



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **July 27, 2022** which reads as follows:*

“**G.R. No. 257969 (People of the Philippines v. Clarito Galon y Velasco)**. — On appeal¹ is the January 27, 2021 Decision² of the Court of Appeals (CA) in CA-G.R. CR HC No. 13687, which affirmed with modification the June 6, 2019 Judgment³ of the Regional Trial Court (RTC), Branch 61 of Naga City, finding accused-appellant Clarito Galon y Velasco (Galon) guilty beyond reasonable doubt of the crimes of violation of the Gun Ban under Rule 2, Section 1 (a)⁴ of Commission on Elections (COMELEC) Resolution No. 10015,⁵ in relation to Section 32⁶ of Republic Act No. (RA) 7166,⁷ and Illegal Possession of Dangerous Drugs defined and

- over – fifteen (15) pages ...

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¹ *Rollo*, pp. 3-5.

² Id. at 8-28. Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Germano Francisco D. Legaspi and Carlito B. Calpatura.

³ Id. at 29-43. Penned by Judge Soliman M. Santos, Jr.

⁴ Rule 2, Section 1 (a) of COMELEC Resolution No. 10015 reads:

SECTION 1. *Prohibited Acts*. – During the Election Period:

No person shall bear, carry or transport Firearms or Deadly Weapons outside his residence or place of business, and in all public places, including any building, street, park, and in private vehicles or public conveyances, even if he is licensed or authorized to possess or to carry the same, unless authorized by the Commission, through the CBSFP, in accordance with the provisions of this Resolution;

⁵ Rules And Regulations On: (1) The ban on the bearing, carrying or transporting of firearms and other deadly weapons; and (2) the employment, availment or engagement of the services of security personnel or bodyguards during the election period of the May 9, 2016 synchronized national and local elections.

⁶ Sec. 32. *Who May Bear Firearms*. - During the election period, no person shall bear, carry or transport firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, even if licensed to possess or carry the same, unless authorized in writing by the Commission. The issuance of firearms licenses shall be suspended during the election period.

⁷ Entitled “AN ACT PROVIDING FOR SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS AND FOR ELECTORAL REFORMS, AUTHORIZING APPROPRIATIONS THEREFORE, AND FOR OTHER PURPOSES.” Approved on November 26, 1991.

penalized under Section 11,⁸ Article II of RA 9165,⁹ or the “Comprehensive Dangerous Drugs Act of 2002.”

The Facts

Two separate Information¹⁰ were filed against Galon for violation of COMELEC gun ban under Rule 2, Section 1 (a) of COMELEC Resolution No. 10015 in relation to Section 32 of RA 7166, and for violation of Section 11, Article II of RA 9165 or Illegal Possession of Dangerous Drugs, respectively. The two Informations state:

Criminal Case No. 2016-0159

That on **March 24, 2016**, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while outside of his residence and in a public place, within the election period of the May 9, 2016 National and Local Elections, did then and there willfully and unlawfully have in his possession, custody, and control, **one (1) piece hand grenade marked as JBB-4A 03-24-16**, without the necessary COMELEC exemption, permit or authority to bear, carry and transport the same outside his residence and not being a necessary tool of his trade.

ACTS CONTRARY TO LAW.¹¹

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⁸ REPUBLIC ACT NO. 9165, Section 11 reads:

Section 11. *Possession of Dangerous Drugs*. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) x x x.

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five (hundred) 500 grams of marijuana; and

(3) x x x.

⁹ Entitled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.” Approved: June 7, 2002.

¹⁰ Records, Crim. Case No. 2016-0159, p. 1.

¹¹ Id.

