

GEORGE MILLER, PETITIONER, VS. SECRETARY HERNANDO B. PEREZ, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF JUSTICE AND GIOVAN BERNARDINO, RESPONDENTS.

G.R. No. 165412. May 30, 2011

Ponente: VILLARAMA, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-165412/>

VILLARAMA, JR., J.:

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated June 14, 2004 and Resolution[2] dated September 14, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 72395. The CA dismissed the petition for certiorari after finding no grave abuse of discretion on the part of public respondent Secretary of Justice in issuing his Resolution[3] dated March 21, 2002 which ordered the exclusion of respondent Giovan Bernardino (Bernardino) from the Information for attempted murder.

The facts as culled from the records:

Petitioner George Miller is a British national and an inmate at the Maximum Security Compound of the New Bilibid Prison (NBP) in Muntinlupa City. In November and December 1998, while serving as Acting Secretary General of the Inmates' Crusade Against Drugs (ICAD) based at NBP, petitioner wrote two confidential letters[4] addressed to then NBP Superintendent Col. Gregorio Agalo-os. The letters contained a detailed report of the alleged irregularities and drug trading activities of respondent Bernardino and Rodolfo Bernardo (Bernardo), both inmates at the Medium Security Compound and ICAD Treasurer and Chairman, respectively. Petitioner also recommended the transfer of Bernardino and Bernardo to the Maximum Security Compound.

On January 6, 1999, at around 2:30 p.m., while proceeding towards the volleyball court at the Medium Security Compound, petitioner felt a crushing blow at the back of his head. As blood oozed from his head, petitioner ran to the Infirmary for first aid treatment. Later, petitioner was transferred to the NBP hospital. On January 17, 1999, Dr. Ma. Corazon S. Alvarez, Medical Specialist at the NBP hospital, issued a Medical Certificate[5] with the following findings:

- lacerated wound, one (1), about 8 to 9 cms. long, 1 cm. deep, on parietal area of the head.
- Barring unforeseen (sic) circumstances, healing period is from 7 to 10 days.

Investigation of the incident was immediately ordered by Supt. Agalo-os. PGIII Cecilio M. Lopez conducted the investigation and submitted to the NBP Director his Report[6] dated January 5, 1999. Based on the sworn statement of petitioner and the verbal admissions made by inmates Constantino Quirante, Jr. (Quirante) and Roberto Ceballos (Ceballos), it was found that a few days before the incident, Bernardo and Bernardino confronted petitioner regarding the letters he wrote reporting the alleged illegal drug activities of Ace Aprid

(Aprid), Bernardo and Bernardino at ICAD. Bernardo and Bernardino were furious when petitioner admitted having authored the letters, threatening him with the words "Mamamatay ka," which petitioner fully understood: he is going to die. Petitioner discovered that another inmate (Valeroso) to whom he confided the matter, had divulged the existence of the letters to Bernardo and Bernardino. At the time he was hit at the back of his head, petitioner was able to turn around and saw his assailant, later identified as Quirante, who ran away through the gate leading to the "talipapa" where petitioner lost sight of him. Petitioner then saw two persons standing near the entrance of the "talipapa" and shouted at one of them asking for the identity of his assailant and if he saw the incident. However, the man just kept mum. As petitioner realized that blood was oozing from his head, he immediately went to the Infirmary.

The day after the incident, Bernardo and Bernardino along with fellow inmates Aprid, Virgilio Adrales, Rogelio Aguilar, Amable Bendoy, Arnel Modrigo, Alfred Magno and Vergel Bustamante, were brought to the investigation section.

In the course of the investigation, Quirante and Ceballos admitted their participation in the attack on petitioner and the information they provided was summarized by the investigating officer as follows:

x x x x

While the investigation was in progress, inmates Roberto Ceballos and Constantino Quirante voluntarily surfaced admitting their participation in the clubbing of Miller. After having been informed of their constitutional rights, the two during interrogation and without second thought, narrated in detail how and why they attempted to kill Miller in the following manner:

At around 10:30 A.M. of January 6, 1999, in whiling the time under the shade of a tree in a basketball court of the Medium Security Camp, Quirante and Ceballos were approached by Aprid and Bernardino to engage their services and offered an amount of P1,500.00 to kill Miller. Being in dire need of money at the very moment, Quirante and Ceballos accepted the offer. Quirante admitted treacherously hitting Miller at the back of his head with a piece of wood but for failing to get him with one blow, he had to flee. On the other hand, Ceballos admitted as the lookout and was asked by Miller the identity of his assailant right after he was clubbed. Accordingly, what motivated them to reveal everything is the fact that only P100.00 was paid in advance to them by Bernardino and Aprid and the balance of P1,400.00 as promised to be paid sooner was never fulfilled. The duo even signified their intention to reduce their participation in writing to authenticate the admission of their guilt. However, in the absence of a lawyer to assist them and to safeguard their constitutional rights, the officer on case opted not to do so.

