



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ERWIN LIBO-ON DELA CRUZ,
Petitioner,

G.R. No. 209387

Present:

CARPIO, *J.*, Chairperson,
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, *JJ.*

-versus-

PEOPLE OF THE
PHILIPPINES, Respondent.

Promulgated:
11 JAN 2016

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DECISION

LEONEN, *J.*:

Routine baggage inspections conducted by port authorities, although done without search warrants, are not unreasonable searches per se. Constitutional provisions protecting privacy should not be so literally understood so as to deny reasonable safeguards to ensure the safety of the traveling public.

For resolution is a Petition for Review on Certiorari¹ assailing the Decision² dated September 28, 2012 and the Resolution³ dated August 23,

¹ *Rollo*, pp. 8–21.

² *Id.* at 56–63. The case was docketed as CA-GR CEB CR. No. 01606. The Decision was penned by Associate Justice Ramon Paul L. Hernando (Chair) and concurred in by Associate Justices Gabriel T. Ingles and Zenaida T. Galapate-Laguilles of the Special Twentieth Division, Court of Appeals Cebu.

³ *Id.* at 68–69. The Resolution was penned by Associate Justice Ramon Paul L. Hernando and concurred in by Associate Justices Edgardo L. Delos Santos (Chair) and Gabriel T. Ingles of the Special Former Special Twentieth Division, Court of Appeals Cebu.

2013 of the Court of Appeals, Cebu City.⁴ The Court of Appeals affirmed⁵ the trial court's Judgment⁶ finding petitioner Erwin Libo-on Dela Cruz (Dela Cruz) guilty beyond reasonable doubt of possessing unlicensed firearms under Commission on Elections Resolution No. 7764⁷ in relation to Section 261⁸ of Batas Pambansa Blg. 881⁹ during the 2007 election period.¹⁰

Dela Cruz was an on-the-job trainee of an inter-island vessel.¹¹ He frequently traveled, "coming back and forth taking a vessel."¹² At around 12:00 noon of May 11, 2007, Dela Cruz was at a pier of the Cebu Domestic Port to go home to Iloilo.¹³ While buying a ticket, he allegedly left his bag on the floor with a porter.¹⁴ It took him around 15 minutes to purchase a ticket.¹⁵

Dela Cruz then proceeded to the entrance of the terminal and placed his bag on the x-ray scanning machine for inspection.¹⁶ The operator of the x-ray machine saw firearms inside Dela Cruz's bag.¹⁷

Cutie Pie Flores (Flores) was the x-ray machine operator-on-duty on May 11, 2007.¹⁸ She saw the impression of what appeared to be three (3) firearms inside Dela Cruz's bag.¹⁹ Upon seeing the suspected firearms, she called the attention of port personnel Archie Igot (Igot) who was the baggage inspector then.²⁰

⁴ Id. at 17, Petition.

⁵ Id. at 63, Court of Appeals Decision.

⁶ Id. at 23–31, Regional Trial Court's Consolidated Judgment. The Consolidated Judgment was penned by Presiding Judge Estela Alma A. Singco of Branch 12 of the Regional Trial Court, Cebu City.

⁷ Rules and Regulations on: (A) Bearing, Carrying or Transporting Firearms or Other Deadly Weapons; (B) Security Personnel or Bodyguards; (C) Bearing Arms by any Member of Security or Police Organization of Government Agencies and Other Similar Organization (D) Organization or Maintenance of Reaction Forces during the Election Period in connection with the May 14, 2007 National and Local Elections.

⁸ Batas Blg. 881 (1985), sec. 261(q) provides:
Section 261. Prohibited Acts. – The following shall be guilty of an election offense:

.....

(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.

⁹ Omnibus Election Code of The Philippines.

¹⁰ *Rollo*, p. 30, Regional Trial Court's Consolidated Judgment.

¹¹ Id. at 12, Petition, and 27, Regional Trial Court's Consolidated Judgment; defense's version of the facts as summarized by the trial court.

¹² Id. at 27, Regional Trial Court's Consolidated Judgment.

¹³ Id. at 25 and 27, Regional Trial Court's Consolidated Judgment, and 58, Court of Appeals Decision.

¹⁴ Id. at 27.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id. at 26–27.

¹⁸ Id. at 26.

¹⁹ Id.

²⁰ Id.

Igot asked Dela Cruz whether he was the owner of the bag.²¹ Dela Cruz answered Igot in the affirmative and consented to Igot's manual inspection of the bag.²²

"Port Police Officer Adolfo Abregana [(Officer Abregana)] was on duty at the terminal of the Cebu Domestic Port in Pier 1-G when his attention was called by . . . Igot."²³ Igot told Officer Abregana that there were firearms in a bag owned by a certain person.²⁴ Igot then pointed to the person.²⁵ That person was later identified as Dela Cruz.²⁶

Dela Cruz admitted that he was owner of the bag.²⁷ The bag was then inspected and the following items were found inside: three (3) revolvers; NBI clearance; seaman's book; other personal items; and four (4) live ammunitions placed inside the cylinder.²⁸ When asked whether he had the proper documents for the firearms, Dela Cruz answered in the negative.²⁹

Dela Cruz was then arrested and informed of his violation of a crime punishable by law.³⁰ He was also informed of his constitutional rights.³¹

In the Information dated November 19, 2003, Dela Cruz was charged with violation of Republic Act No. 8294 for illegal possession of firearms.³²

Criminal Case No. CBU -80084

That on or about the 11th day of May 2007, at about 12:45 p.m. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with the deliberate intent and without being authorized by law, did then and there possess and carry outside his residence one (1) Cal. 38 Smith [sic] & Wesson revolver without serial number; one (1) .22 Smith & Wesson Magnum revolver without serial number; one (1) North American Black Widow magnum revolver without serial number and four rounds of live ammunitions for cal. 38 without first securing the necessary license to possess and permit to carry from the proper authorities.

CONTRARY TO LAW.³³

²¹ Id.

²² Id.

²³ Id. at 58, Court of Appeals Decision. In the trial court's Consolidated Judgment, the port personnel was named "Archie" Igot. The Court of Appeals Decision refers to the port personnel as "Arcie" Igot.

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id. at 58-59.

²⁹ Id. at 11, Petition, and 59, Court of Appeals Decision.

³⁰ Id. at 59, Court of Appeals Decision.

³¹ Id.

³² Id. at 57.

³³ Id.

Subsequently, another Information was filed charging Dela Cruz with the violation of Commission on Elections Resolution No. 7764, in relation to Section 261 of Batas Pambansa Blg. 881:³⁴

Criminal Case No. CBU 80085

That on or about the 11th day of May 2007, at about 12:45 in the afternoon, which is within the election period for the May 14, 2007 National and Local Elections, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there possess and carry outside his residence the following:

One (1) cal. .38 Smith [sic] & Wesson revolver without serial number;
One (1) cal. .22 Smith & Wesson Magnum revolver without serial number;
One (1) North American Black Widow magnum revolver without serial number and four (4) rounds of live ammunitions for cal. 38.

CONTRARY TO LAW.³⁵

Dela Cruz entered a plea of not guilty to both charges during arraignment.³⁶

After trial, Branch 12 of the Regional Trial Court, Cebu City found Dela Cruz guilty beyond reasonable doubt of violating the Gun Ban under Commission on Elections Resolution No. 7764, in relation to Section 261 of Batas Pambansa Blg. 881 in Criminal Case No. CBU 80085.³⁷ Dela Cruz was sentenced to suffer imprisonment of one (1) year with disqualification from holding public office and the right to suffrage.³⁸

According to the trial court, the prosecution was able to prove beyond reasonable doubt that Dela Cruz committed illegal possession of firearms.³⁹ It proved the following elements: “(a) the existence of the subject firearm and (b) the fact that the accused who owned or possessed it does not have the license or permit to possess the same.”⁴⁰ The prosecution presented the firearms and live ammunitions found in Dela Cruz’s possession.⁴¹ It also presented three (3) prosecution witnesses who testified that the firearms were found inside Dela Cruz’s bag.⁴² The prosecution also presented a Certification that Dela Cruz did not file any application for license to

³⁴ Id. at 58.

³⁵ Id.

³⁶ Id. at 11, Petition, and 25, Regional Trial Court’s Consolidated Judgment.

³⁷ Id. at 30, Regional Trial Court’s Consolidated Judgment, and 59–60, Court of Appeals Decision.

³⁸ Id. at 30, Regional Trial Court’s Consolidated Judgment, and 60, Court of Appeals Decision.

³⁹ Id. at 27–28, Regional Trial Court’s Consolidated Judgment.

⁴⁰ Id.

⁴¹ Id. at 28.

⁴² Id. at 25–28.

possess a firearm, and he was not given authority to carry a firearm outside his residence.⁴³

The trial court also held that the search conducted by the port authorities was reasonable and, thus, valid:⁴⁴

Given the circumstances obtaining here, the court finds the search conducted by the port authorities reasonable and, therefore, not violative of the accused's constitutional rights. Hence, when the search of the bag of the accused revealed the firearms and ammunitions, accused is deemed to have been caught in *flagrante delicto*, justifying his arrest even without a warrant under Section 5(a), Rule 113 of the Rules of Criminal Procedure. The firearms and ammunitions obtained in the course of such valid search are thus admissible as evidence against [the] accused.⁴⁵

The trial court did not give credence to Dela Cruz's claim that the firearms were "planted" inside his bag by the porter or anyone who could have accessed his bag while he was buying a ticket.⁴⁶ According to the trial court, Dela Cruz's argument was "easy to fabricate, but terribly difficult to disprove."⁴⁷ Dela Cruz also did not show improper motive on the part of the prosecution witnesses to discredit their testimonies.⁴⁸

The trial court dismissed the case for violation of Republic Act No. 8294.⁴⁹ It held that "Republic Act No. 8294 penalizes simple illegal possession of firearms, provided that the person arrested committed 'no other crime.'"⁵⁰ Dela Cruz, who had been charged with illegal possession of firearms, was also charged with violating the Gun Ban under Commission on Elections Resolution No. 7764.⁵¹

The dispositive portion of the trial court's Consolidated Judgment reads:

WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of violation of COMELEC Resolution No. 7764 in relation to Section 261 of BP Blg. 881 in Criminal Case No. CBU-80085, and hereby sentences him to suffer an imprisonment for a period of one (1) year, and to suffer disqualification to hold public office and deprivation of the right to suffrage.

While Criminal Case No. CBU-80084 for Violation of RA 8294 is

⁴³ Id. at 29.

⁴⁴ Id. at 28.

⁴⁵ Id.

⁴⁶ Id. at 29.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id. at 60, Court of Appeals Decision.

⁵⁰ Id. at 29, Regional Trial Court's Consolidated Judgment.

⁵¹ Id. at 30.

hereby **DISMISSED**. Accordingly, the cash bond posted by accused therein for his provisional liberty is hereby ordered cancelled and released to said accused.

The subject firearms (Exhs. “H”, “I” & “J”), and the live ammunitions (Exhs. “K to K-2”) shall, however, remain in custodia legis for proper disposition of the appropriate government agency.

SO ORDERED.⁵² (Emphasis in the original)

On appeal, the Court of Appeals affirmed the trial court’s Judgment.⁵³ It held that the defense failed to show that the prosecution witnesses were moved by improper motive; thus, their testimonies are entitled to full faith and credit.⁵⁴ The acts of government authorities were found to be regular.⁵⁵

The Court of Appeals did not find Dela Cruz’s defense of denial meritorious.⁵⁶ “Denial as a defense has been viewed upon with disfavor by the courts due to the ease with which it can be concocted.”⁵⁷ Dela Cruz did not present any evidence “to show that he had authority to carry outside of residence firearms and ammunition during the period of effectivity of the Gun Ban [during] election time.”⁵⁸ The prosecution was able to prove Dela Cruz’s guilt beyond reasonable doubt.

The dispositive portion of the assailed Decision provides:

WHEREFORE, premises considered, the appeal is hereby **DENIED**. The assailed January 27, 2010 Consolidated Judgment of the Regional Trial Court (RTC), Branch 12 of Cebu City in Criminal Case CBU-59434 is hereby **AFFIRMED**. Costs on accused-appellant.

SO ORDERED.⁵⁹ (Emphasis in the original)

Dela Cruz filed a Motion for Reconsideration,⁶⁰ which was denied by the Court of Appeals in its Resolution dated August 23, 2013.⁶¹

Dela Cruz filed this Petition on November 4, 2013.⁶² In the Resolution⁶³ dated December 9, 2013, this court required respondent, through the Office of the Solicitor General, to submit its Comment on the

⁵² Id. at 30–31.

⁵³ Id. at 63, Court of Appeals Decision.

⁵⁴ Id. at 60–61.

⁵⁵ Id. at 61.

⁵⁶ Id. at 62.

⁵⁷ Id.

⁵⁸ Id. at 62–63.

⁵⁹ Id. at 63.

⁶⁰ Id. at 64–67.

⁶¹ Id. at 69, Court of Appeals Resolution.

⁶² Id. at 8, Petition.

⁶³ Id. at 72.

Petition. Respondent submitted its Comment⁶⁴ on March 6, 2014, which this court noted in the Resolution⁶⁵ dated March 19, 2014.

Dela Cruz claims that he was an on-the-job trainee for an inter-island vessel.⁶⁶ He was “well[-]acquainted with [the] inspection scheme [at the] ports.”⁶⁷ He would not have risked placing prohibited items such as unlicensed firearms inside his luggage knowing fully the consequences of such an action.⁶⁸

According to Dela Cruz, when he arrived at the port on May 11, 2007, he left his luggage with a porter to buy a ticket.⁶⁹ “A considerable time of fifteen minutes went by before he could secure the ticket while his luggage was left sitting on the floor with only the porter standing beside it.”⁷⁰ He claims that someone must have placed the unlicensed firearms inside his bag during the period he was away from it.⁷¹ He was surprised when his attention was called by the x-ray machine operator after the firearms were detected.⁷²

Considering the circumstances, Dela Cruz argues that there was no voluntary waiver against warrantless search.⁷³

In petitioner’s case, it may well be said that, with the circumstances attending the search of his luggage, he had no actual intention to relinquish his right against warrantless searches. He knew in all honest belief that when his luggage would pass through the routine x-ray examination, nothing incriminating would be recovered. It was out of that innocent confidence that he allowed the examination of his luggage. . . . **[H]e believed that no incriminating evidence w[ould] be found.** He knew he did not place those items. But what is strikingly unique about his situation is that a considerable time interval lapsed, creating an opportunity for someone else to place inside his luggage those incriminating items.⁷⁴ (Emphasis in the original)

Respondent argues that there was a valid waiver of Dela Cruz’s right to unreasonable search and seizure, thus warranting his conviction.⁷⁵ Dela Cruz was “caught in *flagrante delicto* carrying three (3) revolvers and four (4) live ammunitions when his bag went through the x-ray machine in the

⁶⁴ Id. at 83–95.

⁶⁵ Id. at 97.

⁶⁶ Id. at 14, Petition.

⁶⁷ Id.

⁶⁸ Id.

⁶⁹ Id. at 15.

⁷⁰ Id.

⁷¹ Id.

⁷² Id.

⁷³ Id. at 15–16.

⁷⁴ Id. at 16.

⁷⁵ Id. at 88 and 90–91, Comment.

Cebu Domestic Port on May 11, 2007, well within the election period.”⁷⁶ The firearms were seized during a routine baggage x-ray at the port of Cebu, a common seaport security procedure.⁷⁷

According to respondent, this case is similar to valid warrantless searches and seizures conducted by airport personnel pursuant to routine airport security procedures.⁷⁸

Records are also clear that Dela Cruz voluntarily waived his right to unreasonable searches and seizure.⁷⁹ The trial court found that Dela Cruz voluntarily gave his consent to the search.⁸⁰

Dela Cruz’s claim that his bag was switched is also baseless.⁸¹ The witnesses categorically testified that Dela Cruz was “in possession of the bag before it went through the x-ray machine, and he was also in possession of the same bag that contained the firearms when he was apprehended.”⁸²

Dela Cruz raised the lone issue of “whether the Court of Appeals gravely erred in finding [him] guilty beyond reasonable doubt of the crime charged despite the failure of the prosecution to establish his guilt beyond reasonable doubt[.]”⁸³

The issues for resolution in this case are:

First, whether petitioner Erwin Libo-on Dela Cruz was in possession of the illegal firearms within the meaning of the Commission on Elections Resolution No. 7764, in relation to Section 261 of Batas Pambansa Blg. 881;

Second, whether petitioner waived his right against unreasonable searches and seizures; and

Lastly, assuming that there was no waiver, whether there was a valid search and seizure in this case.

We deny the Petition.

⁷⁶ Id. at 88.

⁷⁷ Id.

