SUSAN ESQUILLO Y ROMINES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 182010. August 25, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Via petition erroneously captioned as one for Certiorari, Susan Esquillo y Romines (petitioner) challenges the November 27, 2007 Decision[1] of the Court of Appeals in CA-G.R. CR No. 27894 which affirmed the July 28, 2003 Decision of Branch 116 of the Regional Trial Court (RTC) of Pasay City in Criminal Case No. 02-2297 convicting Susan Esquillo y Romines (petitioner) for violating Section 11, Article II of Republic Act (R.A.) No. 9165 (the Comprehensive Dangerous Drugs Act of 2002) - possession of methamphetamine hydrochloride or shabu.

The accusatory portion of the Information dated December 12, 2002 indicting petitioner reads:

> That on or about the 10th day of December, 2002 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in her possession, custody and control 0.1224 gram of Methylamphetamine Hydrochloride (shabu).[2] (underscoring supplied)

At the trial, petitioner admitted the genuineness and due execution of the documentary evidence of the prosecution, particularly the Dangerous Drugs and Toxicology Reports issued by National Bureau of Investigation (NBI) Forensic Chemist Antonino de Belen (de Belen),[3] subject to her defenses, to thus dispense with the testimony of de Belen.

De Belen recorded the results of the laboratory examination of the contents of the sachet in Dangerous Drugs Report No. DD-02-613,[4] viz:

> x x x x
>
> SPECIMEN:
>
> White crystalline substance contained in a heat-sealed transparent plastic sachet marked "SRE" and further placed in bigger marked transparent plastic sachet.
>
> x x x x
>
> F I N D I N G S:
>
> Net Weight of specimen = 0.1224 gram
>
> Examinations conducted on the above-mentioned specimen gave POSITIVE RESULTS for METHAMPHETAMINE HYDROCHLORIDE, a dangerous drug. x x x
>
> x x x x (emphasis and underscoring supplied)

With respect to the examination of the urine of petitioner, de Belen recorded the results thereof in Toxicology Report No. TDD-02-4128[5] reading:

> x x x x
>
> SPECIMEN:
>
> Urine of one SUSAN ESQUILLO Y ROMINES. 37 y/o, married, jobless, of no. 1159 Bo. Bayanihan, Maricaban, Pasay City.
>
> x x x x
>
> F I N D I N G S:
>
> Volume of urine = 60 mL.
> pH of urine = 5.0
> Appearance = yellow orange, turbid
>
> Examinations conducted on the above-mentioned specimen gave POSITIVE RESULTS for the presence of METHAMPHETAMINE HYDROCHLORIDE, and its metabolite AMPHETAMINE. x x x
>
> x x x x (emphasis and underscoring supplied)

Based on its documentary evidence and the testimony of PO1 Alvin Cruzin (PO1 Cruzin),[6] a member of the Pasay City Police Station Special Operations Group (SOG), the prosecution established its version as follows:

On the basis of an informant's tip, PO1 Cruzin, together with PO2 Angel Aguas (PO2 Aguas), proceeded at around 4:00 p.m. on December 10, 2002 to Bayanihan St., Malibay, Pasay City to conduct surveillance on the activities of an alleged notorious snatcher operating in the area known only as "Ryan."

As PO1 Cruzin alighted from the private vehicle that brought him and PO2 Aguas to the target area, he glanced in the direction of petitioner who was standing three meters away and seen placing inside a yellow cigarette case what appeared to be a small heat-sealed transparent plastic sachet containing white substance. While PO1 Cruz was not sure what the plastic sachet contained, he became suspicious when petitioner started acting strangely as he began to approach her. He then introduced himself as a police officer to petitioner and inquired about the plastic sachet she was placing inside her cigarette case. Instead of replying, however, petitioner attempted to flee to her house nearby but was timely restrained by PO1 Cruzin who then requested her to take out the transparent plastic sachet from the cigarette case.

After apprising petitioner of her constitutional rights, PO1 Cruzin confiscated the plastic sachet[7] on which he marked her initials "SRE." With the seized item, petitioner was brought for investigation to a Pasay City Police Station where P/Insp. Aquilino E. Almanza, Chief of the Drug Enforcement Unit, prepared a memorandum[8] dated December 10, 2002 addressed to the Chief Forensic Chemist of the NBI in Manila requesting for: 1) a laboratory examination of the substance contained in the plastic sachet to determine the presence of shabu, and 2) the conduct of a drug test on the person of petitioner. PO1 Cruzin and PO2 Aguas soon executed a Joint Affidavit of Apprehension[9] recounting the details of their intended surveillance and the circumstances leading to petitioner's arrest.

Repudiating the charges, petitioner[10] gave the following tale:

At around 1:00 to 2:00 p.m. of the date in question, while she was sick and resting at home, several policemen in civilian garb with guns tucked in their waists barged in and asked her whether she knew one named "Ryan" who they claimed was a notorious snatcher operating in the area, to which she replied in the negative. The police

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officers then forced her to go with them to the Pasay City Police Station-SOG office where she was detained.

While she was under detention, the police officers were toying with a wallet which they claimed contained shabu and recovered from her.

In fine, petitioner claimed that the evidence against her was "planted," stemming from an all too obvious attempt by the police officers to extort money from her and her family.

Two other witnesses for the defense, petitioner's daughter Josan Lee[11] and family friend Ma. Stella Tolentino,[12] corroborated petitioner's account. They went on to relate that the police officers never informed them of the reason why they were taking custody of petitioner.

By Decision[13] of July 28, 2003, the trial court found petitioner guilty of illegal possession of Methylamphetamine Hydrochloride or shabu, disposing as follows:

> WHEREFORE, in light of the foregoing premises and considerations, this Court hereby renders judgment finding the accused Susan Esquillo y Romines GUILTY beyond reasonable doubt of the crime of Violation of par. 3 of Section 11, Article II of R. A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and absent any modifying circumstance to either aggravate or mitigate the criminal liability of the same accused, and furthermore, applying the provisions of the Indeterminate Sentence Law, the same accused is hereby sentenced to suffer the penalty of imprisonment ranging from Eight (8) years and One (1) day, as minimum, to Fourteen (14) years, Eight (8) months and One (1) day, as maximum, and to pay a fine of P350,000.00, Philippine Currency, plus costs.
>
> The 0.1224 gram of Methylamphetamine Hydrochloride or "Shabu" involved in this case is declared forfeited in favor of the Government and ordered to be turned over to the Philippine Drug Enforcement Agency (PDEA) for proper and appropriate disposition in accordance with the provisions of the law.[14] (underscoring supplied)

Before the Court of Appeals, appellant questioned as illegal her arrest without warrant to thus render any evidence obtained on the occasion thereof inadmissible.

In its challenged Decision affirming petitioner's conviction, the appellate court, citing People v. Chua,[15] held that the police officers had probable cause to search petitioner under the "stop-and-frisk" concept, a recognized exception to the general rule prohibiting warrantless searches.[16]

Brushing aside petitioner's defense of frame-up, the appellate court noted that petitioner failed to adduce evidence that the arresting officers were impelled by any evil motive to falsely charge her, and that she was even found positive for substance abuse.

In her present petition, petitioner assails the appellate court's application of the "stop-and-frisk" principle in light of PO1 Cruzin's failure to justify his suspicion that a crime was being committed, he having merely noticed her placing something inside a cigarette case which could hardly be deemed suspicious. To petitioner, such legal principle could only be invoked if there were overt acts constituting unusual conduct that would arouse the suspicion.[17]

Respondent, through the Office of the Solicitor General, prays for the affirmance of the appealed decision but seeks a modification of the penalty to conform to the pertinent provisions of R.A. No. 9165.

Appellant's conviction stands.

Petitioner did not question early on her warrantless arrest - before her arraignment. Neither did she take steps to quash the Information on such ground. Verily, she raised the issue of warrantless arrest - as well as the

inadmissibility of evidence acquired on the occasion thereof- for the first time only on appeal before the appellate court.[18] By such omissions, she is deemed to have waived any objections on the legality of her arrest.[19]

Be that as it may, the circumstances under which petitioner was arrested indeed engender the belief that a search on her was warranted. Recall that the police officers were on a surveillance operation as part of their law enforcement efforts. When PO1 Cruzin saw petitioner placing a plastic sachet containing white crystalline substance into her cigarette case, it was in his plain view. Given his training as a law enforcement officer, it was instinctive on his part to be drawn to curiosity and to approach her. That petitioner reacted by attempting to flee after he introduced himself as a police officer and inquired about the contents of the plastic sachet all the more pricked his curiosity.

That a search may be conducted by law enforcers only on the strength of a valid search warrant is settled. The same, however, admits of exceptions, viz:

> (1) consented searches; (2) as an incident to a lawful arrest; (3) searches of vessels and aircraft for violation of immigration, customs, and drug laws; (4) searches of moving vehicles; (5) searches of automobiles at borders or constructive borders; (6) where the prohibited articles are in "plain view;" (7) searches of buildings and premises to enforce fire, sanitary, and building regulations; and (8) "stop and frisk" operations.[20] (emphasis underscoring supplied)

In the instances where a warrant is not necessary to effect a valid search or seizure, the determination of what constitutes a reasonable or unreasonable search or seizure is purely a judicial question, taking into account, among other things, the uniqueness of the circumstances involved including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched, and the character of the articles procured.[21]

Elucidating on what includes "stop-and-frisk" operation and how it is to be carried out, the Court in People v. Chua[22] held:

> . . . the act of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon(s) or contraband. The police officer should properly introduce himself and make initial inquiries, approach and restrain a person who manifests unusual and suspicious conduct, in order to check the latter's outer clothing for possibly concealed weapons. The apprehending police officer must have a genuine reason, in accordance with the police officer's experience and the surrounding conditions, to warrant the belief that the person to be held has weapons (or contraband) concealed about him. It should therefore be emphasized that a search and seizure should precede the arrest for this principle to apply.
>
> This principle of "stop-and-frisk" search was invoked by the Court in Manalili v. Court of Appeals. In said case, the policemen chanced upon the accused who had reddish eyes, walking in a swaying manner, and who appeared to be high on drugs. Thus, we upheld the validity of the search as akin to a "stop-and-frisk." In People v. Solayao, we also found justifiable reason to "stop-and-frisk" the accused after considering the following circumstances: the drunken actuations of the accused and his companions, the fact that his companions fled when they saw the policemen, and the fact that the peace officers were precisely on an intelligence mission to verify reports that armed persons w[h]ere roaming the vicinity. (emphasis and underscoring supplied; citations omitted)

What is, therefore, essential is that a genuine reason must exist, in light of the police officer's experience and surrounding conditions, to warrant the belief that the person who manifests unusual suspicious conduct has weapons or contraband concealed about him. Such a "stop-and-frisk" practice serves a dual purpose: (1) the general interest of effective crime prevention and detection, which underlies the recognition that a police officer may, under appropriate circumstances and in an appropriate manner, approach a person for purposes of

investigating possible criminal behavior even without probable cause; and (2) the more pressing interest of safety and self-preservation which permit the police officer to take steps to assure himself that the person with whom he deals is not armed with a deadly weapon that could unexpectedly and fatally be used against the police officer.[23]

From these standards, the Court finds that the questioned act of the police officers constituted a valid "stop-and-frisk" operation. The search/seizure of the suspected shabu initially noticed in petitioner's possession - later voluntarily exhibited[24] to the police operative - was undertaken after she was interrogated on what she placed inside a cigarette case, and after PO1 Cruzin introduced himself to petitioner as a police officer. And, at the time of her arrest, petitioner was exhibiting suspicious behavior and in fact attempted to flee after the police officer had identified himself.

