



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City
THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim Case No.
SB-14-CRM-0238
*For: Plunder (Violation of
R.A. No. 7080, as
amended)*

-versus-

JUAN PONCE ENRILE, ET AL.,
Accused.

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

PROMULGATED:

FEBRUARY 15, 2021

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RESOLUTION

Moreno, J.:

For resolution are the *Comments in Regard the "Pre-Trial Order"* dated January 8, 2020¹ and the *Ex-parte Motion for Resolution/Clarification of Matters Subject of the Comments in Regard the Pre-trial Order* dated February 14, 2020,² both filed by accused Juan Ponce Enrile on February 14, 2020 and February 19, 2020, respectively; and the *Motion to Suppress*

¹ Record, vol. XX, pp. 410-415.

² Id. at 516-518

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*Evidence*³ and the *Motion to Admit Hereunder Supplemental (To: Motion to Suppress Evidence)*⁴ filed by accused Janet Lim Napoles on February 17, 2020 and August 24, 2020, respectively.

The People of the Philippines, through the Office of the Special Prosecutor (OSP), filed its *Comment*⁵ to Enrile's *Ex-Parte Motion* on June 29, 2020. It also filed its *Opposition to Motion to Suppress x x x*⁶ and *Opposition to Motion to Admit x x x*⁷ on February 28, 2020 and September 14, 2020, respectively.

I. Enrile's submissions

In his *Comments in Regard the "Pre-Trial Order" dated January 8, 2020*, Enrile pointed out that the Pre-Trial Order indicated that it is "With Respect to Accused Juan Ponce Enrile". He likewise maintained that the Pre-Trial Order should have stated whether there will be a joint trial considering that there are several accused in the present case.

Enrile also prayed for the inclusion in the Pre-Trial Order the matters enumerated in the dispositive portion of the Supreme Court's August 11, 2015 Decision in G.R. No. 213455 (*Juan Ponce Enrile v. People of the Philippines*) vis-à-vis the Bill of Particulars submitted by the Prosecution. Enrile likewise prayed that "all antecedent proceedings may be taken into account at the trial and rendition of judgment."⁸

In his *Ex-Parte Motion for Resolution/Clarification x x x*, Enrile essentially prayed that the matters he raised in *his Comments in Regard the "Pre-Trial Order x x x* be resolved and/or clarified prior to trial, particularly whether the trial that had been held as to the other accused shall be considered separate from his trial; and whether the dispositive portion of the Court's August 11, 2015 Decision in G.R. No. 213455 and the Bill of Particulars submitted by the prosecution dated May 16, 2016 are among the matters that shall control the course of action during his (Enrile's) trial.

In its *Comment*, the People of the Philippines stated that while there is a joint trial in the present case, it does not necessarily mean that there should only be one Pre-Trial Order for all the accused. It explained that the latest Pre-Trial Order pertained to Enrile only, considering the pre-trial of his co-accused (Jessica Lucila Reyes and Janet Lim Napoles) had long been terminated.

³ *Id.* at 442-467.

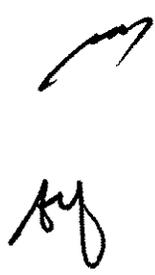
⁴ Record, vol. XXI, pp. 89-108

⁵ *Id.* at 44-56.

⁶ Record, vol. XX, pp. 495-503.

⁷ *Id.* at 205-212.

⁸ Supra, note 1 at 414,



The People also claimed that the other matters contained in the submissions of Enrile were essentially a rehash of the issues he raised in his two previous pleadings which this Court already denied, viz: *Omnibus Motion* praying that the pre-trial order limit the evidence on the alleged overt criminal acts to the acts described in the bill of particulars submitted by the prosecution and his *Motion for Inclusion in the Pre-Trial Order the Issues which Need to be Resolved to Determine the Guilt or Innocence of the Accused of the Offense of Plunder as Charged in the Information*.

The People added that the matter of how the prosecution will present the evidentiary facts should not be confined to the Bill of Particulars it earlier submitted. It emphasized that a bill of particulars is simply a complementary procedural documents consisting of an amplification or more particularized outline of a pleading.

II. The motions of accused Napoles

In her *Motion to Suppress Evidence*, Napoles prayed that all the evidence of the prosecution printed by Benhur Luy (i.e., Daily Disbursement Records, Summary of Rebates, draft indorsement letters, project listings, Memorandum of Agreements, working financial plan, etc.) be “suppressed for being inadmissible for any purpose in any proceeding in any court of tribunal under Section 18 of R.A. No. 10175 or the Cybercrime Law.”⁹

Napoles argued that the documents illegally accessed and printed by Luy were inadmissible in evidence for any proceeding before any court or tribunal as they are the ‘fruits of the poisonous tree’. She claimed that while Luy was “allegedly allowed to use the iMac computer allegedly owned by JLN Corporation, there is no showing or any indication at all that he had the right to copy its contents by backing them up in an HDD without the prior knowledge of or written authority given by JLN Corporation, much less a right to use them as evidence in any court proceeding.”¹⁰

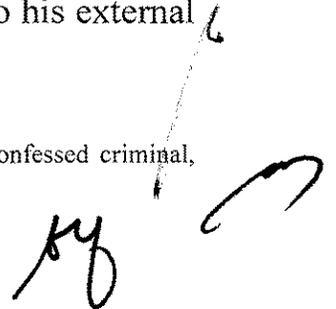
Napoles also claimed that the NBI should have applied for a search warrant to seize the source of the hard drive or HDD to determine whether its contents were the same as those contained in the iMac computer allegedly owned by JLN Corporation, considering, among others, that Luy was a self-confessed criminal, and that there was a high possibility of fabrication of the HDD’s contents.

In its Opposition x x x with Manifestation,¹¹ the prosecution prayed for the denial of Napoles’ *Motion to Suppress Evidence* for lack of merit. It countered that Luy had been authorized to copy the JLN files to his external

⁹ Supra, note 3 at 466.

¹⁰ *Id.* at 449.

¹¹ By way of manifestation, the prosecution manifested that Luy is not a self-confessed criminal, contrary to the claim of Napoles; *id.* at 501.



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hard drive. The prosecution added that Luy, as a state witness admitted under the Witness Protection Program, was entitled to immunity from criminal prosecution.

The prosecution further argued that the right against unreasonable search and seizure applies as a restraint directed only against the government and its agencies: it cannot be extended to acts committed by private individuals so as to bring it within the ambit of alleged intrusion.

The prosecution added that the credibility of Luy to testify as to his authority to identify the external hard drive as well as to determine the weight of its contents is lodged upon this Court. It stated that there was no basis for Napoles to ask for the suppression of the subject pieces of evidence “absent any decision from the proper court stating that the Cybercrime Law was violated when the files contained in the external hard drive of Luy was made or copied.”¹²

In her *Motion to Admit Hereunder Supplemental (To: Motion to Suppress Evidence)*, Napoles prayed that all evidence of the prosecution listed be suppressed for being inadmissible for any purpose and any proceeding in any court or tribunal under Section 18 of R.A. No 10175. She essentially alleged that the NBI illegally accessed and used the hacked computer data allegedly from the iMac computer of JLN Corporation in prosecuting her (Napoles). Napoles further alleged that the prosecution failed to present any evidence that Luy was a former employee of JLN Corporation. She maintained that the subject pieces of evidence had been illegally accessed by Luy, making the latter to be a ‘hacker’ under the Cybercrime Law. Napoles further reiterated that the hacked computer data were the fruits of a poisonous tree, hence inadmissible in evidence.

In its *Opposition x x x*, the prosecution prayed for the denial of Napoles’ *Motion to Admit* since its contents were merely a rehash of her *Motion to Suppress Evidence*, and was filed as a subterfuge to file a Reply.

The prosecution nonetheless maintained that Luy did not violate any law when he copied the JLN files to his external drive, since he was duly authorized (and was even instructed) by Napoles to do so. It argued that “the law itself does not limit access to an electronic file, or an electronic signature or electronic document to the owner or putative owner thereof.”¹³ The prosecution also reiterated that the constitutional right against unreasonable searches and seizures is directed only against the government and its agencies.

¹² *Id.* at 501.
¹³ Records, vol. XX, p. 207.

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THE COURT'S RULING:

A. Enrile's Comments x x x and Ex-parte Motion

Under the Revised Rules of Criminal Procedure,¹⁴ when two or more accused are jointly charged with any offense, they shall be tried jointly unless the court, in its discretion and upon motion of the prosecutor or any accused, orders separate trial for one or more accused.

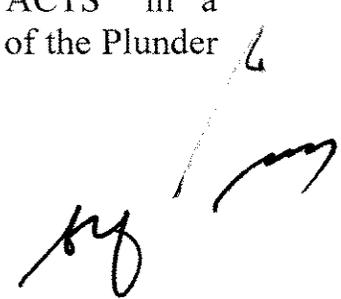
In the present case, there had been no order from this Court to hold separate trial/s for the accused. The specification of Enrile in the Pre-Trial Order dated January 8, 2020 is due to the fact that the pre-trial of his co-accused (that is, Reyes and Napoles) had long been terminated, and consequently, a Pre-trial Order was already issued in connection with the said proceedings. At any rate, the Rules on Criminal Procedure and the Revised Guidelines for Continuous Trial of Criminal Cases do not prohibit the issuance of separate pre-trial orders for several accused jointly tried.

As aptly observed by the prosecution, the inclusion of the names of Enrile's other co-accused in the January 8, 2020 Pre-Trial Order might only cause confusion, and stretch the proceedings in this case. Notably, we see no prejudice on the specification of accused Enrile in the subject Pre-trial Order, as this order pertains to him alone.

We likewise frown upon Enrile's attempt to incorporate in the present Comment – under the guise of clarification - matters that have already been passed upon by this Court in his two previous motions. To recall, Enrile earlier filed an *Omnibus Motion* praying that the pre-trial order limit the evidence on the alleged overt criminal acts to the acts described in the bill of particulars submitted by the prosecution. In denying this motion, this Court essentially ruled that to limit in the pre-trial order the evidence on the alleged overt criminal acts to the acts described in the Bill of Particulars submitted by the prosecution would be to disallow the prosecution from presenting evidentiary matters during trial.

The records also showed that Enrile previously filed a *Motion for Inclusion in the Pre-Trial Order the Issues which Need to be Resolved to Determine the Guilt or Innocence of the Accused of the Offense of Plunder as Charged in the Information* where he essentially prayed that certain proposed issues be included in the Pre-Trial Order, as follows: (a) whether the particular overt "ACTS" alleged in the Information and detailed in the Bill of Particulars, constitute "OVERT CRIMINAL ACTS" and were Committed by accused Enrile (as stated in pages 2-5 of the Bill of Particulars); (b) whether Enrile committed the above "ACTS" in a "COMBINATION OR SERIES as described in Section 1(d)" of the Plunder

¹⁴ Rule 119, Section 16.



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Law (R.A. No. 7080); and, (c) whether Enrile amassed, accumulated or acquired “ILL-GOTTEN WEALTH in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00)” by “repeatedly receiving from NAPOLES and/or representatives LIM, DE ASIS, and others” *kickbacks or commissions xxx.*

In like manner, this Court denied this motion on the following grounds: the issues proposed by Enrile to be included in the Pre-Trial Order do not simplify the issues to be tackled, but complicate it even further; and the motion sought to limit via the pre-trial order the evidence on the alleged overt criminal acts on the acts described in the submitted bill of particulars.

It bears emphasizing that the prosecution has the discretion to employ the manner of prosecuting the case with regard to proving the elements of the offense charged, which in this case necessarily includes the presentation of certain evidentiary matters that the Honorable Supreme Court itself permitted in G.R. No. 213455 to be passed upon during the trial on the merits.

B. The motions of Napoles

The Cybercrime Law considers illegal access as an offense, which is defined as the access to the whole or any part of a computer system without right. Corollarily, under Section 3(h) of this law, ‘without right’ refers to either: (i) conduct undertaken without or in excess of authority; or (ii) conduct not covered by established legal defenses, excuses, court orders, justifications, or relevant principles under the law.

In the present case, the prosecution pointed out that Luy had been duly authorized, and was even instructed by Napoles herself, to copy the JLN files from JLN’s iMac computer to his personal external hard drive. Whether Luy really had authority to access the subject files; or whether he had really been instructed to access and copy the subject files; and/or whether he was still an employee of JLN Corporation or Napoles at the time he copied the files, are matters that will be threshed out during trial since it pertains to his (Luy’s) credibility as a witness. Verily, it could not be said *at this point* that Luy had illegally accessed the files of JLN Corporation. In the same manner, to label Luy as a ‘hacker’ at this stage of the proceedings would still be premature.

The fundamental right against unreasonable searches and seizures and the basic conditions for the issuance of a search warrant are laid down in Section 2, Article III of the 1987 Constitution, which reads:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant

of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

This section preserves, in essence, the right of the people to be let alone *vis-à-vis* the far-reaching and encompassing powers of the State, with respect to their persons, houses, papers, and effects. It thus ensures protection of the individual from arbitrary searches and arrests initiated and perpetrated by the State.¹⁵ Thus, the State and its agents cannot conduct searches and seizures without the requisite warrant.

It bears stressing, however, that the Bill of Rights does not govern relationships between individuals; it cannot be invoked against the acts of private individuals. In this case, it was a private person (Luy) who accessed, copied and printed the files from the computer of JLN Corporation.

To put the so-called copied (i.e., downloaded) files within the ambit of Section 2, Napoles alleged that the elements of the NBI – through Luy – illegally accessed and used the ‘hacked’ computer data from the iMac computer of JLN Corporation.

As earlier stated, it had been alleged that it was Luy who copied the computer data from the computer of JLN Corporation to his personal external hard drive. He then turned over the files/contents of this external drive to the NBI. Verily, there was no necessity to apply for a search warrant on the part of the NBI since Luy already gave to them the files contained in his external hard drive.

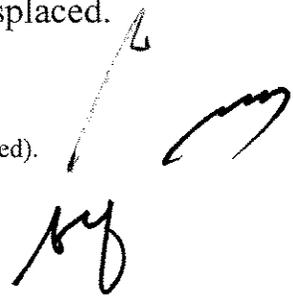
The Supreme Court’s pronouncement in *Erwin Libo-ob Dela Cruz v. People of the Philippines*¹⁶ on this point is particularly instructive, thus:

If the search is made upon the request of law enforcers, a warrant must generally be first secured if it is to pass the test of constitutionality. However, if the search is made at the behest or initiative of the proprietor of a private establishment for its own and private purposes, as in the case at bar, and without the intervention of police authorities, the right against unreasonable search and seizure cannot be invoked for only the act of private individual, not the law enforcers, is involved. In sum, the protection against unreasonable searches and seizures cannot be extended to acts committed by private individuals so as to bring it within the ambit of alleged unlawful intrusion by the government.

Considering that the NBI was able to access the file through the external drive owned by Luy, the reliance of Napoles on the exclusionary rule under Section 18 to suppress the subject evidence is misplaced.

¹⁵ See *People v. Gabiosa*, G.R. No. 248395, January 29, 2020 (citations omitted).

¹⁶ G.R. No. 209387, January 11, 2016.

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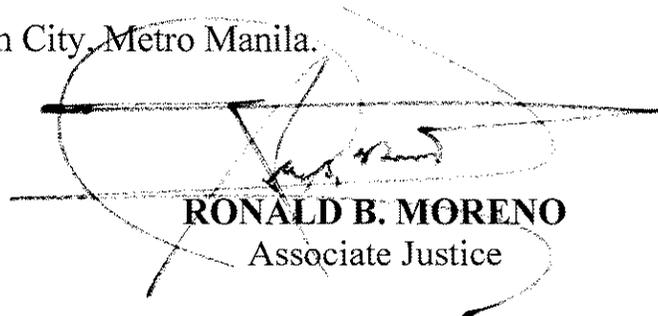
In any event, admissibility of evidence should not be confounded with its probative value. The evidentiary and/or probative value of the testimonial and documentary evidence that will be presented during trial shall be left to the determination and appreciation of this Court in the final disposition of this case.

WHEREFORE, in light of all the foregoing, the Court resolves to:

1. **NOTE** the *Comments in Regard the "Pre-Trial Order"* dated January 8, 2020 and the *Ex-parte Motion for Resolution/Clarification of Matters Subject of the Comments in Regard the Pre-trial Order dated February 14, 2020* filed by Juan Ponce Enrile; and
2. **DENY** the *Motion to Suppress Evidence* and the *Motion to Admit Hereunder Supplemental (To: Motion to Suppress Evidence)* filed by Janet Lim Napoles.

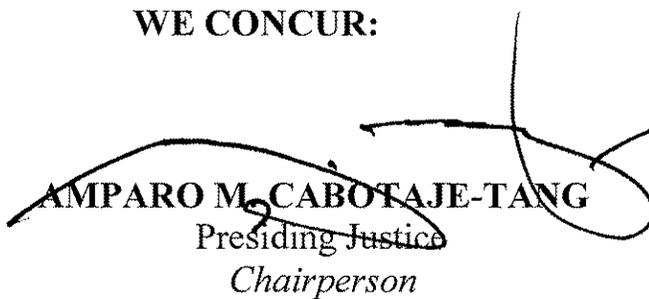
SO ORDERED.

Quezon City, Metro Manila.

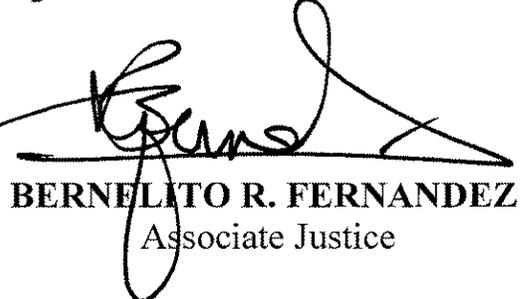


RONALD B. MORENO
Associate Justice

WE CONCUR:



AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson



BERNELITO R. FERNANDEZ
Associate Justice