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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE G.R. No. 243022
PHILIPPINES, Plaintiff-Appellee, Present:

GESMUNDO, C.J.,
Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA,
GAERLAN, JJ.

— versus —

PAUL MARK MALADO y
BALANG and WARTON FRED
y LAYOGAN, Accused;
WARTON FRED y LAYOGAN,
Accused-Appellant.

Promulgated:

JUL 14 2021

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DECISION

CARANDANG, J.:

Before Us is an ordinary appeal¹ filed by accused-appellant Warton Fred y Layogan (Warton) assailing the Decision² dated September 8, 2017 of the Court of Appeals (CA) in CA-GR. CR-HC No. 07870, which affirmed the Judgment³ dated November 21, 2013 of the Regional Trial Court (RTC) of Benguet Province, Branch 9, finding him guilty of illegal possession of drugs in violation of Section 11, Article II of Republic Act No. (R.A.) 9165 or the “Comprehensive Dangerous Drugs Act of 2002.” The dispositive portion of which reads:

[Signature]

¹ CA rollo, pp. 22-23.

² Penned by Associate Justice Florito S. Macalino, with the concurrence of Associate Justices Celia C. Librea-Leagoo and Maria Elisa Sempio Diy; rollo, pp. 2-21.

³ Penned by Presiding Judge Francis A. Buliyat Sr; CA rollo, pp. 68-81.

WHEREFORE, the Court finds accused WARTON FRED y LAYOGAN and PAUL MARK MALADO y BALANG GUILTY as charged and sentence each to suffer the penalty of life imprisonment and further ordered to pay each a fine of P500,000.00.

Accused PAUL MARK MALADO y BALANG, who is no longer a minor and is presently on recognizance of his parents, is hereby cancelled.

Convict WARTON FRED y LAYOGAN and PAUL MARK MALADO y BALANG are hereby ordered to be transferred to the National Bilibid Prison, Muntinlupa City for the service of their prison term.

Furnish copies of this Judgment to the Office of the Benguet Provincial Prosecutor, the accused and their counsel, the Regional Director of PDEA, Camp Bado Dangwa, the Jail Warden of the Benguet Provincial Jail, and the parents of convict PAUL MARK MALADO y BALANG.

SO ORDERED.⁴

Antecedents

Warton and a certain Paul Mark Malado (Paul) who was then a minor were charged with illegal possession of marijuana. The accusatory portion of which reads:

That on or about the 7th day of April, 2010, at Km. 6, Betag, Municipality of La Trinidad, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding each other, without any authority of law, did then and there willfully, unlawfully and knowingly have in their possession, control and custody marijuana bricks, also known as Cannabis or Indian Hemp, a dangerous drug, having a total weight of 17,599 grams, in violation of said law.

That accused PAUL MARK MALADO y BALANG, although a minor being sixteen (16) years and eight (8) months of age at the time of the commission of the crime, acted with discernment as he knows fully well that possessing dangerous drug is wrong and is punishable under the law and that he likewise knows, understands and appreciates the consequences of his unlawful act.

CONTRARY TO LAW.⁵

⁴ Id. at 81.

⁵ Records p. 1

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Warton and Paul pleaded not guilty to the offense charged.⁶ Trial ensued. The prosecution presented six witnesses. Five of the witnesses are from the Philippine Drug Enforcement Agency – Cordillera Administrative Region (PDEA-CAR) office, namely: Agent Melody Yapes (Agent Yapes), Agent Honorari Asiong (Agent Asiong), Agent Michael Langwas (Agent Langwas), Director Edgar Apalla (Dir. Apalla), and Agent Randy Tindaan (Agent Tindaan). The other witness is Police Senior Inspector Alex Biadang Jr. (PSI Biadang Jr.), a member of the Philippine National Police (PNP), assigned as Forensic Chemical Officer at Camp Bado, Dangwa, La Trinidad, Benguet.⁷

According to the PDEA witnesses, at around 5:00 p.m. on April 7, 2010, a civilian informant (CI)⁸ went to the PDEA-CAR, at Camp Dangwa, La Trinidad, Benguet, to give a tip about an illegal drug activity. Agent Yapes referred the CI to Investigation Agent III Jeoffrey C. Tacio (IA3 Tacio), the highest-ranking officer of the day. IA3 Tacio and the CI went inside the former's office and talked for about 30 minutes. Thereafter, IA3 Tacio informed the PDEA agents that certain individuals named Paul and Warton would be delivering marijuana bricks that night in Baguio.⁹ At around 7:00 p.m., IA3 Tacio called Dir. Apalla to relay the tip given by the CI. Upon the instruction of Dir. Apalla, IA3 Tacio assembled a team to conduct an anti-narcotics operation, composed of Agents Yapes and Asiong as arresting and seizing officers, Agent Langwas as seizing officer, and Agent Mangili as back up.¹⁰

The anti-narcotics team, together with the CI, proceeded to Km. 6, La Trinidad, at the swamp area, near the entrance of the Strawberry Farm, where the CI claimed that Paul and Warton would come out from a gate of a residential house.¹¹ They arrived at around 8:30 p.m. and strategically positioned themselves: Agents Yapes, Asiong, and Langwas and the CI stayed at Pico Bar, near the left side of the entrance of the strawberry farm, while Agent Mangili stayed at the other side of the highway. IA3 Tacio stood at the waiting area for jeepneys.¹²

Two male individuals emerged from a gate at around 9:00 p.m. The CI identified the male carrying a plastic bag with blue and white stripes as Paul and the one carrying a carton as Warton. Agents Yapes, Asiong, and Langwas followed Paul and Warton while the latter were walking to the entrance of the Strawberry Farm going to the highway. Paul and Warton were already at the national highway when Paul was about to flag down a taxi.¹³ Agents Yapes and Asiong approached Paul, introduced themselves,

⁶ CA rollo, p.4.

⁷ Records, p. 47.

⁸ Agent Yapes testified that the confidential informant is a concerned citizen, a walk-in informant who is neither an agent of PDEA nor secret agent. She got the name of the informant, but she could not reveal it in open court because it is confidential; id. at 4.

⁹ TSN dated January 31, 2011, p. 29.

¹⁰ Records, p. 5.

¹¹ CA rollo, p. 34.

¹² Id. at 32-33.

¹³ Id. at 33-35.

and asked what he was carrying. When he did not respond, they instructed him to open the plastic bag, containing three objects packaged in brick form and wrapped with brown tape. They directed Paul to bring out one of the bricks, after which they smelled the odor of marijuana. To determine what was inside, Agent Yapes cut a portion of the brick. She then confirmed that it contained suspected marijuana leaves.¹⁴ She immediately seized the plastic bag from Paul,¹⁵ while Agent Asiong arrested Paul.¹⁶ Then and there, Agent Yapes, marked the seized items with her initials "MWY." The plastic bag was marked as "MWY, 4-7-2010" while the three bricks of marijuana were marked as "MWY-1, 4-7-2010," "MWY-2, 4-7-2010," and "MWY-3, 4-7-2010."¹⁷

Meanwhile, as Warton was alerted with the apprehension of his companion, Agent Langwas immediately approached him (Warton). Warton, who was then waiting three meters away from Paul, ran towards the Strawberry Farm, leaving the carton he was carrying along the pavement.¹⁸ Agents Langwas and Mangili and IA3 Tacio chased Warton for about five meters. Agent Yapes went near the carton to secure it. After Warton was successfully apprehended, Agents Langwas and Mangili brought him to the entrance of the swamp where Paul and other members of the team were waiting.¹⁹ Agent Langwas asked Warton to open the carton, revealing seven bricks wrapped in brown packaging tape similar with the contents of the plastic bag carried by Paul.²⁰ Agent Yapes immediately marked the pieces of evidence on site.²¹ The carton was marked as "MWY, 4-7-2010" and the 7 bricks of suspected marijuana found inside were labeled as "MWY-4, 4-7-2010," "MWY-5, 4-7-2010," "MWY-6, 4-7-2010," "MWY-7, 4-7-2010," "MWY-8, 4-7-2010," "MWY-9, 4-7-2010," and "MWY-10, 4-7-2010."²²

Agent Asiong noted that before she arrested Paul and Warton, she informed them of their constitutional rights.²³ The anti-narcotics team immediately brought Paul and Warton to the PDEA-CAR Office, where their identities were confirmed. There, Agent Yapes turned over the confiscated items to Agent Tindaan, the Assistant Evidence Custodian of PDEA-CAR.²⁴

Agent Tindaan and the team prepared the following documents: Joint Affidavit of Arrest,²⁵ Booking Sheets and Arrest Report,²⁶ Request for Physical Examination of Warton and Paul,²⁷ Inventory of Seized Items,²⁸

¹⁴ TSN dated January 31, 2011, pp. 33-34.

¹⁵ *CA rollo*, p. 31.

¹⁶ *Id.* at 35.

¹⁷ *Rollo*, p. 7.

¹⁸ *CA rollo*, p. 34.

¹⁹ Records, p. 5.

²⁰ TSN dated January 31, 2011, pp. 35-36.

²¹ Records, p. 5.

²² *Id.* at 7-8.

²³ *CA rollo*, p. 31.

²⁴ *Id.* at 35.

²⁵ Records, pp. 5-6.

²⁶ *Id.* at 20-21.

²⁷ *Id.* at 9.

²⁸ *Id.* at 7-8.

Request for Physical Examination of Warton and Paul,²⁹ and Request for Laboratory Examination³⁰ of the suspected marijuana bricks seized from them. Inventory of the confiscated items were done at around 1:00 a.m. of April 8, 2010 in the presence of elected *barangay* official Laurence Bagsiao, Jr., representative from ABSC-CBN Glayds Espinola, and Department of Justice (DOJ) representative Prosecutor Andres Gondayao. Agent Tindaan identified in court the Inventory³¹ that he prepared as well as the signatures of the representatives from different agencies who affixed their signatures in his presence on the said Inventory.³² Thereafter, Agent Tindaan placed the seized marijuana bricks in the PDEA evidence room.³³

In the meantime, Agent Tindaan, together with the anti-narcotics team, brought Paul and Warton to the Benguet General Hospital for physical examination. There, Paul and Warton were given Medico-legal Certificates.³⁴ When they are about to go back to the PDEA-CAR office, Paul and Warton tried to escape but the anti-narcotics team caught them. Upon his return to the PDEA-CAR office, Agent Tindaan brought out the confiscated items from the storage room. He then personally brought them to the PNP Crime Laboratory at Camp Bado, Dangwa for examination. He arrived there around 1:30 a.m.³⁵ He turned over the confiscated items and the Request for Laboratory Examination³⁶ to the Forensic Chemical Officer, PSI Biadang Jr., who personally received them as evidenced by the stamp mark found in the said Request.³⁷

PSI Biadang Jr. testified in court that after receiving the Request for Laboratory Examination and the subject specimens of suspected marijuana bricks, he compared if the descriptions written in the Request matched the markings in the specimens. After his confirmation, he proceeded to conduct three test on the specimens.³⁸ *First*, he performed a physical examination. He weighed the 10 bricks minus the wrapping used, which showed a total net weight of 17,599 grams.³⁹ *Second*, he conducted a chemical test by applying To-phenol solution on the representative sample from each of the brick of marijuana. *Third*, he performed a confirmatory test. All tests showed that the specimens turned over to him are positive for the presence of marijuana.⁴⁰ PSI Biadang Jr. stated this finding in his Chemistry Report No. D-18-2010,⁴¹ which he identified in court as Exhibit F of the prosecution.⁴²

²⁹ Id. at 9.
³⁰ Id. at 16-17.
³¹ Id. at 7-8.
³² *CA rollo*, p. 37.
³³ Id.
³⁴ Records, pp. 10-11.
³⁵ *Rollo*, p. 7.
³⁶ Records, pp. 16-17.
³⁷ Records, p. 17.
³⁸ TSN dated January 31, 2011, p. 12.
³⁹ *Rollo*, p. 7.
⁴⁰ TSN dated January 31, 2011, pp. 13-15.
⁴¹ Records, p. 14.
⁴² *CA rollo*, p. 30.



Exhibit F reads that “[s]pecimens ‘A-1 to A-3 and B-1 to B-7’ contains Marijuana, a dangerous drug.” Notably, in his Initial Laboratory Report,⁴³ PSI Biadang Jr. enumerated that specimen A pertains to the blue and white stripes plastic bag containing 3 bricks of dried suspected marijuana fruiting tops with marking MWY 4-7-2010. Specimens A-1, A-2, and A-3 refer to the marijuana bricks with markings “MWY-1, 4-7-2010,” “MWY-2, 4-7-2010,” and “MWY-3, 4-7-2010, respectively. These are the marijuana bricks confiscated from the plastic bag in Paul’s possession. On the other hand, Specimen B pertains to the one brown carton/box containing 7 bricks of dried suspected marijuana fruiting tops with marking MWY 4-7-2010. Specimens B-1, B-2, B-3, B-4, B-5, B-6, and B-7 refer to the marijuana bricks with markings “MWY-4, 4-7-2010,” “MWY-5, 4-7-2010,” “MWY-6, 4-7-2010,” “MWY-7, 4-7-2010,” “MWY-8, 4-7-2010,” “MWY-9, 4-7-2010,” and “MWY-10, 4-7-2010.” These are the marijuana bricks confiscated from the box carried by Warton.⁴⁴

PSI Biadang Jr. narrated that after examining the specimens, he sealed them and turned them over to PO2 De Los Reyes, the evidence custodian, for safekeeping. PO2 De Los Reyes kept the specimens in the PNP Evidence Room. However, PO2 De Los Reyes failed to testify because he was on sick leave due to a major knee operation. Nevertheless, PSI Biadang Jr. brought the bricks of marijuana subject of the case in court.⁴⁵ He stated that the items were in the same condition and same appearance as when he turned them over to PO2 De Los Reyes. PSI Biadang Jr. pointed to the masking tape pasted on the plastic bag with white and blue color, and on said tape is his markings, which are, his signature, canister report number (D-18-2010-A), and his initial (ADB with date April 8, 2010).⁴⁶ He also did the same with respect to the carton, which contains his marking “D-18-2010-B,” with initial “ADB April 8, 2010.”⁴⁷ Similarly, he pointed to the markings that he made to each of the bricks contained in the plastic bag and carton. He also identified the other markings found in the bricks made by the PDEA, the party who requested the laboratory examination. He said that the markings were already present when the bricks were turned over to him.⁴⁸

The defense did not present any witness. Warton and Paul waived their right to present evidence. Instead, they filed a Joint Memorandum for the Accused⁴⁹ raising the following arguments: (a) the pieces of evidence against them were inadmissible because they were seized during an illegal warrantless search; (b) while they waived their right to contest the validity of their arrest by entering their plea, this does not include a waiver of the inadmissibility of evidence seized during the illegal warrantless arrest; and (c) the PDEA agents failed to comply with Section 21, Article II of R.A. 9165 as the seized items were not inventoried and photographed.

⁴³ Records, pp. 12-13

⁴⁴ *Rollo*, p. 8.

⁴⁵ TSN dated January 31, 2011, p. 17.

⁴⁶ *Id.* at 18.

⁴⁷ *Id.* at 19.

⁴⁸ *Id.* at 22.

⁴⁹ Records, pp. 238-259.

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Ruling of the Regional Trial Court

In its Judgment⁵⁰ dated November 21, 2013, the RTC found Warton and Paul guilty of the crime charged. It ruled that the warrantless search was incidental to a lawful warrantless arrest. The PDEA agents had reasonable ground to believe that both accused were in possession of dangerous drugs based on the reliable information given by the CI, which was confirmed after their apprehension. Although the PDEA agents were not armed with a warrant, the arrest was lawful because the accused were actually committing a crime. They were caught *in flagrante delicto* of carrying bricks of marijuana for delivery to Baguio City. The RTC also considered that the strawberry farm was not a usual place of illegal drug activity, thus the PDEA agents must act instantaneously. The incident may be considered as an exigent and emergency circumstance where warrantless search is permissible.⁵¹ “As a result, there was legal basis for the PDEA agents to effect a warrantless search of the two accused’s plastic bag and box. There being probable cause and the two accused having been lawfully arrested.”⁵²

Subsequently, the RTC noted that the record shows that both accused did not question their warrantless arrest before arraignment, hence they are deemed to have waived any objection on the legality of their arrest.⁵³

Further, the RTC held that the failure of the PDEA agents to take a photograph of the seized items does not render them as inadmissible in evidence because what is important is the preservation of their integrity and evidentiary value. More, the action of PDEA agents enjoy the presumption of regularity in the absence of evidence to the contrary.⁵⁴

During the promulgation of judgment, Paul was no longer a minor, so the RTC cancelled his recognizance.⁵⁵ He did not appeal his conviction. Warton, on the other hand, appealed his conviction to the CA.⁵⁶

Ruling of the Court of Appeals

In its Decision⁵⁷ dated September 8, 2017, the CA affirmed the ruling of the RTC. It agreed that the PDEA agents had reasonable suspicion based on the CI’s information and on Warton’s behavior that he was committing a crime. Warton started to run when he saw that Paul was being apprehended by Agents Yapes and Asiong. Warton and Paul were actually committing a crime when they were apprehended, which instance falls under paragraph

⁵⁰ CA rollo, pp.68-81

⁵¹ Id. at 80.

⁵² Id.

⁵³ Id. at 78-80.

⁵⁴ Id. at 80-81.

⁵⁵ Id. at 81. See Section 34 to 36 of R.A. 9344 or the “Juvenile Justice Act of 2006,” stating that “[c]hildren detained pending trial may be released on bail or recognizance x x x.”

⁵⁶ Records, p. 294.

⁵⁷ Supra note 2.

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(a), Section 5, Rule 113 of the Rules of Court, justifying their arrest without a warrant. Thus, the search and seizure was incidental to a lawful arrest. The RTC correctly admitted the bricks of marijuana as evidence.⁵⁸

Similarly, the CA observed that the integrity and evidentiary value of the seized items were preserved despite the failure of the PDEA agents to take photographs. It noted that Agent Yapes immediately marked the seized items in the place where they were confiscated, while the inventory was made upon reaching the PDEA-CAR office in the presence of the representatives from the *barangay*, the media, and the DOJ. Referring to the Inventory of Seized Items, the CA rejected the claim that the PDEA agents failed to distinguish which marijuana bricks were in the possession of Warton.⁵⁹ Thus, it sustained Warton's conviction and penalty of life imprisonment and payment of a fine in the amount of ₱500,000.00.

Warton moved for reconsideration which the CA denied in its Resolution dated May 16, 2018.⁶⁰ He then filed a Notice of Appeal⁶¹ dated June 11, 2018. He manifested that he is adopting his Motion for Reconsideration before the CA as his supplemental brief.⁶² The People of the Philippines, through the Office of the Solicitor General (OSG), manifested that it shall no longer file a supplemental brief considering that it had exhaustively discussed the issues and legal principles involved in the case in the Brief for the Appellee dated September 16, 2016.⁶³

Arguments of Accused-Appellant

Warton insists that the marijuana bricks confiscated from him were inadmissible in evidence because they were obtained through an unlawful search. He alleges that he did not commit any crime by walking to the highway and flagging a taxi. Neither did the arresting team have personal knowledge of facts and circumstances that he just committed a crime.⁶⁴

Arguments of Plaintiff-Appellee

The OSG alleged that the CI's positive identification of Warton and Warton's act of leaving the carton that he was carrying and running away to escape from Agent Langwas are overt acts indicating that he was committing or attempting to commit a crime. These acts validated the tip of the CI. Thus, Agent Langwas was justified in arresting him for he was caught *in flagrante delicto* of carrying 7 bricks of marijuana.⁶⁵

⁵⁸ *Rollo*, p. 17.

⁵⁹ *Id.* at 20.

⁶⁰ *CA rollo*, pp. 185-188.

⁶¹ *Rollo*, p. 22.

⁶² *Id.* at 29-30.

⁶³ *Id.* at 34-35.

⁶⁴ *CA rollo*, p. 145.

⁶⁵ *Id.* at 103.

The OSG also argued that the confiscated items had been properly marked. Warton failed to show that the marijuana bricks had been tampered with. Thus, the presumption of regularity in the handling of seized items by the public officers stands.⁶⁶ The OSG furthermore averred that if Warton was truly innocent of the crime charged, he should have endeavored to defend himself in court.⁶⁷

Issue

The issues before us are: (1) whether the warrantless arrest against Warton was valid; (2) whether the warrantless search on him was unreasonable; and (3) whether Section 21, Article II of R.A. 9165 was complied with.

Ruling of the Court

The appeal is meritorious.

In cases of illegal possession or sale of dangerous drugs, the dangerous drugs itself is the *corpus delicti* of the crime. The State fails to comply with the indispensable requirement of proving the *corpus delicti* when the drug is missing or when substantial gaps occur in the chain of custody of the seized drugs as to raise doubts on the authenticity of the evidence presented.⁶⁸ But it is even worse for the State when the drug is rendered inadmissible in evidence for being a product of an unlawful search and seizure because there would be no evidence at all to support the conviction of the accused. The case of Warton falls in this category.

At the outset, We note that while Warton waived his right to object against the validity of his warrantless arrest when he entered a plea and actively participated in the trial of the case, the waiver does not preclude him from questioning the admissibility of the evidence seized.⁶⁹ The inadmissibility of the evidence is not affected when an accused fails to question the court's jurisdiction over his or her person in a timely manner. Jurisdiction over the person of an accused and the constitutional inadmissibility of evidence are separate and mutually exclusive consequences of an illegal arrest.⁷⁰

It is undisputed that the PDEA agents were not armed with a search warrant when they conducted a search and seizure on Warton. The general rule is that a search and seizure must be carried out through a judicial warrant; otherwise, such search and seizure violates Article III, Section 2⁷¹

⁶⁶ Id. at 104-105.

⁶⁷ CA rollo, p. 106.

⁶⁸ *People v. Calates*, 829 Phil. 262, 269 (2018).

⁶⁹ *Veridiano v. People*, 810 Phil. 642, 564 (2017).

⁷⁰ Id.

⁷¹ The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined

of the 1987 Constitution. Any evidence resulting from it shall be inadmissible in evidence.⁷² However, case law provides for instances when searches and seizures are considered reasonable, which are:

1. Warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence;
2. Seizure of evidence in "plain view," the elements of which are:
 - (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;
 - (b) the evidence was inadvertently discovered by the police who had the right to be where they are;
 - (c) the evidence must be immediately apparent; and
 - (d) "plain view" justified mere seizure of evidence without further search.
3. Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;
4. Consented warrantless search;
5. Customs search;
6. Stop and Frisk; and
7. Exigent and Emergency Circumstances.⁷³

Here, the RTC and the CA upheld the validity of the search on the finding that it is a warrantless search incidental to a lawful arrest, particularly an *in flagrante delicto* arrest. Thus, it is imperative that We first determine whether Warton's warrantless arrest is legal.

Rule 113, Section 5 of the Revised Rules on Criminal Procedure (Revised Rules) provides three instances when arrest may be effected even without a warrant, to wit:

Section 5. *Arrest Without Warrant; When Lawful.* – A peace officer or a private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is

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.

⁷² *Manibog v. People*, G.R. No. 211214, March 20, 2019.

⁷³ *Id.*, citing *People v. Aruta*, 351 Phil. 868, 879-880 (1998).

serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

Section 5(a) refers to an *in flagrante delicto* arrest, which requires the following for it to be valid: (a) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is done in the presence or within the view of the arresting officer (“overt act test”).⁷⁴ Section 5(b) refers to a hot pursuit arrest, which mandates that an offense has just been committed and the law enforcers have personal knowledge of facts and circumstances indicating that the person sought to be arrested has committed it. Section 5(c) deals with escapee prisoners.

Tested using the foregoing parameters, the warrantless arrest of Warton was illegal. The overt act test was not complied with. Paul and Warton were not acting suspiciously when the PDEA agents approached them. They were just waiting for a taxi near the national highway. By no stretch of imagination was flagging a taxi a criminal act. Thus, there was no overt act indicating that they have just committed, is actually committing, or is attempting to commit a crime. Jurisprudence holds that disembarking and waiting along the highway for a tricycle is not a suspicious activity.⁷⁵ In the same vein, the act of standing around with a companion and handing over something to the latter do not constitute criminal acts.⁷⁶

Nevertheless, the courts *a quo* held that Warton gave the impression that he was committing a crime because he ran when Agent Langwas approached him. Warton’s behavior gave the PDEA agents probable cause to conduct the warrantless search and seizure. Suffice it to state that the Brief of the Appellee belies this finding. What prompted the PDEA agents to apprehend Paul and Warton are the tip of the CI, the alleged “suspicious-looking plastic bag/carton,” and Paul’s act of hailing a taxi. Thus, the OSG stated: “[u]pon pointing to the PDEA Agents and confirming the that the two (2) male individuals were Warton and Paul, the PDEA Agents discreetly followed them where they are going. When the aforesaid target persons proceeded to the entrance of Strawberry Farm, which was near the national highway, and Paul was then about to flag down a taxi, these circumstances supplied probable cause for the PDEA agents to then and there conduct a warrantless search since the suspicion that they might be committing a crime found factual support only at that specific moment that their subjects were about to leave the Strawberry Farm, carrying with them a carton and a plastic bag suspected to contain dangerous drugs.”⁷⁷

Similarly, the arrest of Warton does not also fall under the hot pursuit arrest and the arrest of escapee prisoners, which are the second and third

⁷⁴ *Veridiano v. People*, 810 Phil. 642, 658 (2017), citing *People v. Cogaed*, 740 Phil. 212, 238 (2014).

⁷⁵ *People v. Racho*, 640 Phil. 669 (2010).

⁷⁶ *Comerciante v. People*, 764 Phil. 627, 640-641 (2015).

⁷⁷ CA rollo, p. 103.

exceptions for warrantless arrest under Section 5, Rule 113 of the Revised Rules. A hot pursuit arrest requires that the arresting officers have personal knowledge of facts and circumstances that the person sought to be arrested has just committed a crime.⁷⁸ Here, Agent Yapes testified that she and the rest of the team had no personal knowledge that Paul and Warton were in possession of Marijuana and that were it not for the information given to them by the CI there would be no arrest or search and seizure.⁷⁹ The testimony of Agent Yapes during her redirect examination in the RTC is reproduced below:

Q: Madam Witness you confronted and arrested the two accused because of the information given to you by the informant?

A: Yes, sir.

Q: **And as you said a while ago that if the informant did not inform you that they were in possession of marijuana you have not accosted and arrested them?**

A: Yes, sir.

Q: **And you will not arrest them if they will flag down a taxi?**

A: **Definitely no sir.**

Q: You will not just arrest them if they will just walk towards the highway?

A: Yes, sir.

Q: And you prove the information given to you by the informant with your group when you arrested the two accused?

A: Yes, sir.⁸⁰ (Emphasis supplied)

Warton was not also an escapee prisoner at the time of the arrest.

Meanwhile, often confused with warrantless search incidental to a lawful arrest is "stop and frisk." A stop and frisk search refers to the act of a police officer of stopping a citizen on the street, interrogating him/her, and patting him/her for weapons or contrabands. The allowable scope of the search is thus limited to a protective search of outer clothing for weapons. While probable cause is not required, a stop and frisk search cannot be validated on the basis of suspicion or hunch. The law enforcers must have a genuine reason to believe, based on their experience and the circumstances of each case, that criminal activity may be afoot. Thus, in *Manibog v.*

⁷⁸ Paragraph (b), Section 5, Rule 113 of the Revised Rules on Criminal Procedure.

