

RICARDO C. VALMONTE AND UNION OF LAWYERS AND ADVOCATES FOR PEOPLE'S RIGHTS (ULAP), PETITIONERS, VS. GEN. RENATO DE VILLA AND NATIONAL CAPITAL REGION DISTRICT COMMAND, RESPONDENTS.

G.R. No. 83988. May 24, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

In the Court's decision dated 29 September 1989, petitioners' petition for prohibition seeking the declaration of the checkpoints as unconstitutional and their dismantling and/or banning, was dismissed.

Petitioners have filed the instant motion and supplemental motion for reconsideration of said decision. Before submission of the incident for resolution, the Solicitor General, for the respondents, filed his comment, to which petitioners filed a reply.

It should be stated, at the outset, that nowhere in the questioned decision did this Court legalize all check-points, i.e. at all times and under all circumstances. What the Court declared is, that checkpoints are not illegal per se. Thus, under exceptional circumstances, as where the survival of organized government is on the balance, or where the lives and safety of the people are in grave peril, checkpoints may be allowed and installed by the government. Implicit in this proposition is, that when the situation clears and such grave perils are removed, checkpoints will have absolutely no reason to remain.

Recent and on-going events have pointed to the continuing validity and need for checkpoints manned by either military or police forces. The sixth (6th) attempted coup d'etat (stronger than all previous ones) was staged only last 1 December 1989. Another attempt at a coup d'etat is taken almost for granted. The NPA, through its sparrow units, has not relented but instead accelerated its liquidation of armed forces and police personnel. Murders, sex crimes, hold-ups and drug abuse have become daily occurrences. Unlicensed firearms and ammunition have become favorite objects of trade. Smuggling is at an all-time high. Whether or not effective as expected, checkpoints have been regarded by the authorities as a security measure designed to entrap criminals and insurgents and to constitute a dragnet for all types of articles in illegal trade.

No one can be compelled, under our libertarian system, to share with the present government its ideological beliefs and practices, or commend its political, social and economic policies or performance. But, at least, one must concede to it the basic right to defend itself from its enemies and, while in power, to pursue its program of government intended for public welfare; and in the pursuit of those objectives, the government has the equal right, under its police power, to select the reasonable means and methods for best achieving them. The checkpoint is evidently one of such means it has selected.

Admittedly, the routine checkpoint stop does intrude, to a certain extent, on motorist's right to "free passage without interruption", but it cannot be denied that, as a rule, it involves only a brief detention of travellers during

which the vehicle's occupants are required to answer a brief question or two.[1] For as long as the vehicle is neither searched nor its occupants subjected to a body search, and the inspection of the vehicle is limited to a visual search, said routine checks cannot be regarded as violative of an individual's right against unreasonable search.

These routine checks, when conducted in a fixed area, are even less intrusive. As held by the U.S. Supreme Court:

"Routine checkpoint stops do not intrude similarly on the motoring public. First, the potential interference with legitimate traffic is minimal. Motorists using these highways are not taken by surprise as they know, or may obtain knowledge of, the location of the checkpoints and will not be stopped elsewhere. Second, checkpoint operations both appear to and actually involve less discretionary enforcement activity. The regularized manner in which established check-points are operated is visible evidence, reassuring to law-abiding motorists, that the stops are duly authorized and believed to serve the public interest. The location of a fixed check-point is not chosen by officers in the field, but by officials responsible for making overall decisions as to the most effective allocation of limited enforcement resources. We may assume that such officials will be unlikely to locate a checkpoint where it bears arbitrarily or oppressively on motorists as a class, and since field officers may stop only those cars passing the checkpoint, there is less room for abusive or harassing stops of individuals than there was in the case of roving-patrol stops. Moreover, a claim that a particular exercise of discretion in locating or operating a checkpoint is unreasonable is subject to post-stop judicial review." [2]

The checkpoints are nonetheless attacked by the movants as a warrantless search and seizure and, therefore, violative of the Constitution.[3]

As already stated, vehicles are generally allowed to pass these checkpoints after a routine inspection and a few questions. If vehicles are stopped and extensively searched, it is because of some probable cause which justifies a reasonable belief of the men at the checkpoints that either the motorist is a law-offender or the contents of the vehicle are or have been instruments of some offense. Again, as held by the U.S. Supreme Court -

