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THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **January 22, 2020**, *which reads as follows:*

"G.R. No. 226014: (BENIGNO NIRO y PASTOR, *petitioner* v. PEOPLE OF THE PHILIPPINES, *respondent).* — For a warrantless arrest to be valid, the accused must have been in the act of committing a crime, or was about to commit a crime.[1] If the prosecution fails to prove these circumstances, any evidence seized from the accused cannot be used against him or her for any purpose in any proceeding.[2]

This is a Petition for Review on Certiorari assailing the Decision[3] and Resolution[4] of the Court of Appeals, which affirmed petitioner's conviction for possession of illegal drugs under Article II, Section 11[5] of Republic Act No. 9165.[6]

Benigno Niro y Pastor (Niro) was charged with violation of Republic Act No. 9165, Article II, Section 11 (Illegal Possession).[7] The Information against him read:

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1 *See* RULES OF COURT, Rule 113, sec. 5.

2 *See* CONST., art. III, sec. 2.

3 *Rollo*, pp. 39–53. The Decision dated January 29, 2016 and docketed as CA-G.R. CR No. 37620 was penned by Associate Justice Ramon R. Garcia and concurred by Associate Justices Leoncia R. Dimagiba and Jhosep Y. Lopez of the Fifteenth Division, Court of Appeals, Manila.

4 Id. at 55–56. The Resolution dated July 14, 2016 and docketed as CA-G.R. CR No. 37620 was penned by Associate Justice Ramon R. Garcia and concurred by Associate Justices Leoncia R. Dimagiba and Jhosep Y. Lopez of the Fifteenth Division, Court of Appeals, Manila.

5 Republic Act No. 9165 (2002), sec. 11 provides:
Section 11. *Possession of Dangerous Drugs.* — . . . .
Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:
. . . .
(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

6 Comprehensive Dangerous Drugs Act of 2002.

7 *Rollo*, p. 77.

That on or about February 12, 2013 at around 10:40 P.M. at Brgy. Poblacion B, Municipality of Camiling, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused, did then and there willfully, unlawfully and criminally have in possession and control two (2) heat-sealed transparent plastic sachets containing Methamphetamine Hydrochloride commonly known as "shabu" a dangerous drug without being authorized by law, with a total weight of 0.051 gram more or less.

CONTRARY TO LAW.[8]

Niro was arraigned on March 5, 2013, where he pleaded not guilty.[9] Trial on the merits then ensued.

The prosecution presented poseur-buyer PO2 Alexander Juan (PO2 Juan), Forensic Chemist PSI Angelito Angel, and Barangay Kagawad Domingo Donato (Kagawad Donato) as witnesses.[10] They testified that on February 12, 2013, Camiling, Tarlac's Chief of Police acted on a tip from a confidential informant regarding Niro's alleged drug activities along Rizal Street, Camiling, Tarlac. The Chief of Police immediately called his officers and conducted a briefing for a buy-bust operation. PO2 Juan was the designated poseur-buyer, while PO2 Nestor Agustin (PO2 Agustin) was designated as back-up.[11]

PO2 Juan sent Niro a text message about buying ₱500.00 worth of shabu. When Niro replied that he had some for sale, the buy-bust team and the informant proceeded to Niro's house on Rizal Street. Upon their arrival, the informant pointed out Niro to the buy-bust team. PO2 Juan approached Niro while PO2 Agustin went somewhere nearby the area.[12]

Before the transaction could begin, however, Niro recognized PO2 Juan from a prior arrest and started to run away. PO2 Juan was able to catch him and apprehend him. He frisked Niro and asked him to empty out the contents of his pocket. PO2 Juan was able to recover a lighter, a Nokia mobile phone, and a black wallet, which, upon further inspection, contained two (2) heat-sealed transparent sachets containing suspected shabu.[13]

After this, Niro was arrested and read his rights. PO2 Agustin photographed the items in Niro's presence and prepared a confiscation receipt, which was signed by Kagawad Donato and Niro. However, they were unable to mark the sachets at the time because they forgot to bring a

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8 Id.
9 Id. at 77.
10 Id. at 40.
11 Id. at 41.
12 Id.
13 Id.

permanent marker. PO2 Juan had custody of the sachets until it was brought to the police station.[14]

Upon their arrival at the police station, PO2 Juan immediately borrowed a permanent marker and marked the sachets as "AAJ" and "AAJ-1." PO2 Agustin then prepared a Request for Laboratory Examination. PO2 Juan brought the sachets to the Philippine National Police Provincial Crime Laboratory together with the signed request letter, which was received by Chemist PSI Angelito Angel at 12:45 a.m. on February 13, 2013. According to Chemistry Report No. D-033-13, the contents of the two (2) sachets weighing 0.023 gram and 0.028 gram, respectively, were found to be positive for methamphetamine hydrochloride or shabu.[15]

In his defense, Niro testified that on February 12, 2013, at around 5:00 p.m., he stopped at a sari-sari store after playing basketball in Kipping Village, Poblacion B, Camiling, Tarlac. Moments later, a motorcycle pulled over at the store. The rider alighted and grabbed Niro by the waist. Niro pushed him away, threw the basketball he was holding at his attacker, and asked him why he was being attacked. A car then stopped in front of them, three (3) men stepped out and, together with the motorcycle rider, started frisking him.[16]

Niro alleged that he was forcefully dragged to the car and brought to Poblacion where he was interrogated. The three (3) men and the motorcycle rider brought him to the police station and investigated him afterwards. He claims that only his money amounting to ₱100.00 was found in his possession when he was searched.[17]

Niro's neighbor, Alejandra Victorio, corroborated his version of events and testified that while she was at her house, she saw several men alighting from a car and a motorcycle and assaulted Niro, grabbing him and frisking him. When Niro was dragged to the waiting car, he shouted at her, "*Auntie, paki-sabi sa lola ko na kinuha ako ng tatlong lalaki*." She later learned that Niro was put in jail.[18]

In an April 21, 2015 Decision[19], the Regional Trial Court found Niro guilty beyond reasonable doubt of violating Article II, Section 11 of Republic Act No. 9165. The dispositive portion reads:

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14 Id.
15 Id. at 41–42.
16 Id. at 42.
17 Id.
18 Id. at 43.
19 Id. at 77–82. The Decision was penned by Presiding Judge Jose S. Vallo of Branch 68, Regional Trial Court of Camiling, Tarlac.

> WHEREFORE, premises considered, accused Benigno Niro y Pastor is hereby found guilty beyond reasonable doubt for violation of Section 11, Article [II] of RA 9165 (Illegal possession of dangerous drugs) and hereby sentences him to an imprisonment of twelve (12) years and eight (8) months, as minimum to seventeen (17) years and eight (8) months as maximum, and to pay a Fine of Php300,000.00.
>
> The OIC Clerk of Court is ordered to submit to the PDEA representatives the subject plastic sachets of shabu for their proper disposal.
>
> SO ORDERED.[20]

Niro appealed[21] to the Court of Appeals, arguing that his warrantless arrest was illegal since he was not committing or attempting to commit a crime when he was frisked and arrested.[22] He likewise argued that the chain of custody was not established since the seized items were not immediately marked, and that there was no media or Department of Justice representative present during the conduct of the inventory.[23]

On January 29, 2016, the Court of Appeals rendered a Decision[24] affirming Niro's conviction.

According to the Court of Appeals, Niro made overt acts when he agreed to meet PO2 Juan, the poseur-buyer, to sell him ₱500.00 worth of shabu. It found that Niro's act of texting PO2 Juan that he would be selling the latter shabu, then later on running away to evade arrest, made the subsequent search of his person a search incidental to a lawful arrest.[25]

The Court of Appeals also found that there was no break in the chain of custody and that there was no evidence of ill motive on the part of the police officers.[26]

Niro filed a Motion for Reconsideration,[27] which was denied by the Court of Appeals in a Resolution[28] dated July 14, 2016. Hence, this Petition[29] was filed.

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20 Id. at 81.
21 Id. at 45.
22 Id. at 64–65.
23 Id. at 70.
24 Id. at 39–53.
25 Id. at 49–50.
26 Id. at 50–51.
27 Id. at 100–105.
28 Id. at 55–56.
29 Id. at 14–37. Comment (*rollo*, pp. 121–138) was submitted on February 20, 2017 while petitioner filed a Manifestation in Lieu of Reply (*rollo*, pp. 40–44) on August 11, 2017.

Petitioner contends that his warrantless arrest was illegal since he had not committed or was not attempting to commit a crime in the presence of police. He argues that when he was seen by the police, he "was coincidentally going someplace else in a hurry [;] [hence,] [his] mere act of running cannot amount to a crime[.]"[30]

Petitioner also points out that the mobile phone allegedly containing the text messages of him selling PO2 Juan illegal drugs was never presented as evidence. He alleges that he also did not carry his mobile phone with him when he was apprehended because he had plans to play basketball, which meant that he could not have sent PO2 Juan a text message.[31]

Petitioner further maintains that even assuming that his arrest was valid, the prosecution failed to prove the chain of custody when the police failed to immediately mark the evidence. Furthermore, no representative of the Department of Justice or member of the media was present during his arrest.[32]

The Office of the Solicitor General, on the other hand, counters that all the elements of Republic Act No. 9165, Section 11 were proven by the prosecution,[33] and that petitioner failed to question the legality of his arrest before or during his arraignment.[34] It likewise argues that petitioner was arrested *in flagrante delicto* as he was caught while attempting to commit the crime of selling dangerous drugs.[35] It contends that the marking of the seized items was allowed in the nearest police station and that the absence of a Department of Justice or media representative did not affect the evidentiary weight of the seized drugs.[36]

Based on the parties' arguments, this Court is confronted with the sole issue of whether or not the Court of Appeals erred in affirming petitioner's guilt beyond reasonable doubt of possession of illegal drugs, despite his allegation that his warrantless arrest was illegal.

It is the fundamental right of every citizen to be protected against unreasonable searches and seizures. Article II, Section 2 of the Constitution guarantees that:

> SECTION 2. 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

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30 Id. at 22.
31 Id.
32 Id. at 27.
33 Id. at 128–130.
34 Id. at 131.
35 Id. at 131–132.
36 Id. at 135.

> 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.

The Constitution guarantees against "unreasonable searches and seizures[.]" Any item seized during an unreasonable search and seizure "shall be inadmissible for any purpose in any proceeding."[37]

As a general rule, a validly issued warrant must precede every search and seizure in order to be considered "reasonable." This Court, however, has stated that there are instances when searches and seizures are considered reasonable even without a warrant.[38] *People v. Aruta*[39] outlines the instances when a warrantless search and seizure are considered valid:

> 1. Warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126[40] of the Rules of Court and by prevailing jurisprudence;
>
> 2. Seizure of evidence in "plain view," the elements of which are:
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> > (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;
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> 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;
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> 4. Consented warrantless search;
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> 5. Customs search;
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> 6. Stop and Frisk; and
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> 7. Exigent and Emergency Circumstances.[41]

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37 CONST., art. III, sec. 3 (2).
38 *See People v. Cogaed*, 740 Phil. 212 (2014) [Per J. Leonen, Third Division].
39 351 Phil. 868 (1998) [Per J. Romero, Third Division].
40 Now RULES OF COURT, Rule 126, sec. 13.

One of the most common instances of warrantless searches and seizures occurs during a lawful arrest. An arrest may be lawful even without a warrant. Rules of Court, Rule 113, Section 5 provides for the requisites of a valid warrantless arrest:

> 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 serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
>
> In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112. (Emphasis in the original)

A warrantless arrest under Rule 113, Section 5 (a) is often referred to as an "*in flagrante delicto* arrest[.]"[42] *People v. Cogaed*[43] further mandates that for an in flagrante arrest to be valid, "two elements must concur: (1) 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 (2) such overt act is done in the presence or within the view of the arresting officer."[44]

Arrests under Rule 113, Section 5 (b) on the other hand, refers to a "hot pursuit arrest."[45] For a hot pursuit arrest to be valid, the prosecution must be able to prove (1) that a crime has just been committed and (2) while "[l]aw enforcers need not personally witness the commission of a crime . . . . they must have personal knowledge of facts and circumstances indicating that the person sought to be arrested committed it."[46]

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41 *People v. Aruta*, 351 Phil. 868, 879–880 (1998) [Per J. Romero, Third Division] *citing* RULES OF COURT, Rule 126, sec. 12; *Padilla v. Court of Appeals*, 336 Phil. 383 (1997) [Per J. Francisco, Third Division]; *People v. Solayao*, 330 Phil. 811 (1996) [Per J. Romero, Second Division]; and *People v. De Gracia*, 304 Phil. 118 (1994) [Per J. Regalado, Second Division].

42 *See People v. Chua*, 444 Phil. 757 (2003) [Per J. Ynares-Santiago, First Division] and *People v. Cogaed*, 740 Phil. 212 (2014) [Per J. Leonen, Third Division].

43 740 Phil. 212 (2014) [Per J. Leonen, Third Division].

44 *People v. Cogaed*, 740 Phil. 212 (2014) [Per J. Leonen, Third Division] citing *People v. Chua*, 444 Phil. 757 (2003) [Per J. Ynares-Santiago, First Division].

45 *Veridiano v. People*, 810 Phil. 642, 659 (2017) [Per J. Leonen, Second Division].

46 Id. at 660.

In this case, PO2 Juan testified that a buy-bust operation had been conducted against petitioner, after receiving a tip from their confidential agent. As the poseur-buyer, PO2 Juan allegedly sent petitioner a text message that he would be buying ₱500.00 worth of shabu. Petitioner allegedly agreed to the transaction. Upon arrival at the buy-bust operation area, petitioner allegedly recognized PO2 Juan from a previous arrest and ran away before the transaction could be effected.[47]

For petitioner's *in flagrante* arrest to be valid, he must have executed *an overt act* indicating that he has just committed, is actually committing, or is about to commit a crime. Petitioner's mere act of running away after recognizing PO2 Juan, however, cannot be considered an "overt act" indicating the commission of a crime.

In *People v. Villareal*,[48] a police officer, PO3 de Leon, had been driving his motorcycle on his way home when he spotted accused Nazareno Villareal (Villareal) examining something in his hands. PO3 de Leon was familiar with Villareal, having arrested him before for possession of illegal drugs. When PO3 de Leon approached Villareal, the latter ran away. This Court, in finding that the arrest was illegal, held that Villareal's "acts of walking along the street and holding something in his hands, even if they appeared to be dubious, coupled with his previous criminal charge for the same offense, are not by themselves sufficient to incite suspicion of criminal activity or to create probable cause enough to justify a warrantless arrest under [Rule 113,] Section 5[.]":[49]

> . . . [A]ppellant's act of darting away when PO3 de Leon approached him should not be construed against him. Flight per se is not synonymous with guilt and must not always be attributed to one's consciousness of guilt. It is not a reliable indicator of guilt without other circumstances, for even in high crime areas there are many innocent reasons for flight, including fear of retribution for speaking to officers, unwillingness to appear as witnesses, and fear of being wrongfully apprehended as a guilty party. Thus, appellant's attempt to run away from PO3 de Leon is susceptible of various explanations; it could easily have meant guilt just as it could likewise signify innocence.[50]

Similarly, in *Valdez v. People*,[51] a barangay *tanod*, Rogelio Bautista (Bautista), alleged that while he was on patrol with two (2) other *tanods*, he spotted accused Arsenio Valdez (Valdez) alighting from a bus carrying a bag. Bautista alleged that Valdez was acting suspiciously, so the three (3)

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47 *Rollo*, p. 41.
48 706 Phil. 511 (2013) [Per J. Perlas-Bernabe, Second Division].
49 Id. at 522.
50 Id. at 521–522 *citing Valdez v. People*, 563 Phil. 934 (2007) [Per J. Tinga, Second Division]; *People v. Lopez*, 371 Phil. 852, 862 (1999) [Per J. Ynares-Santiago, En Banc]; *People v. Shabaz*, 424 Mich. 42, 378 N.W.2d 451 (1985); and *State v. Nicholson*, 188 S.W.3d 649 (Tenn. 2006).
51 563 Phil. 934 (2007) [Per J. Tinga, Second Division].

tanods approached him. Bautista alleged that Valdez tried to run away. When they caught up to him, they asked to examine his bag, where they found some dried marijuana leaves.

This Court stated that Valdez's mere attempt to flee was not enough reason to conclude that that he had been engaging in a criminal activity:

> For the exception in Section 5(a), Rule 113 to operate, this Court has ruled that two (2) elements must be present: (1) 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 (2) such overt act is done in the presence or within the view of the arresting officer. Here, petitioner's act of looking around after getting off the bus was but natural as he was finding his way to his destination. That he purportedly attempted to run away as the *tanod* approached him is irrelevant and cannot by itself be construed as adequate to charge the *tanod* with personal knowledge that petitioner had just engaged in, was actually engaging in or was attempting to engage in criminal activity. More importantly, petitioner testified that he did not run away but in fact spoke with the barangay *tanod* when they approached him.
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> Even taking the prosecution's version generally as the truth, in line with our assumption from the start, the conclusion will not be any different. It is not unreasonable to expect that petitioner, walking the street at night, after being closely observed and then later tailed by three unknown persons, would attempt to flee at their approach. Flight *per se* is not synonymous with guilt and must not always be attributed to one's consciousness of guilt. Of persuasion was the Michigan Supreme Court when it ruled in *People v. Shabaz* that "[f]light alone is not a reliable indicator of guilt without other circumstances because flight alone is inherently ambiguous." Alone, and under the circumstances of this case, petitioner's flight lends itself just as easily to an innocent explanation as it does to a nefarious one.[52]

There have been other instances where the act of running away was considered by this Court as overt acts that would give police officers probable cause to arrest the accused. In these cases, however, it was not merely flight which gave police officers probable cause to presume that a crime was being committed. Other overt acts must be present as well.

In *Dacanay v. People*,[53] this Court took note that police officers, while on patrol, saw the accused holding a plastic sachet with some white crystalline substance. The police officers had recognized the accused based on several prior arrests for illegal possession. As they approached the accused, the accused attempted to flee by riding a motorcycle and trying to

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[52] Id. at 947–948 *citing People v. Tudtud*, 458 Phil. 752, 775 (2003) [Per J. Tinga, Second Division]; *People v. Chua*, 444 Phil. 757 (2003) [Per J. Ynares-Santiago, First Division] ; *People v. Lopez*, 371 Phil. 852, 862 (1999) [Per J. Ynares-Santiago, En Banc]; *People v. Bawar*, 330 Phil. 884 (1996) [Per J. Melo, Third Division]; and *People v. Shabaz*, 424 Mich. 42, 378 N.W.2d 451 (1985).

[53] 818 Phil. 885 (2017) [Per J. Leonardo-de Castro, First Division].

throw away the plastic sachet, but the police officers were able to catch up to him and apprehend him. This Court stated that petitioner's mere act of holding the shabu in the presence and in view of the police officers was enough to justify that a crime has just been committed.

In *Macad v. People*,[54] there were numerous overt acts committed by the accused, other than running away, that gave rise to the police officers' suspicion that the accused was in the act of transporting marijuana bricks:

> . . . [P]etitioner hailed the same bus that PO1 Falolo was riding on the way to Bontoc, Mountain Province. He then threw his carton baggage to PO1 Falolo who was then seated on the roof and was toting a Sagada woven bag as well. Immediately, PO1 Falolo smelled the distinct scent of marijuana emanating from the carton baggage and noticed its irregular shape. He also noticed that the Sagada woven bag of petitioner was rectangular instead of an oval and, upon touching it, he noticed that it was hard.
>
> Accordingly, PO1 Falolo had probable cause that petitioner was committing the crime of transporting dangerous drugs, specifically marijuana bricks, due to the unique scent of marijuana emanating from the bag and the unusual shapes and hardness of the baggage. As PO1 Falolo was not in uniform at that time, he intended to inform his colleagues at the PHQ Barracks to conduct a check point so that they could verify his suspicion about the transport of illegal drugs. As seen in his testimony, **PO1 Falolo already had probable cause to conduct an extensive search of a moving vehicle** because he believed before the search that he and his colleagues would find instrumentality or evidence pertaining to a crime, particularly transportation of marijuana, in the vehicle to be searched.
>
> However, PO1 Falolo discovered that his load was insufficient to make a phone call. Thus, without the back-up of his colleagues, he chose to remain vigilant of petitioner until he could contact them. When the bus reached Bontoc, petitioner alighted in lower Caluttit. On the other hand, PO1 Falolo alighted in front of the DPWH Compound, which was not more than a kilometer away from lower Caluttit, to look for cellphone load to contact his colleagues. When he failed to find load for his phone, PO1 Falolo immediately boarded a tricycle back to lower Caluttit and sat at the back of the driver.
>
> There, PO1 Falolo chanced upon petitioner, who boarded the same tricycle and sat inside. When the tricycle reached the COMPAC, PO1 Falolo stopped the tricycle and called SPO2 Suagen, who was on duty. He then asked petitioner if he could check his baggage and the latter answered in the affirmative. However, when petitioner saw SPO2 Suagen approaching the tricycle, he suddenly ran away towards the Pizza Kitchenette and left his baggage.
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> **At that moment, PO1 Falolo also acquired probable cause to conduct a warrantless arrest on petitioner.** There were numerous

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[54] G.R. No. 227366, August 1, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64433> [Per J. Gesmundo, Third Division].

> circumstances and overt acts which show that PO1 Falolo had probable cause to effect the said warrantless arrest: (1) the smell of marijuana emanating from the carton baggage; (2) the irregular shape of the baggage; (3) the hardness of the baggage; (4) the assent of petitioner in the inspection of his baggage but running away at the sight of SPO2 Suagen; and (5) leaving behind his baggage to avoid the police officers.
>
> Petitioner's flight at the sight of the uniformed police officer and leaving behind his baggage are overt acts, which reinforce the finding of probable cause to conduct a warrantless arrest against him. The Court has held that the flight of an accused is competent evidence to indicate his guilt; and flight, when unexplained, is a circumstance from which an inference of guilt may be drawn. Indeed, the wicked flee when no man pursueth, but the innocent are as bold as lion.
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> Based on these facts, PO1 Falolo had probable cause to believe that there was a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that petitioner is guilty of the offense charged. Petitioner was caught *in flagrante delicto* of transporting marijuana bricks by PO1 Falolo.
>
> Consequently, when PO1 Falolo and SPO2 Suagen captured petitioner in front of the St. Rita Parish Church, they had probable cause to arrest him and bring him and his baggage to the police station. There, the police officers properly conducted a search of petitioner's baggage, which is an incident to a lawful arrest. Indeed, numerous devious circumstances surround the incident, from the time petitioner boarded the bus until he was caught after fleeing at the sight of the police officer, that constitute as probable cause to arrest him and to conduct the warrantless search incidental to such lawful arrest.[55] (Emphasis in the original, citations omitted)

In this case, petitioner was not holding a plastic sachet when he was spotted by PO2 Juan. PO2 Juan alleged that he had to frisk petitioner to recover the plastic sachet from his pocket.[56] Petitioner's mere act of running away after seeing PO2 Juan was not enough to arouse suspicion that a crime has been committed or was about to be committed.

The obvious overt act that could indicate that petitioner was about to commit a crime was his alleged text message to PO2 Juan that he was willing to sell him ₱500.00 worth of shabu. Unfortunately, and as pointed out by petitioner,[57] the text messages were never presented as evidence by the prosecution.

At this juncture, it should be noted that assigning PO2 Juan to be the poseur-buyer is baffling in itself, considering that he had already arrested petitioner on a prior occasion. It is obvious that if petitioner were indeed

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55 Id. *citing People v. Niegas*, 722 Phil. 301, 313 (2013) [Per J. Leonardo-De Castro, First Division].
56 *Rollo*, p. 41.
57 Id. at 22.

selling illegal drugs, he would recognize PO2 Juan immediately. The buy-bust operation would not be successful.

In any case, PO2 Juan's act of allegedly negotiating a sale of illegal drugs with petitioner is not what is contemplated as "personal knowledge" that would justify a hot pursuit arrest under Rule 113, Section 5 (b). In the first place, Rule 113, Section 5 (b) requires that the crime has already been committed. At the time of petitioner's arrest, no sale of illegal drugs actually occurred. No crime, therefore, has yet been committed.

PO2 Juan's knowledge of a prior arrest against petitioner cannot also be considered as personal knowledge that a crime has been committed:

> . . . [A] previous arrest or existing criminal record, even for the same offense, will not suffice to satisfy the exacting requirements provided under Section 5, Rule 113 in order to justify a *lawful* warrantless arrest. "Personal knowledge" of the arresting officer *that a crime had in fact just been committed* is required. To interpret "personal knowledge" as referring to a person's reputation or past criminal citations would create a dangerous precedent and unnecessarily stretch the authority and power of police officers to effect warrantless arrests based solely on knowledge of a person's previous criminal infractions, rendering nugatory the rigorous requisites laid out under Section 5.[58] (Emphasis in the original)

Considering that no overt act could be attributed to petitioner that would indicate that he had possessed, was possessing, or was about to possess illegal drugs, petitioner's warrantless arrest was unlawful.

As pointed out by the Office of the Solicitor General, petitioner failed to question the invalidity of his arrest before or during his arraignment.[59] "Th[is] Court has consistently ruled that any objection involving a warrant of arrest or the procedure for the acquisition by the court of jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived."[60]

The waiver, however, is only limited to the court's jurisdiction over the person of the accused. Petitioner is not precluded from questioning the inadmissibility of the evidence seized during the illegal arrest.[61]

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58 *People v. Villareal*, 706 Phil. 511, 521 (2013) [Per J. Perlas-Bernabe, Second Division].

59 *Rollo*, p. 131.

60 *People v. Alunday*, 586 Phil. 120, 133 (2008) [Per J. Chico-Nazario, Third Division] citing *People v. Tidula*, 354 Phil. 609, 624 (1998) [Per J. Panganiban, First Division]; *People v. Montilla*, 349 Phil. 640, 661 (1998) [Per J. Regalado, En Banc]; *People v. Cabiles*, 348 Phil. 220 (1998) [Per J. Melo, Third Division]; *People v. Mahusay*, 346 Phil. 762, 769 (1997) [Per J. Romero, Third Division]; *People v. Rivera*, 315 Phil. 454, 465 (1995) [Per J. Vitug, Third Division]; and *People v. Lopez, Jr.*, 315 Phil. 59, 71–72 (1995) [Per J. Kapunan, First Division].

61 *See People v. Bacla-an*, 445 Phil. 729 (2003) [Per J. Austria-Martinez, En Banc] and *Veridiano v. People*, 810 Phil. 642, 659 (2017) [Per J. Leonen, Second Division].

The warrantless arrest on petitioner was invalid. The subsequent search conducted by the police officers was likewise invalid. Any evidence seized in the course of that illegal search, including the plastic sachet of shabu, is inadmissible under the exclusionary principle in Article III, Section 3 (2) of the Constitution. There being no evidence to support his conviction, petitioner must be acquitted.

WHEREFORE, the Petition is **GRANTED**. The Decision and Resolution in CA-G.R. CR No. 37620 is **REVERSED** and **SET ASIDE**. Petitioner Benigno Niro y Pastor is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** unless he is confined for any other lawful cause.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections for immediate implementation. The Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action he or she has taken.

SO ORDERED."

Very truly yours,

Misael DC Batt
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court

Atty. Nico Carlo Crisologo
PUBLIC ATTORNEY'S OFFICE
Special & Appealed Cases Service
DOJ Agencies Building
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COURT OF APPEALS
CA G.R. CR No. 37620
1000 Manila

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The Director
Bureau of Corrections
1770 Muntinlupa City

The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

Mr. Benigno Niro y Pastor
c/o The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

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