

## SECOND DIVISION

[ G. R. No. 197788, February 29, 2012 ]

**RODEL LUZ Y ONG, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES,<sup>[1]</sup> RESPONDENT.**

### D E C I S I O N

**SERENO, J.:**

This is a Petition for Review on Certiorari under Rule 45 seeking to set aside the Court of Appeals (CA) Decision in CA-G.R. CR No. 32516 dated 18 February 2011<sup>[2]</sup> and Resolution dated 8 July 2011.

#### ***Statement of the Facts and of the Case***

The facts, as found by the Regional Trial Court (RTC), which sustained the version of the prosecution, are as follows:

PO2 Emmanuel L. Alteza, who was then assigned at the Sub-Station 1 of the Naga City Police Station as a traffic enforcer, substantially testified that on March 10, 2003 at around 3:00 o'clock in the morning, he saw the accused, who was coming from the direction of Panganiban Drive and going to Diversion Road, Naga City, driving a motorcycle without a helmet; that this prompted him to flag down the accused for violating a municipal ordinance which requires all motorcycle drivers to wear helmet (sic) while driving said motor vehicle; that he invited the accused to come inside their sub-station since the place where he flagged down the accused is almost in front of the said sub-station; that while he and SPO1 Rayford Brillante were issuing a citation ticket for violation of municipal ordinance, he noticed that the accused was uneasy and kept on getting something from his jacket; that he was alerted and so, he told the accused to take out the contents of the pocket of his jacket as the latter may have a weapon inside it; that the accused obliged and slowly put out the contents of the pocket of his jacket which was a nickel-like tin or metal container about two (2) to three (3) inches in size, including two (2) cellphones, one (1) pair of scissors and one (1) Swiss knife; that upon seeing the said container, he asked the accused to open it; that after the accused opened the container, he noticed a cartoon cover and something beneath it; and that upon his instruction, the accused spilled out the contents of the container on the table which turned out to be four (4) plastic sachets, the two (2) of which were empty while the other two (2) contained suspected *shabu*.<sup>[3]</sup>

Arraigned on 2 July 2003, petitioner, assisted by counsel, entered a plea of "Not

guilty” to the charge of illegal possession of dangerous drugs. Pretrial was terminated on 24 September 2003, after which, trial ensued.

During trial, Police Officer 3 (PO3) Emmanuel Alteza and a forensic chemist testified for the prosecution. On the other hand, petitioner testified for himself and raised the defense of planting of evidence and extortion.

In its 19 February 2009 Decision,<sup>[4]</sup> the RTC convicted petitioner of illegal possession of dangerous drugs<sup>[5]</sup> committed on 10 March 2003. It found the prosecution evidence sufficient to show that he had been lawfully arrested for a traffic violation and then subjected to a valid search, which led to the discovery on his person of two plastic sachets later found to contain *shabu*. The RTC also found his defense of frame-up and extortion to be weak, self-serving and unsubstantiated. The dispositive portion of its Decision held:

WHEREFORE, judgment is hereby rendered, finding accused RODEL LUZ y ONG *GUILTY* beyond reasonable doubt for the crime of violation of Section 11, Article II of Republic Act No. 9165 and sentencing him to suffer the indeterminate penalty of imprisonment ranging from twelve (12) years and (1) day, as minimum, to thirteen (13) years, as maximum, and to pay a fine of Three Hundred Thousand Pesos (? 300,000.00).

The subject *shabu* is hereby confiscated for turn over to the Philippine Drug Enforcement Agency for its proper disposition and destruction in accordance with law.

SO ORDERED.<sup>[6]</sup>

Upon review, the CA affirmed the RTC’s Decision.

On 12 September 2011, petitioner filed under Rule 45 the instant Petition for Review on Certiorari dated 1 September 2011. In a Resolution dated 12 October 2011, this Court required respondent to file a comment on the Petition. On 4 January 2012, the latter filed its Comment dated 3 January 2012.

