Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

VIRGILIO EVARDO y LOPENA, Petitioner,	**G.R. No. 234317**
	Present:
-versus-	LEONEN, *J., Chairperson,* HERNANDO, INTING, DELOS SANTOS, and LOPEZ, *JJ.*
PEOPLE OF THE PHILIPPINES, Respondent.	**Promulgated:** May 10, 2021

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DECISION

LEONEN, *J.*:

A warrantless, intrusive search of a moving vehicle cannot be premised solely on an initial tip.[1] It must be founded on probable cause where "[t]here must be a confluence of several suspicious circumstances."[2] As the cause for the search, each such circumstance must occur *before* the search is commenced. Further, they must each be *independently* suspicious. Thus, when law enforcers are predisposed to perceive guilt—as when specific persons are the targets of checkpoints, patrols, and similar operations—their subjective perception cannot anchor probable cause.

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1 *People v. Sapla*, G.R. No. 244045, June 16, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66263> [Per J. Caguioa, En Banc].

2 *People v. Yanson*, G.R. No. 238453, July 31, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65605> [Per J. Leonen, Third Division].

This Court resolves the Petition for Review[3] assailing the Decision[4] and Resolution[5] of the Court of Appeals, which affirmed the conviction[6] of petitioner Virgilo Evardo y Lopena (Evardo) for violation of Section 11 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act.

In two separate informations, Evardo and Justo Algozo (Algozo), now deceased, were charged with illegal possession of dangerous drugs or violating Section 11 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.[7]

The Information against Evardo reads:

That on or about the 23rd day of March 2004 in the municipality of

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3 *Rollo*, pp. 3–28.

4 Id. at 110–119. The March 22, 2017 Decision was penned by Associate Justice Germano Francisco D. Legaspi and concurred in by Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap of the Eighteenth Division, Court of Appeals, Cebu City.

5 Id. at 132–133. The August 16, 2017 Resolution.

6 Id. at 59–77. The July 23, 2012 Joint Decision was penned by Acting Presiding Judge Marivic Trabajo Daray of the Regional Trial Court of Talibon, Bohol, Branch 52.

7 Republic Act No. 9165 (2002), sec. 11 provides:
Section 11. Possession of Dangerous Drugs. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:
(1) 10 grams or more of opium;
(2) 10 grams or more of morphine;
(3) 10 grams or more of heroin;
(4) 10 grams or more of cocaine or cocaine hydrochloride;
(5) 50 grams or more of methamphetamine hydrochloride or "shabu";
(6) 10 grams or more of marijuana resin or marijuana resin oil;
(7) 500 grams or more of marijuana; and
(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.
Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:
(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;
(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and
(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

> Talibon, Province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent of disregarding existing laws, did then and there, willfully, unlawfully, feloniously and knowingly have in his possession, custody and control dangerous drugs consisting of 0.17 gram of Methamphetamine Hydrochloride locally known as "Shabu" contained in seven (7) heat-sealed transparent plastic packs without first obtaining a permit or authority to possess the same from the proper government authority, to the damage and prejudice of the Republic of the Philippines.
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> Acts committed contrary to the provision of Section 11, Art. II of R.A. 9165.[8]

The Information against Algozo reads:

> That on or about the 23rd day of March 2004 in the municipality of Talibon, Province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent of disregarding existing laws, did then and there, willfully, unlawfully, feloniously and knowingly have in his possession, custody and control dangerous drugs consisting of 0.49 gram of Methamphetamine Hydrochloride locally known as "Shabu" contained in eighteen (18) heat-sealed transparent plastic packs without first obtaining a permit or authority to possess the same from the proper government authority, to the damage and prejudice of the Republic of the Philippines.
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> Acts committed contrary to the provision of Section 11, Art. II of R.A. 9165.[9]

Evardo and Algozo both pleaded not guilty during their arraignment. The court conducted a joint pre-trial and trial then ensued.[10]

The prosecution recounted that at around 6:30 pm on March 23, 2004, Police Superintendent Ernest Agas (P/Supt. Agas), the Chief of Police of the Talibon, Bohol Police Station, received information from an asset regarding the alleged purchase of shabu by suspected drug dealers Evardo and Algozo, who were already in the police watch list and were the subject of prior surveillance operations.[11]

In his testimony, Senior Police Officer III Restituto Auza (SPO3 Auza) admitted that "the police already knew the two accused who were residents of Talibon[.]"[12] Moreover, he also admitted that they had been in the process of obtaining a search warrant, "but it was not pushed (sic) through."[13] He added that they had prepared a surveillance report, but that

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8 Id. at 60.
9 Id. at 59–60.
10 Id. at 60–74.
11 Id. at 62. Regional Trial Court Decision, and 111, Court of Appeals Decision.
12 Id. at 65. Regional Trial Court Decision.
13 Id. at 64.

he could not remember if it was still at their office.[14]

The asset further told P/Supt. Agas that Evardo and Algozo would traverse the highway of Banacon, Getafe, Bohol. With the information conveyed to him, P/Supt. Agas formed a team to set up a checkpoint.

With P/Supt. Agas as the leader, the team consisted of the following officers: (1) SPO3 Auza; (2) Senior Police Officer I Danilo Torcende (SPO1 Torcende); (3) Police Officer III Corsino Gabutan; (4) Police Officer II Marino Auxtero; (5) Police Officer I Melquiadito Aventajado; (6) Police Officer I Jose Bongator (PO1 Bongator); (7) Senior Police Officer III Victor Auza; and (8) Police Officer II Hermogenes Auza.[15]

At 8:30 p.m., two hours after receiving the information, the team set up their checkpoint "in a place where there was light illuminating from the corner of [a] house."[16] By SPO3 Auza's and SPO1 Torcende's recollection, their checkpoint was identified by a marked vehicle and signboards.[17] SPO3 Auza, in particular, recalled using a Commission on Elections' sign that read "STOP COMELEC CHECKPOINT."[18] SPO3 Auza conceded that, their preparations notwithstanding, they did not bring a camera.[19]

In the course of the evening, the team flagged down a tricycle driven by Miguelito Tampos, with Evardo and Algozo seated at the tricycle's sidecar.[20] As SPO3 Auza recalled, "[t]hey knew right away that the two accused were on board the tricycle the moment the tricycle stopped in front of them."[21] Further, SPO1 Torcende claimed that Evardo and Algozo "were acting suspiciously and were trembling and appeared to be pale."[22]

SPO3 Auza allegedly saw Algozo place something in the rolled-up rain cover (*tarapal*) of the sidecar. He then went to retrieve it and recovered seven plastic sachets containing white crystalline substance. Thereafter, Evardo and Algozo were asked to disembark. Algozo allegedly tried to run, but PO1 Bongator caught him. The police asked for his wallet, which Algozo gave, and frisked him after. Upon frisking, they found 11 more plastic sachets containing white crystalline substance inside his wallet.[23]

In the meantime, while Evardo was alighting as instructed, SPO1 Torcende allegedly saw another sachet "tucked at the edge of the garter of

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14 Id.
15 Id. at 62. Regional Trial Court Decision, and 111, Court of Appeals Decision.
16 Id. at 64. Regional Trial Court Decision.
17 Id. at 67.
18 Id. at 64.
19 Id. at 66.
20 Id. at 62–70. Regional Trial Court Decision, and 111, Court of Appeals Decision.
21 Id. at 64. Regional Trial Court Decision.
22 Id. at 67.
23 Id. at 63. Regional Trial Court Decision, and 111–112, Court of Appeals Decision.

[Evardo's] underwear."[24] He confiscated the sachet and frisked him afterwards. SPO3 Auza took the sachet which contained seven small packs of white crystalline substance.[25]

The police then informed Evardo and Algozo of their constitutional rights, while SPO3 Restituto marked the seized items with Evardo's and Algozo's initials. The seven sachets found inside the rain cover were marked "JAM 1" to "JAM 7," while the 11 sachets found inside Algozo's wallet were marked "JAM 8" to "JAM 18," and the seven sachets tucked in Evardo's underwear were marked "VEL 1" to "VEL 7."[26]

The police initially brought Evardo and Algozo to a hospital for medical check-up. Later, they were taken to the Talibon Police Station.[27]

On March 24, 2004, P/Supt. Agas wrote a a laboratory examination request. Police Officer I Jelbert Casagan of the Philippine National Police Bohol Provincial Crime Laboratory Office received the request and the seized items. Police Chief Inspector Victoria Celis De Guzman examined the contents of the sachets, which tested positive for methamphetamine hydrochloride or shabu.[28]

Evardo and Algozo denied ownership of the seized items. They claimed that on March 23, 2004, they went to a celebration hosted by Evardo's cousin in Bagacay, Talibon. They then went home at around 7:00 p.m. and rode a tricycle hired by Julito Dajao, Algozo's friend.[29]

Thereafter, upon passing by a police checkpoint in San Jose, the police officers flagged down the tricycle and ordered only the two of them to disembark. They were then ordered to remove their shirts, pull their pants down, and were searched with only their underwear on. Still, the officers found nothing on them.[30]

They were directed to remain outside the tricycle while P/Supt. Agas searched it. He allegedly found sachets of shabu in the rain cover of the sidecar near Algozo's seat. The two were then brought to the police station where they were searched again. P/Supt. Agas told them that the recovered items were theirs.[31]

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24 Id. at 112, Court of Appeals Decision.
25 Id. at 67–68. Regional Trial Court Decision.
26 Id. at 112. Court of Appeals Decision.
27 Id. at 67. Regional Trial Court Decision.
28 Id. at 112. Court of Appeals Decision.
29 Id.at 70–74. Regional Trial Court Decision, and 112–113, Court of Appeals Decision.
30 Id.
31 Id.

In its July 23, 2012 Joint Decision,[32] the Regional Trial Court lent greater weight to the police officers' version of events and found that the elements of the offense charged had been established. Thus, it held Evardo and Algozo guilty beyond reasonable doubt. The dispositive portion of this Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
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> 1. In Criminal Case No. 04-1426, finding accused Justo Algozo GUILTY BEYOND REASONABLE DOUBT for Violation of Section 11, Art II, RA 9165 for illegal possession of dangerous drug, and sentencing him to suffer the indeterminate sentence of Twelve Years and One Day imprisonment as minimum to Fifteen Years imprisonment as maximum and to pay a fine in the amount of P300,000.00
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> 2. In Criminal Case No. 04-1427, finding accused Virgilio Evardo also GUILTY BEYOND REASONABLE DOUBT for Violation of Section 11, Art II, RA 9165 for illegal possession of dangerous drug, and sentencing him to suffer the indeterminate sentence of Twelve Years and One Day imprisonment as minimum to Fifteen Years imprisonment as maximum and to pay a fine in the amount of P300,000.00
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> As it appears on record that both accused are out on provisional liberty by virtue of a surety bond, the court now hereby orders the arrest of the two accused, except if they will file an appeal in these cases but subject to the discretion of this court on the sufficiency of their previous bond.
>
> SO ORDERED.[33]

Evardo and Algozo both appealed to the Court of Appeals.[34] However, with Algozo's death on October 4, 2012,[35] only Evardo was able to file his Appellant's Brief.[36]

On March 22, 2017, the Court of Appeals rendered its Decision[37] denying Evardo's appeal.[38] It held that Evardo's nervous disposition, Algozo's act of inserting something in the rain cover, and the prior inclusion of both Evardo and Algozo in the drugs watch list "engendered a reasonable ground of suspicion for the police officers to believe that an offense is being committed and [Evardo] is probably guilty thereof."[39]

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32 Id. at 59–77. Regional Trial Court Decision.
33 Id. at 77.
34 Id. at 110. Court of Appeals Decision.
35 Id.
36 Id. at 35–56.
37 Id. at 110–119.
38 Id. at 119.
39 Id. at 114.

The Court of Appeals found that the seizure of illegal drugs was valid under the doctrine of "stop-and-frisk" search, which was also allowed in illegal drugs cases.[40] It added that the warrantless search and seizure were also exempted "under the rule on search of moving vehicles."[41] It held:

> To reiterate, when a vehicle is flagged down and subjected to an extensive search, such a warrantless search has been held to be valid as long as the officers conducting the search have reasonable or probable cause to believe prior to the search that they would find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched.[42] (Citation omitted)

The Court of Appeals likewise found that the defense failed to show any improper motive on the part of the prosecution witnesses, thus giving their testimonies more weight than the claims of the defense.[43]

The dispositive portion of the Court of Appeals' Decision reads:

> **WHEREFORE**, in view of the foregoing, the appeal is **DENIED**. The 23 July 2012 Joint-Decision of the Regional Trial Court of Talibon, Bohol, Branch 52, finding Virgilio Evardo y Lopena guilty of violating Section 11, Article II of R.A. No. 9165 in Criminal Case No. 04-1427 is **AFFIRMED** in *toto*.
>
> **SO ORDERED.**[44] (Emphasis in the original)

Evardo moved for reconsideration, which the Court of Appeals denied in its August 16, 2017 Resolution.[45]

On October 10, 2017, Evardo filed a Petition for Review,[46] assailing the March 22, 2017 Decision and the August 16, 2017 Resolution of the Court of Appeals.[47] He claims that his arrest is illegal: that he was arrested without warrant and that none of the circumstances for a valid warrantless arrest applies to his case. Further, he emphasizes that he was merely sitting in the sidecar of the tricycle when he was apprehended, and was neither committing nor attempting to commit any crime.[48]

Evardo notes that there was no personal knowledge on the part of the apprehending police officers that he possessed illegal drugs "since they did

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40 Id. at 115.
41 Id.
42 Id. at 117.
43 Id.
44 Id. at 119.
45 Id. at 132–133.
46 Id. at 3–28.
47 Id. at 28.
48 Id. at 12–15.

not personally see [him] buy the drugs in Banacon Island, and carry them."[49] Lastly, he claims that he was not an escaped prisoner when the officers arrested him.[50]

Evardo also asserts that the search and seizure conducted by the police against him was illegal. None of the circumstances for a valid warrantless search and seizure applies to his case. The search cannot be considered incidental to a lawful arrest, since he was searched before he was illegally arrested.[51]

Moreover, the items recovered from him "were not in plain view and were not readily apparent and observable to the officers."[52] Thus, the search does not fall under the plain view doctrine. Neither does the search fall under the "stop-and-frisk" doctrine. SPO3 Restituto admitted that Evardo did not seem to be carrying a dangerous weapon.[53] Evardo also maintains that the checkpoint search was illegal for not being limited to a visual search.[54] Considering that the search and seizure were illegal, the evidence procured should be inadmissible "for being fruits of a poisonous tree."[55]

Evardo adds that the police officers failed to comply with the rules on the chain of custody in cases involving dangerous drugs. Neither inventory nor taking of photographs was made during the apprehension and seizure of the items. When the markings on the seized items were made, there was no representative from either the media, the National Prosecution Service, or an elected public official. Moreover, the prosecution did not offer any justifiable grounds for the arresting officers' noncompliance. Therefore, the identity and integrity of the evidence were compromised.[56]

For resolution is the issue of whether or not petitioner Virgilio Evardo y Lopena is guilty beyond reasonable doubt of illegal possession of dangerous drugs as penalized by Section 11 of the Comprehensive Dangerous Drugs Act of 2002. Subsumed under this are the issues of: (1) whether or not the search, seizure, and arrest conducted by police officers at the checkpoint they set up were valid; and (2) whether or not the identity and integrity of the items allegedly obtained from petitioner are guaranteed as to justify petitioner's conviction.

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49 Id. at 14.
50 Id.
51 Id. at 15–18.
52 Id. at 19.
53 Id. at 19–20.
54 Id. at 20–21.
55 Id. at 22.
56 Id. at 22–28.

The Court of Appeals and the Regional Trial Court erred in ruling against petitioner. Their decisions must be reversed and petitioner must be acquitted.

Petitioner's case turns on the validity of the search, seizure, and arrest conducted at the checkpoint set up by police officers on March 23, 2004. Petitioner and Algozo were specifically targeted and the police officers were already convinced of their guilt. This tainted the police officers' perception, predisposing them to read petitioner's and Algozo's actions as suspicious. Thus, petitioner's and Algozo's prior inclusion in the drugs watch list, allegedly suspicious demeanor, and purportedly evasive acts cannot be taken as *independently* suspicious acts sufficient to beget probable cause.

Independently of the tip conveyed to P/Supt. Agas, there was no "confluence of several suspicious circumstances"[57] that were "sufficiently strong *in themselves*"[58] to justify a search more intensive than a mere visual survey. Any item subsequently obtained cannot be the basis of any further legal act, including arrest, prosecution, and conviction for criminal liability. This leaves the prosecution without proof of the *corpus delicti* of the offense raised against petitioner. On this alone—and without any further need to delve into the details of how practically all of the chain of custody requirements under Section 21(1)[59] of the Comprehensive Dangerous Drugs Act were not complied with—petitioner must be acquitted.

I

The right against unreasonable searches and seizures is a matter of constitutional dictum. There must be a warrant, issued by a judge and premised on a finding of probable cause, before a search can be effected. There are, however, exceptions. Among these exceptions are searches of moving vehicles. Regardless, even a search of a moving vehicle must be premised on probable cause, "the existence of 'a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the

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57 *People v. Yanson*, G.R. No. 238453, July 31, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65605> [Per J. Leonen, Third Division].

58 *People v. Aruta*, 351 Phil. 868, 880 (1998) [Per J. Romero, Third Division].

59 Republic Act No. 9165 (2002), sec. 21 states:
SECTION 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

offense with which he is charged.'"[60] This Court extensively discussed these in *People v. Yanson*:[61]

> Article III, Section 2 of the 1987 Constitution requires a warrant to be issued by a judge before a search can be validly effected:
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> > 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.
>
> The issuance of a search warrant must be premised on a finding of probable cause; that is, "the existence of such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place to be searched."
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> The rule requiring warrants is, however, not absolute. Jurisprudence recognizes exceptional instances when warrantless searches and seizures are considered permissible:
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> 1. Warrantless search incidental to a lawful arrest ...;
> 2. Seizure of evidence in "plain view," ...;
> 3. *Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;*
> 4. Consented warrantless search;
> 5. Customs search;
> 6. Stop and frisk; and
> 7. Exigent and emergency circumstances.
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> A search of a moving vehicle is one (1) of the few permissible exceptions where warrantless searches can be made. *People v. Mariacos* explains:
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> > This exception is easy to understand. A search warrant may readily be obtained when the search is made in a store, dwelling house or other immobile structure. But it is impracticable to obtain a warrant when the search is conducted on a mobile ship, on an aircraft, or in other motor vehicles since they can quickly be moved out of the locality or jurisdiction where the warrant must be sought.

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60 G.R. No. 238453, July 31, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65605> [Per J. Leonen, Third Division] citing *People v. Aruta*, 351 Phil. 868, 880 (1998) [Per J. Romero, Third Division].

61 Id.

> However, for a warrantless search of a moving vehicle to be valid, probable cause remains imperative. Law enforcers do not enjoy unbridled discretion to conduct searches. In *Caballes v. Court of Appeals*:
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> > The mere mobility of these vehicles, however, does not give the police officers unlimited discretion to conduct indiscriminate searches without warrants if made within the interior of the territory and in the absence of probable cause. *Still and all, the important thing is that there was probable cause to conduct the warrantless search, which must still be present in such a case.*
>
> In determining the existence of probable cause, bare suspicion is never enough. While probable cause does not demand moral certainty, or evidence sufficient to justify conviction, it requires the existence of "a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he is charged."[62] (Citations omitted)

II

This Court has maintained that, for purposes of probable cause, "[t]here must be a confluence of several suspicious circumstances. A solitary tip hardly suffices as probable cause; items seized during warrantless searches based on solitary tips are inadmissible as evidence."[63]

Any doubt on this was settled in *People v. Sapla*.[64] There, this Court, sitting *en banc*, unequivocally set the standard and determined controlling doctrine:

> [T]he Court now holds that the cases adhering to the doctrine that exclusive reliance on an unverified, anonymous tip cannot engender probable cause that permits a warrantless search of a moving vehicle that goes beyond a visual search — which include both long-standing and the most recent jurisprudence — should be the prevailing and controlling line of jurisprudence.[65]

This Court's pronouncements in *Sapla* came with a recognition of the dangers of extensive searches (i.e., beyond mere visual surveys) that are induced by tips. It recognized how such searches are a grievous intrusion into our most basic freedoms:

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62 Id. citing *Century Chinese Medicine Company v. People*, 720 Phil. 795, 810 (2013) [Per J. Peralta, Third Division]; *People v. Cogaed*, 740 Phil. 212, 228 (2014) [Per J. Leonen, Third Division]; *People v. Mariacos*, 635 Phil. 315, 330 (2010) [Per J. Nachura, Second Division]; *People v. Tuazon*, 558 Phil. 759, 775 (2007) [Per J. Chico-Nazario, Third Division]; *Caballes v. Court of Appeals*, 424 Phil. 263, 279 (2002) [Per J. Puno, First Division]; *Laud v. People*, 747 Phil. 503, 522 (2014) [Per Curiam, First Division]; and *People v. Aruta*, 351 Phil. 868, 880 (1998) [Per J. Romero, Third Division].

63 Id.

64 G.R. No. 244045, June 16, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66263> [Per J. Caguioa, En Banc].

65 Id.

> Adopting a contrary rule would set an extremely dangerous and perilous precedent wherein, on the sheer basis of an unverified information passed along by an alleged informant, the authorities are given the unbridled license to undertake extensive and highly intrusive searches, even in the absence of any overt circumstance that engenders a reasonable belief that an illegal activity is afoot.
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> . . . .
>
> It is not hard to imagine the horrid scenarios if the Court were to allow intrusive warrantless searches and seizures on the solitary basis of unverified, anonymous tips.
>
> Any person can easily hide in a shroud of anonymity and simply send false and fabricated information to the police. Unscrupulous persons can effortlessly take advantage of this and easily harass and intimidate another by simply giving false information to the police, allowing the latter to invasively search the vehicle or premises of such person on the sole basis of a bogus tip.
>
> On the side of the authorities, unscrupulous law enforcement agents can easily justify the infiltration of a citizen's vehicle or residence, violating his or her right to privacy, by merely claiming that raw intelligence was received, even if there really was no such information received or if the information received was fabricated.
>
> Simply stated, *the citizen's sanctified and heavily-protected right against unreasonable search and seizure will be at the mercy of phony tips*. The right against unreasonable searches and seizures will be rendered hollow and meaningless. The Court cannot sanction such erosion of the Bill of Rights.[66] (Citations omitted, emphasis in the original)

III

This Court's discussion in *Sapla* exhaustively examined past decisions. It recounted illustrative examples of instances when this Court held searches that were premised on solitary tips as invalid. We quote *Sapla* at length. Its encyclopedic recital of archetypal cases is a yardstick against which the precise circumstances of this case should be appraised. More important, its exhaustive review emphasizes how the high and exacting standards concerning the sanctioning of such searches are benchmarks long established and honored in jurisprudence:

> As early as 1988, our own Court had ruled that an extensive warrantless search and seizure conducted on the sole basis of a confidential tip is tainted with illegality. In *People v. Aminnudin*, analogous to the instant case, the authorities acted upon an information that the accused would be arriving from Iloilo on board a vessel, the M/V Wilcon 9. The authorities waited for the vessel to arrive, accosted the

[66] Id.

accused, and inspected the latter's bag wherein bundles of marijuana leaves were found. The Court declared that the search and seizure was illegal, holding that, at the time of his apprehension, Aminnudin was not "committing a crime nor was it shown that he was about to do so or that he had just done so....To all appearances, he was like any of the other passengers innocently disembarking from the vessel. It was only when the informer pointed to him as the carrier of the marijuana that he suddenly became suspect and so subject to apprehension."

Subsequently, in *People v. Cuizon*, the Court, through former Chief Justice Artemio V. Panganiban, held that the warrantless search and subsequent arrest of the accused were deemed illegal because "the prosecution failed to establish that there was sufficient and reasonable ground for the NBI agents to believe that appellants had committed a crime at the point when the search and arrest of Pua and Lee were made." In reaching this conclusion, the Court found that the authorities merely relied on "the alleged tip that the NBI agents purportedly received that morning." The Court characterized the tip received by the authorities from an anonymous informant as "hearsay information" that cannot engender probable cause.

In *People v. Encinada*, the authorities acted solely on an informant's tip and stopped the tricycle occupied by the accused and asked the latter to alight. The authorities then rummaged through the two strapped plastic baby chairs that were loaded inside the tricycle. The authorities then found a package of marijuana inserted between the two chairs. The Court, again through former Chief Justice Artemio V. Panganiban, held that "raw intelligence" was not enough to justify the warrantless search and seizure." The prosecution's evidence did not show any suspicious behavior when the appellant disembarked from the ship or while he rode the motorela. No act or fact demonstrating a felonious enterprise could be ascribed to appellant under such bare circumstances."

Likewise analogous to the instant case is People v. *Aruta* (Aruta) where an informant had told the police that a certain "Aling Rosa" would be transporting illegal drugs from Baguio City by bus. Hence, the police officers situated themselves at the bus terminal. Eventually, the informant pointed at a woman crossing the street and identified her as "Aling Rosa." Subsequently, the authorities apprehended the woman and inspected her bag which contained marijuana leaves.

In finding that there was an unlawful warrantless search, the Court in Aruta held that "it was only when the informant pointed to accused-appellant and identified her to the agents as the carrier of the marijuana that she was singled out as the suspect. The NARCOM agents would not have apprehended accused-appellant were it not for the furtive finger of the informant because, as clearly illustrated by the evidence on record, there was no reason whatsoever for them to suspect that accused-appellant was committing a crime, except for the pointing finger of the informant." Hence, the Court held that the search conducted on the accused therein based solely on the pointing finger of the informant was "a clear violation of the constitutional guarantee against unreasonable search and seizure."

Of more recent vintage is *People v. Cogaed* (Cogaed), which likewise involved a search conducted through a checkpoint put up after an "unidentified civilian informer" shared information to the authorities that a person would be transporting marijuana.

In finding that there was no probable cause on the part of the police that justified a warrantless search, the Court, through Associate Justice Marvic Mario Victor F. Leonen, astutely explained that in cases finding sufficient probable cause for the conduct of warrantless searches, "the police officers using their senses observed facts that led to the suspicion. Seeing a man with reddish eyes and walking in a swaying manner, based on their experience, is indicative of a person who uses dangerous and illicit drugs. "However, the Court reasoned that the case of the accused was different because "he was simply a passenger carrying a bag and traveling aboard a jeepney. There was nothing suspicious, moreover, criminal, about riding a jeepney or carrying a bag. The assessment of suspicion was not made by the police officer but by the jeepney driver. It was the driver who signaled to the police that Cogaed was 'suspicious.'"

. . . .

Adopting former Chief Justice Lucas P. Bersamin's Dissenting Opinion in *Esquillo v. People*, the Court in Cogaed stressed that reliance on only one suspicious circumstance or none at all will not result in a reasonable search. The Court emphasized that the matching of information transmitted by an informant "still remained only as one circumstance. This should not have been enough reason to search Cogaed and his belongings without a valid search warrant."

Subsequently, in *Veridiano v. People* (Veridiano), a concerned citizen informed the police that the accused was on the way to San Pablo City to obtain illegal drugs. Based on this tip, the authorities set up a checkpoint. The police officers at the checkpoint personally knew the appearance of the accused. Eventually, the police chanced upon the accused inside a passenger jeepney coming from San Pablo, Laguna. The jeepney was flagged down and the police asked the passengers to disembark. The police officers instructed the passengers to raise their t-shirts to check for possible concealed weapons and to remove the contents of their pockets. The police officers recovered from the accused a tea bag containing what appeared to be marijuana.

In finding the warrantless search invalid, the Court, again through Associate Justice Marvic Mario Victor F. Leonen, held that the accused 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. 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 year after *Veridiano*, the Court decided the case of *Comprado*. . .

The Court held in Comprado that the sole information relayed by an informant was not sufficient to incite a genuine reason to conduct an intrusive search on the accused. The Court explained that "no overt physical act could be properly attributed to accused-appellant as to rouse suspicion in the minds of the arresting officers that he had just committed, was committing, or was about to commit a crime."

> The Court emphasized that there should be the "presence of more than one seemingly innocent activity from which, taken together, warranted a reasonable inference of criminal activity." In the said case, as in the instant case, the accused was just a passenger carrying his bag. "There is nothing suspicious much less criminal in said act. Moreover, such circumstance, by itself, could not have led the arresting officers to believe that accused-appellant was in possession of marijuana."
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> Recently, the Court unequivocally declared in *People v. Yanson* (Yanson) that a solitary tip hardly suffices as probable cause that warrants the conduct of a warrantless intrusive search and seizure.
>
> . . . .
>
> In the erudite ponencia of Associate Justice Marvic Mario Victor F. Leonen, the Court held that, in determining whether there is probable cause that warrants an extensive or intrusive warrantless searches of a moving vehicle, "bare suspicion is never enough. While probable cause does not demand moral certainty, or evidence sufficient to justify conviction, it requires the existence of 'a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he is charged.'"
>
> . . . .
>
> And very recently, on September 4, 2019, the Court, through former Chief Justice Lucas P. Bersamin, promulgated its Decision in *People v. Gardon-Mentoy* (Gardon-Mentoy). In the said case, police officers had set up a checkpoint on the National Highway in Barangay Malatgao, Narra, Palawan based on a tip from an unidentified informant that the accused-appellant would be transporting dangerous drugs on board a shuttle van. Eventually, the authorities flagged down the approaching shuttle van matching the description obtained from the informant and conducted a warrantless search of the vehicle, yielding the discovery of a block-shaped bundle containing marijuana.
>
> In holding that the warrantless search and seizure were without probable cause, the Court held that a tip, in the absence of other circumstances that would confirm their suspicion coming from the personal knowledge of the searching officers, was not yet actionable for purposes of conducting a search[.][67] (Citations omitted)

Mirroring *Sapla*, this Court's discussion in *Yanson* included a similarly extensive review of instances where this Court sustained the validity of searches as, in those instances, "probable cause was founded on more than just a solitary suspicious circumstance."[68] As with *Sapla*, *Yanson* provides an authoritative yardstick. Thus, we quote it at length:

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[67] Id.

[68] *People v. Yanson*, G.R. No. 238453, July 31, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65605> [Per J. Leonen, Third Division].

There have been a number of cases where this Court considered warrantless searches made in moving vehicles to be valid. In these cases, probable cause was founded on more than just a solitary suspicious circumstance.

In *People v. Malmstedt*, Narcotics Command officers set up a temporary checkpoint in response to "persistent reports that vehicles coming from Sagada were transporting marijuana and other prohibited drugs." These included information that a Caucasian coming from Sagada had prohibited drugs in his possession. At the checkpoint, the officers intercepted a bus and inspected it, starting from the front, going towards the rear. The bus turned out to be the vehicle boarded by the accused. Upon reaching the accused, an officer noticed a bulge on his waist. This prompted the officer to ask for the accused's passport and identification papers, which the accused failed to provide. The accused was then made to reveal what was bulging on his waist. It turned out to be hashish, a derivative of marijuana.

In *Malmstedt*, this Court ruled that the warrantless search was valid because there was probable cause — premised on circumstances other than the original tip concerning a Caucasian person — for the arresting officers to search the accused:

> It was only when one of the officers noticed a bulge on the waist of accused, during the course of the inspection, that accused was required to present his passport. The failure of accused to present his identification papers, when ordered to do so, only managed to arouse the suspicion of the officer that accused was trying to hide his identity.

In *People v. Que*, police officers went on patrol after receiving information that "a ten-wheeler truck bearing plate number PAD-548 loaded with illegally cut lumber will pass through Ilocos Norte." When they saw the truck resembling this description pass by, the officers flagged it down. The driver admitted upon confrontation that there was sawn lumber between the coconut slabs. Asked for the cargo's supporting documents, all the accused could present was a Community Environment and Natural Resources Office certification that he had legally acquired the coconut slabs. No supporting documents pertaining to the sawn lumber were shown by the accused.

In *Que*, this Court noted that the police officers had probable cause to search the accused's truck. The officers' suspicion was justified not only by a report that a 10-wheeler truck was carrying illegally cut lumber, but also by the accused's failure to present any supporting document for the lumber they were transporting.

In *People v. Libnao*, police officers conducted a surveillance operation after learning from an asset that "a certain woman from Tajiri, Tarlac and a companion from Baguio City were transporting illegal drugs once a month in big bulks." Subsequently, the officers received a tip that "the two drug pushers, riding in a tricycle, would be making a delivery that night." This prompted the police officers to set up a checkpoint, where they flagged down a tricycle that had two (2) female passengers inside, carrying a black bag. The passengers displayed an "uneasy behavior" when asked about the bag's contents and ownership, which

prompted the officers to invite them to a barangay center. The black bag was later found to be carrying eight (8) bricks of marijuana leaves.

In *Libnao*, this Court upheld the accused's conviction, noting that probable cause was properly established. This Court stated that, apart from the reports received by the police officers about drug activity in the area, the accused became uneasy when asked about the ownership and contents of the bag they were carrying.

In *Vinecario*, police officers apprehended three (3) men on a motorcycle that sped past the checkpoint, which had been set up following the election gun ban. One (1) of the men introduced himself as a member of the military, but when asked, he was not able to produce any proof of identification. The police officers noticed a big military backpack slung over the right shoulder of Victor Vinecario (Vinecario), and that he and his companions were acting suspiciously. Suspecting that the bag contained a bomb, a police officer ordered Vinecario to open it, revealing inside something wrapped in paper. When the officer touched the item, Vinecario grabbed it back, resulting in the tearing of the paper wrapper. "Soon the smell of marijuana wafted in the air."

In *Vinecario*, this Court explained that probable cause was established by the confluence of the accused "speeding away after noticing the checkpoint and even after having been flagged down by police officers, their suspicious and nervous gestures when interrogated on the contents of the backpack which they passed to one another, and the reply of Vinecario, when asked why he and his co-appellants sped away from the checkpoint, that he was a member of the Philippine Army, apparently in an attempt to dissuade the policemen from proceeding with their inspection[.]"

In *People v. Tuazon*, police officers received information "that a Gemini car bearing plate number PFC 411 would deliver an unspecified amount of shabu in Marville Subdivision, Antipolo City." A team of police officers conducted surveillance around the area, and upon seeing the Gemini car, flagged it down. The officers were introducing themselves when one (1) of them saw a gun tucked in the driver's waist. An officer asked about the gun, to which the driver replied that it did not belong to him. The driver was also unable to produce any document pertaining to the firearm. This prompted the officer to order the driver to get out of the car, to which the driver obliged. As soon as the driver stepped out of the car, the officer saw five (5) plastic sachets on the driver's seat, "the contents of which appellant allegedly admitted to be shabu."

In *Tuazon*, this Court upheld the accused's conviction. It reasoned that the information received by the police officers regarding the Gemini car — together with how the officer saw a gun tucked in the accused's waist, the accused's inability to produce any document pertaining to the gun, and ultimately, the plastic sachets the officer saw after the accused stepped out — supported probable cause.

In these illustrative cases, law enforcers acted on tipped information that a crime was being committed, or was about to be committed. However, the seizures and arrests were not merely and exclusively based on the initial tips. Rather, they were prompted by other attendant circumstances. Whatever initial suspicion they had from being

> tipped was progressively heightened by other factors, such as the accused's failure to produce identifying documents, papers pertinent to the items they were carrying, or their display of suspicious behavior upon being approached.
>
> In all these instances, the finding of probable cause was premised on more than just the initial information relayed by assets. It was the confluence of initial tips and a myriad of other occurrences that ultimately sustained probable cause.[69] (Citations omitted)

IV

Faithful to the high standards for sanctioning exceptional, warrantless searches and measured against the range of authoritative examples in jurisprudence, this Court finds that the search made on petitioner and Algozo at the checkpoint set up on March 23, 2004 was illicit. Consequently, their arrest, as well as the introduction into evidence of items obtained in the course of that search, were invalid. From this, there is a dearth of evidence on which to anchor petitioner's liability. Thus, he must be acquitted.

The Court of Appeals anchored its affirmation of the Regional Trial Court's Decision on how, apart from the initial tip, there were supposedly additional circumstances that engendered probable cause:

> Evidently, the warrantless search in the case at bench is not bereft of a probable cause. The police officers knew appellant and Justo as they had been conducting surveillance operation on them, being included in the watch list for drug dealers. ... When they were flagged down at the checkpoint, appellant and Justo looked pale and were trembling. Justo was also seen hiding plastic sachets inside the *tarapal* of the tricycle. Justo even tried to flee when told to alight from the tricycle. Under these circumstances, the warrantless search and seizure of the plastic packs in the possession of appellant and Justo were not illegal.[70]

We examine each of the additional circumstances invoked by the Court of Appeals.

First, petitioner's and Algozo's being known as drug suspects included in a watch list and objects of prior surveillance does not bolster the prosecution's case. Quite the contrary, it damages its position. It reveals the police officers' preconceived notion that petitioner and Algozo are drug dealers, demonstrates how they were specifically targeted, and betrays the police officers' predilection to read any of their actions as suspicious.

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69 Id.

70 *Rollo*, pp. 116-117. Court of Appeals Decision.

Referencing this Court's 2018 Decision in *People v. Comprado*,[71] *Sapla* explained that for there to be a properly exceptional search of a moving vehicle, law enforcers should not have proceeded from a preconceived notion of any specific individual's liability such that the search is nothing more than a device to ensnare an already targeted individual:

> The fairly recent case of *People v. Comprado* (*Comprado*) is controlling inasmuch as the facts of the said case are virtually identical to the instant case.
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> . . . .
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> In *Comprado*, the Court held that the search conducted "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." The Court added that "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."
>
> Applying the foregoing to the instant case, it cannot be seriously disputed that the target of the search conducted was not the passenger jeepney boarded by accused-appellant Sapla nor the cargo or contents of the said vehicle. The target of the search was the person who matched the description given by the person who called the RPSB Hotline, i.e., the person wearing a collared white shirt with green stripes, red ball cap, and carrying a blue sack.
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> As explained in *Comprado*, "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."
>
> Therefore, the search conducted in the instant case cannot be characterized as a search of a moving vehicle.[72] (Citations omitted)

The prosecution witnesses' testimonies in this case reveal how the checkpoint zeroed in on petitioner and Algozo. They were the police officers' specific, exclusive targets. To begin with, they were suspected drug dealers, who had already been the subject of surveillance operations and were included in the police watch list.[73] Thus, SPO3 Auza disclosed that "the police already knew the two accused[.]"[74]

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71 *People v. Comprado*, G.R. No. 213225, April 4, 2018, 860 SCRA 420 [Per J. Martires, Third Division].

72 *People v. Sapla*, G.R. No. 244045, June 16, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66263> [Per J. Caguioa, En Banc].

73 Id. at 62. Regional Trial Court Decision, and 111, Court of Appeals Decision.

74 Id. at 65. Regional Trial Court Decision.

SPO3 Auza also admitted that they had already meant to obtain search warrants against petitioner and Algozo but, for some reason, did not pursue it.[75] He even revealed that, when they finally flagged down the tricycle driven by Tampos, they already knew they had their targets: "[t]hey knew right away that the two accused were on board the tricycle the moment the tricycle stopped in front of them."[76]

More damaging to the prosecution's case is how it made nothing more than sweeping references to the police officers' prior understanding that petitioner and Algozo were drug dealers. It never specified what actual findings were yielded by prior police work. When asked about the surveillance report concerning petitioner and Algozo, SPO3 Auza could not even say if their office had it on file.[77] It is even odd that they would abandon their self-confessed effort to more strictly comply with constitutional standards by obtaining a search warrant.

From these, it appears entirely self-serving for the police officers to claim that they had probable cause when all that their representations amount to is an invitation for this Court to fall into a fallacy and believe their inclinations simply because they had their own reasons to believe them.

Apart from reviewing past decisions of this Court, *Sapla* also reviewed decisions by the United States Supreme Court, "[c]onsidering that the doctrine that an extensive warrantless search of a moving vehicle necessitates probable cause was adopted by th[is] Court from United States jurisprudence[.]"[78]

Among the American cases that *Sapla* referenced was *Illinois v. Gates*,[79] where the United States Supreme Court adopted the totality of circumstances test. Applying such test, the United States Supreme Court determined that corroboration of an informant's tip by independent police work sustained a finding or probable cause:

> Subsequently, in the 1983 case of *Illinois v. Gates*, the police received an anonymous letter alleging that the respondents were engaged in selling drugs and that the car of the respondents would be loaded with drugs. Agents of the Drug Enforcement Agency searched the respondents' car, which contained marijuana and other contraband items.
>
> In finding that there was probable cause, the SCOTUS adopted the totality of circumstances test and held that tipped information may

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75 Id. at 64.
76 Id.
77 Id.
78 *People v. Sapla*, G.R. No. 244045, June 16, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66263> [Per J. Caguioa, En Banc].
79 462 U.S. 213 (1983).

> engender probable cause under "a balanced assessment of the relative weights of all the various indicia of reliability (and unreliability) attending an informant's tip." *In the said case, the SCOTUS found that the details of the informant's tip were corroborated by independent police work.*
>
> The SCOTUS emphasized however that "standing alone, the anonymous letter sent to the Bloomingdale Police Department would not provide the basis for a magistrate's determination that there was probable cause to believe contraband would be found in the Gateses' car and home. x x x Something more was required, then, before a magistrate could conclude that there was probable cause to believe that contraband would be found in the Gateses' home and car."[80] (Emphasis supplied, citations omitted)

Without any effort on the part of the police officers to disclose and explain their concrete premises, this Court is hard put to believe that their findings were of particularly exemplary quality as to be on par with the "independent police work" referenced in *Illinois*. This Court would be quite gullible to believe that mere inclusion in a watch list *ipso facto* equates to probable cause. This Court is not deaf to contemporary reports of how drug watch lists have been drawn rather recklessly, with bloody, fatal results.[81]

To be clear, in referencing these reports, this Court does not mean to casually lend unqualified veracity to reports critical of law enforcers' efforts. What they underscore, nevertheless, is the need for this Court to tread carefully in lending approbation to one such watch list, especially when the police officers who harp on its worth have themselves been unable to specify the bases, findings, and other incidents of petitioner's inclusion in that list. Again, it is quite evidently self-serving for police officers to have this Court believe that there was probable cause (i.e., "circumstances *sufficiently strong in themselves*"[82]) just because they themselves wrote a suspect's name into their own list.

Second, the Court of Appeals referenced how petitioner and Algozo supposedly looked pale and trembling, as well as how Algozo allegedly tried to hide something in the tricycle's rain cover.

The flaw in relying on this is self-evident. It places far too much trust in the police officers' subjective perception of individuals whom they already believed were guilty. Again, SPO3 Auza declared that as soon as the tricycle was flagged down, they knew they had their targets. It is not difficult to see how, from that point on, they would be inclined to view petitioner's and Algozo's actions as suspicious.

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[80] *People v. Sapla*, G.R. No. 244045, June 16, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66263> [Per J. Caguioa, En Banc].

[81] See for example, Andrew R.C. Marshall, John Chalmers, *Special Report: In Duterte's war on drugs, local residents help draw up hit lists*, REUTERS, <https://www.reuters.com/article/us-philippines-duterte-hitlists-idUSKCN127049> (last accessed on May 9, 2021).

[82] *People v. Yanson*, G.R. No. 238453, July 31, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65605> [Per J. Leonen, Third Division].

Thus, it was entirely possible that, in the police officers' perception, what was merely their targets' ludicrous—but ultimately innocent—befuddlement at having to face a host of firearm-wielding police officers, was guilty nervousness. So too, what could have very well been meaningless reaching to the tricycle's periphery could be construed as an effort at concealment.

Interestingly, even as it referenced petitioner and Algozo's apparent deportment, *the Court of Appeals conceded that, ultimately, those observations were "insufficient to incite suspicion of criminal activity or to create probable cause enough to justify a warrantless arrest[.]"*[83] Indeed, in *People v. Villareal*,[84] this Court emphasized the need for caution in relying on law enforcers' subjective perception even as it recognized that they are entrusted to act with a measure of personal discretion:

> In fine, appellant's acts of walking along the street and holding something in his hands, even if they appeared to be dubious, coupled with his previous criminal charge for the same offense, are not by themselves sufficient to incite suspicion of criminal activity or to create probable cause enough to justify a warrantless arrest under Section 5 above-quoted. "Probable cause" has been understood to mean a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged. Specifically with respect to arrests, it is such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested, which clearly do not obtain in appellant's case.
>
> Thus, while it is true that the legality of an arrest depends upon the reasonable discretion of the officer or functionary to whom the law at the moment leaves the decision to characterize the nature of the act or deed of the person for the urgent purpose of suspending his liberty, it cannot be arbitrarily or capriciously exercised without unduly compromising a citizen's constitutionally-guaranteed right to liberty[.][85] (Citations omitted)

Beyond these considerations, the Regional Trial Court and the Court of Appeals should have been more critical of the police officers' observations given admitted limitations that impaired visual clarity. As the police officers conceded, their checkpoint was set up "in a place where there was light illuminating [only] from the corner of [a] house."[86] SPO3 Auza even admitted that illumination was so poor that "[w]henever there was a

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83 *Rollo*, p. 114, Court of Appeals Decision.

84 706 Phil. 511 (2013) [Per J. Perlas-Bernabe, Second Division].

85 Id. at 522, citing *People v. Chua Ho San*, 367 Phil. 703, 717 (1999) [Per C.J. Davide, Jr., En Banc]; and *People v. Ramos*, 264 Phil. 554, 568 (1990) [Per J. Gutierrez, Jr., Third Division].

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

vehicle coming, the police will flashlight the signage so that it can be seen."[87]

Third, the Court of Appeals referenced how Algozo allegedly tried to flee.

Villareal took a nuanced view of an accosted person's inclination to take evasive measures when suddenly confronted by law enforcers. It explained how even flight should not necessarily engender probable cause:

> [A]ppellant's act of darting away when PO3 de Leon approached him should not be construed against him. Flight per se is not synonymous with guilt and must not always be attributed to one's consciousness of guilt. It is not a reliable indicator of guilt without other circumstances, for even in high crime areas there are many innocent reasons for flight, including fear of retribution for speaking to officers, unwillingness to appear as witnesses, and fear of being wrongfully apprehended as a guilty party. Thus, appellant's attempt to run away from PO3 de Leon is susceptible of various explanations; it could easily have meant guilt just as it could likewise signify innocence.[88]

Moreover, it is vital to consider the exact point at which this supposed attempt to flee occurred, that is, it was when petitioner and Algozo had been made to disembark. Reckoning this precise point is important because by then—having already had petitioner and Algozo disembark—the police officers had already commenced a search more extensive than a mere visual search.

Probable cause should *precede* an extensive search; it cannot come after an extensive search has commenced or been completed. The cause must occur prior to the effect. By sheer chronological logic then, Algozo's supposed attempt could not have been the probable cause to induce the police officers' resolve to conduct an extensive search and have passengers disembark in order to facilitate such a search.

Understandably, a simple listing of events alleged by the prosecution would make it appear that there were "other attendant circumstances"[89] apart from the tip conveyed to P/Supt. Agas. However, a more conscientious consideration of these occurrences—including how they happened and when they happened—reveals that they are not the sort of "circumstances sufficiently strong *in themselves*"[90] that beget probable cause.

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87 Id.

88 *People v. Villareal*, 706 Phil. 511, 521–522 (2013) [Per J. Perlas-Bernabe, Second Division] citing *Valdez v. People*, 563 Phil. 934 (2007) [Per J. Tinga, Second Division] and *State v. Nicholson*, 188 S.W.3d 649 (Tenn. 2006).

89 *People v. Yanson*, G.R. No. 238453, July 31, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65605> [Per J. Leonen, Third Division].

90 Id.

This case is different from the illustrative examples of exceptional searches cited in *Yanson*. In those cases, the persons subsequently convicted were not previously, specifically, and deliberately singled out as definite targets, identified by name as the persons for whom checkpoints, patrols, or other similar operations were conducted. Here, there are no *independently* suspicious acts occurring *before* actual search and seizure—like the failure to present identification papers or supporting documents (as in *Malmstedt* and *Que*), dubious declarations (as in *Vinecario*), or a readily visible weapon (as in *Tuazon*)—done by persons who were *not previously tagged* as criminals.

V

The totality of circumstances points to an illicit search. Consistent with Article III, Section 3(2) of the Constitution, which mandates that "[a]ny evidence obtained in violation of [the right against unreasonable searches and seizures] shall be inadmissible for any purpose in any proceeding[,]" the items obtained from petitioner on the occasion of the March 23, 2004 checkpoint are inadmissible as evidence.

Jurisprudence is clear on the elements that must be established to secure convictions for violation of Section 11 of the Comprehensive Dangerous Drugs Act. Conviction rests on the integrity of the *corpus delicti*, that is, the actual narcotics claimed to have been in possession of the accused:

> As to the illegal possession of dangerous drugs, punished under Section 11 of the Comprehensive Dangerous Drugs Act, it must be established that "(1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug."
>
> In both illegal sale and illegal possession of dangerous drugs, "the illicit drugs confiscated from the accused comprise the corpus delicti of the charges." Thus, their identity and integrity must be established beyond reasonable doubt. It is the prosecution's duty "to ensure that the illegal drugs offered in court are the very same items seized from the accused."[91] (Citations omitted)

Given the inadmissibility of the drugs alleged to have been possessed by and seized from petitioner, the prosecution is wanting in proof of *corpus delicti*. In *Yanson*:

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[91] *People v. Castillo*, G.R. No. 238339, August 7, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65610 > [Per J. Leonen, Third Division].

> In cases involving drugs, the confiscated article constitutes the corpus delicti of the crime charged. Under Section 5 of Republic Act No. 9165, the essence of the crime is the sale, trading, administration, dispensation, delivery, distribution, and transportation of prohibited drugs, and/or controlled precursors and essential chemicals. The act of transporting the drugs, as in this case, must be duly proven by the prosecution, along with how a particular person is the perpetrator of that act. The seized drug, then, becomes the corpus delicti of the crime charged. The entire case of the prosecution revolves around that material.
>
> In drugs cases where the allegedly confiscated drug is excluded from admissible evidence — as when it was acquired through an invalid warrantless search — the prosecution is left without proof of corpus delicti. Any discussion on whether a crime has been committed becomes an exercise in futility. Acquittal is then inexorable.
>
> Thus, here, the arresting officers' search and subsequent seizure are invalid. As such, the two (2) sacks of marijuana supposedly being transported in the pickup cannot be admitted in evidence.
>
> Even assuming that they were admissible, there remains no proof, whether direct or circumstantial, that the accused actually knew that there were drugs under the hood of their vehicle. Ultimately, their actual authorship of or conscious engagement in the illegal activity of transporting dangerous drugs could not be ascertained.
>
> In any case, with evidence on corpus delicti being inadmissible and placed beyond the Regional Trial Court's contemplation, the prosecution is left with a fatal handicap: it is insisting on the commission of the crime charged, but is without evidence. Accused-appellant's acquittal must ensue.[92]

As it was with the authoritative examples of *Sapla* and *Yanson*, petitioner's acquittal in this case is inexorable.[93]

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The March 22, 2017 Decision and the August 16, 2017 Resolution of the Court of Appeals in CA-G.R. CEB-CR No. 02397, which affirmed the July 23, 2012 Joint-Decision of the Regional Trial Court, are **REVERSED** and **SET ASIDE**. Accused-appellant Virgilio Evardo y Lopena is **ACQUITTED** of the charges of violating Section 11 of the Comprehensive Dangerous Drugs Act.

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92 *People v. Yanson*, G.R. No. 238453, July 31, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65605> [Per J. Leonen, Third Division], citing *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131 [Per J. Caguioa, Second Division].

93 Following *Yanson*, in view of the determination that petitioner must be acquitted, it has become unnecessary to delve into the other matters invoked by petitioner, particularly the police officers' inability to comply with the Comprehensive Dangerous Drugs Act's chain of custody requirements.

For their information, copies of this Decision shall be furnished to the Police General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency.

The Regional Trial Court is directed to turn over the seized sachets of shabu to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of judgment be issued immediately.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO I. DELOS SANTOS
Associate Justice

JHOSEP Y. LOPEZ
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.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice