Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

JOEMARIE MENDOZA *y* BUCAD alias "Joe",	**G.R. No. 248350**
Petitioner,	Present:
- *versus* -	GESMUNDO, *C.J., Chairperson,* HERNANDO,* ZALAMEDA,** ROSARIO, and MARQUEZ, *JJ.*
PEOPLE OF THE PHILIPPINES,	
Respondent.	Promulgated: DEC 05 2022

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DECISION

ZALAMEDA, *J.*:

It is settled that waiver as to the legality of the arrest does not affect the inadmissibility of the evidence seized. An invalid search warrant which led to a warrantless arrest of another person alleged to have been caught in *flagrante delicto* within the searched premises, renders the evidence seized in the said warrantless arrest inadmissible. Given the fact that law enforcement authorities would not have been able to arrest said person were it not for the invalid search warrant, the plain view doctrine is likewise not applicable.[1]

The Case

This is a Petition for Review on *Certiorari* (Petition)[2] seeking to annul

* On wellness leave.
** Designated as Acting Working Chairperson per S.O. No. 2939 dated 24 November 2022.
1 *Rollo*, p. 22.
2 Id. at 11-35.

and set aside the Decision[3] promulgated on 11 February 2019 and the Resolution[4] dated 11 July 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 40706 which affirmed the Decision[5] dated 05 July 2017 of the Regional Trial Court (RTC) of Makati, Branch 135 in Criminal Case Nos. R-MKT-16-765-CR and R-MKT-16-766-CR finding petitioner Joemarie B. Mendoza alias "Joe" (petitioner) guilty of violating Sections 11 and 12, Art. II of Republic Act No. (RA) 9165,[6] otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Antecedent Facts

As narrated by the CA, the prosecution averred that on 15 April 2016 at around 10:30 p.m., in *Barangay* Palanan, Makati City, Police Officer 3 Elberto Rojas, Jr. (PO3 Rojas), PO3 Luisito Leif Marcelo (PO3 Marcelo), PO2 Michelle Gimena (PO2 Gimena), PO3 Joemar Cahanding (PO3 Cahanding), and other operatives from the Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG), Makati City Police implemented Search Warrant SW-16-288-MN dated 13 April 2016 issued by Judge Jimmy Edmund G. Batara of Branch 72, RTC of Malabon City, against Jay Tan, also known as Eugene Tan/Jhay Tan, in the latter's residence at No. 5379, Curie Street, *Barangay* Palanan, Makati City for violation of RA 9165 and Illegal Possession of Firearms.[7]

The operatives entered by breaking open the said house. In a room on the ground floor, they chanced upon petitioner sitting on the floor, holding a pen gun, and in front of him were one small transparent plastic sachet with *shabu*, and two glass pipes or improvised tooters. Petitioner was arrested and apprised of his constitutional rights. Continuing their search, the operatives found a vault, broke it open, and found guns and ammunitions of various calibers, a digital weighing scale, plastic sachet with *shabu* and marijuana, pieces of ecstasy and Celebrex capsules, monies of various denomination and currencies, checks, and a couple of passport in the name of one Joseph Eugene Tan *y* Baltonado.[8]

Then and there, PO3 Marcelo, the assigned recorder, marked the

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[3] Id. at 36-49; penned by Associate Justice Danton Q. Bueser, and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Rafael Antonio M. Santos.

[4] Id. at 51-53; penned by Associate Justice Danton Q. Bueser, and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Rafael Antonio M. Santos.

[5] Id. at 80-90; penned by presiding Judge Josephine M. Advento.

[6] Entitled: "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES." Approved: 07 June 2002.

[7] *Rollo*, p. 37.

