

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SUSAN CANTON, APPELLANT.

G.R. No. 148825. December 27, 2002

Ponente: DAVIDE, JR., C.J.

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DAVIDE, JR., C.J.:

Appellant Susan Canton (hereafter SUSAN) was charged before the Regional Trial Court of Pasay City with the violation of Section 16 of Article III of the Dangerous Drugs Act of 1972 (Republic Act No. 6425), as amended, under an Information[1] whose accusatory portion reads as follows:

That on February 12, 1998 at the Ninoy Aquino International Airport, and within the jurisdiction of this Honorable Court, the above named accused did then and there willfully, unlawfully and feloniously has in her possession NINE HUNDRED NINETY EIGHT POINT TWO EIGHT HUNDRED ZERO NINE (998.2809) GRAMS of methamphetamine hydrochloride, a regulated drug, without the corresponding prescription or license.

CONTRARY TO LAW.

The case was docketed as Criminal Case No. 98-0189 and raffled to Branch 110 of said court.

SUSAN entered a plea of not guilty upon her arraignment.

At the trial, the prosecution presented as witnesses Forensic Chemist Julieta Flores, lady frisker Mylene Cabunoc, and SPO4 Victorio de los Reyes.

For its part, the defense presented SPO2 Jerome Cause as its witness and had prosecution witness Mylene Cabunoc recalled to be presented as hostile witness. It opted not to let SUSAN take the witness stand.

The evidence for the prosecution established that on 12 February 1998, at about 1:30 p.m., SUSAN was at the Ninoy Aquino International Airport (NAIA), being a departing passenger bound for Saigon, Vietnam.[2] When she passed through the metal detector booth, a beeping sound was emitted. Consequently, Mylene Cabunoc, a civilian employee of the National Action Committee on Hijacking and Terrorism (NACHT) and the frisker on duty at that time, called her attention, saying “Excuse me ma’am, can I search you?”[3] Upon frisking SUSAN, Mylene felt something bulging at her abdominal area. Mylene inserted her hand under the skirt of SUSAN, pinched the package several times and noticed that the package contained what felt like rice granules.[4] When Mylene passed her hand, she felt similar packages in front of SUSAN’s genital area and thighs. She asked SUSAN to bring out the packages, but the latter refused and said: “Money, money only.” Mylene forthwith reported the matter to SPO4 Victorio de los Reyes, her supervisor on duty.[5]

SPO4 De los Reyes instructed Mylene to call Customs Examiner Lorna Jalac and bring SUSAN to a comfort room for a thorough physical examination. Upon further frisking in the ladies’ room, Mylene touched something in front of SUSAN’s sex organ. She directed SUSAN to remove her skirt, girdles and panty. SUSAN obliged. Mylene and Lorna discovered three packages individually wrapped and sealed in gray colored packing tape,

which SUSAN voluntarily handed to them.[6] The first was taken from SUSAN's abdominal area; the second, from in front of her genital area; and the third, from her right thigh.[7] Mylene turned over the packages to SPO4 De los Reyes.[8] The latter forthwith informed his superior officer Police Superintendent Daniel Santos about the incident. Together with SUSAN, they brought the gray plastic packs to the customs examination table, opened the same and found that they contained white crystalline substances[9] which, when submitted for laboratory examination, yielded positive results for methamphetamine hydrochloride or shabu, a regulated drug.[10]

For the defense, SPO2 Jerome Cause, an investigator of the First Regional Aviation Office, testified that no investigation was ever conducted on SUSAN.[11] However, SUSAN signed a receipt of the following articles seized from her: (1) three bags of methamphetamine hydrochloride or shabu approximately 1,100 grams; (2) one American passport bearing Number 700389994; (3) one Continental Micronesia plane ticket with stock control number 0414381077; and (4) two panty girdles.[12] He said that he informed SUSAN of her constitutional rights but admitted that she did not have a counsel when she signed the receipt.[13] Yet he told her that she had the option to sign or not to sign the receipt.[14]

When recalled as witness for the defense, Mylene merely reiterated the circumstances surrounding the arrest and search of SUSAN and the seizure of the prohibited items found on her person.[15]

After consideration of the evidence presented, the trial court rendered a decision[16] finding SUSAN guilty beyond reasonable doubt of the offense of violation of Section 16 of Article III of Republic Act No. 6425, as amended, and sentencing her to suffer the penalty of reclusion perpetua and to pay a fine of P1 million.