Petitioner raised the following grounds in support of his Petition:

**(i) THE SEARCH AND SEIZURE OF THE ALLEGED SUBJECT SHABU IS INVALID.**

**(ii) THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY OF THE POLICE OFFICER CANNOT BE RELIED UPON IN THIS CASE.**

**(iii) THE INTEGRITY AND EVIDENTIARY VALUE OF THE ALLEGED SUBJECT SPECIMEN HAS BEEN COMPROMISED.**

**(iv) THE GUILT OF THE ACCUSED-PETITIONER WAS NOT PROVEN BEYOND THE REASONABLE DOUBT (sic).<sup>[7]</sup>**

Petitioner claims that there was no lawful search and seizure, because there was no lawful arrest. He claims that the finding that there was a lawful arrest was erroneous, since he was not even issued a citation ticket or charged with violation of the city ordinance. Even assuming there was a valid arrest, he claims that he had never consented to the search conducted upon him.

On the other hand, finding that petitioner had been lawfully arrested, the RTC held thus:

It is beyond dispute that the accused was flagged down and apprehended in this case by Police Officers Alteza and Brillante for violation of City Ordinance No. 98-012, an ordinance requiring the use of crash helmet by motorcycle drivers and riders thereon in the City of Naga and prescribing penalties for violation thereof. The accused himself admitted that he was not wearing a helmet at the time when he was flagged down by the said police officers, albeit he had a helmet in his possession. Obviously, there is legal basis on the part of the apprehending officers to flag down and arrest the accused because the latter was actually committing a crime in their presence, that is, a violation of City Ordinance No. 98-012. In other words, the accused, being caught in *flagrante delicto* violating the said Ordinance, he could therefore be lawfully stopped or arrested by the apprehending officers. x x x.<sup>[8]</sup>

We find the Petition to be impressed with merit, but not for the particular reasons alleged. In criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors.<sup>[9]</sup>

**First, there was no valid arrest of petitioner.** When he was flagged down for committing a traffic violation, he was not, *ipso facto* and solely for this reason, arrested.

Arrest is the taking of a person into custody in order that he or she may be bound to answer for the commission of an offense.<sup>[10]</sup> It is effected by an actual restraint of the person to be arrested or by that person's voluntary submission to the custody of the one making the arrest. Neither the application of actual force, manual touching of the body, or physical restraint, nor a formal declaration of arrest, is required. It is enough that there be an intention on the part of one of the parties to arrest the other, and that there be an intent on the part of the other to submit, under the belief and impression that submission is necessary.<sup>[11]</sup>

Under R.A. 4136, or the Land Transportation and Traffic Code, the general procedure for dealing with a traffic violation is not the arrest of the offender, but the confiscation of the driver's license of the latter:

SECTION 29. *Confiscation of Driver's License.* — Law enforcement and peace officers of other agencies duly deputized by the Director shall, in apprehending a driver for any violation of this Act or any regulations issued pursuant thereto, or of local traffic rules and regulations not contrary to any provisions of this Act, confiscate the license of the driver concerned and issue a receipt prescribed and issued by the Bureau therefor which shall authorize the driver to operate a motor vehicle for a period not exceeding seventy-two hours from the time and date of issue of said receipt. The period so fixed in the receipt shall not be extended, and shall become invalid thereafter. Failure of the driver to settle his case within fifteen days from the date of apprehension will be a ground for the suspension and/or revocation of his license.

Similarly, the Philippine National Police (PNP) Operations Manual<sup>[12]</sup> provides the following procedure for flagging down vehicles during the conduct of checkpoints:

SECTION 7. *Procedure in Flagging Down or Accosting Vehicles While in Mobile Car.* This rule is a general concept and will not apply in hot pursuit operations. The mobile car crew shall undertake the following, when applicable: x x x

m. If it concerns traffic violations, immediately issue a Traffic Citation Ticket (TCT) or Traffic Violation Report (TVR). Never indulge in prolonged, unnecessary conversation or argument with the driver or any of the vehicle's occupants;

At the time that he was waiting for PO3 Alteza to write his citation ticket, petitioner could not be said to have been "under arrest." There was no intention on the part of PO3 Alteza to arrest him, deprive him of his liberty, or take him into custody. Prior to the issuance of the ticket, the period during which petitioner was at the police station may be characterized merely as waiting time. In fact, as found by the trial court, PO3 Alteza himself testified that the only reason they went to the police sub-station was that petitioner had been flagged down "almost in front" of that place. Hence, it was only for the sake of convenience that they were waiting there. There was no intention to take petitioner into custody.

In *Berkemer v. McCarty*,<sup>[13]</sup> the United States (U.S.) Supreme Court discussed at length whether the roadside questioning of a motorist detained pursuant to a routine traffic stop should be considered custodial interrogation. The Court held that, such questioning does not fall under custodial interrogation, nor can it be considered a formal arrest, by virtue of the nature of the questioning, the expectations of the motorist and the officer, and the length of time the procedure is conducted. It ruled as follows:

It must be acknowledged at the outset that a traffic stop significantly curtails the "freedom of action" of the driver and the passengers, if any, of the detained vehicle. Under the law of most States, it is a crime either to ignore a policeman's signal to stop one's car or, once having stopped, to drive away without permission. x x x

However, we decline to accord talismanic power to the phrase in the Miranda opinion emphasized by respondent. Fidelity to the doctrine announced in Miranda requires that it be enforced strictly, but only in those types of situations in which the concerns that powered the decision are implicated. Thus, we must decide whether a traffic stop exerts upon a detained person pressures that sufficiently impair his free exercise of his privilege against self-incrimination to require that he be warned of his constitutional rights.

Two features of an ordinary traffic stop mitigate the danger that a person questioned will be induced "to speak where he would not otherwise do so freely," *Miranda v. Arizona*, 384 U. S., at 467. **First, detention of a motorist pursuant to a traffic stop is presumptively temporary and brief.** The vast majority of roadside detentions last only a few minutes. A motorist's expectations, when he sees a policeman's light flashing behind him, are that he will be obliged to spend a short period of time answering questions and waiting while the officer checks his license and registration, that he may then be given a citation, but that in the end he most likely will be allowed to continue on his way. In this respect, questioning incident to an ordinary traffic stop is quite different from stationhouse interrogation, which frequently is prolonged, and in which the detainee often is aware that questioning will continue until he provides his interrogators the answers they seek. See *id.*, at 451.

Second, **circumstances associated with the typical traffic stop are not such that the motorist feels completely at the mercy of the police.** To be sure, the aura of authority surrounding an armed, uniformed officer and the knowledge that the officer has some discretion in deciding whether to issue a citation, in combination, exert some pressure on the detainee to respond to questions. But other aspects of the situation substantially offset these forces. Perhaps most importantly, the typical traffic stop is public, at least to some degree. x x x

In both of these respects, **the usual traffic stop is more analogous to a so-called "Terry stop," see *Terry v. Ohio*, 392 U. S. 1 (1968), than to a formal arrest.** x x x The comparatively nonthreatening character of detentions of this sort explains the absence of any suggestion in our opinions that Terry stops are subject to the dictates of Miranda. The similarly noncoercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not "in custody" for the purposes of Miranda.

x x x                      x x x                      x x x

We are confident that the state of affairs projected by respondent will not come to pass. It is settled that the safeguards prescribed by Miranda become applicable as soon as a suspect's freedom of action is curtailed to a "degree associated with formal arrest." *California v. Beheler*, 463 U. S. 1121, 1125 (1983) (per curiam). If a motorist who has been detained pursuant to a traffic stop thereafter is subjected to treatment that renders him "in custody" for practical purposes, he will be entitled to the