

P/INSP. ARIEL S. ARTILLERO, PETITIONER, VS. ORLANDO C. CASIMIRO, OVERALL DEPUTY OMBUDSMAN, OFFICE OF THE DEPUTY OMBUDSMAN; BERNABE D. DUSABAN, PROVINCIAL PROSECUTOR, OFFICE OF T...

G.R. No. 190569. April 25, 2012

Ponente: SERENO, J.

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SERENO, J.:

This case pertains to the criminal charge filed by Private Inspector Ariel S. Artillero (petitioner) against Barangay Captain Edito Aguillon (Aguillon) for violation of Presidential Decree No. (P.D.) 1866[1] as amended by Republic Act No. (R.A.) 8249.

Petitioner is the Chief of Police of the Municipal Station of the Philippine National Police (PNP) in Ajuy, Iloilo.[2] According to him, on 6 August 2008, at about 6:45 in the evening, the municipal station received information that successive gun fires had been heard in Barangay Lanjagan, Ajuy Iloilo. Thus, petitioner, together with Police Inspector Idel Hermoso (Hermoso), and Senior Police Officer (SPO1) Arial Lanaque (Lanaque), immediately went to the area to investigate.[3]

Upon arriving, they saw Paquito Panisales, Jr. (Paquito)[4] standing beside the road, wearing a black sweat shirt with a “Barangay Tanod” print.[5] They asked Paquito if he had heard the alleged gunshots, but he answered in the negative.

Petitioner, Hermoso, and Lanaque decided to investigate further, but before they could proceed, they saw that Paquito had “turned his back from us that seems like bragging his firearm to us flagrantly displayed/tucked in his waist whom we observed to be under the influence of intoxicating odor.”[6] Then, they frisked him to “verify the firearm and its supporting documents.”[7] Paquito then presented his Firearm License Card and a Permit to Carry Firearm Outside Residence (PTCFOR).

Thereafter, they spotted two persons walking towards them, wobbling and visibly drunk. They further noticed that one of them, Aguillon, was openly carrying a rifle, and that its barrel touched the concrete road at times.[8] Petitioner and Hermoso disarmed Aguillon. The rifle was a Caliber 5.56 M16 rifle with Serial Number 101365 and with 20 live ammunitions in its magazine.

According to petitioner and Hermoso, although Aguillon was able to present his Firearm License Card, he was not able to present a PTCFOR.

Petitioner arrested Paquito, Aguillon and his companion Aldan Padilla, and brought them to the Ajuy Municipal Police Station.[9]

Paquito was released on the same night, because he was deemed to have been able to comply with the requirements to possess and carry firearm.[10] Thereafter, Aguillon was detained at the police station, but was

released from custody the next day, 7 August 2008, after he posted a cash bond in the amount of P80,000. The present Petition does not state under what circumstances or when Padilla was released.

On 12 August 2008, petitioner and Hermoso executed a Joint Affidavit[11] alleging the foregoing facts in support of the filing of a case for illegal possession of firearm against Aguillon. Petitioner also endorsed the filing of a Complaint against Aguillon through a letter[12] sent to the Provincial Prosecutor on 12 August 2008.

For his part, Aguillon executed an Affidavit swearing that petitioner had unlawfully arrested and detained him for illegal possession of firearm, even though the former had every right to carry the rifle as evidenced by the license he had surrendered to petitioner. Aguillon further claims that he was duly authorized by law to carry his firearm within his barangay. [13]

According to petitioner, he never received a copy of the Counter-Affidavit Aguillon had filed and was thus unable to give the necessary reply.[14]

In a Resolution[15] dated 10 September 2008, the Office of the Provincial Prosecutor of Iloilo City recommended the dismissal of the case for insufficiency of evidence. Assistant Provincial Prosecutor Rodrigo P. Camacho (Asst. Prosecutor) found that there was no sufficient ground to engender a well-founded belief that Aguillon was probably guilty of the offense charged. The Asst. Prosecutor also recommended that the rifle, which was then under the custody of the PNP Crime Laboratory, be returned to Aguillon. Petitioner claims that he never received a copy of this Resolution.

Thereafter, Provincial Prosecutor Bernabe D. Dusaban (Provincial Prosecutor Dusaban) forwarded to the Office of the Deputy Ombudsman the 10 September 2008 Resolution recommending the approval thereof.[16]

In a Resolution[17] dated 17 February 2009, the Office of the Ombudsman, through Overall Deputy Ombudsman Orlando C. Casimiro (Deputy Ombudsman Casimiro), approved the recommendation of Provincial Prosecutor Dusaban to dismiss the case. It ruled that the evidence on record proved that Aguillon did not commit the crime of illegal possession of firearm since he has a license for his rifle. Petitioner claims that he never received a copy of this Resolution either.[18]

On 13 April 2009, Provincial Prosecutor Dusaban received a letter from petitioner requesting a copy of the following documents:

- Copy of the Referral letter and the resolution if there is any which was the subject of the said referral to the Office of the Ombudsman, Iloilo City; and
- Copy of the counter affidavit of respondent, Edito Aguillon and/or his witnesses considering that I was not furnished a copy of the pleadings filed by said respondent.[19]

On 22 June 2009, petitioner filed a Motion for Reconsideration (MR)[20] of the 17 February 2009 Resolution, but it was denied through an Order dated 23 July 2009.[21] Thus, on 8 December 2009, he filed the present Petition for Certiorari[22] via Rule 65 of the Rules of Court.