It bears recalling that petitioner admitted the genuineness and due execution of the Dangerous Drugs and Toxicology Reports, subject, however, to whatever available defenses she would raise. While such admissions do not necessarily control in determining the validity of a warrantless search or seizure, they nevertheless provide a reasonable gauge by which petitioner's credibility as a witness can be measured, or her defense tested.

It has not escaped the Court's attention that petitioner seeks exculpation by adopting two completely inconsistent or incompatible lines of defense. On one hand, she argues that the "stop-and-frisk" search upon her person and personal effects was unjustified as it constituted a warrantless search in violation of the Constitution. In the same breadth, however, she denies culpability by holding fast to her version that she was at home resting on the date in question and had been forcibly dragged out of the house by the police operatives and brought to the police station, for no apparent reason than to try and extort money from her. That her two witnesses - a daughter and a friend - who were allegedly present at the time of her arrest did not do anything to report it despite their claim that they were not informed why she was being arrested, should dent the credibility of their testimony.

Courts have tended to look with disfavor on claims of accused, such as those of petitioner's, that they are victims of a frame-up. The defense of frame-up, like alibi, has been held as a shop-worn defense of the accused in drug-related cases, the allegation being easily concocted or contrived. For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption of regularity of official acts of government officials. This it failed to do.

Absent any proof of motive to falsely accuse petitioner of such a grave offense, the presumption of regularity in the performance of official duty and the findings of the trial court with respect to the credibility of witnesses prevail over that of petitioner.[25]

A word on the penalty.

While the appellate court affirmed the trial court's decision, it overlooked the error in the penalty imposed by the trial court. The trial court, applying the provisions of the Indeterminate Sentence Law, sentenced petitioner to "suffer the penalty of imprisonment ranging from Eight (8) years and One (1) day, as minimum, to Fourteen (14) years, Eight (8) months and One (1) day, as maximum."

Article II, Section 11 of R.A. No. 9165 provides, however:

> Section 11. Possession of Dangerous Drugs.
>
> x x x x
>
> Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

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x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000) to Four hundred thousand pesos (P400,000), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, metamphetamine hydrochloride or "shabu" or other dangerous drugs such as, but not limited to MDMA or "ecstacy," PMA, TMA, LSD, GHB and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possesses is far behind therapeutic requirements; or less than three hundred (300) grams of marijuana. (emphasis and underscoring supplied)

Section 1 of the Indeterminate Sentence Law provides that when the offense is punished by a law other than the Revised Penal Code, "the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum shall not be less than the minimum term prescribed by the same."

The prayer of the Office of the Solicitor General for a modification of the penalty is thus in order.

The Court, therefore, imposes on petitioner the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum.

WHEREFORE, the assailed decision of the Court of Appeals is AFFIRMED, with the MODIFICATION that the penalty of imprisonment shall be twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum. In all other respects, the decision of the RTC in Criminal Case No. 02-2297 is AFFIRMED.

SO ORDERED.

Villarama, Jr., and Sereno, JJ., concur.
Brion, J., join the dissent of J. Bersamin.
Bersamin, J., see dissent.

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[1] Penned by Associate Justice Ricardo R. Rosario, with the concurrence of Associate Justices Rebecca De Guia-Salvador and Magdangal M. De Leon; CA rollo, pp. 108-116.

[2] Records, p. 5.

[3] TSN. May 5, 2003, pp. 2-8.

[4] Vide Exhibit "C," records, p. 116.

[5] Vide Exhibit "D," id. at 117.

[6] TSN, May 29, 2003, pp. 2-19.

[7] Exhibit "A-1-a."

[8] Exhibits "A" and "B," records, pp. 114-115.

[9] Exhibits "E" to "E-2," id. at 118.

[10] TSN, June 24, 2003, pp. 19-29.

[11] TSN, June 19, 2003, pp. 2-10.

[12] TSN, June 24, 2003, pp. 2-18.

[13] Rendered by Judge Eleuterio F. Guerrero; records, pp. 143-150.

[14] Id. at 150.

[15] G.R. No. 136066-67, February 4, 2003, 396 SCRA 657.

[16] CA rollo, pp. 114-115.

[17] Rollo, pp. 18-22.

[18] CA rollo, pp. 54-59.

[19] People v. Kimura, G.R. No. 130805, April 27, 2004, 428 SCRA 51, 61 citing People v. Lagarto, 326 SCRA 693, 749 (2000); People v. Timon, 281 SCRA 579, 597 (1997).

[20] People v. Agulay, G.R. No. 181747, September 26, 2008, 566 SCRA 571, 594.

[21] People v. Nuevas, G.R. No. 170233, February 22, 2007, 516 SCRA 463, 476.

[22] Supra, note 15.

[23] Malacat v. Court of Appeals, G.R. No. 123595, December 12, 1997, 283 SCRA 159, 177.

[24] TSN, May 29, 2003, pp. 7-8.

[25] People v. Teodoro, G.R. No. 185164, June 22, 2009, 590 SCRA 494, 507-508.

DISSENTING OPINION

BERSAMIN, J.:

> Section 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.
>
> - Section 2, Article III of the Constitution

The petitioner was charged with, tried for, and convicted of the serious crime of illegal possession of methamphetamine hydrochloride or shabu weighing about 0.1224 gram in violation of Section 11, Article II of Republic Act (RA) No. 9165 (Comprehensive Dangerous Drugs Act of 2002) confiscated from her in a stop-and-frisk situation. She is now before the Court to seek the reversal of the decision dated November 27, 2007 rendered by the Court of Appeals (CA), affirming her conviction by the Regional Trial Court in Pasay City (RTC).[1]

The petitioner insists on her acquittal. She challenges the application of the stop-and-frisk principle as the justification for her warrantless arrest and confiscation of the evidence, and points to the abject failure of the arresting officer to justify his suspicion that she was committing a crime by her mere act of placing a transparent plastic sachet inside her cigarette case. She contends that her act was not per se suspicious.

The majority affirm the CA decision.

