EN BANC

G.R. No. 244045 – PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, **v. JERRY SAPLA y GUERRERO, a.k.a. ERIC SALIBAD y MALLARI,** *Accused-Appellant*.

Promulgated:
June 16, 2020

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CONCURRING OPINION

LEONEN, *J.*:

I concur.

To aid courts in upholding the constitutional right against unreasonable searches, I revisit the doctrines regarding two (2) exceptions often invoked to justify warrantless searches of passengers on moving vehicles, such as the one in this case: first, stop-and-frisk searches based on probable cause, genuine reason, or reasonable suspicion; and second, the search of a moving vehicle.

I

Philippine doctrine on stop-and-frisk searches originates in the American case of *Terry v. Ohio*.[1] In that case, the United States Supreme Court ruled on the admissibility of evidence obtained from a warrantless search of a person whose actions suggested to a police officer that he was casing a joint for a robbery. According to it, a limited search was permissible when preceded by unusual conduct that, by virtue of a police officer's experience, led him to reasonably conclude that criminal activity was afoot, and the person to be searched may have been armed and dangerous.[2]

Terry was later cited in *Posadas v. Court of Appeals*.[3] There, this Court held that to deem a warrantless search justified, a court must look into its reasonableness, which was, in turn, predicated on the presence of observable suspicious acts by the person to be searched:

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1 392 U.S. 1 (1968).

2 *People v. Cristobal*, G.R. No. 234207, June 10, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65317> [Per J. Caguioa, Second Division].

3 266 Phil. 306 (1990) [Per J. Gancayco, First Division].

> Thus, as between a warrantless search and seizure conducted at military or police checkpoints and the search thereat in the case at bar, there is no question that, indeed, the latter is more reasonable considering that unlike in the former, it was effected on the basis of a probable cause. The probable cause is that when the petitioner acted suspiciously and attempted to flee with the buri bag there was a probable cause that he was concealing something illegal in the bag and it was the right and duty of the police officers to inspect the same.[4]

This Court then cited *Terry* by way of quoting the following submission of the Solicitor General:

> The assailed search and seizure may still be justified as akin to a "stop and frisk" situation whose object is either to determine the identity of a suspicious individual or to maintain the *status quo* momentarily while the police officer seeks to obtain more information. This is illustrated in the case of *Terry vs. Ohio*, 392 U.S. 1 (1968). . . . The United States Supreme Court held that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for the purpose of investigating possible criminal behavior even though there is no probable cause to make an arrest." In such a situation, it is reasonable for an officer rather than simply to shrug his shoulder and allow a crime to occur, to stop a suspicious individual briefly in order to determine his identity or maintain the *status quo* while obtaining more information[.][5]

Applying *Terry* to *Posadas*, this Court concluded that because of the petitioner's suspicious actions, it was reasonable for the police officers to believe that he was concealing something illegal in his bag, and thus, reasonable for them to search it.

In *People v. Solayao*,[6] this Court upheld the validity of the warrantless search based on the circumstances that reasonably aroused the officers' suspicions: the accused looked drunk, wore a "camouflage uniform," and fled upon seeing the officers. It also considered the context within which the officers observed those suspicious actions: they were then verifying reports of armed persons roaming around the barangay at night.

Similarly, in *Manalili v. Court of Appeals*,[7] this Court found that the police officers had sufficient reason to stop and search the petitioner after observing that he had red eyes, was wobbling like a drunk person, and was in an area that was frequented by drug addicts.

Refining the doctrine further, this Court in *Malacat v. Court of Appeals*[8] emphasized that for a stop-and-frisk search to be reasonable, a

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4 Id. at 311–312.
5 Id. at 312–313.
6 330 Phil. 811 (1996) [Per J. Romero, Second Division].
7 345 Phil. 632 (1997) [Per J. Panganiban, Third Division].
8 347 Phil. 462 (1997) [Per J. Davide, Jr., En Banc].

police officer's suspicion must be based on a "genuine reason." In that case, the officer's claim that the petitioner was part of a group that had earlier attempted to bomb Plaza Miranda was unsupported by any supporting police report, record, or testimonies from other officers who chased that group. This Court also found that the petitioner's behavior—merely standing in a corner with his eyes "moving very fast"—could not be considered genuine reason.

The *ponente* of *Manalili*, Justice Artemio Panganiban, wrote a concurring opinion, elaborating further on the concept of genuine reason. Comparing and contrasting the facts in each case, he explained why the stop-and-frisk search in *Malacat* was founded on no genuine reason, yet the search in *Manalili* was:

> Thus, when these specially trained enforcers saw Manalili with reddish eyes and walking in a wobbly manner characteristic of a person "high" on drugs per their experience, and in a known hangout of drug users, there was sufficient genuine reason to stop and frisk the suspect. It is well to emphasize that under different circumstances, such as where the policemen are not specially trained and in common places where people ordinarily converge, the same features displayed by a person will not normally justify a warrantless arrest or search on him.
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> The case before us presents such a situation. The policemen merely observed that Malacat's eyes were moving very fast. They did not notice any bulges or packets about the bodies of these men indicating that they might be hiding explosive paraphernalia. From their outward look, nothing suggested that they were at the time armed and dangerous. Hence, there was no justification for a stop-and-frisk.[9]

The concept of genuine reason as the basis for reasonable suspicion has been expounded upon further such that, in Philippine jurisprudence, an officer must observe *more than one (1) circumstance*, which when taken alone is apparently innocent, but when taken together with other circumstances, arouse suspicion.

In his dissent in *Esquillo v. People*,[10] Justice Lucas Bersamin (Justice Bersamin) parsed the factual circumstances in cases where the police officers' suspicions were found reasonable, so as to justify a stop-and-frisk search. He concluded that "[t]he common thread of these examples is the presence of *more than one* seemingly innocent activity, which, taken together, warranted a reasonable inference of criminal activity."[11]

Justice Bersamin's analysis was echoed in *People v. Cogaed*,[12] which was in turn reiterated in a line of cases.[13] In *Cogaed*, this Court agreed that

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9 Id. at 489–490.

10 643 Phil. 577 (2010) [Per J. Carpio Morales, Third Division].

11 Id. at 606.

12 740 Phil. 212 (2014) [Per J. Leonen, Third Division].

"reliance on *only one suspicious circumstance* or none at all will not result in a reasonable search."[14]

Thus, to not violate the constitutional right against unreasonable searches, a stop-and-frisk search must be based on suspicion, which, to be deemed reasonable, requires the presence of *more than one (1) suspicious circumstance* that aroused the officer's suspicion that criminal activity is afoot.

Considering this requirement, information provided by a confidential informant, without additional grounds for suspicion, is not enough to arouse suspicion that may be characterized as reasonable. That a person matches the informant's tip is not an additional circumstance separate from the fact that information was given. They are part and parcel of one (1) strand of information. Thus, assuming that a person arrives matching an informant's description, for an officer's suspicion of that person to be deemed reasonable, there must be another observed activity which, taken together with the tip, aroused such suspicion.

II

When warrantless searches target individuals who happen to be on motor vehicles, recognized exceptions pertaining to searches of motor vehicles are often invoked to justify them. These searches are valid only under specific circumstances, for exceptional reasons.

In *Valmonte v. De Villa*,[15] this Court considered the constitutionality of warrantless searches of motor vehicles at military checkpoints. In declining to hold that military checkpoints are per se unconstitutional, this Court observed that certain non-intrusive searches of motor vehicles are reasonable, and thus, need no warrant:

> Where, for example, the 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, these do not constitute unreasonable search.[16] (Citations omitted)

Thus, this Court concluded that searches at military checkpoints may be valid, provided that they are conducted "within reasonable limits":

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13 *Sanchez v. People*, 747 Phil. 552 (2014) [Per J. Mendoza, Second Division]; *Veridiano v. People*, 810 Phil. 642 (2017) [Per J. Leonen, Second Division]; and *People v. Comprado*, G.R. No. 213225, April 4, 2018, 860 SCRA 420 [Per J. Martires, Third Division].

14 Id. at 233–234 citing J. Bersamin, Dissenting Opinion in *Esquillo v. People*, 643 Phil. 577 (2010) [Per J. Carpio Morales, Third Division].

15 258 Phil. 838 (1989) [Per J. Padilla, En Banc].

16 Id. at 843.

> True, the manning of checkpoints by the military is susceptible of abuse by the men in uniform, in the same manner that all governmental power is susceptible of abuse. But, at the cost of occasional inconvenience, discomfort and even irritation to the citizen, the checkpoints during these abnormal times, when conducted within reasonable limits, are part of the price we pay for an orderly society and a peaceful community.[17]

Acting on a motion for reconsideration, this Court in its Resolution[18] in *Valmonte* clarified the limitations that must be observed:

> Admittedly, the routine checkpoint stop does intrude, to a certain extent, on motorist's right to "free passage without interruption", but it cannot be denied that, as a rule, it involves only a brief detention of travellers during which the vehicle's occupants are required to answer a brief question or two. *For 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.*[19] (Emphasis supplied, citation omitted)

Thus, as stated in *Valmonte*, to be deemed reasonable, a search of a motor vehicle at a checkpoint must be limited only to a visual search, and must not be extensive. A reasonable search at a routine checkpoint excludes extensive searches, absent other recognized exceptional circumstances leading to an extensive search.

This was reiterated in *Aniag, Jr. v. Commission on Elections*,[20] in which this Court declared a warrantless search made at a checkpoint illegal. This Court reiterated that warrantless searches of moving vehicles are reasonable when these are searches and "seizure of evidence in plain view";[21] conversely, an extensive search is not reasonable simply because it was conducted on a moving vehicle.

After observing that no genuine reason for suspicion was present in *Aniag, Jr.*, this Court considered whether the evidence seized was nonetheless admissible because of consent from the person searched. Rejecting the claim, this Court evaluated how the checkpoint was set up, as well as the circumstances of the person searched:

> It may be argued that the seeming acquiescence of Arellano to the search constitutes an implied waiver of petitioner's right to question the reasonableness of the search of the vehicle and the seizure of the firearms.

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17 Id. at 844.
18 264 Phil. 265 (1990) [Per J. Padilla, En Banc].
19 Id. at 270.
20 307 Phil. 437 (1994) [Per J. Bellosillo, En Banc].
21 Id. at 448.

> While Resolution No. 2327 authorized the setting up of checkpoints, it however stressed that "guidelines shall be made to ensure that no infringement of civil and political rights results from the implementation of this authority," and that "the places and manner of setting up of checkpoints shall be determined in consultation with the Committee on Firearms Ban and Security Personnel created under Sec. 5, Resolution No. 2323." The facts show that PNP installed the checkpoint at about five o'clock in the afternoon of 13 January 1992. The search was made soon thereafter, or thirty minutes later. It was not shown that news of impending checkpoints without necessarily giving their locations, and the reason for the same have been announced in the media to forewarn the citizens. Nor did the informal checkpoint that afternoon carry signs informing the public of the purpose of its operation. As a result, motorists passing that place did not have any inkling whatsoever about the reason behind the instant exercise. With the authorities in control to stop and search passing vehicles, the motorists did not have any choice but to submit to the PNP's scrutiny. Otherwise, any attempt to turnabout albeit innocent would raise suspicion and provide probable cause for the police to arrest the motorist and to conduct an extensive search of his vehicle.
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> In the case of petitioner, only his driver was at the car at that time it was stopped for inspection. As conceded by COMELEC, driver Arellano did not know the purpose of the checkpoint. In the face of fourteen (14) armed policemen conducting the operation, driver Arellano being alone and a mere employee of petitioner could not have marshalled the strength and the courage to protest against the extensive search conducted in the vehicle. In such scenario, the "implied acquiescence," if there was any, could not be more than a mere passive conformity on Arellano's part to the search, and "consent" given under intimidating or coercive circumstances is no consent within the purview of the constitutional guaranty.[22] (Citations omitted)

The concept of consent to extensive warrantless searches was elaborated in *Dela Cruz v. People*,[23] which involved routine security inspections conducted at a seaport terminal.

Citing *People v. Suzuki*,[24] which recognized the reasonableness of airport security procedures, this Court in *Dela Cruz* likened seaports to airports and explained that the extensive inspections regularly conducted there proceed from the port personnel's "authority and policy to ensure the safety of travelers and vehicles within the port."[25] In ports of travel, persons have a reduced expectation of privacy, due to public safety and security concerns over terrorism and hijacking. Travelers are generally notified that they and their baggage will be searched, and even subject to x-rays; as such, they are well aware ahead of time that they must submit to searches at the port. This Court pointed out that if the petitioner did not want his bag inspected, he could have opted not to travel.

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22 Id. at 450–451.
23 776 Phil. 653 (2016) [Per J. Leonen, Second Division].
24 460 Phil. 146 (2003) [Per J. Sandoval-Gutierrez, En Banc].
25 *Dela Cruz v. People,* 776 Phil. 653, 684 (2016) [Per J. Leonen, Second Division].

The authority and policy of port personnel to ensure the safety of travelers, as with the resulting reduced expectation of privacy at a port of travel, distinguishes the search conducted in *Dela Cruz* from that in *Aniag, Jr.* In *Aniag, Jr.*, the petitioner's driver was stopped at a checkpoint that had only been installed 30 minutes prior, and he did not even know what it was for. In *Dela Cruz*, a traveler voluntarily submits to being searched at a port, informed of why it was being done. It may not have involved moving vehicle searches, but it articulates that a traveler consents to extensive searches at ports as a condition of entry, pursuant to recognized reasonable safeguards for ensuring the traveling public's safety.

Saluday v. People[26] extended this reasoning to cover warrantless searches of public buses. There, a bus was stopped at a military checkpoint and its male passengers were asked to disembark, while its female passengers were allowed to stay put. When a military task force member boarded the bus to inspect it, he noticed a small bag on the rear seat and lifted it, only to find it much heavier than it looked. Upon learning that the petitioner and his brother had been seated near the bag, he asked them to board the bus and open the bag. The petitioner obliged, revealing that the bag contained a gun, ammo, a hand grenade, and a 10-inch hunting knife.[27]

In deciding on whether the items were admissible in evidence, this Court separately evaluated the initial inspection, which consisted of merely lifting the suspicious bag; and the latter inspection, in which the officer inspected the bag after having it opened.

As to the initial inspection, this Court observed that, like in the ports of *Suzuki* and *Dela Cruz*, the traveling public's safety is a concern in buses. This moderates the expectation of privacy a person may reasonably have in that space. Given this, and considering that the act of lifting the bag was visual and minimally intrusive, this initial inspection was deemed reasonable.

As for the more extensive search of the bag's contents, this Court did not conclude that, because of security issues, it was reasonable. Its only basis for not rejecting the search as unreasonable was that, prior to the intrusive search, the officer obtained clear consent to open the bag:

> When SCAA Buco asked if he could open petitioner's bag, petitioner answered "yes, just open it" based on petitioner's own testimony. This is clear consent by petitioner to the search of the contents of his bag. In its Decision dated 26 June 2014, the Court of Appeals aptly held:
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> > A waiver was found in *People v. Omaweng*. There, the police officers asked the accused if they could see the

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26 G.R. No. 215305, April 3, 2018, 860 SCRA 231 [Per Acting C.J. Carpio, En Banc].
27 Id. at 237.

> contents of his bag and he answered "you can see the contents but those are only clothings." When asked if they could open and see it, he said "you can see it." In the present case, accused-appellant told the member of the task force that "it was only a cellphone" when asked who owns the bag and what are its contents. When asked by the member of the task force if he could open it, accused-appellant told him "yes, just open it." Hence, as in *Omaweng*, there was a waiver of accused-appellant's right against warrantless search.[28] (Citation omitted)

Thus, although this Court in *Saluday* did not declare the evidence seized inadmissible, the intrusive search of the bag was not categorically found reasonable. It did not rule on the reasonableness of the intrusive search. Rather, the validity of the search was anchored on the waiver of the petitioner's right when he told the officer, "yes, just open [the bag]."[29]

III

Finally, in reference to the dissent, the guidelines laid down in *Saluday* would be sufficient to address those concerns. I quote:

> 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.
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> **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.

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28 Id. at 254–255.

29 Id. at 254.

> In both situations, the inspection of passengers and their effects prior to entry at the bus terminal and the search of the bus while in transit must also satisfy the following conditions to qualify as a valid reasonable search. *First*, as to the manner of the search, it must be the least intrusive and must uphold the dignity of the person or persons being searched, minimizing, if not altogether eradicating, any cause for public embarrassment, humiliation or ridicule. *Second*, neither can the search result from any discriminatory motive such as insidious profiling, stereotyping and other similar motives. In all instances, the fundamental rights of vulnerable identities, persons with disabilities, children and other similar groups should be protected. *Third*, as to the purpose of the search, it must be confined to ensuring public safety. *Fourth*, as to the evidence seized from the reasonable search, courts must be convinced that precautionary measures were in place to ensure that no evidence was planted against the accused.
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> The search of persons in a public place is valid because the safety of others may be put at risk. Given the present circumstances, the Court takes judicial notice that public transport buses and their terminals, just like passenger ships and seaports, are in that category.[30] (Emphasis in the original)

The facts in *Saluday* are not on all fours with this case. The initial search in *Saluday* was the third of the permissible searches of public vehicles in transit: the routine inspection at a military checkpoint. This case, on the other hand, is a targeted search of an individual on board a public vehicle based on an anonymous informant's tip.

It may be argued that this case falls under one (1) of the permissible searches of a public vehicle in transit: "upon receipt of information that a passenger carries contraband or illegal articles[.]"[31] Because the *Saluday* guidelines do not qualify "receipt of information," it may be tempting to say that when officers are told by anyone at all—an anonymous phone call and text message, in this case—that a passenger on a public vehicle is carrying anything illegal, they may stop the vehicle *en route* and intrusively search such passenger.

This, however, is ultimately untenable. The permitted searches in *Saluday* pertain to an exception to the general rule against warrantless searches, *i.e.*, cases where the safety of others may be at risk. Courts must be more circumspect when invoking it, and law enforcers must not treat it as an expedient way to circumvent the Constitution. Before accepting that a search was permissible based on the received information, courts must at the very least evaluate the circumstances of the supposed information.

Even if this case had involved a permissible inspection upon receipt of information that a passenger is carrying contraband, the search would still

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30 Id. at 255–257.

31 Id. at 256.

not be deemed reasonable, as it failed to satisfy the conditions under the *Saluday* guidelines.

The guidelines require that the manner of search be the least intrusive, yet the search here involved an intrusive probing of the bag. The guidelines also require that the search be conducted only to ensure public safety; however, the search here was unequivocally made to apprehend a person who, as reported by an anonymous phone call and text message, was transporting marijuana. Finally, the guidelines require that "courts must be convinced that precautionary measures were in place to ensure that no evidence was planted against the accused," but there were no such measures here.

For all these reasons, I find the search conducted on accused-appellant Jerry Sapla y Guerrero a.k.a. Eric Salibad y Mallari unreasonable.

ACCORDINGLY, I concur.

MARVIC M.V.F. LEONEN
Associate Justice