



Republic of the Philippines
Supreme Court
Manila

EN BANC

BENJAMIN TOGADO y PAILAN, G.R. No. 260973
Petitioner,

Present:

-versus-

GESMUNDO, *Chief Justice*,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,*
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, JJ.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

August 6, 2024

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DECISION

LEONEN, J.:

In cases involving violations of Republic Act No. 10591 or the Comprehensive Firearms and Ammunition Regulation Act, the prosecution should present before the court the exact same firearm that was confiscated

* On official business.

from the accused. Further, the prosecution should prove that the integrity of the confiscated firearm was preserved. Otherwise, the accused should be acquitted based on reasonable doubt.

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

A portion of the Search Warrant stated:

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

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

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

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

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

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

² *Id.* at 41.

³ *Id.* at 36.

⁴ *Id.* at 37.

⁵ *Id.*

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

PO1 San Luis inspected the firearm and found that its magazine had five live ammunitions.⁷ PO1 San Luis secured the firearm and magazine by placing these items inside a ziplock plastic and marking the plastic with “MMS-01 5/29/14.”⁸

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

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

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

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

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

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

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

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

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

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

CONTRARY TO LAW.¹⁷

During trial, PO1 San Luis testified, thus:

Q: What portion of the house did you search first?

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

Q: What portion of the house the gun is located?

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

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

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

Q: On what particular gun was pointed to by the accused?

A: 45 caliber sir.

Q: Was it loaded when you saw it?

A: Yes, it is loaded sir.

Q: How many live ammunitions?

A: Five sir.

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

A: Yes sir.

Q: Did you place it on a plastic or what?

A: Zip lock plastic sir.

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

A: Yes sir.

Q: Where is the gun now?

A: In my possession sir.

¹⁷ *Id.* at 36.

Q: And can you produce the same to this representation?

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

A: I sir, when I recovered this gun I placed it in a plastic and that plastic I marked it as MMS-01.¹⁸

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

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

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

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

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

SO ORDERED.²¹

The Court of Appeals affirmed the trial court's ruling. It cited²² *People v. Olarte*,²³ where this Court discussed the two elements to establish the *corpus delicti* or the body of the crime in illegal possession of firearms:

In the crime of illegal possession of firearms, the *corpus delicti* is the accused's **lack of license or permit to possess or carry** the firearm, as possession itself is not prohibited by law. To establish the *corpus delicti*, the prosecution has the burden of proving that the **firearm exists** and that the accused who owned or possessed it does not have the corresponding license or permit to possess or carry the same. However, even if the existence of the firearm must be established, the firearm itself need not be

¹⁸ *Id.* at 43–44.

¹⁹ *Id.* at 38.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 45–46.

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

presented as evidence for it may be established by testimony, even without the presentation of the said firearm.²⁴ (Emphasis in the original)

The dispositive portion of the Court of Appeals Decision²⁵ states:

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

SO ORDERED.²⁶

Togado filed a Motion for Reconsideration but it was denied by the Court of Appeals in a Resolution²⁷ dated May 11, 2022.

Hence, this Petition.

Petitioner Togado questions the Decision of the Court of Appeals, arguing that the Search Warrant is not valid because there is allegedly no evidence that the judge “personally and thoroughly examined the applicant and his witnesses.”²⁸ Thus, any evidence obtained during the search is supposedly inadmissible.²⁹

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

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

²⁴ *Id.* at 847.

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

²⁶ *Id.* at 46.

²⁷ *Id.* at 49–52. The Court of Appeals Resolution dated May 11, 2022 was penned by Associate Justice Carlito B. Calpatura, and was concurred in by Presiding Justice Remedios A. Salazar-Fernando and Associate Justice Maria Elisa Sempio Diy of the Former First Division, Court of Appeals, Manila.

²⁸ *Id.* at 19.

²⁹ *Id.* at 22.

³⁰ *Id.* at 23–26.

³¹ *Id.* at 23.

³² *Id.* at 26.

³³ *Id.*

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

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

Through a Resolution³⁷ dated September 28, 2022, the Court required respondent to comment.

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

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

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

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

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

³⁴ *Id.* at 24.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 118.

³⁸ *Id.* at 102–114.

³⁹ *Id.* at 103.

⁴⁰ *Id.* at 104.

⁴¹ *Id.* at 105.



recovered from the accused, this Court believes that the first element abovestated was met by the prosecution.⁴²

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

Q: In your station, who has access to the gun?

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

Q: Who is the evidence custodian of your station?

A: PO3 Bautista, sir.

Q: And this PO3 Bautista has no access to the gun?

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

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

A: I, sir.

Q: It was not the evidence custodian?

A: I got it from the evidence custodian, sir.⁴³

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

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

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

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

⁴² *Id.* at 106.

⁴³ *Id.* at 107.

⁴⁴ *Id.* at 108.

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

⁴⁶ *Id.* at 443.

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

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

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

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

This Court resolves the following issues:

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

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

The Petition is granted.

I

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

⁴⁸ *Id.* at 771–772.

⁴⁹ *Rollo*, pp. 111–112.

⁵⁰ *Id.* at 112.

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

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

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

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

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

II

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

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

⁵¹ *Id.* at 19.

⁵² *Id.* at 20.

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

⁵⁴ *Id.* at 284.

⁵⁵ *Id.* at 285.

⁵⁶ *Rollo*, p. 41.

⁵⁷ *Id.* at 40.

⁵⁸ *Id.* at 42.

- (a) the existence of the subject firearm; and
- (b) the fact that the accused who possessed or owned the same does not have the corresponding license for it.⁵⁹

The first element was not proven because of the prosecution's failure to show that the integrity of the firearm was preserved. Republic Act No. 10591 does not contain any provision on chain of custody and the proper handling of seized firearms and ammunition. However, it should be stressed that the Philippine National Police has an operations manual to guide its members on various matters, including the handling and preservation of the integrity of confiscated firearms. At the very least, the police officers should have followed its internal operations manual.

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

15.3 Mandatory Examination of Firearm Seized/Confiscated during Police Operation

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

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

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

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

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

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

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

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

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

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

⁶¹ *Rollo*, p. 70.

⁶² *Id.* at 44.

⁶³ *Id.* at 90–91.

⁶⁴ *Id.* at 125.

⁶⁵ *Id.* at 24.

⁶⁶ *Id.*

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

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

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

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

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

The cases cited by the Office of the Solicitor General are likewise not applicable. *Malinao*⁷⁰ and *Dulay*⁷¹ both involved murder, where bullets were

⁶⁷ *Id.* at 71.

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

⁶⁹ *Id.* at 855.

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

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

retrieved from the bodies of the victims. Even if the firearms used in those cases were not presented in court, the presence of bullets is enough to show that a firearm was used to kill the victims. In addition, the use of a firearm is not the *corpus delicti* in murder.

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


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

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

- (a) The penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess a small arm;
- (b) The penalty of *reclusion temporal* to *reclusion perpetua* shall be imposed if three (3) or more small arms or Class-A light weapons are unlawfully acquired or possessed by any person;
- (c) The penalty of *prision mayor* in its maximum period shall be imposed upon any person who shall unlawfully acquire or possess a Class-A light weapon;
- (d) The penalty of *reclusion perpetua* shall be imposed upon any person who shall unlawfully acquire or possess a Class-B light weapon;
- (e) The penalty of one (1) degree higher than that provided in paragraphs (a) to (c) in this section shall be imposed upon any person who shall unlawfully possess any firearm under any or combination of the following conditions:

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

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

- (1) Loaded with ammunition or inserted with a loaded magazine;
 - (2) Fitted or mounted with laser or any gadget used to guide the shooter to hit the target such as thermal weapon sight (TWS) and the like;
 - (3) Fitted or mounted with sniper scopes, firearm muffler or firearm silencer;
 - (4) Accompanied with an extra barrel; and
 - (5) Converted to be capable of firing full automatic bursts.
- (f) The penalty of *prision mayor* in its minimum period shall be imposed upon any person who shall unlawfully acquire or possess a major part of a small arm;
- (g) The penalty of *prision mayor* in its minimum period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a small arm or Class-A light weapon. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a small arm, the former violation shall be absorbed by the latter;
- (h) The penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess a major part of a Class-A light weapon;
- (i) The penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a Class-A light weapon. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a Class-A light weapon, the former violation shall be absorbed by the latter;
- (j) The penalty of *prision mayor* in its maximum period shall be imposed upon any person who shall unlawfully acquire or possess a major part of a Class-B light weapon; and
- (k) The penalty of *prision mayor* in its maximum period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a Class-B light weapon. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a Class-B light weapon, the former violation shall be absorbed by the latter.
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III

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

SECTION 29. *Use of Loose Firearm in the Commission of a Crime.*

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

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

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

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

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

1. Where an accused is charged with violation of Republic Act No. 10591, the presentation of the exact same firearm is required for the court to determine whether the accused should be convicted, and if

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

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

⁷⁶ CONST., art. III, sec. 14(2).

so convicted, the proper penalty to be imposed.

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

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

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

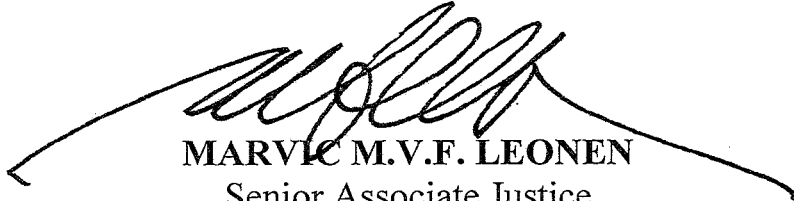
Let a copy of this Decision be furnished to the Chief of the Philippine National Police for their information.



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

Let entry of judgment be issued immediately.

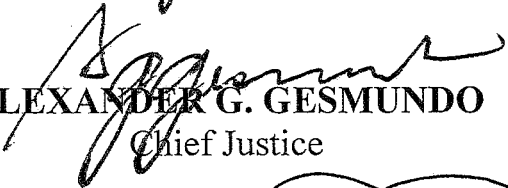
SO ORDERED.



MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:

see concurring opinion

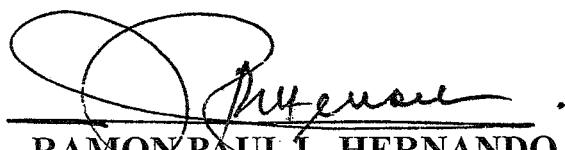


ALEXANDER G. GESMUNDO
Chief Justice

See Concurring Opinion



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

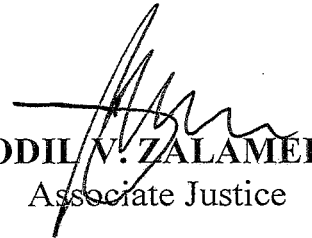


RAMON PAUL L. HERNANDO
Associate Justice

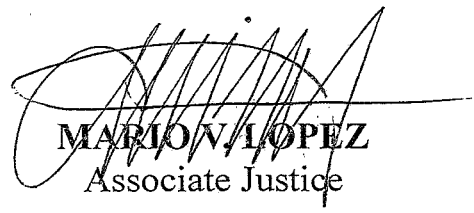
(On official business)
AMY C. LAZARO-JAVIER
Associate Justice




HENRI JEAN PAUL B. INTING
Associate Justice



RODIL V. ZALAMEDA
Associate Justice




MARION V. LOPEZ
Associate Justice



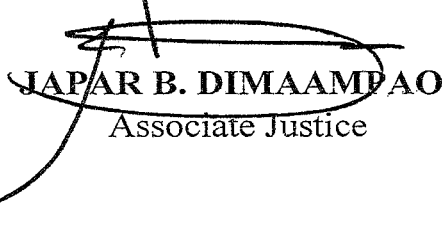
SAMUEL H. GAERLAN
Associate Justice



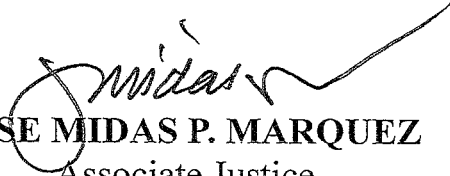
RICARDO R. ROSARIO
Associate Justice




JHOSEP Y. LOPEZ
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice

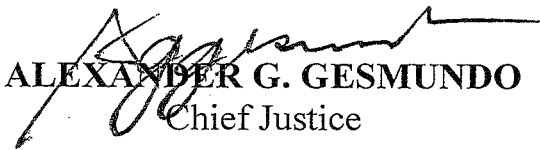

JOSE MIDAS P. MARQUEZ
Associate Justice


ANTONIO T. KHO JR.
Associate Justice


MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.


ALEXANDER G. GESMUNDO
Chief Justice