[8] Id.

plastic sachet found in front of petitioner as "LFM-27" and the two glass pipes/improvised tooters collectively as "LFM-32," as well as other pieces of evidence found inside the vault, which were not subject of the instant case. In the presence of *Barangay Kagawad* Jose Villa Jr. (*Kagawad* Villa), PO3 Marcelo conducted an inventory of the seized items and prepared an Inventory Receipt. Photographs were also taken at the place of arrest. After his medical examination, petitioner was brought to the police station.[9]

PO3 Marcelo turned over the seized pieces of evidence to Senior Police Officer 2 Ramon Esperanzate (SPO2 Esperanzate), assigned investigator-on-case, who prepared the documents pertinent to the case. Thereafter, SPO2 Esperanzate delivered the drug specimens to Police Senior Inspector Rendielyn Sahagun (PSI Sahagun) who conducted the laboratory examination of the plastic sachet. The examination yielded a positive result for the presence of methamphetamine hydrochloride.[10]

On the other hand, petitioner denied the charges against him. He claimed that on 14 April 2016 at around 10:30 p.m., he was inside the house at No. 5379, Curie Street, *Barangay* Palanan, Makati City, when he heard a banging on the gate. When he opened the gate, he was asked by one of the male persons about a certain "Jay." He replied that nobody by that name lived in the house. The men pushed him back, handcuffed him, and some of them forcibly went inside the house. Using an axe, they went into the room of Joseph, petitioner's brother-in-law, where they found an identification document (I.D.) and passport. Afterwards, petitioner was boarded on a vehicle.[11]

During the inquest proceedings, the following documents were submitted to the City Prosecutor's Office: (1) Final Investigation Report, (2) Request for Laboratory Exam, (3) Request for Drug Test, (4) Result of the Laboratory Exam, (5) Inventory Receipt, (6) Chain of Custody, (7) Mug Shot/Photo Gallery, (8) Photocopy of Search Warrant, (9) PDEA Spot Report, (10) Temp. Medical Certificate, (11) Joint Affidavit of Arrest, and (12) Affidavit of Undertaking.[12]

In a Resolution[13] dated 22 April 2016, Senior Assistant City Prosecutor Wilhelmina B. Go-Santiago recommended petitioner to be indicted for violation of RA 10591[14] otherwise known as the Comprehensive

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9 Id.
10 Id.
11 Id. at p. 38.
12 Id. at 39-40.
13 Id. at 40.
14 Entitled: "AN ACT PROVIDING FOR A COMPREHENSIVE LAW ON FIREARMS AND AMMUNITION AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF." Approved: 29 May 2013.

Firearms and Ammunitions Regulation Act, and Sec. 11 and 12, Art. II of RA 9165.[15]

Two Informations[16] were filed before the RTC against petitioner, the accusatory portions of which read:

Criminal Case No. R-MKT-16-765-CR

> On the 15th day of April 2016, in the city of Makati, the Philippines, accused, not being lawfully authorized by law to possess and without the corresponding prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control zero point sixty-five (0.65) gram of white crystalline substance containing methamphetamine hydrochloride, a dangerous drug.[17]

Criminal Case No. R-MKT-16-766-CR

> On the 15th day of April 2016, in the city of Makati, the Philippines, accused, without being authorized by law to possess equipment, instrument, apparatus, and other paraphernalia fit or intended for smoking, administering or introducing any dangerous drug, into the body, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control two improvised pipe tooters, containing traces of methamphetamine hydrochloride, which are dangerous drug paraphernalia, in violation of the above-cited law.[18]

During arraignment, petitioner entered a plea of not guilty. Pre-trial and trial ensued. The prosecution presented the following witnesses: (1) *Kagawad* Villa; (2) PO2 Gimena, and PO3 Rojas. The parties stipulated on the testimonies of PO3 Marcelo and PSI Sahagun, the forensic chemist. On the other hand, the defense presented petitioner as the sole witness.[19]

Ruling of the RTC

In its Decision[20] dated 05 July 2017, the RTC convicted petitioner for violation of Sections 11 and 12, Art. II of RA 9165. The *fallo* reads:

> WHEREFORE, finding accused JOEMARIE MENDOZA y BUCAD @ "Joe" guilty beyond reasonable doubt of the crime of violation of Republic Act No. 9165, judgment is hereby rendered, as follows:

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15 Supra.
16 *Rollo*, p. 40.
17 Id.
18 Id. at 41.
19 Id. at 41-42.
20 Id. at pp. 80-90.

