.2d at 1416. The Government does not challenge that conclusion, and we assume – without deciding – that a stop occurred here. Our decision, then, turns on whether the agents had a reasonable suspicion that respondent was engaged in wrongdoing when they encountered him on the sidewalk. In Terry v. Ohio, 392 U. S. 1, 392 U. S. 30 (1968), we held that the police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity "may be afoot," even if the officer lacks probable cause.
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> **The officer, of course, must be able to articulate something more than an "inchoate and unparticularized suspicion or hunch."** Id. at 27. The Fourth Amendment **requires "some minimal level of objective justification" for making the stop**. INS v. Delgado, 466 U. S. 210, 466 U. S. 217 (1984). **That level of suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence.** We have held that **probable cause means "a fair probability that contraband or evidence of a crime will be found,"** Illinois v. Gates, 462 U. S. 213, 462 U. S. 238 (1983), and the level of suspicion required for a Terry stop is obviously less demanding than that for probable cause, see United States v. Montoya de Hernandez, 473 U. S. 531, 473 U. S. 541, 473 U. S. 544 (1985).
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> **The concept of reasonable suspicion, like probable cause, is not "readily, or even usefully, reduced to a neat set of legal rules."** Gates, supra, at 462 U. S. 232. We think the Court of Appeals' effort to refine and elaborate the requirements of "reasonable suspicion" in this case creates unnecessary difficulty in dealing with one of the relatively simple concepts embodied in the Fourth Amendment. **In evaluating the validity of a stop such as this, we must consider "the totality of the circumstances – the whole picture."** United States v. Cortez, 449 U. S. 411, 449 U. S. 417 (1981). As we said in Cortez:
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> "**The process does not deal with hard certainties, but with probabilities.** Long before the law of probabilities was articulated as such, **practical people formulated certain common sense conclusions about human behavior**; jurors as **factfinders are permitted to do the same – and so are law enforcement officers**."[3]

Further, the statement does disservice to years of jurisprudence that, while recognizing the *Bill of Rights* to be a check on government power, has taken stock of the varying interests that require balancing if not accommodation. **Effective law enforcement** is a **legitimate interest** that is **not less favored by the law**.

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[2] *United States v. Sokolow*, 490 US 1 (1989).
[3] *Id.*

Certainly, the Court *cannot quantify* the legal rights of one (1) subset of our community to be *heavily favored* when the Court has not established a weighing scale by which to measure its validity, accuracy, and reliability.

The statement **chills** our law enforcers from doing their job in good faith of enforcing the law and keeping peace and order, and **emboldens** criminally-disposed persons to commit crimes as they please, because ***in any event*** the law would lend these criminal enterprises the veneer of protection that law-abiding citizens do not have. We cannot nonchalantly refuse to see the totality of circumstances, and choose to close our eyes to the whole picture and the common sense conclusions about human behavior.

Third, the case law research of the ***ponencia*** is quite impressive. Yet, it seems to have missed on a golden opportunity to refine the ***motor vehicle exemption*** to the warrant requirement.

We all agree that the *motor vehicle exemption* emanated from outside jurisprudence, particularly the United States. But as early as 1991, at least in that jurisdiction, the *motor vehicle exemption* has undergone refinements that our own jurisprudence has adopted implicitly if not expressly.

In ***California v. Acevedo***, 500 U.S. 565 (1991),[4] the United States Supreme Court considered the ***motor vehicle exemption*** to the warrant requirement of its Fourth Amendment and **its application to the search of a closed container within the motor vehicle**.

Acevedo is **keenly relevant to our present case** because the police targeted **not exactly** the **passenger jeepney** in which our transporter of four (4) kilos of marijuana **but the transporter** and ***more particularly the sack*** *in which the four (4) kilos of marijuana was being stored for transportation.*

Acevedo ruled that the *motor vehicle exemption* extends to containers carried by passengers inside a moving vehicle, **even if** there is ***no probable cause to search the motor vehicle itself*** and *the* ***probable cause*** *and the* ***interest*** *of the police officers has been* ***piqued only by the circumstances of the passenger and the container*** he or she is carrying and transporting. As held in ***Acevedo***:

> [W]e now hold that **the Fourth Amendment does not compel separate treatment for an automobile search that extends only to a container within the vehicle**....
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> The interpretation of **the Carroll doctrine** set forth in Ross **now applies to all searches of containers found in an automobile**. In other words, **the police may search without a warrant if their search is supported by probable cause.** The Court in Ross put it this way:
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> "The **scope of a warrantless search of an automobile** . . . is **not defined by the nature of the container in which the contraband is**

[4] https://supreme.justia.com/cases/federal/us/500/565/

> **secreted**. Rather, it is **defined by the object of the search** and **the places in which there is probable cause to believe that it may be found.**"
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> ....
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> Until today, **this Court has drawn a curious line between** the *search of an automobile that coincidentally turns up a container* **and** the *search of a container that coincidentally turns up in an automobile*. The protections of the Fourth Amendment must not turn on such coincidences. We therefore interpret Carroll as providing **one rule to govern all automobile searches**. The **police may search an automobile** *and* the **containers within it** where they **have probable cause to believe** contraband or evidence is contained.

