On the Heels of the Doctrine of "Hot Pursuit"

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I. INTRODUCTION

It is a staple of police movies to have high-speed car chases where law enforcers respond to a frantic cry for help and hotly pursue with wailing sirens the fleeing suspects. The movie happily ends with the law enforcers overtaking and apprehending the bad guys and reading them their Miranda rights as they are handcuffed and pushed into the patrol car. End of story. Justice is done.

However, the real world is less simple and simplistic than the reel world. Not all police chases end on a happy note — at least not for the law enforcers and public prosecutors. There are certain legal standards that law enforcers must meet when pursuing and apprehending criminal suspects without a warrant. If they do not meet these criteria, their efforts come to naught and the criminal beats the rap. The legal standards, however, are not intended to impede or thwart police efforts. They are there to ensure that

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the fundamental right of the people against unreasonable searches and seizures is not violated.

There is a link between the legal standards imposed on police officers in conducting "hot pursuits" and the right to privacy and liberty. If police officers are allowed to arrest anyone on the basis of mere whims or suspicions, the public becomes less safe in their homes.

Article III, section 2 of the 1987 Constitution protects citizens from the State's arbitrary use of power. The general rule is that a police officer cannot effect an arrest unless he is armed with a warrant issued by a judicial officer who has personally determined the existence of probable cause.[1] One of the few exceptions where a police officer may make a warrantless arrest is when an officer is in "hot pursuit" of a suspect.[2] The doctrine of "hot pursuit" recognizes the need to balance the right of an individual to liberty and privacy and the duty of the State to maintain peace and order.[3] This juggling act is a delicate one; thus, law and jurisprudence are continually striving to find and define the acceptable equilibrium.

The Supreme Court has not always agreed on where this balance should lie. Justice Artemio Panganiban, in his concurring opinion in *People v. Doria*,[4] opined that the rule on "hot pursuit," together with the rule on *in flagrante delicto*, has been "... frequently misapplied and misinterpreted, not only by law enforcers but some trial judges and lawyers as well."[5]

This Article will discuss the parameters of the "hot pursuit" doctrine, its evolution and areas of improvement. Before any in-depth discussion of the said doctrine, a review of the constitutional provision prohibiting unreasonable searches and seizures is warranted.

II. "HOT PURSUIT" AS EXCEPTION TO THE CONSTITUTIONAL INJUNCTION AGAINST UNREASONABLE SEARCHES AND SEIZURES

The right of the people against unreasonable searches and seizures is enshrined in article III, section 2, of the 1987 Constitution, which provides:

> 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

1. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 112, § 6 (a).
2. Malacat v. Court of Appeals, 283 SCRA 159 (1997).
3. *See*, Umil v. Ramos. 202 SCRA 251 (1991).
4. People v. Doria, 301 SCRA 668 (1999).
5. *Id.* at 720 (Panganiban, J., concurring).

> the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.[6]

The above-quoted provision was patterned after and is nearly identical to the Fourth Amendment of the United States (U.S.) Constitution, which states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[7]

In *Steagald v. United States*,[8] the U.S. Supreme Court held that one of the objectives of the Fourth Amendment is to protect against the abuses of the general warrants and writs of assistance used in the Colonies, thus:

> The Fourth Amendment was intended partly to protect against the abuses of the general warrants that had occurred in England, and of the writs of assistance used in the Colonies. The general warrant specified only an offense — typically seditious libel — and left to the discretion of the executing officials the decision as to which persons should be arrested and which places should be searched. Similarly, the writs of assistance used in the Colonies noted only the object of the search — any uncustomed goods — and thus left customs officials completely free to search any place where they believed such goods might be. The central objectionable feature of both warrants was that they provided no judicial check on the determination of the executing officials that the evidence available justified an intrusion into any particular home.[9]

For its part, our Supreme Court in *United States v. Arceo*[10] described the inviolability of the house as one of the most fundamental of all the individual rights, thus:

> The inviolability of the home is one of the most fundamental of all the individual rights declared and recognized in the political codes of civilized nations. No one can enter into the home of another without the consent of its owners or occupants.
>
> The privacy of the home — the place of abode, the place where a man with his family may dwell in peace and enjoy the companionship of his

6. PHIL. CONST. art III, § 2.
7. U.S. CONST. amend. IV.
8. Steagald v. United States, 451 U.S. 204 (1981).
9. *Id.* at 220 (citing Payton v. New York, 445 U.S. 573, 608-09 (1980) (White, J., dissenting); Boyd v. United States, 116 U.S. 616, 624-29 (1886); N. LASSON, THE HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION 13-78 (1937)).
10. United States v. Arceo, 3 Phil. 381 (1904).

wife and children unmolested by anyone, even the king, except in the rare cases — has always been regarded by civilized nations as one of the most sacred personal rights to which men are entitled. Both the common and the civil law guaranteed to man the right of absolute protection to the privacy of his home. The king was powerful; he was clothed with majesty; his will was the law, but, with few exceptions, the humblest citizen or subject might shut the door of his humble cottage in the face of the monarch and defend his intrusion into that privacy which was regarded as sacred as any of the kingly prerogatives. The poorest and most humble citizen or subject may, in his cottage, no matter how frail or humble it is, bid defiance to all the powers of the state; the wind, the storm and the sunshine alike may enter through its weather-beaten parts, but the king may not enter against its owner's will; none of the forces dare to cross the threshold of even the humblest tenement without its owner's consent.

'A man's house is his castle,' has become a maxim among the civilized peoples of the earth. His protection therein has become a matter of constitutional protection n England, America, and Spain, as well as in other countries.[11]

In *People v. Burgos,*[12] the Supreme Court went further and described the counterpart provision of article III, section 2 in the 1973 Constitution[13] as embodying a "spiritual concept," thus:

> The constitutional provision is a safeguard against wanton and unreasonable invasion of the privacy and liberty of a citizen as to his person, papers and effects. This Court explained in *Villanueva v. Querubin* (48 SCRA 345) why this right is so important:
>
> > 'It is deference to one's personality that lies at the core of this right, but it could be also looked upon as a recognition of a constitutionally protected area, primarily one's home, but not necessarily thereto confined. What is sought to be guarded is a man's prerogative to choose who is allowed entry to his residence. In that haven of refuge, his individuality can assert itself not only in the choice of who shall be welcome but likewise in the kind of objects he wants around him. There the state, however powerful, does not as such have access except under the circumstances above noted, for in the traditional formulation, his house, however humble, is his castle. Thus is outlawed any unwarranted intrusion by government, which is called upon to refrain from any invasion of his dwelling and to respect the privacies of his life. In the same vein, Landynski in his authoritative work, could fitly characterize this constitutional right as the embodiment of a 'spiritual concept: the belief that to value the privacy of home and person and to afford its constitutional protection against the long reach of government is no less than to value human dignity, and that his privacy must not be disturbed except in case of overriding social need, and then only under stringent procedural safeguards.'[14]

To protect this fundamental right, the Constitution has placed a neutral magistrate between the mighty state and the solitary citizen.[15] As an additional safeguard, the Constitution requires that this magistrate not only act impartially, but also that his discretion in issuing an arrest or search warrant be circumscribed by the standard of probable cause.

The framers of the Constitution felt that a magistrate would be in a better position than a police officer to objectively determine the existence of probable cause. As explained by the U.S. Supreme Court:

> [t]he purpose of a warrant is to allow a neutral judicial officer to assess whether the police have probable cause to make an arrest or conduct a search. As we have often explained, the placement of this checkpoint between the Government and the citizen implicitly acknowledges that an 'officer engaged in the often competitive enterprise of ferreting out crime,' may lack sufficient objectivity to weigh correctly the strength of the evidence supporting the contemplated action against the individual's interests in protecting his own liberty and the privacy of his home.[16]

Therefore, the general rule is that the search and seizure must be accomplished through or with a judicial warrant; or else, there is that danger that such search and seizure will be found "unreasonable" within the meaning of the Constitution.[17]

However, the judicial warrant requirement is not absolute. Law enforcers face real life situations that sometimes call for immediate action. Thus, the courts recognize a few exigent circumstances where the law officer can effect an arrest without first going through the time-consuming process

11. *Id.* at 384.
12. People v. Burgos, 144 SCRA 1 (1986).
13. 1973 PHIL. CONST. art IV, § 3 (superseded 1986), which provides:

> 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 not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, 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.

14. *Burgos,* 144 SCRA at 12.
15. People v. Encinada, 280 SCRA 72 (1997).
16. Steagald v. United States, 451 U.S. 204 (1981) (citing Johnson v. United States, 333 U.S. 10, 14 (1948); Coolidge v. New Hampshire, 403 U.S. 443, 449-51 (1971); McDonald v. United States, 335 U.S. 451, 455-56 (1948)).
17. People v. Saycon, 236 SCRA 325, 328 (1994) (citing Pita v. Court of Appeals, 178 SCRA 362, 376 (1989)).

of obtaining a judicial warrant.[18] One of these exigent instances is an "arrest effected in hot pursuit."[19]

III. THE DOCTRINE OF "HOT PURSUIT" IN PHILIPPINE LAW

Notably, neither statute nor the Rules of Court use the words "hot pursuit" in describing the exigent circumstance of giving chase to a suspect after the commission of an offense and in subsequently arresting the suspect without a warrant. The words "hot pursuit" made its appearance only in jurisprudence. One of the earliest references to the phrase in the Philippines was in the separate opinion of Justice Teehankee in *People v. Court of First Instance of Rizal, Br. IX*,[20] a case involving a warrantless customs search and seizure.

While the words "hot pursuit" cannot be found in the statutes, the description is helpful in envisioning the types of situations to which the doctrine applies. By definition, at minimum, there must be a pursuit. Furthermore, this pursuit must be an immediate and intense chase, and not a desultory or lackadaisical one.

A. Remedial Aspect of the "Hot Pursuit" Doctrine

1. Early Procedural Rules

The parameters of "hot pursuit" have evolved through the years. This doctrine delineates the circumstances wherein a law officer can apprehend a suspect without a warrant when the criminal offense did not take place within the police officer's view or in his presence.

At the turn of the 20th century, section 37 of Act No. 183[21] defined the circumstances under which police officers could effect warrantless arrests. Section 37 provides that police officers:

> ... may pursue and arrest without warrant, *any person found in suspicious places or under suspicious circumstances, reasonably tending to show that such person has committed,* or is about to commit *any crime or breach of the peace*; may arrest, or cause to be arrested without warrant, any offender, when the offense is committed in the presence of a peace officer or within his view.[22]

18. *Id.* at 329 (citing People v. Barros, 231 SCRA 557, 565 (1994)).
19. People v. Chua Ho San, 308 SCRA 435, 444 (1999).
20. People v. Court of First Instance of Rizal, Br. IX, 101 SCRA 86, 127 (1980) (Teehankee, J., dissenting and concurring).
21. Organic Act of the City of Manila [Charter of Manila], Act No. 183 (1901).
22. United States v. Fortaleza, 12 Phil. 472, 479 (1909) (citing Act No. 183, § 37 (1901)) (emphasis supplied).

An identical provision on arrests can be found in section 2463 of Act No. 2711,[23] thus:

> Sec. 2463. *Police and other peace officers* – Their powers and duties. – The mayor, the chief and assistant chief of police, the chief of the secret service, and all officers and members of the city police and detective force shall be peace officers. *Such peace officers are authorized* to serve and execute all processes of the municipal court and criminal processes of all other courts to whomsoever directed, within the jurisdictional limits of the city or within the police limits as hereinbefore defined; *within the same territory, to pursue and arrest, without warrant, any person found in suspicious places or under suspicious circumstances reasonably tending to show that such person has committed,* or is about to commit, *any crime or breach of the peace*; to arrest or cause to be arrested, without warrant, any offender when the offense is committed in the presence of a peace officer or within his view; in such pursuit or arrest to enter any building, ship, boat, or vessel, or take into custody any person therein suspected of being concerned in such crime or breach of the peace, and any property suspected of having been stolen; and to exercise such other powers and perform such other duties as may be prescribed by law or ordinance. They shall detain and arrest person only until he can be brought before the proper magistrate. Whenever the mayor shall deem it necessary, to avert danger or to protect life and property, in case of riot, disturbance, or public calamity, or when he has reason to fear any serious violation of law and order, he shall have power to swear in special police, in such numbers as the occasion may demand. Such special police shall have the same powers while on duty as members of the regular force.[24]

On the other hand, section 6 of rule 109 of the 1940 Rules of Court ("1940 Rules") has the following definition of the circumstances under which warrantless arrests could be made:

> Sec. 6. *Arrest without warrant* – When lawful. – A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When the person to be arrested has committed, is actually committing, or is about to commit an offense in his presence;
>
> (b) *When an offense has in fact been committed, and he has reasonable ground to believe that the person to be arrested has committed it;*
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.[25]

23. Revised Administrative Code, Commonwealth Act No. 2711 (1917).
24. An Act Amending the Administrative Code [REVISED ADMINISTRATIVE CODE OF 1917], Act No. 2711, § 2463 (1917) (emphasis supplied).
25. 1940 RULES OF COURT, rule 109, § 6 (superseded 1964) (emphasis supplied).

Thus, under the aforesaid rule 109, section 6 (b), it is not sufficient that the police officer, in good faith, has reason to believe that an offense had been committed. It is necessary that an offense had indisputably been committed in order for the warrantless arrest to be considered valid.

2. 1964 Rules of Court ("1964 Rules")

The 1964 Rules of Court retained the definition of "hot pursuit" found in rule 109, section 6 of the 1940 Rules. Rule 112, section 6, of the 1964 Rules provides:

> Sec. 6. *Arrest Without Warrant* – When Lawful. – A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When the person to be arrested has committed, is actually committing, or is about to commit an offense in his presence;
>
> (b) *When an offense has in fact been committed, and he has reasonable ground to believe that the person to be arrested has committed it;*
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.[26]

3. 1985 Rules of Criminal Procedure ("1985 Rules")

It was only in 1985 that the rules slightly modified the definition of "hot pursuit" arrests. Rule 113, section 5 of the 1985 Rules provides:

> Sec. 5. *Arrest without warrant; when lawful.* – A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) *When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it*; and
>
> (c) When the person to be arrested is a prisoner who escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
>
> In cases falling under paragraphs (a) and (b) hereof, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail, and he shall be proceeded against in accordance with Rule 112, Section 7.[27]

26. 1964 RULES OF COURT, rule 112, § 6 (superseded 1985) (emphasis supplied).

The 1985 Rules had amended rule 113, section 6 (b) of the 1964 Rules, which reads, "[w]hen an offense has in fact been committed, and he [the person making the arrest] has reasonable ground to believe that the person to be arrested has committed it."[28] The insertion of the word "just" in the phrase "when an offense has in fact *just* been committed" requires the police officer to respond and pursue the suspect immediately after the crime has been committed. Moreover, the additional phrase "has personal knowledge of facts indicating that the person to be arrested has committed the offense"[29] seeks to ensure that the police officer making the arrest is not acting on the basis of hearsay or suspicion.

Explaining the import of these revisions to the "hot pursuit" doctrine, the Supreme Court held:

> On the other hand, Sec. 5, par. (b), Rule 113, necessitates two stringent requirements before a warrantless arrest can be effected: (1) an offense has *just* been committed; and, (2) the person making the arrest has *personal knowledge* of facts indicating that the person to be arrested had committed it. Hence, there must be a large measure of *immediacy* between the time the offense was committed and the time of the arrest, and if there was an appreciable lapse of time between the arrest and the commission of the crime, a warrant of arrest must be secured. Aside from the sense of immediacy, it is also mandatory that the person making the arrest must have *personal knowledge* of certain facts indicating that the person to be taken into custody has committed the crime. Again, the arrest of del Rosario does not comply with these requirements since, as earlier explained, the arrest came a day after the consummation of the crime and not immediately thereafter. As such, the crime had not been 'just committed' at the time the accused was arrested. Likewise, the arresting officers had no personal knowledge of facts indicating that the person to be arrested had committed the offense since they were not present and were not actual eyewitnesses to the crime, and they became aware of his identity as the driver of the getaway tricycle only during the custodial investigation.[30]

The above ruling appears to imply that the police officers have to be present and actually witness the offense in order for rule 113, section 5 (b) to apply. However, rule 113, section 5 (b) precisely presupposes that the crime

27. 1985 RULES OF CRIMINAL PROCEDURE, rule 113, § 5 (superseded 2000) (emphasis supplied).

28. *Id.* § 5 (b).

29. *Id.*

30. People v. Del Rosario, 305 SCRA 740, 760 (1999) (citing MANUEL R. PAMARAN, THE 1985 RULES OF CRIMINAL PROCEDURE ANNOTATED 204 (1998 ed.)) (emphasis supplied).

did not take place within the view or in the presence of the police officers. If they had, then rule 113, section 5 (a) or the rule on *in flagrante delicto*, and not section 5 (b) will apply.

