



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on September 6, 2018

Present:

MA. THERESA DOLORES C. GOMEZ-ESTOESTA ----- Chairperson
ZALDY V. TRESPESES ----- Associate Justice
GEORGINA D. HIDALGO ----- Associate Justice

The following resolution was adopted:

CRIMINAL CASE NO. SB-17-CRM-0063

PEOPLE v. JAIME K. RECIO

CRIMINAL CASE NO. SB-17-CRM-0064 to 0069

PEOPLE v. CARLITO A. FAJARDO

CRIMINAL CASE NO. SB-17-CRM-0070 to 0071

PEOPLE v. SALOME T. HABAL

Before the Court are the following:

SB-17-CRM-0063

1. Prosecution's "FORMAL OFFER OF DOCUMENTARY EVIDENCE" dated June 28, 2018; and
2. Accused Recio's "COMMENT/OPPOSITION (To The Prosecution's Formal Offer of Evidence)" dated July 30, 2018

SB-17-CRM-0064 to 0069

1. Prosecution's "FORMAL OFFER OF DOCUMENTARY EVIDENCE" dated June 28, 2018; and
2. Accused Fajardo's "OPPOSITION TO THE PROSECUTION'S FORMAL OFFER OF EVIDENCE" dated July 16, 2018

17
1

SB-17-CRM-0070 to 71

1. Prosecution's "FORMAL OFFER OF DOCUMENTARY EVIDENCE WITH MOTION TO DELETE 'P.M.' ON THE MARKED EXHIBITS" dated June 28, 2018; and
2. Accused Habal's "COMMENT/OPPOSITION TO THE PROSECUTION'S FORMAL OFFER OF EVIDENCE dated August 14, 2018

GOMEZ-ESTOESTA, J.:

Acting on the Prosecution's separate *Formal Offer of Documentary Evidence* for SB-17-CRM-0063,¹ SB-17-CRM-0064 to 0069,² and SB-17-CRM-0070 to 0071,³ as well as the accused's respective Comments/Oppositions⁴ thereto, the Court resolves to:

A. For all cases:

ADMIT Exhibit "A", the Complaint-Affidavit of Atty. R Epicurus Charlo S. Salcedo, over the objections of the accused, the same having been duly authenticated by complainant Salcedo.⁵ The accused's objection to the purposes for the document has been offered pertains to its probative value to be determined by this Court in the ultimate disposition of the cases;

B. For Crim. Case No. SB-17-CRM-0063

ADMIT Exhibit "B", the Service Record of accused Jaime K. Recio, over accused Recio's objections, having been admitted by him during pre-trial.⁶

ADMIT Exhibits "D", "F", "G", "H" and "I",⁷ letters of accused Recio to Severo V. Cariño, certified copies of public documents, being the written

¹ Dated June 28, 2018, Records, Vol. 5, pp. 243-342

² Dated June 28, 2018, Records, Vol. 5, pp. 108-452

³ Dated June 28, 2018, With Motion to Delete PM on the marked exhibits, Records, Vol. 3, pp. 498-558,

⁴ Recio – Comment/Opposition dated July 30, 2018, Records, Vol. 5, pp. 343-473; Fajardo – Opposition dated July 16, 2018, Records, Vol. 5, pp. 453-471; Habal – Comment/Opposition dated August 14, 2018, Records, Vol. 4, pp. 19-20

⁵ As stipulated, Order dated April 3, 2018.

⁶ Pre-Trial Order dated January 17, 2018, p. 2; cf. *Bayas, et al. v. Sandiganbayan, et al.*, G.R. Nos. 143689-91, November 12, 2002

⁷ With notation P.M. (provisionally marked), but certified as true copy and identified by Dexter T. Espiritu

1/1/18

official acts of accused Recio,⁸ and duly identified by Dexter T. Espiritu,⁹ custodian of said documents, over accused Recio's objections that they were identified by a person without personal knowledge of their contents. Accused Recio's objection to the purposes for which these documents have been offered pertains to their probative value to be determined by this Court in the ultimate disposition of the cases;

ADMIT Exhibits "C", "E", "J", and "K", notwithstanding that they are photocopies with notation *P.M.* (provisionally marked), and have not been certified nor identified by any witness of the prosecution, there having been no objection on such ground by accused Recio. Evidence not objected to is deemed admitted and may validly be considered by the court in arriving at its judgment.¹⁰

ADMIT Exhibits "L", "O", "R", "U", "X", "AA", "DD", "GG", "JJ", "MM", "PP", "SS", "VV", "YY", "BBB", "EEE", "FFF", "III", "LLL", "OOO", "RRR", "UUU", "XXX", "A⁴", "D⁴", "G⁴", and "J⁴", and their submarkings, Disbursement Vouchers, hence, public documents, over accused Recio's objection that they were identified by a person without personal knowledge of their contents. These documents were likewise duly authenticated by prosecution witnesses Dexter T. Espiritu,¹¹ their custodian, and Heherson M. Martinez, former accountant of NPDC.¹² Accused Recio's objection to the purposes for which these documents have been offered pertains to their probative value to be determined by this Court in the ultimate disposition of the cases. Finally, this Court finds no merit in accused Recio's allegation that these documents are irrelevant in view of this Court's denial of the prosecution's *Motion to Amend Information*, the same documents being relevant to the allegations in the *Information* other than the amount subject of said *Motion*;

The same is true with Exhibits "M", "P", "S", "V", "Y", "BB", "EE", "HH", "KK", "NN", "QQ", "TT", "WW", "ZZ", "CCC", "GGG", "JJJ", "MMM", "PPP", "SSS", "VVV", "YYY", "B⁴", "E⁴", "H⁴", "K⁴", and "O⁴", checks issued to Variance, hence public documents, which are ADMITTED

⁸ Rule 132, Sec. 19(a) of the Revised Rules on Evidence;

Section 24. Proof of official record. — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

⁹ Judicial Affidavit dated February 15, 2018, pp. 111-114

¹⁰ *BPI v. Mendoza*, G.R. No. 198799, March 20, 2017

¹¹ Judicial Affidavit dated February 15, 2018, pp. 114-138

¹² Judicial Affidavit dated March 22, 2018, pp. 52-85

Handwritten initials or signature, possibly "J. T. Espiritu".

over accused Recio's objection on the same grounds. These were likewise duly authenticated by Dexter T. Espiritu,¹³ their custodian;

ADMIT Exhibits "N",¹⁴ "Q", "T", "W", "Z", "CC", "FF", "II", "LL", "OO", "RR", "UU", "XX", "AAA", "DDD", "HHH", "KKK", "NNN", "QQQ", "TTT", "WWW", "ZZZ", "C⁴", "F⁴", "I⁴", "L⁴", and "P⁴", official receipts of Variance, which have been duly authenticated by Dexter T. Espiritu,¹⁵ custodian of these documents, over accused Recio's objection that the witness has no personal knowledge of their contents. Accused Recio's objection to the purposes for which these documents have been offered pertains to their probative value to be determined by this Court in the ultimate disposition of the cases. These documents remain relevant to allegations in the *Information* other than the amount subject of the prosecution's *Motion to Amend Information*, contrary to accused Recio's objection on the ground of irrelevance based on this Court's denial of said *Motion*;

This Court notes that there is no document marked as Exhibit "Q⁵", as offered by the Prosecution. It further notes the manifestation that Exhibits "M⁴" and "N⁴" were not offered by the Prosecution.

C. For Crim. Case Nos. SB-17-CRM-0064 to 0069

ADMIT Exhibit "B", copy of accused Fajardo's Personal Data Sheet, a public document, over accused Fajardo's objection to the purposes for it was offered, which pertains to its probative value to be determined by this Court in the ultimate disposition of the cases;

Over accused Fajardo's objections, ADMIT Exhibit "C", his Service Record, whose existence, due execution and authenticity he admitted during pre-trial;¹⁶

ADMIT Exhibits "E", and "F", letters of accused Fajardo to Severo V. Cariño, certified copies of public documents, being the written official acts of accused Fajardo,¹⁷ and duly identified by Dexter T. Espiritu,¹⁸ custodian of said documents, over accused Fajardo's objection that they were not properly identified by the person who certified them. Accused Fajardo's objection to the purposes for which these documents have been offered pertains to their probative value to be determined by this Court in the ultimate disposition of the cases;

EXCLUDE Exhibits "G", "H", "I" and "J", photocopies of letters of accused Fajardo to Severo Cariño, the same not having been certified as true

¹³ Judicial Affidavit dated February 15, 2018, pp. 138-155

¹⁴ With notation P.M. (provisionally marked), but certified as true copy and identified by Dexter T. Espiritu

¹⁵ Judicial Affidavit dated February 15, 2018, pp. 155-177

¹⁶ Pre-Trial Order dated January 22, 2018, p. 20

¹⁷ Rule 132, Sec. 19(a) of the Revised Rules on Evidence

¹⁸ Judicial Affidavit dated February 15, 2018, pp. 178-179

copies and identified by any prosecution witness, as properly pointed out by accused Fajardo;

ADMIT Exhibit "K", Audit Observation Memorandum from the COA dated September 5, 2005, a public document duly certified and identified by its custodian, Dexter Espiritu,¹⁹ over accused Fajardo's objections that it was not properly identified, and to the purposes for which it was offered, which pertains to its probative value to be determined by this Court in the ultimate disposition of the cases;

ADMIT Exhibits "L", "O", "R", "U", "X", "AA", "DD", "GG", "JJ", "MM", "PP", "SS", "VV", "YY", "BBB", "EEE", "HHH", "KKK", "NNN", "QQQ", "TTT", "WWW", "ZZZ", "C⁴", "F⁴", "I⁴", "L⁴", "O⁴", "R⁴", "U⁴", "X⁴", "A⁵", "D⁵", "G⁵", "J⁵", "M⁵", "P⁵", "S⁵", "V⁵", "Y⁵", "B⁶", "E⁶", "H⁶", "K⁶", "N⁶", "Q⁶", "T⁶", "W⁶", "Z⁶", "C⁷", "F⁷", "I⁷", "L⁷", "O⁷", "R⁷", "U⁷", "X⁷", "A⁸", "D⁸", "G⁸", "J⁸", "M⁸", "P⁸", "S⁸", "V⁸", "Y⁸", "B⁹", "E⁹", "H⁹", "K⁹", "N⁹", "Q⁹", "T⁹", "W⁹", "Z⁹", "A¹⁰⁻¹", "D¹⁰", "G¹⁰", "J¹⁰", "M¹⁰", "P¹⁰", "T¹⁰", "X¹⁰", "A¹¹", "E¹¹", "I¹¹", "M¹¹", "Q¹¹", "U¹¹", "Y¹¹", "C¹²", "G¹²", "K¹²", "O¹²", "S¹²", "W¹²", "A¹³", "E¹³", "I¹³", "M¹³", "Q¹³", "U¹³", "Y¹³", "C¹³", "F¹⁴", "J¹⁴", "N¹⁴", "R¹⁴", "V¹⁴", "Z¹⁴", and "D¹⁵", and their submarkings, Disbursement Vouchers, hence, public documents,²⁰ over accused Fajardo's objection to the purposes for which these documents have been offered, which pertains to their probative value to be determined by this Court in the ultimate disposition of the cases;

ADMIT Exhibits "M", "P", "S", "V", "Y", "BB", "HH", "KK", "NN", "QQ", "TT", "WW", "ZZ", "CCC", "FFF", "III", "LLL", "OOO", "RRR", "UUU", "XXX", "A⁴", "D⁴", "G⁴", "J⁴", "M⁴", "P⁴", "S⁴", "V⁴", "Y⁴", "B⁵", "E⁵", "H⁵", "K⁵", "N⁵", "Q⁵", "T⁵", "W⁵", "Z⁵", "C⁶", "F⁶", "I⁶", "L⁶", "O⁶", "R⁶", "U⁶", "X⁶", "A⁷", "D⁷", "G⁷", "J⁷", "M⁷", "P⁷", "S⁷", "V⁷", "Y⁷", "B⁸", "E⁸", "H⁸", "K⁸", "N⁸", "Q⁸", "T⁸", "W⁸", "Z⁸", "C⁹", "F⁹", "I⁹", "L⁹", "O⁹", "R⁹", "U⁹", "X⁹", "B¹⁰", "E¹⁰", "H¹⁰", "K¹⁰", "N¹⁰", "Q¹⁰", "U¹⁰", "Y¹⁰", "B¹¹", "F¹¹", "J¹¹", "N¹¹", "R¹¹", "V¹¹", "Z¹¹", "D¹²", "H¹²", "L¹²", "P¹²", "T¹²", "X¹²", "B¹³", "F¹³", "J¹³", "N¹³", "R¹³", "V¹³", "Z¹³", "C¹⁴", "G¹⁴", "K¹⁴", "O¹⁴", "S¹⁴", "W¹⁴", "A¹⁵", and "E¹⁵", checks issued to Variance, hence public documents, likewise duly authenticated by Dexter T. Espiritu,²¹ custodian of these documents, over accused Fajardo's objections that they were not properly identified, and to the purposes for which they were offered, which pertains to their probative value to be determined by this Court in the ultimate disposition of the cases;

ADMIT Exhibits "N", "Q", "T", "W", "Z", "CC", "FF", "II", "LL", "OO", "RR", "UU", "XX", "AAA", "DDD", "GGG", "JJJ", "MMM", "PPP",

¹⁹ Id., pp. 442-443

²⁰ Identified by Dexter T. Espiritu – Judicial Affidavit dated February 15, 2018, pp.179-273; Heherson M. Martinez – Judicial Affidavit dated March 22, 2018, pp. 86-220

²¹ Judicial Affidavit dated February 15, 2018, pp. 274-366

Tj

“SSS”, “VVV”, “YYY”, “B⁴”, “E⁴”, “H⁴”, “K⁴”, “N⁴”, “Q⁴”, “T⁴”, “W⁴”, “Z⁴”, “C⁵”, “F⁵”, “I⁵”, “L⁵”, “O⁵”, “R⁵”, “U⁵”, “X⁵”, “A⁶”, “D⁶”, “G⁶”, “J⁶”, “M⁶”, “P⁶”, “S⁶”, “V⁶”, “Y⁶”, “B⁷”, “E⁷”, “H⁷”, “K⁷”, “N⁷”, “Q⁷”, “T⁷”, “W⁷”, “Z⁷”, “C⁸”, “F⁸”, “I⁸”, “L⁸”, “O⁸”, “R⁸”, “U⁸”, “X⁸”, “A⁹”, “D⁹”, “G⁹”, “J⁹”, “M⁹”, “P⁹”, “S⁹”, “V⁹”, “Y⁹”, “C¹⁰”, “F¹⁰”, “I¹⁰”, “L¹⁰”, “O¹⁰”, “S¹⁰”, “Z¹⁰”, “D¹¹”, “H¹¹”, “K¹¹”, “O¹¹”, “T¹¹”, “W¹¹”, “B¹²”, “E¹²”, “I¹²”, “N¹²”, “R¹²”, “V¹²”, “Z¹²”, “H¹³”, “L¹³”, “P¹³”, “T¹³”, “W¹³”, “E¹⁴”, “H¹⁴”, “M¹⁴”, “P¹⁴”, “T¹⁴”, “Y¹⁴”, “G¹⁵”, and “C¹³”, official receipts of Variance, as well as Exhibits “R¹⁰”, “V¹⁰”, “C¹¹”, “L¹¹”, “P¹¹”, “S¹¹”, “X¹¹”, “A¹²”, “F¹²”, “J¹²”, “M¹²”, “Q¹²”, “U¹²”, “Y¹²”, “D¹³”, “G¹³”, “K¹³”, “O¹³”, “S¹³”, “X¹³”, “A¹⁴”, “D¹⁴”, “I¹⁴”, “L¹⁴”, “Q¹⁴”, “U¹⁴”, “X¹⁴”, “C¹⁵”, and “F¹⁵”, acknowledgment receipts of Variance, which have been duly authenticated by Dexter T. Espiritu,²² custodian of these documents issued to NPDC, over accused Fajardo’s objections that they were not properly identified, and to the purposes for which they were offered, which pertains to their probative value to be determined by this Court in the ultimate disposition of the cases;

This Court notes that there is no document marked as Exhibit “B¹⁴”, as offered by the Prosecution. It further notes the manifestation that Exhibits “H¹⁶” and “I¹⁷” were not offered by the Prosecution

D. For Crim. Case Nos. SB-17-CRM-0070 to 71

ADMIT Exhibit “B”, the Service Record of accused Salome T. Habal, over her objections, having been admitted by her during pre-trial.²³

