



Republic of the Philippines
Supreme Court
 Baguio City
 EN BANC

MARCELO G. SALUDAY,
 Petitioner,

G.R. No. 215305

Present:

SERENO, *C.J.*,*
 CARPIO,**
 VELASCO, JR.,
 LEONARDO-DE CASTRO,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,
 PERLAS-BERNABE,**
 LEONEN,
 JARDELEZA,****
 CAGUIOA,
 MARTIRES,
 TIJAM,
 REYES, JR.,** and
 GESMUNDO, *JJ.*

- versus -

PEOPLE OF THE PHILIPPINES,
 Respondent.

Promulgated:

April 3, 2018

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DECISION

CARPIO, *Acting C.J.*:

The Case

Before the Court is a Petition for Review on Certiorari assailing the Decision dated 26 June 2014¹ and the Resolution dated 15 October 2014² of the Court of Appeals in CA-G.R. CR No. 01099. The Court of Appeals affirmed with modification the Sentence dated 15 September 2011³ rendered by the Regional Trial Court, Branch 11, Davao City in Criminal Case

* On leave.

** Acting Chief Justice.

*** On wellness leave.

**** No part.

*** On wellness leave.

¹ *Rollo*, pp. 25-34. Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Edward B. Contreras and Rafael Antonio M. Santos concurring.

² *Id.* at 41-42.

³ *CA rollo*, pp. 22-25. Penned by Judge Virginia Hofileña Europa.

No. 65,734-09, finding petitioner Marcelo G. Saluday (petitioner) guilty beyond reasonable doubt of illegal possession of high-powered firearm, ammunition, and explosive under Presidential Decree No. 1866,⁴ as amended (PD 1866).

The Antecedent Facts

On 5 May 2009, Bus No. 66 of Davao Metro Shuttle was flagged down by Task Force Davao of the Philippine Army at a checkpoint near the Tefasco Wharf in Ilang, Davao City. SCAA Junbert M. Bucu (Bucu), a member of the Task Force, requested all male passengers to disembark from the vehicle while allowing the female passengers to remain inside. He then boarded the bus to check the presence and intercept the entry of any contraband, illegal firearms or explosives, and suspicious individuals.

SCAA Bucu checked all the baggage and personal effects of the passengers, but a small, gray-black pack bag on the seat at the rear of the bus caught his attention. He lifted the bag and found it too heavy for its small size. SCAA Bucu then looked at the male passengers lined outside and noticed that a man in a white shirt (later identified as petitioner) kept peeping through the window towards the direction of the bag. Afterwards, SCAA Bucu asked who the owner of the bag was, to which the bus conductor answered that petitioner and his brother were the ones seated at the back. SCAA Bucu then requested petitioner to board the bus and open the bag. Petitioner obliged and the bag revealed the following contents: (1) an improvised .30 caliber carbine bearing serial number 64702; (2) one magazine with three live ammunitions; (3) one cacao-type hand grenade; and (4) a ten-inch hunting knife. SCAA Bucu then asked petitioner to produce proof of his authority to carry firearms and explosives. Unable to show any, petitioner was immediately arrested and informed of his rights by SCAA Bucu.

Petitioner was then brought for inquest before the Office of the City Prosecutor for Davao City. In its Resolution dated 7 May 2009,⁵ the latter found probable cause to charge him with illegal possession of high-powered firearm, ammunition, and explosive under PD 1866. The Information dated 8 May 2009 thus reads:

That on or about May 5, 2009, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, willfully, unlawfully and knowingly, with intent to possess, had in his possession and under his custody an improvised high powered

⁴ Entitled "Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes." Effective 29 June 1983.

⁵ Records, pp. 2-3.



firearm caliber .30 carbine bearing Serial No. 64702 (made in Spain) with one (1) magazine loaded with three (3) live ammunitions and one (1) "cacao" type hand grenade explosive, without first securing the necessary license to possess the same.

CONTRARY TO LAW.⁶

When arraigned, petitioner pleaded not guilty.

