

FIRST DIVISION

[G.R. No. 232147, June 08, 2020]

ARTURO SULLANO Y SANTIA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

LOPEZ, J.:

Petitioner Arturo Sullano y Santia is charged with violation of the gun ban during the 2010 election period pursuant to Batas Pambansa Bilang (BP Blg.) 881,^[1] in relation to Commission on Elections (COMELEC) Resolution No. 8714^[2] under the following information:

That on or about the 11th day of February, 2010, in the morning, on board of a [sic] Ceres Bus, at Prado St., Poblacion, Municipality of Malay, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, within the election period, without authority of law nor the requisite exemption from the Committee on Firearms did then and there willfully, unlawfully and feloniously have, possess and carry one (1) COLT M1911A1 Caliber Pistol, Serial Number 604182, three (3) pistol magazines and fifteen (15) live ammunition were confiscated from the custody and control of the accused by the police authorities of Malay, Aklan.

CONTRARY TO LAW.^[3]

When arraigned, Arturo pleaded "Not Guilty." Trial then ensued.

The Prosecution, through the testimonies of Police Senior Inspector (PSI) Lory Tarazona,^[4] Police Officer 3 (PO3) Ben Estuya,^[5] Malay Municipal Election Officer Elma Cahilig,^[6] and Police Officer 2 (PO2) Glenn F. Magbanua^[7] established that, on February 11, 2020, PSI Tarazona, and PO3 Estuya received a text message from an anonymous informant saying that a passenger, wearing camouflage shorts, was carrying a firearm on board a Ceres bus coming from Buruanga and bound for Caticlan. The Malay Police Station coordinated with Cahilig for the conduct of a checkpoint in front of the municipal plaza to verify the tip.

The police officers flagged down a Ceres bus and asked the driver for permission to embark. On board, PSI Tarazona saw the man described in the tip. PSI Tarazona approached the man and saw the handle of a pistol protruding from his half-open belt bag. PSI Tarazona then asked the man to alight from the bus to avoid commotion from the other passengers. After inquiry, the police team identified the man as Arturo Sullano, a security officer of the Municipality of Buruanga. Arturo, however, failed to show his authority to possess the firearm. Consequently, a search on the person of Arturo was conducted, which yielded a loaded caliber .45 pistol,

and two magazines with live ammunition. Arturo was informed of his constitutional rights, arrested, and was brought to the police station. There, Arturo, and the seized items were turned over for investigation to PO3 Estuya, who made an inventory of the items.

Arturo denied the charges against him. He admitted having boarded a Ceres bus from Buruanga headed to Caticlan on February 11, 2010. *En route*, the bus stopped by the Malay Town Hall to unload a passenger. When police officers boarded the bus, Arturo saw one of them appear to be looking for something. The policeman, whom Arturo later on identified as PSI Tarazona, approached him, accosted him for wearing camouflage plants, and asked him to go down the bus. Arturo was frisked, but the police found nothing. Meanwhile, another police officer alighted from the bus claiming that he found a bag. Thereafter, Arturo was brought to the police station and, there, the bag was opened showing a firearm inside. Arturo was detained at the police station and was threatened by PSI Tarazona by pointing a gun at him. When Arturo asked what his offense was, the police answered that the firearm recovered belonged to him. Arturo denied possession and ownership of the bag and its contents. Arturo also raised that the checkpoint was improperly done since no signage was put up.^[8]

Ruling of the Regional Trial Court

In its Judgment^[9] dated January 21, 2014, the trial court convicted Arturo and sentenced him as follows:

IN VIEW OF THE FOREGOING, the Court finds the accused ARTURO SULLANO y SANTIA GUILTY beyond reasonable doubt of violating [the] Omnibus Election Code (BP [Blg.] 881) as amended by Republic Act [No.] 7166 in relation to Comelec Resolution No. 8714 (Gun Ban).

Accordingly, the accused is hereby sentenced to suffer an imprisonment of two (2) years without probation as provided by law. In addition, he shall be disqualified to hold public office and deprived of the right of suffrage during his term of service pursuant to Section 264, Batas Pambansa [Blg.] 881 in relation to Article 43 of the Revised Penal Code.

x x x x

SO ORDERED.^[10]

Ruling of the Court of Appeals

On appeal, the Court of Appeals (CA) affirmed Arturo's conviction, with modification in that the penalty should be an indeterminate prison term of one year, as minimum, to two years, as maximum, without probation.^[11] The CA expounded that Arturo failed to show that he has written authority from the COMELEC to possess a firearm, or that he belongs to the class of persons authorized to possess a firearm during the 2010 election period. The CA gave no weight to Arturo's claim that there was no checkpoint because the testimonies of the prosecution witnesses clearly demonstrated that one was conducted pursuant to the gun ban enforced by the COMELEC. Arturo was arrested *in flagrante delicto*, when PSI Tarazona saw, in plain view, the handle of the gun. Thus, evidence obtained from Arturo during his

arrest is admissible.^[12] Arturo moved to reconsider the CA Decision, but was denied.^[13]

Arguments of the Parties

Aggrieved, Arturo filed the present petition^[14] seeking his acquittal. Arturo contends that he cannot be held criminally liable under COMELEC Resolution No. 8714 since the issuance is an administrative resolution, which cannot be a source of penal liability. The accused's right to be informed of the accusation against him was violated when he was convicted of a crime that was not charged under the information. Arturo maintains that the conduct of the checkpoint was illegal, and that it was irregularly done because the police officers failed to put up the necessary signage and warning to the public. Consequently, Arturo's arrest was illegal and the items seized from him are inadmissible as evidence against him.

On the other hand, the Office of the Solicitor General (OSG) argues that Arturo's guilt was sufficiently proven. The findings of the trial court, affirmed by the CA, should be accorded great respect. There is no question that, at the time Arturo was found in possession of a firearm, a gun ban was enforced pursuant to COMELEC Resolution No. 8714. The facts attested to by the prosecution witnesses enjoy the presumption of regularity in the performance of official duties. Thus, Arturo is estopped from assailing any irregularity with regard to his arrest since he failed to raise them before his arraignment. Lastly, Arturo's defense of denial does not deserve credit against the testimony of the prosecution witnesses, especially, when the witnesses were not actuated by ill motive.^[15]

Ruling of the Court

The petition is bereft of merit.

At the outset, Arturo questions the legality of his warrantless arrest to dispel the jurisdiction of the court over his person. Notably, Arturo entered his plea during arraignment and actively participated in the trial.^[16] He did not move to quash the information on the ground of the illegality of his arrest. Consequently, the trial court obtained jurisdiction over him, and any supposed defect in his arrest was deemed waived.^[17] It is then too late for Arturo to question the legality of his warrantless arrest at this point. The Court has consistently held that any objection by an accused to an arrest without a warrant must be made before he enters his plea, otherwise, the objection is deemed waived.^[18] An accused may be estopped from assailing the illegality of his arrest if he fails to challenge the information against him before his arraignment.^[19] And, since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in his arrest may be deemed cured when he voluntarily submitted to the jurisdiction of the trial court.^[20]

*The checkpoint
conducted by
the Malay
Police Officers
was valid.*

The checkpoint conducted by the Malay Police was pursuant to the gun ban enforced by the COMELEC. Checkpoints, which are warranted by the exigencies of public order and are conducted in a way least intrusive to motorists, are allowed since the COMELEC would be hard put to implement the ban if its deputized agents are limited to a visual search of pedestrians. It would also defeat the purpose for which such ban was instituted. Those who intend to bring a gun during election period, would know that they only need a car to be able to easily perpetrate their malicious designs.^[21] Specifically for the inspection of passenger buses, *Saluday v. People*^[22] is instructive, thus:

[I]n the conduct of bus searches, the Court lays down the following guidelines. **Prior to entry**, passengers and their bags and [luggage] can be subjected to a routine inspection akin to airport and seaport security protocol. In this regard, metal detectors and x-ray scanning machines can be installed at bus terminals. Passengers can also be frisked. In lieu of electronic scanners, passengers can be required instead to open their bags and [luggage] for inspection, which inspection must be made in the passenger's presence. Should the passenger object, he or she can validly be refused entry into the terminal.

While in transit, a bus can still be searched by government agents or the security personnel of the bus owner in the following three instances. First, upon receipt of information that a passenger carries contraband or illegal articles, the bus where the passenger is aboard can be stopped en route to allow for an inspection of the person and his or her effects. This is no different from an airplane that is forced to land upon receipt of information about the contraband or illegal articles carried by a passenger onboard. *Second*, whenever a bus picks passengers *en route*, the prospective passenger can be frisked and his or her bag or luggage be subjected to the same routine inspection by government agents or private security personnel as though the person boarded the bus at the terminal. This is because unlike an airplane, a bus is able to stop and pick passengers along the way, making it possible for these passengers to evade the routine search at the bus terminal. *Third, a bus can be flagged down at designated military or police checkpoints where State agents can board the vehicle for a routine inspection of the passengers and their bags or luggage.*

In both situations, the inspection of passengers and their effects prior to entry at the bus terminal and the search of the bus while in transit must also satisfy the following conditions to qualify as a valid reasonable search. *First*, as to the manner of the search, it must be the least intrusive and must uphold the dignity of the person or persons being searched, minimizing, if not altogether eradicating, any cause for public embarrassment, humiliation or ridicule. *Second*, neither can the search result from any discriminatory motive such as insidious profiling, stereotyping and other similar motives. In all instances, the fundamental rights of vulnerable identities, persons with disabilities, children and other similar groups should be protected. *Third*, as to the purpose of the search, it must be confined to ensuring public safety. *Fourth*, as to the

evidence seized from the reasonable search, courts must be convinced that precautionary measures were in place to ensure that no evidence was planted against the accused.

The search of persons in a public place is valid because the safety of others may be put at risk. Given the present circumstances, the Court takes judicial notice that public transport buses and their terminals, just like passenger ships and seaports, are in that category.

Aside from public transport buses, any moving vehicle that similarly accepts passengers at the terminal and along its route is likewise covered by these guidelines. Hence, whenever compliant with these guidelines, a routine inspection at the terminal or of the vehicle itself while in transit constitutes a reasonable search. Otherwise, the intrusion becomes unreasonable, thereby triggering the constitutional guarantee under Section 2, Article III of the Constitution.^[23] (Emphases supplied.)

In this case, the checkpoint was conducted on the Ceres passenger bus on February 11, 2010, within the election period, that is 120 days before the election and 30 days after the May 10, 2010 elections, or from January 9 to June 9, 2010.

*The evidence
against the
petitioner was
caught in plain
view and is
admissible.*

During the conduct of the checkpoint, PSI Tarazona saw in plain view a firearm protruding from Arturo's belt bag. Under the plain view doctrine, objects falling in the plain view of an officer who has the right to be in the position to have the view are subject to seizure and may be presented in evidence.^[24] The doctrine requires that: (a) the law enforcement officer in search of the evidence has prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of the evidence in plain view is inadvertent; and (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure.^[25] These requisites are present in this case. The police officers of the Malay Police Station, after receiving a report that a person was in possession of a gun, conducted a checkpoint in coordination with the municipal election officer. Upon contact with the subject Ceres bus, the police asked permission from the driver to board the bus. On board the bus, PSI Tarazona came across the firearm, when in plain view, he saw the firearm protruding from Arturo's half open belt bag. Thus, the police officers had the duty to arrest him and confiscate the contraband in his possession. At the time of the arrest, Arturo was committing an offense by being in possession of a firearm during an election gun ban.

*The petitioner
was validly
charged with
illegal*