Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ROEL PABLO *y* PASCUAL,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 253504

Present:
LEONEN, *S.A.J.*, Chairperson,
LAZARO-JAVIER,
LOPEZ, M.
LOPEZ, J., and
KHO, JR., *JJ.*

Promulgated:
FEB 01 2023

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D E C I S I O N

KHO, JR., *J.*:

Assailed in this Petition for Review on *Certiorari*[1] is the Decision[2] dated September 26, 2019 and the Resolution[3] dated August 25, 2020 of the Court of Appeals (CA) in CA-G.R. CR No. 42285, which affirmed the Joint Decision[4] dated July 12, 2018, of the Regional Trial Court of Quezon City, Branch 88 (RTC) in Criminal Case Nos. R-QZN-15-08421-CR and R-QZN-15-08422-CR, finding petitioner Roel Pablo *y* Pascual (petitioner), among others, guilty beyond reasonable doubt of Illegal Possession of Firearms, as defined and penalized under Section 28(a) in relation to Section 28(e) of

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1 Dated November 6, 2020; *rollo*, pp. 12–29.
2 Id. at 33–46. Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Myra V. Garcia-Fernandez and Perpetua Susana T. Atal-Paño.
3 Id. at 48–49.
4 Id. at 78–87. Penned by Presiding Judge Rosanna Fe Romero-Maglaya.

Republic Act No. (RA) 10591[5] or the "Comprehensive Firearms and Ammunition Regulation Act."

The Facts

This case stemmed from an Information[6] filed before the RTC, charging petitioner with violation of Section 28(a) in relation to Section 28(e) of RA 10591, the accusatory portion of which reads:

> That on or about the 13th day of September 2015 in Quezon City, Philippines, the above-named accused, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control, One (1) Smith & Wesson Magnum Caliber .22 pistol loaded with eight (8) pcs. of ammunitions, without first having secured the necessary license/permit issued by the proper authorities.
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> CONTRARY TO LAW.[7]

During arraignment, petitioner and his co-accused, Alvin Teriapel *y* Mira (Teriapel) pleaded not guilty to the crime charged. After posting a surety bond for his provisional release, Teriapel jumped bail.[8]

Trial ensued thereafter. The prosecution asserted that Senior Police Officer 3 Ferdinand de Guzman, Police Officer 1 Rey Jel Nadura (PO1 Nadura), Senior Police Officer 2 Randy Vicente, Police Officer 3 Dennis Sano, and Police Officer 1 Rommel Tuble (PO1 Tuble; collectively, police officers) were conducting an anti-criminality operation along Payapa Street, Villareal, Barangay Gulod, Novaliches. At around 6:00 p.m. on September 13, 2015, they flagged down two (2) male persons riding a motorcycle without the requisite safety helmets in violation of RA 10054[9] or the "Motorcycle Helmet Act of 2009." The police officers further noticed that a piece of paper had been stuck over the last two digits of the motorcycle's plate number so that it reads NC68710 instead of its true plate number, NC 68782, which constitutes tampering of such license plate in violation of RA 4136[10] or the "Land Transportation and Traffic Code." The police officers asked the driver of the motorcycle, who was later identified as herein petitioner, to present his driver's license, but he could not present any. The rider, who was later identified as Teriapel, could not provide a driver's license either upon inquiry.[11] Finding this suspicious, the police officers bodily frisked petitioner

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5 Entitled "An Act Providing For A Comprehensive Law On Firearms And Ammunition And Providing Penalties For Violations Thereof," approved on May 29, 2013.

6 *Rollo*, p. 78.

7 Id.

8 Id. at 34.

9 Entitled "An Act Mandating All Motorcycle Riders To Wear Standard Protective Motorcycle Helmets While Driving And Providing Penalties Therefor," approved on March 23, 2010.

10 Entitled "An Act To Compile The Laws Relative To Land Transportation And Traffic Rules, To Create A Land Transportation Commission And For Other Purposes," approved on June 20, 1964.