Criminal Case No. 2016-0160

That on **March 24, 2016**, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without the authority of law did, then and there, willfully, unlawfully and criminally have in his possession, custody and control of **nine (9) pcs. small heat sealed transparent plastic sachets containing 0.177 gram, 0.213 gram, 1.032 grams, 1.039 grams, 1.061 grams, 1.063 grams, 1.124 grams, 1.079 grams & 0.233 gram or a total of 7.021 grams which later marked as JBB-1A 03-24-16, JBB1B 03-24-16, JBB-1C 03-24-16, JBB-1D 03-24-16, JBB-1E 03-24-16, JBB-1F 03-24-16, JBB-1G 03-24-16, JBB-1H 03-24-16, JBB-1I 03-24-16, respectively, each sachets containing white crystalline substance**, which when subjected to laboratory examination gave positive results to the tests for the presence of Methamphetamine Hydrochloride popularly known as “Shabu[,]” a dangerous drug, in violation of the above-cited law.

ACTS CONTRARY TO LAW.¹²

Galon was likewise charged under Criminal Case No. 2016-0161 with violating Section 1¹³ of RA 9516,¹⁴ in relation to Section 3 of Presidential Decree No. 1866,¹⁵ or for illegal possession of explosives. The RTC dismissed the said charge.

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¹² Records, Crim. Case No. 2016-0160, p. 1.

¹³ Section 3 of PRESIDENTIAL DECREE NO. 1866, as amended, is hereby further amended to read as follows:

Section 3. *Unlawful Manufacture, Sales, Acquisition, Disposition, Importation or Possession of an Explosive or Incendiary Device.* - The penalty of *reclusion perpetua* shall be imposed upon any person who shall willfully and unlawfully manufacture, assemble, deal in, acquire, dispose, import or possess any explosive or incendiary device, with knowledge of its existence and its explosive or incendiary character, where the explosive or incendiary device is capable of producing destructive effect on contiguous objects or causing injury or death to any person, including but not limited to, hand grenade(s), rifle grenade(s), ‘pillbox bomb’, ‘molotov cocktail bomb’, ‘fire bomb’, and other similar explosive and incendiary devices.

¹⁴ Entitled “AN ACT FURTHER AMENDING THE PROVISIONS OF PRESIDENTIAL DECREE NO. 1866, AS AMENDED, ENTITLED ‘CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES.’” Approved: December 22, 2008.

¹⁵ Entitled “CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES.” Approved: June 29, 1983.

Version of the Prosecution

The five prosecution witnesses, namely: Police Officer 2 Jeremy B. Bagacina (PO2 Bagacina), Police Officer 2 Jayson E. Asinas (PO2 Asinas), Senior Police Officer 3 Romeo S. Quimpo (SPO3 Quimpo), Police Inspector Vina Zarina M. Zaldua (PI Zaldua), and Department of Justice (DOJ) representative Aman S. Aquino (Aquino) testified that:

At around 7:15 p.m. of March 24, 2016, Galon was driving a motorcycle along the junction of the service road of Del Rosario and Cararayan, Naga City where PO2 Bagacina, PO2 Asinas, together with their Station Commander, Police Inspector Romeo Bonifacio Apolinar Hugo (PI Hugo), and several other police officers were assigned to conduct a checkpoint in connection with the COMELEC Gun Ban.¹⁶

When Galon was approaching the checkpoint, PO2 Bagacina flagged him down. However, Galon attempted to evade the checkpoint and passed through the left side gutter of the road. PO2 Bagacina quickly alerted his companions who were stationed at the area where Galon was heading.¹⁷

Upon apprehension, PI Hugo turned-over Galon to PO2 Bagacina who asked for his driver's license and motorcycle documents. Galon failed to produce the documents and showed only his Social Security System (SSS) Identification Card (ID). Noting that Galon appeared uneasy and kept on looking at the bulging pockets of his short pants, PO2 Bagacina asked Galon to empty his pockets. Galon thus pulled out from his left side pocket a gray sunglasses case. PO2 Bagacina ordered Galon to open the sunglasses case when Galon opened the case, PO2 Bagacina saw that it contained a hand grenade.¹⁸ Galon then threatened the police officers that he will detonate the grenade ("*ang laog kaini granada, kung dadakupon nindo ako papaputukon ko ini*").¹⁹ PO2 Bagacina immediately called the attention of his companions who took possession of hand grenade from Galon.²⁰

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¹⁶ TSN, August 1, 2016, pp. 6-8.