"Automobiles, because of their mobility, may be searched without a warrant upon facts not justifying a warrantless search of a residence or office. *Brinegar v. United States*, 338 US 160, 93 L Ed 1879, 69 S Ct 1302 (1949); *Carroll v. United States*, 267 US 132, 69 L Ed 543, 45 S Ct 280, 39 ALR 790 (1925). The cases so holding have, however, always insisted that the officers conducting the search have 'reasonable or probable cause' to believe that they will find the instrumentality of a crime or evidence pertaining to a crime before they begin their warrantless search. x x x." [4]

Besides these warrantless searches and seizures at the checkpoints are quite similar to searches and seizures accompanying warrantless arrests during the commission of a crime, or immediately thereafter. In *People vs. Kagui Malasuqui*, it was held -

"To hold that no criminal can, in any case, be arrested and searched for the evidence and tokens of his crime without a warrant, would be to leave society, to a large extent, at the mercy of the shrewdest, the most expert, and the most depraved of criminals, facilitating their escape in many instances." [5]

By the same token, a warrantless search of incoming and outgoing passengers, at the arrival and departure areas of an international airport, is a practice not constitutionally objectionable because it is founded on public interest, safety, and necessity.

Lastly, the Court's decision on checkpoints does not, in any way, validate nor condone abuses committed by the military manning the checkpoints. The Court's decision was concerned with power, i.e. whether the government employing the military has the power to install said checkpoints. Once that power is acknowledged, the Court's inquiry ceases. True, power implies the possibility of its abuse. But whether there is abuse in a particular situation is a different "ball game" to be resolved in the constitutional arena.

The Court, like all other concerned members of the community, has become aware of how some checkpoints have been used as points of thievery and extortion practiced upon innocent civilians. Even the increased prices of foodstuffs coming from the provinces, entering the Metro Manila area and other urban centers, are largely blamed on the checkpoints, because the men manning them have reportedly become "experts" in mulcting travelling traders. This, of course, is a national tragedy.

But the Court could not a priori regard in its now assailed decision that the men in uniform are rascals or thieves. The Court had to assume that the men in uniform live and act by the code of honor and they are assigned to the checkpoints to protect, and not to abuse, the citizenry.[6] The checkpoint is a military "concoction." It behooves the military to improve the QUALITY of their men assigned to these checkpoints. For no system or institution will succeed unless the men behind it are honest, noble and dedicated.

In any situation, where abuse marks the operation of a checkpoint, the citizen is not helpless. For the military is not above but subject to the law. And the courts exist to see that the law is supreme. Soldiers, including those who man checkpoints, who abuse their authority act beyond the scope of their authority and are, therefore, liable criminally and civilly for their abusive acts.[7] This tenet should be ingrained in the soldiery in the clearest of terms by higher military authorities.

ACCORDINGLY, the Motion and Supplemental Motion for Reconsideration are DENIED. This denial is FINAL.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Paras, Feliciano, Bidin, and Cortes, JJ., concur.

Gutierrez, Jr., J., concurring opinion.

Cruz and Sarmiento, JJ., dissenting opinion.

Gancayco, J., on leave.

[1] U.S. v. Martinez-Fuerte, 428 U.S. 543, 49 L Ed. 2d 1116 (1976)

[2] Ibid.

[3] Section 2, Article III, 1987 Constitution

[4] Dyke v. Taylor, 391 US 216, 20 L Ed 538, 88 S Ct 1472.

[5] 63 Phil. 221

[6] Section 3, Article II of the 1987 Constitution provides:

SEC. 3. Civilian authority is, at all times, supreme over the military. The Armed Forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory.

[7] Aberca v. Ver, G.R. No. 69866, 15 April 1988, 160 SCRA 590

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DISSENTING OPINION

CRUZ, J.:

I reiterate my original dissent and add the following observations.

