EN BANC

G.R. No. 260973 – BENJAMIN TOGADO *y* PAILAN, Petitioner, **v. PEOPLE OF THE PHILIPPINES**, Respondent.

Promulgated:

August 6, 2024

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SEPARATE CONCURRING OPINION

GESMUNDO, *C.J.*:

I respectfully write in relation to the above-captioned case.

I concur in granting the Petition and acquitting Benjamin Togado (Togado), as held in the *ponencia* circulated by the esteemed Senior Associate Justice Marvic M.V.F. Leonen. However, I write to respectfully share my perspective on: (a) the applicability of the chain of custody rule, and (b) the necessity of presenting the firearm confiscated in court, in cases of illegal possession of firearms and ammunitions.

The records show that, on May 28, 2014, Judge Cynthia R. Marino Ricablanca of the Regional Trial Court (RTC) of Laguna issued a search warrant (warrant) against Togado based on probable cause that he was in possession of unlicensed firearms and ammunition in violation of Republic Act No. 10591.[1] Pursuant to the warrant, Police Officer I Mar San Luis (PO1 San Luis), PO1 Marvin Alcantara (PO1 Alcantara), Police Officer III Emerson Bautista, and PO3 Arnel Bigata (PO3 Bigata; collectively, the search warrant team) carried out a search on May 29, 2014.[2]

Upon their arrival at Togado's residence, the search warrant team showed him the warrant and explained its contents. When Barangay Kagawad Juan Esquibel (Kagawad Esquibel) arrived, the search warrant team proceeded to conduct the search. When they entered the house, Togado pointed out to them a .45-caliber pistol placed on top of a chair.[3] PO1 San Luis

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1 *Ponencia*, p. 2. Republic Act No. 10591 (2017), also known as the Comprehensive Firearms and Ammunitions Regulation Act.

2 *Ponencia*, *id.*

3 *Id.* at 2–3.

inspected the firearm and noted that its magazine had five live ammunition. He then secured the firearm and the magazine inside a ziplock plastic bag and marked the plastic bag with "MMS-01 5/29/14." The search warrant team then prepared a Certification of Orderly Search, which was signed by PO3 Bigata, as team leader, and Kagawad Esquibel, as witness. They also took photographs and prepared an inventory of the seized items, which was signed by Kagawad Esquibel, as witness, and PO1 San Luis and PO1 Alcantara, as seizing officers. Togado was then arrested.[4]

The Firearms and Explosives Office of the Philippine National Police (FEO-PNP) issued a certification stating that Togado "was not a registered firearm holder of any kind or caliber per verification." Subsequently, Togado was charged with violation of Section 28 of Republic Act No. 10591.[5]

During trial, PO1 San Luis admitted that he failed to put the markings on the gun and the ammunition themselves, but only on the ziplock plastic bag where he stored the items in.[6] The prosecution presented in court a firearm marked "Magdalena MPS" and a magazine marked "MAG MPS."[7]

After trial, the RTC found Togado guilty beyond reasonable doubt of illegal possession of firearms and ammunitions and sentenced him to suffer the penalty of imprisonment for an indeterminate term of eight years, eight months, and one day, as minimum, to nine years, four months, as maximum.[8] On appeal, the Court of Appeals (CA) affirmed the RTC's ruling. The CA, citing *People v. Olarte*,[9] held that in the crime of illegal possession of firearms, the *corpus delicti* is the accused's lack of license or permit to carry the firearm. It stated that the firearm itself need not be presented as evidence for its existence may be established by testimony.[10] Togado subsequently filed a Motion for Reconsideration which was denied by the CA. Hence, this Petition.[11]

The *ponencia* granted the Petition.

First, the *ponencia* upheld the validity of the warrant. The *ponencia* explained that, contrary to Togado's assertions, the warrant itself stated the name of the applicant and that a witness was examined before its issuance. It

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4 *Id.* at 3.
5 *Id.*
6 *Id.* at 4–5.
7 *Id.* at 5.
8 *Id.*
9 848 Phil. 821 (2019) [Per J. Gesmundo, First Division].
10 *Ponencia*, pp. 5–6.
11 *Id.* at 6.

also noted that PO1 Alcantara testified that he inquired with the FEO-PNP on whether Togado is a registered firearm holder prior to applying for the issuance of the warrant. Furthermore, it observed that the warrant described with sufficient particularity the place to be searched and the items to be seized. Hence, the *ponencia* pronounced that there was no error on the CA's part when it upheld the validity of the warrant.[12]

Second, the *ponencia* held that Togado should be acquitted on reasonable doubt on the basis that the first element of the crime—the existence of the subject firearm—was not proven as the prosecution failed to show that the integrity of the firearm was preserved. It observed that, though Republic Act No. 10591 does not have a provision on the chain of custody and proper handling of seized firearms and ammunitions, the 2013 PNP Operations Manual[13] requires that the "chain of custody be strictly observed and documented" with regard to the firearms seized during a police operation.[14] It noted that the 2013 PNP Operations Manual is silent on where the marking should be placed. It proceeded to state that the prudent approach would be to place the marking on the confiscated item itself, not on the plastic container. It also observed that, in the present case, PO1 San Luis marked the plastic container, not the gun. Further, it noted that the evidence presented in court bore a different marking than the one PO1 San Luis testified to having placed on the ziplock bag. Therefore, the *ponencia* concluded that the discrepancy in the markings, the tampering of the plastic bag, and PO1 San Luis's admissions in court show that there is reasonable doubt as to Togado's guilt.[15]

The *ponencia* further explained that *Olarte* is inapplicable in the instant case because the police officers therein were able to identify the confiscated item properly, and were able to explain the differences in the relevant markings.[16] Furthermore, it also held that the cases of *People v. Malinao*[17] and *People v. Dulay*,[18] cited by the Office of the Solicitor General, are inapplicable to the present case, as these decisions involved murder and bullets were retrieved from the bodies of the victims. The use of a firearm is also not the *corpus delicti* in murder.[19]

Additionally, the *ponencia* declared that though the *corpus delicti* in illegal possession of firearms is the lack of license to own or possess it, there is a clear need to present the firearm itself in court in prosecutions under

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12 *Id.* at 10.

13 The latest version of the Manual was released in 2021. However, the 2013 version applies in the present case as the search occurred in 2014.

14 *Ponencia*, pp. 10–11.

15 *Id.* at 12–13.

16 *Id.* at 13.

17 467 Phil. 432 (2004) [Per J. Austria-Martinez, *En Banc*].

18 561 Phil. 764 (2007) [Per J. Carpio, *En Banc*].

19 *Ponencia*, pp. 13–14.

Republic Act No. 10591. Otherwise, it would be easy to simply plant a firearm as evidence, if a person's name does not appear in the database of the FEO-PNP. Also, the presentation of the firearm itself will have an effect on the imposable penalty.[20]

Hence, the *ponencia* ruled that, "[t]o avoid any iota of doubt and to protect an accused's constitutional right to be presumed innocent, it is imperative that the exact same firearm recovered from an accused be presented in court."[21] Thus, it laid 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 so convicted, the proper penalty to be imposed.
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> 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."
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> 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.
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> 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.[22]

I concur in the *ponencia*'s grant of the Petition and the resulting acquittal of Togado. However, I write to delve into the principles regarding: (a) the applicability of the chain of custody rule, and (b) the necessity of presenting the firearm confiscated in court, in cases of illegal possession of firearms and ammunitions.

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20 *Id.* at 14.
21 *Id.* at 16.
22 *Id.* at 16–17. Citation omitted.

The chain of custody rule is inapplicable where the item seized is unique, readily identifiable, and resistant to change, such as a firearm or ammunition with special identifying characteristics

I am of the view that the strict application of the chain of custody rule does not apply where the item seized is unique, readily identifiable, and resistant to change. Thus, applying the same to the crime of illegal possession of firearms and ammunitions, the chain of custody rule is inapplicable to a firearm or ammunition with special identifying characteristics.

In the Philippines, the "chain of custody" rule has been defined as the duly recorded, authorized movements, and custody of the seized drug at each stage, from the moment of confiscation, to the receipt in the forensic laboratory at examination until it is presented in court.[23] As enunciated in *Olarte*, the "chain of custody" rule is utilized primarily as a mode of authenticating illegal substances in order to determine its admissibility.[24] The rationale behind the rule is to safeguard doubts concerning the identity of the seized items, as their *identity must be established with moral certainty* before the accused is convicted for drug-related crimes.[25]

For drug cases, Republic Act No. 9165, as amended by Republic Act No. 10640, prescribes very specific requirements which must be complied with in relation to this rule:

> Sec. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
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> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or

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23 *People v. Del Rosario*, 874 Phil. 881, 894 (2020) [Per J. Gesmundo, Third Division].
24 *People v. Olarte*, 848 Phil. 821, 853 (2019) [Per J. Gesmundo, First Division].
25 *See People v. Del Rosario*, 874 Phil. 881, 893–894 (2020) [Per J. Gesmundo, Third Division].

> counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items;
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> (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
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> (3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued immediately upon completion of the said examination and certification[.][26]

Nonetheless, compliance with a chain of custody rule has also been required in relation to (1) the custody of intercepted and recorded communications acquired through surveillance under the Rules on the Anti-Terrorism Act of 2020 and Related Laws,[27] (2) the assessment of the probative

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[26] Republic Act No. 9165 (2002), sec. 21, as amended by Republic Act No. 10640 (2014).

[27] RULES ON THE ANTI-TERRORISM ACT OF 2020 AND RELATED LAWS, Rule 4, sec. 12:

> Sec. 12. *Custody of Intercepted and Recorded Communications.* — All tapes, discs, other storage devices, recording, notes, memoranda, summaries, excerpts, and all their copies, including a record of the surveillance activities undertaken under Section 8 of this Rule, shall, within forty-eight (48) hours after the expiration of the period fixed in the Surveillance Order or its extension, be deposited with the Court of Appeals in a sealed envelope or sealed package, and shall be accompanied by a joint affidavit of the applicant law enforcement agent or military personnel and the members of their team.
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> In case of death or disability of the applicant, the one next in rank among the members of the team named shall execute the required affidavit with the members of the team.
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> The joint affidavit of the law enforcement agent or military personnel shall state the following: (a) the number of tapes, disc, and recordings that have been made; (b) the dates and times covered by each of such tapes, disc, and recordings; and (c) *the chain of custody or the list of persons who had possession or custody over the tapes, discs and recordings.*

value of DNA evidence,[28] and (3) the recordings captured using body-worn cameras or alternative devices,[29] among others.

To avoid any confusion, it is prudent to clarify that though the term "chain of custody" is used in other laws and rules, this does not mean that the particularities under Republic Act No. 9165 as amended (e.g., two or three-witness rule and the place where marking, inventory and photographing should take place) also apply in such cases.

In general, establishing the chain of custody simply means tracing the evidence's continuous whereabouts. To meet this obligation, crucial representations are required to be made. For example, that a specific officer retrieve the evidence from the crime scene, that a second officer place it in the evidence locker, that a third officer verify that the locker's seal was intact, and so forth,[30] until the time such evidence is presented in court. Hence, unless there is a particular law, rule, or Court decision which prescribes the specificities needed to establish the chain of custody, the prosecution needs only to establish who seized the evidence and how it was handled from its seizure until its presentation in court. Ultimately, these matters must be proven

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They shall also certify under oath that no duplicate/s or copy of the whole or any part of any such tapes, discs, other storage devices, recordings, notes, memoranda, summaries, or excerpts have been made or, if made, that all are included in the sealed envelope or sealed package deposited with the authorizing division of the Court of Appeals. (Emphasis supplied)

[28] RULE ON DNA EVIDENCE, sec. 7(a):

Sec. 7. *Assessment of Probative Value of DNA Evidence.* — In assessing the probative value of the DNA evidence presented, the court shall consider the following:

(a) The chain of custody, including how the biological samples were collected, how they were handled, and the possibility of contamination of the samples;

(b) The DNA testing methodology, including the procedure followed in analyzing the samples, the advantages and disadvantages of the procedure, and compliance with the scientifically valid standards in conducting the tests;

(c) The forensic DNA laboratory, including accreditation by any reputable standards-setting institution and the qualification of the analyst who conducted the tests. If the laboratory is not accredited, the relevant experience of the laboratory in forensic casework and credibility shall be properly established; and

(d) The reliability of the testing result, as hereinafter provided.

The provisions of the Rules of Court concerning the appreciation of evidence shall apply suppletorily. (Emphasis supplied)

[29] RULES ON THE USE OF BODY-WORN CAMERAS IN THE EXECUTION OF WARRANTS, Rule 4, sec. 2:

Sec. 2. *Chain of Custody over the Recordings.* — The chain of custody over the recordings shall, at all times, be preserved from improper access, review, and tampering. It shall cover the following events:

1. Recording of the footage using the body-worn cameras or alternative recording devices;
2. Turn over of the body-worn cameras or alternative recording devices used by the arresting or searching team, or of the data by the media representative under Section 3, Rule 2 of these Rules to the data custodian of the law enforcement agency to which they belong;
3. Downloading of the data by the data custodian pursuant to Section 1 of this Rule;
4. Redaction of personal identifiers by the data custodian or his or her representative pursuant to Section 4 of this Rule, whenever applicable;
5. Retrieval of recording data and their transfer to an external media storage device by the data custodian;
6. Submission and delivery of the recordings contained in an external media storage device to the court under Section 4, Rule 2 and Section 6, Rule 3 of these Rules.

[30] J. Thomas, Concurring Opinion in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009).

to satisfy the court that the subject evidence was not altered, tampered with, or planted.

A. Evidence which requires strict compliance with the chain of custody rule

With certain specific classes of evidence, due to their very nature and composition, meticulous compliance with the chain of custody rule may be necessary.

First, compliance with the chain of custody rule is often required for fungible evidence, as these have no unique characteristics which distinguish them from other pieces of evidence.[31] In other words, the inability to distinguish between fungible pieces of evidence makes positive identification by mere observation alone virtually impossible.[32] Moreover, the nature of these items makes them particularly susceptible to tampering, loss,[33] planting, and switching. This reason has been expressly recognized by this Court in explaining why strict compliance with the chain of custody is required in the prosecution of drug-related cases.[34]

Second, if the relevance of the pieces of evidence depends on its subsequent laboratory analysis, the chain of custody may be necessary to establish that the item seized was the same item analyzed at the crime laboratory.[35] Dangerous drugs are a prime example of this as the item seized from the accused must first be confirmed to be an illegal substance and this is accomplished through subsequent laboratory testing. Similarly, DNA evidence, which would be subject to laboratory analysis, is another example.

Third, if it is not only the identity of the object, but its condition, which is relevant in the determination of the case, then a chain of custody may be required to establish that the object had not been altered while in the custody of police. In this situation, compliance with the rule serves as a safeguard

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31 Paul Giannelli, *Chain of Custody*, Case Western Reserve University School of Law, available at *https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1308&context=faculty_publications* (last accessed April 23, 2024). *See also* Paul C. Giannelli, *Chain of Custody and the Handling of Real Evidence*, 20 AM. CRIM. L. REV. 527, 538 (1983).

32 *Id.*

33 *Id.*

34 *See People v. Ting*, G.R. No. 250307, February 21, 2023 [Per C.J. Gesmundo, *En Banc*] and *Nisperos v. People*, G.R. No. 250927, November 29, 2022 [Per J. Rosario, *En Banc*].

35 Paul Giannelli, *Chain of Custody*, Case Western Reserve University School of Law, available at *https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1308&context=faculty_publications* (last accessed April 23, 2024). *See also* Paul C. Giannelli, *Chain of Custody and the Handling of Real Evidence*, 20 AM. CRIM. L. REV. 527, 537 (1983).

against undetected contamination or deterioration, such as with blood samples.[36] Further, another example of this would be the intercepted and recorded communications acquired through surveillance under the Rules on the Anti-Terrorism Act of 2020 and Related Laws since it is essential to ensure that the condition of the intercepted and recorded communications has not been tampered with.

B. Readily identifiable evidence

On the other hand, there may be no more need to establish a chain of custody for items which have special identifying characteristics[37]—items which are known to be "unique and readily identifiable."[38] In cases where the item seized falls under this category, a witness can directly identify it as the object involved in the case, and this direct identification is already sufficient to establish its authenticity and relevance.[39]

First, an object with an imprinted serial number may easily be identified by such number. A gun and a bank note fall squarely within this category.[40]

Second, an object which possesses distinctive natural characteristics may make it readily identifiable.[41] Here, the issue is whether such distinctive characteristics are sufficient to make it unlikely that another object would have the same characteristics.[42]

Third, an object that is inscribed with the specific markings of a police officer may be considered as readily identifiable. In these cases, the person who marks the object converts the non-unique object into a readily identifiable one though the distinctive markings which they place on it.[43] Nonetheless, the

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36 Paul Giannelli, *Chain of Custody*, Case Western Reserve University School of Law, available at *https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1308&context=faculty_publications* (last accessed April 23, 2024).

37 Paul C. Giannelli, *Chain of Custody and the Handling of Real Evidence*, 20 AM. CRIM. L. REV. 527, 535 (1983).

38 Paul Giannelli, *Chain of Custody*, Case Western Reserve University School of Law, available at *https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1308&context=faculty_publications* (last accessed April 23, 2024).

39 *Id.*

40 *Id. See also* Paul C. Giannelli, *Chain of Custody and the Handling of Real Evidence*, 20 AM. CRIM. L. REV. 527, 535 (1983).

41 Paul Giannelli, *Chain of Custody*, Case Western Reserve University School of Law, available at *https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1308&context=faculty_publications* (last accessed April 23, 2024). *See also* Paul C. Giannelli, *Chain of Custody and the Handling of Real Evidence*, 20 AM. CRIM. L. REV. 527, 536 (1983).

42 *Id.*

43 *Id. See also* Paul C. Giannelli, *Chain of Custody and the Handling of Real Evidence*, 20 AM. CRIM. L. REV. 527, 535 (1983).

specific markings placed by a police officer are of a temporary, transient nature. This is unlike those objects with an imprinted serial number and those which possess distinctive natural characteristics, both of which are of a permanent, lasting character. Thus, the chain of custody rule finds significance for objects which have merely been inscribed with specific markings by a police officer. This is the very reason why in cases involving dangerous drugs the proper marking of the items seized merely constitutes as the first link of the chain of the custody.[44]

Ultimately, these principles elaborating on the characteristics of unique and readily identifiable evidence served as basis for this Court's pronouncement in *Olarte*, viz.:

> *[I]f 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*. And at all times, the *source* of amorphous as well as firmly structured objects being offered as evidence must be tethered to and supported by a testimony. Here, the determination whether a proper foundation has been laid for the introduction of an exhibit into evidence refits within the discretion of the trial court; and a higher court reviews a lower court's authentication ruling in a deferential manner, testing only for mistake of law or a clear abuse of discretion. In other words, the credibility of authenticating witnesses is for the trier of fact to determine.[45] (Emphasis supplied, citations omitted)

Stated otherwise, an item which is unique, readily identifiable, and resistant to change may be authenticated and deemed relevant through the direct identification of a witness. This is precisely what occurred in *Olarte*, where the Court held that "the chain of custody rule does not apply to an undetonated grenade (an object made unique), for it is not amorphous and its form is relatively resistant to change. A witness of the prosecution need only identify the hand grenade, a structured object, based on personal knowledge

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[44] *See People v. Guanzon*, 839 Phil. 1122, 1143–1144 (2018) [Per J. Tijam, First Division], where this Court stated that "[t]he importance of the marking of seized drugs, as the first link in the chain of custody, is elucidated in the case of *People of the Philippines v. Alberto Gonzales y Santos*, thus:

> The first stage in the chain of custody rule is the marking of the dangerous drugs or related items. Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest. The importance of the prompt marking cannot be denied, because succeeding handlers of dangerous drugs or related items will use the marking as reference."

[45] *People v. Olarte*, 848 Phil. 821, 853–854 (2019) [Per J. Gesmundo, First Division].

that the same contraband or article is what it purports to be—that it came from the person of accused-appellant."[46]

Thus, applying this rationale to a firearm, regardless of who has handled it and the number of hands which it has passed through, its special identifying characteristics (e.g., *specific serial number, an atypical dent or scratch, etc.*) will remain the same, and will allow it to be easily identified during trial. In short, the need to establish compliance with the chain of custody rule is dispensed with, as the identity of the seized item may be established with moral certainty by testimony due to the item's special identifying characteristics.

This eliminates the evil sought to be prevented by the stringent application of the chain of custody rule, as these special identifying characteristics effectively insulate the item from tampering and switching. In fact, the tampering and/or switching of a unique and readily identifiable object, which is resistant to change, is *actually detrimental to the case of the prosecution.*

If the firearm is identified by a specific serial number or an atypical dent or scratch at the time of its confiscation but has a different serial number, dent, or scratch when it is presented before the court, then it is the prosecution's burden to adequately explain the change. Otherwise, there is serious doubt on the identity of the firearm – that the firearm presented before the court is actually not the same one confiscated from the accused. This impacts the very existence of the firearm itself as to raise doubts on whether such firearm was actually seized from the accused. This may very well result to the accused's acquittal.

Moreover, the burden to prove that an item is unique, readily identifiable, and resistant to change lies with the prosecution. Hence, police officers are also obligated to be circumspect in recording these special identifying characteristics at the time of confiscation, as this is precisely what they would need to point out to the court during trial. The claim and even the reality that an item supposedly has "special identifying characteristics" is not a magic incantation which dissolves the need for the prosecution to establish not only the existence of the firearm, but more importantly, its identity.

Accordingly, it is respectfully submitted that, where the item seized is unique, readily identifiable, and resistant to change, such as a firearm or an undetonated grenade with special identifying circumstances, stringent

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[46] *Id.* at 854.

compliance with the chain of custody rule is unnecessary. As long as the prosecution is able to establish that the item seized during the time of apprehension is the same as the item presented before the trial court, through the identifying marks of the item seized which makes it unique, then it will be sufficient to admit said item in evidence. In such instance, there is no need to present all the witnesses that handled the item seized.

The firearm or ammunition confiscated must be presented in court when the charge is for illegal possession of firearms and ammunitions

I concur in the *ponencia* that, in the crime of illegal possession of firearms and ammunitions, presentation of the firearm or ammunition seized is integral to the prosecution of the crime.

The CA, in upholding Togado's conviction, cited the portion in *Olarte* which stated that, though the existence of the firearm must be established, the firearm itself need not be presented before the court as its existence may be established purely by testimony.[47] To better understand the development of this doctrine, I deem it prudent to trace its genealogy.

This doctrine was first enunciated by this Court in the 1994 case of *People v. Orehuela*.[48] In said case, Modesto Orehuela (Orehuela) was charged separately for murder and for qualified illegal possession of a firearm and ammunitions.[49] According to the Informations, Orehuela used a .38 caliber revolver, which he was neither licensed nor permitted to carry, to shoot Teoberto Cañizares (Cañizares) who subsequently died from the wounds he sustained.[50] Ultimately, the Court sustained Orehuela's conviction for murder as the elements of the crime were proven beyond reasonable doubt.[51]

More importantly, the Court also upheld Orehuela's conviction for qualified illegal possession of a firearm and ammunitions, despite the prosecution's failure to present the "*unlicensed murder weapon*" during trial.[52] *First*, the Bohol Regional Headquarters of the Integrated National Police, which is now the PNP, issued a certification that Orehuela was not in

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47 *Ponencia*, pp. 5–6. *See also People v. Olarte*, 848 Phil. 821, 847 (2019) [Per J. Gesmundo, First Division].
48 302 Phil. 77 (1994) [Per J. Feliciano, Third Division].
49 *Id.* at 79–80.
50 *Id.*
51 *Id.* at 87.
52 *Id.* at 90.

the list of those licensed to carry firearms within the province.[53] *Second*, a slug was recovered from Cañizares's house, which turned out to be a "caliber .38 copper lead bullet fired through the barrel of a 38 caliber firearm."[54] *Third*, Orehuela was positively identified by a witness as having possession of a firearm and that the same was used to kill Cañizares. Therefore, the Court held that Orehuela should also be convicted for qualified illegal possession of a firearm and ammunition, as the existence of the gun was adequately proved through the testimony of the witnesses, along with the other factual circumstances of the case.[55]

Most cases[56] citing the doctrine in *Orehuela* had similar factual circumstances. In those cases, the non-presentation of the firearm was excused since its existence was established *not only through the testimony of a witness but also through the effects of the main crime committed.* Apart from a police officer testifying that a gun was recovered from the accused, there is also another witness testifying that they saw the accused use a gun to perpetuate the crime. Moreover, the existence of the firearm is seen through the effects of the main crime, such as a dead or injured body riddled with bullet holes, slugs which are subsequently recovered from the crime scene, or a positive paraffin test proving that the accused had just fired a gun, among others.

At the time that *Orehuela* was decided, the law governing the crime of illegal possession of firearms and ammunitions was still the original version of Presidential Decree No. 1866.[57] Under said law, the charge for illegal possession of firearms and ammunitions is separate from the charge for the crime committed through the use of the unlicensed firearm.[58] However, with the passage of Republic Act No. 8294 in 1997, the use of an unlicensed firearm in committing homicide or murder was converted to an aggravating circumstance, i.e., it is no longer a separate crime from the crime of homicide or murder committed through its use.[59] Further, with the passage of Republic Act No. 10591, the use of a loose firearm[60] is now aggravating not only in the commission of murder or homicide, but also in any other crime punishable

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53 *Id.* at 91.
54 *Id.* at 84.
55 *Id.* at 91–92.
56 *See People v. Gaborne*, 791 Phil. 581 (2016) [Per J. Perez, Third Division]; *People v. Salibad*, 773 Phil. 631 (2015) [Per J. Villarama, Jr., Third Division]; *People v. Dulay*, 561 Phil. 764 (2007) [Per J. Carpio, *En Banc*]; *People v. Taan*, 536 Phil. 943 (2006) [Per J. Tinga, *En Banc*]; *People v. Malinao*, 467 Phil. 432 (2004) [Per J. Austria-Martinez, *En Banc*]; *People v. Taguba*, 396 Phil. 366 (2000) [Per J. Quisumbing, Second Division]; *People v. Narvasa*, 359 Phil. 168 (1998) [Per J. Panganiban, First Division].
57 *People v. Orehuela*, 302 Phil. 77, 79 (1994) [Per J. Feliciano, Third Division].
58 *People v. Quijada*, 328 Phil. 505, 552–553 (1996) [Per J. Davide, Jr., *En Banc*].
59 *People v. Molina*, 354 Phil. 746, 786 (1998) [Per J. Panganiban, *En Banc*].
60 Republic Act No. 10591, sec. 3(v).

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under the Revised Penal Code or other penal laws, if the use of such firearm is inherent therein.[61]

Therefore, it must be stated that the factual circumstances in *Orehuela* – where the accused was convicted separately under then Presidential Decree No. 1866 – is unique not only because the firearm therein was committed in furtherance of murder, but mainly because the use of the unlicensed firearm is not yet absorbed as an aggravating or qualifying circumstance at that time.

Despite this, the doctrine in *Orehuela* was applied in subsequent cases[62] where the accused was being prosecuted for the sole charge of illegal possession of firearms and/or ammunitions under Presidential Decree No. 1866, as amended by Republic Act No. 8249 or Republic Act No. 10591. A close examination of these cases will show that the Court reiterated the doctrine in *Orehuela* even if: (a) the unlicensed firearm was not used to commit any other crime, or (b) as in the case of *Olarte*, the firearm or explosive was actually presented and identified in court.

However, there is an imperative need to distinguish between cases where the unlicensed firearm is used in furtherance of another crime and cases where the accused is being prosecuted solely for illegal possession of firearms and/or ammunitions, *as the corpus delicti of the crimes involved are different.*

Corpus delicti translates to "body of the crime," and it refers to the fact of the commission of the crime itself.[63]

For instance, in murder cases, the *corpus delicti* does not simply refer to the lifeless body of the victim, but to the fact of the victim's death itself.[64] Therefore, the prosecution must prove the following elements: (a) that a certain fact or result has been established, i.e., that a person has died, and (b) that some person is criminally responsible for it.[65]

On the other hand, the *corpus delicti* in the crime of illegal possession of firearms and ammunitions is the accused's lack of permit or license to carry the said firearm and/or ammunitions, as their mere possession is not prohibited

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61 *Id.*, sec. 29.

62 *Carbonel v. People*, G.R. No. 253090, March 1, 2023 [Per J. Kho, Jr., Second Division]; *People v. Olarte*, 848 Phil. 821 (2019) [Per J. Gesmundo, First Division]; *Valeroso v. People*, 570 Phil. 58 (2009) [Per J. Nachura, Third Division].

63 *People v. Peñaflor*, 766 Phil. 484, 498 (2015) [Per J. Perez, First Division].

64 *Id.*

65 *Id.*

by law.[66] To establish the *corpus delicti*, the prosecution must prove the following elements: (a) the existence of the firearm, and (b) that the accused who owned or possessed it does not have the corresponding license or permit to possess or carry the same.[67]

Given the foregoing, it must be emphasized that in cases where the unlicensed firearm is used merely in the furtherance of another crime, *the corpus delicti of the main crime is neither the existence (or even use) of a firearm nor the lack of a permit or license to carry it. The existence of the unlicensed firearm, for purposes of appreciating it as an aggravating or qualifying circumstance, may be sufficiently established through the testimony of a witness saying that he or she saw the accused using the firearm to commit the main crime, along with its corroboration through the effects of the said crime*. To reiterate, some of these effects may be bullet holes in the victim's lifeless body, slugs or shells recovered from the crime scene, the positive paraffin test of the accused, and the like. Once the existence of the firearm is proven, then the prosecution simply needs to establish that the accused does not have the license or permit allowing them to carry it. This is precisely why the esteemed *ponente* in the present case held that *People v. Malinao*[68] and *People v. Dulay*,[69] which involved the commission of murder, are inapplicable in the case at bar.[70]

On the other hand, if the accused is being prosecuted solely for the crime of illegal possession of firearms and/or ammunitions, it is respectfully submitted that *the element of lack of license or permit to carry the firearm and/or ammunitions in proving the corpus delicti depends on the existence of the supposed firearm itself.* Stated otherwise, the element of whether or not the accused has the license or permit to carry the items *becomes irrelevant* if the court is not even sufficiently convinced of the existence of the firearm. *In contrast to cases where the unlicensed firearm was merely used to commit another crime, there are usually no other pieces of evidence to prove the existence of the firearm, apart from the testimony of a witness.*

As pointed out by the esteemed Associate Justice Alfredo Benjamin S. Caguioa, the best evidence to prove the existence of the firearm is the firearm itself.[71]

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66 *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.

67 *Id.*

68 467 Phil. 432 (2004) [Per J. Austria-Martinez, *En Banc*].

69 561 Phil. 764 (2007) [Per J. Carpio, *En Banc*].

70 *Ponencia*, pp. 13–14.

71 J. Caguioa, Concurring Opinion, p. 5.

The presentation of the firearm during trial allows the court and the parties to examine it and its special identifying characteristics. The accused is also given the opportunity to raise an objection, in case there is any doubt with respect to the identity of the seized item. Ultimately, requiring the firearm's presentation in court will allow the court to ascertain whether the firearm being presented is the exact same firearm seized from the accused.[72] I also agree with the *ponencia*'s observation that dispensing with the need to present the firearm in a charge for illegal possession of firearms heightens the risk of unscrupulous law enforcers merely planting evidence after securing the requisite certification from the FEO-PNP.

In view of the foregoing, I propose that the presentation of the firearm and/or ammunitions before the court, for proper authentication and identification, be a condition *sine qua non* in prosecuting violations under Republic Act No. 10591. The only exception to this rule is if the presentation of the firearm and/or ammunitions is rendered impossible due to a fortuitous event, or for any other reason which is not caused by the negligence or fault of the prosecution.

On the other hand, there is no need to present the firearm and/or ammunitions before the court if it was merely used in the commission of another crime, i.e., it is being appreciated as an aggravating or qualifying circumstance. This is because the effects of the main crime committed, along with the relevant testimonies, may already sufficiently prove the existence of the firearm itself. The exception is if there are circumstances which impute serious doubts on the alleged existence of the firearm and/or ammunitions.[73] If such doubts exist, then the prosecution must present the firearm and/or ammunitions before the court.

Applying the foregoing to the instant case, I concur in the acquittal of Togado. The identity of the firearm supposedly confiscated from Togado was not established beyond reasonable doubt due to the failure to present the firearm seized from him. To recall, PO1 San Luis placed the marking "MMS-01 5/29/14" on the ziplock bag, and not on the firearm and ammunitions.[74] However, when the items were retrieved from the evidence custodian, the

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72 *Id.* at 6.

73 In the case of *People v. Navarro*, 357 Phil. 1010 (1998) [Per J. Panganiban, First Division], serious doubt was imputed on the existence of the firearm even if it was only used in furtherance of another crime. Here, the Court held that though the prosecution was able to prove the elements of murder, the supposed unlicensed firearm cannot be appreciated as an aggravating circumstance. First, the firearm was neither presented in court nor offered in evidence. Second, though a witness testified that he saw the accused shooting the victim, it was noted that the gun supposedly used was allegedly recovered from the accused only three years after the murder happened. Therefore, the prosecution was unable to show that the gun recovered three years after was actually the same gun used in the murder.

74 *Ponencia*, p. 12.

ziplock bag which bore this marking was already destroyed.[75] This led the prosecution to present a firearm marked "Magdalena MPS" and a magazine marked "MAG MPS" in court.[76] Evidently, there is reasonable doubt as to whether the firearm and magazine presented in court are the same firearm and magazine allegedly seized from Togado.

Considering that the existence of the firearm itself is integral to the charge of illegal possession of firearms, Togado must be acquitted on reasonable doubt.

ACCORDINGLY, I concur in the **GRANT** of the Petition and the **ACQUITTAL** of Benjamin Togado *y* Pailan.

ALEXANDER G. GESMUNDO
Chief Justice

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75 *Id.*
76 *Id.* at 5.