

ROMEO POSADAS Y ZAMORA, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 89139, August 02, 1990

Ponente: GANCAYCO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-89139/>

GANCAYCO, J.:

The validity of a warrantless search on the person of petitioner is put into issue in this case.

On October 16, 1986 at about 10:00 o'clock in the morning Pat. Ursicio Ungab and Pat. Umbra Umpar, both members of the Integrated National Police (INP) of the Davao Metrodiscom assigned with the Intelligence Task Force, were conducting a surveillance along Magallanes Street, Davao City. While they were within the premises of the Rizal Memorial Colleges they spotted petitioner carrying a "buri" bag and they noticed him to be acting suspiciously.

They approached the petitioner and identified themselves as members of the INP. Petitioner attempted to flee but his attempt to get away was thwarted by the two notwithstanding his resistance.

They then checked the "buri" bag of the petitioner where they found one (1) caliber .38 Smith & Wesson revolver with Serial No. 770196[1] two (2) rounds of live ammunition for a .38 caliber gun,[2] a smoke (tear gas) grenade,[3] and two (2) live ammunitions for a .22 caliber gun.[4] They brought the petitioner to the police station for further investigation. In the course of the same, the petitioner was asked to show the necessary license or authority to possess firearms and ammunitions found in his possession but he failed to do so. He was then taken to the Davao Metrodiscom office and the prohibited articles recovered from him were indorsed to M/Sgt. Didoy, the officer then on duty. He was prosecuted for illegal possession of firearms and ammunitions in the Regional Trial Court of Davao City wherein after a plea of not guilty and trial on the merits a decision was rendered on October 8, 1987 finding petitioner guilty of the offense charged as follows:

"WHEREFORE, in view of all the foregoing, this Court finds the accused guilty beyond reasonable doubt of the offense charged.

It appearing that the accused was below eighteen (18) years old at the time of the commission of the offense (Art. 68, par. 2), he is hereby sentenced to an indeterminate penalty ranging from TEN (10) YEARS and ONE (1) DAY of prision mayor to TWELVE (12) Years, FIVE (5) months and Eleven (11) days of Reclusion Temporal, and to pay the costs.

The firearm, ammunitions and smoke grenade are forfeited in favor of the government and the Branch Clerk of Court is hereby directed to turn over said items to the Chief, Davao Metrodiscom, Davao City."[5]

Not satisfied therewith the petitioner interposed an appeal to the Court of Appeals wherein in due course a decision was rendered on February 23, 1989 affirming in toto the appealed decision with costs against the petitioner.[6]

Hence, the herein petition for review, the main thrust of which is that there being no lawful arrest or search and seizure, the items which were confiscated from the possession of the petitioner are inadmissible in evidence against him.

The Solicitor General, in justifying the warrantless search of the buri bag then carried by the petitioner, argues that under Section 12, Rule 136 of the Rules of Court a person lawfully arrested may be searched for dangerous weapons or anything used as proof of a commission of an offense without a search warrant. It is further alleged that the arrest without a warrant of the petitioner was lawful under the circumstances.

Section 5, Rule 113 of the 1985 Rules on Criminal Procedure provides as follows:

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

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

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

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

In cases falling under paragraphs (a) and (b) hereof, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail, and he shall be proceeded against in accordance with Rule 112, Section 7. (6a, 17a)"

From the foregoing provision of law it is clear that an arrest without a warrant may be effected by a peace officer or private person, among others, when in his presence the person to be arrested has committed, is actually committing, or is attempting to commit an offense; or when an offense has in fact just been committed, and he has personal knowledge of the facts indicating that the person arrested has committed it.

The Solicitor General argues that when the two policemen approached the petitioner, he was actually committing or had just committed the offense of illegal possession of firearms and ammunitions in the presence of the police officers and consequently the search and seizure of the contraband was incidental to the lawful arrest in accordance with Section 12, Rule 126 of the 1985 Rules on Criminal Procedure. We disagree.

At the time the peace officers in this case identified themselves and apprehended the petitioner as he attempted to flee they did not know that he had committed, or was actually committing the offense of illegal possession of firearms and ammunitions. They just suspected that he was hiding something in the buri bag. They did not know what its contents were. The said circumstances did not justify an arrest without a warrant.

However, there are many instances where a warrant and seizure can be effected without necessarily being preceded by an arrest, foremost of which is the "stop and search" without a search warrant at military or police checkpoints, the constitutionality or validity of which has been upheld by this Court in *Valmonte vs. de Villa*,^[7] as follows:

"Petitioner Valmonte's general allegation to the effect that he had been stopped and searched without a search warrant by the military manning the checkpoints, without more, i.e., without stating the details of the incidents which amount to a violation of his right against unlawful search and seizure, is not sufficient to enable the Court to determine whether there was a violation of Valmonte's right against unlawful search and seizure. Not all searches and seizures are prohibited. Those which are reasonable are not forbidden. A reasonable search is

not to be determined by any fixed formula but is to be resolved according to the facts of each case.

Where, for example, the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds, or simply looks into a vehicle or flashes a light therein, these do not constitute unreasonable search.

The setting up of the questioned checkpoints in Valenzuela (and probably in other areas) may be considered as a security measure to enable the NCRDC to pursue its mission of establishing effective territorial defense and maintaining peace and order for the benefit of the public. Checkpoints may also be regarded as measures to thwart plots to destabilize the government in the interest of public security. In this connection, the Court may take judicial notice of the shift to urban centers and their suburbs of the insurgency movement, so clearly reflected in the increased killings in cities of police and military men by NPA "sparrow units," not to mention the abundance of unlicensed firearms and the alarming rise in lawlessness and violence in such urban centers, not all of which are reported in media, most likely brought about by deteriorating economic conditions – which all sum up to what one can rightly consider, at the very least, as abnormal times. Between the inherent right of the state to protect its existence and promote public welfare and an individual's right against a warrantless search which is however reasonably conducted, the former should prevail.

True, the manning of checkpoints by the military is susceptible of abuse by the men in uniform in the same manner that all governmental power is susceptible of abuse. But, at the cost of occasional inconvenience, discomfort and even irritation to the citizen, the checkpoints during these abnormal times, when conducted within reasonable limits, are part of the price we pay for an orderly society and a peaceful community. (Emphasis supplied)."

Thus, as between a warrantless search and seizure, conducted at military or police checkpoints and the search thereat in the case at bar, there is no question that, indeed, the latter is more reasonable considering that unlike in the former, it was effected on the basis of a probable cause. The probable cause is that when the petitioner acted suspiciously and attempted to flee with the buri bag there was a probable cause that he was concealing something illegal in the bag and it was the right and duty of the police officers to inspect the same.

It is too much indeed to require the police officers to search the bag in the possession of the petitioner only after they shall have obtained a search warrant for the purpose. Such an exercise may prove to be useless, futile and much too late.

In *People vs. CFI of Rizal*,^[8] this Court held as follows:

"x x x In the ordinary cases where warrant is indispensably necessary, the mechanics prescribed by the Constitution and reiterated in the Rules of Court must be followed and satisfied. But We need not argue that there are exceptions. Thus in the extraordinary events where warrant is not necessary to effect a valid search or seizure, or when the latter cannot be performed except without warrant, what constitutes a reasonable or unreasonable search or seizure becomes purely a judicial question, determinable from the uniqueness of the circumstances involved, including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched and the character of the articles procured."

The Court reproduces with approval the following disquisition of the Solicitor General:

"The assailed search and seizure may still be justified as akin to a "stop and frisk" situation whose object is either to determine the identity of a suspicious individual or to maintain the status quo momentarily while the police officer seeks to obtain more information. This is illustrated in the case of *Terry vs. Ohio*, 392 U.S. 1 (1968). In this case, two men repeatedly walked past a store window and returned to a spot where they apparently conferred with a third man. This aroused the suspicion of a police officer. To the experienced officer, the behaviour of the men indicated that they were sizing up the store for an armed robbery. When the

police officer approached the men and asked them for their names, they mumbled a reply. Whereupon, the officer grabbed one of them, spun him around and frisked him. Finding a concealed weapon in one, he did the same to the other two and found another weapon. In the prosecution for the offense of carrying a concealed weapon, the defense of illegal search and seizure was put up. The United States Supreme Court held that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for the purpose of investigating possible criminal behaviour even though there is no probable cause to make an arrest." In such a situation, it is reasonable for an officer rather than simply to shrug his shoulder and allow a crime to occur, to stop a suspicious individual briefly in order to determine his identity or maintain the status quo while obtaining more information. xxx

Clearly, the search in the case at bar can be sustained under the exceptions heretofore discussed, and hence, the constitutional guarantee against unreasonable searches and seizures has not been violated."[9]

WHEREFORE, the petition is DENIED with costs against petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Exhibit B.

[2] Exhibits B1 and B2.

[3] Exhibit C.

[4] Exhibits D and D-1.

[5] Page 40, Rollo.

[6] Justice Bienvenido Ejercito, ponente, concurred in by Justices Felipe B. Kalalo and Luis L. Victor.

[7] G.R. No. 83988, September 29, 1989.

[8] 101 SCRA 86 (1986).

[9] Pages 67 to 69, Rollo.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.