

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FEDERICO OBOZA IV Y LIBUNAO, ACCUSED-APPELLANT.

Ponente: CORALES, J.

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CORALES, J.:

This is an appeal[1] from the April 27, 2012 Decision[2] of the Regional Trial Court (RTC), Branch 84, Malolos City, Bulacan in Criminal Case No. 1810-M-2010 finding accused-appellant Federico Oboza, IV (Oboza) guilty of violation of Section 261 (q) of Batas Pambansa Bilang 881 (B.P. Blg. 881),[3] otherwise known as the Omnibus Election Code, in relation to COMELEC Resolution No. 8646[4] or the Election Gun Ban.

The Antecedents

The facts are hardly in dispute. On June 4, 2010, PO2 Jovie Santos Rivera (PO2 Rivera) and PO1 Dennis Hernandez (PO1 Hernandez) conducted a checkpoint along the national highway in Barangay Salangan, San Miguel, Bulacan pursuant to the then existing election gun ban. Around 9:00 in the evening, Oboza and a certain Anthony, on board a black motorcycle, passed through the checkpoint. They were flagged down by PO2 Rivera because they were not wearing helmets while traversing the national highway. At that time, Oboza was wearing a black long sleeves which covered his waist, but a belt bag was bulging from his waist. Thus, PO2 Rivera frisked Oboza and felt a hard object in his belt bag. When he opened Oboza's belt bag, he saw a caliber 9mm Armscor pistol with Serial Number 1160829, two (2) magazines, and seven (7) live rounds of ammunition. Oboza presented his Firearm License Card and Permit to Carry[5] but was unable to produce a COMELEC issued exemption for the election gun ban.[6]

On the strength of the Magkasanib na Sinumpaang Salaysay[7] executed by PO2 Rivera and PO1 Hernandez, Oboza was charged with violation of Comelec Omnibus Election Code (Gun Ban)[8] under an Information[9] which reads:

That on or about the 4[th] day of June, 2010, in the municipality of San Miguel, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, under his custody and control one (1) 9MM caliber marked "Armscor", with Serial Number 1160829, two (2) magazine and seven (7) live ammunitions during the campaign period for a national and local elections on May 10, 2010 without first obtaining a permit to carry such firearm outside his residence from the Commission of Election (COMELEC).

Oboza pleaded not guilty[10] to the crime charged. He stipulated his identity and the jurisdiction of the court during the pre-trial proceedings.[11]

The Ruling of the RTC

In its April 27, 2012 Decision,[12] the RTC held that Oboza's gun was lawfully seized pursuant to a "stop and frisk" search, one of the recognized exceptions in warrantless search and seizures. The court a quo considered the police officer's experience and the surrounding conditions to warrant the belief that a person who acts suspiciously has concealed weapon or contraband. It noted Oboza's failure to wear helmet while passing the

checkpoint, which is a violation of traffic rules, and the fact that his belt bag conspicuously bulged out from his waist giving PO2 Rivera sufficient reason to suspect that he was carrying a concealed weapon. The RTC also stressed that Oboza already waived his right to question the legality of his arrest due to his failure to file a motion to quash the Information before arraignment.

The RTC further emphasized that Oboza has the burden to adduce evidence showing his exemption from the COMELEC gun ban but he failed to discharge this onus, thus, he was found guilty beyond reasonable doubt of the crime charged. It then disposed the case in this wise:

WHEREFORE, finding the accused guilty beyond reasonable doubt of the above crime charged, he is hereby sentenced to suffer the indeterminate penalty of imprisonment of one (1) year as minimum to two (2) years as maximum, not subject to probation, and to suffer disqualification to hold public office and deprivation of the right to suffrage. Likewise, the subject firearm of the accused is hereby ordered confiscated and forfeited in favor of the Government.

Unconvinced, Oboza filed the present appeal with the following assignment of errors:

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE CLEAR SHOWING THAT THE EVIDENCE PRESENTED IS INADMISSIBLE.

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE ADMISSION OF THE POLICE OFFICER THAT HE FRISKED THE ACCUSED-APPELLANT AND RECOVERED THE GUN INSIDE HIS BELT BAG IN A CHECK POINT.[13]

Oboza argues that in checkpoints, only those items within plain view or “open to eye and hand” of the law enforcement officers who come upon them “inadvertently” can be seized without a warrant. According to him, when PO2 Rivera took the belt bag from his waist and opened it, he stepped beyond what was allowed; thus, the seized items are inadmissible in evidence for being fruits of a poisonous tree.

This Court’s Ruling

Oboza's conviction stands.

It is well-settled that the constitutional proscription against warrantless searches and seizures admits certain exceptions, such as: (1) search incidental to a lawful arrest; (2) search of a moving motor vehicle; (3) search in violation of customs laws; (4) seizure of evidence in plain view; (5) when the accused himself waives his right against unreasonable searches and seizures; (6) stop-and-frisk situations;[14] and (7) exigent and emergency circumstances.[15]

Searches conducted in checkpoints are also considered valid as long as they are warranted by the exigencies of public order and are conducted in a way least intrusive to motorists. In such instances, motorists and their vehicles as well as pedestrians passing through checkpoints may only be subjected to a routine inspection. However, 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.[16] Simply stated, it is necessary that the officer effecting the seizure must have been impelled to do so because of probable cause. Without probable cause, the articles seized cannot be admitted in evidence against the person arrested.[17]

Probable cause refers to the existence of such facts and circumstances that can lead a reasonably discreet and prudent man to believe that an offense has been committed, and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law are in the place to be searched. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion

that the person to be arrested is probably guilty of committing the offense is based on actual facts, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.[18]

In this case, there was indeed probable cause for PO2 Rivera to conduct an extensive search. It must be remembered that the checkpoint was specifically set-up to enforce the election gun ban. When Oboza passed through said checkpoint, there was a bulging object in his waist which was covered by his black long sleeves. Taking into consideration the ordinary human experience and the surrounding conditions, PO2 Rivera has all the valid reason to believe that a gun was inside Oboza's bulging belt bag. This justified the police officer's action of resorting to a "stop and frisk" search as enunciated in the landmark case of *Terry v. Ohio*.[19] The Terry search or the "stop and frisk" situation refers to a case where a police officer approaches a person who is acting suspiciously, for purposes of investigating possibly criminal behavior in line with the general interest of effective crime prevention and detection. To assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him, he could validly conduct a carefully limited search of the outer clothing of such person to discover weapons which might be used to assault him.[20]

Accordingly, when PO2 Rivera felt the hard object inside the belt bag, he was within his authority, in the interest of safety and self-preservation, to insure that Oboza was not armed with a deadly weapon that could unexpectedly and fatally be used against the police officer. Thus, Oboza's gun was validly seized through a "stop and frisk" search and is admissible as an evidence against him. His conviction necessarily follows when he admitted that he was not exempted from the COMELEC gun ban. To declare otherwise would render the COMELEC gun ban toothless and ineffectual. As elucidated in *People v. Escaño*,[21] those who intend to bring a gun during said period would know that they only need a belt bag to be able to easily perpetrate their malicious designs.

WHEREFORE, the appeal is hereby DENIED. Accordingly, the April 27, 2012 Decision of the Regional Trial Court, Branch 84, Malolos City, Bulacan in Criminal Case No. 1810-M-2010 is AFFIRMED.

SO ORDERED.

Villon (Chairperson) and Macalino, JJ., concur.

[1] See Notice of Appeal relation to July 9, 2012 Order of the RTC giving due course to said appeal, records, pages 123 and 124, respectively.

[2] Penned by Presiding Judge Wilfredo T. Nieves, rollo, pages 21-26.

[3] Sec. 261. Prohibited Acts. – The following shall be guilty of an election offense:

xxx

(q) Carrying firearms outside residence or place of business. – Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission: Provided, That a motor vehicle, water or air craft shall not be considered a residence or place of business or extension hereof.

[4] Prescribing that the election period is from 10 January 2010 to 09 June 2010.

[5] Records, page 10.

[6] TSN, PO2 Jovie S. Rivera, October 5, 2010, pages 5-13 and TSN, Federico Oboza IV, August 16, 2011, pages

5-14.

[7] Records, pages 7-8.

[8] See Inquest Resolution of the Office of the Provincial Prosecutor dated June 15, 2010, *ibid.*, pages 4-5.

[9] *Ibid.*, pages 2.

[10] See RTC Order dated July 19, 2010, *ibid.*, page 36.

[11] See Pre-Trial Order dated September 14, 2010, *ibid.*, page 46.

[12] *Supra*, at note 2.

[13] See Appellant's Brief, *rollo*, pages 17-18.

[14] See *People v. Vinecario*, G.R. No. 141137. January 20, 2004.

[15] See *People v. Mariacos*, G.R. No. 188611. June 21, 2010.

[16] See *People v. Vinecario*, *supra*, at note 14.

[17] See *People v. Mariacos*, *supra*, at note 15.

[18] See *People v. Vinecario*, *supra*, at note 14.

[[19]] *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889. 1968, as cited in *People v. Canton*, G.R. No. 148825. December 27, 2002.

[20] *People v. Canton*, *ibid.*

[21] G.R. Nos. 129756-58. January 28, 2000.

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