

THIRTEENTH DIVISION

[CA-G.R. CR No. 34046, October 03, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMON JOSE GUTIERREZ, ACCUSED-APPELLANT.

DECISION

SADANG, J.:

This is an appeal from the Decision,^[1] dated December 22, 2010, of the Regional Trial Court of Quezon City, Branch 90, in Criminal Case No. Q-95-63998, finding accused-appellant Ramon Jose Gutierrez (hereafter, appellant) guilty of violation of Presidential Decree (PD) No. 1866.

The Information^[2] indicting appellant reads:

That on or about the 29th day of September, 1995 in Quezon City, Philippines, the said accused, did then and there willfully, unlawfully, and feloniously have in his possession, control and custody six (6) live ammunitions (*sic*) for cal. 38 revolver, one (1) live ammunition for M16 Rifle and one (1) black bag, containing holster for cal. 38 without having previously secured the necessary license and permit to possess and carry the same from the proper authorities.

CONTRARY TO LAW.^[3]

Appellant entered a not guilty plea with the assistance of counsel *de officio* at the arraignment^[4] on August 2, 2007; thereafter, pretrial and trial ensued.

The prosecution offered the testimonies of then SPO1 Fernando M. Ferrer and then Senior Inspector Romeo C. Ver as well as pertinent real and documentary evidence.

The prosecution's case: On the basis of a report obtained from an informant in the course of a surveillance operation, Senior Inspector Ver applied for a search warrant before Judge Marciano I. Bacalla of the RTC-Quezon City. The search warrant was issued on September 28, 1995.^[5] The following day, a team composed of six (6) members of the Special Operations Group of the Police Criminal Investigation Unit (SOG, for brevity) headed by Senior Inspector Ver was organized to enforce the search warrant. The team coordinated with the barangay and two barangay officials were assigned to go with them to appellant's residence at No. 103, Sitio 3, Congressional, Barangay Batasan Hills, Quezon City. Senior Inspector Ver knocked on the door and appellant opened the door. The police officers introduced themselves as members of the SOG and, after explaining to appellant the purpose of their visit, searched the house. SPO1 Ferrer found six (6) live ammunition for

caliber .38 while SPO1 Ferol found one (1) live ammunition for M16 rifle. The seized items were marked and placed inside a plastic bag and turned over to Senior Inspector Ver who prepared and signed a Receipt/Inventory of Property Seized (receipt)^[6] on September 29, 1995. Ver also put the marking "RV-9-29-95" on the seized items.^[7] A Certification Re Conduct of Search^[8] was also prepared and appellant signed the document together with the Purok leaders as witnesses. Appellant was apprised of his constitutional rights, including the right to counsel. After the Booking and Info Report^[9] was prepared, appellant was brought to Camp Crame Station Hospital for medical check-up. Thereafter, Senior Inspector Ver filed with the court a Return of Search Warrant (return).^[10] The prosecution offered in evidence a Certification^[11] issued by the Firearms and Explosive Office (FEO) that appellant is not a licensed or registered firearm holder.

Denying the accusation, appellant testified that: on September 29, 1995, he was asleep with his wife when armed men wearing civilian clothes came to his house and introduced themselves as police officers; he opened the door and allowed the armed men to enter the house but they pinned him on the floor and handcuffed him; although the armed men told him that they had a search warrant, they never showed it to him; he was asked to sign a document so that he could be released from custody; he was not asked to sign an inventory of property and the signature appearing thereon is not his; the barangay officials or purok leaders came fifteen (15) minutes later; he was brought to Camp Crame and showed the bullets that allegedly belong to him and thereafter he was detained. Appellant claimed that he was neither informed of the nature of the accusation nor assisted by a competent counsel of his choice.

In a Decision,^[12] dated December 22, 2010, the trial court found appellant guilty as charged. The *fallo* reads:

IN VIEW OF THE FOREGOING, this Court finds the accused Ramon Jose Gutierrez guilty beyond reasonable doubt of committing the crime charged in the information in this case without any aggravating or mitigating circumstance as principal by direct participation, and this Court sentences said accused to suffer imprisonment of an indeterminate penalty of SIX (6) YEARS AND ONE (1) DAY of *prision correccional* as minimum, to TWELVE (12) YEARS AND ONE (1) DAY of *reclusion temporal* as maximum and to pay the costs.

SO ORDERED.^[13]

Hence, this appeal^[14] with this assignment of error:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF ILLEGAL POSSESSION OF FIREARMS NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

RULING

We affirm the judgment of conviction.

In prosecutions for illegal possession of firearm and ammunition, two requisites must be established, *viz.*: (1) the existence of the subject firearm or ammunition and, (2) the fact that the accused who owned or possessed the firearm or ammunition does not have the corresponding license or permit to possess.^[15] The prosecution evidence proved these elements.

It was shown that the ammunition subject of this case, namely, six (6) live ammunition for caliber .38 and one (1) live ammunition for M16 Rifle,^[16] were found and seized in the house of appellant during a search conducted pursuant to Search Warrant No. 1021-95^[17] issued by Judge Bacalla of the RTC of Quezon City. SPO1 Ferrer testified that he found the six (6) live ammunition for caliber .38 while SPO1 Ferol discovered the one (1) live ammunition for M16 rifle and a black bag containing the holster for a .38 caliber firearm in the house of appellant.^[18] The marking "RV-9-29-95"^[19] was inscribed on the seized items which were subsequently identified and offered in evidence at the trial. There can be no doubt that the first element of the offense was established.

The prosecution also offered the certification from the FEO that appellant does not have a license to possess any firearm or ammunition. Considering that the existence of a valid license is peculiarly within his knowledge, appellant should have established such fact, otherwise, he shall suffer conviction.^[20] Unfortunately, appellant did not even attempt to discharge that burden. The essence of the crime of violation of PD 1866 is the offender's lack of license to possess the firearm or ammunition. The lack or absence of license constitutes an essential ingredient of the offense of illegal possession of firearm or ammunition.^[21]

Appellant insists that his version is the true version. He contends that even assuming that the version of the prosecution is true, the receipt is inadmissible in evidence because he was not assisted by counsel when he allegedly signed the document. The contention is untenable.

A person under custodial investigation is entitled to the following rights under Section 2, Article III (Bill of Rights) of the 1987 Constitution: 1) right to remain silent; 2) right to counsel; and 3) right to be informed of such rights. Custodial investigation has been explained in *People v. Marra*^[22] thus:

Custodial investigation involves any questioning initiated by law enforcement officers *after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way*. It is only after the investigation ceases to be a general inquiry into an unsolved crime and begins to focus on a particular suspect, *the suspect is taken into custody, and the police carries out a process of interrogations that lends itself to eliciting incriminating statements that the rule begins to operate*. (Emphasis in the original. Citation omitted.)

There can be no question that appellant was under custodial investigation when the receipt was executed. He was being held in custody after the search in his house yielded positive results and the proceedings conducted by the police officers lent itself to eliciting incriminating statements from appellant. Appellant was therefore entitled to the rights of a person under custodial investigation. However, contrary to the contention of appellant, the receipt is admissible in evidence. The receipt reads:

RECEIPT/INVENTORY OF PROPERTY SEIZED

This is to certify that the undersigned had seized and taken possession of the property herein described below from Ramon Gutierrez at his residence located at #103, Sitio 3, Congressional, Batasan Hills, Quezon City on or about 6:30 A.M. of 29th September 1995 to wit:

<u>Items</u>	<u>Quantity</u>	<u>Description</u>
1	Six (6)	Live ammunition for cal. 38 Rev
2	One (1)	Black bag with inside holster for cal. 38
3	One (1)	Live Ammo for M16 Rifle

----- NOTHING FOLLOWS-----

Witnessed To Seizure Inventory:

- (Signed)
1. Ramon Gutierrez
- (Signed)
2. Anecita Timbal - Purok Leader
- (Signed)
3. Alfredo Escala - Purok Leader

(Signed)
P/SR INSP. ROMEO C. VER PNP
(Seizing Officer)

Perusal of the receipt shows that it was prepared and signed by Senior Inspector Ver who certified that the listed items were seized and taken from appellant at the latter's residence. This is the proper procedure. As held in *People v. Policarpio*,^[23] the police officer who confiscated the items should be the one to sign the receipt, not the suspect. While appellant signed the receipt, his signature merely signified that he witnessed the execution of the receipt. The receipt cannot be considered as an extrajudicial confession during custodial investigation that necessitates the strict observance of the right to counsel enshrined in the Constitution. It is, however,