

VICENTE DEL ROSARIO Y NICOLAS, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 142295. May 31, 2001

Ponente: PARDO, J.

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PARDO, J.:

Petitioner Vicente del Rosario y Nicolas appeals via certiorari from a decision of the Court of Appeals[1] affirming with modification the decision of the Regional Trial Court, Bulacan, Branch 20, Malolos, and finding him guilty beyond reasonable doubt of violation of P. D. No. 1866, as amended by Republic Act No. 8294 (illegal possession of firearms), sentencing him to four (4) years, nine (9) months and eleven (11) days of prision correccional, as minimum, to six (6) years, eight (8) months and one (1) day of prision mayor, as maximum, and to pay a fine of P30,000.00.

On June 17, 1996, Assistant Provincial Prosecutor Eufracio S. Marquez of Bulacan filed with the Regional Trial Court, Bulacan, Malolos an Information charging petitioner Vicente del Rosario y Nicolas with violation of P. D. No. 1866, as follows:

"That on or about the 15th day of June 1996, in the municipality of Norzagaray, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have in his possession under his custody and control, the following, to wit:

"a) One (1) pc. Pistol Cal. 45 SN:70G23792 (w/o license)

"b) One (1) pc. Revolver Cal. 22 SN:48673 (w/o license)

"c) Twenty Seven (27) rds live ammos. For cal. .45

"d) Five (5) pcs. Magazines for cal. .45

"e) Eight (8) rds live ammunitions for cal. 22

"f) Five (5) pcs. Magazines short for cal. 5.56 (M16)

"g) Twenty (20) rds live ammunitions for cal 5.56

"without first having obtained a proper license therefor.

"Contrary to law."[2]

On June 25, 1996, the trial court arraigned the petitioner. He pleaded not guilty.[3] Trial ensued.

The facts, as found by the Court of Appeals, are as follows:

"Sometime in May 1996, the police received a report that accused-appellant Vicente del Rosario was in possession of certain firearms without the necessary licenses. Acting upon the report, P/Sr. Insp. Jerito Adique of the PNP Criminal Investigation Group at Camp Olivas, Pampanga inquired from the PNP Firearms and

Explosive Division whether or not the report was true. On May 10, 1996, P/Sr. Insp. Edwin C. Roque of the PNP Firearms and Explosives Division issued a certification (Exhibit L) stating that per records in his office, the appellant is not a licensed/registered firearm holder of any kind and caliber. Armed with the said certification, P/Sr. Insp. Adique applied for a search warrant to enable his team to search the house of appellant.

"On June 13, 1996, a search warrant (Exhibit A) was issued by Judge Gil Fernandez, Sr. of the Regional Trial Court of Quezon City, Branch 217, authorizing the search of the residence of appellant at Barangay Tigbe, Norzagaray, Bulacan.[4] On June 15, 1996, at about 7:00 o'clock in the morning, a team led by P/Sr. Insp. Adique went to Norzagaray to serve the warrant. Before proceeding to the residence of the appellant, the police officers requested Barangay Chairman Rogelio de Silva and Barangay Councilman Aurelio Panteleon to accompany them in the implementation of the warrant. Upon arrival at the house of appellant, the police officers introduced themselves to the wife of appellant. When the appellant came out, P/Sr. Insp. Adique informed him that they had a search warrant and that they were authorized to search his house. After appellant gave his permission, the police officers conducted a search of the house. The search yielded the following items: (a) a caliber .45 pistol with Serial No. 703792 with five magazines of caliber .45 (Exhibits B and H) found at the master's bedroom; (b) five magazines of 5.56 M-16 rifle and two radios (Exhibits C to C-4) found in the room of appellant's daughter; and (c) a caliber .22 revolver with Serial No. 48673 (Exhibit F) containing 8 pieces of live ammunition (Exhibit M) found in the kitchen of the house. When asked about his license to possess the firearms, the appellant failed to produce any. This prompted the police officers to seize the subject firearms.

"SPO2 Marion Montezon, one of the searching officers, prepared three separate inventories of the seized items (Exhibits H, M and N). The inventories were signed by P/Sr. Insp. Adique, the appellant and the barangay officials who witnessed the search. Thereafter SPO2 Montezon prepared a certification of orderly search (Exhibit I) which was signed by the appellant and the barangay officials attesting to the orderly conduct of the search.