To ascertain the veracity of Ceballos and Quirante's confession, a confrontation was made at the Director's Office. Several inmates were lined-up with Ceballos and Quirante. Miller when asked to identify his assailant, he spontaneously pointed to Quirante as the one who clubbed him on the head and likewise pointed to Ceballos as the man whom he had shouted at asking for the identity of his assailant.

x x x x[7]

On the basis of the foregoing, PGIII Lopez recommended that Quirante and Ceballos be charged with Frustrated Murder and the case be placed under further investigation "pending the establishment of sufficient evidence to indict inmates Rodolfo Bernardo, Giovan Bernardino and Ace Aprid." [8] On February 10, 1999, the case was endorsed to the Office of the City Prosecutor submitting to the said office the following documents: (1) Investigation Report of PGIII Lopez; (2) Sworn Statement of petitioner; (3) Medical Certificate; (4) Routing Slip of Supt. Agalo-os; and (5) petitioner's letters dated November 21, 1998 and December 27, 1998 addressed to the NBP Superintendent. [9] The case was docketed as I.S. No. 99-B-01314.

On March 30, 1999, Prosecutor Antonio V. Padilla issued his resolution[10] finding the evidence sufficient to charge Quirante with attempted murder while dismissing the case against Ceballos for insufficiency of evidence, thus:

Anent the charge against Giovan Bernardino and Rodolfo Bernardo, we noticed that the same is merely anchored on suspicion and conjecture. Except the bare allegations of the complainant, nothing would link them to the assault against the complainant. In fact, their names were not even mentioned in the referral letter, dated February 10, 1999, of the Bureau of Corrections addressed to our Office.

WHEREFORE, premises considered, the undersigned respectfully recommends that the attached Information be filed in court. Further, it is recommended that the charge against Ceballos be dismissed on ground of insufficiency of evidence. As to the charge against Bernardino and Bernardo the same is likewise recommended dismissed on ground of insufficiency of evidence without prejudice to the refilling of same in the event that evidence against them may be unearthed by concerned authorities.[11] (*Italics supplied.*)

Thereafter, an information for attempted murder was filed against Quirante only in the Regional Trial Court (RTC) of Muntinlupa City (Branch 256), docketed as Criminal Case No. 99-452.

On or about April 14, 1999, Quirante and Ceballos executed a joint affidavit in Tagalog ("Pinagsamang Sinumpaang Salaysay"[12]) which was sworn to before Prosecutor Padilla. They declared that at noontime of January 6, 1999, their services were engaged through their "Bosyo" or Commander, Rodrigo Toledo (Toledo), who told them that if they hit ("paluin") petitioner they will be paid P1,500 by Bernardino and Bernardo. Hence, they carried out the clubbing of petitioner by 2:00 in the afternoon of the same day in front of the volleyball court of the Medium Security Compound while petitioner was walking from the "talipapa." Quirante struck at petitioner from behind using a piece of wood and then ran away towards the "talipapa." Petitioner turned around and saw Ceballos whom he asked for the identity of his assailant. In pain and with bleeding wound on his head, petitioner momentarily sat down and then brought himself to the infirmary. Ceballos thought that petitioner did not recognize him since his face was then covered with shirt cloth. A day later, Toledo handed them P100 as initial payment, the balance to be paid by Bernardo and Bernardino also through Toledo. However, three days passed without the P1,400 being paid to them, until they were called to appear before the Director's office. When questioned during the investigation, they readily owned up to the assault on petitioner because Bernardino and Bernardo did not pay the agreed amount.

The sworn statement of Quirante and Ceballos was corroborated by Toledo who likewise executed a "Sinumpaang Salaysay"[13] on even date stating that as early as December 1998, Bernardo and Bernardino have been talking to him about their plan to have petitioner killed. Toledo being the leader of their group (BC 45) at the Medium Security Compound, Bernardo and Bernardino promised that they will pay whoever among his (Toledo) men can do it. Toledo claimed that he initially declined but due to the daily conversations with Bernardo and Bernardino who also gave him food, he finally called on two of his men, Quirante and Ceballos, to carry out the plan to kill petitioner. He was confident that everything will be alright since Bernardo and Bernardino committed to pay P1,500 for the job. A day after the clubbing of petitioner, he gave Quirante and Ceballos P100 as initial payment by Bernardo and Bernardino for their services. Three days later, he learned that Quirante and Ceballos were summoned before the Director's Office in connection with the incident. He affirmed the truth of the admissions made by Quirante and Ceballos because Bernardo and Bernardino failed to comply with their undertaking.

