Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

THE PEOPLE OF THE PHILIPPINES, Respondent-Appellee,	**G.R. No. 200334** Present:
-versus-	VELASCO, JR., *J., Chairperson,* PERALTA, VILLARAMA, JR.,* MENDOZA, and LEONEN, *JJ.*
VICTOR COGAED y ROMANA, Accused-Appellant.	**Promulgated:** July 30, 2014

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DECISION

LEONEN, *J.*:

The mantle of protection upon one's person and one's effects through Article III, Section 2 of the Constitution is essential to allow citizens to evolve their autonomy and, hence, to avail themselves of their right to privacy. The alleged compromise with the battle against dangerous drugs is more apparent than real. Often, the compromise is there because law enforcers neglect to perform what could have been done to uphold the Constitution as they pursue those who traffic this scourge of society.

Squarely raised in this appeal[1] is the admissibility of the evidence seized as a result of a warrantless arrest. The police officers identified the alleged perpetrator through facts that were not based on their personal

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* Designated as Acting Member in view of the vacancy in the Third Division per Special Order No. 1691 dated May 22, 2014.

1 CA *rollo*, pp. 39–58.

knowledge. The information as to the accused's whereabouts was sent through a text message. The accused who never acted suspicious was identified by a driver. The bag that allegedly contained the contraband was required to be opened under intimidating circumstances and without the accused having been fully apprised of his rights.

This was not a reasonable search within the meaning of the Constitution. There was no reasonable suspicion that would allow a legitimate "stop and frisk" action. The alleged waiver of rights by the accused was not done intelligently, knowingly, and without improper pressure or coercion.

The evidence, therefore, used against the accused should be excluded consistent with Article III, Section 3 (2) of the Constitution. There being no possible admissible evidence, the accused should be acquitted.

I

According to the prosecution, at about 6:00 a.m. of November 25, 2005, Police Senior Inspector Sofronio Bayan (PSI Bayan) of the San Gabriel Police Station in San Gabriel, La Union, "received a text message from an unidentified civilian informer"[2] that one Marvin Buya (also known as Marvin Bugat) "[would] be transporting marijuana"[3] from Barangay Lun-Oy, San Gabriel, La Union to the Poblacion of San Gabriel, La Union.[4]

PSI Bayan organized checkpoints in order "to intercept the suspect."[5] PSI Bayan ordered SPO1 Jaime Taracatac, Jr. (SPO1 Taracatac), a member of the San Gabriel Police, to set up a checkpoint in the waiting area of passengers from San Gabriel bound for San Fernando City.[6]

A passenger jeepney from Barangay Lun-Oy arrived at SPO1 Taracatac's checkpoint.[7] The jeepney driver disembarked and signalled to SPO1 Taracatac indicating the two male passengers who were carrying marijuana.[8] SPO1 Taracatac approached the two male passengers who were later identified as Victor Romana Cogaed and Santiago Sacpa Dayao.[9] Cogaed was carrying a blue bag and a sack while Dayao was holding a yellow bag.[10]

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2 Id. at 60.
3 Id.
4 *Rollo*, p. 5; CA *rollo*, p. 10.
5 Id.
6 Id.
7 Id.
8 Id.
9 Id.
10 Id.

SPO1 Taracatac asked Cogaed and Dayao about the contents of their bags.[11] Cogaed and Dayao told SPO1 Taracatac that they did not know since they were transporting the bags as a favor for their *barriomate* named Marvin.[12] After this exchange, Cogaed opened the blue bag, revealing three bricks of what looked like marijuana.[13] Cogaed then muttered, "*nagloko daytoy nga Marvinen, kastoy met gayam ti nagyanna,*" which translates to "Marvin is a fool, this is what [is] contained in the bag."[14] "SPO1 Taracatac arrested [Cogaed] and . . . Dayao and brought them to the police station."[15] Cogaed and Dayao "were still carrying their respective bags"[16] inside the station.[17]

While at the police station, the Chief of Police and Investigator PO3 Stanley Campit (PO3 Campit) requested Cogaed and Dayao to empty their bags.[18] Inside Cogaed's sack was "four (4) rolled pieces of suspected marijuana fruiting tops,"[19] and inside Dayao's yellow bag was a brick of suspected marijuana.[20]

PO3 Campit prepared the suspected marijuana for laboratory testing.[21] PSI Bayan personally delivered the suspected marijuana to the PNP Crime Laboratory.[22] Forensic Chemical Officer Police Inspector Valeriano Panem Laya II performed the tests and found that the objects obtained were indeed marijuana.[23] The marijuana collected from Cogaed's blue bag had a total weight of 8,091.5 grams.[24] The marijuana from Cogaed's sack weighed 4,246.1 grams.[25] The marijuana collected from Dayao's bag weighed 5,092 grams.[26] A total of 17,429.6 grams were collected from Cogaed's and Dayao's bags.[27]

According to Cogaed's testimony during trial, he was at Balbalayan, La Union, "waiting for a jeepney to take him"[28] to the Poblacion of San Gabriel so he could buy pesticide.[29] He boarded a jeepney and recognized Dayao, his younger brother's friend.[30] Upon arrival at the Poblacion of San

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11 *Rollo*, p. 5; CA *rollo*, p. 13.
12 *Rollo*, pp. 5–6, 13.
13 Id. at 6, 13.
14 Id. at 6.
15 Id.
16 Id.
17 Id.
18 Id.
19 Id.
20 Id.
21 Id.
22 Id.
23 *Rollo*, p. 7; CA *rollo*, p. 12.
24 *Rollo*, p. 7.
25 Id.
26 Id.
27 Id.
28 Id.
29 Id.
30 Id.

Gabriel, Dayao and Cogaed alighted from the jeepney.[31] Dayao allegedly "asked for [Cogaed's] help in carrying his things, which included a travelling bag and a sack."[32] Cogaed agreed because they were both going to the market.[33] This was when SPO1 Taracatac approached them, and when SPO1 Taracatac asked Cogaed what was inside the bags, Cogaed replied that he did not know.[34] SPO1 Taracatac then talked to Dayao, however, Cogaed was not privy to their conversation.[35] Thereafter, SPO1 Taracatac arrested Dayao and Cogaed and brought them to the police station.[36] These facts were corroborated by an eyewitness, Teodoro Nalpu-ot, who was standing across the parking lot where Cogaed was apprehended.[37]

At the police station, Cogaed said that "SPO1 Taracatac hit [him] on the head."[38] The bags were also opened, but Cogaed never knew what was inside.[39]

It was only later when Cogaed learned that it was marijuana when he and Dayao were charged with illegal possession of dangerous drugs under Republic Act No. 9165.[40] The information against them states:

> That on or about the 25th day of November, 2005, in the Municipality of San Gabriel, Province of La Union, and within the jurisdiction of this Honorable Court, the above-named accused VICTOR COGAED Y ROMANA and SANTIAGO DAYAO Y SACPA (who acted with discernment) and JOHN DOE, conspiring, confederating and mutually helping one another, did then there wilfully, unlawfully, feloniously and knowingly, without being authorized by law, have in their control, custody and possession dried marijuana, a dangerous drug, with a total weight of seventeen thousand, four hundred twenty-nine and six-tenths (17, 429.6) grams.
>
> CONTRARY TO Section 11 (Possession of Dangerous Drugs), Article II, of Republic Act No. 9165 (otherwise known as the "Comprehensive Dangerous Drugs Act of 2002").[41]

The case was raffled to Regional Trial Court, Branch 28 of San Fernando City, La Union.[42] Cogaed and Dayao pleaded not guilty.[43] The case was dismissed against Dayao because he was only 14 years old at that time and was exempt from criminal liability under the Juvenile Justice and

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31 Id.
32 Id. at 7–8.
33 Id. at 8.
34 Id. at 5.
35 Id. at 8.
36 Id.
37 Id.
38 Id.
39 Id.
40 *Rollo*, pp. 8 and 3–4.
41 Id. at 3–4.
42 Id. at 2–3.
43 Id. at 4.

Welfare Act of 2006 or Republic Act No. 9344.[44] Trial against Cogaed ensued. In a decision[45] dated May 21, 2008, the Regional Trial Court found Cogaed guilty. The dispositive portion of the decision states:

> WHEREFORE, the Court finds accused Victor Cogaed y Romana GUILTY beyond reasonable doubt for Violation of Section 11, Article II of Republic Act No. 9165 (otherwise known as the "Comprehensive Dangerous Drugs Act of 2002") and sentences him to suffer life imprisonment, and to pay a fine of one million pesos (Php 1,000,000.00).[46]

The trial court judge initially found Cogaed's arrest illegal considering that "Cogaed at that time was not, at the moment of his arrest, committing a crime nor was shown that he was about to do so or that had just done so. He just alighted from the passenger jeepney and there was no outward indication that called for his arrest."[47] Since the arrest was illegal, the warrantless search should also be considered illegal.[48] *However, the trial court stated that notwithstanding the illegality of the arrest, Cogaed "waived his right to object to such irregularity"* [49] *when "he did not protest when SPO1 Taracatac, after identifying himself, asked him to open his bag.*"[50]

Cogaed appealed[51] the trial court's decision. However, the Court of Appeals denied his appeal and affirmed the trial court's decision.[52] The Court of Appeals found that Cogaed waived his right against warrantless searches when "[w]ithout any prompting from SPO1 Taracatac, [he] voluntarily opened his bag."[53] Hence, this appeal was filed.

The following errors were assigned by Cogaed in his appellant's brief:

> I
>
> THE TRIAL COURT GRAVELY ERRED IN ADMITTING THE SEIZED DANGEROUS DRUGS AS EVIDENCE AGAINST THE ACCUSED-APPELLANT DESPITE BEING THE RESULT OF AN UNLAWFUL WARRANTLESS SEARCH AND SEIZURE.
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> II

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44 Id.
45 CA *rollo*, pp. 9–15.
46 Id. at 15.
47 Id. at 14.
48 Id.
49 Id.
50 Id.
51 Id. at 39–58.
52 *Rollo*, pp. 2–22. Ninth Division, decision penned by Associate Justice Ramon R. Garcia, with Associate Justices Rosmari D. Carandang and Samuel H. Gaerlan concurring.
53 Id. at 12.

> THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE ARRESTING OFFICER'S NON-COMPLIANCE WITH THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DANGEROUS DRUGS UNDER REPUBLIC ACT NO. 9165.
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> III
>
> THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE ARRESTING OFFICER'S FAILURE TO PRESERVE THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED DANGEROUS DRUGS.[54]

For our consideration are the following issues: (1) whether there was a valid search and seizure of marijuana as against the appellant; (2) whether the evidence obtained through the search should be admitted; and (3) whether there was enough evidence to sustain the conviction of the accused.

In view of the disposition of this case, we deem that a discussion with respect to the requirements on the chain of custody of dangerous drugs unnecessary.[55]

We find for the accused.

II

The right to privacy is a fundamental right enshrined by implication in our Constitution. It has many dimensions. One of its dimensions is its protection through the prohibition of unreasonable searches and seizures in Article III, Section 2 of the Constitution:

> 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.

This provision requires that the court examine with care and diligence whether searches and seizures are "reasonable." As a general rule, searches conducted with a warrant that meets all the requirements of this provision

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54 CA *rollo*, pp. 41–42.

55 Rep. Act No. 10640 (2014) amending sec. 21 of Rep. Act No. 9165.

are reasonable. This warrant requires the existence of probable cause that can only be determined by a judge.[56] The existence of probable cause must be established by the judge after asking searching questions and answers.[57] Probable cause at this stage can only exist if there is an offense alleged to be committed. Also, the warrant frames the searches done by the law enforcers. There must be a particular description of the place and the things to be searched.[58]

However, there are instances when searches are reasonable even when warrantless.[59] In the Rules of Court, searches incidental to lawful arrests are allowed even without a separate warrant.[60] This court has taken into account the "uniqueness of circumstances involved including the purpose of the search or 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."[61] The known jurisprudential instances of reasonable warrantless searches and seizures are:

> 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;
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> 4. *Consented* warrantless search;
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> 5. Customs search;
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> 6. *Stop and frisk*; and
>
> 7. *Exigent and emergency circumstances.*[62] (Citations omitted)

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56 CONST., art. III, sec. 2.

57 CONST., art. III, sec. 2.

58 CONST., art. III, sec. 2.

59 *See Valmonte v. De Villa*, 258 Phil. 838, 843 (1989) [Per J. Padilla, En Banc]: "*Not all searches and seizures are prohibited. Those which are reasonable are not forbidden."*

60 RULES OF COURT, Rule 126, sec. 13. *Search incident to lawful arrest.* – A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without search warrant.

61 *Esquillo v. People*, G.R. No. 182010, August 25, 2010, 629 SCRA 370, 383 [Per J. Carpio- Morales, Third Division], *citing People v. Nuevas*, 545 Phil. 356, 370–371 (2007) [Per J. Tinga, Second Division].

62 *People v. Aruta*, 351 Phil. 868, 879–880 (1998) [Per J. Romero, Third Division].

III

One of these jurisprudential exceptions to search warrants is "stop and frisk". "Stop and frisk" searches are often confused with searches incidental to lawful arrests under the Rules of Court.[63] Searches incidental to a lawful arrest require that a crime be committed *in flagrante delicto*, and the search conducted within the vicinity and within reach by the person arrested is done to ensure that there are no weapons, as well as to preserve the evidence.[64]

On the other hand, "stop and frisk" searches are conducted to prevent the occurrence of a crime. For instance, the search in *Posadas v. Court of Appeals*[65] was similar "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."[66] This court stated that the "stop and frisk" search should be used "[w]hen dealing with a rapidly unfolding and potentially criminal situation in the city streets where unarguably there is no time to secure . . . a search warrant."[67]

The search involved in this case was initially a "stop and frisk" search, but it did not comply with all the requirements of reasonability required by the Constitution.

"Stop and frisk" searches (sometimes referred to as *Terry* searches[68]) 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.

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63 *Esquillo v. People*, G.R. No. 182010, August 25, 2010, 629 SCRA 370, 393–394 [Per J. Carpio-Morales, Third Division] (Bersamin dissenting), *citing Malacat v. Court of Appeals*, 347 Phil. 462, 479–480 (1997) [Per J. Davide, Jr., En Banc].

64 *See also Nolasco v. Judge Paño*, 223 Phil. 363, 377–378 (1985) [Per J. Melencio-Herrera, En Banc].

65 G.R. No. 89139, August 2, 1990, 188 SCRA 288 [Per J. Gancayco, First Division].

66 Id. at 294, *citing* the Solicitor General's arguments.

67 *Manalili v. Court of Appeals*, 345 Phil. 632, 636 (1997) [Per J. Panganiban, Third Division].

68 The term was derived from the American case of *Terry v. Ohio*, 392 U.S. 1 (1968). This case served as basis for allowing "stop and frisk" searches in this jurisdiction.

In *Manalili v. Court of Appeals*,[69] the police officers were initially informed about a place frequented by people abusing drugs.[70] When they arrived, one of the police officers saw a man with "reddish eyes and [who was] walking in a swaying manner."[71] The suspicion increased when the man avoided the police officers.[72] These observations led the police officers to conclude that the man was high on drugs.[73] These were sufficient facts observed by the police officers "to stop [the] petitioner [and] investigate."[74]

In *People v. Solayao*,[75] police officers noticed a man who appeared drunk.[76] This man was also "wearing a camouflage uniform or a jungle suit."[77] Upon seeing the police, the man fled.[78] His flight added to the suspicion.[79] After stopping him, the police officers found an unlicensed "homemade firearm"[80] in his possession.[81] This court ruled that "[u]nder the circumstances, the government agents could not possibly have procured a search warrant first."[82] This was also a valid search.

In these cases, 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. A drunk civilian in guerrilla wear is probably hiding something as well.

The case of Cogaed was different. 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 signalled to the police that Cogaed was "suspicious."

This is supported by the testimony of SPO1 Taracatac himself:

COURT:

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69 345 Phil. 632 (1997) [Per J. Panganiban, Third Division].
70 Id. at 638.
71 Id.
72 Id.
73 Id. at 647.
74 Id.
75 330 Phil. 811 (1996) [Per J. Romero, Second Division].
76 Id. at 815.
77 Id.
78 Id.
79 Id. at 818–819.
80 Id. at 815.
81 Id.
82 Id. at 819.

> Q So you don't know what was the content while it was still being carried by him in the passenger jeep?
>
> WITNESS:
> A Not yet, Your Honor.[83]

SPO1 Taracatac likewise stated:

> COURT:
> Q If the driver did not make a gesture pointing to the accused, did you have reason to believe that the accused were carrying marijuana?
>
> WITNESS:
> A No, Your Honor.[84]

The jeepney driver had to point to Cogaed. He would not have been identified by the police officers otherwise.

It is the police officer who should observe facts that would lead to a reasonable degree of suspicion of a person. The police officer should not adopt the suspicion initiated by another person. This is necessary to justify that the person suspected be stopped and reasonably searched.[85] Anything less than this would be an infringement upon one's basic right to security of one's person and effects.

IV

Normally, "stop and frisk" searches do not give the law enforcer an opportunity to confer with a judge to determine probable cause. In *Posadas v. Court of Appeals*,[86] one of the earliest cases adopting the "stop and frisk" doctrine in Philippine jurisprudence, this court *approximated* the suspicious circumstances as probable cause:

> The *probable cause* is that when the petitioner acted suspiciously and attempted to flee with the buri bag there was a probable cause that he was concealing something illegal in the bag and it was the right and duty of the police officers to inspect the same.[87] (Emphasis supplied)

For warrantless searches, probable cause was defined as "a ***reasonable ground of suspicion*** supported by circumstances sufficiently

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83 TSN, May 23, 2006, p. 6.
84 TSN, June 1, 2006, pp. 21–22.
85 *Malacat v. Court of Appeals*, 347 Phil. 462, 473–474 (1997) [Per J. Davide, Jr., En Banc].
86 G.R. No. 89139, August 2, 1990, 188 SCRA 288 [Per J. Gancayco, First Division].
87 Id. at 293.

strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he is charged."[88]

Malacat v. Court of Appeals[89] clarifies the requirement further. ***It does not have to be probable cause, but it cannot be mere suspicion.***[90] ***It has to be a "genuine reason"***[91] ***to serve the purposes of the "stop and frisk" exception***:[92]

> Other notable points of *Terry* are that while 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.* [93] (Emphasis supplied, footnotes omitted)

In his dissent for *Esquillo v. People*,[94] Justice Bersamin reminds us that police officers must not rely on a single suspicious circumstance.[95] There should be "presence of *more than one* seemingly innocent activity, which, taken together, warranted a reasonable inference of criminal activity."[96] The Constitution prohibits "unreasonable searches and seizures."[97] Certainly, reliance on only one suspicious circumstance or none at all will not result in a reasonable search.[98]

There was not a single suspicious circumstance in this case, and there was no approximation for the probable cause requirement for warrantless arrest. The person searched was not even the person mentioned by the informant. The informant gave the name of Marvin Buya, and the person searched was Victor Cogaed. Even if it was true that Cogaed responded by saying that he was transporting the bag to Marvin Buya, this still remained only as one circumstance. This should not have been enough reason to search Cogaed and his belongings without a valid search warrant.

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88 *People v. Aruta*, 351 Phil. 868, 880 (1998) [Per J. Romero, Third Division] (Emphasis supplied).
89 347 Phil. 462 (1997) [Per J. Davide, Jr., En Banc].
90 Id. at 481.
91 Id.
92 Id.
93 Id.
94 *Esquillo v. People*, G.R. No. 182010, August 25, 2010, 629 SCRA 370 [Per J. Carpio Morales, Third Division].
95 Id. *See* dissenting opinion of J. Bersamin, p. 397.
96 Id.
97 CONST., art. III, sec. 2.
98 *See* dissenting opinion of J. Bersamin in *Esquillo v. People*, G.R. No. 182010, August 25, 2010, 629 SCRA 370, 397 [Per J. Carpio Morales, Third Division].

Police officers cannot justify unbridled searches and be shielded by this exception, unless there is compliance with the "genuine reason" requirement and that the search serves the purpose of protecting the public. As stated in *Malacat:*

> [A] "stop-and-frisk" serves a two-fold interest: (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.[99] (Emphasis supplied)

The "stop and frisk" search was originally limited to *outer clothing* and for the purpose of detecting *dangerous weapons.*[100] As in *Manalili,*[101] jurisprudence also allows "stop and frisk" for cases involving dangerous drugs.

The circumstances of this case are analogous to *People v. Aruta*.[102] In that case, an informant told the police that a certain "Aling Rosa" would be bringing in drugs from Baguio City by bus.[103] At the bus terminal, the police officers prepared themselves.[104] The informant pointed at a woman crossing the street[105] and identified her as "Aling Rosa."[106] The police apprehended "Aling Rosa," and they alleged that she allowed them to look inside her bag.[107] The bag contained marijuana leaves.[108]

In *Aruta*, this court found that the search and seizure conducted was illegal.[109] There were no suspicious circumstances that preceded Aruta's

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

100 In J. Bersamin's dissent in *Esquillo v. People*, G.R. No. 182010, August 25, 2010, 629 SCRA 370, 396, he opined:

> [A] *Terry* protective search is strictly limited to what is necessary for the discovery of weapons that may be used to harm the officer of the law or others nearby. There must then be a genuine reason to believe that the accused is armed and presently dangerous. Being an exception to the rule requiring a search warrant, a *Terry* protective search is strictly construed; hence, it cannot go beyond what is necessary to determine if the suspect is armed. Anything beyond is no longer valid and the fruits of the search will be suppressed.

See also Terry v. Ohio, 392 U.S. 1 (1968).

101 345 Phil. 632 (1997) [Per J. Panganiban, Third Division].

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

103 Id. at 883.

104 Id.

105 Id. at 884–885.

106 Id. at 883.

107 Id.

108 Id.

109 Id. at 888.

arrest and the subsequent search and seizure.[110] It was only the informant that prompted the police to apprehend her.[111] The evidence obtained was not admissible because of the illegal search.[112] Consequently, Aruta was acquitted.[113]

Aruta is almost identical to this case, except that it was the jeepney driver, not the police's informant, who informed the police that Cogaed was "suspicious."

The facts in *Aruta* are also similar to the facts in *People v. Aminnudin*.[114] Here, the National Bureau of Investigation (NBI) acted upon a tip, naming Aminnudin as somebody possessing drugs.[115] The NBI waited for the vessel to arrive and accosted Aminnudin while he was disembarking from a boat.[116] Like in the case at bar, the NBI inspected Aminnudin's bag and found bundles of what turned out to be marijuana leaves.[117] The court declared that the search and seizure was illegal.[118] Aminnudin was acquitted.[119]

People v. Chua[120] also presents almost the same circumstances. In this case, the police had been receiving information that the accused was distributing drugs in "different karaoke bars in Angeles City."[121] One night, the police received information that this drug dealer would be dealing drugs at the Thunder Inn Hotel so they conducted a stakeout.[122] A car "arrived and parked"[123] at the hotel.[124] The informant told the police that the man parked at the hotel was dealing drugs.[125] The man alighted from his car.[126] He was carrying a juice box.[127] The police immediately apprehended him and discovered live ammunition and drugs in his person and in the juice box he was holding.[128]

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110 Id. at 885.
111 Id.
112 Id. at 894.
113 Id. at 895.
114 246 Phil. 424 (1988) [Per J. Cruz, First Division].
115 Id. at 427.
116 Id.
117 Id.
118 Id. at 434.
119 Id. at 435.
120 444 Phil. 757 (2003) [Per J. Ynares-Santiago, First Division].
121 Id. at 763.
122 Id.
123 Id.
124 Id.
125 Id.
126 Id.
127 Id.
128 Id. at 763–764.

Like in *Aruta*, this court did not find anything unusual or suspicious about Chua's situation when the police apprehended him and ruled that "[t]here was no valid 'stop-and-frisk'."[129]

VI

None of the other exceptions to warrantless searches exist to allow the evidence to be admissible. The facts of this case do not qualify as a search incidental to a lawful arrest.

Rule 126, Section 13 of the Rules of Court allows for searches incidental to a lawful arrest. For there to be a lawful arrest, there should be either a warrant of arrest or a lawful warrantless arrest as enumerated in Rule 113, Section 5 of the Rules of Court:

> 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.

The apprehension of Cogaed was not effected with a warrant of arrest. None of the instances enumerated in Rule 113, Section 5 of the Rules of Court were present when the arrest was made.

At the time of his apprehension, Cogaed has not committed, was not committing, or was about to commit a crime. As in *People v. Chua*, for a warrantless arrest of *in flagrante delicto* to be affected, "two elements must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of

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[129] Id. at 774.

the arresting officer."[130] Both elements were missing when Cogaed was arrested.[131] There were no overt acts within plain view of the police officers that suggested that Cogaed was in possession of drugs at that time.

Also, Cogaed was not an escapee prisoner that time; hence, he could not have qualified for the last allowable warrantless arrest.

VII

There can be no valid waiver of Cogaed's constitutional rights even if we assume that he did not object when the police asked him to open his bags. As this court previously stated:

> Appellant's silence should not be lightly taken as consent to such search. The implied acquiescence to the search, if there was any, could not have been more than mere passive conformity given under intimidating or coercive circumstances and is thus considered no consent at all within the purview of the constitutional guarantee.[132] (Citations omitted)

Cogaed's silence or lack of aggressive objection was a natural reaction to a coercive environment brought about by the police officer's excessive intrusion into his private space. The prosecution and the police carry the burden of showing that the waiver of a constitutional right is one which is knowing, intelligent, and free from any coercion. In all cases, such waivers are not to be presumed.

The coercive atmosphere created by the presence of the police officer can be discerned again from the testimony of SPO1 Taracatac during cross-examination:

ATTY. BINWAG:

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130 Id. at 770.

131 *See also People v. Molina*, 404 Phil. 797, 812 (2001) [Per J. Ynares-Santiago, En Banc] and *People v. Aminnudin*, 246 Phil. 424, 433–434 (1988) [Per J. Cruz, First Division].

However, the application of these rules to crimes of illegal possession has been subject of debate. In *People v. Maspil, Jr.* (G.R. No. 85177, August 20, 1990, 188 SCRA 751 [Per J. Gutierrez, Jr., Third Division]), we ruled that the accused were *in flagrante delicto* when the police searched their cargo at a checkpoint, and the accused were found to be transporting prohibited drugs. {761-762} The court delineated this from *Aminnudin* because in *Aminnudin*, the police had an opportunity to secure a warrant. {433} *Maspil* also relied on the doctrine in *People v. Tangliben* (263 Phil. 106 (1990) [Per J. Gutierrez, Jr., Third Division]) wherein the search was considered incidental to an *in flagrante delicto* arrest because of the "urgency" of the situation. {115}

Despite these doctrinal deviations, it is better if we follow the two-tiered test to determine if an individual is *in flagrante delicto*, which calls for his or her warrantless arrests. The general rule should be that there must be an overt act and that such act is in plain view of the law enforcer.

132 *People v. Encinada*, 345 Phil. 301, 322 (1997) [Per J. Panganiban, Third Division].

> Q Now, Mr. witness, you claimed that you only asked them what are the contents of their bags, is it not?
>
> WITNESS:
> A Yes, ma'am.
>
> Q And then without hesitation and voluntarily they just opened their bags, is it not?
>
> A Yes, ma'am.
>
> Q So that there was not any order from you for them to open the bags?
>
> A None, ma'am.
>
> Q Now, Mr. witness when you went near them and asked them what were the contents of the bag, you have not seen any signs of hesitation or fright from them, is it not?
>
> A *It seems they were frightened, ma'am.*
>
> Q But you actually [claimed] that there was not any hesitation from them in opening the bags, is it not?
>
> A Yes, ma'am but when I went near them it seems that they were surprised.[133] (Emphasis supplied)

The state of mind of Cogaed was further clarified with SPO1 Taracatac's responses to Judge Florendo's questions:

> COURT:
>
> . . . .
>
> Q Did you have eye contact with Cogaed?
>
> A When I [sic] was alighting from the jeepney, Your Honor I observed that he was somewhat frightened. He was a little apprehensive and when he was already stepping down and he put down the bag I asked him, "what's that," and he answered, "I don't know because Marvin only asked me to carry."[134]

For a valid waiver by the accused of his or her constitutional right, it is not sufficient that the police officer introduce himself or herself, or be known as a police officer. The police officer must also inform the person to be searched that any inaction on his or her part will amount to a waiver of any of his or her objections that the circumstances do not amount to a reasonable search. The police officer must communicate this clearly and in a language known to the person who is about to waive his or her

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133 TSN, June 1, 2006, pp. 18–19.
134 Id. at 21.

constitutional rights. There must be an assurance given to the police officer that the accused fully understands his or her rights. The fundamental nature of a person's constitutional right to privacy requires no less.

VIII

The Constitution provides:

> Any evidence obtained in violation of [the right against unreasonable searches and seizures] shall be *inadmissible* for any purpose in any proceeding.[135]

Otherwise known as the exclusionary rule or the fruit of the poisonous tree doctrine, this constitutional provision originated from *Stonehill v. Diokno.*[136] This rule prohibits the issuance of general warrants that encourage law enforcers to go on fishing expeditions. Evidence obtained through unlawful seizures should be excluded as evidence because it is "the only practical means of enforcing the constitutional injunction against unreasonable searches and seizures."[137] It ensures that the fundamental rights to one's person, houses, papers, and effects are not lightly infringed upon and are upheld.

Considering that the prosecution and conviction of Cogaed were founded on the search of his bags, a pronouncement of the illegality of that search means that there is no evidence left to convict Cogaed.

Drugs and its illegal traffic are a scourge to our society. In the fight to eradicate this menace, law enforcers should be equipped with the resources to be able to perform their duties better. However, we cannot, in any way, compromise our society's fundamental values enshrined in our Constitution. Otherwise, we will be seen as slowly dismantling the very foundations of the society that we seek to protect.

WHEREFORE, the decisions of the Regional Trial Court, Branch 28, San Fernando City, La Union and of the Court of Appeals in CA-G.R. CR-HC No. 03394 are hereby REVERSED and SET ASIDE. For lack of evidence to establish his guilt beyond reasonable doubt, accused-appellant VICTOR COGAED Y ROMANA is hereby ACQUITTED and ordered RELEASED from confinement unless he is being held for some other legal grounds. No costs.

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135 CONSTI., art. III, sec. 3 (b).
136 126 Phil. 738 (1967) [Per C.J. Concepcion, En Banc].
137 Id. at 750.

SO ORDERED.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE CATRAL MENDOZA
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

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.

MARIA LOURDES P. A. SERENO
Chief Justice