



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0241**
Plaintiff, For: Plunder

Present

- versus -

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
TRESPESES,* J.

AL C. ARGOSINO, ET AL.
Accused.

Promulgated:

MAY 29 2018

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves accused Al C. Argosino's *Omnibus Meritorious Motion (under Par. III, Sec. 2(c) of the Revised Guidelines for Continuous Trial): (1.) To Dismiss/Quash The Information; or (2.) With Leave of Court, to Refer Case to OSP for Reinvestigation on the basis Of Newly-Discovered Evidence; (3.) To Defer Issuance of Warrant; and (4.) To Suspend Proceedings,*¹ on the matter of his motion to quash.²

In his *Omnibus Meritorious Motion*, accused Argosino prays that the Information in Crim. Case No. SB-18-CRM-0241 be quashed. He argues:

1. The facts charged in the Information do not constitute the offense of plunder.

* The incident was submitted for resolution upon the filing of the prosecution's *Consolidated Comment/Opposition* on April 16, 2018; In view of the vacancy in the Sixth Division (As per Administrative Order No. 071-2018 dated February 1, 2018; *Revised Internal Rules of the Sandiganbayan*, Rule XII, Sec. 3)

¹ Dated April 2, 2018, Record, Vol. 3, pp. 32-117

² The matters of his motion for reinvestigation, to defer issuance of warrant and to suspend proceedings were the subject of a separate resolution (Resolution dated April 10, 2018, Record, Vol. 3, p. 158).

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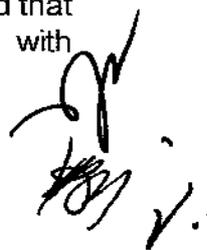
2. There is no series or combination of criminal acts that would constitute Plunder.
 - a. In *Macapagal-Arroyo*, it was categorically stated that for an overt act to be considered part of the combination or series of acts, each act must be considered a predicate crime.
 - b. In Justice Kapunan's dissent in *Jose "Jinggoy" E. Estrada v. Sandiganbayan*, he stated that the Information suffers from ambiguity insofar as the element that there be a "combination or series of overt or criminal acts" is concerned. The Information alleges receiving or collecting money on several instances. However, it does not necessarily amount to the performance of a combination or series of overt or criminal acts. The receipt or collection of money could have been impelled by a single criminal resolution pertaining to a single overt or criminal act, and not a series or combination of acts.
 - c. The Information alleges two (2) ordinary acts used as a means to commit one (1) crime. The lone consideration for the two acts of allegedly of receiving money was the illegal release of the arrested Chinese nationals.
3. The law on Plunder contemplates the commission of predicate crimes over a period of time.
 - a. In the cases of *Jose "Jinggoy" E. Estrada*,³ *Macapagal-Arroyo*,⁴ *People v. Estrada*⁵ and *Organo v. Sandiganbayan*,⁶ the series or combination of overt or criminal acts were done over the period of three (3) years, two (2) years, eight (8) years and four (4) months, respectively.
 - b. Here, the two (2) acts occurred within a single day and within the span of three (3) hours.
4. The fact that the Office of the Ombudsman charged the accused with only one count of Bribery indicates that there was only one criminal act.
 - a. The Office of the Ombudsman, in its Resolution, found that there was probable cause to charge the accused with

³ G.R. No. 148965, February 26, 2002

⁴ G.R. Nos. 220598 and 220953, July 19, 2016

⁵ Crim. Case No. SB-14-CRM-0239 (pending in the Fifth Division of the Sandiganbayan)

⁶ G.R. No. 136916, December 14, 1999



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Direct Bribery, accused Argosino and Robles, having received through accused Sombero the amount of ₱50 million in consideration for the release of the 1,316 Chinese nationals detained for violation of immigration laws.

- b. There was only one criminal act of receiving the amount of ₱50 million, albeit in two (2) installments.
- c. In *Enrile v. People*,⁷ it was held that if an alleged offense is committed in a single act, there is no crime of Plunder.
5. The records of the congressional deliberations would show that Plunder requires the commission of several crimes over a period of time. A single crime consisting of several acts would not constitute Plunder.
6. The amount involved in the present case does not reach the threshold of ₱50 million required for Plunder. The money turned over by accused Argosino and Robles was in the amount of only twenty-nine million nine hundred ninety-nine thousand pesos (₱29,999,000.00).
7. Their possession of the money in the amount of ₱48 million was for the purpose of gathering evidence in the criminal case filed with the Parañaque City Prosecutor's Office, and not for the purpose of amassing, accumulating or acquiring any pecuniary interest.
8. On December 22, 2016, accused Argosino and Robles filed a case against Jack Lam for Corruption of Public Officials and Wire-tapping. On the same day, they turned over the amount of ₱29,999,000.00 to the Department of Justice (DOJ) as evidence, declaring that ₱18 million was with Calima and ₱2 million was with accused Sombero.
9. Their acts of filing a case against Jack Lam and of turning over said amount of money to the DOJ shows their lack of pecuniary interest to consider amassing, accumulating or acquiring the same.

In its *Consolidated Comment/Opposition (To Accused Argosino's Omnibus Meritorious Motion dated 02 April 2018 and Accused Sombero's Motion to Quash Information dated 28 March 2018)*,⁸ the prosecution counters:

⁷ G.R. No. 213455, August 11, 2015

⁸ Dated and filed on April 16, 2018; In view of the prosecution's Motion to Admit Amended Information, the Motion to Quash filed by accused Sombero will be resolved separately.

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1. The Information in Crim. Case No. SB-18-CRM-0241 alleges that the accused are charged with amassing, accumulating and acquiring ill-gotten wealth in the aggregate sum of ₱50 million through a combination or series of overt or criminal acts described under Sec. 1, par. (d), subparagraphs (2)⁹ and (6)¹⁰ of R.A. No. 7080.
2. The commission of predicate crimes over a period of time is not an essential element of Plunder.
3. The elements of Direct Bribery and Plunder are different. The fact that the accused are being charged with only one (1) count of Direct Bribery does not mean that they cannot also be charged with Plunder. As long as the elements of both crimes are present, the accused should be indicted for both.
 - a. The accused were indicted for Direct Bribery for unlawfully demanding and receiving the amount of ₱50 million from Jack Lam through accused Sombero, as consideration for their refraining from performing their official duty to enforce immigration laws, and for intervening or assisting in the release of 1,316 Chinese nationals who were arrested and detained at Fontana Leisure Park for violating Philippine immigration laws.
 - b. They were also indicted for Plunder for amassing, accumulating and acquiring ill-gotten wealth in the aggregate amount of ₱50 million through a combination or series of overt or criminal acts such as (a) by receiving, directly or indirectly, a sum of money from any person and/or entity by reason of their office or position as Deputy Commissioners of the Bureau of Immigration, and (b) by taking undue advantage of their official position, authority and influence as Deputy Commissioners to unjustly enrich themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.
4. The fact that the physical count of the money turned over to the DOJ lacks ₱1,000.00 does not mean that the accused cannot be charged with Plunder. The records of the case would show that they received the total amount of ₱50 million.

⁹ By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned.

¹⁰ By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

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5. The claim of the accused that they came into possession of the ₱48 million for the purpose of gathering evidence is a matter of defense which may be passed upon in a full-blown trial on the merits.

This Court did not require accused Argosino to file his Reply. Thus, his *Motion for Leave to File Integrated Reply (to Prosecution's Consolidated Comment/Opposition dated 16 April 2018)*,¹¹ reiterating his arguments in his *Omnibus Meritorious Motion*, is merely noted.

THE COURT'S RULING

The Court resolves to deny accused Argosino's Motion to Quash.

A motion to quash on the ground that the facts charged do not constitute an offense¹² assails the sufficiency of the Information. In resolving such motion, the Court need not go beyond the four corners of the Information, the allegations of which the truth and veracity are hypothetically admitted. In *People v. Sandiganbayan*,¹³ it was held that the question that must be answered is whether or not the allegations in the Information are sufficient to establish the elements of the crime charged without considering matters aliunde. *Viz.:*

x x x. The question that must be answered is whether such allegations are sufficient to establish the elements of the crime charged without considering matters aliunde. In proceeding to resolve the issue, courts must look into three matters: (1) what must be alleged in a valid Information; (2) what the elements of the crime charged are; and (3) whether these elements are sufficiently stated in the Information.

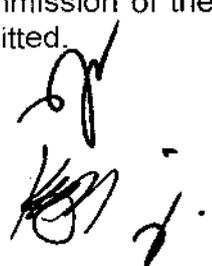
Rule 110, Sec. 6 of the Rules of Court provides for the contents of a sufficient Information. To wit:

Sec. 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

¹¹ Dated April 19, 2018 and filed on April 20, 2018

¹² Rules of Court, Rule 117, Sec. 3(a)

¹³ G.R. No. 160619, September 9, 2015



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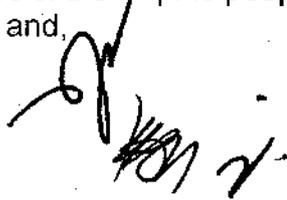
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When an offense is committed by more than one person, all of them shall be included in the complaint or information.

(underscoring supplied)

The Information in Crim. Case No. SB-18-CRM-0241 charges accused Argosino, Robles and Sombero with Plunder. The elements of the offense are as follows:

1. That the offender is a public officer who acts by himself/herself or in connivance with members of his/her family, relatives by affinity or consanguinity, business associates, subordinate, or other persons;
2. That the offender amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts:
 - a. Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
 - b. By receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;
 - c. By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of government-owned or -controlled corporations or their subsidiaries;
 - d. By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
 - e. By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
 - f. By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and,



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3. That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least ₱50,000,000.00.¹⁴

The Court will determine if the Information in Crim. Case No. SB-18-CRM-0241 sufficiently alleges these elements. The accusatory portion of said Information reads:

That on or about 27 November 2016, or sometime prior or subsequent thereto, in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, accused **AL CAPARROS ARGOSINO** (Argosino) and **MICHAEL B. ROBLES** (Robles), both public officers, being then Deputy Commissioners of the Bureau of Immigration, committing the offense in relation to their office, conspiring and confederating with each other and with private individual **WENCESLAO A. SOMBERO, JR.** (Sombero), did then and there willfully, unlawfully and criminally amass, accumulate and acquire ill-gotten wealth in the aggregate amount of **FIFTY MILLION PESOS (PhP50,000,000.00)** through a series or combination of overt or criminal acts, or similar schemes or means, such as by receiving, directly or indirectly, a sum of money from any person and/or entity by reason of their office or position as Deputy Commissioners of the Bureau of Immigration, and by taking undue advantage of their official position, authority and influence as such Deputy Commissioners to unjustly enrich themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines, under Section 1, paragraph d, subparagraphs (2) and (6) of Republic Act No. 7080, as amended, described as follows: by repeatedly receiving or collecting a sum of money which aggregated to an amount of FIFTY MILLION PESOS (PhP50,000,000.00) delivered to and received by the accused Argosino and Robles on two instances at the City of Dreams Manila, an establishment in Parañaque City, that is, TWENTY MILLION PESOS (PhP 20,000,000.00) at or about 2:00 a.m. of 27 November 2016 and THIRTY MILLION PESOS (PhP30,000,000.00) at or about 5:45 a.m. of the same day, both from accused Sombero, as consideration for the intervention and assistance of accused Argosino and Robles in the release of Chinese nationals arrested and detained at Fontana Leisure Parks and Casino in Pampanga, thereby the accused public officers took undue advantage of their position, authority and influence in amassing, accumulating and acquiring the said ill-gotten wealth.

CONTRARY TO LAW.

The Information alleges the first element of Plunder. It states that accused Argosino and Robles, both public officers, being Deputy

¹⁴ *Enrile v. People*, G.R. No. 213455, August 11, 2015

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Commissioners of the Bureau of Immigration, conspired and confederated with each other, and with accused Sombero, a private individual.

The third element of Plunder is likewise alleged in the Information. It states that the accused willfully, unlawfully and criminally amassed, accumulated and acquired ill-gotten wealth in the aggregate amount of ₱50 million.

The only matter left for determination is whether or not the Information alleges the second element.

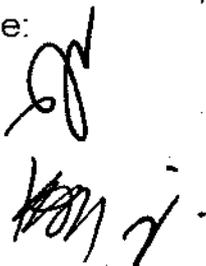
According to accused Argosino, the Information failed to allege the second element of Plunder. Only one criminal act of receiving and collecting a sum of money was alleged, albeit delivered in two (2) installments. Both deliveries of sums of money were allegedly received from accused Sombero in consideration for accused Argosino and Robles' assistance in the release of the Chinese nationals arrested and detained at Fontana Leisure Parks and Casino in Pampanga.

On the other hand, the prosecution contends that the Information alleges two acts, namely, (a) receiving, directly or indirectly, a sum of money from a person and/or entity by reason of their office or position as Deputy Commissioners of the Bureau of Immigration, and (b) taking undue advantage of their official position, authority and influence as Deputy Commissioners to unjustly enrich themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

This Court is not inclined to agree with either accused Argosino or the prosecution. Nonetheless, this Court finds that the Information alleges the second element of Plunder.

The second element of Plunder is that the offender must have amassed, accumulated or acquired ill-gotten wealth through a combination or series of overt or criminal acts as described in Sec. 1(d) of Republic Act No. 7080 (R.A. No. 7080). In *Estrada v. Sandiganbayan*,¹⁵ the Supreme Court explained the words "combination" and "series" in this wise:

¹⁵ G.R. No. 148560, November 19, 2001



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Thus, when the Plunder Law speaks of "combination," it is referring to at least two (2) acts falling under different categories of enumeration provided in Sec. 1, par. (d), e.g., raids on the public treasury in Sec. 1, par. (d), subpar. (1), and fraudulent conveyance of assets belonging to the National Government under Sec. 1, par. (d), subpar. (3).

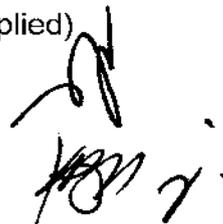
On the other hand, to constitute a "series" there must be two (2) or more overt or criminal acts falling under the same category of enumeration found in Sec. 1, par. (d), say, misappropriation, malversation and raids on the public treasury, all of which fall under Sec. 1, par. (d), subpar. (1). Verily, had the legislature intended a technical or distinctive meaning for "combination" and "series," it would have taken greater pains in specifically providing for it in the law.

Here, the Information states that the accused amassed, accumulated and acquired ill-gotten wealth "by receiving, directly or indirectly, a sum of money from any person and/or entity by reason of their office or position as Deputy Commissioners of the Bureau of Immigration, and by taking undue advantage of their official position, authority and influence as such Deputy Commissioners to unjustly enrich themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines."

At first glance, it may appear that the Information alleges a combination of two (2) separate acts, pertaining to subparagraphs (2) and (6) of Sec. 1(d) of R.A. No. 7080. However, a closer reading of the Information would show that such "receiving of a sum of money" and "taking undue advantage of their official position" pertain to the very same set of acts. The pertinent portion of the Information reads:

x x x by repeatedly receiving or collecting a sum of money which aggregated to an amount of FIFTY MILLION PESOS (PhP50,000,000.00) delivered to and received by the accused Argosino and Robles on two instances at the City of Dreams Manila, an establishment in Parañaque City, x x x, as consideration for the intervention and assistance of accused Argosino and Robles in the release of Chinese nationals arrested and detained at Fontana Leisure Parks and Casino in Pampanga, thereby the accused public officers took undue advantage of their position, authority and influence in amassing, accumulating and acquiring the said ill-gotten wealth.

(emphasis and underscoring supplied)



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Stated differently, the Information alleges that accused Argosino and Robles repeatedly received the sum of money totaling ₱50 million by reason of their office or position, and thereby, took advantage of their position and authority. There can be no combination of acts in the Information because a combination requires at least two (2) separate acts, not a single act or same set of acts that may constitute two distinct means of, or schemes for the acquisition of ill-gotten wealth as enumerated in Sec. 1(d) of R.A. No. 7080.

While no combination of acts is alleged, the Information alleges a series of overt acts. The pertinent portion of the Information reads:

x x x by repeatedly receiving or collecting a sum of money which aggregated to an amount of FIFTY MILLION PESOS (PhP50,000,000.00) delivered to and received by the accused Argosino and Robles on two instances at the City of Dreams Manila, an establishment in Parañaque City, that is, TWENTY MILLION PESOS (PhP 20,000,000.00) at or about 2:00 a.m. of 27 November 2016 and THIRTY MILLION PESOS (PhP30,000,000.00) at or about 5:45 a.m. of the same day, both from accused Sombero, as consideration for the intervention and assistance of accused Argosino and Robles in the release of Chinese nationals arrested and detained at Fontana Leisure Parks and Casino in Pampanga, x x x

Accused Argosino's contention that the Information alleges only a single act or offense is the very same argument made by the petitioner in *Jose "Jinggoy" E. Estrada*.¹⁶ In that case, the portion of the Information charging the petitioner reads:

(a) By receiving OR collecting, directly or indirectly, on SEVERAL INSTANCES, MONEY IN THE AGGREGATE AMOUNT OF FIVE HUNDRED FORTY-FIVE MILLION PESOS (P545,000,000.00) MORE OR LESS, FROM ILLEGAL GAMBLING IN THE FORM OF GIFT, SHARE, PERCENTAGE, KICKBACK OR ANY FORM OF PECUNIARY BENEFIT, BY HIMSELF AND/OR in connivance with co-accused CHARLIE 'ATONG' ANG, Jose 'Jinggoy' Estrada, Yolanda T. Ricaforte, Edward Serapio, AN (sic) JOHN DOES AND JANE DOES, in consideration OF TOLERATION OR PROTECTION OF ILLEGAL GAMBLING;

The Supreme Court rejected the petitioner's claim that only one act or offense was alleged in the information in this manner:

