



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 23 February 2022 which reads as follows:

“G.R. No. 248011 (*People of the Philippines v. Eduardo Tamayo y Pantig*). — On appeal¹ is the November 13, 2018 Decision² of the Court of Appeals (CA) in CA-G.R. CR No. 41299, which affirmed the February 1, 2018 Decision³ of Branch 2 of the Regional Trial Court (RTC) of Balanga City, Bataan, in Criminal Case No. 13240. Both the RTC and CA found accused-appellant Eduardo Tamayo y Pantig (Tamayo) guilty beyond reasonable doubt of violating Section 1 of Presidential Decree (PD) No. 1866,⁴ as amended by RA 8294,⁵ otherwise known as Illegal Possession of Firearms.

Version of the Prosecution:

On October 30, 2012, the operatives of the Bataan Criminal Investigation and Detection Group (CIDG) received a tip from a confidential informant (CI) regarding a gun-running activity in Orani, Bataan. The CI provided Police Officer 2 Noel Rechel Cruz (PO2 Cruz) with the cellphone number of the reported gun-runner named “Ed” (later identified as Tamayo). When PO2 Cruz called Tamayo, the latter revealed that he was selling one baby armalite rifle for ₱60,000.00. Consequently, the members of the Bataan CIDG planned a buy-

¹ *Rollo*, pp. 13-14.

² *Id.* at 3-12. Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Myra V. Garcia-Fernandez and Ronaldo Roberto B. Martin.

³ *CA rollo*, pp. 39-42. Penned by Presiding Judge Antonio Ray A. Ortiguera.

⁴ Entitled “CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES.” Approved: June 29, 1983.

⁵ Entitled “AN ACT AMENDING THE PROVISIONS OF PRESIDENTIAL DECREE NO. 1866, AS AMENDED, ENTITLED ‘CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF, AND FOR RELEVANT PURPOSES.’” Approved: June 6, 1997.

bust operation, then designated PO2 Cruz as the *poseur* buyer and Police Officer 1 Dennis Jimenez (PO1 Jimenez) as back-up officer. PO2 Cruz prepared the marked money consisting of three ₱100.00-bills bundled with several “play/boodle money” and dusted with ultraviolet fluorescent powder.⁶

The operatives proceeded to the town plaza of Orani and waited. Tamayo arrived at around 7:00 p.m. on board a tricycle⁷ with a sack. PO2 Cruz called while Tamayo responded. Tamayo opened the sack then showed PO2 Cruz a baby armalite rifle, a short armalite magazine, a long armalite magazine, and an envelope containing 46 rounds of ammunition. After PO2 Cruz handed over the marked money to Tamayo, the former performed the signal informing his fellow operatives of the consummation of the sale. PO2 Cruz introduced himself as a police officer, while PO1 Jimenez and the other operatives approached them. After discovering that Tamayo had no permit to carry the firearm and ammunitions, the police officers arrested him and apprised him of his rights.⁸

The operatives escorted Tamayo to the office of the Bataan CIDG for processing. PO2 Cruz marked the armalite rifle with serial number RP12842310, the long magazine, and the short magazine as ET-1, ET-2, and ET-3, respectively. The mobile phone confiscated from Tamayo was marked as ET-4. The 46 rounds of ammunition were marked as CJ-1 to CJ-46. They then transferred Tamayo to the crime laboratory for ultraviolet light examination, where he tested positive. The officers likewise turned over the firearm and ammunitions to the crime laboratory for analysis.⁹ Additionally, they prepared the following documents to file the case: Request for Ultraviolet Light Examination,¹⁰ Request for Dusting of the buy-bust money,¹¹ Request for Ballistic Examination,¹² memoranda regarding the turn-over of firearms and ammunitions,¹³ and the Joint Affidavit of Arrest.¹⁴

Version of the Defense:

Tamayo alleged that on the day in question he was at a billiard place in the town plaza of Orani, Bataan. Thereafter, he saw several police officers running towards a vehicle which was parked 20 to 30 meters away from the billiard place. The police officers recovered a gun at the back of the vehicle and arrested the driver, a certain “Ka Lito.” To Tamayo’s surprise, the police officers also arrested him and brought him inside a vehicle. Afterwards, the police officers forced him to admit that he owned the confiscated firearm. When Tamayo denied ownership/possession of the gun, the police brought him to the CIDG

⁶ *Rollo*, pp. 4-5.

⁷ Motorcycle in some parts of the records (there might have been confusion regarding the mode of transportation since PO2 Cruz treated both types of vehicles as similar); TSN, September 16, 2015, p. 6.

⁸ *Rollo*, p. 5.

⁹ *Id.*; TSN, March 2, 2016, pp. 3-4.

¹⁰ Records, p. 5.

¹¹ *Id.* at 6.

¹² *Id.* at 138.

¹³ *Id.* at 9-11 and 139.

¹⁴ *CA rollo*, p. 53; records, p. 4; TSN, September 16, 2015, pp. 3-7.

office.¹⁵

At the CIDG office, a police officer approached Tamayo and inquired if his handcuffs were fastened tight. When he confirmed this, the police officer volunteered to loosen the handcuffs. However, Tamayo noticed that the police officer sprinkled yellow powder on his hands. The police officer ushered Tamayo to the crime laboratory to examine his hands. He requested to go to the bathroom to wash his hands but he was prevented by the police officer.¹⁶

The Information:

On October 30, 2012, an Information¹⁷ was filed charging Tamayo with violation of Section 1 of PD 1866, as amended by RA 8294, the accusatory portion of which reads:

That on or about October 30, 2012, in Orani, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully has in his possession, custody and control one (1) M16 baby armalite rifle, Elisco, with Serial Number RP12842310, one (1) long magazine, one (1) short magazine and forty six (46) live ammunitions, without any license or authority from the government agency concerned having been obtained by him.

CONTRARY TO LAW.¹⁸

During his arraignment, Tamayo entered a “not guilty” plea.¹⁹

At the pre-trial, the parties stipulated that Tamayo is the same person charged in the Information and that he did not have the authority to carry the confiscated firearm.²⁰

Ruling of the Regional Trial Court:

In a Decision²¹ dated February 1, 2018, the RTC noted that the testimonies of the witnesses alluded to the sale of the armalite rifle. However, in the Information, Tamayo was charged with Illegal Possession and not the sale of the firearm. Hence, the RTC focused on the evidence related to illegal possession. The RTC ruled that the elements of Illegal Possession of Firearm are present in the case, as the defense admitted that Tamayo lacked the authority to possess the armalite rifle. Additionally, the testimonies of the prosecution witnesses showed that Tamayo was caught in possession of the firearm.²²

¹⁵ *Rollo*, p. 6; TSN, October 5, 2017, pp. 3-7.

¹⁶ *Id.*

¹⁷ Records, pp. 1-2.

¹⁸ *Id.* at 1.

¹⁹ *Id.* at 44.

²⁰ *Id.* at 62.

²¹ CA *rollo*, pp. 39-42.

²² *Id.* at 58.

The RTC further noted that there was a discrepancy between the actual ammunitions submitted in court and those which appeared on the photographs. Even so, the existence of the firearm itself, coupled with the prosecution witnesses' testimonies, is sufficient to convict Tamayo of the crime charged.²³ Finally, the RTC ruled that RA 10591,²⁴ which took effect in 2013 (after the crime was committed), should not apply in this case since the said law provides for stiffer penalties which are not at all favorable to the accused.²⁵ The dispositive portion of the RTC's Decision reads:

WHEREFORE, the accused Eduardo P. Tamayo is hereby found GUILTY beyond reasonable doubt of the crime of violation of Section 1 of P.D. 1866 as amended by R.A. 8294 and is sentenced to suffer the indeterminate penalty of imprisonment ranging from SIX (6) YEARS of *prision correccional* in its maximum period, as minimum, to SIX (6) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of *prision mayor* minimum in its medium period, as maximum, and to pay a fine of 30,000.00.

The subject firearm, two (2) magazines, and forty-six (46) rounds of ammunitions are confiscated and disposed of in accordance with law. The Branch Clerk of Court is directed to see to it that the confiscated items are properly and immediately disposed.

No costs.

SO ORDERED.²⁶

Aggrieved, Tamayo appealed²⁷ to the CA.

Tamayo argued that there is doubt concerning the legitimacy of the buy-bust operation as there was no pre-operation report referring to the conduct of the said procedure.²⁸ Moreover, there were inconsistencies regarding the number of operatives involved in the operation, the vehicle used, and the container where the armalite rifle was placed.²⁹ Additionally, he pointed out that although two officers purportedly conducted the entrapment, only PO2 Cruz knew about the buy-bust operation despite the conduct of a briefing.³⁰

Furthermore, Tamayo contended that the arresting officer did not clearly and fully inform him of his constitutional rights.³¹ He added that the firearm, magazines, and ammunitions are not admissible in evidence since these were seized without a search warrant.³²

²³ Id.

²⁴ Entitled "An Act Providing for a Comprehensive Law on Firearms and Ammunitions and Providing Penalties for Violation Thereof." Approved: May 29, 2013.

²⁵ *Rollo*, p. 59.

²⁶ Id. at 59.

²⁷ *CA rollo*, p. 15.

²⁸ Id. at 25.

²⁹ Id. at 26-28; Tamayo insisted that the firearm could not fit inside an "envelope," yet the prosecution averred that all the items were in a "sack."

³⁰ Id. at 28.

³¹ Id. at 29-30.

³² Id. at 30.

On the other hand, the People, through the Office of the Solicitor General, contended that all the elements for violation of PD 1866, as amended, were established with moral certainty, especially when PO2 Cruz's testimony showed the existence of the firearm and ammunitions.³³ Moreover, Tamayo admitted during the pre-trial that he did not have a license to possess any kind of firearm.³⁴ Apart from this, it averred that the confiscated items are admissible in evidence as Tamayo's arrest was lawful since he was caught *in flagrante delicto* during a valid buy-bust operation.³⁵ Lastly, it asserted that the RTC correctly appreciated the prosecution's version of the story since the testimonies remained unsullied.³⁶

Ruling of the Court of Appeals:

The CA, in its assailed November 13, 2018 Decision,³⁷ held that there was a valid warrantless arrest since there was a legitimate buy-bust operation. This is notwithstanding the lack of a pre-operation report and the minor discrepancies in the testimonies of the prosecution witnesses.³⁸ The CA found that PO2 Cruz caught Tamayo *in flagrante delicto* in possession of an armalite rifle without a license.³⁹ The CA ruled that the assessment of the RTC should be given weight, and that the defense failed to show that the prosecution was impelled by improper motive to incriminate Tamayo.⁴⁰ Hence, the CA affirmed Tamayo's guilt and the penalty imposed by the RTC.⁴¹

Discontented, Tamayo appealed⁴² before this Court.

Issue

Thus, the issue is whether or not Tamayo is guilty beyond reasonable doubt of the crime of Illegal Possession of Firearm.

Our Ruling

The appeal has no merit.

The Court notes that Tamayo did not question the illegality of his arrest before he entered his plea of "not guilty."⁴³ Since he actively participated during

³³ Id. at 54-55.

³⁴ Id. at 59.

³⁵ Id. at 59-61.

³⁶ Id. at 61-62.

³⁷ *Rollo*, pp. 3-12.

³⁸ Id. at 7-8.

³⁹ Id. at 9.

⁴⁰ Id. at 10.

⁴¹ Id. at 11.

⁴² Id. at 13-14.

⁴³ *People v. Solomon*, G.R. No. 246579, February 19, 2020, citing *Veridiano v. People*, 810 Phil. 642, 654 (2017).

the trial, he is deemed estopped from questioning the legality of his arrest.⁴⁴ Withal, the firearm and ammunitions which were confiscated after his arrest can still be considered for any purpose.⁴⁵

In line with this, this Court concurs in the finding of the RTC and the CA that a buy-bust operation occurred on the day of Tamayo's arrest. The testimonial evidence, although with minor inconsistencies, demonstrated that the operatives of the Bataan CIDG conducted a valid entrapment operation. This is notwithstanding the absence of a pre-operation report. It can be inferred from PO2 Cruz' testimony that the entrapment operation was planned in haste since the transaction would occur early in the morning. Also, in their Joint Affidavit of Arrest, PO2 Cruz and PO1 Jimenez recounted the events leading to Tamayo's arrest. Additionally, the prosecution presented proof of the marked money which was used during the entrapment operation.

According to PO1 Jimenez, he attended the briefing prior to the buy-bust operation but clarified that he only served as back-up officer given that PO2 Cruz was the one who transacted with Tamayo and took charge of the confiscated evidence.⁴⁶ Nonetheless, PO1 Jimenez's testimony corroborated that of PO1 Cruz's. The police officers' testimonies established the occurrence of a valid entrapment operation, including the warrantless arrest of Tamayo and the seizure of the firearm and ammunitions from him.

Simply put, "the search and confiscation of the firearm was an incident to [Tamayo's] arrest during the buy-bust operation. Since the buy-bust operation was established as legitimate, it follows that the warrantless search [incidental to a lawful arrest] was also valid."⁴⁷

In view of this, as Tamayo illegally possessed a high-powered firearm,⁴⁸ he was charged with a violation of Section 1 of PD 1866, as amended by RA 8294, viz.:

Sec. 1. Unlawful manufacture, sale, acquisition, disposition or possession of firearms or ammunition or instruments used or intended to be used in the manufacture of firearms or ammunition. – x x x

The penalty of *prision mayor* in its minimum period and a fine of Thirty thousand pesos (P30,000) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: *Provided*, however, That no other crime was committed by the person arrested.

⁴⁴ *Id.*, citing *Padilla v. Court of Appeals*, 336 Phil. 383, 400-401 (1997).

⁴⁵ *People v. Olarte*, G.R. No. 233209, March 11, 2019, citing *Comerciante v. People*, 764 Phil. 627, 633-634 (2015).

⁴⁶ TSN, March 2, 2016, p. 6; June 29, 2016, pp. 3-6.

⁴⁷ *Amida v. People*, G.R. No. 254489, January 11, 2021, citing *People v. Marcelino*, 639 Phil. 643, 652 (2010).

⁴⁸ See *Jacaban v. People*, 756 Phil. 523, 531 (2015).

To successfully prosecute the crime of Illegal Possession of Firearm, the concurrence of these two elements is required: “(a) the firearm exists; and (b) the accused who owned or possessed it does not have the corresponding license or permit to possess or carry the same.”⁴⁹

The testimonies of PO2 Cruz and PO1 Jimenez proved the existence of the armalite rifle, as it was confiscated from Tamayo during the buy-bust operation. Moreover, Tamayo admitted during the pre-trial that he did not have the license to possess the said firearm. Thus, both the elements of the crime of Illegal Possession of Firearm are present in this case. As observed by the RTC, even if there is a discrepancy between the photographs of the ammunitions and the actual ones submitted in evidence, PO2 Cruz’s testimony regarding the existence of the firearm is sufficient to convict him. Otherwise stated, even if the existence of the bullets cannot be proven, the fact that the existence of the armalite rifle was established is enough to confirm Tamayo’s guilt. In fine, based on the evidence, Tamayo’s culpability was proven beyond reasonable doubt.⁵⁰ Besides, Tamayo did not prove, much less allege, that the police officers harbored any ill motive to falsely accuse him of the crime.

Apart from this, the testimonies of the police operatives showed that the chain of custody in handling the firearm was preserved, as PO2 Cruz handled the armalite rifle from the moment of confiscation until it was turned over to the crime laboratory for examination and safe keeping. It should be noted that the prosecution submitted copies of the memoranda⁵¹ regarding the handling and storage of seized firearms and ammunitions. These should be turned over to the police’s crime laboratory. Photographs of the firearms and ammunitions will be deemed sufficient for purposes of the trial, unless the trial court requires its presentation.

To reiterate, although Tamayo was caught selling the firearm and ammunitions, the Information charged him with Illegal Possession and not Illegal Sale. As such, he can only be held for trial and be convicted of Illegal Possession of Firearm. Finally, both the RTC and the CA correctly imposed the proper penalty in accordance with criminal laws.⁵²

WHEREFORE, the appeal is **DISMISSED**. The assailed November 13, 2018 Decision rendered by the Court of Appeals in CA-G.R. CR No. 41299 is hereby **AFFIRMED**.

SO ORDERED.”

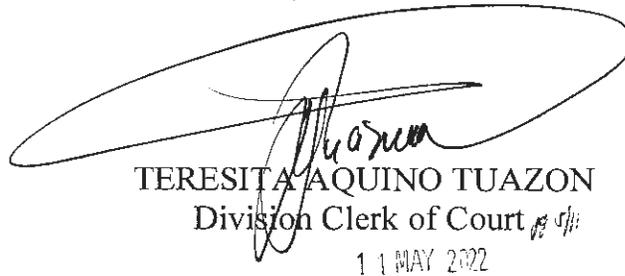
⁴⁹ *Amida v. People*, supra note 47, citing *Peralta v. People*, 817 Phil. 554, 562 (2017).

⁵⁰ RULES OF COURT, Rule 133, Section 2.

⁵¹ Records, pp. 9-11.

⁵² See *Jacaban v. People*, supra note 48 at 534.

By authority of the Court:



TERESITA AQUINO TUAZON
Division Clerk of Court *ps/dfj*
11 MAY 2022

BF CRUZ AND PARTNERS LAW OFFICE (reg)
Counsel for Accused-Appellant
2nd Floor, Admor Building,
Arellano St., National Rd., Balut
2112 Orani, Bataan

OFFICE OF THE SOLICITOR GENERAL (reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 2
2100 Balanga, Bataan
(Crim. Case No. 13240)

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. CR No. 41299

Please notify the Court of any change in your address.
GR248011. 2/23/2022(166)URES