

EUGENE C. FIRAZA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 179319. September 18, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioner, appointed as a confidential agent of the National Bureau of Investigation (NBI), Caraga Regional Office on August 18, 1999, was issued a firearm and a mission to gather and report to the NBI such information as may be relevant to investigations undertaken by it.

In his private capacity, petitioner served as manager for RF Communications in connection with which he dealt with Christopher Rivas, Provincial Auditor of Surigao del Sur, for the establishment of a Public Calling Office in the Municipality of Lianga, Surigao del Sur.

On August 11, 2000, in the course of a meeting between petitioner and Rivas at the latter's restaurant regarding the delivery of a defective machine for the Public Calling Office, a heated exchange ensued during which petitioner is alleged to have pointed a gun at Rivas. Petitioner was thereupon accosted by P/Insp. Alberto A. Mullanida, Acting Chief of Police of Lianga, Surigao del Sur and PO2 Nilo Ronquillo, who discovered that his permit to carry firearm outside residence had expired more than a month earlier or on July 5, 2000.

Hence, a criminal complaint was filed against petitioner before the 6[th] Municipal Circuit Trial Court (MCTC) of Barobo-Lianga, Barobo, Surigao del Sur for "UNATHORIZED CARRYING OF LICENCE [sic] FIREARM OUTSIDE RESIDENCE," the accusatory portion of which reads:

That on or about the 11[th] day of August 2000 at about 4:00 o'clock in the afternoon more or less in Poblacion, Municipality of Lianga, Province of Surigao del Sur Philippines and within the jurisdiction of this Honorable Court the above named accused, willfully, unlawfully, and feloniously possess [sic] one (1) unit Pistol Caliber 45 with serial number 670320 entered inside the residence of Christopher Rivas at Lianga, Surigao del Sur with expired license or permit to carry outside residence renewed [sic] from the government authority concerned.

CONTRARY TO LAW. (Violation of RA 8294 as amended).[1] (Emphasis and underscoring supplied)

Petitioner, denying that any argument occurred between him and Rivas, claimed that while he was explaining to Rivas the defect in the machine subject of their meeting, P/Insp. Mullanida and PO2 Ronquillo apprehended him and seized his firearm tucked inside his shirt, even as he identified himself as an NBI agent; and that he was prevented from presenting a Mission Order dated July 26, 2000 issued to him by the NBI, to prove his authority to carry firearms outside of his residence, due to the coercive manner by which the two approached him.

By Decision of February 20, 2003, the MCTC convicted petitioner, disposing as follows:

WHEREFORE, Court finds accused Eugene C. Firaza GUILTY beyond reasonable doubt of the crime "Unauthorized Carrying of Licensed Firearm Outside Residence," penalized under Section 1 of Republic Act

8294.

Accused Eugene C. Firaza is hereby sentenced to an imprisonment of one (1) month and ten days of Arresto Mayor.

SO ORDERED.

In convicting petitioner, the trial court noted the following facts:

- That accused's permit to carry firearms outside residence, has already expired when he was apprehended on August 11, 2000;
- That the "Mission Order" (Exhibit "4") was not presented or shown to the apprehending policemen on August 11, 2000;
- That accused's "Mission Order" was not issued by the NBI Director or Assistant/Deputy Director or by Regional Director of Caraga Region;
- That accused is only a confidential agent and as such is not included in the regular plantilla of the NBI, nor is receiving regular compensation for the services he is rendering;
- When apprehended, accused was not in actual performance of alleged mission but on business trip.[2] (Underscoring supplied)

On appeal, the Regional Trial Court upheld petitioner's conviction.

On petition for review, the Court of Appeals, by Decision of April 20, 2007,[3] affirmed petitioner's conviction.

Before this Court, petitioner raises the following issues:

- Whether or not Petitioner can be convicted of an offense different from that charged in the Complaint.
- Whether or not the burden of proving a negative element of an offense lies with the prosecution; and
- Whether or not the firearm seized from petitioner after an unlawful search without a warrant is inadmissible in evidence. (Underscoring supplied)

Petitioner prefaces his arguments in support of his appeal by claiming that the Complaint charged him with "illegal possession of firearms," hence, he cannot be convicted of carrying firearms outside of residence, the phrase in the Complaint reading "with expired license or permit to carry outside residence . . ." being "merely descriptive of the alleged unlicensed nature of the firearm."

Petitioner concludes that since he had authority to carry firearm, it was error to convict him. He cites the appellate court's following disquisition as crediting his defense that he had authority to carry firearms, viz:

It must be stated at the outset that petitioner was charged of violation of RA 8294 or Unauthorized Carrying of Licensed Firearm Outside of Residence. His conviction by the courts below is based on their finding that although petitioner had a mission order which authorized him to carry the firearm issued to him, the same already expired as of July 26, 2000.

We qualify.

The courts below committed an error when they said that the authority of petitioner to carry firearm outside residence expired on July 26, 2000, hence when petitioner carried his issued firearm on 18 August 2000, he did so without authority. Mission Order No. 00352000 dated July 26, 2000 issued to petitioner allowed him to carry his issued firearm Pistol Cal. 45 with him, which mission order is good for sixty (60) days from issuance thereof.[4] x x x (Italics in the original, emphasis and underscoring supplied)

Petitioner's argument fails.

Section 6, Rule 110 of the Rules of Court provides:

SEC. 6. Sufficiency of complaint or information. - A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information. (Emphasis and underscoring supplied)

The allegations in a Complaint or Information determine what offense is charged. The alleged acts or omissions complained of constituting the offense need not be in the terms of the statute determining the offense, but in such form as is sufficient to enable a person of common understanding to know what offense is being charged as well as the qualifying and aggravating circumstances and for the court to pronounce judgment.[5]

The earlier-quoted Complaint alleged that the "accused willfully, unlawfully and feloniously possess [sic] one (1) unit Pistol Cal. 45 with serial number 670320 [and] entered . . . the residence of Christopher Rivas at Lianga, Surigao del Sur with expired license or permit to carry outside residence." [6] The words used to indicate or describe the offense charged -- that petitioner unlawfully carried his firearm outside his residence because he had no permit for the purpose -- are clear. They are self-explanatory.

Petitioner cannot seriously claim that his constitutional right to be informed of the nature and cause of the accusation against him was violated. For the transcript of stenographic notes of the proceedings before the trial court shows that he, through his counsel, was duly informed of the nature of the case against him:

Court:

You intend to file a motion for investigation?

Atty. Cadiz: [herein petitioner's counsel]

Yes, Your Honor.

Court:

On what ground?

Atty. Cadiz:

On the ground that based on the evidence that we presented, Your Honor, like counter-affidavit, it seems to be the ground for the further proceedings of this case because the case filed against the accused is merely unauthorized(d) carrying of firearms outside the residence, and the accused is covered by mission order and the evidence submitted, Your Honor, which we take that it is not necessary to prosecute this case, because this case is summary in nature, Your Honor. We will submit a necessary motion for reinvestigation of this case.[7] (Emphasis and underscoring supplied)

It bears noting that petitioner does not challenge his having been found guilty of violating Section 1 of P.D. No. 1866 (DECREE CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES) as amended by R.A. No. 8294 which provides:

SECTION 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition. - The penalty of

prision correccional in its maximum period and a fine of not less than Fifteen thousand pesos (P15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm or ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: Provided, That no other crime was committed.

x x x x

The penalty of *arresto mayor* shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor. (*Italics in the original; emphasis and underscoring supplied*)

Petitioner, however, justifies, his carrying of the firearm outside his residence with the 60-day July 26, 2000 Mission Order issued to him by the NBI.

Petitioner is mistaken. Permit to carry firearm is not the same as permit to carry licensed firearm outside one's residence. Under the Implementing Rules and Regulations of P.D. No. 1866, a Mission Order is defined as "a written directive or order issued by government authority as enumerated in Section 5 hereof to persons who are 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 firearms outside of residence when so specified therein."

The Mission Order issued to petitioner authorized him to carry firearms "in connection with confidential (illegible) cases assigned to [him]." Admittedly, petitioner was at Rivas' restaurant in connection with a private business transaction. Additionally, the Mission Order did not authorize petitioner to carry his duly issued firearm outside of his residence.

At all events, *Sayco v. People*,^[8] citing Section 6(a) of The Implementing Rules and Regulations of P.D. No. 1866 and Memorandum Circular No. 8 dated October 16, 1986 issued by the Department (then Ministry) of Justice, should put to rest any nagging doubts on the liability of petitioner, a confidential civilian agent who was not shown to be in the regular plantilla of the NBI.

First, special or confidential civilian agents who are not included in the regular plantilla of any government agency involved in law enforcement or receiving regular compensation for services rendered are not exempt from the requirement under P.D. No. 1866, as amended by R.A. No. 8294, of a regular license to possess firearms and a permit to carry the same outside of residence.

x x x x

Third, said special or confidential civilian agents do not qualify for mission orders to carry firearms (whether private-owned or government-owned) outside of their residence.

x x x x (*Italics in the original; underscoring supplied*)

As for petitioner's claim that he was searched without a warrant to thus render the firearm seized inadmissible in evidence, the same fails.

For even assuming *arguendo* that, as claimed by petitioner, his firearm was tucked inside his shirt, the plain view doctrine, of which the following requirements which must concur, viz: (1) the law enforcement officer has a prior justification for the intrusion, (2) the discovery of the evidence in plain view is inadvertent, and, (3) the illegality of the evidence observed in plain view is apparent to the apprehending officer,^[9] justified the intervention by the police officers in petitioner's and Rivas' heated arguments in the course of which they noticed the suspicious bulging object on petitioner's waist to draw them to check what it was.

WHEREFORE, the Petition for Review is DENIED.

SO ORDERED.

Ynares-Santiago,[*] Brion, Del Castillo, and Abad, JJ., concur.

[*]Additional member per Special Order No. 691 dated September 4, 2009.

[1] Records, p. 14

[2] Records, p. 12.

[3] Penned by Associate Justice Jane Aurora C. Lantion with the concurrence of Associate Justices Teresita Dy-Liacco Flores and Romulo V. Borja.

[4] Rollo, p. 38

[5] Section 9, Rule 110, Rules of Court.

[6] Underscoring supplied.

[7] TSN, March 15, 2001, p. 11.

[8] G.R. No. 159703, March 3, 2008, 547 SCRA 368, 385-386.

[9] People v. Go, G.R. No. 144639, September 12, 2003, 411 SCRA 81.

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