

ROY A. DIZON, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 111762. July 22, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review of the decision of the Court of Appeals[1] affirming the ruling of the Regional Trial Court of Manila (Branch 49) which found accused-appellant guilty of illegal possession of pillbox in violation of §3 of Presidential Decree (P.D.) No. 1866.[2]

The Information against accused-appellant alleged:

That on or about May 11, 1990, in the City of Manila, Philippines, the said accused, did then and there willfully and unlawfully have in his possession and under his custody and control an explosive with the following description, to wit:

One (1) Pill box bomb wrapped in an aluminum foil with electrical tape and black powder

which he carried outside of his residence not for the purpose of surrendering the same and without first having secured the necessary license or permit therefor from the proper authorities.

The prosecution evidence shows that at around 7:00 in the evening on May 11, 1990, patrolmen Ernesto Marquez and Alfredo Opriasa, of the Western Police District followed a group of rallyist, numbering about 20 to 25, that marched along Recto Avenue then turned left on Nicanor Reyes Street (formerly Morayta Street) and proceeded to España Street.[3] The group was protesting the coming exploratory talks between the governments of the Philippines and the United States concerning the extension of the Military Bases Agreement which was due to expire on September 16, 1991. Upon reaching the intersection of España and A. Maceda Streets, the demonstrators stopped to stage a noise barrage.

Marquez, who was driving the patrol car, stopped the vehicle about seven meters from the group. Marquez and Opriasa remained in the car for about ten minutes, observing the rallyists. When some of them started burning tires in the middle of the street, Opriasa alighted and ran towards the students who scampered when they saw him. Marquez followed Opriasa shortly after. Opriasa got hold of accused-appellant who was left behind while trying to light one of the tires on the street. Opriasa frisked accused-appellant and confiscated from him a pillbox. Following standard procedure, they first took accused-appellant to the Jose B. Reyes Memorial Hospital for examination before proceeding to the WPD Station 4 on UN Avenue, where accused-appellant was booked and detained for illegal possession of pillbox.[4]

Opriasa recounted how he was able to seize the pillbox from the accused:[5]

FISCAL CADELIÑA:

And when you were holding this person you apprehended, what happened there?

WITNESS:

One of his hands [was] inside his front pocket and I ordered him not to pull out his hands because it might be something, sir.

FISCAL CADELIÑA:

When you said one hand, which hand and in what pocket in front?

WITNESS:

Left hand, sir.

FISCAL CADELIÑA:

And in what pocket in front?

WITNESS:

Left pocket also, sir.

FISCAL CADELIÑA:

When you told him not to pull out that thing because you did not know yet what is it, what did this person you arrested do?

WITNESS:

He was not pulling out his hand yet which was placed inside his pocket. What I did [was] I pulled out his hand and I saw something being held by him so I grabbed that thing, sir.

FISCAL CADELIÑA:

And what was that thing you took from that person?

WITNESS:

It was wrapped in the gift wrap. It looks like an aluminum foil, sir, and it was sealed or closed.

Pfc. Edilberto Capacete, a bomb specialist detailed in the Explosive Ordinance Disposal Unit of the WPD, testified that in the evening of May 11, 1990, the sealed object [6] seized by Opriasa from accused-appellant was turned over to him at the WPD station by Pfc. Calingling, in the presence of patrolmen Marquez and Opriasa, for examination. The device, measuring 8.5 cm. x 4 cm., was wrapped in a "Sustagen" tin foil and tied with electrical tape. Inside was a marble rock, two pieces of broken glass, and black powder.[7] He testified that he took a small amount of the powder, ignited it, and found it positive for explosive.[8] He issued a certification to such effect.[9] To further confirm his findings, he requested a chemical examination of the black powder by the police forensic chemist, Marilyn Dequito.

Dequito, for her part, testified that the device was given to her on May 14, 1990, by Pfc. Capacete. She removed the marble rock and two pieces of broken glass and tested the silvery black powder for presence of explosive substances by dissolving it in water and mixing the solution with certain chemicals.[10] The liquid product tested positive for potassium, nitrate, aluminum, and carbon, all composite elements of an explosive.[11] She opined that the presence of these elements makes the object an explosive so that when thrown on the ground, it will explode upon impact.[12] She also issued a report stating these findings.[13] She kept the device locked in a cabinet in her office until it was presented to the trial court on July 18, 1990.

Lilia Lauron, property custodian of the records of the firearms and explosives unit of the Philippine Constabulary, issued a certificate (Exh. C) stating that based on the availbale records of said office, accused-appellant was not a licensed or registered holder of firearms and explosives. She later testified in court and identified the certificate she had issued. She added that their office checked accused-appellant's name both in the personal reference card in the master list and in the computer, but his name was not in either list.[14]

Accused-appellant denied the allegations against him. He testified that at the time material to this case, he was a student at the Polytechnic University of the Philippines and a member of the League of Filipino Students, one of the largest student-based activist groups in the country. On May 11, 1990, he and Rowena Carascal, a friend and schoolmate, joined about 200 students from other schools in a march from Recto Avenue to España Street to protest against the coming exploratory talks between the Philippine and the US governments. At about 7:00 in the evening, the rallyists reached the intersection of A. Maceda and España Streets. Accused-appellant was part of the first line of demonstrators and stood near the center island at the northwestern side of España Street (the lane going to Quiapo). Behind him was the intersection of A. Maceda and España Streets. Another group of students was on the opposite lane. The students were marching towards the Welcome Rotonda, chanting and clapping their hands as they blocked vehicular traffic in the area.[15]

Accused-appellant claimed that he heard a car coming up behind him, followed by a gunshot. When he turned around, he saw it was a police car of the WPD. He got nervous (nataranta) thus he was not able to run immediately. His companions ran towards the direction of Quiapo. He tried to catch up with them, but he was sideswiped by a jeepney and thus fell on his knees. At that point, a policeman, whom he later came to know was Pat. Alfredo Opriasa, grabbed him by the armpit, turned him around, poked a gun at his head and said "Huwag kang pumalag" ("Don't resist"). Accused-appellant said he tried to break from the policeman's hold, but the latter proved too strong for him. He then heard a second gunshot. Opriasa dragged him towards the mobile car. On the way, Opriasa allegedly picked up something and said "Putang ina ninyo, may pillbox pa kayo" ("You sons of bitches, you even have a pillbox"). Accused-appellant claimed he did not see the object held by Opriasa. He was then pushed inside the patrol car and was told to lie face down. The officer then threw a pair of handcuffs at accused-appellant and told the latter to handcuff himself, which he did. Opriasa and Marquez took accused-appellant to the Jose B. Reyes Memorial Hospital where he was examined. They then proceeded to the

WPD Station on UN Avenue where, for the first time, he was shown the pillbox allegedly taken from him.[16]

The defense presented Rowena Carascal to corroborate accused-appellant's testimony. Carascal testified that it was she who invited accused-appellant to join the protest march as she had been left behind by her companions. They were together from Recto Avenue to España Street. She did not notice anything bulging on the left front pocket of accused-appellant's pants.[17] She said that shortly before the group reached the intersection of España and Maceda Streets, accused-appellant joined the first line of rallyists while she became part of the second line behind that of accused-appellant's. The latter's group had already crossed the intersection while that of Carascal remained on the other side.[18]

Carascal said some rallyists placed three tires in the middle of the street, poured gasoline on them, and lit them. She saw accused-appellant still in the front line, locked in arms with the other students, his back against the burning tires. Three or four other students who were not part of the lines were also exploding pyrotechnics.[19] All the while the students were chanting and clapping their hands.[20]

Carascal corroborated accused-appellant's testimony that a police patrol car arrived and shortly after, a shot rang out. She said somebody pulled her away, and they both ran towards Quiapo. As they scampered, she saw accused-appellant still locked in arms with other students. She heard a second shot and somebody shouted that someone had been arrested. She and her companions regrouped at the University of Santo Tomas where she learned that it was accused-appellant who had been arrested.[21]

On April 19, 1991, the trial court rendered a decision, the dispositive portion of which reads:[22]

WHEREFORE, judgment is hereby rendered finding the Accused ROY DIZON guilty beyond reasonable doubt of the crime of violation of Section 3 of Presidential Decree No. 1866, and hereby metes on him an indeterminate penalty of from Seventeen (17) Years, Four (4) Months and One (1) Day of Reclusion Temporal, as Minimum, to Reclusion Perpetua, as Maximum, with all the accessory penalties of the law. Upon the finality of this Decision of the Court, the Branch Clerk of Court of this Court is hereby ordered to cause the delivery of the pillbox, Exhibit "G-1" to the Firearms and Explosives Unit of the Philippine National Police for proper disposition in accordance with law.

SO ORDERED.

On appeal to the Court of Appeals, the trial court's decision was affirmed with modification as to the impossible penalty. Accused-appellant was sentenced to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as minimum to nineteen (19) years of reclusion temporal as maximum.[23] Hence, this petition.

Accused-appellant contends that[24]-

FIRST

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT CONCLUDED THAT THE MERE EXISTENCE OF BLACK POWDER IS SUFFICIENT TO JUSTIFY A FINDING THAT AN "INCENDIARY DEVICE," THE POSSESSION OF WHICH IS PUNISHED BY PRESIDENTIAL DECREE NO. 1866, EXISTS.

SECOND

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT REFUSED TO INDULGE THE REASONABLE DOUBT CREATED BY THE ALLEGED PILLBOX'S FAILURE TO EXPLODE, DESPITE THE EXISTENCE OF CONDITIONS UNDER WHICH AN EXPLOSION COULD REASONABLY HAVE BEEN EXPECTED, IN FAVOR OF ACCUSED-APPELLANT.

THIRD

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT REFUSED TO INDULGE THE REASONABLE DOUBT CREATED BY THE PROSECUTION'S FAILURE TO ADEQUATELY ESTABLISHED AND ACCOUNT FOR THE CHAIN OF CUSTODY OVER THE ALLEGED PILLBOX IN FAVOR OF ACCUSED-APPELLANT.

FOURTH

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT REFUSED TO INDULGE THE REASONABLE DOUBT CREATED BY THE CONFLICTING TESTIMONIES OF THE ARRESTING OFFICERS ON MATERIAL POINTS IN FAVOR OF ACCUSED-APPELLANT.

After reviewing the evidence in the record, we find no reason to reverse the findings of the trial court as affirmed by the Court of Appeals, although the penalty as fixed by the appellate court should be modified in view of the amendment to P.D. No. 1866.

First. Accused-appellant assails the findings of fact by the trial court as affirmed by the Court of Appeals, pointing out alleged inconsistencies and contradictions in the testimonies of patrolmen Opriasa and Marquez. Accused-appellant cites Pat. Opriasa's testimony that accused-appellant was trying to light a tire at the intersection of España and A. Maceda Streets when Pat. Opriasa nabbed him, which according to accused-appellant is inconsistent with the following testimony of Pat. Marquez:[25]

ATTY. OCAYA:

How many tires were there at the intersection?

WITNESS [MARQUEZ]:

Around three (3) tires, sir.

ATTY. OCAYA:

How many were burning at that time?

WITNESS:

All of the three (3), sir.

With respect to Pat. Opriasa's testimony that accused-appellant's left hand was inside the left front pocket of his pants, it is claimed that this is inconsistent with the following testimony of Pat. Marquez:[26]

ATTY. OCAYA:

Was the accused struggling to get himself free from the hold of Pat. Opriasa?

WITNESS:

Yes, sir.

ATTY. OCAYA:

He struggled, the Accused struggled by flailing his arms from the left to the right?

WITNESS:

Yes, sir.

But as the appellate court correctly ruled:[27]

As to the number of tires burning, this Court notes that the accused-appellant had indulged himself in selective citation choosing to omit statements that could well explain what he claims to be an inconsistency. While it is true that Patrolman Marquez averred that there were around (repeat, around) three tires burning, the fact is that Patrolman Opriasa, when he testified that there was a tire set on fire by said group, did not say that there were no other tire/s that were already on fire at that time or that there were no other tire/s that were then being set on fire.

This Court made reference to selective citation. This is evidenced, for instance, by the fact that the accused-appellant conveniently omitted the following testimony of Patrolman Opriasa:

....

ATTY. OCAYA:

Were the tires actually on fire?

WITNESS [OPRIASA]:

The other two (2) tires were already on fire, sir.

ATTY. OCAYA:

[The] [o]ther tires, you said were not yet on fire?

WITNESS:

Yes, sir.

(pp. 76-78, t.s.n., September 5, 1990 - underscoring supplied).

As to the struggle of accused-appellant Dizon, the appellate court stated:[28]

The Mobile Car was about 7 meters from where Dizon was apprehended (p. 52, t.s.n., September 5, 1990). It was at that time that Dizon was being dragged to the mobile car seven meters away that he could have been flailing his arms as noticed by Marquez.

Accused-appellant points out other alleged inconsistencies regarding the drawing by the policemen of their service firearms and whether the blinkers and siren of their patrol car were on. However, these relate to minor details which have no bearing on the principal question involved. As stated in *People v. Manahan*:^[29]

[Minor] contradictions and inconsistencies are normal infirmities that result from individual differences in the appreciation of events, time, place and circumstances. The rule is, as it were, that inconsistencies on minor details do not destroy the probative value of the testimonies of the witnesses because, generally, they may be due to innocent mistake and not to deliberate falsehood.

In the absence of a clear showing that the trial court's conclusions were arbitrarily reached or that it overlooked certain facts of substance or value which, if considered, might alter the result of the findings of the trial court on the credibility of witnesses and their testimonies are to be accorded great respect on appeal. The reason for this is that the trial court had opportunity to hear the witnesses and observe their deportment and manner of testifying.^[30] In this case, the trial court stated:^[31]

The Court belabored to monitor and observe the conduct and demeanor of the witnesses of the prosecution, more particularly Pat. Alfredo Opriasa and Pat. [Ernesto] Marquez, and the Court is fully convinced that they testified spontaneously, in a candid and straightforward manner, their testimonies bereft of artificialities, affectations and vacillations which are the hallmarks of perjured and/or rehearsed witnesses.

Furthermore, the policemen have in their favor the presumption that they have regularly performed their duty. In the absence of showing of any improper motive in testifying against accused-appellant, this presumption must be indulged in this case.^[32] For the same reason, accused-appellant's claim that he is the victim of a frame-up cannot be given much credence. As the trial court stated:^[33]

The [a]ccused, when he testified before the court, categorically admitted having been accosted and held by Pat. Opriasa and then brought to the mobile car nearby. However, [he] denied having been in possession of the pillbox, . . . thereby branding the charge . . . against him as a fabrication and a concoction brewed by the policemen to pillory him [in] a dastardly frame-up. However, such a defense is basically if not inherently weak, it being facile to concoct and difficult to disprove. The [a]ccused, for the court to accord credence to such defense, . . . must adduce clear and convincing evidence to prove it. (citing *People v. Francia*, 154 SCRA 694 (1987) and *People v. Marcos*, G.R. No. 83325, May 8, 1990).

It is noteworthy that accused-appellant testified:^[34]

COURT:

. . . [D]id you sustain injuries before you were brought to the [Jose Reyes] hospital?

WITNESS [DIZON]:

Yes, your Honor.

COURT:

Where?

WITNESS:

Under my armpit, sir.

COURT:

Why?

WITNESS:

Because of the grip of the policeman, your Honor.

COURT:

In this the only injury you sustained?

WITNESS:

Yes, your Honor.

Accused-appellant was clearly exaggerating. It is hard to see how he could have been injured if he was simply grabbed by the armpit. Moreover, this is inconsistent with his claim that he was sideswiped by a jeepney.

Second. Accused-appellant also contends that even if patrolmen Opriasa and Marquez actually did seize the pillbox from him, the prosecution allegedly failed to show that it is an explosive. He claims that the device must be shown to be "capable of producing destructive effect on contiguous objects or causing injury or death to any person," as provided under Sec. 3 of P.D. No. 1866, as amended.[35] He adds that instead of making a piecemeal analysis of the device's components such as the black powder, he suggests that the object, as a whole, must be tested whether it is an "incendiary device." [36]

Accused-appellant does not say, however, how this is to be carried out since, by deduction, the only logical choice is to make the object explode. As the appellate court pointed out in its decision, "accused-appellant must have been less than serious when he suggests that the device . . . should have been thrown to the ground. Such would have been a sure way of losing the very evidence one is testing." [37] Indeed, the law merely states that the device be "capable of producing destructive effect." The positive results yielded by the test conducted by Capacete and Dequito, whose findings likewise enjoy the presumption of regularity, clearly establish this.

Still, it is pointed out that the device failed to explode during the July 16, 1990 killer earthquake notwithstanding that Dequito's cabinet which contained the device fell sideways on a table. However, as Marilyn Dequito explained:[38]

[T]he pillbox was not really totally sealed. What I placed in my locker [is an] explosive that w[as] not totally sealed. It [was] opened already. In fact, moisture has already been absorb[ed] by that mixture of substances and I don't thin[k] it will explode and there will be no explosion anymore. But if the pillbox is totally sealed, when you throw it, pressure will be built inside so when you throw it the pressure will be released. That is the time that there will be an explosion when the pressure will be released.

Moreover, as discussed above, proof of actual explosion is not necessary to establish that the device is an explosive under P.D. No. 1866.

Third. Anent accused-appellant's contention that the prosecution failed to establish the chain of custody of the pillbox thus casting doubt on the identity of the device presented during the trial, the Court is satisfied that the pillbox presented during the trial is the one seized from accused-appellant on May 11, 1990. The prosecution had

shown that after Patrolmen Opriasa and Marquez brought accused-appellant to the WPD station at United Nations Ave. in the evening of May 11, 1990, they gave the pillbox to Pfc. Calingling. Opriasa said the device was "wrapped in an aluminum foil and tied with yellow material." [39] Calingling, in the presence of Marquez and Opriasa, turned over the device to Capacete. That same night, Capacete conducted a preliminary test of the black powder taken from the device and found the powder positive for explosive. On May 14, 1990, he personally delivered the device to Marilyn Dequito, the forensic chemist of the WPD, for further testing. After subjecting the black powder to chemical analysis, Dequito also found it positive for explosive. The device remained in her custody until it was presented to the trial court on July 18, 1990.

That Capacete delivered to Dequito, on May 14, 1990, the identical pillbox he received from Calingling, Opriasa and Marquez is borne by their description of the device in their respective reports. Capacete described the object as: [40]

one pillbox measuring 8 cm. x 5 cm. consisting of one (1) piece of marble rock, two (2) pieces of broken glass wrap [ped] [in] Sustagen aluminum foil with electrical tape and black powder.

Dequito's report likewise described the device as: [41]

[measured] about 8.5 cm. x 5 cm. wrapped in a Sustagen foil with electrical tape Unwrapping [of] the above mentioned exhibit reveal [ed] the presence of silvery gray substance, one (1) piece [of] rock and two pieces of broken glass.

In conclusion, we hold that both the trial court and the Court of Appelas correctly found accused-appellant guilty of illegal possession of pillbox as defined and punished in §3 of P.D. No. 1866. However, the penalty imposed on accused-appellant must be modified in view of Republic Act No. 8294, effective on July 6, 1997, [42] which reduced the penalty for the offense to "prision mayor in its maximum period to reclusion temporal and a fine of not less than Fifty Thousand Pesos (P50,000.00)." Art. 22 of the Revised Penal Code provides that "penal laws shall have retroactive effect in so far as they favor the persons guilty of a felony who is not a habitual criminal."

WHEREFORE, the decision of the Court of Appeals is **AFFIRMED** with the modification that accused-appellant is **SENTENCED** to four (4) years, ten (10) months, and twenty-one (21) days of prision correccional, as minimum, to thirteen (13) years, four (4) months, and one (1) day of reclusion temporal, as maximum, and **ORDERED** to pay a fine of P50,000.00.

SO ORDERED.

Bellosillo, (Chairman), Puno, Quisumbing, and Buena, JJ., concur.

[1] Per Justice Serafin V.C. Guingona, concurred in by Justices Antonio M. Martinez and Bernardo P. Pardo.

[2] Sec. 3. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Explosives. - The penalty of prision mayor in its maximum period to reclusion temporal and a fine of not less than Fifty Thousand Pesos (P50,000.00) shall be imposed upon any person who shall unlawfully manufacture, assemble, deal in, acquire, dispose or possess hand grenade(s), rifle grenade(s), and other explosives, including but not limited to 'pillbox,' molotov cocktail bombs, 'fire bombs,' or other incendiary devices capable of producing destructive effect on contiguous objects or causing injury or death to any person. (As amended)

[3] TSN, pp. 21-24, Oct. 17, 1990.

[4] TSN, pp. 7-8, 29-32, 49-51, Oct. 17, 1990.

- [5] TSN, pp. 54-56, Sept. 5, 1990.
- [6] TSN, p. 58, Sept. 5, 1990.
- [7] Records, p. 60; Exh. B.
- [8] TSN, pp. 10-14, 21-22, Oct. 15, 1990.
- [9] Records, p. 60; Exh. B.
- [10] Ferrous sulfate and sulfuric acid.
- [11] Records, p. 61; Exh. C.
- [12] TSN, pp. 39-40, July 18, 1990.
- [13] Records, p. 61; Exh. C.
- [14] TSN, pp. 32-34, Sept. 5, 1990.
- [15] TSN, pp. 4-5, 32-34, 39-40, Jan. 11, 1991; Rollo, p. 136; Appellant's Memorandum, p. 2.
- [16] TSN, pp. 8-23, 41, 44, 50, 55-56, Jan. 11, 1991.
- [17] TSN, pp. 9, 21-22, Jan. 21, 1991.
- [18] Id., pp. 9, 11-15.
- [19] Id., pp. 32-38, 40-41.
- [20] Id., p. 26.
- [21] TSN, pp. 16-17, 28, 42, Jan. 21, 1991.
- [22] Records, p. 138; RTC Decision, p. 34.
- [23] Rollo, p. 59; CA Decision, p. 27.
- [24] Id., p. 8; Petition, p. 2.
- [25] TSN, pp. 29-30, Oct. 17, 1990.
- [26] Id., p. 43.
- [27] Rollo, pp. 53; CA Decision, pp. 21.
- [28] Rollo, p. 57; CA Decision, p. 25.
- [29] 238 SCRA 141 (1994) citing *People v. Gamboa*, 194 SCRA 372 (1991).
- [30] *People v. Morales*, 241 SCRA 267 (1995); *People v. Tami*, 244 SCRA 1 (1995); *People v. Abo*, 230 SCRA 612 (1994); *People v. Tanilon*, 221 SCRA 671 (1993); *People v. Rosales*, 224 SCRA 45 (1993); *People v. Alaban*, 214 SCRA 301 (1992); *People v. Garcia*, 209 SCRA 164 (1991).
- [31] Records, p. 31; RTC Decision, p. 17.
- [32] *People v. Co*, 245 SCRA 733 (1995); *People v. Utinas*, 239 SCRA 362 (1994); *People v. Constantino*, 235 SCRA 384 (1994); *People v. Bagares*, 235 SCRA 30 (1994); *People v. Alhambra*, 233 SCRA 604 (1994).
- [33] Rollo, pp. 28-29; Decision, pp. 14-15.

[34] TSN, pp. 58-59, Jan. 11, 1991. (Emphasis added)

[35] Sec. 3. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Explosives. - The penalty of prison mayor in its maximum period to reclusion temporal and a fine of not less than Fifty Thousand Pesos (P50,000.00) shall be imposed upon any person who shall unlawfully manufacture, assemble, deal in, acquire, dispose or possess hand grenade(s), rifle grenade(s), and other explosives, including but not limited to `pillbox,' molotov cocktail bombs, `fire bombs,' or other incendiary devices capable of producing destructive effect on contiguous objects or causing injury or death to any person. (Emphasis added)

[36] Rollo, pp. 9-12; Petition, pp. 3-6.

[37] Id., pp. 44-45; CA Decision, pp. 12-13.

[38] TSN, pp. 24-25, Sept. 5, 1990.

[39] TSN, p.9, Oct. 10, 1990.

[40] Records, p. 60; Exh. B.

[41] Id., p. 61; Exh. C.

[42] *People v. Pastrano*, 281 SCRA 290 (1997).

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