

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOEL
TUdTUD Y PAYPA AND DINDO BOLONG Y NARET,
ACCUSED-APPELLANTS.**

G.R. No. 144037. September 26, 2003

Ponente: TINGA, J.

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TINGA, J.:

.... It is desirable that criminals should be detected, and to that end that all available evidence should be used. It also is desirable that the government should not itself foster and pay for other crimes, when they are the means by which the evidence is to be obtained. If it pays its officers for having got evidence by crime, I do not see why it may not as well pay them for getting it in the same way, and I can attach no importance to protestations of disapproval if it knowingly accepts and pays and announces that it will pay for the fruits. We have to choose, and for my part I think it a less evil that some criminals should escape than that the government should play an ignoble part.

So wrote Justice Oliver Wendell Holmes in *Olmstead v. U.S.*[1] On this occasion, this Court is made to choose between letting suspected criminals escape or letting the government play an ignoble part.

Sometime during the months of July and August 1999, the Toril Police Station, Davao City received a report from a "civilian asset" named Bobong Solier about a certain Noel Tudit.[2] Solier related that his neighbors have been complaining about Tudit, who was allegedly responsible for the proliferation of marijuana in their area.[3]

Reacting to the report, PO1 Ronald Desierto, PO1 Ramil Floreta and their superior, SPO1 Villalonghan,[4] all members of the Intelligence Section of the Toril Police Station, conducted surveillance in Solier's neighborhood in Sapa, Toril, Davao City.[5] For five days, they gathered information and learned that Tudit was involved in illegal drugs.[6] According to his neighbors, Tudit was engaged in selling marijuana.[7]

On August 1, 1999, Solier informed the police that Tudit had headed to Cotabato and would be back later that day with new stocks of marijuana.[8] Solier described Tudit as big-bodied and short, and usually wore a hat.[9] At around 4:00 in the afternoon that same day, a team composed of PO1 Desierto, PO1 Floreta and SPO1 Villalonghan posted themselves at the corner of Saipon and McArthur Highway to await Tudit's arrival.[10] All wore civilian clothes.[11]

About 8:00 later that evening, two men disembarked from a bus and helped each other carry a carton[12] marked "King Flakes."[13] Standing some five feet away from the men, PO1 Desierto and PO1 Floreta observed that one of the men fit Tudit's description.[14] The same man also toted a plastic bag.[15]

PO1 Floreta and PO1 Desierto then approached the suspects and identified themselves as police officers.[16] PO1 Desierto informed them that the police had received information that stocks of illegal drugs would be arriving that night.[17] The man who resembled Tudit's description denied that he was carrying any drugs.[18] PO1 Desierto asked him if he could see the contents of the box.[19] Tudit obliged, saying, "it was alright."[20] Tudit opened the box himself as his companion looked on.[21]

The box yielded pieces of dried fish, beneath which were two bundles, one wrapped in a striped plastic bag[22] and another in newspapers.[23] PO1 Desierto asked Tuddud to unwrap the packages.[24] They contained what seemed to the police officers as marijuana leaves.[25]

The police thus arrested Tuddud and his companion, informed them of their rights and brought them to the police station.[26] The two did not resist.[27]

The confiscated items were turned over to the Philippine National Police (PNP) Crime Laboratory for examination.[28] Forensic tests conducted by Police Chief Inspector Noemi Austero, forensic chemist of the PNP Crime Laboratory, Region XI, on specimens taken from the confiscated items confirmed the police officers' suspicion. The plastic bag contained 3,200 grams of marijuana leaves while the newspapers contained another 890 grams.[29] Police Chief Inspector Austero reduced her findings in her report, Physical Sciences Report No. D-220-99 dated 2 August 1999.[30]

Noel Tuddud and his companion, Dindo Bulong, were subsequently charged[31] before the Regional Trial Court (RTC) of Davao City with illegal possession of prohibited drugs.[32] Upon arraignment, both accused pleaded not guilty.[33] The defense, however, reserved their right to question the validity of their arrest and the seizure of the evidence against them.[34]

Trial ensued thereafter.

The prosecution presented five witnesses, namely, arresting officers PO1 Desierto and PO1 Floreta, their civilian informant Bobong Solier, forensic chemist Police Chief Inspector Noemi Austero, and SPO3 Nicolas Algabe, exhibit custodian of the PNP Crime Laboratory. Said witnesses testified to the foregoing narration of facts.

The accused, denying the charges against them, cried frame-up.

Noel Tuddud recalled that on August 1, 1999 he had gone to Kabacan, North Cotabato to sell pairs of Levi's pants, which was his "sideline." [35] At about 5:00 in the afternoon, he returned to Davao City by bus.[36] Upon reaching Toril, Tuddud, along with less than ten passengers, got down the bus.[37]

Suddenly, a man who identified himself as a police officer approached him, pointing a .38 caliber revolver.[38] The man told him not to run.[39] Tuddud raised his arms and asked, "Sir, what is this about?" [40] The man answered that he would like to inspect the plastic bag Tuddud was carrying, and instructed Tuddud to open the bag, which revealed several pairs of Levi's pants.[41]

The man then directed Tuddud to open a carton box some two meters away.[42] According to Tuddud, the box was already there when he disembarked the bus.[43] Tuddud told the man the box was not his, but proceeded to open it out of fear after the man again pointed his revolver at him.[44] Tuddud discovered pieces of dried fish, underneath which was something wrapped in cellophane.[45]

"What is that?" the man asked.[46] Tuddud replied that he did not know.[47] Without even unwrapping the cellophane, the man said it was marijuana and abruptly handcuffed Tuddud.[48]

Simultaneously, another man was pointing a firearm at Dindo Bolong at the other side of the street, some eight meters from Tuddud.[49]

Bolong recounted that he was on his way to a relative in Daliao after attending a cousin's wedding in Hagonoy, Davao del Sur when he was accosted.[50] After alighting the bus, Bolong crossed the street.[51] Someone then approached him and pointed a gun at him.[52] The man ordered him not to move and handcuffed him.[53] Bolong asked why he was being arrested but the man just told him to go with them.[54]

The suspects were then taken to the police station where, they would later claim, they met each other for the first time.[55]

Assailing the credibility of informant Bobong Solier, the defense offered the testimonies of Felicia Julaton,[56] Branch 3 Clerk of Court, Claudio Bohevia,[57] Branch 7 Clerk of Court, and Mercedita Abunda,[58] Branch 9 Utility Clerk, all of the Davao City Municipal Trial Circuit Court. They testified and presented court documents showing that one "Bobo" or "Bobong" Ramirez was charged in their respective branches with various crimes, specifically, light threats, less serious physical injuries and robbery. The defense asserted that the "Bobo" or "Bobong" Ramirez accused in these cases is the same person as the informant Bobong Solier.[59]

Swayed by the prosecution's evidence beyond reasonable doubt, the RTC rendered judgment convicting both accused as charged and sentencing them to suffer the penalty of reclusion perpetua and to pay a fine of P500,000.00.[60]

On appeal, Noel Tudit and Dindo Bolong assign, among other errors, the admission in evidence of the marijuana leaves, which they claim were seized in violation of their right against unreasonable searches and seizures.

The right against unreasonable searches and seizures is secured by Section 2, Article III of the Constitution, which states:

SEC. 2. The right of the people to be secured 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 places to be searched and the persons or things to be seized.

