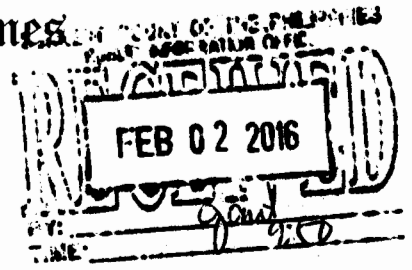




Republic of the Philippines
Supreme Court
 Manila



EN BANC

PEOPLE OF THE PHILIPPINES,
 Petitioner,

G.R. No. 174471

Present:

SERENO, *C.J.*,
 CARPIO,
 VELASCO, JR.,
 LEONARDO-DE CASTRO,
 BRION,
 PERALTA,
 BERSAMIN,*
 DEL CASTILLO,
 VILLARAMA, JR.,*
 PÉREZ,
 MENDOZA
 REYES,
 PERLAS-BERNABE,
 LEONEN, and
 JARDELEZA,* *JJ.*

- versus -

JERRY PEPINO y RUERAS and
PRECIOSA GOMEZ y CAMPOS,
 Respondents.

Promulgated:

January 12, 2016

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X-----X

DECISION

BRION, J.:

This is an appeal filed by Jerry Pepino (*Pepino*) and Preciosa Gomez (*Gomez*) assailing the June 16, 2006 decision¹ of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02026.

* No Part.

¹ *Rollo*, pp. 4-21; penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) and concurred in by Associate Justices Lucas P. Bersamin (now a member of this Court) and Celia C. Librea-Leagogo.

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ANTECEDENTS

The prosecution evidence showed that at 1:00 p.m., on June 28, 1997, two men and a woman entered the office of Edward Tan at Kilton Motors Corporation in Sucat, Parañaque City, and pretended to be customers. When Edward was about to receive them, one of the men, eventually identified as Pepino, pulled out a gun. Thinking that it was a holdup, Edward told Pepino that the money was inside the cashier's box. Pepino and the other man looted the cashier's box, handcuffed Edward, and forced him to go with them.² From the hallway, Jocelyn Tan (mentioned as "Joselyn" in some parts of the record), Edward's wife, saw Pepino take her husband. She went to the adjoining room upon Edward's instructions.³

Pepino brought Edward to a metallic green Toyota Corolla where three other men were waiting inside. The woman (later identified as Gomez) sat on the front passenger seat.⁴ The abductors then placed surgical tape over Edward's eyes and made him wear sunglasses. After travelling for two and a half hours, they arrived at an apartment in Quezon City. The abductors removed the tape from Edward's eyes, placed him in a room, and then chained his legs. Pepino approached Edward and asked for the phone number of his father so that he could ask for ransom for his (Edward's) liberty. Edward told Pepino to negotiate with his wife, but the latter insisted on talking to his father.⁵

At around 5:00 p.m. of the same day, the kidnappers called Edward's father and demanded a ₱40 million ransom for his release. Edward's father told the kidnappers that he did not have that amount. The abductors negotiated with Jocelyn who eventually agreed to a ₱700,000.00 ransom. The kidnappers told Jocelyn to pack the money into two packages and to drop these at a convenience store in front of McDonald's at Mindanao Avenue. They further demanded that Edward's vehicle be used to bring the money.⁶

After four days, or on July 1, 1997, Antonio Gepiga (the family driver) brought the agreed amount to the 7-Eleven convenience store at Mindanao Avenue as instructed.⁷ That evening, three men and Gomez blindfolded Edward, made him board a car, and drove around for 30 minutes. Upon stopping, they told Edward that he could remove his blindfold after five minutes. When Edward removed his blindfold, he found himself inside his own car parked at the UP Diliman Campus. He drove home and reported his kidnapping to Teresita Ang See, a known anti-crime crusader.⁸

² TSN, January 28, 1999, pp. 6-9, 35-36.

³ TSN, January 14, 1999, pp. 7-9; TSN, January 28, 1999, p. 37.

⁴ TSN, January 28, 1999, pp. 10-13, 65.

⁵ Id. at 14-16, 59-60.

⁶ TSN, January 14, 1999, pp. 14-19.

⁷ Id. at 19-20.

⁸ TSN, January 28, 1999, pp. 19-21.

After five months, the National Bureau of Investigation (*NBI*) informed Edward that they had apprehended some suspects, and invited him to identify them from a lineup consisting of seven persons: five males and two females. Edward positively identified Pepino, Gomez, and one Mario Galgo.⁹ Jocelyn likewise identified Pepino.¹⁰

Pepino and Gomez did not testify for their defense. The defense instead presented Zeny Pepino, Reynaldo Pepino, *NBI* Special Investigator Marcelo Jadloc and P/Sr. Insp. Narciso Quano (mentioned as "Qano" in some parts of the record).

Zeny testified that she and her husband, Jerry Pepino, were inside their house in Cebu City on December 7, 1997, when about 20 heavily armed men entered their house looking for Jerry. When Jerry asked them if they had a warrant of arrest, one of the men pointed a gun at him and handcuffed him; the armed men then hit him with the butt of an armalite and punched him. The men also took Pepino's wristwatch and wallet, as well as Zeny's bag and watch. Some of the armed men searched the second floor of the house, and found a .45 caliber gun. The armed men brought Zeny and Pepino outside their house where Zeny saw Renato Pepino and Larex Pepino already handcuffed. The armed men brought them to the Cebu City Police Headquarters before bringing them to the *NBI* Headquarters in Manila. The following day, Jerry, Renato, and Larex were brought to the Department of Justice (*DOJ*). Zeny, on the other hand, was released after being detained at the *NBI* for three (3) days.¹¹

Reynaldo's testimony was summarized by the CA as follows:

x x x On December 6, 1997, he accompanied accused-appellant Gomez to his brother's sister-in-law who happens to work in a recruitment agency. While they were inside the latter's house at Lot 2, Block 15, Marikina Heights, Marikina City, they heard a noise at the gate. When he peeped through the window, he saw two (2) motorcycles and two (2) Vannette vans. Shortly thereafter, someone kicked the back door and several armed men emerged therefrom and announced their arrest. When he asked them if they had any warrant, they replied: "*Walang warrant, warrant. Walang search, search.*" They were then hogtied and made to lie face down. Five (5) of them then went upstairs and seized his personal belongings together with his briefcase which contained ₱45,000.00, documents of accused-appellant Gomez, and his .45 caliber pistol as well as his license and permit to carry the same. No receipts were issued for their personal effects which were confiscated. They were subsequently brought to Camp Crame and subjected to torture. The following day, they were brought to the Department of Justice and a case for kidnapping was filed against him. Upon reinvestigation, however, he was discharged from the Information and the court dismissed the case against him.¹²

⁹ Id. at 21-23, 27 and 67.

¹⁰ TSN, January 14, 1999, pp. 46-48.

¹¹ TSN, August 25, 1999, pp. 6-23.

¹² CA decision, *rollo*, p. 8.

SI Jadloc and Police Senior Inspector Quano, Jr. were presented as hostile witnesses.

Jadloc declared on the witness stand that NBI Assistant Director Edmundo Arugay dispatched a team to Cebu City to investigate a kidnap-for-ransom case. The team immediately conducted surveillance operations when they arrived at Calle Rojo, Lahug, Cebu City. One of the team members saw Renato and Larex Pepino with guns tucked in their waists. When the team approached them, the two men ran inside their house. The team went after them and on entering the house, they saw Jerry in possession of a .45 caliber gun. The team arrested Jerry, Renato and Larex, and then brought them to the NBI Headquarters in Manila.¹³

Quano testified that he was designated as the leader of a team tasked to arrest members of a kidnap-for-ransom group at their safe house in Lot 2, Block 50, Marikina Heights, Marikina City. When they arrived there, they introduced themselves as police officers. The police forcibly opened the door after the occupants of the house refused to open the ground floor door. During their search at the second floor, the operatives found an armalite and a .45 caliber gun. The members of the team handcuffed Gomez and Reynaldo, and then brought them to Camp Crame.¹⁴

The prosecution charged Preciosa Gomez, Jerry Pepino, Reynaldo Pepino, Jessie Pepino, George Curvera, Boy Lanyujan, Luisito "Tata" Adulfo, Henriso Batijon (*a.k.a.* Dodoy Batijon), Nerio Alameda, and an alias Wilan Tan with kidnapping for ransom and serious illegal detention before the Regional Trial Court (*RTC*), Branch 259, Paranaque City.¹⁵ Reynaldo was subsequently discharged after reinvestigation. Only Pepino, Gomez, and Batijon were arraigned; their other co-accused remained at large.

In its May 15, 2000 decision, the *RTC* convicted Pepino and Gomez of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code (as amended) and sentenced them to suffer the death penalty. The *RTC* also ordered them to pay Edward ₱700,000.00 representing the amount extorted from him; ₱50,000.00 as moral damages; and ₱50,000 as exemplary damages. The trial court acquitted Batijon for insufficiency of evidence.

The *RTC* held that Edward positively identified Pepino and Gomez as two of the persons who forcibly abducted him at gunpoint inside Kilton Motors, and who consequently detained him somewhere in Quezon City for four (4) days until he was released inside the UP Diliman Campus after the payment of ransom. The *RTC* added that Jocelyn corroborated Edward's testimony on material points. It also pointed out that

¹³ TSN, August 25, 1999, pp. 40-73.

¹⁴ TSN, November 25, 1999, pp. 8-29.

¹⁵ Docketed as Criminal Case No. 97-946.

Edward identified both Pepino and Gomez at the lineup conducted inside the NBI compound, although Jocelyn only recognized Gomez.

