

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES
Plaintiff,

-versus-

SB-16-CRM-0329
For: **USURPATION**
OF OFFICIAL FUNCTIONS
under (Article 177 of the RJC)

SERGIO C. PASCUAL
Member, Sangguniang Panlungsod,
Butuan City

Accused.

Present:
Herrera, Jr., J., Chairperson
Musngi, J. &
Pahimna, J.

August 29, 2015, A

Promulgated

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RESOLUTION

PAHIMNA, J:

For resolution of the Court are the following:

1. Motion to Dismiss Without Prejudice dated September 28, 2016 of accused Sergio C. Pascual;¹
2. Withdrawal of Motion to Allow Departure for Being Moot and New Motion to Allow Departure filed by the accused on December 16, 2016; and,
3. Motion to Re-Determine Judicial Probable Cause filed on December 16, 2016.

MOTION TO DISMISS WITHOUT PREJUDICE

Accused-Movant Sergio C. Pascual's Motion to Dismiss without prejudice was filed for being premature because the *motion for partial reconsideration* filed by the accused is yet to be acted upon by the Office of the Deputy Ombudsman for Mindanao.² As proof thereof, accused presented a certification issued by Atty. Samuel P. Naungayan, Graft Investigation and Prosecution Officer II certifying that the Motion for Partial Consideration is under review by higher authorities.³

Furthermore, accused asserted that the case only involves the question whether or not the accused must be punished with imprisonment for allegedly acting right away to remove the fence or barrier placed by the private complainant on a public road for the purpose of defending the right of the community to use the same public road and the right of the accused to use the same road.⁴

Harping on the legal ramification of bad faith as a necessary and indispensable element of the crime of Usurpation of authority, accused argued that the Office of the Ombudsman did not assess the charge as having no basis in law considering there is no evidence of bad faith in the act of the accused Pascual in causing the removal of the obstruction to traffic flow.⁵ Bad faith is a state of mind which to the understanding of the accused could not be ascertained and proven by the Office of the Ombudsman thus, necessitating dismissal of the instant case without prejudice.

The prosecution through its Comment/Opposition⁶ emphasized that the filing of the present Information on June 3, 2016 preceded the filing by the accused of Motion for Partial Consideration before the Office of the Ombudsman on July 28, 2016.