The rule is that a search and seizure must be carried out through or with a judicial warrant; otherwise, such search and seizure becomes "unreasonable" within the meaning of the above-quoted constitutional provision, and any evidence secured thereby, will be inadmissible in evidence "for any purpose in any proceeding." [61] Section 3 (2), Article III of the Constitution explicitly provides:

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

The proscription in Section 2, Article III, however, covers only "unreasonable" searches and seizures. The following instances are not deemed "unreasonable" even in the absence of a warrant:

- Warrantless search incidental to a lawful arrest. (Sec. 12, Rule 126 of the Rules of Court and prevailing jurisprudence);
- Search of evidence in "plain view." The elements are: (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties; (b) the evidence was inadvertently discovered by the police who have the right to be where they are; (c) the evidence must be immediately apparent; (d) "plain view" justified mere seizure of evidence without further search;
- Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;
- Consented warrantless search;
- Customs search;
- Stop and Frisk; and

- Exigent and emergency circumstances.[62]

The RTC justified the warrantless search of appellants' belongings under the first exception, as a search incident to a lawful arrest. It cited as authorities this Court's rulings in *People v. Claudio*,[63] *People v. Tangliben*,[64] *People v. Montilla*,[65] and *People v. Valdez*. [66] The Office of the Solicitor General (OSG), in arguing for the affirmance of the appealed decision, invokes the cases of *People v. Maspil, Jr.*,[67] *People v. Malmstedt*,[68] and *People v. Bagista*. [69]

A search incidental to a lawful arrest is sanctioned by the Rules of Court. Prior to its revision in 2000, Section 12,[70] Rule 126 of said Rules read as follows:

SEC. 12. Search incident to lawful arrest. – A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant.

Section 5 (a), Rule 113 of the Rules, in turn, allows warrantless arrests:

SEC. 5. Arrest without warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

....

It is significant to note that the search in question preceded the arrest. Recent jurisprudence holds that the arrest must precede the search; the process cannot be reversed.[71] Nevertheless, a search substantially contemporaneous with an arrest can precede the arrest if the police have probable cause to make the arrest at the outset of the search.[72] The question, therefore, is whether the police in this case had probable cause to arrest appellants. Probable cause has been defined as:

an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense, is based on actual facts, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith of the peace officers making the arrest.[73]

The long-standing rule in this jurisdiction, applied with a great degree of consistency, is that "reliable information" alone is not sufficient to justify a warrantless arrest under Section 5 (a), Rule 113. The rule requires, in addition, that the accused perform some overt act that would indicate that he "has committed, is actually committing, or is attempting to commit an offense."

In the leading case of *People v. Burgos*,[74] this Court held that "the officer arresting a person who has just committed, is committing, or is about to commit an offense must have personal knowledge of that fact. The offense must also be committed in his presence or within his view." [75] In *Burgos*, the authorities obtained information that the accused had forcibly recruited one Cesar Masamlok as member of the New People's Army, threatening the latter with a firearm. Upon finding the accused, the arresting team searched his house and discovered a gun as well as purportedly subversive documents. This Court, in declaring then Section 6 (a), Rule 113 of the Rules of Court inapplicable, ruled that:

There is no such personal knowledge in this case. Whatever knowledge was possessed by the arresting officers, it came in its entirety from the information furnished by Cesar Masamlok. The location of the firearm was given by the appellant's wife.

At the time of the appellant's arrest, he was not in actual possession of any firearm or subversive document. Neither was he committing any act which could be described as subversive. He was, in fact, plowing his field at the time of the arrest.

The right of a person to be secure against any unreasonable seizure of his body and any deprivation of his liberty is a most basic and fundamental one. The statute or rule which allows exceptions to the requirement of warrants of arrest is strictly construed. Any exception must clearly fall within the situations when securing a warrant would be absurd or is manifestly unnecessary as provided by the Rule. We cannot liberally construe the rule on arrests without warrant or extend its application beyond the cases specifically provided by law. To do so would infringe upon personal liberty and set back a basic right so often violated and so deserving of full protection.[76]

Consequently, the items seized were held inadmissible, having been obtained in violation of the accused's constitutional rights against unreasonable searches and seizures.

In *People v. Aminnudin*,^[77] this Court likewise held the warrantless arrest and subsequent search of appellant therein illegal, given the following circumstances:

... the accused-appellant was not, at the moment of his arrest, committing a crime nor was it shown that he was about to do so or that he had just done so. What he was doing was descending the gangplank of the M/V Wilcon 9 and there was no outward indication that he called for his arrest. To all appearances, he was like any of the other passengers innocently disembarking from the vessel. It was only when the informer pointed to him as the carrier of the marijuana that he suddenly became suspect and so subject to apprehension. It was the furtive finger that triggered his arrest. The identification by the informer was the probable cause as determined by the officers (and not a judge) that authorized them to pounce upon Aminnudin and immediately arrest him.[78]

Thus, notwithstanding tips from confidential informants and regardless of the fact that the search yielded contraband, the mere act of looking from side to side while holding one's abdomen,^[79] or of standing on a corner with one's eyes moving very fast, looking at every person who came near,^[80] does not justify a warrantless arrest under said Section 5 (a). Neither does putting something in one's pocket,^[81] handing over one's baggage,^[82] riding a motorcycle,^[83] nor does holding a bag on board a trisikad^[84] sanction State intrusion. The same rule applies to crossing the street per se.^[85]

Personal knowledge was also required in the case of *People v. Doria*.^[86] Recently, in *People v. Binad Sy Chua*,^[87] this Court declared invalid the arrest of the accused, who was walking towards a hotel clutching a sealed Zest-O juice box. For the exception in Section 5 (a), Rule 113 to apply, this Court ruled, two elements must concur: (1) the person to be arrested must execute an overt act indicating he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer. Reliable information alone is insufficient.

In the following cases, the search was held to be incidental to a lawful arrest because of "suspicious" circumstances: *People v. Tangliben*^[88] (accused was "acting suspiciously"), *People v. Malmstedt*^[89] (a bulge on the accused's waist), and *People v. de Guzman*^[90] (likewise a bulge on the waist of the accused, who was wearing tight-fitting clothes).

There is, however, another set of jurisprudence that deems "reliable information" sufficient to justify a search incident to a warrantless arrest under Section 5 (a), Rule 113, thus deviating from *Burgos*. To this class of cases belong *People v. Maspil, Jr.*,^[91] *People v. Bagista*,^[92] *People v. Balingan*,^[93] *People v. Lising*,^[94] *People v. Montilla*,^[95] *People v. Valdez*,^[96] and *People v. Gonzales*.^[97] In these cases, the arresting authorities were acting on information regarding an offense but there were no overt acts or suspicious circumstances that would

indicate that the accused has committed, is actually committing, or is attempting to commit the same. Significantly, these cases, except the last two, come under some other exception to the rule against warrantless searches. Thus, Maspil, Jr. involved a checkpoint search, Balingan was a search of a moving vehicle, Bagista was both, and Lising and Montilla were consented searches.

Nevertheless, the great majority of cases conforms to the rule in Burgos, which, in turn, more faithfully adheres to the letter of Section 5(a), Rule 113. Note the phrase "in his presence" therein, connoting personal knowledge on the part of the arresting officer. The right of the accused to be secure against any unreasonable searches on and seizure of his own body and any deprivation of his liberty being a most basic and fundamental one, the statute or rule that allows exception to the requirement of a warrant of arrest is strictly construed. Its application cannot be extended beyond the cases specifically provided by law.[98]

The cases invoked by the RTC and the OSG are, therefore, gravely misplaced. In Claudio,[99] the accused, who was seated aboard a bus in front of the arresting officer, put her bag behind the latter, thus arousing the latter's suspicion. In Tangliben and Malmstedt, the accused had also acted suspiciously.

As noted earlier, Maspil, Jr., Bagista and Montilla were justified by other exceptions to the rule against warrantless searches. Montilla, moreover, was not without its critics. There, majority of the Court held:

Appellant insists that the mere fact of seeing a person carrying a traveling bag and a carton box should not elicit the slightest suspicion of the commission of any crime since that is normal. But precisely, it is in the ordinary nature of things that drugs being illegally transported are necessarily hidden in containers and concealed from view. Thus, the officers could reasonably assume, and not merely on a hollow suspicion since the informant was by their side and had so informed them, that the drugs were in appellant's luggage. It would obviously have been irresponsible, if now downright absurd under the circumstances, to require the constable to adopt a "wait and see" attitude at the risk of eventually losing the quarry.