Indeed, the distinction between **probable cause as to the motor vehicle** and **probable cause as to the specific person and his or her specific container** actually endangers the privacy interest that the right against unreasonable searches and seizures protects. ***Acevedo*** succinctly explains:

> **The line between probable cause to search a vehicle and probable cause to search a package in that vehicle is not always clear, and separate rules that govern the two objects to be searched may enable the police to broaden their power to make warrantless searches and disserve privacy interests.** We noted this in Ross in the context of a search of an entire vehicle. Recognizing that, under Carroll, the "entire vehicle itself . . . could be searched without a warrant," **we concluded that "prohibiting police from opening immediately a container in which the object of the search is most likely to be found, and instead forcing them first to comb the entire vehicle, would actually exacerbate the intrusion on privacy interests."**
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> At the moment when officers stop an automobile, it may be less than clear whether they suspect with a high degree of certainty that the vehicle contains drugs in a bag or simply contains drugs. **If the police know that they may open a bag only if they are actually searching the entire car, they may search more extensively than they otherwise would in order to establish the general probable cause required by Ross.**
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> Such a situation is not far-fetched.... We cannot see the benefit of a rule that requires law enforcement officers to conduct a more intrusive search in order to justify a less intrusive

In greater detail, ***Acevedo*** ruled thus:

> The facts in this case closely resemble the facts in Ross. In Ross, the police had probable cause to believe that drugs were stored in the trunk of a particular car. See 456 U.S. at 456 U. S. 800. Here, the California Court of Appeal concluded that the police had **probable cause to believe that respondent was carrying marijuana in a bag** in his car's trunk. Furthermore, for what it is worth, in Ross, as here, **the drugs in the trunk were contained in a brown paper bag**.
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> **This Court in Ross rejected Chadwick's distinction between containers and cars.** It concluded that **the expectation of privacy in one's vehicle is equal to one's expectation of privacy in the container**, and noted that **"the privacy interests in a car's trunk or glove compartment**

may be no less than those in a movable container." 456 U.S. at 456 U. S. 823. It **also recognized that it was arguable that the same exigent circumstances that permit a warrantless search of an automobile would justify the warrantless search of a movable container.** Id. at 456 U. S. 809. **In deference to the rule of Chadwick and Sanders, however, the Court put that question to one side.** Id. at 456 U. S. 809-810. It concluded that the time and expense of the warrant process would be misdirected if the police could search every cubic inch of an automobile until they discovered a paper sack, at which point the Fourth Amendment required them to take the sack to a magistrate for permission to look inside. **We now must decide the question deferred in Ross: whether the Fourth Amendment requires the police to obtain a warrant to open the sack in a movable vehicle simply because they lack probable cause to search the entire car. We conclude that it does not.**

IV

Dissenters in Ross asked why the suitcase in Sanders was "more private, less difficult for police to seize and store, or in any other relevant respect more properly subject to the warrant requirement, than a container that police discover in a probable cause search of an entire automobile?"

We now agree that a **container found after a general search of the automobile** and a **container found in a car after a limited search for the container** are **equally easy** for the police to store and **for the suspect to hide or destroy**. In fact, **we see no principled distinction in terms of either the privacy expectation or the exigent circumstances between the paper bag found by the police in Ross** and **the paper bag found by the police here**. Furthermore, **by attempting to distinguish between a container for which the police are specifically searching** and **a container which they come across in a car, we** have provided only minimal protection for privacy, and **have impeded effective law enforcement**.

....

To the extent that the Chadwick-Sanders rule protects privacy, its protection is minimal. Law enforcement officers may seize a container and hold it until they obtain a search warrant. "Since the police, by hypothesis, have probable cause to seize the property, we can assume that a warrant will be routinely forthcoming in the overwhelming majority of cases."

And the police often will be able to search containers without a warrant, despite the Chadwick-Sanders rule, as a search incident to a lawful arrest. In New York v. Belton, 453 U. S. 454 (1981), the Court said: "[W]e hold that, when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." "It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment."