¹⁷ Id. at 8-10.

¹⁸ Id. at 11.

¹⁹ Id. at 15.

²⁰ *Rollo*, p. 12.

PO2 Bagacina secured the grenade then proceeded to handcuff and inform Galon of his constitutional rights.²¹ Thereafter, he conducted a search to check if there were other concealed weapon or contraband items that Galon might be hiding. PO2 Bagacina found in the right pocket of Galon a blue lighter, cash amounting to ₱2,940.00, a Nokia cellphone, 10 pieces of empty transparent sachets, and nine pieces of heat-sealed transparent plastic sachets containing white crystalline substance.²² Inside Galon's lower left pocket, PO2 Bagacina found a white Samsung cellphone.²³ A red wallet with money amounting to ₱8,108.00 was also found in Galon's right back pocket.²⁴

Aquino from the DOJ, Joel Solina (Solina) from the media, and *Barangay Kagawad* Edna S. Bragais (Bragais) arrived at the place of arrest. After the witnesses and the police officers started the marking, inventory, and photography of the confiscated items, they filled out and signed the Inventory Form.²⁵ They then brought Galon to Police Station No. 4 for investigation and preparation of the Police Blotter²⁶ and the Chain of Custody Form.²⁷ PO2 Bagacina had custody of the seized illegal drugs from the time of confiscation until they were brought to the police station for safe keeping in the steel cabinet which he had exclusive access,²⁸ until the next day when the items were delivered to the Philippine National Police Crime Laboratory for laboratory examination. Police Officer 3 Jay Paris Rock Lomatao (PO3 Lomatao),²⁹ the duty receiving clerk at the crime laboratory, received the nine plastic sachets along with the Request for Laboratory Examination³⁰ and Drug Test Examination³¹ from PO2 Bagacina.

PO3 Lomatao then forwarded the seized plastic sachets to PI Zaldua, the forensic chemist, who signed the internal Chain of Custody Form.³² The plastic sachets containing white crystalline substance were found positive for methamphetamine hydrochloride or shabu, as stated in Chemistry Report No. D-198-2016-CS.³³

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²¹ TSN, August 1, 2016, p. 16.

²² Id. at 17-20.

²³ Id. at 20.

²⁴ Id. at 23-24.

²⁵ Records, Crim. Case No. 2016-0160, Exhibit "N," p. 13.

²⁶ Records, Crim. Case No. 2016-0159, Exhibits "B" to "B-1," pp. 26-27; TSN dated 27 February 2017, p.08.

²⁷ Records, Crim. Case No. 2016-0160, Exhibits "O," p. 14.

²⁸ TSN, February 27, 2017, pp. 7 and 9.

²⁹ TSN, December 1, 2016, pp. 5-6.

³⁰ Records, Crim. Case No. 2016-0160, Exhibit "Q" to "Q-1," pp. 36-37.

³¹ Records, Crim. Case No. 2016-0160, Exhibit "R," p. 38.

³² Records, Crim. Case No. 2016-0160, Exhibit "U," p. 79.

³³ Records, Crim. Case No. 2016-0160, Exhibits "T" and "T-1," p. 45.

PO2 Bagacina and PO2 Asinas narrated the facts and circumstances surrounding the arrest of Galon, and the seizure of the illegal drugs in their respective Sworn Affidavits³⁴ dated March 26, 2016.

SPO3 Quimpo, a member of Explosive Ordnance Disposal and an assistant Bomb Technician, asserted that he received from PO2 Bagacina the hand grenade³⁵ wrapped in tape and with marking JBB-4A dated 03-24-16 which he presented in court. He testified that it was a live grenade that was not merely for signal or glare use but for explosive purpose.³⁶

Version of the Defense

The defense presented the lone testimony of Galon.

Galon alleged that on the night of March 24, 2016, he was driving a motorcycle going to Cararayan when PO2 Bagacina flagged him down at the COMELEC checkpoint.³⁷ He presented his SSS ID as he did not have a driver's license as well as the papers of the motorcycle that he borrowed from Alvin Alsisto.³⁸ He immediately signed³⁹ the citation ticket⁴⁰ that was issued to him. He sat and waited at the curbside while waiting for the police officers to verify whether the motorcycle was a carnapped vehicle.⁴¹ After 30 minutes, a vehicle arrived and Galon heard someone say "*Okay na padi, daraha na digdi.*" [Court's translation: "Okay, compadre, bring him over here."]⁴² He was surprised when he saw illegal drugs and a grenade on the road after he was brought by PO2 Bagacina near his motorcycle. When he asked what those are, the police officers responded that the illegal drugs and the grenade belonged to him. In reply, Galon told the police officers: "*Ano man yan bako ko man бага nyako yan para ang problema ko lisensya saka OR kang motor, tapos aanuhan nindo kayan.*"⁴³ (RTC's Translation: "what the heck, those are not mine, the problem was just my driver's license and the Official Receipt for the motorcycle, now you will *sic* those on me).⁴⁴

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³⁴ Records, Crim. Case No. 2016-0160, pp. 6-10.

³⁵ Marked as Exhibit "D"; See Records, Criminal Case No. 2016-0159, Pre-Trial Order, p. 60.

³⁶ TSN, August 25, 2016, pp. 6 and 9.

³⁷ TSN, February 19, 2019, p. 3.

³⁸ Id. at 4 and 12.

³⁹ Id. at 10.

⁴⁰ Records, Crim. Case No. 2016-0159, Exhibit "E," p. 190-A.

⁴¹ Id. at 4.

⁴² Id. at 6.

⁴³ Id. at 7.

⁴⁴ Records, Crim. Case No. 2016-0160, p. 179; Judgment, p. 9.

Ruling of the Regional Trial Court

On June 6, 2019, the RTC, in a consolidated Judgment,⁴⁵ found Galon guilty beyond reasonable doubt of violation of Rule 2, Section 1(a) of COMELEC Resolution No. 10015 in relation to Section 32 of RA 7166 (COMELEC Gun Ban Violation), and for Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165. However, in Criminal Case No. 2016-0161, accused-appellant was acquitted of Illegal Possession of Explosives.⁴⁶

The dispositive portion of the RTC Judgment reads:

WHEREFORE, premises considered, judgment is rendered:

In Crim. Case No. 2016-0159 for VIOLATION OF RULE 2, SEC. 1 (a) OF COMELEC RES. NO. 10015 IN RELATION TO SEC. 32 OF R.A. NO. 2177 (**COMELEC Gun Ban Violation**), the **ACCUSED CLARITO GALON y Velasco** is found GUILTY beyond reasonable doubt and is SENTENCED to an indeterminate period of IMPRISONMENT from a minimum of THREE (3) YEARS to a maximum of FIVE (5) YEARS. In ADDITION, he is SENTENCED to suffer disqualification to hold public office and deprivation of the right of suffrage.

In Crim. Case No. 2016-0160 for VIOLATION OF SEC. 11, ART. II OF R.A. NO. 9165 (*Possession of Dangerous Drugs*), the **ACCUSED CLARITO GALON y Velasco** is found GUILTY beyond reasonable doubt of actual possession of a total of 7.021 grams of "shabu" and is SENTENCED to an indeterminate period of IMPRISONMENT from a minimum of twenty (20) years and one (1) day to a maximum of twenty-one (21) years AND a FINE of Four Hundred Thousand Pesos (₱ 400,000.00).

In Crim. Case No. 2016-0161 for VIOLATION OF SEC. 1 OF R.A. NO. 9516 IN RELATION TO SEC. 3 OF P.D. 1866 (**Illegal Possession of Explosives**), the **ACCUSED CLARITO GALON y Velasco** is ACQUITTED on reasonable doubt for failure of the prosecution to prove beyond reasonable doubt that the accused was carrying a hand grenade without prior authority, license, or permit, pursuant to the *Abenes vs. Court of Appeals* jurisprudence.

ISSUE the corresponding mittimus for the immediate TRANSFER of the SAID ACCUSED to the New Bilibid Prisons, Muntinlupa City, National Capital Region. His 3 years, 2 months and 13 days period of detention, mostly at the Naga City District Jail, since his arrest on 24 March 2016 up to today so far shall be CREDITED for his service of sentence.

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⁴⁵ CA rollo, pp. 8-9.

⁴⁶ See Judgment, pp. 14-15; Records, Crim. Case No. 2016-0160, pp. 184-185.

The subject nine (9) sachets of “shabu” marked as JBB-1A 03-24-16, JBB-1B 03-24-16, JBB-1C 03-24-16, JBB-1D 03-24-16, JBB-1E 03-24-16, JBB-1F 03-24-16, JBB-1G 03-24-16, JBB-1H 03-24-16 & JBB-1I 03-24-16 in Case 0160 are hereby CONFISCATED AND FORFEITED in the favor of the government through the Philippine Drug Enforcement Agency (PDEA) for their proper disposal and destruction as the law directs.

The subject **one (1) piece hand grenade** marked as **JBB-4A 03-24-16** in Cases 0159 & 0161 is hereby ordered CONFISCATED AND FORFEITED in favor of the government and shall be disposed of in accordance with law.

6 June 2019 (6/6/19), Naga City Philippines.⁴⁷

Aggrieved, Galon appealed to the CA.

Ruling of the Court of Appeals

On January 27, 2021, the CA affirmed with modification the RTC's Judgment.⁴⁸

The dispositive portion of the CA's Decision states:

WHEREFORE, premises considered, the appeal is **DENIED**.

Accordingly, the assailed Judgment dated 06 June 2019 of the Regional Trial Court of Naga City, Branch 61, in Criminal Case Nos. 2016-0159 and 20160160 finding accused-appellant Clarito V. Galon guilty beyond reasonable doubt of violating Rule 2, Section 1 (a) COMELEC Resolution No. 10015 in relation to Section 32 of Republic Act (RA) No. 7166 and Section 11, Art. II of RA 9165 for Illegal possession of dangerous drugs is hereby **AFFIRMED with MODIFICATION**.

As modified, in Criminal Case No. 2016-1060, accused-appellant is sentenced to suffer the penalty of imprisonment of twenty years (20) and one day (1) to life imprisonment and to pay a fine of Four Hundred Thousand Pesos (P400,000.00). The rest of the Judgment stands.

SO ORDERED.⁴⁹

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⁴⁷ Records, Crim. Case No. 2016-0160, p. 185; Judgment, pp. 14-15.

⁴⁸ CA *rollo*, p. 27.

⁴⁹ Id. at 27-28.

Dissatisfied, Galon filed a notice of appeal.⁵⁰

Issues

1. Whether the arrest, search and seizure conducted upon the person of Galon was illegal.
2. Whether Galon is guilty beyond reasonable doubt of violation of the election gun ban; and
3. Whether the requirements for the proper custody of dangerous drugs under RA 9165 were complied with and the identity and integrity of the subject prohibited drugs were preserved.

Our Ruling

The legality of the arrest, search and seizure conducted

To begin with, Galon failed to raise the illegality of the arrest, search and seizure before he entered his plea. In *People v. Vallejo*,⁵¹ the Court held that any objection by the accused to an arrest without a warrant must be made before he enters his plea, otherwise the objection is deemed waived. Jurisprudence is settled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashal of the Information against him before his arraignment.

In this case, by entering a plea of not guilty and actively participating in the trial, Galon effectively waived his right to challenge the legality of his warrantless arrest.⁵²

In any event, We find it imperative to pass upon the substantial aspect of the case.

It is constitutionally enshrined that no search and seizure can lawfully be conducted without a valid warrant issued by a competent judicial authority. Section 2, Article III of the Constitution so ordains:

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⁵⁰ Id. at 3.

⁵¹ 461 Phil. 672, 686 (2003), citing *People v. Ereño*, 383 Phil. 1, 41 (2000)

⁵² *People v. Tumameng*, 347 Phil. 56, 75 (1997), citing *People v. Llenaresas*, 318 Phil. 748, 762 (1995), *People vs. Roque*, 308 Phil. 333, 343 (1994).

