

CONGRESSMAN FRANCISCO B. ANIAG, JR., PETITIONER, VS. COMMISSION ON ELECTIONS AND DEPARTMENT OF JUSTICE SPECIAL TASK FORCE, RESPONDENTS.

G.R. No. 104961. October 07, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

PETITIONER assails in this petition (for declaratory relief, certiorari and prohibition) the following resolutions of the Commission on Elections: Resolution No. 2327 dated 26 December 1991 for being unconstitutional, and Resolution No. 92-0829 dated 6 April 1992 and Resolution No. 92-0999 dated 23 April 1992, for want of legal and factual bases.

The factual backdrop: In preparation for the synchronized national and local elections scheduled on 11 May 1992, the Commission on Elections (COMELEC) issued on 11 December 1991 Resolution No. 2323 otherwise referred to as the "Gun Ban," promulgating rules and regulations on bearing, carrying and transporting of firearms or other deadly weapons, on security personnel or bodyguards, on bearing arms by members of security agencies or police organizations, and organization or maintenance of reaction forces during the election period.[1] Subsequently, on 26 December 1991 COMELEC issued Resolution No. 2327 providing for the summary disqualification of candidates engaged in gunrunning, using and transporting of firearms, organizing special strike forces, and establishing spot checkpoints.[2]

On 10 January 1992, pursuant to the "Gun Ban," Mr. Serapio P. Taccad, Sergeant-at-Arms, House of Representatives, wrote petitioner who was then Congressman of the 1st District of Bulacan requesting the return of the two (2) firearms[3] issued to him by the House of Representatives. Upon being advised of the request on 13 January 1992 by his staff, petitioner immediately instructed his driver, Ernesto Arellano, to pick up the firearms from petitioner's house at Valle Verde and return them to Congress.

Meanwhile, at about five o'clock in the afternoon of the same day, the Philippine National Police (PNP) headed by Senior Superintendent Danilo Cordero set up a checkpoint outside the Batasan Complex some twenty (20) meters away from its entrance. About thirty minutes later, the policemen manning the outpost flagged down the car driven by Arellano as it approached the checkpoint. They searched the car and found the firearms neatly packed in their gun cases and placed in a bag in the trunk of the car. Arellano was then apprehended and detained. He explained that he was ordered by petitioner to get the firearms from the house and return them to Sergeant-at-Arms Taccad of the House of Representatives.

Thereafter, the police referred Arellano's case to the Office of the City Prosecutor for inquest. The referral did not include petitioner as among those charged with an election offense. On 15 January 1992, the City Prosecutor ordered the release of Arellano after finding the latter's sworn explanation meritorious.[4]

On 28 January 1992, the City Prosecutor invited petitioner to shed light on the circumstances mentioned in Arellano's sworn explanation. Petitioner not only appeared at the preliminary investigation to confirm Arellano's

statement but also wrote the City Prosecutor urging him to exonerate Arellano. He explained that Arellano did not violate the firearms ban as he in fact was complying with it when apprehended by returning the firearms to Congress; and, that he was petitioner's driver, not a security officer nor a bodyguard.[5]

On 6 March 1992, the Office of the City Prosecutor issued a resolution which, among other matters, recommended that the case against Arellano be dismissed and that the "unofficial" charge against petitioner be also dismissed.[6]

Nevertheless, on 6 April 1992, upon recommendation of its Law Department, COMELEC issued Resolution No. 92-0829 directing the filing of information against petitioner and Arellano for violation of Sec. 261, par. (q), of B.P. Blg. 881 otherwise known as the Omnibus Election Code, in relation to Sec. 32 of R.A. No. 7166;[7] and petitioner to show cause why he should not be disqualified from running for an elective position, pursuant to COMELEC Resolution No. 2327, in relation to Secs. 32, 33 and 35 of R.A. 7166, and Sec. 52, par. (c), of B.P. Blg. 881.[8]

On 13 April 1992, petitioner moved for reconsideration and to hold in abeyance the administrative proceedings as well as the filing of the information in court.[9] On 23 April 1992, the COMELEC denied petitioner's motion for reconsideration.[10] Hence, this recourse.

