



Republic of the Philippines  
*Sandiganbayan*  
Quezon City  
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SEVENTH DIVISION

*MINUTES of the proceedings held on May 30, 2017.*

*Present:*

ALEXANDER G. GESMUNDO ----- Chairperson  
MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Associate Justice  
ZALDY V. TRESPESES ----- Associate Justice

The following resolution was adopted:

**Criminal Case Nos. SB-17-CRM-0738 & 0739 –**

**People v. JOHNMARK CULLANTE<sup>1</sup> BILLANES and ROMEO COLLANTE<sup>2</sup> BILLANES, JR.**

This resolves the following:

1. Accused Johnmark Cullante Billanes' "MOTION FOR JUDICIAL DETERMINATION OF PROBABLE CAUSE (FOR ACCUSED BILLANES)" dated April 21, 2017 filed in Criminal Case No. SB-17-CRM-0738;<sup>3</sup>
2. Accused Johnmark Cullante Billanes' "MOTION FOR JUDICIAL DETERMINATION OF PROBABLE CAUSE (FOR ACCUSED BILLANES)" dated April 21, 2017 filed in Criminal Case No. SB-17-CRM-0739;<sup>4</sup> and
3. Prosecution's "CONSOLIDATED OPPOSITION (Motions for Judicial Determination of Probable Cause of Accused Johnmarc [sic] Cullante Billanes, both dated April 21, 2017)" dated May 8, 2017.<sup>5</sup>

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Before any warrant of arrest could be issued against the accused, two (2) *Motions for Judicial Determination of Probable Cause*<sup>6</sup> dated April 21, 2017 were promptly filed by Johnmark C. Billanes ["accused"] to dispute the present charges.

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<sup>1</sup> As spelled in the Certificate of Live Birth of Johnmark Cullante Billanes; Records, p. 76

<sup>2</sup> As spelled in the Certificate of Live Birth of Romeo Collante Billanes; Records, p. 77

<sup>3</sup> Records, pp. 123-149

<sup>4</sup> Ibid., pp. 150-155

<sup>5</sup> Ibid., pp. 161-165

<sup>6</sup> Records, pp. 123-133, 150-154

Regarding the alleged *Violation of Section 3 (e) of R.A. 3019* subject of **Criminal Case No. SB-17-CRM-0738**, accused posits that there is a want of the third element<sup>7</sup> which would constitute giving a private party unwarranted benefit, advantage or preference because the transaction in question, or the acquisition of the 7,775 square meter lot, is disadvantageous to the seller, Romeo C. Billanes, Jr. [“Romeo Billanes”] who is his brother, who in a sense, was virtually “robbed” of his land at a “notoriously low price.” In arguing that there was a paucity of unwarranted benefit and undue preference, accused particularly zeroed in on: (i) the fact that the LGU of Trento, Agusan del Sur, acquired 7,775 square meters of land at approximately 14.75% (₱1,000,000.00) of its actual value (₱6,473,076.25) which only contradicts the theory that Romeo Billanes received unwarranted benefit and undue preference; (ii) accused’s act of referring to the Provincial Appraisal Committee (PAC) the appraisal of subject land already divested him of any authority or position to give any unwarranted benefit and undue preference to Romeo Billanes; on the other hand, he never insisted that the LGU acquire the property at its appraised value of ₱6,473,076.25; (iii) if the 7,775 square meters of land was actually encumbered with the Landbank of the Philippines [“LBP”], then the Office of the Ombudsman would not have dismissed the complaint for violation of Section 3(g) of R.A. 3019 initially filed against the accused. Accused further alleged that the Rice Processing Complex is part of the infrastructure project of the national government under the Department of Agriculture and hence, the acquisition of real property in relation thereto is governed by R.A. 8974<sup>8</sup> as provided under Executive Order No. 329, and not by Republic Act 9184.

Pertaining to the charge of *Illegal Use of Public Funds* subject of **Criminal Case No. SB-17-CRM-0739**, accused argues that as the Municipal Mayor of Trento, Agusan del Sur, he relied on the representations made by his subordinates, i.e., the *Municipal Treasurer* who certified on the availability of cash for release and payment; the *Municipal Accountant* who represented that all the requirements necessary to support the release of cash and subsequent payment existed; and the *Municipal Planning and Development Officer* who represented that he supervised and reviewed the steps taken by both the Municipal Treasurer and Municipal Accountant. In all, accused contends that there already existed a sufficient and valid basis to support the release of funds (although earlier earmarked for the rehabilitation of a farm-to-market road project) to purchase a certain parcel of land for the Rice Processing Center project. For this purpose, accused had approved a Disbursement Voucher

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<sup>7</sup> The following are the essential elements for violation of Section 3 (e) of RA 3019:

- (1) The accused must be a public officer discharging administrative, judicial or official functions;
- (2) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
- (3) That 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.

<sup>8</sup> Entitled, “AN ACT TO FACILITATE THE ACQUISITION OF RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES”

dated November 29, 2012 worth P1,000,000.00, which document bore the signatures of the Municipal Treasurer, Municipal Accountant, and an officer from the Municipal Planning and Development Office.<sup>9</sup>

Accused thus prays for the deferment of the issuance of a warrant of arrest against him, the judicial determination of probable cause, and the dismissal of all the cases.

In its *Consolidated Opposition*<sup>10</sup> the Prosecution countered that accused's *Motions* are a mere superfluity for with or without the said pleadings, the Court is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence.<sup>11</sup> In fact, the task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused.<sup>12</sup> Furthermore, the case against the accused is supported by numerous pieces of evidence showing his participation in the commission of the crimes charged. Specifically, the justifications proffered by accused are matters of defense which are better ventilated during trial proper rather than at preliminary investigation which purpose is mainly to determine the existence of probable cause against the accused. Thus, it is prayed that the two *Motions* be denied for lack of merit.

While this Court's independent assessment on the existence of probable cause is separate and distinct from the executive determination of probable cause made by the Office of the Ombudsman, it is the same evidence on record which is scrutinized in detail to make such judicial determination. However, the findings by courts and prosecutors of the existence of probable cause are arrived at independently.<sup>13</sup> The executive determination of probable cause made by prosecutors is controlled by the *Rules of Court, Republic Act No. 6770*, and the various issuances by the Department of Justice.<sup>14</sup> On the other hand, courts are guided by the *Constitution* in the judicial determination of probable cause.<sup>15</sup> In *Borlongan, Jr. v. Peña*,<sup>16</sup> the Supreme Court explains:

Enshrined in our *Constitution* is the rule that "[n]o . . . 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 persons . . . to be seized." Interpreting the words "personal determination," we said in *Soliven v. Makaslar* that it does not thereby mean that judges are obliged to conduct the personal examination of the complainant and his witnesses themselves. To require thus would be to unduly laden them with preliminary examinations and investigations of criminal complaints instead

<sup>9</sup> Records, p. 151.

<sup>10</sup> *Ibid.*, pp. 161-165.

<sup>11</sup> The Prosecution cited *Leviste v. Alameda*, G.R. No. 182677, August 3, 2010.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Reyes v. Ombudsman*, G.R. Nos. 212593-94, 213163-78, 213540-41, 213542-43, 215880-94 & 213475-76, March 15, 2016.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> G.R. No. 143591, May 5, 2010

of concentrating on hearing and deciding cases filed before them. Rather, what is emphasized merely is the exclusive and personal responsibility of the issuing judge to satisfy himself as to the existence of probable cause. **To this end, he may: (a) personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (b) if on the basis thereof he finds no probable cause, disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in determining its existence.** What he is never allowed to do is to follow blindly the prosecutor's bare certification as to the existence of probable cause. Much more is required by the constitutional provision. Judges have to go over the report, the affidavits, the transcript of stenographic notes if any, and other documents supporting the prosecutor's certification. Although the extent of the judge's personal examination depends on the circumstances of each case, to be sure, he cannot just rely on the bare certification alone but must go beyond it. This is because the warrant of arrest issues not on the strength of the certification standing alone but because of the records which sustain it. He should even call for the complainant and the witnesses to answer the court's probing questions when the circumstances warrant.

After a careful consideration of the positions presented and an independent examination of the records in detail, the *Motions* filed by accused must be denied. Probable cause exists for the issuance of a warrant of arrest not just against the accused, but also against his co-accused, Romeo Billanes.

The accused may claim that there were no unwarranted benefits given to Romeo Billanes, his brother. The grounds he relied on, however, border on evidentiary matters which cannot simply be taken at face value. For one, the Court cannot take judicial notice of the appraisal value of the land. Hence, whether the same has been the subject of a *Formal Offer to Sell and Affidavit of Availability of Real Property*<sup>17</sup> at a price lower than its appraised value is yet to be shown in evidence by the accused. Even the purported fact that the Rice Processing Complex was an infrastructure project of the national government supposedly governed by R.A. 8974 is subject to proof.

As it is, the Office of the Ombudsman also raised contentious grounds as appearing in its Resolution dated April 8, 2016, which also needed to be proven, such as: (i) the alleged fact that while accused had requested the PAC to appraise subject property, there appears to be no evidence showing that accused had made a similar request to the said body to value the properties offered by the other sellers; (ii) when accused and Romeo Billanes entered into a *Deed of Sale*<sup>18</sup> dated November 20, 2012, concerning subject property, the same was encumbered by existing liens belonging to Land Bank which has not been discharged at the time the said contract was executed;<sup>19</sup> (iii) despite accused's denial of liability for technical malversation, there does not seem to be an ordinance passed by the *Sanggunian Bayan* of Trento, Agusan

<sup>17</sup> Vide: Annex "4" of the Motion for Judicial Determination of Probable Cause filed in SB-17-CRM-0738

<sup>18</sup> Records, pp. 67-68

<sup>19</sup> See Certification of Full Payment dated March 21, 2013 issued by Land Bank (Records, p. 75)

del Sur, which expressly authorized the augmentation or realignment of funds from savings in the rehabilitation of the farm-to-market road project to the Rice Processing Center project, as required by Section 336 of the *Local Government Code of 1991*.<sup>20</sup> While the *Sangguniang Bayan* had issued Resolution Nos. 06-2012<sup>21</sup> and 0268-2012<sup>22</sup> dated November 23, 2012 and November 28, 2012, respectively, giving the appearance that such realignment has been approved, there were statements on record to the contrary. A certain William Encenzo Calvez and one George Gamad Diel, who are both members of the *Sangguniang Bayan*, had elaborated that Resolution No. 0268-2012<sup>23</sup> dated November 28, 2012 was only an expression of sentiment/opinion and never amounted to a realignment of funds.<sup>24</sup>

A judicial determination of probable cause is not the proper mode for a full and exhaustive display of the parties' evidence.<sup>25</sup> Simply stated, a finding of probable cause does not touch on the issue of guilt or innocence of the accused.<sup>26</sup> As echoed by the Supreme Court in *Co v. People*,<sup>27</sup> accused's arguments are evidentiary in nature and are matters of defense. They are thus best left for now, to be resolved only after a full-blown trial on the merits.

It is thus premature to ask for a dismissal of the charge considering the preliminary evidence set before this Court at this stage of the proceedings.

Moreover, the concomitant prayer of accused to defer the issuance of a warrant of arrest against him encroaches upon the exclusive prerogative of this Court and should be denied outright. The salient portion in the case of *Viudez II v. Court of Appeals*<sup>28</sup> is quoted hereunder:

The function of the judge to issue a warrant of arrest upon the determination of probable cause is exclusive; thus, the consequent implementation of a warrant of arrest cannot be deferred pending the resolution of a petition for review by the Secretary of Justice as to the

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<sup>20</sup> The cited section provides:

SECTION 336. Use of Appropriated Funds and Savings. — Funds shall be available exclusively for the specific purpose for which they have been appropriated. No ordinance shall be passed authorizing any transfer of appropriations from one item to another. However, the local chief executive or the presiding officer of the sanggunian concerned may, by ordinance, be authorized to augment any item in the approved annual budget for their respective offices from savings in other items within the same expense class of their respective appropriations.

<sup>21</sup> Records, pp. 69-70

<sup>22</sup> *Ibid.*, pp. 71-72

<sup>23</sup> *Ibid.*

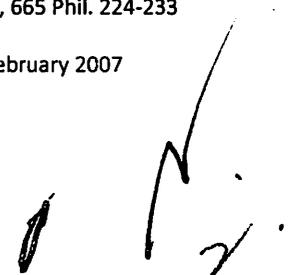
<sup>24</sup> Culled from the Resolution dated April 8, 2016 rendered by the Office of the Ombudsman (Records, p. 17)

<sup>25</sup> *Vide: Redulla v. Sandiganbayan*, G.R. No. 167973, 28 February 2007

<sup>26</sup> *Ganaden, et al. v. Honorable Office of the Ombudsman, et al.*, G.R. Nos. 169359-61, June 1, 2011, 665 Phil. 224-233

<sup>27</sup> G.R. No. 168811. November 28, 2007, quoting *Redulla v. Sandiganbayan*, G.R. No. 167973, 28 February 2007

<sup>28</sup> G.R. No. 152889, June 5, 2009



finding of probable cause, a function that is executive in nature. To defer the implementation of the warrant of arrest would be an encroachment on the exclusive prerogative of the judge. Xxx

**Therefore, the discretion of the court whether or not to suspend the proceedings or the implementation of the warrant of arrest, upon the motion of the appellant or the trial prosecutor, remains unhindered.** This is in consonance with the earlier ruling of this Court that once a complaint or information is filed in court, any disposition of the case as to its dismissal, or the conviction or acquittal of the accused, rests on the sound discretion of the said court, as it is the best and sole judge of what to do with the case before it. In the instant case, the judge of the trial court merely exercised his judicial discretion when he denied petitioner's motion to suspend the implementation of the warrant of arrest. Consequently, the CA was correct when it found no whimsicality or oppressiveness in the exercise of the trial judge's discretion in issuing the challenged orders. [Emphasis supplied]

**WHEREFORE**, the (i) *Motion for Judicial Determination of Probable Cause* filed in Criminal Case No. SB-17-CRM-0738; and the (ii) *Motion for Judicial Determination of Probable Cause* filed in Criminal Case No. SB-17-CRM-0739, filed by accused Johnmark Cullante Billanes, are both **DENIED**.

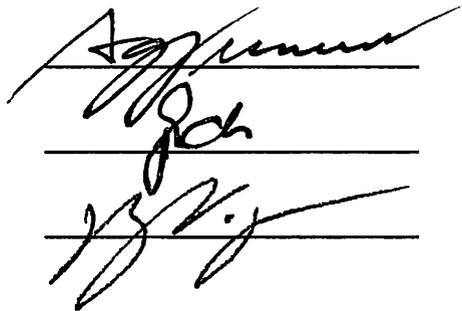
Finding the existence of probable cause, let warrants of arrest **ISSUE** against accused Johnmark Cullante Billanes and Romeo Collante Billanes, Jr. in these cases.

**SO ORDERED.**

**GESMUNDO, J., Chairperson**

**GOMEZ-ESTOESTA, J.**

**TRESPESES, J.**



Three handwritten signatures are present, each written over a horizontal line. The top signature is for Gesmundo, J., the middle for Gomez-Estoesta, J., and the bottom for Trespeses, J.