Under Belton, **the same probable cause to believe that a container holds drugs will allow the police to arrest the person transporting the container and search it.**

Finally, the search of a paper bag intrudes far less on individual privacy than does the incursion sanctioned long ago in Carroll. In that

case, prohibition agents slashed the upholstery of the automobile. This Court nonetheless found their search to be reasonable under the Fourth Amendment. **If destroying the interior of an automobile is not unreasonable, we cannot conclude that looking inside a closed container is.** In light of the minimal protection to privacy afforded by the Chadwick-Sanders rule, and our serious doubt whether that rule substantially serves privacy interests, **we now hold that the Fourth Amendment does not compel separate treatment for an automobile search that extends only to a container within the vehicle.**

V

The Chadwick-Sanders rule not only has failed to protect privacy, but it has also confused courts and police officers and impeded effective law enforcement. The conflict between the Carroll doctrine cases and the Chadwick-Sanders line has been criticized in academic commentary....

Although we have recognized firmly that the doctrine of stare decisis serves profoundly important purposes in our legal system, this Court has overruled a prior case on the comparatively rare occasion when it has bred confusion or been a derelict or led to anomalous results.... We conclude that it is **better to adopt one clear-cut rule to govern automobile searches and eliminate the warrant requirement for closed containers** set forth in Sanders.

VI

The interpretation of the Carroll doctrine set forth in Ross **now applies to all searches of containers found in an automobile**. In other words, **the police may search without a warrant if their search is supported by probable cause.** The Court in Ross put it this way:

"The scope of a warrantless search of an automobile . . . is **not defined by the nature of the container** in which the contraband is secreted. **Rather, it is defined by the object of the search** and **the places in which there is probable cause to believe that it may be found."**

"Probable cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab."

We reaffirm that principle. In the case before us, **the police had probable cause to believe that the paper bag** in the automobile's trunk contained marijuana. **That probable cause now allows a warrantless search of the paper bag.** The facts in the record reveal that the police did not have probable cause to believe that contraband was hidden in any other part of the automobile and a search of the entire vehicle would have been without probable cause and unreasonable under the Fourth Amendment.

Our holding today neither extends the Carroll doctrine nor broadens the scope of the permissible automobile search delineated in Carroll, Chambers, and Ross. It remains a "cardinal principle that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions.'"

> We held in Ross: "The exception recognized in Carroll is unquestionably one that is specifically established and well delineated."
>
> **Until today, this Court has drawn a curious line between the search of an automobile that coincidentally turns up a container and the search of a container that coincidentally turns up in an automobile.** The protections of the Fourth Amendment must not turn on such coincidences. We therefore interpret Carroll as providing one rule to govern all automobile searches. The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained.
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> The judgment of the California Court of Appeal is reversed, and the case is remanded to that court for further proceedings not inconsistent with this opinion.

Fourth, the *Acevedo* doctrine has been **adopted** in our jurisprudence, *consciously or unconsciously as a matter of common sense*, under the **rubric** of a valid warrantless search of a moving **public utility vehicle**.

Saluday v. People,[5] discussed below in greater detail, is one (1) such pinpoint example confirming the validity of the ruling and reasoning in *Acevedo*.

There is no dispute that the **search of a moving vehicle** is a jurisprudentially recognized **exception** to the rule that a search to be valid must be pursuant to a court-issued warrant.

The *ponencia*, however, insists that there was **no valid search of a moving vehicle** in this case, citing the following discussion in ***People v. Comprado***:[6]

> **The search in this case, however, could not be classified as a search of a moving vehicle.** In this particular type of search, **the vehicle is the target and not a specific person**. **Further**, in search of a moving vehicle, **the vehicle was intentionally used as a means to transport** illegal items. It is worthy to note that the information relayed to the police officers was that a passenger of that particular bus was carrying marijuana such that when the police officers boarded the bus, **they searched the bag of the person matching the description given by their informant and not the cargo or contents of the said bus**. Moreover, in this case, it just so happened that the alleged drug courier was a bus passenger. To extend to such breadth the scope of searches on moving vehicles would open the floodgates to unbridled warrantless searches which can be conducted by the mere expedient of waiting for the target person to ride a motor vehicle, setting up a checkpoint along the route of that vehicle, and then stopping such vehicle when it arrives at the checkpoint in order to search the target person.[7]

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[5] *Saluday v. People,* G.R. No. 215305, April 3, 2018.
[6] G.R. No. 213225, April 4, 2018.
[7] *Id.*

This **restrictive definition** of a search of a moving vehicle is found in **no other** judicial precedent and in fact, ***Comprado*** cites none. ***Comprado*** abides by a reasoning that **has long been rejected** from where we have obtained our *motor vehicle exemption.*

Our **prevailing jurisprudence** is, to be sure, **contrary to** what ***Comprado*** implies – which is that, as held in ***Comprado***, if **the confidential tip describes with particularity the person** and **the baggage to be searched**, aside from giving a description of the vehicle, then **the search conducted is no longer a search of a moving vehicle but a search of a particular person and his or her baggage**, and that unless an accused is proved to have "intentionally used" the vehicle to transport illegal drugs, the *motor vehicle exemption* would not apply.

