Puno, C.J., Ynares-Santiago, Carpio, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Bersamin, Del Castillo, and *Abad, JJ.,* concur.

Quisumbing, J., on official leave.

THIRD DIVISION

[G.R. No. 169364. September 18, 2009]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **EVANGELINE SITON *y* SACIL and KRYSTEL KATE SAGARANO *y* MEFANIA,** *respondents*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; POWER TO DEFINE CRIMES AND PRESCRIBE THEIR CORRESPONDING PENALTIES IS LEGISLATIVE IN NATURE.— The power to define crimes and prescribe their corresponding penalties is legislative in nature and inherent in the sovereign power of the state to maintain social order as an aspect of police power. The legislature may even forbid and penalize acts formerly considered innocent and lawful provided that no constitutional rights have been abridged.

2. ID.; ID.; ID.; DUE PROCESS OF LAW; VOID-FOR-VAGUENESS DOCTRINE, EXPLAINED.— x x x [I]n exercising its power to declare what acts constitute a crime, the legislature must inform the citizen with reasonable precision what acts it intends to prohibit so that he may have a certain understandable rule of conduct and know what acts it is his duty to avoid. This requirement has come to be known as the **void-for-vagueness doctrine** which states that "a statute which either forbids or requires the doing of an act in terms so vague that men of

common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

3. ID.; ID.; ID.; ID.; ID.; APPLICABLE TO CRIMINAL STATUTES IN APPROPRIATE CASES.— In *Spouses Romualdez v. COMELEC*, the Court recognized the application of the void-for-vagueness doctrine to criminal statutes in appropriate cases. The Court therein held: At the outset, we declare that under these terms, the opinions of the dissent which seek to bring to the fore the purported ambiguities of a long list of provisions in Republic Act No. 8189 can be deemed as a facial challenge. An appropriate "as applied" challenge in the instant Petition should be limited only to Section 45 (j) in relation to Sections 10 (g) and (j) of Republic Act No. 8189 – the provisions upon which petitioners are charged. An expanded examination of the law covering provisions which are alien to petitioners' case would be antagonistic to the rudiment that for judicial review to be exercised, there must be an existing case or controversy that is appropriate or ripe for determination, and not conjectural or anticipatory.

4. CRIMINAL LAW; CRIMES AGAINST DECENCY AND GOOD CUSTOMS; VAGRANCY; PHILIPPINE LAW THEREON FOUND IN ARTICLE 202 OF THE REVISED PENAL CODE.— x x x While historically an Anglo-American concept of crime prevention, the law on vagrancy was included by the Philippine legislature as a permanent feature of the Revised Penal Code in Article 202 thereof which, to repeat, provides: ART. 202. *Vagrants and prostitutes; penalty*. – The following are vagrants: 1. Any person having no apparent means of subsistence, who has the physical ability to work and who neglects to apply himself or herself to some lawful calling; 2. Any person found loitering about public or semi-public buildings or places, or tramping or wandering about the country or the streets without visible means of support; 3. Any idle or dissolute person who lodges in houses of ill-fame; ruffians or pimps and those who habitually associate with prostitutes; 4. Any person who, not being included in the provisions of other articles of this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose; 5. Prostitutes. For the purposes of this article, women who, for money or profit, habitually indulge in sexual intercourse or

lascivious conduct, are deemed to be prostitutes. Any person found guilty of any of the offenses covered by this article shall be punished by *arresto menor* or a fine not exceeding 200 pesos, and in case of recidivism, by *arresto mayor* in its medium period to *prision correccional* in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court.

5. ID.; ID.; ID.; ID.; VAGRANTS, DEFINED.— In the instant case, the assailed provision is paragraph (2), which defines a vagrant as any person found loitering about public or semi-public buildings or places, or tramping or wandering about the country or the streets without visible means of support. This provision was based on the second clause of Section 1 of Act No. 519 which defined "vagrant" as "*every person found loitering about saloons or dramshops or gambling houses, or tramping or straying through the country without visible means of support*." The second clause was essentially retained with the modification that the places under which the offense might be committed is now expressed in general terms – public or semi-public places.

6. ID.; ID.; ID.; ID.; THAT ARTICLE 202 (2) FAILS TO GIVE FAIR NOTICE OF WHAT CONSTITUTES FORBIDDEN CONDUCT FINDS NO APPLICATION IN CASE AT BAR; EXPLAINED.— The underlying principles in *Papachristou* are that: 1) the assailed Jacksonville ordinance "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute"; and 2) it encourages or promotes opportunities for the application of discriminatory law enforcement. The said underlying principle in *Papachristou* that the Jacksonville ordinance, or Article 202 (2) in this case, fails to give fair notice of what constitutes forbidden conduct, finds no application here because under our legal system, ignorance of the law excuses no one from compliance therewith. This principle is of Spanish origin, and we adopted it to govern and limit legal conduct in this jurisdiction. Under American law, ignorance of the law is merely a traditional rule that admits of exceptions. Moreover, the *Jacksonville* ordinance was declared unconstitutional on account of **specific provisions thereof, which are *not* found in Article 202 (2)**. x x x [T]he U.S. Supreme Court in *Jacksonville* declared the ordinance unconstitutional, because such activities or habits as **nightwalking, wandering or strolling around without any lawful purpose or object, habitual loafing**, **habitual spending of time at places where**

