EN BANC

G.R. No. 244045 – PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, ***versus***, **JERRY SAPLA Y GUERRERO**, *accused-appellant*.

Promulgated:

June 16, 2020

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DISSENTING OPINION

LOPEZ, J.:

Not all searches and seizures are prohibited. Those which are reasonable are not forbidden. A reasonable search is not to be determined by any fixed formula but is to be resolved according to the facts of each case.[1]

The *ponencia* reversed the conviction of the accused for the crime of illegal transportation of dangerous drugs on the ground that the contraband was obtained in violation of the right against unreasonable searches. It pointed out that the police conducted a warrantless intrusive search of a vehicle based solely on an unverified tip from an anonymous informant. Also, there was no consented warrantless search but a mere passive conformity within a coercive and intimidating environment.

For proper reference, there is a need to revisit the facts of the case.

On January 10, 2014 at around 11:30 a.m., the police received a phone call from a concerned citizen that a person will be transporting marijuana out of Kalinga province. At 1:00 p.m., the police received a text message that the transporter of marijuana is a male person wearing a collared white shirt with green stripes, red ball cap and is carrying a blue sack on board a passenger jeepney with plate number AYA 270 bound for Roxas, Isabela. A checkpoint was then established. After 20 minutes, the identified jeepney arrived and was flagged down. The police saw the accused who matched the description with a blue sack in front of him. The police asked about the sack and the accused admitted its ownership. Thereafter, the police requested the accused to open the sack. The accused opened it which yielded four bricks of dried marijuana leaves with a total weight of 3,953.111 grams.

In these circumstances, I believed that what transpired is a reasonable search of the vehicle and not a warrantless search. Obviously, the law enforcers did not have sufficient time to obtain a search warrant. They only have less than two hours

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[1] Valmonte v. De Villa, G.R. No. 83988, September 29, 1989, citing U.S. v. Robinwitz, N.Y.,70 S. Crt. 430, 339 U.S. 56, 94 L. Ed. 653; Harries v. U.S., Okl.,67 S. Ct. 1098 & 331 U.S. 145, 94 L. Ed. 1871; and Martin v. U.S., C.A. Va.,183 F2d 436; 66, 79 C.J.S.,835-836.

between the receipt of the information and the arrival of the passenger jeepney. However, this does not necessarily mean that the authorities have no choice but to conduct a warrantless search. In *Saluday v. People*,[2] we distinguished a reasonable search from a warrantless search and described them as mutually exclusive, thus:

> To emphasize, a reasonable search, on the one hand, and a warrantless search, on the other, are mutually exclusive. While both State intrusions are valid even without a warrant, the underlying reasons for the absence of a warrant are different. **A reasonable search arises from a reduced expectation of privacy, for which reason Section 2, Article III of the Constitution finds no application**. Examples include searches done at airports, seaports, bus terminals, malls, and similar public places. **In contrast, a warrantless search is presumably an "unreasonable search," but for reasons of practicality, a search warrant can be dispensed with.** Examples include search incidental to a lawful arrest, search of evidence in plain view, consented search, and extensive search of a private moving vehicle. (Emphases Supplied).

Moreover, we clarified that the constitutional guarantee under Section 2, Article III of the Constitution[3] is not a blanket prohibition. Rather, it operates against *"unreasonable"* searches and seizures only. Thus, the general rule is that no search can be made without a valid warrant subject to certain legal and judicial exceptions.[4] Otherwise, any evidence obtained is inadmissible in any proceeding.[5] On the other hand, the recognized exceptions do not apply when the search is *"reasonable"* simply because there is nothing to exempt.

In *Saluday*, this Court expounded as to what qualifies as a reasonable search. We cited foreign[6] as well as local[7] jurisprudence and explained that the prohibition

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2 G.R. No. 215305, April 3, 2018.

3 The 1987 Constitution, Article III, Section 2 provides that [t]he 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. Notably, this right has been included in the Philippine Constitution since 1899 through the Malolos Constitution and has been incorporated in the various organic laws governing the Philippines during the American colonization, the 1935 Constitution, and the 1973 Constitution.

4 The exceptions include: (1) search incidental to a lawful arrest; (2) search of moving vehicles; (3) seizure in plain view; (4) customs searches; (5) consented warrantless search; (6) stop and frisk; and (7) exigent and emergency circumstances. In Valmonte v. De Villa, 258 Phil. 838 (1989), the Supreme Court held that not all searches are prohibited. Those which are reasonable are not forbidden. See also Esquillo v. People, G.R. No. 182010, August 25, 2010; People v. Nuevas, 545 Phil. 356 (2007); People v. Aruta,351 Phil. 868 (1998).

5 The 1987 Constitution, Article III, Section 2(3) provides an exclusionary rule which instructs that evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. In other words, evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding. See Comerciante v. People, G.R. No. 205926, July 22, 2015, citing Ambre v. People, 692 Phil. 681 (2012).

6 In the seminal case of Katz v. United States, 389 U.S. 347 (1967), the U.S. Supreme Court held that the electronic surveillance of a phone conversation without a warrant violated the Fourth Amendment. According to the U.S. Supreme Court, what the Fourth Amendment protects are people, not places such that what a person knowingly exposes to the public, even in his or her own home or office, is not a subject of Fourth Amendment protection in much the same way that what he or she seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected. Further, Justice John Harlan laid down in his concurring opinion the two-part test that would trigger the application of the Fourth Amendment. First, a person exhibited an actual (subjective) expectation of privacy. Second, the expectation is one that society is prepared to recognize as reasonable (objective).

7 In People v. Johnson, 401 Phil. 734 (2000), the Court declared airport searches as outside the protection of the search and seizure clause due to the lack of an expectation of privacy that society will regard as reasonable.

of unreasonable search and seizure ultimately stems from a person's right to privacy. Hence, only when the State intrudes into a person's expectation of privacy, which society regards as reasonable, is the Fourth Amendment[8] triggered. Conversely, where a person does not have an expectation of privacy or one's expectation of privacy is not reasonable to society, the alleged State intrusion is not a *"search"* within the protection of the Fourth Amendment. More importantly, the reasonableness of a person's expectation of privacy must be determined on a case-to-case basis since it depends on the factual circumstances surrounding the case. In *Saluday*, we ruled that the bus inspection constitutes a reasonable search, *viz.*:

> **In view of the foregoing, the bus inspection conducted by Task Force Davao at a military checkpoint constitutes a reasonable search. Bus No. 66 of Davao Metro Shuttle was a vehicle of public transportation where passengers have a reduced expectation of privacy**. Further, SCAA Buco merely lifted petitioner's bag. This visual and minimally intrusive inspection was even less than the standard x-ray and physical inspections done at the airport and seaport terminals where passengers may further be required to open their bags and luggages. **Considering the reasonableness of the bus search, Section 2, Article III of the Constitution finds no application, thereby precluding the necessity for a warrant.** (Emphases Supplied)

In that case, we likewise formulated guidelines in conducting reasonable searches of public transport buses and any moving vehicle that similarly accepts passengers at the terminal and along its route, to wit:

> Further, in the conduct of bus searches, the Court lays down the following guidelines. Prior to entry, passengers and their bags and luggages can be subjected to a routine inspection akin to airport and seaport security protocol. In this regard, metal detectors and x-ray scanning machines can be installed at bus terminals. Passengers can also be frisked. In lieu of electronic scanners, passengers can be required instead to open their bags and luggages for inspection, which inspection must be made in the passenger's presence. Should the passenger object, he or she can validly be refused entry into the terminal.
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> **While in transit, a bus can still be searched by government agents or the security personnel of the bus owner in the following three instances. *First,* upon receipt of information that a passenger carries contraband or illegal articles, the bus where the passenger is aboard can be stopped *en route* to allow for an inspection of the person and his or her effects. This is no different from an airplane that is forced to land upon receipt of information about the contraband or illegal articles carried by a passenger onboard.** *Second,* whenever a bus picks passengers *en route,* the prospective passenger can be frisked and his or

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In Dela Cruz v. People, 776 Phil. 653 (2016), the Court described seaport searches as reasonable searches on the ground that the safety of the traveling public overrides a person's right to privacy. In People v. Breis, 766 Phil. 785 (2015), the Court also justified a bus search owing to the reduced expectation of privacy of the riding public.

8 It is a part of the Bill of Rights in the United States Constitution which provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

> her bag or luggage be subjected to the same routine inspection by government agents or private security personnel as though the person boarded the bus at the terminal. This is because unlike an airplane, a bus is able to stop and pick passengers along the way, making it possible for these passengers to evade the routine search at the bus terminal. *Third,* a bus can be flagged down at designated military or police checkpoints where State agents can board the vehicle for a routine inspection of the passengers and their bags or luggages.
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> In both situations, the inspection of passengers and their effects prior to entry at the bus terminal and the search of the bus while in transit must also satisfy the following conditions to qualify as a valid reasonable search. *First,* as to the manner of the search, it must be the least intrusive and must uphold the dignity of the person or persons being searched, minimizing, if not altogether eradicating, any cause for public embarrassment, humiliation or ridicule. *Second,* neither can the search result from any discriminatory motive such as insidious profiling, stereotyping and other similar motives. In all instances, the fundamental rights of vulnerable identities, persons with disabilities, children and other similar groups should be protected. *Third,* as to the purpose of the search, it must be confined to ensuring public safety. *Fourth,* as to the evidence seized from the reasonable search, courts must be convinced that precautionary measures were in place to ensure that no evidence was planted against the accused.
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> The search of persons in a public place is valid because the safety of others may be put at risk. Given the present circumstances, the Court takes judicial notice that public transport buses and their terminals, just like passenger ships and seaports, are in that category.
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> Aside from public transport buses, any moving vehicle that similarly accepts passengers at the terminal and along its route is likewise covered by these guidelines. **Hence, whenever compliant with these guidelines, a routine inspection at the terminal or of the vehicle itself while in transit constitutes a reasonable search**. Otherwise, the intrusion becomes unreasonable, thereby triggering the constitutional guarantee under Section 2, Article III of the Constitution. (Emphases Supplied)

Applying these guidelines, it becomes clearer that what happened is a reasonable search. *First*, **the accused is on board a passenger jeepney or a vehicle of public transportation where passengers have a reduced expectation of privacy**. *Second*, **the authorities properly set up a checkpoint**. The guidelines in *Saluday* are explicit that upon receipt of information that a passenger is carrying contraband, the law enforcers are authorized to stop the vehicle *en route* to allow for an inspection of the person and his or her effects. *Third*, **the police did not perform an intrusive search of the jeepney but merely inquired by asking about the ownership of the blue sack which the accused admitted**. As such, Section 2, Article III of the Constitution finds no application in the reasonable search conducted in this case. Corollarily, there is no need to discuss whether the law enforcers have probable cause to search the vehicle. The requirement of probable cause is necessary in applications for search warrant and warrantless searches but not to a reasonable search. Otherwise, to require probable cause before the authorities could conduct a search, no matter how reasonable, would

cripple law enforcement resulting in non-action and dereliction of duty. It must be emphasized that police officers are duty bound to respond to any information involving illegal activities. But the involution of intelligence materials obliges them to be discerning and vigilant in scintillating truthful information from the false ones.

In *People v. Montilla*,[9] experience shows that although information gathered and passed on by assets to law enforcers are vague and piecemeal, and not as neatly and completely packaged as one would expect from a professional spymaster, such tip-offs are sometimes successful. If the courts of justice are to be of understanding assistance to our law enforcement agencies, it is necessary to adopt a realistic appreciation of the physical and tactical problems, instead of critically viewing them from the placid and clinical environment of judicial chambers.

Here, it can hardly be said that search was conducted based solely on an unverified tip from an anonymous informant. The information given exactly matched the descriptions of the vehicle and passenger to be searched. More especially, the blue sack which is apparent to the eye arouses reasonable suspicion as to its content. On that point, the police officers are left with no choice because letting a suspect pass without further investigation is a euphemism of allowing a crime to run. To hold that no criminal can, in any case, be arrested and searched for the evidence and tokens of his crime without a warrant, would be to leave society, to a large extent, at the mercy of the shrewdest, the most expert, and the most depraved of criminals, facilitating their escape in many instances,[10] even exploiting public utility vehicles to boost their nefarious activities.

Nonetheless, even assuming that what occurred is a warrantless search, there is still no violation of the accused's constitutional right. In *Valmonte v. De Villa,*[11] the general allegation to the effect that the petitioner had been stopped and searched without a search warrant by the military manning the checkpoints is insufficient to determine whether there was a violation of the right against unlawful search and seizure. Moreover, the inherent right of the state to protect its existence and promote public welfare should prevail over an individual's right against a warrantless search which is however *reasonably* conducted. Besides, warrantless searches and seizures at checkpoints are quite similar to searches and seizures accompanying warrantless arrests during the commission of a crime, or immediately thereafter.[12]

There is no need to discuss on whether the accused acceded to the search. A consented search is an exception to a warrantless search. To reiterate, this exception does not apply in a reasonable search simply because there is nothing to exempt. At any rate, the accused performed affirmative acts of volition without being forced and intimidated to do so. In this case, the police asked the passengers about the sack and the accused admitted its ownership. Thereafter, the police requested the accused to open the sack. The accused voluntarily opened it which

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9 G.R. No. 123872, January 30, 1998.
10 People v. Malasugui, G.R. No. L-44335, July 30, 1936, citing United States v. Snyder (278 Fed., 650).
11 G.R. No. 83988, September 29, 1989.
12 Valmonte v. De Villa, G.R. No. 83988, May 24, 1990.

yielded four bricks of Marijuana. These facts are similar in *Montilla* where the appellant consented to the search. In that case, when the officers approached appellant and introduced themselves as policemen, they asked him about the contents of his luggage, and after he replied that they contained personal effects, the officers asked him to open the traveling bag. Appellant readily acceded, presumably or in all likelihood resigned to the fact that the law had caught up with his criminal activities.

Finally, while the ponencia aptly stated that the right against an unreasonable search should not be sacrificed for expediency's sake, its premise that there is an unreasonable seizure in this case is unfounded. To invalidate a mere request to open the sack on the ground that it created a coercive and intimidating environment is taking the provisions of Section 2, Article III of the Constitution too far in favor of the accused. To reiterate, the constitutional guarantee protects only against an unreasonable search. It does not cover a reasonable search, nor is it intended to discourage honest police work.

FOR THESE REASONS, I vote to **DENY** the appeal.

MARIO V. LOPEZ
Associate Justice