ADMIT Exhibits “C”, “G”, “K”, “O”, “S”, “W”, “AA”, “CC”, “GG”, “KK”, “OO”, “SS”, “WW”, “AAA”, and their submarkings, Disbursement Vouchers, hence, public documents,²⁴ over accused Habal’s objection that the person who prepared them was not presented, but instead, only their custodian *i.e.*, prosecution witness Dexter Espiritu,²⁵ hence, hearsay, and to the purposes for which these were offered, which pertains to their probative value to be determined by this Court in the ultimate disposition of the cases. These documents were likewise authenticated by Heherson M. Martinez, former accountant of NPDC.²⁶

²² Original Receipts – Judicial Affidavit dated February 15, 2018, pp. 366-442; Acknowledgment Receipts – *Id.*, pp. 418-442

²³ Pre-Trial Order dated November 10, 2017

²⁴ *Cf.*, Rule 132, Section 24. Proof of official record. — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

²⁵ Judicial Affidavit dated February 15, 2018, pp. 445-456

²⁶ Judicial Affidavit dated March 22, 2018, pp. 220-233

Handwritten signature/initials

ADMIT Exhibits “D”, “H”, “L”, “P”, “T”, “X”, “BB”, “DD”, “HH”, “LL”, “PP”, “TT”, “XX”, “BBB”, checks issued to Variance, hence public documents, likewise duly authenticated by Dexter T. Espiritu,²⁷ custodian of these documents, and Heherson M. Martinez, former accountant of NPDC,²⁸ over accused Habal’s objection to the purposes for which they were offered, which pertains to their probative value to be determined by this Court in the ultimate disposition of the cases;

ADMIT Exhibits “E”, “I”, “M”, “R”, “U”, “Z”, “EE”, “JJ”, “NN”, “QQ”, “UU”, “ZZ”, “CCC” acknowledgment receipts of Variance, as well as Exhibits “F”, “J”, “N”, “Q”, “V”, “Y”, “FF”, “II”, “MM”, “RR”, “VV”, “YY”, “DDD”, official receipts of Variance, which have been duly authenticated by Dexter T. Espiritu,²⁹ custodian of these documents issued to NPDC, over accused Habal’s objections that they were not identified by the persons who issued them, and to the purposes for which they were offered, which pertains to their probative value to be determined by this Court in the ultimate disposition of the cases;

ADMIT Exhibits “EEE” and “FFF”, copies of letters from accused Habal and the COA, respectively, notwithstanding that they have not been certified as true copies of the originals by witness Dexter Espiritu, who identified these documents as custodian of their *certified* copies,³⁰ there having been no objection on such ground by accused Habal. Evidence not objected to is deemed admitted and may validly be considered by the court in arriving at its judgment;³¹

ADMIT Exhibit “G³”, NPDC Memorandum dated November 22, 2010, public document which was likewise authenticated by Edgardo A. Lunizo,³² over accused Habal’s objection to the purpose for which it was offered, which pertains to its probative value to be determined by this Court in the ultimate disposition of the cases;

EXCLUDE Exhibit “H³”, photocopy of the NPDC Minutes of the Pre-Bid Conference, which does not comply with the Best Evidence Rule, as properly pointed out by accused Habal.

²⁷ Judicial Affidavit dated February 15, 2018, pp. 456-467

²⁸ Judicial Affidavit dated March 22, 2018, pp. 234-239

²⁹ Judicial Affidavit dated February 15, 2018, pp. 467-481

³⁰ Judicial Affidavit dated February 15, 2018, pp. 443-445, *cf.* Revised Rules on Evidence, Rule 132, Section 24. Proof of official record. — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, x x x

Section 25. What attestation of copy must state. — Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

³¹ *BPI v. Mendoza*, G.R. No. 198799, March 20, 2017

³² Judicial Affidavit dated December 20, 2017, pp. 2-3

Handwritten initials or signature in the bottom right corner of the page.

As requested by the Prosecution, the deletion of the notations "P.M." on the documents offered for SB-17-CRM-0070 to 71 is GRANTED.

The parties are reminded of the setting for the presentation of defense evidence on October 18, 2018, at 8:30 in the morning.

SO ORDERED.


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice, Chairperson

WE CONCUR:


ZALDY V. TRESPESES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice