



**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

FIRST DIVISION

CTA CRIM. CASE NO. O-1050

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF DECISION

VICTOR GAW SY,
Accused.

To:

PROSECUTOR GENERAL RICHARD ANTHONY D. FADULLON
ASST. STATE PROS. MONICA T. LIWAG
Department of Justice
Padre Faura Street, Ermita, Manila

ATTY. CATHERINE ROSE R. TORTOLES
ATTY. JAMAICA KAY S. DELA CRUZ
ATTY. ROBERTO G. DAMIAN, JR.
Bureau of Internal Revenue
Prosecution Division, Room 704, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

VICTOR GAW SY
14 Int. A. Santiago Street
Brgy. Sipac-Almacen, Navotas City

TUGADI LAW OFFICE
No. 66 Daffodil Street, ESlA Urban Homes
Sto. Domingo, Cainta, Rizal 1900

GREETINGS:

You are hereby notified by these presents that on **January 15, 2025**, a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **January 15, 2025.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II



REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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FIRST DIVISION

CTA CRIM. CASE NO. O-1050

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

NOTICE OF DECISION

VICTOR GAW SY,
Accused.

To:

MS. JUDITH V. LAROCO
Chief Judicial Staff Officer - Cash Division
Court of Tax Appeals
G/F CTA Building I, National Government Center
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE
PHILIPPINES,

Plaintiff,

CTA CRIM. CASE NO. O-1050

For: Violation of Section 263 of the
National Internal Revenue Code
(NIRC) of 1997, as amended

- versus -

Members:

DEL ROSARIO, P.L., Chairperson,
BACORRO-VILLENA, and
CUI-DAVID, JL.

VICTOR GAW SY,
Accused.

Promulgated:

JAN 15 2025; 10:56 a.m.

X ----- X

DECISION

BACORRO-VILLENA, J.:

Accused of possessing reams of imported cigarettes without paying the necessary excise tax thereon, plaintiff People of the Philippines (**plaintiff**) filed an Information¹ against accused Victor Gaw Sy (**accused**). The Information that essays the charges for violation of Section 263² of the National Internal Revenue Code (NIRC) of 1997, as amended, reads: 

¹ Filed on 20 April 2023. Division Docket, pp. 5-8.

² **SEC. 263.** *Unlawful Possession or Removal of Articles Subject to Excise Tax Without Payment of the Tax.* - Any person who owns and/or is found in possession of imported articles subject to excise tax, the tax on which has not been paid in accordance with law, or any person who owns and/or is found in possession of imported tax-exempt articles other than those to whom they are legally issued shall be punished[.]

...

That on or about 03 October 2018, in Zaragoza, Nueva Ecija, Philippines, and within jurisdiction of this Honorable Court, the above-named accused did then and there, knowingly, willfully and unlawfully, possess five thousand (5,000) reams of imported Two Moon and Blue Moon cigarettes, with an appraised value of One Million and Five Hundred Thousand (Php1,500,00.00) Pesos, without paying the excise tax thereon in the amount of One Million Seven Hundred Fifty Thousand Pesos (Php1,750,000.00), exclusive of increments, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid latter amount.

...

Initially, the case was raffled to the Second Division.³ In a Resolution dated 26 May 2023⁴, plaintiff was ordered to submit the relevant Joint Complaint-Affidavit⁵ and the accused's Counter-Affidavit⁶ before it proceeds with the determination of probable cause.

In the *interim*, the case was transferred to the First Division pursuant to the Resolution dated 29 May 2023.⁷ After plaintiff filed its Manifestation with Submission⁸ and Compliance⁹, the First Division found probable cause to issue a warrant of arrest (WOA) against accused. Consequently, the WOA was issued and accused posted the corresponding bail for his provisional liberty.¹⁰

Thereafter, both the arraignment and the pre-trial were set to proceed on 06 September 2023.¹¹

On 29 August 2023, accused's counsel filed an Entry of Appearance¹², Pre-Trial Brief¹³, and accused's Judicial Affidavit.¹⁴ On the other hand, on 04 September 2023, plaintiff filed the following: (1) the 

³ Composed of Associate Justice Erlinda P. Uy (Ret.) as chairperson, Associate Justice Jean Marie A. Bacorro-Villena and Associate Justice Lane S. Cui-David, as members.

⁴ Division Docket, pp. 36-37.

⁵ Id., pp. 46-69, including attached annexes.

⁶ Id., pp. 70-77.

⁷ The Resolution transferred the case to the First Division pursuant to Administrative Circular No. 01-2023, (Reorganizing the Divisions of the Court), id., p. 38.

⁸ Filed on 13 June 2023 through registered mail, id., pp. 39-41.

⁹ Filed on 23 June 2023, id., p. 84.

¹⁰ See Resolution dated 06 July 2023, id., pp. 102-105.

¹¹ See Order dated 26 July 2023, id., pp. 116-117.

¹² Id., pp. 172-174.

¹³ Id., pp. 175-181.

¹⁴ Id., pp. 182-188.

Pre-Trial Brief¹⁵ (with entry of appearance); (2) Compliance with Offer and the attached Judicial Affidavit of Rodelio M. Gutierrez (**Gutierrez**)¹⁶; (3) Compliance with Offer and the attached Judicial Affidavit of John Francis D. Roque (**Roque**)¹⁷; and, (4) Compliance with Offer and the attached Judicial Affidavit of Marlon Y. Mangulabnan (**Mangulabnan**).¹⁸

On 06 September 2023, accused was arraigned and he entered a plea of “not guilty” to the offense charged in the Information. As for the Pre-Trial Conference, while the Court noted the parties’ submissions of the judicial affidavits of their respective witnesses, it further directed the accused to submit the affidavit of the reserved witness, a representative from the Zaragoza, Nueva Ecija, Police Station (**referred hereinafter as Zaragoza Police Station**). The Court also set the hearing dates for the presentation of parties’ witnesses.¹⁹ The Pre-Trial Order was eventually issued on 01 December 2023.²⁰

On 25 October 2023, plaintiff filed a “Request for Issuance of *Subpoena Duces Tecum* and *Ad Testificandum*”²¹ to require Gutierrez to bring the originals of the documents relevant to his testimony. The Court granted the same²² and ordered Gutierrez to appear on the scheduled hearing of 22 November 2023.²³

When trial ensued thereafter, plaintiff presented its witnesses, namely: (1) Gutierrez; (2) Roque; and, (3) Mangulabnan.

Gutierrez was plaintiff’s first witness and he testified that: (1) he was one of the police officers assigned at a checkpoint in Brgy. San Isidro, Nueva Ecija on 03 October 2018; (2) as a protocol, police authorities (assigned at the checkpoint) signal passing vehicles to slow down and to roll down the driver side window to check any unusual or alarming article; (3) if they do not see or find any, the vehicles are allowed to pass through the checkpoint; (4) on the said date, they saw a 

¹⁵ Id., pp. 210-218.

¹⁶ Id., pp. 219-234.

¹⁷ Id., pp. 235-250.

¹⁸ Id., pp. 251-263.

¹⁹ See Order dated 06 September 2023, id., pp. 268-271.

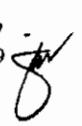
²⁰ Id., pp. 344-367.

²¹ Id., pp. 308-310.

²² See Resolution dated 07 November 2023, id., pp. 314-315.

²³ See *Subpoena Duces Tecum & Ad Testificandum*, id., p. 316.

black Foton commuter van (**Foton van**) approaching the checkpoint and they signaled the driver to slow down but he accelerated and drove past the checkpoint; (5) alarmed, they pursued the Foton van; (6) when the Foton van stopped, they apprehended driver who turned out to be accused²⁴; (7) they also found that accused is not the registered owner of the Foton van; (8) when they proceeded to conduct a “visual search” through the driver’s supposed open door and through the lightly tinted windows, they saw boxes tightly packed and stacked together; (9) upon their request, accused opened the Foton van’s back door; (10) they also asked accused to open the boxes where they were able to find out that the articles inside were cigarette boxes; (11) although accused further declared and showed that the articles were “Two Moon” cigarettes, he did not have any proper documents to justify his possession thereof; (12) for lack of documents for the cigarettes and accused’s non-ownership of the Foton van, Gutierrez decided to impound the vehicle at the Zaragoza Police Station for further investigation; (13) on 04 October 2018, accused was also released from detention but the vehicle and the cigarettes remained at the police station for the Bureau of Internal Revenue’s (**BIR**’s) verification; (14) after the BIR served a copy of the Mission Order²⁵ (**MO**) (to Police Captain Jimmy Mananguit [**Mananguit**] and to *Barangay Kagawad* Ever Tambongco [**Tambongco**]), the former proceeded to inspect and make an inventory of the cigarettes; (15) he was present and took photos during the inventory; (16) afterwards, the custody of the Foton van and the cigarettes was turned over to the BIR; and, (17) a Spot Report²⁶ was made to contain the events that transpired from the 03 October 2018 to 04 October 2018.²⁷

On cross-examination, Gutierrez declared further that accused was apprehended for violation of Article 151²⁸ of the Revised Penal Code (**RPC**). Particularly, when accused disregarded the checkpoint despite the police officer’s instructions to slow down. He also confirmed that accused was not present when the BIR served the MO for the conduct of an inventory on the cigarettes (seized from the Foton van) on 04 October 2018 at the Zaragoza Police Station. According to Gutierrez, accused was already released from detention when the MO was issued.²⁹ 

²⁴ See Driver’s License, Exhibit “P-5”, id., p. 152.

²⁵ See Exhibit “P-10”, id., p. 157.

²⁶ See Exhibit “P-4”, id., p. 151.

²⁷ See Exhibit “P-21”, Judicial Affidavit of Rogelio M. Gutierrez, id., pp. 222-234.

