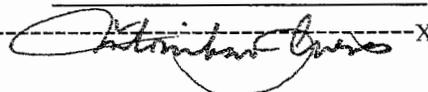


G.R. No. 236628 – (MARVIN L. SAN JUAN, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent).

Promulgated:

January 17, 2023

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CONCURRENCE

LAZARO-JAVIER, J.:

I concur in the result.

I start with this legal doctrine –

A statute or act is vague when it lacks comprehensible standards that individuals of common intelligence must necessarily guess at its meaning and differ in its application.¹ This incomprehensibility violates the *Constitution* in two ways — it violates due process for failure to give persons, especially the parties targeted by it, fair notice of what conduct to avoid; and, it leaves law enforcers unchecked discretion in carrying out its provisions and becomes an arbitrary source of government orders.² But a statute or act cannot be vague if it can be clarified either by a saving clause or by construction.³

This doctrine is important in cases like the present one where the language of the law has to be clarified. Here, the interpretation and application of Section 10(a) of Republic Act No. 7610, otherwise known as “*Special Protection of Children Against Abuse, Exploitation and Discrimination Act*”⁴ have confused our prosecutors and courts of what is and what is not the prohibited conduct under it. Even the name of the crime under this subsection has not been consistent and certain. This case is the appropriate means to uphold the doctrine and settle these concerns.

¹ See *Zabal v. Duterte*, 846 Phil. 743 (2019) [Per J. Del Castillo, *En Banc*]

² *Id.*

³ *Id.*

⁴ Republic Act No. 7610, Sec.10, *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.* – (a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period. (Special Protection of Children Against Abuse, Exploitation and Discrimination Act, June 17, 1992).



Antecedents

The prosecution initiated the criminal case below with this Information:

That on or about March 26, 2014, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, who was drunk, without any justifiable cause, did then and there willfully, unlawfully[,] and feloniously threaten the life of one [AAA] 15 years old (DOB: May 5, 1998) (complainant) by poking a gun at him, an act amounting to a crime, thereby subjecting said minor to psychological cruelty and emotional maltreatment.

The criminal acts are the poking of the gun and the threat to the life of the minor. As stated in the Information, the resulting offense is the conjoined “psychological cruelty and emotional maltreatment.” The prosecution identifies the crime as violation of Section 10(a) of Republic Act No. 7610.

After trial, the **second-level court** found that petitioner pointed a gun and he motioned as if to throw the stone at the minor as he was hurling invectives at him and his friends. The trial court concluded that the crime committed was **Child Abuse under** Section 10(a) of Republic Act No. 7610.

The Court of Appeals affirmed the factual findings of the trial court. It however digressed from the trial court in identifying the offense committed – **grave threats in relation to Section 10(a) of Republic Act No. 7610**. The *ponencia* mentioned that the Court of Appeals had based its ruling on these legal conclusions: there was “maltreatment” that “debase[d]” and caused fear to the minor.

My Observations

Having read the *ponencia* and all the *Reflections*, and having dealt with Section 10(a) of Republic Act No. 7610 in the past, I conclude that the prosecution, the trial court, and the Court of Appeals each came up with their own name of the crime that petitioner is guilty of. Thus, for:

- the prosecution, it is a **violation of Section 10(a) of Republic Act No. 7610** for the minor’s suffering of **psychological cruelty and emotional maltreatment**;
- the trial court, **Child Abuse under Section 10(a) of Republic Act No. 7610** as a result of the **pointing of the gun at him**; and

- the Court of Appeals, it is **grave threats in relation to Section 10(a) of Republic Act No. 7610** arising from his **maltreatment** that debased and caused fear in him.

There are things amiss in the designation of the offense.

One. There is **no** “psychological cruelty” – it is either “psychological abuse,” “psychological injury” or “cruelty.” More, “psychological abuse” is distinct from (though could be similar to) “emotional maltreatment.”

Two. “Child Abuse” itself consists of distinct modes of committing this umbrella offense.

Three. The crime of grave threats in relation to Section 10(a) of Republic Act No. 7610 is a juxtaposition of different elements from each of these crimes, grave threats under the Revised Penal Code (RPC) and Section 10(a) of Republic Act No. 7610 (which itself consists of different crimes of diverse elements). Maltreatment is an overarching criminal act for the different modes of Child Abuse (refer to Section 3(b) of Republic Act No. 7610)⁵ while “debase” is specific to subsection 3(b)(2) Republic Act No. 7610.⁶ Causing fear to the minor is a throwback to grave threats under the RPC.⁷

Must individuals of common intelligence necessarily guess at the meaning and differ in the application of Section 10(a) of Republic Act No. 7610? If we are to take the different designations given by the prosecution, the trial court, and the Court of Appeals, to petitioner’s offense, then for sure the Court must clarify this criminal provision either by a saving clause or construction.

⁵ Republic Act No. 7610, Sec. 3, *Definition of Terms.* –

x x x x

(b) “Child abuse” refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

(Special Protection of Children Against Abuse, Exploitation and Discrimination Act, June 17, 1992).

⁶ Republic Act No. 7610, Sec. 3, *Definition of Terms.* –

x x x x

(b) “Child abuse” refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

x x x x

(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

x x x x

(Special Protection of Children Against Abuse, Exploitation, and Discrimination Act, June 17, 1992).

⁷ REV. PEN. CODE.

My Analysis

Section 10(a) of Republic Act No. 7610 provides a comprehensive cover for every prohibited conduct which may not have been captured by the other provisions of Republic Act No. 7610. This is at once shown by the use of the word “other” in identifying the criminal acts:

SECTION 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child’s Development.

- (a) Any person who shall commit any **other** acts of child abuse, cruelty[,] or exploitation or be responsible for other conditions prejudicial to the child’s development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.⁸

Section 10(a) pertains to acts other than Child Prostitution and Other Sexual Abuse, Child Trafficking, Obscene Publications, and Indecent Shows, and the criminal acts listed in Section 10(b) to (e).⁹

⁸ *Supra* note 4.

⁹ Republic Act No. 7610, Sec.10, *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child’s Development.* –

x x x x

(b) Any person who shall keep or have in his company a minor, twelve (12) years or under or who in ten (10) years or more his junior in any public or private place, hotel, motel, beer joint, discotheque, cabaret, pension house, sauna or massage parlor, beach and/or other tourist resort or similar places shall suffer the penalty of *prision mayor* in its maximum period and a fine of not less than Fifty thousand pesos (P50,000): Provided, That this provision shall not apply to any person who is related within the fourth degree of consanguinity or affinity or any bond recognized by law, local custom and tradition or acts in the performance of a social, moral or legal duty.

(c) Any person who shall induce, deliver or offer a minor to any one prohibited by this Act to keep or have in his company a minor as provided in the preceding paragraph shall suffer the penalty of *prision mayor* in its medium period and a fine of not less than Forty thousand pesos (P40,000); Provided, however, That should the perpetrator be an ascendant, stepparent or guardian of the minor, the penalty to be imposed shall be *prision mayor* in its maximum period, a fine of not less than Fifty thousand pesos (P50,000), and the loss of parental authority over the minor.

(d) Any person, owner, manager or one entrusted with the operation of any public or private place of accommodation, whether for occupancy, food, drink or otherwise, including residential places, who allows any person to take along with him to such place or places any minor herein described shall be imposed a penalty of *prision mayor* in its medium period and a fine of not less than Fifty thousand pesos (P50,000), and the loss of the license to operate such a place or establishment.

(e) Any person who shall use, coerce, force or intimidate a street child or any other child to;

(1) Beg or use begging as a means of living;

(2) Act as conduit or middlemen in drug trafficking or pushing; or

(3) Conduct any illegal activities, shall suffer the penalty of *prision correccional* in its medium period to *reclusion perpetua*.

(Special Protection of Children Against Abuse, Exploitation and Discrimination Act, June 17, 1992).

For purposes of the present case, Subsections 3(b)(1)¹⁰ and 3(b)(2) of Republic Act No. 7610 are helpful in identifying what these **other criminal acts** are, thus:

SECTION 3. Definition of Terms. —

- (a) “Children” refers to person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation[,] or discrimination because of a physical or mental disability or condition;
- (b) “**Child abuse**” refers to the maltreatment, whether habitual or not, of the child which includes any of the following:
 - (1) **Psychological and physical abuse, neglect, cruelty, sexual abuse[,] and emotional maltreatment;**
 - (2) **Any act by deeds or words which debases, degrades[,] or demeans the intrinsic worth and dignity of a child as a human being...** (Emphasis supplied)

So are the following provisions of the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases (1993)* –

SECTION 2. Definition of Terms. — As used in these Rules, unless the context requires otherwise —

- a) “Child” shall refer to a person below eighteen (18) years of age or one over said age and who, upon evaluation of a qualified physician, psychologist[,] or psychiatrist, is found to be incapable of taking care of himself fully because of a physical or mental disability or condition or of protecting himself from abuse;
- b) “**Child abuse**” refers to the **infliction of physical or psychological injury, cruelty to, or neglect, sexual abuse[,] or exploitation** of a child;
- c) “**Cruelty**” refers to any act by word or deed which **debases, degrades[,] or demeans** the intrinsic worth and dignity of a child as a human being. Discipline administered by a parent or legal guardian to a child does not constitute cruelty provided it is reasonable in manner and moderate in degree and does not constitute physical or psychological injury as defined herein;

¹⁰ Republic Act No. 7610, Sec. 3, *Definition of Terms.* –

x x x x

(b) “Child abuse” refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

(1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

x x x x

- d) “**Physical injury**” includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe injury[,] or serious bodily harm suffered by a child;
- e) “**Psychological injury**” means harm to a child’s psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal[,] or outward aggressive behavior, or a combination of said behaviors, which may be demonstrated by a change in behavior, emotional response or cognition;
- f) “**Neglect**” means failure to provide, for reasons other than poverty, adequate food, clothing, shelter, basic education[,] or medical care so as to seriously endanger the physical, mental, social[,] and emotional growth and development of the child;
- g) “**Sexual abuse**” includes the employment, use, persuasion, inducement, enticement[,] or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children;
- h) “**Lascivious conduct**” means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person;
- i) “**Exploitation**” means the hiring, employment, persuasion, inducement, or coercion of a child to perform in obscene exhibitions and indecent shows, whether live or in video or film, or to pose or act as a model in obscene publications or pornographic materials, or to sell or distribute said materials; and¹¹ (Emphasis supplied)

x x x x

As in all other criminal provisions, we begin with identifying the **elements** of the offense. There are **two general headings** for this identification – the *actus reus* and the *mens rea*. Of course, there are *strict liability regulatory offenses* where the *voluntary* doing of the prohibited conduct would be enough to convict. The *mental element* is not essential. Conviction for these crimes can be had just by proving the prohibited act. There is no particular guilty mind required.

¹¹ Rules and Regulations on the Reporting and Investigation of Child Abuse Cases (1993).

Section 10(a) requires both the *actus reus* and the *mens rea*. The *mens rea* however need not always be a specific intent. In some of the offenses under Section 10(a), the general intent is enough. Hence, *Malcampo-Repollo v. People*¹² (Malcampo-Repollo) is correct that **not all the offenses** under Section 10(a) will require the **specific intent** of demeaning, degrading, and debasing the intrinsic worth and dignity of a child. However, I **respectfully disagree** with the ruling in *Malcampo-Repollo* that criminal intent is *not* an essential element for the other offenses under Section 10(a) that do not involve the specific intent demeaning, degrading, and debasing the intrinsic worth and dignity of a child. For these **other** crimes, the prosecution must still prove **general criminal intent** to obtain a conviction.

1. *Actus reus*

The *actus reus* of Section 10(a) is a combination of separate acts which are further divided into their respective constituent acts. For the present case, the *actus reus* for each of the offenses under this provision is as follows:

- a. any other acts of Child Abuse,
 - i. **maltreatment**, whether **habitual or not**, of the child which includes any of the following:
 - **Psychological abuse or injury;**
 - mean harm to a **child's psychological or intellectual functioning** which may be exhibited by severe anxiety, depression, withdrawal[,] or outward aggressive behavior, or a combination of said behaviors, which may be demonstrated by a change in behavior, emotional response[,] or cognition.
 - **Emotional maltreatment;**
 - **Physical abuse or injury;**
 - includes but is not limited to **lacerations, fractured bones, burns, internal injuries, severe injury**[,] or **serious bodily harm** suffered by a child.
 - **Cruelty;**
 - any act by **word or deed** which **debases, degrades**[,] or **demeans** the intrinsic worth and dignity of a child as a human being. Discipline administered by a parent or legal guardian to a child does not constitute cruelty provided it is reasonable in manner and moderate in degree and does not constitute physical or psychological injury as defined herein.

¹² G.R. No. 246017, November 25, 2020 [Per J. Leonen, Third Division]

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- **Neglect**
 - means **failure to provide**, for reasons other than poverty, adequate food, clothing, shelter, basic education[,] or medical care **so as to seriously endanger** the physical, mental, social[,] and emotional growth and development of the child.¹³
- Sexual abuse, and
- **Exploitation**
 - means the hiring, employment, persuasion, inducement, or coercion of a child to **perform in obscene exhibitions and indecent shows**, whether live or in video or film, or to pose or act as a model in **obscene publications or pornographic materials**, or to **sell or distribute said materials**;¹⁴ and
- Any **act by deeds or words** which **debases, degrades or demeans the intrinsic worth and dignity** of a child as a human being.

b. **any other acts of Child Cruelty;**

c. **any other acts of Child Exploitation;**¹⁵ and

d. **any other acts that are responsible for other Conditions Prejudicial to the Child's Development** including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the RPC.

From these, we can see that while *any other acts of Child Abuse* is a distinct offense under Section 10(a) from its other offenses of *any other acts of Child Cruelty* and *any other acts of Child Exploitation*, these offenses must be correlated with each other in their interpretation and application to avoid any confusing overlaps. This is because *cruelty* and *exploitation* are also constituent *actus reus* of *any other acts of Child Abuse*, and therefore, the *cruelty* and *exploitation* in *any other acts of Child Abuse* must be distinguished from the *cruelty* and *exploitation* involved in *any other acts of Child Cruelty* and *any other acts of Child Exploitation*.

¹³ Republic Act No. 7610. Sec. 3. (Special Protection of Children Against Abuse, Exploitation and Discrimination Act, June 17, 1992).

¹⁴ *Id.*

¹⁵ *Id.*

Note also that under *any other acts of Child Abuse, cruelty* as a constituent *actus reus* parallels another constituent *actus reus* of *any other acts of Child Abuse*, which is *any act by deeds or words which debases, degrades, or demeans the intrinsic worth and dignity of a child as a human being*.

The *ponencia* discussed the relevance of the clause “**but not covered by the RPC**” in Section 10(a):

SECTION 10. **Other** Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child’s Development.

- (a) Any person who shall commit any **other** acts of child abuse, cruelty[,] or exploitation or be responsible for other conditions prejudicial to the child’s development including those covered by Article 59 of Presidential Decree No. 603, as amended, **but not covered by the Revised Penal Code**, as amended, shall suffer the penalty of *prision mayor* in its minimum period. (Emphasis supplied)

The *ponencia* then held that the clause modifies only the last antecedent, which is the clause that reads “**including those covered by Article 59 of Presidential Decree No. 603**, as amended....” This is correct. I wish only to add that grammatically, the clause “including those covered by Article 59 of Presidential Decree No. 603” forms a single thought with the clause “but not covered by the *RPC*” and therefore the latter cannot be dissociated from the former.

I respectfully disagree, however, with this holding in the *ponencia*:

We find that the phrase “but not covered by the Revised Penal Code, as amended” **only qualifies the immediately preceding antecedent phrase** “including those covered by Article 59 of Presidential Decree No. 603, as amended” under Section 10(a) of R.A. No. 7610, **and not the acts enumerating the offense under said provision....** The interpretation means that **acts punished under Sec. 10(a) of R.A. No. 7610 includes those acts punishable under Article 59 of P.D. No. 603, even if not covered by the RPC.**

The entire clause “including those covered by Article 59 of Presidential Decree No. 603, as amended, **but not covered by the RPC**, as amended,” is a **dependent** clause that **modifies**, consistently with the *ponencia*’s holding, the **closest antecedent** – “be responsible for **other conditions prejudicial to the child’s development....**”

As already explained in *Araneta v. People*,¹⁶ this **closest antecedent** is itself a **free-standing offense** under Section 10(a), thus:

As gleaned from the foregoing, **the provision punishes not only those enumerated under Article 59 of Presidential Decree No. 603, but also four distinct acts**, i.e., (a) child abuse, (b) child cruelty, (c) child exploitation, and (d) **being responsible for conditions prejudicial to the child's development**. The Rules and Regulations of the questioned statute distinctly and separately defined child abuse, cruelty[,] and exploitation just to show that **these three acts are different from one another and from the act prejudicial to the child's development**. Contrary to petitioner's assertion, an accused can be prosecuted and be convicted under Section 10(a), Article VI of Republic Act No. 7610 if he commits any of the four acts therein. The prosecution need not prove that the acts of child abuse, child cruelty[,] and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts.

Moreover, it is a rule in statutory construction that the word "or" is a disjunctive term signifying dissociation and independence of one thing from other things enumerated. It should, as a rule, be construed in the sense which it ordinarily implies. Hence, **the use of "or" in Section 10(a) of Republic Act No. 7610 before the phrase "be responsible for other conditions prejudicial to the child's development" supposes that there are four punishable acts therein**. First, the act of child abuse; second, child cruelty; third, child exploitation; **and fourth, being responsible for conditions prejudicial to the child's development**. The fourth penalized act cannot be interpreted, as petitioner suggests, as a qualifying condition for the three other acts, because an analysis of the entire context of the questioned provision does not warrant such construal.¹⁷ (Emphasis supplied)

Therefore, given this analysis, the **correct** interpretation should be,

- **The acts punished under Sec. 10(a) as any other acts of Child Abuse, any other acts of Child Cruelty, and any other acts of Child Exploitation include those acts punishable under Article 59 of Presidential Decree No. 603, whether or not covered by the RPC.**
- **However, those acts punished under Sec. 10(a) as being responsible for other conditions prejudicial to the child's development including those acts punishable under Article 59 of Presidential Decree No. 603 but not covered by the RPC.**

The interpretation arrived at in the *ponencia*, *with due respect*, **fails to account** for the clause **"but not covered by the RPC, as amended."** This is because the interpretation **lumps together** all the cognate offenses under Section 10(a) **regardless** of whether the *RPC* already covers any of these

¹⁶ 578 Phil. 876 (2008) [Per J. Chico-Nazario, Third Division]

¹⁷ *Id.* at 885–886.

offenses if the offense pertains to acts criminalized under Article 59 of Presidential Decree No. 603. The interpretation is **correct** for the first three offenses under Section 10(a) – *any other acts of Child Abuse, any other acts of Child Cruelty, and any other acts of Child Exploitation* – **but not** in relation to the fourth one on *being responsible for other conditions prejudicial to the child's development*. If the criminal act pertains to any of those in Article 59, Presidential Decree No. 603, this fourth offense would arise only if it is **not** covered by the *RPC*.

2. *Mens rea*

For *psychological abuse or injury, emotional maltreatment, physical abuse or injury, cruelty, and any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being*, as the constituent *actus reus* of any other acts of Child Abuse, the *mens rea* element would either be a *general* or *specific* intent.

An act is **intentional** when the accused has a conscious desire to commit the act *or* achieve the result. For example, if I say I want to kill this male person and shoot this individual with my pistol, my act of shooting this person *and* causing his death would be **intentional**. If an 11-year-old boy destroys my garden of bonsai trees, and out of anger and frustration, I get a piece of wood and hit his buttocks with moderate force, my act of hitting his buttocks with the wood would be **intentional**. If the offense charged is *violation of Section 10(a) of Republic Act No. 7610 through Other Acts of Child Abuse of physical abuse*, my **(general) criminal intent** to batter the boy would suffice to satisfy the *mens rea* for this crime. If the boy suffers psychological trauma as a result, I would be liable for *violation of Section 10(a) of Republic Act No. 7610 through Other Acts of Child Cruelty* only if I had the **(specific) criminal intent** of demeaning, degrading, and debasing the intrinsic worth and dignity of a child.

General intent means that the accused voluntarily did and intended to do the wrongful act. To illustrate, where the accused is charged with *physically abusing or injuring a child*, it is **enough** that the accused **voluntarily performed the wrongful act, regardless** of the **nature** of the injury that **resulted**.

The offense would be *violation of Section 10(a) of Republic Act No. 7610 through Other Acts of Child Abuse of physical abuse* if the criminal act *resulted in* any of the following physical injuries *whether an accused intended it or otherwise*: lacerations, fractured bones, burns, internal injuries, severe injury or serious bodily harm of the child.

I do not have to **specifically intend** the result because this type of offense under Section 10(a) of Republic Act No. 7610 does **not** require a **specific intent** as *mens rea*. It is **enough** that I performed intentionally the initiating criminal act – the swinging of the piece of wood towards the boy’s buttocks (a wrongful act). The resulting injury is **not** a part of this offense’s *mens rea* but of its *actus reus*. There is **no required mental element to bring about an injury much less the exact type of injury**. The only **criminal mind** I must have is the **intent to swing the wood** towards the boy’s buttocks. Of course, since the **resulting injury** is part of the *actus reus* of this type of offense, the **criminal act** must be its **proximate cause**. The **resulting injury** is relevant only to the analysis of the *actus reus* **but not to the mens rea**. *Mabunot v. People*¹⁸ supports this analysis.

On the other hand, **specific intent** means that the accused **intended the particular result**. To illustrate, where the accusation against the accused is *cruelty* towards a child, the **criminal act** that *resulted* in the *denigration, debasement, or degradation* must have been *specifically intended to happen as a consequence* of the accused. Hence, where the **criminal act** causing denigration, debasement, or degradation to the child was **done in a state of extreme and momentary anger**, the **specific intent to cause this specific result** would have been absent from the doing of the act.¹⁹

Motive could be crucial in **specific intent** crimes. Motive is the “why” someone commits an act. It is **not** the same thing as **intent**. It is **not** the same thing as the **guilty mind**, blameworthiness, or culpability. The motive, the “why” the accused did it, might help prove that the accused did have a **specific criminal mind** required by the law.

There are several other concepts dealing with *mens rea* that are relevant to Section 10(a).

One. The accused must have **knowledge of a particular fact** that is an element of the crime. This is called **scienter**. The accused should know that the victim is a *child*.

Two. We also have the notion known as **transferred intent**. It is where the accused might be **intending a particular harm**, but because of something else happening, this **original intent did not come true** and the accused ended up **harming someone else or causing a different harm**. With **transferred intent**, we say that the original intent to cause that original harm, the intended harm is transferred to the **intent to cause the harm that was actually caused**.

¹⁸ 795 Phil. 453 (2016) [Per J. Reyes, Third Division]

¹⁹ *Bongalon v. People*, 707 Phil. 11 (2013) [Per J. Bersamin, First Division]

This concept was put to use in *Mabunot* and *Patulot v. People*.²⁰ (*Patulot*) It is codified in Article 4(1) of the *RPC*.²¹

Three. If the accused **did not intend to cause** the criminal act, but he or she **knew** that there was a **substantial risk**, or **was reasonably certain**, that the criminal act is **going to happen** from his or her actions, and **nonetheless** proceeded to do his or her actions, and the criminal act occurs, the accused had the *mens rea* of **recklessness**. He or she **ignored this substantial risk of causing the criminal act** and **went on to do his or her actions** despite this **knowledge of the substantial risk** that something awful would happen as a result.

On the other hand, the accused is **negligent** when he or she **did not know** or **was not aware of the substantial risk** of the criminal act taking place, **but should have been or ought to have been aware** of such substantial risk. If he or she so acts, and a criminal act ensues, he or she acted with the *mens rea* of **negligence**.

3. *Nomenclature of the Offense*

As for the naming protocol of the offense, I think *violation of Section 10(a) of Republic Act No. 7610 through* –

- *Other acts of Child Abuse (of psychological abuse, or physical injury, or cruelty, etc.)*
- *Other acts of Child Cruelty,*
- *Other acts of Child Exploitation, or*
- *Other Conditions Prejudicial to the Child's Development*

would be appropriate. This nomenclature reflects the title of Section 10(a) of Republic Act No. 7610 and captures how the Court in *Araneta v. People*²² has interpreted and named the offense in this subsection.

I do not think the naming protocol advised in the *ponencia* – “violation of Section 10(a) in relation to Section 3(b)(1) of Republic Act No. 7610” – helps in informing an accused and the public of the prohibited conduct being charged. No one memorizes the section or article number of a criminal statute. We refer to a crime as murder or homicide, by its **verbal** reference, rather than its **numerical** reference, because it is easier to recall and easily communicate the prohibited criminal act.

²⁰ G.R. No. 235071, January 7, 2019 [Per J. Peralta, Third Division]

²¹ REV. PEN. CODE, article 4. *Criminal Liability*. --- Criminal liability shall be incurred:
1. By any person committing a felony (*delicto*) although the wrongful act done be different from that which he intended.

²² *Supra* note 16.

Application to the Present Case

Petitioner was specifically charged with “psychological cruelty and emotional maltreatment” after he poked a gun at the minor and hurled invectives at him. The consequence was that the minor felt threatened which impacted his psychological security. In other words, he suffered “emotional maltreatment” or “psychological abuse or injury.”

It is **incorrect** for the prosecution to combine *psychological* with *cruelty*. Both are terms of art in Section 10(a) and Section 3(b) of Republic Act No. 7610 and the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases*.

In this regard, I agree with the *ponencia* that the reference to **cruelty** in Section 3(b)(1) as a constituent element of *Other Acts of Child Abuse* does **not** require the specific intent of demeaning, degrading, and debasing the intrinsic worth and dignity of a child. This specific intent is **required** only for the offense of *Other Acts of Child Cruelty*. The constituent *actus reus* of **cruelty** in *Other Acts of Child Abuse* pertains to the **ordinary meaning** of **cruelty**, and **not** to the definition of cruelty as used in the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases*. The latter is, to repeat, relevant to the offense of *Other Acts of Child Cruelty*.

In any event, while erroneous, the allegations in the Information nonetheless truly communicated to petitioner what he was being charged with. To my mind, the proper naming protocol for the offense charged and proved is *violation of Section 10(a) through other acts of Child Abuse of psychological abuse, or emotional maltreatment*.

There is proof beyond a reasonable doubt of the *actus reus* – the accused pointed a gun at the minor and hurled invectives at him, which *resulted in psychological injury or harm or emotional maltreatment to his psychological or intellectual functioning as exhibited by severe anxiety*. The complainant is indisputably a *child*. The *psychological injury* was determined *subjectively* to the complainant child. He suffered the psychological injury and attested to its existence, both established beyond a reasonable doubt.

The *mens rea* has also been proven beyond a reasonable doubt. First, petitioner *knew* he was a child when petitioner threatened him. Next, only *general intent* is required. Petitioner *voluntarily pointed and intended to point* the gun at the minor. He *knew* the victim to be a *child*. He *may or may not have intended* to cause the minor’s *psychological injury* but that is beside the point.

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As affirmed in *Mabunot and Patulot*, petitioner would have nonetheless transferred his *intent to voluntarily and intentionally* pointing the gun at the minor, already a criminal act, to the *consequence of this act*, which is the minor's *psychological injury*. Hence, by *transferred intent*, petitioner is *deemed* to have also *intended to cause the psychological injury* even without specifically intending to cause it. And this is because, again, this type of offense is a *general intent offense*, only the general intent to do intentionally and voluntarily the original criminal act was required to be proved beyond reasonable doubt.

Disposition

I concur in the result with the simple modification that the nomenclature of the crime is violation of Section 10(a) of Republic Act No. 7610 *through other acts of Child Abuse of psychological abuse or emotional maltreatment*.


AMY C. LAZARO-JAVIER