The RTC further ruled that the accused were already estopped from questioning the validity of their arrest after they entered their respective pleas.

The case was automatically elevated to this Court in view of the death penalty that the RTC imposed. We referred the case to the CA for intermediate review pursuant to our ruling in *People v. Mateo*.¹⁶

In its decision dated June 16, 2006, the Court of Appeals affirmed the RTC decision with the modification that the amounts of moral and exemplary damages were increased from ₱300,000.00 and ₱100,000.00, respectively.

The CA held that Pepino and Gomez were deemed to have waived any objection to the illegality of their arrests when they did not move to quash the information before entering their plea, and when they participated at the trial.

The CA further ruled that Pepino and Gomez conspired with each other to attain a common objective, *i.e.*, to kidnap Edward in exchange for ransom.

While the case was under review by the Supreme Court, Pepino filed an urgent motion to withdraw his appeal, which the Court granted.¹⁷ Only Gomez's appeal is now pending before us.

In her brief¹⁸ and supplemental brief,¹⁹ Gomez maintained that it was impossible for Edward to have seen her in the front seat of the getaway car because he (Edward) was blindfolded. She also alleged that the prosecution failed to prove that she had conspired with the other accused.

Gomez further claimed that Edward's identification of her during trial "may have been preconditioned x x x by suggestive identification"²⁰ made at the police lineup. She further argued that the death penalty imposed on her is no longer proper due to the enactment of Republic Act No. 9346.

THE COURT'S RULING

We affirm Gomez's conviction, but we modify the penalty imposed and the awarded indemnities.

¹⁶ 477 Phil. 752 (2004).

¹⁷ The case against Pepino became final and executory on August 15, 2014, per Entry of Judgment made on the same day.

¹⁸ CA *rollo*, pp. 45-59.

¹⁹ *Rollo*, 59-70.

²⁰ *Id.* at 61.

Illegality of the Arrest

We point out at the outset that Gomez did not question before arraignment the legality of her warrantless arrest or the acquisition of RTC's jurisdiction over her person. Thus, Gomez is deemed to have waived any objection to her warrantless arrest.

It is settled that [a]ny objection to the procedure followed in the matter of the acquisition by a court of jurisdiction over the person of the accused must be opportunely raised before he enters his plea; otherwise, the objection is deemed waived.²¹ As we held in *People v. Samson*:²²

[A]ppellant is now estopped from questioning any defect in the manner of his arrest as he failed to move for the quashing of the information before the trial court. Consequently, any irregularity attendant to his arrest was cured when he voluntarily submitted himself to the jurisdiction of the trial court by entering a plea of "not guilty" and by participating in the trial.²³

At any rate, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. Simply put, the illegality of the warrantless arrest cannot deprive the State of its right to prosecute the guilty when all other facts on record point to their culpability. It is much too late in the day to complain about the warrantless arrest after a valid information had been filed, the accused had been arraigned, the trial had commenced and had been completed, and a judgment of conviction had been rendered against her.²⁴

Sufficiency of the Prosecution Evidence

a. Elements of kidnapping proved

The elements of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code, as amended, are: (1) the offender is a private individual; (2) he kidnaps or detains another or in any other manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three (3) days; or (b) it is committed by simulating public authority; or (c) serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer. If the victim of kidnapping and serious illegal detention is a minor, the duration of his detention is immaterial. Likewise, if the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention is also of no moment and the crime is qualified and

²¹ See *People v. Trestiza*, G.R. No. 193833, November 16, 2011, 660 SCRA 407, 442.

²² G.R. No. 100911, May 16, 1995, 244 SCRA 146.

²³ *Id.* at 150.

²⁴ See *People of the Philippines v. Rommel Araza y Sagun*, G.R. No. 190623, November 17, 2014; and *People of the Philippines v. Richard Giray y Corella alias "Herminigildo Baltazar y Poquiz"*, G.R. No. 196240, February 19, 2014.

becomes punishable by death even if none of the circumstances mentioned in paragraphs 1 to 4 of Article 267 is present.²⁵

All these elements have been established by the prosecution. Edward positively identified Gomez and Pepino - both private individuals - as among the three persons who entered his office and pretended to be Kilton Motors' customers. He further declared that Pepino pointed a gun at him, and forcibly took him against his will. To directly quote from the records:

ATTY. WILLIAM CHUA:

Q: Can you tell us if anything unusual happened to you on June 28, 1997?

EDWARD TAN:

A: I was kidnapped.

x x x x

Q: Can you tell this Court how the kidnapping was initiated?

A: At around 1:00 o'clock in the afternoon, there were three persons who entered the office of Kilton Motors and pretended to be customers.

Q: What was the gender of these three persons that you are referring to?

A: Two men and a woman.

Q: After they pretended to be customers, tell us what happened?

A: They told me they were going to pay but instead of pulling out money, they pulled out a gun.

Q: How many people pulled out guns as you said?

A: Only one, sir.

