

**SENIOR STATE PROSECUTOR JOVENCITO R. ZUÑO, SR.,
COMPLAINANT, VS. HON. BALTAZAR DIZON, JUDGE, REGIONAL
TRIAL COURT, BRANCH 113, PASAY CITY, RESPONDENT.**

A.M. NO. RTJ-91-752. June 23, 1993

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PER CURIAM:

On July 17, 1991, Jovencito R. Zuño, Sr., State Prosecutor, Department of Justice, Manila, and Chairman of Task Force NAIA, filed an administrative complaint against Judge Baltazar R. Dizon of the Regional Trial Court, Branch 113, Pasay City, for "Gross Ignorance of the Law," because he acquitted the defendants in four (4) cases of illegal-possession of firearms, namely:

1. Criminal Case No. 91-0464-P, People vs. Adolf Werner Borchert, a German national;
2. Criminal Case No. 91-0586, People vs. Nelson S. Leonor, a Filipino;
3. Criminal Case No. 91-0881, People vs. Robert Wayne Wilkins, an American citizen; and
4. Criminal Case No. 90-5860, People vs. Elizabeth Vicky Nua.

All the accused had been arrested at the Ninoy Aquino International Airport while attempting to smuggle firearms into and out of the country.

Respondent Judge, in his comment, shrugged off the Senior State Prosecutor's administrative complaint, as merely the reaction of "a disgruntled State Prosecutor" whose cases "were lost because of lack of competence to prosecute" (pp. 28-29, Rollo). He asked that the complaint be dismissed.

On January 20, 1992, the Court referred the case to Justice Artemon D. Luna of the Court of Appeals for investigation, report and recommendation within ninety (90) days from receipt of the records thereof. After conducting an investigation of the charge, Justice Luna's Report dated September 28, 1992 disclosed the following:

I. Criminal Case No. 91-0464-P

"People vs. Adolf Werner Borchert"

On March 11, 1991, at about 3:00 in the afternoon, in Pasay City, the accused Adolf Werner Borchert, a departing German tourist, was apprehended at the NAIA for possession of an unlicensed .38 caliber firearm with marking "S & W Special CTG" (p. 12, Rollo).

On April 5, 1991, Borchert was arraigned and entered a plea of not guilty on the following information:

"That on or about the 11th day of March, 1991 at about 3:00 in the afternoon, in Pasay, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above named accused (Adolf Werner Borchert) did then and there wilfully, unlawfully and feloniously, carry and had in possession, direct custody and control the following, to wit:

"one (1) .38 caliber with marking 'S & W Special CTG' "

without first securing the necessary license or permit from the proper authorities." (p. 5, Rollo; Words in parenthesis supplied.)

At the trial, Demeterio Salvago, a Philippine Air Force Security Command (PAFSECOM) x-ray operator at the Ninoy Aquino International Airport, testified that his main duty is to check all the baggage of passengers to insure that they do not bring along with them prohibited drugs, guns and explosives. On March 11, 1991, when the accused's luggage passed thru the x-ray machine, Salvago noticed that it monitored the image of a gun. He stopped the x-ray machine and called his supervisor, Sgt. Angel Reyes, Jr., for him to view the reflection in the x-ray machine.

When the accused picked up the luggage, Sgt. Reyes ordered him to open it. Without any hesitation the accused opened it. Sgt. Reyes saw a gun (Exh. A) inside a white sock (Exh. C). He and Sgt. Salvago affixed their signatures on the butt of the gun (Exhs. A-1 and A-2). They asked the accused for his passport (Exh. D) and plane ticket (Exh. E) and brought him to the Investigation and Intelligence Section. There, Reyes and Salvago prepared and signed a joint affidavit (Exh. B).

Lt. Jose Mario Espino of the Firearms and Explosives Unit certified that Adolf Werner'Borchert is not a licensed/registered firearms holder (Exh. F).

The accused testified through an interpreter that he is 43 years old, a divorcee, and construction worker in Germany. He arrived in the Philippines on February 5, 1991, as a tourist. After a month's stay here, he decided to go back to Germany on March 11, 1991. He was in the airport at around 3:00 o'clock in the afternoon of March 11, 1991 and he was allegedly surprised why there was a gun inside his luggage. He did not know how the gun got there for that was the first time he saw it (Exh. A). He surmised that it might have been slipped inside his luggage by a woman with whom he slept in the hotel the night of March 10, 1991. Feeling dizzy because they had been drinking, he entrusted to her the packing of his personal effects in his luggage.