SUSAN filed a Motion for Reconsideration and/or New Trial,[17] alleging therein that the trial judge erred in (1) giving weight to the medical certificate executed by a certain Dr. Ma. Bernadette Arcena because it was not presented in court nor marked or admitted, and is therefore hearsay evidence; (2) upholding the presumption of regularity in the performance of duty of police officers, since lady frisker Mylene Cabunoc is not even a police officer; (3) making statements which gave the impression that the burden of proof was shifted to the accused; and (4) deliberately ignoring the decisive issue of how the evidence was secured. SUSAN also assailed the propriety of the search and seizure without warrant on the ground that the seized items were not in plain view. Furthermore, alleging bias and prejudice on the part of the trial judge, SUSAN filed a motion to inhibit Judge Porfirio G. Macaraeg from resolving the Motion for Reconsideration and/or New Trial.[18]

After conducting a hearing on 24 November 2000 to resolve appellant's Motion for Reconsideration and/or New Trial, as well as the Motion to Inhibit the Judge, the trial court issued an order[19] on 26 November 2001 denying the motions. According to the trial judge (1) he explained to SUSAN's counsel the effects of the filing of a motion for reconsideration, but the latter chose to magnify the judge's statement which was uttered in jest; (2) SUSAN's conviction was not based on the medical report which was not presented in court; (3) there was no violation of SUSAN's constitutional rights because she was never interrogated during her detention without counsel; and (4) the specimens seized from her were found after a routine frisk at the airport and were therefore acquired legitimately pursuant to airport security procedures.

Unsatisfied with the decision of the trial court, SUSAN seasonably appealed to us, imputing to the trial court the following errors: (1) in justifying the warrantless search against her based on the alleged existence of probable cause; (2) in holding that she was caught flagrante delicto and that the warrantless search was incidental to a lawful arrest; (3) in not ruling that the frisker went beyond the limits of the "Terry search" doctrine; (4) in not ruling that SUSAN was under custodial investigation without counsel; (5) in admitting to the records of the case the report of Dr. Ma. Bernadette Arcena, which was not testified on or offered in evidence, and using the same in determining her guilt; (6) in justifying under the rule on judicial notice its cognizance of the medical report that

has not been offered in evidence; and (7) in applying the ruling in *People v. Johnson*.^[20]

For assigned errors nos. 1 and 2, SUSAN asserts that the strip search conducted on her in the ladies' room was constitutionally infirmed because it was not "incidental to an arrest." The arrest could not be said to have been made before the search because at the time of the strip search, the arresting officers could not have known what was inside the plastic containers hidden on her body, which were wrapped and sealed with gray tape. At that point then, they could not have determined whether SUSAN was actually committing a crime. The strip search was therefore nothing but a fishing expedition. Verily, it is erroneous to say that she was caught *flagrante delicto* and that the warrantless search was incidental to a lawful arrest.

For assigned error no. 3, SUSAN maintains that, following the doctrine enunciated in *Terry v. Ohio*,^[21] such stop and frisk search should have been limited to the patting of her outer garments in order to determine whether she was armed or dangerous and therefore a threat to the security of the aircraft.

For assigned error no. 4, SUSAN alleges that from the moment frisker Mylene felt a package at her abdominal area, started inquiring about the contents thereof, detained her, and decided to submit her to a strip search in the ladies' room, she was under custodial investigation without counsel, which was violative of Section 12, Article III of the Constitution.

For assigned errors nos. 5 and 6, SUSAN assails the propriety of the admission of the medical report executed by Dr. Ma. Bernadette Arcena on the ground that it was neither testified on nor offered in evidence.

