Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff-appellee, *– versus –* **NIXON CABANILLA *y* CRISOLOGO, MICHAEL CABARDO *y* CORDEVILLA, and GOMER VALMEO *y* COMILANG,** Accused-appellants.	**G.R. No. 256233** Present: LEONEN, *J., Chairperson,* LAZARO-JAVIER, LOPEZ, M., LOPEZ, J., KHO, JR., *JJ.* **Promulgated:** AUG 09 2023

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D E C I S I O N

M.V. LOPEZ, *J.*:

The fight against illegal drugs often tempts law enforcers to overstep their authority when apprehending drug offenders.[1] Regrettably, this overreach disregards constitutional guarantees against unlawful searches and arrests.[2] While we fully support the commitment of law enforcers to protect our community from the dangers of illicit drugs, we remind them that such noble intention cannot justify unfair police profiling.[3] When such profiling disproportionately targets individuals from economically disadvantaged backgrounds, it undermines the shared aspiration of our people to live in a just and humane society. The fundamental rights to liberty and privacy are imperiled by the detrimental effects of socioeconomic stratification.

We resolve the appeal of Nixon C. Cabanilla (Nixon), Michael C. Cabardo (Michael), and Gomer C. Valmeo (Gomer) (referred to collectively as the

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[1] *People v. Aruta*, 351 Phil. 868, 874 (1998) [Per J. Romero, Third Division].
[2] *Id.*
[3] *Saluday v. People*, 829 Phil. 65, 85 (2018) [Per J. Carpio, *En Banc*].

accused), assailing the June 2, 2020 Decision[4] of the Court of Appeals (CA) in CA-G.R. CR No. 12689, which declared them guilty beyond reasonable doubt of violating Section 13,[5] Article II of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, as amended by Republic Act No. 10640.[6]

The accused faced the following charges:

For Criminal Case No. 21423-D-SJ

That, on or about the 29th day of January 2017, in the City of San Juan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with one another not being lawfully authorized to possess any dangerous drug, did, then and there knowingly, unlawfully and criminally possess and have in their custody and control, in the proximate company of one another, the following, to witt [*sic*]:

One (1) heat-sealed transparent plastic sachet (later marked as "RE 01-29-2017 with signature") containing 0.03 gram of white crystalline substance.

One (1) heat-sealed transparent plastic sachet containing traces of white crystalline substance (later marked as "RE1 01-29-2017 with signature")

which were found positive to the test for "Methamphetamine Hydrochloride, commonly known as "shabu" a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[7]

For Criminal Case No. 21424-D-SJ

That, on or about the 29th day of January 2017, in the City of San Juan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, each being in the proximate company of one another and without being authorized by law, in conspiracy with one another and without being authorized by law, did then and there knowingly, unlawfully and criminally possess and have in their possession, custody and control during a pot session, the following, to wit:

1. One (1) piece improvised tooter pipe (later marked as "RE3 01-19 [*sic*]-2017 with signature")
2. Two (2) pieces disposable lighter (later marked as "RE4 01-29-2017 with signature")
3. One (1) aluminum foil strip (later marked as "RE2 01-29-2017 with signature") containing traces of white crystalline substance; and

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4 *Rollo*, pp. 4–25. Penned by Associate Justice Fernanda Lampas Peralta, with the concurrence of Associate Justices Myra V. Garcia-Fernandez and Ruben Reynaldo G. Roxas of the Court of Appeals, Manila, Second Division.

5 Section 13. Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings.—Any person found possessing any dangerous drug during a party, or at a social gathering or meeting, or in the proximate company of at least two persons, shall suffer the maximum penalties provided for in Section 11 of this Act, regardless of the quantity and purity of such dangerous drugs.

6 Entitled "An Act to Further Strengthen the Anti-Drug Campaign of the Government, amending for the Purpose Section 21 of Republic Act No. 9165, otherwise known as the 'Comprehensive Dangerous Drugs Act of 2002'" (2015).

7 CA *rollo*, p. 51.

4. One (1) piece surgical scissors (later marked as "RE6 01-29 2017[''])

during or on the occasion of their use or sniffing thereof, which are instruments, equipments [*sic*], apparatuses or paraphernalia fit or intended for sniffing, smoking, consuming and ingesting shabu, a dangerous drug, into their bodies, in violation of the above-cited law.

CONTRARY TO LAW.[8]

The accused pleaded not guilty.[9] During trial, Police Officer (PO) 3 Rennel Españo (PO3 Rennel) and PO 2 Ryan Fuentes (PO2 Ryan) testified that on January 29, 2017, at around 10:00 a.m., they were patrolling Barangay West Crame, San Juan City. With them was Police Inspector John Jefferson delos Reyes (PInsp. John). While on patrol, they spotted a parked jeepney with three men inside, one of whom (later identified as Nixon) was half-naked. Because San Juan City has a local ordinance prohibiting people from being topless in public, PInsp. John instructed PO3 Rennel and PO2 Ryan to verify Nixon's identity.[10]

