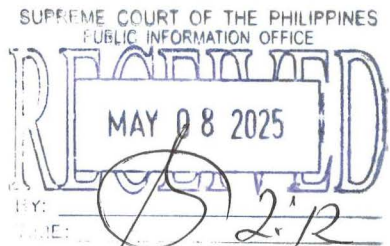




Republic of the Philippines
Supreme Court
 Manila



THIRD DIVISION

EFREN SADIARIN BAGUINON, SR.,
 Petitioner,

G.R. No. 255983

Present:

CAGUIOA, J.
Chairperson,
INTING,
ZALAMEDA,*
GAERLAN,† and
DIMAAMPAO, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
 Respondent.

Promulgated:
JAN 27 2025
Michael D. DeBatt

X-----X

DECISION

GAERLAN, J.:

This petition for review on *certiorari* assails the January 10, 2020 Decision¹ and the February 8, 2021 Resolution² of the Court of Appeals (CA) in CA-G.R. CR No. 42567, which affirmed the August 10, 2018 Judgment³ of Branch 17, Regional Trial Court (RTC), Batac City, Ilocos Norte in a prosecution for violation of the election gun ban docketed as Criminal Case No. 4457-17.

* Designated additional Member vice Singh, J., per Raffle dated July 6, 2022.

¹ *Rollo*, pp. 38–48. Penned by Associate Justice Priscilla J. Baltazar-Padilla (a retired Member of this Court) and concurred in by Associate Justices Ma. Luisa C. Quijano-Padilla and Ronaldo Roberto B. Martin of the Special Eleventh Division.

² *Id.* at 50–51. Penned by Associate Justice Louis P. Acosta, and concurred in by Associate Justices Maria Filomena D. Singh (now a Member of this Court) and Ronaldo Roberto B. Martin of the Special Former Special Eleventh Division.

³ *Id.* at 69–79. Penned by Acting Presiding Judge Francisco R.D. Quilala.

Antecedents

Petitioner Efren Sadiarin Baguion, Sr. (Baguion) was charged with violating the election gun ban under the following information:

That on or about December 31, 2003 within the election period and firearms ban in the May 10, 2004 National and Local Elections, in the Municipality of Paoay, Province of Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a Security Guard of the AFM Protective Agency, did then and there, willfully and unlawfully, carry a firearm outside of their place of business within the area of their responsibility, or in the actual performance in the specific area of assignment at Batac and Currimao, Ilocos Norte, without written authority from the Commission on Elections, by bringing one Caliber .38 Armscor Revolver with Serial No. 58188 at Barangay 9 San Pedro, in the municipality of Paoay, Ilocos Norte, which is outside AFM Industrial and Watchman Protective Agency with address at Barangay # 13, General Segundo Avenue, Laoag City.

CONTRARY TO LAW.⁴ (Numeration and citations omitted)

With Baguion having pled not guilty, the case went to trial. The prosecution's case is summarized by the Office of the Solicitor General (OSG) as follows:

About 11:45 in the evening of December 31, 2003, in the vicinity of Brgy. San Pedro, Paoay, Ilocos Norte, Nestor Badiong (Badiong) was driving his tricycle on his way to deliver a lechon to a customer when he almost collided with a motorcycle driven by the [petitioner], Efren Baguion, Jr. [sic].

Then, Badiong and the [petitioner] alighted from their respective vehicles, then an [altercation] ensued between them. When the [petitioner] attempted to draw his firearm, Badiong grappled with him for its possession. After a certain Engelbert Gonong pacified and separated them, the [petitioner] pointed his gun at Badiong. Badiong ran away but the [petitioner] tried to chase him and fired four times at him, but he was not shot. Badiong then reported the incident to the police.

Acting on this report, police officers Asuncion, Macalma and Bagasol proceeded to the house of the [petitioner]. SPO4 Macalma entered the house and when he came out with the [petitioner], he was already holding the subject firearm surrendered by the [petitioner].⁵

Baguion, represented by the Public Attorney's Office, claimed that

...he was duly authorized to possess the firearm. [He] was employed as a security supervisor officer of AFM Industrial and Watchman Protective

⁴ *Id.* at 39, CA Decision.

⁵ *Id.* at 84, Appeal Brief for the People.

Ⓟ

Agency (“AFM” for brevity), a security agency, and tasked to supervise the area of Batac, Currimao and Paoay, within the province of Ilocos Norte. His employer submitted a request, through Engr. Arnulfo F. Muñoz (Munoz), for a gun ban exemption from the Philippine National Police (PNP). Consequently, on December 17, 2003, PS/Supt. Melecio B. Asis, Jr. (PS/Supt. Asis) indorsed the aforesaid application to COMELEC’s Committee on Firearms and Security Personnel.

On December 31, 2003, [he] reported for work at AFM’s office in Laoag, Ilocos Norte, and took therefrom a caliber .38 [Armscor] service firearm, which was registered in the name of AFM. Thereafter, he went home to have lunch at his house in Paoay, Ilocos Norte, and then proceeded to make his rounds at their security guards deployed in Batac, Ilocos Norte for his routinary inspection as a supervisor.