²⁸ ART. 151. *Resistance and disobedience to a person in authority or the agents of such person.*

²⁹ TSN dated 22 November 2023, pp. 10-27.

On redirect examination, Gutierrez confirmed that accused was released on the morning of 04 October 2018 which explained his absence during the service of the MO and the inventory. No re-cross examination was conducted.³⁰

Upon the Court's inquiry, Gutierrez confirmed that accused was apprehended for violation of Article 151 of the RPC when he disobeyed the police officer who signaled him to slow down at the checkpoint. Moreover, it was Mananguit who recited the Miranda rights (in *Tagalog*) to accused prior to his apprehension. As for the boxes taken from the Foton van, Gutierrez also declared that the word "Two Moon" was imprinted on the outside thereof which, he claimed, incited his suspicion that something was amiss since "Two Moon" cigarettes are usually imported from other countries.³¹

Next to take the witness stand was Roque who testified that: (1) he is an intelligence officer at the BIR's Regional Investigation Division (**RID**) in Revenue Region (**RR**) No. 4; (2) he is one of the affiants in the Joint Complaint-Affidavit³² filed against accused; (3) he is also one of the BIR officers who conducted the inventory and investigation of the subject cigarettes pursuant to the MO (with No. 00014551 dated 04 October 2018³³ and signed by then RR No. 4's Regional Director Atty. Jethro M. Sabariaga); (4) when the said MO was issued, his team proceeded to Zaragoza Police Station where they were briefed of the events that transpired on 03 October 2018; (5) although they did not meet the accused, they served a copy of the MO to Mananguit and Tambongco; (6) thereafter, at the Zaragoza Police Station, they opened the boxes and found cigarettes with the brands: (i) "Two Moon Blue Star" (in hard packs and in boxes 1-35); (ii) "Two Moon and Blue Moon" (in soft packs and in boxes 36-60); and, (iii) "Two Moon and Blue Moon Menthol" (in boxes 61-100); (7) none of the cigarettes had any BIR stamps affixed thereon; (8) after all boxes were accounted, marked, sealed and signed, Mangulabnan issued Certificates of Inventory³⁴; (9) they also issued and served a copy of the Apprehension Slip No. 00044451 dated 04 October 2018³⁵ to Tambongco and Mananguit; (10) the Apprehension Slip declared the Foton van and the 100 boxes of

³⁰ Id., pp. 29-33.

³¹ Id., pp. 33-67.

³² Id., pp. 46-52.

³³ Supra at note 25.

³⁴ Exhibits "P-11", "P-12", "P-13", "P-14" and "P-15", Division Docket, pp. 158-162.

³⁵ Exhibit "P-16", id., p. 163.

seized cigarettes; (11) the cigarettes were loaded back unto the Foton van and after turnover, they brought the Foton van (with the boxes of cigarettes) back to the BIR Complex of RR No. 4 in Pampanga for safekeeping; and, (12) the documents, reports and even the photographs taken during the conduct of inventory were forwarded to the BIR's Legal Division.³⁶

On cross-examination, Roque declared that accused was not given a copy of the MO. He was not also present when he and his team conducted the inventory of the boxes seized from the vehicle. When asked if there were any markings or imprints on the *outside* of the boxes, he responded in the negative.³⁷

On redirect examination, Roque explained that there were two (2) kinds of boxes. The outside box (that also contained the smaller box) did not have the marking "cigarettes" or "Two Moon". However, the word "Two Moon" can be seen on the boxes *inside* it.³⁸

When the Court inquired further about the MO, Roque explained that he resorted to constructive service of the MO as accused was not present at the time. Moreover, he was not able to contact nor locate accused after his release from detention. He went on to declare that the true owner of the Foton van and the cigarettes is a certain Shi Shanbang (**Shi**).³⁹ However, he failed to contact the said owner.⁴⁰

Lastly, Mangulabnan testified that: (1) he is a special investigator at the BIR's RID in RR No. 4; (2) he is one of the affiants in the Joint Complaint-Affidavit⁴¹ filed against accused; (3) during the conduct of inventory, a person from the media was also present; (4) he issued the Certificates of Inventory which indicated that they counted 5,000 reams of cigarettes without any affixed BIR stamp; (5) the certificates were constructively served on two (2) disinterested persons, *i.e.*, Tambongco and Mananguit, since accused was not present at the time; and, (6) after

³⁶ Exhibit "P-22", Judicial Affidavit of John Francis D. Roque, Division Docket, pp. 238-250.

³⁷ TSN dated 22 November 2023, pp. 74-88.

³⁸ *Id.*, pp. 88-92.

³⁹ Although from the court records, it was spelled as Shi Shan Bang, an examination of the passport from the People's Republic of China reveals that the real spelling of the name is Shi Shanbang. Shi is the surname. See Exhibit "A-4", Division Docket, p. 31.

⁴⁰ TSN dated 22 November 2023, pp. 93-97.

⁴¹ *Supra* at note 5.

the cigarettes were loaded back unto the Foton van, the vehicle was brought to the BIR Complex at RR No. 4 for safekeeping.⁴²

On cross-examination, Mangulabnan explained that although he was apprised that accused’s address was in Navotas, he still resorted to constructive service of the MO as the subject items to be investigated were at the Zaragoza Police Station. Also, he confirmed that accused was not present during the inventory held on 04 October 2018.⁴³

On redirect examination, Mangulabnan said that it was the police officers who informed him that the subject cigarette boxes were found in accused’s possession.⁴⁴

Later, upon the Court’s inquiry, Mangulabnan corroborated Roque’s declaration that the “Two Moon” marking appeared not on outside box but on the boxes inside it. He also stated that for violations under Section 263⁴⁵ of the NIRC of 1997, as amended, it is immaterial whether the possessor of the articles (subject to excise tax) is the owner or not.⁴⁶

Thereafter, on 28 November 2023, plaintiff filed its Formal Offer of Evidence⁴⁷ (FOE). On 30 November 2023, accused forwarded to the Court his Comment and Opposition⁴⁸ thereto. In a Resolution dated 30 January 2024⁴⁹, the Court denied Exhibits “P-5”, “P-6”, “P-7”, “P-8”, “P-9”, “P-17” to “P-17-g”, “P-17-h” to “P-17-i” and “P-17-j” to “P-17-k” for failure to present the originals for comparison; and, “P-20-a” to “P-20-e” for failure to locate the marked documents.⁵⁰ 

⁴² See Exhibit “P-23”, Judicial Affidavit of Marlon Y. Mangulabnan, Division Docket, pp. 254-263.
⁴³ TSN dated 22 November 2023, pp. 103-111.
⁴⁴ Id., pp. 111-113.
⁴⁵ Supra at note 2.
⁴⁶ Division Docket, pp. 113-125.
⁴⁷ Id., pp. 324-337.
⁴⁸ Id., pp. 338-341.
⁴⁹ Id., pp. 372-373.
⁵⁰

Exhibit	Description
“P-5”	Driver’s License of Victor Gaw Sy
“P-6”	Photograph of the Black [F]oton Van with Conduction Sticker No. GC 0725 taken last October 4, 2018.
“P-7”	Certificate of Registration and Official Receipt of the Black [F]oton Van with Conduction Sticker No. GC 0725 taken last October 4, 2018.
“P-8”	Impounding Receipt dated October 4, 2018, signed by Victor Gaw Sy.
“P-9”	Motor Vehicle Description dated October 4, 2018, signed by Victor Gaw Sy.

Later, or on 06 February 2024, accused filed a “Motion for Leave to File Demurrer to Evidence”⁵¹, to which plaintiff filed a Comment/Opposition⁵² thereto.

On 16 February 2024, plaintiff filed a “Motion for Reconsideration (of the Resolution dated January 30, 2024)”⁵³ (**MR**) that sought the admission of the previously denied exhibits. In the event that its prayer is denied, plaintiff intimated that it would make a tender of the excluded evidence pursuant to Section 40⁵⁴, Rule 132 of the Rules of Court.

After accused filed his Comment and Opposition⁵⁵ to the said MR, the Court denied plaintiff’s prayer for the admission of the denied exhibits. However, it allowed plaintiff’s tender of excluded evidence to form part of the records. In addition, the Court gave the accused ten (10) days to file a Demurrer to Evidence (**Demurrer**).⁵⁶

On 24 April 2024, accused filed his Demurrer⁵⁷ where he argued that: (1) the search of the Foton van was not valid under the plain view doctrine; (2) at the time of the search, there was no indication from the boxes that they contained cigarettes inside nor that excise taxes were not paid; (3) accused was not informed of his right to refuse the opening of the boxes; (4) the evidence taken are inadmissible being the fruit of an illegal search; and, (5) prosecution failed to prove that the articles were taken from the accused.

On 06 May 2024, plaintiff filed its Comment/Opposition thereto.⁵⁸ 

“P-17” to “P-17-g”	Photographs of the Inventory taking of Boxes, Marking of Boxes, Sealing of Boxes and Signing of Boxes.
“P-17-h” to “P-17-l”	Photographs of the briefing with PNP Zaragoza.
“P-17-j” to “P-17-k”	Photographs of the loading of Boxes to Black Foton-Commuter Van.
“P-20-a” to “P-20-e”	Representative Sample of Cigarette Ream/Pack without BIR documentary stamps.

⁵¹ Division Docket, pp. 374-391.
⁵² See Comment/Opposition [Re: Motion for Leave of Court to file Demurrer to Evidence filed on 05 February 2024], filed on 12 February 2024, id., pp. 395-398.
⁵³ Id., pp. 411-418.
⁵⁴ Sec. 40. *Tender of excluded evidence*.
⁵⁵ Division Docket, pp. 421-426.
⁵⁶ See Resolution dated 19 April 2024, id., pp. 436-440.
⁵⁷ Id., pp. 442-463.
⁵⁸ See Comment/Opposition [Re: Accused’s Demurrer to Evidence dated 24 April 2024], id., pp. 464-491.

In a Resolution dated 09 July 2024⁵⁹, the Court denied accused's Demurrer stating mainly that there exists a probable cause that prompted the police officers to conduct the extensive search of the Foton van. Subsequently, in a hearing dated 04 September 2024, accused manifested that he will be the sole witness for his defense. His supposed other witness, Gutierrez, had already testified as plaintiff's witness and was subjected to cross-examination.⁶⁰

On the witness stand, accused declared that: (1) he had no knowledge of the contents of the Foton van at the time of transport; (2) he only came to know that he was carrying cigarettes based on the Joint Complaint-Affidavit⁶¹ filed against him; (3) he was also not aware who the real owner of the Foton van is or who Shi *aka* Andy Co (the supposed owner) is; (4) he was only apprised that Shi is the owner based on a copy of the Deed of Absolute Sale⁶², the latter's identification card⁶³ and the Official Receipt and Certificate of Registration⁶⁴ (OR/CR) attached to the Joint Complaint-Affidavit; and, (5) he was not present when the BIR conducted the inventory of the cigarettes.⁶⁵

Accused further testified that a friend, a certain Jay Ar Peralta (**Peralta**), referred the job to him and he was told to pick up a van from Jollibee Caloocan and to drive it to Jollibee Cabanatuan for a fee of ₱10,000.00. He narrated that when he was traversing the Zaragoza market in Nueva Ecija, police officers apprehended him and asked him about the contents of the Foton van. Allegedly, they received a call saying that there was a van carrying *shabu*. Since accused had no idea of the contents, he claimed that he was taken to the police station where the police officers took the sacks (boxes) from inside the Foton van and opened them, which then revealed to be containing cigarettes. The police officers thereafter took his driver's license and the vehicle's OR/CR. Thereafter, he was allowed to go home around 6:00 a.m. of 04 October 2018. The next day, he paid for a traffic violation ticket at the Zaragoza City Hall and also claimed his driver's license.⁶⁶ 

⁵⁹ Id., pp. 504-512.

⁶⁰ See TSN dated 04 September 2024, pp. 5-6.

⁶¹ Supra at note 5.

⁶² Exhibit "A-3", Division Docket, p. 30.

⁶³ Exhibit "A-4", supra at note 39.

⁶⁴ Exhibit "A-3-a"/"P-7", Division Docket, p. 154.

⁶⁵ See Exhibit "A-1", Judicial Affidavit of Victor Gaw Sy, id., pp. 182-188.

⁶⁶ See Exhibit "A-6", Supplemental Judicial Affidavit of Victor Gaw Sy, id., pp. 522-527

During cross-examination, accused explained that he did not ask Peralta about the contents of the van nor was he given any other instructions. The sacks (which appeared to be boxes) were already placed inside the Foton van when he picked up the van, thus he did not really know what it was carrying. When the police officers apprehended him, he also informed that he did not know what was inside the van. Thereafter, they demanded for his driver's license and the OR/CR. He also reiterated that when the boxes were opened, they saw cigarettes (as mentioned in his Supplemental Affidavit⁶⁷). Accused then admitted to carrying the cigarettes inside the Foton van that he drove. No redirect examination was conducted.⁶⁸

Later, during the Court's inquisition, accused declared that although he had been working as a driver for a long time, he did not bother to check what he was to transport at the time since he trusted Peralta. While he did seek out Peralta to help him in his case, he later on lost communication with him. Likewise, when he was at the Zaragoza Police Station, he did not consider calling Peralta for help. He only called a *kargador* to inform Peralta of what happened. Accused also confirmed that he did not know Shi nor had seen him during the proceedings before the prosecutor's office. Further, accused stated that he was not made aware that he can refuse the police officers when they asked him to open the back door (of the Foton van).

Lastly, when asked if he ever exerted effort to save himself from the case, accused replied in the negative saying that there was already someone who had claimed to be the owner of the cigarettes.⁶⁹

As there were no other witnesses to present, accused formally offered his evidence in open court. With no objection from the plaintiff, the Court admitted all of the offered exhibits.⁷⁰

Subsequently, or on 04 October 2024, both the accused and the plaintiff filed their respective memoranda.⁷¹ On 14 October 2024, the case was submitted for decision.⁷² 

⁶⁷ See Question and Answer No. 23 in the Supplemental Judicial Affidavit of Victor Gaw Sy, id.

⁶⁸ TSN dated 04 September 2024, pp. 14-23.

⁶⁹ Id., pp. 24-46.

⁷⁰ See Order dated 04 September 2024, Division Docket, pp. 532-533.

⁷¹ See accused's Memorandum, id., pp. 537-558; while plaintiff's Memorandum, id., pp. 560-589.

⁷² See Minute Resolution dated 14 October 2024, id., p. 592.

ISSUE

Based on the Pre-Trial Order⁷³, the issues for the Court's resolution are –

WHETHER ACCUSED VICTOR GAW SY IS GUILTY OF THE VIOLATION OF SECTION 263 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

WHETHER ACCUSED VICTOR GAW SY IS LIABLE TO PAY THE ALLEGED DEFICIENCY EXCISE TAX AMOUNTING TO ₱1,750,000.00, EXCLUSIVE OF INCREMENTS.

ARGUMENTS

Plaintiff contends that it has sufficiently established accused's guilt of the offense charged (or violation of Section 263 of the NIRC of 1997, as amended). It explains that there are only two (2) elements for the commission of the subject tax offense, and both are present in this case. *First*, as accused had admitted carrying the 100 boxes of cigarettes (without BIR stamps) in the Foton van he drove, hence his possession thereof is beyond question. *Second*, no excise taxes have been paid on the said cigarettes. Thus, without doubt, accused is guilty of the crime charged.

Plaintiff also avers that apart from the admission in accused's Counter-Affidavit⁷⁴ that he was the driver of the Foton van, it was proven during trial that the cigarettes were indeed inside the vehicle that he had driven. Although accused repeatedly argued that he is not the owner of the articles, plaintiff maintains that mere possession thereof makes him the perpetrator of the crime charged.

Plaintiff further asserts that accused failed to convincingly provide any legal excuse for his possession of the cigarettes nor had he shown that he only had a temporary, incidental, casual or harmless possession or control of the subject items pursuant to the cases of *People of the* 

⁷³ Supra at note 20, p. 361.

⁷⁴ Supra at note 6.

*Philippines v. Rolando De Garcia, et al.*⁷⁵ and *Erwin Libo-on Dela Cruz v. People of the Philippines*.⁷⁶ It also avers that accused had the intent to possess or the *animus possidendi* over the items as he agreed to drive the Foton van containing them for a consideration of ₱10,000.00.

Moreover, plaintiff maintains that the search made at the checkpoint was valid and legal. Reiterating the Court's disquisition in the Resolution of 09 July 2024 which denied the Demurrer, a reasonable or probable cause arose when accused ignored the checkpoint and the police officers who hand-signaled him to slow down. Plaintiff also claims that accused consented to the opening of boxes during the conduct of the extensive search that led to the discovery of the cigarettes. With the foregoing circumstances and the existence of the object evidence, plaintiff stresses that accused is undoubtedly guilty.

On the other hand, accused reiterates his arguments in his Demurrer and restates that: (1) the plain view doctrine was inapplicable and that the search was illegal; (2) there is no indication from the boxes that these contained cigarettes inside nor excise taxes were not paid thereon; (3) accused was not informed of his right to refuse the opening of the boxes; (4) the evidence taken are inadmissible following the doctrine of fruits of the poisonous tree; and, (5) prosecution failed to prove that the articles were taken from the accused.

RULING OF THE COURT

The judicial determination of guilt or innocence of the person necessarily starts with the recognition of his or her constitutional right to be presumed innocent of the charge he or she faces.⁷⁷ To overcome this constitutional right in favor of the accused, the prosecution must hurdle two things: *first*, the accused enjoys the constitutional presumption of innocence until final conviction; conviction requires no less than evidence sufficient to arrive at a moral certainty of guilt, not only with respect to the existence of a crime, but, more importantly, of the identity of the accused as the author of the crime. *Second*, the

⁷⁵ G. R. Nos. 102009-10, 06 July 1994.

⁷⁶ G.R. No. 209387, 11 January 2016.

⁷⁷ *People of the Philippines v. Irma Maglinas y Quindong*, G.R. No. 255496, 10 August 2022.

prosecution's case must rise and fall on its own merits and cannot draw its strength from the weakness of the defense.⁷⁸

Here, accused is charged with unlawful possession of articles subject to excise taxes without payment thereof. Section 263 of the NIRC of 1997, as amended⁷⁹, states:

...

SEC. 263. Unlawful Possession or Removal of Articles Subject to Excise Tax Without Payment of the Tax. – Any person who owns and/or is found in possession of imported articles subject to excise tax, the tax on which has not been paid in accordance with law, or any person who owns and/or is found in possession of imported tax-exempt articles other than those to whom they are legally issued shall be punished by:

(a) A fine of not less than One thousand pesos (P1,000) nor more than Two thousand pesos (P2,000) and suffer imprisonment of not less than sixty (60) days but not more than one hundred (100) days, if the appraised value, to be determined in the manner prescribed in the tariff and Customs Code, including duties and taxes, of the articles does not exceed One thousand pesos (P1,000);

(b) A fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years, if the appraised value, to be determined in the manner prescribed in the Tariff and Customs Code, including duties and taxes, of the articles exceeds One thousand pesos (P1,000) but does not exceed Fifty thousand pesos (P50,000);

(c) A fine of not less than Thirty thousand pesos (P30,000) but not more than Sixty thousand pesos (P60,000) and suffer imprisonment of not less than four (4) years but not more than six (6) years, if the appraised value, to be determined in the manner prescribed in the Tariff and Customs Code, including duties and taxes, of the articles is more than Fifty thousand pesos (P50,000) but does not exceed One hundred fifty thousand pesos (P150,000); or 

⁷⁸ *Michael Casilag y Arceo v. People of the Philippines*, G.R. No. 213523, 18 March 2021, citing *People of the Philippines v. Catalino Mingming y Discalso*, G.R. No. 174195, 10 December 2008.

⁷⁹ Before amended by Republic Act No. 11346 or An Act Increasing the Excise Tax on Tobacco Products, Imposing Excise Tax on Heated Tobacco Products and Vapor Products, Increasing the Penalties for Violations of Provisions on Articles Subject to Excise Tax, and Earmarking a Portion of the Total Excise Tax Collection from Sugar-Sweetened Beverages, Alcohol, Tobacco, Heated Tobacco and Vapor Products for Universal Health Care, Amending for this Purpose Sections 144, 145, 146, 147, 152, 164, 260, 262, 263, 265, 288, and 289, Repealing Section 288(B) and 288(C), and Creating New Sections 263-A, 265-B, and 288-A of the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, and for Other Purposes.

(d) A fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000) and suffer imprisonment of not less than ten (10) years but not more than twelve (12) years, if the appraised value, to be determined in the manner prescribed in the Tariff and Customs Code, including duties and taxes, of the articles exceeds One hundred fifty thousand pesos (P150,000).

Any person who is found in possession of locally manufactured articles subject to excise tax, the tax on which have not been paid in accordance with law, or any person who is found in possession of such articles which are exempt from excise tax other than those to whom the same is lawfully issued shall be punished with a fine of not less than ten (10) times the amount of excise tax due on the articles found but not less than Five hundred pesos (P500) and suffer imprisonment of not less than two (2) years but not more than four (4) years.

Any manufacturer, owner or person in charge of any article subject to excise tax who removes or allows or causes the unlawful removal of any such articles from the place of production or bonded warehouse, upon which the excise tax has not been paid at the time and in the manner required, and any person who knowingly aids or abets in the removal of such articles as aforesaid, or conceals the same after illegal removal shall, for the first offense, be punished with a fine of not less than ten (10) times the amount of excise tax due on the articles but not less than One thousand pesos (P1,000) and suffer imprisonment of not less than one (1) year but not more than two (2) years.

The **mere unexplained possession** of articles subject to excise tax, the tax on which has not been paid in accordance with law, shall be punishable under this Section.⁸⁰

...

From the foregoing, the elements of the offense charged for violation of Article 263 of the NIRC of 1997, as amended, may be summarized to be as follows —

1. There are articles subject to excise tax and the tax on which has not been paid in accordance with law; and,
2. The offender freely and consciously possessed or has *animus possidendi* over the subject articles.⁸¹

⁸⁰ Emphasis supplied and italics in the original text.

⁸¹ See definition of *animus possidendi* in *The People of the Philippines v. Allan Quijano y Sanding*, G.R. No. 247558, 19 February 2020.

In discharging its burden of proof, plaintiff banks on the validity of the search conducted at the checkpoint of Brgy. San Isidro, Nueva Ecija that later on yielded that the subject cigarettes were indeed then being carried and possessed by accused. On the other hand, accused assails the propriety and legality of the search of the Foton van and seizure of the cigarettes. With the legality of the search of the Foton van in serious question, accused insists that the cigarettes are indubitably inadmissible as evidence against him (being the proverbial fruit of a poisonous tree).

Article III, Section 2 of the 1987 Constitution requires a warrant to be issued by a judge before a search can be validly effected:

...
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.*⁸²
...

The issuance of a search warrant must be premised on a finding of probable cause, *i.e.*, "the existence of such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place to be searched."⁸³

The rule requiring warrants is, however, not absolute. Jurisprudence recognizes exceptional instances when warrantless searches and seizures are considered permissible:

1. **Warrantless search incidental to a lawful arrest. . . ;**
2. **Seizure of evidence in "plain view", . . . ;**

⁸² Italics supplied.

⁸³ *Century Chinese Medicine Co., et al. v. People of the Philippines, et al.*, G.R. No. 188526, 11 November 2013, citing *Sony Music Entertainment (Phils.), et al. v. Hon. Judge Dolores L. Español of the Regional Trial Court, Branch 90, Dasmariñas, Cavite, et al.*, G.R. No. 156804, 14 March 2005.

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.⁸⁴

We shall discuss plaintiff's arguments to support its burden of proof, *in seriatim*.

SEARCH INCIDENTAL TO A LAWFUL
ARREST.

Section 13, Rules 126 of the Revised Rules of Criminal Procedure provides:

...
Sec 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.
...

Jurisprudence is replete with cases supporting a search after a lawful arrest.⁸⁵ Notably, 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.⁸⁶

⁸⁴ Emphasis supplied. *The People of the Philippines v. Victor Cogaed y Romana*, G.R. No. 200334, 30 July 2014, citing *The People of the Philippines v. Rosa Aruta y Menguin*, G.R. No. 120915, 03 April 1998.

⁸⁵ See *People of the Philippines v. Leng Haiyun, et al.*, G.R. No. 242889, 14 March 2022; *People of the Philippines v. Sammy Yusop y Muhammad*, G.R. No. 224587, 28 July 2020; *Abraham Miclat, Jr. y Cebro v. People of the Philippines*, G.R. No. 176077, 31 August 2011.

⁸⁶ *Franklin B. Vaporoso, et al. v. People of the Philippines*, G.R. No. 238659, 03 June 2019.

In the case at bar, although the Court notes that plaintiff invokes the supposed violation of Article 151 of the RPC as the basis for the apprehension (of accused) and not for a traffic violation, the records suggest that accused's driver license was confiscated.

In *Jonathan Mendoza y Esguerra v. People of the Philippines*⁸⁷, the Supreme Court ruled that the commission of a traffic violation could not justify the arrest of the accused. Citing Section 29⁸⁸ of Republic Act (RA) No. 4136⁸⁹ or the Land Transportation and Traffic Code, such violation merely warrants the confiscation of the offender's driver's license and issuance of a traffic violation receipt from the apprehending officer.

In another case, the Supreme Court explained that the same procedure is found in the PNP Handbook which states that in flagging down or accosting *vehicles*, "if it concerns traffic violations, immediately issue a Traffic Citation Ticket or Traffic Violation Report".⁹⁰ Furthermore, the PNP Guidebook on Human Rights-based Policing instructs that "[p]ersons stopped during a checkpoint are not required and must not be forced to answer any questions posed during spot checks or accosting. Failure to respond to an officer's inquiries is not, in and of itself, a sufficient ground to make an arrest. A person's failure or refusal to respond to questions made by the police officer, however, may provide sufficient justification for additional observation and investigation."⁹¹ Nothing in the said handbook authorizes the police officer to order the driver or passengers to also alight the vehicle for a body search.⁹²

The transcript of stenographic notes (TSN) on witness Gutierrez reveals, thusly - 

⁸⁷ G.R. No. 234196, 21 November 2018.

⁸⁸ **SEC. 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.

⁸⁹ AN ACT TO COMPILE THE LAWS RELATIVE TO LAND TRANSPORTATION AND TRAFFIC RULES, TO CREATE A LAND TRANSPORTATION COMMISSION AND FOR OTHER PURPOSES.

⁹⁰ See Rule 11.7(m) of the of the Revised Philippine National Police Operational Procedures.

⁹¹ See 3(g) of the of PNP Guidebook on Human Rights-based Policing.

⁹² *People of the Philippines v. Hermie Estolano y Castillo*, G.R. No. 246195, 30 September 2020.

...

ATTY. TUGADI

Q And what violation did he commit for you to read to him the Miranda rights?

MR. GUTIERREZ

A Article 151, resistance and disobedience.⁹³

...

...

JUSTICE VILLENA

Okay. So, what prompted you to arrest him, is it [the] disregard of the checkpoint or the disregard or disobedience to [you as a] a person in authority?

MR. GUTIERREZ

Disregard in our (interrupted)

JUSTICE VILLENA

Checkpoint [?]

MR. GUTIERREZ

Our personnel Ma'am who waived him to stop during the checkpoint.

JUSTICE VILLENA

Ah, okay ... it was the ... **disregard of the person who asked him to slow down?**

MR. GUTIERREZ

Yes[,] Ma'am.

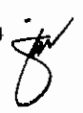
JUSTICE VILLENA

Okay... **it means that your answer is not accurate or wrong in ... Answer 23 when you said that you stopped him for disregarding the checkpoint and that you apprehended him because of that?**

MR. GUTIERREZ

Yes, your Honors.⁹⁴

...



⁹³ TSN dated 22 November 2023, p. 15.

⁹⁴ Id., pp. 37-38; Emphasis supplied.

Setting aside what may be an evident confusion as regards the real reason for accused's arrest, the more crucial question is whether the search that followed his arrest (for Article 151 of the RPC) could be deemed valid.

In *People of the Philippines v. Medario Calantiao y Dimalanta*⁹⁵, the Supreme Court defined the limits of the search (incident to a lawful arrest) only to the person of the person arrested and the permissible area within the latter's reach –

...
Otherwise stated, a valid arrest allows the seizure of evidence or dangerous weapons either ***on the person of the one arrested or within the area of his immediate control***. The phrase "within the area of his immediate control" means the area from within which he might gain possession of a weapon or destructible evidence. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested.

...

Applying the foregoing and on the basis of plaintiff's evidence, it is clear that accused was not subjected to a bodily search. Neither do the pieces of evidence prove where his position was *vis-a-vis* the Foton van that prompted the police officers to extend their search to an "area within the control" of the accused. Gutierrez's affidavit reads –

...
Q23. What happened next when you caught up with the Black Foton - Commuter Van, if any?

A23: When we were able to stop the Black Foton - Commuter Van, we **immediately commanded the driver to alight [from] his vehicle** and informed him that he [was] being stopped for disregarding the checkpoint. **The driver door was left open.** Upon apprehension of his person, Police Officer Jimmy Mananguit recited on him his Miranda Rights.

Q24. You mentioned that Police Officer Jimmy Mananguit recited to the driver his Miranda Rights, what language did Police Officer Jimmy Mananguit use to communicate it to the driver, if you know?



⁹⁵ G.R. No. 203984, 18 June 2014; Emphasis and italics in the original text.

A24. Police Officer Jimmy Mananguit used the Tagalog language.

...

Q29. What happened next, if any?

A29. Since we already determined that he was acting suspicious due to his unusual and alarming actions of deliberately disregarding the checkpoint and intentionally fleeing thereafter, despite clear and lawful commands to slow down and stop, **we initiated visual search of the Black Foton-Commuter Van** to see if it contains persons in distress or things that are illicit, illegal or obnoxious.

...

Q31. What happened next, if any?

A31. **We proceeded by just looking at the open driver side door and the windows of the Black Foton-Commuter Van.**

Q32. What did you see from looking at the open driver side door?

A32. From the open driver side door, it can be apparently seen that there are well stacked boxes with individual covers.

Q33. What did you see from looking at the windows?

A33. It was lightly tinted and it can be readily seen that it contain[ed] numerous boxes inside. These boxes were tightly packed together and filled the whole body of the Black Foton - Commuter Van.

...

Q35. What happened next, if any?

A35. Based on our previous suspicion, and with our initial determination that something is already unusual and alarming, **we asked Mr. Sy to open the back door of the Black Foton - Commuter Van.**⁹⁶

...

Although, initially, the police officers claimed to have done a mere visual search (by peeking through the supposed open driver side door and lightly-tinted window), still this did not show whether accused was in such proximity to the Foton van or to the driver's door, or even to the back door of the Foton van for them to have probed further. On the extent of this testimonial evidence alone, We are not convinced that the search could come within the exception of a valid warrantless search incident to accused's "arrest".

⁹⁶ Supra at note 27, pp. 226-227; Emphasis in the original and supplied.

Similarly, in *Cynthia D. Nolasco, et al., v. Hon. Ernani Cruz Paño, et al.*⁹⁷, the Supreme Court strictly decreed that warrantless search contemporaneous with the lawful arrest should be conducted only at the place where the suspect was arrested –

...

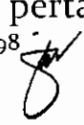
The right without a search warrant contemporaneously to search a person lawfully arrested *while committing a crime* and to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed, as well as weapons or other things to effect an escape from custody is not to be doubted. . . . ***But the right does not extend to other places.*** Frank Agnello's house was several blocks distant from Alba's house where the arrest was made. When it was entered and searched, the conspiracy was ended and the defendants were under arrest and in custody elsewhere. That search cannot be sustained as an incident of the arrests.

...

Contradictorily in this case, the Foton van and the boxes it carried were brought and impounded at the Zaragoza Police Station. Subsequently, the MO was issued to facilitate the inventory and opening of the boxes (both the outside and inside boxes) at the Zaragoza Police Station and not at the actual place of arrest. Hence, on these facts alone, We deem that the search does not fall under the first exception.

SEARCH OF A MOVING VEHICLE.

Another theory that the warrantless search herein could fall under a valid warrantless search on a moving vehicle is not also plausible.

Jurisprudence has always insisted that the warrantless search on moving vehicles is not violative of the Constitution for only as long as the vehicle is neither searched nor its occupants subjected to a body search, and the inspection of the vehicle is *limited* to a visual search. An extensive search is allowed *only* if the officers conducting the search had probable cause to believe *before* the search that either the motorist was a law offender or that they would find evidence pertaining to the commission of a crime in the vehicle to be searched.⁹⁸ 

⁹⁷ G.R. No. L-69803, 08 October 1985; Citations omitted, italics in the original text and emphasis supplied.

⁹⁸ *People of the Philippines v. Hermie Estolano y Castillo*, supra at note 92.

In this kind of warrantless search, the vehicle is the target and not a specific person.⁹⁹ Further, in a search of a moving vehicle, the vehicle is intentionally used as a means to transport illegal items. Thus, there must have been an independent and reliable information that prompted the police officers to target the vehicle. In this case, the records are devoid of any information of a vehicle transporting a contraband or cigarettes with unpaid excise taxes. The police officers, prior to the flagging of the Foton van, had no probable cause to believe that they will find in the person of accused any instrument or evidence pertaining to a crime.¹⁰⁰

The scenario that accused is a law offender as he disregarded a police officer, while a theory that may indeed justify a further search, it is noted here that what the police officers saw when the Foton door was opened were plain-looking boxes. Although there was an attempt to show that the boxes prominently displayed the cigarette's brand "Two Moon", the inconsistency in the declarations of the plaintiff's own witnesses convoluted the presence of a valid reason to seize the boxes as they appeared. The stacks of plain-looking boxes could not have incited probable cause.

The declarations of plaintiff's witnesses are contradictory as shown below –

...
JUSTICE DEL ROSARIO

I'd like to ask some questions, just points of clarification. Kindly go to your answers to Questions 36 & 37, you mentioned there about tightly packed numerous boxes and from the looks of the boxes, they are similar and [resembled] cigarette boxes. Can you more or less give the Court an idea how does it look when you say it is similar to cigarette boxes? Are they the usual box of cigarettes that we see in stores or they are big boxes you are referring to?

MR. GUTIERREZ

Same boxes, your Honors, with the (paused)

JUSTICE DEL ROSARIO

They are same boxes as we see in stores where cigarettes are being sold, is that it? 

⁹⁹ *People of the Philippines v. Renante Comprado y Bronola*, G.R. No. 213225, 04 April 2018.
¹⁰⁰ *See People of the Philippines v. Hermie Estolano y Castillo*, supra at note 92

MR. GUTIERREZ

Yung boxes Sir malalaking ano na nakaloaded sa truck, ganun Sir.

JUSTICE DEL ROSARIO

So, let's clarify that point. Is there a big box and inside a big box there are cigarette boxes or they are separate cigarette boxes that you seem to have seen?

MR. GUTIERREZ

Big boxes with markings Two Moon Sir.

JUSTICE DEL ROSARIO

They are big boxes with markings?

MR. GUTIERREZ

Yes Sir.

JUSTICE DEL ROSARIO

What are the marking?

MR. GUTIERREZ

Two Moon cigarettes Sir.

...

JUSTICE DEL ROSARIO

There is a name indicated in the boxes Two Moon cigarettes?

MR. GUTIERREZ

Yes, your Honors.

JUSTICE DEL ROSARIO

So, even without actually looking into contents of the box, the box itself would say that they are actually cigarette boxes?

MR. GUTIERREZ

Yes, your Honors.¹⁰¹

...

However, Gutierrez's claim was neither supported nor corroborated by Roque who conducted the inventory of the cigarettes. Roque's declarations state - 

¹⁰¹ TSN dated 22 November 2023, pp. 52-54. Italics in the original.

DECISION

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x ----- x

...

ATTY. TUGADI

Q And again I'll repeat my question. What can you see on top of those boxes?

MR. ROQUE

A We sealed the (interrupted)

JUSTICE DAVID

Atty. Joh, can you flash on the screen, ah okay, the photographs are with the witness okay. *Sige* proceed, you may proceed.

MR. ROQUE

A It is shown here *po na* they are sealed, we sealed them and then we put our, we affix our signatures and also the signature of the witnesses *po*.

ATTY. TUGADI

Q Again, my question is, on top of those boxes which you said you sealed.

MR. ROQUE

A *Opo*.

ATTY. TUGADI

Q Is there a mention of cigarettes, the word cigarettes Mr. Witness?

MR. ROQUE

A *Wala po[,] Atty*.

ATTY. TUGADI

Q At the side of the said boxes Mr. Witness, is there any writing or marking?

MR. ROQUE

A [None], Atty.

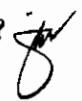
ATTY. TUGADI

Q There is likewise no mention there of Two Moon cigarettes, correct?

MR. ROQUE

A [None] *po[,] Atty*.

ATTY. TUGADI

Q Those are the boxes which were contained in the van? 

MR. ROQUE

A Yes *po*, yes *po*[,] Atty.¹⁰²

...

During Roque's redirect examination, it was clarified that there were two (2) kinds of boxes inside the Foton van; the inside box which had the "Two Moon" markings, and the outside and bigger box which concealed the inner box, to wit –

...

PROS. DAMIAN

Q Mr. Witness, out of the 100 boxes, did you at least see the word "cigarette"?

MR. ROQUE

A I'm not sure *po*. If you will open the box *po*, usually *po*, when we confiscate, they are concealed on another box *po*.

PROS. DAMIAN

Q So, there's another box?

MR. ROQUE

A Opo, they are concealed [in] another box.¹⁰³

...

PROS. DAMIAN

Q So again, the word cigarette can be seen on inside the box?

MR. ROQUE

A Opo.

PROS. DAMIAN

Q Because there are two boxes?

MR. ROQUE

A Yes *po*[,] Atty.¹⁰⁴

...

Likewise, during the Court's inquiry on Mangulabnan, he also confirmed that there were two (2) boxes and the markings of "Two Moon" were found on the inside box – 

¹⁰² TSN dated 22 November 2023, pp. 85-86. Emphasis supplied and italics in the original.

¹⁰³ Id., pp. 89-90; Emphasis supplied and italics in the original.

¹⁰⁴ Id., p. 91; Emphasis supplied and italics in the original.

...

JUSTICE VILLENA

Okay. In Question No. 38, you have answered [there in] the last part, you said that you have seen one particular box with label "Two Moon."

MR. MANGULABNAN

Yes, your Honors.

JUSTICE VILLENA

Okay. So, you only saw one box with one marking, is that it Mr. Mangulabnan?

MR. MANGULABNAN

Yes, your Honors.

JUSTICE VILLENA

Okay. So, there were other boxes there?

MR. MANGULABNAN

Yes, your Honors.

JUSTICE VILLENA

Okay. But you only saw one with "Two Moon" marking?

MR. MANGULABNAN

Yes, your honors.

JUSTICE VILLENA

... can you please confirm? **Where did you see the marking of "Two Moon", inside the contents of the box or the bigger box where these packs where found?**

MR. MANGULABNAN

Your Honors, it was inside the bigger box.

JUSTICE VILLENA

... So, the "Two Moon" marking is seen in the contents or packages?

MR. MANGULABNAN

Yes, Your Honors.

JUSTICE VILLENA

Not on the outside box?

MR. MANGULABNAN

Yes, your Honors.



JUSTICE VILLENA

So, that is consistent with the declaration of the other Revenue Officer. Because earlier, he also said that there were no markings of that sort "Two Moon" outside the boxes.

MR. MANGULABNAN

Yes, your Honors.¹⁰⁵

...

Given the above, it is readily shown that the boxes that the police officers saw to be stacked together could not, in the ordinary course of things, incite suspicion. Differently put, there could not have been "probable cause" to make further search to justify the police officers' act of ordering accused to open the back door of the Foton van.

For a warrantless search of a moving vehicle to be valid, the presence of probable cause is indispensable.¹⁰⁶ Law enforcers do not enjoy unfettered discretion to conduct searches. As the Supreme Court emphasized in *Rudy Caballes y Taiño v. Court of Appeals and People of the Philippines*¹⁰⁷ (**Caballes**):

...

The mere mobility of these vehicles, however, does not give the police officers unlimited discretion to conduct indiscriminate searches without warrants if made within the interior of the territory and in the absence of probable cause. Still and all, the important thing is that there was probable cause to conduct the warrantless search, which must still be present in such a case.

...

Although probable cause does not demand moral certainty, or evidence sufficient to justify conviction¹⁰⁸, it requires the existence of a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he or [she] is charged.¹⁰⁹

¹⁰⁵ Id., pp. 114-116. Emphasis supplied.

¹⁰⁶ *Rudy Caballes y Taiño v. Court of Appeals and People of the Philippines*, G.R. No. 136292, 15 January 2002.

¹⁰⁷ Id.; Citation omitted and emphasis supplied.

¹⁰⁸ Id.

¹⁰⁹ *People of the Philippines v. Ronilo Jumarang y Mulingbayan*, G.R. No. 250306, 10 August 2022.

In the recent case of *Virgilio Evardo y Lopena v. People of the Philippines*¹¹⁰ (**Lopena**), the Supreme Court has ruled that probable cause must be founded on the confluence of several suspicious circumstances. To clearly elucidate, it enumerated several cases where warrantless searches of moving vehicles were considered valid due to the presence of multiple suspicious circumstances –

...

There have been a number of cases where this Court considered warrantless searches made in moving vehicles to be valid. In these cases, probable cause was founded on more than just a solitary suspicious circumstance.

In *People v. Malmstedt*, Narcotics Command officers set up a temporary checkpoint in response to "persistent reports that vehicles coming from Sagada were transporting marijuana and other prohibited drugs." These included information that a Caucasian coming from Sagada had prohibited drugs in his possession. At the checkpoint, the officers intercepted a bus and inspected it, starting from the front, going towards the rear. The bus turned out to be the vehicle boarded by the accused. Upon reaching the accused, an officer noticed a bulge on his waist. This prompted the officer to ask for the accused's passport and identification papers, which the accused failed to provide. The accused was then made to reveal what was bulging on his waist. It turned out to be hashish, a derivative of marijuana.

In *Malmstedt*, this Court ruled that the warrantless search was valid because there was probable cause — premised on circumstances other than the original tip concerning a Caucasian person — for the arresting officers to search the accused:

It was only when one of the officers noticed a bulge on the waist of accused, during the course of the inspection, that accused was required to present his passport. The failure of accused to present his identification papers, when ordered to do so, only managed to arouse the suspicion of the officer that accused was trying to hide his identity.

In *People v. Que*, police officers went on patrol after receiving information that "a ten-wheeler truck bearing plate number PAD-548 loaded with illegally cut lumber will pass through Ilocos Norte." When they saw the truck resembling this description pass by, the officers flagged it down. The driver admitted upon confrontation that there was sawn lumber between the coconut slabs. Asked for the cargo's supporting documents, all the accused could present was a 

Community Environment and Natural Resources Office certification that he had legally acquired the coconut slabs. No supporting documents pertaining to the sawn lumber were shown by the accused.

In *Que*, this Court noted that the police officers had probable cause to search the accused's truck. The officers' suspicion was justified not only by a report that a 10-wheeler truck was carrying illegally cut lumber, but also by the accused's failure to present any supporting document for the lumber they were transporting.

In *People v. Libnao*, police officers conducted a surveillance operation after learning from an asset that "a certain woman from Tajiri, Tarlac and a companion from Baguio City were transporting illegal drugs once a month in big bulks." Subsequently, the officers received a tip that "the two drug pushers, riding in a tricycle, would be making a delivery that night." This prompted the police officers to set up a checkpoint, where they flagged down a tricycle that had two (2) female passengers inside, carrying a black bag. The passengers displayed an "uneasy behavior" when asked about the bag's contents and ownership, which prompted the officers to invite them to a barangay center. The black bag was later found to be carrying eight (8) bricks of marijuana leaves.

In *Libnao*, this Court upheld the accused's conviction, noting that probable cause was properly established. This Court stated that, apart from the reports received by the police officers about drug activity in the area, the accused became uneasy when asked about the ownership and contents of the bag they were carrying.

...

In *People v. Tuazon*, police officers received information "that a Gemini car bearing plate number PFC 411 would deliver an unspecified amount of shabu in Marville Subdivision, Antipolo City." A team of police officers conducted surveillance around the area, and upon seeing the Gemini car, flagged it down. The officers were introducing themselves when one (1) of them saw a gun tucked in the driver's waist. An officer asked about the gun, to which the driver replied that it did not belong to him. The driver was also unable to produce any document pertaining to the firearm. This prompted the officer to order the driver to get out of the car, to which the driver obliged. As soon as the driver stepped out of the car, the officer saw five (5) plastic sachets on the driver's seat, "the contents of which appellant allegedly admitted to be shabu."

In *Tuazon*, this Court upheld the accused's conviction. It reasoned that the information received by the police officers regarding the Gemini car — together with how the officer saw a gun tucked in the accused's waist, the accused's inability to produce any document



pertaining to the gun, and ultimately, the plastic sachets the officer saw after the accused stepped out — supported probable cause.

In these illustrative cases, law enforcers acted on tipped information that a crime was being committed, or was about to be committed. However, the seizures and arrests were not merely and exclusively based on the initial tips. Rather, they were prompted by other attendant circumstances. Whatever initial suspicion they had from being tipped was progressively heightened by other factors, such as the accused's failure to produce identifying documents, papers pertinent to the items they were carrying, or their display of suspicious behavior upon being approached.

In all these instances, the finding of probable cause was premised on more than just the initial information relayed by assets. It was the confluence of initial tips and a myriad of other occurrences that ultimately sustained probable cause.

...

Based on the cited jurisprudence, for there to be probable cause, as far as the search of the Foton van is concerned, there must have been other occurrences (aside from the stacked plain boxes) that stirred suspicions or skepticisms on the part of the police officers. Incidentally, while plaintiff attempted to justify the police officers' action as based on their previous apprehensions; the same could still not amount to a probable cause.

As can be confirmed during the hearing of the case, particularly when Gutierrez took the witness stand, the police officers conducted a checkpoint based on the alleged past apprehensions of illegal transport of cigarettes made in the area –

...

JUSTICE DEL ROSARIO

You actually conducted a checkpoint [as] apparently in previous occasions, you have noticed that the criminality is heightened during night time. Have you been given any information in the past as to whether there has been cigarettes smuggling or illegal transport of cigarettes that may have propelled the PNP to conduct checkpoints?

MR. GUTIERREZ

We have, your Honors. 

JUSTICE DEL ROSARIO
You have in the past?

MR. GUTIERREZ
Yes, your Honors.

JUSTICE DEL ROSARIO
Have there been any apprehension in the past similar to what happened here?

MR. GUTIERREZ
Only small amount of cigarette one boxes *ganun lang* Sir.

JUSTICE DEL ROSARIO
In the past?

MR. GUTIERREZ
Yes Sir, *mga naka tricycle lang*.¹¹¹

...

Aside from Gutierrez's bare claim, no other piece of evidence supports these past apprehensions. Also, even if We are to equate this allegation to a tip (by analogy), *Lopena* dictates that warrantless, intrusive search of a moving vehicle cannot be premised solely on an initial tip. Adopting a contrary rule would set an extremely dangerous and perilous precedent wherein, on the sheer basis of an unverified information (passed along by an alleged informant), the authorities are given the unbridled license to undertake extensive and highly intrusive searches, even in the absence of any overt circumstance that engenders a reasonable belief that an illegal activity is afoot.¹¹²

Similarly, it is noted that after the accused's apprehension for his violation of Article 151 of the RPC, there is no other circumstance or suspicious event that could warrant a more intrusive or extensive search of the Foton van.

Incidentally, although We have previously ruled in Our resolution to the Demurrer¹¹³ that there exists probable cause to justify the intrusive and extensive search of the vehicle, a second hard look of the evidence would show otherwise.

¹¹¹ TSN dated 22 November 2023, p. 55. Italics in the original.

¹¹² *Virgilio Evarado y Lopena v. People of the Philippines*, supra at note 110.

¹¹³ Supra at note 59.

To clarify, the cases cited in the said Resolution namely: *People of the Philippines v. Jerry Sapla y Guerrero a.k.a. Eric Salibad y Mallari*¹¹⁴ (**Sapla**) and *People of the Philippines v. Victor Diaz Vinecario, et al.*¹¹⁵ (**Vinecario**), have different factual milieu from the instant case. In fact, *Sapla* and *Vinecario* are part of the precedent jurisprudence referred in *Lopena* to pronounce that aside from a solitary tip, there should be confluence or myriads of suspicious circumstances before a probable cause for warrantless intrusive searches in a moving vehicle may be sustained.

In *Sapla*¹¹⁶, the Supreme Court held –

...

Hence, considering the foregoing discussion, the Court now holds ***that the cases adhering to the doctrine that exclusive reliance on an unverified, anonymous tip cannot engender probable cause that permits a warrantless search of a moving vehicle that goes beyond a visual search - which include both long-standing and the most recent jurisprudence - should be the prevailing and controlling line of jurisprudence.***

...

Meanwhile, summarizing *Vinecario*, in *Lopena*¹¹⁷, the Supreme Court declared –

In *Vinecario*, police officers apprehended three (3) men on a motorcycle that sped past the checkpoint, which had been set up following the election gun ban. One (1) of the men introduced himself as a member of the military, but when asked, he was not able to produce any proof of identification. The police officers noticed a big military backpack slung over the right shoulder of Victor Vinecario (Vinecario), and that he and his companions were acting suspiciously. Suspecting that the bag contained a bomb, a police officer ordered Vinecario to open it, revealing inside something wrapped in paper. When the officer touched the item, Vinecario grabbed it back, resulting in the tearing of the paper wrapper. "Soon the smell of marijuana wafted in the air." 

¹¹⁴ G.R. No. 244045, 16 June 2020.

¹¹⁵ G.R. No. 141137, 20 January 2004.

¹¹⁶ Supra at note 114; Emphasis, italics and underscoring in the original.

¹¹⁷ Supra at note 110; Emphasis supplied.

In *Vinecario*, this Court explained that **probable cause was established by the confluence of the accused “speeding away after noticing the checkpoint and even after having been flagged down by police officers, their suspicious and nervous gestures when interrogated on the contents of the backpack which they passed to one another, and the reply of Vinecario, when asked why he and his co-appellants sped away from the checkpoint, that he was a member of the Philippine Army, apparently in an attempt to dissuade the policemen from proceeding with their inspection[.]”**

...

Applying the foregoing cases in the case at bar, We clarify that accused’s disregard of the police officers’ instructions to slow down in the checkpoint is the probable cause for the violation of Article 151 of the RPC which, in turn, sanctioned the accused’s arrest. However, as for the police officers’ subsequent intrusive and extensive search of the Foton van, there are no other suspicious circumstances that may justify the finding of probable cause for it.

In Gutierrez’s testimony, he averred that the basis for probable cause to conduct the extensive search was his general knowledge that “Two Moon” cigarettes were imported commodities since these are not part of the local listings of commercial advertisements. The TSN tells –

...

JUSTICE VILLENA

... [A]s follow-up to the question of our Presiding Justice, you said and clarified that what you have seen are big boxes and inside that are the actual cigarette boxes? Tama ba, Police Captain?

MR. GUTIERREZ

Yes, Ma'am.

JUSTICE VILLENA

So, from the outside, *malinis yung kahon* only that there were markings?

MR. GUTIERREZ

Yes, your Honors.

JUSTICE VILLENA

Would you have known immediately on the face or . . . just looking at the boxes whether the excise taxes were paid or



[were] there markings to show that they were regularly (paused)

MR. GUTIERREZ

Pagkakaalam ko po Ma'am, wala namang Two Moon (interrupted)

JUSTICE VILLENA

Okay. So, *hindi mo makikita* from the outside?

MR. GUTIERREZ

Pero yung mere name Ma'am ng sigarilyo, wala namang nagbabayad ng Two Moon na excise tax.

JUSTICE VILLENA

Okay. So, *alam nyo yun?*

MR. GUTIERREZ

Yes Ma'am.

JUSTICE VILLENA

What is the reason *na* you know those things?

MR. GUTIERREZ

Yung mga may patalastas, mga regular na sigarilyo lang Ma'am yung, kapag Two Moon imported.

...

JUSTICE VILLENA

So, that is the basis for your probable cause?

MR. GUTIERREZ

Yes Ma'am, yes, your Honors.¹¹⁸

...

Even accused's presentation of the Foton van's expired OR/CR (not in accused's name) may not be considered as a suspicious circumstance for the extensive search. As earlier stated, the general procedure for dealing with a traffic violation (such as this one) is not the arrest of the offender, but the confiscation of the latter's driver's license.¹¹⁹ Further, accused was able to present his driver's license (as a form of his identification) when he was required to do so. Thus, from the events that transpired, We cannot deduce that there is a valid search of a moving vehicle. 

¹¹⁸ TSN dated 22 November 2023, pp. 58-59; Emphasis supplied and italics in the original.

¹¹⁹ *Rodel Luz y Ong v. People of the Philippines*, G.R. No. 197788, 29 February 2012.

CONSENTED WARRANTLESS SEARCH.

May the warrantless search be sustained following accused's own acquiescence to the same? The Court still responds in the negative.

In *Caballes*¹²⁰, the Supreme Court explained that in consented searches, the person involved must be duly aware of his or her right and he or she has the intention to waive it –

...

In case of consented searches or waiver of the constitutional guarantee against obtrusive searches, it is fundamental that to constitute a waiver, it must first appear that (1) the right exists; (2) that the person involved had knowledge, either actual or constructive, of the existence of such right; and (3) the said person had an actual intention to relinquish the right.

...

Based on the records, notwithstanding that accused was read with the Miranda rights (in *Tagalog*), the same was necessary for his apprehension for the supposed violation of Article 151 of the RPC. However, as far as the opening of boxes are concerned, the police officers admitted that they did not explain to the accused that he has a right to refuse the said request –

...

JUSTICE VILLENA

Okay. So, what prompted you to open the boxes? Because you know that during checkpoints, [you are] only limited to visual inspection, correct Police Captain?

MR. GUTIERREZ

Yes, Your Honors.

JUSTICE VILLENA

Okay. So, there must have been a reason why you [were] prompted to order the opening of the boxes . . . ?

MR. GUTIERREZ

He personally opened one of the boxes, your Honors.



JUSTICE VILLENA

Was he ordered to open the boxes?

MR. GUTIERREZ

Yes, your Honors.

JUSTICE VILLENA

Did you inform the accused that he has a right to not open the boxes?

MR. GUTIERREZ

No, your Honors.

JUSTICE VILLENA

You did not. Because under the law, you must have informed him that he has a right not to open the boxes. And that when he waives [such right], he must know so that he's waiving that right. Is that correct Police Captain?

MR. GUTIERREZ

Yes, your Honors.

JUSTICE VILLENA

Because usually, Police Officers are knowledgeable of these procedures.

MR. GUTIERREZ

Yes, your Honors.

JUSTICE VILLENA

There is a Waiver of [Right] so to speak.

MR. GUTIERREZ

Yes, your Honors.

JUSTICE VILLENA

Okay. And he was not informed of that?

MR. GUTIERREZ

Yes, Your Honors.¹²¹

...

Apart from the said admission, it is also evident from the records that accused was not present when the inventory of the cigarettes was held a day after his apprehension, thus, it is also impossible for him to

¹²¹ TSN dated 22 November 2023, pp. 40-42; Emphasis and underscoring supplied.

have given his consent to be searched. During Roque's cross-examination, he answered –

...

ATTY. TUGADI

Q We go to Question No. 27. You mentioned that you took all the boxes inside the black Foton commuter van.

MR. ROQUE

A The Police Officer *po* Atty.

ATTY. TUGADI

Q The Police Officer. Were you there when this incident happened?

MR. ROQUE

A *Opo*, Atty.

ATTY. TUGADI

Q And you will agree with me that the **Accused was likewise not present during this time?**

MR. ROQUE

A **Yes *po*, Atty.**

...

ATTY. TUGADI

Q You will confirm, we go to Question No. 29. **You will confirm that when you open the boxes Mr. Witness, again, Mr. Gaw Sy was no longer there?**

MR. ROQUE

A **Yes, *po*.**

...

ATTY. TUGADI

Q And again, you confirm that again **Accused Mr. Gaw Sy is no longer present during this accounting, marking, sealing and signing of these boxes?**

MR. ROQUE

Yes, *po*.

...

ATTY. TUGADI

Q And **Accused was likewise not present during the conduct of the said inventory?** 

MR. ROQUE

A **Yes po, Atty.**¹²²

...

It is settled that plaintiff bears the burden of proving “consent”. When the government relies on the “consent” exception to the warrantless search, two main issues must be litigated: did the accused indeed consent, and did the accused do so with the requisite voluntariness? Thus, to constitute a waiver, it must first appear that (1) the right exists; (2) the person involved had knowledge, actual or constructive, of the existence of such a right; and, (3) that said person had an actual intention to relinquish the right.¹²³

The Supreme Court has also held that the consent to a warrantless search and seizure must be **unequivocal, specific, intelligently given, and unattended by duress or coercion**.¹²⁴ It is not to be lightly inferred but must be shown by clear and convincing evidence.¹²⁵ From herein plaintiff’s admission that accused was not apprised of his right to waive, We certainly could not be swayed to conclude that there was a consented warrantless search to support the eventual seizure of the cigarettes.

SEARCH AND SEIZURE IN PLAIN VIEW.

Corollarily, We note that accused questions an apparent application of the plain view doctrine in the search and seizure of the Foton van and the subject cigarettes.

Jurisprudence has settled that the plain view doctrine authorizes the seizure and presentation of objects as evidence that fall in the “plain view” of an officer who has a right to be in the position to have that view.¹²⁶ The plain view doctrine applies when the following requisites concur:

¹²² Id., pp. 77-79. Emphasis supplied and italics in the original.

¹²³ *People of the Philippines v. Eanna O’Cochlain*, G.R. No. 229071, 10 December 2018.

¹²⁴ *People of the Philippines v. Ronilo Jumarang y Mulingbayan*, supra at note 109.

¹²⁵ *Rudy Caballes y Taiño v. Court of Appeals, et al.*, supra at note 106.

¹²⁶ *People of the Philippines v. Leng Haiyun, et al.*, G.R. No. 242889, 14 March 2022.

- a. the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area;
- b. the discovery of evidence in plain view is inadvertent; and,
- c. it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure.¹²⁷

In the instant case, when the police officers apprehended and arrested the accused, they had placed themselves in close proximity to the Foton van. From there, they were able to observe the interior of the vehicle where they saw the stacks of boxes. Thus, the first requisite is present.

Nevertheless, the established facts here betray the presence of the second and third requisites.

The second requisite entails an inadvertent discovery of evidence. However, the testimonies of plaintiff's witnesses are devoid of any showing that the cigarettes were found by accident. As earlier stated, there appears to be no markings on the outside box that could have incited the police officers to pursue a more extensive search. Thus, the second requisite is lacking.

Moreover, the third requisite *i.e.*, it is immediately apparent to the officer that the item he or she observes may be evidence of a crime, contraband or otherwise subject to seizure, is also questionable. During his testimony, Gutierrez responded that there is nothing suspicious when he saw the boxes inside the Foton van –

...
JUSTICE VILLENA

Okay. During checkpoints, you're supposed to do ocular only and you cannot extend beyond that unless there is a probable cause that [raises] suspicion that there is something amiss, correct Police Captain?



¹²⁷ *People of the Philippines v. Maribel Lagman, et al.*, G.R. No. 168695, 08 December 2008.

MR. GUTIERREZ
Yes, your Honors.

JUSTICE VILLENA
. . . In this case, what was it that you thought was amiss that
[incited] your suspicion?

MR. GUTIERREZ
When he alighted from his vehicle, we saw a boxes of cigarettes
from the trunk.

JUSTICE VILLENA
Okay. But I thought you said you only saw boxes?

MR. GUTIERREZ
Boxes of cigarettes Ma'am.

JUSTICE VILLENA
**Okay. Is it criminal for people to carry boxes or have piles
of boxes in their trunks?**

MR. GUTIERREZ
No, your Honors.

JUSTICE VILLENA
**Okay. So, by plainly looking at it, there is nothing
suspicious about trucks carrying boxes?**

MR. GUTIERREZ
Yes, your Honors.¹²⁸

...

From the foregoing, it becomes indubitable that even the plain
view doctrine could not sanction the search made on the Foton van,
much more of the boxes' contents.

JUDICIAL ADMISSION.

Plaintiff here also argues that accused has already admitted that
he carried the boxes since he was the driver of the Foton van. On this
ground, it insists that he committed the crime charged because he freely
and consciously had *animus possidendi* of the cigarettes. 

¹²⁸ TSN dated 22 November 2023, pp. 39-40. Emphasis supplied.

Animus possidendi is a concept that eludes specific standards to indicate its existence. Being a state of mind, *animus possidendi* is determined on a case-to-case basis, taking into consideration the prior and contemporaneous acts of the accused and the surrounding circumstances. "What exists in the realm of thought is often disclosed in a range of action".¹²⁹

Accused here claims that, while indeed the Foton van that he was asked to drive (it is settled that he is not the owner of the vehicle) contained boxes, he was not aware that these were boxes of cigarettes with unpaid excise taxes. Knowledge is an essential component of intent.¹³⁰ Without awareness of the subject cigarettes inside the plain-looking (bigger) boxes, this Court could not conclusively say or rule with certainty that accused indeed had the intent to possess the cigarettes contained in them.

Similarly, although plaintiff suggests that accused disregarded the police officers' signal for him to stop, the records already show the inconsistency in the police officers' other material declarations. Plaintiff also proffered no proof that, eventually, a case for violation of Article 151 of the RPC was filed against the accused. The Supreme Court has held that "inconsistencies on a very material and substantial matter seriously erode the credibility of a witness".¹³¹ Thus, the alleged actuation of accused prior to the arrest and search could not be taken as a fact or truth and be an indication of his knowledge of the existence of the cigarettes.

Moreover, even when this Court could doubt accused's defense, in criminal cases, the overriding consideration is whether it entertains a reasonable doubt as to his guilt. For, in the first place, accused has no legal obligation to prove his innocence (which is already presumed by the Constitution itself). If there exists even one iota of doubt, the Court is under a longstanding legal injunction to resolve the doubt in favor of the accused. Stated differently, it remains the plaintiff's primordial duty to present its side with clarity and persuasion, so that conviction becomes the only logical and inevitable conclusion. What is required of it is to justify the conviction of the accused with moral certainty. Upon 

¹²⁹ *People of the Philippines v. Leng Haiyun et al.*, supra at note 126, citing *People of the Philippines v. Rolando De Gracia et al.*, G.R. Nos. 102009-10, 06 July 1994.

¹³⁰ *Jonathan Mendoza y Esguerra v. People of the Philippines*, supra at note 87.

¹³¹ *People of the Philippines v. Ponciano Amon, et al.*, G.R. No. L-48929, 28 November 1984.

the plaintiff's failure to meet this test, acquittal becomes the constitutional duty of the Court.¹³²

THE SEIZED CIGARETTES ARE
INADMISSIBLE IN EVIDENCE.

With the questionable conduct of the warrantless search and arrest, the Court is left with no other alternative but to disregard the *corpus delicti* in the case at bar. With the subject seized cigarettes being inadmissible in evidence, there is simply no evidence against accused.

Section 3(2), Article III of the 1987 Constitution provides:

- ...
2. Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.
- ...

Otherwise known as the exclusionary rule or the fruit of the poisonous tree doctrine, this rule prohibits the issuance of general warrants that encourage law enforcers to go on fishing expeditions. Evidence obtained through unlawful seizures should be excluded as evidence because it is "the only practical means of enforcing the constitutional injunction against unreasonable searches and seizures." It ensures that the fundamental rights to one's person, houses, papers, and effects are not lightly infringed upon and are upheld.¹³³

ACCUSED HAS NO CIVIL LAIBILITY.

Consequently, no civil liability may be imposed upon the accused. In *People of the Philippines v. Joel C. Mendez*¹³⁴, the Supreme Court laid down the guidelines for the determination and collection of the civil liability in criminal cases for violation of tax laws – 

¹³² *People of the Philippines v. Larry Erguiza*, G.R. No. 171348, 26 November 2008.

¹³³ *The People of the Philippines v. Victor Cogaed y Romana*, supra at note 84.

¹³⁴ G.R. Nos. 208310-11 and G.R. No. 208662, 28 March 2023; Emphasis supplied and italics in the original text.

...

(1) When a criminal action for violation of the tax laws is filed, a prior assessment is not required. Neither a final assessment is a precondition to *collection* of delinquent taxes in the criminal tax case. The criminal action is deemed a collection case. Therefore, the government must prove two things: *one*, the guilt of the accused by proof beyond reasonable doubt, and ***two, the accused's civil liability for taxes by competent evidence (other than an assessment).***

...

In this case, plaintiff computed the deficiency excise tax based on the number of the seized cigarettes as follows -

...

The applicable provision of the NIRC of 1997, as amended, is as follows:

SEC. 145. Cigars and Cigarettes. -

B) Cigarettes Packed by Hand. - There shall be levied, assessed and collected on cigarettes packed by hand an excise tax based on the following schedules:

xxx

Effective on July 1, 2018 until December 31, 2019, Thirty-five pesos (Php35.00) per pack;

xxx

From the foregoing, the deficiency excise tax for the seized imported cigarettes is computed as follows:

Number of reams	5,000
Packs per ream	<u>x 10</u>
Number of packs	50,000
Rate/pack	<u>x Php35</u>
Deficiency Excise Tax, exclusive of increments:	Php1,750,000.00

As to the charge for violation of Section 258 of the NIRC of 1997, as amended, the same should be dismissed, absent of any evidence showing that respondents are engaged in any business involving the seized articles.¹³⁵

...

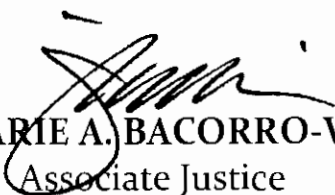
¹³⁵ See Resolution dated 11 July 2022, Division Docket, p. 12.

However, as settled above, any evidence obtained in violation of the accused's right against unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding. Hence, without any competent evidence, the deficiency excise tax liability cannot be properly ascertained as well.

WHEREFORE, premises considered, accused **VICTOR GAW SY** is found **NOT GUILTY** of the charges for violation of Section 263 of the National Internal Revenue Code of 1997, as amended, for the unlawful or illegal possession of articles subject to excise tax (which has not been paid as required by law) for want of evidence and for reasonable doubt. Further, no civil liability may be imposed on him due to the absence of any evidence on which it may be based. Accordingly, let the cash bail bond posted previously by the said accused be **RELEASED** to him upon presentation of proper documents, in accordance with usual accounting rules and regulations.

Let the seized items be dealt with in accordance with the applicable rules and laws.

SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:


ROMAN G. DEL ROSARIO
Presiding Justice


LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ROMAN G. DEL ROSARIO
Presiding Justice