

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Anna Marie Crespillo
Atty. ANNA MARIE D. CRESPILO
Acting Executive Clerk of Court III
Second Division

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

SB-16-CRM-0802
For: Violation of Section 3(e)
of R.A. No. 3019

REXLON T. GATCHALIAN et. al,
Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

SB-16-CRM-0803
For: Violation of Section 3(j) of
R.A. No. 3019

REXLON T. GATCHALIAN et. al.,
Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

SB-16-CRM-0804
For: Reckless Imprudence
Resulting in Multiple
Homicide & Multiple
Physical Injuries

REXLON T. GATCHALIAN et. al.,
Accused.

Present:
Martires, J., *Chairperson*
MUSNGI, J. and
ECONG, J.*

PROMULGATED:

December 13, 2016

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* Sitting as Special Member per Administrative Order No. 242-2016 dated 09 August 2016.

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JOINT RESOLUTION

MUSNGI, J.:

This Court resolves the *Motion for Judicial Determination of Probable Cause*¹ filed by accused Rexlon T. Gatchalian, and a similar motion² jointly filed by accused Renchi May M. Padayao and Eduardo Y. Carreon both on 21 October 2016, and the *Consolidated Comment/Opposition*³ filed by the prosecution on 11 November 2016.

The accused anchored their separate motions on essentially the same ground that there is no probable cause to hold them liable for the crimes charged.

Conversely, the prosecution argued that there is probable cause to indict the accused because all the elements for the crimes charged were sufficiently established in its *Joint Resolution*⁴ dated 28 April 2016.

Thus, the sole issue to be resolved in this case is whether or not probable cause exists warranting the indictment of the accused for the crimes charged.

The Facts of the Case

On May 13, 2015, a fire occurred within the premises of Kentex Manufacturing Corporation (Kentex) located at 6159 Tatalon St., Ugong, Valenzuela Bulacan resulting in the death of seventy four (74) of its employees.

The investigation conducted after the incident revealed that Valenzuela City Mayor Rexlon T. Gatchalian (Mayor Gatchalian) through Renchi May M. Padayao issued a mayor's permit to Kentex without requiring the latter to submit a Fire Safety Inspection Certificate (FSIC), in violation of the Revised Fire Code of the Philippines (R.A. No. 9514).

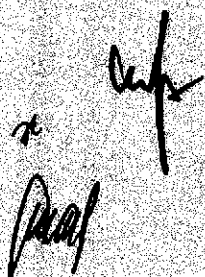
*Sitting as Special Member per Administrative Order No. 242-2016 dated 09 August 2016.

¹ Records, Vol. 1, pp. 93-539 and Vol. 2, pp. 10-382.

² Records Vol. 2, pp. 10-382.

³ *Ibid*, pp. 401-409.

⁴ Records, Vol. 1, pp-8-66.



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Criminal and Administrative complaints were then filed by the Fact-Finding Investigation Bureau-Military and Other Law Enforcement Officers (FFIB-MOLEO) against the following persons:

- a. Accused Gatchalian, Padayao and Carreon, Mayor and Business Permit and Licensing Office (BPLO) officials, respectively of Valenzuela City; and Ong King Guan, Jose L. Tan, Charlie S. Ng, Beato Ang, Mary Grace L. Ching, and Terrence King Ong, of Kentex Manufacturing Corporation, with violation of Section 3(e) and (j), R.A. No. 3019;
- b. Mel Jose P. Lagan, Edgrover L. Oculam and Rolando Avendan of the Bureau of Fire Protection (BFP) with violation of Section 3 (e), R.A. No. 3019; and
- c. Ong King Guan, Jose L. Tan, Charlie S. Ng, Beato Ang, Mary Grace L. Ching, Terrence King Ong, Oscar T. Romero, Nino David T. Provido, Wilmer Arenal, of Kentex Manufacturing; accused Gatchalian, Padayao and Carreon of Valenzuela City; and Mel Jose P. Lagan, Edgrover L. Oculam and Rolando Avendan of the BFP with Reckless Imprudence Resulting to Multiple Homicide and Multiple Physical Injuries as defined in Art. 365 of the Revised Penal Code.

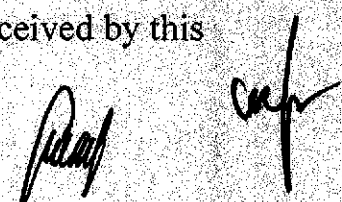
The Complaint charged accused Gatchalian, in his capacity as the Mayor, and accused Padayao and Carreon, as Officer-in-Charge and Licensing Officer IV, respectively, of the BPLO of Valenzuela City of conspiring with the BFP officials and the private respondents in issuing business permits to Kentex thereby enabling the latter to continue operations despite unsafe conditions and absent the corresponding Fire Safety Inspection Certificate (FSIC).

In its *Joint Resolution*⁵ dated 11 February 2016, the Office of the Ombudsman found probable cause to hold accused liable for violation of Sections 3 (e) and (j) of R.A. No. 3019, and for Reckless Imprudence resulting in Multiple Homicides and Multiple Physical Injuries under Article 365 of the Revised Penal Code (RPC). On 28 April 2016, the Office of the Ombudsman issued a *Joint Order*⁶ denying the *Motions for Reconsideration* filed by the accused on 16 March 2016, 18 March 2016, and 30 March 2016.

On 21 October 2016, the following Informations were received by this Court:

⁵ Note 1.

⁶ *Ibid*, pp.67-76.



SB-16-CRM-0802
Violation of Sec. 3 (e), R.A. 3019

That in January 2015 or sometime prior or subsequent thereto, in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court; accused **REXLON TING GATCHALIAN**, a high ranking public officer being the *Mayor (SG 30)*, **RENCHI MAY MECINA PADAYAO**, *Officer-in-Charge (SG 23)* of the Business Permits and Licensing Office (BPLO), and **EDUARDO YCO CARREON**, *Licensing Officer IV (SG 22)* of the BPLO, all public officers of the City Government of Valenzuela; while in the performance of their official functions as such; conspiring and confederating with one another and with private individual **ONG KING GUAN** a.k.a. **TERENCE KING ONG**, *General Manager and Treasurer of Kentex Manufacturing Corporation (Kentex)*; did then and there willfully, unlawfully and criminally give Kentex unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence, by issuing a Business Permit to Kentex for the year 2015, despite its delinquent status and without requiring a *Fire Safety Inspection Certificate*, and for failing to revoke the permit after Kentex failed to submit the requirements within the prescribed period; thereby allowing Kentex to continue operating with inadequate fire safety measures; resulting in 74 fatalities and multiple physical injuries when a fire took place in the Kentex Compound on 13 May 2015, thereby causing undue injury to the victims in the amount of approximately Three Million Seven Hundred Thousand Pesos (₱3,700,000.00)."



SB-16-CRM-0803
Violation of Sec. 3 (j), R.A. 3019

"That in January 2014 or sometime prior or subsequent thereto, in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court; accused **REXLON TING GATCHALIAN**, a high ranking public officer being the *Mayor (SG 30)*, **RENCHI MAY MECINA PADAYAO**, *Officer-in-Charge (SG 23)* of the Business Permits and Licensing Office (BPLO), and **EDUARDO YCO CARREON**, *Licensing Officer IV (SG 22)* of the BPLO, all public officers of the City Government of Valenzuela with the duty of approving or granting business permits; taking advantage of their respective official positions and committing the offense in relation to their office; conspiring and confederating with one another, did then and there willfully, unlawfully, criminally and knowingly approve or grant or issue a Business Permit in 2014 in favor of Kentex Manufacturing Corporation, an entity that was not qualified or legally entitled to such permit for not possessing the requisite *Fire Safety Inspection Certificate*.

SB-16-CRM-0804
Reckless Imprudence Resulting in
Multiple Homicide & Multiple Physical Injuries

“That on or about 13 May 2015, in Valenzuela City, Philippines, and within the Honorable Court’s jurisdiction; accused public officers **REXLON TING GATCHALIAN**, being the *Mayor (SG 30)*, **RENCHI MAY MECINA PADAYAO**, *Officer-in-Charge (SG 23)* of the Business Permits and Licensing Office (BPLO), and **EDUARDO YCO CARREON**, *Licensing Officer IV (SG 22)* of the BPLO, all of the City Government of Valenzuela, and **MEL JOSE PAREDES LAGAN**, *City Fire Marshall (SG 25)*, **EDGROVER LIM OCULAM**, *Fire Senior Inspector (SG 23)*, and **ROLANDO SANTIAGO AVENDAN**, *Senior Fire Officer 2 (SG 17)*, all of the Valenzuela Bureau of Fire Protection; taking advantage of their respective official positions and committing the offense in relation to their office; conspiring and confederating with one another and with private individual **ONG KING GUAN** a.k.a. **TERENCE KING ONG**, *General Manager and Treasurer of Kentex Manufacturing Corporation (Kentex)*; did then and there willfully, unlawfully and feloniously-in a negligent, careless and imprudent manner- approve, grant, or issue a Business Permit in favor of Kentex, and fail to impose the prescribed sanctions under Section 9 of the Revised Fire Code of the Philippines of 2008, thus abandoning the necessary precautionary fire safety measures designed to protect lives and property, or to prevent accident to persons and damage to property , and allowing Kentex to continue operating under hazardous conditions, resulting in the deaths of 74 individuals and physical injuries to others in the 13 May 2015 Fire, thereby causing actual damages to the victims in the approximate amount of **Three Million Seven Hundred Thousand Pesos (₱3,700,000.00)** and causing physical injuries to others.”

On the charge of violation of Section 3 (e) of R.A. No. 3019, accused contended that they did not act with manifest partiality, evident bad faith, or gross and inexcusable negligence in issuing business permits to Kentex. They claimed that they merely enforced the procedure provided by administrative orders, circulars and other issuances of the Department of the Interior and Local Government (DILG), Department of Trade and Industry (DTI), and BFP, and Valenzuela City’s Ordinance No. 62 in issuing the business permits to Kentex, as part of their ministerial duty as Mayor and officials of the Valenzuela City BPLO. Moreover, there was no advantage or preference given to Kentex, as the same procedure in issuing the business permits was applied to all the business establishments in Valenzuela City.

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Accused also argued that Branch 171 of the Regional Trial Court (RTC) of Valenzuela City already rendered a Joint Decision⁷ which upheld the validity of the procedure being implemented for the issuance of business permits in Valenzuela City, and that this Decision had become final and executory. Moreover, the present administration of President Rodrigo Duterte is advocating the implementation of a similar procedure in all cities and municipalities nationwide, as shown by the Joint Memorandum Circular No. 01 Series of 2016 issued on 30 August 2016 by the DILG, DTI, and newly created Department of Information and Communications Technology (DICT) which provides for a procedure that is exactly the same as the procedure implemented in Valenzuela City.

On the charge of violation of Section 3 (j) of R.A. No. 3019, accused claimed that the business permits were issued to Kentex only after there was a determination that it was qualified or legally entitled to the business permit. The business permits were issued to Kentex after it duly filed its application and submitted the required documents, in accordance with the procedure provided by Valenzuela City's Ordinance No. 62. Also, they were unaware of any violation on the part of Kentex when the business permits were issued because there was no notice from the BFP that Kentex was non-compliant with the provisions of R.A. No. 9514 or the Revised Fire Code of the Philippines 2008 (Fire Code). Based on the procedure in place, BFP has the obligation to inform the BPLO of any Fire Code violations committed by business establishments. It is only when the BPLO is accordingly informed that it can either revoke the business permits already issued, or refuse to issue or renew the same.

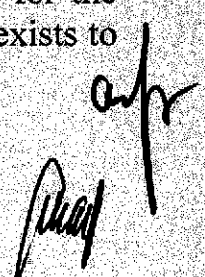
On the charge of Reckless Imprudence Resulting to Multiple Homicide and Multiple Physical Injuries, accused claimed that the Interagency Anti-Arson Task Force (IATF) already determined the proximate cause of the fire which is "the molten slags from the welding rod came into contact with one of the sacks of 'SUPERCELL Blowing Agents' piled almost below or very near the scaffolding which was then being used for the conduct of the said hotwork." Thus, there is likewise no probable cause to hold them liable because the issuance of the business permit to Kentex, or any act for that matter on the part of accused, was not the proximate cause of the fire which caused the death and injury to Kentex workers.

The prosecution filed its *Consolidated Comment/Opposition*⁸ to the motions⁹ on 11 November 2016 and asserted that all the elements for the crimes charged were sufficiently established, hence, probable cause exists to

⁷ *Ibid*, pp. 320-345.

⁸ Note 2.

⁹ Note 1.



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indict the accused. It claimed that the grounds relied upon by the accused in their respective motions do not persuade.

Accused are made to answer for violation of Section 3 (e) of R.A. No. 3019. First, the prosecution pointed out that accused are all public officers at the time of the commission of the offense. Second, accused acted with manifest partiality, evident bad faith, or gross and inexcusable negligence in issuing the business permits to Kentex knowing that the administrative issuances and Ordinance No. 62 they relied upon are contrary to the Fire Code. As such, accused gave unwarranted benefits, advantage or preference to Kentex when they issued the business permits despite the absence of the FSIC.

The prosecution claimed that accused are also liable for violation of Section 3 (j) of R.A. No. 3019 having issued the business permits to Kentex despite knowing that the latter is not entitled thereto due to the absence of the required FSIC. It reiterated that the findings of the IATF conveyed that the absent fire protection features within the establishment of Kentex contributed to the deaths and injuries of the victims.

Ruling

The determination of probable cause rests on evidence that would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested.¹⁰ It is the knowledge of facts, actual or apparent, strong enough to justify a reasonable man in the belief that he [has] lawful grounds for arresting the accused.¹¹

Under the principles governing criminal procedure, the Sandiganbayan, or any trial court for that matter, is mandated to independently evaluate or assess the merits of the case, and may either agree or disagree with the recommendation of the prosecutor¹².

On the charge of violation of Section 3(e) of R.A. 3019.

Accused Gatchalian, Padayao and Carreon are charged with violation of Section 3 (e) of R.A. No. 3019 for allegedly conspiring with Ong King Guan and Terrence King Ong to give unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence in the issuance of business permits to Kentex for the year 2015

¹⁰ *Allado v. Diokno*, G.R. No. 113630, 5 May 1994.

¹¹ *Ibid.*

¹² *Venus v. Desierto*, G.R. No. 130319, October 21, 1998, 358 PHIL 675-704.

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despite its delinquent status and without the required FSIC, and for failing to revoke the permit after Kentex failed to submit the requirements within the prescribed period, thereby allowing Kentex to continue operating with inadequate fire safety measures, resulting in 74 fatalities and multiple physical injuries when a fire took place in the Kentex Compound on 13 May 2015.

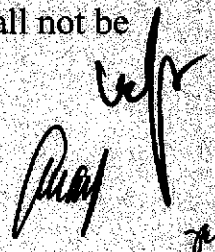
In order to be held liable for the violation of Section 3(e) of R.A. No. 3019, the following elements must exist: (a) The accused must be a public officer discharging administrative, judicial or official functions; (b) He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (c) His action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.¹³

The prosecution maintains that accused Gatchalian, Padayao and Carreon gave unwarranted benefits or advantage to Kentex because it was issued business permits despite its delinquent status and the lack of the FSIC. The Office of the Mayor issued business permits to Kentex on 15 January 2014 and 14 January 2015. The permit issuances were recommended for approval by accused Carreon, and approved on behalf of accused Gatchalian by accused Padayao. The business permits were issued despite the fact that Kentex was not issued any FSIC by the BFP for the years 2014 and 2015. The prosecution relied on Section 5(g) of R.A. No. 9514, enacted in 2008, which provided that no occupancy permit, business or permit to operate shall be issued without securing an FSIC from the Chief, BFP, or his/her duly authorized representative.

Accused Gatchalian, Padayao and Carreon, however, clarified and pointed out that the DILG, which has supervision over all the local government units (LGUs) and the BFP, as well as the DTI, which is tasked to expand trade, industry and business in the country, have issued circulars and regulations, after 2008, in order to streamline the procedure in issuing business permits. The following are the issuances:

- a) Joint Memorandum Circular No. 1 series of 2010 issued by the DTI and DILG (Joint Memorandum) aimed to reduce the steps and processing time for business permits, and allowed the LGUs to issue "temporary" permits that gave applicants a period of time (usually 2-3 months after issuance of the permit) to comply with the other requirements. It also provides that inspections usually undertaken for compliance with zoning and environment ordinances, building and fire safety, health and sanitation regulations undertaken during the construction stage shall not be

¹³ *Jacinto vs. Sandiganbayan, et al.*, 178 SCRA 254, 259 (1989).



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- conducted again by the LGU as part of the requirements for business registration. Instead, inspections to check compliance with all the requirement standards will be undertaken within the year after the issuance of the business permit. (*underscoring provided*)
- b) Joint DILG-DTI Department Administrative Order No. 10-07- (Joint Administrative Order) clarified the roles and responsibilities of both departments in the implementation of the Joint Memorandum. The Joint Administrative Order called for the creation of a Business One-Stop-Shop (BOSS) where a single site or location is designated by the LGU for all concerned agencies in the BPLS system to receive and process applications for business registration thru a streamlined system¹⁴. (*underscoring provided*)
- c) DILG Memorandum Circular No. 2011-05¹⁵ (Re: Intensifying fire safety enforcement in the Bureau of Fire Protection and institutionalizing standard processes in the conduct of inspection and defining accountabilities of concerned BFP Personnel in the inspection and issuance of fire safety inspection certificate) reiterated the need for fire safety inspection to be conducted promptly, and should be completed before the end of the year. It likewise required the City/Municipal Fire Marshall to submit a written report notifying the Local Chief Executive of the names of non-compliant establishments, and expressly stating therein a recommendation not to issue any of the required permits or revoke existing ones. (*underscoring provided*)

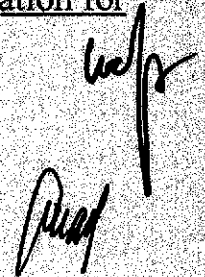
The BFP has also made issuances to implement the objectives spelled out in the circulars and orders of the DILG and the DTI. Thus:

- a. BFP Memorandum dated 24 September 2012¹⁶ (Re: Guidelines in the processing of Fire Safety Inspection Certificate (FSIC)) during renewal of business permits specifically in areas where one-stop-shop is being implemented provided for procedures for inspection before or after the business permitting process and called for the safety inspection of any building, structure and establishment two (2) or three (3) months in advance before the scheduled renewal of any permits or licenses by the BPLO, without need for the submission or referral of the application for

¹⁴ See Annex "4" of the Motion.

¹⁵ See Annex "5" of the Motion.

¹⁶ Annex "6" of the Motion



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business permits before such inspection is conducted. The Memorandum also provided for the inspection of establishments with issued business permit during the one stop shop within three (3) days upon receipt of payment of pertinent fire code fees. *(underscoring provided)*

- b. Bureau of Fire Protection Operational Procedures Manual (BFP Manual) provides for the procedure in the issuance of the FSIC in cases where the local government unit is employing a BOSS scheme provided by the DILG-DTI Joint Memorandum.¹⁷ It is only after the business permits are issued that the applications are forwarded to the Fire Safety Enforcement Section ("FSES") of the BFP for the scheduling of fire safety inspections. In other words, fire safety inspections, and consequently the fire safety inspection certificates, are issued after the issuance of the Business Permit. *(underscoring provided)*

Valenzuela City's Ordinance No. 62, Series of 2012, entitled "An Ordinance Establishing the 3-S in Public Service Program in Valenzuela City and Providing Funds Therefor" similarly embodies the policies sought to be established by the national government. The procedure provided by the Ordinance was implemented and applied by Accused in issuing business permits in Valenzuela City.

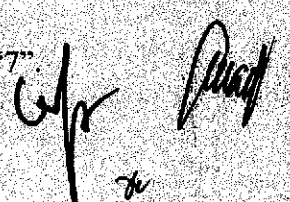
This ordinance was subsequently declared to be valid by RTC 171, Valenzuela City. The decision, which already attained finality, is instructive:

"The newly elected President Benigno C. Aquino III, also called on LGUs "to look for more ways to streamline our process to make business start-ups easier." It became the priority reform policy of Pres. Aquino's government.

The point agencies were the Department of Interior and Local Government [DILG], which has supervision over the LGUs and the BFP; and, the Department of Trade and Industries [DTI] for trade and businesses. As administrative agencies they are clothed with rule-making powers since it is impossible for the legislative branch to foresee the multifarious and complex obstacles that maybe encountered in enforcing the law.

Such was the task of the DILG and the DTI to craft policy guidelines germane to the objects and purposes of ARTA and the FIRE CODE. The two agencies have to come up with issuances which must be in harmony with the

¹⁷ BFP Operations Procedures Manual, pages 21 - 22, attached hereto as Annex "7"



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provisions of both ARTA and the FIRE CODE and for the sole purpose of carrying into effect its general provisions.

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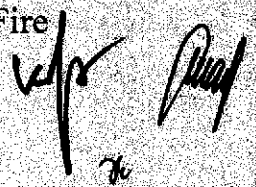
These issuances became the cornerstone of many LGUs reform initiatives in the areas of business registration, permits and licenses which account in the significant boost in revenues in many LGUS which started streamlining strategies. A One-Stop-shop in business permit and licensing pervaded in many cities and municipalities; LGUs adopted a single unified form in processing new applications for business permits; business registrations have to follow shortened steps in applying for new business permits or renewals; prescribed procedure for processing of business registrations have to be complied with.

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The thrust of these administrative regulations/issuances is the relaxation of the stringent requirement of the Fire code in Sec. 5 #g which require "No occupancy permit, business or permit to operate shall be issued without securing a Fire Safety Inspection Certificate [FSIC] from the Chief, BFP or his authorized representative. "Without compromising public safety since prompt, routinary and periodic inspection were required to be conducted throughout the year, these issuances allowed the issuance of business permit and the later presentation of FSIC. The wisdom, practicability and reasonableness of the scheme gave effect of the intendment of ARTA.

Considering that Ordinance No. 62 remains to be a valid and existing Ordinance, not having been void or invalid by any competent Court, the accused local government unit officials were bound to implement the same. It is noteworthy that the above-cited Decision, declared that the Ordinance "x x x actually carr[ies] out the requirements of the mandate of existing issuances: inspections to check compliance with all the requirement standards within the year after the issuance of a business permit [DILG-DTI Joint Memorandum Circular No. 1 Series of 2010]; routinary safety inspection of all occupancies by the Fire Marshall or his representative to be completed before the end x x x [DILG Memorandum Circular No. 2011-05] periodic safety inspection two (2) to three (3) months in advance before scheduled renewal of permit or license and inspection of establishments with issued business permits within three (3) days upon receipt of the payment of the fire code fees [BFP Memorandum dated September 24, 2012]."

Further, Sec. 5 of the Fire Code of the Philippines provides that the Fire Code of the Philippines is "administered and enforced by the Bureau of Fire



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Protection (BFP), under the direct supervision and control of the Chief of the Bureau of Fire Protection, through the hierarchy of organization as provided for in Chapter VI of Republic Act No. 6975". The necessary consequence of this provision is that it is the BFP who is primarily responsible for the implementation of the FSIC and has the obligation to inform the LGU officials of the compliance or violation.

It could then categorically be held that accused city officials—Gatchalian, Padayao and Carreon, who were merely complying with the current laws, rules, both national and local when Kentex was issued a business permit are not liable for violation of the Fire Code, precisely because they are not tasked to implement it. Under the Fire Code, it is BFP's task to inform the LGU of the compliance or violation of the building code. Thus, it is incumbent upon the BFP officials to provide the copy of the FSIC or the Notice of Violation to the City and Municipal Officials.

This Court also takes judicial notice of the fact that the DILG, DTI, and the DICT issued Joint Memorandum Circular No. 01 Series of 2016 entitled "Revised Standards in Processing Business Permits and Licenses in all cities and municipalities". The said JMC, in a simple statement presented in Section 6.3, on Complementary Reforms in Support of the Revised BPLS Standards, particularly in 6.2.1.2 provides that "For renewal of business permits, the requirement for the presentation of FSIC to the city/municipality is with the BFP, either thru the copy of the FSIC or the negative list. If the BFP does not provide the city/municipality with the FSIC or does not inform them thru the negative list, it means that the business establishments has (sic) a valid FSIC and therefore, the basis for renewing the business permit."

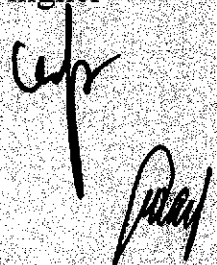
Considering that the actions of the accused LGU officials were pursuant to existing laws, rules and ordinance, then they could not be said to have acted with manifest partiality, evident bad faith or gross inexcusable negligence, when the Business Permit of Kentex was issued for the year 2015. On the contrary, because the accused LGU officials were dispensing with their duties pursuant to law and existing rules, good faith is presumed.

"Unwarranted" is defined as "lacking adequate or official support; unjustified; unauthorized."¹⁸ "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action.¹⁹ "Preference" signifies priority or higher evaluation or desirability, choice or estimation above another.²⁰

¹⁸ Gallego, et. al. v. Sandiganbayan, G.R. No. L-57841, 30 July 1982.

¹⁹ Alvarez v. People G.R. No. 192591, 29 June 2011.

²⁰ Id.



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It does not appear that any unwarranted benefit, preference or advantage was given to Kentex because the procedure provided by Ordinance No. 62 allows for the issuance of business permits, even without first requiring an FSIC. Since Ordinance No. 62 was enacted in 2012, it is presumed that the same procedure provided in the Ordinance was applied by accused when the business permits were issued to Kentex in 2015. This procedure was not only applicable to Kentex, but to all applicants of business permits in Valenzuela City. Moreover, accused do not have the capacity to determine for themselves Kentex' compliance with the requirements of the Fire Code. According to Memorandum Circular No. 2011-05, the City/Municipal Fire Marshall is required to issue a written report notifying the Local Chief Executive of all the names of non-compliant establishments. Consequently, if the BPLO does not receive any such notice, it has no basis to cancel or withdraw the permit already issued.

Likewise, there is no showing that accused acted with manifest partiality, evident bad faith or gross and inexcusable negligence. There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected."²¹

The only allegation left to support the Ombudsman's finding of probable cause to hold accused liable for violation of Section 3(e) of R.A. 3019 is that Kentex was issued business permits in 2015 "despite its delinquent status and without requiring a *Fire Safety Inspection Certificate*"²² and that they were aware of the delinquency. From the records of this case, there is no fact established or alleged that accused LGU officials are aware of the delinquency. There is also no evidence put forward that the BFP submitted to the mayor of Caloocan a report or recommendation relative to the FSIC of Kentex. So that even if the business permits were issued to Kentex despite its delinquent status, this does not equate to giving unwarranted benefits, advantage or preference.

²¹ Soriano vs. Ombudsman, G.R. No. 160772, 13 July 2009.

²² Information on SB-16-CRM-0802.



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As correctly pointed out in the motions, the Local Government Code imposes upon accused Gatchalian, as Mayor, and accused Padayao and Carreon, as officials of Valenzuela City BPLO, the ministerial duty to enforce all laws and ordinances relative to the governance of the city.²³ They cannot refuse to perform this duty and exercise discretion on whether or not the procedure would be applied. Accused Gatchalian, Padayao and Carreon merely followed their mandate in applying and implementing the procedure provided by the Ordinance in the issuance of business permits. If they do otherwise, they would be made to answer criminally.

Without any showing that accused acted with manifest partiality, evident bad faith or gross and inexcusable negligence, or that they gave Kentex any unwarranted benefit, preference or advantage, this Court is constrained to make a finding of lack of probable cause to charge all accused named in the Information for violation of Section 3(e) of R.A. No. 3019. Corollary to that, this Court has no other option but to dismiss the instant case. There is no reason to hold the accused for trial and further expose them to an open and public accusation of the crime when no probable cause exists.

On the charge of violation of Section
3(j) of R.A. 3019.

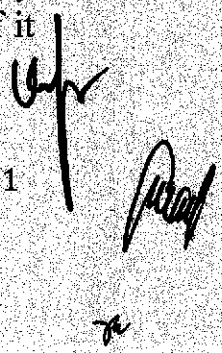
Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.²⁴ Cited in the same case is *Sy v. Secretary of Justice*, which cited *Villanueva v. Secretary of Justice*:

[Probable cause] is such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean "actual or positive cause"; nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.

Accused is being held liable for violation of Section 3 (j) of R.A. No. 3019 allegedly for having willfully, unlawfully, criminally and knowingly approved or granted a business permit in 2014 in favor of Kentex even if it

²³ Section 455(b)(2) of the Local Government Code.

²⁴ *Alejandro v. Bernas*, G.R. No. 179243, [September 7, 2011], 672 PHIL 698-71



x-----x
was not qualified or legally entitled to it since it did not possess the requisite FSIC.

The elements of Sec. (j), R.A. 3019 are as follows:

1. Knowingly approving or granting any:
 - (a) license
 - (b) permit
 - (c) privilege or
 - (d) benefit

2. (2) In favor of any person:
 - (a) not qualified for or
 - (b) not legally entitled to such license, permit, privilege or advantage or
 - (c) of a mere representative or dummy of one who is not so qualified or entitled.

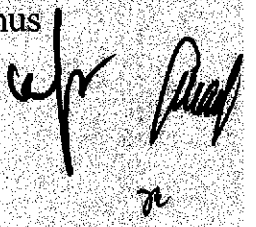
Not to belabor the point, but as already discussed, the procedure provided by Ordinance No. 62 allows for the issuance of business permits, even without first requiring an FSIC. The procedure provided by the Ordinance is in accordance with an established national policy.

Following the procedure provided in the Ordinance that accused LGU officials were bound to observe, Kentex was entitled to the issuance of the business permit at the time of its application even if it did not possess the required FSIC since this is not a condition precedent for the issuance of the business licenses in Valenzuela City. Stated differently, Kentex was issued the business permits because it was qualified and legally entitled to it under the City ordinance of Valenzuela. Kentex was not afforded undue preference when it was issued the business permits by accused LGU officials.

Given that this is the sole reason for the charge, this Court is constrained to dismiss the charge of violation of Section 3 (j) of R.A. No. 3019 for lack of probable cause.

On the charge of reckless imprudence
resulting to multiple homicide and
multiple physical injuries

Accused are charged with reckless imprudence resulting to multiple homicide and multiple physical injuries for negligently and carelessly approving, granting, or issuing the Business Permit in favor of Kentex thus



x-----x
abandoning the necessary precautionary fire safety measures designed to protect lives and property, or to prevent accident to persons and damage to property, and allowing Kentex to continue operating under hazardous conditions, resulting in the deaths of 74 individuals and physical injuries to others.

This Court has already determined that the procedure provided by Ordinance No. 62 followed by accused LGU officials in the issuance of the business permits is proper. Accused Gatchalian, being the Mayor, and accused Padayao and Carreon being officials of the BPLO, had the duty and the obligation to implement and apply the procedure outlined in Ordinance 62. When public officials perform their official functions, they are presumed to have acted in good faith, and with the diligence of a good father of the family. Therefore, absent any indicia, fact or evidence, even if not yet proven beyond reasonable doubt at this stage, but only a probability that they acted "negligently, and carelessly in an imprudent manner" when they issued the business permits to Kentex, good faith and diligence of a good father of the family is presumed. Prosecution must be able to overcome this presumption in order for the case of reckless imprudence resulting in multiple homicide and multiple physical injuries will prosper. On this matter alone, it is readily apparent that probable cause does not exist to hold accused liable for the crime charged.

Moreover, to be held liable for their alleged negligence, the same must be the proximate cause of the injury. The proximate cause of an injury is "that cause, which, in the natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred."²⁵

In this case, the very IATF report relied upon in the complaint-affidavit against accused clearly stated the proximate cause of the fire which burned down the warehouses of Kentex was "the molten slags from the welding rod came into contact with one of the sacks of 'SUPERCELL Blowing Agents' piled almost below or very near the scaffolding which was then being used for the conduct of the said hotwork."²⁶

It does not appear that accused were involved in the incident which caused the fire. There is no direct causal connection between the fire and the damage incurred and the acts supposedly committed by accused. Again, the only fault attributed to accused is the issuance of the business permits without the required FSIC.

²⁵ St. Mary's Academy vs. Carpitanos, G.R. No. 143363, February 6, 2002

²⁶ See IATF Report, page 12




x-----x

WHEREFORE, in light of the foregoing, the Court hereby finds that no probable cause exists for the issuance of warrants of arrest against accused Rex T. Gatchalian, Renchi May Padayao, and Eduardo Carreon in criminal cases SB-16-CRM-0802, SB-16-CRM-0803, and SB-16-CRM-0804, and accordingly dismisses the instant cases.

SO ORDERED.


MICHAEL FREDERICK L. MUSNGI
Associate Justice

WE CONCUR:


SAMUEL R. MARTIRES
Associate Justice
Chairperson


GERALDINE FAITH A. ECONG
Associate Justice