Q: Will you look around this courtroom now and tell us if the person who pulled out a gun is in court?

A: **(WITNESS POINTED TO A PERSON AT THE RIGHT SECTION, SECOND ROW WHO, WHEN ASKED HIS NAME, ANSWERED JERRY PEPINO)**

Q: Now, you said that there were two men and a woman who went up the Kilton Motors Office and you pointed to one of the men as Jerry Pepino, can you look around the courtroom and tell us if any of the two others are in court?

²⁵

People v. Jatulan, 550 Phil. 343, 351-352. (2007).

A: (WITNESS POINTED TO A WOMAN INSIDE THE COURTROOM WHO, WHEN ASKED HER NAME, ANSWERED AS PRECIOSA GOMEZ)

X X X X

Q: You said Mr. Pepino pulled out his gun, what happened after he pulled out his gun?

A: He told me just to be quiet and go with him.

Q: What was your reaction when he pointed a gun to you and he stated those words?

A: I thought it was only a holdup and so I told him there was money with the cashier and told him to get it.

Q: What happened after you told him the money was in the cashier's box?

A: His companion took the money and told me to still go with them.

Q: When they told you to go with them, what happened next?

A: I told them why should I still go with them and then, I was handcuffed and was forced to go down.

X X X X

Q: As they were bringing you down, what happened next, Mr. Witness?

A: When we went down nearing his car, I was boarded on [in] his car.

X X X X

Q: When they boarded you inside that car, what did they do to you, Mr. Witness?

A: They put surgical tape on my eyes and also sunglasses.

X X X X

Q: Who was at the passenger's front seat of the car?

A: It was **Preciosa Gomez**.²⁶

X X X X

Edward further declared on the witness stand that Pepino, Gomez, and their other co-accused brought him to a safe house in Quezon City; detained him there for four (4) days; and *demande*d ransom from his (Edward's) family.

²⁶ TSN, January 28, 1999, pp. 5-13. Emphasis supplied

It is settled that the crime of serious illegal detention consists not only of placing a person in an enclosure, but also in detaining him or depriving him of his liberty in any manner. For there to be kidnapping, it is enough that the victim is restrained from going home. Its essence is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect such deprivation.²⁷

Notably, Jocelyn corroborated Edward's testimony on the following points: Pepino poked a handgun at Edward while they were on the second floor of Kilton; Pepino and his companion brought him downstairs and out of the building, and made him board a car; and the kidnapers demanded ransom in exchange for Edward's release.

Both the RTC and the CA found the respective testimonies of Edward and Jocelyn credible and convincing. We affirm the credibility accorded by the trial court (and affirmed by the CA) to these prosecution witnesses, in the absence of any showing that this factual finding had been arbitrarily arrived at. There is nothing in the records that would put the testimonies of Edward and Jocelyn under suspicion. We recall that Edward had close contacts with Pepino at Kilton Motors and at the safe house. He also saw Gomez (a) seated at the front seat of the getaway Toyota Corolla vehicle; (b) at the safe house in Quezon City; and (c) inside the car before the kidnapers released him.

Jocelyn, for her part, stated that she was very near Pepino while he was taking away her husband.

In *People v. Pavillare*,²⁸ the Court found the testimonies of the private complainant Sukhjinder Singh and his cousin, Lakhvir Singh, to be credible and convincing, and reasoned out as follows:

Both witnesses had ample opportunity to observe the kidnapers and to remember their faces. The complainant had close contact with the kidnapers when he was abducted and beaten up, and later when the kidnapers haggled on the amount of the ransom money. His cousin met Pavillare face to face and actually dealt with him when he paid the ransom money. The two-hour period that the complainant was in close contact with his abductors was sufficient for him to have a recollection of their physical appearance. Complainant admitted in court that he would recognize his abductors if he sees them again and upon seeing Pavillare he immediately recognized him as one of the malefactors as he remembers him as the one who blocked his way, beat him up, haggled with the complainant's cousin and received the ransom money. x x x It bears repeating that the finding of the trial court as to the credibility of witnesses is given utmost respect and as a rule will not be disturbed on appeal because it had the opportunity to closely observe the demeanor of the witness in court.²⁹

²⁷ See *People v. Anticamara*, G.R. No. 178771, June 8, 2011, 651 SCRA 489, 515 (citations omitted).

²⁸ 386 Phil. 126 (2000).

²⁹ *Id.* at 144.

b. Admissibility of Identification

We find no merit in Gomez's claim that Edward's identification of her during trial *might* have been preconditioned by the "suggestive identification" made during the police lineup.

In *People v. Teehanke, Jr.*,³⁰ the Court explained the procedure for out-of-court identification and the test to determine the admissibility of such identifications in this manner:

Out-of-court identification is conducted by the police in various ways. It is done thru **show-ups** where the suspect alone is brought face to face with the witness for identification. It is done thru **mug shots** where photographs are shown to the witness to identify the suspect. It is also done thru **lineups** where a witness identifies the suspect from a group of persons lined up for the purpose x x x In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the **totality of circumstances test** where they consider the following factors, viz: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.³¹

Applying the totality-of-circumstances test, we find Edward's out-of-court identification to be reliable and thus admissible. To recall, when the three individuals entered Edward's office, they initially pretended to be customers,³² and even asked about the products that were for sale.³³ The three had told Edward that they were going to pay, but Pepino "pulled out a gun" instead.³⁴ After Pepino's companion had taken the money from the cashier's box, the malefactors handcuffed Edward and forced him to go down to the parked car. From this sequence of events, there was thus ample opportunity for Edward – before and after the gun had been pointed at him – to view the faces of the three persons who entered his office. In addition, Edward stated that Pepino had talked to him "[a]t least once a day"³⁵ during the four days that he was detained.

Edward also saw Gomez seated at the front seat of the getaway metallic green Toyota Corolla vehicle. In addition, the abductors removed the tape from Edward's eyes when they arrived at the apartment, and among those whom he saw there was Gomez. According to Edward, he was able to take a good look at the occupants of the car when he was about to be released.

³⁰ 319 Phil. 128 (1995).
³¹ Id. at 180 (emphasis in the original).
³² TSN, January 28, 1999, p. 6.
³³ Id. at 61
³⁴ Id. at 7.
³⁵ Id. at 59.

On the part of Jocelyn, she was firm and unyielding in her identification of Pepino as the person who pointed a gun at her husband while going down the stairs, and who brought him outside the premises of Kilton Motors. She maintained that she was very near when Pepino was taking away her husband; and that she could not forget Pepino's face. For accuracy, we quote from the records:

ATTY. CORONEL:

Q: You stated that you were able to see one of the persons who kidnapped your husband, if you see this person again, would you be able to identify him?

JOCELYN SY TAN:

A: Yes, sir.

Q: Can you look around the courtroom and see if the person you are referring to is here today?

A: Yes, sir.

Q: Can you point to him?

A: (WITNESS POINTED TO A MALE PERSON INSIDE THE COURTROOM WHO WHEN ASKED HIS NAME ANSWERED AS JERRY PEPINO).

Q: Ms. Witness, what role did this person whom you identified and gave his name as Jerry Pepino, what role did he play in the kidnapping of your husband?

A: *Siya po bale 'yong nakayakap sa husband ko tapos nakatutok ng baril.*

x x x x

ATTY. ESTRUCO:

Q: When Jerry Pepino was at Kilton Motors, he embraced your husband?

JOCELYN SY TAN:

A: Yes, sir. And pointed a gun at my husband.

Q: And he was not blindfolded at that time?

A: No, he was not blindfolded, he was only wearing a cap.

Q: You are very sure that he is Jerry Pepino?

A: Yes, I am very, very sure. I could not forget his face.

Q: You are very sure?

A: Yes, sir. *Kahit sa nightmare ko, kasama siya.*

x x x x³⁶

We add that no competing event took place to draw Edward's and Jocelyn's attention from the incident. Nothing in the records shows the presence of any distraction that could have disrupted the witnesses' attention at the time of the incident.³⁷

Jurisprudence holds that the natural reaction of victims of criminal violence is to strive to see the appearance of their assailants and observe the manner the crime was committed. As the Court held in *People v. Esoy*:³⁸

It is known that the most natural reaction of a witness to a crime is to strive to look at the appearance of the perpetrator and to observe the manner in which the offense is perpetrated. Most often the face of the assailant and body movements thereof, create a lasting impression which cannot be easily erased from a witness's memory. Experience dictates that precisely because of the unusual acts of violence committed right before their eyes, eyewitnesses can remember with a high degree of reliability the identity of criminals at any given time.³⁹

While this pronouncement should be applied with great caution, there is no compelling circumstance in this case that would warrant its non-application.

Contrary to what Gomez claimed, the police lineup conducted at the NBI was not suggestive. We note that there were seven people in the lineup; Edward was not compelled to focus his attention on any specific person or persons. While it might have been *ideal* if there had been more women included in the lineup instead of only two, or if there had been a separate lineup for Pepino and for Gomez, the fact alone that there were five males and two females in the lineup did not render the procedure irregular. There was no evidence that the police had supplied or even suggested to Edward that the appellants were the suspected perpetrators.

The following exchanges at the trial during Edward's cross-examination prove this point:

ATTY. ESTURCO:

Q: When they were lined up at the NBI, where were they placed, in a certain room?

EDWARD TAN:

³⁶ TSN, January 14, 1999, pp. 6-7 and 34-35.

³⁷ The so-called "weapon-focus effect," while finding support in the areas of psychology and behavioral science, has yet to find its way as a proven and reliable standard acceptable as a consideration in our jurisdiction. We also emphasize in this regard that the weapon-focus effect only reduces, not eliminates, the ability to recall the other details of the crime.