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

Section 3(2), Article III of the same Constitution mandates that any evidence obtained in violation of the right of the people under Section 2 shall be inadmissible for any purpose in any proceeding. The constitutional proscription against warrantless searches and seizures admits of certain exceptions. Search and/or seizure may be made without a warrant and the evidence obtained therefrom may be admissible in the following instances: (1) search incident to a lawful arrest; (2) search of a moving motor vehicle; (3) search in violation of customs laws; (4) seizure of evidence in plain view; (5) when the accused himself waives his right against unreasonable searches and seizures; and (6) stop-and-frisk situations.⁵³

The Court ruled in *People v. Vinecario*⁵⁴ that:

Searches conducted in checkpoints are valid for as long as they are warranted by the exigencies of public order and are conducted in a way least intrusive to motorists. x x x.

Judicial notice is taken of the existence of COMELEC Resolution No. 2735 imposing a gun ban during an election period issued pursuant to Section 52 (c) of the Omnibus Election Code x x x. The national and local elections in 1995 having been held on May 8, the present incident, which occurred on April 10, 1995, was well within the election period.

Although the general rule is that motorists and their vehicles as well as pedestrians passing through checkpoints may only be subjected to a routine inspection, vehicles may be stopped and extensively searched when there is probable cause which justifies a reasonable belief of the [officers] at the checkpoints that either the motorist is a law offender, or the contents of the vehicle are or have been instruments of some offense.

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⁵³ *People v. Escaño*, 380 Phil. 719, 734 (2000).

⁵⁴ 465 Phil. 192 (2004).

Probable cause has been defined as such facts and circumstances which could lead a reasonable, discreet and prudent [person] to believe that an offense has been committed, and that the objects sought in connection with the offense are in the place sought to be searched. The required probable cause that will justify a warrantless search and seizure is not determined by any fixed formula but is resolved according to the facts of each case.⁵⁵

The appellate court found that Galon attempted to evade the checkpoint when he was flagged down by PO2 Bagacina. Galon also appeared uneasy and failed to produce his driver's license, and the papers of the motorcycle he was driving. These factors justify a reasonable belief on the part of the law enforcers that Galon was an offender of the law or that he was in possession of illegal instruments. There was thus probable cause to justify the search conducted by the police officers at the checkpoint. PO2 Bagacina also testified that Galon voluntarily presented the sunglasses case when asked to empty his pockets. When Galon opened the case, PO2 Bagacina saw that it contained a hand grenade. Galon even threatened the police that he will detonate the grenade if he will be apprehended. Indeed, in this instance, the arresting officers were impelled to effect the arrest and thereafter, the seizure of the grenade.⁵⁶

Elements of Violation of election gun ban present in this case

The elements of Section 32 of RA 7166⁵⁷ are:

1. The person is bearing, carrying, or transporting firearms or other deadly weapons.
2. Such possession occurs during the election period.
3. The weapon is carried in a public place.

In this case, the prosecution established that the hand grenade was found in the possession of Galon,⁵⁸ who failed to present any valid authorization to carry the grenade outside his residence during the election period, or from January 10, 2016 up to June 8, 2016,

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⁵⁵ Id. at 206-208.

⁵⁶ CA rollo, pp. 18-21.

⁵⁷ *Abenes v. Court of Appeals*, 544 Phil. 614, 630 (2007), citing Luis B. Reyes, *The Revised Penal Code*, (2001), p. 17 and Antonio L. Gregorio, *Fundamentals of Criminal Law Review*, (1997), p. 10.

⁵⁸ TSN, August 1, 2016, p. 11.

pursuant to COMELEC Resolution No. 9981.⁵⁹ Undeniably, Galon was carrying the grenade while passing along the junction of Cararayan and Del Rosario service road which is a public place.⁶⁰

Thus, the RTC and the CA correctly found that all the elements of violation of election gun ban are present in this case.⁶¹

Compliance with the chain of custody rule of the subject prohibited drugs

In *People v. Torio*,⁶² the Court held:

[Republic Act] 9165 requires that the marking, physical inventory, and taking of photograph of the seized items be conducted immediately after seizure and confiscation of the same. The said law further requires that the physical inventory and taking of photograph of the seized items be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640, any elected public official, a representative from the media **AND** the Department of Justice (DOJ); or (b) if **after** the amendment of RA 9165 by RA 10640, any elected public official and a representative from either the National Prosecution Service **OR** the media.⁶³

It is essential that the identity of the dangerous drug be established with moral certainty since the drug itself forms an integral part of the *corpus delicti* of the crime. Moreover, the Court held in *People v. Balles*⁶⁴ that:

Thus, to show an *unbroken* chain of custody, the following links must be established by the prosecution: **first**, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; **second**, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; **third**, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and **fourth**, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.⁶⁵

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⁵⁹ The Election Period and the Period of Prohibited Acts, including the Ban on the Bearing, Carrying or Transporting of Firearms or Other Deadly Weapons, and the Employment, Availment or Engagement of the Services of Security Personnel or Bodyguard, is from January 10, 2016 up to June 8, 2016 (120 days before and 30 days after the Election Day)

⁶⁰ TSN, August 1, 2016, pp. 6-8.

⁶¹ CA *rollo*, pp. 14-15.

⁶² G.R. No. 225780, December 3, 2018.

⁶³ *Id.*

⁶⁴ 843 Phil. 771 (2018).

⁶⁵ *Id.* at 784-785.

Here, the testimonies of PO2 Bagacina and PO2 Asinas revealed that, after the confiscation of the nine heat sealed plastic sachets containing white crystalline granules, the members of the apprehending team immediately called the mandatory witnesses for the marking, inventory, and photography of the confiscated items. The prosecution's documentary and testimonial evidence showed that the marking, physical inventory, and taking of photographs of the seized items were all done at the place where Galon was apprehended and the same was witnessed by DOJ representative Aquino, media representative Solina and *Barangay Kagawad* Bragais, as evidenced by their signatures in the Receipt/Inventory of Property Seized form.⁶⁶ PO2 Bagacina then testified that, after inventory of the items, he personally brought the same to the police station, and kept it inside the steel cabinet where he had sole access.

Thereafter, PO2 Bagacina personally brought the nine heat sealed plastic sachets to the Camarines Sur Provincial Crime Laboratory for examination and submitted them to the duty receiving clerk at the crime laboratory, PO3 Lomatao, along with the Request for Laboratory Examination.⁶⁷ PO2 Bagacina affixed his signature⁶⁸ both on the rubber-stamped impression and on the internal Chain of Custody⁶⁹ being accomplished by the Crime Laboratory Office.

Upon receipt by PO3 Lomatao of the items for laboratory examination, he affixed his signature⁷⁰ on the rubber-stamped impression on the face of the Request for Laboratory Examination as well as the internal Chain of Custody.⁷¹ PO3 Lomatao placed the items inside a large transparent plastic sachet and wrote his marking JPRL March 25, 2016,⁷² and then turned-over the same to PI Zaldua for examination. After conducting a qualitative examination of the specimens submitted, PI Zaldua reported that the specimens gave positive result to the test for the presence of methamphetamine hydrochloride (shabu) as evidenced by Chemistry Report No. D-198-2016-CS.⁷³ Thereafter, PI Zaldua sealed each sachet with a masking tape and placed letter markings thereon, and affixed her signature

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⁶⁶ Records, Crim. Case No. 2016-0160, Exhibits "N-2" to "N-4," p. 13.

⁶⁷ Records, Crim. Case No. 2016-0160, Exhibit "Q," p. 36.

⁶⁸ Records, Crim. Case No. 2016-0160, Exhibit "Q-2," p. 36.

⁶⁹ Records, Crim. Case No. 2016-0160, Exhibit "U," p. 79.

⁷⁰ Records, Crim. Case No. 2016-0160, Exhibit "Q," p. 36.

⁷¹ Records, Crim. Case No. 2016-0160, Exhibit "U," p. 79.

⁷² TSN, December 1, 2016, p. 22.

⁷³ Records, Crim. Case No. 2016-0160, Exhibits "T" and "T-1," p. 45.

overlapping the masking tape to avoid tampering.⁷⁴ PI Zaldua placed the nine sachets inside the larger transparent plastic, which she also sealed and marked on which her initial signature overlapped the masking tape and the larger plastic sachet.⁷⁵

On the same date, March 25, 2016, PI Zaldua turned-over the sealed items to the evidence custodian for safekeeping as shown in the internal Chain of Custody Form.⁷⁶ Finally, on December 1, 2016, PI Zaldua retrieved the confiscated drugs from the evidence custodian for their presentation in court as written in the back page of the internal Chain of Custody Form.⁷⁷

In fine, We agree with the RTC and the CA that the integrity of the drugs seized remained intact. There was no doubt that the drugs seized from Galon were the ones submitted for examination and eventually presented in court.

However, there is a need to modify the penalty in Criminal Case No. 2016-0160. Pursuant to *People v. Obias, Jr.*,⁷⁸ Galon is meted the penalty of 20 years and one day, as minimum, to 30 years, as maximum, and a fine of ₱400,000.00.

WHEREFORE, the appeal is **DISMISSED**. The assailed January 27, 2021 Decision by the Court of Appeals in CA-G.R. CR HC No. 13687 is **AFFIRMED with MODIFICATION**.

In Criminal Case No. 2016-0159 for violation of Rule 2, Section 1 (a) of COMELEC Resolution No. 10015 in relation to Section 32 of Republic Act No. 7166 or COMELEC Gun Ban, accused-appellant Clarito Galon y Velasco is **GUILTY** beyond reasonable doubt. He is sentenced to an indeterminate period of imprisonment of three years, as minimum, to five years, as maximum. He is further **DISQUALIFIED** to hold public office and **DEPRIVED** of the right of suffrage.

In Criminal Case No. 2016-0160 for violation of Section 11, Article II of Republic Act No. 9165 or Illegal Possession of Dangerous Drugs, accused-appellant Clarito Galon y Velasco is **GUILTY** beyond reasonable doubt and is sentenced to suffer the penalty of imprisonment of 20 years and one day, as minimum to 30 years, as maximum, and to pay a fine of ₱400,000.00.

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⁷⁴ TSN, December 1, 2016, pp. 19 and 22.

⁷⁵ Id. at 23.

⁷⁶ Records, Crim. Case No. 2016-0160, Exhibit "U," p.79.



⁷⁷ Dorsal portion of Exhibit "U," records, Crim. Case No. 2016-0160, p. 79.

⁷⁸ G.R. No. 222187, March 25, 2019.

The Office of the Solicitor General’s manifestation in lieu of supplemental brief, pursuant to the Resolution dated March 7, 2022; the accused-appellant’s manifestation (in lieu of supplemental brief), pursuant to the Resolution dated March 7, 2022; and the letter dated April 8, 2022 of CSO4 Cesar T. Grecia, Chief Admin, Inmate Documents and Processing Division (IDPD), in compliance with the Resolution dated March 7, 2022, informing the Court that the accused-appellant was received for confinement in the New Bilibid Prison, Muntinlupa City, on November 9, 2019, are all **NOTED**.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court 

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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AUG 11 2022

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR-HC No. 13687)

The Hon. Presiding Judge
Regional Trial Court, Branch 61
Naga City, 4400 Camarines Sur
(Crim. Case Nos. 2016-0159 & 2016-0160)

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PUBLIC ATTORNEY’S OFFICE
Special and Appealed Cases Service
Counsel for Accused-Appellant
5/F, DOJ Agencies Building
NIA Road cor. East Avenue, Diliman
1101 Quezon City

Philippine Judicial Academy (x)
Supreme Court

Mr. Clarito V. Galon
Accused-Appellant
c/o The Director General
Bureau of Corrections
1770 Muntinlupa City

Judgment Division (x)
Supreme Court

The Director General
Bureau of Corrections
1770 Muntinlupa City

UR