On December 2, 1999, Quirante, Ceballos and Toledo executed new affidavits[14] in English, which were sworn to before Bureau of Corrections Assistant Director Joselito A. Fajardo and Prosecutor Leopoldo B. Macinas. These new affidavits gave a more detailed narration of the incident and pointed to Bernardo and Bernardino as the "masterminds" with Aprid being an accomplice. Bernardo and Aprid allegedly planned the killing of petitioner

together with Toledo, the BC 45 Gang Commander, wherein Quirante agreed to be the one to kill petitioner while another gang member, Ceballos, would act as his lookout. The affidavits also mentioned what transpired during the preliminary investigation conducted by Prosecutor Padilla and the earlier April 1999 Tagalog affidavits they executed before Prosecutor Padilla. These documents were submitted during the reinvestigation conducted by Prosecutor Macinas.

Bernardo and Bernardino submitted their Joint Counter-Affidavit[15] dated January 19, 2000, stating that it was the second time they were being implicated in the case and pointing out that both investigations by the Investigation Section of the Bureau of Corrections and the Office of the City Prosecutor, Muntinlupa City showed that they have no participation in the commission of the offense. They asserted that the charges against them have no basis and the fruit of the wrong and malicious imputations of the witnesses. They denied having committed any violation of the rules and regulations of ICAD, of which Bernardo is Chairman while Bernardino is the Treasurer. They claimed that in the three years they have been serving the ICAD, the organization has more than progressed and benefitted their fellow inmates at the NBP. As to the statements given by Quirante, Ceballos and Toledo, and other witnesses, these are conflicting and muddled, showing so much evidence of them having been tutored.

Bernardo and Bernardino likewise presented a "Sinumpaang Salaysay"[16] executed by their witnesses, co-inmates Arnel Modrigo, Virgilio Adrales and Rogelio Aguilar. Said affiants declared that when petitioner approached them and asked if Aprid and Bernardo had anything to do with the incident, they plainly answered in the negative and told petitioner he should ask those persons instead. Everyday, petitioner goes to them asking them to pinpoint Aprid, Bernardo and Bernardino as the masterminds in order to strengthen the case against them. Petitioner even asked them to sign a handwritten letter[17] prepared by petitioner himself, addressed to Supt. Agalo-os and which, while requesting for their transfer to the Medium Security dormitories, also affirmed the culpability of Aprid, Bernardo and Bernardino for the attempt on the life of petitioner. However, they refused to do so as they know there was no truth to the contents of said letter.

On March 20, 2000, Prosecutor Leopoldo Macinas issued his Memorandum[18] addressed to the City Prosecutor finding probable cause against Quirante, Ceballos and Toledo in conspiracy with Bernardino, Aprid and Bernardo, for the crime of attempted murder. Prosecutor Macinas was convinced that the detailed account given by Quirante, Ceballos and Toledo were executed freely and voluntarily, and found no reason why they would incriminate their co-inmates other than the truth of the statements in their affidavits. On the other hand, the defenses proffered by Bernardo and Bernardino are evidentiary matters which can be best passed upon after a full-blown trial.

WHEREFORE, it is respectfully recommended that respondents Giovan Bernardino, Rod[o]lfo Bernardo, Rodrigo Toledo, Ace Aprid and Roberto Ceballos be all indicted by way of the herein attached amended information as co-conspirators of accused Constantino Quirante in attempting to kill George Miller, prima facie case having been established.[19]

Consequently, an Amended Information was filed with the RTC which included the names of Bernardino, Aprid, Bernardo, Toledo and Ceballos as co-conspirators in the crime of attempted murder.

Bernardino filed a petition for review[20] with the Department of Justice (DOJ) arguing that there was no sufficient evidence presented to support a claim of conspiracy, which was based merely on conflicting testimonies or affidavits in a language foreign to the affiants. He noted that the English affidavits pointed to three people as the masterminds when originally only two have been implicated by the perpetrators (Quirante and Ceballos).

Petitioner filed his opposition,[21] alleging that contrary to the claim of Bernardino, the Bureau's investigation

was far from complete as the Report of PGIII Lopez itself stated that the case is recommended for further investigation "pending the establishment of sufficient evidence to indict inmates Rodolfo Bernardo, Giovan Bernardino and Ace Aprid". As to the Tagalog affidavits, petitioner pointed out that these could not have been produced during the preliminary investigation conducted by Prosecutor Padilla since the documents were executed only on April 14, 1999, two weeks after Prosecutor Padilla rendered his resolution. Further investigation by the Bureau led to the execution of two affidavits in Tagalog (Quirante, Ceballos and Toledo) without the knowledge of petitioner. However, said Tagalog affidavits "disappeared" and petitioner was not allowed access to the Investigation Section's file despite his complaints to Director Sistoza, the Bureau and DOJ. Prior to the November 25, 1999 hearing on reinvestigation, petitioner had new affidavits in English prepared with the assistance of a former Supreme Court interpreter (inmate Chua) and these were subsequently signed by Toledo, Quirante and Ceballos and sworn to before Prosecutor Macinas. Hence, the said documentary evidence was already considered in the March 20, 2000 Resolution of Prosecutor Macinas. Petitioner further alleged that Bernardo and Bernardino received thru registered mail copy of the March 20, 2000 Resolution on June 16, 2000 but the petition for review before the DOJ was actually filed only on July 27, 2000 but conveniently dated July 14, 2000.

