

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FLORENCIO DORIA Y BOLADO, AND VIOLETA GADDAO Y CATAMA @
“NENETH,” ACCUSED-APPELLANTS.**

G.R. No. 125299. January 22, 1999

Ponente: PUNO, J.

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PUNO, J.:

On December 7, 1995, accused-appellants Florencio Doria y Bolado and Violeta Gaddao y Catama @ "Neneth" were charged with violation of Section 4, in relation to Section 21 of the Dangerous Drugs Act of 1972.[1] The information reads:

"That on or about the 5th day of December, 1995 in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping and aiding one another and without having been authorized by law, did, then and there willfully, unlawfully and feloniously sell, administer, deliver and give away to another eleven (11) plastic bags of suspected marijuana fruiting tops weighing 7,641.08 grams in violation of the above-cited law.

CONTRARY TO LAW."[2]

The prosecution contends the offense was committed as follows: In November 1995, members of the North Metropolitan District, Philippine National Police (PNP) Narcotics Command (Narcom), received information from two (2) civilian informants (CI) that one "Jun" was engaged in illegal drug activities in Mandaluyong City. The Narcom agents decided to entrap and arrest "Jun" in a buy-bust operation. As arranged by one of the CI's, a meeting between the Narcom agents and "Jun" was scheduled on December 5, 1995 at E. Jacinto Street in Mandaluyong City.

On December 5, 1995, at 6:00 in the morning, the CI went to the PNP Headquarters at EDSA, Kamuning, Quezon City to prepare for the buy-bust operation. The Narcom agents formed Team Alpha composed of P/Insp. Nolasco Cortes as team leader and PO3 Celso Manlangit, SPO1 Edmund Badua and four (4) other policemen as members. P/Insp. Cortes designated PO3 Manlangit as the poseur-buyer and SPO1 Badua as his back-up, and the rest of the team as perimeter security. Superintendent Pedro Alcantara, Chief of the North Metropolitan District PNP Narcom, gave the team P2,000.00 to cover operational expenses. From this sum, PO3 Manlangit set aside P1,600.00-- a one thousand peso bill and six (6) one hundred peso bills[3]-- as money for the buy-bust operation. The market price of one kilo of marijuana was then P1,600.00. PO3 Manlangit marked the bills with his initials and listed their serial numbers in the police blotter.[4] The team rode in two cars and headed for the target area.

At 7:20 of the same morning, "Jun" appeared and the CI introduced PO3 Manlangit as interested in buying one (1) kilo of marijuana. PO3 Manlangit handed "Jun" the marked bills worth P1,600.00. "Jun" instructed PO3 Manlangit to wait for him at the corner of Shaw Boulevard and Jacinto Street while he got the marijuana from his associate.[5] An hour later, "Jun" appeared at the agreed place where PO3 Manlangit, the CI and the rest of the team were waiting. "Jun" took out from his bag an object wrapped in plastic and gave it to PO3 Manlangit. PO3

Manlangit forthwith arrested "Jun" as SPO1 Badua rushed to help in the arrest. They frisked "Jun" but did not find the marked bills on him. Upon inquiry, "Jun" revealed that he left the money at the house of his associate named "Neneth." [6] "Jun" led the police team to "Neneth's" house nearby at Daang Bakal.

The team found the door of "Neneth's" house open and a woman inside. "Jun" identified the woman as his associate. [7] SPO1 Badua asked "Neneth" about the P1,600.00 as PO3 Manlangit looked over "Neneth's" house. Standing by the door, PO3 Manlangit noticed a carton box under the dining table. He saw that one of the box's flaps was open and inside the box was something wrapped in plastic. The plastic wrapper and its contents appeared similar to the marijuana earlier "sold" to him by "Jun." His suspicion aroused, PO3 Manlangit entered "Neneth's" house and took hold of the box. He peeked inside the box and found that it contained ten (10) bricks of what appeared to be dried marijuana leaves.

Simultaneous with the box's discovery, SPO1 Badua recovered the marked bills from "Neneth." [8] The policemen arrested "Neneth." They took "Neneth" and "Jun," together with the box, its contents and the marked bills and turned them over to the investigator at headquarters. It was only then that the police learned that "Jun" is Florencio Doria y Bolado while "Neneth" is Violeta Gaddao y Catama. The one (1) brick of dried marijuana leaves recovered from "Jun" plus the ten (10) bricks recovered from "Neneth's" house were examined at the PNP Crime Laboratory. [9] The bricks, eleven (11) in all, were found to be dried marijuana fruiting tops of various weights totalling 7,641.08 grams. [10]

The prosecution story was denied by accused-appellants Florencio Doria and Violeta Gaddao. Florencio Doria, a 33-year old carpenter, testified that on December 5, 1995, at 7:00 in the morning, he was at the gate of his house reading a tabloid newspaper. Two men appeared and asked him if he knew a certain "Totoy." There were many "Totoy's" in their area and as the men questioning him were strangers, accused-appellant denied knowing any "Totoy." The men took accused-appellant inside his house and accused him of being a pusher in their community. When accused-appellant denied the charge, the men led him to their car outside and ordered him to point out the house of "Totoy." For five (5) minutes, accused-appellant stayed in the car. Thereafter, he gave in and took them to "Totoy's" house.

Doria knocked on the door of "Totoy's" house but no one answered. One of the men, later identified as PO3 Manlangit, pushed open the door and he and his companions entered and looked around the house for about three minutes. Accused-appellant Doria was left standing at the door. The policemen came out of the house and they saw Violeta Gaddao carrying water from the well. He asked Violeta where "Totoy" was but she replied he was not there. Curious onlookers and kibitzers were, by that time, surrounding them. When Violeta entered her house, three men were already inside. Accused-appellant Doria, then still at the door, overheard one of the men say that they found a carton box. Turning towards them, Doria saw a box on top of the table. The box was open and had something inside. PO3 Manlangit ordered him and Violeta to go outside the house and board the car. They were brought to police headquarters where they were investigated.

Accused-appellant Doria further declared that his co-accused, Violeta Gaddao, is the wife of his acquaintance, Totoy Gaddao. He said that he and Totoy Gaddao sometimes drank together at the neighborhood store. This closeness, however, did not extend to Violeta, Totoy's wife. [11]

Accused-appellant Violeta Gaddao, a 35-year old rice vendor, claimed that on December 5, 1995, she was at her house at Daang Bakal, Mandaluyong City where she lived with her husband and five (5) children, namely, Arvy, aged 10, Arjay, aged 8, the twins Raymond and Raynan, aged 5, and Jason, aged 3. That day, accused-appellant woke up at 5:30 in the morning and bought pan de sal for her children's breakfast. Her husband, Totoy, a housepainter, had left for Pangasinan five days earlier. She woke her children and bathed them. Her eldest son,

Arvy, left for school at 6:45 A.M. Ten minutes later, she carried her youngest son, Jayson, and accompanied Arjay to school. She left the twins at home leaving the door open. After seeing Arjay off, she and Jayson remained standing in front of the school soaking in the sun for about thirty minutes. Then they headed for home. Along the way, they passed the artesian well to fetch water. She was pumping water when a man clad in short pants and denim jacket suddenly appeared and grabbed her left wrist. The man pulled her and took her to her house. She found out later that the man was PO3 Manlangit.

Inside her house were her co-accused Doria and three (3) other persons. They asked her about a box on top of the table. This was the first time she saw the box. The box was closed and tied with a piece of green straw. The men opened the box and showed her its contents. She said she did not know anything about the box and its contents.

Accused-appellant Violeta Gaddao confirmed that her co-accused Florencio Doria was a friend of her husband, and that her husband never returned to their house after he left for Pangasinan. She denied the charge against her and Doria and the allegation that marked bills were found in her person.[12]

After trial, the Regional Trial Court, Branch 156, Pasig City convicted the accused-appellants. The trial court found the existence of an "organized/syndicated crime group" and sentenced both accused-appellants to death and pay a fine of P500,000.00 each. The dispositive portion of the decision reads as follows:

"WHEREFORE, the guilt of accused, FLORENCIO DORIA y BOLADO @ "Jun" and VIOLETA GADDAO y CATAMA @ "Neneth" having been established beyond reasonable doubt, they are both CONVICTED of the present charge against them.

According to the amendatory provisions of Sec. 13 of Republic Act No. 7659 which cover violations of Sec. 4 of Republic Act No. 6425 and which was exhaustively discussed in *People v. Simon*, 234 SCRA 555, the penalty imposable in this case is reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos. Taking into consideration, however, the provisions of Sec. 23, also of Republic Act No. 7659 which explicitly state that:

'The maximum penalty shall be imposed if the offense was committed by any person who belongs to an organized/syndicated crime group.

An organized/syndicated crime group means a group of two or more persons collaborating, confederating or mutually helping one another for purposes of gain in the commission of any crime.'

the Court is hereby constrained to sentence (hereby sentences) said FLORENCIO DORIA y BOLADO @ "Jun" and VIOLETA GADDAO y CATAMA @ "Neneth" to DEATH and to pay a fine of Five Hundred Thousand Pesos (P500,000.00) each without subsidiary imprisonment in case of insolvency and to pay the costs.

The confiscated marijuana bricks (7,641.08 grams) shall be turned over to the Dangerous Drugs Board, NBI for destruction in accordance with law.

Let a Commitment Order be issued for the transfer of accused DORIA from the Mandaluyong City Jail to the New Bilibid Prisons, Muntinlupa City and also for accused GADDAO for her transfer to the Correctional Institute for Women, Mandaluyong City.

Let the entire records of this case be forwarded immediately to the Supreme Court for mandatory review.

SO ORDERED."[13]

Before this Court, accused-appellant Doria assigns two errors, thus:

"I

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT TO THE TESTIMONY OF THE

WITNESSES FOR THE PROSECUTION WHEN THEIR TESTIMONIES WERE SHOT WITH DISCREPANCIES, INCONSISTENCIES AND THAT THE CORPUS DELICTI OF THE MARIJUANA ALLEGEDLY TAKEN FROM APPELLANT WAS NOT POSITIVELY IDENTIFIED BY THE POSEUR-BUYER.

II

THE COURT A QUO GRAVELY ERRED IN ADMITTING AS EVIDENCE THE MARIJUANA FRUITINGS FOUND INSIDE THE CARTON BOX AS THESE WERE OBTAINED THROUGH A WARRANTLESS SEARCH AND DOES NOT COME WITHIN THE PLAIN VIEW DOCTRINE."[14]

Accused-appellant Violeta Gaddao contends:

"I

THE LOWER COURT ERRED IN FINDING APPELLANT GUILTY DESPITE THE INCREDIBILITY OF THE POLICE VERSION OF THE MANNER THE ALLEGED BUY-BUST AS CONDUCTED.