I cannot resist the compulsion to differ and dissent. My careful study moves me to agree with the petitioner that she should be acquitted in view of the illegality of the seizure and the resulting inadmissibility of the evidence used against her. In so declaring, I do not mind that her urine sample tested positive for substance abuse, for she was not charged with and tried for that shortcoming. I believe that the State should not have gone on to prosecute her, given that all the circumstances surrounding her unfortunate arrest indicated the grossest violation of her guaranteed right to privacy. The stop-and-frisk search was absolutely unwarranted and unreasonable.

Antecedents

During a covert surveillance operation mounted in Malibay, Pasay City against an alleged notorious snatcher held in the late afternoon of December 10, 2002, PO1 Alvin Cruzin, the arresting police officer, happened upon the petitioner, who was then standing about a mere three meters away from where he and as fellow police officer were. PO1 Cruzin saw her placing a transparent plastic sachet inside a yellow cigarette case. Although unsure at that moment of what was inside the plastic sachet, he became suspicious and approached her. In his mind, her behavior was strange. He introduced himself as a police officer and inquired about the plastic sachet. Instead of replying, she started to flee. He thus restrained her, and requested her to take the plastic sachet out of the cigarette case. He informed her of her constitutional rights, and confiscated the plastic sachet, which he subsequently marked with her initials "SRE." He haled her to the police station for investigation and disposition.

Subject to her defenses, the petitioner admitted the genuineness and due execution of the Dangerous Drugs and Toxicology Reports rendered by the National Bureau of Investigation (NBI). The reports confirmed that the specimen found inside the plastic sachet was shabu, which contained

methamphetamine hydrochloride (Exhibit C); and that the urine sample taken from her was positive for metabolite amphetamine (Exhibit D).

The petitioner's defense was frame-up. She assailed the legality of her arrest for the first time on appeal.

As stated, the RTC found the petitioner guilty of illegal possession of the dangerous substance, and imposed the penalty of imprisonment ranging from eight years and one day, as minimum, to 14 years, eight months and one day as maximum and to pay a fine of P350,000.00.[2] The RTC found the testimony of PO1 Cruzin positive and straightforward, hence, more credible than the evidence of the petitioner, which consisted of mere denials of the positive assertions of the Prosecution. Further, the RTC ruled that the legal presumption of regularity of performance of official duty in favor of the arresting officer was not rebutted, considering that she did not establish any evil motive on the part of the arresting officers to falsely accuse her; that the defenses of frame-up and extortion by the police in exchange for her release were purely self-serving assertions; and that the fact that she had been determined by the NBI laboratory to be a shabu user rendered it not a remote possibility that she had possessed the shabu for her personal use or consumption.[3] The majority modify the penalty with an indeterminate sentence ranging from 12 years and one day as minimum to 14 years as maximum.

In affirming the conviction, the CA indicated that the police officers had probable cause to effect a search of the petitioner under the concept of stop-and-frisk as an exception to the general rule requiring a warrant to search. The CA ruminated that under the principle of stop-and-frisk, the police officer was authorized "to stop a citizen on the street, interrogate him, and search him for weapon or contraband."[4] The CA brushed aside the defense of frame-up, noting that she failed to adduce evidence showing that the officers had been impelled by any evil motive to falsely charge her; and further noting that she was even found positive for substance abuse.

Submissions

In support of my dissent, I make the following submissions.

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A

The petitioner's failure to assail the invalidity of her arrest prior to her arraignment, and her objecting to the inadmissibility of the evidence for the first time only on appeal on the ground that the search was illegal for being done despite her not committing any unlawful act to give a justification for the search did not amount to a waiver of her objection to the admissibility of the evidence against her.

The failure to object to the irregularity of an arrest prior to the arraignment does not involve a waiver of the inadmissibility of the evidence. It only amounts to a submission to the jurisdiction of the trial court. The Court said so in several decisions, including People v. Lapitaje,[5] viz:

> A waiver of an illegal warrantless arrest does not also mean a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest. The following searches and seizures are deemed permissible by jurisprudence: (1) search of moving vehicles (2) seizure in plain view (3) customs searches (4) waiver or consent searches (5) stop and frisk situations (Terry Search) and (6) search incidental to a lawful arrest. The last includes a valid warrantless search and seizure pursuant to an equally valid warrantless arrest, for, while as a rule, an arrest is considered legitimate if effected with a valid warrant of arrest, the Rules of Court recognize permissible warrantless arrests, to wit: (1) arrests in flagrante delicto, (2) arrests effected in hot pursuit, and, (3) arrests of escaped prisoners.[6]

B

The CA found nothing wrong or irregular in the arrest of the petitioner and in the search of her person and the seizure of the incriminating evidence from her due to the stop-and-frisk doctrine, a well-recognized exception to the warrant requirement.

I believe that the CA gravely erred in appreciating the factual situation of the search. The stop-and-frisk principle did not apply. The CA confused the stop-and-frisk principle with a search as incidental to a lawful arrest. The Court must correct the CA's error and confusion.

In Terry v. Ohio,[7] circa 1968, the United States Supreme Court allowed a limited protective search of outer clothing for weapons, where a police officer observes unusual conduct that leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the person with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety.

Such permissible limited protective search is for the only purpose of enabling the officer to protect himself and others in the area, and is now known famously as the Terry stop-and-frisk.

A Terry stop-and-frisk is an exception to the constitutional requirement for a judicial warrant as a prerequisite to a valid arrest and search. It is entirely different from and should not be confused with a search incidental to a lawful arrest envisioned under Section 13, Rule 126, 2001 Rules of Criminal Procedure.[8] Although it did not expressly state so, the CA labored under the confused view that one and the other were indistinct and identical. That confused view guided the CA to wrongly affirm the petitioner's unfortunate conviction.

We should now reverse the CA, not affirm its error, for it is necessary to remind the trial court and the CA that the stop-and-frisk search is entirely different from the search incidental to a lawful arrest. The distinctions have been made clear in Malacat v. Court of Appeals:[9]

> xxx the trial court confused the concepts of a "stop-and-frisk" and of a search incidental to a lawful arrest.

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> These two types of warrantless searches differ in terms of the requisite quantum of proof before they may be validly effected and in their allowable scope.
>
> In a search incidental to a lawful arrest, as the precedent arrest determines the validity of the incidental search, the legality of the arrest is questioned in a large majority of these cases, e.g., whether an arrest was merely used as a pretext for conducting a search. In this instance, the law requires that there first be arrest before a search can be made--the process cannot be reversed. At bottom, assuming a valid arrest, the arresting officer may search the person of the arrestee and the area within which the latter may reach for a weapon or for evidence to destroy, and seize any money or property found which was used in the commission of the crime, or the fruit of the crime, or that which may be used as evidence, or which might furnish the arrestee with the means of escaping or committing violence.

In addition to defining the distinctions between the stop-and-frisk search and the search incidental to a lawful arrest, Malacat v. Court of Appeals restated the justification for and the allowable scope of a Terry stop-and-frisk in the following terms:

> We now proceed to the justification for and allowable scope of a "stop-and-frisk" as a "limited protective search of outer clothing for weapons," as laid down in Terry, thus:
>
> We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.Such a search is a reasonable search under the Fourth Amendment.

Other notable points of Terry are that while probable cause is not required to conduct a "stop and frisk," it nevertheless holds that mere suspicion or a hunch will not validate a "stop and frisk." A genuine reason must exist, in light of the police officer's experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him.Finally, a "stop-and-frisk" serves a two-fold interest: (1) the general interest of effective crime prevention and detection, which underlies the recognition that a police officer may, under appropriate circumstances and in an appropriate manner, approach a person for purposes of investigating possible criminal behavior even without probable cause; and (2) the more pressing interest of safety and self-preservation which permit the police officer to take steps to assure himself that the person with whom he deals is not armed with a deadly weapon that could unexpectedly and fatally be used against the police officer.[10]

Another American judicial pronouncement, Minnesota v. Dickerson,[11] enlightens on the purpose and limits of a Terry stop-and-frisk, viz:

> The Fourth Amendment, made applicable to the States by way of the Fourteenth Amendment, Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961), guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Time and again, this Court has observed that searches and seizures "`conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment-subject only to a few specifically established and well delineated exceptions.' " Thompson v. Louisiana, 469 U.S. 17, 19-20, 105 S.Ct. 409, 410, 83 L.Ed.2d 246 (1984) (per curiam) (quoting Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576 (1967) (footnotes omitted)); Mincey v. Arizona, 437 U.S. 385, 390, 98 S.Ct. 2408, 2412, 57 L.Ed.2d 290 (1978); see also United States v. Place, 462 U.S. 696, 701, 103 S.Ct. 2637, 2641, 77 L.Ed.2d 110

> (1983). One such exception was recognized in Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), which held that "where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot...," the officer may briefly stop the suspicious person and make "reasonable inquiries" aimed at confirming or dispelling his suspicions. Id., 392 U.S., at 30, 88 S.Ct., at 1884; see also Adams v. Williams, 407 U.S. 143, 145-146, 92 S.Ct. 1921, 1922-1923, 32 L.Ed.2d 612 (1972).
>
> Terry further held that "[w]hen an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others," the officer may conduct a patdown search "to determine whether the person is in fact carrying a weapon." 392 U.S., at 24, 88 S.Ct., at 1881. "The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence...." Adams, supra, at 146, 92 S.Ct., at 1923. Rather, a protective search - permitted without a warrant and on the basis of reasonable suspicion less than probable cause - must be strictly "limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby." Terry, supra, at 26, 88 S.Ct., at 1882; see also Michigan v. Long, 463 U.S. 1032, 1049, and 1052, n. 16, 103 S.Ct. 3469, 3480-3481, and 3482, n. 16, 77 L.Ed.2d 1201 (1983); Ybarra v. Illinois, 444 U.S. 85, 93-94, 100 S.Ct. 338, 343-344, 62 L.Ed.2d 238 (1979). If the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under Terry and its fruits will be suppressed. Sibron v. New York, 392 U.S. 40, 65-66, 88 S.Ct. 1889, 1904, 20 L.Ed.2d 917 (1968).

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

Moreover, the genuine reason to believe required for a Terry protective search need not amount or equate to probable cause,[12] which infers that an offense is being committed or has been committed. If the reason amounts to probable cause, the officer can already validly effect an outright warrantless arrest, and his ensuing search will not be limited to a merely protective one for weapons but will be for anything related to the offense being committed or has been committed. Such a search is one incidental to a lawful arrest.

What may be regarded as reasonable suspicion justifying a Terry stop-and-frisk search in this jurisdiction has been illustrated in two cases. In Manalili v. Court of Appeals,[13] specially trained policemen saw Manalili with reddish eyes walking in a wobbly manner characteristic of a person on drugs in a known hangout of drug users. In People v. Solayao,[14] the Court found the drunken actuations of the accused and his companions as justifiable reason to conduct stop-and-frisk on them after considering the following circumstances: (a) the fact that his companions fled when they saw the policemen, and (b) the fact that the peace officers were precisely on an intelligence mission to verify reports that armed persons were roaming in the vicinity. The common thread of these examples is the presence of more than one seemingly innocent activity, which, taken together, warranted a reasonable inference of criminal activity. It was not so in this case.

Worse, the search and confiscation of the shabu by PO1 Cruzin resulted neither from a valid Terry stop-and-frisk nor from a search incidental to a lawful arrest. The petitioner was merely placing a transparent plastic sachet inside her cigarette case in public. PO1 Cruzin himself indicated in his testimony that he did not see or know what the plastic sachet contained before deciding to intrude into her privacy, viz.:

> Q -

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So you were conducting surveillance on this certain alias Ryan, the alleged snatcher, why, is he residing thereat?

A -

The informant told us that he is residing there sir.

Q -

So what happened to the surveillance?

A -

We did not see him in the said place sir.

Q -

After that you went home?

A -

No sir.

Q -

What happened next?

A -

We saw Susan Esquillo sir, putting something inside a yellow cigarette case.

Q -

Where was this Susan Equillo then, when you came to see her?

A -

She was along the street of Bayanihan sir.

Q -

By the way, were you in uniform?

A -

No sir.

Q -

You were in civilian clothes?

A -

Yes sir.

Q -

So what was this Susan Esquillo doing then?

A -

Inserting small plastic sachet inside the yellow cigarette case sir.

Q -

When you saw her along Bayanihan St., how far were you from her?

A -

About 3 meters sir.

Q -

Was Susan Esquillo has (sic) any company?

A -

None sir.

Q -

So why do you say that you saw her inserting transparent plastic sachet, was she waving the plastic sachet and then inserts it?

A -

When I passed by her, I saw her inserting something inside the yellow cigarette case sir.

Q -

But you were not sure that that something was transparent plastic sachet containing shabu?

A -

Yes sir, but I became suspicious sir.

FISCAL PUTI:

Q -

Why did you become suspicious that she was inserting illegal item on the cigarette case?

A -

Because when I was about to come near her, she moved differently.

Q -

At what point in time did you see Susan Esquillo inserting something inside the cigarette case, while after you saw her or while you were approaching her?

A -

When I was approaching her sir.

Q -

Now, did you say, she was inserting something inside the cigarette case?

A -

Yes sir.[15]

PO1 Cruzin's further testimony attested to his belated realization of the content as probably shabu only after the

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petitioner had brought the plastic sachet out of the cigarette case upon his command, to wit:

Q -

So why do you have to hold her, was she committing a crime then?

A -

Because she was attempting to leave, and if I will not prevent her, she could have left.

Q -

So you got hold of her because she was attempting to evade you, is that what you mean?

A -

Yes sir.

Q -

You did not hold her because he committed a crime?

A -

No sir.

Q -

So what happened next?

A -

That's it, when she brought out the contents of the cigarette case we learned that it was suspected shabu sir.

Q -

Why did she pull out the suspected shabu from the cigarette case?

A -

Because I requested her to bring out the contents sir.

Q -

So you ordered her to pull out the suspected shabu?

A -

Yes sir.

Q -

What happened next?

A -

After that, I apprise her of her constitutional rights and then we brought her to our office sir.[16]

For purposes of a valid Terry stop-and-frisk search, the test for the existence of reasonable suspicion that a person is engaged in criminal activity is the totality of the circumstances, viewed through the eyes of a reasonable, prudent police officer.[17] Yet, the totality of the circumstances described by PO1 Cruzin did not suffice to

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engender any reasonable suspicion in his mind. The petitioner's act, without more, was an innocuous movement, absolutely not one to give rise in the mind of an experienced officer to any belief that she had any weapon concealed about her, or that she was probably committing a crime in the presence of the officer. Neither should her act and the surrounding circumstances engender any reasonable suspicion on the part of the officer that a criminal activity was afoot. We should bear in mind that the Court has frequently struck down the arrest of individuals whose overt acts did not transgress the penal laws, or were wholly innocent.

For instance, in People v. Aminnudin,[18] the Court declared the warrantless arrest of Aminnudin as he was coming down a vessel to be unconstitutional because, to all appearances, such coming down was no less innocent than the coming down of the other disembarking passengers. The Court observed that Aminnudin had not committed, nor was he actually committing or attempting to commit an offense in the presence of the arresting officer, nor was he even acting suspiciously.

Also, in People v. Mengote,[19] Mengote was arrested allegedly because the policemen had seen his eyes darting from side to side and he had been holding his abdomen. The State explained that Mengote's actions had excited suspicion in the minds of the arresting officers; but the State did not show what their suspicion was all about, for the policemen themselves testified that they had been dispatched to that place where the arrest was effected only because of the telephone call from the informer that there were "suspicious-looking" persons in that vicinity who were about to commit a robbery at North Bay Boulevard. The caller did not explain why he thought the men looked suspicious, nor did he elaborate on the impending crime. The State contended that the actual existence of an offense was not necessary as long as Mengote's acts "created a reasonable suspicion on the part of the arresting officers and induced in them the belief that an offense had been committed and that the accused-appellant had committed it." But the Court would have none of the State's justifications, for it quickly asked: "The question is, What offense? What offense could possibly have been suggested by a person "looking from side to side" and "holding his abdomen" and in a place not exactly forsaken?," and followed its queries with the telling observation: "These are certainly not sinister acts. And the setting of the arrest made them less so, if at all. It might have been different if Mengote had been apprehended at an ungodly hour and in a place where he had no reason to be, like a darkened alley at 3 o'clock in the morning. But he was arrested at 11:30 in the morning and in a crowded street shortly after alighting from a passenger jeep with his companion. He was not skulking in the shadows but walking in the clear light of day. There was nothing clandestine about his being on that street at that busy hour in the blaze of the noonday sun." The Court continued: "On the other hand, there could have been a number of reasons, all of them innocent, why his eyes were darting from side to side and he was holding his abdomen. xxx"

In another case, People v. Chua,[20] the record reveals that when Chua arrived at the vicinity of the Thunder Inn Hotel, he merely parked his car along the McArthur Highway, alighted from it, and casually proceeded towards the entrance of the hotel clutching a sealed Zest-O juice box. He did not thereby act in a suspicious manner; hence, for all intents and purposes, he gave no overt manifestation that he had just committed, was actually committing, or was attempting to commit a crime. In that setting, the policemen hurriedly accosted him and later on introduced themselves as officers and arrested him before the alleged drop-off of shabu happened. According to the Court, the probable cause was more imagined than real, for there "could have been no in flagrante delicto arrest preceding the search, in light of the lack of an overt physical act on the part of accused-appellant that he had committed a crime, was committing a crime or was going to commit a crime. As applied to in flagrante delicto arrests, it has been held that "reliable information" alone, absent any overt act indicative of a felonious enterprise in the presence and within the view of the arresting officers, is not sufficient to constitute probable cause that would justify an in flagrante delicto arrest."

If the reasonableness of a Terry stop and search is tested in the light of the totality of the circumstances in each

case, a dual inquiry is necessary:- whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances, which justified the interference in the first place.[21]

Here, however, the dual inquiry was not successfully met. The police officers were not even surveying the area of arrest for the presence of drug violators. Neither did they have any informant's tip that the area was a known place for drug users or drug pushers. Considering that they were not even shown to have been specially trained to determine and identify shabu from a distance, the only acceptable conclusion to be reached is that PO1 Cruzin had no reasonable suspicion about any illegal or criminal activity on the part of the petitioner. In fact, he admitted that only his curiosity had prompted him to approach her in order to "inquire" about the content of the plastic sachet.

PO1 Cruzin's curiosity did not equate to a reasonable suspicion sufficient to justify his intrusion upon the person of the petitioner, even assuming that he had a sense that the content was white crystalline substance. We all know that shabu was not the only white crystalline substance easily available, for other items very similar in appearance, like tawas or chlorine bleach, could also be packed in a similar plastic sachet. With that, he had absolutely no justification for his intrusion.

Relevantly, it is observed that the majority do not categorically state what the suspicious behavior of the petitioner was.

PO1 Cruzin's restraining of the petitioner because she attempted to flee as he approached her was not also legitimate or reasonable. Flight alone was no basis for any reasonable suspicion that criminal activity was afoot. Indeed, a person's flight cannot immediately justify an investigatory stop, for even in high crime areas there are many innocent reasons for flight, including fear of retribution for speaking to officers, unwillingness to appear as witnesses, and fear of being wrongfully apprehended as a guilty party.[22] At any rate, the Court has said in Valdez v. People:[23]

> Flight per se is not synonymous with guilt and must not always be attributed to one's consciousness of guilt. Of persuasion was the Michigan Supreme Court when it ruled in People v. Shabaz that "[f]light alone is not a reliable indicator of guilt without other circumstances because flight alone is inherently ambiguous." Alone, and under the circumstances of this case, petitioner's flight lends itself just as easily to an innocent explanation as it does to a nefarious one.

I contend, therefore, that contrary to the CA's dangerous position the purpose of the Terry dictum - to enable the officer to discover weapons that may be used to harm him or others nearby - forbids any overindulgence in stopping and searching persons who have given no indication of impending criminal activity. Such purpose really delineates a boundary for all stop-and-frisk situations that limits the search to the person's outer clothing, subject to the officer having a genuine reason, in light of his and the surrounding conditions, to warrant the belief that the person detained has weapons concealed about him. Any search done beyond the boundary cannot be justified as a valid stop-and-frisk under Terry, for it cannot be a limited protective search, or a preventive measure, or an act of self-preservation against a potentially dangerous criminal from harming the officer and others.

Thus, we should exclude the evidence then seized from the petitioner, for that is the only way by which the Court can effectively enforce the guarantee of the Bill of Rights to her right to privacy and personal security expressed under its Section 2, supra. The exclusionary rule is embodied in Section 3 of the Bill of Rights, thus:

Section 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

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

The eminent Justice Frankfurter observed in Walder v. United States[24] that the application of the exclusionary rule and the invalidation of the conviction were necessary to prevent the State from profiting from its agents' stark violation of this important constitutional right, thus:

> The Government cannot violate the Fourth Amendment - in the only way in which the Government can do anything, namely through its agents - and use the fruits of such unlawful conduct to secure a conviction. Weeks v. United States (US) supra. Nor can the Government make indirect use of such evidence for its case, Silverthorne Lumber Co. v. United States, 251 US 385, 64 L ed 319, 40 S Ct 182, 24 ALR 1426, or support a conviction on evidence obtained through leads from the unlawfully obtained evidence, cf. Nardone v. United States, 308 US 338, 84 L ed 307, 60 S Ct 266. All these methods are outlawed, and convictions obtained by means of them are invalidated, because they encourage the kind of society that is obnoxious to free men.

Even so, I hasten to clarify that the officer can lawfully seize contraband that should come into view in the course of a justified stop-and-frisk or pat-down search, and the contraband will be admissible in evidence. The justification in such a situation is the plain view doctrine, for, as explained in Minnesota v. Dickerson:[25]

> We have already held that police officers, at least under certain circumstances, may seize contraband detected during the lawful execution of a Terry search. In Michigan v. Long, x x x. x x x. (t)he Court then held: "If, while conducting a legitimate Terry search of the interior of the automobile, the officer should, as here, discover contraband other than weapons, he clearly cannot be required to ignore the contraband, and the Fourth Amendment does not require its suppression in such circumstances." Id., at 1050, 103 S.Ct., at 3481; accord, Sibron, 392 U.S., at 69-70, 88 S.Ct., at 1905-1906 (WHITE, J., concurring); id., at 79, 88 S.Ct., at 1910 (Harlan, J., concurring in result).
>
> The Court in Long justified this latter holding by reference to our cases under the "plain-view" doctrine. See Long, supra, at 1050, 103 S.Ct., at 3481; see also United States v. Hensley, 469 U.S. 221, 235, 105 S.Ct. 675, 683-684, 83 L.Ed.2d 604 (1985) (upholding plain-view seizure in context *375 of Terry stop). Under that doctrine, if police are lawfully in a position from which they view an object, if its incriminating character **2137 is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant. See Horton v. California, 496 U.S. 128, 136-137, 110 S.Ct. 2301, 2307-2308, 110 L.Ed.2d 112 (1990); Texas v. Brown, 460 U.S. 730, 739, 103 S.Ct. 1535, 1541-1542, 75 L.Ed.2d 502 (1983) (plurality opinion). If, however, the police lack probable cause to believe that an object in plain view is contraband without conducting some further search of the object- i.e., if "its incriminating character [is not] `immediately apparent,'" Horton, supra, 496 U.S., at 136, 110 S.Ct., at 2308 - the plain-view doctrine cannot justify its seizure. Arizona v. Hicks, 480 U.S. 321, 107 S.Ct. 1149, 94 L.Ed.2d 347 (1987).

