

BENJAMIN TOGADO Y PAILAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 260973, August 06, 2024

Ponente: LEONEN, SAJ.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-260973/>

LEONEN, SAJ.:

In cases involving violations of Republic Act No. 10591 or the Comprehensive Firearms and Ammunition Regulation Act, the prosecution should present before the court the exact same firearm that was confiscated from the accused. Further, the prosecution should prove that the integrity of the confiscated firearm was preserved. Otherwise, the accused should be acquitted based on reasonable doubt.

On May 28, 2014, Judge Cynthia R. Marino Ricablanca of the Regional Trial Court of Santa Cruz, Laguna issued Search Warrant No. 14-948 against Benjamin Togado (Togado).[1]

A portion of the Search Warrant stated:

It appears to the satisfaction of the undersigned Presiding Judge after examining under oath the applicant PO3 Arnel P. Bigata, Chief Intel, Magdalena MPS, Magdalena, Laguna, and his witness that there is probable cause to believe that the crime of Violation of R.A. 10591 (Comprehensive Firearms & Ammunitions [sic] Regulation Act), has been committed and there are good and sufficient reasons to believe that Benjamin Togado, Jr. has in his possession and control/custody unlicensed firearms and ammunitions [sic] which may be found at his residence/premises at Brgy. Buenavista, Magdalena, Laguna, and as shown in the attached sketch, which should be seized and brought to the undersigned, to wit:

- a. ONE (1) cal. [.45] pistol;
- b. ONE (1) 9mm pistol;
- c. ONE (1) cal. .38 revolver; and
- d. Assorted ammunitions [sic].[2]

On May 29, 2014, Senior Inspector Jesus Lintag assigned Police Officer I Mar San Luis (PO1 San Luis), PO1 Marvin Alcantara (PO1 Alcantara), PO3 Emerson Bautista (PO3 Bautista), and PO3 Arnel Bigata (PO3 Bigata; collectively, the search warrant team) to carry out the search. PO3 Bigata was the team leader, while PO1 San Luis and PO1 Alcantara were the searchers.[3]

The search warrant team was first briefed before proceeding to Togado's house.

Upon arrival, the police officers showed the Search Warrant to Togado and explained its contents.[4] A few minutes later, Barangay Kagawad Juan E. Esquibel (Barangay Kagawad Esquibel) also arrived and told the search warrant team to begin the search.[5]

When the search warrant team entered the house, Togado "pointed to the police officers a .45-caliber pistol placed on top of a chair." [6]

PO1 San Luis inspected the firearm and found that its magazine had five live ammunitions.[7] PO1 San Luis

secured the firearm and magazine by placing these items inside a ziplock plastic and marking the plastic with "MMS-01 5/29/14." [8]

The rest of the search warrant team did not find any other firearm within the premises. [9]

Thereafter, the search warrant team prepared a Certification of Orderly Search signed by PO3 Bigata as the team leader and Barangay Kagawad Esquibel as witness. [10]

The search warrant team also took photographs and prepared an inventory of the seized items. [11] The inventory was signed by Barangay Kagawad Esquibel as witness, together with PO1 San Luis and PO1 Alcantara as the seizing officers. [12]

The search warrant team informed Togado of his rights as an accused and arrested him. [13]

At the police station, Togado explained that he would use the confiscated firearm whenever he would do his rounds in the barangay ("nagroronda"). [14]

The confiscated firearm was then turned over by PO1 San Luis to PO3 Bautista. [15]

The Firearms and Explosives Office of the Philippine National Police certified that Togado was "not a registered firearm holder of any kind or caliber per verification." [16]

Togado was subsequently charged with violation of Section 28 of Republic Act No. 10591 or the Comprehensive Firearms and Ammunition Regulation Act for illegal possession of firearms and ammunition. The Information states:

That on the [sic] May 29, 2014, on or about 6:45 in the evening, at Brgy. Buenavista, Municipality of Magdalena, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully[,] and feloniously have in his possession, custody[,] and control one (1) cal. 45 pistol with Serial No. 738115, five (5) pieces of live ammunitions for calibre [sic] .45 firearm, one (1) magazine in violation of the aforementioned law.

CONTRARY TO LAW. [17]

During trial, PO1 San Luis testified, thus:

Q:

What portion of the house did you search first?

A:

When we entered the house[,] Benjamin Togado readily pointed to us the location of the gun sir.

Q:

What portion of the house the gun is located?

A:

Near the door of the house it is on top of the chair sir.

Q:

When he pointed the gun to the team what did he do next?

A:

I immediately placed it on plastic and wipe [sic] it with MS-01.

Q:

On what particular gun was pointed to by the accused?

A:

45 caliber sir.

Q:

Was it loaded when you saw it?

A:

Yes, it is loaded sir.

Q:

How many live ammunitions?

A:

Five sir.

Q:

And there is also a magazine also of that same caliber?

A:

Yes sir.

Q:

Did you place it on a plastic or what?

A:

Zip lock plastic sir.

Q:

And based on the markings that you place [sic] on the plastic bag will you be able to identify that gun?

A:

Yes sir.

Q:

Where is the gun now?

A:

In my possession sir.

Q:

And can you produce the same to this representation?

Interpreter:

Witness is producing a gun there is a marking Magdalena MPS and there is also magazine and there is MAG MPS who paced [sic] this marking?

A:

I sir, when I recovered this gun I placed it in a plastic and that plastic I marked it as MMS-01.[18]

Togado filed a Demurrer to Evidence but it was denied for lack of merit. Togado was ordered to present evidence, but his counsel manifested that the defense would be waiving its right to present evidence.[19]

The Regional Trial Court found Togado guilty beyond reasonable doubt of illegal possession of firearms and ammunition.[20] It found that the documentary and testimonial evidence presented by the prosecution were sufficient to support a conviction.

The dispositive portion of the trial court's Decision states:

WHEREFORE, premises considered, judgment is hereby rendered finding accused BENJAMIN TOGADO y PAILAN GUILTY BEYOND REASONABLE DOUBT of Violation of R.A. 10591 and sentencing him to suffer the penalty of imprisonment for an indeterminate term of eight (8) years, eight (8) months and one day, as minimum, to nine (9) years and four (4) months, as maximum.

The firearm subject of this case is ordered confiscated in favor of the government and the Branch Clerk of Court is hereby ordered to transmit the same to the appropriate government agency for proper disposition.

SO ORDERED.[21]

The Court of Appeals affirmed the trial court's ruling. It cited[22] *People v. Olarte*,[23] where this Court discussed the two elements to establish the corpus delicti or the body of the crime in illegal possession of firearms:

In the crime of illegal possession of firearms, the corpus delicti is the accused's lack of license or permit to possess or carry the firearm, as possession itself is not prohibited by law. To establish the corpus delicti, the prosecution has the burden of proving that the firearm exists and that the accused who owned or possessed it does not have the corresponding license or permit to possess or carry the same. However, even if the existence or the firearm must be established, the firearm itself need not be presented as evidence for it may be established by testimony, even without the presentation of the said firearm.[24] (Emphasis in the original)

The dispositive portion of the Court of Appeals Decision[25] states:

WHEREFORE, the appeal is DENIED. The appealed Judgment dated April 30, 2019, of the Regional Trial Court of Santa Cruz, Laguna, Branch 28, finding Benjamin Togado y Pailan guilty beyond reasonable doubt of violating Section 28 of R.A. No. 10591, or the Comprehensive Firearms and Ammunition Regulation Act, is AFFIRMED in toto.

SO ORDERED.[26]

Togado filed a Motion for Reconsideration but it was denied by the Court of Appeals in a Resolution[27] dated May 11, 2022.

Hence, this Petition.

Petitioner Togado questions the Decision of the Court of Appeals, arguing that the Search Warrant is not valid

because there is allegedly no evidence that the judge "personally and thoroughly examined the applicant and his witnesses." [28] Thus, any evidence obtained during the search is supposedly inadmissible. [29]

Petitioner also argues that the prosecution was unable to establish that all the elements of the crime charged are present. [30] He contends that since the Search Warrant is supposedly invalid, all the items seized are inadmissible. Therefore, petitioner holds that there is no evidence against him. [31]

He likewise points out that the Certification issued by the Firearms and Explosives Office of the Philippine National Police (PNP) "merely states that the petitioner is not a registered firearm holder of any kind [or] caliber," [32] but it does not state "that the subject firearm was not licensed nor registered to the petitioner." [33]

Petitioner also highlights PO1 San Luis's testimony that he was not the one who placed the marking "Magdalena MPS" on the gun and the marking "MAG MPS" on the magazine that were presented to the trial court. [34] PO1 San Luis also admitted that "the plastic/[ziplock] where he placed the marking 'MMS-01 5/29/14' was destroyed when he retrieved it from the evidence custodian of Magdalena Municipal Police Station." [35]

Moreover, PO1 San Luis was uncertain whether the firearm presented in court was the same firearm confiscated from petitioner. [36]

Through a Resolution [37] dated September 28, 2022, the Court required respondent to comment.

In its Comment, [38] the Office of the Solicitor General argues that the Search Warrant was not defective because it stated with particularity the place to be searched. [39]

Based on jurisprudence, respondent maintains that the phrase "which may be found at his residence/premises at Brgy. Buenavista, Magdalena, Laguna, and as shown in the attached sketch" is a sufficient description of the place to be searched. [40]

In any case, respondent points out that the prosecution did not file any motion to quash the Search Warrant. It notes that the prosecution even presented in evidence the Certification of Orderly Search. [41]

Respondent also argues that the trial court found that the firearm presented in court was the very same firearm confiscated from petitioner. The trial court held:

The firearm, subject of the instant case, was presented and identified by both PO1 San Luis and PO1 Alcantara in open Court. Though, the certainty of whether the firearm presented in Court was the very same firearm confiscated from the house of the accused was questioned, as the marking MMS-01 5/29/14 was not placed by PO1 San Luis on the firearm itself but on a ziplock plastic where the firearm was placed, that the firearm, when presented in Court was already placed in a different plastic container and that he admitted that he was not certain that it was the same firearm recovered from the accused, this Court believes that the first element abovementioned was met by the prosecution. [42]

In addition, PO1 Alcantara testified that the firearm he withdrew from the evidence custodian is the same firearm confiscated during the search:

Q:

In your station, who has access to the gun?

A:

What I know is that, only Officer Mar San Luis and I can get that gun when there is a hearing, sir.

Q:

Who is the evidence custodian of your station?

A:

PO3 Bautista, sir.

Q:

And this PO3 Bautista has no access to the gun?

A:

Yes, sir, he has access because he was the one in custody of that gun, sir.

Q:

Before you went to the hearing today, who retrieved the gun from the station?

A:

I, sir.

Q:

It was not the evidence custodian?

