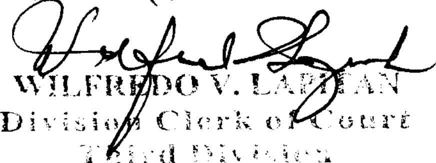
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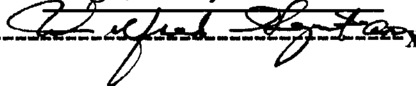
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
AUG 3 0 2018

THIRD DIVISION

G.R. No. 227366 - DOMINGO AGYAO MACAD @ AGPAD, *petitioner,* **v. PEOPLE OF THE PHILIPPINES,** *respondent.*

Promulgated:

August 1, 2018



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CONCURRING OPINION

LEONEN, ***J.*:**

This case involves a man who was both searched and arrested without a warrant. Thus, while this case requires analysis of the rules governing when arrests may be made without a warrant, due attention must also be given to the constitutional rights, which underpin these rules, in particular the right of persons against unreasonable searches and seizures.

Article III, Section 2 of the Constitution provides:

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

The foregoing wording of Article III, Section 2 of the Constitution implies that there may be instances when there can be "reasonable" searches and seizures which may be valid, even if done without a warrant.

It should be noted that what may be "reasonable" in relation to a lawful warrantless search may be different from what may be "reasonable" in relation to a lawful warrantless arrest. The reasonableness must be considered in relation to the values being protected by the Constitution.

The right against unreasonable searches protects the implicit right of the person to be left alone or the person's right to privacy. In other words, the right recognizes and protects inviolable spaces, which cannot be intruded into by the State, except when compelling State interests are present, and even

then, only when such intrusion is the least restrictive way to meet that State interest.

Thus, this Court has traditionally recognized that the State may conduct warrantless searches of moving vehicles but only when there is probable cause and when they are limited to a visual one aided only by a non-intrusive tool, such as a flashlight. An argument can be made in favor of the validity of olfactory searches done with the aid of a dog because the intrusion on the privacy of the individual being searched is not too burdensome.

However, the question of whether any particular warrantless search is reasonable is entirely distinct from the question of whether a warrantless arrest is reasonable. The right of a person to not be unreasonably seized is related to his very right to life and liberty. Thus, the grounds for causing warrantless arrests have been traditionally limited to instances where police officers have personal knowledge that a crime has been committed. A warrantless arrest may not be valid on the basis of mere hearsay information.

The Rules of Court provides for exceptions where a person may be lawfully arrested, even without any arrest warrant having been issued:

> RULE 113
> Arrest
>
> . . . .
>
> Section 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
>
> In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112.[1]

[1] RULES OF COURT, Rule 113, sec. 5.

Rule 113, Section 5(a) of the Rules of Court only allows warrantless arrests for crimes *in flagrante* when the police officer or private citizen conducting the arrest has, within his or her purview, all the elements of the offense being committed by the accused. This provision cannot validly be invoked where a police officer only possesses information that the accused has committed a crime.

On the other hand, Section 5(b) of the same rule requires that the arresting police officer has perceived, through his or her own senses, that a crime has just been committed and, in addition to this perception, also has perceived facts which could reasonably lead to the belief that the person about to be arrested was the offender. In this case, the police officer did not witness the occurrence of the crime itself but witnessed some facts that led him to believe that the person about to be arrested committed the offense.

When explaining why a warrantless search or seizure was valid, this Court must take great care to specify how the circumstances allow for a warrantless search or seizure. This Court must be clear on the exceptions that it is invoking to avoid inadvertent carving out of additional situations where warrantless arrests appear to be allowable, despite having little to no doctrinal basis.

In this case, the police officer already had basis to conduct a warrantless search from the time he smelled the odor of marijuana emanating from the carton and the bag with a Sagada weave. This is similar to the case of *Posadas v. Court of Appeals*,[2] wherein the police officer had reason to conduct a warrantless search in a way akin to a stop and frisk:

> 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). In this case, two men repeatedly walked past a store window and returned to a spot where they apparently conferred with a third man. This aroused the suspicion of a police officer. To the experienced officer, the behavior of the men indicated that they were sizing up the store for an armed robbery. When the police officer approached the men and asked them for their names, they mumbled a reply. Whereupon, the officer grabbed one of them, spun him around and frisked him. Finding a concealed weapon in one, he did the same to the other two and found another weapon. In the prosecution for the offense of carrying a concealed weapon, the defense of illegal search and seizure was put up. 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

2 266 Phil. 306 (1990) [Per J. Gancayco, First Division].

> occur, to stop a suspicious individual briefly in order to determine his identity or maintain the *status quo* while obtaining more information. . . .
>
> Clearly, the search in the case at bar can be sustained under the exceptions heretofore discussed, and hence, the constitutional guarantee against unreasonable searches and seizures has not been violated.[3] (Citation omitted)

It is not necessary to invoke the presence of the carton and the bag in a moving vehicle to justify their warrantless search. That an odor of marijuana was emanating from the bag already sufficiently justified its inspection. Further, it should be noted that if the presence of the bag in a moving vehicle had formed the basis for the warrantless search, under jurisprudence, the police officer would have been limited to its visual inspection only.

The search could have been justified in relation to the consent of the accused. Of course, had this been the basis for the warrantless search, there would have been a burden to establish that the accused made a knowing and intelligent waiver in consenting to the search. The mere testimony of the police officer would have been insufficient for this purpose.

For a search to be validly made as an incident to a lawful arrest, the lawful arrest should have preceded the search. In *Malacat v. Court of Appeals*,[4] this Court stressed this rule:

> At the outset, we note that the trial court confused the concepts of a "stop-and-frisk" and of a search incidental to a lawful arrest. These two types of warrantless searches differ in terms of the requisite quantum of proof before they may be validly effected and in their allowable scope.
>
> In a search incidental to a lawful arrest, as the precedent arrest determines the validity of the incidental search, the legality of the arrest is questioned in a large majority of these cases, e.g., whether an arrest was merely used as a pretext for conducting a search. In this instance, the law requires that there first be a lawful arrest before a search can be made — the process cannot be reversed. At bottom, assuming a valid arrest, the arresting officer may search the person of the arrestee and the area within which the latter may reach for a weapon or for evidence to destroy, and seize any money or property found which was used in the commission of the crime, or the fruit of the crime, or that which may be used as evidence, or which might furnish the arrestee with the means of escaping or committing violence.
>
> Here, there could have been no valid *in flagrante delicto* or hot pursuit arrest preceding the search in light of the lack of personal knowledge on the part of Yu, the arresting officer, or an overt physical act, on the part

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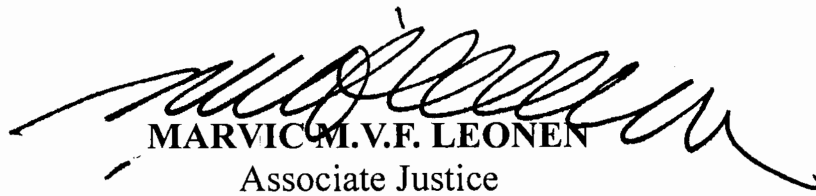
[3] Id. at 312–313.

[4] 347 Phil. 462 (1997) [Per J. Davide, Jr., En Banc].

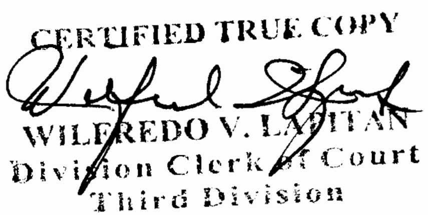
> of petitioner, indicating that a crime had just been committed, was being committed or was going to be committed.[5] (Citations omitted)

In this case, the warrantless search was attempted before the accused started to flee. Consequently, the search could not be considered an incident to a lawful arrest.

Accordingly, I concur in the result.



MARVIC M.V.F. LEONEN
Associate Justice



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[5] Id. at 479–480.