PO3 Rennel walked a short distance of about two to three meters and saw the three men facing each other. PO2 Ryan followed closely. The men were not engaged in any activity but appeared surprised when they saw the police officers. When PO3 Rennel reached the back of the jeepney, he inquired about their actions. Then, PO3 Rennel boarded the jeepney to approach the shirtless Nixon. At this point, PO3 Rennel noticed drug paraphernalia scattered on the vehicle's floor. Acting on this discovery, PO3 Rennel seized the illegal items and arrested Nixon. Meanwhile, PO2 Ryan arrested Michael and Gomer. After the arrest, the accused were informed of their constitutional rights.[11] As the crowd began to gather, the officers transported the accused and the seized items to San Juan City's Police Community Precinct 1. At the station, PO3 Rennel inventoried the items in front of the accused, a barangay kagawad, and a representative from the Department of Justice (DOJ).[12] The seized items were photographed and marked as follows:

1. One heat-sealed transparent plastic sachet containing white crystalline substance marked as "RE 01-29-2017" with signature.
2. One small heat-sealed transparent plastic sachet with traces of suspected shabu marked as "RE1 01-29-2017" with signature.
3. One piece of aluminum foil with traces of suspected shabu marked as "RE2 01-29-2017" with signature.
4. One piece of an improvised tooter pipe marked as "RE3 01-29-2017" with signature.
5. Two disposable lighters marked as "RE4 01-29-2017" and "RE5 01-29-2017" with signatures, respectively.

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[8] *Id.* at 52.
[9] *Id.*
[10] *Id.* at 53.
[11] *Id.*
[12] *Id.*

6. One pair of surgical scissors marked as "RE6 01-29-2017" with signature.[13]

The inventory receipt was signed by the DOJ representative on the same day, January 29, 2017, at 3:40 p.m. The chain of custody form described the two plastic sachets as "heat-sealed," but PO3 Rennel admitted that one of the sachets was opened when he confiscated it. The discrepancy puzzled PO3 Rennel.[14] By 4:00 p.m., PO3 Rennel delivered the evidence to PO3 Jumer Petilo (PO3 Jumer), the duty investigator.[15] PO3 Jumer prepared the case documents including a request for laboratory examination. Around 8:25 p.m., PO3 Jumer brought the seized items to Eastern Police District Crime Laboratory.[16] The specimens were received and examined by Police Chief Inspector Margarita M. Libres (PCI Margarita), a forensic chemist. At 10:35 p.m., PCI Margarita issued a chemistry report confirming that the objects tested positive for Methamphetamine Hydrochloride, a dangerous drug.[17]

The parties stipulated the roles of PO3 Jumer, PCI Margarita, and the barangay kagawad in handling the evidence; hence, their testimonies were dispensed with.[18]

For their part, the accused countered that Nixon was not half-naked when they were arrested. Nixon was wearing a black jacket. They recalled that Nixon was resting in his parked jeepney on the morning of January 29, 2017. Michael and Gomer approached Nixon to borrow some tools. Suddenly, cops arrived and arrested them.[19]

After trial, the Regional Trial Court (RTC) convicted[20] the accused of Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings. The RTC reasoned that the police officers were justified in questioning Nixon's half-naked state, as it violated a San Juan City ordinance prohibiting public toplessness.[21] When approached, the accused were caught *in flagrante delicto* in possessing the prohibited drugs and paraphernalia.[22] The RTC determined that all the elements for violation of Section 13 of Republic Act No. 9165 were present, namely: (1) the accused's possession of an item identified as a prohibited or dangerous drug; (2) the possession not being authorized by law; (3) the accused's conscious and voluntary possession of the contraband; and (4) the accused possessing the dangerous drugs and paraphernalia during a social gathering or meeting, or in the presence of at least two persons.[23] The RTC deemed the

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[13] *Id.* at 51–52.
[14] *Id.* at 53.
[15] *Id.*
[16] *Rollo*, p. 6.
[17] *Id.* at 7.
[18] *Id.* at 9–10.
[19] *Id.* at 7.
[20] *See* Joint Judgment dated February 22, 2019; CA *rollo*, pp. 51–59. Penned by Presiding Judge Juvencio S. Gascon of the Regional Trial Court of Pasig City, Branch 68, San Juan City Station.
[21] *Id.* at 56.
[22] *Id.*
[23] *Id.*

testimonies of the prosecution witnesses more credible than the mere denial of the accused.[24] In addition, the RTC ruled that the police officers preserved the integrity and evidentiary value of the seized items.[25] The RTC decreed:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
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> In Criminal Case No. 21423, accused, NIXON CABANILLA *y* Crisologo, MICHAEL CABARDO *y* Cordevilla and GOMER VALMEO *y* Comilang are found guilty beyond reasonable doubt in violation of Section 13, Article II of RA 9165, and are each sentenced to each suffer the penalty of Life Imprisonment and pay the fine of Five Hundred Thousand Pesos ([PHP] 500,000.00).
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> In Criminal Case No. 21424 for violation of section 14 of RA 9165, the drug paraphernalia having been found together with the dangerous drugs on the floor, in the same place[,] and at the same time, the same is subsumed in the possession of dangerous drugs.
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> Let Commitment Order [Mittimus] issue for the commitment of all the accused at the National Bilibid Prisons, Bureau of Corrections, Muntinlupa City to serve their sentence.
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> Pursuant to Section 21 of Republic Act 9165, let the dangerous drugs and drugs paraphernalia subject matter of this case be turned over to the Philippine Drug Enforcement Agency (PDEA) for immediate destruction. The PDEA is hereby directed to retrieve the said dangerous drug from the evidence custodian of this court within reasonable hours of the day for destruction within twenty-four (24) hours from receipt thereof.
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> SO ORDERED.[26]