³⁸ G.R. No. 185849, April 7, 2010, 617 SCRA 552.

³⁹ *Id.* at 561.

- A: Yes, sir.
- Q: With a glass window? One way?
- A: No, sir.
- Q: You mean to say you were face to face with the alleged kidnapers?
- A: Yes, sir.
- Q: And before you were asked to pinpoint the persons who allegedly kidnaped you, you conferred with the NBI agents?
- A: **The NBI agents told me not to be afraid.**
- Q: No, my question is, you conferred with the NBI agents?
- A: Yes, sir.
- Q: What is the name of the NBI agent?
- A: I cannot remember, sir.
- Q: And how many were lined up?
- A: Seven, sir.
- Q: **And the NBI agent gave the names of each of the seven?**
- A: **No, sir.**⁴⁰

We also note that Jocelyn's and Edward's out-of-court identifications were made on the same day. While Jocelyn only identified Pepino, the circumstances surrounding this out-of-court identification showed that the whole identification process at the NBI was not suggestive. To directly quote from the records:

ATTY. ESTURCO:

- Q: How about the alleged kidnapers, where were they placed during that time?

JOCELYN TAN:

- A: They were in front of us.
- Q: Without any cover?
- A: None, sir.
- Q: Without any glass cover?
- A: See-through glass window.

⁴⁰ TSN, January 28, 1999, pp. 66-68 (emphasis ours).



Q: One-way mirror?

A: Not one way, see-through.

Q: **And before you were asked to pinpoint the alleged kidnappers, you were already instructed by the NBI what to do and was told who are the persons to be lined up?**

A: **No, sir.**

X X X X

Q: **And between the alleged length of time, you were still very positive that it was Gerry (sic) Pepino inside the NBI cell?**

A: **At first, I did not know that he was Jerry Pepino but we know his face.**

Q: **At first, you did not know that it was Jerry Pepino?**

A: **Yes, sir.**

X X X X

Q: **It was the NBI officer who told you that the person is Jerry Pepino, am I correct?**

A: **They identified that the person we identified was Jerry Pepino. We first pinpointed na heto ang mukha at saka sinabi na ‘yan si Jerry Pepino.**

X X X X⁴¹

These exchanges show that the lineup had not been attended by any suggestiveness on the part of the police or the NBI agents; there was no evidence that they had supplied or even suggested to either Edward or Jocelyn that the appellants were the kidnappers.

We are not unaware that the Court, in several instances, has acquitted an accused when the out-of-court identification is fatally flawed. In these cases, however, it had been clearly shown that the identification procedure was suggestive.

In *People v. Pineda*,⁴² the Court acquitted Rolando Pineda because the police suggested the identity of the accused by showing only the photographs of Pineda and his co-accused Celso Sison to witnesses Canilo Ferrer and Jimmy Ramos. According to the Court, “there was impermissible suggestion because the photographs were only of appellant and Sison, focusing attention on the two accused.”⁴³

⁴¹ TSN, January 14, 1999, pp. 37-38 and 46-48 (emphasis ours).

⁴² 473 Phil. 517 (2004).

⁴³ Id. at 540.

Similarly, the Court in *People v. Rodrigo*⁴⁴ acquitted appellant Lee Rodrigo since only a lone photograph was shown to the witness at the police station. We thus held that the appellant's in-court identification proceeded from, and was influenced by, impermissible suggestions in the earlier photographic identification.

The lack of a prior description of the kidnappers in the present case should not lead to a conclusion that witnesses' identification was erroneous. The lack of a prior description of the kidnappers was due to the fact that Jocelyn (together with other members of Edward's family), for reasons not made known in the records, opted to negotiate with the kidnappers, instead of immediately seeking police assistance. If members of Edward's family had refused to cooperate with the police, their refusal could have been due to their desire not to compromise Edward's safety.⁴⁵ In the same manner, Edward, after he was freed, chose to report the matter to Teresita Ang See, and not to the police.

Given these circumstances, the lack of prior description of the malefactors in this case should not in any way taint the identification that Edward and Jocelyn made.

c. The Right to Counsel

The right to counsel is a fundamental right and is intended to preclude the slightest coercion that would lead the accused to admit something false. The right to counsel attaches upon the start of the investigation, *i.e.*, when the investigating officer starts to ask questions to elicit information and/or confessions or admissions from the accused.⁴⁶

Custodial investigation commences when a person is taken into custody and is singled out as a suspect in the commission of the crime under investigation.⁴⁷ As a rule, a police lineup is *not* part of the custodial investigation; hence, the right to counsel guaranteed by the Constitution cannot yet be invoked at this stage. The right to be assisted by counsel attaches only during custodial investigation and cannot be claimed by the accused during identification in a police lineup.

Our ruling on this point in *People v. Lara*⁴⁸ is instructive:

x x x The guarantees of Sec. 12(1), Art. III of the 1987 Constitution, or the so-called *Miranda* rights, may be invoked only by a person while he is under custodial investigation. Custodial investigation starts when the police investigation is no longer a general inquiry into an

⁴⁴ 586 Phil. 515 (2008).

⁴⁵ Per Jocelyn's testimony, two batches of policemen came. The first batch arrived at Kilton Motors immediately after the incident, but Jocelyn told them, "*huwag n'yo muna akong guluhin ngayon kasi magulo pa ang isip ko, umalis muna kayo.*" (TSN, January 14, 1999, pp. 11-12) The second batch arrived after Jocelyn had called her brother-in-law, but Jocelyn also told them to leave.

⁴⁶ See *People v. Reyes*, G.R. No. 178300, March 17, 2009, 581 SCRA 691, 718 (citations omitted).

⁴⁷ See *People v. Pavillare*, 386 Phil. 126, 136 (2000).

⁴⁸ G.R. No. 199877, August 13, 2012, 678 SCRA 332.

unsolved crime but has begun to focus on a particular suspect taken into custody by the police who starts the interrogation and propounds questions to the person to elicit incriminating statements. Police line-up is not part of the custodial investigation; hence, the right to counsel guaranteed by the Constitution cannot yet be invoked at this stage.⁴⁹

Defense witness Reynaldo, however, maintained that Pepino and Gomez were among those *already presented to the media as kidnapping suspects* by the DOJ a day before the police lineup was made. In this sense, the appellants were already the focus of the police and were thus deemed to be already under custodial investigation when the out-of-court identification was conducted.

Nonetheless, **the defense did not object to the in-court identification for having been tainted by an irregular out-of-court identification in a police lineup.** They focused, instead, on the legality of the appellants' arrests.

Whether Edward and Jocelyn could have seen Pepino and Gomez in various media fora that reported the presentation of the kidnapping suspects to the media is not for the Court to speculate on. The records merely show that when defense counsel, Atty. Caesar Esturco, asked Jocelyn during cross-examination whether she was aware that there were several kidnap-for-ransom incidents in Metro Manila, the latter answered that she "can read in the newspapers."⁵⁰ At no time did Jocelyn or Edward ever mention that they saw the appellants from the news reports in print or on television.

At any rate, the appellants' respective convictions in this case were based on an **independent in-court identification made by Edward and Jocelyn, and not on the out-of-court identification during the police lineup.** We reiterate that the RTC and the CA found the court testimonies of these witnesses to be positive and credible, and that there was no showing that their factual findings had been arrived at arbitrarily. The in-court identification thus cured whatever irregularity might have attended the police lineup.

As the Court ruled in *People v. Algarme*:⁵¹

Even assuming *arguendo* the appellants' out-of-court identification was defective, their subsequent identification in court cured any flaw that may have initially attended it. We emphasize that the "inadmissibility of a police lineup identification x x x should not necessarily foreclose the admissibility of an independent in-court identification." We also stress that all the accused-appellants were positively identified by the prosecution eyewitnesses during the trial.

⁴⁹ Id. at 348.

⁵⁰ TSN, January 14, 1999, p. 64.

⁵¹ G.R. No. 175978, February 12, 2009, 578 SCRA 601, 619 citing *People v. Timon*, G.R. Nos. 97841-42, November 12, 1997, 281 SCRA 577, 592.

It is also significant to note that despite the overwhelming evidence adduced by the prosecution, Pepino and Gomez did not even testify for their respective defenses.

d. The Presence of Conspiracy

Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. It may be proved by direct or circumstantial evidence consisting of acts, words, or conduct of the alleged conspirators before, during and after the commission of the felony to achieve a common design or purpose.

Proof of the agreement does not need to rest on direct evidence, as the agreement may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense. Corollarily, it is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out.⁵²

In the present case, the records establish the following facts: Pepino, Gomez, and another man entered Edward's office, and initially pretended to be customers; the three told Edward that they were going to pay, but Pepino pulled out a gun. After Pepino's companion took the money from the cashier's box, the malefactors handcuffed him and forced him to go down to the parked car; Gomez sat at the front passenger seat of the car which brought Edward to a safe house in Quezon City; the abductors removed the tape from Edward's eyes, placed him in a room, and then chained his legs upon arrival at the safe house; the abductors negotiated with Edward's family who eventually agreed to a ₱700,000.00 ransom to be delivered by the family driver using Edward's own car; and after four days, three men and Gomez blindfolded Edward, made him board a car, drove around for 30 minutes, and left him inside his own car at the UP Diliman campus.

The collective, concerted, and synchronized acts of the accused before, during, and after the kidnapping constitute undoubted proof that Gomez and her co-accused conspired with each other to attain a common objective, *i.e.*, to kidnap Edward and detain him illegally in order to demand ransom for his release.

