

EN BANC

[G.R. No. 176364, September 18, 2009]

**JUANITO R. RIMANDO, PETITIONER, VS. COMMISSION ON
ELECTIONS AND NORMA O. MAGNO, RESPONDENTS.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Before the Court is a petition for certiorari under Rule 65 of the Rules of Court with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction to reverse and set aside the following issuances of the Commission on Elections (COMELEC) *En Banc*: 1) **Resolution^[1] promulgated on October 11, 2005** and 2) **Resolution^[2] promulgated on January 5, 2007** in Election Offense (E.O.) Case No. 01-130 for Violation of the Omnibus Election Code. The first assailed Resolution granted private respondent's Motion for Reconsideration and directed the COMELEC's Law Department to file the proper information against petitioner for violation of Article XXII, Section 261, paragraph (s) of the Omnibus Election Code, while the second Resolution denied the petitioner's motion for reconsideration.

The factual antecedents:

On July 13, 2001, herein private respondent lodged a Complaint^[3] with the COMELEC, Office of the Provincial Election Supervisor, Santa Cruz Laguna, accusing Jacinto Carag, Jonry Enaya and herein petitioner Juanito R. Rimando of violating Section 2, paragraph (e) and Section 3, paragraph (d) of COMELEC Resolution No. 3328^[4] in relation to Section 261, paragraph (s) of the Omnibus Election Code^[5] and Section 32 of Republic Act (R.A.) No. 7166.^[6] The Complaint included the following narration of facts:^[7]

That on or about February 27, 2001, and/or during the election period from January 2, 2001 to June 13, 2001, in Quezon City and Santa Rosa, Laguna, and within the jurisdiction of this Honorable Commission, xxx JUANITO R. RIMANDO, being then the President and General Manager of the Illustrious Security and Investigation Agency, Inc. despite the COMELEC denial on February 19, 2001 of his/its application for a Firearms & Other Deadly Weapons Ban Exemption, in conspiring with one another, did then and there, willfully and unlawfully, allow, permit and/or sanction his/its SECURITY GUARDS JACINTO CARAG AND JONRY ENAYA, to work as such as they in fact unlawfully and willfully did at the Santa Rosa Homes, Santa Rosa, Laguna, using 12 GA with Firearms License Nos. 0002946J0048708 and 0002946J00478992, knowing fully well that they had no prior written COMELEC authority to do so under said Section 2, paragraph e and Section 3, paragraph d COMELEC RESOLUTION 3328;

that on February 27, 2001, respondent-Security Guard JACINTO CARAG, without any justifiable cause, with intent to kill, taking advantage of nighttime, with treachery and use of firearm, did then there, willfully, feloniously and unlawfully shoot to death with a shotgun JONATHAN MAGNO, a 19-year old unarmed and defenseless nautical student in his school uniform... that said respondent-Security Guard CARAG immediately fled from the scene of the crime and is still at large, and that the fatal weapon though recovered by the afore-named agency has not yet been surrendered by said respondent RIMANDO to the police authorities, to the damage and prejudice of the heirs of said victim represented by the undersigned mother. xxx xxx xxx

In his Counter-Affidavit,^[8] petitioner denied having violated COMELEC Resolution No. 3328 and averred that on the day of the shooting incident, security guards Carag and Enaya were within the vicinity of Sta. Rosa Homes in Santa Rosa, Laguna, where they were assigned to provide security to the residents thereof and provided with licensed firearms which they never brought outside the subdivision. Attached to his Counter-Affidavit was Memorandum 31-2000^[9] of the Security Agencies and Guards Supervision Division, Civil Security Group, PNP, which petitioner contended only prohibited private security agencies, company security forces, government security forces and their security guards from bearing guns outside the immediate vicinity of their places of work without written authority from the COMELEC.

In a Resolution^[10] dated October 8, 2001, the Provincial Election Supervisor of Santa Cruz, Laguna, dismissed private respondent's complaint against petitioner and his security guards based on a finding that the licensed firearms were carried and used by security guards Enaya and Carag within their place of work, for which no exemption and/or permit was needed in accordance with Section 2(e) of COMELEC Resolution No. 3328.

Therefrom, private respondent Magno appealed^[11] to the COMELEC at Intramuros, Manila. Citing Section 3(d) of COMELEC Resolution No. 3328, she argued that prior written authority from the COMELEC was necessary before firearms could legally be carried even in the place of assignment during the election period.

On May 6, 2002, the COMELEC *En Banc* rendered a Resolution^[12] affirming the dismissal of the complaint against security guards Jonry Enaya and Jacinto Carag, but directing its Law Department to file the proper information against petitioner Juanito Rimando for violation of Article XXII, Section 261, paragraph (s) of the Omnibus Election Code. In said Resolution, the COMELEC *En Banc*, noting the "seeming" conflict between Section 2(e) and Section 3(d) of COMELEC Resolution No. 3328, interpreted Section 261(s) of the Omnibus Election Code as requiring a permit from the Commission before the security guards of a security agency can bear firearms in their place of assignment during the election gun ban. Moreover, the COMELEC found that as President and General Manager of the security agency, it was petitioner's responsibility to apply for such a permit from the COMELEC. Thus, the COMELEC ruled in its May 6, 2002 Resolution:^[13]

As President and General Manager, respondent Rimando is aware of this requirement as shown in the records that he actually applied for an exemption from the Committee on Firearms and Security Personnel of the Commission. However, said application was denied on the ground that it lacked the endorsement of the CSG Director as evidenced by the recommendations made by the Law Department. xxx xxx xxx

We therefore hold respondent Rimando liable for violation of the COMELEC Gun Ban in his capacity as the President and General Manager of the agency. His liability falls squarely on his failure to secure a permit from the Commission as provided under the supplementary statement, *"Provided further, That in the last case prior written approval of the Commission shall be obtained."* This supplemental provision explicitly reveals the role of a security agency head in the procurement of COMELEC permit delineating his responsibility over his subordinates who only perform their duties as mandated of them by the agency. It would be a mockery of justice if by reason of respondent Rimando's failure to secure a permit from the COMELEC all security guards employed in his agency, inclusive of herein respondents Carag and Jacinto, be charged with violation of the COMELEC Gun Ban.