¹ Sandiganbayan records pages 106 - 109

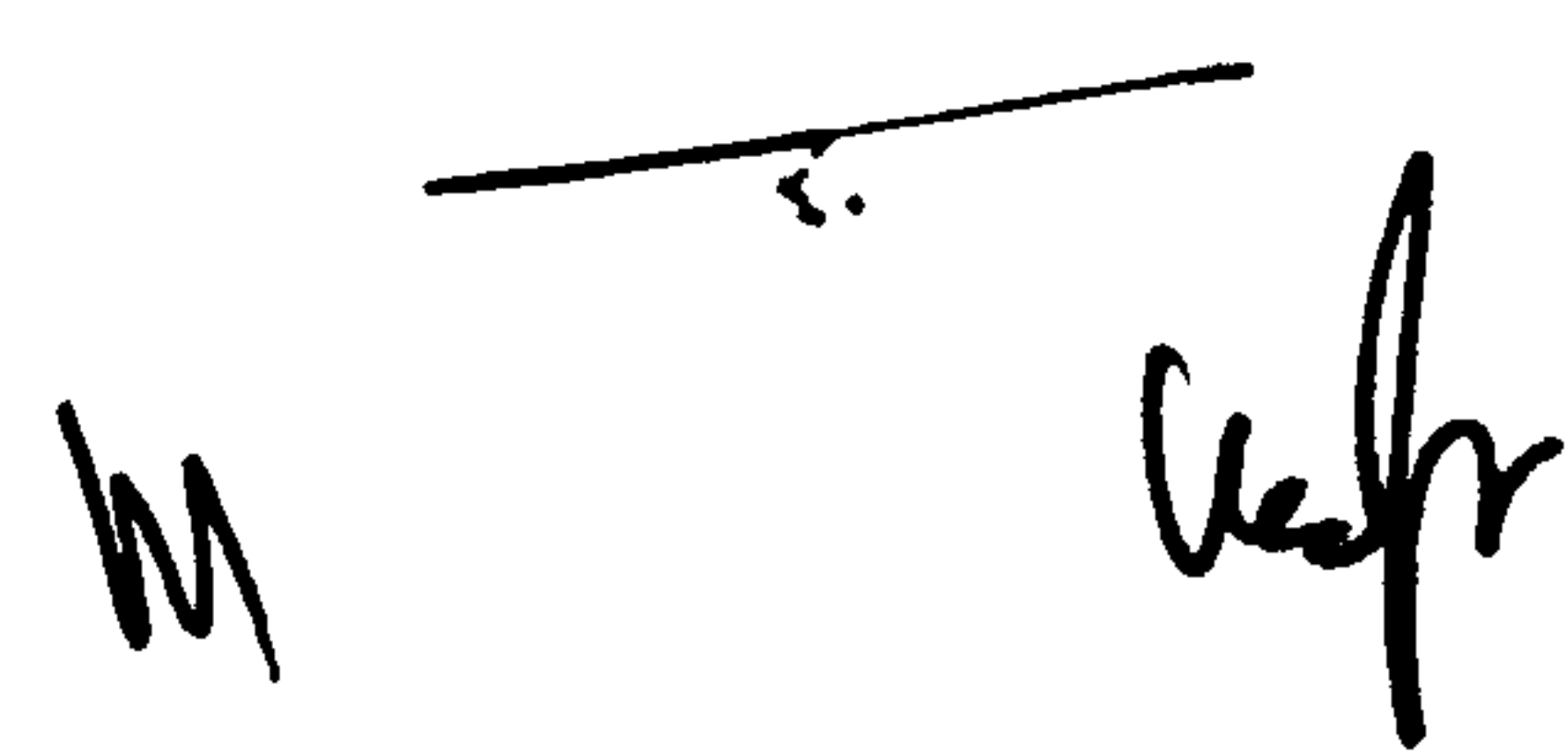
² Ibid., page 106

³ Ibid., Annex "A" page 110

⁴ Ibid., page 107

⁵ Ibid.

⁶ Re: Motion to Dismiss Without Prejudice filed on Oct. 10, 2016



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Following the case of *Mogul v. Crespo*⁷, the prosecution stressed that the filing of Information in Court initiates a criminal action. The court hereby acquired jurisdiction over the case, which is the authority to hear and decide the case.

Further, the preliminary investigation conducted by the fiscal for the purpose of determining whether a prima facie case exist warranting the prosecution of the accused is terminated upon the filing of the information in the proper court.⁸ Once the case has been brought to court, whatever disposition the fiscal may feel should be proper in the case should be addressed for the consideration of the court, the only qualification is that the action of the court must not impair the substantial rights of the accused or the right of the People to due process of law.⁹

The prosecution draws attention to Section 7 of Administrative Order No. 7 of the Office of the Ombudsman¹⁰ to wit:

Section 7. Motion for Reconsideration-

- a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within five (5) days from notice thereof with the Office of the Ombudsman or the proper Deputy Ombudsman as the case may be, with corresponding leave of court in cases where Information has already been filed in court;
- b) The filing of a motion for reconsideration/reinvestigation shall not bar the filing of corresponding information in Court on the basis of the finding of probable cause in the resolution subject of the motion.

MOTION TO REDETERMINE JUDICIAL PROBABLE CAUSE

When the motion of the accused for partial reconsideration was denied by The Office of the Ombudsman for Mindanao, he filed the *Motion to Redetermine Probable Cause* considering it an act that is a new one and one that represents its final action on the issue with a prayer for this Court to dismiss the case for lack of probable cause.

Accused honestly opined that there is no probable cause that he may have committed the crime of usurpation of authority. He emphasized that accused was an elected counselor of Butuan city. Thus, he did not have the power to make laws only but also to some residual powers of the city councilor that must be exercised when circumstances required.¹¹ Circumstance presented itself when he removed the barriers and the fences for the purpose of asserting the right of the community to use the same public road and the accused did not even announce to the radio reporter

⁷ G.R. L-53373, 30 June 1987

⁸ Ibid.

⁹ Ibid.

¹⁰ Rules of Procedure of the Office of the Ombudsman (Administrative Order No. 7, Series of 1990)

¹¹ Sandigan records page 206

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and to the person present that he was exercising the authority of the city engineer or the building official or the city mayor or the vice mayor.¹² Accused believed that he was acting to serve the people and this act cannot be presumed to be exercising the power of the city engineer or building official or the city mayor. It was an act of self-sacrifice for the people who voted for him.¹³

For the same set of acts complained of, the Office of the Ombudsman ruled out that there was no malicious mischief, theft, nor trespass to dwelling as these crimes were also imputed against him. He begs the question how could it exist that there was usurpation of authority in removing those fences?¹⁴ The Office of the Ombudsman ruled out the aforementioned charges because there was no bad faith on the part of the accused in doing the act complained of. Bad faith being a state of mind, is virtually impossible to prove because the mind of the accused cannot be opened with a knife just to see what was in his mind at that time when the act of usurpation occurred.¹⁵

The prosecution in their Comment/Opposition¹⁶ discoursed that the prayer for judicial determination of probable cause is a superfluity because with or without the same, this Honorable Court is duty bound to personally evaluate the resolution of the prosecution and the supporting documents on records to determine the existence or non-existence of probable cause for the arrest of the accused, citing Rule 112, Section 6, 2000 Rules of Criminal Procedure and then, the case of Hon. Alameca, et al.¹⁷

Citing the case of Alfredo Mendoza vs. People of the Philippines and Juno Cars¹⁸, the prosecution posited that “the judge does not act as an appellate court of the prosecutor and has no capacity to review the prosecutor’s determination of probable cause; rather, the judge makes a determination of probable cause independent of the prosecutor’s finding.”

Against the claim of the accused, the Prosecution stressed that all the necessary acts to commit the crime of Usurpation of Official Functions are present in this case. The Office of the City Prosecutor of Butuan correctly found probable cause that a crime has been committed by the accused. It was affirmed by the Office of the Ombudsman by directing the filing of Information for Usurpation of Official Function. It was reinforced by the denial of the accused Motion for Partial Reconsideration.

The prosecution went further to elucidate the two distinct ways of committing the crime punished by Article 177 of the Revised Penal Code. First, by knowingly and falsely representing himself to be an officer, agent or representative of any department or agency of the Philippine government or any foreign government, or second, under pretense of official position, shall perform any act pertaining to any

¹² Ibid.,

¹³ Ibid.,

¹⁴ Ibid., page 207

¹⁵ Ibid., page 208

¹⁶ Re: Motion to Re determine probable cause, page 254

¹⁷ G.R. No. 182677, 03 August 2010

¹⁸ G.R. No. 197293, 21 April 2014

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person in authority public office of the Philippine government or any foreign government, or any agency thereof without being lawfully entitled to do so. The former constitutes the crime of usurpation of authority, while the latter act constitutes the crime of usurpation of official function.¹⁹ It is the thesis of the prosecution that the act complained of squarely falls under the second category, i.e. usurpation of official function.

THE COURT'S RULING

The Court finds the subject motions unmeritorious.

The presence or absence of the element of the crime is evidentiary in nature and is a matter of defense that may be best passed upon after a full-blown trial on the merits.

Accused alleged that there is no evidence to establish that he acted in bad faith when he caused the removal of the concrete barrier. He goes on to articulate that it is virtually impossible to decipher the mind of the accused on the fateful moment and that a knife is needed to open his mind in determining the state of his mind while doing the act complained of. To save accused from craniotomy, the Supreme Court made it easy and clear. It prescribed that the absence or presence of the element of the crime charged, is evidentiary in nature and is a matter of defense that maybe passed upon after a full-blown trial on the merits and the validity or merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper. In *Deloso v. Desierto*²⁰, the Supreme Court elaborated:

that the existence of good faith or lack of it as elements of the crime...xxx is evidentiary in nature. As a matter of defense, it can be best passed upon after a full-blown trial on the merits. The issue of whether petitioners acted in good faith is best determine during the trial proper.

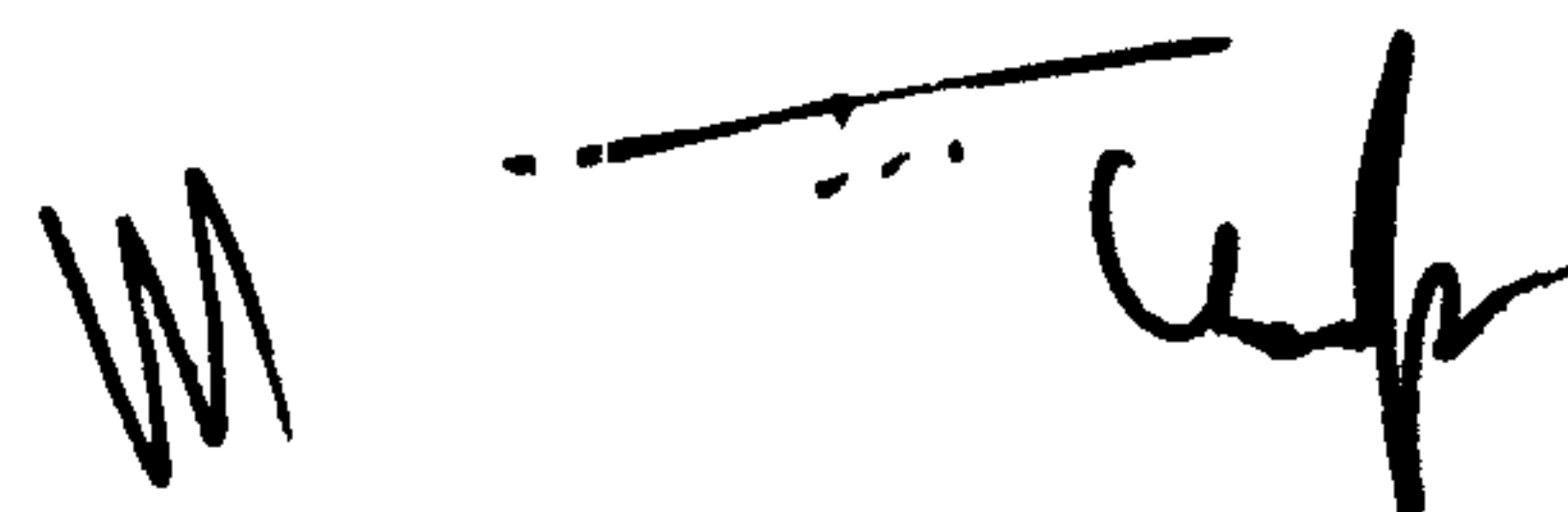
Furthermore, in *People v. Castillo*²¹ the Supreme Court highlighted that: "it was clearly premature on the part of the Sandiganbayan to make a determinative finding prior to the parties presentation of their respective evidence that there was no bad faith and manifest partiality on the respondents part and undue injury on the part of the complainant. In *Go v. The Fifth Division, Sandiganbayan, et al.*²², we held that

¹⁹ *Ruzol v. Sandiganbayan*, G.R. Nos. 186739-960, April 17, 2013 citing L.B. Reyes, *The Revised Penal Code* Book 2, page 241-242.

²⁰ 314 SCRA 125

²¹ 590 SCRA 95

²² Citations omitted



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it is well established that the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be best passed upon after a full-blown trial on the merits.²³ Also, it would be unfair to expect the prosecution to present all the evidence needed to secure the conviction of the accused upon the filing of the information against the latter. The reason is found in the nature and objective of a preliminary investigation. Here, the public prosecutor do not decide whether there is evidence beyond reasonable doubt of the guilt of the person charged; they merely determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial.”

Let us not lose sight of the fact that the filing of motion to dismiss without prejudice was predicated on the pendency of the motion of partial reconsideration before the Office of the Deputy Ombudsman for Mindanao. The subsequent resolution of said office denying the motion for partial reconsideration effectively rendered the instant motion moot.

**The accused movant’s motion
for judicial redetermination of
probable cause is a mere superfluity.**

The Court cannot help but acknowledge the claim of the prosecutor that the filing of the instant motion for judicial redetermination of probable cause is a mere superfluity.

In *Leviste v. Alameda*,²⁴ the Supreme Court ruled that since the judge is already duty-bound to personally determine the existence or nonexistence of probable cause for the arrest of the accused immediately upon filing of the Information, the filing of a motion for judicial determination of probable cause is a mere superfluity, if not a deliberate attempt to cut short the process by asking the judge to weigh in on the evidence without a full-blown trial. This was reiterated in the case of *De los Santos-Dio v. Court of Appeals*.²⁵

Further, *People v. Castillo and Mejia*,²⁶ is instructive, thus:

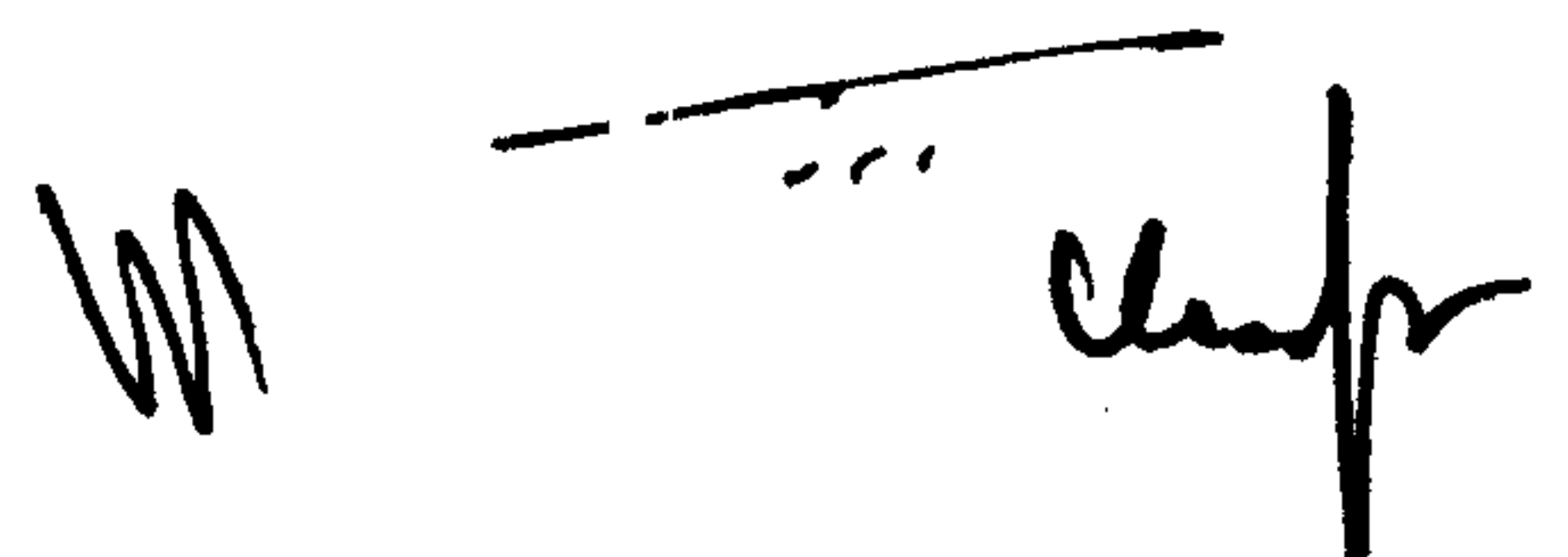
There are two kinds of determination of probable cause; executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to

²³ Citation omitted

²⁴ *Leviste v. Alameda*, 626 SCRA 575

²⁵ 699 SCRA 614

²⁶ G.R. No. 171188, June 19, 2009



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determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.

The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The 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. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.

