

REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
Quezon City

**SECOND DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

**CRIM CASE NO. SB-16-CRM-0802**  
*For: Violation of Section 3(e) of  
Republic Act No. 3019*

- versus -

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

**CRIM. CASE NO. SB-16-CRM-0804**  
*For: Reckless Imprudence Resulting  
in Multiple Homicide & Multiple  
Physical Injuries*

**REXLON T. GATCHALIAN, ET  
AL.,**  
*Accused.*

Present:  
HERRERA, JR., Chairperson  
MUSNGI, Associate Justice  
PAHIMNA, Associate Justice

June 8, 2017

Promulgated 

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**RESOLUTION**

***MUSNGI, J.:***

The Court resolves the (1) *Motion for Reconsideration (Re: Joint Resolution promulgated on December 13, 2016)*<sup>1</sup> filed by the prosecution on 03 January 2017, the (2) *Comment*<sup>2</sup> filed by the accused on 14 February 2017, and the (3) *Reply*<sup>3</sup> filed by the prosecution on 24 February 2017.

On 13 December 2016, the Court issued the assailed *Resolution*<sup>4</sup> finding no probable cause to indict accused REXLON T. GATCHALIAN (“Gatchalian”), RENCHI MAY M. PADAYAO (“Padayao”), and EDUARDO Y. CARREON (“Carreon”) for violation of Sections 3(e) and (j) of Republic Act No. 3019 (“R.A. No. 3019”), and Reckless Imprudence Resulting in Multiple Homicide and Multiple Physical Injuries.

In its *Motion for Reconsideration*, the prosecution submits the following grounds:

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<sup>1</sup> Sandiganbayan Records, Vol 2, pp. 434-451.

<sup>2</sup> *Ibid*, Vol 3, pp. 15-31.

<sup>3</sup> *Ibid*, Vol 3, pp. 44-55.

<sup>4</sup> *Ibid*, Vol 2, pp. 398-414.







First, the prosecution alleges that the issuances relied upon by the accused, namely, Valenzuela City Ordinance No. 62, Series of 2012 ("**Ordinance No. 62**")<sup>5</sup> and DILG-DTI Joint Memorandum Circular No. 01, Series of 2016 ("**Joint Memorandum Circular No. 01**"), among others, do not categorically dispense with the Fire Safety Inspection Certificate ("**FSIC**") as a requirement for the issuance of business permits. The prosecution cited Sections 4 and 6 of Ordinance No. 62 which provides for a post-auditing scheme wherein inspection will be conducted within reasonable time to check the compliance of the business owner with regulatory measures and requirements, including fire safety inspection permits.

The prosecution also mentions that the accused's reliance on the Joint Memorandum Circular No. 01 is misplaced since the same was made effective only on 30 August 2016, which is more than a year after the 13 May 2015 fire incident ("**Kentex Fire**"). Assuming that the memorandum circular can be applied retroactively, the prosecution argues that a mere circular does not justify the premature and illegal issuance of the business permit because the national law provides that an FSIC should first be issued prior to a business permit.

Second, the prosecution contends that the accused violated Section 3(e) of R.A. No. 3019. The prosecution avers that accused Gatchalian knowingly granted Kentex Manufacturing Corporation ("**Kentex**") business permits in 2014 and 2015 despite its failure to secure the necessary FSICs in 2014 and 2015 based on the Certification of the Bureau of Fire Protection ("**BFP**") and the Report of the Inter-Agency Task Force ("**IATF**"). Accused Carreon, as Licensing Officer, recommended approval of the permits while accused Padayao, as Officer-in-Charge of the Business Permits and Licensing Office ("**BPLO**"), approved the same for accused Gatchalian. Clearly, the issuance of the business permit and the failure of the accused to impose sanctions thereafter allegedly show that Kentex was given unwarranted benefits, advantage, or preference through manifest partiality, evident bad faith or gross inexcusable negligence.

Third, the prosecution also asserts that the accused violated Section 3(j) of R.A. No. 3019 when they knowingly approved, granted, or issued a business permit on 15 January 2014 and 14 January 2015 in favor of Kentex despite the lack of an FSIC. The prosecution further argues that the accused should have exercised extraordinary diligence in the issuance of business permits considering the highly combustible nature of Kentex's manufacturing business of producing items made of rubber and plastic.

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<sup>5</sup> An Ordinance Establishing the 3-S in Public Service Program in Valenzuela City and Providing Funds Therefor.

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Fourth, the prosecution maintains that the accused committed Reckless Imprudence Resulting in Multiple Homicide and Multiple Physical Injuries when they, in a careless and imprudent manner, approved, granted, or issued a business permit in favor of Kentex, and failed to impose the necessary sanctions under Section 9 of the Revised Fire Code of the Philippines ("**Fire Code**"), which resulted in the death of seventy-four (74) individuals and physical injuries to others in the 13 May 2015 Kentex Fire. The prosecution alleges that while the welding metal sparks that landed on a stockpile of Supercell Blowing Agents ("**SBA**") was the immediate cause of the fire, it was not the legal cause of deaths. The prosecution insists that Kentex Fire would not have happened had the accused not issued a business permit in a careless and imprudent manner that allowed Kentex to operate under such non-compliant conditions.

Lastly, the prosecution alleges that the Court went beyond its judicial authority of determining the propriety of issuing the warrant of arrest. The prosecution argues that there is absence of irregularity, or showing of manifest error or grave abuse of discretion in the conduct of the preliminary investigation by the Office of the Ombudsman. The prosecution maintains that the evidence on record is more than sufficient to engender a well-founded belief that the accused are probably guilty of the crimes charged and should be held for trial.

In their *Comment*, the accused allege that no new issues were raised by the prosecution in its *Motion for Reconsideration*. First, accused claim that the rules followed by Valenzuela City did not dispense with the FSIC requirement, citing Ordinance No. 62, Joint Memorandum Circular No. 01, and the BFP Manual. Accused allege that Valenzuela City merely adopted the Anti-Red Tape Act ("**ARTA**") which provides a streamlined procedure for the issuance of business permits. According to the accused, 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. Thus, accused maintain that fire safety inspection certificates are issued after the issuance of the business permit.

With regard to the issuance of Joint Memorandum Circular No. 01, which requires all cities and municipalities to implement the very same procedure applied and implemented by Valenzuela City, accused counter that while the same only became effective on 30 August 2016, or more than a year after the Kentex Fire, its issuance shows that the procedure followed by Valenzuela City is legal and valid. Moreover, accused allege that it would be absurd to hold them criminally liable for following a procedure which is being implemented in all cities and municipalities nationwide.





Second, the accused maintain that there is no probable cause against them for violation of Section 3(e) of R.A. No. 3019 because unwarranted benefit, preference or advantage was not given to Kentex when they issued the subject business permit. Accused claim that they merely followed the procedure provided by Ordinance No. 62 which allows for the issuance of business permits even without first requiring an FSIC. The accused also cite DILG Memorandum Circular No. 2011-05 which provides that the City/Municipal Fire Marshall is required to issue a written report notifying the Local Chief Executive of all the names of establishments which do not comply with the requirements under the Fire Code. Thus, if the BPLO does not receive any notice from the City/Municipal Fire Marshall, then it has no basis to cancel or withdraw the permit already issued. Accused add that there is no evidence that the BFP submitted to accused Gatchalian a report or recommendation relative to the FSIC of Kentex. Any knowledge on the part of the accused with regard to the delinquency status of Kentex was not established.

Concerning the argument of the prosecution that the accused should have been alerted of the delinquency of Kentex because of the post-auditing scheme, the accused counter that the duty to post-audit falls on the BFP. As aforementioned, DILG Memorandum Circular No. 2011-05 mandates the City/Municipal Fire Marshall to issue a written report notifying the Local Chief Executive of all the names of the non-compliant establishments. Accused also reiterate the findings of the Court that since the Fire Code is administered and enforced by the BFP, then 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. Hence, accused argue that absent any written report or any notice that Kentex was non-compliant with the provisions of the Fire Code, the BPLO assumed in good faith that Kentex had already been inspected by the BFP, and had been found compliant with the requirements of the Fire Code.

Third, the accused also assert that there is no probable cause against them for violation of Section 3(j) of R.A. No. 3019. The accused restate that they were just implementing the procedure provided by Ordinance No. 62 wherein an FSIC is not a condition precedent for the issuance of business permits in Valenzuela City. Therefore, under Ordinance No. 62, Kentex was qualified and legally entitled to a business permit.

Fourth, the accused contend that there is no probable cause against them for Reckless Imprudence Resulting in Multiple Homicide and Multiple Physical Injuries. The accused restate that the negligence of the accused was not the proximate cause of the injury. Since the IATF has established that the proximate cause of the fire was the molten slags from the welding rod which came into contact with one of the sacks of SBA, then there is no

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direct causal connection between the fire and the damage incurred and the acts allegedly committed by accused.

Moreover, accused argue that even assuming that the issuance of the business permit had a direct connection to the fire, the causal connection was broken by an efficient intervening cause, which is the apparent negligent acts of the welders. Thus, with the failure of the prosecution to raise new matters, the accused pray that the *Motion for Reconsideration* should not be given due course.

In their *Reply*, the prosecution reiterates their arguments in the *Motion for Reconsideration*.

### Ruling

*The instant motion is denied for lack of merit.*

The prosecution alleges that the Court went beyond its judicial authority of determining the propriety of issuing the warrant of arrest. Section 2, Article III of the 1987 Constitution provides that no warrant of arrest shall issue "except upon probable cause to be determined personally by the judge." A judge "must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice."<sup>6</sup> If a judge finds no probable cause, then he/she cannot be forced to issue the warrant of arrest.<sup>7</sup> The Court did not go beyond its judicial authority since it is duty-bound to personally evaluate the existence or non-existence of probable cause prior to the issuance of the warrant of arrest based on his/her review of the prosecutor's initial determination of the same. Based on an independent review of the evidence presented and the *Resolution* of the Office of the Ombudsman, among others, the Court finds that there is no probable cause against the accused for the crimes charged.

A careful perusal of the instant *Motion shows that it* contains a mere rehash of the arguments already passed upon by the Court in the assailed *Resolution*.

First, the Court has already ruled that there is no probable cause to indict accused Gatchalian, Padayao and Carreon for violation of Section 3(e) of R.A. No. 3019 for allegedly giving unwarranted benefits, advantage, or preference through manifest partiality, evident bad faith or gross inexcusable negligence in (1) the issuance of business permits to Kentex for the year 2015 despite its delinquent status and without the required FSIC, and (2) for

<sup>6</sup> *Jose Antonio C. Leviste vs. Hon. Elmo M. Alameda, et al.*, G.R. No. 182677, 03 August 2010.

<sup>7</sup> *Ibid.*

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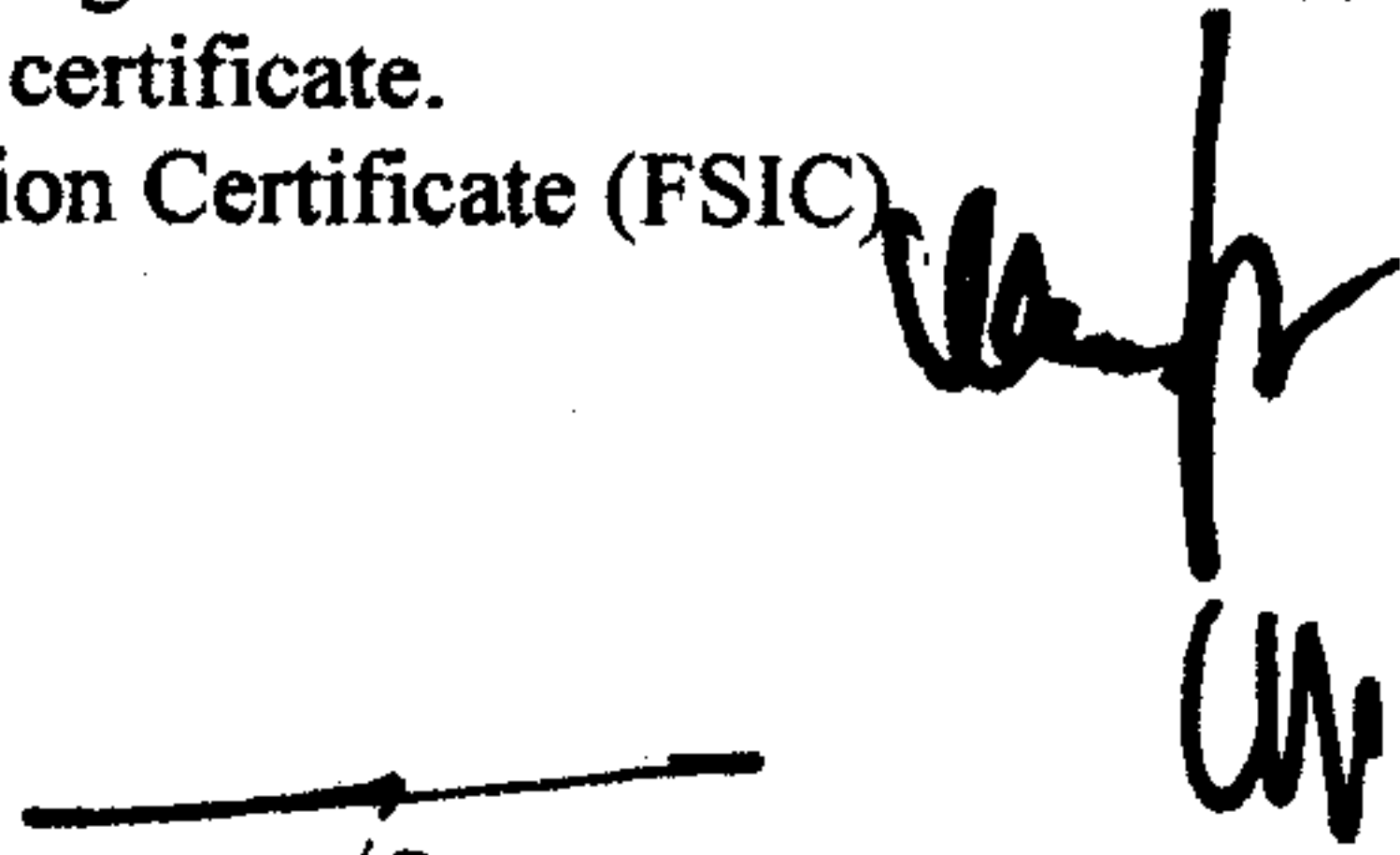
failing to revoke the said permit after Kentex failed to submit the requirements within the prescribed period, which allowed Kentex to continue its operations, resulting in seventy-four (74) fatalities and multiple physical injuries during the Kentex Fire on 13 May 2015.

The records do not show that the accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence. The accused merely followed the existing memorandum circulars and ordinances on the streamlined procedure for the issuance of business permits. The accused did not state that these issuances dispense with the FSIC requirement. The issuances are as follows: (a) **Joint Memorandum Circular No. 1** which aimed to reduce the steps and processing time for business permits, and allowed the Local Government Units to issue "temporary" permits that gave the applicants a period of time to comply with other requirements; (b) **Joint DILG-DTI Department Administrative Order No. 10-07** which created a Business One-Stop-Shop (BOSS) to receive and process applications for business registration thru a streamlined system; (c) **DILG Memorandum Circular No. 2011-05<sup>8</sup>** which reiterated the need for fire safety inspection to be conducted promptly, to be completed before the end of the year, and required the City/Municipal Fire Marshall to submit a written report notifying the Local Chief Executive of the names of non-compliant establishments and recommending the non-issuance or revocation of permits, as the case may be; (d) **BFP Memorandum dated 24 September 2012<sup>9</sup>** which provided for the safety inspection of any structure two (2) or three (3) months in advance before the scheduled renewal of any permits issued by the BPLO, without need for the submission or referral of the application for business permits before such inspection is conducted; and (e) **BFP Operational Procedures Manual ("BFP Manual")** which provides that only after the business permits are issued that the applications are forwarded to the FSES of the BFP for scheduling of fire safety inspections, and eventually, the issuance of the fire safety inspection certificates.

Moreover, Ordinance No. 62, which adopted the national policy of the government and the abovementioned circulars and guidelines to streamline the procedure in the issuance of business permits, was declared valid by the Regional Trial Court ("RTC") Branch 171 in Valenzuela City. The RTC ruled that "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."

<sup>8</sup> Re: Intensifying fire safety enforcement in the Bureau of Fire Protection and institutionalizing standard processes in the conduct of the inspection and defining accountabilities of concerned BFP Personnel in the inspection and issuance of fire safety inspection certificate.

<sup>9</sup> Re: Guidelines in the processing of Fire Safety Inspection Certificate (FSIC)

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Moreover, the Court has resolved that the above-named accused are not the officials primarily tasked to implement the provisions of the Fire Code. The Court cited Section 5 of the Fire Code which provides that the same is "administered and enforced by the Bureau of Fire Protection (BFP), under the direct supervision and control of the Bureau of Fire Protection, through the hierarchy of organization as provided for in Chapter VI of Republic Act No. 6975." Therefore, it is the BFP, not the accused, who is primarily responsible for the implementation of the FSIC and has the obligation to inform the Local Government Unit ("LGU") officials of the compliance or any violation of the establishments with the requirements of the Fire Code. Moreover, the Joint Memorandum Circular No. 1 provides that the BFP has the responsibility to provide the city/municipality with the FSIC or the negative list in case of renewal of business permits. Hence, if the BPLO does not receive any notice from the BFP, then it has no basis to cancel or withdraw the permit already issued.

To reiterate, the plaintiff also failed to provide any evidence to show that the accused were aware of the delinquency of Kentex. There is no evidence that the BFP submitted to accused Gatchalian a report or recommendation relative to the FSIC of Kentex. Thus, there is no proof of unwarranted benefits, advantage, or preference through manifest partiality, evident bad faith or gross inexcusable negligence committed by accused Gatchalian, Padayao and Carreon.

With regard to the existence of probable cause against the above-named accused for violation of Section 3(j) of R.A. No. 3019, the Court already ruled that the accused merely followed the procedure provided in Ordinance No. 62 where the issuance of an FSIC is not a condition precedent for the issuance of business permits in Valenzuela City.

Lastly, the Court reiterates its finding concerning the absence of probable cause against the above-named accused for Reckless Imprudence Resulting in Multiple Homicide and Multiple Physical Injuries. To be liable for their alleged negligence, the same must be the proximate cause of the injury. The IATF Report states that the proximate cause of the Kentex Fire was the molten slags from the welding rod which came into contact with one of the sacks of SBA. Accordingly, there is no causal connection between the fire and the damage that occurred and the acts allegedly committed by the accused.

Considering that the grounds of the prosecution have been sufficiently considered in the assailed *Resolution* and that the instant *Motion* failed to raise new arguments or evidence to justify the reconsideration sought, then the instant motion will not prosper.







**WHEREFORE**, the *Motion for Reconsideration* filed by the plaintiff is hereby **DENIED** for lack of merit.

**SO ORDERED.**

Quezon City, Philippines.

  
**MICHAEL FREDERICK L. MUSNGI**  
Associate Justice

**WE CONCUR:**

  
**OSCAR HERRERA, JR.**  
Associate Justice  
Chairperson

  
**LORIFEL L. PAHIMNA**  
Associate Justice