The majority would justify the checkpoints on the ground of rampant criminality, e.g., the failed coup, the "sparrow" killings, murders, sex crimes, drug abuse, smuggling, etc. I was not aware that the failure of the authorities to suppress crime was an excuse to suspend the Bill of Rights. It has always been my impression that even criminals, and more so the innocent, are entitled to the right against unreasonable searches and seizures.

The protection of the security of the State is a convenient pretext of the police state to suppress individual rights. Constitutional shortcuts should not be allowed in a free regime where the highest function of authority is precisely to exalt liberty.

The ponencia says that the Constitution is not violated because "the inspection of the vehicle is limited to a visual search." Assuming that this is all the search entails, it suffers from the additional defect of inefficaciousness, making it virtually useless. It did not prevent the staging of the December 1 coup, where the rebels used all kinds of high-powered weapons that were not detected by "a visual search."

Under Article III, Section 2 of the Constitution, probable cause is determined "personally by the judge," not by a soldier or a policeman. It is not for the peace officer to decide when a warrantless search and seizure may be made save in the exceptional instances allowed, as where a crime is being committed or before or after its commission. I can hardly believe that the majority is seriously offering this exception as a continuing situation to justify the regular warrantless searches at the checkpoints.

It is easy to say that "where abuse marks the operation of a checkpoint, the citizen is not helpless." Let us at least be realistic. This Court would be the first to dismiss the complaint if not supported by hard evidence, which we know is not easily come by. The remedy, in my view, is to remove the source of the evil instead of leaving it unchecked and then simply suggesting a cure, which is not even effective. It is like inoculating a patient after exposing him to contagion.

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CONCURRING STATEMENT

GUTIERREZ, JR., J.:

The problem we face in the resolution of this petition arises from our knowledge that law enforcement officers use checkpoints as opportunities for mulcting, oppression, and other forms of abuse. However, to completely ban checkpoints as unconstitutional is to lose sight of the fact that the real objective behind their use is laudable and necessary. If we say that ALL checkpoints are unconstitutional, we are banning a law enforcement measure not because it is per se illegal but because it is being used for evil purposes by the soldiers or police who man it.

This is another instance where the Supreme Court is urged to solve a problem of discipline facing the executive and the military. My reluctant concurrence with the majority opinion is premised on the hope that our top military

and police officials will devise effective measures which would insure that checkpoints are used only where absolutely needed and that the officers who are assigned to these checkpoints discharge their duties as professional soldiers or peace officers in the best traditions of the military and the police. I repeat that this is a problem of enforcement and not legality.

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DISSENTING OPINION

SARMIENTO, J.:

The majority states that checkpoints are justified by "grave peril." The question, however, is whether or not the existence of such grave perils has the effect of suspending the Bill of Rights, specifically, the right against unreasonable searches and seizures.

Under the Constitution, "[a] state of martial law does not suspend the operation of the Constitution." (CONST., art. VII, sec. 18.) If not even martial law can suspend the fundamental law, I do not see how a mere executive act can.

That the State has the right to defend itself is a proposition difficult to argue against. The query, again, is whether or not it may defend itself against its enemies at the expense of liberty. After fourteen years of authoritarian rule, I think by now we should have learned our lesson, and known better.

Although "routine inspections" are another matter, I can not think that the checkpoints in question have been meant to undertake routine inspections alone. As it is, no ground rules have been given our law enforcers, which is to say that they have the carte blanche to search vehicles and even persons without the benefit of a valid judicial warrant. I do not believe that this can be done in a constitutional regime.

I find references to the case of *People v. Kagui Malasugui* [63 Phil. 221 (1936)] to be inapt. In that case, there was a waiver of the right against unreasonable search and secondly, there existed a clear probable cause for search and arrest. Certainly, there was reason for excepting the case from the rule. *Malasugui*, however, is an exception. And obviously, the majority would make a general rule out of it.

Certainly, it is different where the authority has probable cause to believe that a crime has been committed by a suspect, in which case, it may place him under arrest or search his person (*Malasugui*, *supra*). But I do not think that it may claim the existence of probable cause for every vehicle or person stopped and searched at a checkpoint. And precisely, checkpoints are intended to allow the authorities to fish for probable cause even if in the beginning there was none. This makes, to my mind, the setting up of checkpoints unconstitutional.

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