



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **January 16, 2023**, which reads as follows:*

**“G.R. No. 262532 – MICHAEL WIGWER y Dela Cruz @ “MICHAEL KANO”, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.**

Petitioner Michael D. Wigwer (**Wigwer**) was charged with violation of Republic Act (R.A.) No. 10591 or the Comprehensive Firearms and Ammunition Regulation Act in an Information, dated September 28, 2015, filed before the Regional Trial Court of Malolos City, Bulacan (RTC).<sup>1</sup> The RTC, in its Decision,<sup>2</sup> dated March 28, 2019, found Wigwer guilty. Wigwer appealed his conviction to the Court of Appeals (CA) which affirmed the RTC Decision in its Decision,<sup>3</sup> dated August 31, 2021. Wigwer filed this Petition for Review on *Certiorari* (**Petition**),<sup>4</sup> dated September 28, 2022, challenging the CA Decision.

*The Facts*

The prosecution claims that on September 12, 2015, at around 10:40 a.m., a confidential informant arrived at the Police Station of Angat, Bulacan and informed the police that a certain “Michael Kano” (later identified as Wigwer) was selling illegal drugs at his residence in Barangay Sto. Cristo, Angat, Bulacan.<sup>5</sup> A buy-bust operation was conducted by police operatives. PO1 Jerry Oliver Gamao (**PO1 Gamao**) acted as a poseur buyer. In his testimony, PO1 Gamao claimed that he transacted with Wigwer and successfully purchased illegal drugs.<sup>6</sup> Upon the consummation of the sale, PO1 Gamao scratched his head, which was the pre-arranged signal to the other police operatives confirming that the sale has been consummated.

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<sup>1</sup> *Rollo*, p. 34.

<sup>2</sup> *Id.* at 71-86.

<sup>3</sup> *Id.* at 34-47. Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Pablito A. Perez and Raymond Reynold R. Lauigan.

<sup>4</sup> *Id.* at 11-32.

<sup>5</sup> *Id.* at 36.

<sup>6</sup> *Id.*

PO1 Gamao introduced himself as a police officer and handcuffed Wigwer. He also confiscated the seven sachets of suspected *shabu*.<sup>7</sup> While he was holding Wigwer, PO1 Gamao noticed a gun tucked in Wigwer's waist. When PO1 Gamao asked Wigwer why he was carrying a gun, Wigwer allegedly responded with "*Di po yan pumuputok.*"<sup>8</sup> PO1 Gamao confiscated the gun which turned out to be a .38 caliber revolver.<sup>9</sup> It was also loaded with two live bullets.<sup>10</sup>

The police operatives then entered Wigwer's home which was near the area where Wigwer was apprehended.<sup>11</sup> The team found Manuel Rios (**Rios**) and three other persons having a pot session.<sup>12</sup> PO3 Dessie James Moraleda (**PO3 Moraleda**) ordered Rios to empty his pockets and recovered from him nine live ammunitions.<sup>13</sup>

The police operatives conducted an inventory of the items confiscated and also took photographs. PO3 Moraleda marked the .38 caliber revolver with "DJAM-26" and the two bullets with "DJAM-27" and "DJAM-28." Notably, DJAM are PO3 Moraleda's initials.<sup>14</sup> The .38 caliber revolver was also included in the inventory and was confirmed to have the following serial number: 521233.<sup>15</sup> The police operatives went to the barangay hall of Sto. Cristo, Angat to record the arrest of Wigwer, Rios, and the three other persons. They then proceeded to the crime laboratory and requested for a ballistic examination of the firearm and ammunition.<sup>16</sup>

On May 3, 2017, the Philippine National Police Firearms and Explosives Office (**PNP FEO**) issued a certification (**PNP FEO Certification**) which stated that "as of this date, MICHAEL WIGWAR y DELA CRUZ, is not a licensed/registered firearm holder of any kind and caliber particularity one (1) Caliber .38 Revolver without make with Serial Number 521233 per verification from records of this office."<sup>17</sup> The PNP FEO Certification also stated that "Caliber .38, Revolver, Arm with Serial Number 521233 is licensed/registered to POLO SECURITY & INTEG

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 37.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 45.