The accused appealed to the CA. However, the CA affirmed the RTC's judgment.[27] The testimonies of the prosecution witnesses were considered credible and consistent, supported by documentary and object proof. The CA presumed that the police officers performed their duties regularly, without any ulterior motive against the accused.[28] The CA upheld the accused's *in flagrante delicto* arrest. Further, the CA concluded that the police officers complied with the chain of custody rule.[29] The dispositive portion of the CA Decision reads:

> WHEREFORE, the Joint Judgment dated February 22, 2019 of the trial court is hereby AFFIRMED.
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> SO ORDERED.[30]

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[24] *Id.* at 58.
[25] *Id.* at 57–58.
[26] *Id.* at 58–59.
[27] *Rollo*, p. 24.
[28] *Id.* at 20.
[29] *Id.* 20–23.
[30] *Id.* at 24.

Hence, this recourse.[31] The accused contend that the testimonies of the prosecution witnesses are doubtful due to alleged inconsistencies. Also, they claim that the police officers failed to comply with the chain of custody rule.[32]

We directed the parties to submit their supplemental briefs.[33] The Office of the Solicitor General, representing the People, manifested that it will no longer file a supplemental brief since the Appellee's Brief adequately addressed the issue.[34] The accused, through the Public Attorney's Office, repleaded their Appellants' Brief.[35]

ISSUE

Did the accused violate Section 13 of Republic Act No. 9165, as amended?

RULING

The accused are innocent.

Article III, Section 2 of the 1987 Constitution states:

> Article III
> Bill of Rights
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> 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 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 protects the right of individuals to be let alone in their person, personal effects, belongings, or residence. They can only be searched and have evidence extracted from pursuant to a valid warrant. Evidence obtained in violation of this right is inadmissible in any proceeding.[36] However, there are situations where a warrantless search is deemed "reasonable." An example of which is a warrantless search incidental to a lawful arrest.[37] According to Rule

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[31] *Id.* at 26.
[32] CA *rollo*, pp. 32–33.
[33] *Id.* at 32–33.
[34] *Id.* at 35–37.
[35] *Id.* at 43–44.
[36] CONST., art. III, sec. 3(2).
[37] Other recognized warrantless searches are:
a. Seizure of evidence in "plain view";
b. Search of a moving vehicle;
c. Consented warrantless search;
d. Customs search;
e. Stop and frisk; and
f. Exigent and emergency circumstances.
See People v. Cogaed, 740 Phil. 212, 228 (2014) [Per J. Leonen, Third Division] and *People v. Aruta*, 351 Phil. 868, 879 (1998) [Per J. Romero, Third Division].

126, Section 13, of the Rules of Court, "*A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.*" The law considers various factors such as the purpose of the search, presence or absence of probable cause, manner of the search, location, and nature of the items obtained.[38] It must be noted that a lawful arrest must precede the warrantless search; the process cannot be reversed.[39] Nevertheless, a search substantially contemporaneous with an arrest can precede the arrest if the police has probable cause to make the arrest at the outset of the search.[40]

Like search and seizure, a lawful arrest must, as a rule, emanate from a valid warrant. Exceptionally, an arrest may be lawful even without a warrant as provided in Rule 113, Section 5, of the Rules of Court, *viz.*:

> RULE 113
> ARREST
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> . . . .
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> Section 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.[41] (Emphasis supplied)

In this case, both the RTC and the CA found that the accused were arrested *in flagrante delicto* under Section 5(a) of Rule 113. As such, the warrantless search and the seized items it yielded were deemed valid, being incidental to a lawful arrest.

We disagree.

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[38] *People v. Cogaed*, 740 Phil. 212, 228 (2014) [Per J. Leonen, Third Division]. *See also Esquillo v. People*, 643 Phil. 577, 593 (2010) [Per J. Carpio-Morales, Third Division], *citing People v. Nuevas*, 545 Phil. 356, 370–371 (2007) [Per J. Tinga, Second Division].

[39] *People v. Manago*, 793 Phil. 505, 515 (2016) [Per J. Perlas-Bernabe, First Division]. *See also Comerciante v. People*, 754 Phil. 627, 634 (2015) [Per J. Perlas-Bernabe, First Division], *citing Ambre v. People*, 692 Phil. 681, 693 (2012) [Per J. Mendoza, Third Division].

[40] *People v. Racho*, 640 Phil. 669, 676 (2010) [Per J. Nachura, Second Division]. *See also People v. Nuevas*, 545 Phil. 356, 371 (2007) [Per J. Perlas-Bernabe, First Division], and *People v. Tudtud*, 458 Phil. 752, 772–773 (2003) [Per J. Tinga, Second Division].

[41] *See People v. Rangaig*, G.R. No. 240447, April 28, 2021 [Per J. Leonen, Third Division].

The warrantless arrest did not satisfy the "overt act test."

In *People v. Cogaed*,[42] We required two elements for a valid *in flagrante delicto* arrest: (1) the persons to be arrested are executing an *overt act* indicating that they have just committed, are committing, or are attempting to commit a crime; and (2) such *overt act is done in the presence* or *within the view of the arresting officer*.[43]

In *People v. Rangaig*,[44] which involved a similar charge for a violation of Section 13 of Republic Act No. 9165, We held that there was no valid *in flagrante delicto* arrest because the police officer did not mention any overt act by the accused that would indicate their use of illegal drugs or paraphernalia. Based on the evidence presented, the arresting officer observed the accused sitting at a table 10 meters away,[45] with clear plastic sachets and other items, such as foil and a tooter, on top of it. However, We disbelieved that the officer could accurately identify items like clear sachets containing small amounts of white powder from such a distance and through a slightly opened door. Thus, the accused did not exhibit any suspicious actions indicating their involvement in current or recent criminal activity.

In *Dominguez v. People*,[46] the police officer searched the person of the accused after arresting him. The police officer saw the accused a meter away holding a plastic sachet suspected to contain *shabu*. In acquitting the accused of illegal possession of dangerous drugs, We remarked:

> The circumstances as stated above do not give rise to a reasonable suspicion that Dominguez was in possession of shabu. From a meter away, even with perfect vision, SPO1 Parchaso would not have been able to identify with reasonable accuracy the contents of the plastic sachet. **Dominguez'[s] acts of standing on the street and holding a plastic sachet in his hands, are not by themselves sufficient to incite suspicion of criminal activity or to create probable cause enough to justify a warrantless arrest.** In fact, SPO1 Parchaso's testimony reveals that before the arrest was made, he only saw that Dominguez was holding a small plastic sachet. He was unable to describe what said plastic sachet contained, if any. He only mentioned that the plastic contained "*pinaghihinalaang shabu*" after he had already arrested Dominguez and subsequently confiscated said plastic sachet[.]
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> The present case is similar to *People v. Villareal*,[47] where the Court held that the warrantless arrest of the accused was unconstitutional, as simply holding something in one's hands cannot in any way be considered as a criminal act:

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[42] 740 Phil. 212, 228 (2014) [Per J. Leonen, Third Division].
[43] *See also People v. Chua*, 444 Phil. 757, 770 (2003) [Per J. Ynares-Santiago, First Division].
[44] G.R. No. 240447, April 28, 2021 [Per J. Leonen, Third Division].
[45] *See also People v. Jumarang*, G.R. No. 250306, August 10, 2022 [Per J. Lopez, J., Second Division].
[46] 849 Phil. 610, 625 (2019) [Per J. Caguioa, Second Division].
[47] 706 Phil. 511, 519 (2013) [Per J. Perlas-Bernabe, Second Division].

> 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 [eight] to [ten] meters* 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*.
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> **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.
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> ....
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> The prosecution failed to establish the conditions set forth in Section 5 (a), Rule 113 of the Rules of Court that: (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. As already discussed, standing on the street and holding a plastic sachet in one's hands cannot in any way be considered as criminal acts. Verily, *it is not enough that the arresting officer had reasonable ground to believe that the accused had just committed a crime; a crime must, in fact, have been committed first, which does not obtain in this case*.[48] (Emphasis supplied)

Here, there was no valid *in flagrante delicto* arrest. PO3 Rennel stated that he saw the accused, sitting inside a parked jeepney doing nothing from two to three meters away.[49] Even when PO3 Rennel approached the rear of the jeepney, at a closer distance, no criminal activity was evident.[50] PO3 Rennel even had to inquire about the accused's activities. The surprised reaction of the accused is inconsequential. It is natural to feel intimidated by the authoritative presence of the police. Still, the accused did not engage in any overt act suggestive of criminal behavior when they were seen and approached by the police. It was only when PO3 Rennel boarded the jeepney that he discovered the scattered contraband on the floor. However, if We follow the dicta in *Rangaig* and *Dominguez*, the presence of suspected illicit items on the jeepney's floor is insufficient to raise suspicion of criminal activity or establish probable cause for a warrantless arrest.

In *Rangaig*, the police failed to establish any overt act by the accused indicating their use of the dangerous drugs and paraphernalia found on the table where they were gathered. Consequently, We granted the accused the benefit of the doubt, considering that the police may have mistakenly identified the items on

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[48] *People v. Dominguez*, 849 Phil. 610, 625–628 (2019) [Per J. Caguioa, Second Division].

[49] *Rollo*, p. 53.

[50] *Id.*

the table. Similarly, in *Dominguez*, We extended a similar benefit of the doubt, explaining that the accused's actions of standing on the street and holding a plastic sachet were insufficient grounds to justify a warrantless arrest. We emphasized that it was not readily apparent that the plastic sachet held by the accused, even when observed from a meter away, constituted evidence of a crime, contraband, or a basis for seizure, thus:

> To recall, when SPO1 Parchaso saw Dominguez, he only saw that Dominguez was holding a very small plastic sachet. To the Court's mind, a very small plastic sachet is not readily apparent as evidence incriminating Dominguez, such that it can be seized without a warrant. **A very small plastic sachet can contain just about anything. It could even be just that — a very small plastic sachet — and nothing more.**[51] (Emphasis supplied)

The reasoning in *Rangaig* and *Dominguez* is applicable here, which involves a minute quantity of 0.03 grams of a white crystalline substance. Moreover, one of the plastic sachets was already opened and contained traces of the substance at a microscopic level. Although the opened sachet might have led PO3 Rennel to suspect a recent drug session, the facts do not show that the accused were using dangerous drugs, or tested positive for drug use. This aligns with PO3 Rennel's admission that the accused were not engaged in any specific activity apart from sitting inside a vehicle when approached by the police. As held in *Dominguez*, "It is not enough that the arresting officer had reasonable ground to believe that the accused had just committed a crime; *a crime must, in fact, have been committed first, which was not obtained in this case*."[52] Therefore, we conclude that the *mere act of sitting inside a vehicle where drugs and paraphernalia were discovered, without any involvement in their possession or use, does not constitute overt acts of criminal behavior.*

For failure to comply with the "overt act test," the accused's warrantless arrest is invalid.

Yet a crucial matter requires attention. The facts neither establish that the jeepney was being used as a public utility vehicle, nor was it in motion at the time of apprehension. Even in a warrantless search of a moving vehicle, we qualified that it is not violative of the Constitution for only as long as the vehicle is neither searched nor its occupants subjected to a body search, and on the condition that the inspection of the vehicle is limited to a visual search.[53] An extensive search is only allowed if there is probable cause to believe that evidence related to a crime can be found inside the vehicle.[54] For a warrantless search, probable cause was defined as "*a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious [person] to believe that the accused [are] guilty of the offense with which [they are] charged.*"[55] In this case, there was no indication whatsoever, in the course of patrolling, that the police

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51 *People v. Dominguez*, 849 Phil. 610, 625 (2019) [Per J. Caguioa, Second Division].

52 *Id.* at 626, *citing People v. Villareal*, 520 (2013) [Per J. Perlas-Bernabe, Second Division].

53 *People v. Estolano*, 886 Phil. 904, 911 (2020) [Per J. Carandang, Third Division]. *See also Valmonte v. De Villa*, 246 Phil. 265 (1990) [Per J. Padilla, *En Banc*].

54 *Id.*

55 *Comerciante v. People*, 764 Phil. 627, 640 (2015), *citing People v. Cogaed*, 740 Phil. 212, 233 (2014) [Per J. Leonen, Third Division].

would discover drugs or drug paraphernalia inside the parked jeepney. The occupants were simply sitting inside, facing each other.

In reality, it is improbable that the police would enter a parked, private, and luxurious-looking car solely to apprehend a shirtless person inside. Despite being parked in a public space, an individual still possesses a reasonable, albeit reduced, expectation of privacy within a private vehicle. The ability of law enforcement to freely enter a parked jeepney not intended for public use is disconcerting. We find it strange that PO3 Rennel had to enter the jeepney even if Nixon was not threatening and already visible from the outside, in broad daylight. Nixon could already be apprehended through the open door and windows of the jeepney. Were it not for PO3 Rennel's uncalled intrusion, the seized items would not have been discovered. In other words, the pieces of evidence were not immediately apparent to the police from the vehicle's exterior. More tellingly, a jeepney, despite its open configuration, is not among the enumerated[56] "*public spaces*" and "*covered public places*" in Section 3(b), in relation to Sections 1 and 2, of San Juan City Ordinance No. 8, Series of 2013:[57]

> **Section 1.** The City Government of San Juan hereby prescribes that all persons must be properly and decently attired while moving about in public spaces within the City of San Juan.
>
> **Section 2.** No person shall move about (i.e. walk, jog, run or the like) in public places and outside his private residence half naked or wearing clothing covering only the lower most portion of the body without any top apparel.
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> **Section 3. Definition of Terms**
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> ....
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> b. **Public Places**
>
> b.1. *Open public places* – include but not limited to the following: roads, streets, sidewalks, parks, bridges, alleys, and overpasses.
>
> b.2. *Covered public places* – include but not limited to the following: schools, colleges, universities, museums, clinics, health's [*sic*] centers, dispensaries, laboratories, government or private offices, auditoriums/session halls/churches/convention centers, theaters/movie houses/studio, bars/restaurants/cocktail lounges/canteen kiosk, and other enclosed public eating places, dance halls/disco houses, enclosed public eating places, dance halls/disco houses [*sic*], day and night clubs, beer/pub houses, hotels, department stores, markets/groceries, factories, and other covered places where people stay or gather for political, social,

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[56] *Liwag v. Happy Glen Loop Homeowners Association, Inc.*, 690 Phil. 321 (2012) [Per J. Sereno, Second Division]. The basic statutory construction principle of *ejusdem generis* states that where a general word or phrase follows an enumeration of particular and specific words of the same class, the general word or phrase is to be construed to include—or to be restricted to—things akin to or resembling, or of the same kind or class as, those specifically mentioned.

[57] An Ordinance Prohibiting Going Half-Naked in Public Places in the City of San Juan, Metro Manila, and Providing Penalties in Violation Thereof.

> the police officer, however, may provide sufficient justification for additional observation and investigation." Nothing in the said handbook authorizes the police officer to order the driver or passengers to alight the vehicle for a body search. Contrary to these rules and guidelines, Estolano was ordered by the police officers to alight from the vehicle that had no plate number.
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> *Second*, the search in this case cannot be classified as a search of a moving vehicle. In this particular type of warrantless search, the vehicle is the target and not a specific person. Further, in a search of a moving vehicle, the vehicle is intentionally used as a means to transport illegal items. In this case before the Court, the main target of the search was the *person* of Estolano before a search on the vehicle was even conducted. **Worse, there was no information or tip relayed to the police officers about a crime, other than the traffic violation, that had just been committed or about to be committed. The police officers, therefore, had no probable cause to believe that they will find in the person of Estolano any instrument or evidence pertaining to a crime.**[62] (Emphasis supplied)

The principles espoused in *Luz*, *Estolano*, and *Mendoza* resonate here.[63] The contraband was seized from the accused after Nixon was approached by the police for allegedly being topless in public. The act committed by Nixon—supposedly for the first time, since the record does not indicate that he was a second- or third-time offender[64]—is punishable only by a *warning* under Section 4 of San Juan City Ordinance No. 8, Series of 2013, to wit:

> **Section 4. Penalty.** Any person apprehended for violating this Ordinance shall be penalized as follows:
>
> **First Offense:** Warning;
>
> **Second Offense:** Three Hundred Peso[s] ([PHP]300.00) Fine or eight (8) hours Community Service (at the option of the offender); and
>
> **Third Offense:** Three to five (3-5) days imprisonment. (Emphasis in the original)

The ordinance is clear that the penalty for a first-time violator is only a *warning*, whereas for the second-time violator only a *fine* of PHP 300.00 or an eight-hour community service at the option of the offender. The ordinance did not provide that the violator be imprisoned for their first violation.[65] And so, even if it were true that Nixon was topless in a public place, the police cannot arrest him for his first violation. At the time that he was approached by PO3 Rennel to verify his identity, Nixon cannot be considered to have been "under arrest." There was no intention on the part of PO3 Rennel to arrest him, deprive him of his liberty, or take him into custody. PO3 Rennel could not have the intent to arrest because the ordinance forbids him from arresting first-time offenders. Since there was no or there could not have been any lawful arrest to speak of, any search or seizure made pursuant thereto is illegal. As a corollary, the seized items are inadmissible

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62 *People v. Estolano*, 886 Phil. 904 (2020) [Per J. Carandang, Third Division]. Citations omitted.

63 *See Picardal v. People*. 854 Phil. 575, 583 (2019) [Per J. Caguioa, Second Division].

64 *People v. Globa*, 861 Phil. 870, 887 (2019) [Per J. Reyes, Jr., First Division]. *Dubiis reus est absolvendus*—all doubts should be refused in favor of the accused.

65 *See Picardal v. People*, 854 Phil. 575, 583 (2019) [Per J. Caguioa, Second Division].

for being "fruits of the poisonous tree."[66] The illegally seized objects cannot be used in *any* prosecution against the accused as mandated by Article III, Section 3(2), of the 1987 Constitution. There being no evidence against the accused in this case, he must perforce be acquitted.[67]

Even if the seized items are deemed admissible, the prosecution's case would still fail for violating the chain of custody rule.

In cases involving dangerous drugs, preserving the identity and integrity of the *corpus delicti*, the drug itself, is of utmost importance. This is because dangerous drugs are delicate and vulnerable to alteration or tampering.[68] To address this concern, the chain of custody rule was enacted in Section 21 of Republic Act No. 9165.[69] This rule ensures that every step, from the seizure of the item from the accused to its presentation in court, is documented and accounted for. *Any break in the chain of custody raises doubts about the identity and integrity of the seized item.* Therefore, it is vital for the prosecution to establish, beyond reasonable doubt, that the evidence presented in court is the same one confiscated from the accused.[70] Failure to do so would render the evidence insufficient and would lead to an acquittal.[71]

Notably, Section 21 of Republic Act No. 9165 was amended by Republic Act No. 10640, which became effective on August 7, 2014.[72] Since the alleged offense was committed on January 29, 2017, or after the law's amendment, the provisions of Republic Act No. 10640 shall apply.[73] Section 21 of Republic Act No. 9165, as amended, provides:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the

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[66] *Id.*, *citing Sindac v. People*, 794 Phil. 421, 428 (2016) [Per J. Perlas-Bernabe, First Division].
[67] *Id.*
[68] *People v. Rangaig*, G.R. No. 240447, April 28, 2021 [Per J. Leonen, Third Division].
[69] *Id.*
[70] *Id. See also People v. De Dios*, 869 Phil. 342 (2020) [Per J. Perlas-Bernabe, Second Division].
[71] *Id.*
[72] *People v. Casa*, G.R. No. 254208, August 16, 2022 [Per J. Gesmundo, *En Banc*].
[73] *Id.*

> person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: ***Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. (Emphasis supplied)

In *People v. Casa*,[74] we dissected the foregoing provision and elucidated, among others, on the interpretation of its *second part*, which states:

> *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, **whichever is practicable, in case of warrantless seizures**. (Emphasis supplied)

Casa highlighted that the phrase "*whichever is practicable*" indicates that the option to conduct the inventory at the nearest police station or office of the apprehending officer/team is not absolute or unrestricted.[75] According to *Casa*, the statute plainly states that the police officers must provide a *practicable* reason to deviate from conducting the inventory at the place of seizure. If such a reason is not presented, the inventory and photography of the seized items should occur at the place of seizure.[76]

In *Casa*, we also discussed an alternative proposition put forth during our deliberations regarding the interpretation of Section 21(1) of Republic Act No. 9165, as amended.[77] This alternative proposition suggests that in warrantless seizures involving dangerous drugs, like a buy-bust operation, "*the police officers do not need to provide any reason whatsoever before they may conduct the inventory at the nearest police station or at the nearest office of the apprehending officer/team.*" [78] *Casa* rejected this alternative standpoint based on the following reasons:

> 1. The law acknowledges that the inventory location may be the nearest police station or apprehending officer's office, depending on practicality. Thus, the choice of inventory location is not absolute and must be based on practical reasons provided by the police officers.[79]

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[74] *Id.*
[75] *People v. Casa*, G.R. No. 254208, August 16, 2022 [Per J. Gesmundo, *En Banc*].
[76] *Id.*
[77] *Id.*
[78] J. M. Lopez, Concurring Opinion, in *People v. Casa*, G.R. No. 254208, August 16, 2022 [Per J. Gesmundo, *En Banc*]; and J. Kho, Jr., Concurring and Dissenting Opinion in *People v. Casa*, G.R. No. 254208, August 16, 2022 [Per J. Gesmundo, *En Banc*].
[79] *Id.*

> 2. While Congress aimed to simplify the inventory process for law enforcement, the amendment to the law did not eliminate the requirement for a practicable location. The phrase "whichever is practicable" was retained, emphasizing that the inventory should not be unrestricted or left to the discretion of law enforcers.[80]
>
> 3. Removing the phrase "whichever is practicable" would have granted the police officers unrestricted discretion in selecting the inventory location.. However, the current wording of the law explicitly states that a practicable reason must be given for conducting the inventory at a location other than the place of seizure.[81]
>
> 4. It may be argued that requiring the inventory at the place of seizure is challenging. However, if practical reasons are provided, such as concerns for safety or unfavorable conditions at the place of seizure, the inventory can be conducted at the nearest police station or office. Police officers are best suited to assess the circumstances and determine the most practical location.[82]

Casa settled the issue of where the inventory and photography of seized items should take place. However, this case offers an opportunity to further refine the rule. In this case, we clarify that the alternative proposition, which permits inventory and photography at the nearest police station or apprehending team's office *without police justification,* may extend to other warrantless seizure cases beyond buy-bust operations. This includes situations like the present case involving items seized after an *in flagrante delicto* arrest.

In *Nisperos v. People,*[83] We clarified the requirement regarding the presence of insulating witnesses in warrantless arrests *during buy-bust operations.* The witnesses must be present *at or near* the place of apprehension, in the vicinity, to comply with the statutory rule that the inventory should occur immediately *after* warrantless seizure and confiscation.[84] *This assumes prior coordination with the witnesses since it is a pre-planned activity.*[85] Nonetheless, the witnesses need not actually see the arrest or seizure, but only the subsequent inventory.[86] Their presence during the inventory and photography of seized items is indispensable.

In contrast, in the case of warrantless seizures incidental to *in flagrante delicto* arrests, which differ from pre-planned buy-bust operations, it is inherently impractical to demand inventory and photography at the place of apprehension. To stress, the police can only perform the inventory and photography in the presence of the insulating witnesses. Given the *spontaneous nature of an in flagrante delicto arrest,* where the suspect has just committed, is committing, or is about to commit a crime, there is no prior coordination with the insulating witnesses, and their immediate presence cannot be expected. Consequently, conducting the inventory at the place of apprehension would be default impracticable. Therefore, in cases

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80 *Id.*

81 *Id.*

82 *Id.*

83 G.R. No. 250927, November 29, 2022 [Per J. Rosario, *En Banc*].

84 *Id.*

85 *Id. See also People v. Tomawis,* 830 Phil. 385 (2018) [Per J. Caguioa, Second Division].

86 *Id.*

of warrantless seizure resulting from *in flagrante delicto* arrests, it is both logical and practical for the police to conduct the inventory and photography at the nearest police station or the office of the apprehending team, without the need for justification. This choice is made due to the unavailability of insulating witnesses during exigent circumstances.

Nonetheless, in accordance with *Nisperos*, the marking of the seized items should be done immediately *upon* confiscation, following a valid search and seizure incidental to a *lawful in flagrante delicto arrest*.

Marking serves as the initial step in establishing the chain of custody, ensuring the proper identification and preservation of the seized evidence from the moment it is taken from the accused until the conclusion of the criminal proceedings.[87] Although not explicitly stated in the statute, Dangerous Drugs Board Regulation No. 1, Series of 2002,[88] mandates the proper marking of seized items for identification.[89] Similarly, the Philippine Drug Enforcement Agency Guidelines on the Implementing Rules and Regulations of Section 21 of Republic Act No. 9165 require the apprehending or seizing officer to mark the seized items immediately *upon* confiscation.[90] As We stated in *Nisperos*, administrative rules and regulations hold the force of law when promulgated within the agency's authority. These rules and regulations fill in the details and procedures for implementing the law.[91]

Here, PO3 Rennel failed to promptly mark the seized items *upon* confiscation. He did not explain the handling and storage of the unmarked items in transit to the police station. It is important to note that one of the plastic sachets confiscated was found to be already opened. These circumstances raise doubts about the identity of the seized objects from the moment of seizure, which is the crucial first link in the chain of custody. Given this compromise in the starting link, there is no need to discuss the other links. The delayed marking significantly undermines the integrity and evidentiary value of the *corpus delicti*, thereby justifying the acquittal of the accused.[92]

In closing, We echo the words expressed in *Rangaig*:

> This case was riddled by procedural infirmities from the moment the [accused] were apprehended to the moment the gavel was struck to convict them. While this [C]ourt laments the proliferation of the use and distribution of illegal substances, it cannot support the haphazard and shoddy execution of government agents of their official tasks. We remind our police officers, as well as officers of

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87 *Nisperos v. People*, G.R. No. 250927, November 29, 2022 [Per J. Rosario, *En Banc*]. *See also People v. Siaton*, 789 Phil. 87, 100 (2016) [Per J. Perez, Third Division] and *People v. Alejandro*, 671 Phil. 33, 46 (2011) [Per J. Brion, Second Division].

88 Dangerous Drugs Board Regulation No. 1, Series of 2002, sec. 2(b), reads:
b. *The drugs or controlled chemicals or laboratory equipment shall be properly marked for identification, weighed when possible or counted, sealed, packed, and labeled by the apprehending officer/team.*

89 *Nisperos v. People*, G.R. No. 250927, November 29, 2022 [Per J. Rosario, *En Banc*].

90 *Id. See* Guidelines on the Implementing Rules and Regulations of Section 21 of Republic Act No. 9165, as amended, section 1(A.1).

91 *Id. See also* DAVIS, ADMINISTRATIVE LAW 194.

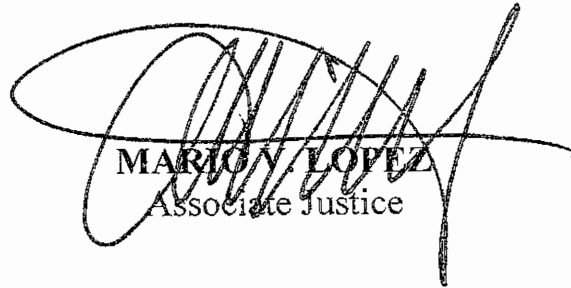
92 *Id.*

the Court, that the constitutionally protected rights of the people must always prevail.[93]

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated June 2, 2020 of the Court of Appeals in CA-G.R. CR No. 12689 is **REVERSED**. For failure of the prosecution to prove their guilt beyond reasonable doubt, NIXON CABANILLA *y* CRISOLOGO, MICHAEL CABARDO *y* CORDEVILLA, and GOMER VALMEO *y* COMILANG are **ACQUITTED** of violation of Section 13 of Republic Act No. 9165, as amended. They are **ORDERED IMMEDIATELY RELEASED** from detention, unless they are being lawfully held for another cause. Let entry of judgment be issued immediately.

Let a copy of this Decision be furnished to the Director General of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director General is directed to report to this Court the action taken within five days from receipt of this Decision.

SO ORDERED.



MARIO V. LOPEZ
Associate Justice

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93 *People v. Rangaig*, G.R. No. 240447, April 28, 2021 [Per J. Leonen, Third Division].

WE CONCUR:

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

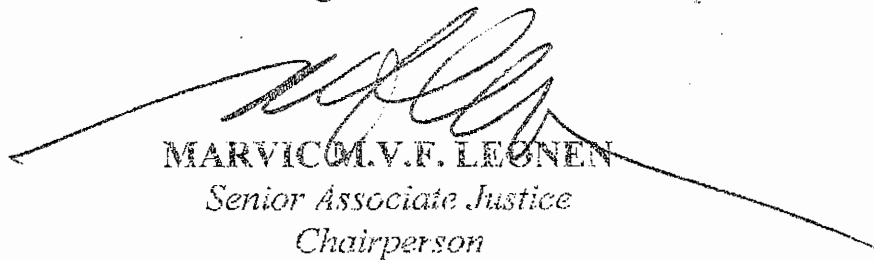
AMY C. LAZARO-JAVIER
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
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.



MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

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.

ALEXANDER G. GESMUNDO
Chief Justice