Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region
Provincial Environment and Natural Resources Office

August 26, 2022

MEMORANDUM

FOR : The Regional Executive Director
MIMAROPA Region

FROM : The In-Charge, Office of the PENRO
Oriental Mindoro

SUBJECT : **RESOLUTION OF REGIONAL TRIAL COURT BRANCH 42 PINAMALAYAN IN PEOPLE OF THE PHILIPPINES VS. MARK REY HERNANDEZ ABEL AND GABRIEL PANERO SERUJANO (CRIMINAL CASE NO. CR21-11806)**

Forwarded is the report of Atty. Frances Margarette A. Mendoza regarding the above subject including its enclosures.

Please be informed that Atty. Mendoza is seeking guidance on the received Court Resolution issued by Presiding Judge Erwin Y. Dimayacyac of Regional Trial Court, Branch 42, Pinamalayan, Oriental Mindoro dismissing the Criminal Case No. CR21-11806 relative to the apprehended vehicle bearing Plate Number CJV 670 loaded with thirty-three (33) sacks of wood charcoal. Likewise, based on the said Resolution, the Office of the Provincial Prosecutor, DENR, and PNP are reminded that filing of similar case within jurisdiction of said Court may be held liable for indirect contempt of court.

For information and consideration.

ALMA E. GIBE

DENRPENRO2208000056

PENRO Tracking No.: 2208000754
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Region Legal chief

Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region
Provincial **E**nvironment and **N**atural **R**esources **O**ffice

August 23, 2022

MEMORANDUM

DENR-MIMAROPA REGION
PROVINCIAL ENVIRONMENT AND NATURAL RESOURCES OFFICE
ORIENTAL MINDORO
PENRO TRACKING NO.
RECEIVED BY:
DATE: AUG 23 2022
TIME:

FOR	:	The Regional Executive Director DENR MIMAROPA Region
ATTENTION	:	The Chief Legal Division
FROM	:	Atty. Frances Margarette A. Mendoza Attorney III
THRU	:	The In-Charge, Office of the PENRO Oriental Mindoro
SUBJECT	:	**RESOLUTION OF REGIONAL TRIAL COURT BRANCH 42 PINAMALAYAN IN PEOPLE OF THE PHILIPPINES VS. MARK REY HERNANDEZ ABEL AND GABRIEL PANERA SERUJANO (CRIMINAL CASE NO. CR21-11806)**

Respectfully forwarded is the photocopy of the *Resolution*[1] dated August 17, 2022 of the Regional Trial Court, Branch 42 Pinamalayan in the case *People of the Philippines vs. Mark Rey Hernandez Abel and Gabriel Panera Serujano* with Criminal Case No. CR21-11806 duly received by the undersigned right after its promulgation on the same date. The dispositive portion of the said Resolution states:

> "WHEREFORE, the Motion to Suppress Evidence is hereby GRANTED. The case against accused Mark Rey Hernandez Abel and Gabriel Panera Serujano is DISMISSED due to unlawful search and seizure. Bail bond posted by both accused amounting to P30,000 each under official receipt nos. 0522099D and 0522100D be released to the bondspersons or duly authorized representative upon presentation of documents and availability of funds.
>
> The vehicle used in transporting the charcoal, bearing plate number CJV 670, be RELEASED to registered owner without any liability upon proper procedure in accordance with law on the ground that charcoal is not a forest product nor a finished wood product. The 33 sacks of charcoal be RELEASED to its owner.
>
> The Office of the Provincial Prosecutor at Oriental Mindoro (OPP-Oriental Mindoro), Department of Environment and Natural Resources (DENR) / Community Environment and Natural Resources (CENRO), and the Philippine National Police (PNP) are reminded that filing of similar case within the jurisdiction of this Court may be held liable for indirect contempt of court.
>
> Furnish copies of this resolution to the Office of the Secretary of the DENR, Regional Office of DENR-MIMAROPA, CENRO

[1] A copy of Resolution dated August 17, 2022 is attached hereto as Annex "A".

Socorro and Roxas, Oriental Mindoro, Chief PNP, PNP-MIMAROPA Regional Director, PNP-Provincial Director, to all Chiefs of Police of all municipal police stations within the territorial jurisdiction of this Court, and to the Office of the Clerk of Court, Regional Trial Court for Pinamalayan, Oriental Mindoro, for their information.

