

EIGHTH DIVISION

[CA-G.R. CR NO. 35490, February 07, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS
MELGAR Y LUCIDO, ACCUSED-APPELLANT.**

D E C I S I O N

REYES, JR., J.C., J.:

On appeal is the Judgment dated September 26, 2012 of the Regional Trial Court (RTC) Branch 37 of Calamba City, in Crim. Case No. 14411-06-C, which found Jesus Melgar y Lucido (appellant) guilty of violating Republic Act No. 8294[*] for which he was sentenced to suffer the penalty of six (6) years and one (1) day to seven (7) years and four (4) months and a fine of Php 30,000.00 Pesos.

The Information filed on September 26, 2006 charged appellant as follows:

"That on or about 4:56 o'clock in the morning of September 25, 2006 at Banana Island, Banaticla Compound, Purok 2, Brgy. Parian, Calamba City and within the jurisdiction of this Honorable Court, the above-named accused without any authority of the law, did then and there willfully, unlawfully and feloniously have in his possession and control the following firearms to wit:

One (1) Cal. 45 pistol with Serial Number NQK47851
One (1) Cal. 38 revolver SN # P11139
One (1) Magazine for Cal. 45 pistol
Four (4) pcs. Live ammunitions for Cal. 38
Thirty (30) pcs. Live ammunitions for Cal. 22.
In violation of the aforementioned law.
CONTRARY TO LAW." (Records, p. 1).

Upon arraignment, the appellant pleaded "not guilty." (Records, p. 50).

The prosecution presented PO2 Sandro A. Ortega (PO2 Ortega) who testified that on September 25, 2006, 4:30 a.m., he together with P/Supt. Roland Bustos, other police officers and Brgy. Tanod Jose Fernandez, by virtue of a Search Warrant, searched the house of appellant at Banana Island, Banaticla Compound, Purok 2, Brgy. Parian, Calamba City. They identified appellant's house through an informant and a sketch of the place. Upon reaching the house, they introduced themselves and entered the premises. They found two pieces of firearms and several pieces of ammunition on top of and under appellant's bed. Specifically, they found one Caliber .38 with serial number P11139, one Caliber .45 with serial number NQK47851, four pieces of live ammunition of Caliber .45 and thirty pieces of live ammunition of Caliber .22. PO2 Ortega asked appellant if he had licenses for the firearms. Appellant however could not produce any document. PO2 Ortega then inventoried and confiscated the firearms and ammunition. He also showed a Certification signed

by appellant, as owner of the house, stating that the officers conducted a peaceful search therein. (TSN, February 5, 2009, pp. 5-13).

For the defense, the appellant testified that he was sleeping in the early morning of September 25, 2006, when police banged at his door and upon entering his house, grabbed and put him on the floor and handcuffed him with his face to the ground. While in that position, the police told him "*May baril ka pala.*" He replied that he did not have any. The police then asked him to go with them to the headquarters, which he could not refuse as there were about 15 policemen in his house that time. He also claimed that he was not able to read the warrant because it was in the possession of the police. During cross-examination, he stated that he was not able to read the warrant because the light was very bright. He also averred that he signed the Certificate of Inventory only because the police were pointing guns at him. (TSN, September 1, 2010, pp. 5-6).

The appellant is now before the Court claiming that:

I

THE TRIAL COURT ERRED IN NOT RULING THAT THE FIREARMS AND AMMUNITIONS ALLEGEDLY SEIZED FROM THE HOUSE OF THE ACCUSED-APPELLANT ARE INADMISSIBLE IN EVIDENCE.

II

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF REPUBLIC ACT NO. 8294. (Rollo, p. 38).

The appellant argues that Search Warrant No. 001-06-C, which was the basis of the search conducted by PO2 Ortega, did not specifically describe the place to be searched. The place indicated was "*Banana Island/Banaticla Compound, Purok 2, Barangay Parian, Calamba City, Province of Laguna,*" and did not specifically mention his house. The warrant was stated in broad terms, giving the police wide discretion in choosing what to search. Appellant was also not given opportunity to read and understand the contents of the warrant. As the search of his house violated his Constitutional right against unreasonable search and seizure, all firearms and ammunitions recovered therefrom are inadmissible in evidence. (Rollo, pp. 41-42).

The appellant further argues that the prosecution failed to prove his guilt beyond reasonable doubt. When the team of PO2 Ortega allegedly conducted the search, appellant was neither in physical nor constructive possession of the alleged firearms and ammunitions. Appellant claims that the prosecution failed to prove that he was in possession of the alleged firearms and ammunitions, thus there was no animus possidendi and no crime was committed. (Rollo, pp. 43-45).

The People on the other hand contends that a search is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended to be searched, such as in this case. Police officers also have in their favor the presumption of regularity in the performance of their duties. Without any proof that they had improper motive in arresting appellant, they are presumed to have

regularly performed their official duties. Also, the firearms and ammunitions were found on top of and under the appellant's bed. There is no doubt therefore that he, and no one else, had control over the contraband. (Rollo, pp. 65-66).

The Court finds NO MERIT in the appeal.

For a case for illegal possession of firearms to prosper, two elements must be present: (1) the existence of a firearm; and (2) the fact that the accused who owned or possessed it does not have the license or permit to possess the same. (*Betoy v. Judge Coliflores*, 483 SCRA 435, 445 [2006]).

There is no question that the subject firearms and ammunition in this case are without any license. The Certification dated June 3, 2009 issued by the Philippine National Police, Firearms and Explosives Division categorically stated that appellant is not a licensed or registered holder of: "Pistol, Caliber .45, Taurus Brazil with serial number NQK47851" and "Revolver, Caliber .38, Armscor 200 with serial number P11139." (Records, p. 133).

The essence of the crime penalized under Presidential Decree No. 1866, as amended, is primarily the accused's lack of license to possess the firearm. The fact of lack or absence of license constitutes an essential ingredient of illegal possession of firearm. (*Evangelista v. People*, 620 SCRA 134, 147 [2010]).

Appellant claims however that the search warrant, which was used to search his house and which eventually led to his arrest, is defective for not having specifically described the place to be searched. Thus, all firearms and ammunitions seized from his house, if any, are inadmissible in any proceeding against him.

Probable cause as applied in illegal possession of firearms cases would refer to such facts and circumstances that would lead a reasonably discreet and prudent man to believe that a person is in possession of a firearm and that he does not have the license or permit to possess the same. (*Betoy v. Judge Coliflores*, *supra*, p. 445).

It has further been held that a description of the place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended to be searched and distinguish it from other places in the community. A designation or description that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officers to it, meets the constitutional requirement of definiteness. (*People v. Tuan*, 628 SCRA 226, 253 [2010]).

Here, the address indicated in the search warrant is "*Banana Island/Banaticla Compound, Purok 2, Brgy. Parian, Calamba City, Province of Laguna*." Such address could not be anymore specific as it is the actual address of appellant. As pointed out by the People in its Brief, the appellant's Personal Bailbond stated the exact same address. (Records, p. 33).

In *Cupcupin v. People* (392 SCRA 203 [2002]) it was held that the residence of the accused, stated as "*Int. David Santos, C. Arrellano Street, Malabon, Metro Manila*" was sufficient as it can, with reasonable effort, already be ascertained and identified by the agents who were ordered to search the address including the rooms located therein. (*Supra*, p. 217).