The Proper Penalty:

Article 267 of the Revised Penal Code, as amended, mandates the imposition of the death penalty when the kidnapping or detention is committed for the purpose of extorting ransom from the victim or any other person. Ransom, as employed in the law, is so used in its common or ordinary sense; meaning, a sum of money or other thing of value, price, or

⁵² See *People v. Bringas*, G.R. No. 189093, April 23, 2010, 619 SCRA 481.

consideration paid or demanded for redemption of a kidnapped or detained person, a payment that releases one from captivity.⁵³

In the present case, the malefactors not only demanded but received ransom for Edward's release. The CA thus correctly affirmed the RTC's imposition of the death penalty on Pepino and Gomez.

With the passage of Republic Act No. 9346, entitled "*An Act Prohibiting the Imposition of Death Penalty in the Philippines*" (signed into law on June 24, 2006), the death penalty may no longer be imposed. We thus sentence Gomez to the penalty of *reclusion perpetua* without eligibility for parole pursuant to A.M. No. 15-08-02-SC.⁵⁴

The reduced penalty shall likewise apply to the non-appealing party, Pepino, since it is more favorable to him.

The Awarded Indemnities:

In the case of *People v. Gamba*⁵⁵ (also for kidnapping for ransom), the Court set the minimum indemnity and damages where facts warranted the imposition of the death penalty if not for prohibition thereof by R.A. No. 9346, as follows: (1) ₱100,000.00 as civil indemnity; (2) ₱100,000.00 as moral damages which the victim is assumed to have suffered and thus needs no proof; and (3) ₱100,000.00 as exemplary damages to set an example for the public good. These amounts shall earn interest at the rate of six percent (6%) per annum from the date of the finality of the Court's Resolution until fully paid.

We thus reduce the moral damages imposed by the CA from ₱300,000.00 to ₱100,000.00 to conform to prevailing jurisprudence on kidnapping cases. This reduced penalty shall apply to Pepino for being more favorable to him. However, the additional monetary award (*i.e.*, ₱100,000.00 civil indemnity) imposed on Gomez shall not be applied to Pepino.⁵⁶

We affirm the ₱700,000.00 imposed by the courts below as restitution of the amount of ransom demanded and received by the kidnapers. We also affirm the CA's award of ₱100,000.00 as exemplary damages based on *Gamba*.

WHEREFORE, in the light of all the foregoing, we **AFFIRM** the challenged June 16, 2006 decision of the Court of Appeals in CA-G.R. CR-HC No. 02026 with the following **MODIFICATIONS**:

⁵³ *People v. Ejandra*, G.R. No. 134203, May 27, 2004, 429 SCRA 364, 382.

⁵⁴ Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties.

⁵⁵ G.R. No. 172707, October 1, 2013, 706 SCRA 508, 533.


⁵⁶ See *People v. Arondain*, 418 Phil. 354 (2001).


- (1) the penalty imposed on Gomez and Pepino shall be reduced from death to *reclusion perpetua* without eligibility for parole;
- (2) they are jointly and severally ordered to pay the reduced amount of ₱100,000.00 as moral damages;
- (3) Gomez is further ordered to pay the victim ₱100,000.00 as civil indemnity; and
- (4) the awarded amounts shall earn interest at the rate of six percent (6%) per annum from the date of the finality of the Court's Decision until fully paid.

SO ORDERED.



ARTURO D. BRION
 Associate Justice


WE CONCUR:

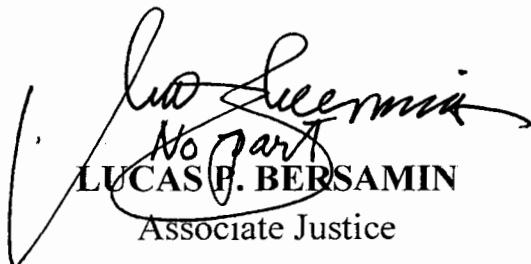

MARIA LOURDES P. A. SERENO
 Chief Justice


ANTONIO T. CARPIO
 Associate Justice


PRESBITERO J. VELASCO, JR.
 Associate Justice


TERESITA J. LEONARDO-DE CASTRO
 Associate Justice


DIOSDADO M. PERALTA
 Associate Justice


LUCAS F. BERSAMIN
 Associate Justice


MARIANO C. DEL CASTILLO
 Associate Justice

(NO PART)

[Signature]
MARTIN S. VILLARAMA, JR.
Associate Justice

[Signature]
JOSE PORTUGAL PEREZ
Associate Justice

[Signature]
JOSE CATRAL MENDOZA
Associate Justice

[Signature]
BIENVENIDO L. REYES
Associate Justice

Sic dissenting opinion

[Signature]
ESTELA M. PERLAS-BERNABE
Associate Justice

[Signature]
MARVIC M.V.F. LEONEN
Associate Justice

[Signature]
FRANCIS H. JARDELEZA
Associate Justice

*NO part
prior D-56
action*

CERTIFICATION

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

[Signature]
MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:

[Signature]
FELIPA B. ANAMA
CLERK OF COURT, EN BANG
SUPREME COURT