

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. COURT OF FIRST INSTANCE OF RIZAL, BRANCH IX, QUEZON CITY, PRESIDED BY HON. ULPIANO SARMIENTO, JESSIE HOPE AND MONINA MEDINA, RESPONDENTS.

G.R. No. L-41686. November 17, 1980

Ponente: GUERRERO, J.

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GUERRERO, J.:

This original petition for certiorari seeks to nullify the Order dated August 20, 1975 issued by District Judge Ulpiano Sarmiento in Criminal Case No. Q-3781 which stalled the prosecution of respondents Sgt. Jessie C. Hope and Monina Medina for the alleged violation of Section 3601[1] of the Tariff and Customs Code. The order declared as inadmissible in evidence the allegedly smuggled articles obtained by apprehending agents in the course of a warrantless search and seizure. Dispositively, the order decreed:

"WHEREFORE, in accordance with Article IV, Sec. 4, paragraph 2 of the present Constitution, the boxes and the watches and bracelets contained therein seized from the car of the accused Sgt. Jessie C. Hope, are hereby declared inadmissible in evidence in this case; likewise, the pictures taken of said items attempted to be presented as evidence in the instant case is hereby declared inadmissible as evidence against the accused.

"SO ORDERED."

The records disclose that one week before February 9, 1974, the Regional Anti-Smuggling Action Center (RASAC) was informed by an undisclosed Informer that a shipment of highly dutiable goods would be transported to Manila from Angeles City on a blue Dodge car. Spurred by such lead, RASAC Agents Arthur Manuel and Macario Sabado, on the aforesaid date and upon order of the Chief of Intelligence and Operations Branch, RASAC-MBA, Col. Antonio Abad, Jr., stationed themselves in the vicinity of the toll gate of the North Diversion Road at Balintawak, Quezon City.

At about 6:45 A.M. of the same day, a light blue Dodge car with Plate No. 21-87-73, driven by Sgt. Jessie Hope who was accompanied by Monina Medina approached the exit gate and after giving the toll receipt sped away towards Manila. The RASAC agents gave a chase and overtook Sgt. Hope's car. Agent Sabado blew his whistle and signaled Sgt. Hope to stop but the latter instead of heeding, made a U-turn back to the North Diversion Road, but he could not go through because of the buses in front of his car. At this point, the agents succeeded in blocking Sgt. Hope's car and the latter stopped. Manuel and Sabado who were in civilian clothes showed their identification cards to respondents and introduced themselves as RASAC agents.

The Agents saw four (4) boxes on the back seat of the Dodge and upon inquiry as to what those boxes were, Sgt. Hope answered "I do not know." Further, respondents were asked where they were bringing the boxes, to which respondent Medina replied that they were bringing them (boxes) to the Tropical Hut at Epifanio de los Santos. Agent Sabado boarded the Dodge car with respondents while Agent Manuel took their own car and both cars drove towards Tropical Hut making a brief stop at the Bonanza where Agent Manuel called up Col. Abad by

telephone.

Arriving at the Tropical Hut, the party, together with Col. Abad who had joined them waited for the man who according to Monina Medina was supposed to receive the boxes. As the man did not appear, Col. Abad "called off the mission" and brought respondents and their car to Camp Aguinaldo arriving there at about 9:00 A.M. (Respondents' Memorandum, records, pp. 180-183).

An inspection of Sgt. Hope's car at Camp Aguinaldo yielded eleven (11) sealed boxes, four (4) on the rear seat and seven (7) more in the baggage compartment which was opened on orders of Col. Abad. On the same order of the intelligence officer, the boxes were opened before the presence of respondents Hope and Medina, representatives of the Bureau of Internal Revenue, Bureau of Customs, P.C., COSAC and photographers of the Department of National Defense. The contents of the boxes revealed some "4,441 more or less wrist watches of assorted brands; 1,075 more or less watch bracelets of assorted brands" (based on a later inventory), supposedly untaxed.

As consequence thereof, ASAC Chairman General Pelagio Cruz requested the Bureau of Customs to issue a Warrant of Seizure and Detention against the articles including the Dodge car. The Collector of Customs did issue the same on February 12, 1974. It was admitted, however, that when the apprehending agents arrested respondents and brought them together with the seized articles to the ASAC Office in Camp Aguinaldo, the former were not armed with a warrant of arrest and seizure.

In conjunction with the Warrant of Seizure and Detention issued by the Collector of Customs, seizure proceedings were instituted and docketed as Seizure Identification No. 14281 against the wrist watches and watch bracelets pursuant to Section 2530 (m)-1 of the Tariff and Customs Code, and Seizure Identification No. 14281-A against the Dodge car pursuant to Section 2530(k) of the same Code.[2]

During the hearing of the aforesaid cases, respondents disclaimed ownership of the seized articles. Ownership was instead claimed by one Antonio del Rosario who intervened in the proceedings. The claimant-intervenor testified that he bought the watches and bracelets from Buenafe Trading as evidenced by a sales invoice certified to be authentic by the BIR Revenue Regional Office No. 6 of Quezon City, which transaction was entered in the book of accounts of aforesaid claimant; that the same articles were brought to a buyer in Angeles City, but when the sale failed to materialize, claimant contracted respondent Monina Medina to transport back the boxes to Manila for a consideration of P1,000.00 without disclosing the contents thereof which claimant simply represented as PX goods; that when he bought the watches from Buenafe, he presumed that the corresponding duties have already been paid, only to be surprised later on when he was informed that the same were seized for non-payment of taxes.

On the other hand, respondent Hope testified to the effect that at the time of apprehension, he had no knowledge of the contents of the boxes, and granting that he had such knowledge, he never knew that these are untaxed commodities; that he consented to transport said boxes from Angeles City to Manila in his car upon request of his girl friend Monina Medina as a personal favor; that he was not present when the boxes were loaded in his car nor was he ever told of their contents on the way. On the part of respondent Monina Medina, she testified that what she did was only in compliance with the agreement with Mr. Del Rosario to transport the boxes and deliver them to a certain Mr. Peter at the Tropical Hut who will in turn give her the contracted price; that Mr. Del Rosario did not reveal the contents of the boxes which she came to know of only when the boxes were opened at Camp Aguinaldo.

As there was not enough evidence to controvert the testimonies of respondents and the narration of claimant Antonio del Rosario, the Collector of Customs issued his decision in the seizure cases on April 1, 1975 declaring

that the seized articles including the car are not subject of forfeiture. The dispositive portion of this decision reads:

"WHEREFORE, by virtue of Section 2312 of the Tariff and Customs Code, it is hereby ordered and decreed that the subject motor vehicle, one (1) Dodge, Model 1965, Motor No. 33859, Serial No. W357348361, File No. 2B-1884, with Plate No. EH 21-87, '73 covered by Seizure Identification No. 14281-A be, as it is hereby declared released to its registered owner, Jessie C. Hope, upon proper identification. Relative to Seizure Identification No. 14281, it is further ordered and decreed that the subject matter thereof to wit: 4,606 pcs. of assorted brands of wrist watches, 1,399 pieces of assorted brands of wrist bracelets and 100 pcs. of tools be, as they are hereby likewise declared released to the rightful owner thereof, Antonio del Rosario, upon payment of the levitable duties, taxes and other charges due thereon plus a fine equivalent to 100% of the duties and taxes thereof. Furthermore, should claimant-intervenor fail to pay the assessable duties, taxes and other charges owing from the aforesaid articles within 30 days from the time this decision becomes final and unappealable, the same shall be deemed abandoned in favor of the government to be disposed of in the manner provided for by law."

Meanwhile, on March 14, 1974, after the requisite preliminary investigation, the City Fiscal of Quezon City, finding the existence of a prima facie case against respondents Hope and Medina, filed Criminal Case No. Q-3781 in the Court of First Instance of Rizal (Quezon City). Upon arraignment on April 23, 1974, respondents pleaded not guilty. Trial commenced on January 28, 1975 and while the prosecution through its first witness, Agent Macario Sabado, was adducing as evidence the pictures of the eleven (11) boxes containing the assorted watches and watch bracelets, counsel for respondents objected to the presentation of the pictures and the subject articles on the ground that they were seized without the benefit of warrant, and therefore inadmissible in evidence under Section 4(2), Article IV of the New Constitution. After the parties have argued their grounds in their respective memoranda, respondent trial court issued the questioned order of August 20, 1975 as cited earlier. The prosecution's motion for reconsideration was denied on September 30, 1975. Hence, this petition which was treated as a special civil action in Our Resolution of May 5, 1976.

The substantive issue as urged in the petition is whether or not the seizure of the merchandise in a moving vehicle by authorized agents commissioned to enforce customs laws without warrant of seizure breaches the constitutional immunity against unreasonable search and seizure and therefore, such merchandise are inadmissible in evidence. Corollary to the issue is, has the trial court gravely abused its discretion in finding the affirmative?

The State holds on the proposition that the rules governing search and seizure had been liberalized when a moving vehicle is the object of the search and the necessity of a prior warrant has been relaxed on the ground of practicality, considering that before a war-rant could be obtained, the place, things and persons to be searched must be described to the satisfaction of the issuing judge - a requirement which borders on impossibility in the case of smuggling effected by the use of a moving vehicle that can transport contraband from one place to another with impunity. Petitioner vigorously contends that contraband may be seized without necessity of a search warrant since the Constitution does not guaranty immunity to smugglers and that a warrantless seizure of contraband in a moving vehicle is justified by the traditional exception attached to the Fourth Amendment of the U.S. Constitution, and such exception Must be adopted in interpreting the relevant provision in the new Philippine Constitution.

As counter argument, respondents maintain that the decision of the Collector of Customs in the seizure cases which has now become final and unappealable has made no pronouncement that the subject articles are smuggled items. More so, the decision has entirely cleared respondents of any liability or responsibility in the alleged smuggling activity and as a consequence, the decision has the direct effect of deciding finally that the watches and bracelets are not smuggled and that respondents have not violated the customs and tariff laws as charged in the criminal complaint. Respondents argue further that the interception of accused Jessie Hope's car by RASAC

Agents while in the course of a normal trip without any order of the court and without having shown that the interception was necessary in the interest of national security, public safety or public health, is an impairment of the liberty of travel under section 5, Article IV of the 1973 Constitution. Finally, they claim that the agents had one week's time before the date of apprehension to secure the necessary warrant but since they failed to get this court order, the search of Hope's car and the spontaneous seizure of the boxes loaded therein and the contents thereof is a violation of the constitutional guarantee against "unreasonable searches and seizure of whatever nature and for any purpose" under section 3, Article IV of the fundamental law.

We find for petitioner. The opposing counsel's attempt to draw an identity between the seizure cases and the present criminal action to the ultimate end that the decision in the former should be made decisive of the issue of criminal liability must be overruled. It is not accurate to say that the Collector of Customs made no findings that the articles were smuggled. In fact, what the Collector stated was that the prosecution failed to present the quantum of evidence sufficient to warrant the forfeiture of the subject articles (Pages 128 and 130 of Annex "E", Records, p. 109). In a general sense, this does not necessarily exclude the possibility of smuggling. But if the aim of a confirmation that the goods are indeed smuggled, is to draw an inference to tie up respondents' criminal liability, the Collector is not duty bound, nor is there any need for him to arrive at such a conclusion. It is quite clear that seizure and forfeiture proceedings under the tariff and customs laws are not criminal in nature as they do not result in the conviction of the offender nor in the imposition of the penalty provided for in section 3601 of the Code.[3] As can be gleaned from Section 2533 of the code, seizure proceedings, such as those instituted in this case, are purely civil and administrative in character, the main purpose of which is to enforce the administrative fines or forfeiture incident to unlawful importation of goods or their deliberate possession. The penalty in seizure cases is distinct and separate from the criminal liability that might be imposed against the indicted importer or possessor and both kinds of penalties may be imposed.[4]

In the case at bar, the decision of the Collector of Customs, as in other seizure proceedings, concerns the res rather than the persona. The proceeding is a probe on contraband or illegally imported goods. These merchandise violated the revenue law of the country, and as such, have been prevented from being assimilated in lawful commerce until corresponding duties are paid thereon and the penalties imposed and satisfied either in the form of fines or of forfeiture in favor of the government who will dispose of them in accordance with law. The importer or possessor is treated differently. The fact that the administrative penalty befalls on him is an inconsequential incidence to criminal liability. By the same token, the probable guilt cannot be negated simply because he was not held administratively liable. The Collector's final declaration that the articles are not subject to forfeiture does not detract his findings that untaxed goods were transported in respondents' car and seized from their possession by agents of the law. Whether criminal liability lurks on the strength of the provision of the Tariff and Customs Code adduced in the information can only be determined in a separate criminal action. Respondents' exoneration in the administrative cases cannot deprive the State of its right to prosecute. But under our penal laws, criminal responsibility, if any, must be proven not by preponderance of evidence but by proof beyond reasonable doubt.

Considering now the critical area of the dispute, under the law, the authority of persons duly commissioned to enforce tariff and customs laws is quite exceptional when it pertains to the domain of searches and seizures of goods suspected to have been introduced in the country in violation of the customs laws. This Court had occasion to recognize this power granted to persons having police authority under Section 2203 of the Code, who in order to discharge their official duties more effectively --

"x x x may at anytime enter, pass through, or search any land or inclosure of any warehouse, store or other building not being a dwelling house." (Section 2208, italics supplied)

"x x x (to) go aboard any vessel or aircraft within the limits of any collection district, and to inspect, search and

examine said vessel or aircraft and any trunk package, box or envelope on board, and search any person on board the said vessel or aircraft and to this end to hail and stop such vessel or aircraft if under way, to use all necessary force to compel compliance; and if it shall appear that any breach or violation of the customs and tariff laws of the Philippines has been committed, whereby or in consequence of which such vessels or aircrafts, or the article, or any part thereof, on board of or imported by such vessel or aircraft, is liable to forfeiture to make seizure of the same or any part thereof.

"The power of search herein above given shall extend to the removal of any false bottom, partition, bulkhead or other obstruction, so far as may be necessary to enable the officer to discover whether any dutiable or forfeitable articles may be concealed." (Section 2210)

or,

"x x x (to) open and examine any box, trunk, envelope or other container wherever found when he has reasonable cause to suspect the presence therein of dutiable or prohibited article or articles introduced into the Philippines contrary to law, and likewise to stop, search and examine any vehicle, beast or person reasonably suspected of holding or conveying such article as aforesaid." (Section 2211, italics supplied)

As enunciated in the leading case of *Papa v. Mago*,^[5] in the exercise of the specific functions aforesaid, the Code does not mention the need of a search warrant unlike Section 2209 which explicitly provides that a "dwelling house may be entered and searched only upon warrant issued by a judge (or justice of the peace), upon sworn application showing probable cause and particularly describing the place to be searched and person or thing to be seized." Aware of this delineation, the Court in that case expressed the considered view that "except in the case of the search of a dwelling house, persons exercising police authority under the customs law may effect search and seizure without a search warrant in the enforcement of customs laws."

The rationale of the *Mago* ruling was nurtured by the traditional doctrine in *Carroll v. United States*^[6] wherein an imprimatur against constitutional infirmity was stamped in favor of a warrantless search and seizure of such nature as in the case at bar. On this stable foundation We refute the constitutional charge of respondents that the warrantless seizure violated Article IV, Section 3 of the 1973 Constitution, which finds origin in the Fourth Amendment of the American Constitution.^[7]

The *Carroll* doctrine arose from the indictment and conviction of George Carroll and partner for transporting in an automobile intoxicating liquor in violation of the National Prohibition Act. They assailed the conviction on the ground that the trial court admitted in evidence two of the sixty-eight bottles found by searching the automobile and eventual seizure of the same allegedly in violation of the 4th Amendment, and therefore that the use of the liquor as evidence was improper.^[8] To paraphrase the significant views of Mr. Chief Justice Taft, the legislative history of the Act clearly established the intent of Congress to make a distinction between the necessity for a search warrant in the search of private dwellings and that of automobiles and other road vehicles in the enforcement of the Act. This distinction is consistent with the 4th Amendment since the latter does not denounce all searches or seizures, but only such as are unreasonable. Searches and seizures without warrant are valid if made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction.^[9] Similarly, other statutes of the Union such as the Act of 1789, Act of August 4, 1790, and Act of March 3, 1815, among others, construed in the light of the 4th Amendment had recognized the distinctive feature of a warrantless search of a ship, motorboat, wagon, or automobile for contraband goods where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.^[10] In such a situation, what appears to be the measure of legality of the seizure was formulated in this sense: "that the seizing officer shall have reasonable or probable cause for believing that the automobile which he

stops and seizures has contraband liquor therein which is being illegally transported." Therein the guarantee of the 4th Amendment was fulfilled. Where seizure is impossible except without warrant, the seizing officer acts unlawfully and at his peril unless he can show the court probable cause.[11]

The counsel for the State is candid enough to admit that the Anti-Smuggling Action Center tries its best to follow-up the more promising tips and information from informers, but very often, the information proves false or the smugglers are forewarned.[12] It is quite true the ASAC received one such information several days or a week before the encounter; but the fact that its agents failed to obtain a warrant in spite of the time allowance is not a sign that they have been remiss in their duty. The records hardly reveal anything certain and confirmatory of the report during the said period except the general knowledge that some highly dutiable goods would be transported from Angeles City to Manila in a blue Dodge automobile. Not even the trial court has made any findings that ASAC has established with exactitude the place to be searched and the person or thing to be seized. Lacking this essential determination, the agents could not have possibly secured a valid warrant even if they had foreseen its compelling necessity. For one thing, the information could have been just another false alarm. Providentially, however, things turned out differently when in the morning of February 9, 1974, the undisclosed Informer himself went along with the agents to the rendezvous point where at the appointed time he positively identified an approaching car as the one described by him a week earlier to be the suspected carrier of untaxed merchandise. Clearly therefore, the agents acted not on the basis of a mere hearsay but on a confirmed information worthy of belief and probable cause enough for them to adopt measures to freeze the fleeting event.

We need not argue that the subjective phase of the police action taken by the ASAC Agents to effect the apprehension of the suspected violators can be anything less than the ensuing interception and stoppage of respondents' vehicle after a short chase. Neither can we sustain the argument that in doing so, the agents violated respondents' constitutional "liberty of travel". To recall again Mr. Chief Justice Taft: "(B)ut those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise." [13] What followed next in the scene was a simple inquiry as to the contents of the boxes seen inside the car. Respondents' baffled denial of knowledge thereof could not but only heighten the suspicion of a reasonable and inquisitive mind. Thus, the probable cause has not been any less mitigated.

The purpose of the constitutional guarantee against unreasonable searches and seizures is to prevent violations of private security in person and property and unlawful invasion of the sanctity of the home by officers of the law acting under legislative or judicial sanction and to give remedy against such usurpation when attempted.[14] The right to privacy is an essential condition to the dignity and happiness and to the peace and security of every individual, whether it be of home or of persons and correspondence.[15] The constitutional inviolability of this great fundamental right against unreasonable searches and seizures must be deemed absolute as nothing is more closer to a man's soul than the serenity of his privacy and the assurance of his personal security. Any interference allowable can only be for the best of causes and reasons. We draw from the context of the Constitution that an intended search or seizure attains a high degree of propriety only when a probable cause duly determined is branded on a warrant duly issued by a judge or other responsible person as may be authorized by law. Not invariably, however, the reasonableness or unreasonableness of the interference is not wholly dependent on the presence of a warrant or the lack of it. In the ordinary cases where warrant is indispensably necessary, the mechanics prescribed by the Constitution and reiterated in the Rules of Court must be followed and satisfied. But we need not argue that there are exceptions. Thus, in the extraordinary events where warrant is not necessary to effect a valid search or seizure, or when the latter cannot be performed except without warrant, what constitutes a reasonable or unreasonable search or seizure becomes purely a judicial question, determinable from the

uniqueness of the 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.[16]

The ultimate question then, if any, that should confront the actuaciones of the ASAC Agents in this case is whether the warrantless search and seizure conducted by them is lawful or not. We have already seen that what they did was a faithful performance of a duty authorized under the Tariff and Customs Code directing them as authorized agents to retrieve articles reasonably suspected of having been possessed, issued or procured in violation of the tariff laws for which the government has a direct interest. The official capacity of the agents has never been questioned by respondents. Neither did respondents raise an issue on the constitutionality of the law giving the agents the power to act as mandated. There is no question that the Agents have not exceeded their authority nor have they acted so licentiously to bear upon respondents moral embarrassment or substantial prejudice beyond what is necessary. The purpose of the search and seizure is more than clear to Us, hence, We rule out the suspicion that the intention is only to elicit evidence to be used against respondents.

We do not see strong justification for the trial court's failure to recognize the circumstances at bar as among the "rare cases" which it admittedly conceded to be exempted from the requirement of a warrant.[17] The lapse lies on the dismal gap in the trial court's developmental treatment of the law on arrest, search and seizure. It missed the vital distinction emphatically laid down in *Boyd v. United States*[18] which was cited in *Carroll* with "particular significance and applicability." Thus, We quote Mr. Justice Bradley in *Boyd*:

"x x x The search and seizure of stolen or forfeited goods, or goods liable to duties and concealed to avoid the payment thereof, are totally different things from a search for and seizure of a man's private books and papers for the purpose of obtaining information therein contained, or of using them as evidence against him. The two things differ in toto coelo. In the one case, the government is entitled to the possession of the property; in the other it is not. The seizure of stolen goods is authorized by the common law; and the seizure of goods forfeited for a breach of the revenue laws or concealed to avoid the duties payable on them, has been authorized by English statutes for at least two centuries past; and the like seizure have been authorized by our revenue acts from the commencement of the government. The first statute passed by Congress to regulate the collection of duties, the Act of July 31, 1789, 1 Stat. at L. 29, 43, chap. 5, contains provisions to this effect. As this act was passed by the same Congress which proposed for adoption the original Amendments to the Constitution, it is clear that the members of that body did not regard searches and seizures of this kind as 'unreasonable' and they are not embraced within the prohibition of the Amendment. So also the supervision authorized to be exercised by officers of the revenue over the manufacture or custody of excisable articles, and the entries thereof in books required by law to be kept for their inspection, are necessarily excepted out of the category of unreasonable searches and seizures. So also the laws which provide for the search and seizure of articles and things which it is unlawful for a person to have in his possession for the purpose of issue or disposition, such as counterfeit coin, lottery tickets, implements of gambling, etc. are not within this category. *Commonwealth v. Dana*, 2 Met. 329. Many other things of this character might be enumerated." (Italics supplied).

Recently, in *Viduya v. Berdiago*,[15] this Court reiterated the controlling force of the *Papa v. Mago* ruling hereinbefore cited and the persuasive authority of the leading decision in *Carroll v. U.S.*, supra, and in explaining the rationale of the doctrine significantly said that "(i)t is not for this Court to do less than it can to implement and enforce the mandates of the customs and revenue laws. The evils associated with tax evasion must be stamped out - without any disregard, it is to be affirmed, of any constitutional right. x x x."

The circumstances of the case at bar undoubtedly fall squarely within the privileged area where search and seizure may lawfully be effected without the need of a warrant. The facts being no less receptive to the applicability of the classic American ruling, the latter's force and effect as well as the *Mago* decision must be upheld and

reiterated in this petition. We find that the constitutional guarantee has not been violated and the respondent court gravely erred in issuing the order of August 20, 1975 declaring as inadmissible evidence the items or articles obtained and seized by the apprehending agents without any search warrant, as well as the pictures of said items attempted to be presented as evidence against the accused.

Notwithstanding the reversal and setting aside of the order of respondent judge assailed herein, thereby allowing the introduction and admission of the subject prohibited articles in the trial of the accused Jessie C. Hope and Monina Medina for alleged smuggling, in the interest of speedy justice, the prosecution is directed forthwith to re-assess and re-evaluate the evidence at its disposal, considering the lapse of time since the trial commenced on June 28, 1975 and was thus delayed due to the filing of the instant certiorari petition and that on April 1, 1975, after seizure proceedings initiated by the Collector of Customs, the said articles were ordered released upon payment of the leviable duties, taxes and other charges due thereon plus a fine equivalent to 100% of the duties and taxes thereof. After such re-assessment and re-evaluation, the prosecution must promptly take the necessary action on the premises for the protection of the rights and interests of all parties concerned.

WHEREFORE, the Order appealed from is hereby set aside and the case is ordered remanded for further trial and reception of evidence without excluding the articles subject of the seizure or for such action as the prosecution may take after the re-assessment and re-evaluation of its evidence as hereinabove directed.

This judgment is immediately executory.

SO ORDERED.

Makasiar, Fernandez, De Castro,[*] and Melencio-Herrera, JJ., concur.
Teehankee, (Chairman), J., files a separate opinion.

[*] Mr. Justice de Castro was designated to sit with the First Division. [1] Section 3601. Unlawful Importation. - Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any articles, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law, shall be guilty of smuggling and shall be punished with:

XXXX XXXX XXXX

In applying the above scale of penalties, if the offender is an alien and the prescribed penalty is not death, he shall be deported after serving the sentence without further proceedings for deportation. If the offender is a government official or employee, the penalty shall be the maximum as hereinabove prescribed and the offender shall suffer an additional penalty of perpetual disqualification from public office, to vote and to participate in any public election.

When upon trial for violation of the section, the defendant is shown to have had possession of the article in question, possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the court; Provided, however, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this action. (As amended by R.A. No. 4712, approved on June 18, 1966).

[2] Section 2530. Property Subject to Forfeiture Under Tariff and Customs Laws. - Any vehicle, vessel or aircraft, cargo, articles and other objects shall, under the following conditions be subjected to forfeiture:

XXXXX XXXXX XXXXX

k. Any conveyance actually being used for the transport of articles subject to forfeiture under the tariff and customs laws, with its equipage or trappings, and any vehicle similarly used, together with its equipage and appurtenances including the beast, steam or other motive power drawing or propelling the same. The mere conveyance of contraband or smuggled articles by such beast or vehicle shall be sufficient cause for the outright seizure and confiscation of such beast or vehicle, but the forfeiture shall not be effected if it is established that the owner of the means of conveyance used as aforesaid, is engaged as common carrier and not chartered or leased, or his agent in charge thereof at the time, has no knowledge of the unlawful act;

XXXXX XXXXX XXXXX

m. Any article sought to be imported or exported:

(1) Without going through a customhouse, whether the act was consummated, frus-trated or attempted;

XXXXX XXXXX XXXXX

[3] See *Lazatin v. Commissioner of Customs*, G.R. No. L-19753, July 30, 1969, 28 SCRA 1016.

[4] *Pascual v. Commissioner of Customs*, G.R. No. L-12219, April 15, 1962, 4 SCRA 1020.

[5] G.R. No. L-27360, February 28, 1968, 22 SCRA 857.

[6] 69 L ed. (267 U.S. 131), p. 543 (1924).

[7] PHIL. CONST. (1973), Art. IV, Sec. 3.

"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 not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, 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."

FOURTH AMENDMENT, AMERICAN CONST.

"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 be issued, 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."

[8] *Carroll v. United States*, supra at 544.

[9] *Id.*, at 549.

[10] *Id.*, at 551.

[11] *Id.*, at 553.

[12] *Records*, p. 50.

[13] *Carroll v. United States*, supra at 552.

[14] *Adams v. New York*, 192 U.S. 858; *Alvero v. Dizon*, 76 Phil. 637 (1946).

[15] *Tañada & Carreon*, *Political Law of the Philippines*, Vol. 2, 139 (1962).

[16] *Cf. Alvarez v. Court of First Ins-tance at Tayabas*, 64 Phil. 33 (1937).

[17] See Records, p. 68.

[18] 29 L ed. (116 U.S. 616) 746, 748 (1885).

[19] G.R. No. L-29218, October 29, 1976, 73 SCRA 553, 562.

SEPARATE DISSENTING AND CONCURRING OPINION

TEEHANKEE, J.:

This dissent is based on two aspects of the case at bar: I. Firstly, as discussed in Part I hereof, I believe that the case at hand does not fall, either pointedly or tangentially, under any of the recognized exceptions to the constitutionally mandated warrant requirement, for the circumstances surrounding the apprehension, search and seizure conducted by the RASAC agents show that they had ample time and opportunity for a week's time to secure the necessary search warrant conformably with the constitutional requirement. The warrantless search and seizure violated respondents' fundamental constitutional rights and rendered the goods so seized inadmissible in evidence; and II. Secondly, I hold that the decision of the Customs authorities themselves, as cited in the majority opinion itself (at pages 4 to 9) wherein the seized articles (including the car of respondent Hope) were declared not subject to forfeiture since said articles were found to have been purchased in good faith by the claimant thereof Antonio del Rosario under a genuine purchase invoice from a trading firm and hence, the goods were ordered released to said Antonio del Rosario upon payment of the corresponding duties and taxes and penalties "as the rightful owner thereof" and Hope's car was ordered released to him as the registered owner in view of the finding that he had been merely asked to bring the boxes back to Manila and had no hand in their importation nor purchase, rendered moot the question of admissibility in evidence of the goods in question. The admission in evidence of the said goods which have been determined by the Customs authorities themselves to have been lawfully purchased in good faith by the claimant-intervenor would in no way establish any criminal liability for the importation or transitory possession by respondents, who were found by said authorities to be merely bringing them back to Manila on behalf of the owner.

Withal, I join and concur with the Court's directive in its judgment that in consonance with the respondents-accused's right to speedy trial and justice that the prosecution forthwith reassess and reevaluate the evidence at its disposal" and thereafter "promptly take the necessary action in the premises for the protection of the rights and interests of all parties concerned" which, to my mind, means that the prosecution must as a simple matter of fairness and justice move for the dismissal of the criminal case below as hereinbelow explained.

I

The opinion of the majority in effect stamps approval on the warrantless search for and seizure of the eleven (11) sealed boxes, containing wrist watches and watch bracelets of different trademarks, aboard the four-door blue Dodge sedan owned by TSgt. Jessie C. Hope of the United States Air Force by the agents of the Regional Anti-Smuggling Action Center (RASAC), such approval being accorded on the strength of the Court's ruling in *Papa v. Mago*[1] following, as the majority states, "the traditional doctrine in *Carroll v. United States*,[2] "as enunciated by the U.S. Supreme Court. An analysis and appreciation of the facts of the case at bar and the fundamental principles on the constitutional guarantee against unreasonable searches and seizure, as laid down by this Court and the precedents set by the United States Supreme Court in resolving Fourth Amendment issues, make it clear to me that respondent judges' challenged Orders (1) dated August 20, 1975 holding the warrantless "apprehension, search and seizure"[3] in question violative of the provisions of Section 3, Article IV of the Constitution and consequently declaring the boxes and their contents seized from Sgt. Hope's car as well as the

pictures taken of the said items inadmissible in evidence in the prosecution of respondents Sgt. Hope and his companion in the car, Monina Medina, for violation of the provisions of Section 3601[4] of the Tariff and Customs Code of the Philippines; and (2) dated September 30, 1975 denying the State's motion for reconsideration of the Order dated August 20, 1975, should be upheld and the petition at bar accordingly dismissed.

1. I cannot accede to the majority's casual approach to the case at bar which in the main raises an issue of constitutional dimension. The majority opinion simply and broadly applied judicial precedents, taking no heed of the injunction that "when the guarantee against unreasonable search and seizure is invoked, there is a need to scrutinize the facts rigorously to preclude any infringement thereof." [5] This injunction should be given due regard with greater reason where, as in the case at bar, the Court invokes the applicability of a judicially established exception to a constitutionally protective rule. Indeed, "[t]he constitutional validity of a warrantless search, [and seizure] is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case." [6]

2. The majority validates the warrantless search and seizure in the case at bar as an exception to the warrant requirement (spelled out by the second clause of Section 3, Article IV of the Constitution) pursuant to the ruling in *Papa*, supra, which in turn relied on the doctrinal pronouncements of the United States Supreme Court in *Carroll*, supra. *Carroll* set the ruling that "if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid," [7] The "necessary difference between a search of a store, dwelling house, or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon, or automobile for contraband goods where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought" [8] supplied the underlying rationale for the *Carroll* rule. Put simply, *Carroll* declared "a search warrant unnecessary where there is probable cause to search an automobile stopped on the highway, the car is movable, the occupants are alerted, and the car's contents may never be found again if a warrant must be obtained," [9] thereby laying down the probable cause plus exigent circumstances standard.

The following ultimate facts provided the basis for the afore-mentioned rule in *Carroll*: Three federal prohibition agents and a state officer, while patrolling, on their regular tour of duty, the highway leading from Detroit to Grand Rapids, Michigan, met and passed an Oldsmobile roadster in which rode *Carroll* and *John Kiro*, whom the said agents recognized, from recent personal contact and observation, as having been lately engaged in illegal liquor dealings (bootlegging). The government agents turned their car and pursued *Carroll* and *Kiro* to a point about nineteen miles east of Grand Rapids "where they stopped them and searched the car." The agents found, stashed inside the upholstered seats, sixty-eight bottles of whiskey and gin. Thereafter, the state officer and another took *Carroll* and *Kiro*, the liquor and the car to Grand Rapids.

As could readily be seen, the "exigent circumstances" [10] which exist in connection with the ambulatory character of the automobile provided the basic factor in the justification for the warrantless search and seizure in *Carroll*. Absent, thus, these "exigent circumstances," notwithstanding the presence of probable cause, a warrant must be secured and used.

The U.S. Supreme Court took this jurisprudential direction in the much later case of *United States v. Joseph V. Chadwick, et al.*, [11] decided on June 21, 1977. The facts of the case were summarized as follows:

"When respondents arrived by train in Boston from San Diego, they were arrested at their waiting automobile by federal narcotics agents, who had been alerted that respondents were possible drug traffickers. A

double-locked footlocker, which respondents had transported on the train and which the agents had probable cause to believe contained narcotics, had been loaded in the trunk of the automobile. Respondents, together with the automobile and footlocker, which was admittedly under the agents' exclusive control, were then taken to the Federal Building in Boston. An hour and a half after the arrests the agents opened the footlocker without respondents' consent or a search warrant and found large amounts of marihuana in it. Respondents were subsequently indicted for possession of marihuana with intent to distribute it. The District Court granted their pretrial motion to suppress the marihuana obtained from the footlocker, holding that warrantless searches are per se unreasonable under the Fourth Amendment unless they fall within some established exception to the warrant requirement, and that the footlocker search was not justified under either the 'automobile exception' or as a search incident to a lawful arrest; the Court of Appeals affirmed."^[12]

The U.S. Supreme Court, speaking through Mr. Chief Justice Warren E. Burger, responding to the Governments argument that the rationale of the Court's automobile search cases applied as well to Chadwick, ruled that the footlocker's mobility does not "justify dispensing with the added protections of the Warrant Clause" for, "[o]nce the federal agents had seized it at the rail road station and had safely transferred it to the Boston Federal Building under their exclusive control, there was not the slightest danger that the foot-locker or its contents could have been removed before a valid search warrant could be obtained."^[13]

As to the contention of the Government that the search fell within the search-incident-to-a-lawful-arrest exception, the U. S. Supreme Court ruled that "warrantless searches of luggage or other property seized at the time of an arrest cannot be justified as incident to that arrest either if the 'search is remote in time or place from the arrest,' x x x or no exigency exists. Once lawful enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest."^[14] It was emphasized that "the search was conducted more than an hour after federal agents had gained exclusive control of the footlocker and long after respondents were securely in custody; the search therefore cannot be viewed as incidental to the arrest or as justified by any other exigency."^[15]

I perceive no reason why the rationale in Chadwick should not find application to the case at bar. The record shows the following undisputed facts: (1) A week before the actual interception of Sgt. Hope and Medina in the former's Dodge sedan, the RASAC agents already knew, from an informer, that "a shipment of highly dutiable goods would be transported to Manila from Angeles City in a blue Dodge car"^[16] and that the goods, in "sealed boxes with yellow tie,"^[17] would consist of "watches";^[18] (2) After the interception, "Agent Sabado boarded the Dodge car with respondents while Agent Manuel took [his] own car and both cars drove towards Tropical Hut making a brief stop at the Bonanza where Agent Manuel called up Col. Abad by telephone";^[19] and (3) "Arriving at the Tro-pical Hut, the party, together with Col. Abad who had joined them waited for the man who according to Monina Medina was supposed to receive the boxes. As the man did not appear, Col. Abad 'called off the mission' and brought respondents and their car to Camp Aguinaldo arriving there at about 9:00 A.M."^[20]

In the case at bar, granting that the RASAC agents had pro-bable cause to effect the search and seizure, nonetheless, no exigent circumstances justified their proceeding to do so without the requisite warrant. The RASAC agents, having known a week before they actually undertook the operation that they would be intercepting a "blue Dodge car" transporting "watches" in "sealed boxes," had ample opportunity within the one-week period to secure the necessary warrant for the search and seizure contemplated. Moreover, the RASAC agents had another opportunity to obtain the search and seizure warrant on the day of the operation itself. The actual interception took place "around 7:00 o'clock in the morning"^[21] at the Balintawak approach to the North Diversion Road and the actual search and seizure occurred past 9:00 o'clock the same morning at Camp

Aguinaldo.[22] During the intervening period, Agent Manuel even had time to telephone Colonel Abad to ask for instructions and could have taken up then with him the matter of securing the necessary search and seizure warrant. Colonel Abad, as well, after learning from Agent Sabado that interception and apprehension had already been effected, could himself, as RASAC Chief of Intelligence and Operations, have secured the necessary search and seizure warrant.[23]

As stressed by respondent judge in his questioned order, "there was ample time and opportunity to secure the necessary warrant"[24] and "[j]ust because the RASAC-MBA agents have information to make them believe that a certain person has contraband goods in his possession, does not give them the right to search him and seize whatever contraband may be found in his possession. ASAC Agents are not by law empowered to determine whether there exists a 'probable cause', and even if they have such power, assuming it to be so, the determination of the probable cause should be made by examining the complainant and his witnesses under oath or affirmation and particularly describing the place to be searched and the thing or person to be seized, and not simply on bare information given by an unnamed informer, as in the instant case." [25]

Respondent judge aptly added that

"We cannot accept 'good faith' here, as an excuse to justify violation of the Constitution in making the warrantless apprehension, search and seizure in question when there was sufficient time - one week - within which they could have procured a warrant of arrest and a search warrant in accordance with the proscriptions of the present Constitution, had the ASAC Agents wanted to. Agent Sabado simply said 'it is not necessary.' Furthermore, if subjective good faith alone was the test, the protection afforded the Filipino people by our present Constitution against unreasonable arrest, search and seizure would evaporate and rendered its provision nugatory, and our people 'would be secured in their persons, houses, papers and effects only in the discretion of the police'. And besides, what would they have lost if they secured a warrant first? Would it have frustrated their efforts in enforcing the provisions of the Customs and Tariff Code if they secured the necessary warrant before making the apprehension and search? Would it have thwarted the purposes of the Customs and Tariff Code and would the results have been different if they had taken the trouble of securing the necessary warrants, and made the apprehension and search in accordance with the Constitution? It would have hardly made any difference. These over earnestness and zealotry on the part of the officers in the discharge of their function, is what we should guard against. We might impress on them the importance to our well ordered society of the 'rule of law' - which necessarily imply respect for and obedience to the Constitution and the laws of the land. This we can do by making it clear to them that the fruits of such unreasonable searches and seizures, are 'forbidden fruits' - inadmissible in evidence." [26]

Granting arguendo that the RASAC agents had no opportunity after they apprehended respondents to secure the necessary search and seizure warrant during the period prior to their arrival at Camp Aguinaldo, they certainly could have delayed the actual search and seizure until the necessary warrant had been obtained, which would not have taken them beyond mid-afternoon of the same day. The inconvenience which could be caused by the delay to respondents Hope and Medina would at least be tolerable, for such inconvenience could be quantifiable only in terms of hours spent while waiting, rather than the transgression of their rights through the warrantless search and seizure which could be measured only in terms of fundamental constitutional values violated.

The case at bar offers no situation "where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought. " As previously stated, after the interception, "Agent Sabado boarded the Dodge car with the respondents" and directed Sgt. Hope the route he should take.[27] Agent Sabado had, in effect, taken custody or control of Sgt. Hope's Dodge sedan, for, being in there, on hand at all times from the moment he boarded it through the trip to Bonanza Restaurant, Tropical Hut Foodmart and, finally, Camp Aguinaldo to guard against any deviation by Sgt. Hope from the route he had been

directed to take or against any attempt to run off with the car and its contents, his presence had neutralized, if not eliminated, the said car's mobility. Moreover, the RASAC agents, by directing the Dodge sedan to Camp Aguinaldo and retaining it within the premises of the said Camp, had effected its complete immobilization as well as of its contents. Definitely, under all these circumstances, there could not have been the slightest possibility that Sgt. Hope and Medina could have either moved the car or removed its contents - all securely within the custody of the RASAC agents and the premises of Camp Aguinaldo - before the necessary search and seizure warrant could be secured.

Neither can the warrantless search in the case at bar be viewed as a search incident to a valid arrest so as to fall within another recognized exception from the warrant requirement. In *Preston v. United States*,^[28] the U.S. Supreme Court, in spelling out the rule regarding this exception and the rationale therefor, stated that:

"Unquestionably when a person is lawfully arrested, the police have the right, without a search warrant, to make a contemporaneous search of the person of the accused for weapons or for the fruits of or implements used to commit the crime. x x x This right to search and seize without a search warrant extends to things under the accused's immediate control, x x x and, to an extent depending on the circumstances of the case, to the place where he is arrested x x x. The rule allowing contemporaneous searches is justified, for example, by the need to seize weapons and other things which might be used to assault an officer or effect an escape, as well as by the need to prevent the destruction of evidence of the crime - things which might easily happen where the weapon or evidence is on the accused's person or under his immediate control. But these justifications are absent where a search is remote in time or place from the arrest. Once an accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to the arrest."^[29]

Clearly, the search in the case at bar cannot be sustained under the exceptions heretofore discussed, for, even assuming the apprehension of Sgt. Hope and Medina as lawful, the "search was too remote in time or place to have been made as incidental to the arrest."^[30] Here, the RASAC agents intercepted and apprehended Sgt. Hope and Medina "around 7:00 o'clock in the morning" at the Balintawak approach to the North Diversion Road but conducted the search of the sealed boxes loaded in the Dodge sedan past 9:00 o'clock of the same morning at Camp Aguinaldo.

3. The majority opinion also cites *Boyd v. United States*,^[31] with particular reference to the dissertation therein on the distinction between the search and seizure of "stolen or forfeited goods or goods liable to duties and concealed to avoid the payment thereof" and the search and seizure of "a man's private books and papers for the purpose of obtaining information therein contained, or of using them as evidence against him" as well as on an historic and statutory account of instances "excepted out of the category of unreasonable searches and seizures."

Boyd raised the matter of distinction aforementioned in connection with the resolution of whether or not "a search and seizure or, what is equivalent thereto, a compulsory production of a man's private papers, to be used in evidence against him in a proceeding to forfeit property for alleged fraud against the revenue laws"^[32] partook of "an 'unreasonable search and seizure' within the meaning of the Fourth Amendment of the Constitution?"^[33] Mr. Justice Joseph P. Bradley, who delivered the opinion of the Court, "sought to determine the meaning of the fourth amendment reasonableness clause by looking to those principles of the common law which defined the limits of the state's power to search and seize the belongings of its citizens. Although it could seize stolen goods and contraband, at common law the government could not search for and seize a citizen's belongings in which it could not assert superior property rights."^[34] He "concluded that the owner's 'indefeasible' natural law property rights, enshrined in the common law and protected by the reasonableness clause of the fourth amendment, placed his private papers and other property absolutely beyond the reach of government agents seeking evidence of crime. No matter how compelling the showing of probable cause or with what particularity the places to be searched and the things to be seized might be described, no warrant or subpoena could issue except for those items already

owned by or forfeited to the state." [35] In other words, the Court, in *Boyd*, [36] ruled, *inter alia*, that the Constitution permitted searches and seizures only of property in which the government could claim superior property rights at common law like "goods liable to duties and concealed to avoid the payment thereof."

The distinction excerpted in the opinion of the majority in the case at bar served, in *Boyd* to underscore its property-oriented rationale. However, this distinction - the very basis of the property-focused rationale - had already been explicitly abandoned by the U.S. Supreme Court in *Warden, Maryland Penitentiary v. Bennie Joe Hayden* [37] wherein it was stated that:

"Nothing in the language of the Fourth Amendment supports the distinction between 'mere evidence' and instrumentalities, fruits of crime, or contraband. On its face, the provision assures the 'right of the people to be secure in their persons, houses, papers and effects ...,' without regard to the use to which any of these things are applied. This 'right of the people' is certainly unrelated to the 'mere evidence' limitation. Privacy is disturbed no more by a search directed to a purely evidentiary object than it is by a search directed to an instrumentality, fruit, or contraband. A magistrate can intervene in both situations, and the requirements of probable cause and specificity can be preserved intact. Moreover, nothing in the nature of property seized as evidence renders it more private than property seized, for example, as an instrumentality; quite the opposite may be true. Indeed, the distinction is wholly irrational, since, depending on the circumstances, the same 'papers and effects' may be 'mere evidence' in one case and 'instrumentality' in another.

x x x x x x

"The premise that property interest control the right of the Government to search and seize has been discredited. Searches and seizures may be 'unreasonable' within the Fourth Amendment even though the Government asserts a superior property interest at common law. We have recognized that the principal object of the Fourth Amendment is the protection of privacy rather than property, and have increasingly discarded fictional and procedural barriers rested on property concepts. x x x This shift in emphasis from property to privacy has come about through a subtle interplay of substantive and procedural reform. x x x.

x x x x x x

"x x x. In determining whether someone is a 'person aggrieved by an unlawful search and seizure' we have refused 'to import into the law . . . subtle distinctions, developed and refined by the common law in evolving the body of private property law which, more than almost any other branch of law, has been shaped by distinctions whose validity is largely historical. x x x [W]e have given recognition to the interest in privacy despite the complete absence of a property claim by suppressing the very items which at common law could be seized with impunity: stolen goods [38] x x x; instrumentalities [39] x x x; and contraband [40] x x x.' [41]

4. That necessity underlies the legislative grant of authority to certain functionaries [42] of the Government "to effect searches, seizures and arrests" to secure the enforcement of the tariff and customs laws need not be belabored. The scope of this authority, however, should be circumscribed by the procedural safeguards set forth by the Constitution. Fealty to these constitutional guarantees requires that the Court, rather than accommodate extended applications of the search-seizure-and-arrest authority, should guard against shortcuts government functionaries are prone to make which render nugatory 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." [43] This authority should, as a matter of principle, be subjected to the requirements of prior judicial inquiry and sanction whenever possible and practicable. The Court should not leave entirely to the hands of government functionaries discretionary determinations susceptible of abuse and misuse, for, indeed, "[p]ower is a heady thing." [44]

"We must remember that the extent of any privilege of search and seizure without warrant which we sustain,

the officers interpret and apply themselves and will push to the limit. We must remember, too, that freedom from unreasonable search differs from some of the other rights of the Constitution in that there is no way in which the innocent citizen can invoke advance protection. For example, any effective interference with freedom of the press, or free speech, or religion, usually requires a course of suppressions against which the citizen can and often does go to the court and obtain an injunction. Other rights, such as that to . . . the aid of counsel, are within the supervisory power of the courts themselves. Such a right as just compensation for the taking of private property may be vindicated after the act in terms of money.

"But an illegal search and seizure usually is a single incident, perpetrated by surprise, conducted in haste, kept purposely beyond the court's supervision and limited only by the judgment and moderation of officers whose own interests and records are often at stake in the search. There is no opportunity for injunction or appeal to disinterested intervention. The citizen's choice is quietly to submit to whatever the officers undertake or to resist at risk of arrest or immediate violence.

"And we must remember that the authority which we concede to conduct searches and seizures without warrant may be exercised by the most unfit and ruthless officers as well as by the fit and responsible, and resorted to in case of petty misdemeanors as well as in the case of the gravest felonies." [45]

All told, I hold that the warrantless search and seizure conducted by the RASAC agents in the case at bar should be invalidated and the constitutional sanction declaring the evidence obtained thereby "inadmissible for any purpose in any proceeding" [46] should be upheld.

II

The outcome of the seizure and detention proceedings instituted by the Collector of Customs against the goods in question, including Sgt. Hope's car, wherein the car and goods were ordered returned to Sgt. Hope and the established claimant-owner of the goods, Antonio del Rosario, respectively, (subject in the case of the latter to payment of the leviable duties and taxes and penalties), as recited on pages 4 to 9 of the majority opinion, shows clearly the lack of any criminal liability on the part of the respondents.

The separate seizure and detention proceedings were instituted by the Collector of Customs of the Port of Manila on February 13, 1974 and after hearing, the Collector rendered his decision of April 1, 1975 finding claimant Antonio del Rosario to be the lawful owner and purchaser in good faith duly covered by an authentic sales invoice issued by the trading firm which sold the same to him and Sgt. Hope to have been unaware of the contents of the 11 boxes which his girlfriend, his correspondent Monina Medina, had asked him to bring to Manila in his car.

The majority opinion itself recites these established facts on pages 4-5, as follows:

"During the hearing of the aforesaid cases [seizure and detention proceedings], respondents disclaimed ownership of the seized articles. Ownership was instead claimed by one Antonio del Rosario who intervened in the proceedings. The claimant-intervenor testified that he bought the watches and bracelets from Buenafe Trading as evidenced by a sales invoice certified to be authentic by the BIR Revenue Regional Office No. 6 of Quezon City, which transaction was entered in the book of accounts of aforesaid claimant; that the same articles were brought to a buyer in Angeles City, but when the sale failed to materialize, claimant contracted respondent Monina Medina to transport back the boxes to Manila for a consideration of P1,000.00 without disclosing the contents thereof which claimant simply represented as PX goods; that when he bought the watches from Buenafe, he presumed that the corresponding duties have already been paid, only to be surprised later on when he was informed that the same were seized for nonpayment of taxes.

"On the other hand, respondent Hope testified to the effect that at the time of apprehension, he had no knowledge of the contents of the boxes, and granting that he had such knowledge, he never knew that these are untaxed commodities; that he consented to transport said boxes from Angeles City to Manila in his car upon

request of his girl friend Monina Medina as a personal favor; that he was not present when the boxes were loaded in his car nor was he ever told of their contents on the way. On the part of respondent Monina Medina, she testified that what she did was only in compliance with the agreement with Mr. Del Rosa-rio to transport the boxes and deliver them to a certain Mr. Peter at the Tropical Hut who will in turn give her the contracted price; that Mr. Del Rosario did not reveal the contents of the boxes which she came to know of only when the boxes were opened at Camp Aguinaldo.

"As there was not enough evidence to contro-vert the testimonies of respondents and the narration of claimant Antonio del Rosario, the Collector of Customs issued his decision in the seizure cases on April 1, 1975 declaring that the seized articles including the car are not subject of forfeiture."

The Collector's decision of April 1, 1975 itself, as affirmed by the Commissioner of Customs' endorsement of April 28, 1975,[47] establishes in detail the above facts which absolve respondents of any complicity in any smuggling activity, as follows:

"From the evidence thus adduced, it was established that the 11 boxes found inside the subject car are 4,606 pcs. of assorted brands of wrist watches, 1,399 pcs. of wrist bracelets likewise of assorted brands and 100 pcs. tools, as evidenced by the inventory list dated Feb. 22, 1974. (Exhs. '3' '3-L' Hope) It is the prosecution's contention that these articles were imported without going through a customhouse in violation of Sec. 2530m.)-1 of the TCCP. As a consequence thereof, the vehicle which was used in transporting the subject articles was likewise seized for alleged violation of Section 2530(k) of the same code.

"With respect to the charge against the subject car, the claimant thereof, T/Sgt. Jessie C. Hope asserted that he merely accommodated Monina Medina, his girl friend, who requested him to help her bring her cargo to Manila by driving the car from Angeles City to Manila; that he was not present when the 11 boxes were loaded in his car which was then parked on its usual parking place which is a vacant lot adjacent to the house where he lives. He further stated that Monina Medina has an access to the key of his car which he usually put on a table in his house and that she did not tell him of the contents of the 11 boxes. Moreover he asserted that he came to know of the contents of the 11 boxes when they were opened at the RASAC office at Camp Aguinaldo. Upon being asked by this Office why it never occurred to him to inquire from Monina Medina about the contents of the 11 boxes, claimant categorically stated x x x 'because of the girl's honesty to me.' In a similar vein, claimant stated in his sworn statement given to the RASAC that he had known Monina Medina for quite a time so that x x x 'he did not suspect her to carry anything against the law of the Philippines and for that reason I did not bother to ask her.' (Exh. '5-A Hope') These assertions find support in the direct testimony of Col. Antonio Abad, Chief, Intelligence and Operations, RASAC who testified thus: (t.s.n., p. 104)

"A.

x x x I asked him again, how come your car was loaded with foreign items? And he said 'that is my lady companion's.' I told him, don't you know these are hot items?

Q.

What did he say?

A.

He was surprised.

Both Col. Antonio Abad and Agent Macario Sabado, one of the apprehending agents admitted in open hearing that during their initial interrogation of T/Sgt. Hope, he maintained and professed that he did not know of the contents of the 11 boxes. Monina Medina, on the other hand, stated on direct examination that T/Sgt. Hope was

not present when the subject 11 boxes were delivered to her at the vacant lot in Angeles City by Antonio del Rosario. (tsn p. 169) Moreover, in her sworn statement given to the RASAC, Monina Medina stated thus: (Exh. '4-A' Hope)

"Q.

When you told T/Sgt. Hope that you will load something in his car, did he ask you what you were going to load?

A.

No, sir."

"Against the foregoing contentions, the prosecution failed to adduce any evidence circumstantial or otherwise that may even tend to disprove or controvert the same. Granting 'arguendo' that T/ Sgt. Jessie C. Hope was aware of the contents of the 11 boxes that were found in his car, it is still incumbent upon the prosecution to at least establish that he has knowledge that the articles he was conveying are untaxed and/or smuggled as contemplated in Sec. 2530 (k) of the Tariff and Customs Code. In the absence of evidence to prove such fact, which in this case there is none whatsoever, the ground relied upon for the forfeiture of the vehicle in question remains unsubstantiated and therefore will not lie.

"Forfeiture works to deprive one's right to his property. Like the capital punishment which is the supreme penalty for human beings, forfeiture is the ultimate sanction imposable to property. However, unlike the capital punishment which can only be imposed after the cause thereof has been established beyond reasonable doubt, forfeiture should at least be made tenable only after the grounds therefor have been established to a reasonable degree of certainty. It shall not lie if based on mere bare presumptions and groundless conclusions. To hold otherwise would be arbitrary and repugnant to the principle of judicial and/or administrative due process.

"With respect to Seizure Identification No. 14281, it is evident that the claimant-intervenor herein Antonio del Rosario purchased the subject wrist watches and bracelets from Teresa Buenafe as evidenced by the covering purchase invoice No. 2637 dated February 7, 1974 which was certified to be authentic by Jeron L. Castillo of Revenue Region No. 6, BIR Quezon City (Exhs. '2', '3' & '4'). The aforesaid business transaction was entered in the Columnar Book (Exh. '3') of claimant-intervenor which fact is a manifestation that Antonio del Rosario was a buyer in good faith and that the business transaction he entered into with Teresa Buenafe was not simulated nor clandestine.

"It is a well settled rule that bad faith cannot be presumed, it must be proven. In the absence of evidence to the contrary, which in this case none whatsoever was presented, the claimant-intervenor herein is presumed to be a buyer in good faith. However, it is incumbent upon the claimant, intervenor herein to prove that the subject articles are tax-paid. Aside from the covering sales invoice, not a scintilla of evidence was adduced to prove that the duties and taxes due on the said items were satisfied. In this connection, this Office does not share the view of the herein claimant-intervenor that it is not the practice in business circles to inquire whether or not the subject matter of a business transaction are tax-paid. Considering the quantity of the articles in question and the big volume of the amount involved, Mr. Antonio del Rosario was quite negligent in failing to inquire from the seller herein whether the duties and taxes of the items he purchased were satisfied or not.

"Viewed in the light of the foregoing considerations, it is the studied opinion of this Office that while the claimant-intervenor herein is liable for the payment of the assessable duties and taxes owing from the subject articles, the forfeiture thereof will not lie it appearing that the 'quantum' of evidence adduced by the prosecution is insufficient to sustain the charges levelled against the said articles. Moreover, this Office referred this case to the Central Bank for the necessary Release Certificate. However, Mr. Cesar Lomotan, Deputy Governor, Central Bank, in his letter to the Commissioner of Customs dated February 21, 1975 in

effect stated thus:

"Based on subject's manager Mr. Antonio del Rosario's representations that the items involved were bought from a local dealer as supported by an alleged commercial invoice from Teresa M. Buenafe Trading dated February 7, 1974 submitted earlier, this Office cannot issue the required release certificate therefor considering that no proof has been submitted to indicate that subject imported goods in question."

"WHEREFORE, by virtue of Section 2312 of the Tariff and Customs Code, it is hereby ordered and decreed that the subject motor vehicle, one (1) Dodge, Model 1965, Motor No. 33359, Serial No. W357348361, File No. 28-1884, with Plate No. EH 21-87, '73 covered by Seizure Identification No. 14281-A be, as it is hereby declared, released to its registered owner, Jessie C. Hope, upon proper identification. Relative to Seizure Identification No. 14281, it is further ordered and decreed that the subject matter thereof to wit: 4,606 pcs. of assorted brands of wrist watches, 1,399 pieces of assorted brands of wrist bracelets and 100 pcs. of tools be, as they are hereby likewise declared, released to the rightful owner thereof, Antonio del Rosario, upon payment of the leviable duties, taxes and other charges due thereon plus a fine equivalent to 100% of the duties and taxes thereof. Furthermore, should claimant-intervenor fail to pay the assessable duties, taxes and other charges owing from the aforesaid articles within 30 days from the time this decision becomes final and unappealable, the same shall be deemed abandoned in favor of the government to be disposed of in the manner provided for by law."[48]

As pointed in the People's petition itself, the Collector's said decision "has long become final and executory"[49] Hope's car was duly released and returned to him since May 8, 1975.[50] And the goods were likewise presumably released to the established claimant-owner Antonio del Rosario, because at the trial of the criminal case below, only pictures of the 11 boxes containing the goods were sought to be presented by the prosecution.

The point is that the customs authorities, the Commissioner of Customs and the Manila Collector of Customs are bound by their own above stated decision and findings in the seizure and detention proceedings that the goods in question were lawfully owned by the claimant-intervenor Antonio del Rosario who had purchased them in good faith in the regular course of business and that respondent Hope was completely innocent of any complicity in their importation and purchase, having agreed merely to his girlfriend Monina Medina's request to bring the goods back to Manila, without any knowledge of their contents, and they should accordingly direct the prosecution to move for dismissal of the case below.

As the majority opinion itself states:

"The collector's final declaration that the articles are not subject to forfeiture does not detract his findings that untaxed goods were transported in respondent's car and seized from their possession by agents of the law. Whether criminal liability lurks on the strength of the provision of the Tariff and Customs Code adduced in the information can only be determined in a separate criminal action. Respondents' exoneration in the administrative cases cannot deprive the State of its right to prosecute. But under our penal laws, criminal responsibility, if any, must be proven not by preponderance of evidence but by proof beyond reasonable doubt."[51]

Certainly, if respondent Hope were absolved by the customs authorities in the seizure and detention proceedings because of the absolute lack of "any evidence circumstantial or otherwise" that would establish any complicity on his part "to a reasonable degree of certainty" and justify the forfeiture of his car that was used in transporting the goods to Manila, they must necessarily on the same evidence or absolute lack thereof as officially determined by themselves move in all fairness and justice for and cause the dismissal of the criminal case below. If their evidence in the seizure proceedings established that respondents had no part whatever in the importation or purchase by the claimant-intervenor of the goods, the very same evidence cannot possibly lead to their being found guilty beyond reasonable doubt of the smuggling charge nor overcome their fundamental right of

presumption of innocence.

The main issue at bar as to the non-admissibility in evidence of the boxes and their photographs as ruled in respondent judge's questioned order (which according to the petition has "the effect of acquitting the accused [respondents] from the charges" in the criminal case below) has thus been rendered moot by respondents customs authorities' decision and findings. The disposition of this case by the majority opinion of setting aside respondent judge's order and ordering the case "remanded for further trial and reception of evidence without excluding the articles subject of the seizure" has likewise been thus rendered moot. The admission in evidence of the said boxes or their photographs whose contents have been found to be lawfully owned and purchased in good faith by the claimant-intervenor Antonio del Rosario would in no way establish any criminal liability on the part of respondents.

Stated in another way, assuming that the seized goods or photos thereof are admissible in evidence notwithstanding the warrantless search and seizure (justified on the doctrine of "hot pursuit"), as held in the majority opinion, still the People's petition should be dismissed since the admission in evidence of the said goods which have been determined by the Customs authorities themselves to have been lawfully purchased in good faith by the claimant-intervenor would in no way establish any criminal liability for the importation or transitory possession by respondents, who were found by said authorities to be merely bringing them back to Manila on behalf of the owner. If the prosecution's evidence in the seizure proceedings established that respondents had no part whatever in the importation or purchase by the claimant-intervenor of the goods, the very same evidence cannot possibly lead to their being found guilty beyond reasonable doubt of the smuggling charge in the case before us nor overcome their fundamental right of presumption of innocence.

The majority opinion penned by Mr. Justice Guerrero, however, reaches the conclusion that despite respondents' exoneration in the administrative cases, the criminal responsibility can be determined only in the separate criminal action while conceding that such criminal responsibility "must be proven not by preponderance of evidence but by proof beyond reasonable doubt."^[52]

This posture of the majority that any dismissal of the criminal case should not be ordered outright by this Court but by the court a quo, whether *motu proprio* or at the prosecution's instance, is nonetheless understandable.

I join the Court's directive in its judgment that in consonance with the respondents-accused's right to speedy trial and justice that the prosecution forthwith "reassess and reevaluate the evidence at its disposal" and thereafter "promptly take the necessary action in the premises for the protection of the rights and interests of all concerned."

This means, as indicated above, that if the prosecution's evidence (as supplied by the customs authorities) is totally devoid of "any evidence circumstantial or otherwise" that would establish any complicity on the part of respondents "to a reasonable degree of certainty", as determined in the very Collector's decision of April 1, 1975 itself as affirmed by the Commissioner of Customs, then the prosecution must as a simple matter of fairness and justice move for the dismissal of the criminal case below. The judgment has been made immediately executory, so that the prosecution may comply with the Court's directive without further delay.

[1] L-27360, February 28, 1968; 22 SCRA 857.

[2] 69 L. Ed. 542; 267 U.S. 132; Decided March 2, 1925.

[3] Although the Order dated August 20, 1975 rather amply discusses the arrest-aspect of the case at bar (vide Order, pp. 23-25, and Rollo, pp. 82-84), the majority opinion prescinds from passing upon the matter.

[4] Section 3601 declares "any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law" guilty of smuggling and prescribes a scale of penalties for the violation thereof.

[5] Jose G. Lopez, et al., v. Commissioner of Customs, et al., L-27968, December 3, 1975; 68 SCRA 320, 321.

[6] Nelson Sibron v. State of New York, 20 L. Ed. 2d 917, 932; 392 U.S. 40, 59. Vide also the dissenting opinion of Mr. Justice Thurgood Marshall with whom Messrs. Justices William O. Douglas and William J. Brennan, Jr., join, in United States v. Willie Robinson, Jr. (33 L. Ed. 2d 427; 414 U.S. 218). In his dissent, Mr. Justice Marshall takes exception to the majority's approach for, he reasons, it "represents a clear and marked departure from [the Court's] long tradition of case-by-case adjudication of the reasonableness of searches and seizures under the Fourth Amendment." He also states that "[t]he majority's attempt to avoid case-by-case adjudication of Fourth Amendment issues is not only misguided as a matter of principle, but is also doomed to fail as a matter of practical application."

[7] Carroll, 69 L. Ed. at 549; 267 U.S. at 149.

[8] Ibid., 69L. Ed. at 551; 267 U.S. at 153.

[9] Frank Chambers v. James F. Maroney, 26 L. Ed. 2d 419. 428; 399 U.S. 42, 51.

[10] Ibid.

[11] 53 L. Ed. 2d 538, 433 U.S. 1.

[12] Chadwick, 53 L. Ed. 2d at 542.

[13] Ibid., 53 L. Ed., 2d at 549 to 550; 433 U. S. at 13.

[14] Ibid., 53 L. Ed. 2d at 550 to 551; 433 U.S. at 15.

[15] Ibid., 53 L. Ed. 2d at 551; 433 U.S. at 15.

[16] Decision, p. 2.

[17] Rollo, p. 87, corresponding to page 28 of the Memorandum for the Respondents wherein appear quoted excerpts from the transcript of stenographic notes taken during the hearing of Criminal Case Q3881 involved herein.

[18] Rollo, pp. 186-187, corresponding to pages 27-28 of the Memorandum for the Respondents.

Parenthetically, the majority's opinion attaches no significance to the circumstance that the ASAC agents knew beforehand that the highly dutiable goods which would be transported from Angeles City to Manila "in sealed boxes" would be "watches."

On the matter, the opinion only states, to wit:

"The records hardly reveal anything certain and confirmatory of the report during the said period except the general; knowledge that some highly dutiable goods would be transported from Angeles City to Manila in a blue Dodge automobile." (Decision, p. 12)

[19] Decision, p. 3.

[20] Ibid.

[21] Rollo, p. 62, corresponding to page 3 of the Order dated August 20, 1975.

[22] Ibid.

[23] Vide *Delfin Lim, et al. v. Francisco Ponce de Leon*, L-22554, August 29, 1975, 66 SCRA 299, wherein the Court, regarding the claim of "lack of time to procure a search warrant as an excuse for the seizure of the motor launch [involved therein] without one," held that "[T]he claim cannot be sustained. The records show that on June 15, 1962 Fiscal Ponce de Leon made the first request to the Provincial Commander for the impound-ing of the motor launch; and on June 26, 1962 another request was made. The seizure was not effected until July 6, 1962. In short, Fiscal Ponce de Leon had all the time to procure a search warrant had he wanted to and which he could have taken in less than a day, but he did not. Besides, there is no basis for the apprehension that the motor launch might be moved out of Balabac because even prior to its seizure the motor launch was already without its engine. In sum, the fact that there was no time to secure a search warrant would not legally justify a search without one."

[24] Rollo, p. 68.

[25] Ibid., p. 71.

[26] Ibid., pp. 76-77.

[27] Rollo, p. 186, corresponding to page 27 of the Memorandum for the Respondents.

[28] 11 L. Ed. 2d 777; 376 U.S. 364.

[29] *Preston*, 11 L. Ed. 2d at 730-731; 376 U.S. at 367, emphasis supplied.

[30] Ibid., 11 L. Ed. 2d at 781; 376 U.S. at 368.

[31] 29 L. Ed. 746, 116 U.S. 616.

[32] 29 L. Ed. at 748, 116 U.S. at 622.

[33] Ibid.

[34] Formalism, Legal Realism, and Constitutionally Protected Privacy Under the Fourth and Fifth Amendments, 90 *Harvard Law Review* 945, 952-953.

[35] Ibid., p. 953.

[36] *Boyd*, decided on February 1, 1886, predated *Fremont Weeks v. United States* (58 L. Ed. 652, 232 U.S. 383), decided on February 24, 1914, wherein the Court, indictum, recognized the search-incident-to-a-lawful-arrest exception, and *Carroll*, supra, decided on March 2, 1925, wherein the Court first categorically established the search-of-automobile exception.

[37] 18 L. Ed. 2d 782; 387 U.S. 294.

[38] *Henry v. United States*, 4 L. Ed. 2d 134, 361 U.S. 93.

[39] *Beck v. Ohio*, 13 L. Ed. 2d 142, 379 U.S. 89; *McDonald v. United States*, 93 L. Ed. 153, 335 U.S. 451.

[40] *Trupiano v. United States*, 92 L. Ed. 1663, 334 U.S. 699; *Aguilar v. Texas*, 12 L. Ed. 2d 723, 378 U.S. 108.

[41] *Warden*, 18 L. Ed. 2d at 789-791, 387 U.S. at 304-306.

[42] Section 2203 of the Tariff and Customs Code of the Philippines enumerates the persons authorized "to effect searches, seiz-ures and arrests," to wit:

"a. Officials of the Bureau of Customs, collectors, assistant collectors, deputy collectors, surveyors, security and secret-service agents, inspectors, port patrol officers and guards of the Bureau of Customs;

"b. Officers of the Philippine Navy and other members of the Armed Forces of the Philippines and national law enforcement agencies when authorized by the commissioner;

"c. Officials of the Bureau of Internal Revenue on all cases falling within the regular performance of their duties, when the payment of internal revenue taxes are involved;" and

"d. Officers generally empowered by law to effect arrest and execute processes of courts, when acting under the direction of the collector."

[43] Section 3, Article IV, Constitution of the Philippines.

[44] McDonald, 93 L. Ed. at 158, 335 U.S. at 456.

[45] Dissenting opinion of Mr. Justice Robert M. Jackson in *Virgil T. Brinegar v. United States*, 93 L. Ed. 1879, 1894, 338 U.S. 160, 182.

[46] Subsection (2), Section 4, Article IV, Constitution of the Philippines.

[47] Annex C, Memorandum for the Respondents, Rollo, p. 236.

[48] Annex A, petition, Rollo, pp. 127-131, emphasis supplied.

[49] Petition, par. 11, Rollo, pp. 45-46.

[50] Annex G, Memorandum for the Respondents, Rollo, p. 241.

[51] At pages 8-9, emphasis supplied.

[52] At pages 8-9, main opinion.

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