

ELENITA C. FAJARDO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 190889. January 10, 2011

Ponente: NACHURA, J.

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NACHURA, J.:

At bar is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking the reversal of the February 10, 2009 Decision[1] of the Court of Appeals (CA), which affirmed with modification the August 29, 2006 decision[2] of the Regional Trial Court (RTC), Branch 5, Kalibo, Aklan, finding petitioner guilty of violating Presidential Decree (P.D.) No. 1866, as amended.

The facts:

Petitioner, Elenita Fajardo, and one Zaldy Valerio (Valerio) were charged with violation of P.D. No. 1866, as amended, before the RTC, Branch 5, Kalibo, Aklan, committed as follows:

That on or about the 28[th] day of August, 2002, in the morning, in Barangay Andagao, Municipality of Kalibo, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, without authority of law, permit or license, did then and there, knowingly, willfully, unlawfully and feloniously have in their possession, custody and control two (2) receivers of caliber .45 pistol, [M]odel [No.] M1911A1 US with SN 763025 and Model [No.] M1911A1 US with defaced serial number, two (2) pieces short magazine of M16 Armalite rifle, thirty-five (35) pieces live M16 ammunition 5.56 caliber and fourteen (14) pieces live caliber .45 ammunition, which items were confiscated and recovered from their possession during a search conducted by members of the Provincial Intelligence Special Operation Group, Aklan Police Provincial Office, Kalibo, Aklan, by virtue of Search Warrant No. 01 (9) 03 issued by OIC Executive Judge Dean Telan of the Regional Trial Court of Aklan.[3]

When arraigned on March 25, 2004, both pleaded not guilty to the offense charged.[4] During pre-trial, they agreed to the following stipulation of facts:

- The search warrant subject of this case exists;
- Accused Elenita Fajardo is the same person subject of the search warrant in this case who is a resident of Sampaguita Road, Park Homes, Andagao, Kalibo, Aklan;
- Accused Zaldy Valerio was in the house of Elenita Fajardo in the evening of August 27, 2002 but does not live therein;
- Both accused were not duly licensed firearm holders;
- The search warrant was served in the house of accused Elenita Fajardo in the morning of August 28, 2002; and
- The accused Elenita Fajardo and Valerio were not arrested immediately upon the arrival of the military

personnel despite the fact that the latter allegedly saw them in possession of a firearm in the evening of August 27, 2002.[5]

As culled from the similar factual findings of the RTC and the CA,[6] these are the chain of events that led to the filing of the information:

In the evening of August 27, 2002, members of the Provincial Intelligence Special Operations Group (PISOG) were instructed by Provincial Director Police Superintendent Edgardo Mendoza (P/Supt. Mendoza) to respond to the complaint of concerned citizens residing on Ilang-Ilang and Sampaguita Roads, Park Homes III Subdivision, Barangay Andagao, Kalibo, Aklan, that armed men drinking liquor at the residence of petitioner were indiscriminately firing guns.

Along with the members of the Aklan Police Provincial Office, the elements of the PISOG proceeded to the area. Upon arrival thereat, they noticed that several persons scampered and ran in different directions. The responding team saw Valerio holding two .45 caliber pistols. He fired shots at the policemen before entering the house of petitioner.

Petitioner was seen tucking a .45 caliber handgun between her waist and the waistband of her shorts, after which, she entered the house and locked the main door.

To prevent any violent commotion, the policemen desisted from entering petitioner's house but, in order to deter Valerio from evading apprehension, they cordoned the perimeter of the house as they waited for further instructions from P/Supt. Mendoza. A few minutes later, petitioner went out of the house and negotiated for the pull-out of the police troops. No agreement materialized.

At around 2:00 a.m. and 4:00 a.m. of August 28, 2002, Senior Police Officer 2 Clemencio Nava (SPO2 Nava), who was posted at the back portion of the house, saw Valerio emerge twice on top of the house and throw something. The discarded objects landed near the wall of petitioner's house and inside the compound of a neighboring residence. SPO2 Nava, together with SPO1 Teodoro Neron and Jerome T. Vega (Vega), radio announcer/reporter of RMN DYKR, as witness, recovered the discarded objects, which turned out to be two (2) receivers of .45 caliber pistol, model no. M1911A1 US, with serial number (SN) 763025, and model no. M1911A1 US, with a defaced serial number. The recovered items were then surrendered to SPO1 Nathaniel A. Tan (SPO1 Tan), Group Investigator, who utilized them in applying for and obtaining a search warrant.

The warrant was served on petitioner at 9:30 a.m. Together with a barangay captain, barangay kagawad, and members of the media, as witnesses, the police team proceeded to search petitioner's house. The team found and was able to confiscate the following:

- Two (2) pieces of Short Magazine of M16 Armalite Rifle;
- Thirty five (35) pieces of live M16 ammos 5.56 Caliber; and
- Fourteen (14) pieces of live ammos of Caliber 45 pistol.

Since petitioner and Valerio failed to present any documents showing their authority to possess the confiscated firearms and the two recovered receivers, a criminal information for violation of P.D. No. 1866, as amended by Republic Act (R.A.) No. 8294, was filed against them.

For their exoneration, petitioner and Valerio argued that the issuance of the search warrant was defective because the allegation contained in the application filed and signed by SPO1 Tan was not based on his personal knowledge. They quoted this pertinent portion of the application:

That this application was founded on confidential information received by the Provincial Director, Police Supt. Edgardo Mendoza.[7]

They further asserted that the execution of the search warrant was infirm since petitioner, who was inside the house at the time of the search, was not asked to accompany the policemen as they explored the place, but was instead ordered to remain in the living room (sala).

Petitioner disowned the confiscated items. She refused to sign the inventory/receipt prepared by the raiding team, because the items allegedly belonged to her brother, Benito Fajardo, a staff sergeant of the Philippine Army.

Petitioner denied that she had a .45 caliber pistol tucked in her waistband when the raiding team arrived. She averred that such situation was implausible because she was wearing garterized shorts and a spaghetti-strapped hanging blouse.[8]

Ruling of the RTC

The RTC rejected the defenses advanced by accused, holding that the same were already denied in the Orders dated December 31, 2002 and April 20, 2005, respectively denying the Motion to Quash Search Warrant and Demurrer to Evidence. The said Orders were not appealed and have thus attained finality. The RTC also ruled that petitioner and Valerio were estopped from assailing the legality of their arrest since they participated in the trial by presenting evidence for their defense. Likewise, by applying for bail, they have effectively waived such irregularities and defects.

In finding the accused liable for illegal possession of firearms, the RTC explained:

Zaldy Valerio, the bodyguard of Elenita Fajardo, is a former soldier, having served with the Philippine Army prior to his separation from his service for going on absence without leave (AWOL). With his military background, it is safe to conclude that Zaldy Valerio is familiar with and knowledgeable about different types of firearms and ammunitions. As a former soldier, undoubtedly, he can assemble and disassemble firearms.

It must not be de-emphasize[d] that the residence of Elenita Fajardo is definitely not an armory or arsenal which are the usual depositories for firearms, explosives and ammunition. Granting arguendo that those firearms and ammunition were left behind by Benito Fajardo, a member of the Philippine army, the fact remains that it is a government property. If it is so, the residence of Elenita Fajardo is not the proper place to store those items. The logical explanation is that those items are stolen property.

x x x x

The rule is that ownership is not an essential element of illegal possession of firearms and ammunition. What the law requires is merely possession which includes not only actual physical possession but also constructive possession or the subjection of the thing to one's control and management. This has to be so if the manifest intent of the law is to be effective. The same evils, the same perils to public security, which the law penalizes exist whether the unlicensed holder of a prohibited weapon be its owner or a borrower. To accomplish the object of this law[,] the proprietary concept of the possession can have no bearing whatsoever.

x x x x

x x x. [I]n order that one may be found guilty of a violation of the decree, it is sufficient that the accused had no authority or license to possess a firearm, and that he intended to possess the same, even if such possession was made in good faith and without criminal intent.

x x x x

To convict an accused for illegal possession of firearms and explosive under P.D. 1866, as amended, two (2)

essential elements must be indubitably established, viz.: (a) the existence of the subject firearm ammunition 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 has no license or permit to own or possess the firearm, ammunition 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 (Exhibit G).

The judicial admission of the accused that they do not have permit or license on the two (2) receivers of caliber .45 pistol, model M1911A1 US with SN 763025 and model M1911A1 of M16 Armalite rifle, thirty-five (35) pieces live M16 ammunition, 5.56 caliber and fourteen (14) pieces live caliber .45 ammunition confiscated and recovered from their possession during the search conducted by members of the PISOG, Aklan Police Provincial Office by virtue of Search Warrant No. 01 (9) 03 fall under Section 4 of Rule 129 of the Revised Rules of Court.[9]

Consequently, petitioner and Valerio were convicted of illegal possession of firearms and explosives, punishable under paragraph 2, Section 1 of P.D. No. 1866, as amended by R.A. No. 8294, which provides:

The penalty of prision mayor in its minimum period and a fine of Thirty thousand pesos (P30,000.00) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: Provided, however, That no other crime was committed by the person arrested.

Both were sentenced to suffer the penalty of imprisonment of six (6) years and one (1) day to twelve (12) years of prision mayor, and to pay a fine of P30,000.00.

On September 1, 2006, only petitioner filed a Motion for Reconsideration, which was denied in an Order dated October 25, 2006. Petitioner then filed a Notice of Appeal with the CA.

Ruling of the CA

The CA concurred with the factual findings of the RTC, but disagreed with its conclusions of law, and held that the search warrant was void based on the following observations:

[A]t the time of applying for a search warrant, SPO1 Nathaniel A. Tan did not have personal knowledge of the fact that appellants had no license to possess firearms as required by law. For one, he failed to make a categorical statement on that point during the application. Also, he failed to attach to the application a certification to that effect from the Firearms and Explosives Office of the Philippine National Police. x x x, this certification is the best evidence obtainable to prove that appellant indeed has no license or permit to possess a firearm. There was also no explanation given why said certification was not presented, or even deemed no longer necessary, during the application for the warrant. Such vital evidence was simply ignored.[10]

Resultantly, all firearms and explosives seized inside petitioner's residence were declared inadmissible in evidence. However, the 2 receivers recovered by the policemen outside the house of petitioner before the warrant was served were admitted as evidence, pursuant to the plain view doctrine.

Accordingly, petitioner and Valerio were convicted of illegal possession of a part of a firearm, punishable under paragraph 1, Section 1 of P.D. No. 1866, as amended. They were sentenced to an indeterminate penalty of three (3) years, six (6) months, and twenty-one (21) days to five (5) years, four (4) months, and twenty (20) days of prision correccional, and ordered to pay a P20,000.00 fine.

Petitioner moved for reconsideration,[11] but the motion was denied in the CA Resolution dated December 3,

2009.[12] Hence, the present recourse.

At the onset, it must be emphasized that the information filed against petitioner and Valerio charged duplicitous offenses contrary to Section 13 of Rule 110 of the Rules of Criminal Procedure, viz.:

Sec. 13. Duplicity of offense. - A complaint or information must charge but one offense, except only in those cases in which existing laws prescribe a single punishment for various offenses.

A reading of the information clearly shows that possession of the enumerated articles confiscated from Valerio and petitioner are punishable under separate provisions of Section 1, P.D. No. 1866, as amended by R.A. No. 8294.[13] Illegal possession of two (2) pieces of short magazine of M16 Armalite rifle, thirty-five (35) pieces of live M16 ammunition 5.56 caliber, and fourteen (14) pieces of live caliber .45 ammunition is punishable under paragraph 2 of the said section, viz.:

The penalty of prision mayor in its minimum period and a fine of Thirty thousand pesos (P30,000.00) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, 41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: Provided, however, That no other crime was committed by the person arrested.[14]

On the other hand, illegal possession of the two (2) receivers of a .45 caliber pistol, model no. M1911A1 US, with SN 763025, and Model M1911A1 US, with a defaced serial number, is penalized under paragraph 1, which states:

Sec. 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 (P15,000.00) 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, 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.[15]

This is the necessary consequence of the amendment introduced by R.A. No. 8294, which categorized the kinds of firearms proscribed from being possessed without a license, according to their firing power and caliber. R.A. No. 8294 likewise mandated different penalties for illegal possession of firearm according to the above classification, unlike in the old P.D. No. 1866 which set a standard penalty for the illegal possession of any kind of firearm. Section 1 of the old law reads:

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 of Ammunition. - The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire dispose, or possess any firearms, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition. (Emphasis ours.)

By virtue of such changes, an information for illegal possession of firearm should now particularly refer to the paragraph of Section 1 under which the seized firearm is classified, and should there be numerous guns confiscated, each must be sorted and then grouped according to the categories stated in Section 1 of R.A. No. 8294, amending P.D. No. 1866. It will no longer suffice to lump all of the seized firearms in one information, and state Section 1, P.D. No. 1866 as the violated provision, as in the instant case,[16] because different penalties are imposed by the law, depending on the caliber of the weapon. To do so would result in duplicitous charges.

Ordinarily, an information that charges multiple offenses merits a quashal, but petitioner and Valerio failed to raise this issue during arraignment. Their failure constitutes a waiver, and they could be convicted of as many offenses as there were charged in the information.[17] This accords propriety to the diverse convictions handed down by the courts a quo.

Further, the charge of illegal possession of firearms and ammunition under paragraph 2, Section 1 of P.D. No. 1866, as amended by R.A. No. 8294, including the validity of the search warrant that led to their confiscation, is now beyond the province of our review since, by virtue of the CA's Decision, petitioner and Valerio have been effectively acquitted from the said charges. The present review is consequently only with regard to the conviction for illegal possession of a part of a firearm.

The Issues

Petitioner insists on an acquittal and avers that the discovery of the two (2) receivers does not come within the purview of the plain view doctrine. She argues that no valid intrusion was attendant and that no evidence was adduced to prove that she was with Valerio when he threw the receivers. Likewise absent is a positive showing that any of the two receivers recovered by the policemen matched the .45 caliber pistol allegedly seen tucked in the waistband of her shorts when the police elements arrived. Neither is there any proof that petitioner had knowledge of or consented to the alleged throwing of the receivers.

Our Ruling

We find merit in the petition.

First, we rule on the admissibility of the receivers. We hold that the receivers were seized in plain view, hence, admissible.

No less than our Constitution recognizes the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. This right is encapsulated in Article III, Section 2, of the Constitution, which states:

Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation 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.

Complementing this provision is the exclusionary rule embodied in Section 3(2) of the same article -

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

There are, however, several well-recognized exceptions to the foregoing rule. Thus, evidence obtained through a warrantless search and seizure may be admissible under any of the following circumstances: (1) search incident to a lawful arrest; (2) search of a moving motor vehicle; (3) search in violation of custom laws; (4) seizure of evidence in plain view; and (5) when the accused himself waives his right against unreasonable searches and seizures.[18]

Under the plain view doctrine, objects falling in the "plain view" of an officer, who has a right to be in the position to have that view, are subject to seizure and may be presented as evidence.[19] It applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of the evidence in plain

view is inadvertent; and (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband, or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand, and its discovery inadvertent.[20]

Tested against these standards, we find that the seizure of the two receivers of the .45 caliber pistol outside petitioner's house falls within the purview of the plain view doctrine.

First, the presence of SPO2 Nava at the back of the house and of the other law enforcers around the premises was justified by the fact that petitioner and Valerio were earlier seen respectively holding .45 caliber pistols before they ran inside the structure and sought refuge. The attendant circumstances and the evasive actions of petitioner and Valerio when the law enforcers arrived engendered a reasonable ground for the latter to believe that a crime was being committed. There was thus sufficient probable cause for the policemen to cordon off the house as they waited for daybreak to apply for a search warrant.

Secondly, from where he was situated, SPO2 Nava clearly saw, on two different instances, Valerio emerge on top of the subject dwelling and throw suspicious objects. Lastly, considering the earlier sighting of Valerio holding a pistol, SPO2 Nava had reasonable ground to believe that the things thrown might be contraband items, or evidence of the offense they were then suspected of committing. Indeed, when subsequently recovered, they turned out to be two (2) receivers of .45 caliber pistol.

The pertinent portions of SPO2 Nava's testimony are elucidating:

Q When you arrived in that place, you saw policemen?

A Yes, sir.

Q What were they doing?

A They were cordoning the house.

Q You said that you asked your assistant team leader Deluso about that incident. What did he tell you?

A Deluso told me that a person ran inside the house carrying with him a gun.

Q And this house you are referring to is the house which you mentioned is the police officers were surrounding?

A Yes, sir.

Q Now, how long did you stay in that place, Mr. Witness?

A I stayed there when I arrived at past 10:00 o'clock up to 12:00 o'clock the following day.

Q At about 2:00 o'clock in the early morning of August 28, 2002, can you recall where were you?

A Yes, sir.

Q Where were you?

A I was at the back of the house that is being cordoned by the police.

Q While you were at the back of this house, do you recall any unusual incident?

A Yes, sir.

Q Can you tell the Honorable Court what was that incident?

A Yes, sir. A person went out at the top of the house and threw something.

Q And did you see the person who threw something out of this house?

A Yes, sir.

x x x x

Q Can you tell the Honorable Court who was that person who threw that something outside the house?

A It was Zaldy Valerio.

COURT: (to witness)

Q Before the incident, you know this person Zaldy Valerio?

A Yes, sir.

Q Why do you know him?

A Because we were formerly members of the Armed Forces of the Philippines.

x x x x

PROS. PERALTA:

Q When you saw something thrown out at the top of the house, did you do something if any?

A I shouted to seek cover.

x x x x

Q So, what else did you do if any after you shouted, "take cover?"

A I took hold of a flashlight after five minutes and focused the beam of the flashlight on the place where something was thrown.

Q What did you see if any?

A I saw there the lower [part] of the receiver of cal. 45.

x x x x

Q Mr. Witness, at around 4:00 o'clock that early morning of August 28, 2002, do you recall another unusual incident?

A Yes, sir.

Q And can you tell us what was that incident?

A I saw a person throwing something there and the one that was thrown fell on top of the roof of another house.

Q And you saw that person who again threw something from the rooftop of the house?

A Yes, sir.

Q Did you recognize him?

A Yes, sir.

Q Who was that person?

A Zaldy Valerio again.

x x x x

Q Where were you when you saw this Zaldy Valerio thr[o]w something out of the house?

A I was on the road in front of the house.

Q Where was Zaldy Valerio when you saw him thr[o]w something out of the house?

A He was on top of the house.

x x x x

Q Later on, were you able to know what was that something thrown out?

A Yes, sir.

Q What was that?

A Another lower receiver of a cal. 45.

x x x x

Q And what did he tell you?

A It [was] on the wall of another house and it [could] be seen right away.

x x x x

Q What did you do if any?

A We waited for the owner of the house to wake up.

x x x x

Q Who opened the fence for you?

A It was a lady who is the owner of the house.

Q When you entered the premises of the house of the lady, what did you find?

A We saw the lower receiver of this .45 cal. (sic)[21]

The ensuing recovery of the receivers may have been deliberate; nonetheless, their initial discovery was indubitably inadvertent. It is not crucial that at initial sighting the seized contraband be identified and known to be so. The law merely requires that the law enforcer observes that the seized item may be evidence of a crime, contraband, or otherwise subject to seizure.

Hence, as correctly declared by the CA, the two receivers were admissible as evidence. The liability for their possession, however, should fall only on Valerio and not on petitioner.

The foregoing disquisition notwithstanding, we find that petitioner is not liable for illegal possession of part of a firearm.

In dissecting how and when liability for illegal possession of firearms attaches, the following disquisitions in

People v. De Gracia[22] are instructive:

The rule is that ownership is not an essential element of illegal possession of firearms and ammunition. What the law requires is merely possession which includes not only actual physical possession but also constructive possession or the subjection of the thing to one's control and management. This has to be so if the manifest intent of the law is to be effective. The same evils, the same perils to public security, which the law penalizes exist whether the unlicensed holder of a prohibited weapon be its owner or a borrower. To accomplish the object of this law the proprietary concept of the possession can have no bearing whatsoever.

But is the mere fact of physical or constructive possession sufficient to convict a person for unlawful possession of firearms or must there be an intent to possess to constitute a violation of the law? This query assumes significance since the offense of illegal possession of firearms is a *malum prohibitum* punished by a special law, in which case good faith and absence of criminal intent are not valid defenses.

When the crime is punished by a special law, as a rule, intent to commit the crime is not necessary. It is sufficient that the offender has the intent to perpetrate the act prohibited by the special law. Intent to commit the crime and intent to perpetrate the act must be distinguished. A person may not have consciously intended to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself. In the first (intent to commit the crime), there must be criminal intent; in the second (intent to perpetrate the act) it is enough that the prohibited act is done freely and consciously.

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. Such intent to possess is, however, without regard to any other criminal or felonious intent which the accused may have harbored in possessing the firearm. Criminal intent here refers to the intention of the accused to commit an offense with the use of an unlicensed firearm. This is not important in convicting a person under Presidential Decree No. 1866. Hence, in order that one may be found guilty of a violation of the decree, it is sufficient that the accused had no authority or license to possess a firearm, and that he intended to possess the same, even if such possession was made in good faith and without criminal intent.

Concomitantly, a temporary, incidental, casual, or harmless possession or control of a firearm cannot be considered a violation of a statute prohibiting the possession of this kind of weapon, such as Presidential Decree No. 1866. Thus, although there is physical or constructive possession, for as long as the *animus possidendi* is absent, there is no offense committed.[23]

Certainly, illegal possession of firearms, or, in this case, part of a firearm, is committed when the holder thereof:

- (1) possesses a firearm or a part thereof
- (2) lacks the authority or license to possess the firearm.[24]

We find that petitioner was neither in physical nor constructive possession of the subject receivers. The testimony of SPO2 Nava clearly bared that he only saw Valerio on top of the house when the receivers were thrown. None of the witnesses saw petitioner holding the receivers, before or during their disposal.

At the very least, petitioner's possession of the receivers was merely incidental because Valerio, the one in actual physical possession, was seen at the rooftop of petitioner's house. Absent any evidence pointing to petitioner's participation, knowledge or consent in Valerio's actions, she cannot be held liable for illegal possession of the receivers.

Petitioner's apparent liability for illegal possession of part of a firearm can only proceed from the assumption that one of the thrown receivers matches the gun seen tucked in the waistband of her shorts earlier that night.

Unfortunately, the prosecution failed to convert such assumption into concrete evidence.

Mere speculations and probabilities cannot substitute for proof required to establish the guilt of an accused beyond reasonable doubt. The rule is the same whether the offenses are punishable under the Revised Penal Code, which are mala in se, or in crimes, which are malum prohibitum by virtue of special law.[25] The quantum of proof required by law was not adequately met in this case in so far as petitioner is concerned.

The gun allegedly seen tucked in petitioner's waistband was not identified with sufficient particularity; as such, it is impossible to match the same with any of the seized receivers. Moreover, SPO1 Tan categorically stated that he saw Valerio holding two guns when he and the rest of the PISOG arrived in petitioner's house. It is not unlikely then that the receivers later on discarded were components of the two (2) pistols seen with Valerio.

These findings also debunk the allegation in the information that petitioner conspired with Valerio in committing illegal possession of part of a firearm. There is no evidence indubitably proving that petitioner participated in the decision to commit the criminal act committed by Valerio.

Hence, this Court is constrained to acquit petitioner on the ground of reasonable doubt. The constitutional presumption of innocence in her favor was not adequately overcome by the evidence adduced by the prosecution.

The CA correctly convicted Valerio with illegal possession of part of a firearm.

In illegal possession of a firearm, two (2) things must be shown to exist: (a) the existence of the subject firearm; and (b) the fact that the accused who possessed the same does not have the corresponding license for it.[26]

By analogy then, a successful conviction for illegal possession of part of a firearm must yield these requisites:

(a) the existence of the part of the firearm; and

(b) the accused who possessed the same does not have the license for the firearm to which the seized part/component corresponds.

In the instant case, the prosecution proved beyond reasonable doubt the

elements of the crime. The subject receivers - one with the markings "United States Property" and the other bearing Serial No. 763025 - were duly presented to the court as Exhibits E and E-1, respectively. They were also identified by SPO2 Nava as the firearm parts he retrieved after Valerio discarded them.[27] His testimony was corroborated by DYKR radio announcer Vega, who witnessed the recovery of the receivers.[28]

Anent the lack of authority, SPO1 Tan testified that, upon verification, it was ascertained that Valerio is not a duly licensed/registered firearm holder of any type, kind, or caliber of firearms.[29] To substantiate his statement, he submitted a certification[30] to that effect and identified the same in court.[31] The testimony of SPO1 Tan, or the certification, would suffice to prove beyond reasonable doubt the second element.[32]

WHEREFORE, premises considered, the February 10, 2009 Decision of the Court of Appeals is hereby REVERSED with respect to petitioner Elenita Fajardo y Castro, who is hereby ACQUITTED on the ground that her guilt was not proved beyond reasonable doubt.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ. concur

[1] Penned by Executive Justice Antonio L. Villamor, with Associate Justices Stephen C. Cruz and Florito S.

Macalino, concurring; rollo, pp. 71-84.

[2] Id. at 32-69.

[3] Information; CA rollo, pp. 6-7. (Emphasis supplied.)

[4] Supra note 2, at 33.

[5] Id.

[6] Supra notes 1 and 2.

[7] CA rollo, pp. 60-90; see also Exhibits 2 & 2a, records, Vol. I, p. 37.

[8] Supra note 2, at 49-63.

[9] Id. at 64-68.

[10] Supra note 1, at 78-79.

[11] Rollo, pp. 85-90.

[12] Id. at 92-93.

[13] Approved on June 6, 1997.

[14] Emphasis supplied.

[15] Emphasis supplied.

[16] In fact, the signing prosecutor did not even cite Section 1; see Information, supra note 3.

[17] The purpose of the rule against duplicity of offense, embodied in Sec. 13, Rule 110 of the Rules of Court, is to give the defendant the necessary knowledge of the charge so that he may not be confused in his defense. (F. Regalado, Remedial Law Compendium, Volume II [8th ed., 2000], citing *People v. Ferrer*, 101 Phil. 234, 270 [1957]).

[18] *People v. Go*, 457 Phil. 885, 926 (2003), citing *People v. Doria*, G.R. No. 125299, January 22, 1999, 301 SCRA 668, 704-705.

[19] *People v. Go*, supra, at 928, citing *People v. Musa*, 217 SCRA 597, 610 (1993) and *Harris v. United States*, 390 U.S. 192, 72 L. ed. 231 (1927).

[20] *People v. Doria*, supra note 18, at 711.

[21] TSN, August 25, 2004, pp. 5-14.

[22] G.R. Nos. 102009-10, July 6, 1994, 233 SCRA 716.

[23] Id. at 725-727. (Citations omitted.)

[24] See *People v. Dela Rosa*, G.R. No. 84857, January 16, 1998, 284 SCRA 158, 167, citing *People v. Caling*, G.R. No. 94784, May 8, 1992, 208 SCRA 827.

[25] *People v. Dela Rosa*, id. at 172.

[26] See *Teofilo Evangelista v. The People of the Philippines*, G.R. No. 163267, May 5, 2010; *People v. Eling*, G.R. No. 178546, April 30, 2008, 553 SCRA 724, 738; *Advincula v. Court of Appeals*, 397 Phil. 641, 649 (2000).

[27] Q Now, when you saw this lower receiver of the cal. 45, what did you do if any?

A I called some uniformed men and asked them to guard the place.

Q You did not right away pick it up?

A No, sir, because we waited for some media persons for them to see what was thrown.

Q Were (sic) the media people eventually arrived?

A Yes, sir.

Q Were they able to see this lower receiver of cal. 45?

A Yes, sir.

x x x x

Q Were you the one who actually picked up this lower receiver of the cal. 45?

A Yes, sir, I picked it with the help of a wire.

Q If that lower receiver of cal. 45 including the wire in picking it up is shown to you, will you be able to identify them?

A Yes, sir.

Q I am showing to you a receiver of the cal. 45 already marked as Exhibit E, please go over the same and tell if this is the same lower receiver of cal. 45 including the wire?

A Yes, sir.

x x x x

Q You said that Zaldy Valerio threw something out of the house towards the direction of another house. Can you remember having said so?

A Yes, sir.

x x x x

Q And you cannot enter this if the owner of the house will not open the gate for you?

A Yes, sir.

Q And so, were you able to enter this house?

A They let us in because they opened the fence.

x x x x

Q When you entered the premises of the house of the lady, what did you find?

A We saw the lower receiver of this .45 cal.

Q If that lower receiver of cal. 45 will be shown to you, will you be able to identify the same?

A Yes, sir.

Q I am showing to you this lower receiver of the cal. 45 already marked as Exhibit E-1, is that the same lower receiver of cal. 45 which you saw in the early morning of August 28, 2002?

A Yes, sir.

Q What did you do with that lower receiver?

A I picked it up and when I have picked it up, turned it over to our investigator.

Q Can you tell us how did you pick up that lower receiver?

A Through the use of a wire.

Q Was there any media people present when you picked up this lower receiver of the cal. 45?

A Many. (TSN, August 25, 2004, pp. 8-14)

[28] TSN, August 18, 2004, pp. 21-30.

[29] TSN, August 4, 2004, pp. 16-17.

[30] Exhibit G; records, Volume I, p. 8.

[31] TSN, August 4, 2004, p. 16.

[32] Valeroso v. People, G.R. No. 164815, February 22, 2008, 546 SCRA 450, 468-469.

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