Petitioner questions the constitutionality of Resolution No. 2327. He argues that the rules and regulations of an administrative body must respect the limits defined by law; that the Omnibus Election Code provides for the disqualification of any person/candidate from running for or holding a public office, i.e., any person who has either been declared by competent authority as insane or incompetent or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude; that gunrunning, using or transporting firearms or similar weapons and other acts mentioned in the resolution are not within the letter or spirit of the provisions of the Code; that the resolution did away with the requirement of final conviction before the commission of certain offenses; that instead, it created a presumption of guilt as a candidate may be disqualified from office in situations (a) where the criminal charge is still pending, (b) where there is no pending criminal case, and (c) where the accused has already been acquitted, all contrary to the requisite quantum of proof for one to be disqualified from running or holding public office under the Omnibus Election Code, i.e., proof beyond reasonable doubt. As a result, petitioner concludes, Resolution No. 2327 violates the fundamental law thus rendering it fatally defective.

But, the issue on the disqualification of petitioner from running in the 11 May 1992 synchronized elections was rendered moot when he lost his bid for a seat in Congress in the elections that ensued. Consequently, it is now futile to discuss the implications of the charge against him on his qualification to run for public office.

However, there still remains an important question to be resolved, i.e., whether he can be validly prosecuted for instructing his driver to return to the Sergeant-at-Arms of the House of Representatives the two firearms issued to him on the basis of the evidence gathered from the warrantless search of his car.

Petitioner strongly protests against the manner by which the PNP conducted the search. According to him, without a warrant and without informing the driver of his fundamental rights the policemen searched his car. The firearms were not tucked in the waist nor within the immediate reach of Arellano but were neatly packed in their gun cases and wrapped in a bag kept in the trunk of the car. Thus, the search of his car that yielded the evidence for the prosecution was clearly violative of Secs. 2 and 3, par. (2), Art. III, of the Constitution.[11]

Petitioner further maintains that he was neither impleaded as party respondent in the preliminary investigation before the Office of the City Prosecutor nor included in the charge sheet. Consequently, making him a respondent

in the criminal information would violate his constitutional right to due process.

Petitioner disputes the charge that he violated Sec. 33 of R.A. 7166, which prohibits any candidate for public office during the election period from employing or availing himself or engaging the services of security personnel or bodyguards since, admittedly, Arellano was not a security officer or bodyguard but a civilian employee assigned to him as driver by the House of Representatives. Specifically, petitioner further argues, Arellano was instructed to return to Congress, as he did, the firearms in compliance with the directive of its Sergeant-at-Arms pursuant to the "Gun Ban," thus, no law was in fact violated.[12]

On 25 June 1992, we required COMELEC to file its own comment on the petition[13] upon manifestation of the Solicitor General that it could not take the position of COMELEC and prayed instead to be excused from filing the required comment.[14]

COMELEC claims that petitioner is charged with violation of Sec. 261, par. (q), in relation to Sec. 263, of B.P. Blg. 881 which provides that "the principals, accomplices and accessories, as defined in the Revised Penal Code, shall be criminally liable for election offenses." It points out that it was upon petitioner's instruction that Arellano brought the firearms in question outside petitioner's residence, submitting that his right to be heard was not violated as he was invited by the City Prosecutor to explain the circumstances regarding Arellano's possession of the firearms. Petitioner also filed a sworn written explanation about the incident. Finally, COMELEC claims that violation of the "Gun Ban" is *mala prohibita*, hence, the intention of the offender is immaterial.[15]

Be that as it may, we find no need to delve into the alleged constitutional infirmity of Resolution No. 2327 since this petition may be resolved without passing upon this particular issue.[16]

As a rule, a valid search must be authorized by a search warrant duly issued by an appropriate authority. However, this is not absolute. Aside from a search incident to a lawful arrest, a warrantless search had been upheld in cases of moving vehicles and the seizure of evidence in plain view,[17] as well as the search conducted at police or military checkpoints which we declared are not illegal per se, and stressed that the warrantless search is not violative of the Constitution for as long as the vehicle is neither searched nor its occupants subjected to a body search, and the inspection of the vehicle is merely limited to a visual search.[18]

Petitioner contends that the guns were not tucked in Arellano's waist nor placed within his reach, and that they were neatly packed in gun cases and placed inside a bag at the back of the car. Significantly, COMELEC did not rebut this claim. The records do not show that the manner by which the package was bundled led the PNP to suspect that it contained firearms. There was no mention either of any report regarding any nervous, suspicious or unnatural reaction from Arellano when the car was stopped and searched. Given these circumstances and relying on its visual observation, the PNP could not thoroughly search the car lawfully as well as the package without violating the constitutional injunction.

