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*Mis-DC Batt*  
MISAELO DOMINGO C. BATTUNG III  
Deputy Division Clerk of Court  
Third Division

JAN 14 2020

Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
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THIRD DIVISION

GREGORIO TELEN y ICHON,  
Petitioner,

G.R. No. 228107

Present:

PERALTA, J., *Chairperson*,  
LEONEN,  
REYES, A., JR.,  
HERNANDO, and  
INTING,\* *JJ*.

-versus-

PEOPLE OF THE PHILIPPINES,  
Respondent.

Promulgated:  
October 9, 2019

*Mis-DC Batt*

X-----X

DECISION

LEONEN, J.:

For a “stop and frisk” search to be valid, it must be supported by evidence such that the totality of the suspicious circumstances observed by the arresting officer led him or her to believe that an accused was committing an illicit act. A warrantless arrest not based on this is a violation of the accused’s basic right to privacy.

This Court resolves a Petition for Review on Certiorari<sup>1</sup> assailing the Decision<sup>2</sup> and Resolution<sup>3</sup> of the Court of Appeals. The Court of Appeals

\* On official leave.

<sup>1</sup> *Rollo*, pp. 11–36.

<sup>2</sup> *Id.* at 38–51. The June 16, 2016 Decision was penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Danton Q. Bueser and Nina G. Antonio-Valenzuela of the Special Sixth Division, Court of Appeals, Manila.

upheld the Regional Trial Court Judgment<sup>4</sup> finding Gregorio Telen y Ichon (Telen) guilty beyond reasonable doubt of violating Article II, Section 11 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

In an Information<sup>5</sup> filed before the Regional Trial Court, Telen was charged with the crime of illegal possession of dangerous drugs. The accusatory portion of the Information read:

On or about October 7, 2012, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully and unlawfully have in his possession and under his custody and control three (3) heat-sealed transparent plastic sachets each containing white crystalline substance, with the following weight, to wit:

- a. two grams and twenty-nine decigrams (2.29 grams)
- b. eight centigrams (0.08 gram)
- c. ten decigrams (*sic*) (0.10 gram)

with a total weight of two grams and forty-seven decigrams (*sic*) (2.47 grams), which were found positive to the tests for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.<sup>6</sup>

On arraignment, Telen pleaded not guilty to the charge against him.<sup>7</sup>

During trial, the prosecution presented four (4) witnesses: (1) Police Senior Inspector Anamelisa S. Bacani (Senior Inspector Bacani); (2) PO3 Marck Andrew M. Mazo (PO3 Mazo);<sup>8</sup> (3) Police Senior Inspector Karl T. Payumo (Senior Inspector Payumo); and (4) PO2 Angel Dela Cruz (PO2 Dela Cruz).<sup>9</sup>

The prosecution's evidence showed that at about 2:30 p.m. on October 7, 2012, PO3 Mazo was at Petron Gasoline Station, Guadalupe, Makati City, waiting for his turn to gas up his motorcycle. He was in line behind another

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<sup>3</sup> Id. at 53–53-A. The November 4, 2016 Resolution was penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Danton Q. Bueser and Nina G. Antonio-Valenzuela of the Former Special Sixth Division, Court of Appeals, Manila.

<sup>4</sup> Id. at 72–80. The March 23, 2015 Judgment was penned by Presiding Judge Jennifer Albano Pilar of Branch 164, Regional Trial Court, Pasig City.

<sup>5</sup> Id. at 72.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Also referred to as PO3 Mark Andrew M. Mozo in the Court of Appeals Decision.

<sup>9</sup> *Rollo*, p. 73.

rider—later identified to be Telen—who was then putting gasoline in his own motorcycle.<sup>10</sup>

After filling up his motorcycle's gas tank, Telen drew out his wallet from his right back pocket. This caused his shirt to be pulled up, revealing a part of his waist. PO3 Mazo saw a metal part of what appeared to be a hand grenade tucked in Telen's right waistband. This prompted the officer to call his superior to report what he observed and ask for back-up.<sup>11</sup>

As instructed by his superior, PO3 Mazo tailed Telen on the road up to Robinsons Galleria, where Telen left his motorcycle at the parking area along Ortigas Avenue. The officer continued tailing Telen while he walked around the area, by the mall's entrance.<sup>12</sup>

At around 5:00 p.m., PO3 Mazo received a call informing him that his back-up was already positioned in the area. PO3 Mazo then saw Senior Inspector Payumo at a distance.<sup>13</sup>

When Telen returned to his motorcycle about 30 minutes later, PO3 Mazo approached him. The officer placed his arm around Telen's shoulder and patted his right waist. He introduced himself as a police officer and warned Telen not to make any untoward movement. He then pulled out the metal object from Telen's waist and confirmed that it was indeed a hand grenade.<sup>14</sup>

PO3 Mazo arrested Telen and apprised him of his constitutional rights. He then frisked Telen and recovered three (3) small plastic sachets of white crystalline substance from him. He placed the seized items in the compartment of his motorcycle.<sup>15</sup>

Subsequently, the police officers brought Telen to the District Special Operation Unit-Southern Police District, Fort Andres Bonifacio, Taguig City. There, PO3 Mazo marked the confiscated sachets with his signature. He also prepared Telen's Booking Sheet and Arrest Report.<sup>16</sup>

The seized sachets were marked, inventoried, and photographed in the presence of Telen and one Cesar Morales (Morales), a reporter from Police Files. Afterwards, PO3 Mazo turned the seized items over to PO2 Dela

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<sup>10</sup> Id. at 74.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id. at 74-75.

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confiscated from him. He claims that he was not arrested *in flagrante delicto* because there was no sufficient basis to incite suspicion that he was committing a criminal activity.<sup>32</sup>

Moreover, petitioner argues that the prosecution failed to comply with Section 21 of Republic Act No. 9165 and, therefore, failed to establish the identity of the prohibited drugs. His conviction is, thus, unwarranted.<sup>33</sup>

In its Comment,<sup>34</sup> respondent People of the Philippines, through the Office of the Solicitor General, insists that the Court of Appeals did not err in affirming petitioner's conviction. It contends that, by questioning his conviction, petitioner effectively raises questions of fact since their resolution requires an examination of evidence, which is beyond the purview of a Rule 45 petition.<sup>35</sup>

Further, respondent insists that the Court of Appeals did not err in affirming the legality of petitioner's arrest as he was caught *in flagrante delicto*, which is allowed under Rule 113, Section 5 of the Rules of Court. It then points out that since the warrantless search was done incidental to the lawful arrest, it was lawful.<sup>36</sup>

Respondent maintains that the prosecution successfully established all the elements required to convict petitioner of violation of Section 11 of Republic Act No. 9165. According to respondent, the police officers preserved the identity and the evidentiary value of the seized items. Finally, it asserts that the noncompliance with the provisions of Section 21 of Republic Act No. 9165 was not fatal to the prosecution's case.<sup>37</sup>

The sole issue for this Court's resolution is whether or not the warrantless search made upon petitioner Gregorio Telen y Ichon was unlawful and, consequently, the illegal drugs confiscated from him inadmissible in evidence.

## I

This Court is not a trier of facts. Generally, it may only entertain questions of law in a petition for review on certiorari.<sup>38</sup> However, this Court

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<sup>32</sup> Id. at 22–24.

<sup>33</sup> Id. at 25–30.

<sup>34</sup> Id. at 135–159.

<sup>35</sup> Id. at 144–147.

<sup>36</sup> Id. at 147–149.

<sup>37</sup> Id. at 150–155.

<sup>38</sup> RULES OF COURT, Rule 45, sec. 1 provides:

is not precluded from reviewing the factual findings of lower courts in criminal cases. Anchored on an accused's constitutional right to be presumed innocent until proven guilty, this Court is mindful of its duty to closely examine the records, including the pieces of evidence presented to determine the accused's guilt with moral certainty.

For this reason, the entire records of a criminal case are thrown wide open for this Court's review.<sup>39</sup> This case is no exception.

The fundamental right against unlawful searches and seizures is guaranteed by no less than the Constitution. 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.

However, the constitutional guarantee applies only to searches and seizures tainted with unreasonableness. As a safeguard, a search and seizure can be carried out on the strength of a warrant issued upon a judge's personal determination of probable cause. In the absence of a warrant, the Constitution renders the evidence obtained inadmissible for any purpose, in any proceeding.<sup>40</sup>

Nevertheless, the requirement of a judicial warrant is not absolute. Over time, this Court has recognized jurisprudential exceptions where, despite the lack of a judicial warrant, the search and seizure were held reasonable due to the circumstances surrounding the cases. These exceptions are:

1. *Warrantless search incidental to a lawful arrest* recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence;

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SECTION 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

<sup>39</sup> *Ferrer v. People*, 518 Phil. 196, 220 (2006) [Per J. Austria-Martinez, First Division] citing *Aradillos v. Court of Appeals*, 464 Phil. 650 (2004) [Per J. Austria-Martinez, Second Division].

<sup>40</sup> CONST., art. III, sec. 3(2) provides:

SECTION 3. . . .

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

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.<sup>41</sup> (Emphasis supplied, citations omitted)

Of these exceptions, the *search incidental to a lawful arrest* and the *stop and frisk search* are often confused with each other. This Court explained in *Malacat v. Court of Appeals*<sup>42</sup> that these two (2) types of warrantless searches “differ in terms of the requisite quantum of proof before they may be validly effected and in their allowable scope.”<sup>43</sup>

A search incidental to a lawful arrest requires the existence of a lawful arrest as a condition precedent. It is imperative that a lawful arrest happens first before the search—never the reverse.<sup>44</sup>

As a general rule, a lawful arrest is carried out only upon the issuance of a judicial warrant. However, Rule 113, Section 5 of the Revised Rules on Criminal Procedure provides the instances when warrantless arrests are considered lawful:

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

<sup>41</sup> *People v. Aruta*, 351 Phil. 868, 879–880 (1998) [Per J. Romero, Third Division].

<sup>42</sup> 347 Phil. 462 (1997) [Per J. Davide, Jr., En Banc].

<sup>43</sup> Id. at 479–480.

<sup>44</sup> *People v. Manago*, 793 Phil. 505, 515 (2016) [Per J. Perlas-Bernabe, First Division] citing *Comerciante v. People*, 764 Phil. 627 (2015) [Per J. Perlas-Bernabe, First Division].

(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 is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

On the other hand, a stop and frisk search is done to deter the commission of a crime. This kind of search is used “[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 a search warrant[.]”<sup>45</sup> This Court laid down the test to a reasonable stop and frisk search in *Malacat*:

[W]hile probable cause is not required to conduct a “stop and frisk,” it nevertheless holds that mere suspicion or a hunch will not validate a “stop and frisk.” *A genuine reason must exist, in light of the police officer's experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him.*<sup>46</sup> (Emphasis supplied, citations omitted)

However, in *People v. Cogaed*,<sup>47</sup> this Court emphasized that while a stop and frisk search was necessary for law enforcement and to deter crime, it should always be balanced with a citizen's right 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.<sup>48</sup> (Citation omitted)

For a valid stop and frisk search, this Court instructed in *Manibog v. People*<sup>49</sup> that the arresting officer should have personally observed at least two (2) or more suspicious circumstances. A reasonable inference must be

<sup>45</sup> *Manalili v. Court of Appeals*, 345 Phil. 632, 636 (1997) [Per J. Panganiban, Third Division].

<sup>46</sup> *Malacat v. Court of Appeals*, 347 Phil. 462, 481 (1997) [Per J. Davide, Jr., En Banc] citing *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed.2d 889 (1968).

<sup>47</sup> 740 Phil. 212 (2014) [Per J. Leonen, Second Division].

<sup>48</sup> *Id.* at 229–230.

<sup>49</sup> G.R. No. 211214, March 20, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65164>> [Per J. Leonen, Third Division].

deduced from the totality of circumstances to justify further investigation by the arresting officer.<sup>50</sup>

Here, however, the prosecution failed to prove the legality of the warrantless arrest. Its bare assertion that the police officers apprehended petitioner after having been caught *in flagrante* of illegal possession of a hand grenade<sup>51</sup> is insufficient to cloth the police officers with the authority to restrain petitioner's liberty.

PO3 Mazo's testimony demonstrates his lack of personal knowledge of suspicious circumstances that would have created the suspicion of a crime being committed or about to be committed—the necessary impetus for him to “stop and frisk” petitioner:

Q: Was there an unusual incident that happened while you were at the Petron gasoline station?

A: Yes ma'am.

Q: What was that?

A: *Noong kasalukuyang nagpapakarga po ako ng gasoline, nakita ko na mayroong isang tao ng nagpapakarga rin, malapit sa kinaroroonan ko, na nakita ko na nagbunot ng kanyang wallet at may nakita akong isang bagay na metal, so agad akong kinutuban. . . .*

....

Q: You said that you feel something at that time?

A: Yes ma'am.

Q: Why, mr. witness (sic)?

A: As police officer ma'am...(discontinued)

COURT:

Q: Mr. witness, you said that you saw a metal?

A: Yes ma'am.

Q: And then you said that you had a hunch. Hunch of what?

A: *Parang masama ma'am.*<sup>52</sup> (Emphasis in the original, citations omitted)

Without any other reason, PO3 Mazo had a sense of foreboding due solely to the sight of a metal object on petitioner's waist.<sup>53</sup> This lone circumstance is clearly inadequate to lead him to a genuine reason to justify the stop and frisk search. Such insufficiency is even bolstered by the fact

<sup>50</sup> Id.

<sup>51</sup> *Rollo*, p. 43.

<sup>52</sup> Id. at 22–23.

<sup>53</sup> Id. at 22.



that PO3 Mazo had to tail petitioner and pat his right waist before he could confirm his suspicion.<sup>54</sup>

Suspicion alone is not sufficient to defeat petitioner's constitutional right to privacy. PO3 Mazo's mere hunch, in the absence of any other circumstance of which he had personal knowledge, does not satisfy the requirements for a valid stop and frisk search.

*Additionally, it has not escaped this Court's attention that the prosecution failed to prove the existence of the hand grenade, as no evidence was proffered on its chain of custody. Petitioner was not even charged with illegal possession of grenade. Senior Inspector Payumo, PO3 Mazo's back-up during the arrest and seizure, was likewise not presented as a witness to corroborate PO3 Mazo's testimony.*

Without proffering other competent evidence aside from PO3 Mazo's testimony, the prosecution failed to prove that there was a confluence of suspicious circumstances that rightly led PO3 Mazo to suspect that petitioner was actually committing a crime at the time he was stopped and frisked. Thus, the warrantless search is rendered illegal and, concomitantly, the seized sachets of illegal drugs are inadmissible. Their inadmissibility as evidence precludes conviction and constrains this Court to acquit petitioner.

There is, consequently, no longer any need to pass upon the other issues raised by petitioner.

**WHEREFORE**, the June 16, 2016 Decision and November 4, 2016 Resolution of the Court of Appeals in CA-G.R. CR No. 37590 are **REVERSED** and **SET ASIDE**. Petitioner Gregorio Telen y Ichon is **ACQUITTED** and is ordered immediately **RELEASED** from confinement unless he is being held for some other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision. For their information, copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency.


The Regional Trial Court is directed to turn the seized sachets of

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<sup>54</sup> Id. at 74.


methamphetamine hydrochloride over to the Dangerous Drugs Board for destruction in accordance with law.

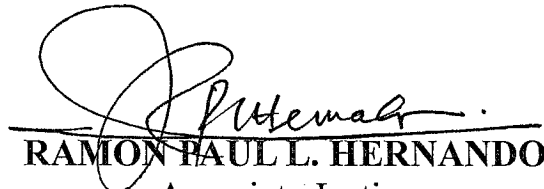
**SO ORDERED.**

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

WE CONCUR:

  
**DIOSDADO M. PERALTA**  
Associate Justice  
Chairperson

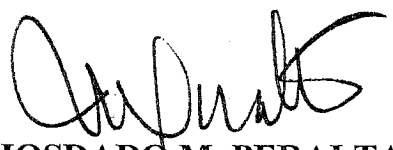
  
**ANDRES B. REYES, JR.**  
Associate Justice

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

On official leave  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

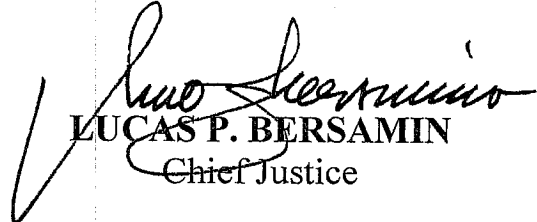
**ATTESTATION**

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.

  
**DIOSDADO M. PERALTA**  
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.

  
**LUCAS P. BERSAMIN**  
Chief Justice

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*Misael DC Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
Deputy Division Clerk of Court  
Third Division

JAN 14 2020