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Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

**BRYAN TA-ALA y G.R. No. 254800**  
**CONSTANTINO,**

*Petitioner,*

-versus-

Members:  
LEONEN, *SAJ, Chairperson,*  
LAZARO-JAVIER,  
LOPEZ, M.,  
LOPEZ, J., and  
KHO, JR., *JJ.*

**PEOPLE OF THE PHILIPPINES,** Promulgated:

*Respondent.*

JUN 20 2022

X-----X

DECISION

**LAZARO-JAVIER, J.:**

**The Case**

This Petition for Review on Certiorari<sup>1</sup> seeks to reverse the following dispositions of the Court of Appeals in CA-G.R. SP No. 10697 and CA-G.R. SP No. 10873:

- 1) **Decision** dated May 9, 2019<sup>2</sup> affirming the denial of petitioner's Motion to Quash in Criminal Case No. 16-43163 and Omnibus Motion to Consolidate, Determine Probable Cause, Allow to Post

<sup>1</sup> This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, *rollo*, pp. 18-52.  
<sup>2</sup> Penned by Associate Justice Edward B. Contreras, concurred in by Associate Justices Gabriel T. Ingles, and Dorothy P. Montejo-Gonzaga, *rollo*, pp. 55-73.

Bail, Quash Information and Suppress Evidence Illegally Obtained in Criminal Case No. 16-43487; and

- 2) **Resolution** dated January 30, 2020<sup>3</sup> denying petitioner's Motion for Reconsideration.

### Antecedents

#### *The Warrantless Arrest*

On August 6, 2016, SPO4 Liberato S. Yorpo (*SPO4 YORPO*) and SPO1 Jerome G. Jambaro (*SPO1 JAMBARO*) of the Criminal Investigation and Detection Group (*CIDG*), Negros Occidental effected the warrantless arrest of petitioner Bryan Ta-ala y Constantino and one Wilford Palma y Zarceno (*Palma*). Two days later, on August 8, 2016, these police officers executed an Affidavit of Arrest<sup>4</sup> before Assistant State Prosecutor Michael A. Vito Cruz (*ASP Vito Cruz*), thus:

#### AFFIDAVIT OF ARREST

We, SPO4 Liberato S. Yorpo and SPO1 Jerome G[.] Jambaro both [of] legal age, married, bonafide members of Philippine National Police assigned at Criminal Investigation and Detection Group Negros Occidental based at Camp Alfredo M. Montelibano Sr[.], Brgy[.] Estefania, Bacolod City, Negros Occidental having been sworn to in accordance with law, do hereby depose and say;

On August 5, 2016 at about 9:00 o'clock in the morning[,] PCI ARIEL S. ARTILLERO, Provincial Officer, CIDG Negros Occidental informed us that our office was tapped by a team from CIDG Camp Crame, Quezon City led by PSUPT[.] RANDY GLENN SILVIO and PCI MICHAEL VILLANUEVA for a possible police operation anytime within the area of Bacolod City;

On August 6, 2016 at about 8:00 o'clock in the morning in an undisclosed place[,] SUPT[.] RANDY GLENN SILVIO conducted a short briefing about the operation informing us that they received an intelligence report from US Homeland Security and Bureau of Customs that a package containing a contraband particularly firearms and its accessories coming from United States of America (USA) was shipped to the Philippines *via* ATLAS Shippers International Incorporated and it will be delivered to Bacolod City;

PSUPT[.] RANDY GLENN SILVIO directed us to pose as errand boys in ATLAS Office at Villa Cristina Subdivision, Brgy[.] Tangub, Bacolod City and to wait for the suspects to arrive to claim their package and conduct arrest if warrants (sic) with coordination with the other PNP Units;

<sup>3</sup> Id. at 76-77.

<sup>4</sup> Id. at 80-81.

At about 11:00 o'clock in the morning of same date, we saw a silver gray Toyota Hilux pick-up truck with Conduction Sticker 7469 arrived (sic) and stopped (sic) at the entrance gate of ATLAS Office. **A male person alighted from the driver's side and entered the gate and claimed the package** using the name of Michael Diamante;

The claimed package was marked with ATLAS Shippers International Inc. with addressee Leo Mendieta of #20 Regina Drive, Doña Juliana Subd., Bacolod City[,] Negros Occidental, with contact no. (0921)622-0091 from sender Miko Claridad of 7325 Birch St. BREA CA 92821 with contact no. (0714) 638-7142 with HBL No. 1342580;

**We carried the said box and we were instructed by the claimant Michael Diamante to place it at the back of the driver's seat. After we put the box, he immediately opened and checked the content of the box exposing to us. While the driver immediately alighted and also checked the box wherein a handle of a pistol was brandishing on his back;**


Upon **seeing the firearm and knowing the content** of the box[,] we introduced ourselves as police [officers] and **restrained the driver and the person who claimed the package** while our companions who discreetly positioned in front of the pickup truck hastily rushed towards us and helped;

**A Glock 26 9mm cal[.] pistol with Serial No: ELR043** chamber loaded (1 bullet) and magazine loaded with fourteen (14) rounds of live ammos and an extra magazine loaded with fourteen (14) rds[.] of live ammos were **recovered from** the possession and control of **the driver whom we later identified as Bryan Ta-ala [y] Constantino** and the person who claimed the package as Michael Diamante whom we later identified his true name as Wilford Palma y Zarceno when asked to present documents, **they could not present any pertinent documents authorizing him or them to possess or carry the said firearms** and likewise, the **firearms accessories** inside the box which was placed at the back seat;

**Recovered from their possession [was] one (1) box containing the following to wit:**

1. Thirty five (35) pcs[.] trigger housing groups
2. Ten (10) pcs[.] barrels
3. One (1) unit rail
4. One (1) unit rail with barrel with flash suppressor
5. Five (5) units butt stock assembly (gray)
6. Ten (10) units butt assembly (black)
7. Sixty (60) pieces upper receivers
8. Five (5) pcs[.] quick detach scope mounts
9. Fifteen (15) pcs[.] buffer spring guides
10. Fifteen (15) pcs[.] spring locks
11. Four (4) sets tool kit
12. Two (2) sets beverage entry tools
13. **One (1) unit Glock 26 9mm pistol SN: ELR043**
14. Two (2) mag. Assy. for 9mm pistol
15. Twenty nine (29) rds[.] live ammos for cal. 9mm
16. Two (2) pieces spare barrels

We informed them of their violations and apprised them individually of their constitutional rights and effect[ed] arrest. (We)





Sir/Madam,

Referred to your office for appropriate legal actions are pertinent records of the case against BRYAN TA-ALA [y] CONSTANTINO (confined), 41 yrs[.] old, married[.] a resident of Estancia Subd[.], Brgy[.] Mandalagan, Bacolod City for Violation of Sec[.] 28 and Sec[.] 33 of RA 10591 and WILFORD PALMA [y] ZARCENO (detained), 33 yrs[.] old, married[.] a resident [of] Hda[.] Lizares, Brgy[.] Cabug, Bacolod City for Violation of Sec[.] 33 of RA 10591. (sic)

#### FACTS OF THE CASE

That at about 11:00 o'clock in the morning of August 6, 2016 SPO4 Liberato S[.] Yorpo and SPO1 Jerome G[.] Jambaro of CIDG-Negros Occidental led by PCI ARIEL S[.] ARTILLERO and CIDG Intel Division, Camp Crame led by PSUPT[.] RANDY GLENN SILVIO and PCI MICHAEL VILLANUEVA and other PNP Units arrested the persons of BRYAN TA-ALA Y CONSTANTINO, 41 yrs[.] old, married[.] a resident of Estancia Subd[.] Brgy[.] Mandalagan, Bacolod City for having **in his possession and control one (1) unit Glock 26 9mm cal pistol with SN: ELR043** (chamber loaded), loaded with magazine with fourteen (14) rds of live ammos and one (1) extra magazine loaded with fourteen (14) rds of live ammos and WILFORD PALMA [Y] ZARCENO, 33 yrs[.] old, married a resident [of] Hda. Lizares, Brgy[.] Cabug, Bacolod City[.] [B]oth were caught in the act having in their possession a box with HBL No. 1342580 shipped by ATLAS Shippers International Inc. containing smuggled firearms and its accessories coming from the United States. (See attached Receipt/Inventory of Property Seized) (sic)

That the above incident was recorded at Station 8, BCPO, PRO18 at Araneta St., Brgy[.] Tangub, Bacolod City.

#### EXHIBITS:

1. Affidavit of Arrest of SPO4 Liberato S. Yorpo and SPO1 Jerome G. Jambaro
2. Incident Record Form Entry No. 1150 dated August 6, 2016
3. ATLAS Shippers Delivery Services Cargo Acknowledgement Receipt
4. One (1) Box of ATLAS Shippers International Inc[.] with HBL No. 1342580 containing the following:
  - a. Thirty five (35) pcs[.] trigger housing groups
  - b. Ten (10) pcs[.] barrels
  - c. One (1) unit rail
  - d. One (1) unit rail with barrel with flash suppressor
  - e. Five (5) units butt stock assembly (gray)
  - f. Ten (10) units butt assembly (black)
  - g. Sixty (60) pieces upper receivers
  - h. Five (5) pcs[.] quick detach scope mounts
  - i. Fifteen (15) pcs[.] buffer spring guides
  - j. Fifteen (15) pcs[.] spring locks
  - k. Four (4) sets tool kit
  - l. Two (2) sets beverage entry tools
  - m. **One (1) unit Glock 26 9mm pistol SN: ELR043**
  - n. Two (2) mag. Assy. for 9mm pistol
  - o. Twenty nine (29) rds live ammos for cal. 9mm

- p. Two (2) pieces spare barrels
  - q. One [1] BPI Card of Alma Sotto Gomez
  - r. Four (4) pieces BDO cards (BCT/WZP)
  - s. One (1) RCBC Card (BCT)
  - t. One (1) CITI Card (BCT)
  - u. One (1) PRC Professional ID (BCT)
  - v. One (1) LTO Professional Driver's License
  - w. One (1) unit | Phone 6S
  - x. One (1) unit | Phone 5S
  - y. Cash money amounting Php 21,760.00
  - z. Toyota Hilux pick-up w/o plate with conduction sticker 7469 color gray with key
5. Receipt/Inventory of Property Seized
  6. Photographs of the Suspects
  7. Photographs of the Recovered Items
  8. Medical Certificate
  9. Others to follow

## WITNESSES:

- a) SPO4 [L]iberato S[.] Yorpo and SPO1 Jerome G[.] Jambaro
- b) And others to follow

RANDY GLENN G SILVIO (SGD.)  
Police Superintendent  
Chief Intel Division CIDG<sup>7</sup>

The Letter-Complaint again identified the same Glock 26 9mm cal. pistol with Serial No. ELR043 **seen in the possession and control of petitioner to have been at the same time also seen inside the box** of supposed contrabands from the United States of America shipped to the country through Atlas Shipping International.

The Incident Record Form Entry No. 1150<sup>8</sup> dated August 6, 2016 attached to the Letter-Complaint mentioned that petitioner and Palma were in actual control and possession of the seized items listed. The Receipt/Inventory of Property Seized<sup>9</sup> dated August 6, 2016 listed all the seized items now designated as a result of OPLAN PAGLALANSAG OMEGA (Campaign Against Loose Firearms) conducted in Bacolod City.

As alleged by petitioner, no criminal information was filed on August 9, 2016 when the maximum 36 hour-period of warrantless detention from August 6, 2016 arrest had lapsed.<sup>10</sup> He also did not receive a copy of the Letter-Complaint or other legal processes that were subsequently filed. Neither was he given the opportunity to file any pleadings with the DOJ.<sup>11</sup>

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<sup>7</sup> Id.

<sup>8</sup> Id. at 82-83.

<sup>9</sup> Id. at 84.

<sup>10</sup> Id. at 22.

<sup>11</sup> Id.

Meantime, in his Resolution dated August 22, 2016,<sup>12</sup> ASP Vito Cruz recommended the filing of two separate informations against petitioner for illegal possession of firearm and for illegal possession of firearm accessories both under Section 28, Republic Act No. (RA) 10591, respectively. On the other hand, the complaint against Palma was dismissed for lack of probable cause, albeit he was recommended for admission to the DOJ Witness Protection Program, thus:

**WHEREFORE**, premises considered, it is respectfully recommended that an Information for possession of the **arms accessories and parts** against respondent **BRYAN TA-ALA y CONSTANTINO** for the crime of Republic Act No. 10591[,] otherwise known as the "Comprehensive Firearms and Ammunition Regulation Act" be **FILED** with the appropriate court.

Another Information for possession of **Glock 26 including its magazines and ammos** is hereby recommended to be **FILED** against respondent **BRYAN TA-ALA y CONSTANTINO**.

The complaint against respondent **WILFORD PALMA y ZARCENO** is hereby **DISMISSED** for lack of probable cause and it is further recommended that the respondent be admitted to the Witness Protection Program of the Department subject to the usual terms and procedures of the program.<sup>13</sup> (Emphases supplied)

The Resolution mentioned some events which allegedly transpired during the inquest, viz.:

- i. Only Palma was brought to Manila by the PNP-CIDG for inquest. Petitioner was left in Bacolod City because of his medical condition;
- ii. Petitioner's brother, together with a lawyer, attended the inquest;
- iii. This lawyer did not enter his appearance as petitioner's counsel of record. The Department of Justice Action Center (*DOJAC*) assigned Atty. Ma. Elisa Jonalyn A. Barquez as Palma's counsel during the inquest;
- iv. Palma moved to reopen the case and was granted preliminary investigation after executing a waiver of Article 125 of The Revised Penal Code;
- v. Palma filed his counter-affidavit (the date of filing was not mentioned) confirming that he was petitioner's employee. On

<sup>12</sup> Prosecutor General Claro A. Arellano approved the resolution, upon recommendation of Senior Deputy State Prosecutor Theodore M. Villanueva, id. at 89-108.

<sup>13</sup> Id. at 106-107.

August 6, 2016, he alleged that he had merely acted under petitioner's supervision and control; and

- vi. Palma also executed a Supplemental Affidavit dated August 19, 2016 reiterating the statements in his Counter-Affidavit;
- vii. On August 17, 2016, ASP Vito Cruz attempted to subject petitioner to the inquest proceedings, to be done in Bacolod City, but his relatives allegedly refused to cooperate and a supposed lawyer declined to go on record since he had not been engaged to assist as his counsel; and
- viii. In view of petitioner's refusal to submit to the inquest, the proceedings were terminated and the inquest was submitted for resolution.

In finding probable cause against petitioner for twin violations of Section 28 of RA 10591, ASP Vito Cruz concluded that petitioner and Palma were validly arrested without warrant because they were caught *in flagrante delicto* committing the crimes of illegal possession of firearm and illegal possession of firearm accessories.

Regarding the Glock 26 9mm cal. pistol with Serial No. ELR043, ASP Vito Cruz<sup>14</sup> affirmed that indeed the PNP-CIDG had seized from petitioner a Glock 26 9mm cal. pistol with Serial No. ELR043 tucked in his waist. At the same time, however, he also gave credence to the narration of the CDIG that this same firearm was found inside the package claimed and picked up by Palma, thus:

In determining probable cause for illegal possession of firearms, **we are constrained to subscribe [to the] narration of the CIDG operatives in their affidavit of arrest that the said firearm and part were found inside the package claimed and picked-up by Palma.** The reason is that positive allegations prevail over denials, which is the only defense, respondents can interpose in the given premise as to the firearms part/accessories.

As for Palma, he was absolved by ASP Vito Cruz, who found that he merely acted under petitioner's control and supervision per letter of one Leo Odio Mendieta authorizing him to claim and receive the package of firearm and firearm accessories with Invoice No. 1342580.

<sup>14</sup> SPO4 Liberato S. Yorpo and SPO1 Jerome G. Jambaro of the Criminal Investigation and Detection Group (CIDG), Negros Occidental, who effected the warrantless arrest of petitioner and Wilford Palma y Zarceno, on August 8, 2016 executed an Affidavit of Arrest, *id.* at 80-81, and took their oath before Assistant State Prosecutor Michael A. Vito Cruz, the same ASP Vito Cruz who gave credence to their Affidavit in his Resolution dated August 22, 2016, *id.* at 89-108.



With respect to the crime of smuggling or unauthorized importation of prohibited items, *i.e.*, firearm and firearm accessories, however, ASP Vito Cruz did not resolve it yet as he opted to proceed further, this time to **convert** the inquest into a preliminary investigation specifically on this charge though without petitioner's consent or a waiver of his rights under Article 125, *The Revised Penal Code*, pursuant to Section 6, Rule 112, *The Revised Rules of Criminal Procedure*.

***The first two Informations for violations of Section 28 of RA 10591***

On September 6, 2016, a month after petitioner's arrest, the DOJ filed the first two Informations<sup>15</sup> against petitioner before the Regional Trial Court (RTC), Bacolod City.

The first was for illegal possession of the Glock 26 9mm pistol SN. ELR043 and its ammunitions (violation of Section 28, RA 10951),<sup>16</sup> thus:

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<sup>15</sup> *Rollo*, pp. 140–142.

<sup>16</sup> Unlawful Acquisition, or Possession of Firearms and Ammunition. - The unlawful acquisition, possession of firearms and ammunition shall be penalized as follows:

- (a) The penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess a small arm;
- (b) The penalty of *reclusion temporal* to *reclusion perpetua* shall be imposed if three (3) or more small arms or Class-A light weapons are unlawfully acquired or possessed by any person;
- (c) The penalty of *prision mayor* in its maximum period shall be imposed upon any person who shall unlawfully acquire or possess a Class-A light weapon;
- (d) The penalty of *reclusion perpetua* shall be imposed upon any person who shall, unlawfully acquire or possess a Class-B light weapon;
- (e) The penalty of one (1) degree higher than that provided in paragraphs a) to (c) in this section shall be imposed upon any person who shall unlawfully possess any firearm under any or combination of the following conditions:
  - (1) Loaded with ammunition or inserted with a loaded magazine;
  - (2) Fitted or mounted with laser or any gadget used to guide the shooter to hit the target such as thermal weapon sight (TWS) and the like;
  - (3) Fitted or mounted with sniper scopes, firearm muffler or firearm silencer;
  - (4) Accompanied with an extra barrel; and
  - (5) Converted to be capable of firing full automatic bursts.
- (f) The penalty of *prision mayor* in its in minimum period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a small arm or Class-A light weapon. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a small arm, the former violation shall be absorbed by the latter;
- (g) The penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess a major part of a Class-A light weapon;
- (h) The penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a Class-A light weapon. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a Class-A light weapon, the former violation shall be absorbed by the latter;
- (i) The penalty of *prision mayor* in its maximum period shall be imposed upon any person who shall unlawfully acquire or possess a major part of a Class-B light weapon; and
- (j) The penalty of *prision mayor* in its maximum period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a Class-B light weapon.
- (k) The penalty of *prision mayor* in its maximum period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a Class-B light weapon. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a Class-B light weapon, the former violation shall be absorbed by the latter.

That on or about August 6, 2016, in Bacolod City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there[,] willfully, unlawfully, and criminally have in his possession, custody and control the following:

1. One (1) unit Glock 26 9mm pistol SN: ELR043
2. Two (2) magazine Assy. for 9mm pistol
3. Twenty nine (29) live ammos of caliber 9mm.

without the necessary license, authority and/or permit issued by the proper authority.

CONTRARY TO LAW.

The case was entitled *People of the Philippines v. Bryan Ta-Ala y Constantino* docketed as Criminal Case No. 16-43163 and raffled to RTC-Branch 46.

Under Order dated September 8, 2016,<sup>17</sup> RTC-Branch 46 approved petitioner's application for bail in Criminal Case No. 16-43163 for ₱80,000.00. Nonetheless, petitioner was not ordered released but continuously held in detention supposedly to await the conclusion of the preliminary investigation on the charge of illegal importation of firearms accessories.

The second Information<sup>18</sup> was for illegal possession of firearm accessories (violation of Section 28, RA 10591),<sup>19</sup> viz.:

That on or about August 6, 2016, in Bacolod City, Negros Occidental, Philippines, and with the jurisdiction of this Honorable Court, the above-named accused, Bryan Ta-ala [y] Constantino, with intent to defraud the government of the legitimate duties accruing to it from merchandise imported into this country, without prior authority and clearance from FEO-PNP and knowingly using fictitious names and documents specifically describe [sic] as a package marked with ATLAS Shippers International, Inc. with addressee Leo Mendieta of #20 Regina Drive, Doña Juliana Subd., Bacolod City, Negros Occidental, with contact no. (0921)622-0091 from sender Miko Claridad of 7325 Birch St., BREA CA 92821 with contact no. (0714) 638-7142 with HBL No. 1342580, did then and there willfully, unlawfully and fraudulently import into the country the followings: (sic)

- a. Thirty five (35) pcs. Trigger housing groups;
- b. Ten (10) pcs. Barrels;
- c. One (1) unit rail;
- d. One (1) unit rail with barrel with flash suppressor;
- e. Five (5) units butt stock assembly (gray);

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(Republic Act No. 10591, Comprehensive Firearms and Ammunition Regulation Act, Approved on May 29, 2013).

<sup>17</sup> *Rollo*, p. 143.

<sup>18</sup> *Id.* at 479-480.

<sup>19</sup> *Supra* note 16.

- f. Ten (10) units butt assembly (black);
- g. Sixty (60) pieces upper receivers;
- h. Five (5) pcs[.] quick detach scope mounts;
- i. Fifteen (15) pcs[.] buffer spring guides;
- j. Fifteen (15) pcs[.] spring locks;
- k. Four (4) sets tool kit; [and]
- l. Two (2) pieces spare barrels.

All major parts of a Class-A light weapon, without the necessary authority to import issued by [the] Chief of the Philippine National Police authorizing importations and not even classified as authorized importer duly licensed to facilitate the importation.

CONTRARY TO LAW.<sup>20</sup>

Under the same title, it was docketed as Criminal Case No. 16-43164 and raffled to RTC-Branch 50. Petitioner also posted bail in this case for ₱120,000.00.<sup>21</sup> But as in the first case, he was not released for the same reason that the preliminary investigation on the charge of illegal importation of firearms was still pending.

Curiously, one day before petitioner's arraignment on September 28, 2016, the prosecution sought to amend the Information<sup>22</sup> in this case from violation of Section 28 of RA 10591 (illegal possession of firearm accessories)<sup>23</sup> to violation of Section 28(b) in relation to Section 3(1) of RA 10591 (illegal possession of firearm "Class-A" light weapons and accessories),<sup>24</sup> a non bailable offense.

By Order dated October 12, 2016,<sup>25</sup> RTC-Branch 50 denied the Motion to Amend.

Criminal Case No. 16-43164 was later consolidated with Criminal Case No. 16-43163 before RTC-Branch 46. Not long after, on March 29, 2017, RTC-Branch 46 allowed the prosecution's subsequent Motion to Withdraw Criminal Case No. 16-43164.<sup>26</sup>

<sup>20</sup> *Rollo*, pp. 480-481.

<sup>21</sup> *Id.* at 273-274.

<sup>22</sup> *Id.* During the scheduled hearing, the prosecution was directed to submit a Memorandum in relation to the motion. Subsequently in its Memorandum, the prosecution clarified that the present Information is penalized under Section 28 (h) of Republic Act. No. 10591 by *prision mayor* medium but since Section (1) of the law considers the barrel, frame or receiver as a firearm, the prosecutor to amend the Information to Violation of Section 28 only in relation to Section 3(1) of Republic Act. No. 10591 to provide a higher penalty of *reclusion temporal* to *reclusion perpetua*. Petitioner filed an Opposition to the Motion as well as a Motion to Quash Information and to Suppress Evidence Illegally Obtained, which was subsequently heard on October 7, 2016. RTC-Branch 50 required the parties to file their respective comment and reply to the motion.

<sup>23</sup> *Supra* note 16. This is punishable under Section 28(a), Republic Act. No. 10591 with *prision mayor* in its medium.

<sup>24</sup> *Id.* This is punishable under Section 28 (b), Republic Act. No. 10591 with *reclusion temporal* to *reclusion perpetua*.

<sup>25</sup> *Rollo*, pp. 324-329.

<sup>26</sup> *Supplemental Rollo*, Par. 3, Verified Manifestation dated February 22, 2022. "Criminal Case No. 16-43164, for violation Section 28 of Republic Act No. 10591, was already dismissed by the Regional Trial

***Proceedings in Criminal Case No. 16-43163 for Illegal Possession of Firearm before RTC-Branch 46***

On October 5, 2016, petitioner filed a Motion to Quash Information and to Suppress Evidence Illegally Obtained<sup>27</sup> in Criminal Case No. 16-43163 for illegal possession of firearm. He asserted that RTC-Branch 46 did not acquire jurisdiction over his person as: (a) he was illegally arrested without warrant; and (b) he was not subjected to a valid inquest or preliminary investigation.

In its Comment dated October 20, 2016,<sup>28</sup> the prosecution through Senior Assistant City Prosecutor Lady Liza Rodrigazo-Placido (SACP Placido) argued that petitioner was caught *in flagrante delicto* by the arresting and seizing police officers when they saw a firearm protruding from his waist and the contraband contents of the box that he and his companion Palma were then unpacking. The prosecution also claimed that the absence of an inquest or preliminary investigation did not impair the validity of the Information or the trial court's jurisdiction over the case.

Petitioner filed his Reply dated October 26, 2016,<sup>29</sup> reiterating the arguments in his Motion. He also filed with RTC-Branch 46 a Request for *Subpoena Duces Tecum and Ad Testificandum* for SPO4 Yorpo and SPO1 Jambaro to testify on their Affidavit of Arrest, and, personnel at Atlas Shippers International, Inc. who facilitated the release of the box to Michael Diamante, to bring a copy of the documents and testify thereto, in preparation for the scheduled November 22, 2016 hearing.<sup>30</sup>

In its Order dated November 3, 2016,<sup>31</sup> RTC-Branch 46 denied both the Motion to Quash Information and to Suppress Evidence Illegally Obtained and the Request for Subpoena, for alleged lack of merit.

It ruled that the police officers did not have to explain why they did not apply beforehand for a warrant of arrest and/or search warrant. The police officers already had advance intelligence report on the nature and initial location of the smuggling of the firearm and firearm accessories and they only wanted to establish the identity of their alleged importer. With this purpose in mind, the police officers devised the sting operation which consequently led to the legitimate warrantless arrest of petitioner *in flagrante delicto*.

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Court, Branch 46, Bacolod City upon the instance of the prosecution per Order dated March 29, 2017, copy attached herewith as Annex "B".

<sup>27</sup> *Rollo*, pp. 145-161.

<sup>28</sup> *Id.* at 163-165.

<sup>29</sup> *Id.* at 166-169.

<sup>30</sup> *Id.* at 170-171.

<sup>31</sup> *Id.* at 172-175.

On November 11, 2016, the prosecution filed a Motion to Amend and Admit Amended Information<sup>32</sup> in Criminal Case No. 16-43163 before RTC-Branch 46, viz.:

That on or about August 6, 2016, in Bacolod City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and criminally have in his possession, custody and control the following:

1. One (1) unit chamber loaded Glock 26 9mm pistol SN: ELR043 inserted with a loaded magazine with fourteen (14) rounds of live ammunition;
2. One (1) extra magazine for 9mm pistol with fourteen (14) rounds of live ammunition.

without the necessary license, authority and/or permit issued by the proper authority.

CONTRARY TO LAW.

Meantime, petitioner filed a Motion for Reconsideration of the Order dated November 3, 2016 of RTC-Branch 46.<sup>33</sup>

By Order dated November 22, 2016, RTC-Branch 46 denied petitioner's Motion for Reconsideration but granted the prosecution's Motion to Amend and Admit Amended Information.

On the same day, petitioner was arraigned before RTC-Branch 46 but he refused to enter a plea. Thus, it entered a plea of not guilty for him.

On February 27, 2017, petitioner filed with the Court of Appeals a Petition for *Certiorari*, docketed CA-G.R. SP No. 10697, against the Orders dated November 3, 2016 and November 22, 2016 of RTC-Branch 46 in Criminal Case No. 16-43163 for violation of Section 28, RA 10591 for illegal possession of firearm and ammunitions.

***The last two (2) Informations for violation of Section 33 of RA 10591 and violation of Section 101(a) in relation to Section 3601 of the Tariff and Customs Code of the Philippines, respectively.***

Over two months after petitioner's arrest, ASP Vito Cruz issued yet another Resolution dated September 13, 2016<sup>34</sup> in NPS Docket No. XVI-INQ-

<sup>32</sup> Id. at 183-190.

<sup>33</sup> Id. at 177-182.

<sup>34</sup> Id. at 109-125.

16H-00110, this time, finding probable cause against petitioner for: (i) violation of Section 33, RA 10591; and (ii) Sections 101(a) and 3601 of the Tariff and Customs Code of the Philippines. The gravamen of both offenses was the illegal importation of firearms accessories, thus:

**WHEREFORE**, it is respectfully recommended that probable cause exists against respondent **BRYAN TA-ALA y CONSTANTINO** for the violation of Section 33 of Republic Act No. 10591 otherwise known as the "Comprehensive Firearms and Ammunition Regulation Act" [and Information] be **FILED** with the appropriate court.

Probable cause likewise exists for violation of Sections 101 (a) and 3601 of the Tariff and Customs Code of the Philippines as amended and Information be **FILED** accordingly.<sup>35</sup>

ASP Vito Cruz referred to his findings in his earlier Resolution dated August 22, 2016. He utilized anew the Affidavit of Arrest of SPO4 Yorpo and SPO1 Jambaro, and the Counter-Affidavit and Supplemental Affidavit of Palma as bases for his finding of probable cause against petitioner, this time, for: (i) violation of Section 33, RA 10591; and (ii) violation of Sections 101(a) and 3601 of the Tariff and Customs Code of the Philippines.

Oddly, ASP Vito Cruz no longer made any reference to the Glock 26 9mm pistol SN. ELR043 as among those found in the imported box.

On October 18, 2016, an Information<sup>36</sup> was filed against petitioner for violation of Section 33, RA 10591<sup>37</sup> before RTC-Branch 54, Bacolod City, viz.:

That on or about August 6, 2016, in Bacolod City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Bryan Ta-ala [y] Constantino, with intent to defraud the government of the legitimate duties accruing to it from merchandise imported into this country, without prior authority and clearance from FEO-PNP and knowingly using fictitious name and documents specifically describe (sic) as a package marked with ATLAS Shippers International Inc. with addressee Leo Mendieta of #20 Regina Drive, Doña Juliana Subd., Bacolod City, Negros Occidental, with contact no. (0921)622-0091 from sender Miko Claridad of 7325 Birch St., BREA CA 92821 with contact no. (0714) 638-7142 with HBL No. 1342580, did then and there, willfully, unlawfully and fraudulently import into the country the followings (sic):

<sup>35</sup> Id. at 124.

<sup>36</sup> Id. at 267-268.

<sup>37</sup> Section 33. Arms Smuggling. The penalty of *reclusion perpetua* shall be imposed upon any person who shall engage or participate in arms smuggling as defined in this Act.

Section 3(d). Arms smuggling refers to the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition, from or across the territory of one country to that of another country which has not been authorized in accordance with domestic law in either or both country/countries.

(Republic Act No. 10591, Comprehensive Firearms and Ammunition Regulation Act. Approved on May 29, 2013).

- a. Thirty five (35) pcs. trigger housing groups;
- b. Ten (10) pcs. Barrels;
- c. One (1) unit rail;
- d. One (1) unit rail with barrel with flash suppressor;
- e. Five (5) units butt stock assembly (gray);
- f. Ten (10) units butt assembly (black);
- g. Sixty (60) pieces upper receivers;
- h. Five (5) pcs[.] quick detach scope mounts;
- i. Fifteen (15) pcs. buffer spring guides;
- j. Fifteen (15) pcs. spring locks
- k. Four (4) sets tool kit; and
- l. Two (2) pieces spare barrels.

All major parts of a Class-A light weapon, without the necessary authority to import issued by Chief of the Philippine National Police authorizing importations and not even classified as authorized importer duly licensed to facilitate importation.

CONTRARY TO LAW.<sup>38</sup>

Again, under the same title, it was docketed as Criminal Case No. 16-43487 and raffled to RTC-Branch 54.

The fourth (last) Information filed before the RTC of Bacolod City against petitioner was for violation of Section 101(a)<sup>39</sup> in relation to Section 3601<sup>40</sup> of the Tariff and Customs Code of the Philippines, thus:

<sup>38</sup> *Rollo*, pp. 267-268.

<sup>39</sup> Tariff and Customs Code, Section 101. Prohibited Importations. The importation into the Philippines of the following articles is prohibited:

1. Dynamite, gunpowder, ammunitions and other explosives, firearms and weapons of war, and parts thereof, except when authorized by law. x x x :

(Republic Act. No. 1937, An Act to Reverse and Codify the Tariff and Customs Laws of the Philippines)

<sup>40</sup> Tariff and Customs Code, Section 3601. Unlawful Importation. Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law, shall be guilty of smuggling and shall be punished with:

1. A fine of not less than fifty pesos nor more than two hundred pesos and imprisonment of not less than five days nor more than twenty days; if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported does not exceed twenty-five pesos;
2. A fine of not less than eight hundred pesos nor more than five thousand pesos and imprisonment of not less than six months and one day nor more than four years, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported exceeds twenty-five pesos but does not exceed fifty thousand pesos;
3. A fine of not less than six thousand pesos nor more than eight thousand pesos and imprisonment of not less than five years and one day nor more than eight years, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the articles unlawfully imported is more than fifty thousand pesos but does not exceed one hundred thousand pesos;
4. A fine of not less than eight thousand pesos nor more than ten thousand pesos and imprisonment of not less than eight years and one day nor more than twelve years, if the appraised value to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported exceeds one hundred fifty thousand pesos;
5. The penalty of prison may or shall be imposed when the crime of serious physical injuries shall have been committed and the penalty of *reclusion perpetua* to death shall be imposed when the crime of homicide shall have been committed by reason or on the occasion of the unlawful importation.

That on or about August 6, 2016, in Bacolod City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Bryan Ta-ala y Constantino, with intent to defraud the government of the legitimate duties accruing to it from merchandise imported into this country, without prior authority and clearance from FEO-PNP and knowingly using fictitious name and documents specifically describe (sic) as a package marked with ATLAS Shippers International Inc. with addressee Leo Mendieta of #20 Regina Drive, Dofia Juliana Subd., Bacolod City, Negros Occidental, with contact no. (0921)622-0091 from sender Miko Claridad of 7325 Birch St., BREA CA 92821 with contact no. (0714) 638-7142 with HBL No. 1342580, did then and there, willfully, unlawfully and fraudulently import into the country the followings [sic]:

- a. Thirty five (35) pcs. trigger housing groups;
- b. Ten (10) pcs. Barrels;
- c. One (1) unit rail;
- d. One (1) unit rail with barrel with flash suppressor;
- e. Five (5) units butt stock assembly (gray);
- f. Ten (10) units butt assembly (black);
- g. Sixty (60) pieces upper receivers;
- h. Five (5) pcs. quick detach scope mounts;
- i. Fifteen (15) pcs. buffer spring guides;
- j. Fifteen (15) pcs. spring locks
- k. Four (4) sets tool kit; and
- l. Two (2) pieces spare barrels.

All major parts of a Class-A light weapon, without the necessary authority to import issued by Chief of the Philippine National Police authorizing importations and not even classified as authorized importer duly licensed to facilitate importation.

CONTRARY TO LAW.<sup>41</sup>

Same as previous Informations, it was docketed as Criminal Case No. 16-43488 and raffled to RTC-Branch 42.

On October 10, 2016, petitioner filed with the DOJ a Motion for Reconsideration<sup>42</sup> of the Resolution dated September 13, 2016. It appears that to date, the DOJ has yet to act on this Motion.

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In applying the above scale of penalties, if the offender is an alien and the prescribed penalty is not death, he shall be deported after serving the sentence without further proceedings for deportation. If the offender is a government official or employee, the penalty shall be the maximum as hereinabove prescribe and the offender shall suffer and additional penalty of perpetual disqualification from public office, to vote and to participate in any public election.

When, upon trial for violation of this section, the defendant is shown to have had possession of the article in question, possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the court: Provided, however, That payment o; the tax due after apprehension shall not constitute a valid defense in any prosecution under this section. (REPUBLIC ACT No. 4712 June 18, 1966, AN ACT AMENDING CERTAIN SECTIONS OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES).

<sup>41</sup> *Rollo*, pp. 267-268.

<sup>42</sup> *Id.* at 126-139.



Meantime, on November 29, 2016, RTC-Branch 42 allowed the prosecution's motion to withdraw Criminal Case No. 16-43488.<sup>43</sup>

***Proceedings in Criminal Case No. 16-43487 for illegal importation of firearms accessories before RTC-Branch 54***

In Criminal Case No. 16-43487, petitioner filed an Omnibus Motion<sup>44</sup> dated October 21, 2016 to consolidate the case with Criminal Case No. 16-43488, judicially determine probable cause, defer the issuance of a warrant of arrest, or in the alternative, allow him to post bail, quash the Information, and suppress illegally obtained evidence.

He argued that:

- a) he was illegally searched and arrested without a warrant and the evidence obtained is thus inadmissible;
- b) the Informations for violation of Section 33, RA 10591 and Section 101(a) in relation to Section 3601 of the Tariff and Customs Code of the Philippines violated his right against double jeopardy;
- c) the Resolution dated September 13, 2016 was void since it was issued when NPS Docket No. XVI-INK-16H-00110 had already become *functus officio* as ASP Vito Cruz's Resolution dated August 22, 2016 became final and executory; and
- d) as there were already pending criminal cases against him, the issuance and filing of the last two Informations should have been approved first by Branches 46 and 50.<sup>45</sup>

Under Resolution dated November 2, 2016,<sup>46</sup> RTC-Branch 54 denied petitioner's Omnibus Motion and found probable cause for the crime of illegal importation of firearm accessories under Section 33 of RA 10591, thereby denying petitioner's bail.<sup>47</sup> It also denied the consolidation of Criminal Case No. 16-43487 with Criminal Case No. 16-43488.

On November 8, 2016, the prosecution filed with RTC-Branch 54 a Motion to Admit Amended Information,<sup>48</sup> viz.:

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<sup>43</sup> Id. at 199, see also *Supplemental Rollo*. Par. 5, Verified Manifestation dated February 22, 2022. "Criminal Case No. 16-43488, for violation of Section 101(a) in relation to Section 3601 of the Tariff and Customs Code of the Philippines, as amended, was already dismissed or withdrawn by the Regional Trial Court, Branch 42, Bacolod City upon the instance of the prosecution as per Order dated November 29, 2016, copy attached herewith as Annex "D".

<sup>44</sup> Id. at 279-294.

<sup>45</sup> Id.

<sup>46</sup> Id. at 330-333.

<sup>47</sup> Id. at 334.

<sup>48</sup> Id. at 335-343.

That on or about August 6, 2016, in Bacolod City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Bryan Ta-ala [y] Constantino, without any authority to import, move, deliver[,] or transfer firearms, their parts and components issued by the Chief of the Philippine National Police (PNP) and clearances from PNP-FEO, did then and there willfully, unlawfully and knowingly import, move, deliver[,] or transfer from the United States of America (USA) into the Philippines the following firearms, their parts and components, to wit:

- a. Thirty five (35) pcs. trigger housing groups;
- b. Ten (10) pcs. Barrels;
- c. One (1) unit rail;
- d. One (1) unit rail with barrel with flash suppressor;
- e. Five (5) units butt stock assembly (gray);
- f. Ten (10) units butt assembly (black);
- g. Sixty (60) pieces upper receivers;
- h. Five (5) pcs[.] quick detach scope mounts;
- i. Fifteen (15) pcs[.] buffer spring guides;
- j. Fifteen (15) pcs[.] spring locks
- k. Four (4) sets tool kit; and
- l. Two (2) pieces spare barrels.

which were contained in a package, specifically described and marked with ATLAS Shippers International, Inc., with the name of the addressee indicated as Leo Mendieta of #20 Regina Drive, Dona Juliana Subd., Bacolod City, Negros Occidental, with contact no. (0921)622-0091 from sender Miko Claridad of 7325 Birch St., BREA CA 92821 with contact no. (0714) 638-7142 and HBL No. 1342580.

CONTRARY TO LAW.<sup>49</sup>

On November 9, 2016, petitioner filed a Motion for Reconsideration of the Resolution dated November 2, 2016 of RTC-Branch 54.<sup>50</sup> The prosecution filed an opposition<sup>51</sup> and, thereafter, petitioner filed a Reply.<sup>52</sup>

On November 14, 2016, RTC-Branch 54 admitted the Amended Information.

On November 15, 2016, petitioner filed a Supplemental Motion for Reconsideration.<sup>53</sup> He argued that P/Superintendent Randy Glenn G. Silvio was not authorized by the Commissioner of the Bureau of Customs to conduct the operation against him<sup>54</sup> and consequently had no authority to file the Letter-Complaint for arms smuggling against him.

<sup>49</sup> Id. at 340–341.

<sup>50</sup> Id. at 348–364.

<sup>51</sup> Id. at 405–409.

<sup>52</sup> Id. at 410–420.

<sup>53</sup> Id. at 398–402.

<sup>54</sup> See Affidavit of Arrest, par. 2 – “On August 5, 2016 at about 9:00 o’clock in the morning PCI ARIEL S. ARTILLERO, Provincial Officer, CIDG Negros Occidental informed us that our office was tapped by a team from CIDG Camp Crame, Quezon City led by PSUPT[.] RANDY GLENN SILVIO and PCI MICHAEL VILLANUEVA for a possible police operation anytime within the area of Bacolod City;”, id. at 80.

