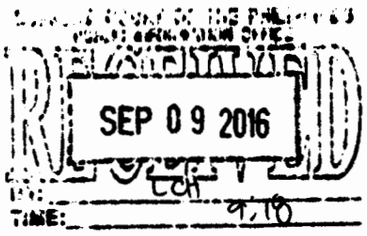
Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee,	**G.R. No. 212340**
	Present:
- versus -	SERENO, *C.J.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, PERLAS-BERNABE, and CAGUIOA, *JJ.*
GERRJAN MANAGO *y* ACUT, Accused-Appellant.	
	Promulgated: **AUG 17 2016**

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DECISION

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Gerrjan Manago *y* Acut (Manago) assailing the Decision[2] dated May 20, 2013 and the Resolution[3] dated November 6, 2013 of the Court of Appeals (CA) in C.A.-G.R. CEB-C.R. No. 01342, which affirmed the Decision[4] dated March 23, 2009 of the Regional Trial Court of Cebu City, Branch 58 (RTC), in Criminal Case No. CBU-79707, finding Manago guilty beyond reasonable doubt of violating Section 11, Article II[5] of Republic Act No.

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1 See Notice of Appeal dated December 13, 2013; *rollo*, pp. 18-19.

2 Id. at 5-17. Penned by Associate Justice Ramon Paul L. Hernando with Associate Justices Carmelita Salandanan-Manahan and Ma. Luisa C. Quijano-Padilla concurring.

3 CA *rollo*, pp. 224-225.

4 Id. at 106-117. Penned by Presiding Judge Gabriel T. Ingles.

5 The pertinent portion of Section 11, Article II of RA 9165 provides:

(RA) 9165,[6] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

On April 10, 2007, an Information[7] was filed before the RTC, charging Manago of Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165, the accusatory portion of which reads:

> That on or about the 16th day of March, 2007, at about 11:50 in the evening, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of law, did then and there have in his possession and under his control one (1) heat-sealed transparent plastic packet of white crystalline substance weighing 5.85 grams containing *Methylamphetamine Hydrochloride* [sic], a dangerous drug, without being authorized by law.
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> CONTRARY TO LAW.[8]

According to the prosecution, at around 9:30 in the evening of March 15, 2007, PO3 Antonio Din (PO3 Din) of the Philippine National Police (PNP) Mobile Patrol Group was waiting to get a haircut at Jonas Borces Beauty Parlor when two (2) persons entered and declared a hold-up. PO3 Din identified himself as a police officer and exchanged gun shots with the two suspects. After the shootout, one of the suspects boarded a motorcycle, while the other boarded a red Toyota Corolla. The plate numbers of the vehicles were noted by PO3 Din.[9]

After the incident, PO3 Din received word from Barangay Tanod Florentino Cano (Cano),[10] that the robbery suspects were last seen in Barangay Del Rio Pit-os. Thus, S/Insp. George Ylanan (S/Insp. Ylanan) conducted an investigation in the said barangay, and discovered that before the robbery incident, Manago told Cano that three persons – namely, Rico Lumampas, Arvin Cadastra, and Allan Sordiano – are his employees in his

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> SEC. 11. *Possession of Dangerous Drugs.* – The penalty x x x shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drugs in the following quantities, regardless of the degree of purity thereof:
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> x x x x
>
> (3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of x x x methamphetamine hydrochloride or "*shabu*" x x x.

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 on June 7, 2002.

7 Records, pp. 1-2.

8 Id. at 1. Italics supplied.

9 *Rollo*, p. 7.

10 "Florentino Cano, Jr." in some parts of the records.

roasted chicken business, and they were to stay in Manago's house. Further, upon verification of the getaway vehicles with the Land Transportation Office, the police officers found out that the motorcycle was registered in Manago's name, while the red Toyota Corolla was registered in the name of Zest-O Corporation, where Manago worked as a District Sales Manager.[11]

