


EN BANC

G.R. No. 260973 – BENJAMIN TOGADO y PAILAN,* Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.

Promulgated:

August 6, 2024

x -----  ----- x

CONCURRING OPINION

CAGUIOA, J.:

I concur with the *ponencia* in acquitting petitioner Benjamin Togado y Pailan (Togado) for violation of Republic Act No. 10591,¹ otherwise known as the “Comprehensive Firearms and Ammunition Regulation Act” based on reasonable doubt.

For a charge of illegal possession of firearms and ammunition to prosper, both (1) the existence of the subject firearm, and (2) the fact that the accused who possessed or owned the same does not have the corresponding license for it,² must be established by the prosecution beyond reasonable doubt. To prove the first element, the prosecution must present as evidence the actual firearm confiscated from the accused. Failure to do so without any valid justification creates reasonable doubt, and consequently, justifies the acquittal of the accused as in this case.

Factual background

Armed with a warrant, Police Officer I (PO1) Mar San Luis (PO1 San Luis), PO1 Marvin Alcantara (PO1 Alcantara), Police Officer III (PO3) Emerson Bautista (PO3 Bautista), and PO3 Arnel Bigata (collectively, the “search warrant team”) proceeded to the house of Togado to search for unlicensed firearms and ammunition. When the search warrant team entered the house, Togado allegedly pointed to the police officers a .45-caliber pistol placed on top of a chair. PO1 San Luis secured the firearm and its magazine with five (5) live rounds of ammunition and placed the items inside a ziplock plastic marked with “MMS-01 5/29/14.” The search warrant team then arrested Togado. Meanwhile, the seized items were turned over by PO1 San Luis to PO3 Bautista, the evidence custodian.³

* Also Benjamin P. Togado Jr. in some parts of the *rollo*.

¹ An Act Providing for A Comprehensive Law on Firearms and Ammunition and Providing Penalties for Violations Thereof, approved on May 29, 2013.

² *Carbonel v. People*, G.R. No. 253090, March 1, 2023 [Per J. Kho, Second Division]. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

³ *Ponencia*, pp. 2–3.



Upon confirmation by the Firearms and Explosives Office (FEO) of the Philippine National Police (PNP) that Togado was not a registered firearm holder of any kind or caliber, Togado was charged with illegal possession of firearms and ammunition.⁴

At the trial, PO1 San Luis testified that “he did not indicate any marking on the gun itself, its magazine and the live ammunition but only on the ziplock plastic where the gun was placed.”⁵ This was corroborated by PO1 Alcantara. However, when asked to present the seized items before the court, PO1 San Luis produced a gun that bore the marking “Magdalena MPS” and a magazine that similarly bore its own marking of “MAG MPS.”⁶ Moreover, the seized items were placed not in the ziplock plastic marked with “MMS-01 5/29/14,” but in a totally different container.⁷

After the Regional Trial Court (RTC) denied Togado’s Demurrer to Evidence, the defense waived its right to present evidence.⁸

The RTC found Togado guilty of illegal possession of firearms and ammunition, and the same was affirmed by the Court of Appeals (CA). According to the CA, “despite PO1 San Luis’ admission that he failed to put markings on the gun and the ammunition itself, it should be underscored that the existence of the firearm may be proven without presenting it.”⁹ Citing *People v. Olarte*¹⁰ (*Olarte*), the CA further espoused that “even if the existence of the firearm must be established, the firearm itself need not be presented as evidence for it may be established by testimony, even without the presentation of the said firearm.”¹¹

The *ponencia* reverses the lower courts and rules that the prosecution failed to show that the integrity of the seized items had been preserved, *viz*:

The discrepancy in the markings, the tampering of the plastic bag, and PO1 [San Luis’] admissions in court [that he could not ascertain whether the gun presented in court was the same firearm confiscated from Togado], lead us to conclude that there exists reasonable doubt as to the guilt of [Togado].

....

Jurisprudence dictates that the *corpus delicti* in illegal possession of firearms is the lack of license to own or possess a firearm. However, for us to rule... that there is no need to present the firearm as evidence would have dangerous consequences. It would be easy for anyone to plant a firearm as

⁴ *Id.* at 3–4.