I need to caution, however, that this exception regarding contraband can arise only as the consequence of a validly executed Terry stop-and-frisk, which was not true herein. The petitioner was immediately restrained only for the reason that she attempted to flee when PO1 Cruzin was approaching her, despite her not ostensibly posing any danger to him or to anyone else nearby. She did not even appear to be holding any weapon on her person. Thus, the stoppage did not constitute a valid Terry stop-and-search, and the CA was in gross error to conclude differently. There was also no probable cause to arrest. Truly, the confiscated evidence should be excluded due to its inadmissibility against the petitioner.

I urge that we should not feel obstructed by any unwanted criticisms that applying the exclusionary rule can hamper needed law enforcement. A commentator on stop-and-frisk has aptly observed in that regard:[26]

> It is frequently argued that legal technicalities give undue advantage to criminals and that the police must be unshackled in order to fight crime more effectively. Whatever theoretical standards are ideally required, the practical demands of effective criminal investigation require some compromise with theory. It seems obvious that every restriction on police behavior hampers law enforcement. On the other hand, the human animal rebels

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> at the thought of change, especially when such change implies more work, and police have opposed every incursion on their activities since the abolition of the rack and screw. Yet, each of their dire predictions has gone unfulfilled because this myopic view confuses the long-run and the short-run. As the Supreme Court has said:
>
> However much in a particular case insistence upon such rules may appear as a technicality that inures to the benefit of a guilty person, the history of the criminal law proves that tolerance of shortcut methods in law enforcement impairs its enduring effectiveness.[27]
>
> Effectiveness should not be measured in terms of the number of convictions obtained. The ultimate goal of our society is not to punish criminals; rather, it is to preserve liberty. Whenever police act illegally - whatever their purpose - our society suffers. Even if the tasks of the police are made somewhat more difficult by adherence to lawful procedures, it would be a small price to pay for the preservation of individual liberty. If it is conceded that law enforcement is not as effective as it could be, it is fallacious to argue that it would necessarily be improved if short cut methods were approved. As the Mapp decision stated:
>
> Nor can it lightly be assumed that, as a practical matter, adoption of the exclusionary rule fetters law enforcement. Only last year this Court expressly considered that contention and found that "pragmatic evidence of a sort" to the contrary was not wanting. Elkins v. United States . . . . [364 U.S. 206, 218]. The Court noted that:
>
> The federal courts themselves have operated under the exclusionary rule of Weeks for almost half a century; yet it has not been suggested either that the Federal Bureau of Investigation [citing remarks of J. Edgar Hoover quoted in Elkins, supra at 218-19] has thereby been rendered ineffective, or that the administration of criminal justice in the federal courts has thereby been disrupted . . .." Id., at 218-219
>
> Indeed, it is conceivable that adherence to the Constitution would improve justice. xxx

The right of the petitioner to privacy and to personal security intoned herein at the start and enshrined in the Bill of Rights of the Constitution was violated by the arresting officer. We should not hesitate to rectify the violation, and so we must acquit her.

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[1] CA Records, pp. 32-40.

[2] RTC Records, p. 150.

[3] RTC Decision, RTC Records, pp. 143-150.

[4] Rollo, p. 38.

[5] G..R. No. 132042, February 19, 2003, 397 SCRA 674.

[6] See also Valdez v. People (G..R. No. 170180, November 23, 2007, 538 SCRA 611), where the Court held that notwithstanding the accused's waiver of his right to assail his arrest, the marijuana leaves allegedly taken from the accused during an illegal warrantless search that could not be admitted in evidence against him.

[7] 392 US 1, 88 S. Ct. 1868, 20 L. Ed. 889.

[8] Section 13. Search incident to lawful arrest. - A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant. (12a)

[9] G..R. No. 123595, December 12, 1997, 283 SCRA 159.

[10] Id., pp 176-177.

[11] 508 U.S. 366, 113 S.Ct. 2130 (June 7, 1993).

[12] Probable cause is understood to merely mean a reasonable ground for belief in the existence of facts warranting the proceedings complained of (Owens vs. Gratezel, 148 Md. 689, 132 A. 265), or an apparent state of facts found to exist upon reasonable inquiry which would induce a reasonably intelligent and prudent man to believe that the accused person had committed the crime (Brand vs. Hinchman, 68 Mich. 590, 36 N.W. 664, 13 Am. St. Rep. 362).

[13] G..R. No. 113447, October 9, 1997, 280 SCRA 400.

[14] G..R. No. 119220, September 20, 1996, 262 SCRA 255.

[15] TSN, May 29, 2003, pp. 5-6.

[16] Id., p.8.

[17] Bost v. State, 406 Md. 341, 958 A.2d 356 (2008).

[18] G..R. No. L-74869, July 6, 1988, 163 SCRA 402.

[19] G..R. No. 87059, June 22, 1992, 210 SCRA 174.

[20] G..R. Nos. 136066-67, February 4, 2003, 396 SCRA 657.

[21] State v. Roe, 2004 WL 417511 (Idaho Ct. App. 2004).

[22] State v. Nicholson, 188 S.W.3d 649 (Tenn. 2006).

[23] Supra, note 1.

[24] 347 US 62, 64-65.

[25] Supra, note 11.

[26] Prof. Marcus Schoenfeld, The "Stop And Frisk" Law Is Unconstitutional, Syracuse Law Review, Volume17, No. 4, Summer, 1966, pp. 633-634 (Note: Professor Schoenfeld taught law at the Cleveland-Marshall Law School of Baldwin-Wallace College; and at the Villanova University School of Law).

[27] Citing Miller v. US, 357 US 301, 313.

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