In acquitting the accused of the crime charged, respondent Judge Dizon stated:

" 'Animus Possidendi' or intent to possess is a necessary element in the crime of illegal possession of firearms (People vs. Mojica, 57 O.G. No. 38, p. 6810). And 'the crime of illegal possession of firearms is committed by the holding or having control of firearms or ammunition with intent to use the same without requisite authority' (People vs. Pajenado, 31 SCRA 819; People vs. Cava, L-9416, Aug. 31, 1956). Also, relying on the case of People vs. Asuncion, 161 SCRA 490-499, our Honorable Supreme Court aptly said; 'In People vs. Lopez, 79 Phil. 658, the Court already ruled that, under Republic Act No. 4, the use or the carrying of firearms and/or ammunition was an ingredient, if not the sole ingredient of the offense; i.e.. the very acts which were punished, subject to certain conditions and hence should be alleged and proved.'

"As can be gleaned from the above-quoted information the prosecution failed to aver that the firearm. subject matter of this case, was used or with intent to use in the commission of an offense, or carrying the same in his person. Hence, the information did not allege facts sufficient to constitute an offense.

"Shifting to another point, 'temporary, incidental, casual or harmless possession or control of a firearm is not a violation of the statute prohibiting the possession or carrying of this kind of weapon' (People vs. Estoista, L-5793, Aug. 27, 1953). In the case at bar, the authorities at the NAIA found the gun (Exh. A) in the luggage of the accused. When he was asked to open his luggage, the accused readily and without hesitation opened it. He vehemently denied any knowledge of how that gun was placed in his luggage. The authorities did not find any ammunition, a clear indication that the gun was not intended to be used in the commission of an offense. What is clear and unequivocal and admitted by the prosecution, the accused was about to board the KLM Airways on his way back to his country - Germany. At this point in time, granting that he really acquired that

gun, it can be safely concluded that accused's possession is only temporary, incidental, casual or harmless, as he was to leave the Philippines jurisdiction.

"Anyway, upon mature deliberation, the Court feels and so holds, that the accused was not even aware of the existence of that gun (Exh. A) in his luggage. His testimony is indeed within the realm of human experience and observation of men. It reveals his consistency throughout, his steadfastness. The Court could not but note his sincerity and candor,' bespeaking truthfulness and reliability.

"In any event, our Honorable Supreme Court has consistently ruled in an array of cases that" if the evidence for the prosecution is susceptible to (sic) two or more interpretations - one consistent with guilt; and the other, with his innocence, the accused shall be acquitted. 'Our jurisprudence is built around the concept that it is preferable for the guilty to remain unpunished than for an innocent person to suffer a long prison term unjustly" (People vs. Alcaraz, 136 SCRA 75).

"WITHOUT MORE, the accused is hereby ACQUITTED. The gun .38 caliber with marking 'S & W Special CTG' is hereby confiscated in favor of the government and the Branch Clerk is hereby directed to surrender the same to the Firearm and Explosives Office, Philippine National Police, Camp Crame, for proper disposition. The passport and the plane ticket must not (now) be returned to the accused. Without costs." (Underscoring supplied; pp. 6-8, Rollo.)

II. Crim. Case No. 91-0861

"People vs. Robert Wayne Wilkins"

In Criminal Case- No. 91-0881, the accused, an American businessman, arrived at the NAIA on May 31, 1991, at about 7:00 P.M. The airport authorities discovered that his suitcase bore the shadow of a firearm. When confronted with it, he voluntarily opened his suitcase and showed the gun. The PAFSECOM endorsed the matter to the Complaint and Action Desk, Task Force NAIA. An information was filed against him charging him for violation of Section 1 of P.D. 1866, as follows:

"That on or about the 31st day of May 1991 at about 8:00 in the evening, in Pasay, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously carry and had in possession, direct custody and control the following, to wit:

"one (1) 9 MM Smith and Wesson model 5966 with Serial No. TCZ-5763;

"two (2) .9MM magazines loaded with 14 bullets each;

"one (1) box containing 24 .9MM bullets

without first securing the necessary license or permit from the proper authorities." (p. 13, Rollo.)

The accused pleaded "not guilty" (p. 13, Rollo.)

On June 20, 1991, he filed through counsel, a motion to quash the information on the ground that: (1) the facts alleged therein do not constitute an offense; and (2) that criminal cases triable by the RTC of Pasay City may only be filed by the City Prosecutor of Pasay City, not the State Prosecutor, as provided in the City Charter.

Resolving the motion to quash, respondent Judge Dizon sustained the authority of the state prosecutors to file the information for they are "duly authorized under and by virtue of Department Order 271 dated November 5, 1990, by the Secretary of Justice" (p. 15, Rollo). However, relying once more on the case of People vs. Asuncion, 161 SCRA 490, and the ruling in People vs. Lopez cited therein, Judge Dizon granted the motion to quash on the ground that "the information does not exist in contemplation of law" for "it is bereft with (sic) an averment that the firearm subject matter of this case, was used or with intent to use in the commission of an offense" (p. 15,

Rollo).

The prosecution filed a motion for reconsideration signed by three state prosecutors, J. Zuño, G. Dee and C. De Leon, showing why it was error for Judge Dizon' to invoke the ruling in *People vs. Asuncion* for quashing the charge against the accused. The pertinent arguments in their motion for reconsideration are quoted below:

"The Government respectfully submits that the ruling in *People vs. Asuncion*, 161 SCRA 490 upon which accused's motion to quash is anchored, among other reasons, is not applicable to the case at bar because of the distinct divergence of the factual antecedents and the legal issues between the two cases.

"In *Asuncion*, the quashal of the information sustained by the Supreme Court was based on Executive Order No. 107 which granted an amnesty period of six months (extended up to December 31, 1987 by E.O. 222) from its effectivity within which holders or possessors of loose firearms and ammunitions could surrender them to the proper authorities without incurring criminal liability.

"Further, what were principally involved in *Asuncion* are laws granting amnesty period (e.g. R.A. No. 482, E.O.107 and 222) to holders/possessors of unlicensed firearms and ammunitions. Although these statutes did not legalize possession of such firearms and ammunitions they however temporarily lifted criminal liability for mere possession thereof, 'within the time designated in the proclamation (*Ibid.*). Criminal liability is incurred only when a person carries said firearm or ammunition outside of his residence not to surrender it, or when he intends to use it to commit another crime.

"It stands to reason therefore that in order to successfully prosecute a person under P.D. 1866 during the period of amnesty, it must be alleged and proved that aside from possessing the firearm (since mere possession thereof would not be criminal) he was carrying the same, " " not to surrender it, or that he intends to use it to commit another crime.

"But not so in the present case.

"The period of amnesty under E.O. 107, as amended no longer obtains at the time herein accused Wilkins possessed the subject firearms and ammunitions without license or authority and for which he is now indicted for violation of P.D. 1866. Indeed, P.D. 1866 is now back in its full force and effect, making mere possession of loose firearms and ammunitions punishable. It must be recalled that to be guilty of the crime of illegal possession of firearms and ammunitions, one does not even have to be in actual physical possession of the firearm. The law does not punish physical possession alone but possession in general which includes constructive possession (*People vs. Fajardo*, 17 SCRA 494). A perusal of P.D. 1866 clearly shows that the crime does not require allegations nor proof of their use in committing a crime nor is it an element .that the firearms be carried outside of the possessor's residence (*Ambrosio Padilla, Law on Illegal Possession of Firearms, Criminal Justice Journal, Vol. III, No. I 1988*). " (pp. 1-3, Exh. L.)

Respondent Judge, nevertheless, denied the motion for reconsideration. He said:

"In the desperate attempt of the prosecutors to restore the information they cited the case of *People vs. Elesterio*, 173 SCRA 243 telling this Court that 'mere possession of an unlicensed firearm is *malum prohibitum* and is punishable regardless of lack of criminal intent, x x x.' The prosecution's view has to be rejected for a lack of correct understanding of the nature of the case they have cited. Undeniably, the accused therein was accused of Violation of General Order No. 6 in relation to Par. 2, P.D. No. 9, as amended. The elements of the offense are first, the carrying of a firearm outside one's residence, and second, the motive for such act, which is 'in furtherance of or to abet, or in connection with subversion, rebellion, insurrection, lawless violence, criminality, chaos or public order.'

"Notably, these two laws under which therein accused was accused, the use or the carrying of firearm and/or ammunition were never essential ingredients of the crime.

"WHEREAS, under P.D. 1866, as already amplified in *People vs. Asuncion*, 161 SCRA 490, 'the use or the carrying of the firearms and/or ammunition was an ingredient, if not the sole ingredient of the offense; the very acts which were punished; x x x.'

"Importantly, in a resolution rendered by the Honorable Acting Secretary of Justice Silvestre H. Bello, III, in the case of *Edilberto Vocal, Jr.* under I.S. No. 89-2967 of the City Prosecutor's Office of the Pasay City dated July 15, 1991, the Honorable Secretary said:

"In illegal possession of firearms, the elements constituting the *corpus delicti* of the crime are (a) the existence of the firearm and (b) that it has been actually held with *animus possidendi* (II Regalado, Remedial Law Compendium, 6th Rev. Edition/1989/p. 567, citing *People vs. Camayor*, CA-G.R. No. 6142-R, April 19, 1957). It is undisputed that there are firearms and ammunitions. The remaining question that is now posed is whether under the obtaining circumstances, said firearms and ammunition were actually held with *animus possidendi*, that is holding or having control with intent to use them without the requisite authority.'

"IN VIEW HEREOF, the motion for reconsideration is hereby DENIED for being without merit." (Underlining supplied; pp. 16-17, Rollo.)

III. Crim. Case No. 91-0586

"*People vs. Nelson Leonor*"

In Criminal Case No. 91-0586, the accused, Nelson Leonor, was arraigned upon an information charging that he:

"x x x wilfully, unlawfully and feloniously carry and had in possession, direct custody and control the following, to wit:

"one (1) .380 cal. pistol, model P-380 with SN APO 38634 without first securing the necessary permit or license from the proper authorities." (p. 19, Rollo.)

Hermogenes Caylan, III, a customs examiner assigned at the NAIA arrival area, testified that on April 5, 1991, at about 1:00 A.M., while he was on duty checking the luggage of incoming passengers, a passenger from the United States named Nelson Leonor passed by his lane. Simultaneously, the personnel in the x-ray section signalled him to conduct an examination of the luggage of Leonor. Following standard procedure, he asked for the luggage declaration (Exh. A) and passport of the passenger, which the latter readily produced. He also asked what was inside the luggage and the accused replied that he brought with him one (1) .380 caliber pistol. The gun was not manifested in Leonor's baggage declaration. Caylan invited Leonor to the ICU unit for a thorough check-up. The accused removed from his luggage an iron steel box wrapped with masking tape. The gun was dismantled so he told Leonor to assemble it. This was done in the presence of Sgt. Lolong and Mr. Cacueco of the customs police*. Afterwards, the Firearms and Explosives Office representative was called to confirm the genuineness of the gun (Exh. D-1) and to receive the gun because the accused had no permit or license to carry it.

Sgt. Romeo Lolong of the PAFSECOM confirmed that Leonor's gun was discovered through the airport x-ray machine.

The accused, Nelson Leonor, alleged that he bought the gun for his personal security in the U.S. for \$150. He allegedly did not know that he should have a license to possess it.

In acquitting Leonor, Judge Dizon reiterated his previous decisions in the *Borchert* and *Wilkins* cases:

"This Court in its previous decisions said, that for the offense of illegal possession of firearm and ammunition under P.D. No. 1866, it is not enough that the accused should have custody and control of the firearm and ammunition at the time of apprehension. The information should allege that the accused was using or with

intent to use the same without requisite authority (*People vs. Pajenado*, 31 SCRA 813). This doctrine was even reiterated in the case of *People vs. Asuncion*, 161 SCRA 490-499. Upholding said doctrine the Honorable Supreme Court even cited the case of *People vs. Lopez*, 79 Phil. 658. In this case it was held that the use or the carrying of firearm and/or ammunition was an ingredient, if not the sole ingredient, of the offense; i.e., the very acts which were punished, subject to certain conditions, and hence, should be alleged and proved.

"Pointedly, the information quoted above is bereft of such important allegation. Hence, the information did not allege facts sufficient to constitute an offense. Borrowing the language of Justice Padilla, 'technically speaking, that information does not exist in contemplation of law.' Let it be said, that our criminal justice system cannot be anchored on assumptions, presumptions or surmises. No less than clear and unequivocal evidence or evidence beyond reasonable doubt will only command acceptance for that purpose.

"xxx xxx xxx.

"WITHOUT MORE, the accused is hereby ACQUITTED. Without costs." (pp. 24 - 24-A, Rollo.)

The complainant, who is the Senior State Prosecutor in Pasay City, believes that respondent Judge deliberately and knowingly rendered those judgments of acquittal "in patent display of gross ignorance of the law, prejudicial to the People's resolve to combat rampant criminality and render inutile the government's drive against the proliferation of loose firearms in the country" (p. 17, Justice Luna's Report). Senior State Prosecutor Zuño filed this administrative complaint to stop Judge Dizon from taking cognizance of all cases filed by Task Force NAIA after consultation with the members of the NAIA Task Force, the Asst. Chief State Prosecutor and the Chief State Prosecutor, and with the approval of the Secretary of Justice. Prosecutor Zuño pointed out that:

"x x x Judge Dizon anchored his decision on the case of *People vs. Asuncion*, 161 SCRA 490, promulgated by the Supreme Court on May 24, 1988 which ruled that the prosecution must show that other than mere possession of an unlicensed firearm, the perpetrator had the intent to use the same. We have repeatedly pointed out to Judge Dizon that the said ruling of the Supreme Court finds no application in the subject cases because in the *Asuncion* case, there was a period of amnesty granted by Executive Order Nos. 107 and 222 during which time the criminal liability for mere possession of unlicensed firearm and ammunition was temporarily lifted unless accused commits any other crime with the use of such unlicensed firearm and ammunition.

"The rule steadfastly laid down in cases of illegal possession of firearms is that mere possession is sufficient to warrant conviction. The offense is covered by special law and is *malum prohibitum*; hence, intent to use is not an ingredient of the crime and need not therefore be alleged in the information. The commission of the act being prohibited by reason of public policy, (it) suffices that the prohibited article be found in the possession of the accused, it not being necessary to allege or prove intent to use.

"The Honorable Court of Appeals has ruled that 'mere unlicensed possession is sufficient to sustain a conviction for illegal possession of firearms, regardless of the intent of the unlicensed holder, since the offense is *malum prohibitum* punished by special law and good faith and absence, of criminal intent are of no moment' (CA-G.R. No. 01257-R and G.R. No. 01258-R, May 14, 1963).

"In fact, in a very recent ruling by this Honorable Court; it was held that 'mere possession of an unlicensed firearm is *malum prohibitum* and is punishable regardless of lack of criminal intent, or proof of the ownership of the firearm by another person.' (*People vs. Elesterio*, 173 SCRA 243.)" (pp. 2-3, Rollo.)

In his defense, Judge Dizon claimed that "the charge is without basis and had been instituted x x x to harass, annoy, demean, degrade and expose (him) to public ridicule" (pp. 28-29, Rollo) and that it is a product of hate nursed by the complainant whom he had cited for contempt in a case and advised to study his case before appearing in his court.

He denied that he is "ignorant of the law" for otherwise he would not have received numerous citations and

awards from legal and civic organizations.

He invoked once more the decision of this Court in the case of *People vs. Asuncion, et al.*, 161 SCRA 490, and the opinion dated July 15, 1991 of the Secretary of Justice, Honorable Silvestre H. Bello, III in *People vs. Edilberto Vocal Jr. y Surla*, that:

"In illegal possession of firearms, the elements constituting the corpus delicti of the crime are (a) the existence of the firearm and (b) that it has been actually held with animus possidendi (II Regalado, Remedial Law Compendium, 6th Rev. Edition/1989/p. 567, citing *People vs. Camayor*, CA-G.R. No. 6142-R, April 19, 1957). It is undisputed that here there are firearms and ammunition. The remaining question that is now posed is whether under the obtaining circumstances, said firearms and ammunition were actually held with animus possidendi, that is holding or having control with intent to use them without the requisite authority." (p. 17, Rollo.)

Complainant Zuño in his Reply, disclosed that:

"x x x a fourth case bearing similar facts, entitled 'People of the Philippines vs. Elizabeth Vicky Nua' with CC No. 90-5860, where the accused was again acquitted, was recently decided by his Honor. A copy of said Decision is hereto attached as additional basis of this Complaint. Clearly, despite our manifestations to the contrary, His Honor has persisted in his erroneous judgment, or in his deliberate, flagrant and wanton disregard of the prevailing jurisprudence laid down by this Honorable Supreme Court." (pp. 37-38, Rollo.)

At the investigation of the charge which was conducted by CA Justice Artemon D. Luna, the parties presented only documentary evidence. The complainant marked in evidence his complaint, the judgments in Criminal Case No. 91-0464-P, Crim. Case No. 91-0881, Crim. Case No. 91-0586 and Crim. Case No. 90-5860, the affidavit of Angel S. Ragana, 2nd State City Prosecutor for Pasay City, the decision in *Padilla vs. Dizon*, Adm. Case No. 3086, May 31, 1989, 173 SCRA 719, and the resolution of Secretary Bello in IS 89-2967.

Respondent's evidence consisted of his Comment as Exhibit 1, his decisions and orders in the aforementioned Criminal Cases Nos. 91-0464-P, 91-0881, 91-0586 and 90-5860 (Exhs. 2, 3, 4, 5 and 6) and the Resolution of Secretary Bello in IS 89-2967 (Exh. 7).

After hearing the arguments and evidence of the parties, Justice Luna observed that respondent Judge Dizon erroneously did not apply Section 1 of P.D. 1866, the specific law cited in the four (4) informations and in spite of the efforts of Prosecutor Zuño to point out his error, he stubbornly refused to heed correction. Judge Dizon's erroneous adherence to the ruling in *-People vs. Asuncion* showed his ignorance of the history and development of the firearms law. As pointed out by Justice Luna:

"Possession of unlicensed firearms, parts of firearms, among others, were declared as unlawful under Section 2692 of the Revised Administrative Code [of 1917] and punished by imprisonment of not less than one (1) year and one (1) day and not more than five (5) years, or of a fine of not less than One Thousand Pesos nor more than Five Thousand Pesos, or both, in "the discretion of the Court." (p. 29, J. Luna's Report.)

On October 17, 1936, Commonwealth Act 56 took effect. Section 3 thereof amended Section 2692 of the Revised Administrative Code by reducing the penalty of imprisonment to "a period not exceeding one (1) year or both imprisonment and fine of not exceeding One Thousand (P1,000.00) Pesos."

On July 19, 1946, Republic Act No. 4 was passed to encourage holders of unlicensed firearms to surrender them. Section 2 of the law provided that any person in possession of unlicensed firearms or parts of firearms would not incur any criminal liability therefor if he surrenders the same to the proper authorities within the period which the President shall by proclamation designate. However, this section shall not be interpreted to mean as in any way exempting from such liability any person without the requisite license, found, within the aforementioned period of

time, making use of any of said articles, except in self defense, or carrying them on his person except for the purpose of surrendering them as-herein required.

On July 20, 1946, the President issued Proclamation No. 1 fixing August 31, 1946 as the last day in the Island of Luzon within which to surrender firearms without incurring any criminal liability.

On June 19, 1950, RA 482 took effect, extending for one (1) year from the approval of the law or up to June 19, 1951, the period for the surrender of unlicensed firearms subject to the same proviso that a person who within such period makes use of said firearm or carries it on his person except for the purpose of surrendering it, shall not be exempt from criminal liability.

On October 2, 1962, the President issued Presidential Decree No. 9 increasing the penalty to death "x x x, if the firearm involved is unlicensed and is used in the commission of crimes against persons, property x x x." [Sec. 1-(a)].

On June 29, 1983, the President issued P.D. 1866, codifying, among others, the laws governing illegal/unlawful possession of firearms. Section 1 of this Decree penalizes possession of unlicensed "firearms, part of firearm" with reclusion temporal in its maximum period to reclusion perpetua (1st par., sec. 1). Section 9 of this Decree repealed, amended and modified RA 4, PD 9 and all laws, decrees, orders, instructions, rules and regulations which are inconsistent with the decree.

On December 24, 1986, the President issued Executive Order 107 again providing for the surrender of loose firearms, ammunitions and explosives. Section 1 of this EO provided that:

"x x x any person who possesses any firearm, ammunition or explosive by law, may, without incurring any criminal liability therefor surrender the same to the proper authorities within a period of six (6) months from the date of the effectivity of this Executive Order, or up to June 24, 1987."

This period was further extended to December 31, 1987 by Executive Order 222.

After December 31, 1987 (the deadline fixed in Executive Order 222 for the surrender of unlicensed firearms, ammunition and explosives) had expired, mere possession of unlicensed firearms and ammunition became punishable once more under Presidential Decree 1866.

Respondent Judge Dizon erroneously applied *People vs. Asuncion*, 161 SCRA 490, decided on May 24, 1988, in the four (4) criminal cases filed by Senior State Prosecutor Zuño without first ascertaining if the facts of that case and the other cases he relied upon (*People vs. Lopez*, 79 Phil. 658, decided on November 29, 1947, and others of similar vein, i.e., *People vs. Feliciano*, 92 Phil. 688, decided on February 17, 1953; *People vs. Tabunares*, 92 Phil. 800, decided on March 19, 1953; and *People vs. Austria*, 94 Phil. 897, decided on April 30, 1954) are similar to the four criminal cases filed by State Prosecutor Zuño. Had he done that, he would have discovered that:

(1) In *People vs. Asuncion*, 161 SCRA 490:

Rolando Abadilla was charged with violation of PD 1866 on July 27, 1987 for having in his possession, custody and control various firearms without first securing the necessary license or permit from lawful authority.

Judge Asuncion dismissed the information as it did not allege sufficient facts to constitute an offense for the possession of unlicensed firearms and explosives was not illegal per se in view of EO No. 107 which gave the holders of such firearms a period of six (6) months from effectivity, extended to December 31, 1987, by EO No. 222 within which to surrender the same to the proper authorities without incurring any criminal liability therefor. Failure of the information to allege that he carried firearms on his person and/or used them to commit

a crime made the information fatally defective as it did not charge an offense.

(2) *People vs. Lopez*, 79 Phil. 658:

The information charged that on August 21, 1946 in the City of Manila, Santos Lopez y Jacinto, had in his possession, custody and control a .45 cal. pistol and 7 rounds of ammunition.

Proclamation No. 1, July 20, 1946, fixed August 31, 1946 as the last day in the provinces of Luzon for surrendering unlicensed firearms and ammunitions without incurring any criminal liability.

This Court held that under RA No. 4 the using or carrying of firearms and/or ammunition was an ingredient, if not the sole ingredient of the offense as mere possession or custody of any of the articles specified in that Act within the time designated in the proclamation, was not illegal unless the possessor made use of them or carried them on his person, except to defend himself or to surrender them to the proper authorities.

Since the information did not allege that Lopez used or carried the unlicensed firearms on his person, there was no allegation on which he could be convicted.

(3) *People vs. Feliciano*, 92 Phil. 688:

The PC seized a .45 cal. revolver which they found under a pillow in Feliciano's house on June 10, 1950. Held not guilty under RA 482 which legalized mere possession for a limited period of one (1) year from the date the act took effect (June 10, 1950 and up to June 10, 1951) but such unlicensed holder or possessor is not exempted from liability if found, within such period, making use of the firearms and ammunition or carrying them on his person except for the purpose of surrendering them.

(4) *People vs. Tabunares*, 92 Phil. 800:

Police confiscated on or about November 6, 1950 a rifle of Epimano Tabunares which he had hidden in the house of Gregorio Casica. He was not guilty of illegal possession because there was no liability for mere possession during -the one-year period (June 10, 1950 to June 10, 1951) fixed by RA 482 for the surrender of the unlicensed firearm.

(5) *People vs. Austria*, 94 Phil. 897:

The information was dismissed under RA 482 because it did not allege that the accused was using the unlicensed firearm, or carrying it in his person at the time he was caught by the authorities. The court dismissed the case on the ground that the information did not allege facts sufficient to constitute an offense.

During the period fixed for the surrender of unlicensed firearms to the proper authorities, criminal liability for mere possession of unlicensed firearms and ammunition, was temporarily lifted but the possessor was not exempt from criminal liability if, within said period, he carried the firearm and ammunition (unless it was for the purpose of surrendering the same), or he used it to commit a crime.

Thus, in the *Lopez* case, since the information did not state the circumstances under which the pistol and the ammunition were seized from Lopez, and/or that he was using them or carrying them with him, it was held that those defects "go to the jurisdiction of the offense or to lack in some essential elements of the offense charged in the information" (*People vs. Lopez*, 79 Phil. 658, 662). The absence of such allegations in the information entitled the accused to acquittal.

In the *Feliciano* case, the Supreme Court cited RA 482, which, in effect, legalized possession of unlicensed firearms for a limited period of one year from the date the law took effect, and punished only: (1) the use of firearm or ammunition, or (2) the carrying of the same on the person, except to give them up. As the said accused "was not charged with any of these two acts" (*People vs. Feliciano*, 92 Phil. 688, 689) the consequent judgment of

conviction was reversed and he was acquitted.

In the Tabunares case, the Supreme Court also cited RA 482, reiterating the Feliciano doctrine, that mere possession of unlicensed firearm at any time within a period of 1 year, as fixed in the law, was not punishable, hence, it acquitted Tabunares of illegal possession of firearm.

In the Austria case, the Supreme Court sustained the trial court's order dismissing the information upon the ground that it did not allege facts sufficient to constitute an offense:

"x x x Bear in mind that the information was filed in connection with Republic Act No. 482 which exempts from criminal liability persons found in possession of unlicensed firearms unless the firearm is used or carried in his person by the possessor. And we already held in a recent case that in order that an information under that Act may be deemed sufficient it must allege that the accused was using the unlicensed firearm or carrying it in his person at the time he was caught by the authorities with the unlicensed weapon (People vs. Santos Lopez y Jacinto, G.R. No. L-1603, November 29, 1947). And these essential allegations not having been averred in the information, the court rightly dismissed the case on the ground that the information did not allege facts sufficient to constitute an offense." (94 Phil. 899.)

The doctrine laid down in the above cases is not applicable to the four criminal cases decided by respondent, because the laws, executive orders and proclamation cited therein fixing periods for the surrender of unlicensed firearms and ammunition had long ago expired on December 31, 1987, while the accused (Borchert, Leonor, Wilkins and Nua) were arrested in 1991 for illegal possession of firearms which after December 31, 1987, and until now, is punished exclusively under Section 1 of PD 1866.

There was no need for the complainant, Senior State Prosecutor Zuño, to allege in the informations in the four criminal cases "intent to use" the unlicensed firearms (p, 17, Rollo) for the offense is *malum prohibitum*, being punishable by a special law.

Section 1 of PD 1866 prohibits and penalizes possession of unlicensed firearms, and possession of ammunitions, separately. It is immaterial if the "authorities did not find any ammunition," for, without ammunition, the possessor would still be guilty of illegal possession of firearms. As pointed out by Senior State Prosecutor Zuño, the unserviceable character of a firearm is not a defense in illegal possession of firearm. Respondent Judge Dizon's finding that the accused "was about to board the KLM Airways on his way back to his country," and, therefore, "it can be safely concluded that accused's possession is only temporary, incidental, casual or harmless, as he was to leave the Philippine jurisdiction" (p. 11, Rollo), is novel and weird because possession of an unlicensed firearm, whether the accused is or is not departing from the Philippines and irrespective of how brief his possession had been, is punishable under P.D. 1866 (People vs. Delfin, 112 Phil. 807).

In Criminal Case 90-0586, People vs. Leonor (Exh. G), Judge Dizon's reasoning that the accused's admission to the customs examiner at the NAIA, that there was a gun (actually two guns) inside his luggage and that he "was authorized to purchase them for his personal use" in Los Angeles, U.S.A., was equivalent to a license to possess under Philippine laws, is absurd and surprising coming from a judge.

His pretext that he did not have any wrongful intention to violate the law has a hollow ring for he had been a prosecuting fiscal of Manila for 20 years before he became a judge. He should know our criminal statutes and the pertinent decisions of this Court, especially those involving illegal possession or smuggling of firearms and ammunition through the NAIA. His persistence in applying the irrelevant rulings in People vs. Asuncion, People vs. Santos Lopez, People vs. Feliciano and People vs. Tabunares, despite the efforts of the Senior State Prosecutor to point out their inapplicability to these four (4) cases, may not be ascribed to a simple mistake of judgment, but to gross ignorance of the law, if not to deliberate disregard of the same.

Respondent Judge does not appear to have learned a lesson from the administrative case ("Padilla vs. Dizon," 158 SCRA 127, promulgated on February 23, 1988) where the Court found him guilty and dismissed him from the service for playing fast and loose with CB Circular No. 960 penalizing the smuggling of foreign currency from the country. As in these four (4) cases, Judge Dizon showed surprising leniency toward the accused whom he hastily acquitted for failure of the prosecution to prove the accused's criminal intent to violate the law. The Court found his plea of simple error of judgment unconvincing for he should have known that "x x x proof of malice or deliberate intent (mens rea) is not essential in offenses punishable by special laws, which are mala prohibita. By requiring proof of malice, he betrayed gross ignorance of the law, if not some hidden motive for letting the accused go scot-free" (158 SCRA 127, 135). After that administrative case, Judge Dizon should have learned to be less hasty to acquit or release from the clutches of the law persons charged by the Office of the State Prosecutor with having violated Philippine laws.

Although in the case filed by Alex Padilla against Judge Dizon the latter's repeated pleas for clemency were ultimately heeded by the Court which reinstated him in the service after having been suspended for a year, the Court did not change its previous finding that he had manifestly disregarded and failed to apply the plain and fundamental legal principle that "proof of criminal intent is not necessary in offenses punished under special laws or which are mala prohibita" and that his actuations amounted to "grave misconduct prejudicial to the interest of sound and fair administration of justice" (158 SCRA 127, 135-136). The Supreme Court said:

"We do not, by any means, exonerate the respondent from all blame nor do we completely overlook the erroneous judgment. His act remains unjustified. It does not speak well of an officer who must 'read, study and ponder' and 'personify learning and equanimity' (Lopez vs. Fernandez, 99 SCRA 603 [1980]). In the case of Fajota vs. Balonso (105 SCRA 1, 4 [1981]), this Court reiterated the strong admonition of former Chief Justice Enrique M. Fernando in his concurring opinion in Quizon vs. Baltazar, Jr. (65 SCRA 293, 299 [1975]), to wit:

" 'It is a truism that the learning process in law does not stop upon graduation from college and admission to the Bar. There should be, on the contrary, more sustained intellectual effort on the part of the members of the legal profession. Certainly, judges are not exempt from this obligation. It is even more incumbent on them as they are thought of as the oracles of law.' There is likely then to be a disillusionment in the judicial process if, as did happen here, an occupant of the bench was found to be woefully lacking in legal knowledge, xxx. The efforts for improvement in the mode of administering the government in all its manifold complexity would come to naught if our people can harbor the suspicion that judges do not even know what the law is.'"

"While the court does not require perfection and infallibility, it reasonably expects a faithful and intelligent discharge of duty by those who are selected to fill the positions of administrators of justice." (Adm. Case No. 3086, May 31, 1989.)

Judge Dizon is once more before the Court to answer charges which are practically a repetition of the earlier case against him. As before, he stubbornly insists that malice or criminal intent should be proved even in crimes punished by special laws or which are mala prohibita. Therefore the Court finds him guilty of having acted with gross incompetence and gross ignorance of the law, as to be almost deliberate and tantamount to knowingly rendering incorrect and unjust judgments (Art. 204, Revised Penal Code).

A Judge should be the embodiment of competence, integrity, and independence (Canon 1, Rule 1.01, Code of Judicial Conduct). He should be faithful to the law and maintain professional competence. In every case, he should endeavor diligently to ascertain the facts and the applicable law unswayed by partisan interests, public opinion or fear of criticism (Canon 3, Rule 3.01 and 3.02, Code of Judicial Conduct). When it has been clearly demonstrated, as in this case, not only once but four (4) times, that the judge is either grossly incompetent or grossly ignorant of the penal laws especially those involving crimes committed by transients, like smuggling of

foreign currency and firearms through the international airport in Pasay City, where his court sits, he becomes unfit to discharge his judicial office. More than mere ignorance of applicable laws and jurisprudence, his intransigence and persistence in error will make people lose their faith in him as an administrator of justice. Having lost his right to be addressed by the respectful appellation of "Honorable Judge," he has likewise lost his right to continue in the judicial service.

The Court finds respondent Judge Baltazar Dizon guilty of gross incompetence, gross ignorance of the law, and of knowingly rendering incorrect judgments which have enabled persons guilty of crimes against the State, to escape punishment therefor. This being his second offense, the Court resolved to impose upon him the penalty of DISMISSAL from the service. This decision is immediately executory.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Bidin, Griño-Aquino, Davide, Jr., Romero, Nocon, Bellosillo, Melo, and Quiason, JJ., concur.

Padilla, J., on official leave.

Regalado, J., No part, due to previous personal association with respondent.

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