⁷⁸ Id. at 89–90.

⁷⁹ Id. at 90.

⁸⁰ Id. at 92, *citing* the Regional Trial Court’s Consolidated Judgment, p. 6.

⁸¹ Id. at 92.

⁸² Id. at 92–93.

⁸³ Id. at 14, Petition.

I

The present criminal case was brought to this court under Rule 45 of the Rules of Court. The penalty imposed on petitioner by the trial court is material in determining the mode of appeal to this court. A petition for review on certiorari under Rule 45 must be differentiated from appeals under Rule 124, Section 13⁸⁴ involving cases where the lower court imposed on the accused the penalty of *reclusion perpetua*, life imprisonment, or, previously, death.⁸⁵

In *Mercado v. People*:⁸⁶

Where the Court of Appeals finds that the imposable penalty in a criminal case brought to it on appeal is at least *reclusion perpetua*, death or life imprisonment, then it should impose such penalty, refrain from entering judgment thereon, certify the case and elevate the entire records to this Court for review. *This will obviate the unnecessary, pointless and time-wasting shuttling of criminal cases between this Court and the Court of Appeals*, for by then this Court will acquire jurisdiction over the case from the very inception and can, without bothering the Court of Appeals which has fully completed the exercise of its jurisdiction, do justice in the case.

*On the other hand, where the Court of Appeals imposes a penalty less than reclusion perpetua, a review of the case may be had only by petition for review on certiorari under Rule 45 where only errors or questions of law may be raised.*⁸⁷ (Emphasis supplied, citations omitted)

It is settled that in petitions for review on certiorari, only questions of law are reviewed by this court.⁸⁸ The rule that only questions of law may be

⁸⁴ RULES OF COURT, Rule 124, sec. 13, as amended by A.M. No. 00-5-03-SC dated September 28, 2004, provides:

Sec. 13. Certification or appeal of case to the Supreme Court.—(a) Whenever the Court of Appeals finds that the penalty of death should be imposed, the court shall render judgment but refrain from making an entry of judgment and forthwith certify the case and elevate its entire record to the Supreme Court for review.

(b) Where the judgment also imposes a lesser penalty for offenses' committed on the same occasion or which arose out of the same occurrence that gave rise to the more severe offense for which the penalty of death is imposed, and the accused appeals, the appeal shall be included in the case certified for review to the Supreme Court.

(c) In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

See People v. Rocha, 558 Phil. 521, 530–535 (2007) [Per J. Chico-Nazario, Third Division], for a discussion on the difference between appeal for cases involving imposition of life imprisonment and *reclusion perpetua*, and automatic review for cases involving imposition of death penalty. *See also People v. Mateo*, 477 Phil. 752, 768–773 (2004) [Per J. Vitug, En Banc].

⁸⁵ *See* Republic Act No. 9346, entitled “An Act Prohibiting the Imposition of Death Penalty in the Philippines”

⁸⁶ 441 Phil. 216 (2002) [Per J. Bellosillo, Second Division]. The case was decided in 2002 before the amendment of the Rules in A.M. No. 00-5-3-SC dated September 28, 2004.

⁸⁷ *Id.* at 222–223.

⁸⁸ RULES OF COURT, Rule 45, sec. 1 provides:

SECTION 1. Filing of petition with Supreme Court.— A party desiring to appeal by certiorari from a

raised in a petition for review under Rule 45 is based on sound and practical policy considerations stemming from the differing natures of a question of law and a question of fact:

A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.⁸⁹

Concomitantly, factual findings of the lower courts as affirmed by the Court of Appeals are binding on this court.⁹⁰

In contrast, an appeal in a criminal case “throws the whole case open for review[.]”⁹¹ The underlying principle is that errors in an appealed judgment, even if not specifically assigned, may be corrected *motu proprio* by the court if the consideration of these errors is necessary to arrive at a just resolution of the case.⁹² Nevertheless, “the right to appeal is neither a natural right nor a part of due process, it being merely a statutory privilege which may be exercised only in the manner provided for by law[.]”⁹³

II

Petitioner argues that the firearms found in his bag were not his. Thus, he could not be liable for possessing the contraband. Key to the resolution of this case is whether petitioner possessed firearms without the necessary authorization from the Commission on Elections. Petitioner was charged under special laws: Republic Act No. 8294 and Commission on Elections Resolution No. 7764, in relation to Section 261 of Batas Pambansa Blg. 881.

judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

See Tan v. People, 604 Phil. 68, 78 (2009) [Per J. Chico-Nazario, Third Division].

⁸⁹ *Ruiz v. People*, 512 Phil. 127, 135 (2005) [Per J. Callejo, Sr., Second Division], citing *Republic v. Sandiganbayan*, 425 Phil. 752, 765–766 (2002) [Per C.J. Davide, Jr., En Banc].

⁹⁰ *See People v. Cardenas*, G. R. No. 190342, March 21, 2012, 668 SCRA 827, 844–845 [Per J. Sereno (now C.J.), Second Division].

⁹¹ *People v. Galigao*, 443 Phil. 246, 261 (2003) [Per J. Ynares-Santiago, En Banc], citing *People v. Taño*, 387 Phil. 465, 478 (2000) [Per J. Panganiban, En Banc] and *People v. Castillo*, 382 Phil. 499, 506 (2000) [Per J. Puno, En Banc].

⁹² *People v. Galigao*, 443 Phil. 246, 261 (2003) [Per J. Ynares-Santiago, En Banc], citing *People v. Pirame*, 384 Phil. 286, 300 (2000) [Per J. Quisumbing, Second Division].

⁹³ *People v. Judge Laguio, Jr.*, 547 Phil. 296, 309 (2007) [Per J. Garcia, First Division].

The law applicable is Section 2(a) of Commission on Elections Resolution No. 7764, which provides:

SECTION 2. Prohibitions. During the election period from January 14, 2007 it shall be unlawful for:

- a. Any person, including those possessing a permit to carry firearms outside of residence or place of business, to bear, carry or transport firearms or other deadly weapons in public places including any building, street, park, private vehicle or public conveyance. For the purpose firearm includes airgun, while deadly weapons include hand grenades or other explosives, except pyrotechnics[.]

Section 261(q) of Batas Pambansa Blg. 881 states:

Section 261. Prohibited Acts. – The following shall be guilty of an election offense:

.....

(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.

For a full understanding of the nature of the constitutional rights involved, we will examine three (3) points of alleged intrusion into the right to privacy of petitioner: first, when petitioner gave his bag for x-ray scanning to port authorities; second, when the baggage inspector opened petitioner's bag and called the Port Authority Police; and third, when the police officer opened the bag to search, retrieve, and seize the firearms and ammunition.

III

The first point of intrusion occurred when petitioner presented his bag for inspection to port personnel—the x-ray machine operator and baggage

inspector manning the x-ray machine station.⁹⁴ With regard to searches and seizures, the standard imposed on private persons is different from that imposed on state agents or authorized government authorities.

In *People v. Marti*,⁹⁵ the private forwarding and shipping company, following standard operating procedure, opened packages sent by accused Andre Marti for shipment to Zurich, Switzerland and detected a peculiar odor from the packages.⁹⁶ The representative from the company found dried marijuana leaves in the packages.⁹⁷ He reported the matter to the National Bureau of Investigation and brought the samples to the Narcotics Section of the Bureau for laboratory examination.⁹⁸ Agents from the National Bureau of Investigation subsequently took custody of the illegal drugs.⁹⁹ Andre Marti was charged with and was found guilty of violating Republic Act No. 6425, otherwise known as the Dangerous Drugs Act.¹⁰⁰

This court held that there was no unreasonable search or seizure.¹⁰¹ The evidence obtained against the accused was not procured by the state acting through its police officers or authorized government agencies.¹⁰² The Bill of Rights does not govern relationships between individuals; it cannot be invoked against the acts of private individuals.¹⁰³

If the search is made upon the request of law enforcers, a warrant must generally be first secured if it is to pass the test of constitutionality. However, if the search is made at the behest or initiative of the proprietor of a private establishment for its own and private purposes, as in the case at bar, and without the intervention of police authorities, the right against unreasonable search and seizure cannot be invoked for only the act of private individual, not the law enforcers, is involved. In sum, the protection against unreasonable searches and seizures cannot be extended to acts committed by private individuals so as to bring it within the ambit of alleged unlawful intrusion by the government.¹⁰⁴

Hence, by virtue of *Marti*, items seized pursuant to a reasonable search conducted by private persons are not covered by the exclusionary rule.¹⁰⁵

⁹⁴ *Rollo*, p. 28, Regional Trial Court's Consolidated Judgment.

⁹⁵ 271 Phil. 51 (1991) [Per J. Bidin, Third Division].

⁹⁶ *Id.* at 54–55.

⁹⁷ *Id.* at 55.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 56.

¹⁰¹ *Id.* at 60.

¹⁰² *Id.*

¹⁰³ *Id.* at 61.

¹⁰⁴ *Id.* at 62.

¹⁰⁵ *Id.* at 58. See *Stonehill, et al. v. Diokno, et al.*, 126 Phil. 738 (1967) [Per C.J. Concepcion, En Banc]. In *People v. Alicando*, 321 Phil. 656, 690–691 (1995) [Per J. Puno, En Banc], this court explained the doctrine of fruit of the poisonous tree as adopted in this jurisdiction: “We have not only constitutionalized the Miranda warnings in our jurisdiction. We have also adopted the libertarian exclusionary rule known as the ‘fruit of the poisonous tree,’ a phrase minted by Mr. Justice Felix

To determine whether the intrusion by the port personnel in this case was committed by private or public persons, we revisit the history and organizational structure of the Philippine Ports Authority.

Port security measures are consistent with the country's aim to develop transportation and trade in conjunction with national and economic growth. In 1974, the Philippine Ports Authority was created for the reorganization of port administration and operation functions.¹⁰⁶ The Philippine Ports Authority's Charter was later revised through Presidential Decree No. 857. The Revised Charter provided that the Authority may:

after consultation with relevant Government agencies, make rules or regulations for the planning, development, construction, maintenance, control, supervision and management of any Port or Port District and the services to be provided therein, and for the maintenance of good order therein, and generally for carrying out the process of this Decree.¹⁰⁷

The Philippine Ports Authority was subsequently given police authority through Executive Order No. 513,¹⁰⁸ which provides:

Sec. 2. Section 6 is hereby amended by adding a new paragraph to read as follows:

Section 6-c. Police Authority – The Authority shall have such police authority within the ports administered by it as may be necessary to carry out its powers and functions and attain its purposes and objectives, without prejudice to the exercise of the functions of the Bureau of Customs and other law enforcement bodies within the area. Such police authority shall include the following:

Frankfurter in the celebrated case of *Nardone v. United States*. According to this rule, once the primary source (the 'tree') is shown to have been unlawfully obtained, any secondary or derivative evidence (the 'fruit') derived from it is also inadmissible. Stated otherwise, illegally seized evidence is obtained as a direct result of the illegal act, whereas the 'fruit of the poisonous tree' is the indirect result of the same illegal act. The 'fruit of the poisonous tree' is at least once removed from the illegally seized evidence, but it is equally inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the originally illegally obtained evidence taints all evidence subsequently obtained. We applied this exclusionary rule in the recent case of *People vs. Salanga, et al.*, a ponencia of Mr. Justice Regalado. Salanga was the appellant in the rape and killing of a 15-year old barrio lass. He was, however, illegally arrested. Soldiers took him into custody. They gave him a body search which yielded a lady's underwear. The underwear was later identified as that of the victim. We acquitted Salanga. Among other reasons, we ruled that 'the underwear allegedly taken from the appellant is inadmissible in evidence, being a so-called fruit of the poisonous tree.'"

¹⁰⁶ See Pres. Decree No. 505 (1974), entitled Providing for the Reorganization of Port Administration and Operation Functions in the Country, Creating the Philippine Port Authority, Paving the Way for the Establishment of Individual, Autonomous Port/Industrial Zone Authorities in the Different Port Districts, and for Other Purposes.

¹⁰⁷ Pres. Decree No. 857 (1974), art. VIII, sec. 26(a).

¹⁰⁸ Exec. Order No. 513 (1978) is entitled Reorganizing the Philippine Ports Authority.

- a) To provide security to cargoes, port equipment, structure, facilities, personnel and documents: Provided, however, That in ports of entry, physical security to import and export cargoes shall be exercised jointly with the Bureau of Customs;
- b) *To regulate the entry to, exit from, and movement within the port, of persons and vehicles, as well as movement within the port of watercraft;*
- c) To maintain peace and order inside the port, in coordination with local police authorities;
- d) To supervise private security agencies operating within the port area; and
- e) To enforce rules and regulations promulgated by the Authority pursuant to law. (Emphasis supplied)

In 1992, the Cebu Port Authority was created to specifically administer all ports located in the Province of Cebu.¹⁰⁹ The Cebu Port Authority is a “public-benefit corporation . . . under the supervision of the Department of Transportation and Communications for purposes of policy coordination.”¹¹⁰ Control of the ports was transferred to the Cebu Port Authority on January 1, 1996, when its operations officially began.¹¹¹

In 2004, the Office for Transportation Security was designated as the “single authority responsible for the security of the transportation systems [in] the country[.]”¹¹² Its powers and functions included providing security measures for all transportation systems in the country:

- b. Exercise operational control and supervision over all units of law enforcement agencies and agency personnel providing security services in the transportation systems, except for motor vehicles in land transportation, jointly with the heads of the bureaus or agencies to which the units or personnel organically belong or are assigned;
- c. *Exercise responsibility for transportation security operations including, but not limited to, security screening of passengers, baggage and cargoes, and hiring, retention, training and testing of security screening personnel;*

¹⁰⁹ See Rep. Act No. 7621 (1992), entitled An Act Creating the Cebu Port Authority Defining its Powers and Functions, Providing Appropriation therefor, and for Other Purposes.

¹¹⁰ Rep. Act No. 7621 (1992), sec. 3.

¹¹¹ See Cebu Port Authority, Corporate Profile, History <http://www.cpa.gov.ph/index.php?option=com_content&view=article&id=142&mId=110&mItemId=111> (visited September 1, 2015).

¹¹² See Exec. Order No. 311 (2004), entitled Designating the Office for Transportation Security as the Single Authority Responsible for the Security of the Transportation Systems of the Country, Expanding its Powers and Functions and for Other Purposes. See also Exec. Order No. 277 (2004).

d. In coordination with the appropriate agencies and/or instrumentalities of the government, formulate, develop, promulgate and implement comprehensive security plans, policies, measures, strategies and programs to ably and decisively deal with any threat to the security of transportation systems, and continually review, assess and upgrade such security plans, policies, measures, strategies and programs, to improve and enhance transportation security and ensure the adequacy of these security measures;

e. Examine and audit the performance of transportation security personnel, equipment and facilities, and, thereafter, establish, on a continuing basis, performance standards for such personnel, equipment and facilities, including for the training of personnel;

f. Prepare a security manual/master plan or programme which shall prescribe the rules and regulations for the efficient and safe operation of all transportation systems, including standards for security screening procedures, prior screening or profiling of individuals for the issuance of security access passes, and determination of levels of security clearances for personnel of the OTS, the DOTC and its attached agencies, and other agencies of the government;

g. Prescribe security and safety standards for all transportation systems in accordance with existing laws, rules, regulations and international conventions;

h. Subject to the approval of the Secretary of the DOTC, issue Transportation Security Regulations/Rules and amend, rescind or revise such regulations or rules as may be necessary for the security of the transportation systems of the country[.]¹¹³
(Emphasis supplied)

The Cebu Port Authority has adopted security measures imposed by the Office for Transportation Security, including the National Security Programme for Sea Transport and Maritime Infrastructure.¹¹⁴

The Cebu Port Authority is clothed with authority by the state to oversee the security of persons and vehicles within its ports. While there is a distinction between port personnel and port police officers in this case, considering that port personnel are not necessarily law enforcers, both should be considered agents of government under Article III of the Constitution. The actions of port personnel during routine security checks at ports have the color of a state-related function.

In *People v. Malngan*,¹¹⁵ barangay tanod and the Barangay Chairman

¹¹³ Exec. Order No. 311 (2004), sec. 2.

¹¹⁴ See Cebu Port Authority Admin. Order No. 04 (2008) <http://www.cpa.gov.ph/external/pdf/all_admin_order/2008/AO_04-2008.pdf> (visited September 1, 2015).

¹¹⁵ 534 Phil. 404 (2006) [Per J. Chico-Nazario, En Banc]. This case applied the ruling in *Marti* on the

were deemed as law enforcement officers for purposes of applying Article III of the Constitution.¹¹⁶ In *People v. Lauga*,¹¹⁷ this court held that a “bantay bayan,” in relation to the authority to conduct a custodial investigation under Article III, Section 12¹¹⁸ of the Constitution, “has the color of a state-related function and objective insofar as the entitlement of a suspect to his constitutional rights[.]”¹¹⁹

Thus, with port security personnel’s functions having the color of state-related functions and deemed agents of government, *Marti* is inapplicable in the present case. Nevertheless, searches pursuant to port security measures are not unreasonable per se. The security measures of x-ray scanning and inspection in domestic ports are akin to routine security procedures in airports.

In *People v. Suzuki*,¹²⁰ the accused “entered the pre-departure area of the Bacolod Airport Terminal.”¹²¹ He was “bound for Manila via flight No. 132 of the Philippine Airlines and was carrying a small traveling bag and a box marked ‘Bongbong’s piaya.’”¹²² The accused “proceeded to the ‘walk-through metal detector,’ a machine which produces a red light and an alarm once it detects the presence of metallic substance or object.”¹²³ “Thereupon, the red light switched on and the alarm sounded, signifying the presence of metallic substance either in his person or in the box he was carrying.”¹²⁴ When the accused was asked to open the content of the box, he answered “open, open.”¹²⁵ Several packs of dried marijuana fruiting tops were then found inside the box.¹²⁶ Suzuki argued that the box was only given to him as “pasalubong” by a certain Pinky, whom he had sexual relations with the night before.¹²⁷ He did not know the contents of the box.¹²⁸

inapplicability of the Bill of Rights against private individuals. However, it found that *barangay tanod* and the *Barangay* Chairman are law enforcement officers for purposes of applying Article III, Section 12(1) and (3) of the Constitution.

¹¹⁶ Id. at 439.

¹¹⁷ 629 Phil. 522 (2010) [Per J. Perez, Second Division].

¹¹⁸ CONST., art. III, sec. 12 provides:

SECTION 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

¹¹⁹ *People v. Lauga*, 629 Phil. 522, 531 (2010) [Per J. Perez, Second Division].

¹²⁰ G.R. No. 120670, October 23, 2003, 414 SCRA 43 [Per J. Sandoval-Gutierrez, En Banc].

¹²¹ Id. at 45.

¹²² Id.

¹²³ Id. at 46.

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ Id.

¹²⁷ Id. at 47.

¹²⁸ Id.

This court in *Suzuki* found that the search conducted on the accused was a valid exception to the prohibition against warrantless searches as it was pursuant to a routine airport security procedure:¹²⁹

It is axiomatic that a reasonable search is not to be determined by any fixed formula but is to be resolved according to the facts of each case. Given the circumstances obtaining here, we find the search conducted by the airport authorities reasonable and, therefore, not violative of his constitutional rights. Hence, when the search of the box of *piaya* revealed several marijuana fruiting tops, appellant is deemed to have been caught in *flagrante delicto*, justifying his arrest even without a warrant under Section 5(a), Rule 113 of the Rules of Criminal Procedure. The packs of marijuana obtained in the course of such valid search are thus admissible as evidence against appellant.¹³⁰ (Citations omitted)

The reason behind it is that there is a reasonable reduced expectation of privacy when coming into airports or ports of travel:

*Persons may lose the protection of the search and seizure clause by exposure of their persons or property to the public in a manner reflecting a lack of subjective expectation of privacy, which expectation society is prepared to recognize as reasonable. Such recognition is implicit in airport security procedures. With increased concern over airplane hijacking and terrorism has come increased security at the nation's airports. Passengers attempting to board an aircraft routinely pass through metal detectors; their carry-on baggage as well as checked luggage are routinely subjected to x-ray scans. Should these procedures suggest the presence of suspicious objects, physical searches are conducted to determine what the objects are. There is little question that such searches are reasonable, given their minimal intrusiveness, the gravity of the safety interests involved, and the reduced privacy expectations associated with airline travel. Indeed, travelers are often notified through airport public address systems, signs and notices in their airline tickets that they are subject to search and, if any prohibited materials or substances are found, such would be subject to seizure. These announcements place passengers on notice that ordinary constitutional protections against warrantless searches and seizures do not apply to routine airport procedures.*¹³¹ (Emphasis supplied, citations omitted)

This rationale was reiterated more recently in *Sales v. People*.¹³² This court in *Sales* upheld the validity of the search conducted as part of the routine security check at the old Manila Domestic Airport—now Terminal 1 of the Ninoy Aquino International Airport.¹³³

¹²⁹ Id. at 53.

¹³⁰ Id. at 56–57.

¹³¹ Id. at 53–54.

¹³² G.R. No. 191023, February 6, 2013, 690 SCRA 141 [Per J. Villarama, Jr., First Division].

¹³³ Id. at 145 and 152.

Port authorities were acting within their duties and functions when it used x-ray scanning machines for inspection of passengers' bags.¹³⁴ When the results of the x-ray scan revealed the existence of firearms in the bag, the port authorities had probable cause to conduct a search of petitioner's bag. Notably, petitioner did not contest the results of the x-ray scan.

IV

Was the search rendered unreasonable at the second point of intrusion—when the baggage inspector opened petitioner's bag and called the attention of the port police officer?

We rule in the negative.

The port personnel's actions proceed from the authority and policy to ensure the safety of travelers and vehicles within the port. At this point, petitioner already submitted himself and his belongings to inspection by placing his bag in the x-ray scanning machine.

The presentation of petitioner's bag for x-ray scanning was voluntary. Petitioner had the choice of whether to present the bag or not. He had the option not to travel if he did not want his bag scanned or inspected. X-ray machine scanning and actual inspection upon showing of probable cause that a crime is being or has been committed are part of reasonable security regulations to safeguard the passengers passing through ports or terminals. Probable cause is:

reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to induce a cautious man to believe that the person accused is guilty of the offense charged. It refers to the existence of such facts and circumstances that can lead a reasonably discreet and prudent man to believe that an offense has been committed, and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law are in the place to be searched.¹³⁵

¹³⁴ Police authority has been delegated to different government agencies and instrumentalities through law. See TARIFF CODE, sec. 2203; Pres. Decree No. 1716-A (1980), entitled Further Amending Presidential Decree No. 66 dated November 20, 1972, Creating the Export Processing Zone Authority, sec. 7; and Exec. Order No. 903 (1983), entitled Providing for a Revision of Executive Order No. 778 Creating the Manila International Airport Authority, Transferring Existing Assets of the Manila International Airport to the Authority, and Vesting the Authority with Power to Administer and Operate the Manila International Airport. See also *Salvador v. People*, 502 Phil. 60 (2005) [Per J. Sandoval-Gutierrez, Third Division]; *Pacis v. Pamaran*, 155 Phil. 17 (1974) [Per J. Fernando, Second Division]; *Manikad, et al. v. Tanodbayan, et al.*, 212 Phil. 669 (1984) [Per J. Escolin, En Banc]; and *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181 (2006) [Per J. Carpio, En Banc].

¹³⁵ *People v. Mariacos*, 635 Phil. 315, 329 (2010) [Per J. Nachura, Second Division], citing *People v. Aruta*, 351 Phil. 868, 880 (1998) [Per J. Romero, Third Division], citing in turn *People v. Encinada*, 345 Phil. 301, 317 (1997) [Per J. Panganiban, Third Division].

It is not too burdensome to be considered as an affront to an ordinary person's right to travel if weighed against the safety of all passengers and the security in the port facility.

As one philosopher said, the balance between authority and an individual's liberty may be confined within the harm that the individual may cause others. John Stuart Mill's "harm principle" provides:

[T]he sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to someone else. The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.¹³⁶

Any perceived curtailment of liberty due to the presentation of person and effects for port security measures is a permissible intrusion to privacy when measured against the possible harm to society caused by lawless persons.

V

A third point of intrusion to petitioner's right to privacy occurred during petitioner's submission to port security measures. This court should determine whether the requirements for a valid waiver against unreasonable searches and seizures were met.

After detection of the firearms through the x-ray scanning machine and inspection by the baggage inspector, Officer Abregana was called to inspect petitioner's bag.

The Constitution safeguards a person's right against unreasonable

¹³⁶ John Stuart Mill, *On Liberty* <<https://www.gutenberg.org/files/34901/34901-h/34901-h.htm>> (visited September 1, 2015).

searches and seizures.¹³⁷ A warrantless search is presumed to be unreasonable.¹³⁸ However, this court lays down the exceptions where warrantless searches are deemed legitimate: (1) warrantless search incidental to a lawful arrest; (2) seizure in “plain view”; (3) search of a moving vehicle; (4) consented warrantless search; (5) customs search; (6) stop and frisk; and (7) exigent and emergency circumstances.¹³⁹

*In Caballes v. Court of Appeals:*¹⁴⁰

In case of consented searches or waiver of the constitutional guarantee against obtrusive searches, it is fundamental that to constitute a waiver, it must first appear that (1) the right exists; (2) that the person involved had knowledge, either actual or constructive, of the existence of such right; and (3) the said person had an actual intention to relinquish the right.¹⁴¹

Petitioner anchors his case on the claim that he did not validly consent to the search conducted by the port authorities. He argues that he did not have an actual intention to relinquish his right against a warrantless search.

In cases involving the waiver of the right against unreasonable searches and seizures, events must be weighed in its entirety. The trial court’s findings show that petitioner presented his bag for scanning in the x-ray machine.¹⁴² When his bag went through the x-ray machine and the firearms were detected, he voluntarily submitted his bag for inspection to the port authorities:

Prosecutor Narido:

Q. What did he tell you?

A. I asked him if I can check his bag?

Q. What was his response?

A. He consented and cooperated. I checked the bag.¹⁴³

¹³⁷ CONST., art. III, sec. 2 provides:

SECTION 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.

¹³⁸ *See People v. Aruta*, 351 Phil. 868 (1998) [Per J. Romero, Third Division].

¹³⁹ *See People v. Cogaed*, G.R. No. 200334, July 30, 2014, 731 SCRA 427, 440–441 [Per J. Leonen, Third Division]. *See also Villanueva v. People*, G.R. No. 199042, November 17, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/199042.pdf>> 5 [Per C.J. Sereno, First Division].

¹⁴⁰ 424 Phil. 263 (2002) [Per J. Puno, First Division].

¹⁴¹ *Id.* at 289. *See People v. Figueroa*, 390 Phil. 561 (2000) [Per C.J. Davide, First Division].

¹⁴² *Rollo*, pp. 26–28, Regional Trial Court’s Consolidated Judgment.

¹⁴³ *Id.* at 28.

It was after the port personnel's inspection that Officer Abregana's attention was called and the bag was inspected anew with petitioner's consent.¹⁴⁴

“[A]ppellate courts accord the highest respect to the assessment of witnesses' credibility by the trial court, because the latter was in a better position to observe their demeanor and deportment on the witness stand.”¹⁴⁵ We do not find anything erroneous as to the findings of fact of both the trial court and the Court of Appeals.

There was probable cause that petitioner was committing a crime leading to the search of his personal effects. As the trial court found:

Given the circumstances obtaining here, the court finds the search conducted by the port authorities reasonable and, therefore, not violative of the accused's constitutional rights. Hence, when the search of the bag of the accused revealed the firearms and ammunitions, accused is deemed to have been caught in flagrante delicto, justifying his arrest even without a warrant under Section 5(a), Rule 113 of the Rules of Criminal Procedure. The firearms and ammunitions obtained in the course of such valid search are thus admissible as evidence against [the] accused.¹⁴⁶

Similar to the accused in *People v. Kagui Malasugui*¹⁴⁷ and *People v. Omaweng*¹⁴⁸ who permitted authorities to search their persons and premises without a warrant, petitioner is now precluded from claiming an invalid warrantless search when he voluntarily submitted to the search on his person. In addition, petitioner's consent to the search at the domestic port was not given under intimidating or coercive circumstances.¹⁴⁹

This case should be differentiated from that of *Aniag, Jr. v. Commission on Elections*,¹⁵⁰ which involved the search of a moving vehicle at a checkpoint.¹⁵¹ In that case, there was no implied acquiescence to the search since the checkpoint set up by the police authorities was conducted without proper consultation, and it left motorists without any choice except to subject themselves to the checkpoint:

It may be argued that the seeming acquiescence of Arellano to the

¹⁴⁴ Id. at 25–27.

¹⁴⁵ *People v. Lacerna*, 344 Phil. 100, 124 (1997) [Per J. Panganiban, Third Division].

¹⁴⁶ *Rollo*, p. 28, Regional Trial Court's Consolidated Judgment.

¹⁴⁷ 63 Phil. 221 (1936) [Per J. Diaz, En Banc], citing I THOMAS COOLEY, CONSTITUTIONAL LIMITATIONS 631 (8th ed.).

¹⁴⁸ G.R. No. 99050, September 2, 1992, 213 SCRA 462, 470–471 [Per J. Davide, Jr., Third Division].

¹⁴⁹ See *Caballes v. Court of Appeals*, 424 Phil. 263, 289 (2002) [Per J. Puno, First Division].

¹⁵⁰ G.R. No. 104961, October 7, 1994, 237 SCRA 424 [Per J. Bellosillo, En Banc].

¹⁵¹ Id. at 429.

search constitutes an implied waiver of petitioner's right to question the reasonableness of the search of the vehicle and the seizure of the firearms.

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

In the case of petitioner, only his driver was at the car at that time it was stopped for inspection. As conceded by COMELEC, driver Arellano did not know the purpose of the checkpoint. In the face of fourteen (14) armed policemen conducting the operation, driver Arellano being alone and a mere employee of petitioner could not have marshalled the strength and the courage to protest against the extensive search conducted in the vehicle. In such scenario, the "implied acquiescence," if there was any, could not be more than a mere passive conformity on Arellano's part to the search, and "consent" given under intimidating or coercive circumstances is no consent within the purview of the constitutional guaranty.¹⁵² (Emphasis supplied, citations omitted)

We also cannot subscribe to petitioner's argument that there was no valid consent to the search because his consent was premised on his belief that there were no prohibited items in his bag. The defendant's belief that no incriminating evidence would be found does not automatically negate valid consent to the search when incriminating items are found. His or her belief must be measured against the totality of the circumstances.¹⁵³ Again, petitioner voluntarily submitted himself to port security measures and, as he claimed during trial, he was familiar with the security measures since he had been traveling back and forth through the sea port.

Consequently, we find respondent's argument that the present petition falls under a valid consented search and during routine port security procedures meritorious. The search conducted on petitioner's bag is valid.

¹⁵² Id. at 436-437.

¹⁵³ See *Caballes v. Court of Appeals*, 424 Phil. 263, 286 (2002) [Per J. Puno, First Division].

VI

The consented search conducted on petitioner's bag is different from a customs search.

Customs searches, as exception to the requirement of a valid search warrant, are allowed when "persons exercising police authority under the customs law . . . effect search and seizure . . . in the enforcement of customs laws."¹⁵⁴ The Tariff and Customs Code provides the authority for such warrantless search, as this court ruled in *Papa, et al. v. Mago, et al.*:¹⁵⁵

The Code authorizes persons having police authority under Section 2203 of the Tariff and Customs Code to enter, pass through or search any land, inclosure, warehouse, store or building, not being a dwelling house; and also to inspect, search and examine any vessel or aircraft and any trunk, package, box or envelope or any person on board, or stop and search and examine any vehicle, beast or person suspected of holding or conveying any dutiable or prohibited article introduced into the Philippines contrary to law, without mentioning the need of a search warrant in said cases.¹⁵⁶
(Citation omitted)

The ruling in *Papa* was echoed in *Salvador v. People*,¹⁵⁷ in that the state's policy to combat smuggling must not lose to the difficulties posed by the debate on whether the state has the duty to accord constitutional protection to dutiable articles on which duty has not been paid, as with a person's papers and/or effects.¹⁵⁸

Hence, to be a valid customs search, the requirements are: (1) the person/s conducting the search was/were exercising police authority under customs law; (2) the search was for the enforcement of customs law; and (3) the place searched is not a dwelling place or house. Here, the facts reveal that the search was part of routine port security measures. The search was not conducted by persons authorized under customs law. It was also not motivated by the provisions of the Tariff and Customs Code or other customs laws. Although customs searches usually occur within ports or terminals, it is important that the search must be for the enforcement of customs laws.

VII

¹⁵⁴ *Papa, et al. v. Mago, et al.*, 130 Phil. 886, 902 (1968) [Per J. Zaldivar, En Banc].

¹⁵⁵ 130 Phil. 886 (1968) [Per J. Zaldivar, En Banc].

¹⁵⁶ *Id.* at 901–902.

¹⁵⁷ 502 Phil. 60 (2005) [Per J. Sandoval-Gutierrez, Third Division].

¹⁵⁸ *Id.* at 72.

In violations of the Gun Ban, the accused must be “in possession of a firearm . . . outside of his residence within the period of the election gun ban imposed by the COMELEC *sans* authority[.]”¹⁵⁹

In *Abenes v. Court of Appeals*,¹⁶⁰ this court enumerated the elements for a violation of the Gun Ban: “1) the person is bearing, carrying, or transporting firearms or other deadly weapons; 2) such possession occurs during the election period; and, 3) the weapon is carried in a public place.”¹⁶¹ This court also ruled that under the Omnibus Election Code, the burden to show that he or she has a written authority to possess a firearm is on the accused.¹⁶²

We find that the prosecution was able to establish all the requisites for violation of the Gun Ban. The firearms were found inside petitioner’s bag. Petitioner did not present any valid authorization to carry the firearms outside his residence during the period designated by the Commission on Elections. He was carrying the firearms in the Cebu Domestic Port, which was a public place.

However, petitioner raised the following circumstances in his defense: (1) that he was a frequent traveler and was, thus, knowledgeable about the security measures at the terminal; (2) that he left his bag with a porter for a certain amount of time; and (3) that he voluntarily put his bag on the x-ray machine for voluntary inspection. All these circumstances were left uncontested by the prosecution.

This court is now asked to determine whether these circumstances are sufficient to raise reasonable doubt on petitioner’s guilt.

When petitioner claimed that someone planted the illegal firearms in his bag, the burden of evidence to prove this allegation shifted to him. The shift in the burden of evidence does not equate to the reversal of the presumption of innocence. In *People v. Villanueva*,¹⁶³ this court discussed the difference between burden of proof and burden of evidence, and when

¹⁵⁹ See *Escalante v. People*, G.R. No. 192727, January 9, 2013, 688 SCRA 362, 373 [Per J. Reyes, First Division].

¹⁶⁰ 544 Phil. 614 (2007) [Per J. Austria-Martinez, Third Division]. In this case, the accused was convicted of violating the Gun Ban but was acquitted of violating Presidential Decree No. 1866 (Id. at 634). This court held: “While the prosecution was able to establish the fact that the subject firearm was seized by the police from the possession of the petitioner, without the latter being able to present any license or permit to possess the same, such fact alone is not conclusive proof that he was not lawfully authorized to carry such firearm. In other words, such fact does not relieve the prosecution from its duty to establish the lack of a license or permit to carry the firearm by clear and convincing evidence, like a certification from the government agency concerned” (Id. at 631).

¹⁶¹ Id. at 633. *Abenes* involved the Commission on Elections’ imposed Gun Ban through Rep. Act No. 7166 (1991), sec. 32, which is substantially the same with COMELEC Resolution No. 7764 (2006), sec. 2, in relation to Batas Blg. 881 (1985), sec. 261.

¹⁶² Id. at 632.

¹⁶³ 536 Phil. 998 (2006) [Per J. Ynares-Santiago, First Division].

the burden of evidence shifts to the accused:

Indeed, in criminal cases, the prosecution bears the onus to prove beyond reasonable doubt not only the commission of the crime but likewise to establish, with the same quantum of proof, the identity of the person or persons responsible therefor. *This burden of proof does not shift to the defense but remains in the prosecution throughout the trial. However, when the prosecution has succeeded in discharging the burden of proof by presenting evidence sufficient to convince the court of the truth of the allegations in the information or has established a prima facie case against the accused, the burden of evidence shifts to the accused making it incumbent upon him to adduce evidence in order to meet and nullify, if not to overthrow, that prima facie case.*¹⁶⁴ (Emphasis supplied, citation omitted)

Petitioner failed to negate the prosecution's evidence that he had *animus possidendi* or the intent to possess the illegal firearms. In *People v. De Gracia*,¹⁶⁵ this court elucidated on the concept of *animus possidendi* and the importance of the intent to commit an act prohibited by law as differentiated from criminal intent.¹⁶⁶ The accused was charged with the qualified offense of illegal possession of firearms in furtherance of rebellion under Presidential Decree No. 1866 resulting from the *coup d'etat* staged in 1989 by the Reform Armed Forces Movement - Soldiers of the Filipino People.¹⁶⁷ This court held that the actions of the accused established his intent to possess the illegal firearms:

When the crime is punished by a special law, as a rule, intent to commit the crime is not necessary. It is sufficient that the offender has the intent to perpetrate the act prohibited by the special law. *Intent to commit the crime and intent to perpetrate the act must be distinguished. A person may not have consciously intended to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself. In the first (intent to commit the crime), there must be criminal intent; in the second (intent to perpetrate the act) it is enough that the prohibited act is done freely and consciously.*

In the present case, a distinction should be made between criminal intent and intent to possess. *While mere possession, without criminal intent, is sufficient to convict a person for illegal possession of a firearm, it must still be shown that there was animus possidendi or an intent to possess on the part of the accused.* Such intent to possess is, however, without regard to any other criminal or felonious intent which the accused may have harbored in possessing the firearm. Criminal intent here refers to the intention of the accused to commit an offense with the use of an unlicensed firearm. This is not important in convicting a person under Presidential Decree No. 1866. *Hence, in order that one may be found guilty of a violation of the decree, it is sufficient that the accused had no*

¹⁶⁴ Id. at 1003–1004.

¹⁶⁵ G.R. Nos. 102009–10, July 6, 1994, 233 SCRA 716 [Per J. Regalado, Second Division].

¹⁶⁶ Id. at 726–727.

¹⁶⁷ Id. at 720–721.

authority or license to possess a firearm, and that he intended to possess the same, even if such possession was made in good faith and without criminal intent.

Concomitantly, a temporary, incidental, casual, or harmless possession or control of a firearm cannot be considered a violation of a statute prohibiting the possession of this kind of weapon, such as Presidential Decree No. 1866. Thus, although there is physical or constructive possession, for as long as the animus possidendi is absent, there is no offense committed.

Coming now to the case before us, there is no doubt in our minds that appellant De Gracia is indeed guilty of having intentionally possessed several firearms, explosives and ammunition without the requisite license or authority therefor. Prosecution witness Sgt. Oscar Abenia categorically testified that he was the first one to enter the Eurocar Sales Office when the military operatives raided the same, and he saw De Gracia standing in the room and holding the several explosives marked in evidence as Exhibits D to D-4. At first, appellant denied any knowledge about the explosives. Then, he alternatively contended that his act of guarding the explosives for and in behalf of Col. Matillano does not constitute illegal possession thereof because there was no intent on his part to possess the same, since he was merely employed as an errand boy of Col. Matillano. His pretension of impersonal or indifferent material possession does not and cannot inspire credence.

Animus possidendi is a state of mind which may be determined on a case to case basis, taking into consideration the prior and coetaneous acts of the accused and the surrounding circumstances. What exists in the realm of thought is often disclosed in the range of action. It is not controverted that appellant De Gracia is a former soldier, having served with the Philippine Constabulary prior to his separation from the service for going on absence without leave (AWOL). We do not hesitate, therefore, to believe and conclude that he is familiar with and knowledgeable about the dynamites, “molotov” bombs, and various kinds of ammunition which were confiscated by the military from his possession. As a former soldier, it would be absurd for him not to know anything about the dangerous uses and power of these weapons. A fortiori, he cannot feign ignorance on the import of having in his possession such a large quantity of explosives and ammunition. Furthermore, the place where the explosives were found is not a military camp or office, nor one where such items can ordinarily but lawfully be stored, as in a gun store, an arsenal or armory. Even an ordinarily prudent man would be put on guard and be suspicious if he finds articles of this nature in a place intended to carry out the business of selling cars and which has nothing to do at all, directly or indirectly, with the trade of firearms and ammunition.¹⁶⁸ (Emphasis supplied, citations omitted)

The disquisition in *De Gracia* on the distinction between criminal intent and intent to possess, which is relevant to convictions for illegal possession of firearms, was reiterated in *Del Rosario v. People*.¹⁶⁹ This court ruled that “[i]n the absence of *animus possidendi*, the possessor of a

¹⁶⁸ Id. at 726–728.

¹⁶⁹ *Del Rosario v. People*, 410 Phil. 642, 664 (2001) [Per J. Pardo, First Division].

firearm incurs no criminal liability.”¹⁷⁰

In this case, petitioner failed to prove that his possession of the illegal firearms seized from his bag was “temporary, incidental, casual, or harmless possession[.]”¹⁷¹ As put by the trial court, petitioner’s claim that anyone could have planted the firearms in his bag while it was unattended is flimsy.¹⁷² There are dire consequences in accepting this claim at face value, particularly that no one will be caught and convicted of illegal possession of firearms.

Courts must also weigh the accused’s claim against the totality of the evidence presented by the prosecution. This includes determination of: (1) the motive of whoever allegedly planted the illegal firearm(s); (2) whether there was opportunity to plant the illegal firearm(s); and (3) reasonableness of the situation creating the opportunity.

Petitioner merely claims that someone must have planted the firearms when he left his bag with the porter. He did not identify who this person could have been and he did not state any motive for this person to plant the firearms in his possession, even if there was indeed an opportunity to plant the firearms.

However, this court is mindful that, owing to the nature of his work, petitioner was a frequent traveler who is well-versed with port security measures. We cannot accept that an average reasonable person aware of travel security measures would leave his belongings with a stranger for a relatively long period of time. Also, records show that petitioner had only one (1) bag. There was no evidence to show that a robust young man like petitioner would have need of the porter’s services. The defense did not identify nor present this porter with whom petitioner left his bag.

VIII

The trial court was correct when it dismissed Criminal Case No. CBU-80084 for violation of Republic Act No. 8294, otherwise known as illegal possession of firearms. Section 1 of Republic Act No. 8294 provides:

SECTION 1. Section 1 of Presidential Decree No. 1866, as amended, is hereby further amended to read as follows:

¹⁷⁰ Id.

¹⁷¹ *People v. De Gracia*, G.R. Nos. 102009–10, July 6, 1994, 233 SCRA 716, 727 [Per J. Regalado, Second Division].

¹⁷² *Rollo*, p. 29, Regional Trial Court’s Consolidated Judgment.

SECTION 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition. – The penalty of *prision correccional* in its maximum period and a fine of not less than Fifteen thousand pesos (P15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: *Provided, That no other crime was committed.* (Emphasis supplied)

*Agote v. Judge Lorenzo*¹⁷³ already settled the question of whether there can be a “separate offense of illegal possession of firearms and ammunition if there is another crime committed[.]”¹⁷⁴ In that case, the petitioner was charged with both illegal possession of firearms and violation of the Gun Ban under Commission on Elections Resolution No. 2826.¹⁷⁵ This court acquitted petitioner in the case for illegal possession of firearms since he simultaneously violated the Gun Ban.¹⁷⁶ This court also held that the unlicensed firearm need not be actually used in the course of committing the other crime for the application of Section 1 of Republic Act No. 8294.¹⁷⁷

Similarly, *Madrigal v. People*¹⁷⁸ applied the ruling in *Agote* and held that Section 1 of Republic Act No. 8294 is express in its terms that a person may not be convicted for illegal possession of firearms if another crime was committed.¹⁷⁹

IX

We note that the trial court imposed the penalty of imprisonment for a period of one (1) year and to suffer disqualification to hold public office and deprivation of the right to suffrage. Under Section 264 of Batas Pambansa Blg. 881, persons found guilty of an election offense “shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation.”¹⁸⁰ The Indeterminate Sentence Law applies to

¹⁷³ 502 Phil. 318 (2005) [Per J. Garcia, En Banc].

¹⁷⁴ Id. at 332.

¹⁷⁵ Id. at 323–324.

¹⁷⁶ Id. at 335.

¹⁷⁷ Id. at 331–334.

¹⁷⁸ 584 Phil. 241 (2008) [Per J. Corona, First Division].

¹⁷⁹ Id. at 245.

¹⁸⁰ Batas Blg. 881 (1985), sec. 264 provides:

SECTION 264. Penalties. – Any person found guilty of any election offense under this Code shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be sentenced to deportation which shall be enforced after the prison term has been served. Any political party found

offenses punished by both the Revised Penal Code and special laws.¹⁸¹

The penalty to be imposed is a matter of law that courts must follow. The trial court should have provided minimum and maximum terms for petitioner's penalty of imprisonment as required by the Indeterminate Sentence Law.¹⁸² Accordingly, we modify the penalty imposed by the trial court. Based on the facts, we deem it reasonable that petitioner be penalized with imprisonment of one (1) year as minimum to two (2) years as maximum.¹⁸³

X

The records are unclear whether petitioner is currently detained by the state or is out on bail. Petitioner's detention is relevant in determining whether he has already served more than the penalty imposed upon him by the trial court as modified by this court, or whether he is qualified to the credit of his preventive imprisonment with his service of sentence.

Article 29¹⁸⁴ of the Revised Penal Code states:

ART. 29. Period of preventive imprisonment deducted from term of imprisonment. – Offenders or accused who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment if the detention prisoner agrees voluntarily in writing after being informed of the effects thereof and with the assistance of counsel to abide by the same disciplinary rules imposed upon convicted prisoners, except in the following cases:

guilty shall be sentenced to pay a fine of not less than ten thousand pesos, which shall be imposed upon such party after criminal action has been instituted in which their corresponding officials have been found guilty.

¹⁸¹ See *Uriarte v. People*, 540 Phil. 477, 501 (2006) [Per J. Callejo, Sr., First Division] and *People v. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555, 579–581 [Per J. Regalado, En Banc].

¹⁸² Act No. 4103 (1933), sec. 1, as amended by Act No. 4225 (1935), sec. 1, provides:

SEC. 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and to a minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

See *Escalante v. People*, G.R. No. 192727, January 9, 2013, 688 SCRA 362, 374 [Per J. Reyes, First Division].

¹⁸³ In *Abenes v. Court of Appeals*, 544 Phil. 614, 634 (2007) [Per J. Austria-Martinez, Third Division], this court imposed the indeterminate sentence of one (1) year of imprisonment as minimum to two (2) years of imprisonment as maximum. In *Madrigal v. People*, 584 Phil. 241, 245 (2008) [Per J. Corona, First Division], the accused was “sentenced to suffer the indeterminate penalty of imprisonment from one year as minimum to three years as maximum[.]”

¹⁸⁴ As amended by Rep. Act No. 10592 (2012), sec. 1.

1. When they are recidivists, or have been convicted previously twice or more times of any crime; and
2. When upon being summoned for the execution of their sentence they have failed to surrender voluntarily.

If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, he shall do so in writing with the assistance of a counsel and shall be credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment.

Credit for preventive imprisonment for the penalty of reclusion perpetua shall be deducted from thirty (30) years.

Whenever an accused has undergone preventive imprisonment for a period equal to the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is under review. Computation of preventive imprisonment for purposes of immediate release under this paragraph shall be the actual period of detention with good conduct time allowance: Provided, however, That if the accused is absent without justifiable cause at any stage of the trial, the court may motu proprio order the rearrest of the accused: Provided, finally, That recidivists, habitual delinquents, escapees and persons charged with heinous crimes are excluded from the coverage of this Act. In case the maximum penalty to which the accused may be sentenced is *lestierro* [sic], he shall be released after thirty (30) days of preventive imprisonment.

In case credit of preventive imprisonment is due, petitioner must first signify his agreement to the conditions set forth in Article 29 of the Revised Penal Code.¹⁸⁵ If petitioner has already served more than the penalty imposed upon him by the trial court, then his immediate release from custody is in order unless detained for some other lawful cause.¹⁸⁶

WHEREFORE, the Petition is **DENIED**. The Court of Appeals Decision dated September 8, 2012 and the Resolution dated August 23, 2013 in CA-GR CEB CR No. 01606 are **AFFIRMED** with **MODIFICATIONS**. Petitioner Erwin Libo-On Dela Cruz is sentenced to imprisonment of one (1) year as minimum to two (2) years as maximum in accordance with the Indeterminate Sentence Law. The period of his preventive imprisonment shall be credited in his favor if he has given his written conformity to abide by the disciplinary rules imposed upon convicted prisoners in accordance with Article 29 of the Revised Penal

¹⁸⁵ *People v. Oloverio*, G.R. No. 211159, March 28, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/march2015/211159.pdf>> 17-18 [Per J. Leonen, Second Division].

¹⁸⁶ *Agote v. Judge Lorenzo*, 502 Phil. 318, 335 (2005) [Per J. Garcia, En Banc].

Code, as amended, and if he is not out on bail.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

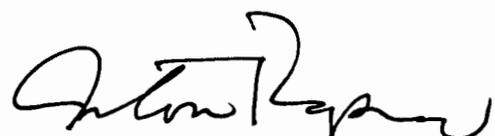

ARTURO D. BRION
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


JOSE CATRAL MENDOZA
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.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII 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.



MARIA LOURDES P. A. SERENO
Chief Justice