



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 10, 2021 which reads as follows:

“G.R. No. 252003 – HAROLD PAGIGAN y DELA PEÑA, petitioner, versus PEOPLE OF THE PHILIPPINES, respondent.

Upon an exhaustive review of the instant case, the Court **DENIES** the Petition for Review on *Certiorari*¹ (Petition) and **AFFIRMS** the Decision² dated March 27, 2019 (assailed Decision) and Resolution³ dated February 14, 2020 (assailed Resolution) of the Court of Appeals⁴ (CA) in CA-G.R. CR No. 41024 which affirmed, with modification, the Amended Decision⁵ dated November 23, 2017 of the Regional Trial Court of Quezon City, Branch 217 (RTC) in Criminal Case No. R-QZN-14-04539-CR, convicting petitioner Harold Pagigan y Dela Peña (Pagigan) for violation of Section 28, paragraph (a) in relation to paragraph (e), Article V of Republic Act No. (R.A.) 10591,⁶ otherwise known as the “Comprehensive Firearm and Ammunition Regulation Act.”

In gist, Pagigan presents the following issues for resolution of the Court: 1) whether there was valid warrantless arrest; 2) whether there was valid warrantless seizure of the subject firearm; 3) whether the police authorities failed to preserve the integrity of the evidence seized; and 4) whether the prosecution established beyond reasonable doubt the elements of the offense charged.⁷

- over – eight (8) pages ...

¹ Rollo, pp. 11-27.

² Id. at 33-42. Penned by Associate Justice Mario V. Lopez (now a Member of the Court) and concurred in by Associate Justices Zenaida T. Galapate-Laguilles and Gabriel T. Robeniol.

³ Id. at 44-45.

⁴ Special Fourteenth Division and Special Former Special Fourteenth Division, respectively.

⁵ Rollo, pp. 73-83. Penned by Presiding Judge Santiago M. Arenas.

⁶ AN ACT PROVIDING FOR A COMPREHENSIVE LAW ON FIREARMS AND AMMUNITION AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF, May 29, 2013.

⁷ See rollo, pp. 15-16.

The Petition must be denied.

The fundamental right against unlawful searches and seizures is guaranteed by Section 2, Article III of the Constitution, thus:

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Further, Section 3 of Article III considers as inadmissible any evidence obtained in violation of the foregoing right.⁸

However, the Constitutional guarantee does not prohibit all forms of searches and seizures, as it is only directed against those which are unreasonable. Conversely, reasonable searches and seizures are not forbidden and items obtained therefrom are admissible evidence.⁹ While, generally, searches and seizures must be authorized by a validly issued warrant to be reasonable,¹⁰ jurisprudence has recognized exceptional circumstances when searches are reasonable even when warrantless, among them: (1) warrantless search incidental to a lawful arrest; (2) search of evidence in plain view; (3) search of a moving vehicle; (4) consented warrantless searches; (5) customs search; (6) stop and frisk; and (7) exigent and emergency circumstances.¹¹

Upon the other hand, Section 5, Rule 113 of the Revised Rules of Criminal Procedure (Rules) provides for situations when arrests without a warrant may be lawful, thus:

SEC. 5. Arrest without warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

- over -

3

⁸ CONSTITUTION, Article III, Sec. 3 provides:

SECTION 3. (1) x x x

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

⁹ See *Veridiano v. People*, G.R. No. 200370, June 7, 2017, 826 SCRA 382, 397.

¹⁰ See *People v. Aruta*, G.R. No. 120915, April 3, 1998, 288 SCRA 626, 636.

¹¹ *Veridiano v. People*, supra note 9, at 398.

- (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112. (5a)

Here, as found by the RTC and affirmed by the CA, as well as supported by the records, Pagigan was flagged down by the police officers for not wearing a helmet while riding a motorcycle — an act constituting a traffic violation. As the police officers inquired about his license and registration papers, Police Officer 3 Noel Galeno (PO3 Galeno) saw the subject firearm tucked in Pagigan's waist. He was then asked for the relevant documents for the firearm but Pagigan failed to produce any. It was then that the firearm was confiscated and Pagigan, after apprising him of his Constitutional rights, was arrested.

From these established facts, the seizure of the subject firearm was valid and reasonable, albeit without a warrant, under the plain view doctrine. Under this doctrine, objects falling in the "plain view" of the police officer who has a right to be in the position to have that view, are subject to seizure and may be presented as evidence.¹² It applies when the following requisites concur: 1) the police officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; 2) the discovery of the evidence in plain view is inadvertent; and 3) it is immediately apparent to the police officer that the item he observes may be an evidence of a crime, contraband, or otherwise subject to seizure.¹³

Here, there was prior valid intrusion as Pagigan was flagged down for a traffic violation by the police officers who were then conducting an anti-criminality patrol. While Pagigan was being questioned, PO3 Galeno inadvertently saw the subject firearm tucked inside Pagigan's waist, in plain sight of said police officer. When asked for the relevant license or permit for the firearm, Pagigan failed to produce any. It was then that such firearm was confiscated, which,

- over -

¹² *Miclat, Jr. v. People*, G.R. No. 176077, August 31, 2011, 656 SCRA 539, 552-553.

¹³ *Fajardo v. People*, G.R. No. 190889, January 10, 2011, 639 SCRA 194, 209.

when inspected, was likewise found to be without a serial number and containing five ammunitions. Since the seizure of the subject firearm was valid, the same is admissible in evidence to prove Pagigan's guilt.

Anent the legality of his arrest, the same is likewise valid as he was caught *in flagrante delicto*, hence, falling under paragraph (a), Section 5, Rule 113 of the Rules. For this to apply, the following must be present: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.¹⁴

Here, as mentioned, Pagigan was caught by the police officers carrying a firearm without a valid license. He was arrested after the police officers saw the subject firearm tucked in his waist and he failed to produce the necessary documents therefor. Hence, he was committing illegal possession of firearms in the presence of the arresting officers when he was arrested without a warrant.

Next, Pagigan contends that the presumption of his innocence must be upheld over the presumption of regularity in the performance of the official duties of the police authorities because the Certification from the Firearms and Explosives Office (FEO) of Camp Crame, Quezon City that Pagigan is not a licensed registered firearm holder of any caliber (Negative Certificate) was issued only on October 22, 2014, almost four months after his arraignment on June 18, 2014, thus violating Department of Justice (DOJ) Circular No. 067,¹⁵ which provides that:

x x x x

To address these issues, all prosecutors are hereby directed:

- a) **TO ACCEPT** the electronic copy of the negative certification of the PNP-Firearms and Explosives Office (which states/confirms that respondent/s do not have a license to possess and transport a firearm) **AS SUFFICIENT EVIDENCE** to warrant the filing of a case for violation of P.D. 1866, as amended by R.A. 8294, provided that:

x x x x

- over -

3

¹⁴ *Miclat, Jr. v. People*, supra note 12, at 550.

¹⁵ *Rollo*, pp. 22-24.

a.2 A copy of the original negative certification is submitted to the prosecutor BEFORE the arraignment of the accused.

x x x x (Emphasis supplied)

The Court cannot agree. First, the courts *a quo*, more than relying on the presumption of regularity in favor of the police officers, considered the totality of evidence submitted by the prosecution in arriving at the assailed Decision. Said evidence overwhelmingly point to the guilt of Pagigan for the offense charged.

Second, the Court agrees with the CA when it ruled that the objection on the belated submission of the original Negative Certificate is considered waived as Pagigan did not timely raise the same prior to his arraignment. Notably, Pagigan raised this defense only on appeal with the CA as a way of challenging the jurisdiction of the RTC over his person. The CA duly ruled on this issue in the assailed Decision, thus:

Likewise, appellant's defense that the trial court failed to acquire jurisdiction over his person due to the police officers' non-compliance with DOJ Circular No. 067 does not persuade. x x x Here, appellant did not raise the non-submission of the original negative certification to the prosecutor before his arraignment. Records reveal that appellant remained silent and did not assail the court's jurisdiction over his person before his arraignment. **The Supreme Court has consistently ruled that any objection involving the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived. Accordingly, appellant's right to question the absence of the original certification before his arraignment is deemed waived due to his failure to timely raise this argument.**¹⁶

Indeed, the Court has held that any objection to the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.¹⁷ At any rate, such irregularity is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. It will not negate the validity of the conviction of the accused.¹⁸

- over -

3

¹⁶ Id. at 40-41. Emphasis supplied.

¹⁷ *Rebellion v. People*, G.R. No. 175700, July 5, 2010, 623 SCRA 343, 348.

¹⁸ Id. at 348.

Anent the alleged failure of the police officers to preserve the integrity of the evidence seized as they did not comply with marking and chain of custody requirements, the records refute this claim. As found by the CA:

x x x The marking requirement was satisfactorily observed by the police officers. The testimony of PO3 Galeno established that the revolver and the five rounds of ammunition seized from the appellant were physically marked and accounted for. The recovered items were properly turned over to the duty officer for investigation and disposition. Hence, the police officers were able to preserve the integrity of the evidence.¹⁹

Finally, the prosecution was able to establish, beyond reasonable doubt, the guilt of Pagigan for the offense charged — violation of Section 28, paragraph (a) in relation to paragraph (e) of R.A. 10591, which provides:

SEC. 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;

x x x x

(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;

x x x x

The essential elements for conviction for the crime of illegal possession of firearms are: (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.²⁰

Here, records show that Pagigan was caught *in flagrante delicto* by the police officers in possession of the subject firearm. The Negative Certificate from the FEO showed that Pagigan was not a

- over -

¹⁹ *Rollo*, pp. 39.

²⁰ *Jacaban v. People*, G.R. No. 184355, March 23, 2015, 754 SCRA 98, 106.

licensed registered firearm holder of any caliber. Moreover, the offense is qualified by the fact that the subject firearm seized from his person was loaded with five rounds of live ammunition.

All told, Pagigan's conviction for the crime charged must be upheld as the findings of the courts *a quo* are supported by the evidence on record and the applicable law.

Finally, there is no error on the penalty imposed by the CA, which is in accordance with Section 28, paragraph (a) in relation to paragraph (e) of R.A. 10591 and the Indeterminate Sentence Law.

WHEREFORE, the Court **RESOLVES** to **ADOPT** the findings of fact and conclusions of law in the Decision dated March 27, 2019 and Resolution dated February 14, 2020 of the Court of Appeals in CA-G.R. CR No. 41024 which affirmed, with modification, the Amended Decision dated November 23, 2017 of the Regional Trial Court of Quezon City, Branch 217 in Criminal Case No. R-QZN-14-04539-CR. Accordingly, the Petition for Review on *Certiorari* is **DENIED** and the Decision finding petitioner Harold Pagigan y Dela Peña guilty of violation of Section 28(a) in relation to (e), Article V of Republic Act No. 10591, and sentencing him to suffer an indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to ten (10) years, eight (8) months and one (1) day of *prision mayor*, as maximum, is **AFFIRMED**.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court ₂₀₂₁

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

3

- over -



PUBLIC ATTORNEY'S OFFICE
Special and Appealed Cases Service
Counsel for Petitioner
DOJ Agencies Building
Diliman, 1101 Quezon City

Court of Appeals (x)
Manila
(CA-G.R. CR No. 41024)

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

The Hon. Presiding Judge
Regional Trial Court, Branch 217
1100 Quezon City
(Crim. Case No. R-QZN-14-04539-CR)

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Philippine Judicial Academy (x)
Supreme Court

Judgment Division (x)
Supreme Court



3

UR