During the trial, the prosecution presented two witnesses namely, NUP Daniel Tabura (Tabura), a representative of the Firearms and Explosives Division of the Philippine National Police, and SCAA Bucu. NUP Tabura identified the Certification dated 5 November 2009⁷ attesting that petitioner was "not a licensed/registered holder of any kind and caliber per verification from records." Meanwhile, SCAA Bucu identified petitioner and the items seized from the bag, and testified on the details of the routine inspection leading to the immediate arrest of petitioner. On cross-examination, SCAA Bucu further elaborated on the search conducted:

Atty. Mamburam

Q And that check point, which was conducted along Ilang [R]oad, Davao City, was by virtue of a memorandum?

A Yes, Your Honor.

x x x x

Q Now, you said that at around 5:00 of said date, you were able to intercept a Metro Shuttle passenger bus and you requested all passengers to alight?

A Yes.

Q All female passengers were left inside?

A Yes, Your Honor.

Q And, after all passengers were able to alight, you checked all cargoes of the passengers in the bus?

A Yes.

x x x x

Q And, you testified that one of those things inside the bus was a black gray colored pack bag which was placed at the back portion of the bus?

A Yes.

Q You said that the bag was heavy?

A Yes.

⁶ Id. at 1.

⁷ Exhibit "F," Folder of Exhibits, p. 2.

Q And you picked up or carried also the other belongings or cargo[e]s inside the bus and that was the only thing or item inside the bus which was heavy. Is that correct?

A There were many bags and they were heavy. When I asked who is the owner of the bag because **it was heavy but the bag was small**, when I asked, he said the content of the bag was a cellphone. But I noticed that it was heavy.

x x x x

Q And you said that somebody admitted ownership of the bag. Is that correct?

A Yes.

Q Who admitted ownership of the bag?

A (WITNESS POINTS TO THE ACCUSED)

Q Now, you said that while you are looking at the bag, you noticed that one male passenger you pointed as the **accused kept looking at you?**

A **Yes.**

Q And, aside from the accused, all the other male passengers were not looking at you?

A The other passengers were on the ground but he was in front of [the] window looking towards his bag.

x x x x

Q **And the accused admitted that he owned the bag, you requested him to open the bag?**

A **Not yet. I let him board the bus and asked him if he can open it.**

Q And, when he opened it?

A I saw the handle of the firearm.⁸ (Emphasis supplied)

On the other hand, the defense presented petitioner as sole witness. On direct examination, petitioner denied ownership of the bag. However, he also admitted to answering SCAA Buco when asked about its contents and allowing SCAA Buco to open it after the latter sought for his permission:

ATTY. MAMBURAM

Q x x x [A]fter the conductor of the bus told the member of the task force that you and your brother were seated at the back of the bus. can you please tell us what happened next?

A The member of the task force asked who is the owner of the bag and what were the contents of the bag.

Q To whom did the member of the task force address that question?

A To me because I was pointed to by the conductor.

⁸ TSN, 11 November 2009, pp. 14-16.

Q And what was your reply to the question of the member of the task force?

A I told him it was only a cellphone.

Q By the way, Mr. Witness, who owned that bag?

A My elder brother.

Q And why did you make a reply to the question of the member of the task force when, in fact, you were not the owner of the bag?

A Because I was pointed to by the conductor that it was me and my brother who were seated at the back.

x x x x

Q **Now, after you told the member of the task force that probably the content of the bag was cellphone, what happened next?**

A **He asked if he can open it.**

Q **And what was your reply?**

A **I told him yes, just open it.**

x x x x

Q Now, you said that the owner of the bag and the one who carried that bag was your brother, what is the name of your brother?

A Roger Saluday.

Q Where is your brother Roger now?

A Roger is already dead. He died in September 2009.⁹ (Emphasis supplied)

On cross-examination, petitioner clarified that only he was pointed at by the conductor when the latter was asked who owned the bag. Petitioner also admitted that he never disclosed he was with his brother when he boarded the bus:

PROS. VELASCO

Q You said that you panicked because they pulled you but as a way of saving yourself considering you don't own the bag, did you not volunteer to inform them that [the] bag was owned by your brother?

A I told them I have a companion but I did not tell them that it was my brother because I was also afraid of my brother.

Q So, in short, Mr. Witness, you did not actually inform them that you had a brother at that time when you were boarding that bus, correct?

A No, sir, I did not.

x x x x

⁹ TSN, 22 March 2010, pp. 5-6, 8.



- Q So, you were answering all questions by saying it is not your bag but you confirm now that it was the conductor of that bus who pointed you as the owner of the bag, correct?
- A Yes, sir, the **conductor pointed at me** as the one who [sic] seated at the back.¹⁰ (Emphasis supplied)

The defense subsequently rested its case and the prosecution waived the right to present rebuttal evidence. Upon order from the trial court, the parties submitted their respective memoranda.

The Decision of the Trial Court

Finding the denials of petitioner as self-serving and weak, the trial court declared him to be in actual or constructive possession of firearm and explosive without authority or license. Consequently, in the dispositive portion of the Sentence dated 15 September 2011, petitioner was adjudged guilty beyond reasonable doubt of illegal possession of firearm, ammunition, and explosive under PD 1866:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered finding Marcelo Gigbalen Saluday GUILTY of illegal possession of high powered firearm, ammunition and explosive. For the offense of illegal possession of high powered firearm and ammunition, he is hereby sentenced to suffer an imprisonment of *prision mayor* in its minimum period. He is likewise ordered to pay a fine of ₱30,000.00. For the offense of illegal possession of explosive, he is hereby sentenced to suffer an imprisonment of *prision mayor* in its maximum period to *reclusion temporal*. He is likewise ordered to pay a fine of ₱50,000.00.

x x x x

SO ORDERED.¹¹

On 12 October 2011, petitioner timely filed his Notice of Appeal.¹²

The Decision of the Court of Appeals

On appeal, petitioner challenged his conviction raising as grounds the alleged misappreciation of evidence by the trial court and the supposed illegality of the search.¹³ On the other hand, the Office of the Solicitor General (OSG) argued that the warrantless search was valid being a consented search, and that the factual findings of the trial court can no longer be disturbed.¹⁴

¹⁰ TSN, 22 March 2010, p. 10.

¹¹ CA rollo, pp. 24-25.

¹² Id. at 8.

¹³ Id. at 15-19.

¹⁴ Id. at 46-60.

In its Decision dated 26 June 2014, the Court of Appeals sustained the conviction of petitioner and affirmed the ruling of the trial court with modification:

WHEREFORE, the instant appeal is DISMISSED. The Sentence dated September 15, 2011 of the Regional Trial Court, 11th Judicial Region, Branch 11, Davao City, in Criminal Case No. 65,734-09, finding Marcelo Gigbalen Saluday guilty beyond reasonable doubt of illegal possession of high powered firearm, ammunition and explosive is AFFIRMED with the MODIFICATION that:

(1) for the offense of illegal possession of high-powered firearm and ammunition, he is imposed an indeterminate sentence of four (4) years, eight (8) months and twenty-one (21) days of *prision correccional* maximum, as the minimum term, to seven (7) years and one (1) day of *prision mayor* minimum, as the maximum term, in addition to the fine of Thirty thousand pesos (₱30,000.00); and

(2) for the offense of illegal possession of explosive, he is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole.

SO ORDERED.¹⁵

Petitioner then filed a Motion for Reconsideration,¹⁶ to which the OSG filed its Comment.¹⁷ In its Resolution dated 15 October 2014,¹⁸ the Court of Appeals denied petitioner's Motion for Reconsideration for being *pro forma*. Hence, petitioner filed this Petition for Review on Certiorari under Rule 45 of the Rules of Court.

The Issue

Petitioner assails the appreciation of evidence by the trial court and the Court of Appeals as to warrant his conviction for the offenses charged.

The Ruling of this Court

We affirm.

Only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court.¹⁹ As a result, the Court, on appeal, is not duty-bound to weigh and sift through the evidence presented

¹⁵ *Rollo*, pp. 33-34.

¹⁶ *Id.* at 35-39.

¹⁷ *CA rollo*, pp. 87-90.

¹⁸ *Rollo*, pp. 41-42.

¹⁹ Section 1, Rule 45, Rules of Court.

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during trial.²⁰ Further, factual findings of the trial court, when affirmed by the Court of Appeals, are accorded great respect, even finality.²¹

Here, petitioner assails his conviction for illegal possession of high-powered firearm and ammunition under PD 1866, and illegal possession of explosive under the same law. The elements of both offenses are as follows: (1) existence of the firearm, ammunition or explosive; (2) ownership or possession of the firearm, ammunition or explosive; and (3) lack of license to own or possess.²² As regards the second and third elements, the Court of Appeals concurred with the trial court that petitioner was in actual or constructive possession of a high-powered firearm, ammunition, and explosive without the requisite authority. The Decision dated 26 June 2014 reads in pertinent part:

In the present case, the prosecution proved the negative fact that appellant has no license or permit to own or possess the firearm, ammunition and explosive by presenting NUP Daniel Tab[u]ra (Tab[u]ra), a representative of the Firearms and Explosives Division (FED) of the PNP. He identified the Certification issued by the Chief, Records Section, FED of the PNP, stating that appellant "is not a licensed/registered holder of any kind and caliber per verification from records of this office."

Appellant, however, questions the competence of Tab[u]ra to testify on the veracity or truthfulness of the Certification. He claims that the officer who issued it should have been the one presented so he would not be denied the right to confront and cross-examine the witnesses against him.

There is no merit to petitioner's claim. The following is pertinent:

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The Court on several occasions ruled that either the testimony of a representative of, or a certification from, the Philippine National Police (PNP) Firearms and Explosive Office attesting that a person is not a licensee of any firearm would suffice to prove beyond reasonable doubt the second element of possession of illegal firearms. The prosecution more than complied when it presented both.

x x x x

Also, appellant denies having physical or constructive possession of the firearms, ammunition and explosive. However, his denial flies in the face of the following testimonies which he himself made:

x x x x

²⁰ *Jose v. People*, 479 Phil. 969, 978 (2004).

²¹ *De la Cruz v. Court of Appeals*, 333 Phil. 126, 135 (1996). See also *Castillo v. Court of Appeals*, 329 Phil. 150, 158-159 (1996); *Navarro v. Sandiganbayan*, 304 Phil. 343, 354 (1994); *People v. Cabalhin*, 301 Phil. 494, 504 (1994).

²² *People v. Dela Cruz*, 400 Phil. 872, 879-880 (2000), citing *People v. Bergante*, 350 Phil. 275, 291 (1998).

Appellant gave information, albeit misleading, on the contents of the bag. He even allowed the police officer to open it. Based on his actuations, there could be no doubt that he owned the bag containing the firearm, ammunition and explosive.

Shifting the blame to his dead brother is very easy for appellant to fabricate. Besides, the allegation that his brother owned the bag is uncorroborated and self-serving.²³

As above-quoted, the presence of the second and third elements of illegal possession of firearm, ammunition, and explosive raises questions of fact. Considering further that the Court of Appeals merely echoed the factual findings of the trial court, the Court finds no reason to disturb them.

As regards the first element, petitioner corroborates the testimony of SCAA Bucu on four important points: *one*, that petitioner was a passenger of the bus flagged down on 5 May 2009 at a military checkpoint in Ilang, Davao City; *two*, that SCAA Bucu boarded and searched the bus; *three*, that the bus conductor pointed at petitioner as the owner of a small, gray-black pack bag on the back seat of the bus; and *four*, that the same bag contained a .30-caliber firearm with one magazine loaded with three live ammunitions, and a hand grenade. Notably, petitioner does not challenge the chain of custody over the seized items. Rather, he merely raises a pure question of law and argues that they are inadmissible on the ground that the search conducted by Task Force Davao was illegal.

The Court disagrees.

Section 2, Article III of the Constitution, which was patterned after the Fourth Amendment to the United States (U.S.) Constitution,²⁴ reads:

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. (Emphasis supplied)

Indeed, the constitutional guarantee is not a blanket prohibition. Rather, it operates against “unreasonable” searches and seizures only.²⁵

²³ *Rollo*, pp. 28-31.

²⁴ The Fourth Amendment of the U.S. Constitution reads:

The right of the people to be secure in their persons, houses, papers, and effects, against **unreasonable searches and seizures**, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (Emphasis supplied)

²⁵ *People v. Aruta*, 351 Phil. 868, 878 (1998).

Conversely, when a search is “reasonable,” Section 2, Article III of the Constitution does *not* apply. As to what qualifies as a reasonable search, the pronouncements of the U.S. Supreme Court, which are doctrinal in this jurisdiction,²⁶ may shed light on the matter.

In the seminal case of *Katz v. United States*,²⁷ the U.S. Supreme Court held that the electronic surveillance of a phone conversation without a warrant violated the Fourth Amendment. According to the U.S. Supreme Court, what the Fourth Amendment protects are people, not places such that what a person knowingly exposes to the public, even in his or her own home or office, is not a subject of Fourth Amendment protection in much the same way that what he or she seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected, thus:

Because of the misleading way the issues have been formulated, the parties have attached great significance to the characterization of the telephone booth from which the petitioner placed his calls. The petitioner has strenuously argued that the booth was a “constitutionally protected area.” The Government has maintained with equal vigor that it was not. But this effort to decide whether or not a given “area,” viewed in the abstract, is “constitutionally protected” deflects attention from the problem presented by this case. For the Fourth Amendment protects people, not places. **What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.** See *Lewis v. United States*, 385 U.S. 206, 210; *United States v. Lee*, 274 U.S. 559, 563. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected. See *Rios v. United States*, 364 U.S. 253; *Ex parte Jackson*, 96 U.S. 727, 733.²⁸ (Emphasis supplied)

Further, Justice John Harlan laid down in his concurring opinion the two-part test that would trigger the application of the Fourth Amendment. *First*, a person exhibited an actual (subjective) expectation of privacy.²⁹ *Second*, the expectation is one that society is prepared to recognize as reasonable (objective).³⁰

The prohibition of unreasonable search and seizure ultimately stems from a person’s right to privacy. Hence, only when the State intrudes into a person’s expectation of privacy, which society regards as reasonable, is the Fourth Amendment triggered. Conversely, where a person does not have an expectation of privacy or one’s expectation of privacy is not reasonable to society, the alleged State intrusion is not a “search” within the protection of the Fourth Amendment.

²⁶ *People v. Marti*, 271 Phil. 51, 57 (1991).

²⁷ 389 U.S. 347 (1967).

²⁸ *Id.* at 351.

²⁹ *Id.* at 361.

³⁰ *Id.*

A survey of Philippine case law would reveal the same jurisprudential reasoning. To illustrate, in *People v. Johnson*,³¹ the Court declared airport searches as outside the protection of the search and seizure clause due to the lack of an expectation of privacy that society will regard as reasonable:

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.³² (Citations omitted)

Similarly, in *Dela Cruz v. People*,³³ the Court described seaport searches as reasonable searches on the ground that the safety of the traveling public overrides a person's right to privacy:

Routine baggage inspections conducted by port authorities, although done without search warrants, are not unreasonable searches per se. Constitutional provisions protecting privacy should not be so literally understood so as to deny reasonable safeguards to ensure the safety of the traveling public.

x x x x

Thus, with port security personnel's functions having the color of state-related functions and deemed agents of government, *Marti* is inapplicable in the present case. Nevertheless, searches pursuant to port security measures are not unreasonable per se. The security measures of x-ray scanning and inspection in domestic ports are akin to routine security procedures in airports.

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Port authorities were acting within their duties and functions when [they] used x-ray scanning machines for inspection of passengers' bags. When the results of the x-ray scan revealed the existence of firearms in the bag, the port authorities had probable cause to conduct a search of

³¹ 401 Phil. 734 (2000).

³² Id. at 743.

³³ 776 Phil. 653 (2016).

petitioner's bag. Notably, petitioner did not contest the results of the x-ray scan.³⁴

In *People v. Breis*,³⁵ the Court also justified a bus search owing to the reduced expectation of privacy of the riding public:

Unlike the officer in *Chan Fook*, IO1 Mangili did not exceed his authority in the performance of his duty. Prior to Breis' resistance, IO1 Mangili laid nary a finger on Breis or Yumol. Neither did his presence in the bus constitute an excess of authority. The bus is public transportation, and is open to the public. The expectation of privacy in relation to the constitutional right against unreasonable searches in a public bus is not the same as that in a person's dwelling. In fact, at that point in time, only the bus was being searched, not Yumol, Breis, or their belongings, and the search of moving vehicles has been upheld.³⁶

Indeed, the reasonableness of a person's expectation of privacy must be determined on a case-to-case basis since it depends on the factual circumstances surrounding the case.³⁷ Other factors such as customs, physical surroundings and practices of a particular activity may diminish this expectation.³⁸ In *Fortune Express, Inc. v. Court of Appeals*,³⁹ a common carrier was held civilly liable for the death of a passenger due to the hostile acts of armed men who boarded and subsequently seized the bus. The Court held that **"simple precautionary measures to protect the safety of passengers, such as frisking passengers and inspecting their baggages, preferably with non-intrusive gadgets such as metal detectors, before allowing them on board could have been employed without violating the passenger's constitutional rights."**⁴⁰ In *Costabella Corp. v. Court of Appeals*,⁴¹ a compulsory right of way was found improper for the failure of the owners of the dominant estate to allege that the passageway they sought to be re-opened was at a point least prejudicial to the owner of the servient estate. The Court thus explained, "[c]onsidering that the petitioner operates a hotel and beach resort in its property, it must undeniably maintain a strict standard of security within its premises. Otherwise, the convenience, privacy, and safety of its clients and patrons would be compromised."⁴² Similarly, shopping malls install metal detectors and body scanners, and require bag inspection as a requisite for entry. Needless to say, any security lapse on the part of the mall owner can compromise public safety.

Concededly, a bus, a hotel and beach resort, and a shopping mall are all private property whose owners have every right to exclude anyone from entering. At the same time, however, because these private premises

³⁴ Id. at 661, 681, 683-684.

³⁵ 766 Phil. 785 (2015).

³⁶ Id. at 812.

³⁷ *Sps. Hing v. Choachoy, Sr.*, 712 Phil. 337, 350 (2013).

³⁸ *Ople v. Torres*, 354 Phil. 948, 981 (1998).

³⁹ 364 Phil. 480 (1999).

⁴⁰ Id. at 490.

⁴¹ 271 Phil. 350 (1991).

⁴² Id. at 359.

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are accessible to the public, the State, much like the owner, can impose non-intrusive security measures and filter those going in. The only difference in the imposition of security measures by an owner and the State is, the former emanates from the attributes of ownership under Article 429 of the Civil Code, while the latter stems from the exercise of police power for the promotion of public safety. Necessarily, a person's expectation of privacy is diminished whenever he or she enters private premises that are accessible to the public.

In view of the foregoing, the bus inspection conducted by Task Force Davao at a military checkpoint constitutes a reasonable search. Bus No. 66 of Davao Metro Shuttle was a vehicle of public transportation where passengers have a reduced expectation of privacy. Further, SCAA Bucu merely lifted petitioner's bag. This visual and minimally intrusive inspection was even less than the standard x-ray and physical inspections done at the airport and seaport terminals where passengers may further be required to open their bags and luggages. Considering the reasonableness of the bus search, Section 2, Article III of the Constitution finds no application, thereby precluding the necessity for a warrant.

As regards the warrantless inspection of petitioner's bag, the OSG argues that petitioner consented to the search, thereby making the seized items admissible in evidence.⁴³ Petitioner contends otherwise and insists that his failure to object cannot be construed as an implied waiver.

Petitioner is wrong.

Doubtless, the constitutional immunity against unreasonable searches and seizures is a personal right, which may be waived.⁴⁴ However, to be valid, the consent must be voluntary such that it is unequivocal, specific, and intelligently given, uncontaminated by any duress or coercion.⁴⁵ Relevant to this determination of voluntariness are the following characteristics of the person giving consent and the environment in which consent is given: (a) the age of the consenting party; (b) whether he or she was in a public or secluded location; (c) whether he or she objected to the search or passively looked on;⁴⁶ (d) his or her education and intelligence; (e) the presence of coercive police procedures; (f) the belief that no incriminating evidence will be found;⁴⁷ (g) the nature of the police questioning; (h) the environment in which the questioning took place; and (i) the possibly vulnerable subjective state of the person consenting.⁴⁸

⁴³ *Rollo*, pp. 108-110.

⁴⁴ *Caballes v. Court of Appeals*, 424 Phil. 263, 286 (2002).

⁴⁵ *Id.*, citing 68 Am Jur 2d Searches and Seizures, § 135.

⁴⁶ *Id.*, citing *United States v. Barahona*, 990 F. 2d 412.

⁴⁷ *Id.*, citing *United States v. Lopez*, 911 F. 2d 1006.

⁴⁸ *Id.*, citing *United States v. Nafziger*, 965 F. 2d 213.