On March 21, 2002, public respondent, then Secretary of Justice Hernando B. Perez, issued his Resolution[22] finding merit in the petition. According to Secretary Perez, the new affidavits of Quirante, Ceballos and Toledo are not credible considering "the length of time they were executed since the commission of the crime" and also because said documents cannot be considered newly discovered evidence. He further noted that the affidavits were executed by the same persons investigated by the Bureau of Corrections and who all participated in the preliminary investigation of the case. At most, said affidavits can only be considered as "afterthought or made upon the prodding or influence of other persons." Public respondent thus ordered:

WHEREFORE, the questioned resolution is MODIFIED. The City Prosecutor of Muntinlupa City is directed to amend the information to exclude accused Giovan Bernardino therefrom, and to report action taken within ten (10) days from receipt hereof.

SO ORDERED.[23]

On March 25, 2002, a Motion to Admit Second Amended Information, which dropped the name of respondent Bernardino as one of the accused, was filed in court.[24]

Petitioner filed a motion for reconsideration which was denied under Resolution[25] dated August 1, 2002.

Aggrieved, petitioner elevated the case to the CA via a Petition for Certiorari under Rule 65. Petitioner argued that public respondent gravely abused his discretion in disregarding all material evidence presented which clearly showed that the affidavits of Quirante, Ceballos and Toledo had not been submitted during the preliminary investigation conducted by Prosecutor Padilla. Contrary to the pronouncement of the Secretary of Justice, the absence of said affidavits could not be construed as an irregularity in the conduct of preliminary investigation. This must be so since the March 30, 1999 resolution of Prosecutor Padilla explicitly stated that if and when evidence be unearthed by the concerned authorities, the case may still be re-filed against the other suspects, including Bernardo and Bernardino, for conspiracy in the attempted murder of petitioner. Petitioner also faulted the public respondent in granting the petition for review despite the same having been filed out of time, more than one month after receipt of the DOJ resolution.[26]

On June 14, 2004, the CA rendered its Decision sustaining the ruling of the Secretary of Justice, finding no grave abuse of discretion in the issuance of the questioned resolutions. Petitioner's motion for reconsideration was likewise denied by the CA.

Petitioner is now before this Court, alleging that -

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW, AND AS SUCH THE INSTANT PETITION SHOULD BE ALLOWED, WHEN, IN AFFIRMING THE DECISION OF THE SECRETARY OF JUSTICE DISREGARDING THE AFFIDAVITS OF THE WITNESSES DATED APRIL 14, 1999 AND DECEMBER 2, 1999, IT RELIED HEAVILY ON A MERE INFERENCE BASED NOT ON ESTABLISHED FACTS BUT ON ANOTHER INFERENCE.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW, AND AS SUCH THE INSTANT PETITION SHOULD BE ALLOWED, WHEN, IN AFFIRMING THE DECISION OF THE SECRETARY OF JUSTICE REVERSING THE INVESTIGATING PROSECUTOR'S FINDINGS OF PROBABLE CAUSE AGAINST THE PRIVATE RESPONDENT, IT DEPARTED FROM THE ESTABLISHED FACTS, AND IN THE PROCESS, FAILED TO MAKE AN INDEPENDENT AND THOROUGH DETERMINATION OF THE EXISTENCE OF PROBABLE CAUSE IN LIGHT OF APPLICABLE LAWS, RULES AND JURISPRUDENCE.[27]

Petitioner contends that the CA erred in concluding that the decision of the Secretary of Justice was supported with factual basis notwithstanding that its conclusion that the new affidavits were executed upon the influence of persons who merely wanted to indict respondent Bernardino, was based merely on another inference - that there was considerable length of time before the said affidavits were executed. He assails the CA which, like the Secretary of Justice, closed its eyes on the clear indications of culpability appearing on the faces of the affidavits presented during the reinvestigation. The CA disregarded these pieces of evidence despite the same having established prima facie that respondent Bernardino is probably guilty of the charge, for the reason alone that since the Secretary of Justice himself "doubts the veracity of the affidavits of Quirante, Ceballos and Toledo, it would be embarrassing to compel [him] to prosecute the case."

On the other hand, respondent Bernardino in his Comment argued that the "plain, speedy and adequate remedy" of petitioner from the ruling of the Secretary of Justice should have been the trial court's resolution of the "Motion for Leave to File Second Amended Information" which had been set for hearing, and not the petition for certiorari he filed before the CA. He also insists that only one copy of the March 20, 2000 Memorandum of Prosecutor Macinas was sent to the NBP which was addressed to petitioner. It was only on July 4, 2000 that his family was able to secure a copy from the Office of the City Prosecutor. As to the resolution of public respondent Secretary, respondent Bernardino maintains that the Secretary of Justice was correct in disregarding the new English affidavits as they were subscribed by unlettered affiants who can hardly speak Filipino and know only the Visayan dialect.

