

Republic of the Philippines
Supreme Court
Manila

CERTIFIED TRUE COPY
Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

OCT 04 2016

THIRD DIVISION

WILSON T. LIM,

Petitioner,

G.R. No. 201320

Present:

- versus -

VELASCO, JR., J., *Chairperson,*
PERALTA,
DEL CASTILLO,*
PEREZ, and
REYES, JJ.

**OFFICE OF THE DEPUTY
OMBUDSMAN FOR THE
MILITARY AND OTHER LAW
ENFORCEMENT OFFICES
(MOLEO) and P/S INSP.
EUSTQUIO FUENTES,**

Respondents.

Promulgated:

September 14, 2016

X-----

Wilfredo V. Lapitan X

DECISION

PERALTA, J.:

This is a Petition for *Certiorari* under Rule 65 assailing the Order¹ of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (*MOLEO*) dated March 31, 2011 and its Joint Order² dated September 7, 2011 in OMB-P-C-05-1361-K.

The pertinent factual and procedural antecedents of the case are as follows:

* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 14, 2016.

¹ Penned by Graft Investigation and Prosecution Officer Yvette Marie S. Evaristo, with Director Eulogio S. Cecilio, concurring; *rollo*, pp. 52-56.

² Penned by Graft Investigation and Prosecution Officer II Lyn L. Llamansares, with Director Dennis L. Garcia, concurring; *id.* at 57-61.

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Petitioner Wilson Lim and Rex Lazo were engaged in the business of buying and selling second-hand vehicles in Iloilo City, where Lim agreed to be the financier. In November and December 2002, they bought pre-owned cars in Iloilo and Manila, and sold them at their Wheels to Go showroom in Iloilo. In March 2003, Lim learned from his neighbor that he had bought a second-hand Mitsubishi Adventure for only ₱332,000.00 through a car agent named Raquim Salvo based in Iligan City. He then became interested in buying similar cars so he contacted Salvo and sent Lazo to Iligan to check the units and examine the documents of ownership. On or about April 7, 2003, Lim sent Lazo to Iligan again. Lazo then personally met Salvo and other second-hand car agents who all assured him that the units were properly documented and cleared by the Iligan Traffic Management Group (TMG). Salvo likewise introduced Lazo to the supposed owners of the vehicles and showed him the alleged original copies of Certificates of Registration (CRs) and Motor Vehicle Registration Renewal (MVRR) Official Receipts (ORs) issued by Rex Pangandag, Head of Land Transportation Office (LTO) Tubod Extension Office, Iligan, and affidavits of ownership of the registered owners. Salvo further brought Lazo to the office of the Iligan TMG, headed by respondent Philippine National Police (PNP) Police Senior Inspector (PSI) Eustiquio Fuentes, who was the one who issued the PNP Motor Vehicle Clearance Certificates (MVCCs), one of the LTO requirements for the transfer of ownership to the buyer. On the basis of the CRs and ORs issued by the LTO Tubod Extension Office and the TMG Clearance issued by Fuentes, Lim and Lazo purchased two (2) units of Isuzu XUV Crosswind at a total purchase price of ₱1,150,000.00. They then displayed and sold the vehicles at Wheels to Go. Subsequently, the ownership over the vehicles was transferred to the buyers using the aforementioned CRs, ORs, and TMG Clearance.

Shortly thereafter, Lazo again went to Iligan and, following the same procedure, purchased three (3) more vehicles through Salvo: two (2) units of Isuzu XUV Crosswind and one (1) unit of Isuzu XT Crosswind. Said vehicles were likewise sold at their car shop in Iloilo. For their next purchase, Salvo was able to convince Lim and Lazo to simply transact from Iloilo and leave the verification of the documents to him in order to save time and money. The car agents assured them that all their vehicles were supported with the necessary documents and cleared by the Iligan TMG. They also faxed copies of the CRs, ORs, MVCCs, and affidavits of the alleged registered owners of the cars. Fully relying on the veracity of said documents, Lim and Lazo purchased through Salvo several second-hand vehicles for a total of ₱6,075,000.00. Lim made the payments to the owners through bank deposits after the bills of lading for the vehicles had been confirmed. Upon receipt of the vehicles and their supporting documents, they then sold the vehicles at Wheels to Go. The ownership over the



vehicles was later transferred to the buyers using the original copies of the CRs and ORs issued by Pangandag, and the TMG Clearance issued by Fuentes.

However, in June 2003, Lim and Lazo decided to stop buying from Iligan when the Iloilo TMG informed them that one (1) Isuzu Crosswind was actually stolen or carnapped. Unfortunately, this had already been sold to Lim's brother-in-law, Frederick Chua, in Zamboanga. Lim then immediately contacted Salvo and demanded a refund for the alleged carnapped unit. Salvo told him he could not refund the purchase price so he simply replaced the Crosswind with an old model of a Mitsubishi Pajero instead. Consequently, the Iloilo TMG ordered them to submit the registration papers and documents of all the units at Wheels to Go.

In September 2004, Lim and Lazo started receiving complaints from their buyers that the Iloilo TMG had seized and impounded their vehicles at Camp Delgado since these allegedly had fake plate numbers, the motor and chassis numbers were tampered, or for being "hot cars," as these were supposedly stolen or carnapped. Shocked, Lim and Lazo tried to contact Salvo and confront him but the latter and the other car agents could no longer be reached.

Thereafter, the Iloilo TMG filed criminal complaints against Lim and Lazo for Carnapping, Anti-Fencing, Estafa, and Violation of Presidential Decree (*P.D.*) 1730. However, finding that they acted in good faith and were, in fact, victims themselves, the Iloilo Prosecutor's Office dismissed the criminal complaints. To protect their names and reputation as legitimate businessmen, and to show their good faith in buying and selling pre-owned cars, Lim refunded the purchase price to the buyers on installment basis.

Subsequently, Lim and Lazo filed a complaint against Pangandag and Fuentes before the Office of the Ombudsman (*OMB*) for defrauding them through false pretenses and falsification of documents, in conspiracy with Salvo and the other car agents, and the persons who represented or agreed to be represented as the lawful owners of the seized vehicles.

For their defense, Fuentes asserted that he issued and signed only the MVCC pertaining to one (1) unit of Mitsubishi Pajero with Plate Number No. UEH-951, the engine and chassis numbers of which had been certified by the Iligan PNP Crime Laboratory Service as real and not tampered as of June 17, 2003, and said vehicle was likewise not included in the list of wanted or stolen cars as of June 18, 2003. He maintained that he had no participation in the issuance of the other MVCCs, and that he could not have

conspired with Salvo and the other car agents since he had not met any one of them.

On February 24, 2009, the Deputy Ombudsman for MOLEO found probable cause and recommended the filing of Informations for violation of Section 3(e), Republic Act (*R.A.*) No. 3019 and Estafa Thru Falsification against Fuentes and his co-respondents in OMB-P-C-05-1361-K.³

Thus, Pangandag and Fuentes filed separate Motions for Reconsideration (*MRs*). On March 31, 2011, the Deputy Ombudsman denied Pangandag's MR but granted that of Fuentes, to wit:

WHEREFORE, in view of the aforesaid discussions, respondent-movant Fuentes' Motion for Reconsideration is hereby **GRANTED**. Accordingly, the criminal charges for violation of Republic Act 3019, Sec. 3(e) and Estafa Thru Falsification against said respondent-movant are hereby **DISMISSED**.

Respondent-movant Pangandag's Motion for Reconsideration, on the other hand, is hereby **DENIED** and the charges for violation of Republic Act 3019, Sec. 3(e) and Estafa Thru Falsification against said respondent-movant, together with his co-respondents Raquim Salvo, Sanakira Dianaton, Azis Lagundab, Potri Utak, Avelino Intal, Fred Simbrano, Alicia Estoque, Ramon Bongaros, Michael Sandoval, Adela Pasbal Marabong, Marlon Hamoy, Hindawi Yonos and Miguel Mejos **AFFIRMED**.

SO ORDERED.⁴

Lim and Lazo, therefore, moved for partial reconsideration. On September 7, 2011, the Deputy Ombudsman denied their motion and affirmed its March 31, 2011 Order.⁵ However, since Lazo had already left the country, Lim filed the petition on April 23, 2012 by himself.

The petition is meritorious.

Lim alleges that the Deputy Ombudsman committed grave abuse of discretion when it disregarded its own Rules of Procedure in granting Fuentes's Motion for Reconsideration and dismissing the criminal complaint against him. Under the Rules of Procedure of the OMB,⁶ a motion for reconsideration of an approved order or resolution shall be filed within five (5) days from notice. Settled is the rule that procedural rules are tools

³ Pinned by Graft Investigation and Prosecution Officer Julius A. Java, with Director Eulogio S. Cecilio, concurring; *rollo*, pp. 42-51.

⁴ *Rollo*, p. 55.

⁵ *Id.* at 57-61.

⁶ Administrative Order No. 07, as amended by Administrative Order No. 09.

designed to facilitate the adjudication of cases; thus, courts and litigants alike are enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, it must be emphasized once again that the same was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. In general, procedural rules, like all rules, should be followed except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the prescribed procedure. The rules were instituted to be faithfully complied with, and allowing them to be ignored or lightly dismissed to suit the convenience of a party should not be condoned. Such rules, often derided as merely technical, are to be relaxed only in the furtherance of justice and to benefit the deserving. Their liberal construction in exceptional situations should then rest on a showing of justifiable reasons and of at least a reasonable attempt at compliance with them.⁷ The Court wishes to stress that the bare invocation of “for the interest of substantial justice” is not a magic wand that will automatically compel the suspension of the existing applicable rules.⁸ Here, Fuentes failed to present such exceptional justification. Fuentes only had until November 27, 2010 to file his MR since he received a copy of the Resolution on November 22, 2010. However, he filed his MR only on December 2, 2010, which was already outside the required reglementary period.

Even assuming, for argument’s sake, that the Deputy Ombudsman was justified in taking cognizance of the belatedly filed MR, it still acted with grave abuse of discretion in not finding probable cause against Fuentes and dismissing the criminal charges against him.

It must be pointed out that in the present case, the criminal action had already been instituted by the filing of the Information with the court. Once that happens, the court acquires jurisdiction and is given the authority to determine whether to dismiss the case or convict or acquit the accused. However, when the prosecution is convinced that the evidence is insufficient to establish the guilt of an accused, it may move for the withdrawal of the Information, which the court cannot simply ignore. But the court must judiciously evaluate the evidence in the hands of the prosecution before granting or denying the motion to withdraw. The court’s exercise of judicial discretion in such a case is not limited to the mere approval or disapproval of

⁷ *Magsino v. De Ocampo*, G.R. No. 166944, August 18, 2014, 733 SCRA 202, 220.

⁸ *Id.*



the stand taken by the prosecution. The court must itself make its own assessment of said evidence and be convinced as to the presence or lack of sufficient evidence against the accused.⁹

The present Constitution and R.A. 6770, otherwise known as *The Ombudsman Act of 1989*, have endowed the OMB with wide latitude, in the exercise of its investigatory and prosecutorial powers, to pass upon criminal complaints involving public officials and employees. Hence, the courts will not generally interfere with its findings and will respect the initiative and independence inherent in its office. However, when the OMB's ruling is tainted with grave abuse of discretion, the aggrieved party may resort to *certiorari* for correction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or an obstinate refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.¹⁰

Applying the foregoing principles to the case at bar, the Court finds that the Deputy Ombudsman gravely abused its discretion when it unjustifiably turned a blind eye to the essential facts and evidence in ruling that there was no probable cause against Fuentes for the crimes of Violation of Section 3(e), R.A. 3019 and Estafa Through Falsification. For the purpose of filing a criminal information, probable cause exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. In order to engender such well-founded belief that a crime has been committed, and to determine if the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense.¹¹

For violation of Section 3(e), R.A. 3019, the elements are as follows: (a) the offender must be a public officer discharging administrative, judicial, or official functions; (b) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (c) his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.¹² Clearly, facts abound pointing to Fuentes, head of Iligan TMG, as probably guilty of having acted with manifest partiality, evident bad faith, or gross inexcusable negligence in issuing the MVCCs in question which caused undue injury to Lim and Lazo, and gave Salvo and the other car

⁹ *Fuentes, Jr. v. Sandiganbayan*, 527 Phil. 58, 65 (2006).

¹⁰ *Garcia v. Office of the Ombudsman*, G.R. No. 197567, November 19, 2014, 714 SCRA 172, 183.

¹¹ *Id.* at 184.

¹² *Id.* at 184-185.

agents unwarranted benefits or advantage in the discharge of his functions, and therefore should be held for trial. For the crime of Estafa through Falsification of a Public Document, the following requisites must concur: (1) the accused made false pretenses or fraudulent representations as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (2) the false pretenses or fraudulent representations were made prior to or simultaneous with the commission of the fraud; (3) the false pretenses or fraudulent representations constitute the very cause which induced the offended party to part with his money or property; (4) that as a result thereof, the offended party suffered damage; (5) that the offender is a private individual or a public officer or employee who took advantage of his official position; (6) that he committed any of the acts of falsification enumerated in Article 171 of the Revised Penal Code (which in this case involves making untruthful statements on the details of the vehicles); and (7) that the falsification was committed in a public or official or commercial document.¹³ There is reasonable ground to believe that Fuentes made false pretenses or fraudulent misrepresentations to Lim and Lazo that the subject vehicles were legally acquired. Relying on the ORs, CRs, and MVCCs which Pangandag and Fuentes issued, Lim and Lazo decided to buy said motor vehicles thinking that they were free from any legal encumbrance or liability.

The Deputy Ombudsman explained in its assailed Orders that the issuance of an MVCC is a purely ministerial function. As such, Fuentes did not actually exercise discretion or judgment. He relied primarily on the Macro Etching Examination conducted by the PNP Crime Laboratory and the latter's certification that the chassis and motor numbers of the vehicle submitted for clearance had not been tampered with. Also, Fuentes would have no way of knowing if the subject Pajero with Plate No. UEH-951 was a stolen or carnapped vehicle because then its details would already have been modified and thus, would not match the original details of the car reported as stolen. However, under Memorandum Circular No. 2002-012,¹⁴ motor vehicles applying for MVCC shall undergo physical examination jointly conducted by the TMG personnel and crime laboratory technicians. The physical examination and macro-etching result shall be used only where the MVCC is to be secured and shall be conducted at the TMG designated area. The clearance officer, Fuentes in this case, is likewise responsible for the effective implementation of the motor vehicle clearance system.¹⁵ Therefore, as the clearance officer, Fuentes is accountable in a situation where a person was able to obtain clearance for a stolen vehicle from the Iligan TMG since then the system could not be considered as having been effectively and faithfully implemented. Indubitably, Fuentes's function was

¹³ *Ansaldo v. People*, 630 Phil. 549, 557 & 561 (2010).

¹⁴ *Re: Amending Memorandum Circular 2001-011 Streamlining the PNP Motor Vehicle Clearance Procedure*.

¹⁵ *Rollo*, p. 34.

not purely ministerial as he, in fact, had to exercise good judgment in issuing vehicle clearances. Moreover, there is no truth to Fuentes's asseveration that there was no other means of determining whether the Pajero with Plate No. UEH-951 was stolen or carnapped. His office could have simply utilized the plate number, as what the TMG Iloilo did, to trace and identify the car as stolen based on the computerized Vehicle Management Information System. It thus becomes clear that the Deputy Ombudsman erroneously failed to consider significant pieces of evidence which should not have been casually ignored. The Deputy Ombudsman should have, at the very least, explained its reasons as to why the aforesaid Memorandum Circular was not followed in this case.¹⁶

The Deputy Ombudsman likewise contends that Fuentes acted in good faith in relying upon the certification of his subordinates. Hence, he could not have acted with evident bad faith and defrauded Lim and Lazo by means of deceit or abuse of confidence. It further held that to drag Fuentes into a criminal conspiracy simply because he did not personally examine every single detail and go beyond the certified macro-etching result would be to set a bad precedent. However, as head of the office responsible for the issuance of motor vehicle clearances, Fuentes must be held liable for any act committed in violation of the purpose for which the office was made. Had it not been for the clearances issued by Fuentes declaring that the cars being sold were indeed acquired through legitimate means, Lim and Lazo would not have parted with their hard-earned money. It must be stressed that the TMG clearance is specifically intended to protect the buyer from buying stolen/carnapped vehicles. To uphold the Deputy Ombudsman's ruling would defeat the very purpose why a motor vehicle clearance is issued and the public could no longer rely on the clearance issued by the TMG.

As a general rule, a public prosecutor's determination of probable cause – that is, one made for the purpose of filing an Information in court – is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. The exception to this rule is when such determination is tainted with grave abuse of discretion and perforce becomes correctible through the extraordinary writ of *certiorari*. The rationale behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function, while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of *certiorari*, has been tasked by the present Constitution to determine whether or not grave abuse of discretion has been committed amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. It is fundamental that the concept of grave abuse of discretion transcends mere judgmental error as it properly

¹⁶ *Garcia v. Office of the Ombudsman*, *supra* note 10, at 190.



pertains to a jurisdictional aberration. While defying precise definition, grave abuse of discretion generally refers to a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. Corollarily, the abuse of discretion must be patent and gross so as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law. To note, the underlying principle behind the courts' power to review a public prosecutor's determination of probable cause is to ensure that the latter acts within the permissible bounds of his authority or does not gravely abuse the same. This manner of judicial review is a constitutionally-enshrined form of check and balance which underpins the very core of our system of government.¹⁷

In the foregoing context, the Court observes that grave abuse of discretion taints a public prosecutor's resolution if he arbitrarily disregards the jurisprudential parameters of probable cause. In particular, case law states that probable cause, for the purpose of filing a criminal Information, exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial. It does not refer to actual and positive cause nor does it import absolute certainty. Rather, it is merely based on opinion and reasonable belief and, as such, does not require an inquiry into whether there is sufficient evidence to procure a conviction; it is enough that it is believed that the act or omission complained of constitutes the offense charged.¹⁸ In the case of *Reyes v. Pearlbank Securities, Inc.*,¹⁹ the Court declared that a finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He simply relies on common sense. Apropos thereto, for the public prosecutor to determine if there exists a well-founded belief that a crime has been committed, and that the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense.

Considering the mandate of Memorandum Circular No. 2002-012, which both Fuentes and the Deputy Ombudsman have clearly disregarded, the Court believes, therefore, that all the elements of the crimes charged are, in all reasonable likelihood, present with respect to Fuentes's participation in

¹⁷ *Aguilar v. Department of Justice, et al.*, 717 Phil. 789, 799 (2013).


¹⁸ *Id.* at 799-800.

¹⁹ 582 Phil. 505, 519 (2008).


the case at bar and that the Deputy Ombudsman committed grave abuse of discretion when it dismissed the criminal charges against him.

WHEREFORE, the petition is **GRANTED**. The Order dated March 31, 2011 and the Joint Order dated September 7, 2011 of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices in OMB-P-C-05-1361-K dismissing the criminal charges against respondent PNP Police Senior Inspector Eustiquio Fuentes for violation of Section 3(e), Republic Act No. 3019, or the *Anti-Graft and Corrupt Practices Act*, and Estafa Through Falsification are hereby **REVERSED** and **SET ASIDE**, and the Resolution dated February 24, 2009 finding probable cause and recommending the filing of the necessary Informations against Fuentes is **AFFIRMED**. The Deputy Ombudsman is **ORDERED** to file in the proper court the necessary Informations for violation of Section 3(e), Republic Act No. 3019 and Estafa Through Falsification against respondent.

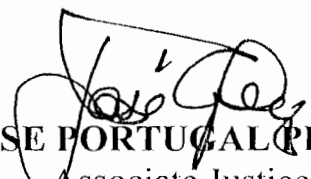
SO ORDERED.

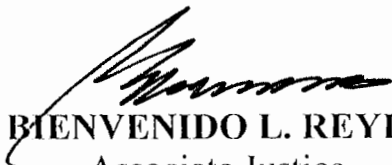

DIOSDADO M. PERALTA
 Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson



MARIANO C. DEL CASTILLO
 Associate Justice


JOSE PORTUGAL PEREZ
 Associate Justice


BIENVENIDO L. REYES
 Associate Justice

ATTESTATION


I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



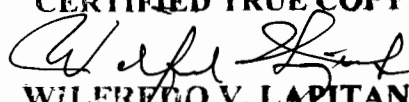
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
OCT 04 2016'