SO ORDERED."[2]

In view of the foregoing, the undersigned is humbly and respectfully seeking guidance on the matter.

For information and consideration.

ATTY. FRANCES MARGARETTE A. MENDOZA

Cc:

CENRO- Socorro
Socorro, Oriental Mindoro

CENRO-Roxas
Roxas, Oriental Mindoro

[2] Ibid, p. 8.

Annex "A"

Republic of the Philippines
Regional Trial Court
Fourth Judicial Region
Branch 42
Pinamalayan, Mindoro Oriental
e-mail address: rtc1pnm042@judiciary.gov.ph
contact number: 0437382186

PEOPLE OF THE PHILIPPINES,
Plaintiff,

versus

Criminal Case No.CR21-11806
For: Violation of PD 705

MARK REY HERNANDEZ ABEL,
and GABRIEL PANERA SERUJANO,
Accused.

x----------x

RESOLUTION

This resolves a Motion to Suppress Evidence filed by both accused on 6 December 2021. A hearing was set on 18 May 2022 on the motion and the prosecution was directed to submit its written comment after series of discussions. The prosecution filed its comment on 31 May 2022, and the defense opted not to file reply to the comment. Hence, this resolution.

The defense argues that arresting officers exceeded in their authority and violated the rights of both accused against unreasonable searches and seizures when extensively searched the truck while conducting a checkpoint. Police officers disregarded the basic requirements in conducting search of moving vehicle as they discovered the sacks of charcoal beneath other items and not in plain view.

The defense also claims that the information received by police officers on a mere tip is unreliable and hearsay. It is not sufficient to constitute probable cause in the absence of other circumstances that will arouse suspicion.

While the prosecution avers that police officers has the authority to search a moving vehicle based on highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity. When accused failed to produce permits relevant to the loads of their vehicle, it verified the tip received by police officers which form probable cause to search the vehicle.

The prosecution avers that both accused voluntarily submitted themselves to consented search. In effect, they had waived their constitutional rights against unreasonable search and seizures. Further, both accused were caught in flagrante delicto as they were transporting charcoal, a forest product, within the definition

of PD 705, *as amended*, also known as the REVISED FORESTRY CODE OF THE PHILIPPINES.

After evaluation of the arguments presented by accused-movant, this Court finds the motion to suppress evidence meritorious. It is clear from the facts that police officers have no sufficient probable cause that both accused were committing an offense when they were flagged down at the checkpoint. The Supreme Court held:

> "Although the general rule is that motorists and their vehicles as well as pedestrians passing through checkpoints may only be subjected to a routine inspection, **vehicles may be stopped and extensively searched when there is probable cause which justifies a reasonable belief of the men at the checkpoints that either the motorist is a law offender or the contents of the vehicle are or have been instruments of some offense.**
>
> "Probable cause has been defined as such facts and circumstances which could lead a reasonable, discreet and prudent man to believe that an offense has been committed, and that the objects sought in connection with the offense are in the place sought to be searched. The required probable cause that will justify a warrantless search and seizure is not detemined by any fixed formula but is resolved according to the facts of each case. (*People v. Vinecario*, G.R. No. 141137, 20 January 2004, *Valmonte v. de Villa*, 185 SCRA 665)" (Emphasis supplied)

The Highest Court further elaborates:

> "Thus, routinary and indiscriminate searches of moving vehicles are allowed if they are limited to a visual search. This holds especially true when the object of the search is a public vehicle where individuals have a reasonably reduced expectation of privacy. **On the other hand, extensive searches are permissible only when they are founded upon probable cause.** Any evidence obtained will be subject to the exclusionary principle under the Constitution. (*Veridiano v. People*, G.R. No. 200370, 7 June 2017)" (Emphasis supplied)

Checkpoints *per se* are not invalid. They are allowed in exceptional circumstances to protect the lives of individuals and ensure their safety. They are also sanctioned in cases where the government's survival is in danger. Considering that routine checkpoints intrude "on [a] motorist's right to 'free passage'" to a certain extent, they must be "conducted in a way least intrusive to motorists." The extent of routine inspections must be limited to a visual search. Routine inspections do not give law enforcers carte blanche to perform warrantless searches. (*Valmonte v. De Villa*, 264 Phil. 265, *People v. Vinecario*, 465 Phil. 192, 206, and *Veridiano v. People*, G.R. No. 200370, 7 June 2017)

In *Valmonte v. De Villa*, 264 Phil. 265, the Supreme Court clarified that "[f]or as long as the vehicle is neither searched nor its occupants subjected to a body search, and the inspection of the vehicle is limited to a visual search, said routine checks cannot be regarded as violative of an individual's right against unreasonable search[es]." Thus, a search where an "officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds, or simply looks into a vehicle, or flashes a light therein" is not unreasonable. However, an extensive search may be conducted on a vehicle at a checkpoint when law enforcers have probable cause to believe that the vehicle's passengers committed a crime or when the vehicle contains instruments of an offense. (*People v. Vinecario*, 465 Phil. 192 and *Veridiano v. People*, G.R. No. 200370, 7 June 2017)

Thus, routinary and indiscriminate searches of moving vehicles are allowed if they are limited to a visual search. This holds especially true when the object of the search is a public vehicle where individuals have a reasonably reduced expectation of privacy. On the other hand, extensive searches are permissible only when they are founded upon probable cause. Any evidence obtained will be subject to the exclusionary principle under the Constitution.

That the object of a warrantless search is allegedly inside a moving vehicle does not justify an extensive search absent probable cause. Moreover, law enforcers cannot act solely on the basis of confidential or tipped information. A tip is still hearsay no matter how reliable it may be. It is not sufficient to constitute probable cause in the absence of any other circumstance that will arouse suspicion. Although courts has upheld warrantless searches of moving vehicles based on tipped information, there have been other circumstances that justified warrantless searches conducted by the authorities.

In the present case, the extensive search conducted by the police officers exceeded the allowable limits of warrantless searches. They had no probable cause to believe that both accused violated any law except for the tip they received. They did not observe any peculiar activity from both accused that may either arouse their suspicion or verify the tip.

Regarding the argument of the prosecution that both accused consented to search, in effect waived their constitutional rights, the Supreme Court held:

> "...Appellant's silence should not be lightly taken as consent to such search. The implied acquiscence to the search, if there was any, could not have been more than **mere passive conformity** given under intimidating or coercive circumstances and is **thus considered no consent at all within the purview of the constitutional guarantee.** Furthermore, considering that the search was conducted irregularly, *i.e.*, without a warrant, we cannot appreciate consent based merely on the presumption of regularity of the performance of duty."(Emphasis supplied)

Thus, accused-appellant's lack of objection to the search is not tantamount to a waiver of her constitutional rights or a voluntary

submission to the warrantless search." (*People v. Aruta*, G.R. No. 120915, 3 April 1998)

The Supreme Court likewise held:

As this Court held in *People v. Barros* (231 SCRA 557):

"x x x [T]he accused is not to be presumed to have waived the unlawful search conducted on the occasion of his warrantless arrest "simply because he failed to object"-

"x x x. To constitute a waiver, it must appear first that the right exists; secondly, that the person involved had knowledge, actual or constructive, of the existence of such right; and lastly, that said person had an actual intention to relinquish the right (*Pasion Vda. de Garcia v. Locsin*, 65 Phil. 698). The fact that the accused failed to object to the entry into his house does not amount to a permission to make a search therein (*Magoncia v. Palacio*, 80 Phil. 770). As pointed out by Justice Laurel in the case of *Pasion Vda. de Garcia v. Locsin* (supra):
'xxx xxx xxx

x x x **As the constitutional guaranty is not dependent upon any affirmative act of the citizen, the courts do not place the citizen in the position of either contesting an officer's authority by force, or waiving his constitutional rights; but instead they hold that a peaceful submission to a search or seizure is not a consent or an invitation thereto, but is merely a demonstration of regard for the supremacy of the law.'** (Citation omitted).

We apply the rule that: **'courts indulge every reasonable presumption against waiver of fundamental constitutional rights and that we do not presume acquiescence in the loss of fundamental rights.'"** (Emphasis original)

To repeat, to constitute a waiver, there should be an actual intention to relinquish the right.

Hence, the search conducted on the vehicle of both accused was unlawful.