On November 16, 2016, petitioner was arraigned in Criminal Case No. 16-43487 for illegal importation of firearm accessories in violation of Section 33 of RA 10591. He refused to enter his plea hence, RTC-Branch 54 entered a plea of not guilty on his behalf.

On January 25, 2017, RTC-Branch 54 denied the petitioner's Omnibus Motion insofar as the quashal of the Information and suppression of illegally obtained evidence in Criminal Case No. 16-43487 and consolidation with Criminal Case No. 16-43488 (though RTC-Branch 42 earlier allowed the withdrawal of this case under its Order dated November 29, 2016).<sup>55</sup>

In its subsequent Resolution dated February 22, 2017, RTC-Branch 54 denied petitioner's Motion for Reconsideration of the Resolution dated November 2, 2016 for lack of merit. Meantime, it scheduled the hearing on petitioner's application for bail.

On April 27, 2017, petitioner filed yet another Petition for *Certiorari*<sup>56</sup> via CA-G.R. SP No. 10873, challenging the Resolutions dated November 2, 2016 and February 22, 2017 of RTC-Branch 54 in Criminal Case No. 16-43487 for violation of Section 33, RA 10591 for illegal importation of firearm accessories.

### **Proceedings in the Court of Appeals**

Thus far, petitioner had initiated two Petitions for *Certiorari* with the Court of Appeals:

- 1) CA-G.R. SP No. 10697 – against the Orders dated November 3, 2016 and November 22, 2016 of RTC-Branch 46 denying petitioner's Motion to Quash Information and Suppress Evidence Illegally Obtained in Criminal Case No. 16-43163 for illegal possession of firearm and its ammunitions; and
- 2) CA-G.R. SP No. 10873 – against the Resolutions dated November 2, 2016 and February 22, 2017 of RTC-Branch 54 denying petitioner's Omnibus Motion to Consolidate [with Criminal Case No. 16-43488 before RTC-Branch 42], Determine Probable Cause, Allow to Post Bail, Quash Information and Suppress Evidence Illegally Obtained for lack of merit in Criminal Case No. 16-43487 for illegal importation of firearm accessories.

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<sup>55</sup> Supra note 43.

<sup>56</sup> *Rollo*, pp. 434-471.

Under Decision dated January 29, 2019, the Court of Appeals ordered the consolidation of the twin Petitions. Per Decision dated May 9, 2019, it dismissed the same for lack of merit.<sup>57</sup>

It held that *certiorari* is not the proper remedy to challenge the assailed dispositions of the trial courts and that petitioner's warrantless arrest was valid. The appellate court emphasized that the police officers saw the firearm tucked in petitioner's waist and the firearm accessories inside the package while he and Palma were inspecting them. It also ruled that petitioner's arraignment and the issuance of a warrant of arrest on him mooted his motion to quash the relevant Informations.

Petitioner's subsequent Motion for Reconsideration was denied under Resolution dated January 30, 2020.<sup>58</sup>

### **The Present Petition**

Petitioner now asserts anew that his warrantless arrest was illegal. He disputes SPO4 Yorpo and SPO1 Jambaro's version of the arrest and the consequent seizure of the so-called illegal items.

He maintains that there was no firearm tucked in his waist and that the box they got from Atlas Shipping International did not contain any firearms accessories. To prove his point, he refers to the fact that the arresting police officers presented two conflicting versions on where or in whose possession they actually saw Glock 26 9mm pistol SN. ELR043. Their first version was they saw it tucked in his waist when he stepped out of the vehicle, while their second version was that they saw the gun inside the box which Palma picked up from Atlas Shipping International and placed inside the vehicle at the back of the driver's seat. He therefore concludes that as a result of the illegal arrest, the alleged firearm and firearm accessories supposedly seized from him and Palma cannot be used to incriminate him.

More, this alleged discrepancy has exposed the police officers' lies when they claimed he had a Glock 26 9mm pistol SN. ELR043 tucked in his waist which they saw *and* when they said that they saw him and Palma open a box full of firearm accessories. These lies by the police officers should disprove their claim of probable cause to justify his warrantless arrest and the seizure of the box and its alleged contents, and thus, the warrantless arrest and seizure were void and the alleged inculpatory evidence arising therefrom should be held inadmissible as fruits of these constitutional violations.

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<sup>57</sup> Id. at 55-73.

<sup>58</sup> Id. at 76-77.

Petitioner also disputes the validity of his supposed inquest. For one, he had to wait for two days before the inquest started. Then he was not present during the inquest. For another, the last two Informations were issued long after NPS Docket No. XVI-INV-16H-00110 already got terminated with the issuance of Resolution dated August 22, 2016. By then, the inquest already became *functus officio*. The DOJ had no authority to convert the inquest into a continuing preliminary investigation since he was already detained and had not waived his right against arbitrary detention.

In its Comment dated February 24, 2022,<sup>59</sup> the Office of the Solicitor General (OSG) ripostes that the Petition raises pure questions of fact, hence, should not be given due course. The Petition had also been mooted by petitioner's arraignment. The proper recourse, according to the OSG, was for petitioner to go ahead with the trial where he could raise his defenses, albeit in the meantime, he ought to bear the burden of his incarceration.

### Issues

- 1) Is the petition academic?
- 2) Was petitioner's warrantless arrest valid?
- 3) Was there a valid inquest or preliminary investigation on petitioner?

### Our Ruling

We reverse.

***The petition is NOT academic.***

The Court of Appeals ruled that the Motions for Quashal of the Informations are already moot as both RTC Branches 46 and 54 had ruled that probable causes for illegal possession of firearm and its ammunitions (Criminal Case No. 16-43163 before RTC-Branch 46) and illegal importation of firearm accessories (Criminal Case No. 16-43487 before RTC-Branch 54) exist against petitioner. In Criminal Case No. 16-43487, for violation of Section 33 of RA 10591, RTC-Branch 54 even issued a warrant of arrest against him. More, the mootness of the Motions to Quash is evident from the fact that petitioner was already arraigned before RTC-Branch 46 and RTC-Branch 54 in Criminal Case Nos. 16-43163 and 16-43487, respectively.

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<sup>59</sup> Id. at 545-573.

We do not agree.

Section 26, Rule 114 of the Revised Rules of Criminal Procedure provides:

Section 26. Bail not a bar to objections on illegal arrest, lack of or irregular preliminary investigation. - An application for or admission to bail shall not bar the accused from challenging the validity of his arrest or the legality of the warrant issued therefor, or from assailing the regularity or questioning the absence of a preliminary investigation of the charge against him, provided that he raises them before entering his plea. The court shall resolve the matter as early as practicable but not later than the start of the trial of the case. (n)

In *People v. Vallejo*,<sup>60</sup> the Court ruled that the accused may be deemed precluded from questioning the legality of their arrest after arraignment **only if they voluntarily enter their plea and participate during trial**, without previously invoking their objections thereto. Thus:

We have consistently 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. We have also ruled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the *Information* against him before his arraignment. And since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in his arrest may be deemed cured when he voluntarily submitted to the jurisdiction of the trial court as what was done by the appellants in the instant case. Not only did they enter their pleas during arraignment, but they also actively participated during the trial which constitutes a waiver of any irregularity in their arrest.<sup>61</sup>

In CA-G.R. SP No. 10697 (Criminal Case No. 16-43163), petitioner posted bail on September 8, 2016. On October 5, 2016, he filed a Motion to Quash Information and to Suppress Evidence Illegally Obtained and subsequently filed on November 4, 2016 a Request for Subpoena *Duces Tecum and Ad Testificandum*. He was arraigned on the amended Information only on November 22, 2016, during which he refused to enter his plea, albeit the court entered a “not guilty” plea on his behalf.

In CA-G.R. SP No. 10873 (Criminal Case No. 16-43487), petitioner filed an Omnibus Motion on October 21, 2016 to consolidate Criminal Case No. 16-43487 with the then Criminal Case No. 16-43488 before RTC-Branch 42, judicially determine probable cause, defer issuance of warrant of arrest, or, in the alternative, allow him to post bail, quash the Information and suppress evidence illegally obtained in both cases. He was arraigned on the amended Information in Criminal Case No. 16-43487 only on November 16,

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<sup>60</sup> 461 Phil. 672-700 (2003).

<sup>61</sup> Id. at 686.

2016, during which, again, he refused to enter his plea, although the court entered a plea of “not guilty” on his behalf.

Verily, petitioner timely filed the relevant motions questioning his arrest, that is, before his arraignment where he refused to enter a plea. He begged RTC-Branch 46 and RTC-Branch 54 to look into his arrest and the alleged multiple violations related to the conduct of his inquest. As it was, both trial courts ignored his motions and instead entered pleas of not guilty for him.

Gauged by these circumstances, we cannot reasonably infer a valid waiver by petitioner as to preclude him from assailing anew before the Court of Appeals and this Court his warrantless arrest.

***The arrest was illegal.***

At the crux of this case is the Affidavit of Arrest executed by SPO4 Yorpo and SPO1 Jambaro dated August 8, 2016, before ASP Vito Cruz. Based on this Affidavit of Arrest, ASP Vito Cruz, per Resolution dated August 22, 2016 and Resolution dated September 13, 2016 in NPS Docket No. XVI-INV-16H-00110, found probable causes to indict petitioner for four separate crimes, namely, two counts of violation of Section 28 of RA 10591 (illegal possession of firearm and its ammunitions and illegal possession of firearms accessories), one count of violation of Section 33, RA 10591 (illegal importation of firearms accessories), and one count of violation of Section 101(a) in relation to Section 3601 of the Tariff and Customs Code of the Philippines (illegal importation of contrabands).

Too, the trial courts heavily relied on the same Affidavit of Arrest in ruling, respectively, that the *in flagrante delicto* arrest of petitioner and his companion and the subsequent search of the box were both valid. They accepted the Affidavit of Arrest hook, line, and sinker.

We are not persuaded.

Section 5, Rule 113 of the Revised Rules of Criminal Procedure provides:

Section 5. Arrest without warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person:

- (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

- (b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
- (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraph (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112. (5a)

In *Ambre v. People*,<sup>62</sup> the Court ruled that “[i]n arrest *in flagrante delicto*, the accused is apprehended at the very moment he or she is committing or attempting to commit or has just committed an offense in the presence of the arresting officer. Clearly, to constitute a valid *in flagrante delicto* arrest, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he or she has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.”<sup>63</sup>

The Affidavit of Arrest reveals that the Glock 26 9mm cal. pistol with Serial No. ELR043 was seen tucked in the waist of petitioner and consequently seized from his possession and control. But the same one unit Glock 26 9mm pistol with Serial No. SN. ELR043 was also listed in the inventory of contrabands supposedly found in the box which Palma had claimed from Atlas Shipping International. The Affidavit of Arrest is firsthand account of what happened during petitioner’s arrest. How can the same exact item be supposedly seized from petitioner and found in the box at the same time?

The Court **cannot ignore these apparently irreconcilable and conflicting facts on record** emanating no less than from the arresting officers themselves. These conflicting accounts were found not just in the Affidavit of Arrest of the police officers but also in the Letter-Complaint signed by Chief Intel Division CIDG P/Superintendent Randy Glenn G. Silvio.

This discrepancy cannot simply be brushed aside. **Petitioner’s warrantless arrest is clearly and convincingly a case of frame up and planting of evidence.** The story of the police officers conjures a **fabricated narrative** meant to legitimize the **unlawful** warrantless arrest of petitioner and the incidental seizure of the items in question. For without seeing petitioner in actual possession of the pistol, and thereafter, inside the box of alleged contrabands, **the police officers had no reason to effect his**

<sup>62</sup> 692 Phil. 681, 692–698 (2012), citing *People v. Chua*, 444 Phil. 757, 770 (2003).

<sup>63</sup> *Id.* at 694.



**warrantless arrest *in flagrante delicto*, let alone, seize the same and the other supposed illegal items in his possession.** They had **no probable cause** to arrest petitioner without a warrant and to search and seize the box as an incident of the arrest.

For greater certainty, we declare that the warrantless arrest of petitioner is unlawful, and the incidental search to be illegal as well. As we held in *Trinidad v. People*.<sup>64</sup>

x x x if the validity of the *in flagrante delicto* warrantless arrest cannot be established, the arrest becomes illegal and the consequent search incidental thereto becomes unreasonable. Resultantly, all the evidence seized by reason of the unlawful arrest is inadmissible in evidence for any purpose in any proceeding.

x x x x

We further deal with the mystery box allegedly containing illegally imported firearm accessories.

According to the police officers, their office received an alleged intelligence report from the Homeland Security of the United States and the Philippines' Bureau of Customs. This report said that a package containing contraband items, particularly firearms and accessories, coming from United States was shipped to the Philippines through Atlas Shippers International in Bacolod City.

The Affidavit of Arrest executed by SPO4 Yorpo and SPO1 Jambaro narrated that:

[the police officers] carried the said box and we were instructed by the claimant Michael Diamante to place it at the back of the driver's seat. After we put the box, he immediately opened and checked the content of the box exposing to us. While the driver immediately alighted and also checked the box wherein a handle of a pistol was brandishing on his back; Upon seeing the firearm and knowing the content of the box[,] we introduced ourselves as policemen and restrained the driver and the person who claimed the package while our companions who discreetly positioned in front of the pickup truck hastily rushed towards us and helped x x x."<sup>65</sup>

This narrative leaves more questions than answers.

- 1) How did the police officers suddenly get hold of the package?
- 2) They claimed to have posed as helpers in the company right after their three-hour briefing at the police headquarters, but how were

<sup>64</sup> G.R. No. 239957, February 18, 2019.

<sup>65</sup> *Rollo*, p. 80.

they able to do so right off considering that their task as helpers, modest as it may seem, required a **high degree of trust and confidence** not just from the alleged customers themselves (*i.e.*, petitioner and Palma) but from the company itself which supposedly hired them?

- 3) With an alleged boxful of contrabands, why would petitioner and Palma trust them with the package?
- 4) In any event, were they specifically chosen by Palma to assist him in carrying and loading the box in the parked vehicle? After they loaded the box inside the vehicle, how long did they still tarry behind and in which part of the parking area?

These matters are relevant considering their statement that they were able to view up close the opening of the box and the entirety of its contents. Since the box got shipped from the United States and considering its **incriminating contents**, common sense dictates it must have been wrapped securely and tightly and so it must have taken some time for Palma to fully open it.

- So how long did it take Palma to open the box and expose its contents to the full view of the police officers?
- Is it not awkward to imagine how Palma's body could have been blocking the car door for the whole time he was opening the package at the backseat?
- How then could the police officers have had a clear and unobstructed view of the box while it was being opened and the entirety of its contents?
- Were they only peeking from behind Palma and/or petitioner the whole time?
- How could the supposed pistol tucked all along in the waist of petitioner have moved or replicated itself to eventually find its way, as well, into the box, together with the other firearm accessories? How can the pistol be in two places at the same time?
- And based on this incredible or otherwise improbable narrative of the police officers, how can we justify petitioner's warrantless arrest and the consequent seizure of the various items subsequently used against him in the criminal proceedings below?

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Certainly, there is an **unsettling disconnect** between the police officers' story of a high-valued and sophisticated arms smuggling ring (who merited the attention of the United States Homeland Security and the Philippine Bureau of Customs) *and* the naivete if not stupidity displayed by petitioner and Palma. Given this context, the police officers' narrative is totally improbable to be given any credit.

With due respect, the police officers fabricated a narrative that is a lie. This untruthfulness cannot be the basis for probable cause to effect the warrantless arrest and thereafter the warrantless search. We cannot tolerate such nefarious scheme, for it impacts the life and liberty of anyone in the situation of petitioner, who as a consequence was unlawfully arrested and locked up in jail without bail.

Section 2 and Section 3, Article III of the Constitution command:

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.

Any evidence obtained in violation of this provision is legally inadmissible in evidence as a fruit of the poisonous tree. This principle is covered by this exclusionary rule:

SEC. 3. x x x

(2) Any evidence obtained in violation of x x x the preceding section shall be inadmissible for any purpose in any proceeding.

The alleged firearm and its ammunitions, *i.e.*, Glock 26 9mm cal. pistol with Serial No. ELR043, and the boxful of alleged firearm accessories or paraphernalia, were obtained **allegedly** as a result of the warrantless arrest and seizure done by SPO4 Yorpo and SPO1 Jambaro. But for the warrantless arrest and seizure, these alleged contrabands would not have come into existence.<sup>66</sup> These pieces of evidence would **not** have been *inevitably gained* without the acts of the police officers.<sup>67</sup> They were gathered and presented as a result of the warrantless arrest and search.<sup>68</sup> They are the fruits of the arrest and seizure actions of the police officers.

Unfortunately, the story foisted by the police officers is not credible. We do not believe that what they said truly happened. In view of this absence

<sup>66</sup> *People v. Manago* 793 Phil. 505, 51 (2016).