Thereafter, their security guard assigned in a resort in Currimao, Ilocos Norte sent a message to Baguion, and asked the latter to replace his faulty service firearm. After finishing rounds, [Baguion] decided to replace the faulty service firearm of the security guard, who sent him a message. Baguion then proceeded to go home first, to tell his wife that he was going to Currimao, Ilocos Norte, and that he cannot go to their pre-scheduled reunion. En route to his house, Baguion’s path was blocked by Nestor Badiong’s (Badiong) tricycle, and the former could not pass. Baguion asked Badiong to step aside, but the latter immediately alighted, and boxed the former in the face, causing him to fall on the ground with the motorcycle also falling over him. Badiong frisked Baguion’s waist and attempted to take the former’s firearm. As Badiong was able to take the grip of the firearm, Baguion had to make sure that the firearm stayed with him, and wrestled with the former. During the scuffle, the firearm was discharged four (4) times Baguion then decided to go home for his own safety. Thereafter, police officers went to Baguion’s house, and told him that he had to go with them to the police station, because Badiong reported that he shot him several times. Baguion complied, and brought the service firearm and the corresponding firearm license and duty detail order documentation with him.

Thereafter, Firearms and Other Deadly Weapon Ban Exemption dated March 12, 2004 was issued by the COMELEC, which included the subject firearm, and indicated that the same was “valid for two hundred two (202) personnel in the actual performance of official duties.”⁶ (Numeration and citations omitted)

Trial Court Ruling

The RTC found Baguion guilty of violating the election gun ban as enunciated in Section 32 of Republic Act No. 7166, in relation to Commission on Elections (COMELEC) Resolution No. 6446. Baguion was sentenced to imprisonment for an indeterminate period of three to five years. He was also disqualified from voting and from holding public office. The firearm confiscated from him was forfeited in favor of the State.⁷

⁶ *Id.* at 57–58, Appeal brief for Baguion.

⁷ *Id.* at 79, August 10, 2018, Judgment.

The trial court held that under COMELEC Resolution No. 6446, which governed the possession of firearms during the 2004 election period, *prior written authority* from the COMELEC is required in order to carry firearms in a public place. However, the Firearms and Other Deadly Weapon Ban Exemption in favor of AFM was issued only on March 12, 2004. Thus, AFM personnel, including Baguion, did not have the requisite authority from the COMELEC to carry firearms in public places as of December 31, 2003.⁸ Furthermore, AFM's March 12, 2004 exemption cannot be given retroactive effect because there is nothing in the document to support retroactivity, moreso considering that COMELEC Resolution No. 6446 requires *prior* written authority. Clearly, a gun ban exemption takes effect only after the COMELEC issues the written authority as required by law and regulations.⁹

Baguion cannot take refuge in the pendency of AFM's application for gun ban exemption at the time of the incident, because a pending application for gun ban exemption does not amount to the prior written authority required by COMELEC Resolution No. 6446. A pending application for exemption cannot be considered deemed approved upon filing because the COMELEC has the power and discretion to reject such application. Conversely, applicants have no vested right or entitlement to gun ban exemptions; and Baguion failed to adduce any legal basis for such an assertion.¹⁰

The Philippine National Police's (PNP) indorsement of AFM's application to the COMELEC cannot be considered as a grant of prior written authority because the power to issue exemptions from the election gun ban is vested solely in the COMELEC. The PNP merely indorses, or hands over, applications to the COMELEC for final evaluation and action.¹¹

Even assuming that AFM's exemption can be given retroactive effect, Baguion cannot invoke the same because he was not in the actual performance of his official duties. Baguion admitted that he was on the way home from his work assignment at the time of incident; and this was corroborated by the certification of an AFM officer. A private security officer who is returning to his or her house or domicile cannot be considered in actual performance of official duties, as they are in fact no longer protecting or securing any person or property of their principal at such point in time.¹² Furthermore, it was proven that Baguion drew and fired his service firearm during the traffic altercation with Badiong. The trial court rejected Baguion's account of the incident, ruling that his service firearm could not have fired accidentally while he was grappling for

⁸ *Id.* at 74.

⁹ *Id.* at 75.

¹⁰ *Id.* at 74.

¹¹ *Id.* at 75.

¹² *Id.* at 75-76.

it with Badiong, considering the fact that four shots were fired. According to the RTC, revolvers like the one issued to Baguionon have triggers that cannot be easily pulled and engaged, and will not fire unless the trigger is intentionally and forcefully pulled.¹³ The RTC also found it incredulous that Baguionon did not report the incident to the police, considering that he was a security guard supervisor.¹⁴

The RTC sentenced Baguionon to imprisonment for an indeterminate period ranging from three to five years, in accordance with Section 264 of the Omnibus Election Code (OEC) and the Indeterminate Sentence Law.¹⁵

Ruling on Appeal

On appeal, Baguionon argued that he was incorrectly charged and tried under Section 32 of Republic Act No. 7166. Since he was carrying the firearm in the course of discharging his duties as area supervisor of a licensed security agency, he should have been charged and tried under Section 261(s) of the OEC, which governs the possession of firearms by private security guards and private security officers.¹⁶