An extensive search without warrant could only be resorted to if the officers conducting the search had reasonable or probable cause to believe before the search that either the motorist was a law offender or that they would find the instrumentality or evidence pertaining to the commission of a crime in the vehicle to be searched.[19] The existence of probable cause justifying the warrantless search is determined by the facts of each case.[20] Thus, we upheld the validity of the warrantless search in situations where the smell of marijuana emanated from a plastic bag owned by the accused, or where the accused was acting suspiciously, and attempted to flee.[21]

We also recognize the stop-and-search without warrant conducted by police officers on the basis of prior confidential information which were reasonably corroborated by other attendant matters, e.g., where a confidential report that a sizeable volume of marijuana would be transported along the route where the search was

conducted and appellants were caught in flagrante delicto transporting drugs at the time of their arrest;[22] where apart from the intelligence information, there were reports by an undercover "deep penetration" agent that appellants were bringing prohibited drugs into the country;[23] where the information that a Caucasian coming from Sagada bringing prohibited drugs was strengthened by the conspicuous bulge in accused's waistline and his suspicious failure to produce his passport and other identification papers;[24] where the physical appearance of the accused fitted the description given in the confidential information about a woman transporting marijuana;[25] where the accused carrying a bulging black leather bag were suspiciously quiet and nervous when queried about its contents;[26] or where the identity of the drug courier was already established by police authorities who received confidential information about the probable arrival of accused on board one of the vessels arriving in Dumaguete City.[27]

In the case at bench, we find that the checkpoint was set up twenty (20) meters from the entrance to the Batasan Complex to enforce Resolution No. 2327. There was no evidence to show that the policemen were impelled to do so because of a confidential report leading them to reasonably believe that certain motorists matching the description furnished by their informant were engaged in gunrunning, transporting firearms or in organizing special strike forces. Nor, as adverted to earlier, was there any indication from the package or behavior of Arellano that could have triggered the suspicion of the policemen. Absent such justifying circumstances specifically pointing to the culpability of petitioner and Arellano, the search could not be valid. The action then of the policemen unreasonably intruded into petitioner's privacy and the security of his property, in violation of Sec. 2, Art. III, of the Constitution. Consequently, the firearms obtained in violation of petitioner's right against warrantless search cannot be admitted for any purpose in any proceeding.

It may be argued that the seeming acquiescence of Arellano to the search constitutes an implied waiver of petitioner's right to question the reasonableness of the search of the vehicle and the seizure of the firearms.

While Resolution No. 2327 authorized the setting up of checkpoints, it however stressed that "guidelines shall be made to ensure that no infringement of civil and political rights results from the implementation of this authority," and that "the places and manner of setting up of checkpoints shall be determined in consultation with the Committee on Firearms Ban and Security Personnel created under Sec. 5, Resolution No. 2323." [28] The facts show that PNP installed the checkpoint at about five o'clock in the afternoon of 13 January 1992. The search was made soon thereafter, or thirty minutes later. It was not shown that news of impending checkpoints without necessarily giving their locations, and the reason for the same have been announced in the media to forewarn the citizens. Nor did the informal checkpoint that afternoon carry signs informing the public of the purpose of its operation. As a result, motorists passing that place did not have any inkling whatsoever about the reason behind the instant exercise. With the authorities in control to stop and search passing vehicles, the motorists did not have any choice but to submit to the PNP's scrutiny. Otherwise, any attempt to turnabout albeit innocent would raise suspicion and provide probable cause for the police to arrest the motorist and to conduct an extensive search of his vehicle.

In the case of petitioner, only his driver was at the car at that time it was stopped for inspection. As conceded by COMELEC, driver Arellano did not know the purpose of the checkpoint. In the face of fourteen (14) armed policemen conducting the operation,[29] driver Arellano being alone and a mere employee of petitioner could not have marshalled the strength and the courage to protest against the extensive search conducted in the vehicle. In such scenario, the "implied acquiescence," if there was any, could not be more than a mere passive conformity on Arellano's part to the search, and "consent" given under intimidating or coercive circumstances is no consent within the purview of the constitutional guaranty.