⁷⁹ CA rollo, p. 71.

⁸⁰ TSN dated February 21, 2011, p. 10.

People,⁸¹ We declared that for a valid stop and frisk search, the arresting officer must have had personal knowledge of facts, which would engender a reasonable degree of suspicion of an illicit act. He/she should have personally observed two or more suspicious circumstances, the totality of which would then create a reasonable inference of criminal activity to compel the arresting officer to investigate further.⁸²

Manibog involved a violation of the gun ban under the Omnibus Election Code. We upheld the warrantless search on the accused because the circumstances warrant a stop and frisk search. We noted that the combination of the police asset's tip that the accused was in possession of a gun in his waistband outside of his residence and the arresting officers' visual confirmation of a gun-shaped object tucked in accused's waistband led to a reasonable suspicion that he was carrying a gun during election gun ban. These two circumstances sufficed as a genuine reason for the arresting officers to conduct a stop and frisk search.

The present case does not fall under a stop and frisk search. As stated previously, the PDEA agents merely relied on the tip of the CI. The act of Paul of flagging a taxi is not even a suspicious activity that would engender a reasonable inference that they are committing a crime. Were it not for the CI's tip, the PDEA would not have approached Warton and Paul. Warton's act of running away and dropping the box he was carrying are merely the result of the PDEA's illegal warrantless search and arrest on Paul. The illegal warrantless search of the plastic bag held by Paul and his subsequent illegal warrantless arrest cannot cause or result to a valid warrantless arrest on the part of Warton.

In fine, the warrantless search conducted by the PDEA agents was unlawful. The 1987 Constitution provides that any evidence obtained through an unreasonable search and seizure is inadmissible for any purpose in any proceeding. It is deemed tainted and should be excluded for being the fruit of a poisonous tree.⁸³ Thus, there is no evidence to sustain Warton's conviction for illegal possession of dangerous drugs. His acquittal is in order.

In this connection, We note that the acquittal of Warton should benefit Paul, even if he did not appeal his conviction to the CA. We cannot disjoin the two because there is only one transaction in this case. It was Paul's act of flagging down a taxi which precipitated the event that led to the warrantless arrest and search on both him and Warton. We already declared that flagging down a taxi, without more, is an innocent act which does not engender a probable cause to conduct a warrantless arrest and search. Paul's warrantless arrest is therefore illegal. Likewise, the warrantless search of his belongings is invalid. The evidence obtained from the search is inadmissible in evidence in any proceeding for any purpose. Accordingly, there is nothing to support

⁸¹ G.R. No. 211214, March 20, 2019.

⁸² Id.

⁸³ Supra note 75.

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Paul's conviction. Paul should not be left languishing in jail. Rule 122, Section 11(a) of the Revised Rules states:

Section 11. Effect of appeal by any of several accused. –

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, **except insofar as the judgment of the appellate court is favorable and applicable to the latter.** x x x (Emphasis supplied)

Warton's acquittal is favorable and applicable to his co-accused Paul, hence such acquittal should benefit him.⁸⁴

In view of the foregoing, We shall no longer discuss the issue of compliance with the chain of custody rule under Section 21, Article II of R.A. 9165.

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 8, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07870 is **REVERSED** and **SET ASIDE**. Accused Paul Mark Malado y Balang and Warton Fred y Layogan are **ACQUITTED** of the crime charged, and are **ORDERED** to be **IMMEDIATELY RELEASED**, unless they are being lawfully held in custody for any other reason. The Director General of the Bureau of Corrections is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

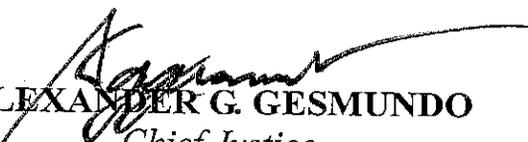
SO ORDERED.


ROS MARI D. CARANDANG
Associate Justice

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People v. Libre, G.R. No. 235980, August 20, 2018.

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify 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's Division.


ALEXANDER G. GESMUNDO
Chief Justice