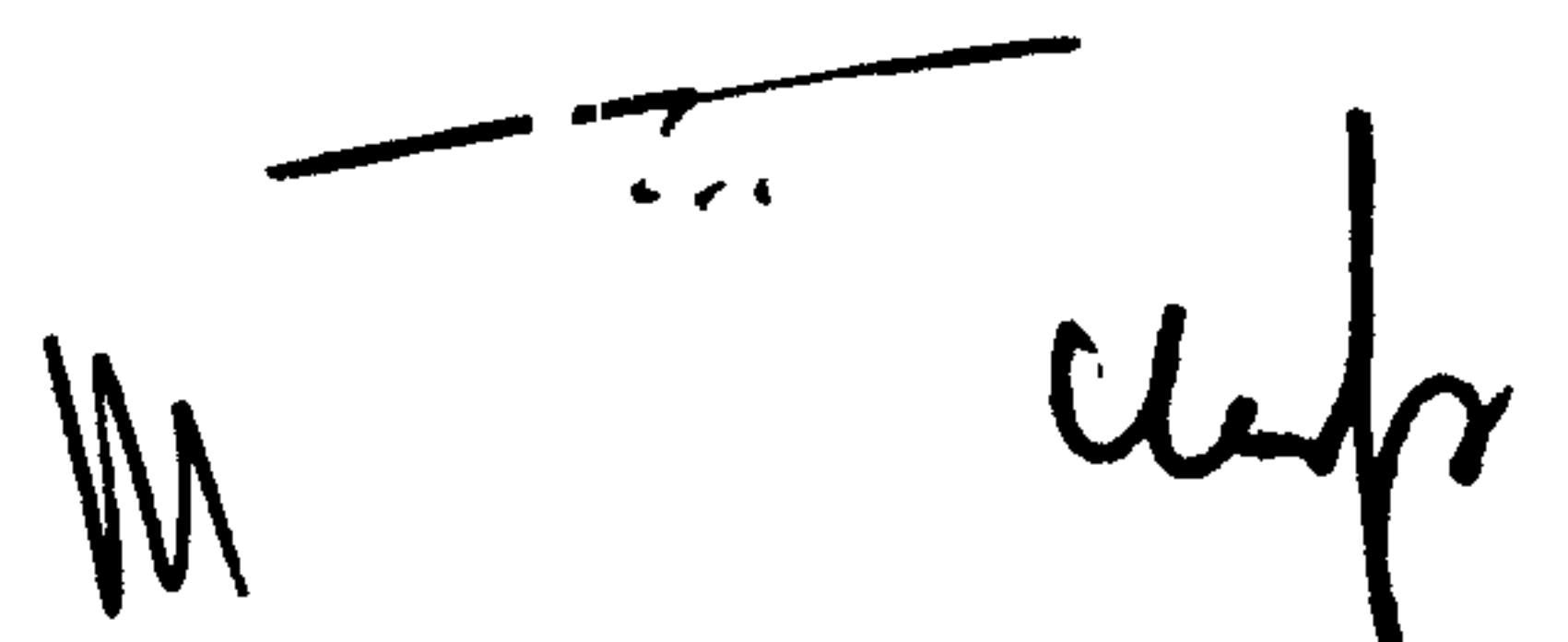
The difference is clear: The executive determination of probable cause concerns itself with whether there is enough evidence to support the information being filed. The judicial determination of probable cause, on the other hand, determines whether a warrant of arrest should be issued.

WITHDRAWAL OF MOTION TO ALLOW DEPARTURE FOR BEING MOOT AND NEW MOTION TO ALLOW DEPARTURE

The New Motion to Allow Departure is for the purpose of allowing the accused to depart for the trip to Brunei for business visit with various government agencies implementing multi-billion dollar project in order to know what venture they would bid for. The travel was scheduled on January 16 to 22, 2017. Finally, accused invokes his constitutional right to travel and enjoyment of his right will be given substance and meaning if he is allowed to travel.

While the prosecution interposed no objection in so far as the Motion to Allow Departure has become moot, it interposed vehement objection on the New Motion to Travel because accused failed to present travel itinerary or any kind of business meeting invitation. Furthermore, the prosecution manifested that based on jurisprudence, a person facing a criminal indictment and provisionally released on bail does not have an unrestricted right to travel. The reason being that a person's right to travel is subject to usual restraints imposed by the very necessity of safeguarding the system of justice.

Be that as it may, the Court resolves to deny the New Motion to Allow Departure for being moot.



WHEREFORE, the accused-movant's Motion to Dismiss without Prejudice dated September 28, 2016 as well as the Motion to Re-determine Judicial Probable Cause filed on December 16, 2016, are both **Denied** for lack of merit. The Withdrawal of Motion to Allow Departure for being Moot and New Motion to Allow Departure dated December 15, 2016 is also **Denied** for being moot.

The Motion to Resolve filed on June 2, 2017 is hereby noted

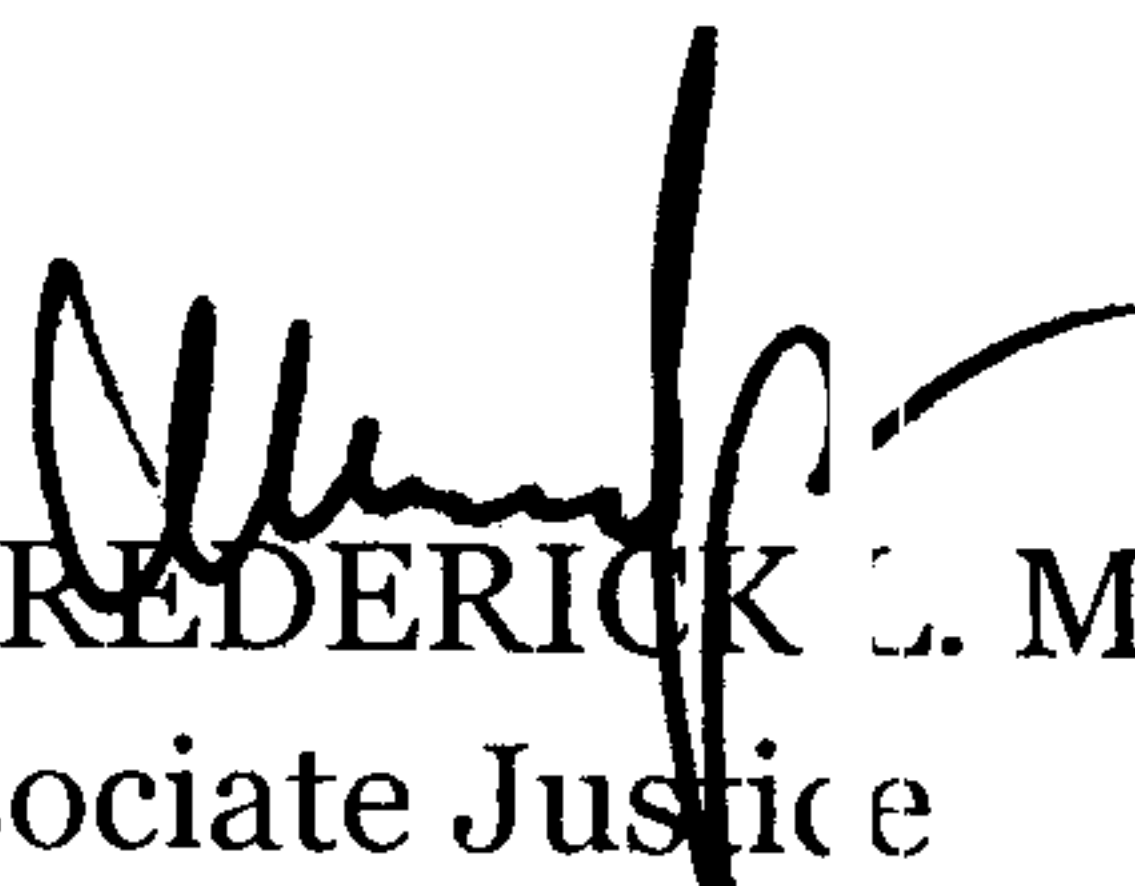
SO ORDERED.

Quezon City, Metro Manila

LORIFEL L. PAHIMNA
Associate Justice

WE CONCUR:


OSCAR C. HERRERA, JR
Chairperson


MICHAEL FREDERICK L. MUSNGI
Associate Justice