Moreover, the manner by which COMELEC proceeded against petitioner runs counter to the due process clause

of the Constitution. The facts show that petitioner was not among those charged by the PNP with violation of the Omnibus Election Code. Nor was he subjected by the City Prosecutor to a preliminary investigation for such offense. The non-disclosure by the City Prosecutor to the petitioner that he was a respondent in the preliminary investigation is violative of due process which requires that the procedure established by law should be obeyed.[30]

COMELEC argues that petitioner was given the chance to be heard because he was invited to enlighten the City Prosecutor regarding the circumstances leading to the arrest of his driver, and that petitioner in fact submitted a sworn letter of explanation regarding the incident. This does not satisfy the requirement of due process the essence of which is the reasonable opportunity to be heard and to submit any evidence one may have in support of his defense.[31] Due process guarantees the observance of both substantive and procedural rights, whatever the source of such rights, be it the Constitution itself or only a statute or a rule of court.[32] In *Go v. Court of Appeals*,[33] we held that -

While the right to preliminary investigation is statutory rather than constitutional in its fundament, since it has in fact been established by statute, it is a component part of due process in criminal justice. The right to have a preliminary investigation conducted before being bound over to trial for a criminal offense and hence formally at risk of incarceration or some other penalty is not a mere formal or technical right; it is a substantive right x x x [T]he right to an opportunity to avoid a process painful to anyone save, perhaps, to hardened criminals is a valuable right. To deny petitioner's claim to a preliminary investigation would be to deprive him of the full measure of his right to due process.

Apparently, petitioner was merely invited during the preliminary investigation of Arellano to corroborate the latter's explanation. Petitioner then was made to believe that he was not a party respondent in the case, so that his written explanation on the incident was only intended to exculpate Arellano, not petitioner himself. Hence, it cannot be seriously contended that petitioner was fully given the opportunity to meet the accusation against him as he was not apprised that he was himself a respondent when he appeared before the City Prosecutor.

Finally, it must be pointed out too that petitioner's filing of a motion for reconsideration with COMELEC cannot be considered as a waiver of his claim to a separate preliminary investigation for himself. The motion itself expresses petitioner's vigorous insistence on his right. Petitioner's protestation started as soon as he learned of his inclusion in the charge, and did not ease up even after COMELEC's denial of his motion for reconsideration. This is understandably so since the prohibition against carrying firearms bears the penalty of imprisonment of not less than one (1) year nor more than six (6) years without probation and with disqualification from holding public office, and deprivation of the right to suffrage. Against such strong stance, petitioner clearly did not waive his right to a preliminary investigation.

WHEREFORE, the instant petition is GRANTED. The warrantless search conducted by the Philippine National Police on 13 January 1992 is declared illegal and the firearms seized during the warrantless search cannot be used as evidence in any proceeding against petitioner. Consequently, COMELEC Resolution No. 92-0829 dated 6 April 1992 being violative of the Constitution is SET ASIDE.

The temporary restraining order we issued on 5 May 1992 is made permanent.

SO ORDERED.

Narvasa, C.J., Romero, Quiason, Puno, Kapunan, and Mendoza, JJ., concur.

Cruz, and Vitug, JJ., concurring opinion.

Regalado, and Davide Jr. JJ., concurring and dissenting opinion.

Melo, J., join the concurring and dissenting opinion of J. Davide, Jr.

Feliciano, Padilla, and Bidin, JJ., on leave.

[1] Rollo, p. 56.

[2] Id., p. 35.

[3] One (1) 9 mm SN U164076 P-226 and one (1) Beretta 9 mm Para F-39721 SMG; Rollo, p. 79.

[4] Rollo, pp. 74-75.

[5] Id., pp. 77-78.

[6] Id., pp. 91-94.

[7] Sec. 261. Prohibited Acts. - The following shall be guilty of an election offense: 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 aircraft shall not be considered a residence or place of business or extension hereof x x x x (B.P. Blg. 881).

Sec. 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 firearm licenses shall be suspended during the election period x x x x (R.A. No. 7166).

Sec. 33. Security Personnel and Bodyguards. - During the election period, no candidate for public office, including incumbent public officers seeking election to any public office, shall employ, avail himself of or engage the services of security personnel or bodyguards, whether or not such bodyguards are regular members or officers of the Philippine National Police, the Armed Forces of the Philippines or other law enforcement agency of the Government x x x x (ibid.).

Sec. 35. Rules and Regulations. - The Commission shall issue rules and regulations to implement this Act. Said rules shall be published in at least two (2) national newspapers of general circulation (ibid.).

Sec. 52. Powers and functions of the Commission on Elections. - In addition to the powers and functions conferred upon it by the Constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections, and shall x x x x (c) Promulgate rules and regulations implementing the provision of this Code or other laws which the Commission is required to enforce and administer, and require the payment of legal fees and collect the same in payment of any business done in the Commission, at rates that it may provide and fix in its rules and regulations x x x x (B.P. Blg. 881).

[8] Rollo, pp. 38-39.

[9] Id., p. 42.

[10] Id., p. 40.

[11] Art. 111, Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly

describing the place to be searched and the persons or things to be seized.

Sec. 3, par. (2). Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[12] *Id.*, pp. 18-30.

[13] *Id.*, p. 110.

[14] *Id.*, p. 128.

[15] *Id.*, pp. 121-125.

[16] See *Alger Electric, Inc. v. Court of Appeals*, L-34298, 28 February 1985, 135 SCRA 37, 45; *Arrastre Security Association--TUPAS v. Ople*, L-45344, 20 February 1984, 127 SCRA 580, 595.

[17] *People v. Bagista*, G.R. No. 86218, 18 September 1992, 214 SCRA 63, 68-69.

[18] *Valmonte v. de Villa*, G.R. No. 83988, 24 May 1990, 185 SCRA 665, 669, see also concurring opinion of Justice Gutierrez, Jr., pp. 672-673, and dissenting opinions of Justice Cruz, pp. 173-174, and Justice Sarmiento, pp. 174-175.

[19] *Id.*, p. 670; *People v. Bagista*, *supra*.

[20] See *Valmonte v. De Villa*, G.R. No. 83988, 29 September 1989, 178 SCRA 211, 216.

[21] *People v. Malmstedt*, G.R. No. 91107, 19 June 1991, 198 SCRA 401, 408, citing *People v. Claudio*, G.R. No. 72564, 15 April 1988, 160 SCRA 646, *People v. Tangliben*, G.R. No. 63630, 6 April 1990, 184 SCRA 220, and *Posadas v. Court of Appeals*, G.R. No. 83139, 2 August 1990, 188 SCRA 288, see also dissenting opinion of Justice Cruz, pp. 410-412, and concurring and dissenting opinion of Justice Narvasa, now Chief Justice, pp. 412-424.

[22] *People v. Maspil, Jr.*, G.R. No. 85177, 20 August 1990, 188 SCRA 751.

[23] *People v. Lo Ho Wing*, G.R. No. 88017, 21 January 1991, 193 SCRA 122.

[24] *People v. Malmstedt*, *ibid.*

[25] *People v. Bagista*, *supra*, p. 10.

[26] *People v. Exala*, G.R. No. 76005, 23 April 1993, 221 SCRA 494, see also dissenting opinion of Justice Cruz, pp. 502-503.

[27] *People v. Saycon*, G.R. No. 110995, 5 September 1994.

[28] *Rollo*, p. 36

[29] *Rollo*, p. 69.

[30] *United States v. Ocampo*, 18 Phil. 1, 41 (1910).

[31] See *Mutuc v. Court of Appeals*, No. L-48108, 26 September 1990, 190 SCRA 43, 49.

[32] See *Tupas v. Court of Appeals*, G.R. No. 89571, 6 February 1991; 193 SCRA 597.

[33] G.R. No. 101837, 11 February 1992, 206 SCRA 138, 153, underscoring ours.

6 pt 6 pt 0 3

CONCURRING OPINION

CRUZ, J.:

I concur, and reiterate my objections to checkpoints in general as originally expressed in my dissent in the case of Valmonte v. De Villa, 178 SCRA 217, where I said:

The sweeping statements in the majority opinion are as dangerous as the checkpoints it would sustain and fraught with serious threats to individual liberty. The bland declaration that individual rights must yield to the demands of national security ignores the fact that the Bill of Rights was intended precisely to limit the authority of the State even if asserted on the ground of national security. What is worse is that the searches and seizures are peremptorily pronounced to be reasonable even without proof of probable cause and much less the required warrant. The improbable excuse is that they are aimed at "establishing an effective territorial defense, maintaining peace and order, and providing an atmosphere conducive to the social, economic and political development of the National Capital Region." For these purposes, every individual may be stopped and searched at random and at any time simply because he excites the suspicion, caprice, hostility or malice of the officers manning the checkpoints, on pain of arrest or worse, even being shot to death, if he resists.

* * *

Unless we are vigilant of our rights, we may find ourselves back to the dark era of the truncheon and the barbed wire, with the Court itself a captive of its own complaisance and sitting at the death-bed of liberty.

I hope the colleagues I have behind on my retirement will reconsider the stand of the Court on checkpoints and finally dismantle them altogether as an affront to individual liberty.

6 pt 6 pt 0 3

CONCURRING AND DISSENTING OPINION

DAVIDE, JR., J.:

I regret that I can concur only in the result, viz., the granting of the petition.

Considering the specific issues raised by the petitioner which, as stated in the exordium of the majority opinion, are whether (a) COMELEC Resolution No. 2327, dated 26 December 1991, is unconstitutional, and (b) COMELEC Resolutions No. 92-0829, dated 6 April 1992, and No. 92-0999, dated 23 April 1992, have legal and factual bases, I am unable to agree with the specific disposition declaring (a) illegal the warrantless search conducted by the Philippine National Police (PNP) on 13 January 1992, (b) inadmissible in evidence in any proceeding against the petitioner the firearms seized during such warrantless search, and (c) unconstitutional COMELEC Resolution No. 92-0829.

1. Having declined to rule on the constitutionality of Resolution No. 2327 because "this petition may be resolved without passing upon this particular issue" (first paragraph, page 10, Ponencia), this Court may no longer inquire into the constitutionality of the spot checkpoints authorized to be established thereunder. And whether the warrantless search conducted by the PNP at the checkpoint was valid, it being assumed that it would have been, provided there existed a probable cause therefor, is a question of fact whose presentation in this case is either procedurally premature, or one which this Court cannot, with definiteness, resolve considering the obvious

paucity of the facts before it. The most the majority opinion can state is that "[t]here was no evidence to show that the police were impelled to do so because of a confidential report leading them to reasonably believe that certain motorists matching the description furnished by their informant were engaged in gunrunning, transporting firearms or in organizing special strike forces. Nor, as adverted to earlier, was there any indication from the package or behavior of Arellano that could have triggered the suspicion of the policemen." Nothing more could be expected at this stage since the records of the proceedings conducted by the Office of the City Prosecutor and the COMELEC are not before this Court. A declaration of invalidity of the warrantless search and of the inadmissibility in evidence of the firearms seized would thus be premature.

It may additionally be relevant to state that the search was not in connection with the crime of illegal possession of firearms, which would have been factually and legally baseless since the firearms involved were licensed and were duly issued to the petitioner by the House of Representatives, but for the violation of the gun ban which was validly decreed by the COMELEC pursuant to its constitutional power to enforce and administer all laws and regulations relative to the conduct of elections, plebiscite, initiative, referendum, and recall (Section 2(1), Article IX-C, 1987 Constitution), its statutory authority to have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly, and honest elections (Section 52, Omnibus Election Code), and its statutory authority to promulgate rules and regulations implementing the provisions of the Omnibus Election Code or other laws which the COMELEC is required to enforce and administer (Section 52(c), Id.; Section 35, R.A. No. 7166), in relation to paragraph (q), Section 261 of the Omnibus Election Code which prohibits the carrying of firearms outside the residence or place of business during the election period unless authorized in writing by the COMELEC, and Section 32 of R.A. No. 7166 which prohibits any person from bearing, carrying, or transporting firearms or other deadly weapons in public places, including any building, street, park, private vehicle, or public conveyance, even if such person is licensed to possess or carry the same during the election period, unless authorized in writing by the COMELEC.