I **cannot subscribe** to this narrow definition laid down in ***Comprado*** as it **ignores** well-settled jurisprudence.

To be sure, the only case cited by ***Comprado*** in relation to searches of moving vehicles, ***People v. Libnao***,[8] **in fact enumerates** the **varied types of situations** that are considered **valid searches of moving vehicles**, ***including*** those involving **persons "targeted" based on a description** given by an informant/agent, to wit:

> In earlier decisions, we held that there was probable cause in the following instances: (a) where the distinctive odor of marijuana emanated from the plastic bag carried by the accused;[9] (b) where an informer positively identified the accused who was observed to be acting suspiciously; (c) where the accused who were riding a jeepney were stopped and searched by policemen who had earlier received confidential reports that said accused would transport a quantity of marijuana;[10] (d) where Narcom agents had received information that a Caucasian coming from Sagada, Mountain Province had in his possession prohibited drugs and when the Narcom agents confronted the accused Caucasian because of a conspicuous bulge in his waistline, he failed to present his passport and other identification papers when requested to do so; (f) where the moving vehicle was stopped and searched on the basis of intelligence information and clandestine reports by a deep penetration agent or spy — one who participated in the drug smuggling activities of the syndicate to which the accused belong — that said accused were bringing prohibited drugs into the country;[11] (g) where the arresting officers had received a confidential information that the accused, whose identity as a drug distributor was established in a previous test-buy operation, would be boarding MV *Dona Virginia* and probably carrying *shabu* with him;[12] (h) where police officers received an information that the accused, who was carrying a suspicious-looking gray luggage bag, would transport marijuana in a bag to Manila;[13]

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[8] 443 Phil. 506 (2003).
[9] Referring to *People v. Claudio,* 243 Phil. 795 (1988), wherein a policeman accosted a fellow passenger on a public bus who was acting suspiciously.
[10] *See*, *People v. Maspil, Jr.*, 266 Phil. 815 (1990).
[11] *See*, *People v. v. Lo Ho Wing,* 271 Phil. 120, (1991).
[12] *See, People v. Saycon y Baquiran,* 306 Phil. 359 (1994).
[13] Referring to *People v. Balingan y Bobbonan,* 311 Phil. 290 (1995).

> and (i) where the appearance of the accused and the color of the bag he was carrying fitted the description given by a civilian asset.[14]

An **example of a warrantless search on a moving vehicle based on details given by an informant** can be found in ***People v. Mariacos***.[15] What should be emphasized is that the ruling in ***Comprado*** handed down by the Court's Third Division **did not expressly reverse** previous doctrine on warrantless searches of moving vehicles since a Division of this Court has no power to do so.

I see **no compelling reason** for the Court *En Banc* to adopt the impractical restrictions imposed in ***Comprado***.

Does the Court mean to require a search warrant **if a specifically described person and baggage** reasonably suspected to be carrying illegal drugs does so **on a moving vehicle**?

But this **artificial distinction has long been discarded** in the United States, where we took our *motor vehicle exemption*.

How exactly is the prosecution supposed to prove that a public or private vehicle was intentionally chosen to transport dangerous drugs **if the mere apprehension of the accused** possessing dangerous drugs in *flagrante* on such moving vehicle does not suffice?

We cannot perpetuate a rule that has long lost its vitality.

To stress, ***Acevedo*** provides a stirring counterpoint to a rule that the *ponencia* seeks to memorialize:

> **Although we have recognized firmly that the doctrine of stare decisis serves profoundly important purposes in our legal system, this Court has overruled a prior case on the comparatively rare occasion when it has bred confusion or been a derelict or led to anomalous results**.... We conclude that it is **better to adopt one clear-cut rule to govern automobile searches and eliminate the warrant requirement for closed containers** set forth in Sanders.

Fifth, jurisprudence likewise recognizes the validity of warrantless searches and arrests **based on a tip from a confidential informant** as a **legitimate** basis for a police officer's determination of probable cause.

Notably, here, this tip is **not just** a **whimsical tip** but ***objectified*** by these circumstances:

(i) the police officers' long experience in dealing with marijuana coming from this route in northern Luzon;

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[14] *See, People v. Valdez,* 363 Phil. 481 (1990).
[15] 635 Phil. 315 (2010).

