



REPUBLIC OF THE PHILIPPINES  
**SANDIGANBAYAN**  
Quezon City

**THIRD DIVISION**

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

Crim. Case Nos.  
**SB-16-CRM-0077-0079;**  
**0081-0083**  
*For: Falsification of*  
*Public Document*  
**SB-16-CRM-0080 and**  
**0084**  
*For: Violation of Section*  
*3(e) of R.A. No. 3019*

-versus-

**MARJORIE AGUINALDO DE VEYRA,**  
**ET AL.,**  
*Accused.*

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Crim. Case Nos.  
**SB-16-CRM-0439-0442**  
*For: Violation of*  
*Section 3(e) of R.A. No.*  
*3019*  
**SB-16-CRM-0443**  
*For: Malversation of*  
*Public Funds (Article*  
*217 of the Revised Penal*  
*Code)*  
**SB-16-CRM-0443**  
*For: Falsification of*  
*Public Document*

X-----X

**JEJOMAR CABAUTAN BINAY, SR.,  
ET AL.,**

*Accused.*

Present:

Cabotaje-Tang, A.M.,  
*PJ, Chairperson*  
Fernandez, B.R., *J.* and  
Moreno, R.B., *J.*

PROMULGATED:

JANUARY 29, 2024 

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### RESOLUTION

***Moreno, J.:***

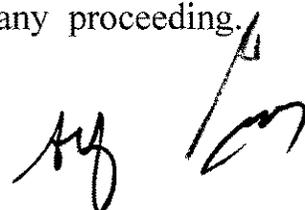
For resolution are the following:

1. Manifestation with Omnibus Motion: (A) To Strike from the Records the Exhibits from the Commission on Audit Special Audit/Notice of Disallowance and to Prohibit the Presentation, Identification, Authentication, and Offer of Such Exhibits; (B) To Strike from the Records Exhibits Attached to the Judicial Affidavits of Previously-Presented Witnesses that Were Sourced from the Commission on Audit's Special Audit/Notice of Disallowance, and Any Portion of the Testimony Relating Thereto; (C) To Forbid Witnesses from the Commission on Audit from Testifying; and (D) To Forbid Any Other Witness from Testifying Based On, or Referring to, any Exhibit Sourced from the Commission on Audit's Special Audit/Notice of Disallowance, filed by accused Efren M. Canlas on November 20, 2023; and

2. Request for Hearing on the Motion Re: Manifestation with Omnibus Motion x x x also filed by Canlas on the same date.

The prosecution, through the Office of the Special Prosecutor, filed its Opposition on December 5, 2023.

In its Manifestation with Omnibus Motion, Canlas claimed that in light of the Commission on Audit's July 27, 2023 Decision declaring the special audit conducted by the audit team under COA Order Nos. 2014-559 and 2014-559-A invalid and ineffectual and lifting the COA Fraud Audit Office Special Audit/Notice of Disallowance Nos. 2018-002 and 2018-003, then any exhibit or finding emanating from the said Special Audit/Notice of Disallowance were inadmissible and cannot be used in any proceeding.



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Accordingly, Canlas moved to strike from the proceedings: “the entirety of the prosecution’s marked B-series exhibits originating from the voided COA Special Audit/Notice of Disallowance”;<sup>1</sup> and “all of the documents identified or admitted as part of the testimony of witness Atty. Maria Melinda S. Mananghay-Henson,”<sup>2</sup> as well as all portions of the said witnesses’ testimony relating to documents originating from the voided COA Special Audit/Notice of Disallowance.

Canlas likewise prayed that the Court prohibit the future presentation, identification, authentication, and offer of any such exhibit originating from the voided COA Special Audit/Notice of Disallowance, and to forbid any witnesses from the COA and any other witness from testifying based on the voided Special Audit/ND, since to do so would be “to allow the presentation of evidence gathered from an illegal exercise.”<sup>3</sup>

In his *Request for Hearing on the Motion x x x*, Canlas prayed that his motion be set for hearing in order for him to fully ventilate his position, considering the import and implications of the contentions in his motion in relation to the constitutional guarantee of due process.

In its Opposition, the prosecution prayed for the denial of Canlas’ Manifestation with omnibus Motion for lack of merit. It countered that it was premature for Canlas to move to strike out from the records all the prosecution’s COA exhibits (marked as Exhibits “B” to “B-2428”); all exhibits attached to the judicial affidavits of previously presented witnesses that were sourced from the voided Special Audit/Notice of Disallowance; and any portion of the testimony relating thereto. The prosecution argued that Canlas will have the opportunity to comment on these exhibits during its formal offer of evidence.

The prosecution also claimed as premature Canlas’ move to forbid witnesses from testifying based on any exhibit sourced from the COA’s Special Audit/Notice of Disallowance, since he (Canlas) will have the opportunity to object to their presentation when their testimonies are offered before the Court. According to the prosecution, Canlas will also have the opportunity to confront and cross-examine the said witnesses.

The prosecution thus maintained that the prosecution’s pieces of evidence that were considered by the Office of the Ombudsman in finding probable cause against the accused should not be stricken off from the Court records.

<sup>1</sup> Manifestation and Motion, p. 8.

<sup>2</sup> Id.

<sup>3</sup> Id. at 10.

**THE COURT'S RULING:**

After due consideration, we **DENY** both the Manifestation with Omnibus Motion and the Request for Hearing filed by accused Canlas for lack of merit.

To recall, Canlas had previously filed a Motion to Suppress Evidence before this Court praying that all the audit findings conducted by the commission on Audit Special Audit Team be declared as incompetent, and to suppress the same as evidence against him.

In the Court's May 5, 2021 Resolution, we denied this motion for being premature; the Notice of Disallowance was still subject of an appeal before the COA Proper; and the allegations of irregularity in the conduct of the special audit were matters of defense best ventilated during trial.

Canlas moved to reconsider our May 5, 2021 Resolution, but we denied his motion per our July 29, 2021 Resolution.

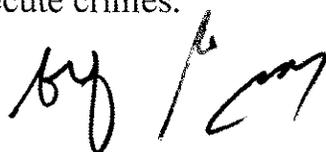
Notably, Canlas questioned our resolutions before the Supreme Court via a petition for *certiorari*, docketed as G.R. No. 258981. The Supreme Court dismissed this petition for lack of merit in its July 10, 2023 Resolution.

As earlier mentioned, the COA declared the special audit conducted by the audit team under COA Order Nos. 2014-559 and 2014-559-A invalid and ineffectual, and lifted the COA Fraud Audit Office Special Audit/Notice of Disallowance Nos. 2018-002 and 2018-003 in a Decision dated July 27, 2023.

*Prosecutorial discretion*

It bears noting that Canlas' merely reiterated the arguments he raised in his previous motion to suppress evidence, albeit now including the COA's July 27, 2023 Decision to strengthen his position.

To our mind, the COA's decision to lift the subject COA Fraud Audit Office Special Audit/Notice of Disallowance did not ipso facto categorize as incompetent and/or inadmissible the audit findings of the special audit team. We emphasize that after the finding of probable cause against the herein accused, the prosecution is given the discretion in matters relating to the prosecution of the offense/s charged. This discretion encompasses a wide range of activities including, the choice of charge, the decision to proceed or to enter into a plea bargaining agreement, and the selection of the pieces of evidence (testimonial and documentary) to present in court. It bears highlighting, too, that the prosecutorial discretion flows from the sovereign's constitutional right to prosecute crimes.

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The prosecution's insistence on presenting in Court the subject pieces of evidence, and to call on its selected witnesses to testify on such evidence despite the COA's July 27, 2023 Decision, thus falls within the realm of prosecutorial discretion. If the prosecution insists on presenting the subject audit findings, then it does so at its own risk. The Court, however, will not interfere with such discretion. Moreover, Canlas will have the opportunity to object to the witnesses' presentation when their testimonies are offered before the Court, and to cross-examine them.

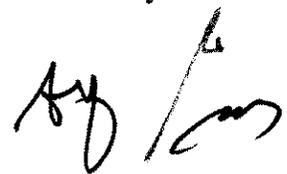
As the Supreme Court explained in *Tresvalles v. People*:<sup>4</sup>

Prosecutorial discretion pertains to who to prosecute, what case to prosecute, and how the case would be pursued based on the evidence available to the prosecution. The prosecution has the freedom and authority to determine whether to charge a person, what Information to file against them and **how to prosecute the case filed before the courts.**

b. *The prosecution has not yet made its formal offer of evidence*

It is settled that in order to exclude evidence, the objection to admissibility of evidence must be made at the proper time, and the grounds therefore be specified. Objection to evidence must be made at the time it is formally offered. **In case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered. It is only at this time, and not at any other, that objection to the documentary evidence may be made.** When a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived. This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time.<sup>5</sup> The formal offer of evidence therefore allows the parties the chance to object to the presentation of an evidence which may not be admissible for the purpose it is being offered.<sup>6</sup>

It is important to point out that the rule on formal offer of evidence is intertwined with the constitutional guarantee of due process. Parties must be given the opportunity to review the evidence submitted against them and take the necessary actions to secure their case. Hence, any document or object that was marked for identification is not evidence unless it was formally offered and the opposing counsel was given an opportunity to object to it or cross-examine the witness called upon to prove or identify it.<sup>7</sup>



<sup>4</sup> G.R. No. 260214, April 17, 2023. [emphasis ours; citation omitted]

<sup>5</sup> See *Cadajas v. People*, G.R. No. 247348, November 16, 2021.

<sup>6</sup> See *Laborte v. Pagsanjan Tourism Consumers' Cooperative*, G.R. No. 183860, January 15, 2014.

<sup>7</sup> See *Republic v. Gimenez*, G.R. No. 174673, January 11, 2016 (citations omitted).

In *Cabrera v. Clarin, et al.*,<sup>8</sup> the Supreme Court further explained the importance of the formal offer as follows:

A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. Conversely, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, **it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.**<sup>9</sup>

In the present case, the prosecution has not yet made its formal offer of evidence. As such, the motion to strike from the records certain exhibits from the Commission on Audit Special Audit/Notice of Disallowance and to prohibit the presentation, identification, authentication, and offer of such exhibits was premature and lacked basis. As earlier discussed, the prosecution has the right to present its evidence and state such purpose in the formal offer of evidence after it has completed the presentation of its case. Corollarily, it is during this formal offer where Canlas can interpose his objections.

We stress that the aim of the formal offer is to inform the Court of the purpose of introducing its exhibits into evidence, in order to assist us in ruling on their admissibility *in case the adverse party objects*. The Court's ruling in *Magsino v. Magsino*<sup>10</sup> on this point is particularly instructive, thus:

Objection to documentary evidence must be made at the time it is formally offered, not earlier. Because at that time the purpose of the offer has already been disclosed and ascertained. Suffice it to say that the identification of the document before it is marked as an exhibit does not constitute the formal offer of the document as evidence for the party presenting it. Objection to the identification and marking of the document is not equivalent to objection to the document when it is formally offered in evidence. What really matters is the objection to the document at the time it is formally offered as an exhibit.

Prescinding from the foregoing discussion, we also see no cogent reason to grant Canlas' request for hearing on his manifestation with omnibus motion.

**WHEREFORE**, in light of all the foregoing, the Court **DENIES** the *Manifestation with Omnibus Motion x x x* and the *Request for Hearing on the Motion* filed by accused Efren M. Canlas for lack of merit.

**SO ORDERED.**

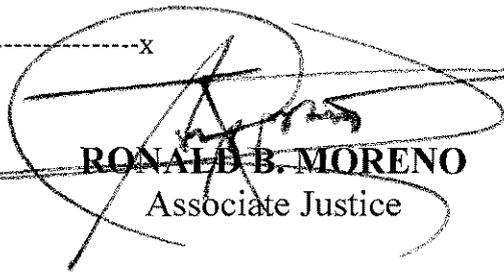
Quezon City, Metro Manila.

<sup>8</sup> G.R. No. 215640, November 28, 2016.

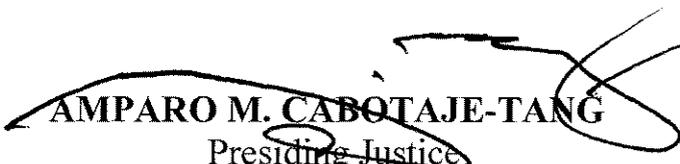
<sup>9</sup> *Id.* (emphasis in the original).

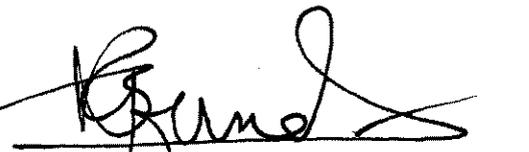
<sup>10</sup> G.R. No. 205333, February 18, 2019.



  
**RONALD B. MORENO**  
Associate Justice

**WE CONCUR:**

  
**AMPARO M. CABOTAJE-TANG**  
Presiding Justice  
*Chairperson*

  
**BERNELITO R. FERNANDEZ**  
Associate Justice