

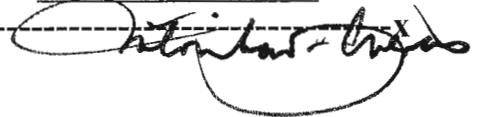
EN BANC

G.R. No. 257910 – ALFONSO PATOTOY y CENTENO @ “NONOY,”
Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.

Promulgated:

March 4, 2025

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DISSENTING OPINION

LEONEN, J.:

I regret that I cannot join the majority in sustaining the conviction of petitioner Alfonso Patotoy (Patotoy). I believe that the prosecution failed to prove petitioner's guilt beyond reasonable doubt and therefore should be acquitted of the crime of illegal possession of firearms and ammunition. I contribute the following observations:

I

Article III, Section 2 of the Constitution states:

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.¹

This constitutional guarantee is complemented by Article III, Section 3(2), which ensures that citizens are protected “against erring officers who deliberately or negligently disregard the proper procedure in effecting searches[.]”² Also known as the exclusionary rule, this constitutional provision is regarded as “the only practical means of enforcing the constitutional injunction against unreasonable searches and seizure.”³

¹ CONST., art III, sec. 2. See also *Nala v. Barroso, Jr.*, 455 Phil. 999, 1007 (2003) [Per J. Ynares-Santiago, First Division].

² *People v. Yanson*, 858 Phil. 642, 668 (2019) [Per J. Leonen, Third Division].

³ *People v. Aruta*, 351 Phil. 868, 894 (1998) [Per J. Romero, Third Division].



In *People v. Gardon-Mentoy*:⁴

To enforce such inviolable right, Section 3 (2), Article III of the Constitution enunciates the exclusionary rule by unqualifiedly declaring that '[a]ny evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.' The exclusionary rule is intended to deter the violation of the right to be protected from unreasonable searches and arrest.⁵

A search and seizure is considered as unreasonable within the language of Article III, Section 2 if it is not carried out on the strength of a judicial warrant.⁶ The rule, however, has an exception:

However, there are instances when searches are reasonable even when warrantless. In the Rules of Court, searches incidental to lawful arrests are allowed even without a separate warrant. This court has taken into account the "uniqueness of 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 known jurisprudential instances of reasonable warrantless searches and seizures are:

1. Warrantless search incidental to a lawful arrest . . . ;
2. Seizure of evidence in "plain view," . . . ;
3. Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;
4. Consented warrantless search;
5. Customs search;
6. Stop and frisk; and
7. Exigent and emergency circumstances.⁷ (Citations omitted)

Contrary to the majority's conclusion, I believe that the facts surrounding the apprehension and search of petitioner do not justify the application of these exceptions.

⁴ 861 Phil. 871 (2019) [Per C.J. Bersamin, First Division].

⁵ *Id.* at 879.

⁶ *Ambre v. People*, 692 Phil. 68, 692-693 (2012) [Per J. Mendoza, Third Division].

⁷ *People v. Cogaed*, 740 Phil. 22, 227-228 (2014) [Per J. Leonen, Third Division].

I (A)

The first exception pertains to a warrantless search incidental to a lawful arrest. This exception is governed by Rule 126, Section 13 of the Rules of Court:

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

*People v. Calantiao*⁸ further discussed the purpose of this rule:

The purpose of allowing a warrantless search and seizure incident to a lawful arrest is “to protect the arresting officer from being harmed by the person arrested, who might be armed with a concealed weapon, and to prevent the latter from destroying evidence within reach.” It is therefore a reasonable exercise of the State’s police power to protect (1) law enforcers from the injury that may be inflicted on them by a person they have lawfully arrested; and (2) evidence from being destroyed by the arrestee. It seeks to ensure the safety of the arresting officers and the integrity of the evidence under the control and within the reach of the arrestee.⁹ (Citation omitted)

The prosecution invokes this exception and insists that the confiscated items may be admitted in evidence considering that “it was a product of a search incidental to a lawful arrest.”¹⁰

In ascertaining whether the prosecution’s argument had merit, the *ponencia* considered the circumstances surrounding petitioner’s arrest as well as the warrantless search which followed the apprehension.¹¹ The *ponencia* also compared the circumstances of the present case to previous cases of comparatively similar facts. In particular, the *ponencia* harmonized this case to *People v. Cristobal*,¹² *Picardal v. People*,¹³ and *Ridon v. People*,¹⁴ in which we ruled that there can be no valid arrest when the unlawful act for which a person is being apprehended is punishable only by a fine. In these cases, the Court clarified that when the infraction committed is not punishable by imprisonment, the ensuing arrest of the violator cannot be considered lawful which would justify a warrantless search.¹⁵

⁸ 736 Phil. 661 (2014) [Per J. Leonardo-De Castro, First Division].

⁹ *Id.* at 670.

¹⁰ *Ponencia*, p. 11.

¹¹ *Id.* at 11–14.

¹² 853 Phil. 352 (2019) [Per J. Caguioa, Second Division].

¹³ 854 Phil. 575 (2019) [Per J. Caguioa, Second Division].

¹⁴ 949 Phil. 1025 (2023) [Per J. M.V. Lopez, Second Division].

¹⁵ *Id.* at 1034–1035.

Distinguishing the present case from *Cristobal, Picardan, and Ridon*, the *ponencia* stressed that unlike in the previous cases in which the infractions were only punishable by a fine, petitioner's act of violating Manila Ordinance No. 5555 carries a penalty of both a fine and imprisonment. Given that "petitioner was caught *in flagrante delicto* drinking Red Horse beer in a public place[.]"¹⁶ the *ponencia* decreed that petitioner was validly apprehended and, as a result, he can be subjected to a valid warrantless search by the police officers.¹⁷

With due respect to my esteemed colleague, I disagree. The search conducted on petitioner was beyond the ambit of Section 13, Rule 126 of the Rules of Court.

A search incidental to a valid arrest is meant to: (a) check for weapons which the accused may use to protect themselves against the arresting officers, and (b) search for additional evidence in relation to the crime. More than that, the search becomes unreasonable. In his separate opinion in *Nolasco v. Judge Paño*,¹⁸ Associate Justice Serafin R. Cuevas discussed:

The lawful arrest being the sole justification for the validity of the warrantless search under the aforementioned provision (Sec. 12, Rule 126) the same must be limited to and circumscribed by, the *subject, time, and place* of said arrest. As to *subject*, the warrantless search is sanctioned only with respect to the person of the suspect, and things that may be seized from him are limited to "dangerous weapons" or "anything which may be used as proof of the commission of the offense" Hence —

'An officer making an arrest may take from the person arrested any money or property found upon his person which was used in the commission of the crime or might furnish the prisoner with the means of committing violence or escaping or which may be used as evidence in the trial of the cause[.]'¹⁹ (Citation omitted)

Here, when petitioner was arrested for violating Manila Ordinance No. 5555, there should be a presumption that it would be unreasonable to assume that the accused will fight back with concealed weapons because it is not visited with heavy penalties. However, this is only a presumption unless there are other factual circumstances to show otherwise.

In this case, there is none.

To reiterate, the police officers were then conducting an anti-criminality campaign when they saw petitioner. The police officers

¹⁶ *Ponencia*, p. 16.

¹⁷ *Id.* at 18-19.

¹⁸ 223 Phil. 363 (1985) [Per J. Melencio-Herrera, *En Banc*].

¹⁹ *Id.* at 382.

proceeded to approach petitioner and informed him of his violation. Immediately after, petitioner was apprehended and was subjected to a search of his person:

Q: Tondo, Manila. So, when you saw him drinking Red Horse [b]eer, what did you do. Mr. Witness?

A: PO3 Tan confiscated the Red Horse. Ma'am, and he informed him of his right. Ma'am.

Q: And after Police Officer Tan confiscated this Red Horse [b]eer, what else happened?

A: When PO3 Tan took the Red Horse [b]eer, Ma'am, I frisked the accused.

Q: Okay. What was the result of this frisking by you to the person of the accused?

A: I recovered, Ma'am, one revolver, Ma'am.²⁰

Notably, there was no showing that petitioner was concealing a weapon which he will use against the arresting officers. Given that the infraction for which petitioner was apprehended carries a penalty of a fine or imprisonment of not exceeding six months, and that there was no showing that he will fight back with a concealed weapon, I believe that the search on the person of petitioner was unreasonable. As a result, all evidence obtained through the unlawful search on petitioner should be deemed inadmissible in evidence following the exclusionary rule enshrined in Article III, Section 3(2):²¹

This exclusionary rule is a protection against erring officers who deliberately or negligently disregard the proper procedure in effecting searches, and would so recklessly trample on one's right to privacy. By negating the admissibility in evidence of items seized in illegal searches and seizures, the Constitution declines to validate the law enforcers' illicit conduct. 'Evidence obtained and confiscated on the occasion of such an unreasonable search and seizure is tainted and should be excluded for being the proverbial fruit of a poisonous tree.'²² (Citation omitted)

ACCORDINGLY, I vote to **GRANT** the Petition.


MARVIC M.V.F. LEONEN
Senior Associate Justice

²⁰ *Id.* at 17.

²¹ CONST., art. III, sec. 3 provides:
SECTION 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.
(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

²² *People v. Sison*, 858 Phil. 642 668 (2019) [Per J. Leonen, Third Division].