11 *Rollo*, p. 37.

and Teriapel. PO1 Nadura recovered a Magnum Caliber .22 pistol, loaded with eight (8) pieces of live ammunition from petitioner's waistline while PO1 Tuble recovered nine (9) pieces of Magnum Caliber .22 ammunition from Teriapel's right front pocket. The officers thus placed petitioner and Teriapel under arrest and apprised them of their constitutional rights. Thereafter, they were brought to the police station where PO1 Nadura marked the recovered pistol and the live ammunition recovered from petitioner as "RP" and "RP-1" to "RP-8," respectively. The ammunition recovered from Teriapel were also marked by PO1 Tuble as "AT-1" to "AT-9." The recovered items were then turned over to the Firearms Identification Division of the Philippine National Police (PNP) Crime Laboratory at Camp Crame for ballistic examination.[12]

Upon cross-examination, PO1 Nadura stated that they also asked for the motorcycle's documentation prior to conducting a search, but petitioner and Teriapel were unable to produce such documents.[13] The officers attempted to verify the motorcycle's registration with the Land Transportation Office (LTO) through text message and found that the motorcycle had no registration papers.[14] This was not disputed by petitioner.

On the other hand, the defense averred that on the night of the arrest, petitioner was at his house at No. 8 Payapa St., Barangay Gulod, Novaliches, Quezon City. Teriapel stopped him as he was walking to the store to ask on the whereabouts of his (Teriapel's) aunt, as she was the live-in partner of petitioner. Just as petitioner answered, a red van arrived, and three (3) men alighted and introduced themselves as police officers. Two of the officers approached Teriapel while the third officer approached petitioner. Petitioner asserted that the gun was found inside the compartment of the motorcycle, which was owned by Teriapel's brother. Petitioner maintains that no contraband items were found or recovered from his person, but that the arresting officers insisted that the firearm belonged to him and brought him to the police station. While there were bystanders during their arrest, petitioner asserted that he did not ask for their help because he was still new to the area.[15]

The RTC Ruling

In a Joint Decision[16] dated July 12, 2018, the RTC found petitioner guilty beyond reasonable doubt of the crime charged and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of eight (8) years and one (1) day of *prision mayor*, as minimum, to eleven (11) years and four (4) months of *prision mayor*, as maximum, to wit:

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[12] Id. at 37–38.
[13] Id. at 81.
[14] Id.
[15] Id. at 39.
[16] Id. at 78–87.

WHEREFORE, judgement is hereby rendered as follows:

> 1. In Criminal Case No. R-QZN-15-08421-CR, the Court finds accused Roel Pablo y Pascual **GUILTY** beyond reasonable doubt of the crime of violating Section 28 (a) in relation to Section 28 (e) of Republic Act No. 10591, otherwise known as the "Comprehensive Firearms and Ammunition Regulation Act" and he is hereby sentenced to suffer an indeterminate penalty of imprisonment of eight (8) years one (1) day of *prision mayor* medium as minimum to eleven (11) years and four (4) months of *prision mayor* maximum as maximum; and,
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> 2. In Criminal Case No. R-QZN-15-08422-CR, the Court finds accused Alvin Teriapel y Mira **GUILTY** beyond reasonable doubt of the crime of violating Section 28(g) of Republic Act No. 10591, otherwise known as the "Comprehensive Firearms and Ammunition Regulation Act" and he is hereby sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor* minimum as minimum to seven (7) years and four (4) months of *prision mayor* minimum as maximum.
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> Accused Roel Pablo y Pascual shall be credited with the full period of his preventive imprisonment, subject to the conditions imposed under Article 29 of the Revised Penal Code, as amended.
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> **SO ORDERED**.[17]

The RTC found that the prosecution was able to prove all the elements of the crime charged through: (*a*) the testimonies of the police officers who identified all the seized items in open court; and (*b*) the Certification[18] dated July 13, 2017 issued by Police Superintendent Marieta N. Garrido, Assistant Chief, FLD, Firearms and Explosive Office, PNP, stating that both petitioner and his co-accused are not licensed or registered firearm holders of any kind and caliber nor were they authorized to possess ammunition on September 13, 2015. On the other hand, petitioner's defense of denial was ruled to be self-serving as it was not supported by strong evidence of nonculpability. The RTC further ruled that petitioner failed to show any motive for the prosecution's witnesses to falsely testify, and thus his denial could not be given more credence than their testimony.[19]

Aggrieved, petitioner filed an appeal[20] before the CA. In his appeal, petitioner contended that the search conducted on him by PO1 Nadura was not incidental to a lawful arrest; hence, the seized firearm and ammunition are inadmissible as evidence. Petitioner notes that the search preceded his arrest, as he was not arrested for the traffic violation but for the illegal possession of a firearm and ammunition.[21] Petitioner also argued that the RTC erred in ruling that his failure to adduce evidence of the ill motive of the arresting police officers discredits his defense of denial. Petitioner asserted that this

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17 Id. at 86.
18 Not attached to the *rollo*.
19 *Rollo*, p. 85.
20 Not attached to the *rollo*. See id. at 40.
21 Id. at 40.

