

## SECOND DIVISION

**[ G.R. No. 120330, November 18, 1997 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
WENCESLAO JAYSON, ACCUSED-APPELLANT.**

### DECISION

**MENDOZA, J.:**

Accused-appellant Wenceslao Jayson was charged with violation of P.D. No. 1866 in the Regional Trial Court of Davao City. The amended information alleged —

That on or about March 16, 1991, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused wilfully, unlawfully and feloniously with intent to possess, had in his possession and under his custody one (1) .38 caliber revolver (Paltik), with Serial Number 91955 and four (4) live ammunitions inside the chamber of said revolver, without first securing the necessary license to possess the same.

That the same .38 caliber revolver was used by the accused in killing Nelson Jordan on March 16, 1991.

Contrary to law.

Davao City, Philippines, July 12, 1991.

The prosecution evidence shows that in the evening of March 16, 1991, accused-appellant, then a bouncer at the "Ihaw-Ihaw" nightclub on Bonifacio Street, Davao City, shot one Nelson Jordan. He was arrested after he had been pointed by eyewitnesses as the gunman. Recovered from him was a .38 caliber revolver with serial number 91955,<sup>[1]</sup> four live bullets, and one empty shell.<sup>[2]</sup> The firearm and ammunition were covered by a memorandum receipt and mission order issued by Major Francisco Arquillano, Deputy Commander of the Civil-Military Operation and CAFGU Affairs of the Davao Metropolitan District Command.<sup>[3]</sup> The mission order authorized accused-appellant to carry the said firearm and twelve rounds of ammunition "[t]o intensify intel[ligence] coverage" and was for a three-month duration (from February 8, 1991 to May 8, 1991), subject to the following restrictions:<sup>[4]</sup>

VII. The carrying of firearms is prohibited in places where people gather for political, religious, social, educational, and recreational purposes, such as churches or chapels, carnival grounds or fairs, nightclubs, cabarets, dance halls, dancing places during fiestas and other celebrations, bars, liquor drinking places, theaters or movies, cockpits, race tracks and the like, except when the personnel concerned is on

official mission in such places for which he was authorized to carry firearms.

Accused-appellant was initially charged with murder<sup>[5]</sup> in an information filed on March 20, 1991 and docketed as Criminal Case No. 22,456-91 in the Regional Trial Court, Branch 18 of Davao City but, after plea-bargaining, he was allowed to plead guilty to the lesser offense of homicide.<sup>[6]</sup> In a decision dated September 24, 1991, the trial court sentenced him to imprisonment of 6 years and 1 day of prision mayor, as minimum, to 12 years and 1 day of reclusion temporal, as maximum.<sup>[7]</sup>

On July 15, 1991, he was charged with illegal possession of firearm.<sup>[8]</sup> The information against him was amended on October 8, 1991 in order to allege that the firearm subject of the charge had been used in the killing of a person (Nelson Jordan) on March 16, 1991.

On June 17, 1993,<sup>[9]</sup> he was found guilty by the Regional Trial Court and sentenced to 20 years imprisonment. The trial court found accused-appellant acted in good faith, believing that the mission order and memorandum receipt issued to him were valid.

On appeal, the Court of Appeals<sup>[10]</sup> increased the penalty on accused-appellant to reclusion perpetua and, in accordance with Rule 124, §13 of the Rules on Criminal Procedure, certified the case to this Court for review. Both accused-appellant and plaintiff-appellee have filed supplemental briefs.

Accused-appellant maintains that he acted in the good faith belief that he was authorized to carry the firearm by virtue of the mission order and memorandum receipt issued to him by Major Francisco Arquillano of the Davao Metropolitan District Command. He argues that the failure of the prosecution to present as witness the government official who had certified that accused-appellant was not the holder of a firearms license is fatal to the prosecution of this case.

## **I.**

Although not raised as an error by the accused-appellant, it is pertinent to consider the circumstances surrounding accused-appellant's arrest and the seizure from him of the firearm in question considering that both were made without any warrant from a court.

With respect to the arrest, SPO1 Loreto Tenebro<sup>[11]</sup> testified that at around 10:00 in the evening of March 16, 1991, while he and Patrolmen Camotes and Reinerio Racolas were patrolling in their car, they received a radio message from their camp directing them to proceed to the "Ihaw-Ihaw" on Bonifacio Street where there had been a shooting. Accordingly, they proceeded to the place and there saw the victim, Nelson Jordan. Bystanders pointed to accused-appellant as the one who had shot Jordan. They then arrested accused-appellant. Seized from him was a .38 caliber revolver with serial number 91955. The firearm was covered by a mission order and memorandum receipt. Considering these facts, we hold that the warrantless arrest and search were valid.

Rule 113, §5(b) of the Revised Rules of Criminal Procedure provides:

Sec. 5. *Arrest without warrant; when lawful.* — A peace officer or private person may, without a warrant, arrest a person: . . . .

(b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it.

In the case at bar there was a shooting. The policemen summoned to the scene of the crime found the victim. Accused-appellant was pointed to them as the assailant only moments after the shooting. In fact accused-appellant had not gone very far (only ten meters away from the "Ihaw-Ihaw"), although he was then fleeing. The arresting officers thus acted on the basis of personal knowledge of the death of the victim and of facts indicating that accused-appellant was the assailant.

This Court has upheld a warrantless arrest under analogous circumstances. In *People v. Tonog, Jr.*,<sup>[12]</sup> the police found the lifeless body of a person with several stab wounds. An informer pointed to the accused as the person who had killed the victim. That afternoon, police officers arrested the accused. On their way to the police station, a policeman noticed bloodstains on the accused's pants which, when examined, was found to be the same blood type "O" found on the fatal knife. The Court upheld the warrantless arrest and ruled that the blood-stained pants, having been seized as an incident of a lawful arrest, was admissible in evidence.

In *People v. Gerente*,<sup>[13]</sup> the police arrested the accused three hours after the victim had been killed. They went to the scene of the crime where they found a piece of wood and a concrete hollow block used by the killers in bludgeoning the victim to death. A neighbor of the accused who witnessed the killing, pointed to him as one of the assailants. The warrantless arrest was held valid under Rule 113, §5(b).

In *People v. Acol*,<sup>[14]</sup> a group held up a passenger jeepney. Policemen immediately responded to the report of the crime. One of the victims saw four persons walking towards Fort Bonifacio, one of whom was wearing his jacket. He pointed them to the policemen. When the group saw the policemen coming, they ran in different directions. Three were caught and arrested. Each was found in possession of an unlicensed revolver and charged with illegal possession of firearms. The accused claimed that the warrantless seizure of firearms was illegal. The Court rejected their plea and held that the search was a valid incident of a lawful arrest.

The subsequent search of accused-appellant's person and the seizure from him of the firearm was likewise lawful. Rule 126, §12 states:

Sec. 12. *Search incident to lawful arrest.* — A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant.

In *People v. Lua*,<sup>[15]</sup> a buy-bust operation was conducted against the accused. After accused had gone inside his house and returned with the three tea bags of marijuana and received the marked money, the designated poseur-buyer gave the signal to his fellow police officers who closed in and arrested the accused. In the course of the arrest, a police officer noticed something bulging at accused's waistline, which turned out to be an unlicensed .38 caliber "paltik" with two live bullets. Accused was charged with illegal possession of firearm. The search was held

to be a valid incident of a lawful arrest.

## **II.**

We now come to the main question of accused-appellant's liability for illegal possession of firearm. There is no dispute that accused-appellant was in possession of the gun in this case. His defense is that the gun is covered by a memorandum receipt and mission order issued by Major Francisco Arquillano, then Deputy Commander of the Civil-Military Operation and CAFGU Affairs of the Davao Metropolitan District Command.

The issuance of mission orders is governed by Memorandum Circular No. 8 dated October 16, 1986 of the then Ministry of Justice, which in pertinent part states:<sup>[16]</sup>

. . It is unlawful for any person or office to issue a mission order authorizing the carrying of firearms by any person unless the following conditions are met:

1. That the AFP officer is authorized by the law to issue the mission order;
2. That the recipient or addressee of the mission order is also authorized by the law to have a mission order, i.e., he must be an organic member of the command/unit of the AFP officer issuing the mission order. If mission orders are issued to civilians (not members of the uniformed service), they must be civilian agents included in the regular plantilla of the government agency involved in law enforcement and are receiving regular compensation for the services they are rendering. (In this case, the agency head or officials so designated by the law shall issue the mission order.) . . . .

As the Court of Appeals held, however, Major Arquillano, who had issued the mission order in question, was not authorized to do the same. Neither was accused-appellant qualified to have a mission order.

Admittedly, Major Arquillano was not authorized to issue mission orders to civilian agents of the AFP as he was not any of the following officers mentioned in the Implementing Rules and Regulations of P.D. No. 1866, §5(a), to wit:<sup>[17]</sup>

- (1) The Minister of National Defense and such other Ministry officials duly designated by him;
- (2) The Chief of Staff, AFP;
- (3) Chief of the General/Special/Technical and Personal Staffs of GHQ AFP;
- (4) Commanders of the AFP Major Services including the Chiefs of their respective General/Special/Technical and Personal Staffs;