This principle on the criminal liability of managers of security agencies and their employees has been laid down in *Cuenca vs. People of the Philippines* (G.R. No. L-27586, June 26, 1970). In said case, the Supreme Court absolved the security guard of the crime of illegal possession of firearms and instead ordered the prosecution of the security guard's agency's manager for his failure to acquire the necessary permit for the firearms used by his agency. xxx xxx xxx

Petitioner filed a Motion for Reconsideration^[14] contending that 1) the aforesaid Resolution went beyond the scope of the law when it held petitioner, as President of the security agency, criminally liable for an act that was not prohibited under Section 261 (s) of the Omnibus Election Code; 2) there was no conflict between Sections 2 and 3 of COMELEC Resolution No. 3382 and if ever there was, the same should be resolved in his favor since penal laws were construed strictly against the State and in favor of the accused; 3) the application for exemption filed by petitioner's security agency with the COMELEC through the PNP-SAGD was for the authority to transport firearms and not to bear arms inside or within the vicinity of the place of work of petitioner's security personnel; and 4) since no election offense was committed, the filing of a criminal case against petitioner was unwarranted and contrary to law.

In its Resolution^[15] dated January 30, 2004, the COMELEC *En Banc* granted petitioner's motion for reconsideration and accordingly reversed and set aside its May 6, 2002 Resolution with the following ratiocination:

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

x x x

(s) Wearing of uniforms and bearing arms.- During the campaign period, on the day before and on election day, any member of x x x [a] privately-owned or operated security, investigative, protective or intelligence agencies, "who x x x bear arms outside the immediate vicinity of his place of work; *Provided*, That this prohibition shall not apply x x x when guarding private residences, buildings or offices; *Provided, further*, that in the last case prior written approval of the Commission shall be obtained. Xxx"

The aforequoted provision lays down the following parameters for its application, to wit:

1. Bearing of firearms beyond the immediate vicinity of one's place of work is prohibited;
2. One may carry his firearm beyond the immediate vicinity of his place of work when he is guarding the residence of private persons or private residences or offices provided he has prior written authority from the Comelec.

The confusion in the interpretation of this proscription lies in the peculiar circumstances under which security guards perform their duties. There are security guards hired to escort individuals. Since they are mobile, their place of work cannot be determined with exactitude hence, the need for an authority from the Comelec for them to carry their firearms. There are also guards hired to secure the premises of offices, or residences. And because these offices adjoin other offices or that these residences adjoin other houses, the actual place of work or its immediate vicinity cannot be fixed with ease, there is also a need for these guards to secure authority from the Comelec. Lastly, there are guards assigned to secure all the houses in a subdivision, or all offices in one compound, or all factories within a complex, or all stores within a mall. In this case, the place of work of the guards therein detailed can be easily determined by the visible boundaries. And because the place of work can be determined, the Gun Ban exemption is required only when the firearms are brought outside said subdivision, or compound, or complex, or mall.

The following provisions of Comelec Resolution No. 3328 which is the Rules and regulations governing the Bearing of Firearms during the election period for the May 2001 elections should likewise be noted:

"Sec. 2. Prohibitions - During the election period from Jan. 2 to June 13, 2001, it shall be unlawful for xxx

x x x

(e) Any members of xxx privately owned or operated security, investigative, protective or

intelligence agencies to bear firearms outside the immediate vicinity of his place of work xxx

x x x

"Sec. 3. Exceptions - The provisions in Sec. 2 hereof shall not apply in the following instances:

x x x

(d). Members of x x x privately owned or operated security, investigative, protective or intelligence agencies in the specific area of their assignment of their duties with prior written authority from the Commission."

Interpreting the provisions aforequoted in relation to this case, we arrive at the following important points:

1. One does not need authority from the Commission when the firearm is carried within the immediate vicinity of his place of work;
2. If his place of work cannot be determined but he has an assignment to carry out in accordance with his duty, authority from the Commission is required.

In the instant case, the shooting incident happened within the premises of Sta. Rosa Homes, a subdivision being guarded by the security agency headed by the respondent. It is very clear therefore that the carrying of firearm was done within the premises of the guards' place of work. Under the law, the act is exempted from the Gun Ban rule.

Laws which are penal in nature, like Section 261 of the Omnibus Election Code, should be interpreted liberally in favor of respondents. xxx While it is our duty to conduct preliminary investigation for election offenses and that this kind of investigation only requires substantial evidence, the Commission must carry out this task prudently to the end that persons are not unnecessarily dragged into court hearings. Furthermore, we have already dismissed the case against the security guards. In the interest of justice, we also have to dismiss the case against the head of their security agency. ^[16]

Private respondent filed a motion for reconsideration^[17] of the January 30, 2004 Resolution. In the herein first assailed **Resolution^[18] dated October 11, 2005**, the COMELEC *En Banc* rendered judgment, thus:

WHEREFORE, complainant's Motion for Reconsideration is hereby **GRANTED**, and the Resolution of the Commission promulgated on 30 January 2004 is hereby **RECONSIDERED**.

The Law department is hereby directed to file the proper information