II

THE PNP OFFICERS' VERSIONS AS TO WHERE THE BUY-BUST MONEY CAME FROM ARE INCONSISTENT WITH ONE ANOTHER AND ALSO REEKS WITH INCREDIBILITY.

III

THE LOWER COURT ERRED IN FINDING APPELLANT GUILTY AND SENTENCING HER TO DEATH DESPITE THE MANIFESTLY IRRECONCILABLE INCONSISTENCIES IN THE VERSIONS OF THE POLICE AS TO HOW AND BY WHOM THE ALLEGED BUY-BUST MONEY WAS RECOVERED FROM HER, WHICH IN CONSEQUENCE RESULTS IN THE EVIDENCE, OF RETRIEVAL FROM HER OF THE SAME, NEBULOUS, AT BEST, NIL, AT WORST.

IV

THE LOWER COURT ERRED IN UPHOLDING THE VALIDITY OF THE WARRANTLESS SEARCH LEADING TO THE SEIZURE OF THE MARIJUANA ALLEGEDLY FOUND INSIDE THE HOUSE OF ACCUSED-APPELLANT."[15]

The assigned errors involve two principal issues: (1) the validity of the buy-bust operation in the apprehension of accused-appellant Doria; and (2) the validity of the warrantless arrest of accused-appellant Gaddao, the search of her person and house, and the admissibility of the pieces of evidence obtained therefrom.

Accused-appellants were caught by the police in a buy-bust operation. A buy-bust operation is a form of entrapment employed by peace officers as an effective way of apprehending a criminal in the act of the commission of an offense.[16] Entrapment has received judicial sanction when undertaken with due regard to constitutional and legal safeguards.[17]

Entrapment was unknown in common law. It is a judicially created twentieth-century American doctrine that evolved from the increasing use of informers and undercover agents in the detection of crimes, particularly liquor and narcotics offenses.[18] Entrapment sprouted from the doctrine of estoppel and the public interest in the formulation and application of decent standards in the enforcement of criminal law.[19] It also took off from a spontaneous moral revulsion against using the powers of government to beguile innocent but ductile persons into lapses that they might otherwise resist.[20]

In the American jurisdiction, the term "entrapment" has a generally negative meaning because it is understood as the inducement of one to commit a crime not contemplated by him, for the mere purpose of instituting a criminal prosecution against him.[21] The classic definition of entrapment is that articulated by Justice Roberts in *Sorrells v. United States*,[22] the first Supreme Court decision to acknowledge the concept: "Entrapment is the conception

and planning of an offense by an officer, and his procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion or fraud of the officer." [23] It consists of two (2) elements: (a) acts of persuasion, trickery, or fraud carried out by law enforcement officers or the agents to induce a defendant to commit a crime; and (b) the origin of the criminal design in the minds of the government officials rather than that of the innocent defendant, such that the crime is the product of the creative activity of the law enforcement officer. [24]

It is recognized that in every arrest, there is a certain amount of entrapment used to outwit the persons violating or about to violate the law. Not every deception is forbidden. The type of entrapment the law forbids is the inducing of another to violate the law, the "seduction" of an otherwise innocent person into a criminal career. [25] Where the criminal intent originates in the mind of the entrapping person and the accused is lured into the commission of the offense charged in order to prosecute him, there is entrapment and no conviction may be had. [26] Where, however, the criminal intent originates in the mind of the accused and the criminal offense is completed, the fact that a person acting as a decoy for the state, or public officials furnished the accused an opportunity for commission of the offense, or that the accused is aided in the commission of the crime in order to secure the evidence necessary to prosecute him, there is no entrapment and the accused must be convicted. [27] The law tolerates the use of decoys and other artifices to catch a criminal.

Entrapment is recognized as a valid defense [28] that can be raised by an accused and partakes of the nature of a confession and avoidance. [29] It is a positive defense. Initially, an accused has the burden of providing sufficient evidence that the government induced him to commit the offense. Once established, the burden shifts to the government to show otherwise. [30] When entrapment is raised as a defense, American federal courts and a majority of state courts use the "subjective" or "origin of intent" test laid down in *Sorrells v. United States* [31] to determine whether entrapment actually occurred. The focus of the inquiry is on the accused's predisposition to commit the offense charged, his state of mind and inclination before his initial exposure to government agents. [32] All relevant facts such as the accused's mental and character traits, his past offenses, activities, his eagerness in committing the crime, his reputation, etc., are considered to assess his state of mind before the crime. [33] The predisposition test emphasizes the accused's propensity to commit the offense rather than the officer's misconduct [34] and reflects an attempt to draw a line between a "trap for the unwary innocent and the trap for the unwary criminal." [35] If the accused was found to have been ready and willing to commit the offense at any favorable opportunity, the entrapment defense will fail even if a police agent used an unduly persuasive inducement. [36] Some states, however, have adopted the "objective" test. [37] This test was first authoritatively laid down in the case of *Grossman v. State* [38] rendered by the Supreme Court of Alaska. Several other states have subsequently adopted the test by judicial pronouncement or legislation. Here, the court considers the nature of the police activity involved and the propriety of police conduct. [39] The inquiry is focused on the inducements used by government agents, on police conduct, not on the accused and his predisposition to commit the crime. For the goal of the defense is to deter unlawful police conduct. [40] The test of entrapment is whether the conduct of the law enforcement agent was likely to induce a normally law-abiding person, other than one who is ready and willing, to commit the offense; [41] for purposes of this test, it is presumed that a law-abiding person would normally resist the temptation to commit a crime that is presented by the simple opportunity to act unlawfully. [42] Official conduct that merely offers such an opportunity is permissible, but overbearing conduct, such as badgering, cajoling or importuning, [43] or appeals to sentiments such as pity, sympathy, friendship or pleas of desperate illness, are not. [44] Proponents of this test believe that courts must refuse to convict an entrapped accused not because his conduct falls outside the legal norm but rather because, even if his guilt has been established, the methods employed on behalf of the government to bring about the crime "cannot be countenanced." To some extent, this reflects the notion that the courts should not become tainted by condoning

law enforcement improprieties.[45] Hence, the transactions leading up to the offense, the interaction between the accused and law enforcement officer and the accused's response to the officer's inducements, the gravity of the crime, and the difficulty of detecting instances of its commission are considered in judging what the effect of the officer's conduct would be on a normal person.[46]

Both the "subjective" and "objective" approaches have been criticized and objected to. It is claimed that the "subjective" test creates an "anything goes" rule, i.e., if the court determines that an accused was predisposed to commit the crime charged, no level of police deceit, badgering or other unsavory practices will be deemed impermissible.[47] Delving into the accused's character and predisposition obscures the more important task of judging police behavior and prejudices the accused more generally. It ignores the possibility that no matter what his past crimes and general disposition were, the accused might not have committed the particular crime unless confronted with inordinate inducements.[48] On the other extreme, the purely "objective" test eliminates entirely the need for considering a particular accused's predisposition. His predisposition, at least if known by the police, may have an important bearing upon the question of whether the conduct of the police and their agents was proper.[49] The undisputed fact that the accused was a dangerous and chronic offender or that he was a shrewd and active member of a criminal syndicate at the time of his arrest is relegated to irrelevancy.[50]

Objections to the two tests gave birth to hybrid approaches to entrapment. Some states in the United States now combine both the "subjective" and "objective" tests.[51] In *Cruz v. State*,[52] the Florida Supreme Court declared that the permissibility of police conduct must first be determined. If this objective test is satisfied, then the analysis turns to whether the accused was predisposed to commit the crime.[53] In *Baca v. State*,[54] the New Mexico Supreme Court modified the state's entrapment analysis by holding that "a criminal defendant may successfully assert a defense of entrapment, either by showing lack of predisposition to commit the crime for which he is charged, or, that the police exceeded the standards of proper investigation.[55] The hybrid approaches combine and apply the "objective" and "subjective" tests alternatively or concurrently.

As early as 1910, this Court has examined the conduct of law enforcers while apprehending the accused caught in flagrante delicto. In *United States v. Phelps*,[56] we acquitted the accused from the offense of smoking opium after finding that the government employee, a BIR personnel, actually induced him to commit the crime in order to prosecute him. Smith, the BIR agent, testified that Phelps' apprehension came after he overheard Phelps in a saloon say that he liked smoking opium on some occasions. Smith's testimony was disregarded. We accorded significance to the fact that it was Smith who went to the accused three times to convince him to look for an opium den where both of them could smoke this drug.[57] The conduct of the BIR agent was condemned as "most reprehensible." [58] In *People v. Abella*,[59] we acquitted the accused of the crime of selling explosives after examining the testimony of the apprehending police officer who pretended to be a merchant. The police officer offered "a tempting price, xxx a very high one" causing the accused to sell the explosives. We found that there was inducement, "direct, persistent and effective" by the police officer and that outside of his testimony, there was no evidence sufficient to convict the accused.[60] In *People v. Lua Chu and Uy Se Tieng*,[61] we convicted the accused after finding that there was no inducement on the part of the law enforcement officer. We stated that the Customs secret serviceman smoothed the way for the introduction of opium from Hongkong to Cebu after the accused had already planned its importation and ordered said drug. We ruled that the apprehending officer did not induce the accused to import opium but merely entrapped him by pretending to have an understanding with the Collector of Customs of Cebu to better assure the seizure of the prohibited drug and the arrest of the surreptitious importers.[62]

It was also in the same case of *People v. Lua Chu and Uy Se Tieng*[63] we first laid down the distinction between entrapment vis-a-vis instigation or inducement. Quoting 16 *Corpus Juris*,[64] we held:

"ENTRAPMENT AND INSTIGATION. -- While it has been said that the practice of entrapping persons into crime for the purpose of instituting criminal prosecutions is to be deplored, and while instigation, as distinguished from mere entrapment, has often been condemned and has sometimes been held to prevent the act from being criminal or punishable, the general rule is that it is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the 'decoy solicitation' of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting in its commission. Especially is this true in that class of cases where the offense is one of a kind habitually committed, and the solicitation merely furnishes evidence of a course of conduct. Mere deception by the detective will not shield defendant, if the offense was committed by him, free from the influence or instigation of the detective. The fact that an agent of an owner acts as a supposed confederate of a thief is no defense to the latter in a prosecution for larceny, provided the original design was formed independently of such agent; and where a person approached by the thief as his confederate notifies the owner or the public authorities, and, being authorised by them to do so, assists the thief in carrying out the plan, the larceny is nevertheless committed. It is generally held that it is no defense to a prosecution for an illegal sale of liquor that the purchase was made by a 'spotter,' detective, or hired informer; but there are cases holding the contrary." [65]

The distinction above-quoted was reiterated in two (2) decisions of the Court of Appeals. In *People v. Galicia*, [66] the appellate court declared that "there is a wide difference between entrapment and instigation." The instigator practically induces the would-be accused into the commission of the offense and himself becomes a co-principal. In entrapment, ways and means are resorted to by the peace officer for the purpose of trapping and capturing the lawbreaker in the execution of his criminal plan. [67] In *People v. Tan Tiong*, [68] the Court of Appeals further declared that "entrapment is no bar to the prosecution and conviction of the lawbreaker." [69]

The pronouncement of the Court of Appeals in *People v. Galicia* was affirmed by this Court in *People v. Tiu Ua*. [70] Entrapment, we further held, is not contrary to public policy. It is instigation that is deemed contrary to public policy and illegal. [71]

It can thus be seen that the concept of entrapment in the American jurisdiction is similar to instigation or inducement in Philippine jurisprudence. Entrapment in the Philippines is not a defense available to the accused. It is instigation that is a defense and is considered an absolatory cause. [72] To determine whether there is entrapment or instigation, our courts have mainly examined the conduct of the apprehending officers, not the predisposition of the accused to commit the crime. The "objective" test first applied in *United States v. Phelps* has been followed in a series of similar cases. [73] Nevertheless, adopting the "objective" approach has not precluded us from likewise applying the "subjective" test. In *People v. Boholst*, [74] we applied both tests by examining the conduct of the police officers in a buy-bust operation and admitting evidence of the accused's membership with the notorious and dreaded Sigue-Sigue Sputnik Gang. We also considered accused's previous convictions of other crimes [75] and held that his opprobrious past and membership with the dreaded gang strengthened the state's evidence against him. Conversely, the evidence that the accused did not sell or smoke marijuana and did not have any criminal record was likewise admitted in *People v. Yutuc* [76] thereby sustaining his defense that led to his acquittal.