alcoholic beverages are sold or served, and **living upon the earnings of wives or minor children**, which are otherwise common and normal, were declared illegal. ***But these are specific acts or activities not found in Article 202 (2)***. The closest to Article 202 (2) – "*any person found loitering about public or semi-public buildings or places, or tramping or wandering about the country or the streets without visible means of support*" – from the Jacksonville ordinance, would be "*persons wandering or strolling around from place to place without any lawful purpose or object*." But these two acts are still not the same: Article 202 (2) is qualified by "without visible means of support" while the Jacksonville ordinance prohibits wandering or strolling "without any lawful purpose or object," which was held by the U.S. Supreme Court to constitute a "trap for innocent acts."

7. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS AGAINST UNREASONABLE SEARCHES AND WARRANTLESS ARREST; REQUIREMENT OF PROBABLE CAUSE; PURPOSE; CASE AT BAR.— Under the Constitution, the people are guaranteed the right to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. Thus, as with any other act or offense, the requirement of **probable cause** provides an acceptable limit on police or executive authority that may otherwise be abused in relation to the search or arrest of persons found to be violating Article 202 (2). The fear exhibited by the respondents, echoing *Jacksonville*, that unfettered discretion is placed in the hands of the police to make an arrest or search, is therefore assuaged by the constitutional requirement of probable cause, which is one less than certainty or proof, but more than suspicion or possibility. Evidently, the requirement of probable cause cannot be done away with arbitrarily without pain of punishment, for, absent this requirement, the authorities are necessarily guilty of abuse. 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 of the peace officers making the arrest. The State cannot in a cavalier fashion intrude into the persons of its citizens as well as into their houses, papers and effects. The constitutional provision sheathes the private individual with an impenetrable armor against unreasonable searches and seizures. It protects the privacy and sanctity of the person himself against unlawful arrests and other forms of restraint, and prevents him from being irreversibly cut off from that domestic security which renders the lives of the most unhappy in some measure agreeable. As applied to the instant case, it appears that the police authorities have been conducting previous surveillance operations on respondents prior to their arrest. On the surface, this satisfies the probable cause requirement under our Constitution. For this reason, we are not moved by respondents' trepidation that Article 202 (2) could have been a source of police abuse in their case.

8. CRIMINAL LAW; CRIMES AGAINST DECENCY AND GOOD CUSTOMS; VAGRANCY; ARTICLE 202 (2) OF THE REVISED PENAL CODE, A PUBLIC ORDER LAW; PUBLIC ORDER LAWS, ELUCIDATED.— The streets must be protected. Our people should never dread having to ply them each day, or else we can never say that we have performed our task to our brothers and sisters. We must rid the streets of the scourge of humanity, and restore order, peace, civility, decency and morality in them. This is exactly why we have ***public order laws***, to which Article 202 (2) belongs. These laws were crafted to **maintain minimum standards of decency, morality and civility in human society**. These laws may be traced all the way back to ancient times, and today, they have also come to be associated with the struggle to improve the citizens' quality of life, which is guaranteed by our Constitution. *Civilly*, they are covered by the "abuse of rights" doctrine embodied in the preliminary articles of the Civil Code concerning Human Relations, to the end, in part, that any person who willfully causes loss or injury to another in a manner that is contrary to **morals**, **good customs** or **public policy** shall compensate the latter for the damage. This provision is, together with the

succeeding articles on human relations, intended to embody certain basic principles "that are to be observed for the rightful relationship between human beings and for the stability of the social order." x x x *Criminally*, public order laws encompass a whole range of acts – from public indecencies and immoralities, to public nuisances, to disorderly conduct. The acts punished are made illegal by their offensiveness to society's basic sensibilities and their adverse effect on the quality of life of the people of society. For example, the issuance or making of a bouncing check is deemed a public nuisance, a crime against public order that must be abated. As a matter of public policy, the failure to turn over the proceeds of the sale of the goods covered by a trust receipt or to return said goods, if not sold, is a public nuisance to be abated by the imposition of penal sanctions. Thus, public nuisances must be abated because they have the effect of interfering with the comfortable enjoyment of life or property by members of a community.

9. ID.; ID.; ID.; A PUBLIC ORDER CRIME.— Vagrancy must not be so lightly treated as to be considered constitutionally offensive. It is a public order crime which punishes persons for conducting themselves, at a certain place and time which orderly society finds unusual, under such conditions that are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society, as would engender a justifiable concern for the safety and well-being of members of the community.

10. ID.; ID.; ID.; ARTICLE 202 (2) OF THE REVISED PENAL CODE, PRESUMED VALID AND CONSTITUTIONAL; RATIONALE.— x x x Article 202 (2) should be presumed valid and constitutional. When confronted with a constitutional question, it is elementary that every court must approach it with grave care and considerable caution bearing in mind that every statute is presumed valid and every reasonable doubt should be resolved in favor of its constitutionality. The policy of our courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain, this presumption is based on the doctrine of separation of powers which enjoins upon each department a becoming respect for the acts of the other departments. The theory is that as the joint act of Congress

and the President of the Philippines, a law has been carefully studied, crafted and determined to be in accordance with the fundamental law before it was finally enacted. It must not be forgotten that police power is an inherent attribute of sovereignty. It has been defined as the power vested by the Constitution in the legislature to make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth, and for the subjects of the same. The power is plenary and its scope is vast and pervasive, reaching and justifying measures for public health, public safety, public morals, and the general welfare. As an obvious police power measure, Article 202 (2) must therefore be viewed in a constitutional light.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Women's Legal Bureau, Inc.-Legal Advocates for Women Network for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

If a man is called to be a street sweeper, he should sweep streets even as Michelangelo painted, or Beethoven composed music, or Shakespeare wrote poetry. He should sweep streets so well that all the hosts of Heaven and Earth will pause to say, here lived a great street sweeper who did his job well.

– Martin Luther King, Jr.

Assailed in this petition for review on *certiorari* is the July 29, 2005 Order[1] of Branch 11, Davao City Regional Trial Court in Special Civil Case No. 30-500-2004 granting respondents' Petition for *Certiorari* and declaring paragraph 2 of Article 202 of the Revised Penal Code unconstitutional.

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[1] Records, pp. 108-113; penned by Judge Virginia Hofileña-Europa.

Respondents Evangeline Siton and Krystel Kate Sagarano were charged with vagrancy pursuant to Article 202 (2) of the Revised Penal Code in two separate Informations dated November 18, 2003, docketed as Criminal Case Nos. 115,716-C-2003 and 115,717-C-2003 and raffled to Branch 3 of the Municipal Trial Court in Cities, Davao City. The Informations, read:

That on or about November 14, 2003, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, willfully, unlawfully and feloniously wandered and loitered around San Pedro and Legaspi Streets, this City, without any visible means to support herself nor lawful and justifiable purpose.[2]

Article 202 of the Revised Penal Code provides:

Art. 202. *Vagrants and prostitutes; penalty.* — The following are vagrants:

1. Any person having no apparent means of subsistence, who has the physical ability to work and who neglects to apply himself or herself to some lawful calling;

2. Any person found loitering about public or semi-public buildings or places or tramping or wandering about the country or the streets without visible means of support;

3. Any idle or dissolute person who lodges in houses of ill fame; ruffians or pimps and those who habitually associate with prostitutes;

4. Any person who, not being included in the provisions of other articles of this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose;

5. Prostitutes.

For the purposes of this article, women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes.

Any person found guilty of any of the offenses covered by this articles shall be punished by *arresto menor* or a fine not exceeding

[2] *Rollo*, p. 25.

200 pesos, and in case of recidivism, by *arresto mayor* in its medium period to *prision correccional* in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court.

Instead of submitting their counter-affidavits as directed, respondents filed separate Motions to Quash[3] on the ground that Article 202 (2) is unconstitutional for being vague and overbroad.

In an Order[4] dated April 28, 2004, the municipal trial court denied the motions and directed respondents anew to file their respective counter-affidavits. The municipal trial court also declared that the law on vagrancy was enacted pursuant to the State's police power and justified by the Latin maxim "*salus populi est suprem(a) lex*," which calls for the subordination of individual benefit to the interest of the greater number, thus:

> Our law on vagrancy was enacted pursuant to the police power of the State. An authority on police power, Professor Freund describes laconically police power "as the power of promoting public welfare by restraining and regulating the use of liberty and property." (Citations omitted). In fact the person's acts and acquisitions are hemmed in by the police power of the state. The justification found in the Latin maxim, *salus populi est supreme* (sic) *lex*" (the god of the people is the Supreme Law). This calls for the subordination of individual benefit to the interests of the greater number.In the case at bar the affidavit of the arresting police officer, SPO1 JAY PLAZA with Annex "A" lucidly shows that there was a prior surveillance conducted in view of the reports that vagrants and prostitutes proliferate in the place where the two accused (among other women) were wandering and in the wee hours of night and soliciting male customer. Thus, on that basis the prosecution should be given a leeway to prove its case. Thus, in the interest of substantial justice, both prosecution and defense must be given their day in Court: the prosecution proof of the crime, and the author thereof; the defense, to show that the acts of the accused in the indictment can't be categorized as a crime.[5]

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[3] Records, pp. 37-76.

[4] *Id.* at 31-34; penned by Presiding Judge Romeo C. Abarracin.

[5] *Id.* at 33.

The municipal trial court also noted that in the affidavit of the arresting police officer, SPO1 Jay Plaza, it was stated that there was a prior surveillance conducted on the two accused in an area reported to be frequented by vagrants and prostitutes who solicited sexual favors. Hence, the prosecution should be given the opportunity to prove the crime, and the defense to rebut the evidence.

Respondents thus filed an original petition for *certiorari* and prohibition with the Regional Trial Court of Davao City,[6] directly challenging the constitutionality of the anti-vagrancy law, claiming that the definition of the crime of vagrancy under Article 202 (2), apart from being vague, results as well in an arbitrary identification of violators, since the definition of the crime includes in its coverage persons who are otherwise performing ordinary peaceful acts. They likewise claimed that Article 202 (2) violated the equal protection clause under the Constitution because it discriminates against the poor and unemployed, thus permitting an arbitrary and unreasonable classification.