should not have been taken against him, as the warrantless arrest and warrantless search were irregular and unconstitutional. For these reasons, petitioner asserted that his acquittal was in order.[22]

The CA Ruling

In a Decision[23] dated September 26, 2019, the CA affirmed petitioner's conviction, to wit:

> **WHEREFORE**, premises considered, the instant appeal is ***DISMISSED***. The July 12, 2018 Decision of the Regional Trial Court of Quezon City, Branch 88, in Criminal Case No. R-QZN-15-08421-CR, finding the accused-appellant guilty beyond reasonable doubt of Violation of Republic Act No. 10591 (Comprehensive Firearms and Ammunition Regulation Act), is ***AFFIRMED***.
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> **SO ORDERED.**[24]

The CA held that there was enough justification for petitioner's lawful warrantless arrest, which led to the subsequent search and seizure of the firearm recovered from him. The CA added that even if the circumstances would not amount to a search incidental to a lawful arrest, the search may still fall under the "stop and frisk rule." In this regard, the CA explained that the various traffic violations, taken together, may be construed as an attempt to conceal one's identity which creates sufficient suspicion to justify a stop and frisk search. Further, the subject firearm and ammunition were obtained through a pat down of petitioner's outer clothing. Hence, the CA ruled that this was a valid stop and frisk conforming with all the requisites.[25]

Finally, the CA noted that the testimonies of the police officers carry with them a presumption of regularity in the performance of official functions absent any clear showing of ill-motive.[26]

Hence, this petition.[27]

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA gravely erred in finding petitioner guilty beyond reasonable doubt of Illegal

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[22] Id. at 40–41.
[23] Id. at 33–46.
[24] Id. at 45.
[25] Id. at 41–44.
[26] Id. at 45.
[27] Id. at 12–29.

Possession of Firearms, as defined and penalized under Section 28(a) in relation to Section 28(e) of RA 10591.

The Court's Ruling

The petition is without merit.

The essential elements of Illegal Possession of Firearm or a violation of Section 28(a) of RA 10591 are: "(1) the existence of subject firearm; and, (2) the fact that the accused who possessed or owned the same does not have the corresponding license for it."[28] Ownership of the firearm is not required; mere possession is sufficient.

If, in addition to the above elements, any of the circumstances under Section 28(e) of RA 10591 is present, a penalty of one (1) degree higher shall be imposed. The circumstances under Section 28(e) are as follows:

> (1) Loaded with ammunition or inserted with a loaded magazine;
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> (2) Fitted or mounted with laser or any gadget used to guide the shooter to hit the target such as thermal weapon sight (TWS) and the like;
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> (3) Fitted or mounted with sniper scopes, firearm muffler or firearm silencer;
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> (4) Accompanied with an extra barrel; and
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> (5) Converted to be capable of firing full automatic bursts. (Underscoring supplied)

In this case, the firearm and ammunition were identified by the prosecution's witnesses in open court as those found on petitioner's person. Further, the prosecution provided the proper certification to show that petitioner did not have the corresponding license for the firearm and ammunition. It was also established by the prosecution's witnesses that the firearm retrieved was loaded with eight (8) pieces of live ammunition.

Verily, findings of fact of trial courts, as affirmed by the CA, are binding and conclusive upon the Court. The Court has always accorded great weight and respect to factual findings of trial courts, especially in their assessment of the credibility of witnesses.[29] Mere denial claiming a misapprehension of facts is not enough to constitute one of the exceptions. When the findings of fact of the trial court and the CA are borne out by the

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[28] See *Bacod v. People*, G.R. No. 247401, December 5, 2022 [Per J. Caguioa, Third Division] and *Evangelista v. People*, 634 Phil. 207, 227 (2010) [Per J. Del Castillo, Second Division], citation omitted.

[29] See *Gatan v. Vinarao*, 820 Phil. 257, 273 (2017) [Per J. Leonardo-De Castro, First Division].

record or are based on substantial evidence, the Court refrains from reviewing those findings on appeal. Appellate courts rely on the findings of trial courts as they had the firsthand opportunity to hear the witnesses and to observe their conduct and demeanor during the proceedings.[30]

In an attempt to absolve himself from any criminal liability, petitioner questioned the legality of the seizure of the loaded firearm and live ammunition from his person. The Court has recognized the following as instances of permissible warrantless searches: (1) a warrantless search incidental to a lawful arrest; (2) search of evidence in "plain view;" (3) search of a moving vehicle; (4) consented warrantless searches; (5) customs search; (6) stop and frisk; and (7) exigent and emergency circumstances.[31] The CA opined that the search which led to the seizure of the subject firearm from petitioner may be validly deemed as: *first*, a search incidental to a lawful arrest; and *second*, a "stop-and-frisk" search, both of which are jurisprudentially accepted instances of warrantless searches.[32]

After a circumspect review of the circumstances of this case, the Court holds that while the search made on petitioner cannot be deemed as a search incidental to a lawful arrest, it may nevertheless fall under the "stop-and-frisk" rule.