The CA rejected this argument for being belatedly raised and unmeritorious. Novel issues not raised in the trial phase cannot be raised for the first time on appeal and are barred by estoppel.¹⁷

At any rate, Baguionon was correctly indicted and tried under Section 32 of Republic Act No. 7166. The application of Section 261(s) is temporally limited to the **campaign period, the day before election day, and the election day itself**. Since the incident occurred on December 31, 2003, or before the official commencement dates of the campaign period on February 10 and March 25, 2004, Section 261(s) cannot apply. Rather, the applicable provision is Section 32 of Republic Act No. 7166, which governs the possession of firearms during the **election period**. In its Resolution No. 6420, the COMELEC set the election period for the 2004 national and local elections from December 15, 2003 to June 9, 2004, thus placing the incident at bar within the temporal coverage of Section 32 of Republic Act No. 7166.¹⁸ *“It is worth to emphasize that Section 261 (s) is applicable only during the campaign period to certain individuals. When the campaign period has not yet begun, Section 32 of [Republic Act No.] 7166 applies to all persons including those enumerated in Section 261(s).”*¹⁹

¹³ *Id.* at 76.

¹⁴ *Id.*

¹⁵ *Id.* at 78–79.

¹⁶ *Id.* at 58–66, Appeal brief for Baguionon.

¹⁷ *Id.* at 44, CA Decision.

¹⁸ *Id.* at 45–46.

¹⁹ *Id.* at 46.

The elements of a violation of Section 32 of Republic Act No. 7166 were proven beyond reasonable doubt. It was duly proven that: 1) Baguion physically carried a firearm; 2) he did so during an election period; and 3) he did so in a public place:

...it was established that [Baguion] was carrying a firearm while on the street going to Paoay on December 31, 2003 which fell within the election period set by the COMELEC and that at that time he had no written authority from the COMELEC to possess such firearm. Clearly, all the elements of the violation of Section 32 of [Republic Act No.] 7166 are present.²⁰

Finally, the CA rejected Baguion's claim that he was in the actual performance of duty at the time of the incident. The CA found no relation between Baguion's duty to supervise security guards and the act of firing at a person during a road traffic altercation. Given the foregoing, the CA upheld the penalty imposed by the RTC.

The Present Petition

Before Us, Baguion argues that the CA committed reversible error in: 1) applying Section 32 of Republic Act No. 7166 instead of Section 261(s) of the OEC; and 2) rejecting his defense of performance of official duty.

Baguion asserts that the election period and the campaign period under the OEC and Republic Act No. 7166 are virtually the same, so the provisions of the OEC should apply to offenses committed within either period. He further asserts the nullity of the duration of the election period as fixed in COMELEC Resolution No. 6466, because the duration of the election and campaign periods are fixed at 90 days by Section 5 of Republic Act No. 7166, and the COMELEC has no authority to set a longer duration. Strictly applying Section 5 of Republic Act No. 7166, the election period for the 2004 national and local elections should be deemed to have begun on February 10, 2004. Baguion thus did not violate the election gun ban when he brandished and fired his service firearm in a public place on December 31, 2003.²¹

Even assuming that the incident was covered by the election gun ban, Baguion remains adamant he cannot be prosecuted under Section 261(s) of the OEC because he acted in the performance of his official duty. He argues that as security guard supervisor with jurisdiction over AFM's security personnel in the towns of Batac, Currimao, and Paoay, it was part of his duty to carry and

²⁰ *Id.* at 45.

²¹ *Id.* at 22-25, 28-31, Petition for Review on Certiorari.

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distribute firearms from AFM's head office to its guards. Baguion argues that this duty also allows him to carry firearms to and from his own house, as he could not be expected to return any firearms in his possession to the AFM head office in Laoag after the end of his shift. Baguion also calls this Court's attention to the December 11, 2007 decision of the Municipal Circuit Trial Court of Paoay-Currimaos, Ilocos Norte, Criminal Case No. 3309-P, wherein he was acquitted of attempted homicide upon a finding that he was justified in firing at Badiong because the latter refused to retreat.²²

The People ripostes that the errors raised by Baguion involve questions of fact which cannot be passed upon in a Rule 45 review.

In any case, Baguion's interpretation of the election and campaign period provisions of the OEC and Republic Act No. 7166 is incorrect. COMELEC Resolution No. 6466 is valid and binding, because the constitutional and statutory grants of power to the COMELEC include the power to define the duration of the election period. Furthermore, while Section 3 of the OEC and Section 5 of Republic Act No. 7166 both provide for the duration of the election period, the phrase "unless otherwise fixed by the Commission" in the latter amendatory provision gives the COMELEC authority to shorten or extend the period.²³

Baguion's assertion of the applicability of Section 261(s) of the OEC is likewise incorrect, because said provision applies only during the campaign period. The applicable provision is Section 32 of Republic Act No. 7166, as implemented by COMELEC Resolution No. 6466, which covers all persons, including private security personnel.²⁴

Baguion was not in actual performance of his duties at the time of the incident; rather, he was coming home from his shift, as admitted in his counter-affidavit and confirmed by the August 7, 2006 certification issued by AFM's operations manager. Baguion was not on his way to work and therefore cannot be considered to have been bearing arms in his capacity as AFM's security supervisor. Thus, his act of firing at Badiong cannot be considered as having been done in the performance of duty. His acquittal for attempted homicide is likewise immaterial, because his authority to carry firearms during an election gun ban period was not an issue therein. Finally, Baguion cannot invoke AFM's belatedly-issued gun ban exemption, as gun ban exemptions issued by the COMELEC do not have retroactive effect.²⁵

²² *Id.* at 25-28.

²³ *Id.* at 132-136, Comment.

²⁴ *Id.* at 136-139.

²⁵ *Id.* at 139-141.

The Court's Ruling

We reverse.

COMELEC's power to fix the duration of the election and campaign periods

Baguion argues that the temporal coverage of Section 32 of Republic Act No. 7166 and Section 261(s) of the OEC is essentially the same because Section 5 of Republic Act No. 7166 and Section 3 of the OEC fix the same duration for both periods. He further asserts that the election period fixed by the COMELEC for the 2004 national and local elections cannot prevail over the duration set by law.

Article IX-C, Section 9 of the Constitution, Section 3 of the OEC, and Section 5 of Republic Act No. 7166 all provide that “*the election period shall commence ninety days before the day of election and shall end thirty days thereafter*”. However, this delineation is preceded by the qualifier “*Unless otherwise fixed by the [COMELEC] in special cases.*” Baguion construes this proviso as a limited grant of power to fix the start and end dates of the election period. He argues that the “90-30” period is mandatory and can neither be extended nor shortened by the COMELEC.

Baguion's construction of the above provisions has been rejected by this Court at least thrice. In *Occeña v. Commission on Elections*,²⁶ the petitioners sought to enjoin the COMELEC from, among others, conducting local elections on January 30, 1980, in accordance with Batas Pambansa Blg. 52, on the ground that holding an election on said date violates the “90-30” period provided for in Article XII, Section 6 of the 1973 Constitution. We held that

Section 6 of Article XII of the Constitution does not fix an unalterable period of ninety (90) days for an election campaign. This provision must be construed in relation to Section 5 of Article XII thereof which grants to the Commission on Elections the power to supervise or regulate the operation of transportation, public utilities, media of communication, etc. during the “election period”. Section 6 fixes the “election period” by stating that unless fixed by the Commission in special cases, the election period shall commence ninety (90) days before the day of election and shall end thirty (30) days thereafter.²⁷ (Emphasis supplied)

²⁶ 184 Phil. 591 (1980) [Per J. Antonio, *En Banc*].

²⁷ *Id.* at 596.

We reiterated this doctrine 35 years later in *Aquino v. COMELEC*,²⁸ which involved the prosecution of the president of a government corporation for reassigning employees during the election period for the May 2010 national and local elections, an election offense under Section 261(h) of the OEC. Presaging Baguion's argument, the accused asserted "*that Section 3 of [the OEC] fixes the start of the election period at ninety (90) days before the day of the election, not one hundred and twenty (120) days before, which the COMELEC set in Resolution No. 8737. Hence, the election period for the May 10, 2010 elections should have commenced on February 9, 2010, not January 10, 2010.*"²⁹ We rejected the argument thusly:

As a general rule, the period of election starts at ninety (90) days before and ends thirty (30) days after the election date pursuant to Section 9, Article IX-C of the Constitution and Section 3 of BP 881. This rule, however, is not without exception. Under these same provisions, the COMELEC is not precluded from setting a period different from that provided thereunder.

In this case, the COMELEC fixed the election period for the May 10, 2010 Elections at 120 days before and 30 days after the day of the election. We find this period proper as we find no arbitrariness in the COMELEC's act of fixing an election period longer than the period fixed in the Constitution and BP 881. For one, the COMELEC fixed the longer period of 120-days-before-and-30-days-after pursuant to Section 9, Article IX-C of the Constitution and Section 3 of BP 881.

Also, Resolution No. 8737, through which the COMELEC fixed this alternate period of election, is valid as it was issued pursuant to the COMELEC's valid exercise of its rule-making power (under Section 6, Article IX-A of the Constitution and Section 52 [c] of BP 881). Too, Resolution No. 8737 is valid as it complied with the publication requirement. Note that per the record, Resolution No. 8737 was published twice — on December 31, 2009 in the *Philippine Daily Inquirer* and on January 4, 2010 in the *Daily Tribune*.³⁰

We comprehensively settled the matter in *Javier v. COMELEC*,³¹ where the governor of Antique was charged with the offenses defined in Section 261(d) and (e) of the OEC, for issuing a preventive suspension order against an elected official of the province during the election period for the 2013 national and local elections. As in *Aquino* and the case at bar, the governor argued that the COMELEC committed grave abuse of discretion in setting the commencement of the 2013 election period to January 13, 2013, or 120 days before the scheduled election, because the Constitution and the OEC mandate the "90-30" period. For the third time, We rejected this argument and held that

²⁸ 756 Phil. 80 (2015) [Per J. Brion, *En Banc*].

²⁹ *Id.* at 95.

³⁰ *Id.* at 109–110.

³¹ 777 Phil. 700 (2016) [Per J. Brion, *En Banc*].

The COMELEC is expressly authorized to fix a different date of the election period.

The petitioner contends that the election period for the reckoning of administrative and criminal liabilities under election laws should always be the same — 90 days before and 30 days after an election — fixed in Article IX-C, Section 9 of the Constitution and Section 8 of Republic Act No. 7056. He argues that the Commission's authority to fix the pre-election period refers only to the period needed to properly administer and conduct orderly elections. The petitioner argues that by extending the period for incurring criminal liability beyond the 90-day period, the Commission encroached on the legislature's prerogative to impute criminal and administrative liability on *mala prohibita* acts. Therefore, COMELEC Resolution Nos. 9385 and 9581 were issued *ultra vires*.

We do not find this argument meritorious.

No less than the Constitution authorizes the Commission to fix the dates of the election period. Article IX-C, Section 9 provides...

....

Congress, through the Election Code, explicitly recognizes this authority:

....

Evidently, the 120-day [*i.e., the "90-30"*] period is merely the default election period. The Commission is not precluded from fixing the length and the starting date of the election period to ensure free, orderly, honest, peaceful, and credible elections. This is not merely a statutory but a constitutionally granted power of the Commission.

Contrary to the petitioner's contention, the Commission's act of fixing the election period does not amount to an encroachment on legislative prerogative. The Commission did not prescribe or define the elements of election offenses. Congress already defined them through the Omnibus Election Code, the Fair Elections Act, and other pertinent election laws.

As defined by Congress, some election offenses and prohibited acts can only be committed during the election period. An element of these offenses (*i.e., that it be committed during the election period*) is variable, as election periods are not affixed to a specific and permanent date. Nevertheless, the definition of the offense is already complete. By fixing the date of the election period, the Commission did not change what the offense is or how it is committed. There is thus no intrusion into the legislative sphere.

There is also no merit in the petitioner's argument that the extended election period only applies to pre-election activities other than the determination of administrative or criminal liability for violating election laws. Neither the law nor the Constitution authorizes the use of two distinct election periods for the same election. The law does not distinguish between election offenses and

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other pre-election activities in terms of the applicable election period. Where the law does not distinguish, neither should this Court.³²

The Court thus takes this opportunity to reiterate that *the COMELEC has the power to extend the election period provided in the Constitution and the OEC, for the purpose of ensuring that elections are free, fair, and credible.* COMELEC Resolution No. 6420, which set the commencement of the 2004 election period to December 15, 2003, is a valid exercise of this power. That resolution also set the following campaign periods, in accordance with Section 3 of the OEC and Section 5 of Republic Act No. 7166:

February 10, 2004 (Tuesday) to May 08, 2004 (Saturday) (90 days before election)	Campaign period for President, Vice President and Senators (Sec 5, Republic Act No. 7166), and political parties, organizations or coalitions participating under the party list system (Sec. 4 Republic Act No. 7941) both in the Philippines and abroad
March 25, 2004 (Thursday) to May 08, 2004 (Saturday) (45 days before election)	Campaign period for members of the House of Representatives and elective provincial, city and municipal officials (Sec 3, OEC; and Sec. 11, Republic Act No. 8436) ³³

The incident at bar was therefore committed during the 2004 election period, and outside the 2004 campaign periods, making Section 32 of Republic Act No. 7166 the applicable law.

Sections 261(q) and (s) of the OEC, distinguished

Bearing or carrying firearms in public places during an election-related weapons ban is penalized by two provisions of law: Section 261(q) of the OEC, as amended by Section 32 of Republic Act No. 7166; and Section 261(s) of the OEC.

Rimando v. COMELEC clarified that “Section 261(s) [of the OEC] was not the [provision] modified by Section 32 of [Republic Act] No. 7166, but

³² *Id.* at 715–717. Emphasis and underscoring in the original.

³³ COMELEC Resolution No. 6420 (November 25, 2003). Available online at https://lawphil.net/administ/comelec/comres2003/comres_6420_2003.html, last accessed on October 7, 2024.

Section 261(q).³⁴ *Los Baños v. Pedro*³⁵ thus held that Section 32 of Republic Act No. 7166 and Section 261(q) of the OEC are virtually interchangeable for the purpose of specifying the offense to be charged in an information, because the former amended the latter:

One final observation: the Information was not rendered defective by the fact that Pedro was charged of violating Section 261 (q) of the Code, instead of Section 32 of R.A. No. 7166, which amended Section 261 (q); these two sections aim to penalize among others, the carrying of firearms (or other deadly weapons) in public places during the election period without the authority of the Comelec. The established rule is that the character of the crime is not determined by the caption or preamble of the information or from the specification of the provision of law alleged to have been violated; the crime committed is determined by the recital of the ultimate facts and circumstances in the complaint or information. Further, in *Abenes v. Court of Appeals*, we specifically recognized that the amendment under Section 32 of R.A. No. 7166 does not affect the prosecution of the accused who was charged under Section 261 (q) of the Code.³⁶