(ii) the fact that appellant was a passenger on board a *moving* public jeepney crossing provincial boundaries; and

(iii) photographs of the bricks of marijuana show that they were of such size and bulk that they were readily the most conspicuous items in the blue sack, and therefore, no "probing" of the sack's contents would have even been necessary.

It is conceded that although searches of moving vehicles may be done without warrant, police officers do not have unlimited discretion in the conduct of such searches. As we held in ***People v. Tuazon***:[16]

> Nevertheless, the exception from securing a search warrant when it comes to moving vehicles does not give the police authorities unbridled discretion to conduct a warrantless search of an automobile. To do so would render the aforementioned constitutional stipulations inutile and expose the citizenry to indiscriminate police distrust which could amount to outright harassment. Surely, the policy consideration behind the exemption of search of moving vehicles does not encompass such arbitrariness on the part of the police authorities. In recognition of the possible abuse, jurisprudence dictates that at all times, **it is required that probable cause exist in order to justify the warrantless search of a vehicle.** (Emphasis supplied.)

While the *ponencia* was able to cite jurisprudence to the effect that tipped information is insufficient and police officers must have personal knowledge of facts giving them probable cause to conduct a search, the Court also **cannot simply disregard long standing jurisprudence** holding that **probable cause may be based on reliable, confidential information** received by police.

In ***People v. Bagista***,[17] we ruled that the officers involved had probable cause to stop and search all vehicles coming from the north at Acop, Tublay, Benguet **in view of the confidential information** they had received that a woman having the same appearance as that of accused would be bringing marijuana from up north. They likewise had probable cause to search accused's belongings since she fit the description provided by the informant.

We have also upheld the warrantless search in ***People v. Valdez***[18] where a police officer was informed by a civilian asset that a thin Ilocano person with a green bag was about to transport marijuana on a public bus from Banaue, Ifugao. That the search targeted a specifically described individual was even the basis for the reasonableness of the search, *viz.*:

> Said information was received by SPO1 Mariano the very same morning he was waiting for a ride in Banaue to report for work in Lagawe, the capital town of Ifugao province. Thus, faced with such on-the-spot information, the law enforcer had to respond quickly to the call of duty. Obviously, there was not enough time to secure a search warrant

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[16] 558 Phil. 759 (2007).
[17] 288 Phil. 828 (1992).
[18] Supra note 9.

> considering the time involved in the process. In fact, in view of the urgency of the case, SPO1 Mariano together with the civilian "asset" proceeded immediately to Hingyon, Ifugao to pursue the drug trafficker. In Hingyon, he flagged down buses bound for Baguio City and Manila, and looked for the person described by the informant. It must be noted that the target of the pursuit was just the "thin Ilocano person with a green bag" and no other. And so, when SPO1 Mariano inspected the bus bound for Manila, he just singled out the passenger with the green bag. Evidently, there was definite information of the identity of the person engaged in transporting prohibited drugs at a particular time and place. SPO1 Mariano had already an inkling of the identity of the person he was looking for. As a matter of fact, no search at all was conducted on the baggages of other passengers. Hence, appellant's claim that the arresting officer was only fishing for evidence of a crime has no factual basis.

In that case, we deemed the accused caught *in flagrante* since he was carrying marijuana at the time of his arrest.

In ***People v. Mariacos***,[19] we justified the warrantless search of a jeepney in this wise:

> It is well to remember that on October 26, 2005, the night before appellant's arrest, the police received information that marijuana was to be transported from Barangay Balbalayang, and had set up a checkpoint around the area to intercept the suspects. At dawn of October 27, 2005, PO2 Pallayoc met the secret agent from the Barangay Intelligence Network, who informed him that a baggage of marijuana was loaded on a passenger *jeepney* about to leave for the *poblacion*. Thus, PO2 Pallayoc had probable cause to search the packages allegedly containing illegal drugs.

Meanwhile, in ***People v. Quebral***,[20] where police officers acted on an informer's report that two (2) men and a woman on board an owner type jeep with a specific plate number would deliver *shabu* at a gas station, we explained:

> As the lower court aptly put it in this case, **the law enforcers already had an inkling of the personal circumstances of the persons they were looking for and the criminal act they were about to commit. That these circumstances played out in their presence supplied probable cause for the search.** The police acted on reasonable ground of suspicion or belief supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that a crime has been committed or is about to be committed. Since the seized *shabu* resulted from a valid search, it is admissible in evidence against the accused. (Emphasis supplied.)

The citations may go on and on.[21] From the foregoing cases, it is clear that police officers, **acting on a tip from an informant**, may **lawfully** apprehend drug offenders.

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[19] 635 Phil. 315 (2010).
[20] 621 Phil. 226 (2009).
[21] *Macad v. People*, G.R. No. 227366, August 01, 2018; *Veridiano v. People*, G.R. No. 200370, June 07, 2017; *People v. Macalaba*, 443 Phil. 565 (2003); *Caballes v. People*, 424 Phil. 263 (2002).

This doctrine has not been abandoned.

The United States cases cited in the *ponencia*, ***Aguilar v. Texas***,[22] ***U.S. v. Ventresca***,[23] and ***Illinois v. Gates***[24] are not on all fours with this case.

To begin with, these United States cases involved probable cause for issuance of a search warrant by a court **while here** we are discussing the search of a moving vehicle, an accepted exception to the need to secure a court-issued search warrant.

For another, ***Aguilar*** and ***Ventresca*** involved the search of a house while ***Illinois*** involved the search of a house and a private vehicle purportedly regularly used to transport illegal drugs. Thus, in ***Aguilar*** and ***Illinois***, police officers would have had time to investigate further the veracity of the tip received perhaps through a surveillance or a test buy. ***Ventresca*** did not even involve an anonymous tip but concerned an investigator's affidavit which was used as basis for the issuance of a search warrant but was assailed as being partly hearsay for some of the information therein was gathered by fellow investigators. ***Ventresca*** is hardly even relevant here at all.

Still, a careful reading of ***Illinois*** demonstrates that United States jurisprudence does not prohibit law enforcement officers from relying on anonymous tips, even when they may constitute hearsay. ***Illinois*** even expressly abandoned the rigid two (2)-pronged test under ***Aguilar*** requiring that "(1) the informant's 'basis of knowledge' be revealed and (2) sufficient facts to establish either the informant's 'veracity' or the 'reliability' of the informant's report must be provided."[25] Instead, it held that "[w]hile a conscientious assessment of the basis for crediting such tips is required by the Fourth Amendment, a standard that leaves virtually no place for anonymous citizen informants is not."[26]

To be sure, ***Illinois*** in proposing the "totality of circumstances test" merely recognized that corroboration of details of an informant's tip by prior independent police work bolstered the veracity of the tip but it was not requisite to a finding of probable cause. ***Illinois*** also amply discussed the evidentiary value of on-site verification of the accuracy of the anonymous information received by the police, to wit:

> The corroboration of the letter's predictions that the Gateses' car would be in Florida, that Lance Gates would fly to Florida in the next day or so, and that he would drive the car north toward Bloomingdale all indicated, albeit not with certainty, that the informant's other assertions also were true. "[B]ecause an informant is right about some things, he is more

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[22] 378 US 108 (1964).
[23] 380 US 102 (1965).
[24] 462 US 213 (1983).
[25] *Ponencia*, p. 12
[26] 462 US 213, 238.

probably right about other facts"[27] x x x including the claim regarding the Gateses' illegal activity.[28]

Relating this principle to **the present case**, the **anonymous tip** received by the police officers **turned out to be accurate** as their on-site investigation showed. *There was a passenger jeepney with plate number AYA 270 bound for Roxas, Isabela that passed through their checkpoint. There was a man on board fitting the description in the anonymous tip who had a blue sack. That blue sack indeed contained illegal drugs*, a **large and hard to ignore quantity** of it. All of these facts **came to the personal knowledge of the arresting officers upon investigation of the tip**.

In ***Illinois,*** the United States Supreme Court aptly observed:

> This totality-of-the-circumstances approach is far more consistent with our prior treatment of probable cause than is any rigid demand that specific "tests" be satisfied by every informant's tip. Perhaps the central teaching of our decisions bearing on the probable cause standard is that it is a "practical, nontechnical conception."
>
> **In dealing with probable cause, . . . as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.** Our observation in *United States v. Cortez,* regarding **"particularized suspicion,"** is also applicable to the probable cause standard:
>
> > **"The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common sense conclusions about human behavior; jurors as factfinders are permitted to do the same – and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement."**
>
> As these comments illustrate, probable cause is **a fluid concept** – turning on the assessment of probabilities in particular factual contexts – **not readily, or even usefully, reduced to a neat set of legal rules**. Informants' tips doubtless come in many shapes and sizes from many different types of persons. As we said in *Adams v. Williams*:
>
> > "Informants' tips, like all other clues and evidence coming to a policeman on the scene, may vary greatly in their value and reliability."
> >
> > Rigid legal rules are ill-suited to an area of such diversity. **"One simple rule will not cover every situation."**[29] (Emphasis supplied; citations omitted.)

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[27] Citing *Spinelli v. United States*, 393 US 410, 427 (1969).
[28] 462 US 213, 244.
[29] 62 US 213, 230.