The State, through the Office of the Solicitor General, argued that pursuant to the Court's ruling in *Estrada v. Sandiganbayan*,[7] the overbreadth and vagueness doctrines apply only to free speech cases and not to penal statutes. It also asserted that Article 202 (2) must be presumed valid and constitutional, since the respondents failed to overcome this presumption.

On July 29, 2005, the Regional Trial Court issued the assailed Order granting the petition, the dispositive portion of which reads:

> WHEREFORE, PRESCINDING FROM THE FOREGOING, the instant Petition is hereby GRANTED. Paragraph 2 of Article 202 of the Revised Penal Code is hereby declared unconstitutional and the Order of the court *a quo*, dated April 28, 2004, denying the petitioners'

[6] *Id.* at 31. Docketed as Special Civil Case No. 30-500-2004 and raffled to Branch 11 of the Regional Trial Court of Davao City.

[7] G.R. No. 148560, November 19, 2001, 369 SCRA 394.

Motion to Quash is set aside and the said court is ordered to dismiss the subject criminal cases against the petitioners pending before it.

SO ORDERED.[8]

In declaring Article 202 (2) unconstitutional, the trial court opined that the law is vague and it violated the equal protection clause. It held that the "void for vagueness" doctrine is equally applicable in testing the validity of penal statutes. Citing *Papachristou v. City of Jacksonville*,[9] where an anti vagrancy ordinance was struck down as unconstitutional by the Supreme Court of the United States, the trial court ruled:

> The U.S. Supreme Court's justifications for striking down the Jacksonville Vagrancy Ordinance are equally applicable to paragraph 2 of Article 202 of the Revised Penal Code.
>
> Indeed, to authorize a police officer to arrest a person for being "found loitering about public or semi-public buildings or places or tramping or wandering about the country or the streets without visible means of support" offers too wide a latitude for arbitrary determinations as to who should be arrested and who should not.
>
> Loitering about and wandering have become national pastimes particularly in these times of recession when there are many who are "without visible means of support" not by reason of choice but by force of circumstance as borne out by the high unemployment rate in the entire country.
>
> To authorize law enforcement authorities to arrest someone for nearly no other reason than the fact that he cannot find gainful employment would indeed be adding insult to injury.[10]

On its pronouncement that Article 202 (2) violated the equal protection clause of the Constitution, the trial court declared:

> The application of the Anti-Vagrancy Law, crafted in the 1930s, to our situation at present runs afoul of the equal protection clause of the constitution as it offers no reasonable classification between those covered by the law and those who are not.

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[8] *Rollo*, p. 31.

[9] 405 U.S. 156, 31 L.Ed. 2d 110 (1972).

[10] *Rollo*, p. 31.

Class legislation is such legislation which denies rights to one which are accorded to others, or inflicts upon one individual a more severe penalty than is imposed upon another in like case offending.

Applying this to the case at bar, since the definition of Vagrancy under Article 202 of the Revised Penal Code offers no guidelines or any other reasonable indicators to differentiate those who have no visible means of support by force of circumstance and those who choose to loiter about and bum around, who are the proper subjects of vagrancy legislation, it cannot pass a judicial scrutiny of its constitutionality.[11]

Hence, this petition for review on *certiorari* raising the sole issue of:

WHETHER THE REGIONAL TRIAL COURT COMMITTED A REVERSIBLE ERROR IN DECLARING UNCONSTITUTIONAL ARTICLE 202 (2) OF THE REVISED PENAL CODE[12]

Petitioner argues that every statute is presumed valid and all reasonable doubts should be resolved in favor of its constitutionality; that, citing *Romualdez v. Sandiganbayan*,[13] the overbreadth and vagueness doctrines have special application to free-speech cases only and are not appropriate for testing the validity of penal statutes; that respondents failed to overcome the presumed validity of the statute, failing to prove that it was vague under the standards set out by the Courts; and that the State may regulate individual conduct for the promotion of public welfare in the exercise of its police power.

On the other hand, respondents argue against the limited application of the overbreadth and vagueness doctrines. They insist that Article 202 (2) on its face violates the constitutionally-guaranteed rights to due process and the equal protection of the laws; that the due process vagueness standard, as distinguished from the free speech vagueness doctrine, is adequate to declare Article 202 (2) unconstitutional and void on its face;

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[11] *Id.*

[12] *Id.* at 11.

[13] G.R. No. 152259, July 29, 2004, 435 SCRA 371.

and that the presumption of constitutionality was adequately overthrown.

The Court finds for petitioner.

The power to define crimes and prescribe their corresponding penalties is legislative in nature and inherent in the sovereign power of the state to maintain social order as an aspect of police power. The legislature may even forbid and penalize acts formerly considered innocent and lawful provided that no constitutional rights have been abridged.[14] However, in exercising its power to declare what acts constitute a crime, the legislature must inform the citizen with reasonable precision what acts it intends to prohibit so that he may have a certain understandable rule of conduct and know what acts it is his duty to avoid.[15] This requirement has come to be known as the **void-for-vagueness doctrine** which states that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."[16]

In *Spouses Romualdez v. COMELEC*,[17] the Court recognized the application of the void-for-vagueness doctrine to criminal statutes in appropriate cases. The Court therein held:

> At the outset, we declare that under these terms, the opinions of the dissent which seek to bring to the fore the purported ambiguities of a long list of provisions in Republic Act No. 8189 can be deemed as a facial challenge. An appropriate "as applied" challenge in the instant Petition should be limited only to Section 45 (j) in relation to Sections 10 (g) and (j) of Republic Act No. 8189 – the provisions upon which petitioners are charged. An expanded examination of the law covering provisions which are alien to petitioners' case would be antagonistic to the rudiment that for judicial review to be exercised,

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[14] 21 Am Jur §§ 12, 13.

[15] *Musser v. Utah*, 333 U.S. 95; *Giaccio v. Pennsylvania*, 382 U.S. 339; *U.S. v. Brewer*, 139 U.S. 278, 35 L.Ed. 190, 193.

[16] *Estrada v. Sandiganbayan*, *supra* note 6.

[17] *Supra* note 12.

there must be an existing case or controversy that is appropriate or ripe for determination, and not conjectural or anticipatory.[18]

The first statute punishing vagrancy – Act No. 519 – was modeled after American vagrancy statutes and passed by the Philippine Commission in 1902. The Penal Code of Spain of 1870 which was in force in this country up to December 31, 1931 did not contain a provision on vagrancy.[19] While historically an Anglo-American concept of crime prevention, the law on vagrancy was included by the Philippine legislature as a permanent feature of the Revised Penal Code in Article 202 thereof which, to repeat, provides:

ART. 202. *Vagrants and prostitutes; penalty*. – The following are vagrants:

1. Any person having no apparent means of subsistence, who has the physical ability to work and who neglects to apply himself or herself to some lawful calling;

2. Any person found loitering about public or semi-public buildings or places, or tramping or wandering about the country or the streets without visible means of support;

3. Any idle or dissolute person who lodges in houses of ill-fame; ruffians or pimps and those who habitually associate with prostitutes;

4. Any person who, not being included in the provisions of other articles of this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose;

5. Prostitutes.

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Any person found guilty of any of the offenses covered by this article shall be punished by *arresto menor* or a fine not exceeding 200 pesos, and in case of recidivism, by *arresto mayor* in its medium period to *prision correccional* in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court.

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[18] *Id.* at 420.

[19] 57 P.L.J. 421 (1982).

In the instant case, the assailed provision is paragraph (2), which defines a vagrant as any person found loitering about public or semi-public buildings or places, or tramping or wandering about the country or the streets without visible means of support. This provision was based on the second clause of Section 1 of Act No. 519 which defined "vagrant" as "*every person found loitering about saloons or dramshops or gambling houses, or tramping or straying through the country without visible means of support*." The second clause was essentially retained with the modification that the places under which the offense might be committed is now expressed in general terms – public or semi-public places.

The Regional Trial Court, in asserting the unconstitutionality of Article 202 (2), take support mainly from the U.S. Supreme Court's opinion in the *Papachristou v. City of Jacksonville*[20] case, which in essence declares:

> Living under a rule of law entails various suppositions, one of which is that "[all persons] are entitled to be informed as to what the State commands or forbids." *Lanzetta v. New Jersey*, 306 U. S. 451, 306 U. S. 453.
>
> Lanzetta is one of a well recognized group of cases insisting that the law give fair notice of the offending conduct. See *Connally v. General Construction Co.*, 269 U. S. 385, 269 U. S. 391; *Cline v. Frink Dairy Co.*, 274 U. S. 445; *United States v. Cohen Grocery Co.*, 255 U. S. 81. In the field of regulatory statutes governing business activities, where the acts limited are in a narrow category, greater leeway is allowed. *Boyce Motor Lines, Inc. v. United States*, 342 U. S. 337; *United States v. National Dairy Products Corp.*, 372 U. S. 29; *United States v. Petrillo*, 332 U. S. 1.
>
> The poor among us, the minorities, the average householder, are not in business and not alerted to the regulatory schemes of vagrancy laws; and we assume they would have no understanding of their meaning and impact if they read them. Nor are they protected from being caught in the vagrancy net by the necessity of having a specific intent to commit an unlawful act. See *Screws v. United States*, 325 U. S. 91; *Boyce Motor Lines, Inc. v. United States*, *supra*.

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[20] *Supra* note 8.

The Jacksonville ordinance makes criminal activities which, by modern standards, are normally innocent. "Nightwalking" is one. Florida construes the ordinance not to make criminal one night's wandering, *Johnson v. State,* 202 So.2d at 855, only the "habitual" wanderer or, as the ordinance describes it, "common night walkers." We know, however, from experience that sleepless people often walk at night, perhaps hopeful that sleep-inducing relaxation will result.

Luis Munoz-Marin, former Governor of Puerto Rico, commented once that "loafing" was a national virtue in his Commonwealth, and that it should be encouraged. It is, however, a crime in Jacksonville.

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Persons "wandering or strolling" from place to place have been extolled by Walt Whitman and Vachel Lindsay. The qualification "without any lawful purpose or object" may be a trap for innocent acts. Persons "neglecting all lawful business and habitually spending their time by frequenting . . . places where alcoholic beverages are sold or served" would literally embrace many members of golf clubs and city clubs.

Walkers and strollers and wanderers may be going to or coming from a burglary. Loafers or loiterers may be "casing" a place for a holdup. Letting one's wife support him is an intra-family matter, and normally of no concern to the police. Yet it may, of course, be the setting for numerous crimes.

The difficulty is that these activities are historically part of the amenities of life as we have known them. They are not mentioned in the Constitution or in the Bill of Rights. These unwritten amenities have been, in part, responsible for giving our people the feeling of independence and self-confidence, the feeling of creativity. These amenities have dignified the right of dissent, and have honored the right to be nonconformists and the right to defy submissiveness. They have encouraged lives of high spirits, rather than hushed, suffocating silence.

x x x x x x x x x

Where the list of crimes is so all-inclusive and generalized as the one in this ordinance, those convicted may be punished for no more than vindicating affronts to police authority:

> "The common ground which brings such a motley assortment of human troubles before the magistrates in vagrancy-type

> proceedings is the procedural laxity which permits 'conviction' for almost any kind of conduct and the existence of the House of Correction as an easy and convenient dumping-ground for problems that appear to have no other immediate solution." Foote, Vagrancy-Type Law and Its Administration, 104 U.Pa.L.Rev. 603, 631.
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> Another aspect of the ordinance's vagueness appears when we focus not on the lack of notice given a potential offender, but on the effect of the unfettered discretion it places in the hands of the Jacksonville police. Caleb Foote, an early student of this subject, has called the vagrancy-type law as offering "punishment by analogy." Such crimes, though long common in Russia, are not compatible with our constitutional system.
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> A presumption that people who might walk or loaf or loiter or stroll or frequent houses where liquor is sold, or who are supported by their wives or who look suspicious to the police are to become future criminals is too precarious for a rule of law. The implicit presumption in these generalized vagrancy standards — that crime is being nipped in the bud — is too extravagant to deserve extended treatment. Of course, vagrancy statutes are useful to the police. Of course, they are nets making easy the roundup of so-called undesirables. But the rule of law implies equality and justice in its application. Vagrancy laws of the Jacksonville type teach that the scales of justice are so tipped that even-handed administration of the law is not possible. The rule of law, evenly applied to minorities as well as majorities, to the poor as well as the rich, is the great mucilage that holds society together.[21]

The underlying principles in *Papachristou* are that: 1) the assailed Jacksonville ordinance "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute"; and 2) it encourages or promotes opportunities for the application of discriminatory law enforcement.

The said underlying principle in *Papachristou* that the Jacksonville ordinance, or Article 202 (2) in this case, fails to

[21] *Supra* note 8 at 405 U.S. 163-171.

give fair notice of what constitutes forbidden conduct, finds no application here because under our legal system, ignorance of the law excuses no one from compliance therewith.[22] This principle is of Spanish origin, and we adopted it to govern and limit legal conduct in this jurisdiction. Under American law, ignorance of the law is merely a traditional rule that admits of exceptions.[23]

Moreover, the *Jacksonville* ordinance was declared unconstitutional on account of **specific provisions thereof, which are *not* found in Article 202 (2)**. The ordinance (Jacksonville Ordinance Code § 257) provided, as follows:

> Rogues and vagabonds, or dissolute persons who go about begging; common gamblers, persons who use juggling or unlawful games or plays, common drunkards, common night walkers, thieves, pilferers or pickpockets, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and

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[22] CIVIL CODE, Article 3.

[23] *Bryan v. United States* (96-8422), 122 F.3d 90. The Court held:

> Petitioner next argues that we must read §924(a)(1)(D) to require knowledge of the law because of our interpretation of "willfully" in two other contexts. In certain cases involving willful violations of the tax laws, we have concluded that the jury must find that the defendant was aware of the specific provision of the tax code that he was charged with violating. See, *e.g.*, *Cheek* v. *United States*, 498 U.S. 192, 201 (1991). Similarly, in order to satisfy a willful violation in *Ratzlaf*, we concluded that the jury had to find that the defendant knew that his structuring of cash transactions to avoid a reporting requirement was unlawful. See 510 U.S., at 138, 149. Those cases, however, are readily distinguishable. Both the tax cases and *Ratzlaf* involved highly technical statutes that presented the danger of ensnaring individuals engaged in apparently innocent conduct. As a result, we held that these statutes "carv[e] out an exception to the **traditional rule**" that ignorance of the law is no excuse and require that the defendant have knowledge of the law. The danger of convicting individuals engaged in apparently innocent activity that motivated our decisions in the tax cases and *Ratzlaf* is not present here because the jury found that this petitioner knew that his conduct was unlawful.
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> Thus, the willfulness requirement of §924(a)(1)(D) does not carve out an exception to the traditional rule that ignorance of the law is no excuse; knowledge that the conduct is unlawful is all that is required. (Emphasis supplied)

brawlers, persons wandering or strolling around from place to place without any lawful purpose or object, habitual loafers, disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses, or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children shall be deemed vagrants and, upon conviction in the Municipal Court shall be punished as provided for Class D offenses.

Thus, the U.S. Supreme Court in *Jacksonville* declared the ordinance unconstitutional, because such activities or habits as **nightwalking**, **wandering or strolling around without any lawful purpose or object**, **habitual loafing**, **habitual spending of time at places where alcoholic beverages are sold or served**, and **living upon the earnings of wives or minor children**, which are otherwise common and normal, were declared illegal. ***But these are specific acts or activities not found in Article 202 (2)***. The closest to Article 202 (2) – "*any person found loitering about public or semi-public buildings or places, or tramping or wandering about the country or the streets without visible means of support*" – from the Jacksonville ordinance, would be "*persons wandering or strolling around from place to place without any lawful purpose or object*." But these two acts are still not the same: Article 202 (2) is qualified by "without visible means of support" while the Jacksonville ordinance prohibits wandering or strolling "without any lawful purpose or object," which was held by the U.S. Supreme Court to constitute a "trap for innocent acts."

Under the Constitution, the people are guaranteed the right to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.[24] Thus, as with any other act or offense,

[24] CONSTITUTION, Art. III, Sec. 2.

the requirement of **probable cause** provides an acceptable limit on police or executive authority that may otherwise be abused in relation to the search or arrest of persons found to be violating Article 202 (2). The fear exhibited by the respondents, echoing *Jacksonville*, that unfettered discretion is placed in the hands of the police to make an arrest or search, is therefore assuaged by the constitutional requirement of probable cause, which is one less than certainty or proof, but more than suspicion or possibility.[25]

Evidently, the requirement of probable cause cannot be done away with arbitrarily without pain of punishment, for, absent this requirement, the authorities are necessarily guilty of abuse. 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 of the peace officers making the arrest.[26]

The State cannot in a cavalier fashion intrude into the persons of its citizens as well as into their houses, papers and effects. The constitutional provision sheathes the private individual with an impenetrable armor against unreasonable searches and seizures. It protects the privacy and sanctity of the person himself against unlawful arrests and other forms of restraint, and prevents him from being irreversibly cut off from that domestic security which renders the lives of the most unhappy in some measure agreeable.[27]

As applied to the instant case, it appears that the police authorities have been conducting previous surveillance operations

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[25] 79 C.J.S., Search and Seizures, Sec. 74, 865.

[26] *People v. Molina*, G.R. No. 133917, February 19, 2001, 352 SCRA 174.

[27] *People v. Bolasa*, G.R. No. 125754, December 22, 1999, 321 SCRA 459.

on respondents prior to their arrest. On the surface, this satisfies the probable cause requirement under our Constitution. For this reason, we are not moved by respondents' trepidation that Article 202 (2) could have been a source of police abuse in their case.

Since the Revised Penal Code took effect in 1932, no challenge has ever been made upon the constitutionality of Article 202 except now. Instead, throughout the years, we have witnessed the streets and parks become dangerous and unsafe, a haven for beggars, harassing "watch-your-car" boys, petty thieves and robbers, pickpockets, swindlers, gangs, prostitutes, and individuals performing acts that go beyond decency and morality, if not basic humanity. The streets and parks have become the training ground for petty offenders who graduate into hardened and battle-scarred criminals. Everyday, the news is rife with reports of innocent and hardworking people being robbed, swindled, harassed or mauled – if not killed – by the scourge of the streets. Blue collar workers are robbed straight from withdrawing hard-earned money from the ATMs (automated teller machines); students are held up for having to use and thus exhibit publicly their mobile phones; frail and helpless men are mauled by thrill-seeking gangs; innocent passers-by are stabbed to death by rowdy drunken men walking the streets; fair-looking or pretty women are stalked and harassed, if not abducted, raped and then killed; robbers, thieves, pickpockets and snatchers case streets and parks for possible victims; the old are swindled of their life savings by conniving streetsmart bilkers and con artists on the prowl; beggars endlessly pester and panhandle pedestrians and commuters, posing a health threat and putting law-abiding drivers and citizens at risk of running them over. All these happen on the streets and in public places, day or night.

The streets must be protected. Our people should never dread having to ply them each day, or else we can never say that we have performed our task to our brothers and sisters. We must rid the streets of the scourge of humanity, and restore order, peace, civility, decency and morality in them.

This is exactly why we have ***public order laws***, to which Article 202 (2) belongs. These laws were crafted to **maintain minimum standards of decency, morality and civility in human society**. These laws may be traced all the way back to ancient times, and today, they have also come to be associated with the struggle to improve the citizens' quality of life, which is guaranteed by our Constitution.[28] *Civilly*, they are covered by the "abuse of rights" doctrine embodied in the preliminary articles of the Civil Code concerning Human Relations, to the end, in part, that any person who willfully causes loss or injury to another in a manner that is contrary to **morals**, **good customs** or **public policy** shall compensate the latter for the damage.[29] This provision is, together with the succeeding articles on human relations, intended to embody certain basic principles "that are to be observed for the rightful relationship between human beings and for the stability of the social order."[30]

In civil law, for example, the summary remedy of ejectment is intended to prevent criminal disorder and breaches of the peace and to discourage those who, believing themselves entitled to the possession of the property, resort to force rather than to some appropriate action in court to assert their claims.[31] Any private person may abate a public nuisance which is specially injurious to him by removing, or if necessary, by destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury.[32]

Criminally, public order laws encompass a whole range of acts – from public indecencies and immoralities, to public

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[28] CONSTITUTION, Article II, Section 9: The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

[29] CIVIL CODE, Article 19.

[30] *Sea Commercial Company Inc. v. Court of Appeals*, G.R. No. 122823, November 25, 1999, 319 SCRA 210.

[31] *Drilon v. Gaurana*, No. L-35482, April 30, 1987, 149 SCRA 342.

[32] CIVIL CODE, Article 704.

nuisances, to disorderly conduct. The acts punished are made illegal by their offensiveness to society's basic sensibilities and their adverse effect on the quality of life of the people of society. For example, the issuance or making of a bouncing check is deemed a public nuisance, a crime against public order that must be abated.[33] As a matter of public policy, the failure to turn over the proceeds of the sale of the goods covered by a trust receipt or to return said goods, if not sold, is a public nuisance to be abated by the imposition of penal sanctions.[34] Thus, public nuisances must be abated because they have the effect of interfering with the comfortable enjoyment of life or property by members of a community.

Article 202 (2) does not violate the equal protection clause; neither does it discriminate against the poor and the unemployed. Offenders of public order laws are punished not for their status, as for being poor or unemployed, but for conducting themselves under such circumstances as to endanger the public peace or cause alarm and apprehension in the community. Being poor or unemployed is not a license or a justification to act indecently or to engage in immoral conduct.

Vagrancy must not be so lightly treated as to be considered constitutionally offensive. It is a public order crime which punishes persons for conducting themselves, at a certain place and time which orderly society finds unusual, under such conditions that are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society, as would engender a justifiable concern for the safety and well-being of members of the community.

Instead of taking an active position declaring public order laws unconstitutional, the State should train its eye on their effective implementation, because it is in this area that the Court perceives difficulties. Red light districts abound, gangs

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[33] *Ruiz v. People*, G.R. No. 160893, November 18, 2005, 475 SCRA 476.

[34] *Tiomico v. Court of Appeals*, G.R. No. 122539, March 4, 1999, 304 SCRA 216.

work the streets in the wee hours of the morning, dangerous robbers and thieves ply their trade in the trains stations, drunken men terrorize law-abiding citizens late at night and urinate on otherwise decent corners of our streets. Rugby-sniffing individuals crowd our national parks and busy intersections. Prostitutes wait for customers by the roadside all around the metropolis, some even venture in bars and restaurants. Drug-crazed men loiter around dark avenues waiting to pounce on helpless citizens. Dangerous groups wander around, casing homes and establishments for their next hit. The streets must be made safe once more. Though a man's house is his castle,[35] outside on the streets, the king is fair game.

The dangerous streets must surrender to orderly society.

Finally, we agree with the position of the State that first and foremost, Article 202 (2) should be presumed valid and constitutional. When confronted with a constitutional question, it is elementary that every court must approach it with grave care and considerable caution bearing in mind that every statute is presumed valid and every reasonable doubt should be resolved in favor of its constitutionality.[36] The policy of our courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain, this presumption is based on the doctrine of separation of powers which enjoins upon each department a becoming respect for the acts of the other departments. The theory is that as the joint act of Congress and the President of the Philippines, a law has been carefully studied, crafted and determined to be in accordance with the fundamental law before it was finally enacted.[37]

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[35] *Villanueva v. Querubin*, G.R. No. L-26177, 48 SCRA 345.

[36] *Lacson v. Executive Secretary*, G.R. No. 128096, January 20, 1999, 301 SCRA 298.

[37] *Macasiano v. National Housing Authority*, G.R. No. 107921, July 1, 1993, 224 SCRA 236.

It must not be forgotten that police power is an inherent attribute of sovereignty. It has been defined as the power vested by the Constitution in the legislature to make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth, and for the subjects of the same. The power is plenary and its scope is vast and pervasive, reaching and justifying measures for public health, public safety, public morals, and the general welfare.[38] As an obvious police power measure, Article 202 (2) must therefore be viewed in a constitutional light.

WHEREFORE, the petition is *GRANTED*. The Decision of Branch 11 of the Regional Trial Court of Davao City in Special Civil Case No. 30-500-2004 declaring *Article 202, paragraph 2 of the Revised Penal Code UNCONSTITUTIONAL* is *REVERSED* and *SET ASIDE*.

Let the proceedings in Criminal Cases Nos. 115,716-C-2003 and 115,717-C-2003 thus continue.

No costs.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Peralta, and *Bersamin,*[*] *JJ.,* concur.

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[38] Bernas, *The 1987 Constitution of the Philippines, A Commentary*, pp. 95-98 [1996].

[*] In lieu of Associate Justice Antonio Eduardo B. Nachura per raffle dated September 16, 2009.