> 1] For Criminal Case No. R-MKT-16-765-CR, for violation of Section 11 of RA 9165, accused is hereby sentenced to suffer imprisonment for an indeterminate term of twelve (12) years and one (1) day as minimum, to twenty (20) years as maximum and to pay a fine of three hundred thousand pesos (Php300,000.00) and
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> 2] For Criminal Case No. R-MKT-16-766-CR, for violation of Section 12 of RA 9165, accused is hereby sentenced to suffer imprisonment for an indeterminate sentence to suffer imprisonment of six (6) months and one (1) day as minimum to four (4) years as maximum and to pay a fine of fifty thousand pesos (Ph50,000.00).
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> Further, let the zero point sixty-five (0.65) gram of methamphetamine hydrochloride (shabu) be turned over to PDEA for proper disposition.
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> SO ORDERED.[21]

The RTC found that the evidence on record are sufficient to convict petitioner. It was ruled that his arrest was valid because he was caught in plain view, and that the *corpus delicti* in this case has been established with moral certainty.

Ruling of the CA

In its Decision[22] dated 11 February 2019, the CA denied the appeal, and affirmed the RTC ruling, thus:

> **WHEREFORE**, in view of the foregoing, the instant appeal is hereby **DENIED**. The Decision dated 5 July 2017 rendered by the Regional Trial Court, Branch 135, Makati City, in Criminal Case Nos. R-MKT-16-765-CR and R-MKT-16-766-CR is hereby **AFFIRMED** in **TOTO**.
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> **SO ORDERED.**[23]

The CA ruled that petitioner cannot question the validity of the search warrant, which was issued against Jay Tan a.k.a Eugene Tan/ Jhay Tan. Further, the legality of the seizure can only be contested by the party whose rights have been impaired thereby, and objection to an unlawful search and

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21 Id. at 89-90
22 Id. at 36-49.
23 Id. at 48.

seizure is purely personal and cannot be availed of by third parties. Thus, petitioner cannot be considered a real party-in-interest to question the validity of the search warrant.[24]

It was also held that the seized items were under petitioner's immediate possession and control, there being no other person in the room where he was caught in *flagrante delicto*.[25]

Further, the CA affirmed the RTC's finding that the prosecution was able to establish the *corpus delicti* with moral certainty as well as the consecutive movement of the seized drug items. Correlatively, the CA also held that the denial of petitioner deserves scant consideration as it was unsupported and unsubstantiated by clear and convincing evidence.

The CA likewise denied petitioner's Motion for Reconsideration[26] in its Resolution[27] dated 11 July 2019.

Petitioner then filed this Petition with the Court raising the following issues:

> I. Whether the CA gravely erred in affirming the conviction of petitioner for violation of Sec. 11 and 12, Art. II of RA 9165 despite the invalidity of the search warrant and the inadmissibility of the pieces of evidence against him.
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> II. Whether the CA gravely erred in affirming the conviction of petitioner despite the police officers' failure to conduct the inventory of the seized items in the presence of the required witnesses under Sec. 21, Art. II of RA 9165 as amended.[28]

Petitioner argues that: (1) the search warrant was in violation of the one-specific-offense rule, and as a consequence, all items seized from petitioner should be considered inadmissible; (2) petitioner can question the validity of the search warrant as his rights have been impaired by the same because it is the same search warrant that the police officers used to gain access to the room where he was claimed to be found; (3) he was not caught *in flagrante delicto,* and the situation in this case is contrary to the plain

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[24] Id. at 44-45.
[25] Id. at 46.
[26] Id. at 110-119.
[27] Id. at 51-53.
[28] Id. at 18

view doctrine; (4) there are conflicting testimonies in the prosecution's testimonial evidence, which are too material; and (5) the police officers failed to comply with Sec. 21, Art. II of RA 9165, as amended.

The Office of the Solicitor General (OSG) filed its Comment[29] where it argued that: (1) the Petition raises questions of fact which are not appropriate in this kind of proceeding; and (2) in any case, the CA correctly affirmed the RTC which convicted petitioner of the crimes charged, specifically that: (i) the search warrant was validly issued; (ii) petitioner was caught *in flagrante delicto* committing the offense charged; and (iii) the unbroken chain of custody of the seized illegal drugs has been duly established.

Petitioner likewise filed a Reply,[30] where he reiterated his arguments in the Petition.

Given the foregoing, the main issue for the resolution of this Court is whether the CA correctly affirmed the conviction of petitioner for violation of Sec. 11 and 12, Art. II of RA 9165.

Ruling of the Court

Preliminarily, a petition for review on *certiorari* under Rule 45 of the Rules of Court must, as a general rule, only raise questions of law. In criminal cases, however, the entire case is thrown open for the Court to review.[31]

The search warrant is defective as it involved two separate offenses

The OSG argues that the search warrant cannot be totally invalidated even if it appears to cover two offenses. It was also raised that petitioner did not file a motion to quash or suppress evidence, and as such, he can no longer question the validity of the same or suppress the evidence obtained.[32]

It is clear that the search warrant in this case covers violations of RA 9165 and RA 10591. As such, this Court should determine if this fact renders

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[29] Id. at 139-157.
[30] Id. at 166-188.
[31] *Lapi v. People*, G.R. No. 210731, 13 February 2019; citations omitted.
[32] *Rollo*, pp. 145-147.

the search warrant defective.

The sacrosanct right of persons against unreasonable searches and seizures is found in Sec. 2, Art. III of the 1987 Constitution which reads:

> 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 [or she] may produce, and particularly describing the place to be searched and the persons or things to be seized.

In furtherance of this constitutional right, the Court issued the Revised Rules of Criminal Procedure, Sec. 4, Rule 126 of which provides the requisites for a search warrant as follows:

> **Section 4**. *Requisites for issuing search warrant.* — A search warrant shall not issue except upon probable cause in connection with **one specific offense** to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he [or she] may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines. (3a) (Emphasis supplied.)

The one-specific-offense rule, mentioned in the foregoing, is intended to prevent the issuance of a scatter-shot warrant or a warrant issued for more than one offense. The purpose of the one-specific-offense rule was explained in *Philippine Long Distance Telephone Co. v. Razon Alvarez*[33] in the following manner:

> [T]he Rules require that a search warrant should be issued "in connection with one specific offense" **to prevent the issuance of a scatter-shot warrant. The one-specific-offense requirement reinforces the constitutional requirement that a search warrant should issue only on the basis of probable cause**. Since the primary objective of applying for a search warrant is to obtain evidence to be used in a subsequent prosecution for an offense for which the search warrant was applied, a judge issuing a particular warrant must satisfy himself that the evidence presented by the applicant establishes the facts and circumstances relating to this specific offense for which the warrant is sought and issued. Accordingly, in a subsequent challenge against the validity of the

[33] 728 Phil. 391 (2014).

> warrant, the applicant cannot be allowed to maintain its validity based on facts and circumstances that may be related to other search warrants but are extrinsic to the warrant in question.[34] (Emphasis supplied; citations omitted.)

This was again reiterated in *People v. Pastrana*[35] where the Court ruled that a search warrant must be issued based on probable cause which, under the Rules, must be in connection with one specific offense, thus:

> One of the constitutional requirements for the validity of a search warrant is that it must be issued based on probable cause which, under the Rules, must be in connection with one specific offense to prevent the issuance of a scatter-shot warrant. In search warrant proceedings, probable cause is defined as such facts and circumstances that would lead a reasonably discreet and prudent man to believe that **an offense has been committed** and that the objects sought in connection with the offense are in the place sought to be searched.
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> x x x x
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> [C]ontrary to petitioner's claim that violation of Section 28.1 of the SRC and *estafa* are so intertwined with each other that the issuance of a single search warrant does not violate the one-specific-offense rule, the two offenses are entirely different from each other and neither one necessarily includes or is necessarily included in the other. An offense may be said to necessarily include another when some of the essential elements or ingredients of the former constitute the latter. And vice versa, an offense may be said to be necessarily included in another when the essential ingredients of the former constitute or form part of those constituting the latter.[36]

In *Vallejo v. Court of Appeals*,[37] the Court invalidated a search warrant for having been issued for more than one offense, thus:

> The questioned warrant in this case is a scatter-shot warrant for having been issued for more than one offense — Falsification of Land Titles under Article 171 and Article 213 of the Revised Penal Code, and violation of Rep. Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. A warrant must be issued upon probable cause in connection with one specific offense. In fact, a careful perusal of the application for the warrant shows that the

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34 Id. at 420.
35 826 Phil. 427 (2018).
36 Id. at 439 and 445.
37 471 Phil. 670 (2004).

> applicant did not allege any specific act performed by the petitioner constituting a violation of any of the aforementioned offenses.[38] (Citation omitted.)

This rule was also considered to have been violated in *People v. Court of Appeals*[39] which involved a search warrant for "stolen or embezzled and proceeds or fruits of the offense, used or intended to be used as a means of committing the offense." It was ruled that:

> There is no question that the search warrant did not relate to a specific offense, in violation of the doctrine announced in Stonehill v. Diokno and of Section 3 of Rule 126 providing as follows:
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> xxxx
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> Significantly, the petitioner has not denied this defect in the search warrant and has merely said that there was probable cause, omitting to continue that it was in connection with one specific offense. **He could not, of course, for the warrant was a scatter-shot warrant that could refer, in Judge Dayrit's own words, "to robbery, theft, qualified theft or estafa."** On this score alone, the search warrant was totally null and void and was correctly declared to be so by the very judge who had issued it.[40] (Emphasis supplied; citations omitted.)

In *Tambasen v. People*,[41] the Court also ruled that the search warrant violated the one-specific-offense rule as it contained the offenses of violation of Presidential Decree No. 1866 (Illegal Possession of Firearms, Ammunitions or Explosives) and RA 1700 or the Anti-Subversion Law. The Court explained:

> On its face, the search warrant violates Section 3, Rule 126 of the Revised Rules of Court, which prohibits the issuance of a search warrant for more than one specified offense. The caption of Search Warrant No. 365 reflects the violation of two special laws: P.D. No. 1866 for illegal possession of firearms, ammunition and explosives; and R.A. No. 1700, the Anti-Subversion Law. Search Warrant No. 365 was therefore a "scatter-shot warrant" and totally null and void.[42]

The foregoing discussions demonstrate that the one-specific-offense

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38 Id. at 688-689.
39 290 Phil. 528 (1992).
40 Id. at 533.
41 316 Phil. 237 (1995).
42 Id. at 243.

requirement for search warrant is intended to ensure that each warrant is founded on probable cause in relation to one specific offense only. This is also a safeguard under the rules to ensure that the constitutional right of persons against unreasonable searches and seizure is not violated. Therefore, We hold that the search warrant in this case is void for violating the one-specific-offense rule.

Contrary to the suggestion of the OSG that the invalid portions of the search warrant could be severed from the valid portions,[43] the Court cannot simply decide to uphold the enforcement of a search warrant in relation to one of the crimes stated therein. The evil sought to be avoided cannot be delineated since the totality of the search warrant could have led the law enforcement authorities to implement the same in a wholesale fashion considering all the offenses mentioned therein, and seize any and all evidence seized related to all of the crimes mentioned in the search warrant. The Court cannot sever the supposed "valid" portions of the search warrant in relation to one of the crimes stated therein after the fact of its implementation.

The reliance of the OSG on severability in *People v. Salanguit*[44] is misplaced as it referred to an objectionable item (*i.e.*, drug paraphernalia), in the list of objects to be seized under the search warrant, thus:

> It would be a drastic remedy indeed if a warrant, which was issued on probable cause and particularly describing the items to be seized on the basis thereof, is to be invalidated in toto because the judge erred in authorizing a search for other items not supported by the evidence. Accordingly, we hold that the first part of the search warrant, authorizing the search of accused-appellant's house for an undetermined quantity of shabu, is valid, even though the second part, with respect to the search for drug paraphernalia, is not.[45]

It is thus clear that the severability allowed by the Court therein referred to the objects seized, and not on the crimes included in the search warrant which is the issue in this case.

The waiver of the legality of the arrest did not extend to the inadmissibility of the evidence seized

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43 *Rollo*, pp. 145-146.
44 408 Phil. 817 (2001)
45 Id.

Proceeding from the invalidity of the search warrant, We now determine its effect to the warrantless arrest of petitioner, and evidence seized in this case.

Preliminarily, it should be considered that the search was intended against a certain Jay Tan, also known as Eugene Tan/ Jhay Tan (Tan). Petitioner was, however, arrested for committing a crime *in flagrante* at the time of the search. In this regard, the OSG argues that the validity of the search warrant, and the seizure that comes after the search are purely personal and can only be contested by Tan to whom the search warrant was issued for, and not petitioner.[46]

We disagree.

Petitioner had the right to question the validity of the search warrant as he was undoubtedly affected by the implementation thereof. In *Securities and Exchange Commission v. Mendoza*,[47] the Court ruled that it is not required that a person be a party of the search warrant proceeding, to question the validity of the search warrant, thus:

> But the rules do not require Mendoza, *et al.* to be parties to the search warrant proceeding for them to be able to file a motion to suppress. It is not correct to say that only the parties to the application for search warrant can question its issuance or seek suppression of evidence seized under it. The proceeding for the issuance of a search warrant does not partake of an action where a party complains of a violation of his right by another. x x x
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> x x x x
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> Clearly, although the search warrant in this case did not target the residence or offices of Mendoza, *et al.*, they were entitled to file with the Makati RTC a motion to suppress the use of the seized items as evidence against them for failure of the SEC and the NBI to immediately turn these over to the issuing court. The issuing court is the right forum for such motion given that no criminal action had as yet been filed against Mendoza, *et al.* in some other court.[48]

In this case, the intrusion of law enforcement agents in the room where they found petitioner would not have been possible were it not for the search warrant they had at that time which lent apparent authority to be in

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46 *Rollo*, pp. 145-147.
47 686 Phil. 308 (2012).
48 Id. at 315-316.

the searched premises. As such, the validity of the search warrant is intimately linked to the arrest of petitioner, and the seizure of the items used against him.

In the same vein, the plain view doctrine is inapplicable in this case. Said doctrine in order to be applicable, requires the following:

> Objects falling in plain view of an officer who has a right to be in a position to have that view are subject to seizure even without a search warrant and may be introduced in evidence. The 'plain view' doctrine applies when the following requisites concur: (a) **the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area**; (b) the discovery of evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand and its discovery inadvertent.[49] (Emphasis supplied.)

Here, the police officers had no prior justification for an intrusion nor were they in a position from which they could view the area where petitioner was supposedly caught *in flagrante delicto*. As previously mentioned, were it not for the authority claimed under the search warrant, petitioner would not have been seen committing the crimes charged against him.

We now consider the effect of the invalid search warrant to: (a) the arrest of petitioner; and (b) the evidence seized from petitioner.

It is settled in our jurisdiction that the validity of the arrest may be waived if not raised before arraignment. However, as held in *Dominguez v. People*,[50] this does not mean a waiver of the inadmissible character of the evidence seized on the occasion of the arrest, thus:

> Well settled is the rule that an accused is estopped from assailing the legality of his arrest if he failed to move to quash the information against him before his arraignment. Any objection involving the arrest or the procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise, the objection is deemed waived. Even in the instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and objection

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49 *People v. Acosta*, G.R. No. 238865, 28 January 2019 citing *People v. Lagman*, 593 Phil. 617 (2008).
50 G.R. No. 235898, 13 March 2019.

thereto is waived where the person arrested submits to arraignment without objection.

Applying the foregoing, the Court agrees that Dominguez had already waived his objection to the validity of his arrest. However, it must be stressed that such waiver only affects the jurisdiction of the court over the person of the accused but does not carry a waiver of the admissibility of evidence, as the Court ruled in *Homar v. People*:

> We agree with the respondent that the petitioner did not timely object to the irregularity of his arrest before his arraignment as required by the Rules. In addition, he actively participated in the trial of the case. As a result, the petitioner is deemed to have submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest.
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> However, **this waiver to question an illegal arrest only affects the jurisdiction of the court over his person. It is well-settled that a waiver of an illegal warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest.** (Emphasis ours.)

Thus, it is now necessary for the Court to ascertain whether the warrantless search which yielded the alleged contraband was lawful.[51]

In this case, since the search warrant is invalid, it follows that the evidence obtained pursuant thereto are inadmissible. Moreover, although the warrantless arrest could have been questioned on the ground that the authorities' presence within the searched premises is illegal due to an invalid search warrant, this has been waived after the arraignment of petitioner. In any case, petitioner should be allowed to question the admissibility of the evidence seized against him. Otherwise, this would warrant a license for authorities which can be abused to the detriment of the constitutional right to be secured in one's home. As the famous maxim states "what cannot be done directly cannot likewise be done indirectly."

In any case, there is a violation of the chain of custody rule under RA 9165 as amended

Contrary to the finding of the CA that the chain of custody was followed in this case, this Court cannot turn a blind eye to the requirements under Section 21 of RA 9165, as amended, thus:

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51 Id., citations omitted.

> SEC. 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:
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> (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 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 x x x (Emphasis supplied.)

Here, it was clear that there was no member of the media or the National Prosecution Service as required by the law. This requisite is essential as elucidated in *David v. People*,[52] thus:

> In cases for Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the corpus delicti of the crime. Failing to prove the integrity of the corpus delicti renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal.
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> To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, inter alia, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.
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> The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if prior to the amendment of RA 9165 by RA 10640, "a representative from the media and the Department of Justice (DOJ), and any elected public official"; or (b) **if after the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service or the media." The law requires the presence of these witnesses primarily "to ensure the**

[52] G.R. No. 253336, 10 May 2021.

> **establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."**[53] (Emphasis supplied.)

While jurisprudence recognizes that the chain of custody is not an inflexible rule, any deviations thereto has to be sufficiently explained, thus:

> As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." Nonetheless, anent the witness requirement, **non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear.** While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation, and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.[54] (Emphasis supplied.)

In this case, there was no explanation for the non-observance of the requirements of the law which could warrant the liberality allowed therein. Absent such justification, and considering that the law enforcement had ample time to coordinate said witnesses given that they had time to apply for a search warrant, the Court has no other option but to declare the *corpus delicti* of the crimes charged as not having been established. Thus, the acquittal of petitioner is in order.

WHEREFORE, in view of the foregoing, the petition is hereby **GRANTED**. The Decision dated 11 February 2019 and the Resolution dated 11 July 2019 of the Court of Appeals in CA-G.R. CR No. 40706 is hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Joemarie Mendoza *y* Bucad "Joe" is **ACQUITTED** of the crimes charged and **ORDERED RELEASED** from detention unless he is being lawfully held for another cause.

The Director of the Bureau of Corrections, Muntinlupa City is ORDERED toinform the Court of the action taken within five days from

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53 Id.
54 Id.

receipt of this Decision.

Let entry of judgment be issued immediately.

SO ORDERED.

RODIL V. ZALAMEDA
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

(on wellness leave)
RAMON PAUL L. HERNANDO
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice