

SECOND DIVISION

[G.R. No. 114267, December 17, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GILBERT DORIMON, ACCUSED-APPELLANT.**

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision dated January 24, 1994, of the Regional Trial Court of Sindangan, Zamboanga del Norte, Branch 11, in Criminal Case No. S-2180 convicting accused-appellant Gilbert Dorimon^[1] of Presidential Decree No. 1866,^[2] sentencing him to *reclusion perpetua*, and ordering the forfeiture of his .22 caliber *paltik* revolver in favor of the government.

At the time of the incident, appellant was an eighteen (18) year-old senior high school student at the Salug National High School of Salug, Zamboanga del Norte. Found in his possession was a .22 cal. *paltik*, that he allegedly used to threaten a classmate who had defeated him in a basketball game at school.^[3]

The pertinent facts are as follows:

On August 7, 1992, at around 9:30 A.M., Esnani Bontigao, a high school student, personally reported to the Chief of Police of the Philippine National Police (PNP), Salug, Zamboanga del Norte, that appellant had threatened him with a gun.^[4] Acting on the information, the Chief of Police dispatched a team composed of SPO3 Marcelino Tamala, SPO2 Ernesto Lagare and SPO3 Malik Sapihi to proceed to the store near the school to apprehend appellant. Upon reaching the store, SPO3 Tamala approached appellant whom he knew since the latter was a relative of his wife, and asked him whether he was carrying a gun.^[5] Appellant answered in the affirmative but explained that he only found the gun at the back of the school.^[6] Thereafter, appellant was brought to the police station where SPO3 Sapihi discovered a .22 cal. *paltik* revolver, which fell from appellant's waist when appellant was frisked.^[7]

On August 10, 1992, the Chief of Police of Salug, Zamboanga del Norte filed a Complaint^[8] for Illegal Possession with the Municipal Circuit Trial Court of Salug-Godod, Salug, Zamboanga del Norte against appellant.

On August 24, 1992, after conducting the preliminary investigation, Municipal Circuit Trial Judge Ig H. Aricheta issued a Resolution,^[9] which found a *prima facie* case for Illegal Possession, fixed the bail at P200,000.00, and ordered the records of the case forwarded to the Office of the Provincial Prosecutor.

On September 16, 1992, Second Assistant Provincial Prosecutor Valeriano B. Lagula

affirmed the aforesaid Resolution but lowered the recommended bail to P50,000.00.
[10]

On October 8, 1992, Provincial Prosecutor Rodolfo T. Mata filed the following Information^[11] for Illegal Possession of Firearm with the Regional Trial Court:

"The undersigned, Provincial Prosecutor, accuses GILBERT DORIMON of the crime of ILLEGAL POSSESSION OF FIREARM, committed as follows:

That, in the morning, on or about the 7th day of August, 1992, in the Municipality of Salug, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, did then and there wilfully, unlawfully and feloniously have in his possession and under his custody and control one revolver caliber 22 homemade (paltic), bring and carry it outside his residence without the necessary license or permit from the proper authorities and neither is he exempted from liability for carrying said firearm outside his residence.

CONTRARY TO LAW. (Violation of P.D. 1866).

Dipolog City (for Sindanganan, Zamboanga del Norte)."

On May 5, 1993, upon arraignment, appellant, duly assisted by counsel *de parte* Atty. Reubin Maraon, entered a plea of not guilty.

During trial, the prosecution presented two of the arresting officers as its witnesses, namely, SPO3 Marcelino Tamala and SPO2 Ernesto Lagare. Both identified the .22 cal. *paltik* revolver ("Exhibit "A") recovered from appellant.^[12]

Appellant testified on his behalf and denied the charges. He testified that on August 7, 1992, at about 9:00 o' clock in the morning, he was in a store in front of his school when three (3) policemen whom he identified as SPO3 Tamala, SPO2 Lagare and SPO3 Sapihi, approached him.^[13] SPO2 Lagare told him that they wanted to bring him to the Office of the Chief of Police. He was not shown any warrant of arrest nor search warrant. He stood up to enter the school campus but SPO3 Sapihi aimed his armalite at him so that he was forced to go with them to the Office of the Station Commander. At the Office of the Station Commander, SPO3 Tamala searched his body but recovered nothing from him. He denied any knowledge of the firearm presented as Exhibit "A".^[14]

On January 28, 1994, the trial court rendered a decision^[15] convicting appellant of the crime charged. The dispositive portion of the decision reads:

"WHEREFORE, the Court finds accused, Gilbert Dorimon, guilty beyond reasonable doubt of the crime of "Illegal Possession of Firearm," punishable under Section 1 of P.D. 1866, hereby sentences him the penalty of Reclusion Perpetua. Exh. "A" forfeited in favor of the Government."

Hence, the present appeal.

In his Brief, appellant assigns the sole error that:[16]

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME AS CHARGED IN THE INFORMATION DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Additionally, appellant contends that even granting that he possessed the firearm, his arrest without a warrant violated his constitutional right against unlawful searches and seizures, and as a result, the evidence obtained in violation thereof should be inadmissible for any purpose. Appellant insists that before he was picked up by the policemen, they should have first secured a warrant of arrest or search warrant. The arrest being unlawful, the subsequent search on the body of appellant should also be held unlawful.

The Office of the Solicitor General maintains, however, that appellant was arrested with the firearm in *flagrante delicto*; when asked whether he had a firearm, he admitted that he possessed one, which he found at the back of the school.[17] Hence, the warrantless arrest and the incidental search on his body were both valid.

According to the OSG, mere possession of the firearm consummated the crime under P.D. 1866. Although appellant denied ownership of the gun, what is essential for purposes of illegal possession is control or dominion over the use of the weapon of the holder. Absent any ill motive on the part of the police officers in testifying against appellant, their testimonies are entitled to full faith and credit.

As to the sufficiency of evidence to convict, however, we are constrained by the factual circumstances in this case to differ from the OSG's contention that all the elements of the crime of illegal possession were duly proven.

In cases involving illegal possession of firearm, the requisite elements are: (a) the existence of the subject firearm and (b) the fact that the accused who owned or possessed the firearm does not have the corresponding license or permit to possess.
[18]

The first requisite is beyond dispute as the subject firearm was recovered from the person of accused, identified in court as the same firearm, and offered in evidence during trial.

As to the second requisite, we have held that the testimony of a representative of, or a certification from, the Philippine National Police (PNP) Firearms and Explosives Unit that appellant was not a licensee of the said firearm would suffice to prove beyond reasonable doubt the second element of the crime of illegal possession.[19] The non-possession of a license is a negative fact, which constitutes an essential ingredient of the offense of illegal possession, and it is the duty of the prosecution not only to allege it but also to prove it beyond reasonable doubt.[20]

In this case, while the Information alleged that the appellant did not possess any license or permit to carry, such fact was not established during trial. The only reference to the non-possession of a license or permit of the appellant was when the