

PEDRITO PASTRANO, PETITIONER VS. HON. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 104504. October 31, 1997

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals, affirming the conviction of petitioner Pedrito Pastrano of the crime of Illegal Possession of Firearms by the Regional Trial Court of Oroquieta City, Branch 13.

The facts are as follows:

On February 13, 1989, a group of students went to see Capt. Rodolfo Mañoza, then intelligence operations officer of the Philippine Constabulary, at Camp Naranjo, at Oroquieta City. They reported having seen Clyde Pastrano beaten up by his father, petitioner Pedrito Pastrano. The students were willing to testify but expressed fear of the petitioner who, according to them, had firearms. Clyde Pastrano had died and it was suspected he had been the victim of foul play.

On February 20, 1989, two sons of Pedrito Pastrano by his estranged wife - James Clement G. Pastrano and Clinton Steve G. Pastrano - also saw Capt. Mañoza, seeking his assistance in connection with the death of their brother Clyde. The brothers reported that their father and his common-law wife were keeping unlicensed firearms in their house. They executed a joint affidavit on February 20, 1989 in which they stated that they had personal knowledge of the fact that their father Pedrito Pastrano was keeping three (3) firearms of different calibers in the bedroom of his house.

On the basis of the affidavit of the Pastrano brothers, Capt. Mañoza applied for a search warrant on the same day.

After examining complainant and the two brothers, Judge Teodorico M. Durias of the Municipal Trial Court of Oroquieta City (Branch I) issued a search warrant which Capt. Mañoza and his men later served at the residence of Pedrito Pastrano at Capitol Drive, Oroquieta City. Seized from petitioner's dwelling was a sack containing the following:

One (1) Revolver Cal. 22 Magnum with Serial No. 07345. Made in Germany ROHMGMBH SONTHEM/BRENZ;

One (1) round ammunition for Cal. 22 Magnum;

One (1) Revolver Cal. 32 with Serial No. 233833 Colt Made in U.S.A.;

Six rounds of live Ammunition for Cal. 32 revolver.

On the basis of the evidence thus seized, petitioner Pedrito Pastrano y Capapas and his common-law wife, Erlinda Ventir y Sanchez, were charged with Illegal Possession of Firearms and Ammunition as penalized under P.D. No. 1866, §1. The information against them alleged:

That on or about the 20th day of February 1989 and during the period prior thereto, in Barangay Lower Langcangan, Oroquieta City, Philippines and within the jurisdiction of this Honorable Court, the said accused conspiring together and collaborating with each other, did then and there keep, possess and maintain at their residence known as Door #1, Aguja Apartment, Capitol Drive, Lower Langcangan, Oroquieta City, the following firearms:

One (1) Revolver Cal. 22 Magnum with Serial No. 07345, Made in Germany ROHM GMBH SONTHEM/BRENZ;

One (1) round Ammunitions for Cal. 22 Magnum;

One (1) Revolver Cal. 32 with serial No. 233833 Colt. Made in U.S.A.;

Six (6) rounds live ammunition for Cal. 32 Revolver.

Without having the necessary license, authority and/or permit duly issued to or granted them by the proper government agency/official as determined by law.

Contrary to law.

On January 14, 1991, the trial court rendered a decision finding petitioner guilty, even as it found his common-law wife, Erlinda Ventir, innocent of the charge. The dispositive portion of its decision read:

WHEREFORE, this Court finds accused Erlinda Ventir innocent of the crime charged but finds accused Pedrito Pastrano guilty beyond reasonable doubt of illegal possession of firearms and ammunitions for which he is sentenced to suffer an indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of prision mayor, as minimum to SEVENTEEN (17) YEARS and FOUR (4) MONTHS and ONE (1) DAY reclusion temporal, as maximum. No pronouncement as to costs.

SO ORDERED.

On appeal, the Court of Appeals upheld the decision of the trial court. Hence, this petition for review.

Petitioner contends:

1. The Court of Appeals erred as a matter of law in affirming the findings of the trial court convicting the accused of the crime of illegal possession of firearms despite clear and convincing proof that accused is duly authorized to carry firearms per PTCFOR No. 40448 and Mission Order No. 01-06-89.
2. The Search Warrant issued by Judge Teodorico Durias is invalid for failure to comply with the basic requirements of the Constitution. Hence, the evidence obtained is inadmissible in court.

The first ground for the petition is without merit. P.D. No. 1866, §1 punishes “any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearm, part of firearm, ammunition or machinery tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.” Section 2 of the Rules and Regulations Implementing P.D. No. 1866 provides that

Any person or entity desiring to import, manufacture, deal in, receive, acquire, buy, sell, dispose of or possess any firearm, part of firearms, ammunition, or explosives or machinery, tool or instrument used or intended to be used in the manufacture of any firearm, parts of firearm, ammunition or explosives shall first secure the necessary permit/license/authority from the Chief of Constabulary, except that in the case of application to manufacture firearms, ammunition or explosives, the corresponding permit/license shall be issued, only with the prior approval of the President.

The possession of any firearm without the requisite permit/license is thus unlawful. In this case two witnesses for

the prosecution, both from the Philippine Constabulary, testified that petitioner had no license to possess the firearms seized from him. Sgt. Eugenio Salingay, officer-in-charge of the licensing of firearms at Camp Naranjo in Oroquieta City, testified that petitioner and his common-law wife Erlinda Ventir were not in the list of registered firearm holders in Misamis Occidental. Neither did they have any pending application for a gun permit.

Capt. Rodolfo Mañoza, on the other hand, testified that he had made inquiries from the Southern Command in Zamboanga City whether the firearms seized from petitioner were organic firearms of that command and was informed that they did not belong to that command. He also inquired from the commanding officer of the 55th Infantry Battalion whether Pedrito Pastrano and Erlinda Ventir were members of the Citizens Armed Forces Geographical Unit (CAFGU) in Oroquieta City, and he found they were not.

Petitioner admitted ownership of the .32 cal. revolver bearing Serial No. 233833 (Exh. J) but claimed that the .22 cal. magnum revolver with Serial No. 07345 (Exh. I) belonged to his cousin, a certain Luz Laspiñas, who gave it to him merely for safekeeping. Petitioner claimed that he had bought the .32 cal. revolver in January 1989 from the grandson of the late Atty. Felipe Tac-an who had a license to possess the gun. Petitioner produced a Mission Order dated January 9, 1989 issued to him by Lt. Col. Celso A. Undag, Philippine Army, Deputy Brigade Commander, and a Mission Order issued to Luz Laspiñas, also by Lt. Col. Undag, as authority for them to possess the firearms in question. He also presented a Permit to Carry Firearm Outside of Residence dated January 1, 1989 signed by Major General Ramon Montaño, then chief of the Philippine Constabulary, for the firearm he purchased and another Permit to Carry Firearm Outside of Residence issued to Luz Laspiñas for the latter's gun.

The trial court and the Court of Appeals both ruled that the Mission Orders and the Permits to Carry Firearm Outside of Residence did not give petitioner authority to possess the firearms in question. We agree. It is clear from P.D. No. 1866, §1 and the Implementing Rules, §2 that a license is necessary in order to possess a firearm. A Permit to Carry Firearm Outside Residence does not render the license unnecessary because its purpose is only to authorize its holder to carry the firearm outside his residence. A Permit to Carry a Firearm Outside the Residence presupposes that the party to whom it is issued is duly licensed to possess the firearm in question. This is clear from the following provision of the Implementing Rules:

§3. Authority of private individuals to carry firearms outside of residence.

- a. As a rule, persons who are lawful holders of firearms (regular license, special permit, certificate of registration or M/R) are prohibited from carrying their firearms outside of residence.
- b. However, the Chief of Constabulary may, in meritorious cases as determined by him and under such conditions as he may impose, authorize such person or persons to carry firearm outside [of] residence.
- c. Except otherwise provided in Secs. 4 and 5 hereof, station in pursuance of an official mission or duty shall have the prior approval of the Chief of Constabulary.

For the same reason, a Mission Order cannot take the place of a license. As the trial court pointed out:

Sec. 1(d) of the implementing rules and regulations of P.D. No. 1866 defines a mission order as a "written directive or order issued by competent authority to persons under his supervision and control for a definite purpose or objective during a specified period and to such place or places as therein mentioned which may entitle the bearer thereof to carry his duly issued or licensed firearm outside of his residence when so specified therein."

As in the case of Permit to Carry Firearm Outside the Residence, a Mission Order can only be issued to the holder of a permit/license or authority to possess firearm.

Nor is there any merit in petitioner's contention that since the .32 cal. revolver is covered by a license issued to its former owner, petitioner's possession of the same firearm is legal. The permit/license or authority to possess firearm contemplated by P.D. No. 1866 and its Implementing Rules is one which is issued to the applicant taking into account his qualifications. Contrary to petitioner's contention, therefore, the possession of firearms is unlike the registration of motor vehicles. A permit/license or authority to possess firearms is not transferrable to the purchaser of the firearm.

The second ground for the present petition is that the evidence against petitioner was obtained through illegal search. Petitioner cites the constitutional provision that

no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.[1]

Petitioner contends that Capt. Rodolfo Mañoza, who applied for the search warrant, did not have personal knowledge of the facts on which the warrant was based. But the trial court actually examined the two brothers, James Clement G. Pastrano and Clinton G. Steve Pastrano. These two were the ones who reported the matter to Capt. Mañoza. They gave information of the illegal possession of firearms by their father, petitioner herein, on the basis of personal knowledge. Their testimonies, not that of Capt. Mañoza, formed the basis of the trial court's finding of probable cause for the issuance of a search warrant. As Capt. Mañoza testified:[2]

Q: When Clinton and James Pastrano went to your office on February 20, 1989, and told you that their father and his paramour possessed some firearms, what steps did you take?

A: I applied for a Search Warrant and brought the two brothers before Judge Durias.

....

Q: What happen[ed] after that, when you filed this application for Search Warrant with the Municipal Trial Court in Cities, Branch 1, Oroquieta City, what happen[ed] when you filed?

A: Judge Durias examined the two witnesses, the two brothers, and after that, he issued the Search Warrant.

Petitioner finally assails the absence of a written deposition showing that the judge had examined the complainant and his witnesses by means of searching questions in writing and under oath as required by Rule 126, §4 of the Rules on Criminal Procedure, to wit:

§4. Examination of complainant, record. - The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath the complainant and any witnesses he may produce on facts personally known to them and attach to the record their sworn statements together with any affidavits submitted.

Rule 126, §4 indeed requires the examination of the complainant and his witnesses to be put in writing and under oath. But although this is a ground for quashing a search warrant in this case, petitioner did nothing to this end. He did not move to quash the information before the trial court.[3] Nor did he object to the presentation of the evidence obtained as being the product of an illegal search. In the case of *Demaisip v. Court of Appeals*,[4] we held:

At any rate, objections to the legality of the search warrant and to the admissibility of the evidence obtained thereby were deemed waived when no objection to the legality of the search warrant was raised during the trial of the case nor to the admissibility of the evidence obtained through said warrant.

Petitioner thus waived any objection based on the illegality of the search. As held in *People v. Omaweng*,[5] the right to be secure against unreasonable searches and seizures, like any other right, can be waived and the waiver

may be made either expressly or impliedly.

We find that the prosecution clearly established the elements of the crime charged and that the Court of Appeals and the trial court correctly found petitioner guilty beyond reasonable doubt of the crime of Illegal Possession of Firearms and Ammunition.

We hold, however, that the penalty imposed on petitioner should be modified by reducing it, in view of R.A. No. 8294,[6] which took effect on July 6, 1997. Penal statutes are to be retroactively applied insofar as they are favorable to the accused. Under the new statute, the penalty for Illegal Possession of Firearm has been reduced to prision correccional maximum and a fine of not less than P15,000.00 with respect to the possession of the .32 cal. revolver and to prision mayor minimum and a fine of P30,000.00 with respect to the possession of the .22 cal. Magnum revolver. Additional benefit would redound to petitioner because the Indeterminate Sentence Law will have to be applied.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED with the modification that petitioner is hereby SENTENCED to 4 years, 2 months, and 1 day of prision correccional maximum, as minimum, to 6 years and 8 months of prision mayor minimum, as maximum, and a fine of P30,000.00, for his illegal possession of the .22 cal. Magnum revolver; and to 2 years, 4 months, and 1 day of prision correccional, as minimum, to 4 years, 9 months, and 11 days of prision correccional, as maximum, and a fine of P15,000.00 for his possession of the .32 cal. revolver.

SO ORDERED.

Regalado, (Chairman), Puno, and Torres, Jr., JJ., concur.

[1] Const., Art. III, §2.

[2] TSN, pp. 3-5, July 18, 1989.

[3] People v. Ampil, 244 SCRA 135 (1995).

[4] 193 SCRA 373, 382 (1991).

[5] 213 SCRA 462 (1992).

[6] Gonzales v. Court of Appeals, G.R. No. 95523, August 18, 1997.

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