On its part, the Office of the Solicitor General (OSG) prays for the dismissal of the petition as the Secretary of Justice committed no grave abuse of discretion in modifying the ruling of Prosecutor Macinas by ordering the exclusion of respondent Bernardino from the Information. Considering that the affidavits indicting respondent Bernardino were executed after the initial preliminary investigation and after an information was already filed in court, the Secretary of Justice was justified in giving less credence to the said evidence.

We find the petition meritorious.

Probable cause is defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[28] To determine the existence of probable cause, there is need to conduct preliminary investigation. A preliminary investigation constitutes a realistic judicial appraisal of the merits of a case.[29] Its purpose is to determine whether (a) a crime has been committed; and (b) whether there is a probable cause to believe that the accused is guilty thereof. It is a means of discovering which person or persons may be

reasonably charged with a crime.[30]

It is well-settled that the determination of probable cause for the purpose of filing an information in court is an executive function which pertains at the first instance to the public prosecutor and then to the Secretary of Justice.[31] The Secretary of Justice may reverse or modify the resolution of the prosecutor, after which he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties.[32]

The Court considers it sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the Department of Justice ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders.[33] Its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with abuse of discretion amounting to want of jurisdiction.[34]

However, this Court may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice.[35] Although policy considerations call for the widest latitude of deference to the prosecutor's findings, courts should never shirk from exercising their power, when the circumstances warrant, to determine whether the prosecutor's findings are supported by the facts, or by the law.[36]

In this case, Secretary Perez disregarded the new (English) affidavits executed by Quirante, Ceballos and Toledo, saying it was an afterthought or made simply upon the prodding or influence of other persons. He also stated that Quirante, Ceballos and Toledo all participated in the investigations of the Bureau of Corrections. No mention, however, was made of the fact that said new affidavits firmly reiterated what Quirante, Ceballos and Toledo declared in their earlier Tagalog affidavits and their verbal admissions during the investigation proceedings conducted by PGIII Lopez. These Tagalog affidavits in turn, although executed two weeks after the initial preliminary investigation conducted by Prosecutor Padilla, were properly admitted and considered by the investigating officer, Prosecutor Macinas who took over during the reinvestigation of the case. The recommendation of Prosecutor Padilla which initially found probable cause only against Quirante, explicitly reserved the inclusion of Bernardo and Bernardino whose complicity may eventually be established, by qualifying the dismissal of the case as against them for insufficiency of evidence, with the words "without prejudice to the refile of the same in the event that evidence against them may be unearthed by concerned authorities." The reservation made by Prosecutor Padilla for the inclusion of other persons who may have had complicity in the commission of the crime was grounded on reasonable belief that there were other conspirators or masterminds, on the basis of the findings of PGIII Lopez during the investigation by the Bureau, the verbal admissions of Quirante and Ceballos as to their culpability and the alleged masterminds they identified. Hence, the English affidavits submitted during the reinvestigation cannot be considered an afterthought and executed merely upon the influence of certain persons, and Prosecutor Macinas properly admitted those in evidence.

Indeed, the English affidavits contained a reiteration and more detailed account of the clubbing incident earlier given by Quirante, Ceballos and Toledo in the Tagalog affidavits. In these affidavits executed on December 2, 1999, as well as in the Tagalog affidavits dated April 14, 1999, they were consistent in pointing to Bernardo and Bernardino as the masterminds with Aprid as accomplice, in the crime charged. Further, the English affidavits fully explained the circumstances as to why they were not able to give sworn statements during the Bureau investigation and initial preliminary investigation conducted by Prosecutor Padilla, before whom they subscribed their Tagalog affidavits, and the reason for the execution of new affidavits in English which were subscribed

before Prosecutor Macinas. Thus, the pertinent portions of their individual affidavits in English read:

Affidavit of Roberto Ceballos

x x x x

On January 9[th] 1999 at around 10:00 a.m. inmate Constantino Quirante was arrested by the ICA (Inmates Custodial Aide) who took him to the Overseer's Office for interrogation. I was arrested shortly afterwards by the ICA and taken to their office also for investigation. Inmate Constantino Quirante and I were then confined to the Bartolina (disciplinary cell) where we remained for two months and twenty one days (2 mos. 21 days) before being transferred to the Maximum Security Compound.

Shortly after being confined in the disciplinary cell at the Medium Security Compound, inmate Quirante and I were summoned to the Maximum Security Compound for interrogation. We first went to the office of Superintendent Agalo-os and made a joint statement which we did not sign as we were nervous and a lawyer (Ace Aprid's counsel I think) was present. We were then taken to the ante-room of the Director's office where inmate Dr. George Miller was with an Inspector Lopez from the Bureau's Investigation Section and an [illegible] Inspector Lopez's questions in Tagalog and Dr. Miller asked why those people from ICAD wished to have him killed. We told him it was because he had informed on them with a report to the Superintendent. While confined in the Medium Security Compound's Bartolina we were visited by Giovan Bernardino who told us to keep quiet about what had happened and gave us hamburgers. He also promised us money but this never materialized.