According to petitioner, he was denied his right to due process when he was not given a copy of Aguillon's Counter-affidavit, the Asst. Prosecutor's 10 September 2008 Resolution, and the 17 February 2009 Resolution of the Office of the Ombudsman. Petitioner also argues that public respondents' act of dismissing the criminal Complaint against Aguillon, based solely on insufficiency of evidence, was contrary to the provisions of P.D. 1866 and its Implementing Rules and Regulations (IRR).[23] He thus claims that the assailed Resolutions were issued "contrary to law, and/or jurisprudence and with grave abuse of discretion amounting to lack or excess of jurisdiction."[24]

The present Petition contains the following prayer:

WHEREFORE, premises considered petitioner most respectfully prays:

1. That this Petition for Certiorari be given due course;
2. That a Decision be rendered granting the petition by issuing the following:
 - a. Writ of Certiorari nullifying and setting aside the Order dated July 23, 2009 and dated February 17, 2009 both of the Office of the Ombudsman in OMB V-08-0406-J and the Resolution dated September 10, 2008 of the Office of the Provincial Prosecutor of Iloilo in I.S. No. 2008-1281 (Annexes A, C and D, respectively);
 - b. To reverse and set aside said Orders and Resolution (Annexes A, C and D, respectively) finding PROBABLE CAUSE of the crime of Violation of Presidential Decree No. 1866 as amended by R.A. 8294 and other applicable laws and to direct the immediate filing of the information in Court against private respondent EDITO AGUILLON.

Such other relief just and equitable are likewise prayed for.[25] (Emphasis in the original.)

In his Comment,[26] Aguillon submits that the present Petition should not be given due course based on the following grounds:

- The Deputy Ombudsman found that there was no sufficient evidence to warrant the prosecution for violation of P.D. No. 1866 as amended;
- The present Petition is “frivolous and manifestly prosecuted for delay;”[27]
- The allegations raised are too unsubstantial to merit consideration, because “Petitioner failed to specifically allege the manner in which the alleged Grave Abuse was committed by Respondent Deputy Ombudsman;”[28] and
- The Deputy Ombudsman’s findings are supported by substantial evidence.

Petitioner claims that Provincial Prosecutor Dusaban should have given him a copy of Aguillon’s Counter-affidavit. In support of this claim, petitioner cites Section 3(c), Rule 112 of the Revised Rules on Criminal Procedure, which reads:

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

Petitioner faults the Asst. Prosecutor and the Office of the Ombudsman for supposedly committing grave abuse of discretion when they failed to send him a copy of the 10 September 2008 and 17 February 2009 Resolutions.

A perusal of the records reveal that in both the 10 September 2008 and 17 February 2009 Resolutions, the PNP Crime Laboratory and petitioner were included in the list of those who were furnished copies of the foregoing Resolutions.[29] Even though his name was listed in the “copy furnished” section, petitioner never signed to signify receipt thereof. Thus, none of herein respondents raise this fact as a defense. In fact, they do not even deny the allegation of petitioner that he never received a copy of these documents.

Aguillon does not deny that he never sent a copy of his counter-affidavit to petitioner. For his part, Provincial Prosecutor Dusaban explained in his Comment,[30] that he was not able to give petitioner a copy of Aguillon’s Counter-affidavit and the 10 September 2008 Resolution, because “when petitioner was asking for them, the

record of the case, including the subject Resolution, was sent to the Office of the Ombudsman for the required approval.”[31]

As further proof that petitioner was not sent a copy of the 10 September 2008 Resolution, it can be seen from the document itself that one Atty. Jehiel Cosa signed in a “care of” capacity to signify his receipt thereof on behalf of petitioner, only on 23 June 2009 or after the latter’s 12 April 2009 letter-request to Provincial Prosecutor Dusaban.

Nevertheless, the provincial prosecutor is of the opinion that petitioner was never deprived of his due process rights, to wit:

8. Even granting that private respondent Edito Aguillion failed to furnish the petitioner with a copy of his counter-affidavit as required of him by the Rules, petitioner was never deprived of anything. As aptly said by the Office of the Overall Deputy Ombudsman in its Order dated 23 July 2009, “Complainant added that he was never furnished copies of the Counter-Affidavit of respondent nor of the Resolution of the Office of the Provincial Prosecutor, Iloilo City.”

“Anent the claim of the complainant that he was not furnished with a copy of the Resolution dated 10 September 2008 of the Office of the Provincial Prosecutor, Iloilo City, said Resolution did not attain finality until approved by the Office of the Ombudsman. Nevertheless, complainant was not deprived of due process, he can still avail to file a Motion for Reconsideration, which he did, to refute respondent’s defense.”[32]

We agree.

Petitioner insists that Section 3(c), Rule 112 of the Revised Rules on Criminal Procedure, was created “in order not to deprive party litigants of their basic constitutional right to be informed of the nature and cause of accusation against them.”[33]

Deputy Ombudsman Casimiro contradicts the claim of petitioner and argues that the latter was not deprived of due process, just because he was not able to file his Reply to the Counter-affidavit. The constitutional right to due process according to the Deputy Ombudsman, is guaranteed to the accused, and not to the complainant.[34]

Article III, Section 14 of the 1987 Constitution, mandates that no person shall be held liable for a criminal offense without due process of law. It further provides that in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him.[35] This is a right that cannot be invoked by petitioner, because he is not the accused in this case.

The law is vigilant in protecting the rights of an accused. Yet, notwithstanding the primacy put on the rights of an accused in a criminal case, even they cannot claim unbridled rights in Preliminary Investigations. In *Lozada v. Hernandez*,[36] we explained the nature of a Preliminary Investigation in relation to the rights of an accused, to wit:

It has been said time and again that a preliminary investigation is not properly a trial or any part thereof but is merely preparatory thereto, its only purpose being to determine whether a crime has been committed and whether there is probable cause to believe the accused guilty thereof. (*U.S. vs. Yu Tuico*, 34 Phil. 209; *People vs. Badilla*, 48 Phil. 716). The right to such investigation is not a fundamental right guaranteed by the constitution. At most, it is statutory. (*II Moran*, Rules of Court, 1952 ed., p. 673). And rights conferred upon accused persons to participate in preliminary investigations concerning themselves depend upon the provisions of law by which such rights are specifically secured, rather than upon the phrase “due process of law”. (*U.S. vs. Grant and Kennedy*, 18 Phil., 122).[37]

It is therefore clear that because a preliminary investigation is not a proper trial, the rights of parties therein

depend on the rights granted to them by law and these cannot be based on whatever rights they believe they are entitled to or those that may be derived from the phrase “due process of law.”

A complainant in a preliminary investigation does not have a vested right to file a Reply—this right should be granted to him by law. There is no provision in Rule 112 of the Rules of Court that gives the Complainant or requires the prosecutor to observe the right to file a Reply to the accused’s counter-affidavit. To illustrate the non-mandatory nature of filing a Reply in preliminary investigations, Section 3 (d) of Rule 112 gives the prosecutor, in certain instances, the right to resolve the Complaint even without a counter-affidavit, viz:

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

Provincial Prosecutor Dusaban correctly claims that it is discretionary on his part to require or allow the filing or submission of reply-affidavits.[38]

Furthermore, we agree with Provincial Prosecutor Dusaban that there was no need to send a copy of the 10 September 2008 Resolution to petitioner, since it did not attain finality until it was approved by the Office of the Ombudsman. It must be noted that the rules do not state that petitioner, as complainant, was entitled to a copy of this recommendation. The only obligation of the prosecutor, as detailed in Section 4 of Rule 112, was to forward the record of the case to the proper officer within five days from the issuance of his Resolution, to wit:

SEC. 4. Resolution of investigating prosecutor and its review.—If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

Even though petitioner was indeed entitled to receive a copy of the Counter-affidavit filed by Aguillon, whatever procedural defects this case suffered from in its initial stages were cured when the former filed an MR. In fact, all of the supposed defenses of petitioner in this case have already been raised in his MR and adequately considered and acted on by the Office of the Ombudsman.

The essence of due process is simply an opportunity to be heard. “What the law prohibits is not the absence of previous notice but the absolute absence thereof and lack of opportunity to be heard.”[39] We have said that where a party has been given a chance to be heard with respect to the latter’s motion for reconsideration there is sufficient compliance with the requirements of due process.[40]

At this point, this Court finds it important to stress that even though the filing of the MR cured whatever procedural defect may have been present in this case, this does not change the fact that Provincial Prosecutor Dusaban had the duty to send petitioner a copy of Aguillon’s Counter-affidavit. Section 3(c), Rule 112 of the

Revised Rules on Criminal Procedure, grants a complainant this right, and the Provincial Prosecutor has the duty to observe the fundamental and essential requirements of due process in the cases presented before it. That the requirements of due process are deemed complied with in the present case because of the filing of an MR by Complainant was simply a fortunate turn of events for the Office of the Provincial Prosecutor.

It is submitted by petitioner that in dismissing Aguillon's Complaint, public respondents committed grave abuse of discretion by failing to consider Memorandum Circular No. 2000-016, which was supposedly the IRR issued by the PNP for P.D. 1866.[41]

Petitioner fails to persuade this Court.

The original IRR[42] of P.D. 1866 was issued by then Lieutenant General of the Armed Forces of the Philippines (AFP) Fidel V. Ramos on 28 October 1983. The IRR provides that, except when specifically authorized by the Chief of Constabulary, lawful holders of firearms are prohibited from carrying them outside their residences, to wit:

SECTION 3. Authority of Private Individuals to Carry Firearms Outside of Residence. —

- a. As a rule, persons who are lawful holders of firearms (regular license, special permit, certificate of registration or M/R) are prohibited from carrying their firearms outside of residence.
- b. However, the Chief of Constabulary may, in meritorious cases as determined by him and under such conditions as he may impose, authorize such person or persons to carry firearm outside of residence.
- c. Except as otherwise provided in Secs. 4 and 5 hereof, the carrying of firearm outside of residence or official station in pursuance of an official mission or duty shall have the prior approval of the Chief of Constabulary.

By virtue of R.A. 6975,[43] the PNP absorbed the Philippine Constabulary. Consequently, the PNP Chief succeeded the Chief of the Constabulary and, therefore, assumed the latter's licensing authority.[44]

On 31 January 2003, PNP Chief Hermogenes Ebdane issued Guidelines in the Implementation of the Ban on the Carrying of Firearms Outside of Residence (Guidelines). In these Guidelines, the PNP Chief revoked all PTCFOR previously issued, thereby prohibiting holders of licensed firearms from carrying these outside their residences, to wit:

- Specific Instructions on the Ban on the Carrying of Firearms:
- All PTCFOR are hereby revoked. Authorized holders of licensed firearms covered with valid PTCFOR may re-apply for a new PTCFOR in accordance with the conditions hereinafter prescribed.
- All holders of licensed or government firearms are hereby prohibited from carrying their firearms outside their residence except those covered with mission/letter orders and duty detail orders issued by competent authority pursuant to Section 5, IRR, PD 1866, provided, that the said exception shall pertain only to organic and regular employees.

Section 4 of the IRR lists the following persons as those authorized to carry their duty-issued firearms outside their residences, even without a PTCFOR, whenever they are on duty:

SECTION 4. Authority of Personnel of Certain Civilian Government Entities and Guards of Private Security Agencies, Company Guard Forces and Government Guard Forces to Carry Firearms. — The personnel of the following civilian agencies commanding guards of private security agencies, company guard forces and government guard forces are authorized to carry their duty issued firearms whenever they are on duty detail subject to the specific guidelines provided in Sec. 6 hereof:

- a. Guards of the National Bureau of Prisons, Provincial and City Jails;
- b. Members of the Bureau of Customs Police, Philippine Ports Authority Security Force, and Export Processing Zones Authority Police Force; and x
- c. Guards of private security agencies, company guard forces, and government guard forces.

Section 5 of the guidelines, on the other hand, enumerates persons who have the authority to carry firearms outside their residences, viz:

- The following persons may be authorized to carry firearms outside of residence.
- All persons whose application for a new PTCFOR has been approved, provided, that the persons and security of those so authorized are under actual threat, or by the nature of their position, occupation and profession are under imminent danger.
- All organic and regular employees with Mission/Letter Orders granted by their respective agencies so authorized pursuant to Section 5, IRR, PD 1866, provided, that such Mission/Letter Orders is valid only for the duration of the official mission which in no case shall be more than ten (10) days.
- All guards covered with Duty Detail Orders granted by their respective security agencies so authorized pursuant to Section 4, IRR, PD 1866, provided, that such DDO shall in no case exceed 24-hour duration.
- Members of duly recognized Gun Clubs issued Permit to Transport (PTT) by the PNP for purposes of practice and competition, provided, that such firearms while in transit must not be loaded with ammunition and secured in an appropriate box or case detached from the person.
- Authorized members of the Diplomatic Corps.

It is true therefore, that, as petitioner claims, a barangay captain is not one of those authorized to carry firearms outside their residences unless armed with the appropriate PTCFOR under the Guidelines.[45]

However, we find merit in respondents' contention that the authority of Aguillon to carry his firearm outside his residence was not based on the IRR or the guidelines of P.D. 1866 but, rather, was rooted in the authority given to him by Local Government Code (LGC).

In *People v. Monton*,[46] the house of Mariano Monton—the Barrio Captain of Bacao, General Trias, Cavite—was raided, and an automatic carbine with one long magazine containing several rounds of ammunition was found hidden under a pillow covered with a mat. He was charged with the crime of illegal possession of firearm, but this Court acquitted him on the basis of Section 88(3) of Batas Pambansa Bilang 337(B.P. 337), the LGC of 1983, which reads:

In the performance of his peace and order functions, the punong barangay shall be entitled to possess and carry the necessary firearms within his territorial jurisdiction subject to existing rules and regulations on the possession and carrying of firearms.

Republic Act No. 7160, the LGC of 1991, repealed B.P. 337. It retained the foregoing provision as reflected in its Section 389 (b), viz:

CHAPTER 3 - THE PUNONG BARANGAY

SEC. 389. Chief Executive: Powers, Duties, and Functions.

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(b) In the performance of his peace and order functions, the punong barangay shall be entitled to possess and carry the necessary firearm within his territorial jurisdiction, subject to appropriate rules and regulations.

Provincial Prosecutor Dusaban's standpoint on this matter is correct. All the guidelines and rules cited in the instant Petition "refers to civilian agents, private security guards, company guard forces and government guard forces." These rules and guidelines should not be applied to Aguillon, as he is neither an agent nor a guard. As barangay captain, he is the head of a local government unit; as such, his powers and responsibilities are properly outlined in the LGC. This law specifically gives him, by virtue of his position, the authority to carry the necessary firearm within his territorial jurisdiction. Petitioner does not deny that when he found Aguillon "openly carrying a rifle," the latter was within his territorial jurisdiction as the captain of the barangay.

In the absence of a clear showing of arbitrariness, this Court will give credence to the finding and determination of probable cause by prosecutors in a preliminary investigation.[47]

This Court has consistently adopted a policy of non-interference in the exercise of the Ombudsman's investigatory powers.[48] It is incumbent upon petitioner to prove that such discretion was gravely abused in order to warrant this Court's reversal of the Ombudsman's findings.[49] This, petitioner has failed to do.

The Court hereby rules that respondent Deputy Ombudsman Casimiro did not commit grave abuse of discretion in finding that there was no probable cause to hold respondent Aguillon for trial.

The Dissent contends that probable cause was already established by facts of this case, which show that Aguillon was found carrying a licensed firearm outside his residence without a PTCFOR. Thus, Deputy Ombudsman Casimiro committed grave abuse of discretion in dismissing the criminal Complaint. However, even though Aguillon did not possess a PTCFOR, he had the "legal authority" to carry his firearm outside his residence, as required by P.D. 1866 as amended by R.A. 8294. This authority was granted to him by Section 389 (b) of the LGC of 1991, which specifically carved out an exception to P.D. 1866.

Following the suggestion of the Dissent, prosecutors have the authority to disregard existing exemptions, as long as the requirements of the general rule apply. This should not be the case. Although the Dissent correctly declared that the prosecutor cannot peremptorily apply a statutory exception without weighing it against the facts and evidence before him, we find that the facts of the case prove that there is no probable cause to charge Aguillon with the crime of illegal possession of firearm.

In interpreting Section 389 (b) of the LGC of 1991, the Dissent found that the factual circumstances of the present case show that the conditions set forth in the law have not been met. Thus, the exemption should not apply.

Contrary to the allegation of the dissent, there is no question as to the fact that Aguillon was within his territorial jurisdiction when he was found in possession of his rifle.

The authority of punong barangays to possess the necessary firearm within their territorial jurisdiction is necessary to enforce their duty to maintain peace and order within the barangays. Owing to the similar functions, that is, to keep peace and order, this Court deems that, like police officers, punong barangays have a duty as a peace officer that must be discharged 24 hours a day. As a peace officer, a barangay captain may be called by his constituents, at any time, to assist in maintaining the peace and security of his barangay.[50] As long as Aguillon is within his barangay, he cannot be separated from his duty as a punong barangay—to maintain peace and order.

As to the last phrase in Section 389 (b) of the LGC of 1991, stating that the exception it carved out is subject to "appropriate rules and regulations," suffice it to say that although P.D. 1866 was not repealed, it was modified by the LGC by specifically adding to the exceptions found in the former. Even the IRR of P.D. 1866 was modified by Section 389 (b) of the LGC as the latter provision already existed when Congress enacted the LGC. Thus, Section 389 (b) of the LGC of 1991 added to the list found in Section 3 of the IRR of P.D. 1866, which enumerated the persons given the authority to carry firearms outside of residence without an issued permit. The

phrase “subject to appropriate rules and regulations” found in the LGC refers to those found in the IRR of the LGC itself or a later IRR of P.D. 1866 and not those that it has already amended.

Indeed, petitioner’s mere allegation does not establish the fact that Aguillon was drunk at the time of his arrest. This Court, however, is alarmed at the idea that government officials, who are not only particularly charged with the responsibility to maintain peace and order within their barangays but are also given the authority to carry any form of firearm necessary to perform their duty, could be the very same person who would put their barangays in danger by carelessly carrying high-powered firearms especially when they are not in full control of their senses.

While this Court does not condone the acts of Aguillon, it cannot order the prosecutor to file a case against him since there is no law that penalizes a local chief executive for imbibing liquor while carrying his firearm. Neither is there any law that restricts the kind of firearms that punong barangays may carry in the performance of their peace and order functions. Unfortunately, it also appears that the term “peace and order function” has not been adequately defined by law or appropriate regulations.

WHEREFORE, we DISMISS the Petition. We AFFIRM the Resolution of the Office of the Provincial Prosecutor dated 10 September 2008, as well as the Resolution and the Order of the Office of the Ombudsman dated 17 February 2009 and 23 July 2009, respectively.

Let a copy of this Decision be served on the President of the Senate and the Speaker of the House of Representatives for whatever appropriate action they may deem warranted by the statements in this Decision regarding the adequacy of laws governing the carrying of firearms by local chief executives.

No costs.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Reyes, JJ., concur.

[1] CODIFYING THE LAW ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES, 29 June 1983.

[2] Rollo, p. 9.

[3] Id at 53.

[4] Id at 49.

[5] Id at 53.

[6] Id.

[7] Id.

[8] Id.

