

THIRD DIVISION

[CA-G.R. CR NO. 35533, June 11, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. NIÑO
JOTIE Y BAUTISTA @ JAY, ACCUSED-APPELLANT.**

DECISION

DE GUIA-SALVADOR, R., J.:

This is an appeal from the Decision dated 26 April 2012 of the Regional Trial Court of Quezon City, Branch 81 (RTC), finding accused-appellant Niño Jotie y Bautista, *a.k.a.* Jay (or "***appellant***"), guilty of illegal possession of firearm, or violation of Presidential Decree No. 1866, as amended by Republic Act No. 8294.^[1] The dispositive portion of the Decision reads:

"WHEREFORE, premises considered, the Court finds accused NIÑO JOTIE y BAUTISTA @ Jay guilty beyond reasonable doubt of the crime of violation of P.D. 1866, as amended by R.A. 8294 and is hereby sentenced to suffer the penalty of prision mayor in its minimum period, ranging from 6 years and 1 day to 8 years and to pay a fine of P30,000.00.

SO ORDERED."

THE ANTECEDENTS

In the Information filed with the RTC on 24 April 2006 by the Office of the City Prosecutor of Quezon City, appellant was charged with illegal possession of a caliber .45 pistol and seven (7) live ammunition, which were found in front of his feet below the passenger seat of the Isuzu Esteem vehicle driven by one Christian Lim. The accusatory portion of the Information reads:

"That on or about 1:20 in the morning of April 20, 2006 at Quezon City, and within the jurisdiction of this Honorable Court, the above-named [appellant] not being authorized by law [and] without any necessary license from the government, did then and there, willfully, unlawfully, and knowingly have in [his] possession and under his custody a caliber .45 COLT MKIV Pistol with Serial Number NO-7 OF 2746, and seven live ammunitions.

CONTRARY TO LAW."^[2]

Arraigned with the assistance of a counsel *de parte*, appellant entered a plea of not guilty.^[3]

At the Pre-Trial Conference, appellant admitted that no license to possess and to carry firearm has been issued to him by the Firearms and Explosive Unit of the Philippine National Police.^[4]

During trial, the prosecution presented as witnesses: (1) PO2 Gail Gines (**PO2 GINES**), one of the police officers assigned at the Philippine National Police-Traffic Management Group (**PNP-TMG**), Task Force Limbas, Camp Crame, Quezon City, who recovered the subject firearm, a .45 caliber pistol, at the front passenger seat that was occupied by appellant, and a .22 caliber pistol at the driver's side where one Christian Lim was seated; and (2) PO2 Julito Mamanao (**PO2 MAMANA**O), one of the police officers of the PNP-TMG who was present when they chased and flagged down the vehicle of appellant and Lim, and arrested them after finding said firearms inside the vehicle.

Further, the prosecution and the defense stipulated upon the testimonies of PO2 Fernando Rey Gapuz and PO2 Josil Rey Lucena to the effect, that they were part of the team that arrested appellant on April 20, 2006 at 1:20 a.m.; that they were able to identify the person of appellant as well as his signature in the Joint Affidavit of Apprehension; that SPO3 Romualdo Escobar was subpoenaed to produce a certification as requested by the PNP-TMG; and that appellant has no license nor is he a registered holder of a caliber .45 pistol with Serial No. NO-7 of 2746.

With the conclusion of the presentation of its evidence, the prosecution filed its Formal Offer of Evidence,^[5] which the trial court admitted over the objection of the defense. Instead of presenting its evidence, the defense opted to file a *Motion for Leave of Court to File Demurrer of Evidence*,^[6] which the trial court granted.^[7]

In his *Demurrer To Evidence*,^[8] appellant pointed out that the prosecution's offer of the direct testimony of PO2 GINES to prove, among other matters, that "*he is one of the officers who apprehended [appellant] who was driving the vehicle*" contradicts the testimony itself of PO2 GINES and that of PO2 MAMANA, who both asserted that appellant was a front passenger of the vehicle, while Christian Lim was the driver thereof.^[9] Appellant also insinuated that the subject firearm was "*planted*" by the arresting officers because it was found merely resting at appellant's foot but not in his actual possession.^[10]

In its Order dated 02 February 2009, the trial court denied appellant's Demurrer to Evidence, and directed him to present his evidence.^[11] With appellant having waived his right to present evidence, the trial court directed the parties to submit their respective memorandum.^[12]

In his Memorandum,^[13] appellant reiterated the same arguments he had stated in his Demurrer To Evidence, i.e., that he should be acquitted on account of the contradictory statements of the prosecution witnesses PO2 GINES and PO2 MAMANA, as to where appellant was seated inside the vehicle, whether at the driver's seat or the passenger seat; and the fact that the subject firearm was not recovered from appellant's possession but was just "*planted*" by the arresting officers.^[14]

The Facts

Version of the Prosecution

The Solicitor General's summarized the evidence for the prosecution in the Appellee's Brief as follows:

"At around 1:20 a.m. of April 20, 2006, the officer-in-charge (OIC) of the Task Force Limbas received a report that suspected carnappers riding a Suzuki Esteem with plate no. WAV 950 were seen along White Plains, Quezon City. Pursuant thereto, three mobile vehicles were dispatched to verify the report. One of the mobile vehicles, mobile [no.] 86, manned by [PO2 GINES], PO2 Fernando Rey Gapuz, and PO1 Josil Rey Lucena, who were then plying along Santolan Road, Quezon City responded. At that time the reported vehicle was also plying the same road.

The police officers spotted the vehicle bearing plate no. WAV 950 along Santolan Road or the side of White Plains Subdivision which prompted them to follow the vehicle and signal the driver to pull over to the side of the street. Instead of yielding, the driver attempted to flee which forced the mobile patrol to give chase. Another mobile patrol, manned by the OIC of Task Force Limbas, Police Senior Inspector Hansel Tan, and PO2 Julito Mamanao.. were also there and gave chase. The police officers were able to corner the vehicle in front of Gate 2, Camp Crame.

As part of the standard police operating procedure, the police officers approached the vehicle, asked the occupants of the vehicle to raise their hands and produce identification cards. The driver was Christian Lim while the passenger was [appellant]. It was at that instant when PO2 Mamanao clearly saw the Colt MKIV caliber .45 with magazine and ammunition in front of the feet of [appellant.] A caliber .22 with silencer and ammunition was also seen in front of the driver Christian Lim.

During the presentation of prosecution's evidence in this case a Memorandum dated April 20, 2006 issued by [FED-PNP] was produced that stated that accused-appellant is not a licensed gun holder and that the Colt MKIV embossed with "NBJ" on the left side and bearing Serial No. NO-7 OF 2746 was [also not] licensed..."^[15]

Version of the Defense

Appellant expressly waived his right to present evidence."^[16]

RULING OF THE TRIAL COURT

In convicting appellant of illegal possession of a firearm, the trial court gave credence to the testimony of PO2 GINES and the stipulated testimonies of PO2 Fernando Rey Gapuz and PO1 Jusil Rey Lucena, and relied on Exhibit "H" or the Memorandum issued by Alexander L. Roldan, Chief of the Records Division of the Firearms and Explosive Division-Philippine National Police (*FED-PNP*), stating that appellant is not a licensed/registered firearm holder of any kind and caliber per verification from the records of the FED-PNP.

In his motion for reconsideration^[17], appellant reiterated the same arguments^[18] raised in his Demurrer To Evidence and Memorandum. He further argued that since the firearm was merely found at his foot, he was not in possession thereof,^[19] and that with the failure of the prosecution to produce the firearm before the court, the existence thereof was not established."^[20]

With the denial^[21] of his motion for reconsideration, appellant filed a notice of appeal on 11 January 2013.^[22]

The Issue

Appellant urges the reversal of his conviction on the ground that the prosecution had not proven his guilt beyond reasonable doubt for its failure to present as evidence the subject firearm.^[23]

The Court's Ruling

The appeal is devoid of merit.

The crime of illegal possession of firearms is defined and penalized under Section 1 of PD 1866, as amended by RA No. 8294, *to wit* :

"Section 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms, Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.- The penalty of *prision correccional* in its maximum period and a fine of not less than Fifteen Thousand Pesos (P15,000.00) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: Provided, That no other crime was committed.

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."

To sustain a conviction for illegal possession of firearm and ammunition, the presence of two elements must be established, viz: (a) the existence of the subject firearm and ammunition; and (b) the fact that the accused who owned or possessed the firearm and ammunition does not have the corresponding license or permit to possess them.^[24] In the case at bar, both elements were established beyond reasonable doubt by the prosecution.

First Element: Existence of the firearm

There is no merit in appellant's argument that the existence of the subject caliber. 45 pistol was not shown because the prosecution failed to present it as evidence.

Records show that the subject firearm was brought^[25] before the court by PO2 MAMANAO^[26] when he was presented as a witness. However, the trial court barred the prosecution from marking it in evidence for the unjustified failure of the latter to have it marked during the pre-trial conference.^[27] Hence, it was not among the evidence formally offered by the prosecution.^[28]

Nevertheless, the presentation in evidence of said firearm is not a requirement to establish its existence.^[29] Even without the presentation of the said firearm, its existence can be proved by the testimony of an eyewitness.^[30] In ***People v. Narvasa***,^[31] the high powered firearms were not presented as evidence, and the trial court solely relied on the credible testimony of the prosecution witnesses in appreciating the special aggravating circumstance of using unlicensed firearms. In affirming the trial court's ruling, the Supreme Court held that illegal possession of firearms may be proven by testimony even without the presentation of the said firearm. Thus:

"In *People v. Lualhati*,^[32] this Court merely stated that the existence of the firearm must be established; it did not rule that the firearm itself had to be presented as evidence. Thus, in *People v. Orehuela*,^[33] the Court held **that the existence of the firearm can be established by testimony, even without the presentation of the said firearm**. In the said case, Appellant Orehuela was convicted of qualified illegal possession of a firearm despite the fact that the firearm used was not presented as evidence. The existence of the weapon was deemed amply established by the testimony of an eyewitness that Orehuela was in possession of it and had used it to kill the victim..."^[34]

In the case at bar, the prosecution was able to clearly establish through the credible testimony of PO2 GINES not just the existence of the subject caliber .45 pistol but also appellant's possession thereof. We quote the relevant portions of PO2 Gines' testimony, thus:

"Q Tell us where in particular did you recover the firearms subject matter of this case?

A In front, at the lower part of the seat of the passenger [referring to appellant], sir.

xxx xxx xxx

Q After the vehicle stopped at Camp Crame, what happened?

A We slowly step out of the mobile, ordered them to raise their hands and asked for identification and they gave us their license, sir.

Q How many were in the vehicle?

A Two (2) occupants, sir.

Q If those persons are inside the courtroom will you be able to identify them?

A Yes, sir.

Q Please look around and tell us if anyone of the persons in the vehicle is inside the courtroom?

A Yes, sir.