The distinction between entrapment and instigation has proven to be very material in anti-narcotics operations. In recent years, it has become common practice for law enforcement officers and agents to engage in buy-bust operations and other entrapment procedures in apprehending drug offenders. Anti-narcotics laws, like anti-gambling laws are regulatory statutes. [77] They are rules of convenience designed to secure a more orderly regulation of the affairs of society, and their violation gives rise to crimes *mala prohibita*. [78] They are not the traditional type of criminal law such as the law of murder, rape, theft, arson, etc. that deal with crimes *mala in se* or those inherently wrongful and immoral. [79] Laws defining crimes *mala prohibita* condemn behavior directed,

not against particular individuals, but against public order.[80] Violation is deemed a wrong against society as a whole and is generally unattended with any particular harm to a definite person.[81] These offenses are carried on in secret and the violators resort to many devices and subterfuges to avoid detection. It is rare for any member of the public, no matter how furiously he condemns acts mala prohibita, to be willing to assist in the enforcement of the law. It is necessary, therefore, that government in detecting and punishing violations of these laws, rely, not upon the voluntary action of aggrieved individuals, but upon the diligence of its own officials. This means that the police must be present at the time the offenses are committed either in an undercover capacity or through informants, spies or stool pigeons.[82]

Though considered essential by the police in enforcing vice legislation, the confidential informant system breeds abominable abuse. Frequently, a person who accepts payment from the police in the apprehension of drug peddlers and gamblers also accept payment from these persons who deceive the police. The informant himself may be a drug addict, pickpocket, pimp, or other petty criminal. For whatever noble purpose it serves, the spectacle that government is secretly mated with the underworld and uses underworld characters to help maintain law and order is not an inspiring one.[83] Equally odious is the bitter reality of dealing with unscrupulous, corrupt and exploitative law enforcers. Like the informant, unscrupulous law enforcers' motivations are legion--harassment, extortion, vengeance, blackmail, or a desire to report an accomplishment to their superiors. This Court has taken judicial notice of this ugly reality in a number of cases[84] where we observed that it is a common modus operandi of corrupt law enforcers to prey on weak and hapless persons, particularly unsuspecting provincial hicks.[85] The use of shady underworld characters as informants, the relative ease with which illegal drugs may be planted in the hands or property of trusting and ignorant persons, and the imposed secrecy that inevitably shrouds all drug deals have compelled this Court to be extra-vigilant in deciding drug cases.[86] Criminal activity is such that stealth and strategy, although necessary weapons in the arsenal of the police officer, become as objectionable police methods as the coerced confession and the unlawful search. As well put by the Supreme Court of California in *People v. Barraza*,[87]

"[E]ntrapment is a facet of a broader problem. Along with illegal search and seizures, wiretapping, false arrest, illegal detention and the third degree, it is a type of lawless enforcement. They all spring from common motivations. Each is a substitute for skillful and scientific investigation. Each is condoned by the sinister sophism that the end, when dealing with known criminals of the 'criminal classes,' justifies the employment of illegal means." [88]

It is thus imperative that the presumption, *juris tantum*, of regularity in the performance of official duty by law enforcement agents raised by the Solicitor General be applied with studied restraint. This presumption should not by itself prevail over the presumption of innocence and the constitutionally-protected rights of the individual.[89] It is the duty of courts to preserve the purity of their own temple from the prostitution of the criminal law through lawless enforcement.[90] Courts should not allow themselves to be used as an instrument of abuse and injustice lest an innocent person be made to suffer the unusually severe penalties for drug offenses.[91]

We therefore stress that the "objective" test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale.[92] The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is

overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.

In the case at bar, the evidence shows that it was the confidential informant who initially contacted accused-appellant Doria. At the pre-arranged meeting, the informant was accompanied by PO3 Manlangit who posed as the buyer of marijuana. PO3 Manlangit handed the marked money to accused-appellant Doria as advance payment for one (1) kilo of marijuana. Accused-appellant Doria was apprehended when he later returned and handed the brick of marijuana to PO3 Manlangit.

PO3 Manlangit testified in a frank, spontaneous, straightforward and categorical manner and his credibility was not crumpled on cross-examination by defense counsel. Moreover, PO3 Manlangit's testimony was corroborated on its material points by SPO1 Badua, his back-up security. The non-presentation of the confidential informant is not fatal to the prosecution. Informants are usually not presented in court because of the need to hide their identity and preserve their invaluable service to the police.[93] It is well-settled that except when the appellant vehemently denies selling prohibited drugs and there are material inconsistencies in the testimonies of the arresting officers,[94] or there are reasons to believe that the arresting officers had motives to testify falsely against the appellant,[95] or that only the informant was the poseur-buyer who actually witnessed the entire transaction,[96] the testimony of the informant may be dispensed with as it will merely be corroborative of the apprehending officers' eyewitness testimonies.[97] There is no need to present the informant in court where the sale was actually witnessed and adequately proved by prosecution witnesses.[98]

The inconsistencies in PO3 Manlangit's and SPO1 Badua's testimonies and the other police officers' testimonies are minor and do not detract from the veracity and weight of the prosecution evidence. The source of the money for the buy-bust operation is not a critical fact in the case at bar. It is enough that the prosecution proved that money was paid to accused-appellant Doria in consideration of which he sold and delivered the marijuana.

Contrary to accused-appellant Doria's claim, the one kilo of marijuana "sold" by him to PO3 Manlangit was actually identified by PO3 Manlangit himself before the trial court. After appellants' apprehension, the Narcom agents placed this one (1) brick of marijuana recovered from appellant Doria inside the carton box lumping it together with the ten (10) bricks inside. This is why the carton box contained eleven (11) bricks of marijuana when brought before the trial court. The one (1) brick recovered from appellant Doria and each of the ten (10) bricks, however, were identified and marked in court. Thus:

"ATTY. ARIAS, Counsel for Florencio Doria:

Mr. Police Officer, when you identified that box,. Tell the court, how were you able to identify that box?

A

This is the box that I brought to the crime laboratory which contained the eleven pieces of marijuana brick we confiscated from the suspect, sir.

Q

Please open it and show those eleven bricks.

PROSECUTOR Witness bringing out from the said box...

ATTY. VALDEZ, Counsel for Violeta Gaddao:

Your Honor, I must protest the line of questioning considering the fact that we are now dealing with eleven items when the question posed to the witness was what was handed to him by Jun?

COURT So be it.

ATTY. ARIAS May we make it of record that the witness is pulling out item after item from the box showed to him and brought in front of him.

COURT Noted.

Q

Now tell the court, how did you know that those are the eleven bricks?

x x x.

A I have markings on these eleven bricks, sir.

Q Point to the court, where are those markings?

A Here, sir, my signature, my initials with the date, sir.

PROSECUTOR Witness showed a white wrapper and pointing to CLM and the signature.

Q Whose signature is that?

ATTY VALDEZ Your Honor, may we just limit the inquiry to the basic question of the fiscal as to what was handed to him by the accused Jun, your Honor?

PROSECUTOR Your Honor, there is already a ruling by this Honorable Court, your Honor, despite reconsideration.

COURT Let the prosecution do its own thing and leave the appreciation of what it has done to the court.

ATTY. VALDEZ We submit, your Honor.

A This brick is the one that was handed to me by the suspect Jun, sir.

COURT Why do you know that that is the thing? Are you sure that is not "tikoy?"

A

Yes, your Honor.

Q

What makes you so sure?

A

I am sure that this is the one, your Honor. This is the Exhibit "A" which I marked before I brought it to the PCCL, your Honor.

Q

What are you sure of?

A

I am sure that this is the brick that was given to me by one alias Jun, sir.

Q

What makes you so sure?

A

Because I marked it with my own initials before giving it to the investigator and before we brought it to the PCCL, your Honor.

x x x.

PROSECUTOR May we request that a tag be placed on this white plastic bag and this be marked as Exhibit "D?"

COURT Mark it as Exhibit "D."

Q

To stress, who made the entries of this date, Exhibit "A" then the other letters and figures on this plastic?

A

This one, the signature, I made the signature, the date and the time and this Exhibit "A."

Q

How about this one?

A

I don't know who made this marking, sir.

PROSECUTOR May it be of record that this was just entered this morning.

Q

I am asking you about this "itim" and not the "asul."

A

This CLM, the date and the time and the Exhibit "A," I was the one who made these markings, sir.

PROSECUTOR May we place on record that the one that was enclosed...

ATTY. ARIAS Your Honor, there are also entries included in that enclosure where it appears D-394-95, also Exhibit "A," etc. etc., that was not pointed to by the witness. I want to make it of record that there are other entries included in the enclosure.

COURT Noted. The court saw it.

Q

Now, and this alleged brick of marijuana with a piece of paper, with a newspaper wrapping with a piece of paper inside which reads: "D-394-95, Exhibit A, 970 grams SSL" be marked as our Exhibit "D-2?"

COURT Tag it. Mark it.

Q

This particular exhibit that you identified, the wrapper and the contents was given to you by whom?

A

It was given to me by suspect Jun, sir.

Q

Whereat?

A

At the corner of Boulevard and Jacinto St., sir.

Q

How about the other items that you were able to recover?

x x x.

A

These other marijuana bricks, because during our follow-up, because according to Jun the money which I gave him was in the hands of Neneth and so we proceeded to the house of Neneth, sir.

x x x."[99]

The first brick identified by P03 Manlangit was the brick of marijuana "given to [him] by suspect Jun" at the corner of Boulevard and Jacinto Streets. This brick, including the newspaper and white plastic wrapping were marked as Exhibits "D," "D-1," and "D-2" and described as weighing nine hundred seventy (970) grams.[100]

We also reject appellant's submission that the fact that PO3 Manlangit and his team waited for almost one hour for appellant Doria to give them the one kilo of marijuana after he "paid" P1,600.00 strains credulity. Appellant cannot capitalize on the circumstance that the money and the marijuana in the case at bar did not change hands under the usual "kaliwaan" system. There is no rule of law which requires that in "buy-bust" operations there must be a simultaneous exchange of the marked money and the prohibited drug between the poseur-buyer and the pusher.[101] Again, the decisive fact is that the poseur-buyer received the marijuana from the accused-appellant.[102]

We also hold that the warrantless arrest of accused-appellant Doria is not unlawful. Warrantless arrests are allowed in three instances as provided by Section 5 of Rule 113 of the 1985 Rules on Criminal Procedure, to wit:

"Sec. 5. Arrest without warrant; when lawful. -- A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

x x x."[103]

Under Section 5 (a), as above-quoted, a person may be arrested without a warrant if he "has committed, is actually committing, or is attempting to commit an offense." Appellant Doria was caught in the act of committing an offense. When an accused is apprehended in flagrante delicto as a result of a buy-bust operation, the police are not only authorized but duty-bound to arrest him even without a warrant.[104]

The warrantless arrest of appellant Gaddao, the search of her person and residence, and the seizure of the box of marijuana and marked bills are different matters.

Our Constitution proscribes search and seizure without a judicial warrant and any evidence obtained without such warrant is inadmissible for any purpose in any proceeding.[105] The rule is, however, not absolute. Search and seizure may be made without a warrant and the evidence obtained therefrom may be admissible in the following instances:[106] (1) search incident to a lawful arrest;[107] (2) search of a moving motor vehicle;[108] (3) search in violation of customs laws;[109] (4) seizure of evidence in plain view;[110] (5) when the accused himself waives his right against unreasonable searches and seizures.[111]

The prosecution admits that appellant Gaddao was arrested without a warrant of arrest and the search and seizure of the box of marijuana and the marked bills were likewise made without a search warrant. It is claimed, however, that the warrants were not necessary because the arrest was made in "hot pursuit" and the search was an incident to her lawful arrest.

To be lawful, the warrantless arrest of appellant Gaddao must fall under any of the three (3) instances enumerated in Section 5 of Rule 113 of the 1985 Rules on Criminal Procedure as aforequoted. The direct testimony of PO3 Manlangit, the arresting officer, however shows otherwise:

"ATTY VALDEZ, Counsel for appellant Gaddao:

We submit at this juncture, your Honor, that there will be no basis for that question.

Q

This particular exhibit that you identified, the wrapper and the contents was given to you by whom?

A It was given to me by suspect Jun, sir.

Q Whereat?

A At the corner of Boulevard and Jacinto Street, sir.

Q How about the other items that you were able to recover?

ATTY. VALDEZ: We submit at this juncture, your Honor, that there will be no basis for that question.

COURT There is. Answer.

A These other marijuana bricks, because during our follow-up, because according to Jun the money which I gave him was in the hands of Neneth and so we proceeded to the house of Neneth, sir.

Q Whereat?

A At Daang Bakal near the crime scene at Shaw Boulevard, sir.

Q And what happened upon arrival thereat?

A We saw alias Neneth inside the house and we asked him to give us the buy-bust money, sir.

Q You mentioned "him?"

A Her, sir. We asked her to give us the money, the marked money which Jun gave her, sir.

Q And what happened?

A At this instance, it was SPO1 Badua who can testify regarding this buy-bust money, sir.

x x x."[112]

SPO1 Badua testified on cross-examination that:

Q What was your intention in going to the house of Aling Neneth?

A To arrest her, sir.

Q But the fact is, Mr. Witness, when you reached the house of Aling Neneth, Aling Neneth was there?

A Yes, sir.

Q As far as you can see, she was just inside her house?

A I saw her outside, sir.

Q She was fetching water as a matter of fact?

A She was `sa bandang poso.'

Q Carrying a baby?

A No, sir.

Q At that particular time when you reached the house of Aling Neneth and saw her outside the house, she was not committing any crime, she was just outside the house?

A No, sir.

Q She was not about to commit any crime because she was just outside the house doing her daily chores. Am I correct?

A I just saw her outside, sir.

Q And at that point in time you already wanted to arrest her. That is correct, is it not?

A Yes, sir.

Q

Now, if any memory of your testimony is correct, according to you SPO1 Manlangit approached her?

A PO3 Manlangit, sir.

Q You did not approach her because PO3 Manlangit approached her?

A Yes, sir.

Q During all the time that this confrontation, arrest or whatever by SPO3 Manlangit was taking place, you were just in the side lines?

A I was just watching, sir.

Q So you were just an on-looker to what Manlangit was doing, because precisely according to you your role in this buy-bust operation was as a back-up?

A Yes, sir.

Q Who got the alleged marijuana from inside the house of Mrs. Neneth?

A PO3 Manlangit, sir.

Q Manlangit got the marijuana?

A Yes, sir.

Q And the money from Aling Neneth?

A I don't know, sir.

Q You did not even know who got the money from Aling Neneth?

PROSECUTOR:

There is no basis for this question, your Honor. Money, there's no testimony on that.

ATTY. VALDEZ:

I was asking him precisely.

PROSECUTOR:

No basis.

COURT:

Sustained.

Q Alright. I will ask you a question and I expect an honest answer. According to the records, the amount of P1,600.00 was recovered from the person of Aling Neneth. That's right?

A Yes, sir, the buy-bust money.

Q What you are now saying for certain and for the record is the fact that you were not the one who retrieved the money from Aling Neneth, it was Manlangit maybe?

A I saw it, sir.

Q It was Manlangit who got the money from Aling Neneth?

A The buy-bust money was recovered from the house of Aling Neneth, sir.

Q It was taken from the house of Aling Neneth, not from the person of Aling Neneth. Is that what you are trying to tell the Court?

A No, sir.

ATTY. VALDEZ: I am through with this witness, your Honor."^[113]

Accused-appellant Gaddao was not caught red-handed during the buy-bust operation to give ground for her arrest under Section 5 (a) of Rule 113. She was not committing any crime. Contrary to the finding of the trial court, there was no occasion at all for appellant Gaddao to flee from the policemen to justify her arrest in "hot pursuit."^[114] In fact, she was going about her daily chores when the policemen pounced on her.

Neither could the arrest of appellant Gaddao be justified under the second instance of Rule 113. "Personal knowledge" of facts in arrests without warrant under Section 5 (b) of Rule 113 must be based upon "probable cause" which means an "actual belief or reasonable grounds of suspicion." [115] The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense, is based on actual facts, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. [116] A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest. [117]

Accused-appellant Gaddao was arrested solely on the basis of the alleged identification made by her co-accused. PO3 Manlangit, however, declared in his direct examination that appellant Doria named his co-accused in response to his (PO3 Manlangit's) query as to where the marked money was. [118] Appellant Doria did not point to appellant Gaddao as his associate in the drug business, but as the person with whom he left the marked bills. This identification does not necessarily lead to the conclusion that appellant Gaddao conspired with her co-accused in pushing drugs. Appellant Doria may have left the money in her house, [119] with or without her knowledge, with or without any conspiracy. Save for accused-appellant Doria's word, the Narcom agents had no reasonable grounds to believe that she was engaged in drug pushing. If there is no showing that the person who effected the warrantless arrest had, in his own right, knowledge of facts implicating the person arrested to the perpetration of a criminal offense, the arrest is legally objectionable. [120]

Since the warrantless arrest of accused-appellant Gaddao was illegal, it follows that the search of her person and home and the subsequent seizure of the marked bills and marijuana cannot be deemed legal as an incident to her arrest. This brings us to the question of whether the trial court correctly found that the box of marijuana was in plain view, making its warrantless seizure valid.

Objects falling in plain view of an officer who has a right to be in the position to have that view are subject to seizure even without a search warrant and may be introduced in evidence. [121] 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 the 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. [122] The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. [123] In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. [124] The object must be open to eye and hand [125] and its discovery inadvertent. [126]

It is clear that an object is in plain view if the object itself is plainly exposed to sight. The difficulty arises when the object is inside a closed container. Where the object seized was inside a closed package, the object itself is not in plain view and therefore cannot be seized without a warrant. However, if the package proclaims its contents, whether by its distinctive configuration, its transparency, or if its contents are obvious to an observer, then the contents are in plain view and may be seized. [127] In other words, if the package is such that an experienced observer could infer from its appearance that it contains the prohibited article, then the article is deemed in plain view. [128] It must be immediately apparent to the police that the items that they observe may be evidence of a crime, contraband or otherwise subject to seizure. [129]

PO3 Manlangit, the Narcom agent who found the box, testified on cross-examination as follows:

"ATTY. VALDEZ:

So here we are. When you and Badua arrived, Aling Neneth was inside the house?

A Yes, sir.

Q Badua demanded from Aling Neneth the buy-bust money?

A Yes, sir.

Q At that particular instance, you saw the carton?

A Yes, sir.

Q This carton, according to you was under a table?

A Yes, sir, dining table.

Q I noticed that this carton has a cover?

A Yes, sir.

Q I ask you were the flaps of the cover raised or closed?

A It was open, sir. Not like that.

COURT

Go down there. Show to the court.

INTERPRETER

Witness went down the witness stand and approached a carton box.

A Like this, sir.

PROSECUTOR

Can we describe it?

ATTY. VALDEZ

Yes.

PROSECUTOR

One flap is inside and the other flap is standing and with the contents visible.

COURT

Noted.

Q At this juncture, you went inside the house?

A Yes, sir.

Q And got hold of this carton?

A Yes, sir.

Q Did you mention anything to Aling Neneth?

A I asked her, what's this...

Q No, no. no. did you mention anything to Aling Neneth before getting the carton?

A

I think it was Badua who accosted Aling Neneth regarding the buy-bust money and he asked "Sa iyo galing ang marijuananang ito, nasaan ang buy-bust money namin?" sir.

Q Making reference to the marijuana that was given by alias Jun?

A Yes, sir.

Q When you proceeded to take hold of this carton, Aling Neneth was not yet frisked, is it not [sic]?

A I just don't know if she was frisked already by Badua, sir.

Q Who got hold of this?

A I was the one, sir.

Q You were the one who got this?

A Yes, sir.

Q At that particular point in time, you did not know if the alleged buy-bust money was already retrieved by Badua?

A Yes, sir.

Q You did not have any search warrant?

A Yes, sir.

Q

In fact, there was nothing yet as far as you were concerned to validate the fact that Mrs. Gadao was in possession of the buy-bust money because according to you, you did not know whether Badua already retrieved the buy-bust money from her?

A Yes, sir.

Q How far was this from the door?

A Two and a half meters from the door, sir. It was in plain view.

Q Under the table according to you?

A Yes, sir, dining table.

Q Somewhere here?

A It's far, sir.

PROSECUTOR

May we request the witness to place it, where he saw it?

A

Here, sir.

Q What you see is a carton?

A Yes, sir, with plastic.

Q Marked "Snow Time Ice Pop?"

A Yes, sir.

Q With a piece of plastic visible on top of the carton?

A Yes, sir.

Q That is all that you saw?

A Yes, sir.

PROSECUTOR

For the record, your Honor...

Q You were only able to verify according to you...

PROSECUTOR

Panero, wait. Because I am objecting to the words a piece of plastic. By reading it...

ATTY. VALDEZ

That's a piece of plastic.

PROSECUTOR

By reading it, it will connote... this is not a piece of plastic.

ATTY. VALDEZ

What is that? What can you say, Fiscal? I'm asking you?

PROSECUTOR

With due respect, what I am saying is, let's place the size of the plastic. A piece of plastic may be big or a small one, for record purposes.

COURT

Leave that to the court.

PROSECUTOR

Leave that to the court.

Q

The only reason according to you, you were able to... Look at this, no even Superman... I withdraw that. Not even a man with very kin [sic] eyes can tell the contents here. And according to the Court, it could be "tikoy," is it not [sic]?

A Yes, sir.

Q Siopao?

A Yes, sir.

Q Canned goods?

A Yes, sir.

Q It could be ice cream because it says Snow Pop, Ice Pop?

A I presumed it was also marijuana because it may ...

Q I am not asking you what your presumptions are. I'm asking you what it could possibly be.

A It's the same plastic, sir.

ATTY. VALDEZ

I'm not even asking you that question so why are you voluntarily saying the information. Let the prosecutor do that for you.

COURT

Continue. Next question.

x x x."[130]

PO3 Manlangit and the police team were at appellant Gaddao's house because they were led there by appellant Doria. The Narcom agents testified that they had no information on appellant Gaddao until appellant Doria named her and led them to her.[131] Standing by the door of appellant Gaddao's house, PO3 Manlangit had a view of the interior of said house. Two and a half meters away was the dining table and underneath it was a carton box. The box was partially open and revealed something wrapped in plastic.

In his direct examination, PO3 Manlangit said that he was sure that the contents of the box were marijuana because he himself checked and marked the said contents.[132] On cross-examination, however, he admitted that he merely presumed the contents to be marijuana because it had the same plastic wrapping as the "buy-bust marijuana." A close scrutiny of the records reveals that the plastic wrapper was not colorless and transparent as to clearly manifest its contents to a viewer. Each of the ten (10) bricks of marijuana in the box was individually wrapped in old newspaper and placed inside plastic bags-- white, pink or blue in color.[133] PO3 Manlangit himself admitted on cross-examination that the contents of the box could be items other than marijuana. He did not know exactly what the box contained that he had to ask appellant Gaddao about its contents.[134] It was not immediately apparent to PO3 Manlangit that the content of the box was marijuana. The marijuana was not in plain view and its seizure without the requisite search warrant was in violation of the law and the Constitution.[135] It was fruit of the poisonous tree and should have been excluded and never considered by the trial court.[136]

The fact that the box containing about six (6) kilos of marijuana[137] was found in the house of accused-appellant Gaddao does not justify a finding that she herself is guilty of the crime charged.[138] Apropos is our ruling in *People v. Aminnudin*,[139] viz:

"The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of the liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against

any manner of high-handedness from the authorities, however praiseworthy their intentions.

Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. Order is too high a price for the loss of liberty. As Justice Holmes, again, said, 'I think it a less evil that some criminals should escape than that the government should play an ignoble part.' It is simply not allowed in the free society to violate a law to enforce another, especially if the law violated is the Constitution itself." [140]

Section 4 of Republic Act No. 6425, the Dangerous Drugs Act of 1972, as amended by Section 13 of Republic Act No. 7659 punishes the "sale, administration, delivery, distribution and transportation of a prohibited drug" with the penalty of reclusion perpetua to death and a fine ranging from P500,000.00 to P10 million, to wit:

"Sec. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs.-- The penalty of reclusion perpetua to death, and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions.

x x x."

In every prosecution for illegal sale of dangerous drugs, what is material is the submission of proof that the sale took place between the poseur-buyer and the seller thereof and the presentation of the drug, i.e., the corpus delicti, as evidence in court.[141] The prosecution has clearly established the fact that in consideration of P1,600.00 which he received, accused-appellant Doria sold and delivered nine hundred seventy (970) grams of marijuana to PO3 Manlangit, the poseur-buyer. The prosecution, however, has failed to prove that accused-appellant Gaddao conspired with accused-appellant Doria in the sale of said drug. There being no mitigating or aggravating circumstances, the lower penalty of reclusion perpetua must be imposed.[142]

IN VIEW WHEREOF, the decision of the Regional Trial Court, Branch 156, Pasig City acting as a Special Court in Criminal Case No. 3307-D is reversed and modified as follows:

1. Accused-appellant Florencio Doria y Bolado is sentenced to suffer the penalty of reclusion perpetua and to pay a fine of five hundred thousand pesos (P500,000.00).
2. Accused-appellant Violeta Gaddao y Catama is acquitted.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Vitug, Kapunan, Mendoza, Martinez, Quisumbing, Purisima, Pardo, Buena, and Gonzaga-Reyes, JJ., concur.
Panganiban, J., please see concurring opinion.

[1] Republic Act No. 6425, as amended by R.A. 7659.

[2] Rollo, pp. 6-7.

[3] Exhibits "A-1" to "A-4," "B-1" to "B-3."

[4] Exhibits "C-1" and "C-2."

[5] TSN of February 6, 1996, p. 10.

[6] TSN of February 6, 1996, pp. 11-12.

[7] TSN of February 6, 1996, p. 18.

[8] TSN of March 12, 1996, p. 18.

[9] Exhibit "S," Request for Laboratory Examination.

[10] Exhibits "Q," and "R;" TSN of March 5, 1996, pp. 2-11.

[11] TSN of May 8, 1996, pp. 2-8.

[12] TSN of April 10, 1996, pp. 4-17.

[13] Decision of the trial court, pp. 13-14, Rollo, pp. 30-31.

[14] Brief for Accused-Appellant Florencio Doria, pp. 8, 14, Rollo, pp. 52, 58.

[15] Brief for Accused-Appellant Violeta Gaddao, p. 39, Rollo, p. 126.

[16] *People v. Basilgo*, 235 SCRA 191 [1994]; *People v. Yap*, 229 SCRA 787 [1994]; *People v. Macasa*, 229 SCRA 422 [1994].

[17] *People v. Herrera*, 247 SCRA 433 [1995]; *People v. Tadepa*, 244 SCRA 339 [1995]; *People v. Basilgo*, *supra*.

[18] 21 Am Jur 2d, "Criminal Law," Sec. 203 [1981 ed.]; see also *State v. Campbell*, 110 NH 238, 265 A2d 11, 13 [1970]-- sale of narcotics; Annotation in 62 ALR 3d 110, Sec. 2[a].

[19] 21 Am Jur 2d, "Criminal Law," Sec. 204 [1981 ed.]; see also *United States ex rel. Hall v. Illinois* (CA7 Ill) 329 F2d 354, 358-359 cert den 379 US 891, 13 L Ed 2d 94, 85 S Ct 164 [1964]-- unlawful sale and possession of narcotic drugs.

[20] *Id*; see also *State v. Campbell*, *supra*, at 13; *United States v. Becker* (CA2 NY) 62 F2d 1007, 1009 [1933]-- sending obscene matter in interstate commerce.

[21] 21 Am Jur 2d, "Criminal Law," Sec. 202 [1981 ed.].

[22] 287 U.S. 435, 53 S. Ct. 210, 77 L Ed 413 [1932]. This case involved the sale of liquor in violation of the Prohibition Act. The majority decision was penned by Chief Justice Hughes. Justice Roberts wrote a concurring opinion.

[23] at 287 U.S. 454, 77 L Ed 423; also cited in *People v. Bernal* (4th Dist) 345 P 2d 140,143, 174 Cal App 2d 777 [1959]; *People v. Outten*, 147 NE 2d 284,285, 13 Ill 2d 21 [1958]; *Swift v. Commonwealth*, 100 SE 2d 9, 12, 199 Va 420 [1957]; see also 21 Am Jur 2d, "Criminal Law," Sec. 202.

[24] 21 Am Jur 2d, *supra*, at Sec. 202.

[25] *People v. Outten*, *supra*, at 286.

[26] *Sorrells v. United States*, 287 U.S. 435, 442, 451-452 [1932].

[27] *Hoy v. State*, 53 Ariz 440, 90 P2d 623, 628-629 [1939]--bribery; see 21 Am Jur 2d, *supra*, Sec. 202.

[28] *Woo Wai v. United States*, 233 Fed. 412 (6th Cir. 1916); *Sorrells v. United States*, *supra*, at 452-- the defense is available, not in the view that the accused though guilty may go free, but that the government cannot be permitted to contend that he is guilty of the crime when the government officials are the instigators of his conduct; see also 22 C.J.S., "Criminal Law," Sec. 45, [1940 ed.].

[29] 21 Am Jr 2d, "Criminal Law," Sec. 203.

[30] Christopher Moore, "The Elusive Foundation of the Entrapment Defense," *Northwestern University Law Review*, vol. 89: 1151, 1153-1154 [Spring 1995]; Scott C. Paton, "The Government Made Me Do It: A Proposed Approach to Entrapment under *Jacobson v. United States*," *Cornell Law Review*, vol. 79:885, 1000-1001 [1994]; Roger Park, "The Entrapment Controversy," *Minnesota Law Review*, vol. 60: 163, 165 [1976].

[31] The "subjective" test is also referred to as the Sherman-Sorrells doctrine, a reference to the fact that the test was adopted by a majority of the U.S. Supreme Court in the cases of *Sherman v. United States*, 356 U.S. 369, 2 L Ed 2d 848, 78 S Ct 819 [1958] and *Sorrells v. United States*, supra-- Wayne R. LaFave and Austin W. Scott, Jr., *Criminal Law*, Hornbook series, 2d ed., p. 422 [1986].

[32] *Sorrells v. United States*, supra, at 451-452; *Sherman v. United States*, 356 U.S. 369, 373, 2 L ed 2d 848, 78 S Ct 819 [1958].

[33] Paton, supra, at 1001-1002.

[34] LaFave and Scott, supra, at 422.

[35] *Sherman v. United States*, supra, at 356 U.S. at 372-373.

[36] *United States v. Russell*, 411 U.S. 423, 435-437, 36 L Ed 2d 366, 3750376, 93 S Ct 1637 [1973]; see also Park, supra, at 165.

[37] Or the Roberts-Frankfurter approach, after the writers of the concurring opinions in *Sorrells* and *Sherman*-- LaFave and Scott, supra, at 423.

[38] 457 P. 2d 226 [Alaska 1969].

[39] *Grossman v. State*, 457 P. 2d 226, 229 [Alaska 1969]; Paton, supra, at 1002.

[40] *Sorrells v. United States*, 287 U.S. at 453, Roberts, J., concurring; *Sherman v. United States*, 356 U.S. at 378-385, Frankfurter, J., concurring.

[41] *Grossman v. State*, 457 P. 2d 226, 229 [Alaska 1969].

[42] *People v. Barraza*, 591 P. 2d 947, 955 [California 1979]-- selling heroin.

[43] *People v. Barraza*, supra, at 955.

[44] *Sherman v. United States*, 356 U.S. 369, 383 [1958] Frankfurter, J., concurring; *Grossman v. State*, supra, at 230; see also Park, supra, Note 212, at 227.

[45] LaFave and Scott, supra, at 424.

[46] *Grossman v. State*, supra, at 230; *People v. Barraza*, supra, at 955-956.

[47] LaFave and Scott, supra, at 425-426.

[48] *Id.* Other objections are also discussed in said book.

[49] *Id.*

[50] *Id.*

[51] Paton, supra, at 1005-1006.

[52] 465 So. 2d 516 [Fla. 1985].

[53] Id. at 521-522.

[54] 742 P. 2d 1043 [N.M. 1987].

[55] Paton, *supra*, at 1039.

[56] 16 Phil. 440 [1910].

[57] This case was interpreted in *People v. Hilario and Aguila*, 93 Phil. 386, 390 [1953], where the Supreme Court declared that the "criminal intent" to smoke opium "originated in the mind of the entrapping agent" and the accused was merely induced to commit the act by repeated and persistent solicitation. In *Phelps*, the court disregarded the evidence of Phelps' predisposition to commit the crime.

[58] Id., at 443-444.

[59] 46 Phil. 857 [1923].

[60] Id., at 861.

[61] 56 Phil. 44 [1931].

[62] Id. at 53-54.

[63] Id.

[64] Page 88, section 57.

[65] Id., at 52-53; also cited in *People v. Hilario and Aguila*, 93 Phil. 386, 389-390 [1953].

[66] 40 O.G. No. 23, p. 4476 [1941].

[67] Id., at 4478.

[68] 43 O.G. No. 4, p. 1286 [1947].

[69] Id., at 1287.

[70] 96 Phil. 738, 741 [1955].

[71] Id.; also cited in *Aquino*, Revised Penal Code, vol. 2, p. 240 [1997].

[72] Absolutory causes are those causes where the act committed is a crime but for reasons of public policy and sentiment there is no penalty imposed-- *Reyes*, Revised Penal Code, Book I, pp. 231-232 [1993].

[73] *People v. Cruz*, 231 SCRA 759 [1994]; *People v. Poliza*, 214 SCRA 56 [1992]; *People v. Lapatha*, 167 SCRA 159 [1988] citing *U.S. v. Phelps*, *supra*; *People v. Flores*, 165 SCRA 71 [1988]; *People v. Ale*, 145 SCRA 50 [1986]; *People v. Fernando*, 145 SCRA 151 [1986]; *People v. Patog*, 144 SCRA 429 [1986]; *People v. Valmores*, 122 SCRA 922 [1983] citing *People v. Lua Chu*, etc.

[74] 152 SCRA 263, 271 [1987]. Although the accused did not raise the defense of instigation, the court examined the conduct of the police at the buy-bust operation and admitted evidence of the accused's past and predisposition to commit the crime.

[75] Accused was previously convicted of frustrated murder, robbery, hold-up and drug pushing. In the drug-pushing case, he was detained at Welfareville but escaped-- *People v. Boholst*, 152 SCRA 263, 271 [1987].

[76] 188 SCRA 1, 15 [1990].

[77] Richard C. Donnelly, "Judicial Control of Informants, Spies, Stool Pigeons and Agent Provocateurs," The Yale Law Journal, vol. 60: 1091, 1093 [1951].

[78] Reyes, Revised Penal Code, Book I, pp. 54-55 [1993].

[79] Id.

[80] Donnelly, *supra*, at 1093. Instead of "mala prohibita," Donnelly uses the term "regulatory statutes."

[81] Id.

[82] Id.

[83] Id., at 1094.

[84] *People v. Simon*, 234 SCRA 555, 563 [1994]; *People v. Cruz*, 231 SCRA 759, 764 [1994]; *People v. Crisostomo*, 222 SCRA 511, 514 [1993]; *People v. Fernando*, 145 SCRA 151, 159 [1986]; *People v. Ale*, 145 SCRA 50, 58-59 [1986].

[85] Id.

[86] *People v. Cruz*, 231 SCRA 759, 764-765 [1994]; *People v. Salcedo*, 195 SCRA 345, 352 [1991]; *People v. William*, 209 SCRA 808, 814 [1992]; *People v. Ale*, 145 SCRA 50, 58-59 [1986].

[87] 591 P. 2d 947 [Cal. 1979].

[88] Id. at 955. The Supreme Court of California quoted Richard C. Donnelly, "Judicial Control of Informants, Spies, Stool Pigeons and Agent Provocateurs," Yale Law Journal, vol. 60: 1091, 1111 [1951], also herein cited; See also Paton, Cornell Law Review, *supra*, at Note 55. It must be noted, however, that entrapment is not based on constitutional grounds as search and seizure and forced confessions-- *United States v. Russell*, 411 U.S. 423, 430, 36 L Ed 2d 366, 372-373, 93 S Ct 1637 [1973].

[89] *Tambasen v. People*, 246 SCRA 184 [1995]; *People v. Rigodon*, 238 SCRA 27 [1994]; *People v. Cruz*, 231 SCRA 759, 771 [1994].

[90] *Sorrells v. United States*, *supra*, at 457, Roberts, J., concurring.

[91] *Tambasen v. People*, 246 SCRA 184, 191 [1995]; *People v. Rigodon*, 238 SCRA 27, 35 [1994]; *People v. Cruz*, 231 SCRA 759, 771 [1994].

[92] *People v. Tadepa*, 244 SCRA 339, 341-342 [1995]; *People v. Crisostomo*, 222 SCRA 511, 515 [1993].

[93] *People v. Gireng*, 241 SCRA 11 [1995]; *People v. Nicolas*, 241 SCRA 67 [1995]; *People v. Marcelo*, 223 SCRA 24 [1993].

[94] *People v. Ale*, 145 SCRA 50 [1994].

[95] *People v. Sillo*, 214 SCRA 74 [1992].

[96] *People v. Sahagun*, 182 SCRA 91 [1990]; *People v. Libag*, 184 SCRA 707, 717-715 [1990]; *People v. Ramos*, 186 SCRA 184, 191-192 [1990].

[97] *People v. Lucero*, 229 SCRA 1, 9-10 [1994]; *People v. Tranca*, 235 SCRA 455, 464 [1994]; *People v. Solon*, 244 SCRA 554, 561 [1995]; *People v. Herrera*, 247 SCRA 433 [1995].

[98] *People v. Solon*, 244 SCRA 554 [1995]; *People v. Ong Co*, 245 SCRA 733 [1995].

[99] TSN of February 20, 1996, pp. 14-18; Emphasis supplied.

[100] TSN of February 20, 1996, pp. 16-17.

[101] *People v. Ponsica*, 230 SCRA 87, 95-96 [1994]; *People v. Agustin*, 215 SCRA 725, 732-733 [1992].

[102] *People v. Agustin*, *supra*, at 732-733.

[103]103 Emphasis supplied.103

[104] *People v. Sibug*, 229 SCRA 489 [1994]; *People v. de Lara*, 236 SCRA 291 [1994]; *People v. Labarias*, 217 SCRA 483 [1993].

[105] Sections 2 and 3 (2), Article III.

[106] *Hizon v. Court of Appeals*, 265 SCRA 517, 527 [1996]; *People v. Fernandez*, 239 SCRA 174, 182-183 [1994]; *Roan v. Gonzales*, 145 SCRA 687, 697 [1986]; see also *Bernas, The Constitution of the Republic of the Philippines*, p. 169 [1996]; *Cruz, Constitutional Law*, pp. 147-153 [1986].

[107] Section 12, Rule 126; Section 5, Rule 113, Revised Rules on Criminal Procedure.

[108] *People v. Bagista*, 214 SCRA 63, 69 [1992]; *People v. Lo Ho Wing*, 193 SCRA 122, 126-128 [1991].

[109] *Roldan, Jr. v. Arca*, 65 SCRA 336, 348 [1975]; *Papa v. Mago*, 22 SCRA 857, 871-874 [1968].

[110] *People v. Tabar*, 222 SCRA 144, 153 [1993]; *Roan v. Gonzales*, 145 SCRA 687, 697 [1986].

[111] *People v. Tabar*, *supra*, at 153-154; *Alvarez v. CFI*, 64 Phil. 33, 48 [1937]; *People v. Kagui Malasugui*, 63 Phil. 221, 226 [1936].

[112] TSN of February 20, 1996, pp. 17-18; Direct examination; Emphasis supplied.

[113] TSN of March 12, 1996, pp. 16-18, Cross-examination by counsel for Violeta Gaddao; Emphasis supplied.

[114] Compare with *People v. Bati*, 189 SCRA 97, 103 [1990], where the two accused were pursued and arrested a few minutes after consummating the sale of marijuana. "Hot pursuit" has a technical meaning. It is a doctrine in International Law which means the pursuit in the high seas of a foreign vessel undertaken by the coastal state which has good reason to believe that the ship has violated the laws and regulations of that state (*Salonga and Yap, Public International Law*, p. 90 [1992]).

[115] *Umil v. Ramos*, 202 SCRA 251, 263 [1991]; *United States v. Santos*, 36 Phil. 851 [1917]. Police officers had personal knowledge of the actual commission of the crime after conducting a surveillance of the accused (*People v. Bati*, 189 SCRA 97 [1990]; *People v. Sucro*, 195 SCRA 388 [1990]), or a prior test-buy operation (*People v. Ramos*, 186 SCRA 184 [1990]).

[116] *Id.*

[117] *Id.*

[118] PO3 Manlangit affirmed this fact in his cross-examination by counsel for appellant Gaddao-- TSN of February 20, 1996, pp. 42-43.

[119] SPO1 Badua's testimony does not clearly establish where he found the marked bills-- whether from appellant Gaddao's person or after a search of her house.

- [120] Pamaran, The 1985 Rules on Criminal Procedure Annotated, p. 195 [1995].
- [121] Harris v. United States, 390 U.S. 234, 19 L. Ed. 2d 1067, 1069 [1968]; see also Bernas, supra, at 174.
- [122] Coolidge v. New Hampshire, 403 U.S. 443, 29 L. Ed. 2d 564 [1971]; Texas v. Brown, 460 U.S. 730, 75 L. Ed. 2d 502, 510 [1983]; see also People v. Musa, 217 SCRA 597, 611 [1993] citing both cases.
- [123] Harris v. United States, supra, at 1069.
- [124] Coolidge v. New Hampshire, supra, at 582.
- [125] Roan v. Gonzales, 145 SCRA 687, 697 [1986]; Cruz, supra, at 151.
- [126] Roan v. Gonzales, supra, at 697, citing Harris v. United States, supra; Bernas, supra, at 174 citing Coolidge v. New Hampshire, 403 U.S. 443, 472 [1971].
- [127] Robbins v. California, 453 U.S. 420, 69 L. Ed. 2d 744, 751 [1981]; also cited in People v. Musa, supra, at 612 and Note 48; Arkansas v. Sanders, 442 U.S. 753, 61 L. Ed. 2d 235, 245, Note 13 [1979].
- [128] Robbins v. California, supra, at 751; Texas v. Brown, supra, at 514.
- [129] People v. Musa, supra, at 611.
- [130] TSN of February 20, 1996, pp. 44-47; Emphasis supplied.
- [131] TSN of February 20, 1996, p. 31.
- [132] TSN of February 20, 1996, pp. 15-16.
- [133] Exhibits "F," "G," "H," "I," "J," "K," "L," "M," "N," "O;" TSN of February 20, 1996, pp. 22-25; see also Exhibit "S--" Request for Laboratory Examination.
- [134] In People v. Musa, 217 SCRA 597, 612 [1993], the Narcom agents found marijuana in a plastic bag hanging in one corner of the kitchen. The agents had no clue as to the contents of the bag and had to ask the accused what it contained. The Supreme Court held that the marijuana was not in plain view.
- [135] Section 2, Bill of Rights, 1987 Constitution.
- [136] People v. Aminnudin, 163 SCRA 403, 410 [1988].
- [137] The total weight of 7,641.08 grams or 7.6 kilos of marijuana included the 970 grams (or almost one kilo) of "buy-bust marijuana" given by appellant Doria (See "Request for Laboratory Examination," Exhibit "S"). Deducting this 970 grams, the ten bricks of marijuana found in the box weigh 6,671.08 grams or approximately 6 kilos.
- [138] People v. Aminnudin, 163 SCRA 402, 410 [1988].
- [139] Id.
- [140] Id, at 410-411; also cited in People v. Flores, 165 SCRA 71, 85 [1988].
- [141] People v. Zervoulakos, 241 SCRA 625 [1995]; People v. Martinez, 235 SCRA 171 [1994]; People v. Rigodon, 238 SCRA 27 [1994]. The exclusion or absence of the marked money does not create a hiatus in the prosecution's evidence as long as the drug subject of the illegal transaction was presented at the trial court--People v. Nicolas, 241 SCRA 573 [1995]; People v. Lucero, 229 SCRA 1 [1994].
- [142] Section 23, R.A. 7659 amending Article 62 of the Dangerous Drugs Act; see also Section 17 (5), R.A. 7659

amending Section 20 of the Dangerous Drugs Act.

CONCURRING OPINION

PANGANIBAN, J.:

I fully concur with the exhaustive and incisive ponencia of Mr. Justice Reynato S. Puno. This Decision rightfully brings the Court back to well-settled doctrines on warrantless arrests and searches, which have seemingly been modified through an obiter in *People v. Ruben Montilla*.^[1] I just wish to outline some guidelines on when an arrest or a search without a warrant is valid. Hopefully, they would be of help, especially to our law enforcers who are often faced with actual situation that promptly call for their application.

Valid Arrests

Without Warrants

Section 5 of Rule 113 of the Rules of Court lays down the basic rule on when an arrest without a warrant is lawful. It states:

“Sec. 5. Arrest without warrant; when lawful. -- A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

xxx xxx xxx”

I shall focus my discussion on the first two rules, which have been most frequently misapplied and misinterpreted, not only by law enforcers but some trial judges and lawyers as well.

At the very outset, I wish to underscore that in both cases the arresting officer must have personal knowledge of the fact of the commission of an offense. Under Section 5 (a), the officer himself is a witness to the crime; under Section 5 (b), he knows for a fact that a crime has just been committed. Let me elaborate.

1. In Flagrante

Delicto Arrests

Section 5 (a) is commonly referred to as the rule on in flagrante delicto arrests.^[2] The accused is apprehended at the very moment he is committing or attempting to commit or has just committed an offense in the presence of the arresting officer. There are two elements that must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.^[3]

It is not sufficient that the suspect exhibits unusual or strange acts or simply appears suspicious. Thus, in the recent en banc case of *Malacat v. Court of Appeals*,^[4] the Court, through now Chief Justice Hilario G. Davide Jr., held that the fact that the appellant’s eyes were “moving very fast” and looking at every approaching person were

not sufficient to suspect him of “attempting to commit a crime,” much less to justify his arrest and subsequent search without a warrant. The Court said that “there was nothing in [Malacat’s] behavior or conduct which could have reasonably elicited even mere suspicion” that he was armed with a deadly weapon. In other words, there was no overt physical act on the part of the suspect, positively indicating that he had just committed a crime or was committing or attempting to commit one. There was, therefore, no valid reason for the police officers to arrest or search him.

The same was true in *People v. Mengote*,^[5] where the arresting police tried to justify the warrantless arrest of the appellant on the ground that he appeared suspicious. The “suspicious” acts consisted of his darting eyes and the fact that his hand was over his abdomen. The Court, rejecting such justification, stated: “By no stretch of the imagination could it have been inferred from these acts that an offense had just been committed, or was actually being committed, or was at least being attempted in their presence.”^[6]

In other words, the behavior or conduct of the person to be arrested must be clearly indicative of a criminal act. If there is no outward indication at all that calls for an arrest, the suspect cannot be validly apprehended under this paragraph, notwithstanding a tip from an informant that he would at the time be undertaking a felonious enterprise.

This doctrine found strength in *People v. Aminnudin*^[7] and again in *People v. Encinada*.^[8] In both cases, the appellants were arrested while disembarking from a ship, on account of a tip received from an informant that they were carrying prohibited drugs. The Court invalidated their warrantless arrests, explaining that at the moment of their arrests, the appellants were simply descending the gangplank, without manifesting any suspicious behavior that would reasonably invite the attention of the police. To all appearances, they were not committing a crime; nor was it shown that they were about to do so or had just done so. There was, therefore, no valid reason for their arrests.

Adhering to (and having faith in) the above rules, I respectfully disagreed with the distinguished Mr. Justice Florenz D. Regalado in *People v. Montilla*,^[9] when he upheld the validity of the warrantless arrest of the appellant while the latter was merely alighting from a passenger jeepney. I opined that Montilla could not have been perceived as committing a crime while merely alighting from a jeepney carrying a traveling bag and a carton. He did not exhibit any overt act or strange conduct that would reasonably arouse in the minds of the police suspicion that he was embarking on a felonious undertaking. There was no outward manifestation that he had just committed or was committing or attempting to commit an offense. Mercifully, the statement of the Court that Montilla’s arrest was valid because he was caught in flagrante delicto was only an obiter, for what finally nailed him down was his implied waiver of any objection to the validity of his arrest.

2. “Hot Pursuit”

Arrests

Section 5 (b) is otherwise known as the rule on “hot pursuit” arrests.^[10] Here, two elements must also concur prior to the arrest: (1) an “offense has in fact just been committed,” and (2) the arresting officer “has personal knowledge of facts indicating that the person to be arrested xxx committed [the offense].” In effecting this type of arrest, “it is not enough that there is reasonable ground to believe that the person to be arrested has committed a crime. A crime must in fact or actually have been committed first. xxx The fact of the commission of the offense must be undisputed.”^[11]

Thus, while the law enforcers may not actually witness the execution of acts constituting the offense, they must have direct knowledge or view of the crime right after its commission. They should know for a fact that a crime was committed. AND they must also perceive acts exhibited by the person to be arrested, indicating that he

perpetrated the crime. Again, mere intelligence information that the suspect committed the crime will not suffice. The arresting officers themselves must have personal knowledge of facts showing that the suspect performed the criminal act. Personal knowledge means actual belief or reasonable grounds of suspicion, based on actual facts, that the person to be arrested is probably guilty of committing the crime.[12]

In several cases wherein third persons gave law enforcers information that certain individuals or groups were engaged in some felonious activities, such relayed information was not deemed equivalent to personal knowledge of the lawmen. In *People v. Burgos*,[13] a certain Masamlok informed police authorities that the appellant was involved in subversive activities. Acting on the strength of such information and without securing a judicial warrant, the police proceeded to appellant's house to arrest him. There, they also allegedly recovered an unlicensed firearm and subversive materials.

The Court held that there was no personal knowledge on the part of the arresting officers, since the information came in its entirety from Masamlok, a civilian. We pointed out that at the time of his arrest, appellant was not in actual possession of any firearm or subversive document; neither was he committing a subversive act.[14] His warrantless arrest, therefore, could not be allowed under any of the instances in Rule 113, Section 6 (now 5) of the Rules of Court.

Also in *Encinada*, the appellant was arrested without a warrant, on the justification that the arresting officer "received an intelligence report that appellant who was carrying marijuana would arrive the next morning aboard M/V Sweet Pearl." The Court categorically stated that such "[r]aw intelligence information is not a sufficient ground for a warrantless arrest." [15] And since, at the time of his arrest, no act or fact demonstrating a felonious enterprise could be ascribed to appellant, there was no valid justification for his arrest.

To be distinguished from the above cases are those involving continuing offenses for which the culprit could be arrested any time in *flagrante delicto*. In *Umil v. Ramos*,[16] there were strong objections to the warrantless arrest of a suspected member of the New People's Army (NPA), while he was being treated for a gunshot wound in a hospital. He alleged that there was no valid justification for his arrest without a warrant, because he was not then committing any offense nor were there any indications that he had just committed or was about to commit one; he was in fact confined in a hospital.

The Court held that subversion, for which he was arrested and subsequently charged, was a continuing offense. For purposes of arrest, the Court said, the NPA member "did not cease to be, or became less of a subversive, xxx simply because he was, at the time of his arrest, confined in the xxx [hospital]." "Unlike other so-called 'common' offenses, i.e. adultery, murder, arson, etc., which generally end upon their commission, subversion and rebellion are anchored on an ideological base which compels the repetition of the same acts of lawlessness and violence until the overriding object of overthrowing organized government is attained." [17]

In the above instances where the arrests without warrants were held unlawful, so were the searches conducted subsequent thereto. Thus, the items seized consequent to the invalid search, though clearly prohibited by law (e.g. marijuana or unlicensed firearm), were considered inadmissible as evidence against the person wrongfully arrested. Important to bear in mind always is that any search conducted without a judicial warrant must be preceded by a lawful arrest, whether with or without a warrant duly issued therefor.

To underscore the rationale behind these strict rules, I deem it quite apt to quote these inspiring words from the precedent-setting case of *People v. Burgos*: [18]

"The right of a person to be secure against any unreasonable seizure of his body and any deprivation of his liberty is a most basic and fundamental one. The statute or rule which allows exceptions to the requirement of warrants of arrest is strictly construed. Any exception must clearly fall within the situations when securing a

warrant would be absurd or is manifestly unnecessary as provided by the Rule. We cannot liberally construe the rule on arrests without warrant or extend its application beyond the cases specifically provided by law. To do so would infringe upon personal liberty and set back a basic right so often violated and so deserving of full protection.”

Valid Searches

Without Warrants

The general rule is that a judicial warrant must first be duly obtained before search and seizure may be conducted. The only allowable instances in which a search may be conducted without a warrant are: (1) search incident to lawful arrest, (2) search pursuant to the “plain view” doctrine, (3) search of moving vehicles, (4) searches incidental to violation of customs laws, (5) search with consent, and (6) a “stop and frisk.”[19]

1. Search Incident to Lawful Arrest

Section 12 of Rule 1326 provides that a lawfully arrested person may be searched without a warrant for dangerous weapons or anything else that may be used as evidence of the offense. Such incidental search is, however, limited to the person of the arrestee at the time of the apprehension. The search cannot be extended to or made in a place other than the place of the arrest.[20]

2. The “Plain View” Doctrine

The “plain view” doctrine applies when the following requisites concur: (1) the law enforcement officer is in a position where he has a clear view of a particular area or has prior justification for an intrusion; (2) said officer inadvertently comes across (or sees in plain view) a piece of incriminating evidence; and (3) it is immediately apparent to such officer that the item he sees may be evidence of a crime or a contraband or is otherwise subject to seizure.[21]

3. Search of Moving Vehicles

The warrantless search of moving vehicles (including shipping vessels and aircraft) is justified by practicability, viz.: [22]

“The guaranty of freedom from unreasonable searches and seizures construed as recognizing a necessary difference between a search of a dwelling house or other structure in respect of which a search warrant may readily be obtained and a search of a ship, motorboat, wagon, or automobile for contraband goods, where 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.

xxx xxx xxx

“The automobile is a swift and powerful vehicle xxx Constructed as covered vehicles to standard form in immense quantities, and with a capacity for speed rivaling express trains, they furnish for successful commission of crime a distinguishing means of silent approach and swift escape unknown in the history of the world before their advent. The question of their police control and reasonable search on highways or other public place is a serious question far deeper and broader than their use in so-called ‘bootlegging’ or ‘rum running,’ which in itself is no small matter. While a possession in the sense of private ownership, they are but a vehicle constructed for travel and transportation on highways. Their active use is not in homes or on private premises, the privacy of which the law especially guards from search and seizure without process. The baffling

extent to which they are successfully utilized to facilitate commission of crime of all degrees, from those against morality, chastity, and decency to robbery, rape, burglary, and murder, is a matter of common knowledge. Upon that problem, a condition, and not a theory, confronts proper administration of our criminal laws. Whether search of and seizure from an automobile upon a highway or other public place without a search warrant is unreasonable is in its final analysis to be determined as a judicial question in view of all the circumstances under which it is made.”

4. Customs Searches

Under the Tariff and Customs Code, searches, seizures and arrests may be made even without warrants, for purposes of enforcing customs and tariff laws. Without mention of the need to priorly obtain a judicial warrant, the Code specifically allows police authorities to “enter, pass through or search any land, enclosure, warehouse, store or building, not being a dwelling house; and also to inspect, search and examine any vessel or aircraft and any trunk, package, box or envelope or any person on board[;]or stop and search and examine any vehicle, beast or person suspected of holding or conveying any dutiable or prohibited article introduced into the Philippines contrary to law.”[23]

5. Search With Consent

Waiver of any objection to the unreasonableness or invalidity of a search is a recognized exception to the rule against a warrantless search.[24] The consent to the search, however, must be express, knowing and voluntary. A search based merely on implied acquiescence is not valid, because such consent is not within the purview of the constitutional guarantee, but only a passive conformity to the search given under intimidating and coercive circumstances.[25]

In *People v. Lacerna*,[26] it was held that the otherwise prohibited intrusive search of appellant’s plastic bag was validated by the express consent of appellant himself, who was observed to be “urbanized in mannerism and speech,” and who moreover stated that he had nothing to hide and had done nothing wrong.

6. “Stop and Frisk”

The “stop and frisk” concept is of American origin, the most notable case thereon being *Terry v. Ohio*. [27] The idea is that a police officer may after properly introducing himself and making initial inquiries, approach and restrain a person manifesting unusual and suspicious conduct, in order to check, the latter’s outer clothing for possibly concealed weapons. The strict manner in which this notion should be applied has been laid down as follows:[28]

“xxx where a police officer observes unusual conduct which leads him reasonably to conclude in the light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior, he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own and others’ safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.”

As in the warrantless arrest of a person reasonably suspected of having just committed a crime, mere suspicious behavior would not call for a “stop and frisk.” There must be a genuine reason, in accordance with the police officer’s experience and the surrounding conditions, to warrant the belief that the person to be held has weapons (or contraband) concealed about him.[29]

A valid application of the doctrine was recognized in *Posadas v. Court of Appeals*[30] and in *Manalili v. Court of Appeals*. [31] In *Manalili*, the law enforcers, who were members of the Anti-Narcotics Unit of the Caloocan City

Police, observed during their surveillance that appellant had red eyes and was walking in a wobbly manner along the city cemetery which, according to police information, was a popular hangout of drug addicts. Based on police experience, such suspicious behavior was characteristic of persons who were “high” on drugs. The Court held that past experience and the surrounding circumstances gave the police sufficient reason to stop the suspect and to investigate if he was really high on drugs. The marijuana that they found in the suspect’s possession was held to be admissible in evidence.

Before I end, I must reiterate that the above exceptions to the general rule on the necessity of a judicial warrant for any arrest, search and seizure must all be strictly construed. Foremost in our minds must still be every person’s prized and fundamental right to liberty and security, a right protected and guaranteed by our Constitution.

WHEREFORE, I vote to ACQUIT Appellant Violeta Gaddao y Catama, as well as to REDUCE the penalty of Appellant Florencio Doria y Bolado to reclusion perpetua and a fine of P500,000.

[1] GR No. 123872, January 30, 1998.

[2] *Malacat v. Court of Appeals*, 283 SCRA 159, 174, December 12, 1997.

[3] *People v. Burgos*, 144 SCRA 1, 14, September 4, 1986; citing *Sayo v. Chief of Police*, 80 Phil. 859 (1948).

[4] *Malacat v. CA*, *supra*.

[5] 210 SCRA 174, June 22, 1992, per Cruz, J.

[6] *Ibid.*, p. 180.

[7] 163 SCRA 402, July 6, 1988, per Cruz, J.

[8] 280 SCRA 72, October 2, 1997, per Panganiban, J.

[9] *Supra*.

[10] *Malacat v. CA*, *supra*.

[11] *People v. Burgos*, *supra*, p. 15, per Gutierrez, J.

[12] *Umil v. Ramos*, 202 SCRA 251, 263, October 3, 1991.

[13] *Supra*.

[14] *Supra*, p. 14.

[15] *Supra*, p. 87.

[16] 187 SCRA 311, July 9, 1990; 202 SCRA 251, October 3, 1991 (*per curiam*).

[17] The Anti-Subversion Law, which prohibited mere membership in a subversive organization, has since been repealed.

[18] *Supra*, p. 14, per Gutierrez, J.

[19] *Malacat v. CA*, *supra*, p. 174; citing *Mustang Lumber v. Court of Appeals*, 257 SCRA 430, 450, 1996; *Moreno v. Ago Chi*, 12 Phil 439 (1909); Rule 126, § 12, Rules of Court; and *Terry v. Ohio*, 392 US 1, 88 S Ct 1868, 20 L Ed 2d 889 (1968). See also *Roan v. Gonzales*, 145 SCRA 687, 697, November 25, 1986; citing several cases.

[20] Concurring Opinion of Chief Justice Claudio Teehankee in *Nolasco v. Paño*, 147 SCRA 509, 515, January 30, 1987.

[21] *People v. Musa*, 217 SCRA 597, 611, January 27, 1993; citing *Coolidge v. New Hampshire*, 403 US 443, 29 L ed. 2d 564, 583 (1971); *Texas v. Brown*, 460 US 730, 75 L ed. 2d 502 (1983); Concurring Opinion by Stewart, Brennan and White, JJ, in *Stanley v. Georgia*, 394 US 557, 22 L ed. 2d 542 (1969); and *Walter v. US*, 447 US 649, 65 L ed. 2d 410 (1980).

[22] *Papa v. Mago*, 22 SCRA 857, 873-874 (1968), per Zaldivar, J.; quoting from 47 Am Jur 513-514, citing *Carroll v. United States*, 267 US 132, 69 L ed. 543, 45 S Ct. 280, 39 ALR 790; and *People v. Case*, 320 Mich 379, 190 NW 389, 27 ALR 686. See also *Roldan v. Arca*, 65 SCRA 336.

[23] *Papa v. Mago*, *ibid.*, pp. 871-872, citing pertinent provisions of the Tariff and Customs Code and *Carroll v. United States*, 39 ALR 790, 799. See also *People v. CFI of Rizal*, Br. IX, 101 SCRA 86, November 17, 1980.

[24] *People v. Lacerna*, 278 SCRA 561, 576, September 5, 1997; *People v. Fernandez*, 239 SCRA 174, December 17, 1994; *People v. Barros*, 231 SCRA 557, March 29, 1994; *People v. Damaso*, 212 SCRA 547, August 12, 1992.

[25] *Aniag v. Commission on Elections*, 237 SCRA 424, 436-437, October 7, 1994.

[26] *Supra*.

[27] 392 US 1; 88 S Ct. 1868; 20 L ed. 2d 889 (1968).

[28] *Ibid.*, p. 911; quoted in *Malacat v. CA*, *supra*.

[29] *Malacat v. CA*, *supra*.

[30] 188 SCRA 288, August 2, 1992, per Gancayco, J.

[31] 280 SCRA 400, October 9, 1997, per Panganiban, J.

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