

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LOUMEL SANTOS Y DELOS REYES, ACCUSED-APPELLANT.

Ponente: LIBREA-LEAGOGO, J.

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LIBREA-LEAGOGO, J.:

Before this Court is an appeal from the Decision[1] dated 14 December 2012 of the Regional Trial Court, National Capital Judicial Region, Branch 263, Marikina City in the case entitled “People of the Philippines v. Loumel Santos y Delos Reyes,” docketed as Crim. Case No. 10-11627-MK, the dispositive portion of which reads:

“WHEREFORE, in view of the foregoing(,) accused, LOUMEL SANTOS y DELOS REYES is hereby found GUILTY BEYOND REASONABLE DOUBT of Violation of Section 261 par (q) of the Omnibus Election Code in relation to COMELEC (R)esolution (N)o. 8714 and is sentenced to an indeterminate penalty of one year of imprisonment as minimum to three years of imprisonment as maximum, not subject to probation; and he shall suffer DISQUALIFICATION to hold public office and DEPRIVATION of the right of suffrage. The subject firearm is CONFISCATED and FORFEITED in favor of the government.

SO ORDERED.”[2]

Accused-appellant filed his Brief[3] dated 22 October 2013. Plaintiff-appellee also filed its Brief[4] dated 24 February 2014. Accused-appellant then filed a Manifestation in lieu of Reply Brief[5] dated 12 March 2014 to the effect that he would no longer file a reply brief. Thus, the appeal is submitted for decision.

FACTUAL ANTECEDENTS

Accused Loumel Santos y Delos Reyes was charged with violation of Section 261 paragraph (q) of the Omnibus Election Code in relation to COMELEC Resolution No. 8714, in an Information[6] dated 18 January 2010 filed with the Regional Trial Court of Marikina City, docketed as Crim. Case No. 2010-11627-MK, the accusatory portion of which reads:

“That on or about the 14[th] day of January 2010, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without written authority from the COMELEC, did then and there willfully, unlawfully and feloniously carry (sic) firearm (improvised pen gun with .38 caliber live ammunition outside his residence during the election period.

CONTRARY TO LAW.”[7]

Considering that the accused had already been detained, the trial court issued an Order[8] dated 25 January 2010, setting his arraignment. When arraigned on 18 February 2010, accused entered a plea of not guilty to the crime charged.[9] Pre-trial conference was held and a Pre-trial Order[10] dated 06 May 2010 was issued, which stated, inter alia, that the accused who was then present is the same accused named in the Information and that the incident happened within the jurisdiction of the trial court.

Trial ensued.

The prosecution presented its evidence. The testimonies of PO1 Rey Cabarles (“PO1 Cabarles,” for brevity), Police Chief Inspector Russel G. Leysa (“P/CI Leysa,” for brevity), Barangay Tanod Luisito Cruz (“B/T Cruz,” for brevity) and Barangay Tanod Romeo San Pedro (“B/T San Pedro,” for brevity) were summarized by the trial court, viz:

“PO1 Rey Cabarles, a police officer of the Eastern Police District (EPD). He testified that on January 14, 2010 at around 8:00 in the evening while they were at their office they decided to go on patrol. At that time he was with B/T San Pedro and B/T Cruz on board a tricycle patrol along Sitaw Street. It was B/T Luisito Cruz who was driving the tricycle and he was seated inside the side car. Upon reaching Sitaw Street, they saw a group of persons along the street creating noise. They told the group to stop creating noise and to go home. B/T San Pedro saw one of the persons urinating at the alley. The crowd dispersed and went inside their respective houses already. He saw B/T San Pedro and Cruz holding a male person and they told him that they caught him urinating at the alley. Upon approaching the person who was accosted by the barangay tanod(.) he noticed something bulging at his back. He immediately frisked the accused and upon lifting his shirt he saw an improvised gun made out of tube and black rubber around seven (7) inches in length. He noticed that there is live ammunition cocked inside the barrel of the improvised gun. He marked the gun and the ammunition at the scene of the crime with the accused (sic) nickname as 'Ogie POSS-14-01-10'. PO1 Cabarles identified the accused in open court and when asked his name, he replied 'Loumel Santos'. He submitted the evidence at the SOCO crime laboratory for examination in order to determine whether the firearm is serviceable or not. They brought the accused at (sic) the hospital for medical examination. They executed a Pinagsamang Sinumpaang Salaysay consisting of two pages dated January 15, 2010 signed by him and B/T San Pedro and B/T Cruz. The prosecution moved for continuance considering that the witness is not in possession of the object evidence and it is still with the crime laboratory.

The second witness for the prosecution is P/C Insp. Russel Leyza (sic), from the Eastern Police District (EPD) Crime Laboratory Office, Marikina City whose testimony was the subject of stipulation by the prosecution and the defense and was accordingly dispensed with by the parties.

The prosecution and the defense stipulated and agreed that the witness is an expert witness, that the crime laboratory received a request for verification as to whether or not (the) improvised hand gun is serviceable with markings 'OGIE POSS 14-01-10', that the improvised handgun was received by their office along with one live ammunition of cal.38 with markings 'OGIE POSS 14-01-10', that P/CI Leyza (sic) conducted the examination of the specimen and found the improvised handgun with marking 'OGIE POSS 14-01-10' was serviceable and that the examination was reduced to (sic) writing.

PO1 Rey Cabarles was again called to the witness stand for additional direct examination. He testified that he was the one who put the markings 'OGIE POSS 14-01-10' on the evidence confiscated from the accused.

On cross-examination, he testified that he cannot recall his other companions when he arrested the accused but he knew that B/T San Pedro and B/T Cruz were with him when he arrested the accused. He did not see the accused urinating but it was either B/T San Pedro or B/T Cruz who saw the accused urinating at the alley. He noticed that something was tucked in his waist when the accused struggled to free himself when he was being arrested by Barangay Tanods San Pedro and Cruz. He saw the improvised handgun tucked at the back right portion of the waist of the accused.

On re-direct examination of the witness, he testified that he was the one who prepared the Pinagsamang Sinumpaang Salaysay dated January 15, 2010. It was B/T San Pedro and B/T Cruz who joined him in executing the Salaysay since their other companions are not authorized to do so since they are civilian personnel(s) and volunteer(s) of the community. When he was assigned at barangay Tumana(.) B/T Luisito Cruz was no longer a barangay tanod.

The third witness for the prosecution is B/T Luisito Cruz. He testified that he is the same B/T Luisito Cruz who

executed a Pinagsamang Sinumpaang Salaysay together with B/T San Pedro and PO1 Rey Cabarles. He confirmed the truthfulness of the contents of their Salaysay in so far as the time they were on patrol. The Public Prosecutor moved that the witness be considered as hostile witness and the same was granted by the court. B/T Cruz testified that he is no longer a barangay tanod since December 1, 2010. He has no knowledge as to the reason why the accused has been arrested and B/T San Pedro just told him that the accused was involved in a case of robbery-hold up of an Indian national. He was the driver of the patrol that brought the accused to the police station. He signed the Pinagsamang Sinumpaang Salaysay and also participated in the inquest proceedings of the accused.

On cross-examination(,) he testified that he just finished grade three. He testified that he did not read the Pinagsamang sinumpaang salaysay before he signed it because PO1 Cabarles was in a hurry to proceed to the fiscal's office for inquest. On January 14, 2010 he did not see a gun or bullet recovered from the accused when he was arrested by B/T San Pedro.

On re-direct examination he testified that he is not changing his answer only because he is no longer connected with the Barangay.

The fourth witness for the prosecution is B/T Romeo Francisco (sic). The prosecution and the defense agreed that his testimony will only be corroborative with the statements given by B/T Luisito Cruz (sic) hence, his testimony was dispensed with.”[11]

The prosecution filed its Formal Offer of Evidence[12] dated 18 January 2012, to which the accused filed its Comments/Objections etc.[13] dated 31 January 2012. In the Orderxiv dated 29 February 2012, the trial court admitted Exhibits “A” - “C”, inclusive of submarkings.

The defense presented its evidence. The testimony of the accused was summarized by the trial court, viz:

“On the part of the defense, it presented the accused, Loumel Santos. He testified that on January 14, 2010 at around 10:30 in the evening he was attending a birthday party of his friend along Sitaw Street. Suddenly, some members of the Barangay Security including B/T San Pedro and B/T Lacara came to the place and called him. He approached them and he was informed that he was involved in a robbery-hold up of an Indian national. He told them that he is not involved in the said incident to which B/T Kimpoy replied, 'if you are not involved you must go with us at the Barangay office'. After he was brought to the barangay, they proceeded to the police station and that was the only time he knew that he was charged with illegal possession. When he was invited by the barangay tanods to go with them at the barangay they did not confiscate anything from him. The pen gun and the ammunition that was allegedly confiscated from him belong to Kimpoy. He saw Kimpoy got the pen gun from his jacket when he was brought at (sic) the CID Office.

On cross-examination he testified that his alias is Ogie and on January 14, 2010 he and some of his friends were at Sitaw Street, Tumana, Marikina City attending the birthday party of Angelo Daligdig. After he was arrested he was brought to the Prosecutor's Office for investigation and subsequently charged of the present offense.”[15]

The assailed Decision[16] dated 14 December 2012 was promulgated on 17 December 2012,[17] finding the accused guilty beyond reasonable doubt for violation of Section 261 paragraph (q) of the Omnibus Election Code in relation to COMELEC Resolution No. 8714, the decretal portion of which was earlier quoted.[18]

On 18 December 2012, the accused filed a Motion for Reconsideration.[19] A Motion to Release the Accused and for Early Resolution[20] dated 10 February 2013 was also filed, on the ground that the accused has served the maximum penalty imposed by the trial court which can be gleaned from the Order of Commitment[21] dated 25 January 2010 issued by the trial court.

In the Order[22] dated 14 February 2013, the trial court denied the Motion for Reconsideration for lack of merit,

and ordered the Jail Warden of the Metro Manila District Jail, Bicutan, Taguig City to release the accused, unless he was detained for some other lawful causes. The accused filed a Notice of Appeal[23] dated 11 March 2013. In an Order[24] dated 12 March 2013, the trial court ordered the records of the case to be forwarded to this Court.

Hence, this appeal.

RULING

Accused-appellant assigns the following errors, viz:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE THAT HIS WARRANTLESS ARREST WAS JUSTIFIED UNDER SECTION 5 (a), RULE 113 OF THE RULES OF COURT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE THAT THE CIRCUMSTANCES OF THE CASE JUSTIFIED A WARRANTLESS SEARCH OF HIS PERSON.

III

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE INADMISSIBILITY OF THE EVIDENCE AGAINST HIM.”[25]

Accused-appellant contends, inter alia, that: to convict him of the crime charged, it is necessary to determine: 1) whether his arrest without a warrant was valid, 2) whether the warrantless search of his person was justified, and 3) whether the evidence obtained as a result of the said search is admissible in court; the Constitution and jurisprudence provide that no arrest may be made except by virtue of a warrant issued by a judge after examining the complainant and the witnesses he may produce and after finding probable cause to believe that the person to be arrested has committed the crime; this rule, however is with exceptions as provided for in Section 5, Rule 113 of the Rules of Court; he was arrested for allegedly urinating in public, a violation of a city ordinance, and that the arrest was effected without a warrant; as testified to by PO1 Cabarles, it was San Pedro and Cruz who saw him urinating in an alley; when PO1 Cabarles approached him, he was already being held by both barangay tanods; there is no question that the attendant circumstances do not fall under the exceptions provided for in Section 5, Rule 113 of the Rules of Court; to determine the validity of his arrest, the arresting officer must prove that in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; while San Pedro and Cruz were the ones who supposedly saw him urinating in the alley, it was only San Pedro who arrested the latter; to uphold the validity of the warrantless arrest, the prosecution must prove that he, in the presence of San Pedro, committed, was actually committing, or was attempting to commit an offense upon his arrest; the prosecution utterly failed to do so, as the testimony of San Pedro merely corroborated the testimony of PO1 Cabarles and was dispensed with by both parties; only the testimonies of PO1 Cabarles and Cruz remain for proper consideration; while PO1 Cabarles testified that San Pedro saw the accused-appellant urinating in the alley, the same was recounted observations made by San Pedro and which pertain to facts not of his personal knowledge, thus, it cannot be given credence for being hearsay; as San Pedro was not presented on the witness stand to testify on the arrest of the accused-appellant, there is want of evidence to prove that the warrantless arrest of the accused-appellant is justified under Section 5 (a), Rule 113 of the Rules of Court; the prosecution failed to

adduce evidence to justify his warrantless arrest; while Cruz admitted to signing the Sinumpaang Salaysay which narrated the events on 14 January 2010, his testimony in open court revealed that he did not read the said document prior to affixing his signature thereto; Cruz testified that PO1 Cabarles was not with them when he was arrested and the latter was not urinating in the alley when they chanced upon him; accused appellant was arrested for his suspected involvement in a hold-up of Farmer's II; even assuming that PO1 Cabarles was the one who arrested him without a warrant, the arrest must still be deemed illegal; when PO1 Cabarles saw him, he was already held by San Pedro and Cruz; records do not show that PO1 Cabarles was privy to the circumstances which prompted the arrest, thus, PO1 Cabarles was not equipped with personal knowledge sufficient to justify his warrantless arrest; it is true that he failed to raise the issue of the admissibility of the evidence; the clear infringement of his right to be protected against unreasonable searches and seizures cannot be ignored; the only exception which finds application in this case is a search incidental to a lawful arrest; having sufficiently established the absence of a lawful arrest, the search conducted by PO1 Cabarles is patently unjustified; even assuming that the arrest was lawful, at the time PO1 Cabarles approached him, there was no more reason for him to conduct the search; PO1 Cabarles' testimony that when he approached the accused-appellant with the latter's back facing him, he noticed something bulging at accused-appellant's back is merely an attempt to justify his warrantless search; Section 13, Rule 126 of the Rules of Court provides that a person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant; when PO1 Cabarles approached him, his hands were both held by San Pedro and Cruz; having been apprehended by the barangay tanods, he was already divested of the means to commit violence or effect an escape; PO1 Cabarles' testimony that he was able to see the weapon because of the accused-appellant's attempt to draw the same should not be given credence; in an earlier testimony PO1 Cabarles averred that he discovered the improvised firearm when he lifted the latter's shirt; the inconsistencies in the statements of PO1 Cabarles clearly pertain to material facts which indubitably show his deliberate intention to falsify; as the prosecution failed to reconcile these inconsistencies, the same must be rejected; to convict him of the crime charged, the existence of the improvised firearm is a necessary element; absent such evidence, the charge has no leg to stand on; he was arrested for allegedly urinating in an alley, a violation of a city ordinance; assuming this to be true, the corpus delicti of the crime is his act of urinating in an alley; any evidence obtained in violation of the Constitution shall be inadmissible for any purpose in any proceeding; and the court a quo overlooked the fact that the circumstances of the case did not justify the warrantless search of his person and gravely erred in ignoring the utter inadmissibility of the evidence obtained therefrom.

Plaintiff-appellee ripostes, inter alia, that: the trial court did not err in convicting accused-appellant for violation of Section 261(q) of the Omnibus Election Code; accused-appellant's theory in his Brief is mistaken; accused-appellant is charged with and convicted for an election offense under Section 261 (q) of the Omnibus Election Code (OEC) which is not the same as an illegal possession case under P.D No. 1866; proof of corpus delicti is not an indispensable requirement under Section 261 (q), for what is being punished is not the possession of a prohibited item per se, but the act of carrying a firearm outside one's residence or place of business without authority from the COMELEC; Section 261 (q) of the OEC must be read together with Section 32 of R.A. 7166 which amended it; for a conviction under Section 261 (q) of the OEC to be had, there are requirements that must be met; all these requirements were met in this case; an improvised gun was found in accused-appellant's possession while urinating at Sitaw Street on 14 January 2010 and it is undisputed that such date falls within the election period as per COMELEC Resolution No. 8714; accused-appellant has no authorization in writing from the Commission on Elections to carry a firearm in public places; in indictments under Section 261 (q) of the OEC, the burden is on the accused to show that he has a written authority issued by the COMELEC; while in illegal possession cases, the burden to prove the negative allegation of the accused that he has no license or permit to carry a firearm lies with the prosecution, under the OEC, however, the burden to adduce evidence that the accused

is exempt from the COMELEC gun ban lies with accused-appellant and he failed to discharge his burden; by adopting the theory of illegal search, accused-appellant should be considered to have implicitly admitted that the firearm in question was indeed recovered from his person; he is estopped from denying possession, for he in effect admitted the existence of the firearm but is seeking to exclude it on the ground of alleged violation of a constitutional right; the facts clearly indicate that the search conducted in this case is one incident to a lawful arrest, which can be carried out even without a warrant pursuant to Section 13 of Rule 126 of the Rules of Court; accused-appellant's argument that his arrest was also unlawful as it does not fall within Section 5, Rule 113 of the Rules of Court is not supported by the facts of the case; the case at bar involves two successive arrests, one effected by B/T San Pedro and B/T Cruz, and another carried out by PO1 Cabarles; the first or initial arrest of the accused-appellant falls within the ambit of Section 5 (a) - an arrest in flagrante delicto as the barangay tanods personally witnessed the appellant urinating on a public street, an act which is in violation of a city ordinance, prompting them to arrest him; contrary to accused-appellant's argument, PO1 Cabarles' testimony to this effect is not hearsay; it is worth to note that B/T San Pedro, one of the barangay tanods who arrested the accused-appellant and the one who witnessed the latter urinating, was actually presented on the witness stand; during the offer of and before B/T San Pedro could deliver his testimony, the defense agreed to stipulate that its substance will corroborate the testimony of PO1 Cabarles; PO1 Cabarles' testimony should be considered as corroborated by B/T San Pedro, for the stipulation of the defense had the effect of achieving the purpose of the testimony being offered; B/T San Pedro in his joint affidavit with B/T Cruz and PO1 Cabarles, as admitted by the trial court as "Exhibit A," affirmed that he personally saw accused-appellant urinating on the alley; accused-appellant was apprehended by B/T San Pedro and B/T Cruz as such there is already a lawful warrantless arrest; it follows that under Section 13, Rule 126, appellant may at that point be lawfully searched even without a warrant for the limited purpose of discovering dangerous weapons or anything which may have been used or which may constitute proof in the commission of an offense; PO1 Cabarles was laboring under circumstances which gave him probable cause to believe based on personal knowledge of facts that the person arrested has just committed a crime; PO1 Cabarles' act of approaching the barangay tanods to assist in the arrest of appellant falls within the ambit of Section 5 (b) of Rule 113; PO1 Cabarles was actually present on the scene; although he did not personally witness accused-appellant urinating, he had personal knowledge of the facts and circumstances sufficient to engender reasonable grounds of suspicion that he is probably guilty of committing an offense; PO1 Cabarles' act of frisking accused-appellant is justified not only by Section 13, Rule 126, but also by the legitimate concern of persons engaged in crime prevention to ensure their safety and the safety of others in the area, analogous to a permissible "stop and frisk" searches which is as an exception to the general requirement of a search warrant.

The appeal is bereft of merit.

Section 5, Rule 113 of the Revised Rules of Criminal Procedure provides:

"SEC. 5. Arrest without warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

x x x x.”

For the warrantless arrest under paragraph (a) of Section 5 to operate, two elements must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer. On the other hand, paragraph (b) of Section 5 requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the appellant had committed it.[26]

A perusal of the records shows that: PO1 Cabarles, along with Barangay Tanods Romeo San Pedro and Luisito Cruz and other volunteers, were on patrol on board their service tricycle on 14 January 2010 at around 8:00 in the evening along Sitaw St., Marikina City; and B/T San Pedro saw the accused-appellant urinating at the alley.[27] B/T San Pedro and B/T Cruz held the accused-appellant[28] for violating Marikina City Ordinance 43,[29] which prohibits urinating and defecating in public places within the city, and any individual apprehended doing such shall be imposed a fine of Php1,000.00 and in case of inability to pay, he shall be required to render one (1) day or eight (8) hours of community service in the barangay where he was apprehended.

Although PO1 Cabarles did not witness the accused-appellant urinating on the alley and only noticed the latter when the barangay tanods were already arresting him for violating a city ordinance and on the belief that the barangay tanods were not able to arrest the accused-appellant,[30] as the latter struggled while he was being held by the barangay tanods,[31] PO1 Cabarles went near them. Upon approaching the three, he noticed something bulging at the accused-appellant's back so he immediately frisked the accused-appellant, and upon lifting the latter's shirt, he saw an improvised firearm made of two tubular tubes wrapped with black rubber and upon inspecting the same, he discovered one live ammunition in the barrel.[32] The testimony of B/T San Pedro was dispensed with following the stipulation of counsel for the accused that it would be only corroborative of PO1 Cabarles' testimony.[33]

Hence, the same falls within the ambit of Section 5 (a) and (b), Rule 113 of the Revised Rules of Criminal Procedure on a lawful warrantless arrest.

In any event, nowhere in the records do We find any objection interposed by the accused-appellant to the alleged irregularity of his arrest prior to his arraignment. It has been consistently ruled that an accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment. Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.[34] Having failed to move for the quashing of the information against (him) before (his) arraignment, (accused-appellant is) now estopped from questioning the legality of (his) arrest. Any irregularity was cured upon (his) voluntary submission to the trial court's jurisdiction.[35] Here, accused-appellant was duly arraigned, entered a plea of not guilty, actively participated during the trial, and testified in his defense. In fact, before the arraignment, accused-appellant even called the attention of his counsel that his name is “Loumel”, and not “Lomel”, following which the public prosecutor corrected the name in the Information and initialed the same.[36] Even in his Motion for Reconsideration[37] of the assailed Decision, he failed to raise any question regarding the alleged irregularity of his arrest. Thus, he is now estopped from assailing any irregularity of his arrest before Us.

Accused-appellant contends that at the time he was approached by PO1 Cabarles, the latter has no more reason to conduct the search.

We are unswayed.

Having established the validity of the warrantless arrest in this case, the warrantless search made by PO1 Cabarles on the person of the accused-appellant incidental to a lawful arrest is likewise valid.

(I)t is true that under the Constitution, “a search and consequent seizure must be carried out with a judicial warrant; otherwise, it becomes unreasonable and any evidence obtained therefrom shall be inadmissible for any purpose in any proceeding.”[38] (T)he interdiction against warrantless searches and seizures is not absolute and such warrantless searches and seizures have long been deemed permissible by jurisprudence in the following instances: (1) search of moving vehicles; (2) seizure in plain view; (3) customs searches; (4) waiver or consented searches; (5) stop and frisk situations (Terry search); and (6) search incidental to a lawful arrest.[39]

Section 13, Rule 126 of the Revised Rules of Criminal Procedure provides:

“SEC. 13. Search incident to a lawful arrest. - A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of the offense without a search warrant.”

The arrest was valid xxx and the arresting police(man) thereby became cloaked with the authority to validly search his person and effects for weapons or any other article he might use in the commission of the crime or was the fruit of the crime or might be used as evidence in the trial of the case, and to seize from him and the area within his reach or under his control, xxx such weapon or other article.[40] Here, following the lawful warrantless arrest, PO1 Cabarles noticed something bulging at accused-appellant's back which prompted him to immediately frisk him, as a result of which, one improvised gun with a live ammunition was recovered from the accused-appellant's possession. The said improvised firearm (sumpak) made of two tubular pipes wrapped with rubber interior tire color black marked “OGIE POSS 14-01-10A with one (1) live ammunition of caliber.38 marked “OGIE POSS 14-01-10B” were submitted to the PNP Crime Laboratory for verification whether said firearm is serviceable or not,[41] and that per Firearms Identification Report No. FAIS-008-2010 of Police Chief Inspector/Firearms Examiner Russell G. Leysa, the improvised handgun was found serviceable.[41] The foregoing facts were admitted by counsel for the accused during the hearing on 16 February 2011.[43]

(U)nder the Omnibus Election Code, xxx the burden to adduce evidence that accused is exempt from the COMELEC Gun Ban, lies with the accused.[44]

Section 261 paragraph (q) of the Omnibus Election Code provides:

“Sec. 261. Prohibited Acts. - the following shall be guilty of an election offense:

x x x x

(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 x x x.” (Emphasis supplied)

This section was subsequently amended under Republic Act No. 7166, the Synchronized Election Law of 1991,[45] to read:

“Section 32. Who May Bear Firearms. - During the election period, no person shall bear, carry or transport firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, even if licensed to possess or carry the same, unless authorized in writing by the Commission. The issuance of firearms licenses shall be suspended during the election period.

x x x x.”

Section 32 of R.A. No. 7166 is clear and unequivocal that the prohibited act to which this provision refers is made up of the following elements: 1) the person is bearing, carrying, or transporting firearms or other deadly weapons; 2) such possession occurs during the election period; and, 3) the weapon is carried in a public place. Under said provision, it is explicit that even if the accused can prove that he is holding a valid license to possess such firearm, this circumstance by itself cannot exculpate him from criminal liability. The burden is on the accused to show that he has a written authority to possess such firearm issued by no less than the COMELEC.[46]

(COMELEC) Resolution No. 8714 is entitled Rules and Regulations on the: (1) Bearing, Carrying or Transporting of Firearms or other Deadly Weapons; and (2) Employment, Availment or Engagement of the Services of Security Personnel or Bodyguards, During the Election Period for the May 10, 2010 National and Local Elections. The Resolution was promulgated by the COMELEC on December 16, 2009, and took effect on December 25, 2009.[47]

Further, Sections 1 and 2 (a) of COMELEC Resolution No. 8714[48] provide:

“Section 1. General Guiding Principles. - During the election period: (a) no person shall bear, carry or transport firearms or other deadly weapons in public places including all public buildings, streets, parks, and private vehicles or public conveyances, even if licensed to possess or carry the same; x x x

SEC. 2. Definition of Terms. - As used in this Resolution:

(a) Election Period refers to the election period prescribed in Comelec Resolution No. 8646 dated 14 July 2009 which is from 10 January 2010 to 09 June 2010.

x x x x”

COMELEC Resolution xxx is a special law and a violation of which is in the nature of a mala prohibita crime. As such, regardless of (accused-appellant's) intent, mere carrying of the gun without the necessary permit is already a violation of the COMELEC resolution. It is a hornbook doctrine that in mala prohibita crimes, the only inquiry is whether the law has been violated. When the act is illegal, the intent of the offender is immaterial.[49]

In the instant case, accused-appellant was caught carrying an improvised firearm with one live ammunition on 14 January 2010 along Sitaw St. in Marikina City, a public place and outside his residence, during the election period, and he utterly failed to show that he has any written authority from the COMELEC. Thus, the trial court did not err in finding him guilty beyond reasonable doubt of violation of Section 261 paragraph (q) of the Omnibus Election Code in relation to COMELEC Resolution No. 8714.

We now review the penalty imposed by the trial court.

Section 264 of the Omnibus Election Code provides:

“Sec. 264. Penalties. – Any person found guilty of any election offense under this Code shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. x x x”

Applying the Indeterminate Sentence Law, the imposable penalty for violation of the election gun ban should have a maximum period, which shall not exceed six (6) years, and a minimum period which shall not be less than one (1) year.[50] Thus, We affirm the indeterminate penalty of one (1) year of imprisonment, as minimum, to three (3) years of imprisonment, as maximum, which is not subject to probation, and the disqualification from holding public office and deprivation of the right of suffrage, imposed on accused-appellant by the trial court.

WHEREFORE, premises considered, the appeal is DENIED. The Decision dated 14 December 2012 of the

Regional Trial Court of Marikina City, Branch 263 in Crim. Case No. 10-11627-MK finding accused-appellant Loumel Santos y Delos Reyes guilty beyond reasonable doubt of violation of Section 261 paragraph (q) of the Omnibus Election Code in relation to COMELEC Resolution No. 8714 and sentencing him to an indeterminate penalty of one year of imprisonment, as minimum, to three years of imprisonment, as maximum, which is not subject to probation, and to suffer disqualification to hold public office and deprivation of the right of suffrage, is **AFFIRMED**.

SO ORDERED.

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Diamante and Sadang, JJ., concur.

[1] Rollo, pp. 51-59; penned by Hon. Armando C. Velasco

[2] Id. at 59

[3] Id. at 31-49

[4] Id. at 72-87

[5] Id. at 89-90

[6] Record, pp. 1-2

[7] Id. at 1

[8] Id. at 8

[9] Id. at 13

[10] Id. at 24-25

[11] Id. at 184-188

[12] Id. at 151-156

[13] Id. at 157

[14] Id. at 158

[15] Id. at 188-189

[16] Id. at 184-192

[17] Id. at 183

[18] Supra, note 2

[19] Record, pp. 193-196

[20] Id. at 198-199

- [21] Id. at 9
- [22] Id. at 200-201
- [23] Id. at 202-203
- [24] Id. at 204
- [25] Rollo, pp. 33-34
- [26] Cf. *People of the Philippines v. Nazareno Villareal y Lualhati*, G.R. No. 201363, 18 March 2013
- [27] Exhibit “A”, record, pp. 153-154; TSN, 09 December 2010, pp. 4-9
- [28] TSN, 09 December 2010, pp. 6-7
- [29] Record, pp. 6-7
- [30] TSN, 09 December 2010, p. 7
- [31] Id., 16 February 2011, p. 13
- [32] Id., 09 December 2010, pp. 6-9
- [33] TSN, 08 December 2011, p. 4
- [34] *People of the Philippines v. Welvin Diu y Kotsesa, et al.*, G.R. No. 201449, 03 April 2013, citing *Rebellion v. People*, G.R. No. 175700, 05 July 2010, 660 SCRA 407, 444
- [35] *People of the Philippines v. Donald Vasquez y Sandigan @ “Don”*, G.R. No. 200304, 15 January 2014, citing *People v. Tampis*, 455 Phil. 371 (2003), SC E-Library
- [36] Record, pp. 1, 13
- [37] Id. at 193-196
- [38] *People of the Philippines v. Marcelino Collado y Cunanan, et al.*, G.R. No. 185719, 17 June 2013
- [39] *People of the Philippines v. Vicente Rom*, G.R. No. 198452, 19 February 2014, citing *Dimacuha v. People*, 545 Phil. 406 (2007), SC- E Library
- [40] *People of the Philippines v. Reynaldo Belocura y Perez*, G.R. No. 173474, 29 August 2012
- [41] Record, p. 155, Exhibit “B”
- [42] Id. at 156, Exhibit “C”
- [43] TSN, 16 February 2011, pp. 6-7
- [44] *Rodolfo Abenes y Gacutan v. The Hon. Court of Appeals et al.*, G.R. No. 156320, 14 February 2007
- [45] Cf. *Juanito R. Rimando v. Commission on Elections et al.*, G.R. No. 176364, 18 September 2009
- [46] *Rodolfo Abenes y Gacutan v. The Hon. Court of Appeals et al.*, *supra*
- [47] Cf. *Atty. Reynante B. Orceo v. Commission on Elections*, G.R. No. 190779, 26 March 2010
- [48] Rules and Regulations on the: (1) Bearing, Carrying or Transporting of Firearms or Other Deadly Weapons; and (2) Employment, Availment or Engagement of the Services of Security Personnel or Bodyguards, During the

Election Period for the May 10, 2010 National and Local Elections

[49] Cf. *Datu Eduardo Ampo v. The Honorable Court of Appeals, et al.*, G.R. No. 169091, 16 February 2006

[50] *Raul B. Escalante v. People of the Philippines et al.*, G.R. No. 192727, 09 January 2013

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