The ***ponencia*** acknowledges that jurisprudence on this matter is divergent but has now set **in stone that a confidential tip is insufficient to establish probable cause** to conduct a warrantless search. It holds that **despite the detailed nature of a tip**, it **must be accompanied by other circumstances** that come to the arresting officers' **personal knowledge**, such as the observation that the person might be a drug user as in ***People v. Manalili***[30] or was otherwise acting suspiciously as in ***People v. Tangliben***[31] and the other cases cited in the *ponencia.*

The *ponencia's* reasoning, **however**, is based on the **assumption** that *drug couriers are all drug users* or would *all act suspiciously* while in the act of committing the crime of possession of illegal drugs.

We have *long recognized* that **people may act differently in the same situation**.[32] This is true not only in the case of victims of a crime but also of perpetrators.

Indeed, as early as the case of ***People v. Saycon***,[33] the Court observed that "unlike in the case of crimes like, e.g., homicide, murder, physical injuries, robbery or rape which by their nature involve physical, optically perceptible, overt acts, ***the offense of possessing or delivering or transporting some prohibited or regulated drug is customarily carried out without any external signs or indicia visible to police officers and the rest of the outside world.***"

Thus, in evaluating the evidence against the accused, **the Court must account for this fact**.

Sixth, since appellant **consented** to the warrantless search, he **cannot** claim that it is invalid.

Time and again, the Court has ruled the constitutional immunity against unreasonable searches and seizures is a personal right which may be waived and a person may voluntarily consent to have government officials conduct a search or seizure that would otherwise be barred by the Constitution.[34] Hence, in the oft-cited ***People v. Montilla***, where the accused spontaneously performed affirmative acts of volition by himself opening his bag without being forced or intimidated to do so, such acts should properly be construed as a clear waiver of his right.[35] ***Montilla*** is still good law and had been most recently cited in the 2018 case of ***Saluday v. People***.[36]

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[30] 345 Phil. 632 (1997).
[31] G.R. No. L-63630, April 6, 1990.
[32] *People v. Cabel y Iwag,* 347 Phil. 82 (1997).
[33] 306 Phil. 359 (1994).
[34] *People v. O'Cochlain,* G.R. No. 229071, December 10, 2018.
[35] *People v. Montilla y Gatdula,* 349 Phil. 640 (1998).
[36] G.R. No. 215305, April 3, 2018.

The ruling in ***Montilla*** is applicable here since appellant **freely and readily acceded** to the police officers' request for him to open the blue sack that he also **voluntarily acknowledged** was his.

The *ponencia* relies heavily on our pronouncement in ***People v. Cogaed*** that mere silence or passive acquiescence given under intimidating or coercive circumstances **does not constitute** a valid waiver of the constitutional right against unreasonable searches.[37]

We must, however, **distinguish** the present case from ***Cogaed*** where the police officers themselves testified that *the accused therein seemed frightened* during the search.

Here, there is **absolutely no indication** in the records that appellant was intimidated or moved by fear in his act of opening the sack and thereby displaying the four (4) bricks of marijuana to the apprehending officers' view.

By appellant's own account, there were **only two (2) policemen** manning the checkpoint and who conducted the search of the jeepney.[38] Throughout his testimony which spanned **several hearing dates**, appellant **never even mentioned** whether these policemen were **armed** nor did he claim that he was **threatened** by them.

PO3 Mabiasan's testimony that when appellant was asked to open his sack, it was only after a while that he voluntarily opened it **does not** necessarily indicate appellant acted under duress or fear.[39] Appellant's hesitation could have just been **hesitation easily indicative of guilt**. In any event, it is **best left to the trial court to decipher such factual details** as it was **the one that had the opportunity to observe** the witnesses during their testimony.

Seventh, I **do not agree** with the *ponencia*'s finding that the police conducted a probing, highly intrusive search on appellant.

In truth, it is the rule espoused by the *ponencia* and *Comprado* that endangers the people's right to privacy. The rationale in ***Acevedo***, extensively quoted above, affirms this conclusion.

People v. Manago,[40] ***Valmonte v. de Villa***,[41] and ***Caballes v. Court of Appeals***[42] where the "visual and minimally intrusive" standard was applied, all involved searches of private vehicles conducted at routine military or police checkpoint. It stands to reason that only a visual and minimally intrusive search would be permissible at routine checkpoints as any number

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[37] 740 Phil. 212 (2014).
[38] TSN dated November 9, 2015, p. 121.
[39] *Ponencia*, p. 29.
[40] 793 Phil. 505 (2016).
[41] 264 Phil. 265 (1990).
[42] 424 Phil. 263, (2002).

of vehicles and persons would pass through them and in all likelihood, these vehicles or persons would not be involved in criminal activity.

Interestingly, the *ponencia* cites ***Saluday v. People***[43] as another example of a "visual and minimally intrusive" search by focusing on the fact that the authorities merely lifted the bag containing the illegal firearms but it ignores the extensive discussion in the same case on the validity of law enforcement officers' inspections of persons and the opening of their belongings in instances when they have reduced expectations of privacy, particularly in public places, such as airports, seaports, bus terminals, malls, and even on board public transportation that is in transit. In connection with inspections of public buses and their passengers, ***Saluday*** had this to say:

> Further, in the conduct of bus searches, the Court lays down the following guidelines. **Prior to entry**, passengers and their bags and luggages can be subjected to a routine inspection akin to airport and seaport security protocol. In this regard, metal detectors and x-ray scanning machines can be installed at bus terminals. Passengers can also be frisked. In lieu of electronic scanners, passengers can be required instead to open their bags and luggages for inspection, which inspection must be made in the passenger's presence. Should the passenger object, he or she can validly be refused entry into the terminal.
>
> **While in transit**, a bus can still be searched by government agents or the security personnel of the bus owner in the following three instances. *First*, upon receipt of information that a passenger carries contraband or illegal articles, the bus where the passenger is aboard can be stopped *en route* to allow for an inspection of the person and his or her effects. This is no different from an airplane that is forced to land upon receipt of information about the contraband or illegal articles carried by a passenger onboard. *Second*, whenever a bus picks passengers *en route*, the prospective passenger can be frisked and his or her bag or luggage be subjected to the same routine inspection by government agents or private security personnel as though the person boarded the bus at the terminal. This is because unlike an airplane, a bus is able to stop and pick passengers along the way, making it possible for these passengers to evade the routine search at the bus terminal. *Third*, a bus can be flagged down at designated military or police checkpoints where State agents can board the vehicle for a routine inspection of the passengers and their bags or luggages.[44] (Emphasis in the original; underscoring supplied.)

Verily, ***Saluday*** considers the opening and inspection of a **passenger's bag/belongings** by authorities in a public place or on board public transportation as a **reasonable and minimally intrusive search**.

Here, appellant, a **passenger on board a public jeepney**, **voluntarily opened** his blue sack at the request of police officers who had previously received information that such blue sack most likely contained illegal drugs.

As soon as appellant opened the sack, the two (2) police officers, without any need to do more, **immediately saw** the four (4) large bricks of

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[43] *Saluday v. People,* G.R. No. 215305, April 3, 2018.
[44] *Id.*

marijuana inside. Not only did the testimonies of the two (2) police officers coincide on these material points but also their testimonies were corroborated by the physical evidence.

Photographs of the bricks of marijuana show that they were of such size and bulk that they were readily the most conspicuous items in the blue sack. No "probing" of the sack's contents would have even been necessary.

Significantly, too, appellant **did not plead, much less prove,** that these police officers had **some ill motive** for testifying against him.

Eighth, the *ponencia* now relies on the exclusionary rule or the *fruit of the poisonous tree* doctrine as a basis to acquit accused-appellant. Suffice it to state, since it is my view there was a valid warrantless search of a moving vehicle in this case, **I likewise hold that the prosecution's evidence is admissible against appellant** and fully supports the lower courts' finding of guilt.

A final word. I whole-heartedly agree with the doctrine in drugs cases that the **presumption of regularity** accorded to acts undertaken by police officers in the pursuit of their official duties **cannot be used** to negate the constitutional presumption of innocence.[45]

The Court, however, **should not go so far as to presume** at the outset that our law enforcement officers are negligent or in bad faith. It **chills** our law enforcers from their important mission to preserve peace and order and destroy the menace of illegal drugs. Equally foreboding, it **goes against** our duty to judge cases with **cold neutrality**.

Neither do I believe that the Court should **undeservedly place a premium** on the quantity of past precedents that have applied a certain principle, especially when a **mechanical application of this principle** would **not only defeat** the ends of justice **but also resurrect and worse perpetuate** a ruling and rationale that others whose interest in the right to privacy has been firm have long discarded.

We **must not evade our duty** to revisit previously established doctrine, abandon or, perhaps, **at least carve out exceptions or reconcile contradictory rulings** when warranted.

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[45] *See,* for example, *People v. Dela Cruz,* G.R. No. 229053, July 17, 2019.

For the foregoing reasons, I vote to **AFFIRM** the Court of Appeals' Decision dated April 24, 2018 in CA-G.R. CR HC No. 09296 and to uphold the trial court's judgment of conviction, but with the modification that appellant be sentenced to life imprisonment instead of *reclusion perpetua* in line with the nomenclature used in RA 9165 and to pay a fine of ₱1,000,000.00 as warranted under prevailing jurisprudence.

AMY C. LAZARO-JAVIER
Associate Justice