Anent the search incidental to a lawful arrest, it is axiomatic that the law requires that there must first be a lawful arrest before a search can be made.[33] The fact that an accused failed to question the legality of his or her arrest at the first instance and he or she participated in the trial of the case shall only constitute as a waiver of the objections pertaining to the defects in the arrest, and not with regard to the inadmissibility of the evidence seized during an illegal warrantless arrest.[34]

Here, suffice it to state that the CA erred in ruling that petitioner's multiple traffic violations are sufficient for the police officers to effect an arrest. In *People v. Cristobal*,[35] the Court, through Associate Justice Alfredo Benjamin S. Caguioa, ruled that warrantless arrests cannot be made for offenses penalized only by a fine, to wit:

> It also appears that, according to City Ordinance No. 98-012, which was violated by petitioner, the failure to wear a crash helmet while riding a motorcycle is penalized by a fine only. Under the Rules of Court, a warrant of arrest need not be issued if the information or charge was filed for an

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30 *De Jesus v. CA*, 524 Phil. 633, 641 (2006) [Per J. Tinga, Third Division].
31 *Veridiano v. People*, 810 Phil. 642, 656 (2017) [Per J. Leonen, Second Division].
32 See *Luz v. People*, 683 Phil. 399, 411 (2012) [Per J. Sereno, Second Division].
33 See *Pinga v. People*, G.R. No. 245368, June 21, 2021 [Per J. Perlas-Bernabe, Second Division].
34 *Vaporoso v. People*, 852 Phil. 508, 516-517 (2019) [Per J. Perlas-Bernabe, Second Division].
35 853 Phil. 352 (2019) [Second Division].

offense penalized by a fine only. It may be stated as a corollary that neither can a warrantless arrest be made for such an offense.[36]

In *Polangcos v. People*,[37] the Court, through Associate Justice Alfredo Benjamin S. Caguioa, reiterated this doctrine stating the following:

> In the very recent case of People v. Cristobal, (Cristobal) the driver of the motorcycle was flagged because he was not wearing a helmet, and he did not have in his possession the OR and CR of the motorcycle. The accused therein was then frisked to search for a deadly weapon, but the police officers did not find any. The apprehending officer thereafter noticed that there was a bulge in the pocket of his pants, so the officer asked the accused to remove the thing in his pocket. When the accused obliged, it was then revealed that the thing in his pocket was a small plastic bag containing seven sachets of *shabu*. The accused was then charged with Illegal Possession of Dangerous Drugs, similar to Polangcos in this case.
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> When the case reached the Court, the accused was acquitted as the Court found that the seized items were borne of an illegal search. The Court similarly held that the search was unlawful because it was not preceded by a valid arrest. **As the violations of the accused therein were only punishable by fine, the Court ruled that there was no reason to arrest the accused, and, as a consequence, no valid arrest preceded the search thereafter conducted.** Accordingly, the Court held that the accused therein must be acquitted as the evidence against him was rendered inadmissible by the exclusionary rule provided under the Constitution. The Court elucidated:
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> Thus, any item seized through an illegal search, as in this case, cannot be used in any prosecution against the person as mandated by Section 3(2), Article III of the 1987 Constitution. As there is no longer any evidence against Cristobal in this case, he must perforce be acquitted.
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> The case of Cristobal squarely applies to this case. There was likewise no valid arrest to speak of in this case — as Polangcos' violations were also punishable by fine only — and there could thus be no valid "search incidental to lawful arrest." Ultimately, Polangcos must be similarly acquitted, as the *corpus delicti* of the crime, *i.e.* the seized drug, is excluded evidence, inadmissible in any proceeding, including this one, against him.[38]
> (Emphasis and underscoring supplied; citations omitted)

To recall, the violations for which petitioner was flagged are traffic violations under RA 10054 and RA 4136, particularly: (1) riding a motorcycle without the requisite safety helmets; (2) tampering with a license plate; and (3) driving a motorcycle without a license or the proper registration papers. All the enumerated violations are punishable with a fine, to wit:

> Section 7. *Penalties*. – (a) Any person caught not wearing the standard protective motorcycle helmet in violation of this Act shall be punished with

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[36] Id. at 362, citing *Luz v. People*, supra, at 409.
[37] 862 Phil. 764 (2019) [Second Division].
[38] Id. at 773–774.

> a fine of One thousand five hundred pesos (Php1,500.00) for the first offense; Three thousand pesos (Php3,000.00) for the second offense; Five thousand pesos (Php5,000.00) for the third offense; and Ten thousand pesos (Php10,000.00) plus confiscation of the driver's license for the fourth and succeeding offenses.[39]
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> Section 56, (b) For failure to sign driver's license or to carry same while driving, twenty pesos fine.[40]
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> (d) Driving a motor vehicle with delinquent, suspended or invalid registration, or without registration or without the proper license plate for the current year, three hundred pesos fine.[41]
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> (l) For violation of any provisions of this Act or regulations promulgated pursuant hereto, not hereinbefore specifically punished, a fine of not less than ten or more than fifty pesos shall be imposed.[42] (Underscoring supplied)

Considering the foregoing, there could have been no valid warrantless arrest for the traffic violations.

Be that as it may, the CA correctly pointed out that the warrantless search made on petitioner falls under the "stop-and-frisk" exception; thus, the search was lawful.

A "stop-and-frisk" search, also known as a "Terry search," is defined as "the act of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon(s) or contraband."[43] The practice serves a dual purpose, namely: "(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."[44]

This dual purpose must, however, be balanced with the constitutional right of every person to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. As American Supreme Court

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[39] Section 7, RA 10054.
[40] Section 56(b), RA 4136.
[41] Section 56(d), RA 4136.
[42] Section 56(l), RA 4136.
[43] See *Porteria v. People*, 850 Phil. 259, 276 (2019) [Per J. A. Reyes, Jr., Third Division], citing *People v. Chua*, 444 Phil. 757, 773–774 (2003) [Per J. Ynares-Santiago, First Division], further citing *Manalili v. CA*, 345 Phil. 632, 643–644 (1997) [Per J. Panganiban, Third Division].
[44] *Esquillo v. People*, 643 Phil. 577, 594 (2010) [Per J. Carpio-Morales, Third Division], citing *Malacat v. CA*, 347 Phil. 462 (1997) [Per J. Hilario-Davide, *En Banc*].

Justice William O. Douglas cautioned in his dissent in the landmark case of *Terry v. Ohio*:

> To give the police greater power than a magistrate is to take a long step down the totalitarian path. Perhaps such a step is desirable to cope with modern forms of lawlessness. But if it is taken, it should be the deliberate choice of the people through a constitutional amendment.[45]

Thus, it should be emphasized that "although *Terry* gives police discretion to act when confronted with a potentially dangerous situation, the suspicious actions of the suspect are the key to triggering that discretion."[46]

In order to strike a balance between individual rights and the interests of the state, it is clear that the concept of "suspiciousness" is key. This was elucidated by the Court in *Comerciante v. People*,[47] to wit:

> The balance lies in the concept of "suspiciousness" present where the police officer finds himself or herself in. This may be undoubtedly based on the experience of the police officer. Experienced police officers have personal experience dealing with criminals and criminal behavior. Hence, they should have the ability to discern — based on facts that they themselves observe — whether an individual is acting in a suspicious manner. Clearly, a basic criterion would be that the police officer, with his or her personal knowledge, must observe the facts leading to the suspicion of an illicit act.[48]

Thus, case law instructs that a "stop-and-frisk" search should be allowed only when attended by the following limited circumstances: (1) **it should be allowed only on the basis of the police officer's reasonable suspicion, in light of his or her experience, that criminal activity may be afoot and that the persons with whom he/she is dealing may be armed and presently dangerous;** (2) the search must only be a carefully limited search of the outer clothing; and (3) conducted for the purpose of discovering weapons which might be used to assault him/her or other persons in the area.[49]

In order to be considered valid, the search must be premised on the manifest overt acts of an accused, which give law enforcers a "genuine reason" to conduct the search. Under prevailing jurisprudence, the standard has been refined to less than probable cause, but more than mere suspicion.[50] The purpose of a "stop-and-frisk" is not to discover evidence of crime, but to

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[45] *Terry v. Ohio*, 392 U.S. 1, 900, 88 S Ct 1868, 20 L Ed 2d 889 (1968).

[46] Epstein, Lee & Walker, Thomas G., *Constitutional Law for a Changing America: Rights, Liberties, and Justice*, pp. 512–513, Fourth Edition, 2000, citing *Terry v. Ohio*, id.; *Illinois v. Wardlow*, 528 U.S. 119 (2000); and *Florida v. J. L.*, 529 U.S. 266 (2000).

[47] 764 Phil. 627 (2015) [Per J. Perlas-Bernabe, First Division].

[48] *Comerciante v. People*, supra, at 639, citing *People v. Cogaed*, 740 Phil. 212, 230 (2014) [Per J. Leonen, Third Division].

[49] See *People v. Sapla*, 874 Phil. 240 (2020) [Per J. Caguioa, *En Banc*], citing *Veridiano v. People*, 810 Phil. 642 (2017) [Per J. Leonen, Second Division].

[50] See *Porteria v. People*, supra, at 277.

allow the officer to pursue the investigation without fear of violence.[51] As such, the genuine reason to believe required for a "stop-and-frisk" search need not amount or equate to probable cause, which infers that an offense is being committed or has been committed.[52]

However, while probable cause is not required for "stop-and-frisk" searches, the search cannot be based on a single suspicious circumstance. The Court, in *People v. Yanson*,[53] through now Senior Associate Justice Marvic M.V.F. Leonen, emphasized that in warrantless searches:

> [L]aw enforcers "must not rely on a single suspicious circumstance." What is required is the "presence of more than one seemingly innocent activity, which, taken together, warranted a reasonable inference of criminal activity."[54] Indeed, it is unlikely that a law enforcer's suspicion is reasonably roused at the sight of a single activity, which may very well be innocent. It is far more likely that there first be several, continuous, peculiar acts of a suspect before any law enforcer's suspicion is roused. At every peculiar act done, a law enforcer's suspicion is successively confirmed and strengthened.[54] (Underscoring supplied)

In other words, the **arresting officer should have personally observed at least two (2) or more suspicious circumstances, the totality of which leads to a genuine reason to suspect that a person is committing an illicit act**.[55] This precept has been observed by the Court in several cases.

In *Manalili v. CA*,[56] the Court, through Associate Justice Artemio V. Panganiban, upheld a stop and frisk search after considering the following observations of the arresting officers: (*a*) the accused had red eyes; and (*b*) he was wobbling like drunk in a cemetery. It was not unreasonable for the police officers to suspect that the accused was "high" or had consumed illegal drugs.

In *People v. Solayao*,[57] the Court, through Associate Justice Flerida Ruth P. Romero, also found justifiable reason to uphold the stop and frisk search due to the presence of the following circumstances: (*a*) the arresting officers witnessed the drunken actuations of the accused and his companions; (*b*) the fact that accused's companions fled when they saw the policemen; and (*c*) the fact that the peace officers were on an intelligence mission to verify reports that armed persons were roaming the vicinity.

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[51] See *Esquillo v. People*, supra, at 604, citing *Adams v. Williams*, 407 U.S. 143, 145–146, 92 S. Ct. 1921, 1922-1923, 32 L. Ed. 2d 612 (1972).

[52] See id. at 603.

[53] 858 Phil. 642 (2019) [Third Division].

[54] Id. at 660, citing *People v. Cogaed*, supra, at 233 and Chief Justice Lucas P. Bersamin's dissent in *Esquillo v. People*, supra note 44.

[55] See *Telen v. People*, 864 Phil. 1103, 1117 (2019) [Per J. Leonen, Third Division], citing *Manibog v. People*, 850 Phil. 103, 118 (2019) [Per J. Leonen, Third Division].

[56] 345 Phil. 632 (1997) [Third Division].

[57] 330 Phil. 811 (1996) [Second Division].

In *Manibog v. People*,[58] the combination of: (*a*) the police asset's tip; and (*b*) the arresting officers' observation of a gun-shaped object under petitioner's shirt already suffices as a genuine reason for the arresting officers to conduct a stop-and-frisk search of the accused.

In *Palencia v. People*,[59] the Court ruled that a stop and frisk search could be upheld based on: (*a*) the police officers witnessing the accused "checking out some plastic sachets in his left hand;" (*b*) the accused's act of running for the other direction upon seeing the police; and (*c*) the fact that such events occurred in an area notorious for the buying and selling of dangerous drugs.

In all these cases, the Court made a judgment based on whether the totality of the circumstances construed together is enough to elicit the reasonable suspicion in an experienced police officer's mind that something illicit was afoot. Each circumstance need not, on its own, be suspicious or illegal. A person wobbling like a drunk in a cemetery is not illegal or by itself suspicious, and neither is a person with red eyes inherently suspicious–together, however, the Court held that they were considered enough to rouse the suspicion of law enforcement. What is required is not multiple illegal acts, but several, continuous, peculiar acts through which a law enforcer's suspicion is successively confirmed and strengthened.[60]

In the instant case, the obtaining circumstances lead the Court to conclude that there was a genuine reason for the police officers to conduct a "stop-and-frisk" search on petitioner.

First, to recall, the police officers had a genuine reason to flag down petitioner after observing that he and Teriapel were not wearing helmets. ***Second***, the plate number of their motorcycle had been tampered with. ***Third***, upon flagging down petitioner and Teriapel, the officers properly introduced themselves as police officers before questioning them and asking for their driver's licenses, which petitioner and Teriapel failed to produce. ***Fourth***, petitioner also failed to produce motorcycle documentation when asked. ***Lastly***, on the night of the arrest, the police officers had been conducting an anti-criminality operation.

On their own, none of the enumerated traffic violations are inherently suspicious; taken together, however, there is reason to believe, as the RTC noted in its Decision, that petitioner and his co-accused were attempting to hide their identities. This, in turn, is enough to engender a suspicion in the mind of an experienced police officer that something illicit was afoot.

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[58] Supra, at 120.
[59] 875 Phil. 827 (2020) [Per J. Leonen, Third Division].
[60] See *People v. Yanson*, supra, at 660.

The Court notes that aside from seemingly trying to hide his identity, petitioner was also riding in tandem with Teriapel. In Philippine society, the phrase "riding in tandem" has taken on a meaning wholly different from its plain reading. It has become shorthand for criminality, more specifically, it has been heavily associated with armed men. This association is so well ingrained in the public consciousness that the phrase is now seldom used in the media outside the context of reporting a crime.[61]

The new meaning of the phrase is so ubiquitous that the Court itself has used it as a noun rather than as a descriptor in more than one case. In *People v. Dayrit*,[62] the Court, through Associate Justice Diosdado M. Peralta, ruled that "the fact that a riding in tandem committed the crime should not automatically result in a finding of evident premeditation especially if there are no external acts of deliberate planning." Similarly in *People v. Quillo*,[63] the Court used the phrase "the riding-in-tandem" in its Decision.

The Court cannot be blind and indifferent to current events affecting society. It must take them into serious consideration in the adjudication of pending cases.[64] In this connection, the Court has ruled that:

> Section 2, Rule 129 of the Rules of Court recognizes that the courts have discretionary authority to take judicial notice of matters that are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions. The principle is based on convenience and expediency in securing and introducing evidence on matters that are not ordinarily capable of dispute and are not *bona fide* disputed.[65] (Underscoring supplied)

Certainly, the proliferation of crimes committed by men riding in tandem on motorcycles is a matter of public knowledge. The Court cannot, therefore, rule on this case purporting to be blind to the associations every Filipino makes in relation to persons "riding in tandem." These associations necessarily affect the mindset and discretion of police officers when they determine and assess whether there is a reasonable ground to suspect that a person may be performing illicit acts.

It must be clarified and stressed, however, that the very act of two persons riding in tandem on a motorcycle or similar vehicles does not by itself

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[61] See Tan, Michael L., "*Riding in Tandem*," Philippine Daily Inquirer, October 24, 2014, <https://opinion.inquirer.net/79545/riding-in-tandem> (last accessed on October 24, 2022).

[62] G.R. No. 241632, October 14, 2020 [First Division].

[63] 856 Phil. 123 (2019) [Per J. Carandang, First Division].

[64] See *Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc.*, 827 Phil. 680, 733 (2018) [Per J. Bersamin, *En Banc*] and A.M. No. 11-10-1-SC (Resolution), March 13, 2018; citing *In Re: Request Radio-TV Coverage of the Trial in the Sandiganbayan of the Plunder Cases against the Former President Joseph E. Estrada, Secretary of Justice Hernando Perez, Kapisanan ng mga Brodkaster ng Pilipinas, Cesar Sarino, Renato Cayetano and Atty. Ricardo Romulo v. Estrada*, 417 Phil. 395 (2001) [Per J. Mendoza, *En Banc*].

[65] Id.

constitute a valid reason for a stop-and-frisk search, nor does it constitute a valid reason for police officers to flag down motorists. On its own, the mere act of riding in tandem should not be seen as suspicious or worth noting by law enforcement. However, such fact can be taken together with the totality of the circumstances to establish that there was a genuine reason to suspect that persons might be performing an illicit act.

Thus, when faced with the successive circumstances of: **(1)** two men riding in tandem who are **(2)** unable to produce identification by way of a driver's license, **(3)** who did not have their motorcycle's documentation and **(4)** who tampered with said motorcycle's plate number, any man of reasonable caution would suspect that perhaps petitioner was armed and/or conducting some illicit activity.

It must also be noted that in this case, the search conducted by the police officers was not more invasive than is proper for a "stop-and-frisk" search. To reiterate, a "stop-and-frisk" is conducted to allow an officer to pursue his investigation without fear of violence, and not to discover evidence of a crime.[66] It is for this reason, it is strictly limited to the outer clothing, or to what is necessary for the discovery of weapons that may be used to harm the officer of the law or others nearby.[67] As established by the prosecution and the courts *a quo*, the police officers properly limited the search to petitioner's outer clothing.

Regarding whether the chain of custody was properly established in this case, the Court emphasizes that the application of the chain of custody rule under Section 21 of RA 9165 has not been extended to other objects seized. Where the proffered evidence is ***unique, readily identifiable, and relatively resistant to change***, that foundation need only consist of testimony by a witness with knowledge that the evidence is what the proponent claims.[68] The chain of custody rule does not apply to an object which is amorphous and relatively resistant to change; a witness of the prosecution need only identify the structured object based on personal knowledge that the same contraband or the article is what it purports to be and that it came from the person of the accused.[69] Thus, a testimony showing the handling of the firearms and ammunition upon confiscation, turnover to the crime laboratory, and its later identification to the court, will suffice. In this case, the prosecution ***substantially complied*** with the foregoing rule as PO1 Nadura and PO1 Tuble were able to testify on the handling and turnover of the firearms and ammunition and were able to identify the same in open court.

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[66] Supra note 41.
[67] Id.
[68] *People v. Olarte*, 848 Phil. 821 (2019) [Per C.J. Gesmundo, First Division], at 19. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.
[69] Id. at 20.

Given the foregoing, the Court concludes that all the elements of the crime charged had been established, and that the recovery of the subject firearm and ammunition from petitioner was a result of a validly conducted "stop-and-frisk" search against him. As such, there is no cogent reason for the Court not to affirm petitioner's conviction for the crime charged.

A violation of Section 28(a) of RA 10591 is punishable by *prision mayor* in its medium period. As earlier discussed, Section 28(e) raises the penalty of a violation of Section 28(a) by one degree if any of the circumstances enumerated therein are present. In this case, the prosecution established through reliable testimony that the firearm had been loaded. Thus, the proper penalty for a violation of Section 28(a) in relation to Section 28(e) of RA 10591 is *prision mayor* in its maximum period.

Case law instructs that the rules for the application of penalties and the correlative effects thereof under the Revised Penal Code (RPC), as well as other statutory enactments founded upon and applicable to such RPC provisions, have suppletory effect to the penalties under special laws that use the penalties under the RPC.[70] Thus, following the Indeterminate Sentence Law, and there being no aggravating circumstances, the maximum period which may be imposed is *prision mayor* maximum in its medium period, or ten (10) years, eight (8) months and one (1) day to eleven (11) years and four (4) months; while the minimum period must be within the range of the penalty next lower of what has been prescribed, in this case, *prision mayor* medium or eight (8) years and one (1) day to ten (10) years. The penalty imposed by the RTC is within the proper range, thus the Court sees no reason to disturb it.

WHEREFORE, the petition is **DENIED**. The Decision dated September 26, 2019 and the Resolution dated August 25, 2020 of the Court of Appeals in CA-G.R. CR No. 42285 finding petitioner Roel Pablo *y* Pascual **GUILTY** beyond reasonable doubt of violation of Section 28(a) in relation to Section 28(e) of Republic Act No. 10591 or the Comprehensive Firearms and Ammunition Regulation Act, and sentencing him to suffer the penalty of imprisonment for an indeterminate period of eight (8) years and one (1) day of *prision mayor*, as minimum, to eleven (11) years and four (4) months of *prision mayor*, as maximum, are hereby **AFFIRMED**.

SO ORDERED.

ANTONIO T. KHO, JR.
Associate Justice

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[70] *People v. Simon*, 304 Phil. 725 (1994).

WE CONCUR: See dissenting opinion

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest 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's Division.

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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's Division.

ALEXANDER G. GESMUNDO
Chief Justice