With all the foregoing information at hand, the police officers, comprised of a team including PO3 Din and S/Insp. Ylanan, conducted a "hot pursuit" operation one (1) day after the robbery incident, or on March 16, 2007, by setting up a checkpoint in Sitio Panagdait. At around 9:30 in the evening of even date, the red Toyota Corolla, then being driven by Manago, passed through the checkpoint, prompting the police officers to stop the vehicle. The police officers then ordered Manago to disembark, and thereafter, conducted a thorough search of the vehicle. As the search produced no contraband, the police officers then frisked Manago, resulting in the discovery of one (1) plastic sachet containing a white crystalline substance suspected to be *methamphetamine hydrochloride* or *shabu*. The police officers seized the plastic pack, arrested Manago, informed him of his constitutional rights, and brought him and the plastic pack to their headquarters. Upon reaching the headquarters, S/Insp. Ylanan turned over the seized plastic pack to PO3 Joel Taboada, who in turn, prepared a request for a laboratory examination of the same. SPO1 Felix Gabijan then delivered the said sachet and request to Forensic Chemist Jude Daniel Mendoza of the PNP Crime Laboratory, who, after conducting an examination, confirmed that the sachet contained *methamphetamine hydrochloride* or *shabu*.[12]

In his defense, Manago denied possessing the plastic pack recovered by the police officers. He claimed that at around 11:50 in the evening of March 16, 2007, he was about to start his vehicle and was on his way home from the office when a pick-up truck stopped in front of his car. Three (3) police officers armed with long firearms disembarked from the said truck. One of the officers knocked on the door of Manago's vehicle and asked for his driver's license, to which Manago complied. When the same officer saw Manago's name on the license, the former uttered "*mao na ni* (this is him)." Manago was then ordered to sit at the back of his car as the vehicle was driven by one of the police officers directly to the Cebu City Police Station. After arriving at the police station, Manago was interrogated about who the robbers were and to divulge their whereabouts so that no criminal charges would be filed against him. Manago claimed that he requested for a phone call with his lawyer, as well as a copy of the warrant for his arrest, but both requests went unheeded. After he was dispossessed of his laptop, wallet, and two (2) mobile phones, he was then photographed and placed in a detention cell. Thereafter, he was brought to the Cebu City Prosecutor's Office where he was charged with, among others, illegal possession of *shabu*.[13]

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11 *Rollo*, p.7.
12 Id. at 7-8.
13 Id. at 8-9.

Prior to his arraignment, Manago filed a Motion to Dismiss for Lack of Probable Cause and/or Motion for the Suppression of Evidence,[14] contending, *inter alia*, that there is neither probable cause nor *prima facie* evidence to conduct an arrest and search on him; as such, the item seized from him, *i.e.*, the plastic sachet containing *shabu*, is inadmissible in evidence pursuant to the fruit of the poisonous tree doctrine.[15] However, in an Order[16] dated May 31, 2007, the RTC denied the said motion. The RTC held that while (*a*) the police officers, through PO3 Din, had no personal knowledge of Manago's involvement in the robbery as they had to conduct an investigation to identify him as the registered owner of the motorcycle and (*b*) there was no *in flagrante delicto* arrest as Manago was merely driving and gave no indication that he was committing an offense, the RTC nevertheless held that there was a valid warrantless search of a moving vehicle, considering that PO3 Din had probable cause to believe that Manago was part of the robbery, because the latter was driving the getaway vehicle used in the March 15, 2007 robbery incident.[17]

On July 12, 2007, Manago was arraigned with the assistance of counsel and pleaded not guilty to the charge against him.[18]

During the course of the trial, the contents of the plastic sachet were re-examined by the National Bureau of Investigation, revealing that out of the 5.7158 grams of white crystalline substance contained in the sachet, only 0.3852 grams is *methamphetamine hydrochloride*, while the rest is potassium aluminum sulphate or *tawas*, which is not a dangerous drug substance. Thus, Manago applied for and was granted bail.[19]

The RTC Ruling

In a Decision[20] dated March 23, 2009, the RTC found Manago guilty beyond reasonable doubt of possession of 0.3852 grams of *shabu* and accordingly, sentenced him to suffer the penalty of imprisonment for a period of twelve (12) years and one (1) day, as minimum, to fifteen (15) years, as maximum, and to pay a fine in the amount of ₱300,000.00.[21]

Echoing its earlier findings in its May 31, 2007 Order, the RTC found that the police officers conducted a valid warrantless search of a moving vehicle, considering that PO3 Din positively identified the red Toyota Corolla, then being driven by Manago, as the getaway vehicle in the March

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14 Dated April 25, 2007. Records, pp. 35-49.
15 Id. at 35.
16 Id. at 74-78. Penned by Presiding Judge Gabriel T. Ingles.
17 Id.
18 *Rollo*, p. 6.
19 See CA *rollo*, pp. 51-53. See also pp. 54-55.
20 Id. at 106-117. Penned by Presiding Judge Gabriel T. Ingles.
21 Id. at 117.

15, 2007 robbery incident. Thus, the item found in the search, *i.e.*, the plastic sachet containing *shabu* obtained from Managо, is admissible in evidence and is enough to sustain a conviction against him for violation of Section 11, Article II of RA 9165.[22]

Managо moved for reconsideration[23] and applied for bail pending appeal, which were, however, both denied in an Omnibus Order[24] dated May 12, 2009. Aggrieved, Managо appealed his conviction before the CA.[25]

The CA Proceedings

Upon Managо's motion to post bail, the CA rendered a Resolution[26] dated August 13, 2010, allowing Managо to post bail in the amount of ₱200,000.00, noting that the quantity of the *shabu* seized from him was only 0.3852 grams, thus bailable, and that the Office of the Solicitor General did not oppose Managо's motion.[27]

In a Decision[28] dated May 20, 2013, the CA affirmed Managо's conviction *in toto*. It held that the police officers conducted a valid hot pursuit operation against Managо, considering that PO3 Din personally identified him as the one driving the red Toyota Corolla vehicle used in the March 15, 2007 robbery incident. As such, the CA concluded that the warrantless arrest conducted against Managо was valid, and consequently, the plastic sachet seized from him containing *shabu* is admissible in evidence as it was done incidental to a lawful arrest.[29]

Undaunted, Managо moved for reconsideration,[30] which was denied in a Resolution[31] dated November 6, 2013; hence, the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Managо's conviction for violation of Section 11, Article II of RA 9165 should be upheld.

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22 Id. at 112-117.
23 Dated April 27, 2009. Records, pp. 531-549.
24 CA *rollo*, p. 118.
25 See Notice of Appeal dated May 19, 2009; records, p. 555.
26 CA *rollo*, pp. 51-53. Penned by Associate Justice Erwin D. Sorongon with Executive Justice Portia A. Hormachuelos and Associate Justice Socorro B. Inting concurring.
27 Id.
28 *Rollo*, pp. 5-17.
29 Id. at 11-15.
30 CA *rollo*, pp. 201-212.
31 Id. at 224-225.

The Court's Ruling

The appeal is meritorious.

Section 2, Article III[32] of the 1987 Constitution mandates that **a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which such search and seizure becomes "unreasonable" within the meaning of the said constitutional provision**. To protect the people from unreasonable searches and seizures, Section 3 (2), Article III[33] of the 1987 Constitution provides that evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. In other words, **evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.**[34]

One of the recognized exceptions to the need of a warrant before a search may be effected is a search incidental to a lawful arrest. **In this instance, the law requires that there first be a lawful arrest before a search can be made – the process cannot be reversed.**[35]

A lawful arrest may be effected with or without a warrant. With respect to the latter, the parameters of Section 5, Rule 113 of the Revised Rules of Criminal Procedure should – as a general rule – be complied with:

> 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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32 Section 2, Article III of the 1987 Constitution states:

> Sec. 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.

33 Section 3(2), Article III of the 1987 Constitution states:

> Sec 3. x x x
>
> x x x x
>
> (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

34 See *Comerciante v. People*, G.R. No. 205926, July 22, 2015, 763 SCRA 587, 594-595, citing *Ambre v. People*, 692 Phil. 681, 693 (2012).

35 Id. at 595, citations omitted.

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

Under the foregoing provision, there are three (3) instances when warrantless arrests may be lawfully effected. These are: (*a*) an arrest of a suspect *in flagrante delicto;* (*b*) **an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed**; and (*c*) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.[36]

In warrantless arrests made pursuant to Section 5 (b), it is essential that **the element of personal knowledge must be coupled with the element of immediacy**; otherwise, the arrest may be nullified, and resultantly, the items yielded through the search incidental thereto will be rendered inadmissible in consonance with the exclusionary rule of the 1987 Constitution. In *Pestilos v. Generoso*,[37] the Court explained the requirement of immediacy as follows:

> Based on these discussions, it appears that the Court's appreciation of the elements that "the offense has just been committed" and "personal knowledge of facts and circumstances that the person to be arrested committed it" depended on the particular circumstances of the case.
>
> However, we note that the element of "personal knowledge of facts or circumstance" under Section 5 (b), Rule 113 of the Revised Rules of Criminal Procedure requires clarification.
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> The phrase covers facts or, in the alternative, circumstances. According to the Black's Law Dictionary, "circumstances are attendant or accompanying facts, events or conditions." Circumstances may pertain to events or actions within the actual perception, personal evaluation or observation of the police officer at the scene of the crime. Thus, even though the police officer has not seen someone actually fleeing, he could still make a warrantless arrest if, based on his personal evaluation of the circumstances at the scene of the crime, he could determine the existence of probable cause that the person sought to be arrested has committed the crime. However, the determination of probable cause and the gathering of facts or circumstances should be made immediately after the commission of the crime in order to comply with the element of immediacy.

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[36] Id. at 596, citing *Malacat v. CA*, 347 Phil. 462, 480 (1997).
[37] G.R. No. 182601, November 10, 2014, 739 SCRA 337.

> In other words, **the clincher in the element of "personal knowledge of facts or circumstances" is the required element of immediacy within which these facts or circumstances should be gathered. This required time element acts as a safeguard to ensure that the police officers have gathered the facts or perceived the circumstances within a very limited time frame. This guarantees that the police officers would have no time to base their probable cause finding on facts or circumstances obtained after an exhaustive investigation.**
>
> The reason for the element of the immediacy is this – as the time gap from the commission of the crime to the arrest widens, the pieces of information gathered are prone to become contaminated and subjected to external factors, interpretations and hearsay. On the other hand, **with the element of immediacy imposed under Section 5 (b), Rule 113 of the Revised Rules of Criminal Procedure, the police officer's determination of probable cause would necessarily be limited to raw or uncontaminated facts or circumstances, gathered as they were within a very limited period of time.** The same provision adds another safeguard with the requirement of probable cause as the standard for evaluating these facts of circumstances before the police officer could effect a valid warrantless arrest.[38] (Emphases and underscoring supplied)

In this case, records reveal that at around 9:30 in the evening of March 15, 2007, PO3 Din personally witnessed a robbery incident while he was waiting for his turn to have a haircut at Jonas Borces Beauty Parlor. After his brief shootout with the armed robbers, the latter fled using a motorcycle and a red Toyota Corolla. Through an investigation and verification made by the police officers headed by PO3 Din and S/Insp. Ylanan, they were able to: (*a*) find out that the armed robbers were staying in Barangay Del Rio Pit-os; and (*b*) trace the getaway vehicles to Manago. The next day, or on March 16, 2007, the police officers set up a checkpoint in Sitio Panagdait where, at around 9:30 in the evening, the red Toyota Corolla being driven by Manago passed by and was intercepted by the police officers. The police officers then ordered Manago to disembark the car, and from there, proceeded to search the vehicle and the body of Manago, which search yielded the plastic sachet containing *shabu*. Thereupon, they effected Manago's arrest.

The foregoing circumstances show that while the element of personal knowledge under Section 5 (b) above was present – given that PO3 Din actually saw the March 15, 2007 robbery incident and even engaged the armed robbers in a shootout – the required element of immediacy was not met. This is because, at the time the police officers effected the warrantless arrest upon Manago's person, investigation and verification proceedings were already conducted, which consequently yielded sufficient information on the suspects of the March 15, 2007 robbery incident. As the Court sees it, the information the police officers had gathered therefrom would have been enough for them to secure the necessary warrants against the robbery suspects. However, they opted to conduct a "hot pursuit" operation which –

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[38] Id. at 373-374.

considering the lack of immediacy – unfortunately failed to meet the legal requirements therefor. Thus, there being no valid warrantless arrest under the "hot pursuit" doctrine, the CA erred in ruling that Manago was lawfully arrested.

In view of the finding that there was no lawful arrest in this case, the CA likewise erred in ruling that the incidental search on Manago's vehicle and body was valid. In fact, the said search was made even ***before*** he was arrested and thus, violated the cardinal rule on searches incidental to lawful arrests **that there first be a lawful arrest before a search can be made.**

For another, the Court similarly finds the RTC's ruling that the police officers conducted a lawful warrantless search of a moving vehicle on Manago's red Toyota Corolla untenable.

In *Caballes v. People*, [39] the Court explained the concept of warrantless searches on moving vehicles:

> Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity. **Thus, the rules governing search and seizure have over the years been steadily liberalized whenever a moving vehicle is the object of the search on the basis of practicality.** This is so considering that before a warrant could be obtained, the place, things and persons to be searched must be described to the satisfaction of the issuing judge – a requirement which borders on the impossible in the case of smuggling effected by the use of a moving vehicle that can transport contraband from one place to another with impunity. **We might add that a warrantless search of a moving vehicle is justified on the ground that it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.** Searches without warrant of automobiles is also allowed for the purpose of preventing violations of smuggling or immigration laws, provided such searches are made at borders or "constructive borders" like checkpoints near the boundary lines of the State. [40] (Emphases and underscoring supplied)

A variant of searching moving vehicles without a warrant may entail the **setup of military or police checkpoints** – as in this case – which, based on jurisprudence, are **not illegal *per se* for as long as its necessity is justified by the exigencies of public order and conducted in a way least intrusive to motorists**.[41] Case law further states that routine inspections in checkpoints are not regarded as violative of an individual's right against unreasonable searches, and thus, permissible, if limited to the following: (*a*)

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[39] 424 Phil. 263 (2002).
[40] Id. at 278-279, citations omitted.
[41] Id. at 280, citations omitted.

where the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds; (*b*) simply looks into a vehicle; (*c*) flashes a light therein without opening the car's doors; (*d*) where the occupants are not subjected to a physical or body search; (*e*) where the inspection of the vehicles is limited to a visual search or visual inspection; and (*f*) where the routine check is conducted in a fixed area.[42]

It is well to clarify, however, that routine inspections do not give police officers *carte blanche* discretion to conduct warrantless searches in the absence of probable cause. When a vehicle is stopped and subjected to an extensive search – as opposed to a mere routine inspection – such a warrantless search has been held to be valid only as long as the officers conducting the search have reasonable or probable cause to believe before the search that they will find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched.[43]

In the case at bar, it should be reiterated that the police officers had already conducted a thorough investigation and verification proceedings, which yielded, among others: (*a*) the identities of the robbery suspects; (*b*) the place where they reside; and (*c*) the ownership of the getaway vehicles used in the robbery, *i.e.*, the motorcycle and the red Toyota Corolla. As adverted to earlier, these pieces of information were already enough for said police officers to secure the necessary warrants to accost the robbery suspects. Consequently, there was no longer any exigent circumstance that would have justified the necessity of setting up the checkpoint in this case for the purpose of searching the subject vehicle. In addition, it is well to point out that the checkpoint was arranged for the targeted arrest of Manago, who was already identified as the culprit of the robbery incident. In this regard, it cannot, therefore, be said that the checkpoint was meant to conduct a routinary and indiscriminate search of moving vehicles. Rather, it was used as a subterfuge to put into force the capture of the fleeing suspect. Unfortunately, this setup cannot take the place of – nor skirt the legal requirement of – procuring a valid search/arrest warrant given the circumstances of this case. Hence, the search conducted on the red Toyota Corolla and on the person of its driver, Manago, was unlawful.

In fine, Manago's warrantless arrest, and the search incidental thereto, including that of his moving vehicle were all unreasonable and unlawful. In consequence, the *shabu* seized from him is rendered inadmissible in evidence pursuant to the exclusionary rule under Section 3 (2), Article III of the 1987 Constitution. Since the confiscated *shabu* is the very *corpus delicti* of the crime charged, Manago must necessarily be acquitted and exonerated from criminal liability.[44]

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42 See id. at 280, citations omitted.

43 See *People v. Mariacos*, 635 Phil. 315, 329 (2010), citing *People v. Bagista*, G.R. No. 86218, September 18, 1992, 214 SCRA 63, 68-69.

44 See *Comerciante v. People*, supra note 34, at 603.

WHEREFORE, the appeal is **GRANTED**. The Decision dated May 20, 2013 and the Resolution dated November 6, 2013 of the Court of Appeals in C.A.-G.R. CEB-C.R. No. 01342 are hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Gerrjan Managoy Acut is hereby **ACQUITTED** of the crime of violation of Section 11, Article II of Republic Act No. 9165.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
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.

MARIA LOURDES P. A. SERENO
Chief Justice