PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELVIS LEGO Y LAGUNDAY, ACCUSED-APPELLANT.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is an appeal from the Decision[1] dated November 21, 2011, of the Regional Trial Court, 6[th] Judicial Region, Branch 29, Iloilo City, finding accused-appellant Elvis Lagunday Lego, guilty beyond reasonable doubt for Violation of Section 261 (q) of BP 881 (The Omnibus Election Code), in relation to Section 32 of RA 7166 and COMELEC Resolution No. 8714 or Violation of COMELEC Gun-Ban, in Criminal Case No. 10-68343.

The Facts

Accused-appellant Elvis Lagunday Lego [Lego] was charged in an Information[2] dated February 23, 2010 for Violation of Section 261 (q) of BP 881 (The Omnibus Election Code), in relation to Section 32 of RA 7166 and COMELEC Resolution No. 8714 or Violation of COMELEC Gun-Ban, the accusatory portion of the said information, reads:

> "That on or about February 19, 2010, covered by the Election period, in the Municipality of Bingawan, Province of Iloilo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) homemade .38 caliber revolver loaded with six (6) live ammunitions inside its cylinder which he carried outside his residence without first obtaining the necessary exemption or authority from the Commission on Elections.
>
> CONTRARY TO LAW."

Accused-appellant Lego was able to post bail.[3] Upon his arraignment on April 22, 2010, with the assistance of his counsel Atty. Edison Belloga, he entered a plea of "not-guilty" to the offense charged.[4]

As contained in the Pre-Trial Order[5] dated September 2, 2010, the parties entered into the following stipulations, to wit:

> "1. The identity of accused, Elvis Lego y Lagunday as the same person charged in the Information and subsequently arraigned;
>
> 2. That February 19, 2010 is covered by the election period in view of the national and local elections on May 10, 2010;
>
> 3. That the accused was not authorized by the COMELEC to carry a firearm on such date and place; also that the accused is not a licensed firearm holder;
>
> 4. The existence of the extract of the Police Blotter of February 22, 2010 in reference to this case under Entry No. 10853 and 10854;
>
> 5. That there is another case filed before another sala concerning the same subject firearm against the

accused."[6]

Thereafter, trial on the merits ensued.

VERSION OF THE PROSECUTION

Prosecution presented two [2] witnesses, namely: PO3 Edwin Compas [PO3 Compas] and SPO1 Ronnie Espedion [SPO1 Espedion] who testified that:

On February 19, 2010 at around 9:00 o'clock in the evening, PO3 Compas and Police Inspector Joeffer Cabural together with other police officers arrived at Barangay Alabidhan, Bingawan, Iloilo for the purpose of conducting a COMELEC Checkpoint in view of the upcoming national and local elections in May 2010.[7]

At around 11:00 o' clock in the evening, Lego was on the way to the COMELEC checkpoint on board a single motorcycle driven by his son Michael Lego. In view of the checkpoint, PO3 Compas motioned for the motorcycle to stop and when it did, he asked Lego for the registration papers of the motorcycle. When Lego opened the compartment in order to show to the police the registration, the police officers spotted a .38 caliber revolver that was partly covered by a handkerchief. The registration reflected Elvis Lego's name as the registrant and owner of the motorcycle.[8] When Lego was not able to produce any license for the gun upon the police officer's query, the latter placed the former under arrest and informed him of his constitutional rights. Upon further examination of the weapon, the police officers discovered that the gun had six [6] live bullets inside its cylinder.[9]

Thereafter, PO1 Jorge Lenantud placed the marking "EL" on the hand gun.[10] Michael Lego was sent home while the police officers detained accused-appellant Lego.[11]

After that, prosecution offered their Exhibits "A" to "C"[12] with all their sub-markings which were all duly admitted by the RTC[13], over the objection of the defense.[14]

VERSION OF THE DEFENSE

Defense presented two [2] witnesses, accused-appellant Elvis Lego [Lego] himself and his son, Michael Lego [Michael], whose version is recounted thus:

On February 19, 2010 at around 6:00 o'clock in the evening, Lego was headed at Barangay Nueva Onion in order to attend the last day of the wake of his relative. Later on, he sent an sms message to his son, Michael, in order to fetch him. Michael arrived there at around 8:30 o'clock. Two hours later, at around 10:45 in the evening, the duo headed home, Michael was at the wheel driving his motorcycle.

On their way to their residence, they saw a well illuminated checkpoint when they were 40 meters away from it. Upon reaching the checkpoint, they were asked to stop by PO3 Compas and PO2 Lenantud. After stopping, they were frisked by the police officers. Thereafter, the police officers asked them for their drivers' licenses, Michael showed them his Student Permit which he fished out from his clutch bag hanging on the stirring wheel, while Lego who doesn't drive was not able to produce any license. Next, the police asked for the registration of the motorcycle, Michael who was the registered owner thereof got the required papers from the clutch bag. After he presented it to the officers, Michael was directed to open the compartment of the motorcycle which was done by lifting the seat thereof and the latter complied out of fear.

When the compartment was already opened, PO3 Compas scanned the contents of the compartment until he discovered a gun. When said police officer asked them who owns the gun, both of them kept silent. Afterwards, Lego was asked by the police officers to go with them while Michael was sent home.[15]

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Michael later on revealed to his father when he visited him in prison that the gun belongs to his uncle, Totong Lastimoso. Earlier that day on February 19, 2010 in the morning, his uncle Totong arrived from Sta. Barbara. Around lunch time, Michael and his uncle went at Suhot Spring Resort using the former's motorcyle. His uncle who was then carrying the said firearm asked that the same be placed inside the compartment of Michael's motorcycle to which the latter acceded. At the resort both swam and had alcoholic drinks. It was already 5:00 o'clock in the afternoon when Michael and his uncle went to the house of Michael's grandfather. While at the said house both of them continued to drink and chat until Michael received an sms message from his father for him to be fetched. Both Michael and his uncle already forgot about the gun placed inside the compartment of his motorcycle.

Defense thereafter rested without any documentary evidence.

The RTC in its Decision dated November 21, 2011 pronounced accused-appellant Lego guilty beyond reasonable doubt of the crime charged. The fallo of the said decision, reads:

> "WHEREFORE, premises considered, the accused ELVIS LEGO Y LAGUNDAY is hereby found GUILTY beyond reasonable doubt of the crime of VIOLATION OF SEC. 261 (q) BP 881 (The Omnibus Election Code) in rel. to Sec. 32, RA 7166 and COMELEC Res No. 8714 (Viol. of Firearms Ban). He is hereby sentenced to suffer a straight penalty of One (1) year and shall suffer disqualification to hold public office and deprivation of the right of suffrage during the term of his sentence.
>
> SO ORDERED."[16]

Aggrieved, accused-appellant comes to Us on appeal with the following assignment of errors, to wit:

> "I. THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED; AND
>
> II. THE TRIAL COURT ERRED IN RULING THAT THE ACCUSED HAS WAIVED HIS RIGHT TO QUESTION THE ILLEGALITY/ IRREGULARITY OF THE SEARCH AND HIS ARREST."[17]

Our Ruling

Accused-appellant Lego insists that the search and seizure made by the police officers was invalid as the police officers were not equipped with a search warrant moreover, the search conducted by the police officers do not fall in any of the exceptions established by jurisprudence for warrantless search and seizure. Consequently, the evidence obtained from an invalid search and seizure becomes the proverbial "fruit of the poisonous tree" and the invalidity thereof could be attacked at any stage of the proceeding.

We agree.

We take judicial notice of the existence of the COMELEC Resolution No. 8714 imposing a gun ban during the election period issued pursuant to Section 52(c) in relation to Section 26(q) of the Omnibus Election Code (Batas Pambansa Blg. 881). The national and local elections in 2010 were held on May 10, 2010, the second Monday of the month. The incident, which happened on February 19, 2010, was well within the election period[18] as defined under the said COMELEC resolution which was from January 2010 to June 9, 2010. There is no doubt that the checkpoint installed in that area was in compliance with the law.

Checkpoints may either be a mere routine inspection or it may involve an extensive search. Routine inspections are not regarded as violative of an individual's right against unreasonable search. The search which is normally permissible in this instance is limited to the following instances: (1) where the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds; (2) simply looks into a vehicle; (3) flashes

a light therein without opening the car's doors; (4) where the occupants are not subjected to a physical or body search; (5) where the inspection of the vehicles is limited to a visual search or visual inspection; and (6) where the routine check is conducted in a fixed area.[19]

The Supreme Court has ruled that not all checkpoints are illegal. Those which are warranted by the exigencies of public order and are conducted in a way least intrusive to motorists are allowed. For, admittedly, routine checkpoints do intrude, to a certain extent, on motorists' right to "free passage without interruption," but it cannot be denied that, as a rule, it involves only a brief detention of travelers during which the vehicle's occupants are required to answer a brief question or two.[20]

Searches conducted in checkpoints are valid for as long as they are warranted by the exigencies of public order and are conducted in a way least intrusive to motorists. Although the general rule is that motorists and their vehicles as well as pedestrians passing through checkpoints may only be subjected to a routine inspection, vehicles may be stopped and extensively searched when there is probable cause which justifies a reasonable belief of the men at the checkpoints that either the motorist is a law offender or the contents of the vehicle are or have been instruments of some offense.[21] For as long as the vehicle is neither searched nor its occupants subjected to a body search, and the inspection of the vehicle is limited to a visual search, said routine checks cannot be regarded as violative of an individual's right against unreasonable search.[22]

While the checkpoint was valid in the instant case, the police officers had no reason to search the motorcycle where accused-appellant was riding because there was no probable cause that accused-appellant Lego was committing a crime or had information that accused-appellant had just committed a crime as revealed by the testimony of prosecution witness PO3 Compas, which reads:

> "Q: You said that you stopped the motorcycle where the accused was riding on when he passed your checkpoint in the evening of February 19, 2010. Do I get you correct?
> A: Yes sir.
>
> Q: And you said that the accused was only a back rider in the motorcycle and there was one driving it in the person of Michael Lego. Am I correct?
> A: Yes sir.
>
> Q: Why did you stop the motorcycle when it passed by your checkpoint? Was it running at a high speed? A: No sir, because we are under the order from the higher ups to conduct check point (sic).
>
> Q: When you stopped the motorcycle where the accused was riding on, what was your purpose? Please tell the court.
> A: To check whether there were firearms.
>
> Q: Do you remember whether (the) motorcycle of the accused has a plate number?
> A: I cannot recall.[23]
>
> xxxxx
>
> Q: From who did you ask the papers of the motorcycle considering that there were two persons riding on the motorcycle?
> A: When we stopped them we asked who is the owner and he said Elvis Lego, so we asked for the papers of said motorcycle.
>
> Q: When accused answered that he is the owner of the motorcycle, did you still want to see the registration or you were simply satisfied that he claims that he is the owner?
> A: We asked for the license.

Q: Why did you still ask for the license. Do you suspect that the motorcycle is a carnapped motorcycle?
A: No sir. To know if he is really the owner of the motorcycle."[24]

Absent the requisite probable cause, the search of the police officers should only be limited to looking into a vehicle or is limited to a visual search or visual inspection only, following COMELEC Resolution 8729 entitled Guidelines for the Establishment of COMELEC Checkpoints in Connection with the May 10, 2010 National and Local Elections which promulgated on December 23, 2009, which states:

"Sec. 8. Searches at COMELEC checkpoint. - Any search at any COMELEC checkpoint must be made only by members of the unit designated to man the same. It should be done in a manner which will impose minimum inconvenience upon the person or persons so searched, to the end that civil, political and human rights of the person/s are not violated.

As a rule, a valid search must be authorized by a search warrant duly issued by an appropriate authority. However, a warrantless search can be made in the following cases:

a. moving vehicles and the seizure of evidence in plain view;

b. as long as the vehicle is neither searched nor its occupant/s subjected to a body search, and the inspection of the vehicle is merely limited to a visual search;

c. when the occupant(s) of the vehicle appear to be nervous or suspicious or exhibit unnatural reaction;

d. if the officer conducting the search has reasonable or probable cause to believe that either the occupant(s) is a law offender or that the instrumentality or evidence pertaining to the commission of a crime can be found in the vehicle to be searched; or

e. on the basis of prior confidential information which are reasonably corroborated by other attendant matters."

With more reason that it was not necessary for the police officers to frisk accused-appellant and/or the driver Michael Lego. As narrated by Lego:

"Q: By the way Mr. Witness, what was your position then after you were directed by the team to stop? Were you still on the motorcycle or where you or have you already alighted from the motorcycle?
A: We were asked to alight.

Q: The same with Michael Lego?
A: Yes your Honor.

Q: Were you not personally frisked by any member of the PNP COMELEC checkpoint?
A: We were frisked.

Q: At what point in time were you frisked, before they asked for the driver's license and documents of the motorcycle or already after?
A: Before. We were frisked before the documents were asked.

Q: You and your son Michael were frisked by the team?
A: Yes your Honor.

Q: Who personally from the team frisked you if you can still recall?
A: Jorge Lenantud.

Q: How about Police Officer Compas, did he not frisk any of you?
A: Edwin Compas frisked me and Jorge Lenantud frisked Michael."[25]

Further, the search on the compartment of the motorcycle by the police officers was unwarranted because the

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same transgresses the express mandate of COMELEC Resolution 8729 which merely limits police inspection to a mere visual search, contrary thereto the opposite of the mandate transpired thus, as narrated by Michael Lego:

> "Q: Mr. Witness after you have shown to the police officer the documents of the motorcycle, what happened after that?
> A: He then asked me to open the toolbox of my motorcycle.
>
> Q: And did you comply?
> A: Yes, Your Honor.
>
> Q: Where is this toolbox of the motorcycle located Mr. Witness?
> A: It it located under the seat of the motorcycle.
>
> Q: And after you open the toolbox of the motorcycle, what happened
> ? A: PO3 Edwin Compas tried to scan the contents of the toolbox.
>
> Q: Did he recover anything from the toolbox of the motorcycle?
>
> xxxxx
>
> Court: Reform.[26]
>
> Q: And when PO3 Edwin Compas scanned the toolbox of your motorcycle, what happened?
> A: He saw something.
>
> Q: And what is that something that he saw?
> A: It's a firearm, Your Honor."[27]

It must be noted that the evidence seized, although alleged to be inadvertently discovered, was not in "plain view." It was actually concealed inside the motorcycle's compartment or the toolbox. Clearly, the evidence was not immediately apparent.[28] Jurisprudence is to the effect that an object is in plain view if the object itself is plainly exposed to sight. Where the object seized was inside a closed package, the object itself is not in plain view and therefore cannot be seized without a warrant. However, if the package proclaims its contents, whether by its distinctive configuration, its transparency, or if its contents are obvious to an observer, then the contents are in plain view and may be seized. In other words, if the package is such that an experienced observer could infer from its appearance that it contains the prohibited article, then the article is deemed in plain view. It must be immediately apparent to the police that the items that they observe may be evidence of a crime, contraband or otherwise subject to seizure.[29]

Neither was there a consented warrantless search. Consent to a search is not to be lightly inferred, but shown by clear and convincing evidence. It must be voluntary in order to validate an otherwise illegal search; that is, the consent must be unequivocal, specific, intelligently given and uncontaminated by any duress or coercion.[30] It is the State which has the burden of proving, by clear and positive testimony, that the necessary consent was obtained and that it was freely and voluntarily given.[31]

The search was conducted in this manner as testified by accused-appellant Lego, viz:

> "Q: When Michael Lego was directed to open the compartment of his motorcycle, did he comply?
> A: Yes your Honor.
>
> Q: Did any of you refuse to comply with the order of the police officers?
> A: None your Honor because we were afraid considering that they are police officers.
>
> Q: Where is the compartment that you are referring to located?

A: The one where you sit on the motorcycle.

Q: Do you want to tell this Court that is it beneath the seat of the motorcycle?
A: Yes your Honor.

Q: When you opened the compartment, how did you do it? Please tell the Court?
A: Opened it with a key.

Q: And who opened the compartment?
A: Michael.
Q: And when Michael has opened already the compartment, what happened next?
A: Edwin Compas scanned the contents of the said compartment.

Q: And did he recover anything?
A: Yes your Honor.

Q: What was that?
A: A gun."[32]

In sustaining the conviction, the RTC relied on the evidentiary presumption that official duties have been regularly performed. Admittedly, the defense did not adduce evidence showing that PO3 Compas and SPO1 Espedion had any ill motive to falsify their testimony.[33] Because a warrantless search is in derogation of a constitutional right, peace officers who conduct it cannot invoke regularity in the performance of official functions. The Bill of Rights is the bedrock of constitutional government. If people are stripped naked of their rights as human beings, democracy cannot survive and government becomes meaningless. This explains why the Bill of Rights, contained as it is in Article III of the Constitution, occupies a position of primacy in the fundamental law way above the articles on governmental power.[34] It must be emphasized that the presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof of guilt beyond reasonable doubt.[35]

Without the illegally seized firearm, accused-appellant Lego's conviction cannot stand. There is simply no sufficient evidence to convict him. All told, the guilt of Lego was not proven beyond reasonable doubt measured by the required moral certainty for conviction. The evidence presented by the prosecution was not enough to overcome the presumption of innocence as constitutionally ordained. Indeed, it would be better to set free ten men who might probably be guilty of the crime charged than to convict one innocent man for a crime he did not commit.[36]

WHEREFORE, premises considered, the Decision dated November 21, 2011, of the Regional Trial Court, 6[th] Judicial Region, Branch 29, Iloilo City, finding accused-appellant Elvis Lagunday Lego, guilty beyond reasonable doubt for Violation of Section 261 (q) of BP 881 (The Omnibus Election Code), in relation to Section 32 of RA 7166 and COMELEC Resolution No. 8714 or Violation of COMELEC Gun-Ban, in Criminal Case No. 10-68343 is hereby REVERSED and SET ASIDE. Accused-appellant Elvis Lagunday Lego is hereby ACQUITTED of the crime charged.

Pursuant to Article 22, Rule 114[37] of the Rules of Court, the bail posted by accused-appellant is deemed automatically cancelled upon his acquittal.

SO ORDERED.

Hernando, J., Chairperson, and Azcarraga-Jacob, JJ., concur.

[1] Records, pp. 166-171, penned by the Honorable Judge Gloria G. Madero

[2] Records, p. 1

[3] Records, p. 41

[4] Records, p. 51

[5] Records, pp. 69-70

[6] Records, p. 69

[7] TSN, October 28, 2010, p. 9

[8] TSN, October 28, 2010, p. 8

[9] TSN, October 28, 2010, p. 5

[10] TSN, October 28, 2010, p. 5

[11] TSN, October 28, 2010, p. 8

[12] TSN, January 20, 2011, p. 12

“A”- Records of Events of Bingawan Municipal Police Station dated February 22, 2010;
“B”- The firearm, .38 caliber revolver;
“B-1” to “B-6”- live ammunition
“C”- Joint Affidavit of PO3 Edwin C. Compas and PO1 Jorge L. Lenantud

[13] Records, p. 106

[14] TSN, October 28, 2010, pp. 12-13

[15] TSN, May 20, 2011, pp. 2-9

[16] Records, p. 171

[17] Rollo, p. 17

[18] People v. Escaño, et al., G.R. Nos. 129756-58, January 28, 2000

[19] Caballes v. CA, et al., G.R. No. 136292, January 15, 2002

[20] People v. Escaño, et al., G.R. Nos. 129756-58, January 28, 2000

[21] People v. Vinecario, et al., G.R. No. 141137, January 20, 2004

[22] People v. Vinecario, et al., G.R. No. 141137, January 20, 2004

[23] TSN, October 28, 2010, p. 10

[24] TSN, October 28, 2010, p. 11

[25] TSN, May 20, 2011, p. 6

[26] TSN, September 15, 2011, p. 9

[27] TSN, September 15, 2011, p. 10

[28] Luz v. People, G.R. No. 197788, February 29, 2012

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[29] Caballes v. CA, et al., G.R. No. 136292, January 15, 2002

[30] Luz v. People, G.R. No. 197788, February 29, 2012

[31] Caballes v. CA, et al., G.R. No. 136292, January 15, 2002

[32] TSN, May 20, 2011, pp. 7-8

[33] People v. Gatlabayan, G.R. No. 186467, July 13, 2011

[34] Valeroso v. CA and People of the Philippines, G.R. No. 164815, September 3, 2009

[35] People v. Gatlabayan, G.R. No. 186467, July 13, 2011

[36] Valeroso v. CA and People of the Philippines, G.R. No. 164815, September 3, 2009

[37] Sec. 22. Cancellation of bail – Upon application of the bondsmen, with due notice to the prosecutor, the bail may be cancelled upon surrender of the accused or proof of his death.

The bail shall be deemed automatically cancelled upon acquittal of the accused, dismissal of the case, or execution of the judgment of conviction.

In all instances, the cancellation shall be without prejudice to any liability on the bail.

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