In this case, the petitioner himself admits that on 10 January 1992 he was requested by the Sergeant-at-Arms of the House of Representatives to return the two firearms issued to him, and that on 13 January 1992, he instructed his driver, Ernesto Arellano, to pick up the firearms from his (petitioner's) house at Valle Verde and to return them to the House of Representatives. That day was already within the election period, which commenced the day earlier pursuant to COMELEC Resolution No. 2314 (In The Matter of Fixing The Schedule of Activities in Connection With the Elections of National and Local Officials on May 11, 1992), promulgated on 20 November 1991. Considering then that the offense for which he was to be charged was for the violation of paragraph (q), Section 261 of the Omnibus Election Code, in relation to Section 32 of R.A. No. 7166, which, in view of his aforesaid admissions, renders unnecessary the offer in evidence of the seized firearms, I fail to grasp the rationale of a ruling on the admissibility in evidence of the firearms.

2. COMELEC Resolution No. 92-0829, dated 6 April 1992, should not be set aside on the ground of unconstitutionality. It simply directed the filing of an information against the petitioner and Arellano for the violation of paragraph (q), Section 261 of the Omnibus Election Code, in relation to Section 32 of R.A. No. 7166, and directed the petitioner to show cause why he should not be disqualified from running for an elective position, pursuant to COMELEC Resolution No. 2327, in relation to Sections 32, 33, and 35 of R.A. No. 7166 and paragraph (c), Section 52 of the Omnibus Election Code. Insofar as Arellano is concerned, he is not a petitioner in this case. Moreover, as to him, the resolution was nothing more than a disapproval of the recommendation of the Office of the City Prosecutor to dismiss the complaint against him. As against the petitioner, there was no denial of due process because the petitioner was later heard on his motion for reconsideration. Moreover, the right of an accused to a preliminary investigation is not a creation of the Constitution; its origin is statutory (*Kilusang Bayan sa Paglilingkod ng mga Magtitinda ng Bagong Pamilihang Bayan ng Muntinglupa, Inc. vs. Dominguez*, 205

SCRA 92 [1992]).

The fatal flaw of Resolution No. 92-0829 lies in its directive to file the information against the petitioner despite the fact that he was never formally charged before the Office of the City Prosecutor. There was only an "unofficial" charge imputed against him. The COMELEC then acted with grave abuse of discretion amounting to want or excess of jurisdiction.

I vote then to grant the petition, but solely on the ground that the COMELEC acted with grave abuse of discretion in directing the filing of an information against the petitioner for the violation of paragraph (q), Section 261 of the Omnibus Election Code, in relation to Section 32 of R.A. No. 7166.

6 pt 6 pt 0 3

CONCURRING AND DISSENTING OPINION

REGALADO, J.:

I join Mr. Justice Davide, Jr. in his opinion wherein he concurs with the majority ruling that with respect to petitioner Ania, Resolution No. 92-0829 of respondent commission should be set aside, not because of an unconstitutional warrantless search but by reason of the fact that he was not actually charged as a respondent in the preliminary investigation of the case.

With regard to petitioner's driver, Ernesto Arellano, although he was not impleaded as a co-petitioner in the present recourse, the nullification of said Resolution No. 92-0829 necessarily applies to him and redounds to his benefit. To the extent, therefore, that the majority opinion thereby reinstates the resolution of the Office of the City Prosecutor dismissing the charge against Arellano, I concur in that result.

However, even as a simple matter of consistency but more in point of law, I dissent from the rationale submitted therefor, that is, that Arellano was the victim of an unlawful search without a warrant. The pertinent facts stated by the majority readily yield the conclusion that there was consent on the part of Arellano to the search of the car then under his control, particularly of its baggage compartment where the firearms were discovered. As held in *People vs. Excela, et al.*,^[1] consent to a search may be given expressly or impliedly, and as early as *People vs. Malasugui*,^[2] the settled rule is that a search may be validly conducted without a warrant if the person searched consented thereto.

I would prefer to sustain the exoneration of Ernesto Arellano on the justifying circumstance that he was acting in obedience to what he innocently believed to be a lawful order of a superior, that is, the instructions of his employer, petitioner Ania, who was himself acting upon and in compliance with Resolution No. 2323 of respondent commission which was implemented by the Sergeant-at-Arms of the House of Representatives.

The said justifying circumstance provided in paragraph 6, Article 11 of the Revised Penal Code can be given supplementary effect to special laws like B.P. Blg. 881 and R.A. No. 7166 by force of Article 10 of the same Code. There is no prohibition therefor in the cited provisions of B.P. Blg. 881 in relation to R.A. No. 7166, nor is there any legal impossibility for such supplementary application whether by express provision or by necessary implication. And even if the order of petitioner Ania may be considered as illegal, Arellano acted thereon in good faith^[3] and under a mistake of fact as to its legality, hence his exculpation is ineludibly dictated. *Ignorantia facti excusat*.

It being evident from the very records and the factual findings adopted in the majority opinion that no error was committed by the Office of the City Prosecutor in dismissing the charge against Ernesto Arellano for lack of

sufficient grounds to engender a well founded belief that a crime had been committed and that he was probably guilty thereof,[4] respondent commission acted with grave abuse of discretion in arriving at a contrary conclusion and directing his prosecution in its Resolution No. 92-0829.

[1] G.R. No. 76005 April 23, 1993, 221 SCRA 494.

[2] 63 Phil. 221 (1936).

[3] People vs. Beronilla, et al., 96 Phil. 566 (1955).

[4] Sec. 1, Rule 112, 1985 Rules of Criminal Procedure, as amended.

109 6 pt 6 pt 0 3

CONCURRING OPINION

VITUG, J.:

The ultimate hypothesis of sound governance is not might but the willingness of the governed to accept and subordinate themselves to authority.

When our people gave their consent to the fundamental law of the land, they did not renounce but, to the contrary, reserved for themselves certain rights that they held sacred and inviolable.

One such right is the privilege to be so secured "in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose." Their sole conceded proviso to this rule is when a search warrant or a warrant of arrest is lawfully issued. There are, to be sure, known exceptions, predicated on necessity and justified by good reasons, when warrantless searches and seizures are allowed. It is in this context that I appreciate the ratio decidendi of the Court in Valmonte vs. De Villa (178 SCRA 211). In giving its imprimatur to the installation of checkpoints, the Court clearly has based its decision on the existence at the time of what has been so described as an "abnormal" situation that then prevailed. Evidently, the Court did not have the intention to have its ruling continue to apply to less aberrant circumstances than previously obtaining.

The question has been asked: Between the security of the State and its due preservation, on the one hand, and the constitutionally-guaranteed right of an individual, on the other hand, which should be held to prevail? There is no choice to my mind not for any other reason than because there is, in the first place, utterly no need to make a choice. The two are not incompatible; neither are they necessarily opposed to each other. Both can be preserved; indeed, the vitality of one is the strength of the other.

There should be ways to curb the ills of society so severe as they might seem. A disregard of constitutional mandates or an abuse on the citizenry, I am most certain, is not the answer. It might pay to listen to the words of Mr. Justice Isagani A. Cruz when he said, "(u)nless we are vigilant of our rights, we may find ourselves back to the dark era of the truncheon and the barbed wire, with the Court itself a captive of its own complaisance and sitting at the death-bed of liberty."

It is a welcome note that in the subsequent case of Bagalihog vs. Fernandez (198 SCRA 614), the Court has expressed:

"This guaranty is one of the greatest of individual liberties and was already recognized even during the days of the absolute monarchies, when the king could do no wrong. On this right, Cooley wrote: "Awe surrounded and

majesty clothed the King, but the humblest subject might shut the door of his cottage against him and defend from intrusion that privacy which was as sacred as the kingly prerogatives.

"The provision protects not only those who appear to be innocent but also those who appear to be guilty but are nevertheless to be presumed innocent until the contrary is proved. The mere fact that in the private respondent's view the crime involved is 'heinous' and the victim was 'a man of consequence' did not authorize disregard of the constitutional guaranty. Neither did 'superior orders' condone the omission for they could not in any case be superior to the Constitution."

While it gives me great comfort to concur with my esteemed colleague, Mr. Justice Josue N. Bellosillo, in his ponencia, I would express, nonetheless, the humble view that even on the above constitutional aspect, the petition could rightly be granted.

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