

Should Miranda Warnings Be Given to Traffic Violators?

At what point should the police read a traffic violator's *Miranda* rights: at the shoulder of the highway or at the police station?

Supreme Court recently clarified that flagging down a motorist cannot be considered an arrest. In *Rodel Luz vs. People of the Philippines*, citing *Berkemer v. McCarty*, the Court cited the following reasons why a roadside questioning of a motorist detained pursuant to a routine traffic stop should neither be considered custodial interrogation nor regarded as a formal arrest:

1. The detention of a motorist pursuant to a traffic stop is presumptively temporary and brief. Majority of roadside detentions last only for a short period of time as the motorist is only required to answer some questions while the officer checks his license and registration. This is different from a stationhouse interrogation, which is frequently prolonged as the detainee knows that questioning will continue until he provides his interrogators the answers they seek.
2. Circumstances associated with the typical traffic stop are not such that the motorist feels completely at the mercy of the police. For instance, the typical traffic stop is public, at least to some degree.

In *Luz*, while the suspect was flagged for not wearing a helmet as he was driving a motorcycle, the police charged him with illegal possession of dangerous drugs after he was invited in the police station where he pulled out the contents of his pockets and revealed sachets of methamphetamines, a prohibited drug. The Court acquitted the motorist of the charge after finding that he was not read his *Miranda* rights when asked to disclose the contents of his apparel.

What it means to be "arrested"

An arrest, the Court explained, is the taking of a person into custody in order that he or she may be bound to answer for the commission of an offense. It is effected by an actual restraint of the person to be arrested or by that person's voluntary submission to the custody of the one making the arrest. The application of actual force, manual touching of the body, or physical restraint, or a formal declaration of arrest, is needed to make an actual arrest. It is enough that there be an intention on the part of one of the parties to arrest the other, and that there be an intent on the part of the other to submit, under the belief and impression that submission is necessary.

In this case, the Court held that granting the accused was deemed "arrested" upon being flagged down for a traffic violation and while awaiting the issuance of his ticket, the requirements for a valid arrest were not complied with. At the time the accused was "arrested," the arresting officer did not inform the accused of the reason for the arrest. Also, he was not notified of his constitutional rights to remain silent and to counsel, and that any statement they might make could be used against them. The Court further noted that these constitutional requirements were complied with by the police officers only after the accused had been arrested for illegal possession of dangerous drugs.

When warrantless search is allowed

A search without a warrant of arrest can be done in the following circumstances: (i) a warrantless search incidental to a lawful arrest; (ii) search of evidence in "plain view;" (iii) search of a moving vehicle; (iv) consented warrantless search; (v) customs search; (vi) a "stop and frisk" search; and (vii) exigent and emergency circumstances.

The High Tribunal found that none of these instances, especially a search incident to a lawful arrest, are applicable to this case.

{continued to p.3}

Medical Certificate Needed as Proof for Absence Due to Illness

An employee who claims absences due to illness must submit a medical certificate when he reports for work, showing the reason for his absence. Intermittent unexplained leaves of an employee may show a pattern of disregard of company rules and can be used as basis for termination of employment.

In the case of *Daniel O. Paduata v. Manila Electric Company (Meralco)*, after Meralco transferred an employee to its Central Office in the Manila District to do the work as an Acting Stockman, the employee started incurring several absences supposedly due to rheumatic arthritis. Meralco said that these absences were unauthorized and unexcused since the employee failed to submit the required medical certificate after the absences were incurred.

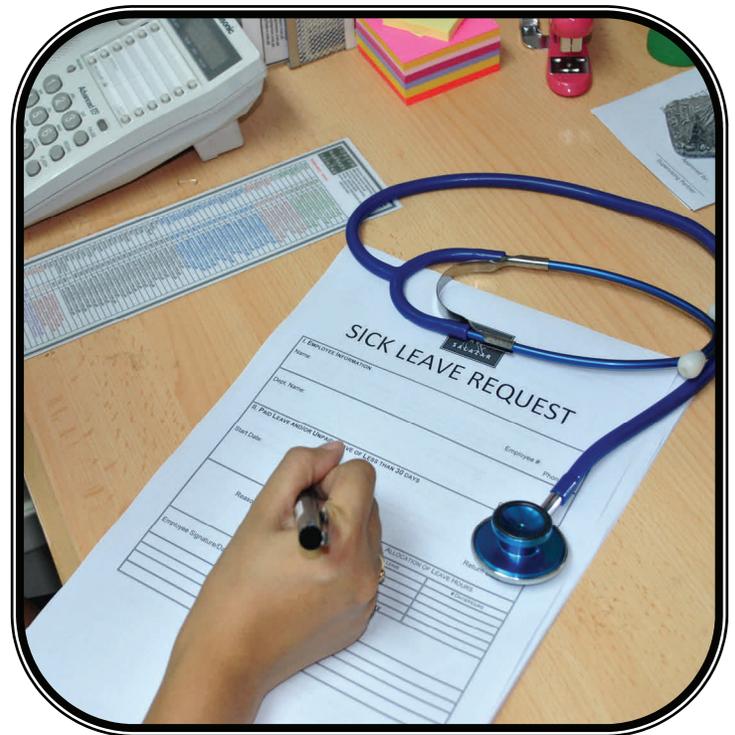
Meralco conducted an investigation and found that the employee violated the company's Code on Employee Discipline. MERALCO thereafter wrote the employee a letter informing him of his dismissal from the service due to his absences.