"For his defense, appellant contends that he had a license for the caliber .45 pistol recovered in his bedroom and that the other items seized during the search including the caliber .22 revolver, were merely planted by the police officers. Appellant likewise assails the manner in which the search was carried out, claiming that the police officers just barged into his house without asking permission. Furthermore, he claimed that the barangay officials arrived only after the police already had finished the search.

"After trial and on July 2, 1998, the trial court rendered a judgment of conviction, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court finds the accused VICENTE DEL ROSARIO y NICOLAS guilty beyond reasonable doubt of violation of P. D. No. 1866 as charged under the Information dated June 17, 1996.

"Conformably with the provisions of said law, as amended by Republic Act No. 8294, and pursuant to the provisions of the Indeterminate Sentence Law, the Court hereby sentences the accused to suffer imprisonment of six (6) months of arresto mayor, as minimum, to six (6) years of prision correccional, as maximum, and to pay a fine of Fifteen Thousand Pesos (P15,000.00)."[5]

On July 20, 1998, petitioner appealed to the Court of Appeals, assailing the decision for being contrary to facts and the law.[6]

On July 9, 1999, the Court of Appeals promulgated its decision affirming with modification the decision of the trial court as set out in the opening paragraph of this decision.[7]

On August 10, 1999, petitioner filed with the Court of Appeals a motion for reconsideration and/or new trial.[8]

He contended that the certification issued by the Chief, Firearms and Explosives Division, Philippine National Police stating that the person named therein had not been issued a firearm license referred to a certain Vicente "Vic" del Rosario of barangay Bigte, Norzagaray, Bulacan, not to him. He comes from barangay Tigbe, Norzagaray, Bulacan, and that he has a valid firearm license.

On February 22, 2000, the Court of Appeals denied the motion for reconsideration for lack of merit.[9]

Hence, this appeal.[10]

Petitioner submits that the search conducted at his residence was illegal as the search warrant was issued in violation of the Constitution[11] and consequently, the evidence seized was inadmissible. He also submits that he had a license for the .45 caliber firearm and ammunition seized in his bedroom. The other firearm, a .22 caliber revolver seized in a drawer at the kitchen of his house, a magazine for 5.56 mm. cal. Armalite rifle, and two 2-way radios found in his daughter's bedroom, were either planted by the police or illegally seized, as they were not mentioned in the search warrant.

We find the petition impressed with merit.

We define the issues as follows:

First: whether petitioner had a license for the .45 caliber Colt pistol and ammunition seized in his bedroom; and

Second: whether the .22 caliber revolver seized in a drawer at the kitchen of his house, a magazine for 5.56 mm. cal. Armalite rifle and two 2-way radios found in his daughter's bedroom, were planted by the police or were illegally seized.

We shall resolve the issues in seriatim.

First: The .45 cal. Colt pistol in question was duly licensed.

Normally, we do not review the factual findings of the Court of Appeals and the trial courts.[12] However, this case comes within the exceptions.[13] The "findings of fact by the Court of Appeals will not be disturbed by the Court unless these findings are not supported by evidence." [14] In this case, the findings of the lower courts even directly contradict the evidence. Hence, we review the evidence. The trial court held that the copy of the license presented was blurred, and that in any event, the court could rely on the certification dated May 10, 1996, of P/Sr. Inspector Edwin C. Roque, Chief, Records Branch, Firearms and Explosives Division, Philippine National Police stating that Vicente "Vic" del Rosario of Barangay Bigte, Norzagaray, Bulacan is not a licensed/registered firearm holder of any kind and caliber.[15] As against this, petitioner submitted that he was not the person referred to in the said certification because he is Vicente del Rosario y Nicolas from Barangay Tigbe, Norzagaray, Bulacan. The Court takes judicial notice of the existence of both barangay Tigbe and barangay Bigte, in Norzagaray, Bulacan.[16] In fact, the trial court erred grievously in not taking judicial notice of the barangays within its territorial jurisdiction, believing the prosecution's submission that there was only barangay Tigbe, and that barangay Bigte in the certification was a typographical error.[17] Petitioner presented to the head of the raiding team, Police Senior Inspector Jerito A. Adique, Chief, Operations Branch, PNP Criminal Investigation Command, a valid firearm license. The court is duty bound to examine the evidence assiduously to determine the guilt or innocence of the accused. It is true that the court may rely on the certification of the Chief, Firearms and Explosives Division, PNP on the absence of a firearm license.[18] However, such certification referred to another individual and thus, cannot prevail over a valid firearm license duly issued to petitioner. In this case, petitioner presented the printed computerized copy of License No. RCL 1614021915 issued to him on July 13, 1993, expiring in January 1995, by the Chief, Firearms and Explosives Division, PNP under the signature of Reynaldo

V. Velasco, Sr. Supt. (GSC) PNP, Chief, FEO.[19] On the dorsal side of the printed computerized license, there is stamped the words "Validity of computerized license is extended until renewed license is printed" dated January 17, 1995, signed by Police Chief Inspector Franklin S. Alfabeto, Chief, Licence Branch, FEO.[20] Coupled with this indefinite extension, petitioner paid the license fees for the extension of the license for the next two-year period.[21]

Consequently, we find that petitioner was the holder of a valid firearm license for the .45 caliber Colt pistol seized in the bedroom of his house on June 15, 1996.[22] As required, petitioner presented the license to the head of the raiding team, Police Senior Inspector Jerito A. Adique of the Criminal Investigation Division Group, PNP.[23] As a senior police officer, Senior Inspector Adique could easily determine the genuineness and authenticity of the computerized printed license presented. He must know the computerized license printed form. The stamp is clearly visible. He could decipher the words and the signature of the authorized signing official of the Firearms and Explosives Division, PNP. He belonged to the same national police organization.

Nevertheless, Senior Insp. Adique rejected the license presented because, according to him, it was expired. However, assuming that the license presented was expired during the period January 1995 to January 1997, still, possession of the firearm in question, a .45 caliber Colt pistol with serial No. 70G23792, during that period was not illegal. The firearm was kept at home, not carried outside residence. On June 15, 1996, at the time of the seizure of the firearm in question, possession of firearm with an expired license was not considered unlawful, provided that the license had not been cancelled or revoked. Republic Act No. 8294, providing that possession of a firearm with an expired license was unlawful took effect only on July 7, 1997.[24] It could not be given retroactive effect.[25]

According to firearm licensing regulations, the renewal of a firearm license was automatically applied for upon payment of the license fees for the renewal period. The expired license was not cancelled or revoked. It served as temporary authority to possess the firearm until the renewed license was issued. Meantime, the applicant may keep the gun at home pending renewal of the firearm license and issuance of a printed computerized license. He was not obliged to surrender the weapon. Printed at the dorsal side of the computerized license is a notice reading:

"IMPORTANT

- This firearm license is valid for two (2) years. Exhibit this license whenever demanded by proper authority.
- Surrender your firearm/s to the nearest PNP Unit upon revocation or termination of this license. Under any of the following instances, your license shall be revoked for which reason your firearm/s is/are subject to confiscation and its/their forfeiture in favor of the government.
- Failure to notify the Chief of PNP in writing of your change of address, and/or qualification.
- Failure to renew this license by paying annual license, fees, within six (6) months from your birth month. Renewal of your license can be made within your birth month or month preceding your birth month. Late renewal shall be penalized with 50% surcharge for the first month (from the first day to the last day of this month) followed by an additional 25% surcharge for all of the succeeding five (5) months compounded monthly.
- Loss of firearm/s through negligence.
- Carrying of firearm/s outside of residence without appropriate permit and/or carrying firearm/s in prohibited places.
- Conviction by competent court for a crime involving moral turpitude or for any offense where the penalty carries an imprisonment of more than six (6) months or fine of at least P1,000.00.

- Dismissal for cause from the service.
- Failure to sign license, or sign ID picture or affix right thumbmark.
- Unauthorized loan of firearm/s to another person is punishable by permanent disqualification and forfeiture of the firearm in favor of the government.
- If termination is due to death, your next of kin should surrender your firearm/s to the nearest PNP Unit. For those within Metro Manila, surrender should be made with FEO, Camp Crame.
- When firearms become permanently unserviceable, they should be deposited with the nearest PNP Unit and ownership should be relinquished in writing so that firearms may be disposed of in accordance with law.
- Application for the purchase of ammunition should be made in case of a resident of Metro Manila direct to the Chief, FEO and for residents of a Province to secure recommendation letter to the nearest PNP Provincial Command who will thereafter endorse same to CHIEF, FEO for issuance of the permit. License must be presented before an authority to purchase ammo could be obtained."[26]

Indeed, as heretofore stated, petitioner duly paid the license fees for the automatic renewal of the firearm license for the next two years upon expiration of the license in January 1995, as evidenced by official receipt No. 7615186, dated January 17, 1995.[27] The license would be renewed, as it was, because petitioner still possessed the required qualifications. Meantime, the validity of the license was extended until the renewed computerized license was printed. In fact, a renewed license was issued on January 17, 1997, for the succeeding two-year period.[28]

Aside from the clearly valid and subsisting license issued to petitioner, on January 25, 1995, the Chief, Philippine National Police issued to him a permit to carry firearm outside residence valid until January 25, 1996, for the firearm in question.[29] The Chief, Philippine National Police would not issue a permit to carry firearm outside residence unless petitioner had a valid and subsisting firearm license. Although the permit to carry firearm outside residence was valid for only one year, and expired on January 25, 1996, such permit is proof that the regular firearm license was renewed and subsisting within the two-year term up to January 1997. "A Permit to Carry Firearm Outside Residence presupposes that the party to whom it is issued is duly licensed to possess the firearm in question." [30] Unquestionably, on January 17, 1997, the Chief, Firearms and Explosives Division, PNP renewed petitioner's license for the .45 cal. Colt pistol in question.[31]

Clearly then, petitioner had a valid firearm license during the interregnum between January 17, 1995, to the issuance of his renewed license on January 17, 1997.

Finally, there is no rhyme or reason why the Court of Appeals and the trial court did not accept with alacrity the certification dated June 25, 1996, of P/Sr. Inspector Edwin C. Roque,[32] Chief, Records Branch, Firearms and Explosives Division, PNP that Vicente N. del Rosario of Barangay Tigbe, Norzagaray, Bulacan is a licensed/registered holder of Pistol, Colt caliber .45 with serial number 70G23792, covered by computerized license issued dated June 15, 1995, with an expiry date January 1997.[33] Reinforcing the aforementioned certification, petitioner submitted another certification dated August 27, 1999, stating that Vicente N. del Rosario of Barangay Tigbe, Norzagaray, Bulacan, was issued firearm license No. RL-C1614021915, for caliber .45 Pistol with Serial Number 70G23792, for the years covering the period from July 13, 1993 to January 1995, and the extension appearing at the back thereof for the years 1995 to 1997.[34] Had the lower courts given full probative value to these official issuances, petitioner would have been correctly acquitted, thus sparing this Court of valuable time and effort.

"In crimes involving illegal possession of firearm, the prosecution has the burden of proving the elements thereof,

viz.: (a) the existence of the subject firearm and (b) the fact that the accused who owned or possessed it does not have the license or permit to possess the same.[35] The essence of the crime of illegal possession is the possession, whether actual or constructive, of the subject firearm, without which there can be no conviction for illegal possession. After possession is established by the prosecution, it would only be a matter of course to determine whether the accused has a license to possess the firearm." [36] "Possession of any firearm becomes unlawful only if the necessary permit or license therefor is not first obtained. The absence of license and legal authority constitutes an essential ingredient of the offense of illegal possession of firearm and every ingredient or essential element of an offense must be shown by the prosecution by proof beyond reasonable doubt. Stated otherwise, the negative fact of lack or absence of license constitutes an essential ingredient of the offense which the prosecution has the duty not only to allege but also to prove beyond reasonable doubt." [37] "To convict an accused for illegal possession of firearms and explosives under P. D. 1866, as amended, two (2) essential elements must be indubitably established, viz.: (a) the existence of the subject firearm or explosive which may be proved by the presentation of the subject firearm or explosive or by the testimony of witnesses who saw accused in possession of the same, and (b) the negative fact that the accused had no license or permit to own or possess the firearm or explosive which fact may be established by the testimony or certification of a representative of the PNP Firearms and Explosives Unit that the accused has no license or permit to possess the subject firearm or explosive." x x x We stress that the essence of the crime penalized under P. D. 1866 is primarily the accused's lack of license or permit to carry or possess the firearm, ammunition or explosive as possession by itself is not prohibited by law." [38] Illegal possession of firearm is a crime punished by special law, a *malum prohibitum*, and no malice or intent to commit a crime need be proved. [39] To support a conviction, however, there must be possession coupled with intent to possess (*animus possidendi*) the firearm. [40]

In upholding the prosecution and giving credence to the testimony of police officer Jerito A. Adigue, the trial court relied on the presumption of regularity in the performance of official duties by the police officers. [41] This is a flagrant error because his testimony is directly contradictory to the official records of the Firearms and Explosives Division, PNP, which must prevail. Moreover, the presumption of regularity can not prevail over the Constitutional presumption of innocence. [42] Right from the start, P/Sr. Insp. Jerito A. Adigue was aware that petitioner possessed a valid license for the caliber .45 Colt pistol in question. Despite this fact, P/Sr. Insp. Adigue proceeded to detain petitioner and charged him with illegal possession of firearms. We quote pertinent portions of the testimony of petitioner:

"Q: What else did Adigue tell you after showing to him the license of your cal. .45 pistol and the alleged cal. .22 found in a drawer in your kitchen?

A: He told me that since my firearm is licensed, he will return my firearm, give him ten thousand pesos (P10,000.00) and for me to tell who among the people in our barangay have unlicensed firearm, sir.

Q: How did he say about the ten thousand pesos?

A: He said "palit kalabaw na lang tayo" sir.

Q: And what did you answer him?

A: I told him my firearm is licensed and I do not have money, if I have, I will not give him, sir, because he was just trying to squeeze something from me.

Q: How about the unlicensed firearms in your barangay which he asked from you?

A: I said I do not know any unlicensed firearm in our barangay, sir.

Q: About the .22 cal. pistol, what was your answer to him?

A: I told him that it was not mine, they planted it, sir.

Q: What did he say next?

A: He said that it is your word against mine, the Court will believe me because I am a police officer, sir.

Q: What was your comment to what he said?

A: I said my firearm is licensed and we have Courts of law who do not conform with officials like you and then he laughed and laughed, sir."[43]

The trial court was obviously misguided when it held that "it is a matter of judicial notice that a caliber .45 firearm can not be licensed to a private individual." [44] This ruling has no basis either in law or in jurisprudence. [45]

Second issue. The seizure of items not mentioned in the search warrant was illegal.

With respect to the .22 caliber revolver with Serial No. 48673, that the police raiding team found in a drawer at the kitchen of petitioner's house, suffice it to say that the firearm was not mentioned in the search warrant applied for and issued for the search of petitioner's house. "Section 2, Article III of the Constitution lays down the general rule that a search and seizure must be carried out through or on the strength of a judicial warrant, absent which such search and seizure becomes 'unreasonable' within the meaning of said constitutional provision." [46] "Supporting jurisprudence thus outlined the following requisites for a search warrant's validity, the absence of even one will cause its downright nullification: (1) it must be issued upon probable cause; (2) the probable cause must be determined by the judge himself and not by the applicant or any other person; (3) in the determination of probable cause, the judge must examine, under oath or affirmation, the complainant and such witnesses as the latter may produce; and (4) the warrant issued must particularly describe the place to be searched and persons or things to be seized." [47] Seizure is limited to those items particularly described in a valid search warrant. Searching officers are without discretion regarding what articles they shall seize. [48] Evidence seized on the occasion of such an unreasonable search and seizure is tainted and excluded for being the proverbial "fruit of a poisonous tree." In the language of the fundamental law, it shall be inadmissible in evidence for any purpose in any proceeding. [49]

In this case, the firearm was not found inadvertently and in plain view. It was found as a result of a meticulous search in the kitchen of petitioner's house. This firearm, to emphasize, was not mentioned in the search warrant. Hence, the seizure was illegal. [50] The seizure without the requisite search warrant was in plain violation of the law and the Constitution. [51] True that as an exception, the police may seize without warrant illegally possessed firearm or any contraband for that matter, inadvertently found in plain view. However, "[t]he seizure of evidence in 'plain view' applies only where the police officer is not searching for evidence against the accused, but inadvertently comes across an incriminating object." [52] Specifically, seizure of evidence in "plain view" is justified when there is:

- (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;
- (b) the evidence was inadvertently discovered by the police who had the right to be where they are;
- (c) the evidence must be immediately apparent, and
- (d) "plain view" justified mere seizure of evidence without further search. [53]

Hence, the petitioner rightly rejected the firearm as planted and not belonging to him. The prosecution was not

able to prove that the firearm was in the effective possession or control of the petitioner without a license. In illegal possession of firearms, the possessor must know of the existence of the subject firearm in his possession or control. "In *People v. de Gracia*,[54] we clarified the meaning of possession for the purpose of convicting a person under P. D. No. 1866, thus: x x x `In the present case, a distinction should be made between criminal intent and intent to possess. While mere possession without criminal intent is sufficient to convict a person for illegal possession of a firearm, it must still be shown that there was *animus possidendi* or an intent to possess on the part of the accused.' x x x x Hence, the kind of possession punishable under P. D. No. 1866 is one where the accused possessed a firearm either physically or constructively with *animus possidendi* or intention to possess the same." [55] That is the meaning of *animus possidendi*. In the absence of *animus possidendi*, the possessor of a firearm incurs no criminal liability.

The same is true with respect to the 5.56 cal. magazine found in the bedroom of petitioner's daughter. The seizure was invalid and the seized items were inadmissible in evidence. As explained in *People v. Doria*,[56] the "plain view" doctrine applies when the following requisites concur: (1) the law enforcement officer is in a position where he has a clear view of a particular area or has prior justification for an intrusion; (2) said officer inadvertently comes across (or sees in plain view) a piece of incriminating evidence; and (3) it is immediately apparent to such officer that the item he sees may be evidence of a crime or a contraband or is otherwise subject to seizure."

With particular reference to the two 2-way radios that the raiding policemen also seized in the bedroom of petitioner's daughter, there was absolutely no reason for the seizure. The radios were not contraband per se. The National Telecommunications Commission may license two-way radios at its discretion.[57] The burden is on the prosecution to show that the two-way radios were not licensed. The National Telecommunication Commission is the sole agency authorized to seize unlicensed two-way radios. More importantly, admittedly, the two-way radios were not mentioned in the search warrant. We condemn the seizure as illegal and a plain violation of a citizen's right. Worse, the petitioner was not charged with illegal possession of the two-way radios.

Consequently, the confiscation of the two 2-way radios was clearly illegal. The possession of such radios is not even included in the charge of illegal possession of firearms (violation of P. D. No. 1866, as amended) alleged in the Information.

WHEREFORE, the Court hereby REVERSES the decision of the Court of Appeals in CA-G. R. CR No. 22255, promulgated on July 09, 1999.

The Court ACQUITS petitioner Vicente del Rosario y Nicolas of the charge of violation of P. D. No. 1866, as amended by R. A. No. 8294 (illegal possession of firearms and ammunition), in Criminal Case No. 800-M-96, Regional Trial Court, Bulacan, Branch 20, Malolos.

Costs de officio.

The Chief, Firearms and Explosives Division, PNP shall return to petitioner his caliber .45 Colt pistol, with Serial Number No. 70G23792, the five (5) extra magazines and twenty seven (27) rounds of live ammunition, and the two 2-way radios confiscated from him. The Chief, Philippine National Police, or his duly authorized representative shall show to this Court proof of compliance herewith within fifteen (15) days from notice. The .22 caliber revolver with Serial No. 48673, and eight (8) live ammunition and the magazine for 5.56 mm. caliber Armalite rifle are confiscated in favor of the government.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and Ynares-Santiago, JJ., concur.
Kapunan, J., on leave.

[1] In CA-G. R. CR No. 22255, promulgated on July 09, 1999. Aquino, J., ponente, Mabutas, Jr. and Agnir, Jr., JJ., concurring. Petition, Annex "A", Rollo, pp. 21-28.

[2] Regional Trial Court Records, pp. 2-3.

[3] Ibid., p. 21.

[4] Note well that petitioner is a resident of Barangay Tigbe, Norzagaray, Bulacan. The certification issued by P/Sr. Insp. Edwin C. Roque referred to Vicente "Vic" del Rosario of Barangay Bigte, Norzagaray, Bulacan.

[5] Petition, Annex "A", Rollo, pp. 22-28, at pp. 23-24; CA Rollo, pp. 87-93, at pp. 88-89. Promulgated on July 13, 1998, Regional Trial Court Records, p. 173.

[6] Notice of Appeal, dated July 17, 1998, Regional Trial Court Records, p. 175. Docketed as CA-G. R. CR No. 22255.

[7] Rollo, pp. 22-28.

[8] CA Rollo, pp. 94-116.

[9] Resolution, Rollo, pp. 60-61.

[10] Petition, filed on April 24, 2000. Rollo, pp. 9-20. On June 14, 2000, we required respondent to comment on the petition (Rollo, p. 129). On October 26, 2000, respondent filed its comment (Rollo, pp. 143-156). On December 6, 2000, we gave due course to the petition (Temp. Rollo, pp. 1-2).

[11] On the ground that the judge who issued the search warrant did not personally ask searching questions to the applicant and his witnesses (*Prudente v. Dayrit*, 180 SCRA 69 [1989]; *Pendon v. Court of Appeals*, 191 SCRA 429 [1990]; *Silva v. RTC Negros Oriental*, 203 SCRA 140 [1991]).

[12] *Siguan v. Lim*, 318 SCRA 725, 734 [1999]; *de los Reyes v. Court of Appeals*, 313 SCRA 632, 645 [1999]; *American Express International, Inc. v. Court of Appeals*, 308 SCRA 65, 69 [1999]; *Pimentel v. Court of Appeals*, 307 SCRA 38, 43 [1999].

[13] *Sta. Maria v. Court of Appeals*, 349 Phil. 275, 282-283 [1998].

[14] *Guerrero v. Court of Appeals*, 349 Phil. 605, 614 [1998].

[15] See Exhibit "L", Folder of Exhibits, Regional Trial Court Records, p. 6.

[16] See Petition, Annex "C", Supplement to the Motion for Reconsideration, Annex "B", Rollo, p. 57. We also checked these data from the records of the Commission on Elections.

[17] But the trial court and the Court of Appeals ignored the sworn certification dated August 16, 1999, to the effect that Barangay Tigbe and Barangay Bigte, Norzagaray, Bulacan are two different and distinct barangays.

[18] *People v. Lazaro*, 317 SCRA 435, 446 [1999].

[19] Exh. "1", Folder of Exhibits, Regional Trial Court Records, p. 10; See also p. 21.

[20] See reverse side of Exhibit "1", back of p. 10 and p. 21.

[21] Exh. "3-A", Folder of Exhibits, Regional Trial Court Records, p. 14; See also Exh. "1", *ibid.*, p. 21.

[22] The trial court, by taking judicial notice, ruled that a .45 cal. pistol can not be licensed. The trial court committed two errors here. One, for taking judicial notice of a disputed fact without hearing and receiving evidence thereon (*Salamera v. Sandiganbayan*, 303 SCRA 217 [1999]). Second, no law prohibits the licensing of a .45 cal pistol; the power to issue license is vested in the discretion of the Chief of Constabulary, now the Chief, Philippine National Police (Rules and Regulations Implementing P. D. No. 1866, Section 2).

[23] TSN, November 26, 1996, p. 3.

[24] *People v. Mendoza*, 301 SCRA 66, 82 [1999].

[25] *People v. de Vera, Sr.*, 308 SCRA 75, 100 [1999].

[26] Exh. "1", dorsal side, Folder of Exhibits, Regional Trial Court Records, back of p. 21; see also Annex "5.2", CA Rollo, p. 112.

[27] Exh. "3-A", Folder of Exhibits, Regional Trial Court Records, p. 14.

[28] Motion for Reconsideration and/or new trial, Annex "5.1", Rollo, pp. 29-51, at p. 46; See also CA Rollo, pp. 94-116, at p. 111.

[29] Exh. "3-b", Folder of Exhibits, Regional Trial Court Records, p. 15. See also Exhibit "1-Motion", *ibid.*, p. 21.

[30] *Pastrano v. Court of Appeals*, 346 Phil. 277, 284 [1997].

[31] *Supra*, Note 28.

[32] He is the same P/Sr. Insp. Edwin C. Roque who certified on May 10, 1996, that one Vicente "Vic" del Rosario of barangay Bigte, Norzagaray, Bulacan is not a licensed/registered firearm holder of any kind and caliber, basis of the issuance of a search warrant. *Supra*, Note 15.

[33] Exh. "2", Folder of Exhibits, Regional Trial Court Records, p. 11. See also Exhibit "5", *ibid.*, p. 18.

[34] Supplement to the motion for reconsideration and/or new trial, Annex "C", CA Rollo, pp. 118-124, at p. 124.

[35] *People v. Castillo*, 325 SCRA 613, 620 [2000]; *People v. Dorimon*, 321 SCRA 43, 48 [1999]; *People v. Cerveto*, 315 SCRA 611, 624 [1999]; *Cadua v. Court of Appeals*, 312 SCRA 703, 722 [1999]; *People v. Khor*, 307 SCRA 295, 311 [1999].

[36] *People v. Bansil*, 304 SCRA 384, 394 [1999].

[37] *People v. Khor*, *supra*, Note 35, at p. 310.

[38] *People v. Cortez*, 324 SCRA 335, 344 [2000].

[39] *People v. Lubo*, 101 Phil. 179 [1957], citing *U. S. v. Go Chico*, 14 Phil. 128 [1909]; *People v. Bayona*, 61 Phil. 181 [1935]; *People v. Cava*, G. R. No. L-9416, August 31, 1956 [unpublished].

[40] *People v. Lubo*, *supra*, Note 39.

[41] *People v. Jubilag*, 331 Phil. 897, 910 [1996].

[42] *People v. Figueroa*, G. R. No. 134056, July 6, 2000.

[43] TSN, November 26, 1996, pp. 7-9.

[44] Decision, Regional Trial Court Records, pp. 147-171, at p. 168.

[45] Supra, Note 22.

[46] People v. Montilla, 349 Phil. 640, 656 [1998].

[47] Republic v. Sandiganbayan, 325 Phil. 762, 821-822 [1996].

[48] Uy Kheylin v. Villareal, 42 Phil. 886 [1933]. In Roan v. Gonzales, 145 SCRA 687, there was a search warrant but it was declared invalid because of failure to conduct proper examination. The seizure of guns not described in the warrant was held illegal because there was no valid search warrant, and the articles seized were not in plain view but deliberately sought (taken from A Handbook on Arrest, Search and Seizure and Custodial Investigation, by Justice Oscar M. Herrera, 1994 ed., p. 178).

[49] People v. Valdez, G. R. No. 129296, September 25, 2000.

[50] People v. Doria, 301 SCRA 668 [1999]. Cf. Veroy v. Layaque, 210 SCRA 97 [1992], the seizure of a gun found inside an unlocked drawer was rejected because there was no valid search.

[51] Ibid., at p. 716, citing Section 2, Bill of Rights, 1987 Constitution.

[52] People v. Valdez, supra, Note 49.

[53] People v. Aruta, 351 Phil. 868, 879 [1998].

[54] 233 SCRA 716, 725, 727 [1994].

[55] People v. de la Rosa, 348 Phil. 173, 184-185 [1998], citing People v. Soyang, 110 Phil. 565 [1960].

[56] Supra, Note 50, concurring opinion of Justice Artemio V. Panganiban, pp. 726-727, citing People v. Musa, 217 SCRA 597, 611 [1993].

[57] Rep. Act No. 3846, as amended.

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