

ALFREDO C. MENDOZA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND JUNO CARS, INC., RESPONDENTS.

G.R. No. 197293. April 21, 2014

Ponente: LEONEN, J.

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LEONEN, J.:

While the determination of probable cause to charge a person of a crime is the sole function of the prosecutor, the trial court may, in the protection of one's fundamental right to liberty, dismiss the case if, upon a personal assessment of the evidence, it finds that the evidence does not establish probable cause.

This is a petition for review on certiorari[1] assailing the Court of Appeals' decision[2] dated January 14, 2011, which reversed the Regional Trial Court's dismissal of the complaint against petitioner Alfredo C. Mendoza for qualified theft and estafa.

This case stems from a complaint-affidavit filed by Juno Cars, Inc. through its representative, Raul C. Evangelista, on January 8, 2008 for qualified theft and estafa against Alfredo.[3]

In the complaint-affidavit, Juno Cars alleged that on June 2, 2007, it hired Alfredo as Trade-In/Used Car Supervisor. On November 19, 2007, its Dealer/Operator, Rolando Garcia, conducted a partial audit of the used cars and discovered that five (5) cars had been sold and released by Alfredo without Rolando's or the finance manager's permission.[4]

The partial audit showed that the buyers of the five cars made payments, but Alfredo failed to remit the payments totalling ₱886,000.00. It was further alleged that while there were 20 cars under Alfredo's custody, only 18 were accounted for. Further investigation revealed that Alfredo failed to turn over the files of a 2001 Hyundai Starex and a Honda City 1.5 LXI. Juno Cars alleged that taking into account the unremitted amounts and the acquisition cost of the Honda City, Alfredo pilfered a total amount of ₱1,046,000.00 to its prejudice and damage.[5]

In his counter-affidavit, Alfredo raised, among others, Juno Cars' supposed failure to prove ownership over the five (5) cars or its right to possess them with the purported unremitted payments. Hence, it could not have suffered damage.[6]

On March 4, 2008, Provincial Prosecutor Rey F. Delgado issued a resolution[7] finding probable cause and recommending the filing of an information against Alfredo for qualified theft and estafa.

Alfredo moved for reconsideration, but the motion was denied.[8] He then filed a petition for review with the Department of Justice on May 16, 2008.[9]

While Alfredo's motion for reconsideration was still pending before the Office of the City Prosecutor of Mandaluyong, two informations for qualified theft[10] and estafa[11] were filed before the Regional Trial Court, Branch 212, Mandaluyong City. On March 31, 2008, Alfredo filed a motion for determination of probable cause[12] before the trial court. On April 28, 2008, he also filed a motion to defer arraignment.

Several clarificatory hearings were scheduled but were not conducted.[13] On February 4, 2009, the parties agreed to submit all pending incidents, including the clarificatory hearing, for resolution.[14]

On March 3, 2009, the trial court, through Presiding Judge Rizalina Capco-Umali, issued an order[15] dismissing the complaint, stating that:

After conducting an independent assessment of the evidence on record which includes the assailed Resolution dated 04 March 2008, the court holds that the evidence adduced does not support a finding of probable cause for the offenses of qualified theft and estafa. x x x.[16]

Juno Cars filed a motion for reconsideration, which the trial court denied on July 3, 2009.[17]

Juno Cars then filed a petition for certiorari with the Court of Appeals, arguing that the trial court acted without or in excess of its jurisdiction and with grave abuse of discretion when it dismissed the complaint. It argued that “the determination of probable cause and the decision whether or not to file a criminal case in court, rightfully belongs to the public prosecutor.”[18]

On January 14, 2011, the Court of Appeals rendered a decision,[19] reversed the trial court, and reinstated the case. In its decision, the appellate court ruled that the trial court acted without or in excess of its jurisdiction “in supplanting the public prosecutor’s findings of probable cause with her own findings of insufficiency of evidence and lack of probable cause.”[20]

Aggrieved, Alfredo filed a petition for review under Rule 45 before this court. In essence, he argued that the trial court was correct in finding that there was no probable cause as shown by the evidence on record. He argued that “judicial determination of probable cause is broader than [the] executive determination of probable cause”[21] and that “[i]t is not correct to say that the determination of probable cause is exclusively vested on the prosecutor x x x.”[22]

In its comment,[23] Juno Cars argued that Alfredo presented questions, issues, and arguments that were a mere rehash of those already considered and passed upon by the appellate court.

The Office of the Solicitor General, arguing for public respondent, stated in its comment[24] that the appellate court correctly sustained the public prosecutor in his findings of probable cause against Alfredo. Since there was no showing of grave abuse of discretion on the part of Prosecutor Rey F. Delgado, the trial court should respect his determination of probable cause.

In his reply,[25] Alfredo reiterated that “judicial determination of probable cause[,] while not a superior faculty[,] covers a broader encompassing perspective in the disposition of the issue on the existence of probable cause.”[26] He argued that the findings of the trial court should be accorded greater weight than the appellate court’s. It merely reviewed the findings of the trial court.

The primordial issue is whether the trial court may dismiss an information filed by the prosecutor on the basis of its own independent finding of lack of probable cause.

Time and again, this court has been confronted with the issue of the difference between the determination of probable cause by the prosecutor on one hand and the determination of probable cause by the judge on the other. We examine these two concepts again.

Juno Cars filed a complaint against Alfredo for qualified theft[27] and estafa under Article 315, fourth paragraph, no. 3(c)[28] of the Revised Penal Code. Since qualified theft is punishable by reclusion perpetua, a preliminary investigation must first be conducted “to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial,”

in accordance with Rule 112, Section 1 of the Rules on Criminal Procedure.

At this stage, the conduct of the preliminary investigation and the subsequent determination of the existence of probable cause lie solely within the discretion of the public prosecutor.[29] If upon evaluation of the evidence, the prosecutor finds sufficient basis to find probable cause, he or she shall then cause the filing of the information with the court.

Once the information has been filed, the judge shall then “personally evaluate the resolution of the prosecutor and its supporting evidence”[30] to determine whether there is probable cause to issue a warrant of arrest. At this stage, a judicial determination of probable cause exists.

In *People v. Castillo and Mejia*,[31] this court has stated:

There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.

The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.[32]

The difference is clear: The executive determination of probable cause concerns itself with whether there is enough evidence to support an Information being filed. The judicial determination of probable cause, on the other hand, determines whether a warrant of arrest should be issued. In *People v. Inting*: [33]

x x x Judges and Prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or released. Even if the two inquiries are conducted in the course of one and the same proceeding, there should be no confusion about the objectives. The determination of probable cause for the warrant of arrest is made by the Judge. The preliminary investigation proper—whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial—is the function of the Prosecutor.[34] (Emphasis supplied)

While it is within the trial court’s discretion to make an independent assessment of the evidence on hand, it is only for the purpose of determining whether a warrant of arrest should be issued. The judge does not act as an appellate court of the prosecutor and has no capacity to review the prosecutor’s determination of probable cause; rather, the judge makes a determination of probable cause independent of the prosecutor’s finding.

People v. Court of Appeals and Jonathan Cerbo[35] discussed the rationale. In that case, Jonathan Cerbo allegedly shot Rosalinda Dy in the presence of his father, Billy Cerbo. An information for murder was filed against Jonathan Cerbo. The daughter of Rosalinda Dy, as private complainant, executed a complaint-affidavit charging Billy Cerbo with conspiracy. The prosecutor then filed a motion to amend the information, which was granted by the court. The information was then amended to include Billy Cerbo as one of the accused, and a warrant of arrest was issued against him.

Billy Cerbo filed a motion to quash the warrant arguing that it was issued without probable cause. The trial court granted this motion, recalled the warrant, and dismissed the case against him. The Court of Appeals affirmed this dismissal. This court, however, reversed the Court of Appeals and ordered the reinstatement of the amended information against Billy Cerbo, stating that:

In granting this petition, we are not prejudging the criminal case or the guilt or innocence of Private Respondent Billy Cerbo. We are simply saying that, as a general rule, if the information is valid on its face and there is no showing of manifest error, grave abuse of discretion or prejudice on the part of the public prosecutor, courts should not dismiss it for ‘want of evidence,’ because evidentiary matters should be presented and heard during the trial. The functions and duties of both the trial court and the public prosecutor in “the proper scheme of things” in our criminal justice system should be clearly understood.

The rights of the people from what could sometimes be an “oppressive” exercise of government prosecutorial powers do need to be protected when circumstances so require. But just as we recognize this need, we also acknowledge that the State must likewise be accorded due process. Thus, when there is no showing of nefarious irregularity or manifest error in the performance of a public prosecutor’s duties, courts ought to refrain from interfering with such lawfully and judicially mandated duties.

In any case, if there was palpable error or grave abuse of discretion in the public prosecutor’s finding of probable cause, the accused can appeal such finding to the justice secretary and move for the deferment or suspension of the proceedings until such appeal is resolved.[36] (Emphasis supplied)

In this case, the resolution dated March 4, 2008 of Prosecutor Rey F. Delgado found that the facts and evidence were “sufficient to warrant the indictment of [petitioner] x x x.”[37] There was nothing in his resolution which showed that he issued it beyond the discretion granted to him by law and jurisprudence.

While the information filed by Prosecutor Delgado was valid, Judge Capco-Umali still had the discretion to make her own finding of whether probable cause existed to order the arrest of the accused and proceed with trial.

Jurisdiction over an accused is acquired when the warrant of arrest is served. Absent this, the court cannot hold the accused for arraignment and trial.

Article III, Section 2 of the Constitution states:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

The Constitution prohibits the issuance of search warrants or warrants of arrest where the judge has not personally determined the existence of probable cause. The phrase “upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce” allows a determination of probable cause by the judge *ex parte*.

For this reason, Section 6, paragraph (a) of Rule 112 of the Rules on Criminal Procedure mandates the judge to “immediately dismiss the case if the evidence on record fails to establish probable cause.” Section 6, paragraph (a) of Rule 112 reads:

Section 6. When warrant of arrest may issue. — (a) By the Regional Trial Court. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if

the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.

In *People v. Hon. Yadao*:^[38]

Section 6, Rule 112 of the Rules of Court gives the trial court three options upon the filing of the criminal information: (1) dismiss the case if the evidence on record clearly failed to establish probable cause; (2) issue a warrant of arrest if it finds probable cause; and (3) order the prosecutor to present additional evidence within five days from notice in case of doubt as to the existence of probable cause.

But the option to order the prosecutor to present additional evidence is not mandatory. The court's first option under the above is for it to "immediately dismiss the case if the evidence on record clearly fails to establish probable cause." That is the situation here: the evidence on record clearly fails to establish probable cause against the respondents.^[39] (Emphasis supplied)

It is also settled that "once a complaint or information is filed in court, any disposition of the case, whether as to its dismissal or the conviction or the acquittal of the accused, rests in the sound discretion of the court."^[40]

In this case, Judge Capco-Umali made an independent assessment of the evidence on record and concluded that "the evidence adduced does not support a finding of probable cause for the offenses of qualified theft and estafa."^[41] Specifically, she found that Juno Cars "failed to prove by competent evidence"^[42] that the vehicles alleged to have been pilfered by Alfredo were lawfully possessed or owned by them, or that these vehicles were received by Alfredo, to be able to substantiate the charge of qualified theft. She also found that the complaint "[did] not state with particularity the exact value of the alleged office files or their valuation purportedly have been removed, concealed or destroyed by the accused,"^[43] which she found crucial to the prosecution of the crime of estafa under Article 315, fourth paragraph, no. 3(c) of the Revised Penal Code. She also noted that:

x x x As a matter of fact, this court had even ordered that this case be set for clarificatory hearing to clear out essential matters pertinent to the offense charged and even directed the private complainant to bring documents relative to the same/payment as well as affidavit of witnesses/buyers with the end view of satisfying itself that indeed probable cause exists to commit the present case which private complainant failed to do.^[44]

Accordingly, with the present laws and jurisprudence on the matter, Judge Capco-Umali correctly dismissed the case against Alfredo.

Although jurisprudence and procedural rules allow it, a judge must always proceed with caution in dismissing cases due to lack of probable cause, considering the preliminary nature of the evidence before it. It is only when he or she finds that the evidence on hand absolutely fails to support a finding of probable cause that he or she can dismiss the case. On the other hand, if a judge finds probable cause, he or she must not hesitate to proceed with arraignment and trial in order that justice may be served.

WHEREFORE, the petition is GRANTED. The decision dated January 14, 2011 of the Court of Appeals in CA-G.R. SP. No. 110774 is REVERSED and SET ASIDE. Criminal Case Nos. MC08-11604-05 against Alfredo C. Mendoza are DISMISSED.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

April 30, 2014

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ____April 24, 2014____ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on April 30, 2014 at 11:05 a.m.

Very truly yours,

LUCITA ABJELINA SORIANO
Division Clerk of Court

By:
(SGD)
WILFREDO V. LAPITAN
Deputy Division Clerk of Court

[1] Rollo, pp. 3-31.

[2] Id. at 33-44.

[3] Id. at 80.

[4] Id.

[5] Id. at 81-82.

[6] Id. at 82.

[7] Id. at 60-64.

[8] Id. at 35.

[9] Id.

[10] Id. at 65-67.

[11] Id. at 68-69.

[12] Id. at 70-79.

[13] Id. at 35.

[14] Id. at 35-36.

[15] Id. at 80-85.

[16] Id. at 84.

[17] Id. at 87.

[18] Id. at 36.

[19] Id. at 33-44, Court of Appeals' decision, per Tenth Division, penned by J. Hakim S. Abdulwahid and concurred in by J. Ricardo R. Rosario and J. Samuel H. Gaerlan.

[20] Id. at 44.

[21] Id. at 15.

[22] Id.

[23] Id. at 130-136.

[24] Id. at 146-161.

[25] Id. at 163-166.

[26] Id. at 163.

[27] REVISED PENAL CODE, Art. 310. Qualified Theft. — The crime of theft shall be punished by the penalties next higher in degree than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is large cattle or consists of coconuts, or fish taken from a fishpond or fishery.

[28] REVISED PENAL CODE, Art. 315. Swindling (Estafa). — Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

x x x x

4th. By arresto mayor in its medium and maximum periods, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

x x x x

3. Through any of the following fraudulent means:

x x x x

(c) By removing, concealing or destroying, in whole or in part, any court record, office files, document or any other papers.

[29] See *Leviste v. Alameda*, G.R. No. 182677, August 3, 2010, 626 SCRA 575, 598 [Per J. Carpio-Morales, Third Division].

[30] Rules on Criminal Procedure, Rule 112, sec. 6.

[31] 607 Phil. 754 (2009) [Per J. Quisumbing, Second Division].

[32] Id. at 764-765, citing *Paderanga v. Drilon*, 273 Phil. 290, 296 (1991) [Per J. Regalado, En Banc]; *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568, 620-621 (1996) [Per J. Davide, Jr., En Banc]; *Ho v. People*, 345 Phil. 597, 611 (1997) [Per J. Panganiban, En Banc].

[33] G.R. No. 88919, July 25, 1990, 187 SCRA 788 [Per J. Gutierrez, Jr., En Banc].

[34] Id. at 792-793.

[35] 361 Phil. 401 (1999) [Per J. Panganiban, Third Division].

[36] Id. at 420-421.

[37] Rollo, p. 62.

[38] G.R. Nos. 162144-54, November 13, 2012, 685 SCRA 264 [Per J. Abad, En Banc].

[39] Id. at 287-288.

[40] *Leviste v. Alameda*, G.R. No. 182677, August 3, 2010, 626 SCRA 575, 598 [Per J. Carpio-Morales, Third Division], citing *Galvez v. Court of Appeals*, G.R. No. 114046, October 24, 1994, 237 SCRA 685 [Per J. Regalado, Second Division].

[41] Rollo, p. 84.

[42] Id.

[43] Id.

[44] Id. at 84-85.

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