Thus, under the law applicable at the time of the incident, the bearing of arms in public places prior to or after an election is punishable under either Section 32 of Republic Act No. 7166 or Section 261(s) of the OEC. The difference between these provisions is revealed by an analysis of their respective elements, as compared to the corresponding allegations in the information:

	Republic Act No. 7166, Section 32, amending OEC 261(q)	OEC 261(s)	Allegation in the information
Persons covered	Any person ³⁷	1) Members of security or police organizations of government agencies, commissions, councils, bureaus, offices, or government-owned or controlled corporations 2) Members of privately-owned or operated security, investigative, protective or intelligence agencies ³⁸	"...accused [Baguion], a Security Guard of the AFM Protective Agency..."

³⁴ *Rimando v. Commission on Elections*, 616 Phil. 562, 585 (2009) [Per J. Leonardo-de Castro, *En Banc*].
³⁵ 604 Phil. 215 (2009) [Per J. Brion, *En Banc*].

³⁶ *Id.* at 236. Citations omitted. *See also Sullano v. People*, 873 Phil. 480 (2020) [Per J. M.V. Lopez, First Division].

³⁷ *Gonzalez v. People*, 826 Phil. 190 (2018) [Per J. Perlas-Bernabe, Second Division]; *Abenes v. Court of Appeals*, 544 Phil. 614 (2007) [Per J. Austria-Martinez, Third Division. *See also Sullano v. People*, *id.* at 493.

³⁸ *Rimando v. Commission on Elections*, 616 Phil. 562 (2009) [Per J. Leonardo-de Castro, *En Banc*].

		3) Members of the Armed Forces of the Philippines, special forces, home defense forces, barangay self-defense units and all other para-military units ³⁹	
Acts punished	Bearing, carrying, or transporting firearms or other deadly weapons ⁴⁰	1) Wearing uniform or using insignia, decorations or regalia 2) Bearing arms ⁴¹	“...did then and there, willfully and unlawfully, carry a firearm...by bringing one Caliber .38 Armscor Revolver with Serial No. 58188...”
Temporal coverage	Election period ⁴²	Campaign period, day before election day, and election day, ⁴³ thirty days after election day ⁴⁴	“...within the election period and firearms ban in the May 10, 2004 National and Local Elections...”
Spatial coverage	Any public place ⁴⁵	Any place outside the immediate vicinity of the offender’s place of work ⁴⁶	“...outside of their place of business within the area of their responsibility, or in the actual performance in the specific area of assignment at Batac and Currimao, Ilocos Norte... at Barangay 9 San Pedro, in the municipality of Paoay, Ilocos Norte, which is outside AFM Industrial and Watchman Protective Agency with address at Barangay # 13, General Segundo Avenue, Laoag City...”

³⁹ OMNIBUS ELECTION CODE, sec. 261(s), second paragraph.

⁴⁰ *Gonzalez v. People*, 826 Phil. 190 (2018) [Per J. Perlas-Bernabe]; *Abenes v. Court of Appeals*, 544 Phil. 614 (2007) [Per J. Austria-Martinez, Third Division]; *Sullano v. People*, 873 Phil. 480 (2020) [Per J. M.V. Lopez, First Division].

⁴¹ *Rimando v. Commission on Elections*, 616 Phil. 562 (2009) [Per J. Leonardo-de Castro, *En Banc*].

⁴² *Gonzalez v. People*, 826 Phil. 190 (2018) [Per J. Perlas-Bernabe, Second Division]; *Abenes v. Court of Appeals*, 544 Phil. 614 (2007) [Per J. Austria-Martinez, Third Division]. *Sullano v. People*, 873 Phil. 480, 493 (2020) [Per J. M.V. Lopez, First Division].

⁴³ OMNIBUS ELECTION CODE, sec. 261(s), first paragraph.

⁴⁴ OMNIBUS ELECTION CODE, sec. 261(s), second paragraph.

⁴⁵ *Gonzalez v. People*, 826 Phil. 190 (2018) [Per J. Perlas-Bernabe, Second Division]; *Abenes v. Court of Appeals*, 544 Phil. 614 (2007) [Per J. Austria-Martinez, Third Division]. *Sullano v. People*, 873 Phil. 480, 493 (2020) [Per J. M.V. Lopez, First Division].

⁴⁶ *Rimando v. Commission on Elections*, 616 Phil. 562 (2009) [Per J. Leonardo-de Castro, *En Banc*].

Exceptions	When authorized in writing by the COMELEC ⁴⁷	In certain circumstances ⁴⁸ or with prior written approval from the COMELEC or the President ⁴⁹	“...without written authority from the [COMELEC]...”
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Both Section 32 of Republic Act No. 7166 and Section 261(s) of the OEC penalize the possession, carriage, or transportation of firearms during election periods, albeit under different attendant circumstances. Section 261(s) of the OEC applies only to specific classes of persons, while Section 32 of Republic Act No. 7166 is wider in scope as it applies to any person. Given our previous discussion on the COMELEC’s power to set the commencement and the duration of election periods, the temporal coverage of each offense is virtually dependent on the COMELEC’s reckoning of the election and the campaign periods; however, Section 32 of Republic Act No. 7166 categorically applies during the election period, while Section 261(s) of the OEC applies only during the campaign period. The most salient difference between the two offenses is their spatial coverage: Section 261(s) of the OEC only requires that the firearm be carried outside the offender’s workplace, while Section 32 of Republic Act No. 7166 specifies that the firearm must be carried in a **public place**.

Baguion cannot be convicted under Section 32 of Republic Act No. 7166

The factual allegations in an information determine the nature and character of the offense charged.⁵⁰ The information against Baguion states that he committed the offense *during* the election period *but before* the campaign period, which precludes the application of Section 261(s) of the OEC. However, the Information also specifies Baguion’s employment as a security guard, which is an essential element of the offense in Section 261(s). The Information also states the spatial aspect of the violation as carrying firearms

outside of their place of business within the area of their responsibility, or in the actual performance in the specific area of assignment at Batac and Currimaog, Ilocos Norte, without written authority from the Commission on Elections, by bringing one Caliber .38 Armscor Revolver with Serial No. 58188 at Barangay 9 San Pedro, in the municipality of Paoay, Ilocos Norte, which is **outside AFM Industrial and Watchman Protective Agency with address at Barangay # 13, General Segundo Avenue, Laoag City[.]**

⁴⁷ Republic Act No. 7166 (1991), sec. 32.

⁴⁸ OMNIBUS ELECTION CODE, sec. 261(s), first paragraph.

⁴⁹ OMNIBUS ELECTION CODE, sec. 261(s), first and second paragraphs.

⁵⁰ *Sullano v. People*, 873 Phil. 480, 498–499 (2020) [Per J. M.V. Lopez, First Division], citing *Pielago v. People*, 706 Phil. 460, 469 (2013) [Per J. Reyes, First Division] in turn citing *Malto v. People*, 560 Phil. 119 (2007); *People v. Ramos, Sr.*, 702 Phil. 672 (2013).

which is clearly indicative of an intent to charge Baguion under Section 261(s). However, the Information designated the offense as violation of Section 32 of Republic Act No. 7166, and it was proven during trial that Baguion carried the firearm in a public place, i.e., along a highway in Paoay, Ilocos Norte. This factual circumstance passed uncontested by the defense.

Viewing the allegations therein together with the elements of Section 32 of Republic Act No. 7166 and Section 261(s) of the OEC, it becomes clear that the prosecution effectively cherry-picked elements from these two separate offenses and pleaded them together in the Information against Baguion. The prosecution then completely ignored this mistake and established a violation of the former offense during trial.

Article III, Section 14(2) of the 1987 Constitution gives accused persons the right to be heard and to be informed of the nature and cause of the accusation against them. Among the procedural implementations of these rights is the principle that a person may only be convicted of an offense which is properly alleged in an information. “[E]very element constituting the offense must be alleged in the Information before an accused can be convicted of the crime charged.”⁵¹ *Andaya v. People*⁵² elaborates:

It is fundamental that every element constituting the offense must be alleged in the information. The main purpose of requiring the various elements of a crime to be set out in the information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and an accused’s right to question his conviction based on facts not alleged in the information cannot be waived. No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.⁵³

Rule 110, Section 10 of the Rules of Court further provides that “[t]he complaint or Information is sufficient if it can be understood from its allegations that the offense was committed or some of its essential ingredients occurred at some place within the jurisdiction of the court, **unless the particular place where it was committed constitutes an essential element of the offense charged or is**

⁵¹ *Quimvel v. People*, 808 Phil. 889, 911–912 (2017) [Per J. Velasco, Jr., *En Banc*].

⁵² *Andaya v. People*, 526 Phil. 480 (2006) [Per J. Ynares-Santiago, First Division].

⁵³ *Id.* at 497.

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*necessary for its identification.*⁵⁴ If an offense has a spatial or locational element, it must be sufficiently alleged in the Information.

As explained above, place is an essential element in both Section 32 of Republic Act No. 7166 and Section 261(s) of the OEC. Section 261(s) of the OEC requires that the firearm be carried *outside the immediate vicinity of the offender's place of work*, which is precisely the thrust of the allegation in the Information at bar. Similarly, Section 32 of Republic Act No. 7166 requires that the firearm *be carried in a public place*.⁵⁵

In order to secure a conviction of an accused based on [COMELEC Resolution No. 9357, implementing Section 32 of RA 7166], the prosecution must prove that: (a) the person is bearing, carrying, or transporting firearms or other deadly weapons; (b) such possession occurs during the election period; and (c) the weapon is carried in a public place. Notably, it is essential that possession of the deadly weapon in a public place be established beyond reasonable doubt.⁵⁶ (Emphasis supplied)

However, the specific accusation that Baguion “[brought] one Caliber .38 Armscor Revolver with Serial No. 58188 at Barangay 9 San Pedro, in the municipality of Paoay, Ilocos Norte, which is outside AFM Industrial and Watchman Protective Agency with address at Barangay # 13, General Segundo Avenue, Laoag City” does not sufficiently indicate that he carried said revolver in a public place. Contrast this with the information in *Sullano v. People*:⁵⁷

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.⁵⁸ (Emphasis supplied)

We sustained Sullano’s conviction under such information, viz.:

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

⁵⁴ See also *U.S. v. Tan Goy*, 36 Phil. 974 (1917) [Per J. Carson, *En Banc*].

⁵⁵ *Abalain v. People*, G.R. No. 244027, April 11, 2023 [Per C.J. Gesmundo, *En Banc*].

⁵⁶ *Gonzalez v. People*, 826 Phil. 190, 200-201 (2013) [Per J. Perlas-Bernabe, Second Division].

⁵⁷ *Gonzalez v. People, id.*; *Abenes v. Court of Appeals*, 544 Phil. 614 (2007) [Per J. Austria-Martinez, Third Division]. *Sullano v. People*, 873 Phil. 480, 493 (2020) [Per J. M.V. Lopez, First Division].

⁵⁸ *Id.* at 484.

him... The burden to adduce evidence that the accused is exempt from the COMELEC Gun Ban lies with the accused. **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.⁵⁹ (Emphasis supplied)

We reached the same conclusion in *Escalante v. People*,⁶⁰ which involved the following Information:

That on or about the 3rd day of April, 1995, at nighttime, at Barangay Biasong, Municipality of Almagro, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to possess and without being authorized by law, did then and there wilfully, unlawfully, feloniously and illegally have in his possession, custody and control one (1) caliber .45 pistol loaded with live ammunition, **in a public place** outside of his residence, without first securing the necessary permit to possess the same from the competent authority, as required by law.⁶¹ (Emphasis supplied)

The foregoing precedents show that in order to sustain a conviction for violation of Section 32 of Republic Act No. 7166, the public character of the place where the offense was committed must be sufficiently alleged, either by expressly stating that the act was committed in a public place, or by alleging the spatial or locational circumstances of the act with enough precision. The pertinent allegation in the Information against Baguion simply states that he brought the firearm to a certain area which is outside the business coverage area of his employer. "Barangay 9, San Pedro, Paoay, Ilocos Norte" is simply the name of a barangay or a particular locality in the town of Paoay. It does not sufficiently indicate that Baguion carried the firearm in a public place. This circumstance was only borne out during trial, when the evidence revealed that the incident took place along a national highway: a fact which the prosecution could have easily alleged in the Information. The missing allegation of an essential element of the offense renders the Information fatally defective.⁶² Baguion must perforce be acquitted.

ACCORDINGLY, the petition is **GRANTED**. The January 10, 2020 Decision and the February 8, 2021 Resolution of the Court of Appeals in CA-

⁵⁹ *Id.* at 498-499.

⁶⁰ 701 Phil. 332 (2013) [Per J. Reyes, First Division].

⁶¹ *Id.* at 336.

⁶² *People v. Reyes*, 842 Phil. 45, 59 (2018) [Per J. Caguioa, Second Division], quoting *People v. Posada*, 684 Phil. 20, 40 (2012) [Per J. Reyes, Second Division]

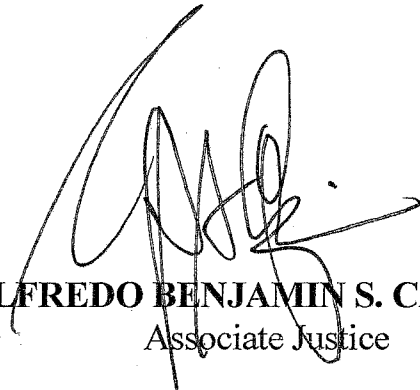
G.R. CR No. 42567 are **REVERSED** and **SET ASIDE**. Petitioner Efren Sadiarin Baguinon, Sr. is hereby **ACQUITTED**.

SO ORDERED.



SAMUEL H. GAERLAN
Associate Justice

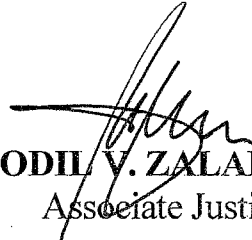
WE CONCUR:



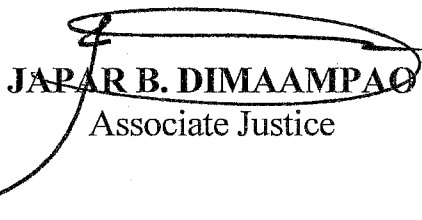
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



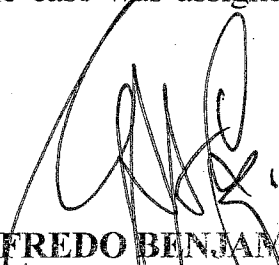
RODIL V. ZALAMEDA
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

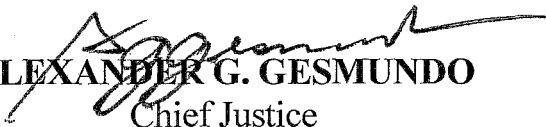
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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.


ALEXANDER G. GESMUNDO
Chief Justice

