Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- versus -

NAZARENO VILLAREAL *y* LUALHATI,
Accused-Appellant.

G.R. No. 201363

Present:

CARPIO, *J.*, *Chairperson,*
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

MAR 18 2013

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DECISION

PERLAS-BERNABE, *J.*:

This is an appeal from the May 25, 2011 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 31320 which affirmed *in toto* the December 11, 2007 Decision[2] of the Regional Trial Court of Caloocan City, Branch 123 (RTC), convicting appellant Nazareno Villareal *y* Lualhati (appellant) of violation of Section 11, Article II of Republic Act No. 9165[3] (RA 9165) and sentencing him to suffer the penalty of imprisonment for twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and to pay a fine of ₱300,000.00.

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1 *Rollo*, pp. 3-20. Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Rebecca De Guia-Salvador and Normandie B. Pizarro, concurring.

2 CA *rollo*, pp. 14-22. Penned by Judge Edmundo T. Acuña.

3 Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Factual Antecedents

On December 25, 2006 at around 11:30 in the morning, as PO3 Renato de Leon (PO3 de Leon) was driving his motorcycle on his way home along 5th Avenue, he saw appellant from a distance of about 8 to 10 meters, holding and scrutinizing in his hand a plastic sachet of *shabu*. Thus, PO3 de Leon, a member of the Station Anti-Illegal Drugs-Special Operation Unit (SAID-SOU) in Caloocan City, alighted from his motorcycle and approached the appellant whom he recognized as someone he had previously arrested for illegal drug possession.[4]

Upon seeing PO3 de Leon, appellant tried to escape but was quickly apprehended with the help of a tricycle driver. Despite appellant's attempts to resist arrest, PO3 de Leon was able to board appellant onto his motorcycle and confiscate the plastic sachet of *shabu* in his possession. Thereafter, PO3 de Leon brought appellant to the 9th Avenue Police Station to fix his handcuffs, and then they proceeded to the SAID-SOU office where PO3 de Leon marked the seized plastic sachet with "RZL/NV 12-25-06," representing his and appellant's initials and the date of the arrest.[5]

Subsequently, PO3 de Leon turned over the marked evidence as well as the person of appellant to the investigator, PO2 Randulfo Hipolito (PO2 Hipolito) who, in turn, executed an acknowledgment receipt[6] and prepared a letter request[7] for the laboratory examination of the seized substance. PO2 Hipolito personally delivered the request and the confiscated item to the Philippine National Police (PNP) Crime Laboratory, which were received by Police Senior Inspector Albert Arturo (PSI Arturo), the forensic chemist.[8]

Upon qualitative examination, the plastic sachet, which contained 0.03 gram of white crystalline substance, tested positive for methylamphetamine hydrochloride, a dangerous drug.[9]

Consequently, appellant was charged with violation of Section 11, Article II of RA 9165 for illegal possession of dangerous drugs in an Information[10] which reads:

> That on or about the 25th day of December, 2006 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there

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4 TSN, May 8, 2007, pp. 2-4.
5 Id. at 5-7; TSN, July 3, 2007, p. 3.
6 Exhibit "E," folder of exhibits, p. 4.
7 Exhibit "A," folder of exhibits, p. 1.
8 TSN, July 31, 2007, pp. 2-5; TSN, June 19, 2007, pp. 4-6.
9 Exhibit "C," folder of exhibits, p. 2.
10 Records, p. 2.

> willfully, unlawfully and feloniously have in his possession, custody and control, METHYLAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.03 gram [which,] when subjected [to] chemistry examination gave positive result of METHYLAMPHETAMIME HYDROCHLORIDE, a dangerous drug.
>
> CONTRARY TO LAW.