Lastly, SUSAN questions the application of *People v. Johnson*^[22] because of its sweeping statement allowing searches and seizures of departing passengers in airports in view of the gravity of the safety interests involved. She stresses that the pertinent case should have been *Katz v. United States*,^[23] which upholds the Fourth Amendment of the United States of America that "protects people and not places."

In its Appellant's Brief, the Office of the Solicitor General (OSG) declares that SUSAN was found *flagrante delicto* in possession of a regulated drug without being authorized by law. Thus, the case falls squarely within the exception, being a warrantless search incidental to a lawful arrest. Moreover, SUSAN voluntarily submitted herself to the search and seizure when she allowed herself to be frisked and brought to the comfort room for further inspection by airport security personnel. It likewise maintains that the methamphetamine hydrochloride seized from SUSAN during the routine frisk at the airport was acquired legitimately pursuant to airport security procedures.

Anent the admission of the medical certificate issued by Dr. Ma. Bernadette Arcena, the OSG argues that SUSAN's conviction was not solely based on the questioned document but also on the fact that she was caught *flagrante delicto* in possession of a regulated drug without being authorized by law. Consequently, it supports SUSAN's conviction but recommends the reduction of the fine from P1 million to P100,000.

We affirm SUSAN's conviction.

We do not agree that the warrantless search and subsequent seizure of the regulated drugs, as well as the arrest of SUSAN, were violative of her constitutional rights.

Sections 2 and 3(2) of Article III of the 1987 Constitution provides:

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.

xxx xxx xxx

Sec. 3...

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

What constitutes a reasonable or unreasonable search in any particular case is a judicial question, determinable from a consideration of the circumstances involved. The rule is that the Constitution bars State intrusions to a person's body, personal effects or residence except if conducted by virtue of a valid search warrant issued in compliance with the procedure outlined in the Constitution and reiterated in the Rules of Court.[24]

The interdiction against warrantless searches and seizures is not absolute. The recognized exceptions established by jurisprudence are (1) search of moving vehicles; (2) seizure in plain view; (3) customs searches; (4) waiver or consented searches; (5) stop and frisk situations (Terry search); and (6) search incidental to a lawful arrest.[25]

I. The search conducted on SUSAN was not incidental to a lawful arrest.

We do not agree with the trial court and the OSG that the search and seizure conducted in this case were incidental to a lawful arrest. SUSAN's arrest did not precede the search. When the metal detector alarmed while SUSAN was passing through it, the lady frisker on duty forthwith made a pat down search on the former. In the process, the latter felt a bulge on SUSAN's abdomen. The strip search that followed was for the purpose of ascertaining what were the packages concealed on SUSAN's body. If ever at the time SUSAN was deprived of her will and liberty, such restraint did not amount to an arrest. Under Section 1 of Rule 113 of the Revised Rules of Criminal Procedure, as amended, arrest is the "taking of a person into custody in order that he may be bound to answer for the commission of an offense."

As pointed out by the appellant, prior to the strip search in the ladies' room, the airport security personnel had no knowledge yet of what were hidden on SUSAN's body; hence, they did not know yet whether a crime was being committed. It was only after the strip search upon the discovery by the police officers of the white crystalline substances inside the packages, which they believed to be shabu, that SUSAN was arrested. The search cannot, therefore, be said to have been done incidental to a lawful arrest. In a search incidental to a lawful arrest, the law requires that there be first a lawful arrest before a search can be made; the process cannot be reversed.[26]

II. The scope of a search pursuant to airport security procedure is not confined only to search for weapons under the "Terry search" doctrine.

The Terry search or the "stop and frisk" situation refers to a case where a police officer approaches a person who is acting suspiciously, for purposes of investigating possibly criminal behavior in line with the general interest of effective crime prevention and detection. To assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him, he could validly conduct a carefully limited search of the outer clothing of such person to discover weapons which might be used to assault him.[27]

In the present case, the search was made pursuant to routine airport security procedure, which is allowed under Section 9 of Republic Act No. 6235 reading as follows:

SEC. 9. Every ticket issued to a passenger by the airline or air carrier concerned shall contain among others the following condition printed thereon: "Holder hereof and his hand-carried luggage(s) are subject to search for, and seizure of, prohibited materials or substances. Holder refusing to be searched shall not be allowed to board the aircraft," which shall constitute a part of the contract between the passenger and the air carrier.