Nevertheless, the apprehending officers have no grounds to arrest both accused as no penal law that penalizing the possession of charcoal. Under sec. 77 (68) of PD No. 705, *as amended*, that:

"SECTION 77 (68). Cutting, Gathering and/or collecting Timber, or Other Forest Products Without License. – Any person who shall **cut, gather, collect**, removed timber or **other forest products** from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the

> penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.
>
> The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found." (Emphasis supplied)

While sec.3 (q) of the same law defines forest product, to wit:

> "(q) **Forest product means** timber, pulpwood, firewood, bark, tree top, resin, gum, wood, oil, honey, beeswax, nipa, rattan, or other forest growth such as grass, shrub, and flowering plant, the associated water, fish, game, scenic, historical, recreational and geologic resources in forest lands." (Emphasis supplied)

In sum, it is clear that it is prohibited to cut, gather, collect timber or other products without a license. The law itself defines forest products which, by its classification are **raw, unprocessed or natural materials from forest**. While the items subject of this case is charcoal, which is a hard-black material that is made by burning wood with a small amount of air, a processed product. This Court is guided by a well-acknowledged legal maxim *"expressio unius est exclusio alterius"*. The Supreme Court held:

> "It is a settled rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim *expressio unius est exclusio alterius*. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned (*Development Bank of the Philippines v. Commission on Audit*, G.R. No. 221706, 13 March 2018)."

It was also held that:

> "The rule of *expressio unius est exclusio alterius* and its variations are canons of restrictive interpretation. They are based on the rules of logic and the natural workings of the human mind. They are predicated upon one's own voluntary act and not upon that of others. They proceed from the premise that the legislature would not have made specified enumeration in a statute had the intention been not to

> restrict its meaning and confine its terms to those expressly mentioned (*Dela Salle Araneta University v. Bernardo*, G.R. No. 190809, 13 February 2017)."

In addition, the argument of prosecution that charcoal is a "timber" or "processed log" included **as finished product** by interposing the definition of processing plant is misplaced. Section 3 of PD 705, as amended, enumerated the meaning of words in the law, which defined the meaning of **processing plant**, **not of the forest product or the definition of charcoal**, to wit:

> **"Section 3.** *Definitions.*
>
> ...aa) **PROCESSING PLANT** is any mechanical set-up, machine or combination of machine used for the processing of logs and other forest raw materials into lumber, veneer, plywood, wallboard, block-board, paper board, pulp, paper **or other finished wood products**..."(Emphasis supplied)

Following the argument of the prosecution, in the case of *Merida v. People*, 577 Phil. 243, 256-257 and in a latest case of *Sama et. al., v. People*, G.R. No. 224469, 05 January 2021, the Supreme Court held:

> ... "wood used for or suitable for **building or for carpentry or joinery**." Indeed, tree saplings or tiny tree stems that **are too small for use as posts, panelling, beams, tables, or chairs cannot be considered timber....** Undoubtedly, the narra tree petitioner felled and converted to lumber was "timber" fit "for building or for carpentry or joinery" and thus falls under the ambit of Section 68 of PD 705, as amended.

For obvious reason, charcoal is not only too small to be used as post, paneling, beams, tables or chairs, for its physical appearance, it is impossible to use it for other purpose other than for combustion material for cooking. Hence, as discussed above, **charcoal cannot consider as a forest product nor a finished wood product**. Both accused did not violate PD No. 705, *as amended*, and the case against them should be dismissed.

Fruthermore, no result of laboratory examination was submitted to show that charcoal subject of this case came from non-fruit bearing tree. Besides, it is a common practice within the territorial jurisdiction of this Court that pieces of left-over woods from construction sites used as scaffoldings were collected to be processed as charcoal. Therefore, this Court cast serious doubt to the source of charcoal in this case.

In conclusion, this Court finds the search of the vehicle and the seizure of charcoal subject of this case were made unlawful and inadmissible in evidence. Possession of charcoal is not unlawful within the purview of the law and existing jurisprudence. This Court has only one option, to grant the motion.

Once and for all, filing of this kind of case must cease. Several cases involving charcoal had been dismissed by this Court on the ground that no penal law that prohibits the possession or gathering of charcoal. Even the DENR Administrative Order No. 97-32 which included the word "charcoal" on its definition of forest product to justify the confiscation and forfeiture of conveyance used and tried to amend PD No. 705 is **not a penal law** as it has **no authority to amend the law**.

However, Philippine National Police (PNP) obstinately filing this kind of case in order to exhibit an "accomplishment" in their monthly report to their office and to attain a certain number in their *"quota system"*. While the Department of Environment and Natural Resources (DENR) through Community Environment and Natural Resources (CENRO) of this province continues on its practice of confiscating conveyance carrying charcoal in order to generate revenues.

This Court had observed the systematic practice of these government agencies in this province. The PNP would set up a checkpoint after an alleged "tip" from their "asset" that a driver or trader was able to purchase sacks of charcoal and loaded them in a vehicle. Police officers would flag down cargo the vehicle at the checkpoint to search for charcoal as contraband, apprehend the driver/trader and helper, and confiscate the vehicle and the cargo. The confiscated vehicle and cargo would transfer to the office of DENR/CENRO for documentation, safekeeping, and impoundment. The owner of the vehicle has to post a bond to the DENR/CENRO for temporary release of the vehicle pending the administrative case for confiscation and forfeiture of the vehicle in violation of PD 705, *as amended* for gathering and transporting 'forest product'. Upon release of forfeiture order, the vehicle would schedule for bidding and the owner of the vehicle would bid to get back his/her vehicle by using a dummy or other person posing as bidder than to purchase another one which is of course more expensive.

Worst, if the apprehended person is a member of indigenous people (IP) or *Mangyan* that usually using a motorcycle or tricycle in conveying their commodities and was caught with charcoal. The vehicle would be confiscated and for lack of financial resources to post bond for provisional release of it and to bid back the vehicle. Arrest and seizure of charcoal and conveyance without valid legal basis are wanton, oppressive, and confiscatory. This practice must stop.

This Court recognizes the authority of DENR/CENRO to confiscate forest products including conveyances that was used. However, the authority is valid only if the subject is a forest product or finished wood product. As discussed above, charcoal is not a forest product nor a finished wood product within the context of PD 705, *as amended*, and as dictated by jurisprudence.

If the DENR and the PNP are indeed serious in protecting our environment and possession of charcoal is strictly prohibited, they should proceed to municipalities of Socorro, Mansalay, and Bulalacao of this province where piles of charcoal are in front of almost all stores and sales are rampant along the nautical highway. However, they ignored them for simple reason, for DENR - no vehicle,

no revenue, for PNP – condemnation from chief local executives. The most convenient and lucrative way to apprehend charcoal and vehicles are through checkpoints.

In order not to waste the precious time of this Court, the Department of Justice (DOJ) through National Prosecution Service (NPS), Office of Provincial Prosecutor at Oriental Mindoro (OPP-Oriental Mindoro), DENR/CENRO and the PNP are reminded that filing of similar case within its jurisdiction may be held liable for indirect contempt of court.

WHEREFORE, the Motion to Suppress Evidence is hereby GRANTED. The case against accused Mark Rey Hernandez Abel and Gabriel Panera Serujano is DISMISSED due to unlawful search and seizure. Bail bond posted by both accused amounting to ₱30,000 each under official receipt nos. 0522099D and 0522100D be released to the bondspersons or duly authorized representative upon presentation of documents and availability of funds.

The vehicle used in transporting the charcoal, bearing plate number CJV 670, be RELEASED to registered owner without any liability upon proper procedure in accordance with law on the ground that charcoal is not a forest product nor a finished wood product. The 33 sacks of charcoal be RELEASED to its owner.

The Office of the Provincial Prosecutor at Oriental Mindoro (OPP-Oriental Mindoro), Department of Environment and Natural Resources (DENR) /Community Environment and Natural Resources (CENRO), and the Philippine National Police (PNP) are reminded that filing of similar case within the jurisdiction of this Court may be held liable for indirect contempt of court.

Furnish copies of this resolution to the Office of the Secretary of the DENR, Regional Office of DENR-MIMAROPA, CENRO Socorro and Roxas, Oriental Mindoro, Chief PNP, PNP-MIMAROPA Regional Director, PNP-Provincial Director, to all Chiefs of Police of all municipal police stations within the territorial jurisdiction of this Court, and to the Office of the Clerk of Court, Regional Trial Court for Pinamalayan, Oriental Mindoro, for their information.

SO ORDERED.

Given in open court this 17th of August 2022 at Pinamalayan, Oriental Mindoro, the Philippines.

ERWIN Y. DIMAYACYAC
Presiding Judge