Here, there were sufficient facts antecedent to the search and seizure that, at the point prior to the search were already constitutive of probable cause, and which by themselves could properly create in the minds of the officers a well-grounded and reasonable belief that appellant was in the act of violating the law. The search yielded affirmance both of that probable cause and the actuality that appellant was then actually committing a crime by illegally transporting prohibited drugs. With these attendant facts, it is ineluctable that appellant was caught in flagrante delicto, hence his arrest and the search of his belongings without the requisite warrant were both justified.[100]

While concurring with the majority, Mr. Justice Vitug reserved his vote on the discussion on the warrantless search being incidental to a lawful arrest. Mr. Justice Panganiban, joined by Messrs. Justices Melo and Puno, filed a Separate Opinion.

Although likewise concurring in the majority's ruling that appellant consented to the inspection of his baggage, Justice Panganiban disagreed with the conclusion that the warrantless search was incidental to a lawful arrest. He argued that jurisprudence required personal knowledge on the part of the officers making the in flagrante delicto arrest. In Montilla, the appellant "did not exhibit any overt act or strange conduct that would reasonably arouse in their minds suspicion that he was embarking on some felonious enterprise."

Law and jurisprudence in fact require stricter grounds for valid arrests and searches without warrant than for the issuance of warrants therefore. In the former, the arresting person must have actually witnessed the crime being committed or attempted by the person sought to be arrested; or he must have personal knowledge of facts indicating that the person to be arrested perpetrated the crime that had just occurred. In the latter case, the judge simply determines personally from testimonies of witnesses that there exists reasonable grounds to believe that a crime was committed by the accused.

....

To say that "reliable tips" constitute probable cause for a warrantless arrest or search is in my opinion, a dangerous precedent and places in great jeopardy the doctrines laid down in many decisions made by this Court, in its effort to zealously guard and protect the sacred constitutional right against unreasonable arrests, searches and seizures. Everyone would be practically at the mercy of so-called informants, reminiscent of the *makapilis* during the Japanese occupation. Any one whom they point out to a police officer as a possible violator of the law could then be subject to search and possible arrest. This is placing limitless power upon informants who will no longer be required to affirm under oath their accusations, for they can always delay their giving of tips in order to justify warrantless arrests and searches. Even law enforcers can use this as an oppressive tool to conduct searches without warrants, for they can always claim that they received raw intelligence information only on the day or afternoon before. This would clearly be a circumvention of the legal requisites for validly effecting an arrest or conducting a search and seizure. Indeed the majority's ruling would open loopholes that would allow unreasonable arrests, searches and seizures.[101]

Montilla would shortly find mention in Justice Panganiban's concurring opinion in *People v. Doria*, *supra*, where this Court ruled:

Accused-Appellant Gaddao was arrested solely on the basis of the alleged identification made by her co-accused. PO3 Manlangit, however, declared in his direct examination that appellant Doria named his co-accused in response to his (PO3 Manlangit's) query as to where the marked money was. Appellant Doria did not point to appellant Gaddao as his associate in the drug business, but as the person with whom he left the marked bills. This identification does not necessarily lead to the conclusion that appellant Gaddao conspired with her co-accused in pushing drugs. Appellant Doria may have left the money in her house, with or without any conspiracy. Save for accused-appellant Doria's word, the Narcom agents had no showing that the person who affected the warrantless arrest had, in his own right, knowledge of facts implicating the person arrested to the perpetration of a criminal offense, the arrest is legally objectionable.[102] *[Italics in the original.]*

Expressing his accord with Mr. Justice Puno's ponencia, Justice Panganiban said that Doria "rightfully brings the Court back to well-settled doctrines on warrantless arrests and searches, which have seemingly been modified through an obiter in *People v. Ruben Montilla*." [103]

Montilla, therefore, has been seemingly discredited insofar as it sanctions searches incidental to lawful arrest under similar circumstances. At any rate, Montilla was a consented search. As will be demonstrated later, the same could not be said of this case.

That leaves the prosecution with *People v. Valdez*, which, however, involved an "on-the-spot information." The urgency of the circumstances, an element not present in this case, prevented the arresting officer therein from obtaining a warrant.

Appellants in this case were neither performing any overt act or acting in a suspicious manner that would hint that a crime has been, was being, or was about to be, committed. If the arresting officers' testimonies are to be believed, appellants were merely helping each other carry a carton box. Although appellant Tudtud did appear "afraid and perspiring," [104] "pale" [105] and "trembling," [106] this was only after, not before, he was asked to open the said box.

In no sense can the knowledge of the herein arresting officers that appellant Tudtud was in possession of marijuana be described as "personal," having learned the same only from their informant Solier. Solier, for his part, testified that he obtained his information only from his neighbors and the friends of appellant Tudtud:

Q -

What was your basis in your report to the police that Tudit is going to Cotabato and get stocks of marijuana?

A -

Because of the protest of my neighbors who were saying who will be the person whou [sic] would point to him because he had been giving trouble to the neighborhood because according to them there are [sic] proliferation of marijuana in our place. That was the complained [sic] of our neighbors.

Q -

Insofar as the accused Tudit is concerned what was your basis in reporting him particularly?

A -

His friends were the once who told me about it.

Q -

For how long have you know [sic] this fact of alleged activity of Tudit in proliferation of marijuana?

A -

About a month.

....

Q -

Regarding the report that Tudit went to Cotabato to get stocks of marijuana which led to his apprehension sometime in the evening of August 1 and according to the report [which] is based on your report my question is, how did you know that Tudit will be bringing along with him marijuana stocks on August 1, 1999?

....

A -

Because of the information of his neighbor.[107]

In other words, Solier's information itself is hearsay. He did not even elaborate on how his neighbors or Tudit's friends acquired their information that Tudit was responsible for the proliferation of drugs in their neighborhood.

Indeed, it appears that PO1 Floreta himself doubted the reliability of their informant. He testified on cross-examination:

Q -

You mean to say that Bobot Solier, is not reliable?

A -

He is trustworthy.

Q -

Why [did] you not consider his information not reliable if he is reliable?

A -

(witness did not answer).

ATTY. CAÑETE:

Never mind, do not answer anymore. That's all.[108]

The prosecution, on re-direct examination, did not attempt to extract any explanation from PO1 Floreta for his telling silence.

Confronted with such a dubious informant, the police perhaps felt it necessary to conduct their own "surveillance." This "surveillance," it turns out, did not actually consist of staking out appellant Tudtud to catch him in the act of plying his illegal trade, but of a mere "gather[ing] of information from the assets there." [109] The police officers who conducted such "surveillance" did not identify who these "assets" were or the basis of the latter's information. Clearly, such information is also hearsay, not of personal knowledge.

Neither were the arresting officers impelled by any urgency that would allow them to do away with the requisite warrant, PO1 Desierto's assertions of lack of time [110] notwithstanding. Records show that the police had ample opportunity to apply for a warrant, having received Solier's information at around 9:00 in the morning; Tudtud, however, was expected to arrive at around 6:00 in the evening of the same day. [111] In *People v. Encinada*, supra, the Court ruled that there was sufficient time to procure a warrant where the police officers received at 4:00 in the afternoon an intelligence report that the accused, who was supposedly carrying marijuana, would arrive the next morning at 7:00 a.m.:

Even if the information was received by Bolonia about 4:00 p.m. of May 20, 1992 at his house, there was sufficient time to secure a warrant of arrest, as the M/V Sweet Pearl was not expected to dock until 7:00 a.m. the following day. Administrative Circular No. 13 allows application for search warrants even after office hours:

"3. Raffling shall be strictly enforced, except only in case where an application for search warrant may be filed directly with any judge whose jurisdiction the place to be searched is located, after office hours, or during Saturdays, Sundays, and legal holidays, in which case the applicant is required to certify under oath the urgency of the issuance thereof after office hours, or during Saturdays, Sundays and legal holidays;" . . .

The same procedural dispatch finds validation and reiteration in Circular No. 19, series of 1987, entitled "Amended Guidelines and Procedures on Application for search warrants for Illegal Possession of Firearms and Other Serious Crimes Filed in Metro Manila Courts and Other Courts with Multiple Salas":

"This Court has received reports of delay while awaiting raffle, in acting on applications for search warrants in

the campaign against loose firearms and other serious crimes affecting peace and order. There is a need for prompt action on such applications for search warrant. Accordingly, these amended guidelines in the issuance of a search warrant are issued:

- All applications for search warrants relating to violation of the Anti-subversion Act, crimes against public order as defined in the Revised Penal Code, as amended, illegal possession of firearms and/or ammunition and violations of the Dangerous Drugs Act of 1972, as amended, shall no longer be raffled and shall immediately be taken cognizance of and acted upon by the Executive Judge of the Regional Trial Court, Metropolitan Trial Court, and Municipal Trial Court under whose jurisdiction the place to be searched is located.

- In the absence of the Executive Judge, the Vice-Executive Judge shall take cognizance of and personally act on the same. In the absence of the Executive Judge or Vice-Executive Judge, the application may be taken cognizance of and acted upon by any judge of the Court where application is filed.

- Applications filed after office hours, during Saturdays, Sundays and holidays, shall likewise be taken cognizance of and acted upon by any judge of the Court having jurisdiction of the place to be searched, but in such cases the applicant shall certify and state the facts under oath, to the satisfaction of the judge, that its issuance is urgent.

- Any judge acting on such application shall immediately and without delay personally conduct the examination of the applicant and his witnesses to prevent the possible leakage of information. He shall observe the procedures, safeguards, and guidelines for the issuance of search warrants provided for in this Court's Administrative Circular No. 13, dated October 1, 1985."^[112] *[Italics in the original.]*

Given that the police had adequate time to obtain the warrant, PO1 Floreta's testimony that the real reason for their omission was their belief that they lacked sufficient basis to obtain the same assumes greater significance. This was PO1 Floreta's familiar refrain:

Q -

When Solier reported to you that fact, that Tudtud will be coming from Cotabato to get that (sic) stocks, you did not go to court to get a search warrant on the basis of the report of Bobot Solier?

A -

No.

Q -

Why?

A -

Because we have no real basis to secure the search warrant.

Q -

When you have no real basis to secure a search warrant, you have also no real basis to search Tudtud and Bulong at that time?

A -

Yes, sir.

....

Q -

And Bobot Solier told you that Tudit, that he would already bring marijuana?

A -

Yes, sir.

Q -

And this was 9:00 a.m.?

A -

Yes, sir.

Q -

The arrival of Tudit was expected at 6:00 p.m.?

A -

Yes, sir.

Q -

Toril is just 16 kilometers from Davao City?

A -

Yes, sir.

Q -

And the Office of the Regional Trial Court is only about 16 kilometers, is that correct? .

A -

Yes, sir

Q -

And it can be negotiated by thirty minutes by a jeep ride?

A -

Yes, sir.

Q -

And you can asked [sic] the assistance of any prosecutor to apply for the search warrant or the prosecutor do [sic] not assist?

A -

They help.

Q -

But you did not come to Davao City, to asked [sic] for a search warrant?

A -

As I said, we do not have sufficient basis.[113]

It may be conceded that "the mere subjective conclusions of a police officer concerning the existence of probable cause is not binding on [the courts] which must independently scrutinize the objective facts to determine the existence of probable cause" and that "a court may also find probable cause in spite of an officer's judgment that none exists." [114] However, the fact that the arresting officers felt that they did not have sufficient basis to obtain a warrant, despite their own information-gathering efforts, raises serious questions whether such "surveillance" actually yielded any pertinent information and even whether they actually conducted any information-gathering at all, thereby eroding any claim to personal knowledge.

Finally, there is an effective waiver of rights against unreasonable searches and seizures if the following requisites are present:

- It must appear that the rights exist;
- The person involved had knowledge, actual or constructive, of the existence of such right;
- Said person had an actual intention to relinquish the right.[115]

Here, the prosecution failed to establish the second and third requisites. Records disclose that when the police officers introduced themselves as such and requested appellant that they see the contents of the carton box supposedly containing the marijuana, appellant Tudtud said "it was alright." He did not resist and opened the box himself.

The fundamental law and jurisprudence require more than the presence of these circumstances to constitute a valid waiver of the constitutional right against unreasonable searches and seizures. Courts indulge every reasonable presumption against waiver of fundamental constitutional rights; acquiescence in the loss of fundamental rights is not to be presumed.[116] The fact that a person failed to object to a search does not amount to permission thereto.

.... As the constitutional guaranty is not dependent upon any affirmative act of the citizen, the courts do not place the citizen 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.[117] [Underscoring supplied.]

Thus, even in cases where the accused voluntarily handed her bag[118] or the chairs[119] containing marijuana to the arresting officer, this Court held there was no valid consent to the search.

On the other hand, because a warrantless search is in derogation of a constitutional right, peace officers who conduct it cannot invoke regularity in the performance of official functions and shift to the accused the burden of proving that the search was unconsented.[120]

In any case, any presumption in favor of regularity would be severely diminished by the allegation of appellants in this case that the arresting officers pointed a gun at them before asking them to open the subject box. Appellant Tutud testified as follows:

Q -

This person who approached you according to you pointed something at you[.] [What] was that something?

A -

A 38 cal. Revolver.

Q -

How did he point it at you?

A -

Like this (Witness demonstrating as if pointing with his two arms holding something towards somebody).

Q -

This man[,], what did he tell you when he pointed a gun at you?

A -

He said do not run.

Q -

What did you do?

A -

I raised my hands and said "Sir, what is this about?"

Q -

Why did you call him Sir?

A -

I was afraid because when somebody is holding a gun, I am afraid.

Q -

Precisely, why did you address him as Sir?

A -

Because he was holding a gun and I believed that somebody who is carrying a gun is a policeman.

Q -

When you asked him what is this? What did he say?

A -

He said "I would like to inspect what you are carrying.["]

...

Q -

What did you say when you were asked to open that carton box?

A -

I told him that is not mine.

Q -

What did this man say?

A -

He again pointed to me his revolver and again said to open.

Q -

What did you do?

A -

So I proceeded to open for fear of being shot.[121]

Appellants' implied acquiescence, if at all, could not have been more than mere passive conformity given under coercive or intimidating circumstances and is, thus, considered no consent at all within the purview of the constitutional guarantee.[122] Consequently, appellants' lack of objection to the search and seizure is not tantamount to a waiver of his constitutional right or a voluntary submission to the warrantless search and seizure.[123]

As the search of appellants' box does not come under the recognized exceptions to a valid warrantless search, the marijuana leaves obtained thereby are inadmissible in evidence. And as there is no evidence other than the hearsay testimony of the arresting officers and their informant, the conviction of appellants cannot be sustained.