As for the words "in fact" in the phrase "[w]hen an offense has *in fact* just been committed,"[31] the Supreme Court interpreted this to mean that the fact of the commission of the offense must be "undisputed," thus:

> In arrests without a warrant under Section 6 (b), however, it is not enough that there is reasonable ground to believe that the person to be arrested has committed a crime. A crime must in fact or *actually* have been committed first. That a crime has actually been committed is an essential precondition. It is not enough to suspect that a crime may have been committed. The fact of the commission of the offense must be undisputed. The test of reasonable ground applies only to the identity of the perpetrator.[32]

4. 2000 Revised Rules of Criminal Procedure ("2000 Rules")

The 2000 Revised Rules of Criminal Procedure, in turn, amended rule 113, section 5 (b) of the 1985 Rules of Criminal Procedure. Rule 113, section 5 of the 2000 Rules reads:

> Sec. 5. *Arrest without warrant; when lawful.* – A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) *When as offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it*; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
>
> In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and he shall be proceeded against in accordance with section 7 of Rule 112.[33]

Under the 2000 Rules, the words "in fact" have been deleted from the phrase "when an offense has *in fact* just been committed."

31. 1985 RULES OF CRIMINAL PROCEDURE, rule 113, § 5 (b) (superseded 2000).

32. People v. Burgos, 144 SCRA 1, 15 (1904) (emphasis supplied).

33. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 113, § 5 (emphasis supplied).

Also, the 2000 Rules clarified that the arresting officer must not only have "personal knowledge" of the "facts indicating that the person to be arrested has committed it" but that such personal knowledge must be based on "probable cause."

B. Supreme Court Rulings on "Hot Pursuit"

Jurisprudence surrounding rule 113, section 5 (b) of the 2000 Rules has generally been consistent and non-contentious.

1. Padilla v. Court of Appeals[34]

The "hot pursuit" doctrine is typified by the case of the movie actor Robin Padilla. Padilla was driving along a public highway in Angeles City when he hit a vendor. Instead of stopping to assist the injured vendor, Padilla sped off. There were witnesses who heard the screeching of brakes and the sound of the car hitting an object. One of the witnesses was able to take down the plate number of the fleeing vehicle and immediately notify the police of the incident. The police were able to successfully pursue and intercept Padilla's vehicle several minutes later. As Padilla alighted from his vehicle, the police noticed a firearm tucked in his waist. The police also found an assault rifle lying in plain view in the front by the driver's seat. Padilla was arrested on the spot, and subsequently charged and convicted of illegal possession of firearms.[35]

Padilla challenged the legality of his arrest. The Supreme Court found that Padilla had been validly arrested since the elements of "hot pursuit" were complied with, namely, the element of immediacy and probable cause on the part of the arresting police officers.[36] The Court held:

> Besides, the policemen's warrantless arrest of petitioner could likewise be justified under paragraph (b) as he had in fact just committed an offense. There was no supervening event or a considerable lapse of time between the hit and run and the actual apprehension. Moreover, after having stationed themselves at the Abacan bridge in response to Manarang's report, the policemen saw for themselves the fast approaching Pajero of petitioner, its dangling plate number (PMA 777 as reported by Manarang), and the dented hood and railings thereof. These formed part of the arresting police officer's personal knowledge of the facts indicating that petitioner's Pajero was indeed the vehicle involved in the hit and run incident. Verily then, the arresting police officers acted upon verified personal knowledge and not on unreliable hearsay information.[37]

34. Padilla v. Court of Appeals, 269 SCRA 402 (1997).

35. *Id.* at 409-13.

36. *Id.* at 414.

37. *Id.* at 416-17.

Not all cases, however, have been as non-contentious as *Padilla*. There have been a handful that have split the Supreme Court.

2. Sayo v. Chief of Police of Manila[38]

One of the earlier cases that divided the Supreme Court on the issue of "hot pursuit" arrests was *Sayo v. Chief of Police of Manila*. In this case, the police officer Benjamin Dumlao arrested Melencio Sayo and Joaquin Mostero based on the complaint of Bernardino Malinao charging Sayo and Mostero of the crime of robbery.[39] On the principal issue of the case, the Supreme Court ruled that the city fiscal of Manila is not a judicial authority within the meaning of the provisions of article 125 of the Revised Penal Code.[40] Then, in an *obiter dictum*, the Court declared that since the fiscal has no authority to order the arrest of a person even if he finds probable cause against the latter, *a fortiori*, neither does a police officer. The Court explained:

> A peace officer has no power or authority to arrest a person without a warrant upon complaint of the offended party or any other person, except in those cases expressly authorized by law. What he or the complainant may do in such case is to file a complaint with the city fiscal of Manila, or directly with the justice of the peace courts in municipalities and other political subdivisions. If the City Fiscal has no authority, and he has not, to order the arrest of a person charged with having committed a public offense even if he finds, after due investigation, that there is a probability that a crime has been committed and the accused is guilty thereof, *a fortiori* a police officer has no authority to arrest and detain a person charged with an offense upon complaint of the offended party or other persons even though, after investigation, he becomes convinced that the accused is guilty of the offense charged.[41]

The Supreme Court was impliedly of the opinion that there was no "hot pursuit" in this case. The majority then took a potshot at the dissenting opinion of Justice Tuason, who cited the following excerpts from the *Corpus Juris Secundum*:

> ... an officer need not necessarily have personal knowledge of the facts constituting the offense, in the sense of having seen or witnessed the offense himself, but he may, if there are no circumstances known to him which materially impeach his information, acquire his knowledge from information imparted to him by reliable and credible third persons, or by information together with other suspicious circumstances.[42]

38. Sayo v. Chief of Police of Manila, 80 Phil. 859 (1948).

39. *Id.* at 864-65. It is not clear from the facts of the case when the crime took place and when the offended party reported the robbery to the police.

40. *Id.* at 865.

41. *Id.* at 870-71.

42. *Id.* at 898 (Tuason, J., dissenting) (citing 6 C.J.S. 589-601 § 6).

Justice Tuason added that, "This is a common law rule implanted in the Philippines along with its present form of government, a rule which has been cited and applied by this Court in a number of cases."[43]

The majority held that:

> [t]he above-quoted excerpt is not a general principle of law or a common law rule implanted in the Philippines. It is a summary of the ruling of several State courts based on statutory exceptions of the general rule. 'It is the general rule, although there are statutory exceptions and variations, that a peace officer has no right to make an arrest without a warrant, upon a mere information of a third person,' because 'statutes sometime authorize peace officer to make arrest upon information.' In none of the cases cited in the dissenting opinion has this Court quoted and applied it.[44]

After citing section 2463 of the Administrative Code and section 6 of rule 109, the majority proceeded to hold that apart from these provisions of law, there were no other laws expanding the authority of the police officers to effect warrantless arrests. The majority was also of the opinion that common law was inapplicable.[45]

43. *Id.* at 899 (citing United States v. Santos, 36 Phil. 853 (1917); United States v. Batallones, 23 Phil. 46 (1912); United States v. Samonte, 16 Phil. 516 (1910)).

44. Sayo v. Chief of Police of Manila, 80 Phil. 859, 881-82 (1948) (citing 5 C.J. 401-03, § 31; 4 AM. JUR. 16-17, § 23).

45. *Id.* at 884. The ruling of the majority reads in relevant part:

> *These are the only provisions of law in force in these Islands which enumerate the cases in which a peace officer may arrest a person without warrant, and the so called common law relating to other cases of arrest without warrant cited in the dissenting opinion has no application in this jurisdiction.* Therefore, all the considerations set forth in the said opinion about the disastrous consequences which this Court's interpretation of article 125 of the Revised Penal Code will bring to a law enforcement, because 'the entire six hours might be consumed by the police in their investigation alone,' or that 'even if the city fiscal be given the chance to start his assigned task at the beginning of the six hours period, this time can not insure proper and just investigation in complicated cases and in cases where the persons arrested are numerous and witnesses are not at hand to testify,' since 'the police is not authorized to round up the witnesses and take them along with the prisoner to the city fiscal,' are without any foundation. *Because they are premised on the wrong assumption that, under the laws in force in our jurisdiction, a peace officer need not have personal knowledge but may arrest a person without a warrant upon mere information from other person.* 'The right to make arrests without a warrant is usually regulated by express statute, and except as authorized by such statutes, an arrest without a warrant is illegal.' (5 C.J., pp. 395, 396) And statutory construction extending the right to make arrest without a

Stung by the "derision" of the majority, Justice Tuason subsequently wrote a "supplementary" dissenting opinion. His supplement is worth quoting at length since he traces the history of the common law on the authority of police officers to effect warrantless arrests. He also discusses the practical problems faced by the law enforcers on the ground. His supplement reads in relevant part:

> There was common law before there were statutes. Common law in England and in the U. S. preceded statutes and constitutions. Statutes and constitutions in matters of arrest came afterward, restating, affirming, clarifying, restricting or modifying the common law.
>
> > 'The English common law has been adopted as the basis of jurisprudence in all the states of the Union with the exception of Louisiana 'where the civil law prevails in civil matters.' (11 Am. Jur., 157.)
> >
> > And
> >
> > 'in England, *under the common law*, sheriffs, justices of the peace, coroners, constables and watchmen were entrusted with special powers as conservators of the peace, with authority to arrest felons and persons reasonably suspected of being felons. Whenever a charge of felony *was brought to their notice, supported by reasonable grounds of suspicion*, they were required to apprehend the offenders, or at least to raise hue and cry, under penalty of being indicted for neglect of duty.'
>
> ...
>
> I have remarked that there is no fundamental difference between my citations, on the one hand, and section 6 of rule 109 and section 2463 of the Revised Administrative Code, cited by the majority of the Court, on the other hand. There is only a difference in phraseology. The very case of *United States v. Fortaleza* relied upon in the resolution speaks of barrio lieutenants' power to make arrest as not inferior to that usually conferred on peace officers known to American and English law as constables.
>
> ...
>
> *To make arrest on suspicion or on information is not new; it is an everyday practice absolutely necessary in the interest of public security and firmly enshrined in the jurisprudence of all civilized societies. The power to arrest on suspicion or on reasonable ground to believe that a crime has been committed is authority to arrest on information. Information coming from reliable sources may be, and it often is, the basis of reasonable ground to believe that a crime has been committed or of reasonable ground of suspicion that a person is guilty thereof. Suspicion, reasonable ground and information are intertwined within the same concept.*

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warrant beyond the cases provided by law is derogatory of the right of the people to personal liberty (4 AM. JUR. 17) (emphasis supplied).

> *'The necessary elements of the grounds of suspicion are that the officer acts upon the belief of the person's guilt, based either upon facts or circumstances within the officers own knowledge, or upon information imparted by a reliable and credible third person provided there are no circumstances known to the officer sufficient to materially impeach the information received. It is not every idle and unreasonable charge which will justify an arrest. An arrest without a warrant is illegal when it is made upon mere suspicion or belief, unsupported by facts, circumstances, or credible information calculated to produce such suspicion or belief.'*
>
> ...
>
> *Section 6 of Rule 109 of the Rules of Court and section 2463 of the Revised Administrative Code, as well as the authorities I have quoted, show the fallacy of the idea that the arresting officer knows, or should know, all the facts about the offense for the perpetration, or supposed perpetration, of which he has made the arrest. The resolution fails to realize that in the great majority of cases an officer makes arrest on information or suspicion; that 'suspicion implies a belief or opinion as to the guilt based upon facts or circumstances which DO NOT AMOUNT TO PROOF;' and that information and suspicion by their nature require verification and examination of the informers and other persons and circumstances. While an officer may not act on unsubstantial appearances and unreasonable stories to justify an arrest without a warrant, obviously in the interest of security, an officer, who has to act on the spot and cannot afford to lose time, has to make arrest without satisfying himself beyond question that a crime has been committed or that the person suspected is guilty of such crime. A police officer can seldom make arrest with personal knowledge of the offense and of the identity of the person arrested sufficient in itself to convict. To require him to make an arrest only when the evidence he himself can furnish proves beyond reasonable doubt the guilt of the accused, would 'endanger the safety of society.' It would cripple the forces of the law to the point of enabling criminals, against whom there is only moral conviction or prima facie proof of guilt, to escape. Yet persons arrested on suspicion, on insufficient evidence or information are not necessarily innocent so that the prosecuting attorney should release them. Further and closer investigation not infrequently confirm the suspicion or information.*
>
> *The majority of arrests are not as simple as a police officer catching a thief slipping his hand into another's pocket or snatching someone else's bag, or surprising a merchant selling above the ceiling price, or seizing a person carrying concealed weapons. Cases of frequent occurrence which confront the police and the prosecution in a populous and crime-ridden city are a great deal more complicated. They are cases in which the needed evidence can only be supplied by witnesses, witnesses whom the arresting officer or private persons has not the authority or the time to round up and take to the city fiscal for examination within what remains, if any, of six hours.*[46]

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46. *Id.* at 912-18 (Tuason, J., dissenting) (emphasis supplied). Justice Tuason even gave two examples to illustrate his point.

> 1. A murder with robbery is reported to the police. An alarm is broadcasted giving a description of the murderer. Later a police officer is told that the wanted man is in a store. He proceeds to the store and, besides believing in the good faith of his informant, detects in the

In reality, the majority and the dissenters were arguing over an academic point since the legality of the arrest of Sayo and Mostero was not at issue. Also, it seems that there was really not much disagreement between them. The majority was of the position that "a police officer has no authority to arrest and detain a person charged with an offense upon complaint of the offended party or other persons even though, after investigation, he becomes convinced that the accused is guilty of the offense charged."[47] However, it does not seem that Justice Tuason advocated the warrantless arrest of suspects long after the offense has been committed and reported. In contending that police officers have the authority to effect warrantless arrests on the basis of reliable information from the offended party or third persons such as witnesses, he was referring to "hot pursuit" arrests; that is, police officers responding to requests for assistance soon after the commission of the

man's physical appearance some resemblance to the description given in the alarm. All this occurs at the holy hours of night.

Should the officer refrain from making an arrest because he is not certain beyond reasonable doubt of the identity of the suspected murderer? Should the city fiscal order the release of the prisoner because of insufficiency of evidence and because the six hours are expiring or should he prefer formal charges (if that can be done at midnight) on the strength of evidence which, as likely as not, may be due to a mistaken identity? Should not the prosecuting attorney be given, as the law clearly intends, adequate time to summon those who witnessed the crime and who can tell whether the prisoner was the fugitive?, allowing the prisoner to give bail, if he can.

2. A police officer is attracted by screams from a house where a robbery has been committed. The officer rushes to the place, finds a man slain, is told that the murderers have fled. The officer runs in the direction indicated and finds men with arms who, from appearances, seem to be the perpetrators of the crime. The people who saw the criminals run off are not sure those are the men they saw. The night was dark, for criminals like to ply their trade under cover of darkness.

The officer does not, under these circumstances, have to seek an arrest warrant or wait for one before detaining the suspected persons. To prevent their escape he brings them to the police station. On the other hand, would the fiscal be justified in filing an information against such persons on the sole testimony of the police officer? Is it not his duty to wait for more proofs on their probable connection with the crime? Should the city fiscal file an information on insufficient evidence, or should he, as the only alternative, order the release of the prisoners? Does either course subserve the interest of justice and the interest of the public? If the arrested persons are innocent, as they may be, is their interest best served by hasty filing of information against them, or would they rather have a more thorough investigation of the case?

Id. at 918.

47. *Id.* at 871.

offense. Furthermore, his contention that a warrantless arrest could be done on the basis of suspicion or information was qualified by his statement that "[s]uspicion, reasonable ground and information are intertwined within the same concept."[48] His dissenting opinion contained several references to "probable cause" and "reasonable grounds" as the standard to be applied by police officers.

While the above opinions of the Supreme Court did not constitute binding precedent, the lively exchange of the justices nonetheless framed the problems and issues involving "hot pursuits."

3. Umil v. Ramos[49]

The first petition in this consolidated decision involves a member of the National People's Army (NPA) Sparrow Unit treated for a gunshot wound in a hospital. Upon verification, it was found that the wounded person, who was listed in the hospital records as Ronnie Javelon, was actually Rolando Dural, a member of the NPA liquidation squad. Dural was allegedly responsible for the killing of two soldiers. The Regional Intelligence Operations Unit of the Capital Command (RIOU-CAPCOM) then transferred Dural to the Regional Medical Services of the CAPCOM, for security reasons. While he was in confinement there, Dural was positively identified by eyewitnesses as the gunman who fired at two CAPCOM.[50]

Consequently, he was referred to the Caloocan City Fiscal who conducted an inquest and subsequently filed with the Regional Trial Court of Caloocan City an information charging him with the crime of "Double Murder with Assault Upon Agents of Persons in Authority."[51]

The Supreme Court held that Dural's arrest could be justified under either rule 113, section 5 (a) or rule 113, section 5 (b). The majority's ruling on the applicability of rule 113, section 5 (b) reads:

> Viewed from another but related perspective, it may also be said, under the facts of the Umil case, that the arrest of Dural falls under *Section 5, paragraph (b), Rule 113* of the Rules of Court, which requires two conditions for a valid arrest without warrant: *first*, that the person to be arrested has just committed an offense, and *second*, that the arresting peace officer or private person has personal knowledge of facts indicating that the person to be arrested is the one who committed the offense. Section 5 (b), Rule 113, it

48. *Id.* at 916.

49. Umil v. Ramos, 187 SCRA 311 (1990) & 202 SCRA 251 (1991). These decisions involve eight petitions for *habeas corpus* consolidated by the Court due to similarity on the issues raised.

50. *Umil*, 187 SCRA at 317.

51. *Id.*

will be noted, refers to arrests without warrant, based on 'personal knowledge of facts' acquired by the arresting officer or private person.

It has been ruled that 'personal knowledge of facts,' in arrests without warrant must be based upon *probable cause*, which means an actual belief or reasonable grounds of suspicion.

The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense, is based on *actual facts*, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, *coupled with good faith on the part of the peace officers making the arrest.*

These requisites were complied with in the Umil case and in the other cases at bar.

...

As to the condition that 'probable cause' must also be coupled with acts done in good faith by the officers who make the arrest, the Court notes that the peace officers who arrested Dural are deemed to have conducted the same in good faith, considering that law enforcers are presumed to regularly perform their official duties. The records show that the arresting officers did not appear to have been ill-motivated in arresting Dural. It is, therefore clear that the arrest, without warrant, of Dural was made in compliance with the requirements of paragraphs (a) and (b) of Section 5, Rule 113.[52]

The ruling of the majority in *Umil*, at least insofar as it found that the arrest of Dural could be justified as a "hot pursuit" arrest, is difficult to defend. First, either a warrantless arrest is justifiable under rule 113, section 5 (a) or under section 5 (b). It cannot be logically justified under *both*. Furthermore, there was no pursuit to speak of, much less a "hot pursuit." Dural was lying in a hospital bed at the time of his detention.

The Supreme Court made an equally egregious ruling in the petition for *habeas corpus* of Narciso B. Nazareno. This case involves the killing of Romulo Bunye II by a group of men which allegedly includes Ramil Regala as one of the suspects. Upon questioning, Regala pointed to Narciso Nazareno as one of his companions in the killing of the Bunye II. On the basis of Regala's statement, the police officers, without warrant, picked up Nazareno and brought him to the police headquarters for questioning.[53]

The Supreme Court held that Nazareno's arrest was justified under rule 113, section 5 (b), thus:

52. *Umil*, 202 SCRA at 263-65 (emphasis supplied).

53. *Umil*, 187 SCRA at 330-31.

Evidently, the arrest of Nazareno was effected by the police without warrant pursuant to Sec. 5 (b), Rule 113, Rules of Court after he was positively implicated by his co-accused Ramil Regala in the killing of Romulo Bunye II; and after investigation by the police authorities. As held in *People v. Ancheta*:

'The obligation of an agent of authority to make an arrest by reason of a crime, does not presuppose as a necessary requisite for the fulfillment thereof, the indubitable existence of a crime. For the detention to be perfectly legal, it is sufficient that the agent or person in authority making the arrest has reasonably sufficient grounds to believe the existence of an act having the characteristics of a crime and that the same grounds exist to believe that the person sought to be detained participated therein.'[54]

In denying Nazareno's motion for reconsideration, the Supreme Court reiterated its earlier ruing that the arrest of Nazareno was a "hot pursuit" arrest. Thus, the Court elucidated:

Although the killing of Bunye II occurred on 14 December 1988, while Nazareno's arrest without warrant was made only on 28 December 1988, or 14 days later, the arrest falls under Section 5 (b) of Rule 113, since it was only on 28 December 1988 that the police authorities came to know that Nazareno was probably one of those guilty in the killing of Bunye II and the arrest had to be made promptly, even without warrant, (after the police were alerted) and despite the lapse of 14 days to prevent possible flight.[55]

In order to justify the arrest of Nazareno under rule 113, section 5 (b), the Court used as its reckoning point not the date of the commission of the offense (December 14) but the date the police learned of the participation of Nazareno in the murder of Bunye II (December 28). The Supreme Court clearly disregarded the express requirement that a "hot pursuit" arrest must be done soon after the commission of the offense.

Equally indefensible was the Supreme Court's ruling in the *habeas corpus* petition of Deogracias Espiritu, the General Secretary of the Pinagkaisahang Samahan ng Tsuper at Operators Nationwide (PISTON), an association of drivers and operators of public service vehicles in the Philippines, organized for their mutual aid and protection.[56]

Espiritu was taken at dawn by a group of persons, who initially pretended to be interested in hiring the former's jeepney, from his house to the police station where he was interrogated and detained. When he was brought to Brig. Gen. Alfredo Lim, the latter ordered his arrest and

54. *Id.* 331-32 (1990) (citing People v. Ancheta, 68 Phil. 415, 420 (1939)).

55. Umil v. Ramos, 202 SCRA 251, 270 (1991).

56. Umil v. Ramos, 187 SCRA 311, 328 (1990).

detention. He was subsequently brought to the Western Police District where he was detained, restrained and deprived of his liberty.[57]

The respondents claim that Espiritu's detention is justified pursuant to an Information charging him with violation of article 142 of the Revised Penal Code (Inciting to Sedition). They further averred that there was lawful warrantless arrest since petitioner had in fact just committed an offense in that afternoon, during a press conference at the National Press Club where he was heard urging all drivers and operators to go on nationwide strike to force the government to give in to their demands to lower the prices of spare parts, commodities, water and the immediate release from detention of the president of the PISTON.[58]

When the police finally caught Espiritu the day after, he was invited for questioning and brought to the police headquarters wherein an Information for violation of article 142 of the Revised Penal Code was filed against him.[59]

The Supreme Court justified the warrantless arrest of Espiritu under rule 113, section 2 (b). The Court did not give any reason for its ruling. It merely concluded that the arrest of Espiritu was "in accordance with the provisions of Rule 113, Sec. 5 (b) of the Rules of Court."[60] The Court stated:

> Since the arrest of the petitioner without a warrant was in accordance with the provisions of Rule 113, Sec. 5 (b) of the Rules of Court and that the petitioner is detained by virtue of a valid information filed with the competent court, he may not be released on habeas corpus. He may, however be released upon posting bail as recommended. However, we find the amount of the recommended bail (P60,000.00) excessive and we reduce it to P10,000.00 only.[61]

In denying Espiritu's motion for reconsideration, the Supreme Court attempted to elaborate on its earlier ruling upholding the validity of Espiritu's warrantless arrest. However, the Court's reasoning is not persuasive. For one, as pointed out by Justice Fernan in his dissenting opinion, the issue whether Espiritu's utterance — "*Bukas tuloy ang welga natin ... hanggang sa magkagulo na.*" — is seditious is not so clear cut.[62] Even reasonable men disagree on where the line between free speech and sedition lies. For another, there was no pursuit to speak of. Espiritu was arrested

57. *Id.* at 328-29.

58. *Id.* at 329.

59. *Id.* at 330.

60. *Id.*

61. *Id.*

62. Umil v. Ramos, 202 SCRA 251, 274-75 (1991) (Fernan, C.J., concurring and dissenting).

without a warrant the day after he made the alleged seditious remarks. Worse, he was arrested in his house.

The rulings in the consolidated petitions for *habeas corpus* in *Umil* have given the doctrine of "hot pursuit" a bad name. This is unfortunate since the Supreme Court has generally correctly applied the doctrine. Several of these cases are worth citing since they reasonably interpret the meaning of "hot pursuit."

4. People v. Doria[63]

The police together with civilian informants conducted a buy-bust operation. This resulted in the arrest of "Jun," the marijuana seller who revealed that he left the marked money paid by the police to his associate named "Neneth." The police team was escorted by "Jun" to "Neneth's" house.[64]

With the door of the house wide open, they found a woman inside whom "Jun" identified as his associate. This led to the recovery of the marked bills and dried marijuana, and the conviction of the accused.[65]

The Supreme Court emphasized the need for "personal knowledge" in conducting "hot pursuits." The Court held:

> Neither could the arrest of appellant Gaddao ['Neneth'] be justified under the second instance of Rule 113. 'Personal knowledge' of facts in arrests without warrant under Section 5 (b) of Rule 113 must be based upon 'probable cause' which means an 'actual belief or reasonable grounds of suspicion.' The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense, is based on actual facts, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.[66]

Under U.S. jurisprudence, the only time the police can arrest a person in his or her house without as warrant is when that person flees into the house in the course of a "hot pursuit." Thus, even if the police had probable cause to arrest the accused, they would still have needed to obtain a warrant to do so since she was inside her home and there was no pursuit to justify a warrantless arrest.

63. People v. Doria, 301 SCRA 668 (1999).

64. *Id.* at 679-80.

65. *Id.* at 680.

66. *Id.* at 709 (citing Umil v. Ramos, 202 SCRA 251, 263 (1991); United States v. Santos, 36 Phil. 853, 855 (1917)).

5. People v. Mahusay[67]

Six armed men who represented themselves as members of the NPA barged into the Bughao residence. They ransacked the place and raped Bughao's daughter. The house helper was able to identify three of the suspects, one of whom she testified to be her brother.[68] After reporting the incident the following day, a police team was promptly sent out to arrest the suspects.[69] The three accused were convicted of the crime of Robbery with Rape.[70]

The Supreme Court, ruling that no "hot pursuit" occurred, reiterated the conditions of a valid warrantless arrest:

> [T]wo conditions must concur for a warrantless arrest to be valid: first, the person to be arrested must have just committed an offense, and second, the arresting peace officer or private person must have personal knowledge of facts indicating that the person to be arrested is the one who committed the offense. It has been ruled that 'personal knowledge of facts' in arrests without a warrant must be based upon probable cause, which means an actual belief or reasonable grounds of suspicion.
>
> In the case at bar, appellants were arrested on the sole basis of Bughao's verbal report. The arresting officers were led to suspect that, indeed, appellants had committed a crime. Thus, the arrest was made in violation of their fundamental right against an unjustified warrantless arrest.[71]

6. People v. Burgos[72]

One Cesar Masamlok voluntarily surrendered to the police and testified that he was forcibly recruited by accused Ruben Burgos to become a member of the NPA. Upon learning this information, a group was dispatched to arrest Burgos. They found Burgos plowing his rice field. The police inquired about the accused's firearm as revealed by the informant. They were able to recover it with the assistance of the accused's wife.[73]

Subsequently, Burgos admitted ownership of the gun revealing that it was issued to him by the alleged team leader of the NPA sparrow unit, responsible for the killing of those opposed to the NPA ideological movement.[74]

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67. People v. Mahusay, 282 SCRA 80 (1997).
68. *Id.* at 83-84.
69. *Id.* at 84.
70. *Id.* at 85.
71. *Id.* at 86 (citing United States v. Santos, 36 Phil. 853, 855 (1917)).
72. People v. Burgos, 144 SCRA 1 (1986).
73. *Id.* at 5-6.
74. *Id.*

The Supreme Court ruled:

> More important, we find no compelling reason for the haste with which the arresting officers sought to arrest the accused. We fail to see why they failed to first go through the process of obtaining a warrant of arrest, if indeed they had reasonable ground to believe that the accused had truly committed a crime. There is no showing that there was a real apprehension that the accused was on the verge of flight or escape. Likewise, there is no showing that the whereabouts of the accused were unknown.
>
> The basis for the action taken by the arresting officer was the verbal report made by Masamlok who was not required to subscribe his allegations under oath. There was no compulsion for him to state truthfully his charges under pain of criminal prosecution. Consequently, the need to go through the process of securing a search warrant and a warrant of arrest becomes even more clear. The arrest of the accused while he was plowing his field is illegal. The arrest being unlawful, the search and seizure which transpired afterwards could not likewise be deemed legal as being mere incidents to a valid arrest.[75]

The Supreme Court correctly found the arrest of Masamlok to be unlawful. Apart from the Court's reasoning, Masamlok was clearly within a zone of privacy, his house and, by extension, rice field. Therefore, he could not be arrested without a warrant even if the police officers had probable cause to arrest him.

7. Go v. Court of Appeals[76]

Petitioner Rolito Go's and Eldon Maguan's cars nearly collided with each other along a one-way street. This prompted Go to alight from his car and shoot Maguan. A security guard took down the car's plate number, which was later on verified by the Land Transportation Office to be registered under one Elsa Ang Go. The police was also able to trace the identity of the shooter upon positive identification of the security guard of the bake shop where Go had dined immediately before the shooting. Pursuant to these information, the police started a manhunt for Go.[77]

Six days after the incident, Go showed up with two lawyers at a police station to confirm reports that he was the subject of a manhunt. An eye-witness who was at the same time in the police station positively identified him as the shooter. He was detained by the police and a complaint for frustrated homicide was filed.[78]

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75. *Id.* at 15-16.
76. Go v. Court of Appeals, 206 SCRA 138 (1992).
77. *Id.* at 143-44.
78. *Id.* at 144.

On the issue of the validity of petitioner's arrest, the Supreme Court disagreed with the Solicitor General's reliance upon the *Umil* ruling and discussed the inappropriateness of applying the "hot pursuit" doctrine. The Court held:

> The reliance of both petitioner and the Solicitor General upon Umil v. Ramos is, in the circumstances of this case, misplaced. In Umil v. Ramos, by an eight-to-six vote, the Court sustained the legality of the warrantless arrests of petitioners made from one to 14 days alter the actual commission of the offenses, upon the ground that such offenses constituted 'continuing crimes.' Those offenses were subversion, membership in an outlawed organization like the New People's Army, etc. In the instant case, the offense for which petitioner was arrested was murder, an offense which was obviously commenced and completed at one definite location in time and space. No one had pretended that the fatal shooting of Maguan was a 'continuing crime.'
>
> Secondly, we do not believe that the warrantless 'arrest' or detention of petitioner in the instant case falls within the terms of Section 5 of Rule 113 of the 1985 Rules on Criminal Procedure … .
>
> …
>
> Petitioner's 'arrest' took place six days after the shooting of Maguan. The 'arresting' officers obviously were not present, within the meaning of Section 5 (a), at the time petitioner had allegedly shot Maguan. Neither could the 'arrest' effected six days after the shooting be reasonably regarded as effected 'when [the shooting had] in fact just been committed' within the meaning of Section 5 (b). Moreover, none of the 'arresting' officers had any 'personal knowledge' of facts indicating that petitioner was the gunman who had shot Maguan. The information upon which the police acted had been derived from statements made by alleged eyewitnesses to the shooting — one stated that petitioner was the gunman another was able to take down the alleged gunman's car's plate number which turned out to be registered in petitioner's wife's name. That information did not, however, constitute 'personal knowledge.'[79]

The Supreme Court correctly found the arrest of Go to be unlawful due to the absence of the elements of immediacy and personal knowledge of probable cause.

As discussed above, a survey of the cases applying the doctrine of "hot pursuit" has generally adhered to the spirit and letter of the procedural rules, whether they be the 1940 Rules, the 1964 Rules, the 1985 Rules, or the 2000 Rules. Thus, despite the occasional wayward ruling and sharp dissent, the rule on "hot pursuits" appears to have been uniformly and reasonably interpreted and applied.

79. *Id.* at 149-50 (citing People v. Burgos, 144 SCRA 1 (1986)).

IV. THE DOCTRINE OF "HOT PURSUIT" IN U.S. JURISPRUDENCE

Since article III, section 4 of the 1987 Constitution was patterned after the 4th Amendment of the U.S. Constitution, a review of the doctrine of "hot pursuit" as it evolved in U.S. jurisprudence would be instructive.

A review of Philippine law and jurisprudence shows that the emphasis of the "hot pursuit" doctrine is on when and how the pursuit is commenced. The police officers undertaking the pursuit must commence their pursuit soon after the commission of the offense and they must act on the basis of probable cause. The Philippine Supreme Court does not lay any particular emphasis on where the pursuit started or where it came to an end.

On the other hand, while the U.S. doctrine of "hot pursuit" likewise relates to warrantless arrests, its emphasis is on where the pursuit ends, that is, on private premises.

In *Payton v. New York,*[80] for example, the U.S. Supreme Court held that a suspect should not be arrested in his house without an arrest warrant, even though there is probable cause to arrest him. "Hot pursuit" in U.S. jurisprudence provides a justification for law enforcers to enter private premises without a warrant.

The earliest U.S. ruling involving "hot pursuit" is *Warden v. Hayden.*[81] The facts there were as follows:

> About 8 a.m. on 17 March 1962, an armed robber entered the business premises of the Diamond Cab Company in Baltimore, Maryland. He took some $63 and ran. Two cab drivers in the vicinity, attracted by shouts of 'Holdup,' followed the man to 2111 Cocoa Lane. One driver notified the company dispatcher by radio that the man was a Negro about 5'8" tall, wearing a light cap and dark jacket, and that he had entered the house on Cocoa Lane. The dispatcher relayed the information to police who were proceeding to the scene of the robbery. Within minutes, police arrived at the house in a number of patrol cars. An officer knocked and announced their presence. Mrs. Hayden answered, and the officers told her they believed that a robber had entered the house, and asked to search the house. She offered no objection.
>
> The officers spread out through the first and second floors and the cellar in search of the robber. Hayden was found in an upstairs bedroom feigning sleep. He was arrested when the officers on the first floor and in the cellar reported that no other man was in the house. Meanwhile, an officer was attracted to an adjoining bathroom by the noise of running water, and discovered a shotgun and a pistol in a flush tank; another officer who, according to the District Court, 'was searching the cellar for a man or the money' found in a washing machine a jacket and trousers of the type the

80. Payton v. New York, 445 U.S. 573 (1980).

81. Warden v. Hayden, 387 U.S. 294 (1967).

fleeing man was said to have worn. A clip of ammunition for the pistol and a cap were found under the mattress of Hayden's bed, and ammunition for the shotgun was found in a bureau drawer in Hayden's room. All these items of evidence were introduced against respondent at his trial.[82]

Here, the entry into Hayden's house without a warrant and his subsequent arrest was found valid since the "exigencies of the situation made that course imperative."[83] Obtaining a warrant to enter the house of Hayden would have entailed delay and delay could have endangered the lives of the police officers and others.

The U.S. Supreme Court had occasion to again resolve a case involving a "hot pursuit" in *United States v. Santana.*[84] The case concerns an undercover officer who arranged to "buy" heroin with one Patricia McCafferty. McCafferty told him it would cost $115 "and we will go down to Mom Santana's for the dope."[85] During the entrapment operation, the former was placed under arrest. The latter said that her "Mom has the money."[86] And so, the police proceeded to Santana's house where the latter attempted to retreat inside but the police followed through the open door to make the arrest.[87]

The District Court in deciding the case made the following observations:

> In an oral opinion, the court found that '[t]here was strong probable cause that Defendant Santana had participated in the transaction with Defendant McCafferty.' However, ...
>
> > One of the police officers ... testified that the mission was to arrest Defendant Santana. Another police officer testified that the mission was to recover the bait money. Either one would require a warrant, one a warrant of arrest under ordinary circumstances and one a search warrant.

82. *Id.* at 297-98.
83. *Id.* at 298 (citing McDonald v. United States, 335 U.S. 451, 456 (1948)). The U.S. Supreme Court went on further to aver:

> The Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others. Speed here was essential, and only a thorough search of the house for persons and weapons could have insured that Hayden was the only man present and that the police had control of all weapons which could be used against them or to effect an escape.

Id. at 298-99.

84. United States v. Santana, 427 U.S. 38 (1976).
85. *Id.* at 39.
86. *Id.* at 40.
87. *Id.* at 41.

> The court further held that Santana's 'reentry from the doorway into the house' did not support allowing the police to make a warrantless entry into the house on the grounds of 'hot pursuit,' because it took 'hot pursuit' to mean 'a chase in and about public streets.' The Court did find, however, that the police acted under 'extreme emergency' conditions. The Court of Appeals affirmed this decision without opinion.[88]

In reversing the decision, the U.S. Supreme Court held that "'hot pursuit' means some sort of a chase, but it need not be an extended hue and cry 'in and about [the] public streets.'"[89] Even if the pursuit in *Santana* ended immediately, such fact did not render it any less a "hot pursuit" sufficient to justify the warrantless entry into Santana's house.[90] The Court further elaborated:

> In *United States v. Watson,* we held that the warrantless arrest of an individual in a public place upon probable cause did not violate the Fourth Amendment. Thus, the first question we must decide is whether, when the police first sought to arrest Santana, she was in a public place.
>
> While it may be true that, under the common law of property, the threshold of one's dwelling is 'private,' as is the yard surrounding the house, it is nonetheless clear that, under the cases interpreting the Fourth Amendment, Santana was in a 'public' place. She was not in an area where she had any expectation of privacy. 'What a person knowingly exposes to the public, even in his own house or office, is not a subject of Fourth Amendment protection.' She was not merely visible to the public, but was as exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house. Thus, when the police, who concededly had probable cause to do so, sought to arrest her, they merely intended to perform a function which we have approved in *Watson.*[91]

In *Minnesota v. Olson,*[92] the U.S. Supreme Court dealt with the issue of whether the police could validly arrest without a warrant an accused who, at the time of the arrest, was inside the house of a friend as an overnight guest.[93]

The U.S. Supreme Court in affirming the Minnesota Supreme Court ruling held that the warrantless arrest of Olson was illegal because "Olson's status as an overnight guest is alone enough to show that he had an

88. *Id.* at 41-42.
89. *Id.* at 43.
90. United States v. Santana, 427 U.S. 38, 43 (1976)
91. *Id.* at 42 (1976) (citing United States v. Watson, 423 U.S. 411 (1976); Katz v. United States, 389 U.S. 347, 351 (1967); Hester v. United States, 265 U.S. 57, 59 (1924)).
92. Minnesota v. Olson, 495 U.S. 91 (1990).
93. *Id.* at 93.

expectation of privacy in the home that society is prepared to recognize as reasonable."[94] The Court further held:

> It was held in *Payton v. New York* that a suspect should not be arrested in his house without an arrest warrant, even though there is probable cause to arrest him. The purpose of the decision was not to protect the person of the suspect but to protect his home from entry in the absence of a magistrate's finding of probable cause. In this case, the court below held that Olson's warrantless arrest was illegal because he had a sufficient connection with the premises to be treated like a householder. The State challenges that conclusion.
>
> Since the decision in *Katz v. United States* it has been the law that 'capacity to claim the protection of the Fourth Amendment depends ... upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place.' A subjective expectation of privacy is legitimate if it is '*one that society is prepared to recognize as 'reasonable.'*'
>
> The State argues that Olson's relationship to the premises does not satisfy the 12 factors which in its view determine whether a dwelling is a 'home.' Aside from the fact that it is based on the mistaken premise that a place must be one's 'home' in order for one to have a legitimate expectation of privacy there, the State's proposed test is needlessly complex. We need go no further than to conclude, as we do, that Olson's status as an overnight guest is alone enough to show that he had an expectation of privacy in the home that society is prepared to recognize as reasonable.
>
> ...
>
> To hold that an overnight guest has a legitimate expectation of privacy in his host's home merely recognizes the everyday expectations of privacy that we all share. Staying overnight in another's home is a longstanding social custom that serves functions recognized as valuable by society. We stay in others' homes when we travel to a strange city for business or pleasure, when we visit our parents, children, or more distant relatives out of town, when we are in between jobs or homes, or when we house-sit for a friend. We will all be hosts and we will all be guests many times in our lives. From either perspective, we think that society recognizes that a houseguest has a legitimate expectation of privacy in his host's home.
>
> ...
>
> The Minnesota Supreme Court applied essentially the correct standard in determining whether exigent circumstances existed. The court observed that 'a warrantless intrusion may be justified by hot pursuit of a fleeing felon, or imminent destruction of evidence, or the need to prevent a suspect's escape, or the risk of danger to the police or to other persons inside or outside the dwelling.'

94. *Id.* at 96.

> The court also apparently thought that, in the absence of hot pursuit, there must be at least probable cause to believe that one or more of the other factors justifying the entry were present and that in assessing the risk of danger, the gravity of the crime, and likelihood that the suspect is armed should be considered. Applying this standard, the state court determined that exigent circumstances did not exist.[95]

What is significant in the ruling in *Olson* is the U.S. Supreme Court's pronouncement that since the police officers had probable cause to believe that Olson had participated as the getaway in a robbery that occurred the day before, the police officers could validly arrest him without a warrant the moment he stepped out of his friend's house.

Equally significant is the fact that the U.S. Supreme Court had extended the protection afforded by the Fourth Amendment to include the house where the suspect was staying as an overnight guest. The U.S. Supreme Court based it ruling on the theory that a person staying as a guest in the home of a friend has a legitimate expectation of privacy and that society recognizes such expectation as reasonable.[96]

In finding that there was no exigent circumstance to justify the warrantless arrest of Olson, the Supreme Court took into consideration the suspect's degree of participation in the robbery and the fact that the police had earlier recovered the murder weapon.

V. OBSERVATIONS AND RECOMMENDATIONS

A. Amendments under Rule 113, Section 5 (b) of 2000 Rules

The deletion of the words "in fact" from the phrase "when an offense has *in fact* just been committed" in rule 113, section 5 (b) of the 2000 Rules is arguably an improvement since it allows law enforcers to more effectively carry out their duties. Police officers in effecting warrantless arrests should only be required to act in good faith and on the basis of probable cause. As Justice Scalia in *Illinois v. Rodriguez*[97] held:

> It is apparent that, in order to satisfy the 'reasonableness' requirement of the Fourth Amendment, what is generally demanded of the many factual determinations that must regularly be made by agents of the government — whether the magistrate issuing a warrant, the police officer executing a warrant, or the police officer conducting a search or seizure under one of

95. *Id.* at 95-100 (citing Payton v. New York, 445 U.S. 573 (1980); Rakas v. Illinois, 439 U.S. 128, 143 (1978); Katz v. United States, 389 U.S. 347, 361 (1967); Welsh v. Wisconsin, 466 U.S. 740 (1984)) (emphasis supplied).

96. *Id.* at 96.

97. Illinois v. Rodriguez, 497 U.S. 177 (1990).

the exceptions to the warrant requirement — is not that they always be correct, but that they always be reasonable.[98]

The rationale for not requiring that the police officer to be absolutely certain of the commission of the offense before effecting a warrantless arrest was explained by Justice Carson in his dissenting opinion in *United States v. Alexander*[99] way back in 1907, thus:

> The majority opinion holds (adopting the language of the syllabus prepared by the writer of the opinion) 'that a policeman who, without a warrant, arrests for a misdemeanor a person who has not committed any misdemeanor commits the crime of *coacción* (coercion).'
>
> I contend that in those cases where the law expressly authorizes a policeman to make an arrest without a warrant for certain offenses committed in his presence, he can not be held *criminally* responsible if, while acting in good faith, he arrests a person apparently committing such an offense in his presence under circumstances which would justify a reasonable man in believing that the arrested person was in fact committing the offense, even though it should afterwards appear that such person was not guilty of the offense with which he was charged. To hold otherwise would be to impose an intolerable burden upon the guardians of the peace, who can not fairly be expected to constitute themselves infallible judges of the guilt or innocence of persons whom they charge with the commission of an offense, nor of the validity of the laws and ordinances defining those offenses; nor of the degree of criminal responsibility of those apparently committing such offenses or violating such ordinances.[100]

As for the revision that the "probable cause" must be based on the police officer's "personal knowledge of facts or circumstances that the person to be arrested has committed" the offense, this is merely a refinement of the requirement that an arrest, whether with or without warrant, must be based on probable cause.[101] The difference between an arrest with a warrant and an arrest without a warrant is that in the former, it is a judicial officer ascertaining the existence of probable cause, whereas in the latter, it is the police officer.

The above refinement of the rule will, however, be better appreciated by the judge on the bench than the policeman in the street.

B. Arrest Warrants Pending Preliminary Investigation

98. *Id.* at 185-86.

99. United States v. Alexander, 8 Phil. 29 (1907).

100. *Id.* at 43-44.

101. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 113, § 5 (b).

The rule on issuance of arrest warrants should complement and supplement the rule on warrantless arrests, particularly rule 113, section 5, which embodies the "hot pursuit" doctrine.

For obvious reasons, criminals do not wittingly commit criminal acts *in flagrante delicto* or in the presence or within view of law enforcers. More often than not, the police arrive at the scene of the crime after the suspect has fled. However, the standards of "hot pursuit" are stringent. First, there is the requirement of "immediacy." Any pursuit must be done immediately after the commission of the offense. Second, there is the requirement of probable cause based on personal knowledge. These requirements are designed to deter the police from arbitrarily wielding their power.

It has been observed that a neutral magistrate stands between the law enforcers and the citizens. Ideally, the magistrate should be readily accessible to the law enforcer and the offended party so that when the element of "immediacy" has disappeared, the magistrate can step in and issue the arrest warrant if supported by probable cause.

However, in practice, the judge, for purposes of issuing arrest warrants, is not readily accessible, at least not in the National Capital Judicial Region. Between the judge and the law enforcer stands the protracted process of preliminary investigation.

Rule 112, section 2 of the 2000 Rules provides:

> Sec. 2. *Officers authorized to conduct preliminary investigation.* – The following may conduct a preliminary investigation:
>
> a) Provincial or City Prosecutors and their assistants;
>
> b) Judges of the Municipal Trial Courts and Municipal Circuit Trial Courts;
>
> c) National and Regional State Prosecutors; and
>
> d) Other officers as may be authorized by law.
>
> Their authority to conduct preliminary investigations shall include all crimes cognizable by the proper court in their respective territorial jurisdictions.[102]

The 1985 Rules took away the authority of the judges of the Regional Trial Court (RTC) to conduct preliminary investigations. Also, under section 37 of B.P. Blg. 129 (The Judiciary Reorganization Act)[103] and

102. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 112, § 2.

103. An Act Reorganizing the Judiciary, Appropriating Funds Therefor, and for Other Purposes, Batas Pambansa Blg. 129, § 37 (1981).

section 12 of its Interim Rules and Guidelines,[104] judges of the Metropolitan Trial Courts (MeTC) do not have the authority to conduct preliminary investigations. Finally, rule 110, section 1 of the 2000 rules provides that: "[i]n Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters."[105]

The Supreme Court has explained that preliminary investigations are essentially executive in nature and that it is only out of practical necessity due to the insufficiency of prosecutors that the services judges have been enlisted in conducting preliminary investigations.[106]

True, as pointed out by the Supreme Court in *Castillo v. Villaluz*,[107] that while an "RTC judge may no longer conduct preliminary investigations to ascertain whether there is sufficient ground for filing a criminal complaint or information,"[108] he nonetheless "retains the authority, when such a pleading is filed with his court, to determine whether there is probable cause justifying the issuance of a warrant of arrest."[109]

However, the RTC judge's "power to make a preliminary examination for the purpose of determining whether probable cause exists to justify the issuance of a warrant of arrest" cannot now be exercised until after the filing of an information,[110] by which time a respondent who is predisposed to flee would have already fled. The time periods prescribed in the 2000 Rules for conducting the preliminary investigation[111] are never complied with in practice.

Thus, it is suggested that, the 2000 Rules be revised as follows:

> Upon the filing of the criminal complaint with the City Prosecutor's Office for cases involving heinous crimes, the complainant shall be allowed to simultaneously file a verified application for an arrest warrant in the RTC.
>
> Before resolving the application, the RTC may, in its discretion, require the respondent to first file a verified comment/opposition to the application.
>
> The arrest warrant issued by the RTC shall remain in force during the pendency of the preliminary investigation. It shall be deemed recalled if the Prosecutor's Office does not find probable cause to charge the respondent with a criminal offense.

104. Interim Rules and Guidelines Implementing Batas Pambansa Blg. 129, § 12 (1983).

105. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 110, § 1.

106. Salta v. Court of Appeals, 143 SCRA 228, 235 (1986).

107. Castillo v. Villaluz, 171 SCRA 39 (1989).

108. *Id.* at 43.

109. *Id.*

110. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 112, § 6 (a).

111. *Id.* § 2.

C. *Hold Departure Orders*

In the alternative, upon the filing of a criminal complaint with the prosecutor's office, the complainant should be given an opportunity to simultaneously apply for a Hold Departure Order (HDO) with the RTC.

At present, only the RTC has the authority to issue HDOs.[112] In Department Circular No. 17 entitled Prescribing Rules and Regulations Governing the Issuance of Hold Departure Orders,[113] the Secretary of Justice may also issue HDOs but only against the following: (i) an accused person who is released on bail attempts to leave the country without the prior written permission of the court where the case is pending; (ii) a fugitive from justice; (iii) an alien who is accused in a criminal case that is pending trial before a court; (iv) an alien who is a respondent in a deportation complaint; and (v) an alien whose presence is required as a witness in a criminal case.[114]

Thus, the complainant is powerless to prevent a respondent from fleeing the country until an information is filed in court, for only then can the prosecution apply for an HDO. In the meantime, there is nothing to stop the respondent in a criminal case from taking flight.

An HDO is less intrusive than a warrant of arrest since it merely prevents the accused from leaving the country. A person subject of an HDO remains free to travel anywhere within the Philippines. In contrast, an arrest deprives the accused of his liberty altogether.

VI. CONCLUSION

Democracy involves a continual balancing act. The Executive Branch has the natural tendency to assert its power to the fullest extent that it can. It falls on the courts to define and delineate the limits of this power.

The question that the judiciary must answer is where does the balance lie? In doing so, the courts must weigh the interest of the individual to privacy and liberty and the interest of the State to preserving peace and order.

In striking the balance, courts should avoid what Chief Justice Rehnquist described as the "Court's ivory tower misconception of the

112. Supreme Court, Circular No. 39-97, subpar. 1 (June 19, 1997).

113. Department of Justice, DOJ Circular No. 17 (Mar. 19, 1998). The circular can be accessed in National Administrative Register, vol. IX/2, 417.

114. *Id.* ¶ 2 (c).

realities of the apprehension of fugitives from justice."[115] In the words of the Philippine Supreme Court, "it is necessary to adopt a realistic appreciation of the physical and tactical problems of the latter, instead of critically viewing them from the placid and clinical environment of judicial chambers."[116]

On the other hand, the courts should never lose sight of the fact that the right against unreasonable searches and seizures is one of the most treasured rights of a free citizen. Article III, section 2 of the 1987 Constitution stands guard at the threshold of homes and prohibits the State's agents from knocking on doors with the butt of their assault rifles, disturbing the public in their quiet slumber, and forcibly hauling them away in the dead of night.

The balance between the competing interests of the individual and the law enforcer is not an even one, nor should it be. Between the individual and the State, the scales of justice should tilt in favor of the former. The Constitution prohibits unreasonable searches and seizures not because it wishes to take the side of the criminal as against the law enforcer. It is because it has chosen to take the side of the citizen as against the State.

As can be seen from the review of relevant Philippine jurisprudence, the individual can continue to sleep easy within the four walls of his home, secure in the knowledge that the Supreme Court has, except for the occasional wayward ruling, generally upheld the right of the citizen against unreasonable intrusions by the State.

115. Steagald v. United States, 451 U.S. 204, 226 (1981).

116. People v. Montilla, 285 SCRA 703, 719 (1998).

Intellectual Property Rights Enforcement Issues for the Judiciary

*Judge Reynaldo B. Daway**

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