Later in the beginning of March we were escorted to the Muntinlupa City Prosecutor's Office for a preliminary hearing. We were surprised nobody from ICAD was there but Miller said he would not prefer charges against us provided we turned State's witnesses and deposed to a counter-affidavit exposing the "masterminds", those in fact who had commissioned the crime. Quirante and I requested the Asst. Prosecutor Padilla for a few days within which to think about submitting a counter-affidavit. The Asst. Prosecutor Padilla arranged a second preliminary hearing which was on the 11[th] March 1999 when we informed him we were still thinking it over. Afterwards when we were transferred to the Maximum Security Compound we discovered the Bureau of Corrections' Investigation Section had commenced an inquiry into the management of ICAD. We were summoned to the Penal Superintendent's office with inmate Rudy Toledo, when Quirante and I gave a joint affidavit with Toledo giving another of his own account. All three of us were then escorted to Assistant Prosecutor Padilla's office in Muntinlupa City when we swore in our respective affidavits. I understand from Dr. Miller these affidavits have been "misplaced" and he is unable to access copies from the Bureau of Corrections. I therefore agreed to execute another deposition which differs from the joint affidavit sworn earlier in that this is more thorough.[37]

Affidavit of Constantino Quirante

x x x x

On January 9[th], I was urinating in front of building 5 when I was called to the office of Inspector Del Prado. I changed into my issue uniform at the brigada and proceeded to Inspector Del Prado's office where I was arrested. I admitted to the "hit" on Miller and that I was acting on orders received from Boy Bernardo and Giovan Bernardino of ICAD given to the BC 45 gang commander, Rudy Toledo. I was then confined at the Medium Security Compound's disciplinary cell. Roberto Ceballos, who had been arrested and interrogated by the ICA joined me in the bartolina. Giovan Bernardino later visited us in the bartolina bringing hamburgers but no money. Upon his request I promised to keep quiet about the involvement of inmate Boy Bernardo and himself. He assured me not to worry and that everything would be taken care of.

Round about Jan. 29[th], Roberto Ceballos and I were escorted to the office of Superintendent Agalo-os at the Maximum Security Compound. We gave Superintendent Agalo-os a statement but did not sign it. I believe the

attorney of Ace Aprid was present so Ceballos and I were nervous of signing. We were then taken to the ante room of the Director's office where inmate Miller was present with Inspector Lopez of the Investigation Section and an interpreter. We were asked a number of questions in Tagalog by Inspector Lopez and Dr. Miller asked why Bernardino and Bernardo wished him to be killed [illegible] myself provided we completed a counter-affidavit naming Bernardo and Bernardino as the "masterminds". Asst. City Prosecutor Padilla said he would give us some time to consider and he arranged a second preliminary hearing for March 11[th] 1999. At the second meeting we refused to give a counter-affidavit as we had not yet decided and also we were worried.

Thereafter we were transferred to the Maximum Security Compound on the 30[th] of March. Approximately one month later we were called to the office of Superintendent Agalo-os with inmate Rudy Toledo. Ceballos and I prepared a joint affidavit for the Bureau's Investigation section and Rudy Toledo completed a sep[a]rate affidavit. These handwritten affidavits were photocopied in Super[intendent] Agalo-os's office by the Investigation Section Officer and at approximately 4:00 p.m. we were escorted into Assistant City Prosecutor Padilla's office w[h]ere the affidavits were sworn.

This further affidavit is made at the request of Dr. Miller, as I understand the prior affidavits sworn in front of Attorney Padilla have disappeared and he has not been allowed access to the Bureau of Correction[s] file copies with the Investigation Section. This affidavit is more comprehensive and better than our first joint affidavit which was hurriedly completed in manuscript.[38]

Toledo's affidavit not only dovetailed with the above-mentioned circumstances surrounding the execution of the two sets of affidavits, but also positively identified Bernardo, Bernardino and Aprid as the masterminds and detailed how the crime was planned and carried out on January 6, 1999. Thus:

x x x x

On or about December 15[th], 1998 I had a meeting with inmate Giovan Bernardino at the Inmates Crusade Against Drugs restaurant in the Medium Security Compound of Camp Sampaguita. The meeting was arranged by Giovan Bernardino when he spoke to me in my capacity as commander of the BC 45 Gang (Medium Security Compound) requesting that I arrange for some of my members to kill Dr. George Miller of the Inmates Crusade Against Drugs. He offered the sum of one thousand five hundred pesos (PHP 1,500.00) to be paid after the task was accomplished. Initially, I refused to accept this mission. Thereafter, we met several times in ICAD's premises mainly, at the billiard table. At each meeting, he endeavoured to persuade me of that which he required earlier, namely to have some of my gang members kill inmate George Miller. Everytime I refused inmate Bernardino said there was no need to worry he was able to take care of everything afterwards. In January he contacted me again when I was invited to ICAD's offices where I remember seeing a computer. Inmate Rodolfo "Boy" Bernardo, the Chairman of the Inmates Crusade Against Drugs was present with another ICAD member inmate, Ace Aprid, who was the Sigue Sigue Sputnik commander of the Medium Security Compound. Inmates Bernardo and Aprid were the colleagues of inmate Bernardino and all of them wanted Miller killed as they stated he had submitted a report concerning their activities in ICAD to Superintendent Agalo-os and was responsible for ICAD's premises being subjected to a search by sniffer dogs at the Superintendent's direction. Later I arranged for two of my gang members, inmates Constantino Quirante and Roberto Ceballos, who agreed to do as ICAD's Bernardo, Bernardino and Aprid had requested. This was the morning of the 6[th] of January and it was agreed that Quirante would be the assassin while Ceballos was to be the "lookout." At the meeting it was planned that I would arrange for a distraction to take place simultaneously when Quirante and Ceballos where [sic] killing Miller. Inmate Miller's movements to the High School and elsewhere that day were closely monitored and in the afternoon he went to the store of inmate Boy Sabater at the talipapa. I organized Sinulog Dancing for the BC 45 Gang anniversary at Camp Sampaguita's Plaza Compound with gang members to divert attention from Quirante's and C[e]ballo's assassination of Miller. When the dancing was finished one of my men informed me that Miller was still alive and had been sent to the NBP Hospital from the Camp Sampaguita Infirmary. Quirante had struck Miller on the head from behind when he left the talipapa but failed to kill him. Afterwards inmates Giovan Bernardino and Ace Aprid

gave Quirante and Ceballos the sum of one hundred pesos (PHP100.00). They were not paid the promised one thousand five hundred pesos (PHP1,500.00) as their "mission was not completed" in that they failed to kill Miller.

In February I was transferred to the Maximum Security Compound where I met Dr. Miller and informed him that I was prepared to testify regarding the foregoing. Inmates Quirante and C[e]ballos had been transferred earlier to the Maximum Security Compound after confessing their involvement. Later the Bureau of Corrections carried out an investigation regarding the affairs of ICAD when Quirante, C[e]ballos and myself where [sic] summoned to the Penal Superintendent Agalo-os's office. The Bureau's Investigation Section then took an affidavit from me and a joint affidavit was completed by Quirante and C[e]ballos. Thereafter we were escorted to the City Prosecutor[s] Office in Muntinlupa City where the affidavits were sworn in before the Assistant Prosecutor Padilla. Copies were taken for the Investigation Section's file. I was informed by Dr. Miller that the affidavits in the City Prosecutor[s] Office have "disappeared" and he had been prevented to date from accessing the Bureau of Correction's file, hence this further affidavit.[39]

Confronted with these evidence clearly showing prima facie that respondent Bernardino was among those involved in the crime committed against petitioner, Prosecutor Macinas was correct in finding probable cause, upon reinvestigation, to include respondent Bernardino along with Bernardo, Aprid, Quirante, Ceballos and Toledo as those who will be formally charged with attempted murder and recommending the filing of an amended information for this purpose. In modifying the said amended information by dropping the name of respondent Bernardino, Secretary Perez gravely abused his discretion, his conclusion that the new affidavits were mere afterthought being contrary to the facts on record. Besides, the Secretary's act of absolving respondent Bernardino arbitrarily ignored the consistent and categorical declarations of Quirante, Ceballos and Toledo that respondent Bernardino together with Bernardo and Aprid instigated, planned and ordered the attack on petitioner, harping solely on their belated execution of affidavits even if such delay have been satisfactorily explained.

We need not over-emphasize that in a preliminary investigation, the public prosecutor merely determines whether there is probable cause or sufficient ground 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.[40] In a preliminary investigation, a full and exhaustive presentation of the parties' evidence is not required, but only such as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. Certainly, it does not involve the determination of whether or not there is evidence beyond reasonable doubt pointing to the guilt of the person. Only prima facie evidence is required; or that which is, on its face, good and sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense; and which, if not rebutted or contradicted, will remain sufficient. Therefore, matters of evidence, such as who are the conspirators, are more appropriately presented and heard during the trial.[41]

The term "probable cause" does not mean actual and positive cause nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause 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. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.[42]

While it is this Court's general policy not to interfere in the conduct of preliminary investigations, leaving the investigating officers sufficient discretion to determine probable cause, courts are nevertheless empowered to substitute their judgment for that of the Secretary of Justice when the same was rendered without or in excess of authority.[43] Where the Secretary of Justice dismissed the complaint against the respondent despite sufficient evidence to support a finding of probable cause, such clearly constitutes grave error, thus warranting a reversal.[44] The CA thus clearly erred in sustaining the ruling of Secretary Perez for the exclusion of respondent

Bernardino from the charge of attempted murder despite a prima facie case against him having been established by the evidence on record.

WHEREFORE, the petition for review on certiorari is GRANTED. The Decision dated June 14, 2004 and Resolution dated September 14, 2004 of the Court of Appeals in CA-G.R. SP No. 72395 are hereby REVERSED and SET ASIDE. The Secretary of Justice is hereby DIRECTED to REINSTATE or RE-FILE with deliberate dispatch the Amended Information which included Giovan Bernardino as accused in Criminal Case No. 99-452 of the National Capital Judicial Region, Regional Trial Court of Muntinlupa City, Branch 256.

No costs.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, and Sereno, JJ., concur.

[1] Rollo, pp. 20-25. Penned by Associate Justice Romeo A. Brawner (now deceased), with Associate Justices Juan Q. Enriquez, Jr. and Vicente Q. Roxas concurring.

[2] Id. at 27.

[3] CA rollo, pp. 22-23.

[4] Rollo, pp. 66-77.

[5] Id. at 64.

[6] Id. at 58-61.

[7] Id. at 60.

[8] Id. at 60-61.

[9] Id. at 57.

[10] CA rollo, pp. 35-36.

[11] Id. at 36.

[12] Id. at 25-26.

[13] Id. at 27.

[14] Id. at 193-199; DOJ records, pp. 98-102.

[15] DOJ records, pp. 34-41.

[16] Id. at 32-33.

[17] Id. at 30-31.

[18] CA rollo, pp. 37-38.

[19] Id. at 38.

[20] DOJ records, pp. 81-95.

[21] Id. at 111-119.

[22] Supra note 3.

[23] Id. at 23.

[24] DOJ records, pp. 123-126.

[25] Id. at 162.

[26] CA rollo, pp. 12-16.

[27] Rollo, p. 8.

[28] Cruz, Jr. v. People, G.R. No. 110436, June 27, 1994, 233 SCRA 439, 459, cited in *Ladlad v. Velasco*, G.R. Nos. 172070-72, 172074-76 & 175013, June 1, 2007, 523 SCRA 318, 335.

[29] Metropolitan Bank & Trust Company, G.R. No. 180165, April 7, 2009, 584 SCRA 631, 641, citing *Villanueva v. Ople*, G.R. No. 165125, November 18, 2005, 475 SCRA 539, 553.

[30] Id., citing *Gonzalez v. Hongkong & Shanghai Banking Corporation*, G.R. No. 164904, October 19, 2007, 537 SCRA 255, 269.

[31] *Insular Life Assurance Company, Limited v. Serrano*, G.R. No. 163255, June 22, 2007, 525 SCRA 400, 405-406, citing *Hegerty v. Court of Appeals*, 456 Phil. 542 (2003) and *First Women's Credit Corporation v. Perez*, G.R. No. 169026, June 15, 2006, 490 SCRA 774, 777.

[32] *Tan v. Ballena*, G.R. No. 168111, July 4, 2008, 557 SCRA 229, 252, citing Sec. 4, last paragraph, Rule 112, Rules of Court.

[33] *Reyes v. Pearlbank Securities, Inc.* G.R. No. 171435, July 30, 2008, 560 SCRA 518, 536.

[34] *Manebo v. Acosta*, G.R. No. 169554, October 28, 2009, 604 SCRA 618, 627, citing *Alawiya v. Datumanong*, G.R. No. 164170, April 16, 2009, 585 SCRA 267, 281.

[35] Id. at 627-628.

[36] *Social Security System v. Department of Justice*, G.R. No. 158131, August 8, 2007, 529 SCRA 426, 442, citing *Acuña v. Deputy Ombudsman for Luzon*, G.R. No. 144692, January 31, 2005, 450 SCRA 232.

[37] DOJ records, pp. 98-99; CA rollo, pp. 195-196.

[38] Id. at 100-101; id. at 193-194.

[39] Id. at 102; id. at 197.

[40] *Manebo v. Acosta*, supra note 34 at 633, citing *Metropolitan Bank & Trust Company v. Gonzales*, G.R. No. 180165, April 7, 2009, 584 SCRA 631, 642.

[41] *Tan v. Ballena*, supra note 32 at 253-254, citing *People v. CA*, 361 Phil. 492 (1999), *Ledesma v. CA*, 344 Phil. 207, 226 (1997) and *Wa-acon v. People*, G.R. No. 164575, December 6, 2006, 510 SCRA 429, 439.

[42] *United Coconut Planters Bank v. Looyuko*, G.R. No. 156337, September 28, 2007, 534 SCRA 322, 336-337, citing *Garcia-Rueda v. Pascasio*, 344 Phil. 323, 330-331 (1997).

[43] *Sy v. Secretary of Justice*, G.R. No. 166315, December 14, 2006, 511 SCRA 92, 99, citing *Filadams Pharma, Inc. v. Court of Appeals*, G.R. No. 132422, March 30, 2004, 426 SCRA 460, 470.

[44] Id.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.