The Bill of Rights is the bedrock of constitutional government. If people are stripped naked of their rights as human beings, democracy cannot survive and government becomes meaningless. This explains why the Bill of Rights, contained as it is in Article III of the Constitution, occupies a position of primacy in the fundamental law way above the articles on governmental power.[124]

The right against unreasonable search and seizure in turn is at the top of the hierarchy of rights,[125] next only to, if not on the same plane as, the right to life, liberty and property, which is protected by the due process clause.[126] This is as it should be for, as stressed by a couple of noted freedom advocates,[127] the right to personal security which, along with the right to privacy, is the foundation of the right against unreasonable search and seizure "includes the right to exist, and the right to enjoyment of life while existing." Emphasizing such right, this Court declared in *People v. Aruta*:

Unreasonable searches and seizures are the menace against which the constitutional guarantees afford full protection. While the power to search and seize may at times be necessary to the public welfare, still it may be exercised and the law enforced without transgressing the constitutional rights of the citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government.

Those who are supposed to enforce the law are not justified in disregarding the rights of the individual in the name of order. Order is too high a price to pay for the loss of liberty. As Justice Holmes declared: "I think it is less evil that some criminals escape than that the government should play an ignoble part." It is simply not allowed in free society to violate a law to enforce another, especially if the law violated is the Constitution itself.[128]

Thus, given a choice between letting suspected criminals escape or letting the government play an ignoble part, the answer, to this Court, is clear and ineluctable.

WHEREFORE, the Decision of the Regional Trial Court of Davao City is REVERSED. Appellants Noel Tudtud y Paypa and Dindo Bolong y Naret are hereby ACQUITTED for insufficiency of evidence. The Director of the Bureau of Prisons is ordered to cause the immediate release of appellants from confinement, unless they are being held for some other lawful cause, and to report to this Court compliance herewith within five (5) days from receipt hereof.

SO ORDERED.

Bellosillo, (Chairman), Austria-Martinez, and Callejo, Sr., JJ., concur.
Quisumbing, J., please see dissenting opinion.

[1] 277 U.S. 438, 470 (1927); 72 L. Ed. 944.

[2] TSN, 15 November 1999, p. 5.

[3] TSN, 28 January 2000, p. 3.

[4] Also appears "SPO2 Villalongja" in the Records.

[5] TSN, 15 November 1999, p. 7; TSN, 16 November 1999.

[6] *Id.*, at 7-8.

[7] *Id.*, at 8; TSN, 16 November 1999, p. 6.

- [8] Ibid; id., at 7.
- [9] Ibid; id., at 8-9.
- [10] TSN, 15 November 1999, p. 9; id., at 7.
- [11] Ibid.
- [12] Exhibit A.
- [13] TSN, 15 November 1999, pp. 9-10.
- [14] Id., at 9.
- [15] Ibid.
- [16] TSN, 15 November 1999, p. 11.
- [17] Ibid.; TSN, 16 November 1999, p. 10.
- [18] TSN, 16 November 1999, p. 10.
- [19] TSN, 15 November 1999, p. 11; TSN, 16 November 1999, pp. 10-11.
- [20] Ibid.; id., at 11.
- [21] Ibid.; ibid.
- [22] Exhibit B.
- [23] TSN, 15 November 1999, pp. 11-12; TSN, 16 November 1999, p. 12.
- [24] TSN, 16 November 1999, p. 13.
- [25] TSN, 15 November 1999, p. 12; TSN, 16 November 1999, p. 13.
- [26] Id., at 13; id., at 14.
- [27] Ibid.
- [28] TSN, 15 November 1999, pp. 13-14; TSN, 16 November 1999, p. 14.
- [29] TSN, 12 November 1999, pp. 6-7.
- [30] Exhibit E.
- [31] The Information (Records, p. 1) against the accused reads:
- That on or about August 1, 1999, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring, confederating together and helping one another, willfully, unlawfully and feloniously had in their possession two (2) packages of Marijuana leaves and stems with leaves, weighing 890 grams and 3.2 kgs. more or less, respectively, which are prohibited drugs.
- Contrary to law.
- [32] Rep. Act No. 6425 (1972), sec. 8.
- [33] TSN, 29 October 1999, p. 2; Records, pp. 17-18.
- [34] Ibid.

[35] TSN, 4 February 2000, p. 2.

[36] Ibid.

[37] TSN, 4 February 2000, pp. 2-3.

[38] Id., at 4.

[39] Ibid.

[40] Ibid.

[41] Ibid.

[42] TSN, 4 February 2000, pp. 5-10.

[43] Id., at 10.

[44] Id., at 5.

[45] Id., at 5, 10.

[46] Id., at 5, 10.

[47] Id., at 5, 10.

[48] Id., at 5, 10.

[49] Id., at 5.

[50] TSN, 8 February 2000, p. 4.

[51] Id., at 5.

[52] Ibid.

[53] Ibid.

[54] TSN, 8 February 2000, p. 15.

[55] Id., at 7, 14.

[56] Id., at 19-21.

[57] Id., at 23.

[58] Id., at 26-27.

[59] TSN, 4 February 2000, pp. 6-7.

[60] Records, p. 148. The dispositive portion of the Decision dated 8 March 2000 reads:

WHEREFORE, finding the evidence of prosecution more than sufficient to prove the guilt of both accused of the offense charged beyond reasonable doubt, pursuant to the provision of Sec. 8[,] Art. 11 of the Republic Act 6575, as amended by Republic Act 7659, Sec. 20[,] Art. 4, without any aggravating nor mitigating circumstances attendant in the commission of the offense charged, both above-named accused, Noel Tudtud [y] Paypa and Dindo Bolong [y] Naret, are sentenced to suffer an [sic] imprisonment of reclusion perpetua, together with all accessory penalty [sic] as provided for by law and to pay a fine of P500,000.00 in favor of the government.

The confiscated subject marijuana dried leaves, placed in a carton box with brand name "King Flakes" marked Exh. "A" and "B" for the prosecution, are ordered confiscated in favor of the government, and are turn-over [sic] to the Office of the Narcotics Command, Davao City, for its immediate destruction through burning, as the circumstances, will warrant.

SO ORDERED.

- [61] *People v. Barros*, G.R. No. 90640, 29 March 1994, 231 SCRA 557.
- [62] *People v. Bolasa*, 378 Phil. 1073, 1078-1079 (1999).
- [63] G.R. No. L-72564, 15 April 1988, 160 SCRA 646 (1988).
- [64] G.R. No. 63630, 6 April 1990, 184 SCRA 220 (1990).
- [65] G.R. No. 123872, 30 January 1998, 285 SCRA 703 (1998).
- [66] 363 Phil. 481 (1999).
- [67] G.R. No. 85177, 20 August 1990, 188 SCRA 751 (1990).
- [68] G.R. No. 91107, 19 June 1991, 198 SCRA 401 (1991).
- [69] G.R. No. 86218, 12 September 1992, 214 SCRA 63 (1992).
- [70] Now Section 13, as amended.
- [71] *People v. Chua Ho San*, 367 Phil. 703 (1999), citing *Malacat v. Court of Appeals*, 347 Phil. 462 (1997).
- [72] 68 Am Jur 2d, Search and Seizure §114.
- [73] *People v. Molina*, G.R. No. 133917, 19 February 2001, 352 SCRA 174.
- [74] 228 Phil. 1 (1986).
- [75] *Id.*, at 15.
- [76] *Ibid.*
- [77] G.R. No. L-74869, 6 July 1988, 163 SCRA 402 (1988). Griño-Aquino, J., dissented.
- [78] *Id.*, at 409-410.
- [79] *People v. Mengote*, G.R. No. 87059, 22 June 1992, 210 SCRA 174 (1992).
- [80] *Malacat v. Court of Appeals*, 347 Phil. 462 (1997).
- [81] *People v. Rodriguez*, G.R. No. 79965, 25 May 1994, 232 SCRA 498 (1994).
- [82] *People v. Cuizon*, 326 Phil. 345 (1996).
- [83] *People v. Encinada*, 345 Phil. 301(1997).
- [84] *People v. Molina*, *supra*, note 72.
- [85] *People v. Aruta*, 351 Phil. 868 (1998).
- [86] 361 Phil. 595 (1999).
- [87] G.R. Nos. 136066-67, 4 February 2003.

