

SECOND DIVISION

[G.R. No. 190889, January 10, 2011]

**ELENITA C. FAJARDO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

NACHURA, J.:

At bar is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking the reversal of the February 10, 2009 Decision^[1] of the Court of Appeals (CA), which affirmed with modification the August 29, 2006 decision^[2] of the Regional Trial Court (RTC), Branch 5, Kalibo, Aklan, finding petitioner guilty of violating Presidential Decree (P.D.) No. 1866, as amended.

The facts:

Petitioner, Elenita Fajardo, and one Zaldy Valerio (Valerio) were charged with violation of P.D. No. 1866, as amended, before the RTC, Branch 5, Kalibo, Aklan, committed as follows:

That on or about the 28th day of August, 2002, in the morning, in Barangay Andagao, Municipality of Kalibo, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, without authority of law, permit or license, did then and there, knowingly, willfully, unlawfully and feloniously have in their possession, custody and control **two (2) receivers of caliber .45 pistol, [M]odel [No.] M1911A1 US with SN 763025 and Model [No.] M1911A1 US with defaced serial number, two (2) pieces short magazine of M16 Armalite rifle, thirty-five (35) pieces live M16 ammunition 5.56 caliber and fourteen (14) pieces live caliber .45 ammunition**, which items were confiscated and recovered from their possession during a search conducted by members of the Provincial Intelligence Special Operation Group, Aklan Police Provincial Office, Kalibo, Aklan, by virtue of Search Warrant No. 01 (9) 03 issued by OIC Executive Judge Dean Telan of the Regional Trial Court of Aklan.^[3]

When arraigned on March 25, 2004, both pleaded not guilty to the offense charged.^[4] During pre-trial, they agreed to the following stipulation of facts:

1. The search warrant subject of this case exists;

2. Accused Elenita Fajardo is the same person subject of the search warrant in this case who is a resident of Sampaguita Road, Park Homes, Andagao, Kalibo, Aklan;
3. Accused Zaldy Valerio was in the house of Elenita Fajardo in the evening of August 27, 2002 but does not live therein;
4. Both accused were not duly licensed firearm holders;
5. The search warrant was served in the house of accused Elenita Fajardo in the morning of August 28, 2002; and
6. The accused Elenita Fajardo and Valerio were not arrested immediately upon the arrival of the military personnel despite the fact that the latter allegedly saw them in possession of a firearm in the evening of August 27, 2002.^[5]

As culled from the similar factual findings of the RTC and the CA,^[6] these are the chain of events that led to the filing of the information:

In the evening of August 27, 2002, members of the Provincial Intelligence Special Operations Group (PISOG) were instructed by Provincial Director Police Superintendent Edgardo Mendoza (P/Supt. Mendoza) to respond to the complaint of concerned citizens residing on Ilang-Ilang and Sampaguita Roads, Park Homes III Subdivision, Barangay Andagao, Kalibo, Aklan, that armed men drinking liquor at the residence of petitioner were indiscriminately firing guns.

Along with the members of the Aklan Police Provincial Office, the elements of the PISOG proceeded to the area. Upon arrival thereat, they noticed that several persons scampered and ran in different directions. The responding team saw Valerio holding two .45 caliber pistols. He fired shots at the policemen before entering the house of petitioner.

Petitioner was seen tucking a .45 caliber handgun between her waist and the waistband of her shorts, after which, she entered the house and locked the main door.

To prevent any violent commotion, the policemen desisted from entering petitioner's house but, in order to deter Valerio from evading apprehension, they cordoned the perimeter of the house as they waited for further instructions from P/Supt. Mendoza. A few minutes later, petitioner went out of the house and negotiated for the pull-out of the police troops. No agreement materialized.

At around 2:00 a.m. and 4:00 a.m. of August 28, 2002, Senior Police Officer 2 Clemencio Nava (SPO2 Nava), who was posted at the back portion of the house, saw Valerio emerge twice on top of the house and throw something. The discarded objects landed near the wall of petitioner's house and inside the compound of a neighboring residence. SPO2 Nava, together with SPO1 Teodoro Neron and Jerome T. Vega (Vega), radio announcer/reporter of RMN DYKR, as witness, recovered the discarded objects, which turned out to be two (2) receivers of .45 caliber pistol, model no. M1911A1 US, with serial number (SN) 763025, and model no. M1911A1

US, with a defaced serial number. The recovered items were then surrendered to SPO1 Nathaniel A. Tan (SPO1 Tan), Group Investigator, who utilized them in applying for and obtaining a search warrant.

The warrant was served on petitioner at 9:30 a.m. Together with a *barangay* captain, *barangay kagawad*, and members of the media, as witnesses, the police team proceeded to search petitioner's house. The team found and was able to confiscate the following:

1. Two (2) pieces of Short Magazine of M16 Armalite Rifle;
2. Thirty five (35) pieces of live M16 ammos 5.56 Caliber; and
3. Fourteen (14) pieces of live ammos of Caliber 45 pistol.

Since petitioner and Valerio failed to present any documents showing their authority to possess the confiscated firearms and the two recovered receivers, a criminal information for violation of P.D. No. 1866, as amended by Republic Act (R.A.) No. 8294, was filed against them.

For their exoneration, petitioner and Valerio argued that the issuance of the search warrant was defective because the allegation contained in the application filed and signed by SPO1 Tan was not based on his personal knowledge. They quoted this pertinent portion of the application:

That this application was founded on confidential information received by the Provincial Director, Police Supt. Edgardo Mendoza.^[7]

They further asserted that the execution of the search warrant was infirm since petitioner, who was inside the house at the time of the search, was not asked to accompany the policemen as they explored the place, but was instead ordered to remain in the living room (sala).

Petitioner disowned the confiscated items. She refused to sign the inventory/receipt prepared by the raiding team, because the items allegedly belonged to her brother, Benito Fajardo, a staff sergeant of the Philippine Army.

Petitioner denied that she had a .45 caliber pistol tucked in her waistband when the raiding team arrived. She averred that such situation was implausible because she was wearing garterized shorts and a spaghetti-strapped hanging blouse.^[8]

Ruling of the RTC

The RTC rejected the defenses advanced by accused, holding that the same were already denied in the Orders dated December 31, 2002 and April 20, 2005, respectively denying the *Motion to Quash Search Warrant* and *Demurrer to Evidence*. The said Orders were not appealed and have thus attained finality. The RTC also ruled that petitioner and Valerio were estopped from assailing the legality of their arrest since they participated in the trial by presenting evidence for their defense. Likewise, by applying for bail, they have effectively waived such irregularities and defects.

In finding the accused liable for illegal possession of firearms, the RTC explained:

Zaldy Valerio, the bodyguard of Elenita Fajardo, is a former soldier, having served with the Philippine Army prior to his separation from his service for going on absence without leave (AWOL). With his military background, it is safe to conclude that Zaldy Valerio is familiar with and knowledgeable about different types of firearms and ammunitions. As a former soldier, undoubtedly, he can assemble and disassemble firearms.

It must not be de-emphasize[d] that the residence of Elenita Fajardo is definitely not an armory or arsenal which are the usual depositories for firearms, explosives and ammunition. Granting *arguendo* that those firearms and ammunition were left behind by Benito Fajardo, a member of the Philippine army, the fact remains that it is a government property. If it is so, the residence of Elenita Fajardo is not the proper place to store those items. The logical explanation is that those items are stolen property.

x x x x

The rule is that ownership is not an essential element of illegal possession of firearms and ammunition. What the law requires is merely possession which includes not only actual physical possession but also constructive possession or the subjection of the thing to one's control and management. This has to be so if the manifest intent of the law is to be effective. The same evils, the same perils to public security, which the law penalizes exist whether the unlicensed holder of a prohibited weapon be its owner or a borrower. To accomplish the object of this law[,] the proprietary concept of the possession can have no bearing whatsoever.

x x x x

x x x. [I]n order that one may be found guilty of a violation of the decree, it is sufficient that the accused had no authority or license to possess a firearm, and that he intended to possess the same, even if such possession was made in good faith and without criminal intent.

x x x x

To convict an accused for illegal possession of firearms and explosive under P.D. 1866, as amended, two (2) essential elements must be indubitably established, *viz.*: (a) the existence of the subject firearm ammunition or explosive which may be proved by the presentation of the subject firearm or explosive or by the testimony of witnesses who saw accused in possession of the same, and (b) the negative fact that the accused has no license or permit to own or possess the firearm, ammunition or explosive which fact may be established by the testimony or certification of a representative of the PNP Firearms and Explosives Unit that the accused has no license or permit to possess the subject firearm or explosive (Exhibit G).

The judicial admission of the accused that they do not have permit or license on the two (2) receivers of caliber .45 pistol, model M1911A1 US with SN 763025 and model M1911A1 of M16 Armalite rifle, thirty-five (35) pieces live M16 ammunition, 5.56 caliber and fourteen (14) pieces live caliber .45 ammunition confiscated and recovered from their possession during the search conducted by members of the PISOG, Aklan Police Provincial Office by virtue of Search Warrant No. 01 (9) 03 fall under Section 4 of Rule 129 of the Revised Rules of Court.^[9]

Consequently, petitioner and Valerio were convicted of illegal possession of firearms and explosives, punishable under paragraph 2, Section 1 of P.D. No. 1866, as amended by R.A. No. 8294, which provides:

The penalty of *prision mayor* in its minimum period and a fine of Thirty thousand pesos (P30,000.00) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: Provided, however, That no other crime was committed by the person arrested.

Both were sentenced to suffer the penalty of imprisonment of six (6) years and one (1) day to twelve (12) years of *prision mayor*, and to pay a fine of P30,000.00.

On September 1, 2006, only petitioner filed a Motion for Reconsideration, which was denied in an Order dated October 25, 2006. Petitioner then filed a Notice of Appeal with the CA.

Ruling of the CA

The CA concurred with the factual findings of the RTC, but disagreed with its conclusions of law, and held that the search warrant was void based on the following observations:

[A]t the time of applying for a search warrant, SPO1 Nathaniel A. Tan did not have personal knowledge of the fact that appellants had no license to possess firearms as required by law. For one, he failed to make a categorical statement on that point during the application. Also, he failed to attach to the application a certification to that effect from the Firearms and Explosives Office of the Philippine National Police. x x x, this certification is the best evidence obtainable to prove that appellant indeed has no license or permit to possess a firearm. There was also no explanation given why said certification was not presented, or even deemed no longer necessary, during the application for the warrant. Such vital evidence was simply ignored.^[10]