The Supreme Court held that the employee was not able to comply with the notice and substantiation requirements for sick leave absence conditioned on prior notice to his employer as indicated in Code on Employee Discipline.

MERALCO presented evidence that it followed the substantive and procedural requirements of dismissal, supported by documents and memoranda and that, consequently, the burden was on the employee to prove that his absences were authorized and excused. The employee failed to submit any credible proof that he gave prior notice of his absences or that he submitted

the medical certificates needed to justify them. He relied solely on his own affidavit and did not submit the affidavits of the private physician he allegedly consulted about his reported illness.

The employee in this case also claimed that shortly before Meralco issued its notice of dismissal, it offered him separation pay, apparently to avoid a dispute with him. In the case of *Eastern Shipping Lines, Inc. v. Sedan*, financial assistance may be allowed as a measure of social justice and exceptional circumstances, such may be extended to the employee in this case who apparently suffered from recurring illness that prevented him from doing his work. (March 27, 2012) ^{LF}



Feeling singled out? You may not be alone

The Supreme Court struck down a 2003 Bureau of Customs memorandum for unduly classifying wheat as food or feed based on the importer, port of discharge or country of origin. The Court failed to find any justification in the case of *Commissioner of Customs and the District Collector of the Port of Subic vs. Hypermix Feeds Corporation*, why the Bureau made such distinctions.

The *Hypermix Feeds* case comes closely after the Court voided the Aquino administration’s Executive Order No. 1 in *Biragao vs. Philippine Truth Commission of 2010* case, also for violating the Equal Protection Clause.

The Equal Protection Clause provides that no person or class of persons shall be deprived of the same protection of laws enjoyed by other persons or other classes in the same place in like circumstances. The guarantee of the equal protection of laws is maintained if there is a reasonable classification. For a classification to be reasonable, it must be shown that (1) it rests on substantial distinctions; (2) it is germane to the purpose of the law; (3) it is not limited to existing conditions only; and (4) it applies equally to all members of the same class.

In the *Hypermix Feeds* case, Hypermix filed

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The drugs were in “plain view” when inadvertently discovered by police officers but were actually concealed inside a metal container inside the pocket of the traffic violator.

Miranda Warnings For Motorists

Luz should be understood that an arrest may happen even for a traffic violation. When there is an intent on the part of the police officer to deprive the motorist of liberty or to take the latter into custody, the law enforcer may be deemed to have arrested the offender. At this point, the officer is required to inform the motorist of his (i) right to remain silent, (ii) right to an attorney of his

a declaratory relief petition after the Bureau issued Customs Memorandum Order No. 27-2003 which classified wheat for tariff purposes based on (a) importer or consignee; (b) port of discharged; or (c) country of origin. Hypermix alleged that the Equal Protection Clause was violated when the regulation treated non-flour millers differently from flour millers for no reason at all. The Court said the regulation forecloses the possibility that other corporations that are excluded from the list import food grade wheat; at the same time, it creates an assumption that those who meet the criteria do not import feed grade wheat. In the first case, importers are unnecessarily burdened to prove the classification of their wheat imports; while in the second, the State carries that burden.

In *Biragao*, the government issued EO No. 1 to create an investigating body that would determine whether the Arroyo administration committed graft and corruption. The Court, in applying the Equal Protection Clause, found the purpose of creating the Truth Commission too arbitrary and discriminatory. The current government should also look into the actions of other administrations, according to the Court. (February 29, 2012) LF

choice, and (iii) right to waive these rights in writing and in the presence of counsel.

The purposes of the safeguards are to ensure that the police do not coerce or trick captive suspects into confessing, to relieve the “inherently compelling pressures” “generated by the custodial setting itself,” “which work to undermine the individual’s will to resist,” and as much as possible to free courts from the task of scrutinizing individual cases to try to determine, after the fact, whether particular confessions were voluntary. Those purposes are implicated as much by in-custody questioning of persons suspected of misdemeanors as they are by questioning of persons suspected of felonies. (March 27, 2012) LF

FNS hosts Otis McAllister



The Firm hosted James Everett Kochheiser, Chief Information Officer of Otis McAllister, Inc. last March 19, 2012. Mr. Kochheiser attended a mediation conference together with the members of the IP Group of the Firm at the Intellectual Property Office. During the luncheon that followed, Mr. Kochheiser and spouse, Gilda, met the other partners and members of the legal staff of the Firm. At left, Atty. Gregorio Narvasa II discusses the state of the US economy with Mr. Kochheiser.

The Kochheisers with the members of the legal staff. Standing from left, Ms. Denise Michelle L. Lim, Ms. Joy Z. Manaog, Mr. Karl Arian A. Castillo, Ms. Ma. Carmen D. Babista-Lazaro, Ms. Rebecca R. De Guzman, Mr. Joseph B. G. Gesmundo, Ms. Denise J. P. Arenillo, Ms. Gilda Kochheiser, Mr. James Kochheiser, Mr. Bayani B. Loste, Mr. Paul Abbott P. Enriquez and Mr. Salvador P. Escalante. Seated in front are Mlles. Dequiña, Escosia, Singcol and Moral.



Four new associates joined this quarter:



Ms. Doanni L.F. Dequiña has a *juris doctor* and an MBA from FEU and De La Salle Univ.



Ms. Grace Xaviere E. Escosia graduated from the Ateneo De Manila Univ. with a *juris doctor*.



Ms. Christina Alma M. Moral is a *juris doctor* graduate of AdMU.



Ms. Ana Theresia D. Singcol received her law degree from Univ. of San Carlos.