<sup>67</sup> *People v. Alicando*, 321 Phil. 656, 712-713 (1995).

<sup>68</sup> *Supra* note 66.

of a justification for the warrantless arrest and search, or the absence of any other explanation to prove probable cause, these acts are unlawful. As a result, the pieces of evidence obtained as a result of this illegal warrantless arrest and search – the alleged firearm and its ammunitions, *i.e.*, Glock 26 9mm cal. pistol with Serial No. ELR043, and the boxful of alleged firearm accessories or paraphernalia – are fruits of the poisonous tree, which are inadmissible in any proceeding for any purpose whatsoever.

Since these pieces of evidence are the very *corpus delicti* of the crimes charged in Criminal Case No. 16-43163 for illegal possession of firearm and its ammunitions in violation of Section 28 of RA 10591 before RTC-Branch 46, and in Criminal Case No. 16-43487 for illegal importation of firearm accessories under Section 33 of RA 10591 before RTC-Branch 54, these criminal cases against petitioner must necessarily be dismissed with prejudice since there is no other evidence upon which to try him.<sup>69</sup>

***The inquest and later the preliminary investigation conducted by ASP Vito Cruz were illegal.***

We also rule that the inquest should have stopped the moment the timelines under Article 125 of the Revised Penal Code had lapsed, *viz.*:

Art 125 - Delay in the Delivery of Detained Persons to the Proper Judicial Authorities. - The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and thirty-six (36) hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel.

ASP Vito Cruz had 36 hours to complete the inquest, resolve the complaint, and file the Informations, if any. Had he needed more time to resolve, he should have converted the inquest to a regular preliminary investigation, but petitioner should have been released in the meantime.

Here, it took **one month** for ASP Vito Cruz to file the first two Informations for violation of Section 28 of RA 10591, and **another one month** for him to file the next two Informations for violation of Section 33 of RA 10591, **without** petitioner's consent, much less, a waiver of his rights under Article 125, or his right to provisional liberty considering he already

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<sup>69</sup> Id.

posted bail not once but twice. By making petitioner suffer incarceration as ASP Vito Cruz bade his time to complete the inquest, ASP Vito Cruz and the DOJ violated petitioner's right not to be deprived of his liberty without due process of law.

RTC-Branch 46 committed grievous error as well when it refused to order the release of petitioner, even after posting bail, on the ground that there was a non bailable crime undergoing preliminary investigation. This is a blatant violation of Sections 3 and 19, Rule 114 of the Rules on Criminal Procedure, viz.:

Sec. 3. No release or transfer except on court order or bail. – No person under detention by legal process shall be released or transferred except upon order of the court or when he is admitted to bail.

Sec. 19. Release on bail. – The accused must be discharged upon approval of the bail by the judge with whom it was filed in accordance with Section 17 of this Rule.

When bail is filed with a court other than where the case is pending, the judge who accepted the bail shall forward it, together with the order of release and other supporting papers, to the court where the case is pending, which may, for good reason, require a different one to be filed.

In *Paderanga v. Court of Appeals*, the Court ruled:

“Section 13, Article III of the Constitution lays down the rule that before conviction, all indictes shall be allowed bail, except only those charged with offenses punishable by *reclusion perpetua*, when the evidence of guilt is strong. Thus, Section 4 of Rule 114 provides that all persons in custody shall, before conviction by a regional trial court of an offense not punishable by death, *reclusion perpetua* or life imprisonment, be admitted to bail as a matter of right. The right to bail, which may be waived considering its personal nature and which, to repeat, arises from the time one is placed in the custody of the law, springs from the presumption of innocence accorded every accused upon whom should not be inflicted incarceration at the outset since after trial he would be entitled to acquittal, unless their guilt be established beyond reasonable doubt.”<sup>70</sup>

**Petitioner is entitled to release as a matter of right.** For one, ASP Vito Cruz cannot convert an inquest into a preliminary investigation without petitioner's consent, without his waiver of his rights under Article 125 of the Revised Penal Code, or without being released from detention on account of the bail he had posted twice. For another, RTC-Branch 46 ought to have known that after posting bail, petitioner was already being held in captivity without any court process. This again is a violation of petitioner's right not to be deprived of his liberty without due process of law.

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<sup>70</sup> 317 Phil. 862, 874 (1995).

The Court strongly supports the campaign against loose firearms and the danger they pose to the general public. But as dangerous and important as this campaign may be, it can never be more compelling than the Bill of Rights for the protection of liberty of every individual in the country. The Constitution protects every citizen, innocent and guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions may be.

**ACCORDINGLY**, the Petition is **GRANTED**. The **Decision dated May 9, 2019** and **Resolution dated January 30, 2020** of the Court of Appeals in CA-G.R. SP No. 10697 and CA-G.R. SP No. 10873 are **REVERSED** and **SET ASIDE**.

The **Resolution dated August 22, 2016** and **Resolution dated September 13, 2016** of the Department of Justice through Assistant State Prosecutor Michael A. Vito Cruz in NPS Docket No. XVI-INQ-16H-00110 are likewise **REVERSED** and **SET ASIDE**.

The following criminal cases filed against petitioner **BRYAN TA-ALAY CONSTANTINO** are **DISMISSED WITH PREJUDICE**:

- a) *People of the Philippines v. Bryan Ta-Ala y Constantino* before the Regional Trial Court for Negros Occidental, Bacolod City, Branch 46, **Criminal Case No. 16-43163** for violation of Section 28, Republic Act No. 10591 for illegal possession of firearm and ammunitions; and
- b) *People of the Philippines v. Bryan Ta-Ala y Constantino* before the Regional Trial Court for Negros Occidental, Bacolod City, Branch 54, **Criminal Case No. 16-43487** for violation of Section 33, Republic Act No. 10591 for illegal importation of firearm accessories.

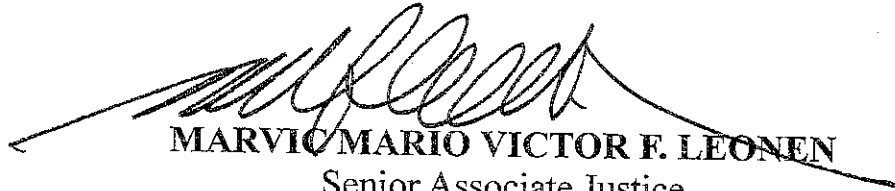
The Chief of the Bureau of Jail Management and Penology is ordered to immediately release petitioner Bryan Ta-Ala y Constantino unless he is being held in custody for some other lawful cause. He is further directed to report to the Court the action he has taken within five (5) days from notice.

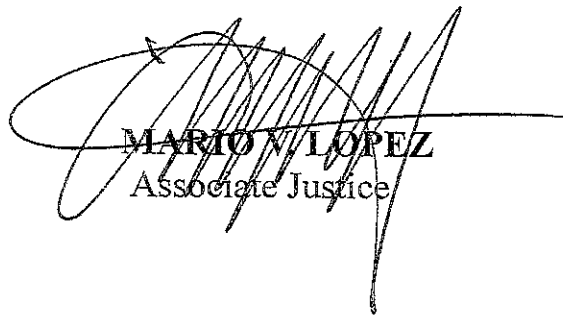
Let entry of judgment be immediately issued.


**SO ORDERED.**

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

**WE CONCUR:**

  
**MARVIC MARIO VICTOR F. LEONEN**  
Senior Associate Justice  
Chairperson

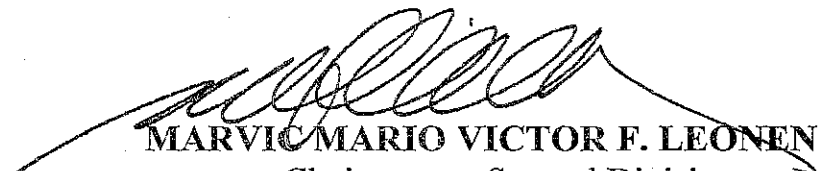
  
**MARIO N. LOPEZ**  
Associate Justice

  
**JHOSEP Y. LOPEZ**  
Associate Justice

  
**ANTONIO T. KHO, JR.**  
Associate Justice

**ATTESTATION**

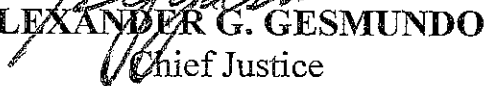
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARVIC MARIO VICTOR F. LEONEN**  
Chairperson, Second Division



**CERTIFICATION**

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



**ALEXANDER G. GESMUNDO**  
Chief Justice