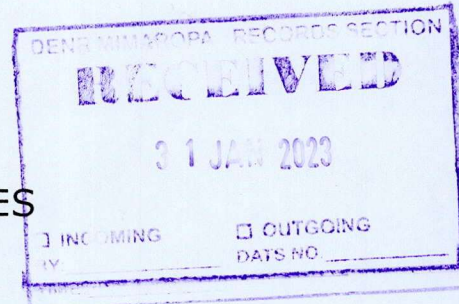


REPUBLIC OF THE PHILIPPINES  
**COURT OF APPEALS**  
MANILA



**PEOPLE OF THE  
PHILIPPINES,**

Petitioner,

-versus-

CA-G.R. No. \_\_\_\_\_

For: Certiorari under  
Rule 65

**HON. ERWIN Y.  
DIMAYACYAC,** in his  
capacity as Presiding Judge  
of the Regional Trial Court,  
4<sup>th</sup> Judicial Region,  
Pinamalayan, Oriental  
Mindoro, Branch 42, **MARK  
REY HERNANDEZ ABEL and  
GABRIEL PANERA  
SERUJANO,**

Respondents.

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## **PETITION**

**PETITIONER PEOPLE OF THE PHILIPPINES**, through  
the Office of the Solicitor General (OSG), respectfully submits  
this petition.

### **NATURE AND TIMELINESS OF THE PETITION**

1. This is a petition for certiorari under Rule 65 of the Revised Rules of Court seeking to set aside the following issuances of public respondent Presiding Judge Erwin Y. Dimayacyac of Branch 42 of the Regional Trial Court (RTC) of Pinamalayan, Oriental Mindoro in Criminal Case No. CR21-11806 entitled *People of the Philippines v. Mark Rey Hernandez Abel and Gabriel Panera Serujano* for having been



**PETITION**

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issued with grave abuse of discretion amounting to lack or excess of jurisdiction:

1.1. Resolution dated August 17, 2022 granting the private respondents' Motion to Suppress Evidence dated December 2, 2021 on the ground that charcoal is not a forest product nor a finished wood product. A certified copy of the Resolution is attached as **Annex "A"** and

1.2. Order dated November 23, 2022 denying the petitioner's Motion for Reconsideration dated September 1, 2022. A certified copy of the Order is attached as **Annex "B."**

2. On August 17, 2022, the petitioner, through the counsel for the Department of Environment and Natural Resources (DENR) as special prosecutor pursuant to Section 34, Rule 9 of the Rules of Procedure for Environmental Cases, received the Resolution granting the private respondents' Motion to Suppress Evidence. On September 1, 2022, the petitioner filed a motion for reconsideration but it was denied in an Order dated November 23, 2022 in open court.

3. The petitioner has sixty days or until January 22, 2023 to file the instant petition for certiorari. Since the last day of the period as computed falls on a Sunday, the petitioner has until the next working day or until January 23, 2023 (Monday) to file the petition. Thus, the petition is being filed within the sixty-day reglementary period provided under Section 4, Rule 65 of the Rules of Court.

### **PROPIETY OF FILING THE PETITION**

4. The filing of the instant petition under Rule 65 of the Revised Rules of Court is properly availed of since the prosecution is proscribed from seeking, through appeal, the reversal of the dismissal of a case.

### **THE PARTIES**

5. Petitioner People of the Philippines is the plaintiff in Criminal Case No. CR21-11806. It is represented in this action



by the Office of the Solicitor General and may be served with writs, orders, and processes of the Honorable Court at 134 OSG Building, Amorsolo St., Legaspi Village, Makati City.

6. Public respondent Erwin Y. Dimayacyac is the Presiding Judge of Branch 42 of the Regional Trial Court (RTC) of Pinamalayan, Oriental Mindoro who rendered the assailed resolution and order. He may be served with writs, orders, and processes of the Honorable Court at his official station in Pinamalayan, Oriental Mindoro, Branch 42, RTC.

7. Private respondents Mark Rey Hernandez Abel and Gabriel Panera Serujano were the accused in Criminal Case No. CR21-11806. They may be served with writs, orders, and processes of the Honorable Court through their counsel of record, Atty. Mary Lyka M. Olita-Cabarles with office address at Public Attorney's Office, Pinamalayan District Office, A and G Building, Mambil St., Sto. Niño Subdivision, Marfrancisco, Pinamalayan, Oriental Mindoro.

## **THE PROCEDURAL AND SUBSTANTIVE FACTS**

8. On October 30, 2021, the Philippine National Police stationed at Gloria Municipal Police Station conducted a simultaneous checkpoint along the Strong Republic Nautical Highway in Brgy. Maligaya, Gloria Silangang Mindoro.<sup>1</sup>

9. About 4:00 p.m. of the same day, PCPT Edwin Villarba received information that a truck loaded with sacks of charcoal would pass by the checkpoint. According to the informant, the truck's plate number is CJV 670. It has markings *Saint Augustine* and *Mama Mary* above its windshield, and *Abel Family* below it. A blue tarp or *trapal* partially covered the opposite sides of the truck. The *trapal* have a markings *CJV 670*. After receiving the information, PCPT Villarba directed PSMS Roderick Red and PSSg Jaybert Jadruque Sosa to proceed to the checkpoint.<sup>2</sup>

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<sup>1</sup> A copy of the *Pinagsamang Sinumpaang Salaysay* of PSMS Roderick Red and PSSg Jaybert Jadruque Sosa, p. 1 is attached as Annex "C" of the petition.

<sup>2</sup> *Id.*



10. PSMS Red and PSSg Sosa went to the checkpoint area. Around 4:45 p.m., the subject truck passed the checkpoint. Patrolman Arvy Manguera and Patrolman Nikon Hernandez flagged down the truck. Once the truck was at the side of the road, PSMS Red and PSSg Sosa found that the truck exactly matched with the description of the vehicle from the tip they received earlier.<sup>3</sup>

11. The police officers then questioned the private respondents. The private respondents admitted to transporting sacks of charcoal. Right then and there, the police officers demanded that they be shown the requisite permit from the Department of Environment and Natural Resources (DENR) but the private respondents were not able to produce any.<sup>4</sup>

12. The police officers then brought the truck and the private respondents to the police station for interrogation and thereafter to the DENR-Community Environment and Natural Resources Office (CENRO). The DENR-CENRO took custody of the vehicle and the thirty-three sacks of charcoal and conducted a summary administrative confiscation hearing and submitted the corresponding recommendation to the DENR Regional Executive Director pursuant to Section 77-A of Presidential Decree No. 705, as amended, in relation to DENR Administrative Order No. 97-32 dated October 10, 1997. Up to this date, the administrative case against the private respondents is still pending.<sup>5</sup>

13. Meanwhile, the private respondents were charged with violation of P.D. No. 705 before Br. 42 of the RTC. The case was docketed as Criminal Case No. CR21-11806 entitled *People of the Philippines v. Mark Rey Hernandez Abel and Gabriel Panera Serujano.* The Information contained the following recitals:

That on or about the 30th day of October, 2021 at around 4:55 O'clock in the afternoon, along Strong Republic Nautical Highway (SRNH), Barangay Maligaya, Municipality

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<sup>3</sup> See Annex "C," p. 1.

<sup>4</sup> *Id.*

<sup>5</sup> A copy of the Explanation of DENR-CENRO dated September 1, 2022, p. 2 is attached as Annex "D" of the petition.



**PETITION**

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of Gloria, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, MARK REY HERNANDEZ ABEL and GABRIEL PANERA SERUJANO, in active conspiracy with each other, with intent to gain and without any license, authority or legal documents as required under existing forestry laws and regulations, did then and there, willfully, unlawfully, feloniously and knowingly gather, collect and transport THIRTY THREE (33) SACKS of manufactured wood charcoal with an estimated value of NINE THOUSAND NINE HUNDRED (PHP 9,900) PESOS, Philippine Currency, loaded to a Utility Vehicle MITSUBISHI with Plate No. CVJ670, Engine No. 800087 and Chassis No. SPMM75298-94C registered and owned by Rollen Jhune Hernandez Abel and driven by accused MARK REY HERNANDEZ ABEL, without any permit from lawful authority, to the damage and prejudice of the Republic in the aforementioned amount.

CONTRARY TO LAW.<sup>6</sup>

14. On December 6, 2021, the private respondents filed a motion to suppress evidence alleging that the process of gathering evidence against them was tainted by a violation of their right against unreasonable search and seizure.<sup>7</sup>

15. On May 31, 2022, the petitioner filed its comment on the motion to suppress evidence emphasizing that the private respondents were caught *in flagrante delicto* for violation of P.D. No. 705, thus, "[T]he tipped information coupled with the probable cause surrounding the warrantless search of a moving vehicle, the waiver of consent of the accused, their failure to present document in support of their lawful right over the wood charcoals and the extrajudicial confession that they were in possession of 33 sacks of wood charcoals prior their arrest supported the case and pieces of evidence against them."<sup>8</sup>

16. On August 17, 2022, the respondent Judge issued the assailed Resolution disposing as follows:

WHEREFORE, the Motion to Suppress Evidence is hereby GRANTED. The case against accused Mark Rey

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<sup>6</sup> A copy of the Information dated November 3, 2021, p. 1 is attached as Annex "E" of the petition.

<sup>7</sup> See Annex "A" of the petition.

<sup>8</sup> A copy of the Comment to the Motion to Suppress Evidence with Entry of Appearance is attached as Annex "F" of the petition.



**PETITION**

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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 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.<sup>9</sup>

17. On September 1, 2022, the petitioner filed a motion for reconsideration but it was denied in the assailed Order dated November 23, 2022.

18. Hence, this petition.

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<sup>9</sup> See Annex "A" of the petition, p. 8.



## **GROUND FOR THE ALLOWANCE OF THE PETITION**

### **I.**

RESPONDENT JUDGE ERWIN Y. DIMAYACYAC  
ACTED WITH GRAVE ABUSE OF DISCRETION  
AMOUNTING TO LACK OR EXCESS OF  
JURISDICTION WHEN HE GRANTED THE PRIVATE  
RESPONDENTS' MOTION TO SUPPRESS EVIDENCE  
AND DISMISSED CRIMINAL CASE NO. CR21-  
11806.

### **II.**

RESPONDENT JUDGE ERWIN Y. DIMAYACYAC  
ACTED WITH GRAVE ABUSE OF DISCRETION  
AMOUNTING TO LACK OR EXCESS OF  
JURISDICTION IN CONCLUDING THAT THERE WAS  
NO BASIS FOR THE ARREST OF THE PRIVATE  
RESPONDENTS BECAUSE CHARCOAL IS NEITHER A  
FOREST PRODUCT NOR A FINISHED WOOD  
PRODUCT WITHIN THE PURVIEW OF P.D. NO. 705.

### **III.**

RESPONDENT JUDGE ERWIN Y. DIMAYACYAC  
GRAVELY ABUSED HIS DISCRETION AMOUNTING  
TO LACK OR EXCESS OF JURISDICTION IN  
ORDERING THE RELEASE OF THE CONFISCATED  
VEHICLE AND THE 33 SACKS OF CHARCOAL TO  
THE REGISTERED OWNER.

### **IV.**

RESPONDENT JUDGE ERWIN Y. DIMAYACYAC  
GRAVELY ABUSED HIS DISCRETION AMOUNTING  
TO LACK OR EXCESS OF JURISDICTION IN  
GRANTING THE MOTION TO SUPPRESS EVIDENCE  
OUT OF PERSONAL BIAS.



V.

THE PETITIONER IS ENTITLED TO THE ISSUANCE  
OF A TRO AND/OR A WRIT OF PRELIMINARY  
INJUNCTION.

## DISCUSSION

19. The respondent Judge acted with grave abuse of discretion when he granted the private respondents' motion to suppress evidence and dismissed Criminal Case No. CR21-11806.

20. Grave abuse of discretion has been defined as a "capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law."<sup>10</sup> It implies such a whimsical exercise of judgment as equivalent to lack of jurisdiction, or in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.<sup>11</sup>

*I. The respondent Judge gravely abused his discretion amounting to lack or excess of jurisdiction in granting the private respondents' motion to suppress evidence despite the propriety of the conduct of the search and seizure.*

21. The respondent Judge gravely abused his discretion amounting to lack or excess of jurisdiction when he concluded that the police officers had no probable cause that the private respondents were committing an offense thereby making the

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<sup>10</sup> Cruz v. People of the Philippines, G.R. No. 224974, July 3, 2017, citing Rodriguez v. Hon. Presiding Judge of the Regional Trial Court of Manila, Branch 17, et al., 518 Phil. 455, 462 (2006).

<sup>11</sup> Chua v. People of the Philippines, G.R. No. 195248, November 22, 2017.



conduct of the search and seizure against them unreasonable.

22. Section 2, Article II of the 1987 Constitution provides:

SECTION 2. 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.

23. The issuance of a search warrant must be premised on a finding of a probable cause, that is, the existence of such facts and circumstances which would lead a reasonably discreet and prudent man to believe an offense has been committed and that the object sought in connection with the offense are in the place to be searched.<sup>12</sup> The rule requiring warrants, however, is not absolute. Jurisprudence has recognized instances when warrantless searches and seizures are allowed, thus:

a. Warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence;

b. Seizure of evidence in "plain view," the elements of which are:

b.1 a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;

b.2 the evidence was inadvertently discovered by the police who had the right to be where they are;

b.3 the evidence must be immediately apparent, and

b.4 "plain view" justified mere seizure of evidence without further search;

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<sup>12</sup> *People of the Philippines v. Yanson, et al.*, G.R. No. 238453 dated July 31, 2019.



c. Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;

d. Consented warrantless search;

e. Customs search;

f. Stop and Frisk; and

g. Exigent and Emergency Circumstances.<sup>13</sup>

24. Following the preceding enumeration, a search of a moving vehicle is one of the permissible exceptions where warrantless searches can be made. In *People of the Philippines v. Mariacos*, the Supreme Court ratiocinated:

This exception is easy to understand. A search warrant may readily be obtained when the search is made in a store, dwelling house or other immobile structure. But it is impracticable to obtain a warrant when the search is conducted on a mobile ship, on an aircraft, or in other motor vehicles since they can quickly be moved out of the locality or jurisdiction where the warrant must be sought.<sup>14</sup>

25. For a warrantless search of a moving vehicle to be valid, probable cause remains essential. In determining the existence of probable cause, bare suspicion is never enough. It requires the existence of a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he is charged.<sup>15</sup>

26. In this case, there was probable cause for the police officers to search the private respondents. The police officers went to the checkpoint area after receiving information that a truck bearing plate number CJV 670 loaded with illegally obtained charcoal would pass through. When the police officers saw the truck resembling this description passed by,

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<sup>13</sup> *Manibog v. People of the Philippines*, G.R. No. 211214 dated March 20, 2019.

<sup>14</sup> 635 Phi. 315 [2010].

<sup>15</sup> *Manibog v. People of the Philippines*, *supra*.



the police officers flagged it down. PSMS Red and PSSg Sosa detailed the circumstances leading to the conduct of the warrantless search and seizure against the private respondents:<sup>16</sup>

2. *Na, sa ganap na ikaw-4:00 ng hapon ng parehong petsa, habang kami ay nasa aming tanggapan inatasan kami ng aming Hepe na si PCPT EDWIN VILLARBA na magpunta sa checkpoint sapagkat may dadaan na trucking na manggagaling sa Brgy Malayong, Gloria Silangang Mindoro na diumanaoy nagkarga itong mga uling na kahoy na walang kaukulang permit. Na ang nasabing impormante na hindi na nagpabanggit ng kanyang pangalan para sa kanyang kaligtasan.*

3. *Na, ang nasabing sasakyan na pinagkakargahan ng uling ng kahoy ay may plaka na CJV 670 at may nakasulat sa unahan sa bandang itaas nag (sic) wind shield na Saint Augustine at sa bandang taas nito at Mama Mary at bandang ibaba ay Abel Family at ang nasabi ding sasakyan ay may trapal ng kulay asul sa magkabilang gilid at nakasulat din sa trapal ang plaka ng sasakyan na CVJ 670 at may karga ding mga sako ng bigas sa ibabaw na napapailalim nito ay mga saging sa bandang hulihan ng sasakyan may trapal din na stripe ng kulay pula, dilaw at berde.*

4. *Na, bandang 4:55 ng hapon ng araw din yoon dumaan na sa checkpoint ang nasabing trucking na may karga na mga uling ng kahoy at ito ay pinara nina Patrolman Arvy Manguera at Patrolman Nikon Hernandez na mga personnel ng 2nd PMFC at pinatabi na sa gilid ng hi-way habang ito ay kinukunan nina PSSg Normelito Saguid at PCpl Ronnel Delmo ng video na ninirequired ng korte hinggil sa mga mahuhuling nagkakasala sa batas, sa aming pagbi'video nakita namin na lahat ng impormasyon na sinabi ng aming hepe na si PCPT EDWIN H VILLARBA ay nagtutugma lahat sa pinarang trucking;"<sup>17</sup>*

27. PSSg Normelito Saguid and PCpl Ronnel De Leon Delmo corroborated the statements of PSMS Roderick Red and PSSg Jaybert Jadruque Sosa.<sup>18</sup>

<sup>16</sup> See Annex "C" of the petition.

<sup>17</sup> A copy of the photograph showing the plate number of the vehicle as CVJ 670 lifted from Page 17 of the RTC's Records is attached as Annex "G" of the petition; Underscoring supplied.

<sup>18</sup> A copy of the Pinagsamahang Salaysay of PSSg Normelio Saguid and PCpl Ronnel De Leon Delmo is attached as Annex "H" of the petition.



