

SECOND DIVISION

G.R. No. 253504 – ROEL PABLO y PASCUAL, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.

Promulgated:

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DISSENTING OPINION

LEONEN, J.:

In my view, there was no reasonable suspicion or genuine reason for the police officers to conduct a stop and frisk search leading to the seizure of the firearm and ammunition from Roel Pablo y Pascual (Pablo). Because of the illegal warrantless search, the articles allegedly confiscated from Pablo are inadmissible as evidence against him. His acquittal should follow.

Pablo and Alvin Teriapel (Teriapel) were charged with illegal possession of firearms punishable under Republic Act No. 10591, otherwise known as the “Comprehensive Firearms and Ammunition Regulation Act.” Teriapel, after posting a bond for his provisional release, jumped bail.

The prosecution’s evidence showed that around 6:00 pm on September 13, 2015, police officers conducting anti-criminality operations along Payapa Street, Villareal, Barangay Gulod, Novaliches, Quezon City flagged down Pablo and Teriapel, who were then riding a motorcycle without the required safety helmets. The police officers also observed that the motorcycle’s plate number was tampered with a piece of paper to make it appear that it was NC68710 instead of NC68782.

The police officers became suspicious when the driver of the motorcycle, Pablo, as well as his passenger, Teriapel, failed to present their driver’s licenses. Before conducting a search, the police officers claimed to have also asked for the pertinent documentation of the motorcycle which both accused also failed to show. Upon verification with the Land Transportation Office, the police officers discovered that the motorcycle was unregistered.

Hence, Pablo and Teriapel were bodily frisked. Police Officer I Rey Jel Nadura (PO1 Nadura) recovered a Magnum Caliber .22 pistol loaded with eight pieces of live ammunition from Pablo’s waist, while Police



Officer I Rommel Tuble (PO1 Tuble) retrieved nine pieces of Magnum caliber .22 ammunition from Teriapel's right front pocket. Both were arrested and brought to the police station. After marking, the articles seized were handed over to the Firearms Identification Division of the Philippine National Police Crime Laboratory for ballistic examination.

For his part, Pablo denied that there was contraband retrieved from him. At the time of the purported arrest, he was allegedly at his house located in the same area. As he was walking towards the store, he was stopped by Teriapel to ask about the latter's aunt who was also his live-in partner. A red van suddenly arrived from which three men, who identified themselves as police officers, alighted. Pablo claimed that the gun was recovered from the compartment of the motorcycle owned by Teriapel's brother and that the police officers only insisted that it was his.¹

The Regional Trial Court ruled for conviction. Compared to Pablo's bare denial, it gave more weight to the testimonies of the prosecution witnesses in the absence of ill motive to falsely testify against the accused.

Pablo raised to the Court of Appeals the inadmissibility of the seized items as evidence. Pablo claims that PO1 Nadura's search on his person was not incidental to a lawful arrest.²

The Court of Appeals upheld Pablo's conviction and explained that there was enough reason for his lawful warrantless arrest, which resulted in the consequent search and seizure of the firearm. Even if the incidents would not amount to a search incidental to a lawful arrest, the Court of Appeals explained that the warrantless search may still be justified under the rule on stop and frisk. It noted how the various traffic infractions, when taken collectively, may be interpreted as an attempt to hide a person's identity, thereby creating a reasonable suspicion that warranted a stop and frisk search.³

The *ponencia* sustained Pablo's guilt for the crime charged.⁴ Though the search cannot be deemed as one that is incidental to a lawful arrest,⁵ the *ponencia* explained that the totality of the attendant circumstances created a genuine reason for the police officers to believe that both Pablo and Teriapel were seemingly trying to conceal their identity warranting the conduct of a warrantless search under the stop and frisk rule:

First, to recall, the police officers had a genuine reason to flag down petitioner after observing that he and [Teriapel] were not wearing

¹ *Ponencia*, pp. 2-3.

² *Id.* at 4.

³ *Id.* at 5.

⁴ *Id.* at 15.

⁵ *Id.* at 7.

helmets. *Second*, the plate number of their motorcycle had been tampered with. *Third*, upon flagging down petitioner and [Teriapel], the officers properly introduced themselves as police officers before questioning them and asking for their driver's licenses, which petitioner and [Teriapel] failed to produce. *Fourth*, petitioner also failed to produce motorcycle documentation when asked. *Lastly*, on the night of the arrest, the police officers had been conducting an anti-criminality operation.

*On their own, none of the enumerated traffic violations are inherently suspicious; taken together, however, there is reason to believe, as the [Regional Trial Court] noted in its decision, that petitioner and his co-accused were attempting to hide their identity. This, in turn, is enough to engender a suspicion in the mind of an experienced police officer that something illicit was afoot.*⁶ (Emphasis supplied)

In addition, the *ponencia* recognized the current associations to persons "riding in tandem" in the Philippine setting relative to proliferation of crimes pursuant to Section 2, Rule 29 of the Rules on Civil Procedure. These, as explained, "necessarily⁷ affect the mindset and discretion of police officers when they determine and assess whether there is a reasonable ground to suspect that a person may be performing illicit acts."⁷

Taken together, the *ponencia* deduced that there exists a genuine reason for the police officers to suppose that Pablo was armed and/or committing an illicit action⁸ that justified the stop and frisk search. Upholding the validity of the warrantless search which led to the recovery of the articles from Pablo, the *ponencia* denied his Petition and affirmed his conviction.⁹

I respectfully differ.

Article III, Section 2 of the 1987 Constitution guarantees the fundamental right of the people against unlawful searches and seizures:

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.

Even so, it bears stressing that the protection afforded by the Constitution only pertains to unreasonable searches and seizures. As safeguard, a search and seizure must be executed on account of a warrant

⁶ *Id.* at 12.

⁷ *Id.* at 13.

⁸ *Id.* at 14.

⁹ *Id.* at 15.

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issued by a judge upon personal determination of probable cause. “In the absence of a warrant, the Constitution renders the evidence obtained *inadmissible* for any purpose, in any proceeding.”¹⁰

Notwithstanding, the indispensability of a judicial warrant is not absolute and admits of exceptions. Jurisprudentially, even when warrantless, the accompanying searches and seizures in the following instances were considered reasonable owing to the attendant circumstances of the situation:

1. Warrantless search incidental to a lawful arrest [;]
2. Seizure of evidence in “plain view,” the elements of which are:
 - a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;
 - b) the evidence was inadvertently discovered by the police who had the right to be where they are;
 - c) the evidence must be immediately apparent; and
 - d) “plain view” justified mere seizure of evidence without further search.
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.¹¹ (Emphasis supplied)

There is no hard and fast rule to determine a reasonable search and seizure. In any circumstance, what comprises a reasonable search is wholly a judicial question, its determination rests on distinct factual incidents of the case. This may entail a review on “the purpose of the search and seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured.”¹²

Pertinent to this case is the stop and frisk search.

¹⁰ *Telen v. People*, 864 Phil 1103, 1114 (2019) [Per J. Leonen, Third Division].

¹¹ *Id.* at 1114–1115.

¹² *Veridiano v. People*, 810 Phil. 642, 657 (2017) [Per J. Leonen, Second Division]. (Citation omitted)

Stop and frisk is described “as the act of a police officer to stop a citizen on the street, interrogate him [or her], and pat him [or her] for weapon(s) or contraband.”¹³ Police officers ought to “properly introduce [themselves] and make initial inquiries, approach and restrain a person who manifests unusual and suspicious conduct, in order to check the latter’s outer clothing for possibly concealed weapons.”¹⁴ The permissible extent here only covers “a protective search of outer clothing for weapons.”¹⁵

A stop and frisk search is conducted to avert the commission of a crime. It is also utilized “[w]hen dealing with a rapidly unfolding and potentially criminal situation in the city streets where unarguably there is no time to secure an arrest or search warrant[.]”¹⁶ Notably, the purpose behind it is two-fold:

(1) the general interest of effective crime prevention and detection, which underlies the recognition that a police officer may, under appropriate circumstances and in an appropriate manner, approach a person for purposes of investigating possible criminal behavior even without probable cause; and (2) the more pressing interest of safety and self-preservation which permit the police officer to take steps to assure himself that the person with whom he deals is not armed with a deadly weapon that could unexpectedly and fatally be used against the police officer.¹⁷

Although it is evident that the conduct of a stop and frisk search is essential to law enforcement, *People v. Cogaed*¹⁸ was explicit that it should nevertheless be balanced with the constitutionally protected right of a person to privacy:

“Stop and frisk” searches (sometimes referred to as *Terry* searches) are necessary for law enforcement. That is, law enforcers should be given the legal arsenal to prevent the commission of offenses. However, this should be balanced with the need to protect the privacy of citizens in accordance with Article III, Section 2 of the Constitution.

*The balance lies in the concept of “suspiciousness” present in the situation where the police officer finds himself or herself in. This may be undoubtedly based on the experience of the police officer. Experienced police officers have personal experience dealing with criminals and criminal behavior. Hence, they should have the ability to discern—based on facts that they themselves observe—whether an individual is acting in a suspicious manner. Clearly, a basic criterion would be that the police officer, with his or her personal knowledge, must observe the facts leading to the suspicion of an illicit act.*¹⁹ (Emphasis supplied)

¹³ *People v. Chua*, 444 Phil. 757, 773–774 (2003) [Per J. Ynares-Santiago, First Division]. (Citation omitted)

¹⁴ *Id.* at 774.

¹⁵ *Veridiano v. People*, 810 Phil. 642, 662 (2017) [Per J. Leonen, Second Division].

¹⁶ *Telen v. People*, 864 Phil 1103, 1116 (2019) [Per J. Leonen, Third Division]. (Citation omitted)

¹⁷ *Malacat v. Court of Appeals*, 347 Phil. 462, 481–482 (1997) [Per J. Davide, Jr., *En Banc*].

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

¹⁹ *Id.* at 229–230

As such, law enforcers do not possess a vast discretion in conducting stop and frisk searches. Even if there is no need for a probable cause, this permissible warrantless search cannot hinge on just a hunch or suspicion. There should exist a *genuine reason* for law enforcers “to believe, based on their experience and the particular circumstances of each case, that criminal activity may be afoot.”²⁰

Dependence on only one suspicious action, or on nothing at all, does not generate a reasonable search.²¹ Concomitantly, for a stop and frisk search to be acceptable, “the arresting officer should have personally observed two (2) or more suspicious circumstances, the totality of which would then create a reasonable inference of criminal activity to compel the arresting officer to investigate further.”²²

Prescinding from these gauges, there was no valid stop and frisk search in the case before us.

As to the *ponencia*, the confluence of traffic violations provided the basis for police officers to believe that petitioner and Teriapel were trying to conceal their identity. This, the *ponencia* explained, suffices “to engender a suspicion in the mind of an experienced police officer that something illicit was afoot.”²³

I cannot agree.

Petitioner Pablo and Teriapel were flagged down by the police officers for not wearing the required safety helmets, and on account of the motorcycle’s purportedly tampered plate number.²⁴ Consequently, the police officers asked for their respective driver’s licenses which they failed to show. It is from this point that the police officers bodily-frisked them which, notably, led to the seizure of a Magnum caliber .22 pistol loaded with ammunition from petitioner’s waistline.²⁵

Evidently, what impelled the police officers to become suspicious was the failure of petitioner and his co-accused to present their driver’s licenses. This, in my view, does not constitute a genuine reason for the police officers to believe that a criminal activity was afoot, let alone that petitioner was in possession of a firearm. Besides, there was no mention of any specific suspicious behavior or conduct on the part of the petitioner that would cause the police officers to speculate that he was armed. Neither was there any allegation that there existed a visible indication of the firearm in petitioner’s

²⁰ *Veridiano v. People*, 810 Phil. 642, 663 (2017) [Per J. Leonen, Second Division].

²¹ *Id.*

²² *Manibog v. People*, 850 Phil 103, 118 (2019) [Per J. Leonen, Third Division].

²³ *Ponencia*, p. 12.

²⁴ *Id.*

²⁵ *See id.* at 2–3.

body, such as a bulge or contour, which warranted the stop and frisk search for purposes of confirmation. Even the negative connotation linked to persons riding a motorcycle in tandem does not hold water for being a mere stereotype.

To stress, “the right of a person to be secured against any unreasonable seizure of his [or her] body and any deprivation of his liberty is a most basic and fundamental one.”²⁶ As an exception to the requirement of a search warrant, the conduct of a stop and frisk search should be strictly construed.²⁷

All told, it is my view that an illegal search attended petitioner’s apprehension. As such, the seized firearm and ammunition is inadmissible as evidence against him. Petitioner must then be acquitted for lack of evidence to sustain the charge.

ACCORDINGLY, I vote to **GRANT** the Petition.



MARVIC M.V.F. LEONEN
Senior Associate Justice

²⁶ *People v. Aruta*, 351 Phil. 868, 879 (1998) [Per J. Romero, Third Division].

²⁷ *Id.*