This constitutes another exception to the proscription against warrantless searches and seizures. As admitted by SUSAN and shown in Annex “D” of her Brief, the afore-quoted provision is stated in the “Notice to All Passengers” located at the final security checkpoint at the departure lounge. From the said provision, it is clear that the search, unlike in the Terry search, is not limited to weapons. Passengers are also subject to search for prohibited materials or substances.

In this case, after the metal detector alarmed SUSAN consented to be frisked, which resulted in the discovery of packages on her body. It was too late in the day for her to refuse to be further searched because the discovery of the packages whose contents felt like rice granules, coupled by her apprehensiveness and her obviously false statement that the packages contained only money, aroused the suspicion of the frisker that SUSAN was hiding something illegal. It must be repeated that R.A. No. 6235 authorizes search for prohibited materials or substances. To limit the action of the airport security personnel to simply refusing her entry into the aircraft and sending her home (as suggested by appellant), and thereby depriving them of “the ability and facility to act accordingly, including to further search without warrant, in light of such circumstances, would be to sanction impotence and ineffectivity in law enforcement, to the detriment of society.”[28] Thus, the strip search in the ladies’ room was justified under the circumstances.

III. The ruling in *People v. Johnson* is applicable to the instant case.

The case of *People v. Johnson*, which involves similar facts and issues, finds application to the present case. That case involves accused-appellant Leila Johnson, who was also a departing passenger bound for the United States via Continental Airlines CS-912. Olivia Ramirez was then the frisker on duty, whose task was to frisk departing passengers, employees and crew to check for weapons, bombs, prohibited drugs, contraband goods and explosives. When Olivia frisked Leila, the former felt something hard on the latter’s abdominal area. Upon inquiry, Leila explained that she needed to wear two panty girdles, as she had just undergone an operation as a result of an ectopic pregnancy. Not satisfied with the explanation, Olivia reported the matter to her superior, who then directed her to take Leila to the nearest women’s room for inspection. In the comfort room, Leila was asked “to bring out the thing under her girdle.” She acceded and brought out three plastic packs which contained a total of 580.2 grams of methamphetamine hydrochloride or shabu. This Court ruled that the packs of “methamphetamine hydrochloride” seized during the routine frisk at the airport was acquired legitimately pursuant to airport security procedures and are therefore admissible in evidence against Leila. Corollarily, her subsequent arrest, although likewise without warrant, was justified, since it was effected upon the discovery and recovery of shabu in her person *flagrante delicto*. The Court held in this wise:

Persons may lose the protection of the search and seizure clause by exposure of their persons or property to the public in a manner reflecting a lack of subjective expectation of privacy, which expectation society is prepared to recognize as reasonable. Such recognition is implicit in airport security procedures. With increased concern over airplane hijacking and terrorism has come increased security at the nation’s airports. Passengers attempting to board an aircraft routinely pass through metal detectors; their carry-on baggage as well as checked luggage are routinely subjected to x-ray scans. Should these procedures suggest the presence of suspicious objects, physical searches are conducted to determine what the objects are. There is little question that such searches are reasonable, given their minimal intrusiveness, the gravity of the safety interests involved, and the reduced privacy expectations associated with airline travel. Indeed, travelers are often notified through airport public address systems, signs, and notices in their airline tickets that they are subject to search and, if any prohibited materials or substances are found, such would be subject to seizure. These announcements place passengers on notice that ordinary constitutional protections against warrantless searches and seizures do not apply to routine airport procedures.