<sup>11</sup> *Id.* at 36-37.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 37.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 114. The PNP FEO Certification spelled Wigwer's name as "Michael Wigwar."

SERVICES of MC Arthur Highway, Malanday, Valenzuela City, issued/approved on April 29, 2016.”<sup>18</sup>

The defense, on the other hand, claims that the buy-bust operation was a sham and that the firearm and ammunition purportedly recovered from Wigwer and Rios were planted by the police.<sup>19</sup>

According to the defense, Rios was at Wigwer’s residence in the morning of September 12, 2015 because he wanted to buy tilapia from Wigwer, who was a fisherman. However, when Rios arrived at Wigwer’s home, Wigwer was not present as he was out fishing. There were, however, three persons present who were playing cards. Rios joined them. While they were playing cards, PO1 Gamao and PO3 Moraleda arrived and asked Rios, “*Ikaw si Kano ano?*” Rios was allegedly shocked and could not respond. The two police officers then frisked them and took their money. When Wigwer arrived, the two police officers searched his home and claimed that they found drug paraphernalia, a firearm, and bullets. However, according to the defense, these were merely taken from the police officer’s own bag. The police officers forced Wigwer and Rios to point to the items and took photographs of them. They were subsequently brought to the barangay hall where they were ordered to sign a document. According to Rios and Wigwer, the police officers hit them when they initially refused to sign the document. They were eventually brought to the police station.<sup>20</sup>

### *The Ruling of the RTC*

Wigwer and Rios were charged in separate informations for violation of R.A. No. 10591, which were filed with the RTC.<sup>21</sup> During the arraignment, both Wigwer and Rios pleaded not guilty.<sup>22</sup> The two cases were consolidated and the RTC conducted a joint trial.<sup>23</sup> On March 28, 2019, the RTC rendered a Joint Judgment, dated March 28, 2019,<sup>24</sup> finding both Wigwer and Rios guilty. The dispositive portion of the Joint Judgment states:

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<sup>18</sup> *Id.* at 114-115.

<sup>19</sup> *Id.* at 19.

<sup>20</sup> *Id.* at 14.

<sup>21</sup> *Id.* at 35.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 71-86.

**WHEREFORE**, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 4716-M-2015, accused Manuel D. Rios is found guilty beyond reasonable doubt of Illegal Possession of Ammunition and is hereby sentenced to suffer the penalty of imprisonment of six (6) years, eight (8) months and one (1) day to seven (7) years and four (4) months of *prision mayor* in its minimum period.

2. In Criminal Case No. 4717-M-2015, accused Michael D. Wigwer, is found guilty beyond reasonable doubt of Illegal Possession of a Firearm and is hereby sentenced to suffer the penalty of imprisonment of eight (8) years and one (1) day to nine (9) years and four (4) months of *prision mayor* in its medium period.

In the service of their respective sentence, accused Manuel Rios and Michael Wigwer shall be credited with the period of their preventive imprisonment in accordance with Article 29 of the Revised Penal Code, as amended by Republic Act No. 10592.

The .38 caliber revolver with serial number 521233 and the 11 bullets, subject matter of these cases, are hereby ordered (1) forfeited in favor of the government; and (2) transmitted to the Philippine National Police for proper disposition.

SO ORDERED.<sup>25</sup>

### *The Ruling of the CA*

Wigwer and Rios filed an appeal to the CA.<sup>26</sup> On October 23, 2019, Rios withdrew his appeal. On August 31, 2021, the CA rendered its Decision,<sup>27</sup> dated August 31, 2021, which affirmed the Joint Judgment with modifications. The dispositive portion of the CA Decision reads:

**WHEREFORE**, the appeal is **DENIED** for lack of merit. The assailed Joint Judgment dated March 28, 2019 of the Regional Trial Court of Malolos City, Bulacan, Branch 20 in Criminal Case No. 4717-M-2015 is **AFFIRMED** with **MODIFICATION** in that the accused-appellant Michael Wigwer y Dela Cruz @ "Michael Kano" is found guilty beyond reasonable doubt of illegal possession of firearm and ammunition, defined and penalized under Section 28, paragraphs (a) and (e)(1), Article V of Republic Act No. 10591 and sentenced to suffer the indeterminate penalty

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<sup>25</sup> *Id.* at 85-86.

<sup>26</sup> *Id.* at 34.

<sup>27</sup> *Id.* at 34-47. Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Pablito A. Perez and Raymond Reynold R. Lauigan.

of imprisonment of eight (8) years, eight (8) months and one (1) day of *prision mayor* in its medium period, as minimum, to ten (10) years, eight (8) months and one (1) day of *prision mayor* in its maximum period, as maximum.<sup>28</sup>

The CA denied Wigwer's Motion for Reconsideration,<sup>29</sup> dated October 14, 2021, in its Resolution,<sup>30</sup> dated August 3, 2022.

Wigwer filed this Petition,<sup>31</sup> seeking the reversal of the CA Decision and Resolution. Wigwer raises the following arguments:

First, the buy-bust operation was a sham and thus, there was no valid justification for Wigwer's arrest and the consequent search and seizure of the firearm and bullets.<sup>32</sup> The prosecution's evidence, consisting of testimonies of PO1 Gamao and PO3 Morelada, were inconsistent and incompatible with ordinary human experience and thus did not merit any credence.<sup>33</sup>

Second, the prosecution failed to establish the first element of the crime which is the existence of the firearm since "the prosecution failed to prove an unbroken chain of custody because not all those who touched and had possession of the subject firearm and ammunition testified in court."<sup>34</sup> Further, the prosecution did not present evidence on the condition of the firearm and ammunition while it was in PO1 Gamao's and PO3 Moraleda's possession and upon their turnover to the subsequent links in the chain of custody.<sup>35</sup>

Third, the prosecution did not establish the second element of the crime which is that Wigwer does not have a corresponding license to possess or own the firearm. Wigwer asserts that the PNP FEO Certification did not confirm that he did not have a license at the time of the alleged crime.<sup>36</sup> The PNP FEO Certification merely stated that 'as of this date'<sup>37</sup> or on May 3, 2017, Wigwer was not a licensed or registered firearm holder of any kind and caliber[.]<sup>38</sup> Thus, for Wigwer, there exists no evidence that he did not

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<sup>28</sup> *Id.* at 46.  
<sup>29</sup> *Id.* at 104-112.  
<sup>30</sup> *Id.* at 49-50.  
<sup>31</sup> *Id.* at 11-32.  
<sup>32</sup> *Id.* at 19-20.  
<sup>33</sup> *Id.* at 20-23.  
<sup>34</sup> *Id.* at 24.  
<sup>35</sup> *Id.* at 25.  
<sup>36</sup> *Id.* at 27.  
<sup>37</sup> *Id.*  
<sup>38</sup> *Id.*

have the required license between September 12, 2015 (the date of his apprehension) and May 3, 2017.<sup>39</sup> Moreover, Wigwer claims that since the PNP FEO Certification shows that the firearm is licensed to Polo Security & Integ Services, it is curious that the “prosecution neither alleged that the licensee had reported to the PNP FEO that the said gun was lost or stolen, nor alleged that the PNP FEO had initiated any action against the licensee for such non-reporting.”<sup>40</sup>

Wigwer also argues that while a Rule 45 petition is generally limited to questions of law, there are exceptions, present in this case, which warrant a review of the facts. According to Wigwer, the following exceptions are present: (1) the conclusion of the CA is grounded entirely on speculations, surmises and conjectures; (2) the CA Decision is based on a misapprehension of facts; and (3) the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.<sup>41</sup>

### *The Issue*

Did the CA correctly affirm the RTC’s Joint Judgment finding Wigwer guilty of violating R.A. No. 10591?

### *The Ruling of the Court*

The Court denies the Petition.

First, there is no valid ground to consider this case as an exception to the rule that a Rule 45 petition involves only questions of law. Contrary to Wigwer’s claim, the CA did not misapprehend the facts nor base its ruling on the absence of evidence or on mere speculations, surmises, and conjectures. Second, the evidence on record satisfactorily established the elements of the crime.

*A Rule 45 Petition involves only questions of law and Wigwer has not shown that any of the exceptions to this rule are present in this case*

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 26.

<sup>41</sup> *Id.* at 17-18.

An appeal to the Court via a Rule 45 petition involves only questions of law.<sup>42</sup> This rule is subject to a narrow set of exceptions and the Court will not overturn the findings of fact of the lower courts in the absence of proof that the recognized exceptions are present. Moreover, it is axiomatic that where the issues raised by a party pertain to the credibility of the witnesses and the proper appreciation of the weight of the evidence on record, the ruling of the trial court are generally binding.<sup>43</sup> Such rulings on questions of fact carry even more weight when they are affirmed by the CA.<sup>44</sup>

Here, the CA affirmed the findings of fact of the RTC (except for the ruling on whether or not the subject firearm was loaded which became the basis for the CA's modification of the penalty imposed).<sup>45</sup> As will be discussed below, contrary to Wigwer's claim, the RTC and the CA findings are based on a proper and judicious appreciation of the evidence and the credibility of the testimonies of the witnesses. There is, therefore, no ground to review the findings of fact in the assailed CA Decision.

*The prosecution established the  
elements of the crime and,  
consequently, Wigwer's guilt*

Wigwer insists that there were glaring inconsistencies in the two police officer's testimonies which render them incredible. Specifically, Wigwer points to the following inconsistencies: (1) PO1 Gamao testified that he received a tip from a confidential informant that Wigwer was selling illegal drugs while PO3 Morelada testified that it was he who received the said tip;<sup>46</sup> (2) both PO1 Gamao and PO3 Morelada stated in their affidavits that they inventoried the confiscated items at the place of arrest but contradicted this during their testimony in court when they said that they conducted the inventory at the barangay hall;<sup>47</sup> (3) PO1 Gamao and PO3 Morelada contradicted each others testimonies because while PO1 Gamao stated that the firearm was marked by their Chief, PO3 Morelada testified that he marked the firearm and bullets himself;<sup>48</sup> and (4) PO1 Gamao initially claimed that the police operatives entered Wigwer's house after the

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<sup>42</sup> RULES OF COURT, Rule 41, sec. 2 (c).

<sup>43</sup> *Bautista v. Spouses Balolong*, G.R. No. 243296, July 29, 2020.

<sup>44</sup> *Id.*

<sup>45</sup> *Rollo*, p. 54.

<sup>46</sup> *Id.* at 20.

<sup>47</sup> *Id.* at 20-21.

<sup>48</sup> *Id.* at 21.

consummation of the alleged sale transaction but later stated that he was outside of Wigwer's house and did not witness what happened inside.<sup>49</sup>

All the foregoing purported inconsistencies pertain to collateral matters and do not affect the essential question of whether the elements of the crime were duly established. All of these minor inconsistencies in the witnesses' testimonies do not go into any of the elements of the crime and do not disprove the established facts that (a) a firearm was found in Wigwer's possession and (b) Wigwer did not have a license to possess or own the firearm.

In *Calma v. People*,<sup>50</sup> the Court ruled that:

It is an elementary rule in this jurisdiction that inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect the substance of their declaration nor the veracity or weight of their testimony. In fact, these minor inconsistencies enhance the credibility of the witnesses, for they remove any suspicion that their testimonies were contrived or rehearsed.<sup>51</sup>

Ultimately, Wigwer assails the credibility of the prosecution's witnesses. It is fundamental that the trial court is in the best position to ascertain the credibility of witnesses.<sup>52</sup> In the absence of proof that the trial court erred in its assessment, there is no reason for the Court to reverse the RTC's findings on this point.

As to Wigwer's argument that the prosecution failed to prove an unbroken chain of custody because (a) not all those who touched and had possession of the firearm were presented and (b) there was no adequate evidence showing the condition of the firearm and the manner of its storage at each link in the chain of custody, the CA Decision correctly concluded that this stringent standard of evidence pertaining to the chain of custody applies to illegal drugs cases and has not been extended to apply to cases involving illegal firearms.<sup>53</sup>

In *People v. Olarte*,<sup>54</sup> the Court explained:

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<sup>49</sup> *Id.*

<sup>50</sup> 820 Phil. 858, 866 (2017).

<sup>51</sup> *Id.*

<sup>52</sup> *Bautista v. Spouses Balolong, supra note.*

<sup>53</sup> *Id.* at 44; *People v. Guinto*, G.R. No. 243591, September 16, 2020.

<sup>54</sup> 848 Phil 820-856, 853 (2019).



At this point, it becomes necessary to point out that the degree of fungibility of amorphous objects without an inherent unique characteristic capable of scientific determination, i.e., DNA testing, is higher than stably structured objects or those which retain their form because the likelihood of tracing the former objects' source is more difficult, if not impossible. Narcotic substances, for example, are relatively easy to source because they are readily available in small quantities thereby allowing the buyer to obtain them at lower cost or minimal effort. It makes these substances highly susceptible to being used by corrupt law enforcers to plant evidence on the person of a hapless and innocent victim for the purpose of extortion. Such is the reason why narcotic substances should undergo the tedious process of being authenticated in accordance with the chain of custody rule.

**In this regard, the 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.<sup>55</sup>

In this case, because the firearm involved, a .38 caliber revolver with serial number 521233 is unique, readily identifiable, and relatively resistant to change, the stringent requirements for chain of custody, which applies to drugs cases, should not apply here. The CA and the RTC are correct that the prosecution adequately identified the firearm presented in court to be the same firearm confiscated from Wigwer. In this regard, it is pertinent to note that the firearm was included in the inventory conducted by the police officers shortly after the arrest. Moreover, the firearm and ammunition were personally marked by PO3 Morelada with his own initials and he positively identified the firearm and the bullets in open court.

Further, the CA properly ruled that Wigwer cannot raise this objection for the first time on appeal.<sup>56</sup> If Wigwer had objections as to the prosecution's evidence, and specifically the admissibility of the firearm and the bullets as evidence, this should have been raised during the trial and not for the first time in his appeal with the CA.<sup>57</sup>

Finally, Wigwer's argument that the prosecution failed to prove that he did not possess the required license is incorrect. According to Wigwer,

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<sup>55</sup> Emphasis supplied; citations omitted.

<sup>56</sup> *Rollo*, p. 44.

<sup>57</sup> *S.C. Megaworld Construction and Development Corporation v. Parada*, 717 Phil. 752, 760 (2013).

the PNP FEO Certification only stated that “as of this date”<sup>58</sup> or on May 3, 2017, Wigwer was not a licensed or registered firearm holder of any kind and caliber[.]”<sup>59</sup> but did not confirm that Wigwer did not have a license at the time of his arrest on September 12, 2015. Wigwer erroneously reads “as of this date” to mean “today only” when the context of the PNP FEO Certification clearly shows that “as of this date” means that based on the records of the PNP FEO, Wigwer did not have a license and continues not to have one at the time the certification was issued.

Wigwer also claims that since the PNP FEO Certification shows that the firearm is licensed to Polo Security & Integ Services, it should have reported that the gun was lost or stolen to the PNP FEO. The PNP FEO should have also initiated action in relation to the licensee’s non-reporting of the loss of the gun. According to Wigwer, that the prosecution did not make these allegations makes the probability that the gun was merely planted plausible. Wigwer’s argument is untenable. The report of the actual licensee of a firearm that it has been lost or stolen is not vital in the criminal prosecution for violations of R.A. No. 10591. Thus, whether there has been such a report and whether the PNP FEO has initiated any investigation is irrelevant to the question of whether Wigwer possessed a firearm without the necessary license. There is equally no merit to Wigwer’s assertion that the firearm and the bullets were merely planted. Apart from his bare assertion, there is no evidence on record that would support this claim.

WHEREFORE, the Decision, dated August 31, 2021, of the Court of Appeals in CA-G.R. CR No. 43703 is **AFFIRMED**.

**SO ORDERED.”**

By authority of the Court:

**MISAEAL DOMINGO C. BATTUNG III**  
*Division Clerk of Court*

By:

  
**RUMAR D. PASION**  
*Deputy Division Clerk of Court*

CER  
3/31/23

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<sup>58</sup> *Rollo*, p. 65.

<sup>59</sup> *Id.*

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(Criminal Case No. 4717-M-2015)

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