

RUDY CABALLES Y TAIÑO, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 136292. January 15, 2002

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal by certiorari from the decision[1] of respondent Court of Appeals dated September 15, 1998 which affirmed the judgment rendered by the Regional Trial Court of Santa Cruz, Laguna, finding herein petitioner, Rudy Caballes y Taiño, guilty beyond reasonable doubt of the crime of theft, and the resolution[2] dated November 9, 1998 which denied petitioner's motion for reconsideration.

In an Information[3] dated October 16, 1989, petitioner was charged with the crime of theft committed as follows:

"That on or about the 28th day of June, 1989, in the Municipality of Pagsanjan, and/or elsewhere in the Province of Laguna, and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain, and without the knowledge and consent of the owner thereof, the NATIONAL POWER CORPORATION, did then and there wilfully, unlawfully and feloniously take, steal and carry away about 630-kg of Aluminum Cable Conductors, valued at P27, 450.00, belonging to and to the damage and prejudice of said owner National Power Corp., in the aforesaid amount.

CONTRARY TO LAW."

During the arraignment, petitioner pleaded not guilty and hence, trial on the merits ensued.

The facts are summarized by the appellate court as follows:

"[At] about 9:15 p.m. of June 28, 1989, Sgt. Victorino Noceja and Pat. Alex de Castro, while on a routine patrol in Barangay Sampalucan, Pagsanjan, Laguna, spotted a passenger jeep unusually covered with "kakawati" leaves.

Suspecting that the jeep was loaded with smuggled goods, the two police officers flagged down the vehicle. The jeep was driven by appellant. When asked what was loaded on the jeep, he did not answer; he appeared pale and nervous.

With appellant's consent, the police officers checked the cargo and they discovered bundles of 3.08 mm aluminum/galvanized conductor wires exclusively owned by National Power Corporation (NPC). The conductor wires weighed 700 kilos and valued at P55, 244.45. Noceja asked appellant where the wires came from and appellant answered that they came from Cavinti, a town approximately 8 kilometers away from Sampalucan. Thereafter, appellant and the vehicle with the high-voltage wires were brought to the Pagsanjan Police Station. Danilo Cabale took pictures of the appellant and the jeep loaded with the wires which were turned over to the Police Station Commander of Pagsanjan, Laguna. Appellant was incarcerated for 7 days in the Municipal jail.

In defense, appellant interposed denial and alibi. He testified that he is a driver and resident of Pagsanjan, Laguna; a NARCOM civilian agent since January, 1988 although his identification card (ID) has already

expired. In the afternoon of June 28, 1989, while he was driving a passenger jeepney, he was stopped by one Resty Fernandez who requested him to transport in his jeepney conductor wires which were in Cavinti, Laguna. He told Resty to wait until he had finished his last trip for the day from Santa Cruz, Laguna. On his way to Santa Cruz, Laguna, he dropped by the NARCOM headquarters and informed his superior, Sgt. Callos, that something unlawful was going to happen. Sgt. Callos advised him to proceed with the loading of the wires and that the former would act as back-up and intercept the vehicle at the Sambat Patrol Base in Pagsanjan.

After receiving those instructions, he went back to see Resty. Although Resty had his own vehicle, its tires were old so the cable wires were loaded in appellant's jeep and covered with kakawati leaves. The loading was done by about five (5) masked men. He was promised P1,000.00 for the job. Upon crossing a bridge, the two vehicles separated but in his case, he was intercepted by Sgt. Noceja and Pat. De Castro. When they discovered the cables, he told the police officers that the cables were loaded in his jeep by the owner, Resty Fernandez. But despite his explanation, he was ordered to proceed to police headquarters where he was interrogated. The police officers did not believe him and instead locked him up in jail for a week."^[4]

On April 27, 1993, the court a quo rendered judgment^[5] the dispositive portion of which reads:

"WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of Theft of property worth P55,244.45, the Court hereby sentences him to suffer imprisonment from TWO (2) [YEARS], FOUR (4) MONTHS, and ONE (1) DAY of Prison Correccional, as minimum, to TEN (10) YEARS of Prison Mayor, as maximum, to indemnify the complainant National Power Corporation in the amount of P55, 244.45, and to pay the costs."