SUSAN’s reliance on *Katz v. U.S.*[29] is misplaced. The facts and circumstances of that case are entirely

different from the case at bar. In that case, the accused was convicted in the United States District Court for the Southern District of California of transmitting wagering information by telephone. During the trial, the government was permitted, over the accused's objection, to introduce evidence of accused's end of telephone conversations, which was overheard by FBI agents who had attached an electronic listening and recording device to the outside of the public telephone booth from which he placed his calls. The Court of Appeals for the Ninth Circuit affirmed the conviction. On certiorari, however, the Supreme Court of the United States of America reversed the decision, ruling that antecedent judicial authorization, which was not given in the instant case, was a constitutional precondition of the kind of electronic surveillance involved. It ruled that what a person knowingly exposes to the public, even in his own house or office, is not a subject the Fourth Amendment protection, but what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.

The maxim - stare decisis et non quieta movere - invokes adherence to precedents and mandates not to unsettle things which are established. When the court has once laid down a principle of law as applicable to a certain state of facts, it must adhere to that principle and apply it to all future cases where the facts are substantially the same.[30] There being a disparity in the factual milieu of *Katz v. U.S.* and the instant case, we cannot apply to this case the ruling in *Katz*.

IV. The appellant, having been caught *flagrante delicto*, was lawfully arrested without a warrant.

Section 5, Rule 113 of the Rules of Court, as amended, provides:

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 just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

The present case falls under paragraph (a) of the afore-quoted Section. The search conducted on SUSAN resulted in the discovery and recovery of three packages containing white crystalline substances, which upon examination yielded positive results for methamphetamine hydrochloride or shabu. As discussed earlier, such warrantless search and seizure were legal. Armed with the knowledge that SUSAN was committing a crime, the airport security personnel and police authorities were duty-bound to arrest her. As held in *People v. Johnson*, her subsequent arrest without a warrant was justified, since it was effected upon the discovery and recovery of shabu in her person *flagrante delicto*.

V. The constitutional right to counsel afforded an accused under custodial investigation was not violated.

Entrenched is the rule that the rights provided in Section 12, Article III of the Constitution may be invoked only when a person is under "custodial investigation" or is "in custody interrogation." [31] Custodial investigation refers to the "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." [32] This presupposes that he is suspected of

having committed a crime and that the investigator is trying to elicit information or a confession from him.[33] And the right to counsel attaches upon the start of such investigation.[34] The objective is to prohibit “incommunicado” interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights.[35]

In this case, as testified to by the lone witness for the defense, SPO2 Jerome Cause, no custodial investigation was conducted after SUSAN’s arrest. She affixed her signature to the receipt of the articles seized from her, but before she did so, she was told that she had the option to sign or not to sign it. In any event, her signature to the packages was not relied upon by the prosecution to prove its case. Moreover, no statement was taken from her during her detention and used in evidence against her.[36] Hence, her claim of violation of her right to counsel has no leg to stand on.

VI. The admission of the medical report was erroneous.

SUSAN assails, on the ground of violation of the hearsay rule, the admission of the medical report on the physical and medical examination conducted upon appellant’s request, which contained the following:

On subsequent examinations, she was seen behaved and cooperative. She related that she was an illegitimate daughter, married, but divorced in 1995. She verbalized, “I gamble like an addict. I gambled since I was young and I lost control of myself when I played cards. When I lost control, I want my money back. I owe other people lots of money. I lost all the cash of my husband. This is the first time I carried shabu. I need the money.” She denied having any morbid thoughts and perceptual disturbances. (*Italics supplied*).

This argument is meritorious. The admission of the questioned document was erroneous because it was not properly identified. Nevertheless, even without the medical report, appellant’s conviction will stand, as the court’s finding of guilt was not based on that document.

VII. SUSAN’s conviction and the penalty imposed on her are correct.

Having found the warrantless search and seizure conducted in this case to be valid, we do not hesitate to rule that that the three packages of shabu recovered from SUSAN are admissible in evidence against her. Supported by this evidence and the testimonies of the prosecution witnesses, her conviction must inevitably be sustained.

Sections 16 and 20 of Article III of the Dangerous Drugs Act of 1972 (Republic Act No. 6425), as amended, provides:

SEC. 16. Possession or Use of Regulated 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 shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof.

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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 of Article III of this Act shall be applied if the dangerous drugs involved [are] in any of the following quantities:

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3. 200 grams or more of shabu or methylamphetamine hydrochloride....

There being no aggravating nor mitigating circumstance, the proper penalty is reclusion perpetua pursuant to Article 63(2) of the Revised Penal Code.

As regards the fine, courts may fix any amount within the limits established by law. For possession of regulated drugs, the law fixes the range of the fine from P500,000 to P10 million. In view of the net weight of methamphetamine hydrochloride found in the possession of SUSAN, the trial court's imposition of fine in the amount of P1 million is well within the range prescribed by law.

VIII. The other items seized from the appellant should be returned to her.

Section 3 of Rule 126 of the Revised Rules of Criminal Procedure authorizes the confiscation of the following:

SEC. 3. Personal property to be seized. – A search warrant may be issued for the search and seizure of personal property:

- (a) Subject of the offense;
- (b) Stolen or embezzled and other proceeds, or fruits of the offense; or
- (c) Used or intended to be used as the means of committing an offense.

Clearly, the seizure of SUSAN's passport, plane tickets, and girdles exceeded the limits of the afore-quoted provision. They, therefore, have to be returned to her.[37]

IN VIEW OF ALL THE FOREGOING, the judgment of the Regional Trial Court of Pasay City, Branch 110, in Criminal Case No. 98-0189 finding appellant SUSAN CANTON guilty beyond reasonable doubt of the violation of Section 16, Article III of the Dangerous Act of 1972 (Republic Act No. 6425), as amended, and sentencing her to suffer the penalty of reclusion perpetua and to pay a fine of One Million Pesos (P1,000,000) and the costs is hereby AFFIRMED. The appellant's passport, plane tickets, and girdles are hereby ordered to be returned to her.

Costs de officio.

SO ORDERED.

Vitug, Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Original Record (OR), 1.

[2] OR, 16.

[3] TSN, 16 October 1998, 6-8.

[4] Id., 24-30.

[5] Id., 29, 32-34.

[6] TSN, 16 October 1998, 39-41.

[7] Id., 9-12.

[8] Id., 43-44; 10 March 1999, 7-8, 22.

[9] Id., 8.

[10] TSN, 29 July 1998, 23-53.

[11] TSN, 22 February 2000, 7.

[12] Id., 12; OR, 20.

[13] Id., 15-16; 19-20.

[14] Id., 21.

[15] TSN, 26 April 2000, 4-18, 21.

[16] Per Judge Porfirio C. Macaraeg. OR, 406-417; Rollo, 18-29.

[17] OR, 422-439.

[18] Id., 441-444.

[19] Id., 466-471.

[20] 348 SCRA 526 [2000].

[21] 392 U.S. 1, 20 L. Ed. 2nd 889 [1968].

[22] Supra note 20.

[23] 389 U.S. 347, 19 L. Ed. 2d 576 [1967].

[24] People v. Chua Ho San, 308 SCRA 432, 443-444 [1999].

[25] Supra, People v. Figueroa, 335 SCRA 249, 263 [2000]; People v. Fernandez, G.R. Nos. 143850-53, 18 December 2001.

[26] People v. Chua Ho San, supra note 24, citing Malacat v. Court of Appeals, 283 SCRA 159, 175 [1997].

[27] Terry v. Ohio, supra note 21.

[28] People v. Malmstedt, 198 SCRA 401, 410 [1991].

[29] Supra note 23.

[30] People v. Aquino, G.R. No. 145371, 28 September 2001.

[31] Sebastian v. Garchitorena, 343 SCRA 463, 470 [2000]; People v. De la Cruz, 279 SCRA 245 [1997].

[32] People v. Salonga, 359 SCRA 310, 320-321 [2001].

[33] People v. Ayson, 175 SCRA 216, 230 [1989].

[34] Manuel v. P.C. Construction Supply, 282 SCRA 326, 334-335 [1997].

[35] People v. Ayson, supra note 33, at 229.

[36] See People v. Johnson, supra note 20.

[37] People v. Johnson, supra note 20.

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