¹⁶ *Supra*. Note 3

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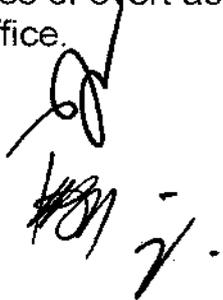
Petitioner's contention that R.A. No. 7080 is unconstitutional as applied to him is principally perched on the premise that the Amended Information charged him with only one act or one offense which cannot constitute plunder. He then assails the denial of his right to bail.

x x x

Pertinent to the case at bar is the predicate act alleged in sub-paragraph (a) of the Amended Information which is of "receiving or collecting, directly or indirectly, **on several instances**, money in the aggregate amount of ₱545,000,000.00 for illegal gambling in the form of gift, share, percentage, kickback or any form of pecuniary benefit x x x." In this sub-paragraph (a), **petitioner**, in conspiracy with former President Estrada, is charged with the act of receiving or collecting money from illegal gambling amounting to ₱545 million. Contrary to petitioner's posture, the allegation is that he received or collected money from illegal gambling "**on several instances.**" **The phrase "on several instances" means the petitioner committed the predicate act in series.** To insist that the Amended Information charged the petitioner with the commission of only one act or offense despite the phrase "several instances" is to indulge in a twisted, nay, "pretzel" interpretation.

The Information in the present case alleges that accused Argosino and Robles repeatedly received or collected a sum of money on two (2) instances, in consideration for their intervention and assistance in the release of Chinese nationals arrested and detained at Fontana Leisure Parks and Casino in Pampanga. Applying the ruling in the aforesaid case, each instance of receiving or collecting a sum of money constitutes a separate act. Hence, the Information in the case at bar alleges the commission of acts in series.

Accused Argosino's contention that the Information alleges only a single act because the accused were charged with only one count of Direct Bribery is also untenable. It must be emphasized that the second element requires a combination or series of overt or criminal acts. Therefore, each of the act in the series of acts need not constitute a crime. A series of overt acts as enumerated in Sec. 1(d) of R.A. No. 7080 would suffice.



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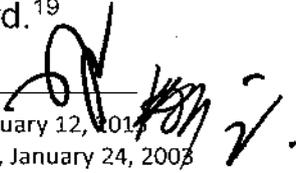
In *Fantastico v. Malicse*,¹⁷ citing *People v. Lizada*,¹⁸ the concept of an overt act was explained as thus:

The Court in *People v. Lizada* elaborated on the concept of an overt or external act, thus:

An overt or external act is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. The *raison d'être* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is. It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the "first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made." The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of Viada, the overt acts must have an immediate and necessary relation to the offense.

Here, the Information alleges that accused Argosino and Robles amassed, accumulated or acquired ill-gotten wealth by receiving and collecting, on two (2) instances, sums of money from accused Sombero by reason of their position as Deputy Commissioners of the Bureau of Immigration. Each of the two (2) acts of receiving or collecting a sum of money is an overt act, or "some physical activity or deed, indicating the intention to commit a particular crime."

It is a cardinal rule in statutory construction that no word, clause, sentence, provision or part of a statute shall be considered surplusage or superfluous, meaningless, void and insignificant. To this end, a construction which renders every word operative is preferred over that which makes some words idle and nugatory. This principle is expressed in the maxim *Ut Magis valeat quam pereat*, that is, we choose the interpretation which gives effect to the whole of the statute – it's every word.¹⁹


¹⁷ G.R. No. 190912, January 12, 2014

¹⁸ G.R. Nos. 143468-71, January 24, 2008

¹⁹ *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 167330, September 18, 2008, citing *Inding v. Sandiganbayan*, G.R. No. 143047, July 14, 2004

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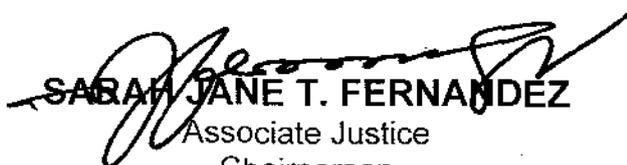
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Accused Argosino's interpretation that each act in the series or combination of acts should constitute a criminal act will render the word "overt" meaningless or nugatory. If the legislature, in crafting the provisions of the R.A. No. 7080, intended that each act in the series or combination of acts be a criminal act, it would have omitted the word "overt" from Sec. 2 of R.A. No. 7080.

The rest of accused Argosino's arguments are matters of defense which are better threshed out during the trial on the merits.

WHEREFORE, accused Argosino's *Omnibus Meritorious Motion* is hereby **DENIED** for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


ZALDY N. TRESPESSES
Associate Justice