[9] Rollo, p. 10.

[10] Id.

- [11] Rollo, pp. 53-54.
- [12] Rollo, p. 51.
- [13] Id at 50.
- [14] Id at 10.
- [15] Rollo, pp. 49-51; I.S. No. 2008-1281, penned by Assistant Provincial Prosecutor Rodrigo P. Camacho.
- [16] Rollo, p. 59.
- [17] Rollo, pp. 47-48.
- [18] Rollo, p. 10.
- [19] Id at 60.
- [20] Rollo, pp. 34-46.
- [21] Rollo, p. 11.
- [22] Rollo, pp. 3-26.
- [23] Rollo, p. 12.
- [24] Id.
- [25] Rollo, pp. 25-26.
- [26] Rollo, pp. 72-74.
- [27] Rollo, p. 73.
- [28] Id.
- [29] See Rollo, pp. 48 and 51.
- [30] Rollo, pp. 78-82.
- [31] Rollo, p. 79.
- [32] Id at 80.
- [33] Id at 7.
- [34] Id at 92.
- [35] *People v. Valdesancho*, 410 Phil. 556 (2001).
- [36] 92 Phil 1051 (1953).
- [37] Id at 1053.
- [38] Id at 79.
- [39] *De Borja v. Tan*, 93 Phil. 167, 171(1953); *Embate v. Penolio*, 93 Phil. 782, 785 (1953).
- [40] *Aguilar v. Tan*, G.R. No. L-23603, 30 January 1970, 31 SCRA 205 citing *De Borja vs. Tan*, supra; *Llanto vs. Dimaporo*, 123 Phil. 413, 417-418 (1966).

[41] Rollo, p. 13.

[42] RULES AND REGULATIONS IMPLEMENTING PRESIDENTIAL DECREE NUMBER 1866 DATED 29 JUNE 1983 CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES.

[43] AN ACT ESTABLISHING THE PHILIPPINE NATIONAL POLICE UNDER A REORGANIZED DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT, AND FOR OTHER PURPOSES. Approved 13 December 1990.

[44] Chavez v. Romulo, G.R. No. 157036, 9 June 2004, 431 SCRA 534.

[45] Rollo, p. 19.

[46] G.R. No. L-48112, 29 February 1988.

[47] Drilon v. Court of Appeals, 327 Phil. 916 (1996).

[48] Vergara v. Ombudsman, G.R. No. 174567, 12 March 2009, 580 SCRA 693.

[49] Ombudsman v. Vda. de Ventura, G.R. No. 151800, 5 November 2009, 605 SCRA 1.

[50] Government Service Insurance System v. Court of Appeals, G.R. No. 128524, 20 April 1999, 306 SCRA 41, 45.

G.R. No. 190569 – P/INSP. ARIEL S. ARTILLERO, petitioner –versus– ORLANDO C. CASIMIRO, Overall Deputy Ombudsman, Office of the Deputy Ombudsman, BERNABE D. DUSABAN, Provincial Prosecutor, Office of the Provincial Prosecutor of Iloilo, EDITO AGUILLON, Brgy. Capt., Brgy. Lanjagan, Ajuy, Iloilo, respondents.

Promulgated:

April 25, 2012

DISSENTING OPINION

BRION, J.:

I dissent from the ponencia's conclusion that the Office of the Overall Deputy Ombudsman (Ombudsman) committed no grave abuse of discretion in dismissing the criminal complaint against Edito Aguillon for insufficiency of evidence.

The Court consistently adheres to its policy of non-interference in the conduct of preliminary investigations. This policy leaves the investigating prosecutor with sufficient latitude of discretion in determining what constitutes sufficient evidence to establish probable cause for the purpose of filing information in court.[1] The inherently executive nature[2] of determining the existence of probable cause dictates this judicial course of action.

More particularly, the Court's policy of non-interference with the investigatory and prosecutory powers of the Office of the Ombudsman is anchored on the provisions of the Constitution, which guarantees the independence

of this office.[3] However, given the Court's own duty under paragraph 2, Section 1, Article VIII of the Constitution, the Court is not precluded from reviewing the Ombudsman's action for the limited purpose of determining whether this action is tainted with grave abuse of discretion.[4]

In the present case, I find the Ombudsman's dismissal of the criminal complaint tainted with grave abuse of discretion, as the dismissal was not supported by the established facts of the case and was also grossly contrary to applicable laws, rules and jurisprudence on the matter.

First, in conducting a preliminary investigation, the investigating prosecutor merely determines whether probable cause exists that would warrant the filing of the corresponding information in court against a supposed offender. In turn, probable cause is simply the existence of such facts and circumstances, sufficient to create the belief in a reasonable mind that a crime has been committed and that the person charged is probably guilty of the crime charged.[5] The determination of probable cause only requires reasonable belief, not actual certainty, that a crime has been committed and that the person charged is probably guilty thereof.

In this regard, Edito Aguillon was charged with violation of Presidential Decree (P.D.) No. 1866, as amended by Republic Act No. 8294. The last paragraph of Section 1 of P.D. No. 1866 as amended provides:

"The penalty of *arresto mayor* shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor."

The established facts show that Edito Aguillon was found in possession of an M16 rifle with 20 live ammunitions outside his residence. While he was able to present a license to possess the firearm, he failed to present evidence that he had legal authority to carry the firearm outside of his residence. These circumstances alone, to my mind, satisfy the standard definition of probable cause that the acts charged were committed, and that Edito Aguillon was probably guilty of its commission (violation of P.D. No. 1866). Whether or not he is indeed guilty beyond reasonable doubt of this crime is another matter that must be addressed in the trial proper of the criminal case.[6]

Second, the Ombudsman's dismissal of the criminal complaint based on the finding that Edito Aguillon did not commit a crime, as he was a barangay captain performing his peace and order functions and had a license for his M16 rifle, is contrary to the provisions of P.D. No. 1866 and the factual circumstances of the case.

The crime of illegal possession of firearm,[7] on one hand, and the crime of carrying a licensed firearm outside one's residence without legal authority, on the other, are two separate offenses punished by P.D. No. 1866 as amended. In other words, while Edito Aguillon cannot be prosecuted for illegal possession of firearms, sufficient evidence exists to prosecute him for carrying a licensed firearm outside his residence without legal authority.

In *Francisco I. Chavez v. Hon. Alberto G. Romulo, et. al.*,[8] we held that the right to bear arms is a mere statutory privilege, and not a constitutional right; and that the possession of firearms by citizens in the Philippines is the exception rather than the rule.[9] Consequently, when a *prima facie* showing of a violation of the law on firearms is established, the prosecutor cannot peremptorily apply a statutory exception without weighing it against the facts and evidence before him; otherwise, he would be committing grave abuse of discretion, warranting the corrective writ of *certiorari* – which brings me to my third point.

Third. Undoubtedly, Section 389 (c), Chapter 3, Book III of the Local Government Code (LGC) of the Philippines (Republic Act [R.A.] No. 7160) provides an exception to the rule on carrying of firearms outside one's residence. R.A. No. 7160 is a special law[10] that allows the barangay captain (now the Punong Barangay) the right to possess and carry firearms within his territorial jurisdiction. As expressly stated in the law, however, the exercise of such right is not without restrictions. Section 389 (c) in fact mentions four (4) conditions that restrict the right of the Punong Barangay to possess and carry firearms:

“In the performance of his peace and order functions, the Punong Barangay shall be entitled to possess and carry the necessary firearm within his territorial jurisdiction, subject to appropriate rules and regulations.”

The four (4) conditions are: first, the right must be exercised in performance of peace and order functions; second, the right must be exercised within the territorial jurisdiction of the Punong Barangay; third, the firearm must be necessary in the exercise of official functions; and fourth, the exercise of the right is subject to appropriate rules and regulations.

The available records do not establish compliance with the above conditions.

The records do not show that Edito Aguillon, as barangay captain, was in the performance of official duties to protect and preserve the peace and order of his community at the time the police confronted him. Contrary to the ponencia’s claim – unsupported by law and evidence – a barangay captain cannot be performing his peace and order functions 24 hours a day. This is a preposterous claim that effectively says that the mere fact of being a barangay captain characterizes one as an official continuously exercising peace and order functions. At most, perhaps, such a presumption can exist; but a presumption should not apply when the attendant circumstances dictate otherwise.

What the records establish are the following: that (i) the police responded to a call for assistance upon hearing successive gunfires; (ii) the police saw and confronted Edito Aguillon, wobbling and visibly drunk, carrying an M16 rifle; and (iii) Edito Aguillon was then and there disarmed of his firearm and brought to the police station. None of these facts was denied by Aguillon. Significantly, Aguillon made no claim, not even a pretense, that he was then in the course of protecting and preserving peace in his barangay at the time he was arrested.

Similarly, the second and third conditions were not clearly established. The records failed to show that Edito Aguillon was actually within the territorial jurisdiction of his barangay when the confrontation with the police took place. This is a matter of defense that the one charged must claim and support by evidence. No such effort appears to have taken place. The facts also failed to show how, specifically, an M16 rifle became necessary for the exercise of his official functions - if at all he was exercising his official functions at that time. We can take judicial notice that an M16 (as the prefix “M” denotes) is a military weapon, not a civilian one.

The fourth condition on the “appropriate rules and regulations” is no other than the rules governing the possession and carrying of firearm, which are mainly found in the implementing rules and regulations of P.D. No. 1866. In this regard, Section 3 of the Implementing Rules and Regulations of P.D. No. 1866 impose the following restrictions on persons in possession of licensed firearms:

- As a rule, persons who are lawful holders of firearms (regular license, special permit, certificate of registration or M/R) are prohibited from carrying their firearms outside of residence.
- However, the Chief of Constabulary (now PNP Chief) may, in meritorious cases as determined by him and under such conditions as he may impose, authorize such person or persons to carry firearm outside of residence.
- Except as other provided in Sections 4 (Authority of personnel or certain civilian government entities and guards of private security agencies, company guard forces and government guard forces to carry firearms) and 5 (Authority to issue mission order involving the carrying of firearm) hereof, the carrying of firearm outside of residence or official station in pursuance of an official mission or duty shall have prior approval of the Chief of Constabulary.

Hence, while Section 389 (c) Chapter 3, Book III of R.A. No. 7160 grants the Punong Barangay the right to possess and carry firearms, the very wording of the law did not relieve the Punong Barangay from complying with

the rules and regulations involving the possession and carrying of firearms.

Specifically, I take exception to the ponencia's (i) statement that "[e]ven the IRR of PD 1866 was modified by Section 389 (b)[11] of the LGC as the latter provision already existed when Congress enacted the LGC" and (ii) conclusion that "Section 389 (b) of the LGC of 1991 added to the list found in Section 3 of the IRR of PD 1866."

Contrary to the ponencia's claim, P.D. No. 1866's IRR could not have been modified by Section 389 (c) of the LGC. On May 12, 1983 Batas Pambansa (BP) 337 (the old Local Government Code) took effect. Section 88 par. 3 of BP 337 similarly limits the punong barangay's otherwise broad authority to possess and carry firearms. It was only later (or in October 1983) that the IRR of P.D. No. 1866 was issued. Effectively, the promulgation of the IRR after BP 337 took effect served to limit (and continues to by the re-enactment of the same provision in Section 389 of the present LGC) the Punong Barangay's authority to carry firearms.

At any rate, even granting that Section 389 (c) of R.A. No. 7160 does not require compliance with the ordinary rules regarding the licensing of firearms under P.D. No. 1866, the facts do not sufficiently show that Edito Aguillon falls within the exception provided under Section 389 (c) of R.A. No. 7160 that would exempt him from compliance with the general rule on licensing of firearms. Given that the issue before us is the existence of grave abuse of discretion in the determination of the well-settled concept of probable cause, the petitioner's reliance on *People v. Monton*,^[12] which already involves the guilt or innocence of an accused, is misplaced.

In short, being a matter of exception to the rule on carrying of firearms outside one's residence, the Court cannot simply apply Section 389 (c) of the LGC (as the ponencia did) without regard to the plain qualifications stated in that provision – all of which are aimed at serving the interest (maintenance of peace and order^[13]) of the Punong Barangay's constituencies and not his personal interests. As an exception, too, the burden lies with the person charged to show that he falls within the exception. No such showing is evident from the records of the case; thus, the application of the exception has no basis.

For these reasons, I vote to GRANT the petition.

[1] *Kalalo v. Office of the Ombudsman*, G.R. No. 158189, April 23, 2010.

[2] ARTICLE VII, Section 17, second sentence, the 1987 CONSTITUTION (the Faithful execution clause).

[3] Section 5, Section 8 and Section 14 of Article XI of the 1987 Constitution reads:

Section 5. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.

Section 8. The Ombudsman and his Deputies shall be natural-born citizens of the Philippines, and at the time of their appointment, at least forty years old, of recognized probity and independence, and members of the Philippine Bar, and must not have been candidates for any elective office in the immediately preceding election. The Ombudsman must have, for ten years or more, been a judge or engaged in the practice of law in the Philippines.

During their tenure, they shall be subject to the same disqualifications and prohibitions as provided for in Section 2 of Article 1X-A of this Constitution.

Section 14. The Office of the Ombudsman shall enjoy fiscal autonomy. Its approved annual appropriations shall be automatically and regularly released.

[4] *Hilario P. Soriano v. Ombudsman Simeon V. Marcelo*, G.R. No. 160772, July 13, 2009, 592 SCRA 394 and

Marina B. Schroeder v. Attys. Mario A. Saldevar and Erwin C. Macalino, G.R. No. 163656, April 27, 2007, 522 SCRA 624, 629.

[5] Ibid.

[6] Ibid.

[7] In Villanueva v. People (G.R. No. 159703 March 3, 2008), the Court stated that –

The corpus delicti in the crime of illegal possession of firearms is the accused's lack of license or permit to possess or carry the firearm, as possession itself is not prohibited by law. To establish the corpus delicti, the prosecution has the burden of proving that the firearm exists and that the accused who owned or possessed it does not have the corresponding license or permit to possess or carry the same.

[8] G.R. No. 157036, June 9, 2004, 431 SCRA 534, 559.

[9] Id. at 559.

[10] Alex L. David v. Commission on Elections, G.R. No. 127116 April 8, 1997, 271 SCRA 90, 102. The Court held that “RA 7160 is a codified set of laws that specifically applies to local government units.”

[11] Should be Section 389 (c).

[12] G.R. No. L-48112, February 29, 1988.

[13] Section 389 (b) 3 and 14 reads:

(b) For efficient, effective and economical governance, the purpose of which is the general welfare of the barangay and its inhabitants pursuant to Section 16 of this Code, the punong barangay shall:

x x x x

(3) Maintain public order in the barangay and, in pursuance thereof, assist the city or municipal mayor and the sanggunian members in the performance of their duties and functions;

x x x x

(14) Promote the general welfare of the barangay; and

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