[88] G.R. No. 63630, 6 April 1990, 184 SCRA 220.

[89] Supra, note 68. Fernan, C.J., Narvasa, Cruz, Gutierrez and Gancayco, JJ., dissented.

[90] G.R. Nos. 117952-53, 14 February 2001, 351 SCRA 573. In De Guzman, however, the narration of facts do not indicate how the arresting officer "learned" that the accused was engaged in the sale of drugs, whether from personal knowledge or through an informant.

[91] Supra, note 67.

[92] Supra, note 69.

[93] 311 Phil. 290 (1995). Padilla, J., dissented,

[94] 341 Phil. 801 (1997).

[95] Supra, note 65.

[96] Supra, note 66.

[97] 417 Phil. 342 (2001).

[98] People v. Salangga, G.R. No. 100910, 25 July 1994, 234 SCRA 407.

[99] Claudio involved information provided by the arresting office himself and, hence, is not included in the above survey of cases.

[100] People v. Montilla, supra, note 65, at 721-722.

[101] Id., at 733-734.

[102] People v. Doria, supra, note 86, at 632-633.

[103] Id., at 642-643.

[104] TSN, 16 November 1999, p. 18.

[105] Id., at 24.

[106] Ibid.

[107] TSN, 28 January 2000, p. 3.

[108] TSN, 16 November 1999, p. 29. Underscoring supplied.

[109] TSN, 15 November 1999, p. 7.

[110] Id., at 14.

[111] TSN, 16 November 1999, p. 17.

[112] People v. Encinada, supra, note 83, at 319-321.

[113] Id., at 17, 28. Underscoring supplied.

[114] United States ex rel. Senk v. Brierly, 381 F.Supp. 447, 463 (1974).

[115] People v. Burgos, supra; note 74; People v. Salangga, supra; note 98; People v. Aruta, supra, note 85.

[116] Ibid.; ibid.; ibid.

[117] Ibid.; People v. Aruta, supra, note 85.

[118] People v. Aruta, supra, note 85.

[119] People v. Encinada, supra, note 83.

[120] People v. Cubcubin, 413 Phil. 249 (2001). See also People v. Salanguit, G.R. No. 133254-55, 19 April 2001, 356 SCRA 683 (2001); People v. Encinada, supra, note 83.

[121] TSN, February 4, 2000, pp. 4-5. See also Id., at 8, and TSN, 8 February 2000, p. 5.

[122] People v. Compacion, 414 Phil. 68 (2001).

[123] Ibid.

[124] C.f. Constitution, Arts. VI (Legislative Department), VII (Executive Department), VIII (Judicial Department), IX (Constitutional Commissions) and X (Local Government).

[125] See Const., art. III, sec. 2.

[126] Id., sec. 1.

[127] D. SANDIFER AND L. SCHEMAN, THE FOUNDATION OF FREEDOM 44-45 (1966).

[128] People v. Aruta, supra, note 85, at 895.

QUISUMBING, J., Dissenting:

I respectfully differ from the majority of my brethren on this case. I vote to sustain the decision^[1] dated March 8, 2000, the Regional Trial Court of Davao City, Branch 17, which convicted in Criminal Case No. 43,817-99 appellants Noel Tudtud y Paypa and Dindo Bolong^[2] y Naret, and imposed upon each of them the penalty of reclusion perpetua and a fine of P500,000, for illegal possession of prohibited drugs.

For emphasis, I quote hereunder the information against the appellants filed by the prosecution:

That on or about August 1, 1999, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring, confederating together and helping one another, willfully, unlawfully and feloniously and with intent to possess and without being authorized by law had in their possession two (2) packages of Marijuana leaves and stems with leaves, weighing 890 grams and 3.2 kgs. More or less, respectively, which are prohibited drugs.

CONTRARY TO LAW.^[3]

There is no doubt in my mind that appellants are guilty of the illegal possession of prohibited drugs found by the police inside their carton box. The facts and the law support the findings of the trial court, leading to the conviction of as well the penalty imposed upon appellants.

Allow me to restate the facts and my reasons for this dissent.

Sometime in the months of July and August 1999, PO1 Ronald Desierto assigned at Police Precinct 8, Toril, Davao City, received a tip from their "civilian asset," Bobong Solier, that appellant Noel Tudtud was involved in the prohibited drug trade. According to Solier, Tudtud got his stocks of marijuana from Cotabato. The information was entered in the police blotter,^[4] after which PO1 Desierto and other members of the Intelligence Section of Toril Precinct 8 conducted surveillance on Tudtud for five (5) days.^[5] Gathering information from other secret

informants in the vicinity and from Tugtud's neighbors, Solier's tip to the police was validated.[6]

In the morning of August 1, 1999, Bobong Solier informed Precinct 8 officers that appellant Tugtud went on another trip to Cotabato and was expected to arrive in the afternoon of the same day with a load of marijuana.[7] A team was immediately formed, which included PO1 Ronald Desierto, SPO1 Villanueva[8] and PO1 Ramil Floreta. They posted themselves at the corner of Saypon, MacArthur Highway, Toril, Davao City.[9] They waited from 4:00 p.m. until 8:00 p.m. when a Weena bus stopped and appellants disembarked.[10] Tugtud alighted holding a plastic bag with his right hand while his left hand was holding a carton box with the markings "King Flakes." Appellant Bolong helped Tugtud carry the carton box with his right hand.[11]

PO1 Desierto and Floreta approached appellants and identified themselves as police officers.[12] For security purposes, SPO1 Villanueva stood ten (10) meters away from them.[13] PO1 Desierto and Floreta told appellants that they received information of the arrival of illegal drugs. They requested appellants if they could be allowed to see the contents of the carton box. Appellant Tugtud said "okay" and opened the carton box himself.[14] PO1 Desierto and Floreta saw dried sliced fish on top of the carton box. PO1 Desierto requested Tugtud to take the dried sliced fish out of the carton box.[15] Inside the box, something was wrapped in a striped plastic bag, while another bundle was wrapped in a newspaper. PO1 Desierto again requested Tugtud to open the striped plastic bag and the bundle wrapped in newspaper. When appellant Tugtud opened the striped plastic bag, PO1 Desierto and Floreta saw leaves, which appeared to be marijuana.[16] Likewise, the contents of the bundle wrapped with newspaper revealed what appeared to be marijuana stalks with leaves.[17]

Appellants, who did not resist arrest, were forthwith informed of their right to counsel and to remain silent. They were brought to the police station where the foregoing incident was recorded in the police blotter.[18]

The seized packages of suspected marijuana, weighing 820 grams and 3.2 kilograms, were referred to the PNP Crime Laboratory, Region XI, Davao City, for examination. The forensic result revealed that the dried leaves were indeed marijuana.[19]

For his defense, appellant NOEL TUGTUD testified that in the morning of August 1, 1999, he left for Kabacan, North Cotabato to sell ten pieces of Levis[20] maong pants to students at the University of Southern Mindanao.[21] He left for Davao City in the afternoon, taking the Weena bus crossing Bayabas and arrived at Toril at about 8:30 p.m., where he alighted before going to his residence at Sapa, Crossing Bayabas, Toril, Davao City. After the bus left, somebody whom he later identified as PO1 Desierto aimed a gun at him and ordered him to open a box, which yielded marijuana leaves. He denied carrying said carton box or knowing its contents but despite his pleas he was handcuffed and brought to the Toril Police Station along with somebody whom he had never met before, herein co-appellant Dindo Bolong,

In his own testimony, co-appellant DINDO BOLONG likewise denied knowing Noel Tugtud. He too, disclaimed any knowledge of a carton box containing the subject marijuana. He denied having carried said carton box together with his co-appellants. He narrated that on August 1, 1999, he went to Hagonoy, Davao del Sur, to do an errand for his cousin who was about to get married. In the afternoon of that day, he boarded a Weena bus going back to Calinan, Davao City, but decided to drop by at Toril, Davao City, to meet a relative. When he alighted at the crossing of Bayabas and Toril in Davao City, at about 8:30 p.m., he and another man, herein appellant Tugtud, were apprehended by a man who handcuffed them. They were at once brought together to the Toril Police Station.

In its decision dated March 8, 2000, the trial court disbelieved the version of the defense and gave credence to the testimony of the apprehending officers, as corroborated by the Philippine National Police forensic chemist. The trial court found appellants guilty, as follows:

WHEREFORE, finding the evidence of prosecution more than sufficient to prove the guilt of both accused of

the offense charged beyond reasonable doubt, pursuant to the provision of Sec. 8, Art. 11 of the Republic Act 6575, as amended by Republic Act 7659, Sec. 20 Art. 4, without any aggravating nor mitigating circumstances attendant in the commission of the offense charged, both above-named accused, Noel Tuftud y Paypa and Dindo Bolong y Naret, are sentenced to suffer an imprisonment of reclusion perpetua, together with all accessory penalty as provided for by law and to pay a fine of P500,000.00 in favor of the government.

The confiscated subject marijuana dried leaves, placed in a carton box with name "King Flakes" marked Exh. "A" and "B" for the prosecution, are ordered confiscated in favor of the government, and are turn-over (sic) to the Office of the Narcotics Command, Davao City, for its immediate destruction through burning, as the circumstances, will warrant.

SO ORDERED.[22]

Hence, the present appeal before us. Appellant Noel Tuftud assigned in his Brief several errors.[23]

On July 19, 2001, appellant Dindo Bolong filed a manifestation, adopting appellant Tuftud's brief as his own.[24]

In our view, the resolution of this appeal hinges on the following issues: (1) whether the warrantless arrest, search and seizure effected by the police officer are unlawful; (2) whether the prosecution's evidence suffices to sustain a finding of guilt with moral certainty; and (3) whether the penalty of reclusion perpetua and the fine of P500,000 imposed on each appellant are proper.

On the first issue, appellants content that the warrantless arrest of appellants and the search and seizure of the marijuana leaves were irregular, hence, unlawful. They claim that the marijuana allegedly seized from them was a product of an illegal search, hence, inadmissible in evidence.

The Office of the Solicitor General (OSG), however, argues that the findings and conclusions of the trial court should be sustained. According to the OSG, the law permits the warrantless search and seizure of the marijuana as an incident to a lawful arrest. I am squarely in agreement with the OSG's submission.

The validity of the warrantless arrest and the search made by the police upon the persons of appellants, as well as the seizure of the marijuana leaves, as herein presented, is no longer a matter of first impression. Jurisprudence is replete with cases on this score.

Section 2, Article III of the Constitution, ordains that a search and seizure must be carried out through or on the strength of a judicial warrant, absent which such search and seizure becomes "unreasonable"[25] and that evidence secured on the occasion of such an unreasonable search and seizure shall be inadmissible in evidence for any purpose in any proceeding.[26] But this exclusionary rule is not, however, an absolute and rigid proscription. Section 5(a), Rule 113 of the Rules of Court[27] provides one such exception where a peace officer or a private person may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense. In the case at hand, appellants were caught in flagrante delicto, since they were carrying marijuana at the time of their arrest. A warrantless arrest, under this circumstance, is legitimate. It also necessarily cloaks the arresting police officer with authority to search and seize from the offender contraband or prohibited material and whatever may be used as proof of the offense being committed.

However, the instances of permissible arrests set out in Section 5(a) of Rule 113, do not dispense with the requisite probable cause before a warrantless search and seizure can be lawfully conducted. In these cases, probable cause must only be based on reasonable ground of suspicion or belief that a crime has been committed or is about to be committed.[28] 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.

In this case, I note that the arresting officers personally verified the information tipped to them by their civilian informant concerning appellant Tudtud's drug trafficking activities. After receiving this information from Solier, PO1 Desierto and other members of the Intelligence Section of Toril Precinct, conducted surveillance operations on appellants for five (5) days and confirmed the tip.[29] Having verified Solier's data, the police officers had personal knowledge of the probable cause to believe the subsequent tip-off in the morning of August 1, 1999 that on that day, Tudtud was on another trip to Cotabato to replenish his stocks of marijuana and was expected to arrive in the afternoon of the same day.[30] Further, the informant described in detail the personal circumstances of appellant Tudtud, i.e. that he was short, burly, and usually wore a baseball cap. PO1 Desierto and his team already had leads as to the identity of the person they were looking for.[31] It was indubitable, therefore, that the police team of PO1 Desierto had probable cause to search appellant Tudtud's belongings since he fitted the description given by the civilian asset.[32]

The warrantless search and seizure is further justified by lack of material time to apply for a search warrant. Faced with such on-the-spot information that Tudtud would arrive that same day with the prohibited drugs, the law enforcers had to respond quickly. As often said, it is necessary to adopt a realistic appreciation of the physical and tactical problems of the police, instead of critically viewing them from the placid and clinical environment of judicial chambers,[33] if courts of justice wish to be of understanding assistance to law enforcement agencies in the fight against crime.

Moreover, appellants consented to the search in this case. This, to me, is established not merely from the words but the actions taken hereon. When the officers approached appellants, they formally introduced themselves as policemen. They inquired from appellants about the contents of their luggage, and requested appellant Tudtud to open the box. Although trembling, appellant Tudtud agreed to the request.[34] Neither did appellant Bolong resist the search. In *People v. Cuizon*,[35] we held that illegal drugs discovered as a result of consented search is admissible in evidence. And, in *People v. Montilla*,[36] when an individual voluntarily submits to a search or consents to have the same conducted upon his person or premises, he is precluded from later complaining thereof.

Circumstances considered, I believe that there was a valid warrantless search by the police officer. Any evidence obtained during the course of said search is admissible in evidence against appellants.

On the second issue, I concur in the trial court's conclusion that the prosecution has proved appellant's guilt for violation of Section 8[37] of the Dangerous Drugs Act beyond reasonable doubt, for the following reasons:

The elements of illegal possession of marijuana are: (a) the accused is in possession of an item or object which is identified to be a prohibited drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the said drug.[38]

The identity of either appellant as a possessor of the seized marijuana leaves is not at issue. Both were caught in flagrante delicto in a standard police operation. The substance found in appellants' possession was identified after laboratory analysis by Philippine National Police forensic chemist Noemi Austero to be marijuana.[39] Appellants' lack of authority to possess these items was also established.

Appellants' awareness of the prohibited drug's character is also irrefutable. When stopped by the policemen, appellant Tudtud was holding the plastic bag in one hand and a carton box in his other hand, with appellant Bolong was helping him in carrying said box. Irrefutably, appellants' animus possidendi existed together with the possession or control of said articles. Recently, in *People v. Tee*,[40] we held that possession of a prohibited drug per se constitutes prima facie evidence of knowledge or animus possidendi sufficient to convict an accused absent a satisfactory explanation of such possession. In effect, the onus probandi must be shifted to the accused to explain the absence of knowledge or consciousness of the element of possession of the contraband, i.e. his animus

possidendi.[41] Appellants, in this case, have failed to discharge this exculpatory burden.

The conspiracy to commit the offense between appellants Noel Tudit and Dindo Bolong clearly appears from the records. They were apprehended at the same time. They alighted together from the bus at the highway corner of Toril, Davao City. Appellant Bolong was helping his co-appellant Tudit carry the "King Flakes" carton box, which contained what turned out to be a large quantity of dried marijuana leaves covered by dried fish and concealed in plastic and newspaper wrapper. These factors convince me that indeed the two appellants had conspired together and helped each other in the commission of the offense.

As the trial court explained, the frame-up angle in this case that appellants wish to peddle in their defense does not inspire belief. Like alibi, the defense of frame-up is viewed with disfavor, because it is easily concocted. It is a common and standard line of defense in cases arising from violations of the Dangerous Drugs Act.[42] Appellant Tudit's alibi that he came from Kabacan, North Cotabato, where he sold Levis jeans, is uncorroborated. In his memorandum, he referred to Exh. "F," claiming that the apprehending officers had confiscated the six pants then in his possession,[43] although Exh. "F" refers to the entry in the police blotter on the arrest of both appellants, with no mention of a plastic bag containing 6 Levis jeans.[44] In the same vein, the defense of appellant Dindo Bolong, that he took the bus from Hagonoy, Davao del Sur, after delivering invitations for his cousin's wedding, remains a bare allegation that is not substantiated. The version of the incident by the police officers, coming as it did from law enforcers presumed to have regularly performed their duty in the absence of proof to the contrary,[45] and accepted as credible by the trial court, has not been discredited at all by appellants who claimed a frame-up without sufficient bases.

Appellants next assail the credibility of the civilian informant, witness Bobong Solier, on the ground that various informations and complaints had been filed against him in the City Court and Regional Trial Court off Davao City. But it should be stressed that witness Solier's testimony is not essential for the conviction of the appellants. Testimony of the police informant in an illegal drug case is merely cumulative and corroborative of the apprehending officers' eyewitness testimonies.[46] Moreover, Solier's tip-off was not the sole basis for the police operation in this case as there was prior surveillance conducted by the police. As it stands, Solier's testimony merely buttressed the case for the prosecution.

The investigative including laboratory procedures adopted in this regard by Chief Inspector Noemi Austero are being criticized by appellants. They lament that the Duquenois Levine Test conducted by Austero at the PNP Crime Laboratory on the confiscated leaves was inconclusive in regard to determining whether the confiscated items were indeed marijuana, absent any confirmatory or other tests. However, nothing on record effectively negates the finding of the trial court that the test was regularly performed. The trial court's evaluation of the credibility of witnesses and their testimonies is entitled to great respect and will not be disturbed on appeal, unless there appears on record some facts of weight and substance that have been overlooked, misapprehended, or misapplied by the trial court.

The trial court, in my view, did not err in ruling that the prosecution has established the guilt of appellants beyond reasonable doubt. Appellants are guilty of illegal possession of a prohibited drug under Section 8 of Republic Act 6425, which provides:

SEC. 8. Possession or Use of Prohibited Drugs. - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who unless authorized by law, shall possess or use any prohibited drug subject to the provisions of Section 20 hereof. (As amended by Republic Act 7659).

In sentencing both appellants to reclusion perpetua and in imposing a fine of P500,000 upon each of them, the

trial court was not in error but only enforcing law and policy on prohibited and dangerous drugs. Under R.A. No. 6425 as amended by R.A. No. 7659, the penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos (P500,000) to ten million pesos (10,000,000) shall be imposed if the quantity of marijuana involved in a conviction for possession of marijuana or Indian hemp is 750 grams or more.[47]

In the present case, the Chemistry Report submitted by forensic chemist Noemi Austero states that the subject prohibited drugs were: "(a) Dried suspected Marijuana fruiting tops weighing 3,200 grams contained in a "King Flakes" box, and (b) Dried suspected Marijuana leaves weighing 890.0 grams contained in pink and white plastic bag." [48] The quantity of the confiscated marijuana as proved by the prosecution weighs more than 4 kilos, much in excess of 750 grams cited by the law as baseline for the penalty involved. In the absence of any aggravating or mitigating circumstances, the lower penalty of reclusion perpetua should be properly imposed, in view of Art. 63 of the Revised Penal Code.[49]

To conclude, I am of the considered view that the judgment of the Regional Trial Court convicting the appellants, as well as the penalty of reclusion perpetua imposed on them, should be affirmed.

[1] Rollo, pp. 16-34.

[2] Sometimes spelled as "Bulong" in other parts of the records.

[3] Rollo, p. 8.

[4] TSN, 15 November 1999, pp. 5-6.

[5] Id. at 7.

[6] Id. at 8.

[7] Id. at 8, 17.

[8] "Villalonja" and "Villalonghan" in other parts of the records.

[9] TSN, 15 November 1999, pp. 8-9.

[10] TSN, 16 November 1999, pp. 8-9.

[11] Id. at 9.

[12] TSN, 15 November 1999, p. 11.

[13] Id. at 9.

[14] Supra, note 12; TSN, 16 November 1999, p. 11.

[15] TSN, 15 November 1999, pp. 11-12.

[16] TSN, 16 November 1999, p. 13.

[17] Ibid.

[18] TSN, 15 November 1999, p. 13.

[19] TSN, 12 November 1999, pp. 5-7; Records, p. 51, Exh. "E."

[20] Sometimes spelled as "Levi" in other parts of the records.

[21] TSN, 4 February 2000, pp. 2-3.

[22] Rollo, p. 34.

[23] *Id.*, at 58.

[24] *Id.*, at 127.

[25] CONST. ARTICLE III 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 or warrant of arrest shall issue 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.

[26] *People v. Sarap*, G.R. No. 132165, 26 March 2003, p. 5.

[27] SEC. 5. Arrest without warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person:

(a)

When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b)

When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

(c)

When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. (Emphasis supplied).

[28] *Supra*, note 26 citing *People v. Aruta*, 351 Phil. 868, 881 (1998).

[29] TSN, 15 November 1999, pp. 7-8.

[30] *Supra*, note 7.

[31] TSN, 16 November 1999, pp. 8-9.

[32] See *People v. Valdez*, 363 Phil. 481, 489 (1999).

[33] *People v. Montilla*, 349 Phil. 640, 658 (1998).

[34] *Supra*, note 31 at 24.

[35] 326 Phil. 345, 372 (1996).

[36] *Supra*, note 33 at 661.

[37] SEC. 8. Possession of Use of Prohibited Drugs. - The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall possess or use any prohibited drug subject to the provisions of Section 20 hereof.

[38] Manalili v. Court of Appeals, 345 Phil. 632, 650 (1997).

[39] Records, p. 51, Exh. "E."

[40] G.R. Nos. 140546-47, 20 January 2003, p. 30.

[41] People v. Burton, 335 Phil. 1003, 1025 (1997).

[42] People v. Rodriguez, G.R. No. 144399, 20 March 2002, p. 10

[43] Records, p. 86.

[44] Id. at 52.

[45] See People v. Padasin, G.R. No. 143671, 14 February 2003, p. 7; See also People v. Che Chun Ting, G.R. Nos. 130568-69, 21 March 2000, 328 SCRA 592, 602.

[46] People v. Zheng Bai Hui, G.R. No. 127580, 22 August 2000, 338 SCRA 420, 475-476.

[47] Sec. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime. – The penalties for offenses under Section 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 or Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

- 40 grams or more of opium;
- 40 grams of more of morphine;
- 200 grams of more of shabu or methylamphetamine hydrochloride;
- 40 grams of more of heroin;
- 750 grams or more of Indian hemp or marijuana;
- 50 grams or more of marijuana resin or marijuana resin oil;
- 40 grams or more of cocaine or cocaine hydrochloride; or
- In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultations/hearings conducted for the purpose.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from prison correctional to reclusion perpetua depending upon the quantity. (Emphasis supplied.)

[48] Supra, note 40.

[49] ART. 63. Rules for the application of indivisible penalties. - In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

...

- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

...

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