



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,  
Petitioner,

G.R. No. 220685

Present:

- versus -

CARPIO, J., Chairperson  
PERLAS-BERNABE,  
JARDELEZA,\*  
CAGUIOA,  
REYES, JR., JJ.

ERNESTO L. DELOS SANTOS,  
Respondent.

Promulgated:

29 NOV 2017

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Amended Decision<sup>2</sup> dated November 21, 2014 and the Resolution<sup>3</sup> dated August 28, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 128625, which (a) dismissed for lack of probable cause the complaint charging respondent Ernesto L. Delos Santos (respondent) with qualified theft, and (b) quashed the arrest warrant against him.

The Facts

In May 2007, respondent undertook the construction of the CTTL Building in Baguio City, adjacent to the Benguet Pines Tourist Inn (BPTI) which is a business establishment owned and operated by the University of Manila (UM). At that time, respondent's father, Virgilio Delos Santos

\* Designated Additional Member per Raffle dated November 29, 2017.

<sup>1</sup> *Rollo*, Vol. I, pp. 83-149.

<sup>2</sup> Id. at 36-49. Penned by Associate Justice Rosmari D. Carandang with Associate Justices Ramon M. Bato, Jr. and Edwin D. Sorongon concurring, and Associate Justices Marlene Gonzales-Sison and Manuel M. Barrios dissenting.

<sup>3</sup> Id. at 67-75.

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(Virgilio), who was the President and Chairman of the Board of Trustees (BOT) of UM, allegedly ordered the employees of BPTI to assist respondent in all his needs in the construction. Specifically, respondent was permitted to tap into BPTI's electricity and water supply.<sup>4</sup>

Respondent's father died on January 21, 2008, and was succeeded by Emily Dodson De Leon (De Leon) as President of UM. On July 8, 2011, UM, represented by De Leon, filed a criminal complaint<sup>5</sup> against respondent for the qualified theft of the electricity and water supply of BPTI for the period 2007 to 2011, with a total value of ₱3,000,000.00 more or less, before the Office of the City Prosecutor of Baguio City.<sup>6</sup> In his defense,<sup>7</sup> respondent argued that his family aggregately owns 98.79% of UM; that he was explicitly allowed by his father to use the electricity and water supply of BPTI for the construction of the CTTL Building for which no opposition was aired by anyone; and that the complaint was filed as a result of his own opposition to the probate of his father's alleged holographic will, which was initiated by his sister, Maria Corazon Ramona Llamas De Los Santos, whom respondent claims is the live-in partner of De Leon.<sup>8</sup>

In a Resolution<sup>9</sup> dated July 29, 2011, the investigating prosecutor dismissed the complaint in view of the absence of the element of "lack of consent or knowledge of the owner," considering that Virgilio, while being the President and Chairman of the BOT of UM, explicitly allowed respondent to use the electricity and water supply of BPTI. It was likewise noted that Virgilio was a very generous father to his children; and that, while Virgilio was still alive, no complaint was filed against the respondent for his use of the electricity and water supply of BPTI.<sup>10</sup>

However, the aforesaid Resolution was subsequently reversed upon the UM's motion for reconsideration.<sup>11</sup> In a Resolution on Review<sup>12</sup> dated September 23, 2011, Assistant City Prosecutor Rolando T. Vergara (ACP Vergara) found sufficient evidence to establish probable cause for qualified theft (attended by the qualifying circumstance of grave abuse of confidence),<sup>13</sup> pointing out that respondent's defense of being expressly allowed by his father is barred under the Dead Man's Statute. Nonetheless, ACP Vergara held that the express consent of Virgilio, if there was any, was only limited to the period of the construction of the CTTL Building. However, even after the completion thereof, respondent did not disconnect the electrical and water connections to the damage and prejudice of UM.

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<sup>4</sup> See *id.* at 37.

<sup>5</sup> *Id.* at 198.

<sup>6</sup> See *id.* at 37 and 198.

<sup>7</sup> See Counter-Affidavit dated July 28, 2011; *id.* at 206-213.

<sup>8</sup> See *id.* at 38 and 207-209.

<sup>9</sup> Not attached to the *rollos*.

<sup>10</sup> See *rollo*, Vol. I, p. 38.

<sup>11</sup> See Amended Motion for Reconsideration dated August 22, 2011; *id.* at pp. 254-263.

<sup>12</sup> *Id.* at 283-286.

<sup>13</sup> *Id.* at 286.

Moreover, considering that respondent was, at the time in question, not only the manager and operator of BPTI, but a stockholder and trustee of UM which owns BPTI, he was said to have had access to the BPTI premises and, thus, gravely abused the confidence reposed upon him by UM.<sup>14</sup>

The September 23, 2011 Resolution on Review was affirmed in the Second Resolution on Review<sup>15</sup> dated November 23, 2011, which denied respondent's motion for reconsideration for lack of merit.<sup>16</sup> Meanwhile, an Information<sup>17</sup> dated September 23, 2011 charging respondent with qualified theft was filed before the Regional Trial Court of Baguio City, Branch 7 (RTC). Consequently, respondent was arrested on September 27, 2011.<sup>18</sup>

Respondent challenged *via* a petition for review<sup>19</sup> before the Department of Justice (DOJ) the (a) September 23, 2011 Resolution on Review, and (b) November 23, 2011 Second Resolution on Review. Said petition was, however, dismissed in a Resolution<sup>20</sup> dated June 8, 2015.

Eventually, respondent filed before the RTC an Urgent Omnibus Motion: (1) For Judicial Determination of Probable Cause; (2) To Lift/Quash Warrant of Arrest; and (3) To Suspend/Defer Arraignment and/or any Proceeding,<sup>21</sup> alleging that the Information filed against him and the documents appended thereto failed to show proof sufficient to warrant the finding of probable cause for the crime of qualified theft.<sup>22</sup>

### The RTC Ruling

In an Order<sup>23</sup> dated February 1, 2012, the RTC denied the Urgent Omnibus Motion upon a finding that probable cause indeed exists for the indictment of respondent, considering his admission that he caused the tapping of the electricity and water supply of BPTI.<sup>24</sup>

Aggrieved, respondent elevated said ruling to the CA on *certiorari*,<sup>25</sup> arguing, among others, that the testimonies attesting to the fact of Virgilio's consent to the tapping and diversion of the electrical and water connections are not barred under the Dead Man's Statute;<sup>26</sup> and that the RTC erred in

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<sup>14</sup> See *id.* at 285-286.

<sup>15</sup> *Id.* at 311-326. Signed by Deputy City Prosecutor- In Charge Gloria Caranto-Agunos.

<sup>16</sup> *Id.* at 326.

<sup>17</sup> *Id.* at 287.

<sup>18</sup> See *id.* at 39 and 91.

<sup>19</sup> Not attached to the *rollos*.

<sup>20</sup> *Rollo*, Vol. I, p. 362. Signed Prosecutor General Claro A. Arellano.

<sup>21</sup> Not attached to the *rollos*.

<sup>22</sup> See *rollo*, Vol. I, p. 363.

<sup>23</sup> *Id.* at 363-365. Penned by Presiding Judge Mona Lisa V. Tionson-Tabora.

<sup>24</sup> See *id.* at 364-365.

<sup>25</sup> See Petition for *Certiorari* dated February 15, 2013; *id.* at 399-456.

<sup>26</sup> See *id.* at 412-427.

declaring that proof of absence of the elements of the crime may be passed upon only in a full blown trial.<sup>27</sup>

### The Proceedings Before the CA

In a Decision<sup>28</sup> dated July 30, 2013, the CA Special Tenth Division affirmed *in toto* the questioned Orders of the RTC, and remanded the case to the trial court for further proceedings.<sup>29</sup> Consequently, respondent moved for reconsideration<sup>30</sup> of the foregoing Decision. He likewise filed a motion for inhibition<sup>31</sup> attributing irregularities on the part of the members of the Special Tenth Division, which was granted amidst strong denial of respondent's accusations.<sup>32</sup>

The case was re-raffled to the CA Fourth Division (Division of Five), which issued on November 21, 2014, an Amended Decision<sup>33</sup> setting aside the Orders of the RTC, and thereby, dismissing the complaint for qualified theft and quashing the warrant of arrest against respondent.<sup>34</sup>

The CA Fourth Division categorically held that Virgilio, as majority stockholder, President, and Chairman of the BOT of the UM, had apparent authority to give consent to respondent's use of the electricity and water supply of BPTI. Hence, the element of lack of owner's consent was absent. Even if Virgilio was not, in fact, duly authorized by the BOT to give his consent to respondent's acts, the latter nonetheless acted in good faith on the basis of the permission given to him by his father, which negated another element of the crime, *i.e.*, the intent to gain.<sup>35</sup> In view of the "clear absence" of said elements, the CA Fourth Division declared that subjecting respondent to the rigors of trial would just be a futile exercise and a waste of the trial court's precious time and resources.<sup>36</sup>

Undaunted, UM filed a motion for reconsideration<sup>37</sup> of the Amended Decision dated November 21, 2014, which was, however, denied in a Resolution<sup>38</sup> dated August 28, 2015 for lack of merit. Hence, the instant petition for review on *certiorari* filed by the People of the Philippines (petitioner) insisting on the existence of probable cause against respondent for the crime of qualified theft.

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<sup>27</sup> See *id.* at 427-435.

<sup>28</sup> *Id.* at 16-34. Penned by Associate Justice Francisco P. Acosta with Associate Justice Fernanda Lampas Peralta and Nina G. Antonio-Valenzuela concurring.

<sup>29</sup> *Id.* at 33.

<sup>30</sup> See motion for reconsideration dated August 19, 2013; *id.* at 566-649.

<sup>31</sup> Not attached to the *rollos*.

<sup>32</sup> See *rollo*, Vol. I, p. 41.

<sup>33</sup> *Id.* at 36-49.

<sup>34</sup> *Id.* at 48.

<sup>35</sup> See *id.* at 43-45.

<sup>36</sup> See *id.* at 47-48.

<sup>37</sup> See Motion for Reconsideration (Re: Amended Decision dated 21 November 2014); *id.* at 702-760.

<sup>38</sup> *Id.* at 68-75.

### The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CA erred in finding that the RTC gravely abused its discretion in holding that probable cause exists against respondent for qualified theft.

### The Court's Ruling

The petition is not impressed with merit.

“A public prosecutor's determination of probable cause – that is, one made for the purpose of filing an [I]nformation in court – is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny.”<sup>39</sup>

However, Section 5 (a), Rule 112 of the Revised Rules of Criminal Procedure explicitly states that **a judge may immediately dismiss a case if the evidence on record clearly fails to establish probable cause, viz.:**

Section 5. *When warrant of arrest may issue.* – (a) *By the Regional Trial Court.* – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused had already been arrested, pursuant to a warrant issued by the judge who conducted preliminary investigation or when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

x x x x (Emphasis and underscoring supplied)

In *De Los Santos-Dio v. CA*,<sup>40</sup> the Court explained that **“the judge's dismissal of a case [under the authority of the aforesaid provision] must be done only in clear-cut cases when the evidence on record plainly fails to establish probable cause – that is when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged.** On the contrary, if the evidence on record [show] that, more likely than not, the crime charged has been committed and that respondent is probably guilty of the same, the judge should not dismiss the case and thereon, order the parties to proceed to trial.

<sup>39</sup> *Aguilar v. DOJ*, 717 Phil. 789, 798 (2013).

<sup>40</sup> 712 Phil. 288 (2013).

In doubtful cases, however, the appropriate course of action would be to order the presentation of additional evidence.”<sup>41</sup>

In this case, the Court concurs with the CA Fourth Division’s finding that there was no probable cause against herein respondent for the crime of qualified theft, considering the glaring absence of certain key elements thereof. Notably, “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.”<sup>42</sup>

The elements of qualified theft, punishable under Article 310, in relation to Articles 308 and 309, of the Revised Penal Code (RPC), are as follows: (a) the taking of personal property; (b) the said property belongs to another; (c) the said taking be done with intent to gain; (d) it be done without the owner’s consent; (e) it be accomplished without the use of violence or intimidation against persons, nor of force upon things; and (f) it be done under any of the circumstances enumerated in Article 310 of the RPC, *i.e.*, with grave abuse of confidence.<sup>43</sup>

As correctly ruled by the CA, the elements of lack of owner’s consent and intent to gain are evidently absent in this case.

To recount, UM, which owns BPTI, is an educational institution established and owned by respondent’s family. His father, Virgilio, owned 70.79%<sup>44</sup> of the entire shares of stock of the UM, and respondent himself claims 9.85%<sup>45</sup> share thereof. Virgilio was the President and Chairman of the BOT of UM at the time material to this case, and respondent himself was a board member and stockholder. Records disclose that respondent was permitted by Virgilio to tap into BPTI’s electricity and water supply. As such, respondent had no criminal intent – as he, in fact, acted on the faith of his father’s authority, on behalf of UM – to appropriate said personal property.

**It has been held that in cases where one, in good faith, “takes another’s property under claim of title in himself, he is exempt from the charge of larceny, however puerile or mistaken the claim may in fact be. And the same is true where the taking is on behalf of another, believed to be the true owner.** The gist of the offense is the intent to deprive another of his property in a chattel, either for gain or out of wantonness or malice to

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<sup>41</sup> Id. at 307-308.

<sup>42</sup> *Aguilar v. DOJ*, supra note 39, at 800.

<sup>43</sup> *Matrido v. People*, 610 Phil. 203, 211-212 (2009).

<sup>44</sup> *Rollo*, p. 415.

<sup>45</sup> Id.

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deprive another of his right in the thing taken. This cannot be where the taker honestly believes the property is his own or that of another, and that he has a right to take possession of it for himself or for another,”<sup>46</sup> as in this case.

The fact that respondent’s shares of stock in UM represents only a proportionate or aliquot interest in the property of the corporation, or that his interest was only equitable or beneficial in nature<sup>47</sup> does not negate respondent’s belief that he and his family own UM, and that the consent of his father was sufficient for the use of BPTI’s electricity and water supply. As correctly reasoned by the CA, “(e)ven assuming *arguendo* that Virgilio was not duly authorized by the Board of Trustees of UM to give its consent to [respondent] and the latter erred when he solely relied on his father’s consent without further securing the authority of the [BOT] of UM, his *bona fide* belief that he had authority from the real owner of the electricity and water supply will not make him culpable of the crime of qualified theft because he was acting with a color of authority or a semblance of right to do such act.”<sup>48</sup>

Respondent’s *bona fide* reliance on the consent of his father was bolstered by the material fact – which was likewise disregarded by the RTC – that Virgilio had utilized the resources of UM to shoulder the expenses of respondent’s children. On this point, the Court quotes with approval the following disquisition of the CA:

Indeed, the records show that UM’s Board of Trustees clothed Virgilio with such apparent authority to act on behalf of UM. Private respondent admitted this when it adduced the affidavit (used during the preliminary investigation stage of the complaint *a quo*) of petitioner’s sister, Ramona, who is the current Chairman of the Board of Trustees of the UM, to wit:

“They failed to appreciate the fact that it was even my father who shouldered his grandchildren’s expenses. This was evidenced by a certification issued by the President and Chief of Academic Officer, x x x attesting that my brother’s second mistress has been receiving monthly allowance from the University in the amount of Nine Thousand Eight Hundred Twenty Five Pesos. x x x”

By giving Virgilio an apparent authority, UM’s Board of Trustees cannot now deny and repudiate the legal effect of Virgilio’s consent given to the petitioner to use the electricity and water supply of BPTI. The element of lack of owner’s consent is thus glaringly absent in this case.<sup>49</sup>

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<sup>46</sup> *Gaviola v. People*, 516 Phil. 228, 238 (2006); citation omitted.

<sup>47</sup> See *Asia’s Emerging Dragon Corporation v. Department of Transportation and Communication*, 572 Phil. 523, 528 (2008); citation omitted.

<sup>48</sup> *Rollo*, Vol. I, p. 45.

<sup>49</sup> *Id.* at 44.

In addition to the clear absence of the elements of *intent to gain* and *lack of owner's consent*, the RTC failed to take into consideration that the instant case stems from a bitter feud between siblings. The CA, on the other hand, found that it was only when respondent and his other sister, Cynthia, opposed the probate proceedings of the estate of their father, which was initiated by their youngest sister, Ramona, that the BOT of UM filed the complaint *a quo*.<sup>50</sup> In fact, respondent alleged in his Counter-Affidavit submitted before the investigating prosecutor that Ramona had filed “a number of malicious, revengeful and unfounded criminal complaints which were all dismissed.”<sup>51</sup> Thus, the possibility that Ramona may have only dragged the BOT of UM into her personal vendetta against respondent is not farfetched.

The Court reiterates that “[w]hile probable cause should be determined in a summary manner, there is a need to examine the evidence with care to prevent material damage to a potential accused’s constitutional right to liberty and the guarantees of freedom and fair play, and to protect the State from the burden of unnecessary expenses in prosecuting alleged offenses and holding trials arising from false, fraudulent or groundless charges.”<sup>52</sup> This, the RTC failed to do. Hence, the CA correctly reversed the finding of probable cause against respondent.

All told, the RTC gravely erred when it denied respondent’s motion for judicial determination of probable cause. Instead, it should have granted the same and, accordingly, dismissed the case pursuant to Section 5 (a), Rule 112 as cited above. In this light, the assailed CA rulings are affirmed.

**WHEREFORE**, the petition is **DENIED**. The Amended Decision dated November 21, 2014 and the Resolution dated August 28, 2015 of the Court of Appeals in CA-G.R. SP No. 128625 are hereby **AFFIRMED**.

**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

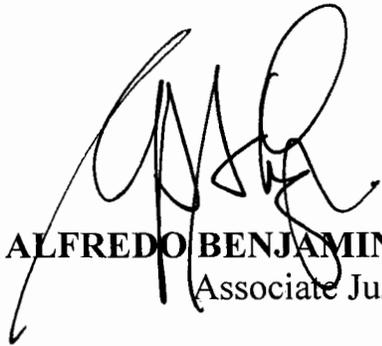
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<sup>50</sup> See *id.* at 43-44.

<sup>51</sup> *Id.* at 209.

<sup>52</sup> *Tan, Jr. v. Matsuura*, 701 Phil. 236, 251 (2013).

  
**FRANCIS H. JARDELEZA**  
Associate Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

  
**ANDRES B. REYES, JR.**  
Associate Justice

**A T T E S T A T I O N**

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.

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**C E R T I F I C A T I O N**

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