⁵ *Id.* at 12.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 5.

⁹ *Rollo*, p. 45.

¹⁰ *People v. Olarte*, 848 Phil. 821 (2019) [Per. J. Gesmundo, First Division].

¹¹ *Id.* at 847.

evidence, arrest the person, then charge them for illegal possession if their name does not appear in the database of the [FEO] of the [PNP]. Anyone could easily be convicted by the mere issuance of a certification that they do not have a license to own and possess a firearm. Thus, the preservation of the integrity of the confiscated firearm is crucial.

....

[T]his Court pronounced that “the firearm itself need not be presented as evidence for it may be established by testimony.”¹² (Citations omitted)

Thus, the *ponencia* held that Togado’s acquittal should necessarily follow.

I completely agree with the *ponencia*.

***Chain of custody in cases involving
illegal possession of firearms and
ammunition***

Preliminarily, I believe there is a need to settle the issue on whether the “chain of custody” rule should be strictly observed in cases involving illegal possession of firearms and ammunition.

The term “chain of custody” is particularly relevant in drugs cases, as embodied in Section 21 of Republic Act No. 9165,¹³ otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” as amended. It refers to the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer or custody were made in the course of safekeeping and use in court as evidence, and the procedure on how the seized item was handled and managed by the custodian. Compliance with the chain of custody rule removes any doubt as to the identity of the seized illegal drug and preserves the evidentiary value of the same. Corollary thereto, failure to prove compliance with the chain of custody rule, without justifiable ground, will result in the acquittal of the accused.

In the handbook or manual of the PNP, the term “chain of custody” is used loosely to refer to a list of persons who came into possession of an item of evidence or the continuity of possession.¹⁴ For instance, the 2013 PNP

¹² *Ponencia*, pp. 13–16.

¹³ An Act Instituting the Comprehensive Dangerous Drugs Act Of 2002, Repealing Republic Act No. 6425, Otherwise Known as The Dangerous Drugs Act Of 1972, As Amended, Providing Funds Therefor, And for Other Purposes, approved January 23, 2002.

¹⁴ 2011 Philippine National Police Criminal Investigation Manual.



Handbook¹⁵ and the 2021 PNP Manual¹⁶ both expressly state that when effecting an arrest, confiscated evidence, including non-drugs evidence such as firearm and ammunition, shall be properly documented “*with the chain of custody of evidence duly and clearly established.*”

Recently, there have been cases that reached the Court involving illegal possession of firearms and ammunition wherein the defense argued in favor of acquittal on the basis of non-compliance with the “chain of custody” rule found in the 2013 PNP Handbook or the 2021 PNP Manual. On this score, I submit that unlike in drugs cases, the failure to strictly observe the chain of custody of evidence, or any irregularity thereof, ***standing alone***, should not automatically result in the acquittal of the accused in cases involving illegal possession of firearms and ammunition, provided that the prosecution is able to prove beyond reasonable doubt that the item presented in court is the same item seized from the accused.

For one, unlike Republic Act No. 9165, as amended, Republic Act No. 10591 does not contain a detailed continuity of possession that must be observed by the law enforcement operatives when handling seized illegal firearms and ammunition; it only requires that the seized items be kept within the custody and/or control of the court.¹⁷ For another, and this is the crucial distinction, firearms and ammunition—***unlike drugs***—are unique objects which may either: (a) already exhibit identifiable visual or physical peculiarities such as a particular paint job or an accidental scratch, dent, cut, chip, disfigurement, or stain; or (b) have a readily distinguishable mark such as a unit-specific serial number in case of an industrially manufactured item.¹⁸

In *Olarte*, the Court categorically held that the “chain of custody” rule has not been extended to cases involving non-drug substances or objects since the evidence is unique, readily identifiable, and relatively resistant to change:

[T]he Court emphasizes that if the proffered evidence is unique, readily identifiable, and relatively resistant to change, that foundation need only consist of testimony by a witness with knowledge that the evidence is what the proponent claims; otherwise, the chain of custody rule has to be resorted to and complied with by the proponent to satisfy the evidentiary requirement of relevancy. And at all times, the source of amorphous as well as firmly structured objects being offered as evidence must be tethered to and supported by a testimony. Here, the determination whether a proper foundation has been laid for the introduction of an exhibit into evidence refits within the discretion of the trial court; and a higher court

¹⁵ The 2013 Philippine National Police Operations Manual has been repealed by the 2021 Revised Philippine National Police Operational Procedures.

¹⁶ 2021 Revised Philippine National Police Operational Procedures.

¹⁷ See Republic Act No. 10591 (2013), sec. 36.

¹⁸ *People v. Olarte*, *supra* note 10 at 827.



reviews a lower court's authentication ruling in a deferential manner, testing only for mistake of law or a clear abuse of discretion. In other words, the credibility of authenticating witnesses is for the trier of fact to determine.¹⁹ (Emphasis supplied, citations omitted)

In *Olarte*, the Court compared a firearm with drug substances which can easily be tampered, altered, or planted on account of its amorphous nature. Indeed, narcotic substances are non-unique objects which cannot be distinguished, are not readily identifiable, and "present an inherent problem of fungibility or substitutability and contamination which adversely affects their relevance or probative value."²⁰ Thus, Republic Act No. 9165, as amended, requires that seized drugs must be marked upon seizure or confiscation *in order to make them unique or identifiable*, and the chain of custody rule must be followed in order to determine their admissibility as evidence.²¹ On the other hand, a firearm with a particular dent or a specific serial number would still be the same firearm even if the continuity of possession was not accounted for. The failure to strictly account for the movement of the seized firearm from confiscation until presentation in court does not present a possibility of contamination, alteration, or tampering that would change the item's nature as a firearm. As such, an irregularity or failure to strictly observe the chain of custody of seized firearms and ammunition should not automatically affect the integrity and evidentiary value of the seized item.

The seized firearms and ammunition must be presented in court; otherwise, the accused should be acquitted based on reasonable doubt

While a strict observance of the chain of custody may be excused in cases involving seized firearms and ammunition, the presentation of the actual firearm is still mandatory. I agree with the *ponencia* that the actual seized items *must be presented in court* to remove reasonable doubt as to its existence. Corollary thereto, I submit that the pronouncement in *Olarte* that the subject firearm itself need not be presented in the prosecution for Republic Act No. 10591 cases should be read in the context of *Olarte's* facts, or totally re-examined.

The first element of illegal possession of firearm under Republic Act No. 10591 is the existence of the subject firearm. The best evidence to prove the existence of this element is the firearm itself. By presenting the firearm during trial, the court and the parties are given the opportunity to examine the firearm and its readily identifiable marks such as its serial number or its other distinct physical characteristics with regard to photographs, markings, and reports made during the confiscation thereof. Consequently, the accused is

¹⁹ *Id.* at 853-854.

²⁰ *Id.* at 851.

²¹ *Id.* at 853.



given the opportunity to raise an objection in case of doubt with respect to the integrity and evidentiary value of the seized item. ***The court will also be able to ascertain that the firearm so presented is the very same firearm seized from the accused.***

I likewise agree with the *ponencia* that the non-presentation of the subject firearm would have dangerous consequences as anyone can now just be convicted based on an issuance of a certification that he or she does not have a license to own or possess the same, even if the existence of the firearm was not even proven as a fact, i.e., where a police officer only claims that he or she saw it.

Moreover, in case of conviction, the classification of the firearm determines the penalty to be imposed on the accused. Presenting the firearm during trial ensures that the firearm is classified correctly, and that the proper penalty is being applied.

Further, it is of no additional burden to the prosecution to present the subject firearm. In the prosecution of violations of Republic Act No. 10591, Section 36 of the law mandates that the seized firearm, ammunition, or parts thereof, machinery, tools or instruments remain in the custody of the court during the pendency of the case. In case of conviction, the law likewise mandates the confiscation and the forfeiture of the seized items in favor of the government. Thus, the seized firearm should already be within the custody and control of the court from the start of the trial until the end. Verily, if the court has no adequate means to safely keep the same, the court shall issue an order to turn over to the PNP Crime Laboratory such firearm, ammunition, or parts thereof, machinery, tools, or instruments in its custody during the pendency of the case and to produce the same to the court when so ordered. As such, control over the seized firearm remains with the court and presentation of the same during trial should not be an obstacle to the prosecution.

Thus, I humbly propose to the *En Banc* that in cases of illegal possession of firearms punished under Section 28 of Republic Act No. 10591, the Court veer away from the ruling that the existence of a firearm may be established by testimony and other evidence on record. ***As an element of the crime, the existence of the firearm should be undisputed, lest it leads to the wrongful conviction of the innocent.***

It bears consideration that the lightest penalty for a violation of Section 28 is *prision mayor* in its medium period or eight (8) years and one (1) day to ten (10) years. To convict a person when the very existence of the object he or she is being accused of illegally possessing cannot be proven by its production in court would be offensive to the very tenet of criminal justice—proof of guilt beyond reasonable doubt.



The prosecution bears the burden of proving that measures against tampering or planting of evidence were observed in the seizure and handling of firearms, ammunition, or other similar unique, non-amorphous, and readily identifiable items

In previous years, there have been numerous reports of evidence planting by the authorities, such as the ‘*laglag bala*’ *modus operandi* which victimized many travelers and caused enough public outrage that the Senate of the Philippines ordered an inquiry into it, and the ‘*nanlaban*’ defense that was used to justify the killings during drug operations. Of note is the 2020 report²² released by the United Nations Office of the High Commissioner for Human Rights (OHCHR) where it was found that in several crime scenes, the police claimed to have recovered guns allegedly used by the victims to resist police officers, but the same recovered guns which bore unique serial numbers were found in different locations with different victims. The report reads:

....

24. OHCHR examined police reports on another 25 operations in which 45 people had been killed in Metro Manila between August 2016 and June 2017. The police had referred to 34 of these killings as “neutralization”. *At all the crime scenes, the police claimed to have recovered satchels of methamphetamine and guns allegedly used by the victims to resist police officers. On the basis of these reports, OHCHR found that the police had repeatedly recovered guns bearing the same serial numbers from different victims in different locations. OHCHR identified seven handguns with unique serial numbers. Each handgun appeared in at least two separate crime scenes, while two reappeared in five different crime scenes. The pattern suggests planting of evidence by police officers and casts doubt on the self-defence narrative, implying that the victims were likely unarmed when killed.*²³ (Emphasis supplied)

Republic Act No. 10591 itself recognizes the possibility of planting any firearm, or ammunition, or parts thereof in the person, house, effects, or in the immediate vicinity of an innocent individual for the purpose of implicating or incriminating the person, or imputing the commission of any violation of the law to said individual.²⁴ Verily, non-presentation of the seized firearms may also give rise to untoward incidents where these firearms are re-used as planted evidence, similar to the instances earlier mentioned.

Thus, while I submit that the strict standard of chain of custody applied in cases involving dangerous drugs should not be applied to cases involving

²² United Nations Office of the High Commissioner for Human Rights, *Situation of Human Rights in the Philippines: Report of the United Nations High Commissioner for Human Rights*, available at <https://www.ohchr.org/sites/default/files/Documents/Countries/PH/Philippines-HRC44-AEV.pdf>, (last accessed on March 7, 2024).

²³ *Id.* at 6.

²⁴ See Republic Act No. 10591 (2013), sec. 38.



firearms, ammunition, and similar unique, non-amorphous, and readily identifiable items, there must still be certain standards or measures that the police officers and other law enforcement agencies must follow in the seizing and handling of these items to prevent instances of evidence planting.

As in this case, the prosecution must establish the integrity and evidentiary value of the seized item, specifically that the item presented in court is the same item seized from the accused. This may be proven by the markings made on the seized items, the inventory of the seized items, the photographs taken of the seized items upon confiscation, and any other documentary evidence prepared and executed by the police officers upon confiscation from the accused.

I also propose that in instances where the operation is required to be conducted in the presence of witnesses, such as in the implementation of a search warrant, the prosecution must establish that the required witnesses are present at the time of the seizure, marking, and inventory. Section 8, Rule 126 of the Revised Rules of Criminal Procedure provides that a house, room, or any other premises shall not be searched except in the presence of the lawful occupant thereof, or any member of his or her family, or in the absence of the latter, two (2) witnesses of sufficient age and discretion residing in the same locality. The same rule is reflected in Section 2.7(h), Rule 2 of the 2021 PNP Manual.²⁵ The presence of these witnesses would guard against the planting of evidence and frame up,²⁶ and would belie any doubt as to the source, identity, and integrity of the seized items, as in drugs cases.²⁷

Further, similar to drugs cases,²⁸ the marking of firearms, ammunition, and similar unique, non-amorphous, and readily identifiable items should be done immediately upon confiscation, at the place of confiscation and in the presence of the offender and the insulating witnesses. The conduct of inventory and the taking of photographs must follow immediately after seizure and confiscation to provide credible proof of the state or condition of the seized item and ensure that its identity and integrity are preserved. This is especially crucial in other instances or operations where police officers may recover firearms, ammunition, and other similar items but witnesses are not

²⁵ Rule 2, Law Enforcement Operations provides:

.....
2.7 Search and Seizure

.....
h. Prohibited Acts in the Conduct of Search by Virtue of a Search Warrant

- 1) Houses, rooms, or other premises shall not be searched except in the presence of the lawful occupant thereof or any member of his/her family or, in the absence of the latter, in the presence of two witnesses of sufficient age and discretion residing in the same locality.

²⁶ *People v. Sagana*, 815 Phil. 356, 373 (2017) [Per J. Leonen, Second Division]

²⁷ *People v. Tomawis*, 830 Phil. 385, 409 (2018) [Per J. Caguioa, Second Division].

²⁸ *Nisperos v. People*, G.R. No. 250927, November 29, 2022 [Per J. Rosario, *En Banc*]. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

required to be present for the same, such as during patrol operations, checkpoints, and warrantless arrests.

I also note that the 2021 PNP Manual requires that whenever applicable and practicable, Body Worn Cameras (BWCs) and/or Alternative Recording Devices (ARDs) must be used in police operations.²⁹ During trial, the recordings from these BWCs and ARDs should likewise be presented in court to prove the validity of the seizure and to allow the parties to examine the same.

I submit that the foregoing measures, among others, would greatly decrease the possibility of evidence planting and wrongful prosecution, while keeping within the confines of the law.

***Togado should be acquitted as
his guilt was not proven
beyond reasonable doubt***

As applied in the present case, I support the acquittal of Togado due to the prosecution's failure to prove his guilt beyond reasonable doubt.

At the outset, when the subject firearm was allegedly confiscated from Togado, PO1 San Luis placed the markings "MMS-01 5/29/14" on the ziplock plastic where the evidence is contained, instead of on the seized firearm itself. Togado testified at trial that he did not indicate any marking on the gun itself, its magazine, or on the live ammunition.

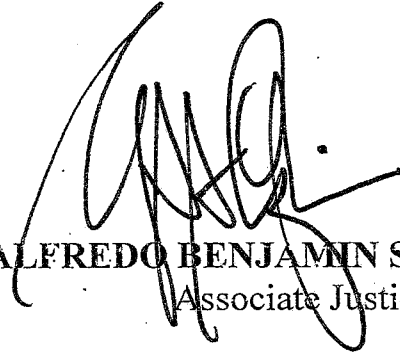
However, when the subject firearm was presented in court, it bore the marking "MAG MPS." It was likewise placed in a different container, and not in the ziplock plastic marked with "MMS-01 5/29/14." Under scrutiny of examination, PO1 San Luis admitted his uncertainty if the firearm presented in court was the same firearm that was confiscated from Togado.

Placing the markings on the container, rather than on the seized item, makes it prone to tampering, which is what appears to have happened in this case. The firearm bearing a marking when it had none when it was handled by the seizing officer creates doubt as to whether the seized firearm and the firearm presented in court are the same items. From the foregoing circumstances, there already exists doubt as to the existence of the seized firearm and consequently, the first element of a violation of Section 28 of Republic Act No. 10591 was not duly proven.

ACCORDINGLY, I concur with the *ponencia* and vote to **GRANT** the Petition.

²⁹ See Chapter 2 Operational Guidelines, Sections 2.4 and 2.7, 2021 Revised Philippine National Police Operational Procedures.



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above the printed name.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice