



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**ARTURO SULLANO y  
SANTIA,**

Petitioner,

- versus -

**PEOPLE OF THE  
PHILIPPINES,**  
Respondent.

**G.R. No. 232147**

Present:

PERALTA, *CJ.*, Chairperson,  
CAGUIOA,  
REYES, J., JR.,  
LAZARO-JAVIER, and  
LOPEZ, *JJ.*

Promulgated:

**JUN 08 2020**

**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,<sup>1</sup> in relation to Commission on Elections (COMELEC) Resolution No. 8714<sup>2</sup> under the following information:

That on or about the 11<sup>th</sup> 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.

<sup>1</sup> The Omnibus Election Code of the Philippines, as amended by Republic Act (RA) No. 7166 entitled "An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefore, and for Other Purposes."

<sup>2</sup> 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 Elections Period for the May 10, 2010 National and Local Elections.

CONTRARY TO LAW.<sup>3</sup>

When arraigned, Arturo pleaded “Not Guilty.” Trial then ensued.

The Prosecution, through the testimonies of Police Senior Inspector (PSI) Lory Tarazona,<sup>4</sup> Police Officer 3 (PO3) Ben Estuya,<sup>5</sup> Malay Municipal Election Officer Elma Cahilig,<sup>6</sup> and Police Officer 2 (PO2) Glenn F. Magbanua<sup>7</sup> 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.<sup>8</sup>

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<sup>3</sup> *Rollo*, pp. 6-7.

<sup>4</sup> *Id.* at 7-15.

<sup>5</sup> *Id.* at 17-20.

<sup>6</sup> *Id.* at 15-17.

<sup>7</sup> *Id.* at 26-27.

<sup>8</sup> *Id.* at 22-25.

*Ruling of the Regional Trial Court*

In its Judgment<sup>9</sup> 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 SANTI A 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.<sup>10</sup>

*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.<sup>11</sup> 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.<sup>12</sup> Arturo moved to reconsider the CA Decision, but was denied.<sup>13</sup>

<sup>9</sup> Penned by Presiding Judge Domingo L. Casiple, Jr. of the Regional Trial Court of Kalibo, Aklan; *id.* at 61-70.

<sup>10</sup> *Id.* at 69-70.

<sup>11</sup> *Id.* at 49-60. The Decision in CA-G.R. CEB-CR No. 02424 dated November 17, 2016, was penned by Associate Justice Germano Francisco D. Legaspi, with the concurrence of Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap. The dispositive portion of the Decision reads:

**WHEREFORE**, the appeal is **DENIED**. The Judgment dated January 21[,] 2014 of Branch 7 of the Regional Trial Court of Kalibo, Aklan in Crim. Case No. 9235 is **AFFIRMED** with **MODIFICATION** with regard to the penalty of imprisonment. Accused-appellant is sentenced to suffer an indeterminate prison term of one (1) year, as minimum, to two (2) years as maximum, without probation. The penalties of disqualification to hold public office and deprivation of the right of suffrage is **RETAINED**.

**SO ORDERED.**

<sup>12</sup> *Id.* at 56-59.

<sup>13</sup> *Id.* at 71-72. The CA in its Resolution dated April 28, 2017, penned by Associate Justice Germano Francisco D. Legaspi, with the concurrence of Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap, resolved Arturo's motion for reconsideration as follows:

A perusal of the allegations contained in the instant *Motion for Reconsideration* reveals that the issues raised therein have been discussed and squarely ruled upon by this Court in the assailed 17 November 2016 Decision. The issues propounded by accused-appellant are mere reiterations of



*Arguments of the Parties*

Aggrieved, Arturo filed the present petition<sup>14</sup> 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.<sup>15</sup>

*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.<sup>16</sup> He did not

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the arguments in his appeal. As such, We find no cogent reason to overturn the Decision sought to be reconsidered.

**WHEREFORE**, the Motion for Reconsideration is **DENIED** for lack of merit.  
**SO ORDERED.**

<sup>14</sup> Filed under Rule 45 of the Rules of Court; *id.* at 3-45. Arturo submits the following grounds for the allowance of his petition:

I

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS IN LAW IN AFFIRMING THE DECISION OF THE HONORABLE COURT A QUO FINDING THE PETITIONER GUILTY OF VIOLATION OF COMELEC RESOLUTION NO. 8714

II

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW WHEN IT AFFIRMED THE JUDGMENT OF THE HONORABLE COURT A QUO IN RULING IN FAVOR OF ADMISSION OF EVIDENCE PRESENTED AGAINST THE PETITIONER DESPITE BEING INADMISSIBLE UNDER THE LAW; *id.* at 129.

<sup>15</sup> *Id.* at 153-155.

<sup>16</sup> *Lapi y Mahipus v. People*, G.R. No. 210731, February 13, 2019, citing *People v. Alunday*, 586 Phil. 120 (2008); *People v. Tidula*, 354 Phil. 609, 624 (1998); *People v. Montilla*, 349 Phil. 640, 661 (1998); *People v. Cabiles*, 348 Phil. 220 (1998); *People v. Mahusay*, 346 Phil. 762, 769 (1997); *People v. Rivera*, 315 Phil. 454, 465 (1995); *People v. Lopez, Jr.*, 315 Phil. 59, 71-72 (1995); *People v. Hernandez*, 347 Phil. 56, 74-75 (1997); *People v. Navarro*, 357 Phil. 1010, 1032-1033 (1998).

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.<sup>17</sup> 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.<sup>18</sup> An accused may be estopped from assailing the illegality of his arrest if he fails to challenge the information against him before his arraignment.<sup>19</sup> 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.<sup>20</sup>

*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.<sup>21</sup> Specifically for the inspection of passenger buses, *Saluday v. People*<sup>22</sup> 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

<sup>17</sup> *Dolera v. People*, 614 Phil. 655, 666 (2009), citing *People v. Timon* 346 Phil. 572 (1997); *People v. Nazareno*, *supra*.

<sup>18</sup> *People v. Vallejo*, 461 Phil. 672, 686 (2003), citing *People v. Ereño*, 383 Phil. 1 (2000), citing *People v. Lopez, Jr.*, 315 Phil. 59 (1995); *People v. Montilla*, 349 Phil. 640 (1998); *People v. Tichula*, 354 Phil. 609 (1998).

<sup>19</sup> *Id.*, citing *People v. Hernandez*, 347 Phil. 56 (1997).

<sup>20</sup> *Id.*, citing *People v. Nazareno*, 329 Phil. 16 (1996).

<sup>21</sup> *Abenes v. Court of Appeals*, 544 Phil. 614, 628 (2007).

<sup>22</sup> G.R. No. 215305, April 3, 2018, 860 SCRA 231.

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 luggages.**

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.<sup>23</sup> (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

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<sup>23</sup> *Id.* at 255-257.



evidence.<sup>24</sup> 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.<sup>25</sup> 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 possession of firearm during a gun ban.*

Under Section 261(q) of BP Blg. 881,<sup>26</sup> any person, even if holding a permit to carry firearms, is prohibited to carry firearms or other deadly weapons outside his residence or place of business during an election period, unless authorized in writing by the COMELEC. Sections 32 and 33 of Republic Act (RA) No. 7166, which amended BP Blg. 881, clarified who may bear firearms and who may avail of or engage the services of security personnel and bodyguards, to wit:

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.

Only regular members or officers of the Philippine National Police, the Armed Forces of the Philippines and other enforcement agencies of the Government who are duly deputized in writing by the Commission for election duty may be authorized to carry and possess firearms during the

<sup>24</sup> *Supra* note 21.

<sup>25</sup> *Id.* at 629.

<sup>26</sup> ARTICLE XXII – *Election Offenses*, Section 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. (*Par. (l), Id.*)

This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables.

election period: *Provided*, That, when in the possession of firearms, the deputized law enforcement officer must be: (a) in full uniform showing clearly and legibly his name, rank and serial number which shall remain visible at all times; and (b) in the actual performance of his election duty in the specific area designated by the Commission.

SECTION 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: *Provided*, That, when circumstances warrant, including but not limited to threats to life and security of a candidate, he may be assigned by the Commission, upon due application, regular members of the Philippine National Police, the Armed Forces of the Philippines or other law enforcement agency who shall provide him security for the duration of the election period. The officers assigned for security duty to a candidate shall be subject to the same requirement as to wearing of uniforms prescribed in the immediately preceding section unless exempted in writing by the Commission.

If at any time during the election period, the ground for which the authority to engage the services of security personnel has been granted shall cease to exist or for any other valid cause, the Commission shall revoke the said authority.

To implement these laws, the COMELEC – being the constitutional body possessing special knowledge and expertise on election matters and with the objective of ensuring the holding of free, orderly, honest, peaceful, and credible elections – was granted the power to issue implementing rules and regulations.<sup>27</sup> Accordingly, COMELEC Resolution No. 8714 was promulgated setting forth the details of who may bear, carry or transport firearms or other deadly weapons, as well as the definition of “firearms,” in connection with the conduct of the May 10, 2010 national and local elections,<sup>28</sup> *viz.*:

SEC. 4. *Who May Bear Firearms*. — Only the following persons who are in the regular plantilla of the PNP or AFP or other law enforcement agencies are authorized to bear, carry or transport firearms or other deadly weapons during the election period:

- (a) Regular member or officer of the PNP, the AFP and other law enforcement agencies of the Government, provided that when in the possession of firearm, he is: (1) in the regular plantilla of the said agencies and is receiving regular compensation for the services rendered in said agencies; and (2) in the agency-prescribed uniform showing clearly and legibly his name, rank

<sup>27</sup> RA No. 7166, Section 35, which provides:

*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.

<sup>28</sup> *Atty. Orceo v. Commission on Elections*, 630 Phil. 670 (2010), as cited in *Philippine Association of Detective and Protective Agency Operations (PADPAO), Region 7, Chapter, Inc. v. COMELEC et al.*, G.R. No. 223505, 819 Phil. 204, 226-229 (2017).



and serial number or, in case rank and serial number are inapplicable, his agency-issued identification card showing clearly his name and position, which identification card shall remain visible at all times; (3) duly licensed to possess firearm and to carry the same outside of residence by means of a valid mission order or letter order; and (4) in the actual performance of official law enforcement duty, or in going to or returning from his residence/barracks or official station.

Other law enforcement agencies of the government shall refer to:

1. Guards of the National Bureau of Prisons, Provincial, and City Jails;
2. Members of the Bureau of Jail Management and Penology;
3. Members of the Custom Enforcement and Security and Customs Intelligence and Investigation Service of the Bureau of Customs;
4. Port Police Department, Philippine Port Authority;
5. Philippine Economic Zone Authority Police Force;
6. Government guard forces;
7. Law Enforcement Agents and Investigation Agents of the Bureau of Immigration;
8. Members of the Manila International Airport Authority (MIAA); Police Force;
9. Members of the Mactan-Cebu International Airport Authority (MCIAA) Police Force;
10. Personnel of the Law Enforcement Service of the Land Transportation Office (LTO);
11. Members of the Philippine Coast Guard, Department of Transportation and Communication;
12. Members of the Cebu Port Authority (CPA) Police Force;
13. Agents of ISOG of the Witness Protection Program;
14. Members of the Videogram Regulatory Board performing law enforcement functions;
15. Members of the Security Investigation and Transport Department (SITD), Cash Department (CD), including members of the Office of Special Investigation (OSI), Branch Operations and Department of General Services of the Bangko Sentral ng Pilipinas;
16. Personnel of the Office of the Sergeant-At-Arms (OSAA) of the Senate or the House of Representatives and the OSAA-certified designated senators/congressmen's security escorts;
17. Postal Inspectors, Investigators, Intelligence Officers and Members of the Inspection Service of the Philippine Postal Corporation;
18. Election Officers, Provincial Election Supervisors, Regional Attorneys, Assistant Regional Election Directors, Regional Election Directors, Directors III and IV, Lawyers in the Main Office of the Commission on Elections and the Members of the Commission;



19. Members of the Law Enforcement Section of the Bureau of Fisheries and Aquatic Resources;
20. Members of the Tourist Security Division of the Department of Tourism;
21. Personnel of the Intelligence Division of the Central Management Information Office, Department of Finance;
22. Personnel of the Inspection and Monitoring Service of the National Police Commission;
23. Personnel of the Special Action and Investigation Division, Forest Officers defined under PD 705 and Department of Environment and Natural Resources (DENR) DAO No. 1997-32, Forest/Park Rangers, Wildlife Officers and all forest protection and law enforcement officers of the DENR;
24. Personnel of the Intelligence and Security, Office of the Secretary, Department of Foreign Affairs;
25. Personnel of the Philippine Drug Enforcement Agency;
26. Personnel of the Philippine Center for Transnational Crime (PCTC);
27. Personnel of the National Intelligence Coordinating Agency;
28. Personnel of the National Bureau of Investigation;
29. Personnel of the Presidential Anti-Smuggling Group (PASG); and
30. Field officers of the Fertilizer and Pesticide Authority, Department of Agriculture.

(b) Member of privately owned or operated security, investigative, protective or intelligence agencies duly authorized by the PNP, provided that when in the possession of firearm, he is: (1) in the agency-prescribed uniform with his agency-issued identification card prominently displayed and visible at all times, showing clearly his name and position; and (2) in the actual performance of duty at his specified place/area of duty.


The heads of other law enforcement agencies and Protective Agents of Private Detective Agencies enumerated above shall, not later than 29 December 2009, submit a colored 4" x 5" picture, with description, of the authorized uniform of the office, to the Committee on the Ban on Firearms and Security Personnel (CBFSP) herein established.<sup>29</sup>

Arturo, however, insists that he was deprived of his right to be apprised of the accusations against him since the information categorized his offense as a violation of COMELEC Resolution No. 8714, which is not a penal law. A perusal of the information, however, reveals that Arturo was charged with the election offense of carrying a firearm during an election gun ban. This is clear from the allegations in the information, which reads:

That on or about the 11<sup>th</sup> day of February, 2010, in the morning, on board of (sic) Ceres Bus, at Prado St., Poblacion, Municipality of Malay, province of Aklan, Republic of the Philippines, and within the jurisdiction

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<sup>29</sup> *Id.* at 681.



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 of Caliber 45 pistol**, which firearm and ammunitions were confiscated from the custody and control of the accused by the police authorities of Malay, Aklan.

CONTRARY TO LAW.<sup>30</sup> (Emphasis supplied.)

Verily, Arturo was accused of violating COMELEC Resolution No. 8714. The charge against him is in relation to BP Blg. 881 and the amendatory law, RA No. 7166. It is well-settled that it is the recital of facts of the commission of the offense in the information, not the nomenclature of the offense that determines the crime charged against the accused. The designation of the offense, given by the prosecutor, is merely an opinion and not binding on the court.<sup>31</sup> Differently stated, the crime is not determined by the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, but by the factual allegations in the complaint or information.<sup>32</sup> The facts pleaded in the information constitute the offense of carrying firearms outside residence or place of business under Section 261(q) of BP Blg. 881. Thus, Arturo was duly apprised of the charge against him; there is no violation of his constitutional right to be informed of the nature of the accusation against him.

*The petitioner is liable for illegal possession of firearm during a gun ban.*

The prosecution was able to establish the elements of the crime – the existence of a firearm, and the fact that the accused who owned or possessed the firearm does not have the corresponding license or permit to possess the same.<sup>33</sup> The burden to adduce evidence that the accused is exempt from the COMELEC Gun Ban lies with the accused.<sup>34</sup> We reiterate that, Arturo was arrested in a public place, on board a passenger bus *en route* to Caticlan on February 11, 2010, within the election period for the 2010 national and local elections. He was positively identified by prosecution witness PSI Tarazona as the person from whom a loaded caliber .45 pistol, and two magazines with live ammunition were seized. Arturo failed to show a COMELEC-issued authority to carry the confiscated items.

Given the overwhelming evidence of the prosecution, Arturo counters only with the defense of denial; thus, his self-serving assertions, unsupported

<sup>30</sup> *Rollo*, pp. 49-50.

<sup>31</sup> *Pielago v. People*, 706 Phil. 460, 469 (2013), citing *Malto v. People*, 560 Phil. 119 (2007); *People v. Ramos, Sr.*, 702 Phil. 672 (2013).

<sup>32</sup> *Id.*

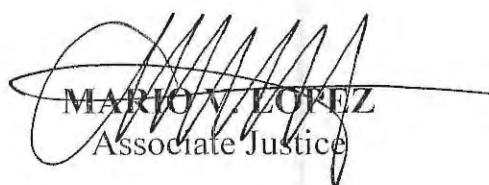
<sup>33</sup> *Supra* note 21 at 630.

<sup>34</sup> *Supra* note 21.

by any plausible proof, cannot prevail over the positive testimonies of the prosecution witnesses.<sup>35</sup> The defense of denial is inherently weak because it can easily be fabricated.<sup>36</sup> Denials, as negative and self-serving evidence, do not deserve as much weight in law as positive and affirmative testimonies.<sup>37</sup> All told, we affirm the conviction of petitioner Arturo Sullano y Santia for violation of BP Blg. 881, or the Omnibus Election Code of the Philippines.

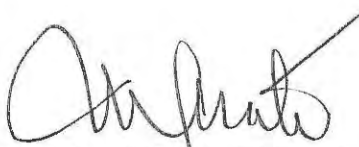
**FOR THESE REASONS**, the petition for review on *certiorari* is **DENIED**. The Decision dated November 17, 2016 and Resolution dated April 28, 2017 of the Court of Appeals in CA-G.R. CEB-CR No. 02424, finding Arturo S. Sullano guilty beyond reasonable doubt for violating the Omnibus Election Code or the Batas Pambansa Bilang 881, as amended by Republic Act No. 7166, in relation to Commission on Elections Resolution No. 8714, are **AFFIRMED**.

**SO ORDERED.**

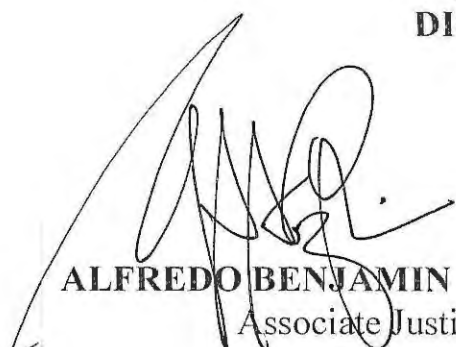


MARIO V. LOPEZ  
Associate Justice

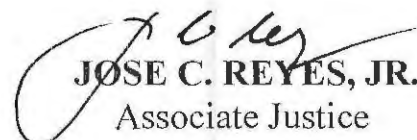
**WE CONCUR:**



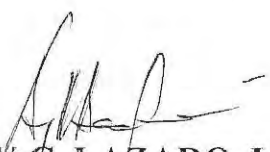
DIOSDADO M. PERALTA  
Chief Justice



ALFREDO BENJAMIN S. CAGUIOA  
Associate Justice



JOSE C. REYES, JR.  
Associate Justice



AMY C. LAZARO-JAVIER  
Associate Justice

<sup>35</sup> See *People v. Soriano*, 549 Phil. 250 (2007).

<sup>36</sup> *People v. Gaborne*, G.R. No. 210710, July 27, 2016, 798 SCRA 657.

<sup>37</sup> *Supra* note 18 at 694.

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**DIOSDADO M. PERALTA**  
Chief Justice