When arraigned, appellant, assisted by counsel *de oficio*, entered a plea of *not guilty* to the offense charged.[11]

In his defense, appellant denied PO3 de Leon's allegations and instead claimed that on the date and time of the incident, he was walking alone along Avenida, Rizal headed towards 5th Avenue when someone who was riding a motorcycle called him from behind. Appellant approached the person, who turned out to be PO3 de Leon, who then told him not to run, frisked him, and took his wallet which contained ₱1,000.00.[12]

Appellant was brought to the 9th Avenue police station where he was detained and mauled by eight other detainees under the orders of PO3 de Leon. Subsequently, he was brought to the Sangandaan Headquarters where two other police officers, whose names he recalled were "Michelle" and "Hipolito," took him to the headquarters' firing range. There, "Michelle" and "Hipolito" forced him to answer questions about a stolen cellphone, firing a gun right beside his ear each time he failed to answer and eventually mauling him when he continued to deny knowledge about the cellphone.[13] Thus, appellant sustained head injuries for which he was brought to the Diosdado Macapagal Hospital for proper treatment.[14]

The following day, he underwent inquest proceedings before one Fiscal Guiyab, who informed him that he was being charged with resisting arrest and "Section 11."[15] The first charge was eventually dismissed.

The RTC Ruling

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11 Id. at 10.
12 TSN, August 21, 2007, pp. 2-4.
13 Id. at 4-7.
14 TSN, September 11, 2007, pp. 8-9. Exhibit "I," folder of exhibits, p. 7.
15 TSN, August 21, 2007, pp. 8-9.

After trial on the merits, the RTC convicted appellant as charged upon a finding that all the elements of the crime of illegal possession of dangerous drugs have been established, to wit: (1) the appellant is in possession of an item or object which is identified to be a prohibited drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possesses said drug. Finding no ill motive on the part of PO3 de Leon to testify falsely against appellant, coupled with the fact that the former had previously arrested the latter for illegal possession of drugs under Republic Act No. 6425[16] (RA 6425), the RTC gave full faith and credit to PO3 de Leon's testimony. Moreover, the RTC found the plain view doctrine to be applicable, as the confiscated item was in plain view of PO3 de Leon at the place and time of the arrest.

On the other hand, the RTC gave scant consideration to the defenses of denial and frame-up proffered by the appellant, being uncorroborated, and in the light of the positive assertions of PO3 de Leon. It refused to give credence to appellant's claim that PO3 de Leon robbed him of his money, since he failed to bring the incident to the attention of PO3 de Leon's superiors or to institute any action against the latter.

Consequently, the RTC sentenced appellant to suffer the penalty of imprisonment of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and to pay a fine of ₱300,000.00.

The CA Ruling

In its assailed Decision, the CA sustained appellant's conviction, finding "a clear case of *in flagrante delicto* warrantless arrest"[17] as provided under Section 5, Rule 113 of the Revised Rules of Criminal Procedure. The CA held that appellant "exhibited an overt act or strange conduct that would reasonably arouse suspicion,"[18] aggravated by the existence of his past criminal citations and his attempt to flee when PO3 de Leon approached him.

Citing jurisprudence, the appellate court likewise ruled that the prosecution had adequately shown the continuous and unbroken chain of custody of the seized item, from the time it was confiscated from appellant by PO3 de Leon, marked at the police station, turned over to PO2 Hipolito and delivered to the crime laboratory, where it was received by PSI Arturo,

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16 Otherwise known as The Dangerous Drugs Act of 1972.
17 *Rollo*, p. 10.
18 Id.

the forensic chemist, up to the time it was presented in court for proper identification.

The Issue

The sole issue advanced before the Court for resolution is whether the CA erred in affirming *in toto* the RTC's Decision convicting appellant of the offense charged.

The Ruling of the Court

The appeal is meritorious.

Section 5, Rule 113 of the Revised Rules of Criminal Procedure lays down the basic rules on *lawful* warrantless arrests, either by a peace officer or a private person, as follows:

> Sec. 5. *Arrest without warrant; when lawful.* – A peace officer or a private person may, without a warrant, arrest a person:
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> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
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> (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
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> (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.
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> x x x

For the warrantless arrest under paragraph (a) of Section 5 to operate, 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.[19] On the other hand, paragraph (b) of Section 5 requires for its application that at the time of the arrest, an

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[19] *Valdez v. People*, G.R. No. 170180, November 23, 2007, 538 SCRA 611, 624, citing *People v. Tudtud*, 458 Phil. 752, 775 (2003).

offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the appellant had committed it.[20]

In both instances, **the officer's *personal knowledge* of the fact of the commission of an offense is absolutely required.** Under paragraph (a), the *officer himself witnesses* the crime while under paragraph (b), he knows *for a fact* that a crime has just been committed.

In sustaining appellant's conviction in this case, the appellate court ratiocinated that this was a clear case of an "*in flagrante delicto* warrantless arrest" under paragraphs (a) and (b) of Section 5, Rule 113 of the Revised Rules on Criminal Procedure, as above-quoted.

The Court disagrees.

A punctilious assessment of the factual backdrop of this case shows that there could have been no *lawful* warrantless arrest. A portion of PO3 de Leon's testimony on direct examination in court is revelatory:

FISCAL LARIEGO:	While you were there at 5th Avenue, was there anything unusual that transpired?
PO3 DE LEON:	Yes Ma'am.
Q:	What was this incident?
A:	While I was on board my motorcycle on my home, I saw a man looking at the shabu in his hand, Ma'am.
Q:	And exactly what time was this?
A:	Around 11:30 in the morning, Ma'am.
Q:	How far were you from this person that you said was verifying something in his hand?
A:	Eight to ten meters, Ma'am.
Q:	What exactly did you see he was verifying?
A:	The shabu that he was holding, Ma'am.
Q:	After seeing what the man was doing, what did you do next?
A:	I alighted from my motorcycle and approached him, Ma'am.

[20] *People v. Cuizon*, G.R. No. 109287, April 18, 1996, 256 SCRA 325, 341.

Q:	In the first place why do you say that what he was examining and holding in his hand was a shabu?
A:	Because of the numerous arrests that I have done, they were all shabu, Ma'am.[21] (Underscoring supplied)

On the basis of the foregoing testimony, the Court finds it inconceivable how PO3 de Leon, even with his presumably perfect vision, would be able to identify with reasonable accuracy, from a distance of about *8 to 10 meters* and while *simultaneously driving a motorcycle*, a negligible and minuscule amount of powdery substance (**0.03 gram**) inside the plastic sachet allegedly held by appellant. That he had previously effected numerous arrests, all involving *shabu*, is insufficient to create a conclusion that what he *purportedly* saw in appellant's hands was indeed *shabu*.

Absent any other circumstance upon which to anchor a lawful arrest, no other overt act could be properly attributed to appellant as to rouse suspicion in the mind of PO3 de Leon that he (appellant) had just committed, was committing, or was about to commit a crime, for the acts *per se* of walking along the street and examining something in one's hands cannot in any way be considered criminal acts. In fact, even if appellant had been exhibiting unusual or strange acts, or at the very least appeared suspicious, the same would not have been sufficient in order for PO3 de Leon to effect a *lawful* warrantless arrest under paragraph (a) of Section 5, Rule 113.

Neither has it been established that the rigorous conditions set forth in paragraph (b) of Section 5, Rule 113 have been complied with, *i.e.*, that an offense had in fact just been committed and the arresting officer had *personal knowledge* of facts indicating that the appellant had committed it. The factual circumstances of the case failed to show that PO3 de Leon had personal knowledge that a crime had been *indisputably* committed by the appellant. It is not enough that PO3 de Leon had reasonable ground to believe that appellant had just committed a crime; a crime must in fact have been committed first, which does not obtain in this case.

Without the overt act that would pin liability against appellant, it is therefore clear that PO3 de Leon was merely impelled to apprehend appellant on account of the latter's previous charge[22] for the same offense. The CA stressed this point when it said:

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[21] TSN, May 8, 2007, p. 3.

[22] Exhibit "H," folder of exhibits, p. 8.

> It is common for drugs, being illegal in nature, to be concealed from view. PO3 Renato de Leon saw appellant holding and scrutinizing a piece of plastic wrapper containing a white powder[l]y substance. PO3 Renato de Leon was quite familiar with appellant, having arrested him twice before for the same illegal possession of drug. It was not just a hollow suspicion. The third time around, PO3 de Leon had reasonably assumed that the piece of plastic wrapper appellant was holding and scrutinizing also contained shabu as he had personal knowledge of facts regarding appellant's person and past criminal record. He would have been irresponsible to just 'wait and see' and give appellant a chance to scamper away. For his part, appellant being, in fact, in possession of illegal drug, sensing trouble from an equally familiar face of authority, ran away. Luckily, however, PO3 de Leon caught up with him through the aid of a tricycle driver. Appellant's act of running away, indeed, validated PO3 de Leon's reasonable suspicion that appellant was actually in possession of illegal drug. x x x[23]

However, 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.

It was therefore error on the part of the CA to rule on the validity of appellant's arrest based on "*personal knowledge of facts regarding appellant's person and past criminal record,*" as this is unquestionably not what "personal knowledge" under the law contemplates, which must be strictly construed.[24]

Furthermore, appellant'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.[25] It is not a reliable indicator of guilt without other circumstances,[26] 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.[27] Thus, appellant's attempt to run away from

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23 *Rollo*, p. 9.
24 See *People v. Tudtud*, supra note 19, at 773.
25 *Valdez v. People*, supra note 19, citing *People v. Lopez*, 371 Phil. 852, 862 (1999).
26 Id., citing *People v. Shabaz*, 424 Mich. 42, 378 N.W.2d 451 (1985).
27 *State v. Nicholson*, 188 S.W.3d 649 (Tenn. 2006).

PO3 de Leon is susceptible of various explanations; it could easily have meant guilt just as it could likewise signify innocence.

In fine, appellant'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 Section 5 above-quoted. "Probable cause" has been understood to mean a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged.[28] Specifically with respect to arrests, it is such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested,[29] which clearly do not obtain in appellant's case.

Thus, while it is true that the legality of an arrest depends upon the reasonable discretion of the officer or functionary to whom the law at the moment leaves the decision to characterize the nature of the act or deed of the person for the urgent purpose of suspending his liberty,[30] it cannot be arbitrarily or capriciously exercised without unduly compromising a citizen's constitutionally-guaranteed right to liberty. As the Court succinctly explained in the case of *People v. Tudtud*:[31]

> The right of a person to be secure against any unreasonable seizure of his body and any deprivation of his liberty is a most basic and fundamental one. The statute or rule which allows exceptions to the requirement of warrants of arrest is strictly construed. Any exception must clearly fall within the situations when securing a warrant would be absurd or is manifestly unnecessary as provided by the Rule. We cannot liberally construe the rule on arrests without warrant or extend its application beyond the cases specifically provided by law. To do so would infringe upon personal liberty and set back a basic right so often violated and so deserving of full protection.

Consequently, there being no lawful warrantless arrest, the *shabu* purportedly seized from appellant is rendered inadmissible in evidence for being the proverbial fruit of the poisonous tree. As the confiscated *shabu* is the very *corpus delicti* of the crime charged, appellant must be acquitted and exonerated from all criminal liability.

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28 *People v. Chua Ho San @Tsay Ho San*, 367 Phil. 703, 717 (1999).

29 Id., citing Joaquin G. Bernas, S.J., The Constitution of the Philippines: A Commentary, 85 (1st *ed.* 1987).

30 *People v. Ramos*, 264 Phil. 554, 568 (1990).

31 Supra note 24, at 774.

WHEREFORE, the assailed Decision of the Court of Appeals in CA-G.R. CR No. 31320 is **REVERSED** and **SET ASIDE**. Appellant Nazareno Villareal *y* Lualhati is **ACQUITTED** on reasonable doubt of the offense charged and ordered immediately released from detention, unless his continued confinement is warranted by some other cause or ground.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION

I attest 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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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.

MARIA LOURDES P.A. SERENO
Chief Justice