A:

I got it from the evidence custodian, sir.[43]

Assuming that the firearm presented is not the same firearm that was confiscated, respondent notes that "jurisprudence dictates that the existence of said firearm can still be established by testimony and other evidence on record." [44]

Respondent cites *People v. Malinao*, [45] where this Court held that:

In this case, while the firearm was not presented in evidence, the existence of the same was sufficiently established by (a) the categorical testimonies of the prosecution eyewitnesses that appellant was in possession of a firearm handgun described as "caliber 32," a "shortgun", and a "small gun" and had used it to kill Nestor, (b) the paraffin test on the hands of appellant tested positive for the presence of gunpowder residue, and (c) the ballistics report revealed that the two bullets taken from the body of Nestor were fired from the barrel of a caliber .38 firearm. The prosecution proved the second element by presenting a certification from the PNP to the effect that appellant is "neither a firearm holder nor a licensee of any firearm of whatever caliber." [46]

The Office of the Solicitor General also cites *People v. Dulay*: [47]

The existence of the firearm can be established by testimony, even without the presentation of the firearm. It was established that Elmer and Marcelina Hidalgo died of, and Pedro Hidalgo sustained, gunshot wounds. The ballistic examination of the slugs recovered from the place of the incident showed that they were fired from a .30 carbine rifle and a .38 caliber firearm. The prosecution witnesses positively identified appellant as one of those who were holding a long firearm. It was established that appellant was not a licensed firearm holder. Hence, the trial court and the Court of Appeals likewise correctly appreciated the use of unlicensed firearm as an aggravating circumstance. [48]

For the Office of the Solicitor General, the testimonies of PO1 San Luis and PO1 Alcantara, the photographs taken during the search, and the inventory of seized items are sufficient to prove that a .45-caliber pistol with serial number 738115 was confiscated from Togado, thus proving the first element that the firearm exists. [49]

It also posits that the second element—that the accused does not have the corresponding license or permit to possess or carry the firearm—was proven by the Certification issued by the Firearms and Explosives Office of the Philippine National Police, stating that Togado "is not a registered firearm holder of any kind or caliber." [50]

This Court resolves the following issues:

First, whether the Court of Appeals erred in ruling that Search Warrant No. 14-948 was valid; and

Second, whether the Court of Appeals erred in affirming the trial court's Decision, finding petitioner Togado guilty of violation of Republic Act No. 10591.

The Petition is granted.

I

The Court of Appeals did not err in ruling that the Search Warrant was valid, but a review of the records shows that petitioner should be acquitted on reasonable doubt because the evidence was tampered with, and the witness failed to identify with certainty the firearm and live ammunition confiscated from petitioner.

On the validity of the Search Warrant, petitioner argues that there is nothing on record that would prove that the judge personally examined the complainant and the witnesses before issuing the Search Warrant. [51] Petitioner also argues that the address at "Brgy. Buenavista, Magdalena, Laguna" does not describe the place to be searched with sufficient particularity. [52]

Ogayon v. People [53] instructs us that "failure to attach to the records the depositions of the complainant and [their] witnesses and/or the transcript of the judge's examination, though contrary to the Rules, does not by itself nullify the warrant" because such requirement "is merely a procedural rule and not a component of the right." [54] It was further clarified that in the absence of records, "a warrant may still be upheld if there is evidence in the records that the requisite examination was made and probable cause was based thereon." [55]

In this case, the Search Warrant itself stated the name of the applicant and that a witness was examined. [56] In addition, PO1 Alcantara testified that before applying for the issuance of a search warrant, he inquired with the Firearms and Explosives Office on whether petitioner is a registered firearm holder. [57]

Moreover, the place to be searched and the items to be seized were described with sufficient particularity. The Search Warrant had a map attached to it, and it also enumerated the firearms to be confiscated. [58]

Hence, there was no error on the part of the Court of Appeals in upholding the validity of the Search Warrant.

II

Nevertheless, we rule that petitioner should be acquitted on reasonable doubt.

To reiterate, the elements of violation of Section 28 of Republic Act No. 10591 are:

(a)

the existence of the subject firearm; and

(b)

the fact that the accused who possessed or owned the same does not have the corresponding license for it. [59]

The first element was not proven because of the prosecution's failure to show that the integrity of the firearm was preserved. Republic Act No. 10591 does not contain any provision on chain of custody and the proper handling of seized firearms and ammunition. However, it should be stressed that the Philippine National Police has an

operations manual to guide its members on various matters, including the handling and preservation of the integrity of confiscated firearms. At the very least, the police officers should have followed its internal operations manual.

The 2021 Revised Philippine National Police Operational Procedures is the prevailing manual, but considering that this case involves a Search Warrant that was issued in 2014, we take a look at the 2013 Philippine National Police Operational Procedures Manual.[60] The pertinent provision of the operations manual states:

15.3 Mandatory Examination of Firearm Seized/Confiscated during Police Operation

- All firearms, cartridges, and slugs seized, captured or recovered during checkpoints or pursuit operations or in any other police operations including those seized during the service of warrants and, more importantly, those recovered from the crime scene shall immediately be submitted to the local Crime Laboratory (CLO) which shall in turn process it for capturing and cross-matching through the Integrated Ballistics Identification System (IBIS);
- The field investigation or investigator-on-case (IOC) shall submit the photo of the firearm and the receipt issued by the local Crime Laboratory Office for the said firearm/cartridges/slugs to the prosecutor or the court;
- Should the prosecutor eventually require the physical submission of the firearm, the investigator-on-case shall manifest with the prosecutor or court that a subpoena be issued for the Crime Laboratory which issued the receipt to present the said firearm; and
- It is also imperative that the chain of custody be strictly observed and documented and therefore, as much as practicable, it shall be the investigator-on-case (IOC) who shall personally submit the recovered firearms/shells/slugs to the local Crime Laboratory. (Emphasis supplied)

Notably, the provision does not state where the marking should be placed; only that "the chain of custody be strictly observed and documented." The phrase may lack specificity, but it is still a directive that a confiscating officer must be able to keep a record of the handling, safekeeping, and preservation of the seized firearm. For confiscated firearms and ammunition, it is more prudent to place the marking on the confiscated item itself, not on the plastic. Law enforcers and courts should remember that the crucial piece of evidence is the confiscated item, not the plastic containing it. Once the confiscated item is marked and placed inside a plastic container, the container should also be sealed in a manner that would indicate whether the plastic has been tampered with.

During trial, PO1 San Luis admitted that "he did not indicate any marking on the gun itself, its magazine and the live ammunition but only on the ziplock plastic where the gun was placed." [61] The transcript of his testimony partly states:

Interpreter:

Witness is producing a gun there is a marking Magdalena MPS and there is also magazine and there is MAG MPS who placed [sic] this marking?

A:

I, sir, when I recovered this gun I placed it in a plastic and that plastic I marked it as MMS-01.[62] (Emphasis supplied)

PO1 Alcantara corroborated that PO1 San Luis marked the plastic container, not the gun. He also testified that PO1 San Luis marked the plastic with "MMS-01" and the date "[5/29/14]." [63] Not only did the evidence produced in court bore a different marking, but it also appears that the gun and the magazine itself bore the marking, not the plastic.

Even the Office of the Solicitor General stated in its Comment that "PO1 San Luis then placed said firearm and ammunition inside a plastic ziplock and marked the same with 'MMS-01 5/29/14.'"[64]

Petitioner highlights PO1 San Luis's admission that when he retrieved the firearm from the evidence custodian, the plastic marked "MMS-01 5/29/14" was destroyed.[65] When the firearm was presented in court, it was in a different container and PO1 San Luis could not ascertain whether it was the very same firearm confiscated from petitioner.[66] These allegations were noted by the trial court in its Decision:

Though, the certainty of whether the firearm presented in Court was the very same firearm confiscated from the house of the accused was questioned, as the marking MMS-01 5/29/14 was not placed by PO1 San Luis on the firearm itself but on a ziplock plastic where the firearm was placed, that the firearm, when presented in Court was already placed in a different plastic container and that he admitted that he was not certain that it was the same firearm recovered from the accused[.][67]

The discrepancy in the markings, the tampering of the plastic bag, and PO1 San Luis's admissions in court lead us to conclude that there exists reasonable doubt as to the guilt of petitioner.

The Olarte case,[68] cited by the Court of Appeals, has a different set of facts and, thus, cannot be applied in this case. The police officers in Olarte were able to identify the confiscated item and were also able to explain why the marking placed on the hand grenade differed from the marking in the examination report. Specifically:

As to the absence of the marking "RMI2" which was placed by PO2 Intud on the grenade marked as Exhibit "B-1," the same does not affect the evidentiary value of said object evidence. Said marking was placed by PO2 Intud on the grenade before it was turned over to the PNP[-]EOD for examination, as shown by the Acknowledgement Receipt dated 23 July 2014 prepared by SPO2 Radaza and duly received by SPO2 Tingson. However, after the examination conducted by the PNP[-]EOD where it was determined that the grenade had "Safety Pull Ring, Safety Pin, Safety Lever intact and containing COMP B (Co[m]position B) as Explosive Filler," the masking tape containing the marking "RMI2" was apparently removed and/or "overlapped" with another masking tape. As such, the Certification dated 28 July 2014 issued by SPO2 Tingson of the EOD Team no longer reflected the "RMI2" marking on the grenade. In any event, what is crucial is the testimony of SPO2 Tingson that the grenade marked as Exhibit "B--1" is the same grenade turned over to him by SPO2 Radaza.[69]

Unlike in Olarte, the police officer in this case, PO1 San Luis, could not testify with certainty whether the firearm presented in court was the same firearm confiscated from Togado. He also could not explain why the container presented in court bore the marking "MAG MPS," when the records of this case indicate that the marking placed upon confiscation of the firearm was "MMS-01 5/29/14." Worse, there was an admission that the container bearing the marking "MMS-01 5/29/14" was destroyed. In essence, the integrity of the seized item was not preserved.

The cases cited by the Office of the Solicitor General are likewise not applicable. Malinao[70] and Dulay[71] both involved murder, where bullets were retrieved from the bodies of the victims. Even if the firearms used in those cases were not presented in court, the presence of bullets is enough to show that a firearm was used to kill the victims. In addition, the use of a firearm is not the corpus delicti in murder.

Jurisprudence dictates that the corpus delicti in illegal possession of firearms is the lack of license to own or possess a firearm.[72] However, for us to rule, in this case, that there is no need to present the firearm as evidence would have dangerous consequences. It would be easy for anyone to plant a firearm as evidence, arrest the person, then charge them for illegal possession if their name does not appear in the database of the Firearms and Explosives Office of the Philippine National Police. Anyone could easily be convicted by the mere issuance of a certification that they do not have a license to own and possess a firearm. Thus, the preservation of the integrity of

the confiscated firearm is crucial.

Another reason why the firearm should be presented in court is its effect on the impossible penalty for violation of Republic Act No. 10591. The classification of the firearm determines the impossible penalty.[73] The penal provision of Republic Act No. 10591 provides:

SECTION 28. Unlawful Acquisition, or Possession of Firearms and Ammunition. — The unlawful acquisition, possession of firearms and ammunition shall be penalized as follows:

(a)

The penalty of prision mayor in its medium period shall be imposed upon any person who shall unlawfully acquire or possess a small arm;

(b)

The penalty of reclusion temporal to reclusion perpetua shall be imposed if three (3) or more small arms or Class- A light weapons are unlawfully acquired or possessed by any person;

(c)

The penalty of prision mayor in its maximum period shall be imposed upon any person who shall unlawfully acquire or possess a Class-A light weapon;

(d)

The penalty of reclusion perpetua shall be imposed upon any person who shall unlawfully acquire or possess a Class-B light weapon;

(e)

The penalty of one (1) degree higher than that provided in paragraphs (a) to (c) in this section shall be imposed upon any person who shall unlawfully possess any firearm under any or combination of the following conditions:

(1)

Loaded with ammunition or inserted with a loaded magazine;

(2)

Fitted or mounted with laser or any gadget used to guide the shooter to hit the target such as thermal weapon sight (TWS) and the like;

(3)

Fitted or mounted with sniper scopes, firearm muffler or firearm silencer;

(4)

Accompanied with an extra barrel; and

(5)

Converted to be capable of firing full automatic bursts.

(f)

The penalty of prision mayor in its minimum period shall be imposed upon any person who shall unlawfully

acquire or possess a major part of a small arm;

(g)

The penalty of prision mayor in its minimum period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a small arm or Class-A light weapon. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a small arm, the former violation shall be absorbed by the latter;

(h)

The penalty of prision mayor in its medium period shall be imposed upon any person who shall unlawfully acquire or possess a major part of a Class-A light weapon;

(i)

The penalty of prision mayor in its medium period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a Class-A light weapon. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a Class-A light weapon, the former violation shall be absorbed by the latter;

(j)

The penalty of prision mayor in its maximum period shall be imposed upon any person who shall unlawfully acquire or possess a major part of a Class-B light weapon; and

(k)

The penalty of prision mayor in its maximum period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a Class-B light weapon. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a Class-B light weapon, the former violation shall be absorbed by the latter.

III

Republic Act No. 10591 recognizes that firearms may be used in the commission of other crimes. Hence, Section 29 of the same law provides for another set of rules on how to determine the imposable penalty in such cases.

SECTION 29. Use of Loose Firearm in the Commission of a Crime. — The use of a loose firearm, when inherent in the commission of a crime punishable under the Revised Penal Code or other special laws, shall be considered as an aggravating circumstance: Provided, That if the crime committed with the use of a loose firearm is penalized by the law with a maximum penalty which is lower than that prescribed in the preceding section for illegal possession of firearm, the penalty for illegal possession of firearm shall be imposed in lieu of the penalty for the crime charged: Provided, further, That if the crime committed with the use of a loose firearm is penalized by the law with a maximum penalty which is equal to that imposed under the preceding section for illegal possession of firearms, the penalty of prision mayor in its minimum period shall be imposed in addition to the penalty for the crime punishable under the Revised Penal Code or other special laws of which he/she is found guilty.

If the violation of this Act is in furtherance of, or incident to, or in connection with the crime of rebellion or insurrection, or attempted coup d' etat, such violation shall be absorbed as an element of the crime of rebellion or insurrection, or attempted coup d' etat.

If the crime is committed by the person without using the loose firearm, the violation of this Act shall be considered as a distinct and separate offense.

In acquitting petitioner, we have discussed that there was reasonable doubt because the prosecution was unable to prove that the firearm presented in court was the exact same firearm confiscated from him. However, we recognize that in previous cases,[74] this Court pronounced that "the firearm itself need not be presented as evidence for it may be established by testimony." [75] To avoid any iota of doubt and to protect an accused's constitutional right to be presumed innocent,[76] it is imperative that the exact same firearm recovered from an accused be presented in court. The nonpresentation of firearms should be the exception rather than the rule.

For clarity on whether the exact same firearm must be presented in court, we lay down the following guidelines:

- Where an accused is charged with violation of Republic Act No. 10591, the presentation of the exact same firearm is required for the court to determine whether the accused should be convicted, and if so convicted, the proper penalty to be imposed.
- When a firearm is used in the commission of a crime which prescribes a lesser penalty, Section 29 of Republic Act No. 10591 states that the penalty imposable shall be the penalty prescribed for illegal possession of firearms. In this situation, the use of a firearm is a qualifying circumstance and the penalty imposable depends on the classification of the firearm. Thus, the presentation of the exact same firearm is also required. The rule remains that "qualifying circumstances must be proven with the same quantum of evidence as the crime itself." [77]
- When the use of a firearm is an aggravating circumstance, or is inherent in or absorbed by the nature of the crime charged, the presentation of the exact same firearm is preferred, but the presentation of secondary evidence may be considered by the courts.
- In all situations where a firearm is confiscated or recovered from an accused, the confiscated firearm must be marked, photographed, and duly authenticated, and its integrity preserved. The failure to comply with the foregoing requirements should not, however, automatically result in an acquittal, but may constitute reasonable doubt as to the guilt of the accused if not sufficiently justified.

For violations of Republic Act No. 10591, courts should not simply disregard the nonpresentation of the firearm that was actually confiscated. To say that the presentation of the confiscated firearm is not required may cause the imposition of the wrong penalty, or worse, cause the conviction of an innocent person. The presentation of a certificate stating that the accused is not licensed to own and possess the confiscated firearm is not proof beyond reasonable doubt that would justify conviction for violation of Republic Act No. 10591.

ACCORDINGLY, the Petition is GRANTED. The October 13, 2021 Decision and May 11, 2022 Resolution of the Court of Appeals in CA-G.R. CR No. 43471 are REVERSED and SET ASIDE. Petitioner Benjamin Togado y Pailan is ACQUITTED for the prosecution's failure to prove his guilt beyond reasonable doubt. He is ordered RELEASED from confinement unless he is being held for some other legal grounds.

Let a copy of this Decision be furnished to the Chief of the Philippine National Police for their information.

Let entry of judgment be issued immediately.

SO ORDERED.

Hernando, Inting, Zalameda, M. Lopez, Gaerlan, Rosario, J. Lopez, Dimaampao, Marquez, Kho, Jr., and Singh, JJ., concur.

Gesmundo, C.J. and Caguioa, J., see concurring opinion.

Lazaro-Javier, [*] J., on official business.

[*] On official business.

[1] Rollo, p. 36. The Court of Appeals Decision dated October 13, 2021 in CA-G.R. CR No. 43471 was penned by Associate Justice Carlito B. Calpatura, and was concurred in by Presiding Justice Remedios A. Salazar-Fernando and Associate Justice Maria Elisa Sempio Diy of the First Division, Court of Appeals, Manila.

[2] Id. at 41.

[3] Id. at 36.

[4] Id. at 37.

[5] Id.

[6] Id.

[7] Id.

[8] Id.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

[13] Id.

[14] Id.

[15] Id.

[16] Id.

[17] Id. at 36.

[18] Id. at 43-44.

[19] Id. at 38.

[20] Id.

[21] Id.

[22] Id. at 45-46.

[23] 848 Phil. 821 (2019) [Per J. Gesmundo, First Division].

[24] Id. at 847.

[25] Rollo, pp. 35-47. The Court of Appeals Decision dated October 13, 2021 in CA-G.R. CR No. 43471 was penned by Associate Justice Carlito B. Calpatura, and was concurred in by Presiding Justice Remedios A. Salazar-Fernando and Associate Justice Maria Elisa Sempio Diy of the First Division, Court of Appeals, Manila.

[26] Id. at 46.

[27] Id. at 49-52. The Court of Appeals Resolution dated May 11, 2022 was penned by Associate Justice Carlito

B. Calpatura, and was concurred in by Presiding Justice Remedios A. Salazar-Fernando and Associate Justice Maria Elisa Sempio Diy of the Former First Division, Court of Appeals, Manila.

[28] Id. at 19.

[29] Id. at 22.

[30] Id. at 23-26.

[31] Id. at 23.

[32] Id. at 26.

[33] Id.

[34] Id. at 24.

[35] Id.

[36] Id.

[37] Id. at 118.

[38] Id. at 102-114.

[39] Id. at 103.

[40] Id. at 104.

[41] Id. at 105.

[42] Id. at 106.

[43] Id. at 107.

[44] Id. at 108.

[45] 467 Phil. 432 (2004) [Per J. Austria-Martinez, En Banc].

[46] Id. at 443.

[47] 561 Phil. 764 (2007) [Per J. Carpio, En Banc].

[48] Id. at 771-772.

[49] Rollo, pp. 111-112.

[50] Id. at 112.

[51] Id. at 19.

[52] Id. at 20.

[53] 768 Phil. 272 (2015) [Per J. Brion, Second Division].

[54] Id. at 284.

[55] Id. at 285

[56] Rollo, p. 41.

[57] Id. at 40.

[58] Id. at 42.

[59] *Castil v. People*, G.R. No. 253930, July 13, 2022 [Per J. Hernando, First Division] at 9. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[60] The 2013 Philippine National Police Operational Procedures Manual has been repealed by the 2021 Revised Philippine National Police Operational Procedures.

[61] Rollo, p. 70.

[62] Id. at 44.

[63] Id. at 90-91.

[64] Id. at 125.

[65] Id. at 24.

[66] Id.

[67] Id. at 71.

[68] 848 Phil. 821 (2019) [Per J. Gesmundo, First Division].

[69] Id. at 855.

[70] 467 Phil. 432 (2004) [Per J. Austria-Martinez, En Banc].

[71] 561 Phil. 764 (2007) [Per J. Carpio, En Banc].

[72] *People v. Alcira*, G.R. No. 242831, June 22, 2022 [Per J. Lopez, J., Second Division] at 18. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website. See also *Zafe III v. People*, G.R. No. 226993, May 3, 2021 [Per J. Leonen, Third Division].

[73] See Republic Act No. 10591 (2013), sec. 28.

[74] *People v. Olarte*, 848 Phil. 821 (2019) [Per J. Gesmundo, First Division]; *People v. Narvasa*, 359 Phil. 168 (1998) [Per J. Panganiban, First Division].

[75] *People v. Olarte*, 848 Phil. 821, 847 (2019) [Per J. Gesmundo, First Division].

[76] CONST., art. III, sec. 14(2).

[77] *People v. Aguila*, 892 Phil. 308, 319 (2020) [Per J. Caguioa, First Division].

SEPARATE CONCURRING OPINION

GESMUNDO, C.J.:

I respectfully write in relation to the above-captioned case.

I concur in granting the Petition and acquitting Benjamin Togado (Togado), as held in the ponencia circulated by the esteemed Senior Associate Justice Marvic M.V.F. Leonen. However, I write to respectfully share my perspective on: (a) the applicability of the chain of custody rule, and (b) the necessity of presenting the firearm

confiscated in court, in cases of illegal possession of firearms and ammunitions.

The records show that, on May 28, 2014, Judge Cynthia R. Marino Ricablanca of the Regional Trial Court (RTC) of Laguna issued a search warrant (warrant) against Togado based on probable cause that he was in possession of unlicensed firearms and ammunition in violation of Republic Act No. 10591.[1] Pursuant to the warrant, Police Officer I Mar San Luis (PO1 San Luis), PO1 Marvin Alcantara (PO1 Alcantara), Police Officer III Emerson Bautista, and PO3 Arnel Bigata (PO3 Bigata; collectively, the search warrant team) carried out a search on May 29, 2014.[2]

Upon their arrival at Togado's residence, the search warrant team showed him the warrant and explained its contents. When Barangay Kagawad Juan Esquibel (Kagawad Esquibel) arrived, the search warrant team proceeded to conduct the search. When they entered the house, Togado pointed out to them a .45-caliber pistol placed on top of a chair.[3] PO1 San Luis inspected the firearm and noted that its magazine had five live ammunition. He then secured the firearm and the magazine inside a ziplock plastic bag and marked the plastic bag with "MMS-01 5/29/14." The search warrant team then prepared a Certification of Orderly Search, which was signed by PO3 Bigata, as team leader, and Kagawad Esquibel, as witness. They also took photographs and prepared an inventory of the seized items, which was signed by Kagawad Esquibel, as witness, and PO1 San Luis and PO1 Alcantara, as seizing officers. Togado was then arrested.[4]

The Firearms and Explosives Office of the Philippine National Police (FEO-PNP) issued a certification stating that Togado "was not a registered firearm holder of any kind or caliber per verification." Subsequently, Togado was charged with violation of Section 28 of Republic Act No. 10591.[5]

During trial, PO1 San Luis admitted that he failed to put the markings on the gun and the ammunition themselves, but only on the ziplock plastic bag where he stored the items in.[6] The prosecution presented in court a firearm marked "Magdalena MPS" and a magazine marked "MAG MPS." [7]

After trial, the RTC found Togado guilty beyond reasonable doubt of illegal possession of firearms and ammunitions and sentenced him to suffer the penalty of imprisonment for an indeterminate term of eight years, eight months, and one day, as minimum, to nine years, four months, as maximum.[8] On appeal, the Court of Appeals (CA) affirmed the RTC's ruling. The CA, citing *People v. Olarte*, [9] held that in the crime of illegal possession of firearms, the corpus delicti is the accused's lack of license or permit to carry the firearm. It stated that the firearm itself need not be presented as evidence for its existence may be established by testimony.[10] Togado subsequently filed a Motion for Reconsideration which was denied by the CA. Hence, this Petition.[11]

The ponencia granted the Petition.

First, the ponencia upheld the validity of the warrant. The ponencia explained that, contrary to Togado's assertions, the warrant itself stated the name of the applicant and that a witness was examined before its issuance. It also noted that PO1 Alcantara testified that he inquired with the FEO-PNP on whether Togado is a registered firearm holder prior to applying for the issuance of the warrant. Furthermore, it observed that the warrant described with sufficient particularity the place to be searched and the items to be seized. Hence, the ponencia pronounced that there was no error on the CA's part when it upheld the validity of the warrant.[12]

Second, the ponencia held that Togado should be acquitted on reasonable doubt on the basis that the first element of the crime—the existence of the subject firearm—was not proven as the prosecution failed to show that the integrity of the firearm was preserved. It observed that, though Republic Act No. 10591 does not have a provision on the chain of custody and proper handling of seized firearms and ammunitions, the 2013 PNP Operations Manual [13] requires that the "chain of custody be strictly observed and documented" with regard to the firearms

seized during a police operation.[14] It noted that the 2013 PNP Operations Manual is silent on where the marking should be placed. It proceeded to state that the prudent approach would be to place the marking on the confiscated item itself, not on the plastic container. It also observed that, in the present case, PO1 San Luis marked the plastic container, not the gun. Further, it noted that the evidence presented in court bore a different marking than the one PO1 San Luis testified to having placed on the ziplock bag. Therefore, the ponencia concluded that the discrepancy in the markings, the tampering of the plastic bag, and PO1 San Luis's admissions in court show that there is reasonable doubt as to Togado's guilt.[15]

The ponencia further explained that Olarte is inapplicable in the instant case because the police officers therein were able to identify the confiscated item properly, and were able to explain the differences in the relevant markings.[16] Furthermore, it also held that the cases of *People v. Malinao*[17] and *People v. Dulay*,[18] cited by the Office of the Solicitor General, are inapplicable to the present case, as these decisions involved murder and bullets were retrieved from the bodies of the victims. The use of a firearm is also not the *corpus delicti* in murder.[19]

Additionally, the ponencia declared that though the *corpus delicti* in illegal possession of firearms is the lack of license to own or possess it, there is a clear need to present the firearm itself in court in prosecutions under Republic Act No. 10591. Otherwise, it would be easy to simply plant a firearm as evidence, if a person's name does not appear in the database of the FEO--PNP. Also, the presentation of the firearm itself will have an effect on the imposable penalty.[20]

Hence, the ponencia ruled that, "[t]o avoid any iota of doubt and to protect an accused's constitutional right to be presumed innocent, it is imperative that the exact same firearm recovered from an accused be presented in court." [21] Thus, it laid down the following guidelines:

- Where an accused is charged with violation of Republic Act No. 10591, the presentation of the exact same firearm is required for the court to determine whether the accused should be convicted, and if so convicted, the proper penalty to be imposed.
- When a firearm is used in the commission of a crime which prescribes a lesser penalty, Section 29 of Republic Act No. 10591 states that the penalty imposable shall be the penalty prescribed for illegal possession of firearms. In this situation, the use of a firearm is a qualifying circumstance and the penalty imposable depends on the classification of the firearm. Thus, the presentation of the exact same firearm is also required. The rule remains that "qualifying circumstances must be proven with the same quantum of evidence as the crime itself."
- When the use of a firearm is an aggravating circumstance, or is inherent in or absorbed by the nature of the crime charged, the presentation of the exact same firearm is preferred, but the presentation of secondary evidence may be considered by the courts.
- In all situations where a firearm is confiscated or recovered from an accused, the confiscated firearm must be marked, photographed, and duly authenticated, and its integrity preserved. The failure to comply with the foregoing requirements should not, however, automatically result in an acquittal, but may constitute reasonable doubt as to the guilt of the accused if not sufficiently justified.[22]

I concur in the ponencia's grant of the Petition and the resulting acquittal of Togado. However, I write to delve into the principles regarding: (a) the applicability of the chain of custody rule, and (b) the necessity of presenting the firearm confiscated in court, in cases of illegal possession of firearms and ammunitions.

The chain of custody rule is inapplicable where the item seized is unique, readily identifiable, and resistant to

change, such as a firearm or ammunition with special identifying characteristics

I am of the view that the strict application of the chain of custody rule does not apply where the item seized is unique, readily identifiable, and resistant to change. Thus, applying the same to the crime of illegal possession of firearms and ammunitions, the chain of custody rule is inapplicable to a firearm or ammunition with special identifying characteristics.

In the Philippines, the "chain of custody" rule has been defined as the duly recorded, authorized movements, and custody of the seized drug at each stage, from the moment of confiscation, to the receipt in the forensic laboratory at examination until it is presented in court.[23] As enunciated in Olarte, the "chain of custody" rule is utilized primarily as a mode of authenticating illegal substances in order to determine its admissibility.[24] The rationale behind the rule is to safeguard doubts concerning the identity of the seized items, as their identity must be established with moral certainty before the accused is convicted for drug-related crimes.[25]

For drug cases, Republic Act No. 9165, as amended by Republic Act No. 10640, prescribes very specific requirements which must be complied with in relation to this rule:

Sec. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1)

The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items;

(2)

Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3)

A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be

provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification[.][26]

Nonetheless, compliance with a chain of custody rule has also been required in relation to (1) the custody of intercepted and recorded communications acquired through surveillance under the Rules on the Anti--Terrorism Act of 2020 and Related Laws,[27] (2) the assessment of the probative value of DNA evidence,[28] and (3) the recordings captured using body-worn cameras or alternative devices,[29] among others.

To avoid any confusion, it is prudent to clarify that though the term "chain of custody" is used in other laws and rules, this does not mean that the particularities under Republic Act No. 9165 as amended (e.g., two or three-witness rule and the place where marking, inventory and photographing should take place) also apply in such cases.

In general, establishing the chain of custody simply means tracing the evidence's continuous whereabouts. To meet this obligation, crucial representations are required to be made. For example, that a specific officer retrieve the evidence from the crime scene, that a second officer place it in the evidence locker, that a third officer verify that the locker's seal was intact, and so forth,[30] until the time such evidence is presented in court. Hence, unless there is a particular law, rule, or Court decision which prescribes the specificities needed to establish the chain of custody, the prosecution needs only to establish who seized the evidence and how it was handled from its seizure until its presentation in court. Ultimately, these matters must be proven to satisfy the court that the subject evidence was not altered, tampered with, or planted.

A. Evidence which requires strict compliance with the chain of custody rule

With certain specific classes of evidence, due to their very nature and composition, meticulous compliance with the chain of custody rule may be necessary.

First, compliance with the chain of custody rule is often required for fungible evidence, as these have no unique characteristics which distinguish them from other pieces of evidence.[31] In other words, the inability to distinguish between fungible pieces of evidence makes positive identification by mere observation alone virtually impossible.[32] Moreover, the nature of these items makes them particularly susceptible to tampering, loss,[33] planting, and switching. This reason has been expressly recognized by this Court in explaining why strict compliance with the chain of custody is required in the prosecution of drug-related cases.[34]

Second, if the relevance of the pieces of evidence depends on its subsequent laboratory analysis, the chain of custody may be necessary to establish that the item seized was the same item analyzed at the crime laboratory.[35] Dangerous drugs are a prime example of this as the item seized from the accused must first be confirmed to be an illegal substance and this is accomplished through subsequent laboratory testing. Similarly, DNA evidence, which would be subject to laboratory analysis, is another example.

Third, if it is not only the identity of the object, but its condition, which is relevant in the determination of the case, then a chain of custody may be required to establish that the object had not been altered while in the custody of police. In this situation, compliance with the rule serves as a safeguard against undetected contamination or deterioration, such as with blood samples.[36] Further, another example of this would be the intercepted and recorded communications acquired through surveillance under the Rules on the Anti-Terrorism Act of 2020 and Related Laws since it is essential to ensure that the condition of the intercepted and recorded communications has

not been tampered with.

B. Readily identifiable evidence

On the other hand, there may be no more need to establish a chain of custody for items which have special identifying characteristics[37]—items which are known to be "unique and readily identifiable." [38] In cases where the item seized falls under this category, a witness can directly identify it as the object involved in the case, and this direct identification is already sufficient to establish its authenticity and relevance.[39]

First, an object with an imprinted serial number may easily be identified by such number. A gun and a bank note fall squarely within this category.[40]

Second, an object which possesses distinctive natural characteristics may make it readily identifiable.[41] Here, the issue is whether such distinctive characteristics are sufficient to make it unlikely that another object would have the same characteristics.[42]

Third, an object that is inscribed with the specific markings of a police officer may be considered as readily identifiable. In these cases, the person who marks the object converts the non-unique object into a readily identifiable one though the distinctive markings which they place on it.[43] Nonetheless, the specific markings placed by a police officer are of a temporary, transient nature. This is unlike those objects with an imprinted serial number and those which possess distinctive natural characteristics, both of which are of a permanent, lasting character. Thus, the chain of custody rule finds significance for objects which have merely been inscribed with specific markings by a police officer. This is the very reason why in cases involving dangerous drugs the proper marking of the items seized merely constitutes as the first link of the chain of the custody.[44]

Ultimately, these principles elaborating on the characteristics of unique and readily identifiable evidence served as basis for this Court's pronouncement in *Olarte*, viz.:

[I]f the proffered evidence is unique, readily identifiable, and relatively resistant to change, that foundation need only consist of testimony by a witness with knowledge that the evidence is what the proponent claims; otherwise, the chain of custody rule has to be resorted to and complied with by the proponent to satisfy the evidentiary requirement of relevancy. And at all times, the source of amorphous as well as firmly structured objects being offered as evidence must be tethered to and supported by a testimony. Here, the determination whether a proper foundation has been laid for the introduction of an exhibit into evidence refits within the discretion of the trial court; and a higher court reviews a lower court's authentication ruling in a deferential manner, testing only for mistake of law or a clear abuse of discretion. In other words, the credibility of authenticating witnesses is for the trier of fact to determine.[45] (Emphasis supplied, citations omitted)

Stated otherwise, an item which is unique, readily identifiable, and resistant to change may be authenticated and deemed relevant through the direct identification of a witness. This is precisely what occurred in *Olarte*, where the Court held that "the chain of custody rule does not apply to an undetonated grenade (an object made unique), for it is not amorphous and its form is relatively resistant to change. A witness of the prosecution need only identify the hand grenade, a structured object, based on personal knowledge that the same contraband or article is what it purports to be—that it came from the person of accused-appellant." [46]

Thus, applying this rationale to a firearm, regardless of who has handled it and the number of hands which it has passed through, its special identifying characteristics (e.g., specific serial number, an atypical dent or scratch, etc.) will remain the same, and will allow it to be easily identified during trial. In short, the need to establish

compliance with the chain of custody rule is dispensed with, as the identity of the seized item may be established with moral certainty by testimony due to the item's special identifying characteristics.

This eliminates the evil sought to be prevented by the stringent application of the chain of custody rule, as these special identifying characteristics effectively insulate the item from tampering and switching. In fact, the tampering and/or switching of a unique and readily identifiable object, which is resistant to change, is actually detrimental to the case of the prosecution.

If the firearm is identified by a specific serial number or an atypical dent or scratch at the time of its confiscation but has a different serial number, dent, or scratch when it is presented before the court, then it is the prosecution's burden to adequately explain the change. Otherwise, there is serious doubt on the identity of the firearm – that the firearm presented before the court is actually not the same one confiscated from the accused. This impacts the very existence of the firearm itself as to raise doubts on whether such firearm was actually seized from the accused. This may very well result to the accused's acquittal.

Moreover, the burden to prove that an item is unique, readily identifiable, and resistant to change lies with the prosecution. Hence, police officers are also obligated to be circumspect in recording these special identifying characteristics at the time of confiscation, as this is precisely what they would need to point out to the court during trial. The claim and even the reality that an item supposedly has "special identifying characteristics" is not a magic incantation which dissolves the need for the prosecution to establish not only the existence of the firearm, but more importantly, its identity.

Accordingly, it is respectfully submitted that, where the item seized is unique, readily identifiable, and resistant to change, such as a firearm or an undetonated grenade with special identifying circumstances, stringent compliance with the chain of custody rule is unnecessary. As long as the prosecution is able to establish that the item seized during the time of apprehension is the same as the item presented before the trial court, through the identifying marks of the item seized which makes it unique, then it will be sufficient to admit said item in evidence. In such instance, there is no need to present all the witnesses that handled the item seized.

The firearm or ammunition confiscated must be presented in court when the charge is for illegal possession of firearms and ammunitions

I concur in the ponencia that, in the crime of illegal possession of firearms and ammunitions, presentation of the firearm or ammunition seized is integral to the prosecution of the crime.

The CA, in upholding Togado's conviction, cited the portion in Olarte which stated that, though the existence of the firearm must be established, the firearm itself need not be presented before the court as its existence may be established purely by testimony.[47] To better understand the development of this doctrine, I deem it prudent to trace its genealogy.

This doctrine was first enunciated by this Court in the 1994 case of *People v. Orehuela*.^[48] In said case, Modesto Orehuela (Orehuela) was charged separately for murder and for qualified illegal possession of a firearm and ammunitions.^[49] According to the Informations, Orehuela used a .38 caliber revolver, which he was neither licensed nor permitted to carry, to shoot Teoberto Cañizares (Cañizares) who subsequently died from the wounds he sustained.^[50] Ultimately, the Court sustained Orehuela's conviction for murder as the elements of the crime were proven beyond reasonable doubt.^[51]

More importantly, the Court also upheld Orehuela's conviction for qualified illegal possession of a firearm and ammunitions, despite the prosecution's failure to present the "unlicensed murder weapon" during trial.[52] First, the Bohol Regional Headquarters of the Integrated National Police, which is now the PNP, issued a certification that Orehuela was not in the list of those licensed to carry firearms within the province.[53] Second, a slug was recovered from Cañizares's house, which turned out to be a "caliber .38 copper lead bullet fired through the barrel of a 38 caliber firearm." [54] Third, Orehuela was positively identified by a witness as having possession of a firearm and that the same was used to kill Cañizares. Therefore, the Court held that Orehuela should also be convicted for qualified illegal possession of a firearm and ammunition, as the existence of the gun was adequately proved through the testimony of the witnesses, along with the other factual circumstances of the case.[55]

Most cases[56] citing the doctrine in Orehuela had similar factual circumstances. In those cases, the non-presentation of the firearm was excused since its existence was established not only through the testimony of a witness but also through the effects of the main crime committed. Apart from a police officer testifying that a gun was recovered from the accused, there is also another witness testifying that they saw the accused use a gun to perpetuate the crime. Moreover, the existence of the firearm is seen through the effects of the main crime, such as a dead or injured body riddled with bullet holes, slugs which are subsequently recovered from the crime scene, or a positive paraffin test proving that the accused had just fired a gun, among others.

At the time that Orehuela was decided, the law governing the crime of illegal possession of firearms and ammunitions was still the original version of Presidential Decree No. 1866.[57] Under said law, the charge for illegal possession of firearms and ammunitions is separate from the charge for the crime committed through the use of the unlicensed firearm.[58] However, with the passage of Republic Act No. 8294 in 1997, the use of an unlicensed firearm in committing homicide or murder was converted to an aggravating circumstance, i.e., it is no longer a separate crime from the crime of homicide or murder committed through its use.[59] Further, with the passage of Republic Act No. 10591, the use of a loose firearm[60] is now aggravating not only in the commission of murder or homicide, but also in any other crime punishable under the Revised Penal Code or other penal laws, if the use of such firearm is inherent therein.[61]

Therefore, it must be stated that the factual circumstances in Orehuela – where the accused was convicted separately under then Presidential Decree No. 1866 – is unique not only because the firearm therein was committed in furtherance of murder, but mainly because the use of the unlicensed firearm is not yet absorbed as an aggravating or qualifying circumstance at that time.

Despite this, the doctrine in Orehuela was applied in subsequent cases[62] where the accused was being prosecuted for the sole charge of illegal possession of firearms and/or ammunitions under Presidential Decree No. 1866, as amended by Republic Act No. 8249 or Republic Act No. 10591. A close examination of these cases will show that the Court reiterated the doctrine in Orehuela even if: (a) the unlicensed firearm was not used to commit any other crime, or (b) as in the case of Olarte, the firearm or explosive was actually presented and identified in court.

However, there is an imperative need to distinguish between cases where the unlicensed firearm is used in furtherance of another crime and cases where the accused is being prosecuted solely for illegal possession of firearms and/or ammunitions, as the corpus delicti of the crimes involved are different.

Corpus delicti translates to "body of the crime," and it refers to the fact of the commission of the crime itself.[63]

For instance, in murder cases, the corpus delicti does not simply refer to the lifeless body of the victim, but to the fact of the victim's death itself.[64] Therefore, the prosecution must prove the following elements: (a) that a certain fact or result has been established, i.e., that a person has died, and (b) that some person is criminally

responsible for it.[65]

On the other hand, the corpus delicti in the crime of illegal possession of firearms and ammunitions is the accused's lack of permit or license to carry the said firearm and/or ammunitions, as their mere possession is not prohibited by law.[66] To establish the corpus delicti, the prosecution must prove the following elements: (a) the existence of the firearm, and (b) that the accused who owned or possessed it does not have the corresponding license or permit to possess or carry the same.[67]

Given the foregoing, it must be emphasized that in cases where the unlicensed firearm is used merely in the furtherance of another crime, the corpus delicti of the main crime is neither the existence (or even use) of a firearm nor the lack of a permit or license to carry it. The existence of the unlicensed firearm, for purposes of appreciating it as an aggravating or qualifying circumstance, may be sufficiently established through the testimony of a witness saying that he or she saw the accused using the firearm to commit the main crime, along with its corroboration through the effects of the said crime. To reiterate, some of these effects may be bullet holes in the victim's lifeless body, slugs or shells recovered from the crime scene, the positive paraffin test of the accused, and the like. Once the existence of the firearm is proven, then the prosecution simply needs to establish that the accused does not have the license or permit allowing them to carry it. This is precisely why the esteemed ponente in the present case held that *People v. Malinao*[68] and *People v. Dulay*,[69] which involved the commission of murder, are inapplicable in the case at bar.[70]

On the other hand, if the accused is being prosecuted solely for the crime of illegal possession of firearms and/or ammunitions, it is respectfully submitted that the element of lack of license or permit to carry the firearm and/or ammunitions in proving the corpus delicti depends on the existence of the supposed firearm itself. Stated otherwise, the element of whether or not the accused has the license or permit to carry the items becomes irrelevant if the court is not even sufficiently convinced of the existence of the firearm. In contrast to cases where the unlicensed firearm was merely used to commit another crime, there are usually no other pieces of evidence to prove the existence of the firearm, apart from the testimony of a witness.

As pointed out by the esteemed Associate Justice Alfredo Benjamin S. Caguioa, the best evidence to prove the existence of the firearm is the firearm itself.[71]

The presentation of the firearm during trial allows the court and the parties to examine it and its special identifying characteristics. The accused is also given the opportunity to raise an objection, in case there is any doubt with respect to the identity of the seized item. Ultimately, requiring the firearm's presentation in court will allow the court to ascertain whether the firearm being presented is the exact same firearm seized from the accused.[72] I also agree with the ponencia's observation that dispensing with the need to present the firearm in a charge for illegal possession of firearms heightens the risk of unscrupulous law enforcers merely planting evidence after securing the requisite certification from the FEO-PNP.

In view of the foregoing, I propose that the presentation of the firearm and/or ammunitions before the court, for proper authentication and identification, be a condition sine qua non in prosecuting violations under Republic Act No. 10591. The only exception to this rule is if the presentation of the firearm and/or ammunitions is rendered impossible due to a fortuitous event, or for any other reason which is not caused by the negligence or fault of the prosecution.

On the other hand, there is no need to present the firearm and/or ammunitions before the court if it was merely used in the commission of another crime, i.e., it is being appreciated as an aggravating or qualifying circumstance. This is because the effects of the main crime committed, along with the relevant testimonies, may already sufficiently prove the existence of the firearm itself. The exception is if there are circumstances which impute

serious doubts on the alleged existence of the firearm and/or ammunitions.[73] If such doubts exist, then the prosecution must present the firearm and/or ammunitions before the court.

Applying the foregoing to the instant case, I concur in the acquittal of Togado. The identity of the firearm supposedly confiscated from Togado was not established beyond reasonable doubt due to the failure to present the firearm seized from him. To recall, PO1 San Luis placed the marking "MMS-01 5/29/14" on the ziplock bag, and not on the firearm and ammunitions.[74] However, when the items were retrieved from the evidence custodian, the ziplock bag which bore this marking was already destroyed.[75] This led the prosecution to present a firearm marked "Magdalena MPS" and a magazine marked "MAG MPS" in court.[76] Evidently, there is reasonable doubt as to whether the firearm and magazine presented in court are the same firearm and magazine allegedly seized from Togado.

Considering that the existence of the firearm itself is integral to the charge of illegal possession of firearms, Togado must be acquitted on reasonable doubt.

ACCORDINGLY, I concur in the GRANT of the Petition and the ACQUITTAL of Benjamin Togado y Pailan.

[1] Ponencia, p. 2. Republic Act No. 10591 (2017), also known as the Comprehensive Firearms and Ammunitions Regulation Act.

[2] Ponencia, id.

[3] Id. at 2-3.

[4] Id. at 3.

[5] Id.

[6] Id. at 4-5.

[7] Id. at 5.

[8] Id.

[9] 848 Phil. 821 (2019) [Per J. Gesmundo, First Division].

[10] Ponencia, pp. 5-6.

[11] Id. at 6.

[12] Id. at 10.

[13] The latest version of the Manual was released in 2021. However, the 2013 version applies in the present case as the search occurred in 2014.

[14] Ponencia, pp. 10-11.

[15] Id. at 12-13.

[16] Id. at 13.

[17] 467 Phil. 432 (2004) [Per J. Austria-Martinez, En Banc].

[18] 561 Phil. 764 (2007) [Per J. Carpio, En Banc].

[19] Ponencia, pp. 13-14.

[20] Id. at 14.

[21] Id. at 16.

[22] Id. at 16-17. Citation omitted.

[23] *People v. Del Rosario*, 874 Phil. 881, 894 (2020) [Per J. Gesmundo, Third Division].

[24] *People v. Olarte*, 848 Phil. 821, 853 (2019) [Per J. Gesmundo, First Division].

[25] See *People v. Del Rosario*, 874 Phil. 881, 893-894 (2020) [Per J. Gesmundo, Third Division].

[26] Republic Act No. 9165 (2002), sec. 21, as amended by Republic Act No. 10640 (2014).

[27] RULES ON THE ANTI-TERRORISM ACT OF 2020 AND RELATED LAWS, Rule 4, sec. 12:

Sec. 12. Custody of Intercepted and Recorded Communications. — All tapes, discs, other storage devices, recording, notes, memoranda, summaries, excerpts, and all their copies, including a record of the surveillance activities undertaken under Section 8 of this Rule, shall, within forty-eight (48) hours after the expiration of the period fixed in the Surveillance Order or its extension, be deposited with the Court of Appeals in a sealed envelope or sealed package, and shall be accompanied by a joint affidavit of the applicant law enforcement agent or military personnel and the members of their team.

In case of death or disability of the applicant, the one next in rank among the members of the team named shall execute the required affidavit with the members of the team.

The joint affidavit of the law enforcement agent or military personnel shall state the following: (a) the number of tapes, disc, and recordings that have been made; (b) the dates and times covered by each of such tapes, disc, and recordings; and (c) the chain of custody or the list of persons who had possession or custody over the tapes, discs and recordings.

They shall also certify under oath that no duplicate/s or copy of the whole or any part of any such tapes, discs, other storage devices, recordings, notes, memoranda, summaries, or excerpts have been made or, if made, that all are included in the sealed envelope or sealed package deposited with the authorizing division of the Court of Appeals. (Emphasis supplied)

[28] RULE ON DNA EVIDENCE, sec. 7(a):

Sec. 7. Assessment of Probative Value of DNA Evidence. — In assessing the probative value of the DNA evidence presented, the court shall consider the following:

(a)

The chain of custody, including how the biological samples were collected, how they were handled, and the possibility of contamination of the samples;

(b)

The DNA testing methodology, including the procedure followed in analyzing the samples, the advantages and disadvantages of the procedure, and compliance with the scientifically valid standards in conducting the tests;

(c)

The forensic DNA laboratory, including accreditation by any reputable standards-setting institution and the qualification of the analyst who conducted the tests. If the laboratory is not accredited, the relevant experience of the laboratory in forensic casework and credibility shall be properly established; and

(d)

The reliability of the testing result, as hereinafter provided.

The provisions of the Rules of Court concerning the appreciation of evidence shall apply suppletorily. (Emphasis supplied)

[29] RULES ON THE USE OF BODY-WORN CAMERAS IN THE EXECUTION OF WARRANTS, Rule 4, sec. 2:

Sec. 2. Chain of Custody over the Recordings. — The chain of custody over the recordings shall, at all times, be preserved from improper access, review, and tampering. It shall cover the following events:

- Recording of the footage using the body-worn cameras or alternative recording devices;
- Turn over of the body-worn cameras or alternative recording devices used by the arresting or searching team, or of the data by the media representative under Section 3, Rule 2 of these Rules to the data custodian of the law enforcement agency to which they belong;
- Downloading of the data by the data custodian pursuant to Section 1 of this Rule;
- Redaction of personal identifiers by the data custodian or his or her representative pursuant to Section 4 of this Rule, whenever applicable;
- Retrieval of recording data and their transfer to an external media storage device by the data custodian;
- Submission and delivery of the recordings contained in an external media storage device to the court under Section 4, Rule 2 and Section 6, Rule 3 of these Rules.

[30] J. Thomas, Concurring Opinion in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009).

[31] Paul Giannelli, Chain of Custody, Case Western Reserve University School of Law, available at https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1308&context=faculty_publications (last accessed April 23, 2024). See also Paul C. Giannelli, Chain of Custody and the Handling of Real Evidence, 20 AM. CRIM. L. REV. 527, 538 (1983).

[32] Id.

[33] Id.

[34] See *People v. Ting*, G.R. No. 250307, February 21, 2023 [Per C.J. Gesmundo, En Banc] and *Nisperos v. People*, G.R. No. 250927, November 29, 2022 [Per J. Rosario, En Banc].

[35] Paul Giannelli, Chain of Custody, Case Western Reserve University School of Law, available at https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1308&context=faculty_publications (last accessed April 23, 2024). See also Paul C. Giannelli, Chain of Custody and the Handling of Real Evidence, 20 AM. CRIM. L. REV. 527, 537 (1983).

[36] Paul Giannelli, Chain of Custody, Case Western Reserve University School of Law, available at https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1308&context=faculty_publications (last accessed April 23, 2024).

[37] Paul C. Giannelli, Chain of Custody and the Handling of Real Evidence, 20 AM. CRIM. L. REV. 527, 535 (1983).

[38] Paul Giannelli, Chain of Custody, Case Western Reserve University School of Law, available at

https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1308&context=faculty_publications (last accessed April 23, 2024).

[39] Id.

[40] Id. See also Paul C. Giannelli, Chain of Custody and the Handling of Real Evidence, 20 AM. CRIM. L. REV. 527, 535 (1983).

[41] Paul Giannelli, Chain of Custody, Case Western Reserve University School of Law, available at https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1308&context=faculty_publications (last accessed April 23, 2024). See also Paul C. Giannelli, Chain of Custody and the Handling of Real Evidence, 20 AM. CRIM. L. REV. 527, 536 (1983).

[42] Id.

[43] Id. See also Paul C. Giannelli, Chain of Custody and the Handling of Real Evidence, 20 AM. CRIM. L. REV. 527, 535 (1983).

[44] See *People v. Guanzon*, 839 Phil. 1122, 1143-1144 (2018) [Per J. Tijam, First Division], where this Court stated that "[t]he importance of the marking of seized drugs, as the first link in the chain of custody, is elucidated in the case of *People of the Philippines v. Alberto Gonzales y Santos*, thus:

The first stage in the chain of custody rule is the marking of the dangerous drugs or related items. Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest. The importance of the prompt marking cannot be denied, because succeeding handlers of dangerous drugs or related items will use the marking as reference."

[45] *People v. Olarte*, 848 Phil. 821, 853-854 (2019) [Per J. Gesmundo, First Division].

[46] Id. at 854.

[47] Ponencia, pp. 5-6. See also *People v. Olarte*, 848 Phil. 821, 847 (2019) [Per J. Gesmundo, First Division].

[48] 302 Phil. 77 (1994) [Per J. Feliciano, Third Division].

[49] Id. at 79-80.

[50] Id.

[51] Id. at 87.

[52] Id. at 90.

[53] Id. at 91.

[54] Id. at 84.

[55] Id. at 91-92.

[56] See *People v. Gaborne*, 791 Phil. 581 (2016) [Per J. Perez, Third Division]; *People v. Salibad*, 773 Phil. 631 (2015) [Per J. Villarama, Jr., Third Division]; *People v. Dulay*, 561 Phil. 764 (2007) [Per J. Carpio, En Banc]; *People v. Taan*, 536 Phil. 943 (2006) [Per J. Tinga, En Banc]; *People v. Malinao*, 467 Phil. 432 (2004) [Per J. Austria-Martinez, En Banc]; *People v. Taguba*, 396 Phil. 366 (2000) [Per J. Quisumbing, Second Division]; *People v. Narvasa*, 359 Phil. 168 (1998) [Per J. Panganiban, First Division].

[57] *People v. Orehuela*, 302 Phil. 77, 79 (1994) [Per J. Feliciano, Third Division].

[58] *People v. Quijada*, 328 Phil. 505, 552-553 (1996) [Per J. Davide, Jr., En Banc].

[59] *People v. Molina*, 354 Phil. 746, 786 (1998) [Per J. Panganiban, En Banc].

[60] Republic Act No. 10591, sec. 3(v).

[61] *Id.*, sec. 29.

[62] *Carbonel v. People*, G.R. No. 253090, March 1, 2023 [Per J. Kho, Jr., Second Division]; *People v. Olarte*, 848 Phil. 821 (2019) [Per J. Gesmundo, First Division]; *Valeroso v. People*, 570 Phil. 58 (2009) [Per J. Nachura, Third Division].

[63] *People v. Peñaflor*, 766 Phil. 484, 498 (2015) [Per J. Perez, First Division].

[64] *Id.*

[65] *Id.*

[66] *People v. Alcira*, G.R. No. 242831, June 22, 2022 [Per J. Lopez, J., Second Division] at 18. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[67] *Id.*

[68] 467 Phil. 432 (2004) [Per J. Austria-Martinez, En Banc].

[69] 561 Phil. 764 (2007) [Per J. Carpio, En Banc].

[70] Ponencia, pp. 13-14.

[71] J. Caguioa, Concurring Opinion, p. 5.

[72] *Id.* at 6.

[73] In the case of *People v. Navarro*, 357 Phil. 1010 (1998) [Per J. Panganiban, First Division], serious doubt was imputed on the existence of the firearm even if it was only used in furtherance of another crime. Here, the Court held that though the prosecution was able to prove the elements of murder, the supposed unlicensed firearm cannot be appreciated as an aggravating circumstance. First, the firearm was neither presented in court nor offered in evidence. Second, though a witness testified that he saw the accused shooting the victim, it was noted that the gun supposedly used was allegedly recovered from the accused only three years after the murder happened. Therefore, the prosecution was unable to show that the gun recovered three years after was actually the same gun used in the murder.

[74] Ponencia, p. 12.

[75] *Id.*

[76] *Id.* at 5.

G.R. No. 260973 – BENJAMIN TOGADO y PAILAN,[*] Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.

CONCURRING OPINION

CAGUIOA, J.:

I concur with the ponencia in acquitting petitioner Benjamin Togado y Pailan (Togado) for violation of Republic Act No. 10591,[1] otherwise known as the "Comprehensive Firearms and Ammunition Regulation Act" based on reasonable doubt.

For a charge of illegal possession of firearms and ammunition to prosper, both (1) the existence of the subject firearm, and (2) the fact that the accused who possessed or owned the same does not have the corresponding license for it,[2] must be established by the prosecution beyond reasonable doubt. To prove the first element, the prosecution must present as evidence the actual firearm confiscated from the accused. Failure to do so without any valid justification creates reasonable doubt, and consequently, justifies the acquittal of the accused as in this case.

Factual background

Armed with a warrant, Police Officer I (PO1) Mar San Luis (PO1 San Luis), PO1 Marvin Alcantara (PO1 Alcantara), Police Officer III (PO3) Emerson Bautista (PO3 Bautista), and PO3 Arnel Bigata (collectively, the "search warrant team") proceeded to the house of Togado to search for unlicensed firearms and ammunition. When the search warrant team entered the house, Togado allegedly pointed to the police officers a .45-caliber pistol placed on top of a chair. PO1 San Luis secured the firearm and its magazine with five (5) live rounds of ammunition and placed the items inside a ziplock plastic marked with "MMS-01 5/29/14." The search warrant team then arrested Togado. Meanwhile, the seized items were turned over by PO1 San Luis to PO3 Bautista, the evidence custodian.[3]

Upon confirmation by the Firearms and Explosives Office (FEO) of the Philippine National Police (PNP) that Togado was not a registered firearm holder of any kind or caliber, Togado was charged with illegal possession of firearms and ammunition.[4]

At the trial, PO1 San Luis testified that "he did not indicate any marking on the gun itself, its magazine and the live ammunition but only on the ziplock plastic where the gun was placed." [5] This was corroborated by PO1 Alcantara. However, when asked to present the seized items before the court, PO1 San Luis produced a gun that bore the marking "Magdalena MPS" and a magazine that similarly bore its own marking of "MAG MPS." [6] Moreover, the seized items were placed not in the ziplock plastic marked with "MMS-01 5/29/14," but in a totally different container. [7]

After the Regional Trial Court (RTC) denied Togado's Demurrer to Evidence, the defense waived its right to present evidence. [8]

The RTC found Togado guilty of illegal possession of firearms and ammunition, and the same was affirmed by the Court of Appeals (CA). According to the CA, "despite PO1 San Luis' admission that he failed to put markings on the gun and the ammunition itself, it should be underscored that the existence of the firearm may be proven without presenting it." [9] Citing *People v. Olarte* [10] (Olarte), the CA further espoused that "even if the existence of the firearm must be established, the firearm itself need not be presented as evidence for it may be established by testimony, even without the presentation of the said firearm." [11]

The ponencia reverses the lower courts and rules that the prosecution failed to show that the integrity of the seized items had been preserved, viz:

The discrepancy in the markings, the tampering of the plastic bag, and PO1 [San Luis'] admissions in court [that he could not ascertain whether the gun presented in court was the same firearm confiscated from Togado],

lead us to conclude that there exists reasonable doubt as to the guilt of [Togado].

....

Jurisprudence dictates that the corpus delicti in illegal possession of firearms is the lack of license to own or possess a firearm. However, for us to rule... that there is no need to present the firearm as evidence would have dangerous consequences. It would be easy for anyone to plant a firearm as evidence, arrest the person, then charge them for illegal possession if their name does not appear in the database of the [FEO] of the [PNP]. Anyone could easily be convicted by the mere issuance of a certification that they do not have a license to own and possess a firearm. Thus, the preservation of the integrity of the confiscated firearm is crucial.

....

[T]his Court pronounced that "the firearm itself need not be presented as evidence for it may be established by testimony." [12] (Citations omitted)

Thus, the ponencia held that Togado's acquittal should necessarily follow.

I completely agree with the ponencia.

Chain of custody in cases involving illegal possession of firearms and ammunition

Preliminarily, I believe there is a need to settle the issue on whether the "chain of custody" rule should be strictly observed in cases involving illegal possession of firearms and ammunition.

The term "chain of custody" is particularly relevant in drugs cases, as embodied in Section 21 of Republic Act No. 9165,[13] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," as amended. It refers to the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer or custody were made in the course of safekeeping and use in court as evidence, and the procedure on how the seized item was handled and managed by the custodian. Compliance with the chain of custody rule removes any doubt as to the identity of the seized illegal drug and preserves the evidentiary value of the same. Corollary thereto, failure to prove compliance with the chain of custody rule, without justifiable ground, will result in the acquittal of the accused.

In the handbook or manual of the PNP, the term "chain of custody" is used loosely to refer to a list of persons who came into possession of an item of evidence or the continuity of possession.[14] For instance, the 2013 PNP Handbook[15] and the 2021 PNP Manual[16] both expressly state that when effecting an arrest, confiscated evidence, including non-drugs evidence such as firearm and ammunition, shall be properly documented "with the chain of custody of evidence duly and clearly established."

Recently, there have been cases that reached the Court involving illegal possession of firearms and ammunition wherein the defense argued in favor of acquittal on the basis of non-compliance with the "chain of custody" rule found in the 2013 PNP Handbook or the 2021 PNP Manual. On this score, I submit that unlike in drugs cases, the failure to strictly observe the chain of custody of evidence, or any irregularity thereof, standing alone, should not automatically result in the acquittal of the accused in cases involving illegal possession of firearms and ammunition, provided that the prosecution is able to prove beyond reasonable doubt that the item presented in

court is the same item seized from the accused.

For one, unlike Republic Act No. 9165, as amended, Republic Act No. 10591 does not contain a detailed continuity of possession that must be observed by the law enforcement operatives when handling seized illegal firearms and ammunition; it only requires that the seized items be kept within the custody and/or control of the court.[17] For another, and this is the crucial distinction, firearms and ammunition—unlike drugs—are unique objects which may either: (a) already exhibit identifiable visual or physical peculiarities such as a particular paint job or an accidental scratch, dent, cut, chip, disfigurement, or stain; or (b) have a readily distinguishable mark such as a unit-specific serial number in case of an industrially manufactured item.[18]

In Olarte, the Court categorically held that the "chain of custody" rule has not been extended to cases involving non-drug substances or objects since the evidence is unique, readily identifiable, and relatively resistant to change:

[T]he Court emphasizes that if the proffered evidence is unique, readily identifiable, and relatively resistant to change, that foundation need only consist of testimony by a witness with knowledge that the evidence is what the proponent claims; otherwise, the chain of custody rule has to be resorted to and complied with by the proponent to satisfy the evidentiary requirement of relevancy. And at all times, the source of amorphous as well as firmly structured objects being offered as evidence must be tethered to and supported by a testimony. Here, the determination whether a proper foundation has been laid for the introduction of an exhibit into evidence refits within the discretion of the trial court; and a higher court reviews a lower court's authentication ruling in a deferential manner, testing only for mistake of law or a clear abuse of discretion. In other words, the credibility of authenticating witnesses is for the trier of fact to determine.[19] (Emphasis supplied, citations omitted)

In Olarte, the Court compared a firearm with drug substances which can easily be tampered, altered, or planted on account of its amorphous nature. Indeed, narcotic substances are non-unique objects which cannot be distinguished, are not readily identifiable, and "present an inherent problem of fungibility or substitutability and contamination which adversely affects their relevance or probative value." [20] Thus, Republic Act No. 9165, as amended, requires that seized drugs must be marked upon seizure or confiscation in order to make them unique or identifiable, and the chain of custody rule must be followed in order to determine their admissibility as evidence.[21] On the other hand, a firearm with a particular dent or a specific serial number would still be the same firearm even if the continuity of possession was not accounted for. The failure to strictly account for the movement of the seized firearm from confiscation until presentation in court does not present a possibility of contamination, alteration, or tampering that would change the item's nature as a firearm. As such, an irregularity or failure to strictly observe the chain of custody of seized firearms and ammunition should not automatically affect the integrity and evidentiary value of the seized item.

The seized firearms and ammunition must be presented in court; otherwise, the accused should be acquitted based on reasonable doubt

While a strict observance of the chain of custody may be excused in cases involving seized firearms and ammunition, the presentation of the actual firearm is still mandatory. I agree with the ponencia that the actual seized items must be presented in court to remove reasonable doubt as to its existence. Corollary thereto, I submit that the pronouncement in Olarte that the subject firearm itself need not be presented in the prosecution for Republic Act No. 10591 cases should be read in the context of Olarte's facts, or totally re-examined.

The first element of illegal possession of firearm under Republic Act No. 10591 is the existence of the subject firearm. The best evidence to prove the existence of this element is the firearm itself. By presenting the firearm during trial, the court and the parties are given the opportunity to examine the firearm and its readily identifiable marks such as its serial number or its other distinct physical characteristics with regard to photographs, markings, and reports made during the confiscation thereof. Consequently, the accused is given the opportunity to raise an objection in case of doubt with respect to the integrity and evidentiary value of the seized item. The court will also be able to ascertain that the firearm so presented is the very same firearm seized from the accused.

I likewise agree with the ponencia that the non-presentation of the subject firearm would have dangerous consequences as anyone can now just be convicted based on an issuance of a certification that he or she does not have a license to own or possess the same, even if the existence of the firearm was not even proven as a fact, i.e., where a police officer only claims that he or she saw it.

Moreover, in case of conviction, the classification of the firearm determines the penalty to be imposed on the accused. Presenting the firearm during trial ensures that the firearm is classified correctly, and that the proper penalty is being applied.

Further, it is of no additional burden to the prosecution to present the subject firearm. In the prosecution of violations of Republic Act No. 10591, Section 36 of the law mandates that the seized firearm, ammunition, or parts thereof, machinery, tools or instruments remain in the custody of the court during the pendency of the case. In case of conviction, the law likewise mandates the confiscation and the forfeiture of the seized items in favor of the government. Thus, the seized firearm should already be within the custody and control of the court from the start of the trial until the end. Verily, if the court has no adequate means to safely keep the same, the court shall issue an order to turn over to the PNP Crime Laboratory such firearm, ammunition, or parts thereof, machinery, tools, or instruments in its custody during the pendency of the case and to produce the same to the court when so ordered. As such, control over the seized firearm remains with the court and presentation of the same during trial should not be an obstacle to the prosecution.

Thus, I humbly propose to the En Banc that in cases of illegal possession of firearms punished under Section 28 of Republic Act No. 10591, the Court veer away from the ruling that the existence of a firearm may be established by testimony and other evidence on record. As an element of the crime, the existence of the firearm should be undisputed, lest it leads to the wrongful conviction of the innocent.

It bears consideration that the lightest penalty for a violation of Section 28 is prision mayor in its medium period or eight (8) years and one (1) day to ten (10) years. To convict a person when the very existence of the object he or she is being accused of illegally possessing cannot be proven by its production in court would be offensive to the very tenet of criminal justice—proof of guilt beyond reasonable doubt.

The prosecution bears the burden of proving that measures against tampering or planting of evidence were observed in the seizure and handling of firearms, ammunition, or other similar unique, non-amorphous, and readily identifiable items

In previous years, there have been numerous reports of evidence planting by the authorities, such as the 'laglag bala' modus operandi which victimized many travelers and caused enough public outrage that the Senate of the Philippines ordered an inquiry into it, and the 'nanlaban' defense that was used to justify the killings during drug operations. Of note is the 2020 report[22] released by the United Nations Office of the High Commissioner for

Human Rights (OHCHR) where it was found that in several crime scenes, the police claimed to have recovered guns allegedly used by the victims to resist police officers, but the same recovered guns which bore unique serial numbers were found in different locations with different victims. The report reads:

....

24. OHCHR examined police reports on another 25 operations in which 45 people had been killed in Metro Manila between August 2016 and June 2017. The police had referred to 34 of these killings as "neutralization". At all the crime scenes, the police claimed to have recovered satchels of methamphetamine and guns allegedly used by the victims to resist police officers. On the basis of these reports, OHCHR found that the police had repeatedly recovered guns bearing the same serial numbers from different victims in different locations. OHCHR identified seven handguns with unique serial numbers. Each handgun appeared in at least two separate crime scenes, while two reappeared in five different crime scenes. The pattern suggests planting of evidence by police officers and casts doubt on the self-defence narrative, implying that the victims were likely unarmed when killed.[23] (Emphasis supplied)

Republic Act No. 10591 itself recognizes the possibility of planting any firearm, or ammunition, or parts thereof in the person, house, effects, or in the immediate vicinity of an innocent individual for the purpose of implicating or incriminating the person, or imputing the commission of any violation of the law to said individual.[24] Verily, non-presentation of the seized firearms may also give rise to untoward incidents where these firearms are re-used as planted evidence, similar to the instances earlier mentioned.

Thus, while I submit that the strict standard of chain of custody applied in cases involving dangerous drugs should not be applied to cases involving firearms, ammunition, and similar unique, non-amorphous, and readily identifiable items, there must still be certain standards or measures that the police officers and other law enforcement agencies must follow in the seizing and handling of these items to prevent instances of evidence planting.

As in this case, the prosecution must establish the integrity and evidentiary value of the seized item, specifically that the item presented in court is the same item seized from the accused. This may be proven by the markings made on the seized items, the inventory of the seized items, the photographs taken of the seized items upon confiscation, and any other documentary evidence prepared and executed by the police officers upon confiscation from the accused.

I also propose that in instances where the operation is required to be conducted in the presence of witnesses, such as in the implementation of a search warrant, the prosecution must establish that the required witnesses are present at the time of the seizure, marking, and inventory. Section 8, Rule 126 of the Revised Rules of Criminal Procedure provides that a house, room, or any other premises shall not be searched except in the presence of the lawful occupant thereof, or any member of his or her family, or in the absence of the latter, two (2) witnesses of sufficient age and discretion residing in the same locality. The same rule is reflected in Section 2.7(h), Rule 2 of the 2021 PNP Manual.[25] The presence of these witnesses would guard against the planting of evidence and frame up,[26] and would belie any doubt as to the source, identity, and integrity of the seized items, as in drugs cases.[27]

Further, similar to drugs cases,[28] the marking of firearms, ammunition, and similar unique, non-amorphous, and readily identifiable items should be done immediately upon confiscation, at the place of confiscation and in the presence of the offender and the insulating witnesses. The conduct of inventory and the taking of photographs must follow immediately after seizure and confiscation to provide credible proof of the state or condition of the seized item and ensure that its identity and integrity are preserved. This is especially crucial in other instances or operations where police officers may recover firearms, ammunition, and other similar items but witnesses are not

required to be present for the same, such as during patrol operations, checkpoints, and warrantless arrests.

I also note that the 2021 PNP Manual requires that whenever applicable and practicable, Body Worn Cameras (BWCs) and/or Alternative Recording Devices (ARDs) must be used in police operations.[29] During trial, the recordings from these BWCs and ARDs should likewise be presented in court to prove the validity of the seizure and to allow the parties to examine the same.

I submit that the foregoing measures, among others, would greatly decrease the possibility of evidence planting and wrongful prosecution, while keeping within the confines of the law.

Togado should be acquitted as his guilt was not proven beyond reasonable doubt

As applied in the present case, I support the acquittal of Togado due to the prosecution's failure to prove his guilt beyond reasonable doubt.

At the outset, when the subject firearm was allegedly confiscated from Togado, PO1 San Luis placed the markings "MMS-01 5/29/14" on the ziplock plastic where the evidence is contained, instead of on the seized firearm itself. Togado testified at trial that he did not indicate any marking on the gun itself, its magazine, or on the live ammunition.

However, when the subject firearm was presented in court, it bore the marking "MAG MPS." It was likewise placed in a different container, and not in the ziplock plastic marked with "MMS-01 5/29/14." Under scrutiny of examination, PO1 San Luis admitted his uncertainty if the firearm presented in court was the same firearm that was confiscated from Togado.

Placing the markings on the container, rather than on the seized item, makes it prone to tampering, which is what appears to have happened in this case. The firearm bearing a marking when it had none when it was handled by the seizing officer creates doubt as to whether the seized firearm and the firearm presented in court are the same items. From the foregoing circumstances, there already exists doubt as to the existence of the seized firearm and consequently, the first element of a violation of Section 28 of Republic Act No. 10591 was not duly proven.

ACCORDINGLY, I concur with the ponencia and vote to GRANT the Petition.

[*] Also Benjamin P. Togado Jr. in some parts of the rollo.

[1] An Act Providing for A Comprehensive Law on Firearms and Ammunition and Providing Penalties for Violations Thereof, approved on May 29, 2013.

[2] Carhonel v. People, G.R. No. 253090, March 1, 2023 [Per J. Kho, Second Division]. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[3] Ponencia, pp. 2-3.

[4] Id. at 3-4.

[5] Id. at 12.

[6] Id.

[7] Id.

[8] Id. at 5.

[9] Rollo, p. 45.

[10] *People v. Olarte*, 848 Phil. 821 (2019) [Per. J. Gesmundo, First Division].

[11] Id. at 847.

[12] Ponencia, pp. 13-16.

[13] An Act Instituting the Comprehensive Dangerous Drugs Act Of 2002, Repealing Republic Act No. 6425, Otherwise Known as The Dangerous Drugs Act Of 1972, As Amended, Providing Funds Therefor, And for Other Purposes, approved January 23, 2002.

[14] 2011 Philippine National Police Criminal Investigation Manual.

[15] The 2013 Philippine National Police Operations Manual has been repealed by the 2021 Revised Philippine National Police Operational Procedures.

[16] 2021 Revised Philippine National Police Operational Procedures.

[17] See Republic Act No. 10591 (2013), sec. 36.

[18] *People v. Olarte*, supra note 10 at 827.

[19] Id. at 853-854.

[20] Id. at 851.

[21] Id. at 853.

[22] United Nations Office of the High Commissioner for Human Rights, Situation of Human Rights in the Philippines: Report of the United Nations High Commissioner for Human Rights, available at <https://www.ohchr.org/sites/default/files/Documents/Countries/PH/Philippines-HRC44-AEV.pdf>, (last accessed on March 7, 2024).

[23] Id. at 6.

[24] See Republic Act No. 10591 (2013), sec. 38.

[25] Rule 2, Law Enforcement Operations provides:

....

2.7 Search and Seizure

....

h. Prohibited Acts in the Conduct of Search by Virtue of a Search Warrant

1)

Houses, rooms, or other premises shall not be searched except in the presence of the lawful occupant thereof or any member of his/her family or, in the absence of the latter, in the presence of two witnesses of sufficient age and discretion residing in the same locality.

[26] *People v. Sagana*, 815 Phil. 356, 373 (2017) [Per J. Leonen, Second Division].

[27] *People v. Tomawis*, 830 Phil. 385, 409 (2018) [Per J. Caguioa, Second Division].

[28] *Nisperos v. People*, G.R. No. 250927, November 29, 2022 [Per J. Rosario, En Banc]. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[29] See Chapter 2 Operational Guidelines, Sections 2.4 and 2.7, 2021 Revised Philippine National Police Operational Procedures.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.