On appeal, the Court of Appeals affirmed the judgment of conviction but deleted the award for damages on the ground that the stolen materials were recovered and modified the penalty imposed, to wit:

"WHEREFORE, the appealed decision is hereby AFFIRMED with the modification that appellant RUDY CABALLES is found guilty beyond reasonable doubt as principal in theft, defined and penalized under Articles 308 and 309, par. 1, Revised Penal Code, and there being no modifying circumstances, he is hereby meted an indeterminate penalty of Four (4) years, Nine (9) months and Eleven (11) days of prison correccional, as minimum term, to Eight (8) years, Eight (8) months and one (1) day of prison mayor, as maximum term. No civil indemnity and no costs."^[6]

Petitioner comes before us and raises the following issues:

- "(a) Whether or not the constitutional right of petitioner was violated when the police officers searched his vehicle and seized the wires found therein without a search warrant and when samples of the wires and references to them were admitted in evidence as basis for his conviction;
- (b) Whether or not respondent Court erred in rejecting petitioner's defense that he was engaged in an entrapment operation and in indulging in speculation and conjecture in rejecting said defense; and
- (c) Whether or not the evidence of the prosecution failed to establish the guilt of petitioner beyond reasonable doubt and thus failed to overcome the constitutional right of petitioner to presumption of innocence."

The conviction or acquittal of petitioner hinges primarily on the validity of the warrantless search and seizure made by the police officers, and the admissibility of the evidence obtained by virtue thereof.

In holding that the warrantless search and seizure is valid, the trial court ruled that:

"As his last straw of argument, the accused questions the constitutionality of the search and validity of his arrest on the ground that no warrant was issued to that effect. The Court cannot again sustain such view. In the case of *People v. Lo Ho [Wing]*, G.R. No. 88017, January 21, 1991, it has been held that 'considering that before a warrant can 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 the impossible in the case of smuggling effected by the use of a moving vehicle that can transport contraband from one place to another with impunity, a warrantless search of a moving vehicle is justified on grounds of practicability.' The doctrine is not of recent vintage. In the case of *Valmonte vs. de Villa*, G.R. No. 83988, May 24, 1990 (Resolution on Motion for Reconsideration, September 29, 1989), it was ruled that 'automobiles because of their mobility may be searched without a warrant upon facts not justifying warrantless search of a resident or office. x x x To hold that no criminal can, in any case, be arrested and searched for the evidence and tokens of his crime without a warrant, would be to leave society, to a large extent, at the mercy of the shrewdest, the most expert, and the most depraved of criminals, facilitating their escape in many instances' (Ibid.). In *Umil v. Ramos*, 187 SCRA 311, and *People vs. Ortiz*, 191 SCRA 836, the Supreme Court held that a search may be made even without a warrant where the accused is caught in flagrante. Under the circumstances, the police officers are not only authorized but are also under obligation to arrest the accused even without a warrant." [7]

Petitioner contends that the flagging down of his vehicle by police officers who were on routine patrol, merely on "suspicion" that "it might contain smuggled goods," does not constitute probable cause that will justify a warrantless search and seizure. He insists that, contrary to the findings of the trial court as adopted by the appellate court, he did not give any consent, express or implied, to the search of the vehicle. Perforce, any evidence obtained in violation of his right against unreasonable search and seizure shall be deemed inadmissible.

Enshrined in our Constitution is the inviolable right of the people to be secure in their persons and properties against unreasonable searches and seizures, as defined under Section 2, Article III thereof, which reads:

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

The exclusionary rule under Section 3(2), Article III of the Constitution bars the admission of evidence obtained in violation of such right.

The constitutional proscription against warrantless searches and seizures is not absolute but admits of certain exceptions, namely: (1) warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence; [8] (2) seizure of evidence in plain view; [9] (3) search of moving vehicles; [10] (4) consented warrantless search; [11] (5) customs search; (6) stop and frisk situations (Terry search); [12] and (7) exigent and emergency circumstances. [13]

In cases where warrant is necessary, the steps prescribed by the Constitution and reiterated in the Rules of Court must be complied with. In the exceptional events where warrant is not necessary to effect a valid search or seizure, or when the latter cannot be performed except without a warrant, what constitutes a reasonable or unreasonable search or seizure is 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. [14]

It is not controverted that the search and seizure conducted by the police officers in the case at bar was not authorized by a search warrant. The main issue is whether the evidence taken from the warrantless search is admissible against the appellant. Without said evidence, the prosecution cannot prove the guilt of the appellant beyond reasonable doubt.

I. Search of 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.[15] Thus, the rules governing search and seizure have over the years been steadily liberalized whenever a moving vehicle is the object of the search on the basis of practicality. This is so considering that before a warrant 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 the impossible in the case of smuggling effected by the use of a moving vehicle that can transport contraband from one place to another with impunity. We might add that a warrantless search of a moving vehicle is justified on the ground that 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.[16] Searches without warrant of automobiles is also allowed for the purpose of preventing violations of smuggling or immigration laws, provided such searches are made at borders or 'constructive borders' like checkpoints near the boundary lines of the State.[17]

The mere mobility of these vehicles, however, does not give the police officers unlimited discretion to conduct indiscriminate searches without warrants if made within the interior of the territory and in the absence of probable cause.[18] Still and all, the important thing is that there was probable cause to conduct the warrantless search, which must still be present in such a case.

Although the term eludes exact definition, probable cause signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged; or the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched.[19] The required probable cause that will justify a warrantless search and seizure is not determined by a fixed formula but is resolved according to the facts of each case.[20]

One such form of search of moving vehicles is the "stop-and-search" without warrant at military or police checkpoints which has been declared to be not illegal per se,[21] for as long as it is warranted by the exigencies of public order[22] and conducted in a way least intrusive to motorists.[23] A checkpoint may either be a mere routine inspection or it may involve an extensive search.

Routine inspections are not regarded as violative of an individual's right against unreasonable search. The search which is normally permissible in this instance is limited to the following instances: (1) where the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds;[24] (2) simply looks into a vehicle;[25] (3) flashes a light therein without opening the car's doors;[26] (4) where the occupants are not subjected to a physical or body search;[27] (5) where the inspection of the vehicles is limited to a visual search or visual inspection;[28] and (6) where the routine check is conducted in a fixed area.[29]

None of the foregoing circumstances is obtaining in the case at bar. The police officers did not merely conduct a visual search or visual inspection of herein petitioner's vehicle. They had to reach inside the vehicle, lift the kakawati leaves and look inside the sacks before they were able to see the cable wires. It cannot be considered a simple routine check.

In the case of *United States vs. Pierre*,[30] the Court held that the physical intrusion of a part of the body of an agent into the vehicle goes beyond the area protected by the Fourth Amendment, to wit:

"The Agent . . . stuck his head through the driver's side window. The agent thus effected a physical intrusion into the vehicle. . . [W]e are aware of no case holding that an officer did not conduct a search when he physically intruded part of his body into a space in which the suspect had a reasonable expectation of privacy.

[The] Agent[s] . . . physical intrusion allowed him to see and to smell things he could not see or smell from outside the vehicle. . . In doing so, his inspection went beyond that portion of the vehicle which may be viewed from outside the vehicle by either inquisitive passersby or diligent police officers, and into the area protected by the Fourth amendment, just as much as if he had stuck his head inside the open window of a home."

On the other hand, when a vehicle is stopped and subjected to an extensive search, such a warrantless search would be constitutionally permissible only if the officers conducting the search have reasonable or probable cause to believe, before the search, that either the motorist is a law-offender or they will find the instrumentality or evidence pertaining to a crime in the vehicle to be searched.[31]

This Court has in the past found probable cause to conduct without a judicial warrant an extensive search of moving vehicles in situations where (1) there had emanated from a package the distinctive smell of marijuana; (2) agents of the Narcotics Command ("Narcom") of the Philippine National Police ("PNP") had received a confidential report from informers that a sizeable volume of marijuana would be transported along the route where the search was conducted; (3) Narcom agents had received information that a Caucasian coming from Sagada, Mountain Province, had in his possession prohibited drugs and when the Narcom agents confronted the accused Caucasian, because of a conspicuous bulge in his waistline, he failed to present his passport and other identification papers when requested to do so; (4) Narcom agents had received confidential information that a woman having the same physical appearance as that of the accused would be transporting marijuana;[32] (5) the accused who were riding a jeepney were stopped and searched by policemen who had earlier received confidential reports that said accused would transport a large quantity of marijuana; and (6) where the moving vehicle was stopped and searched on the basis of intelligence information and clandestine reports by a deep penetration agent or spy - one who participated in the drug smuggling activities of the syndicate to which the accused belonged - that said accused were bringing prohibited drugs into the country.[33]

In the case at bar, the vehicle of the petitioner was flagged down because the police officers who were on routine patrol became suspicious when they saw that the back of the vehicle was covered with kakawati leaves which, according to them, was unusual and uncommon.

Pat. Alex de Castro recounted the incident as follows:

"ATTY. SANTOS

Q

Now on said date and time do you remember of any unusual incident while you were performing your duty?

A

Yes, sir, at that time and date myself and Police Sgt. Noceja were conducting patrol in the said place when we spotted a suspicious jeepney so we stopped the jeepney and searched the load of the jeepney and we found out (sic) these conductor wires.

Q

You mentioned about the fact that when you saw the jeepney you became suspicious, why did you become suspicious?

A

Because the cargo was covered with leaves and branches, sir.

Q

When you became suspicious upon seeing those leaves on top of the load what did you do next, if any?

A

We stopped the jeepney and searched the contents thereof, sir."[34]

The testimony of Victorino Noceja did not fare any better:

"ATTY SANTOS

Q

When you saw the accused driving the said vehicle, what did you do?

A

Because I saw that the vehicle being drawn by Caballes was covered by kakawati leaves, I became suspicious since such vehicle should not be covered by those and I flagged him, sir."[35]

We hold that the fact that the vehicle looked suspicious simply because it is not common for such to be covered with kakawati leaves does not constitute "probable cause" as would justify the conduct of a search without a warrant.

In *People vs. Chua Ho San*,[36] we held that the fact that the watercraft used by the accused was different in appearance from the usual fishing boats that commonly cruise over the Bacnotan seas coupled with the suspicious behavior of the accused when he attempted to flee from the police authorities do not sufficiently establish probable cause. Thus:

"In the case at bar, the Solicitor General proposes that the following details are suggestive of probable cause - persistent reports of rampant smuggling of firearm and other contraband articles, CHUA's watercraft differing in appearance from the usual fishing boats that commonly cruise over the Bacnotan seas, CHUA's illegal entry into the Philippines x x x, CHUA's suspicious behavior, i.e., he attempted to flee when he saw the police authorities, and the apparent ease by which CHUA can return to and navigate his speedboat with immediate dispatch towards the high seas, beyond the reach of Philippine laws.

This Court, however, finds that these do not constitute "probable cause." None of the telltale clues, e.g., bag or package emanating the pungent odor of marijuana or other prohibited drug, confidential report and/or positive identification by informers of courier of prohibited drug and/or the time and place where they will transport/deliver the same, suspicious demeanor or behavior, and suspicious bulge in the waist - accepted by this Court as sufficient to justify a warrantless arrest exists in this case. There was no classified information that a foreigner would disembark at Tammocalao beach bearing prohibited drug on the date in question. CHUA was not identified as a drug courier by a police informer or agent. The fact that the vessel that ferried him to shore bore no resemblance to the fishing boats of the area did not automatically mark him as in the

process of perpetrating an offense. x x x." (emphasis supplied)

In addition, the police authorities do not claim to have received any confidential report or tipped information that petitioner was carrying stolen cable wires in his vehicle which could otherwise have sustained their suspicion. Our jurisprudence is replete with cases where tipped information has become a sufficient probable cause to effect a warrantless search and seizure.[37] Unfortunately, none exists in this case.

II. Plain view doctrine

It cannot likewise be said that the cable wires found in petitioner's vehicle were in plain view, making its warrantless seizure valid.

Jurisprudence is to the effect that an object is in plain view if the object itself is plainly exposed to sight. Where the object seized was inside a closed package, the object itself is not in plain view and therefore cannot be seized without a warrant. However, if the package proclaims its contents, whether by its distinctive configuration, its transparency, or if its contents are obvious to an observer, then the contents are in plain view and may be seized. In other words, if the package is such that an experienced observer could infer from its appearance that it contains the prohibited article, then the article is deemed in plain view. It must be immediately apparent to the police that the items that they observe may be evidence of a crime, contraband or otherwise subject to seizure.[38]

It is clear from the records of this case that the cable wires were not exposed to sight because they were placed in sacks[39] and covered with leaves. The articles were neither transparent nor immediately apparent to the police authorities. They had no clue as to what was hidden underneath the leaves and branches. As a matter of fact, they had to ask petitioner what was loaded in his vehicle. In such a case, it has been held that the object is not in plain view which could have justified mere seizure of the articles without further search.[40]

III. Consented search

Petitioner contends that the statement of Sgt. Victorino Noceja that he checked the vehicle "with the consent of the accused" is too vague to prove that petitioner consented to the search. He claims that there is no specific statement as to how the consent was asked and how it was given, nor the specific words spoken by petitioner indicating his alleged "consent." At most, there was only an implied acquiescence, a mere passive conformity, which is no "consent" at all within the purview of the constitutional guarantee.

Doubtless, the constitutional immunity against unreasonable searches and seizures is a personal right which may be waived. The consent must be voluntary in order to validate an otherwise illegal detention and search, i.e., the consent is unequivocal, specific, and intelligently given, uncontaminated by any duress or coercion.[41] Hence, consent to a search is not to be lightly inferred, but must be shown by clear and convincing evidence.[42] The question whether a consent to a search was in fact voluntary is a question of fact to be determined from the totality of all the circumstances.[43] Relevant to this determination are the following characteristics of the person giving consent and the environment in which consent is given: (1) the age of the defendant; (2) whether he was in a public or secluded location; (3) whether he objected to the search or passively looked on;[44] (4) the education and intelligence of the defendant; (5) the presence of coercive police procedures; (6) the defendant's belief that no incriminating evidence will be found;[45] (7) the nature of the police questioning; (8) the environment in which the questioning took place; and (9) the possibly vulnerable subjective state of the person consenting.[46] It is the State which has the burden of proving, by clear and positive testimony, that the necessary consent was obtained and that it was freely and voluntarily given.[47]

In the case at bar, Sgt. Victorino Noceja testified on the manner in which the search was conducted in this wise:

"WITNESS

Q

On June 28, 1989, where were you?

A

We were conducting patrol at the poblacion and some barangays, sir.

X X X X X X X X

Q

After conducting the patrol operation, do you remember of any unusual incident on said date and time?

A

Yes, sir.

Q

What is that incident?

A

While I was conducting my patrol at barangay Sampalucan, I saw Rudy Caballes driving a vehicle and the vehicle contained aluminum wires, sir.

X X X X X X X X

Q

When you saw the accused driving the said vehicle, what did you do?

A

Because I saw that the vehicle being driven by Caballes was covered by kakawati leaves, I became suspicious since such vehicle should not be covered by those and I flagged him, sir.

Q

Did the vehicle stop?

A

Yes, sir, and after said vehicle stop[ped], I removed the cover of said vehicle and by so doing, I saw the aluminum wires.

Q

Before you saw the aluminum wires, did you talk to the accused?

A

Yes, sir, I asked him what his load was.

Q

What was the answer of Caballes?

A

He did not answer and I observed him to be pale, "nagpapamutla" (sic), so I told him I will look at the contents of his vehicle and he answered in the positive.

Q

And after you saw for yourself the aluminum wires loaded on the jeep, what did you do?

A

I asked him where those wires came from and he answered those came from the Cavinti area, sir."[48]

This Court is not unmindful of cases upholding the validity of consented warrantless searches and seizure. But in these cases, the police officers' request to search personnel effects was orally articulated to the accused and in such language that left no room for doubt that the latter fully understood what was requested. In some instance, the accused even verbally replied to the request demonstrating that he also understood the nature and consequences of such request.[49]

In *Asuncion vs. Court of Appeals*,[50] the apprehending officers sought the permission of petitioner to search the car, to which the latter agreed. Petitioner therein himself freely gave his consent to said search. In *People vs. Lacerna*,[51] the appellants who were riding in a taxi were stopped by two policemen who asked permission to search the vehicle and the appellants readily agreed. In upholding the validity of the consented search, the Court

held that appellant himself who was "urbanized in mannerism and speech" expressly said that he was consenting to the search as he allegedly had nothing to hide and had done nothing wrong. In *People vs. Cuizon*,^[52] the accused admitted that they signed a written permission stating that they freely consented to the search of their luggage by the NBI agents to determine if they were carrying shabu. In *People vs. Montilla*,^[53] it was held that the accused spontaneously performed affirmative acts of volition by himself opening the bag without being forced or intimidated to do so, which acts should properly be construed as a clear waiver of his right. In *People vs. Omaweng*,^[54] the police officers asked the accused if they could see the contents of his bag to which the accused said "you can see the contents but those are only clothings." Then the policemen asked if they could open and see it, and accused answered "you can see it." The Court said there was a valid consented search.

In case of consented searches or waiver of the constitutional guarantee against obtrusive searches, it is fundamental that to constitute a waiver, it must first appear that (1) the right exists; (2) that the person involved had knowledge, either actual or constructive, of the existence of such right; and (3) the said person had an actual intention to relinquish the right.^[55]

In the case at bar, the evidence is lacking that the petitioner intentionally surrendered his right against unreasonable searches. The manner by which the two police officers allegedly obtained the consent of petitioner for them to conduct the search leaves much to be desired. When petitioner's vehicle was flagged down, Sgt. Noceja approached petitioner and "told him I will look at the contents of his vehicle and he answered in the positive." We are hard put to believe that by uttering those words, the police officers were asking or requesting for permission that they be allowed to search the vehicle of petitioner. For all intents and purposes, they were informing, nay, imposing upon herein petitioner that they will search his vehicle. The "consent" given under intimidating or coercive circumstances is no consent within the purview of the constitutional guaranty. In addition, in cases where this Court upheld the validity of consented search, it will be noted that the police authorities expressly asked, in no uncertain terms, for the consent of the accused to be searched. And the consent of the accused was established by clear and positive proof. In the case of herein petitioner, the statements of the police officers were not asking for his consent; they were declaring to him that they will look inside his vehicle. Besides, it is doubtful whether permission was actually requested and granted because when Sgt. Noceja was asked during his direct examination what he did when the vehicle of petitioner stopped, he answered that he removed the cover of the vehicle and saw the aluminum wires. It was only after he was asked a clarificatory question that he added that he told petitioner he will inspect the vehicle. To our mind, this was more of an afterthought. Likewise, when Pat. de Castro was asked twice in his direct examination what they did when they stopped the jeepney, his consistent answer was that they searched the vehicle. He never testified that he asked petitioner for permission to conduct the search.^[56]

Neither can petitioner's passive submission be construed as an implied acquiescence to the warrantless search. In *People vs. Barros*,^[57] appellant Barros, who was carrying a carton box, boarded a bus where two policemen were riding. The policemen inspected the carton and found marijuana inside. When asked who owned the box, appellant denied ownership of the box and failed to object to the search. The Court there struck down the warrantless search as illegal and held that the accused is not to be presumed to have waived the unlawful search conducted simply because he failed to object, citing the ruling in the case of *People vs. Burgos*,^[58] to wit:

"As the constitutional guaranty is not dependent upon any affirmative act of the citizen, the courts do not place the citizens in the position of either contesting an officer's authority by force, or waiving his constitutional rights; but instead they hold that a peaceful submission to a search or seizure is not a consent or an invitation thereto, but is merely a demonstration of regard for the supremacy of the law."

Casting aside the cable wires as evidence, the remaining evidence on record are insufficient to sustain petitioner's

conviction. His guilt can only be established without violating the constitutional right of the accused against unreasonable search and seizure.

WHEREFORE, the impugned decision is REVERSED and SET ASIDE, and accused Rudy Caballes is hereby ACQUITTED of the crime charged. Cost de oficio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo and Ynares-Santiago, JJ., concur.

[1] Penned by Associate Justice Ruben T. Reyes, with Salome A. Montoya and Eloy R. Bello, Jr., JJ., concurring; Annex A, Petition; Rollo, pp. 32-45.

[2] Annex B, id.; Ibid., p. 48.

[3] Original Record, p. 37.

[4] Rollo, pp. 33-36.

[5] Penned by Judge Jose Catral Mendoza; Original Record, pp. 187-194.

[6] Rollo, p. 45.

[7] Original Record, pp. 193-194.

[8] *People vs. Figueroa*, 248 SCRA 679 (1995); *Morfe vs. Mutuc, et al.*, 22 SCRA 424 (1968); *Davis vs. United States*, 328 U.S. 582.

[9] *Obra, et al. vs. CA, et al.*, 317 SCRA 594 (1999); *People vs. Bagista*, 214 SCRA 63 (1992); *Padilla vs. CA, et al.*, 269 SCRA 402 (1997); *People vs. Lo Ho Wing, et al.*, 193 SCRA 122 (1991); *Coolidge vs. New Hampshire*, 403 U.S. 443.

[10] *People vs. Escaño, et al.*, 323 SCRA 754 (2000); *Aniag, Jr. vs. Comelec*, 237 SCRA 424 (1994); *People vs. Saycon*, 236 SCRA 325 (1994); *People vs. Exala*, 221 SCRA 494 (1993); *Valmonte vs. de Villa*, 178 SCRA 211 (1989); *Carroll vs. United States*, 267 U.S. 132.

[11] *People vs. Montilla*, 285 SCRA 703 (1998); *People vs. Cuizon*, 256 SCRA 325 (1996); *Mustang Lumber vs. CA, et al.*, 257 SCRA 430 (1996); *People vs. Ramos*, 222 SCRA 557 (1993); *People vs. Omaweng*, 213 SCRA 462 (1992).

[12] *People vs. Salayao*, 262 SCRA 255 (1996); *Posadas vs. Court of Appeals*, 188 SCRA 288 (1990) citing *Terry vs. Ohio*, 20 L. Ed. 2d 896.

[13] *People vs. de Gracia*, 233 SCRA 716 (1994) citing *People vs. Malmstedt*, 198 SCRA 401 (1991) and *Umil, et al. vs. Ramos, et al.*, 187 SCRA 311 (1990).

[14] *Posadas vs. CA, et al.*, supra note 12, citing *People vs. CFI of Rizal*, 101 SCRA 86 (1996).

[15] *Padilla vs. CA, et al.*, supra note 9, citing *United States vs. Rem*, 984 F 2d 806 ; *United States vs. McCoy*, 977 F 2d 706; *United States vs. Rusher*, 966 F 2d 868; *United States vs. Parker*, 928 F 2d 365.

[16] *Asuncion vs. CA, et al.*, 302 SCRA 490 (1999); *People vs. Lo Ho Wing*, supra note 9.

[17] *Almedia-Sanchez vs. United States*, 37 L.ed. 2d 596; *Carrol vs. United States*, supra note 10.

[18] *People vs. Malmstedt*, supra note 13.

[19] *People vs. Valdez*, 304 SCRA 140 (1999).

[20] *People vs. Barros*, 231 SCRA 557 (1994); *United States vs. Robinwitz*, 94 L. ed. 653; *Martin vs. United States*, 183 F 2d 436.

[21] *People vs. Exala*, supra note 10; *Valmonte vs. de Villa*, supra note 10.

[22] The Court has held in a case that checkpoints may also be regarded as measures to thwart plots to destabilize the government, in the interest of public security. At the cost of occasional inconvenience, discomfort and even irritation to the citizen, the checkpoints during abnormal times, when conducted within reasonable limits, are part of the price we pay for an orderly society and a peaceful community. *Valmonte vs. de Villa*, supra.

[23] *People vs. Escaño*, supra note 10, citing *U.S. vs. Martinez-Fuerte*, 428 U.S. 543.

[24] *Valmonte vs. de Villa*, supra note 10, citing *People vs. Case*, 27 A.L.R. 686.

[25] *Id.*, citing *State vs. Gaina*, 3 A.L.R. 1500.

[26] *Id.*, citing *Rowland vs. Commonwealth*, 259 S.W. 33.

[27] *People vs. Barros*, supra note 20.

[28] *People vs. Lacerna*, 278 SCRA 561 (1997).

[29] *People vs. Escaño*, supra note 10.

[30] 932 F. 2d 377 cited in *Hermann, Search and Seizure Checklists*, 1994 ed., p. 246.

[31] *Obra, et al. vs. CA, et al.*, supra note 9; *People vs. Bagista*, supra note 9.

[32] *People vs. Barros*, supra note 27.

[33] *People vs. Lacerna*, supra note 28.

[34] TSN, January 31, 1991, pp. 9-10.

[35] TSN, August 9, 1990, p. 3.

[36] 308 SCRA 432 (1999).

[37] *People vs. Gonzales*, G.R. No. 121877, September 12, 2001; *People vs. Valdez*, supra note 19; *People vs. Malmstedt*, supra note 13; *People vs. Tangliben*, 184 SCRA 220 (1990); *People vs. Maspil*, 188 SCRA 751 (1990); *People vs. Bagista*, supra note 9.

[38] *People vs. Doria*, 301 SCRA 668 (1999).

[39] Exhibit E; Original Record, p. 104.

[40] *People vs. Musa*, 217 SCRA 597 (1993); *People vs. Evaristo*, 216 SCRA 431 (1992); *Harris vs. United States*, 390 U.S. 234.

[41] 68 Am Jur 2d Searches and Seizures, §135.

[42] Supra, §136.

[43] *Schneckloth vs. Bustamonte*, 412 U.S. 218.

[44] United States vs. Barahona, 990 F. 2d 412.

[45] United States vs. Lopez, 911 F. 2d 1006.

[46] United States vs. Nafzger, 965 F. 2d 213.

[47] United States vs. Tillman, 963 F. 2d 137; Florida vs. Royer, 460 U.S. 491; United States vs. Mendenhall, 446 U.S. 544.

[48] TSN, August 9, 1990, pp. 2-3.

[49] People vs. Chua Ho San, *supra* note 36.

[50] 302 SCRA 490 (1999).

[51] 278 SCRA 561 (1997).

[52] 256 SCRA 325 (1996).

[53] 285 SCRA 703 (1998).

[54] 213 SCRA 462 (1992).

[55] People vs. Figueroa, 335 SCRA 249 (2000).

[56] TSN, January 31, 1991, p. 10.

[57] 231 SCRA 557 (1994).

[58] 144 SCRA 1 (1986).

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