In *Asuncion v. Court of Appeals*,⁴⁹ the apprehending officers sought the permission of petitioner to search the car, to which the latter agreed. According to the Court, petitioner himself freely gave his consent to the search. In *People v. Montilla*,⁵⁰ the Court found the accused to have spontaneously performed affirmative acts of volition by opening the bag without being forced or intimidated to do so, which acts amounted to a clear waiver of his right. In *People v. Omaweng*,⁵¹ the police officers asked the accused if they could see the contents of his bag, to which the accused said “you can see the contents but those are only clothings.” The policemen then asked if they could open and see it, and the accused answered “you can see it.” The Court held there was a valid consented search.

Similarly in this case, petitioner consented to the baggage inspection done by SCAA Buco. When SCAA Buco asked if he could open petitioner’s bag, petitioner answered “**yes, just open it**” based on petitioner’s own testimony. This is clear consent by petitioner to the search of the contents of his bag. In its Decision dated 26 June 2014, the Court of Appeals aptly held:

A waiver was found in *People v. Omaweng*. There, the police officers asked the accused if they could see the contents of his bag and he answered “you can see the contents but those are only clothings.” When asked if they could open and see it, he said “you can see it.” In the present case, accused-appellant told the member of the task force that “it was only a cellphone” when asked who owns the bag and what are its contents. When asked by the member of the task force if he could open it, accused-appellant told him “yes, just open it.” Hence, as in *Omaweng*, there was a waiver of accused-appellant’s right against warrantless search.⁵²

To emphasize, a reasonable search, on the one hand, and a warrantless search, on the other, are mutually exclusive. While both State intrusions are valid even without a warrant, the underlying reasons for the absence of a warrant are different. A reasonable search arises from a reduced expectation of privacy, for which reason Section 2, Article III of the Constitution finds no application. Examples include searches done at airports, seaports, bus terminals, malls, and similar public places. In contrast, a warrantless search is presumably an “unreasonable search,” but for reasons of practicality, a search warrant can be dispensed with. Examples include search incidental to a lawful arrest, search of evidence in plain view, consented search, and extensive search of a private moving vehicle.

Further, in the conduct of bus searches, the Court lays down the following guidelines. **Prior to entry**, passengers and their bags and luggages can be subjected to a routine inspection akin to airport and seaport security protocol. In this regard, metal detectors and x-ray scanning machines can be installed at bus terminals. Passengers can also be frisked. In lieu of

⁴⁹ 362 Phil. 118, 127 (1999).

⁵⁰ 349 Phil. 640, 661 (1998).

⁵¹ 288 Phil. 350, 358-359 (1992).

⁵² *Rollo*, p. 32.

electronic scanners, passengers can be required instead to open their bags and luggages for inspection, which inspection must be made in the passenger's presence. Should the passenger object, he or she can validly be refused entry into the terminal.

While in transit, a bus can still be searched by government agents or the security personnel of the bus owner in the following three instances. *First*, upon receipt of information that a passenger carries contraband or illegal articles, the bus where the passenger is aboard can be stopped *en route* to allow for an inspection of the person and his or her effects. This is no different from an airplane that is forced to land upon receipt of information about the contraband or illegal articles carried by a passenger onboard. *Second*, whenever a bus picks passengers *en route*, the prospective passenger can be frisked and his or her bag or luggage be subjected to the same routine inspection by government agents or private security personnel as though the person boarded the bus at the terminal. This is because unlike an airplane, a bus is able to stop and pick passengers along the way, making it possible for these passengers to evade the routine search at the bus terminal. *Third*, a bus can be flagged down at designated military or police checkpoints where State agents can board the vehicle for a routine inspection of the passengers and their bags or luggages.

In both situations, the inspection of passengers and their effects prior to entry at the bus terminal and the search of the bus while in transit must also satisfy the following conditions to qualify as a valid reasonable search. *First*, as to the manner of the search, it must be the least intrusive and must uphold the dignity of the person or persons being searched, minimizing, if not altogether eradicating, any cause for public embarrassment, humiliation or ridicule. *Second*, neither can the search result from any discriminatory motive such as insidious profiling, stereotyping and other similar motives. In all instances, the fundamental rights of vulnerable identities, persons with disabilities, children and other similar groups should be protected. *Third*, as to the purpose of the search, it must be confined to ensuring public safety. *Fourth*, as to the evidence seized from the reasonable search, courts must be convinced that precautionary measures were in place to ensure that no evidence was planted against the accused.

The search of persons in a public place is valid because the safety of others may be put at risk. Given the present circumstances, the Court takes judicial notice that public transport buses and their terminals, just like passenger ships and seaports, are in that category.

Aside from public transport buses, any moving vehicle that similarly accepts passengers at the terminal and along its route is likewise covered by these guidelines. Hence, whenever compliant with these guidelines, a routine inspection at the terminal or of the vehicle itself while in transit constitutes a

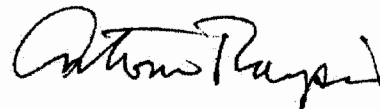


reasonable search. Otherwise, the intrusion becomes unreasonable, thereby triggering the constitutional guarantee under Section 2, Article III of the Constitution.

To emphasize, the guidelines do *not* apply to privately-owned cars. Neither are they applicable to moving vehicles dedicated for private or personal use, as in the case of taxis, which are hired by only one or a group of passengers such that the vehicle can no longer be flagged down by any other person until the passengers on board alight from the vehicle.

WHEREFORE, the petition is **DENIED**. The Decision dated 26 June 2014 and the Resolution dated 15 October 2014 of the Court of Appeals in CA-G.R. CR No. 01099 are **AFFIRMED**.

SO ORDERED.

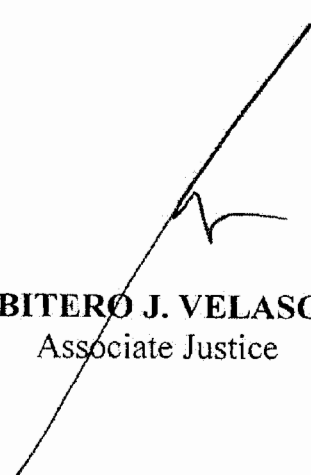


ANTONIO T. CARPIO
Acting Chief Justice

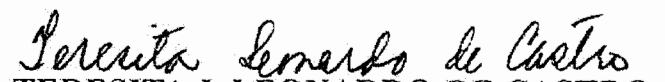
WE CONCUR:

(on leave)

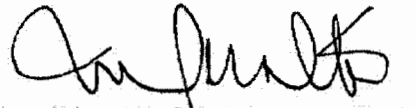
MARIA LOURDES P. A. SERENO
Chief Justice




PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


DIOSDADO M. PERALTA
Associate Justice

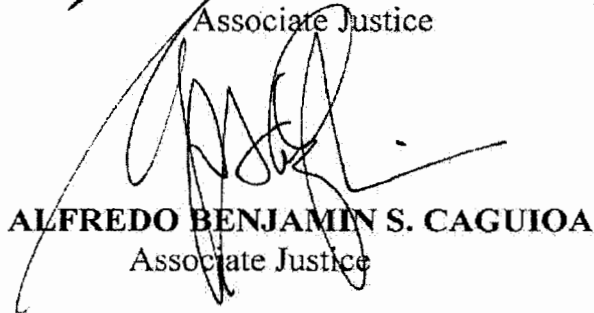

LUCAS P. BERSAMIN
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MARIANO C. DEL CASTILLO
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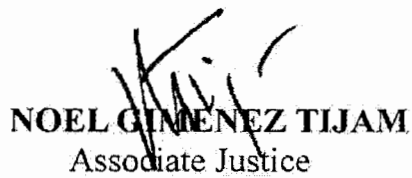
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ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC M.V.F. LEONEN
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(no part)
FRANCIS H. JARDELEZA
Associate Justice


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Associate Justice


SAMUEL R. MAITRES
Associate Justice


NOEL GIMENEZ TIJAM
Associate Justice

(on wellness leave)
ANDRES B. REYES, JR.
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice

Certified True Copy

ANNA-LI R. PABLO
Deputy Clerk of Court
C.O. En Banc


CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



ANTONIO T. CARPIO
Acting Chief Justice

Certified True Copy



ANNA-LI R. PAPA-GOMBIO
Deputy Clerk of Court En Banc
OCC En Banc, Supreme Court