28. To be sure, law enforcers cannot act solely on the basis of confidential or tipped information.<sup>19</sup> The Supreme Court explained that in prior cases wherein the Court validated warrantless searches and seizures on the basis of tipped information, the seizures and arrests were not merely and exclusively based on the initial tips. Rather, they were prompted by other attendant circumstances. Whatever initial suspicion they had from being tipped was progressively heightened by other factors, such as the accused's failure to produce identifying documents, papers pertinent to the items they were carrying, or their display of suspicious behavior upon being approached. In such cases, the finding of probable cause was premised on more than just the initial information relayed by assets. It was the confluence of initial tips and a myriad of other occurrences that ultimately sustained probable cause.<sup>20</sup>

30. Here, the police officers did not merely rely on the tip. At the checkpoint, the police officers saw that the truck of the private respondents exactly matched the description of the truck carrying illegal charcoal according to the tip.<sup>21</sup> This circumstance roused the suspicion of the police officers. Upon inspection of the truck, the police officers saw that the *trapal* was at the endmost part of the truck, the goods loaded were visible through the openings and the sacks of charcoal were visible from inside the truck. All these circumstances when taken together contributed to a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity justifying the warrantless search of a moving vehicle.

29. In *Caballes v. Court of Appeals, et al.*, the Supreme Court discussed the definition of probable cause that would justify warrantless search and seizure at checkpoints and the appreciation of tipped information, *viz.*:

Still and all, the important thing is that there was probable cause to conduct the warrantless search, which must still be present in such a case.

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<sup>19</sup> People of the Philippines v. Guerro, G.R. No. 244045 dated June 16, 2020.

<sup>20</sup> People of the Philippines v. Guerro, *supra*.

<sup>21</sup> See Annex "C" of the petition.



**PETITION**

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Although the term eludes exact definition, probable cause signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged; or the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched. The required probable cause that will justify a warrantless search and seizure is not determined by a fixed formula but is resolved according to the facts of each case.

One such form of search of moving vehicles is the "stop-and-search" without warrant at military or police checkpoints which has been declared to be not illegal per se, for as long as it is warranted by the exigencies of public order-and conducted in a way least intrusive to motorists. A checkpoint may either be a mere routine inspection or it may involve an extensive search.

...

On the other hand, when a vehicle is stopped and subjected to an extensive search, such a warrantless search would be constitutionally permissible only if the officers conducting the search have reasonable or probable cause to believe, before the search, that either the motorist is a law-offender or they will find the instrumentality or evidence pertaining to a crime in the vehicle to be searched.

This Court has in the past found probable cause to conduct without a judicial warrant an extensive search of moving vehicles in situations where (1) there had emanated from a package the distinctive smell of marijuana; (2) agents of the Narcotics Command ("Narcom") of the Philippine National Police ("PNP") had received a confidential report from informers that a sizeable volume of marijuana would be transported along the route where the search was conducted; (3) Narcom agents had received information that a Caucasian coming from Sagada, Mountain Province, had in his possession prohibited drugs and when the Narcom agents confronted the accused Caucasian, because of a conspicuous bulge in his waistline, he failed to present his passport and other identification papers when requested to do so; (4) Narcom agents had received confidential information that a woman having the same physical appearance as that of the accused would be transporting marijuana;-(5) the accused who were riding a jeepney were stopped and searched by policemen who had earlier received confidential reports that said accused would



transport a large quantity of marijuana; and (6) where the moving vehicle was stopped and searched on the basis of intelligence information and clandestine reports by a deep penetration agent or spy - one who participated in the drug smuggling activities of the syndicate to which the accused belonged - that said accused were bringing prohibited drugs into the country.

...

Our jurisprudence is replete with cases where tipped information has become a sufficient probable cause to effect a warrantless search and seizure.<sup>22</sup>

30. Moreover, the private respondents consented to the removal of the *trapal* of the truck when they were asked by the police officers. Based on the *Pinagsamang Sinumpaang Salaysay*, the police officers' request to search the truck was orally articulated to the private respondents and in such language that left no room for doubt that the latter fully understood what was requested.<sup>23</sup> The private respondents therefore freely gave their consent to the search.

31. The Supreme Court in *People of the Philippines v. Omaweng*<sup>24</sup> is instructive on the matter:

Accused was not subjected to any search which may be stigmatized as a violation of his Constitutional right against unreasonable searches and seizures. If one had been made, this Court would be the first to condemn it "as the protection of the citizen and the maintenance of his constitutional rights is one of the highest duties and privileges of the Court." He willingly gave prior consent to the search and voluntarily agreed to have it conducted on his vehicle and travelling bag.

...

Thus, the accused waived his right against unreasonable searches and seizures. As this Court stated in *People v. Malasugui*:

[W]hen one voluntarily submits to a search or consents to have it made of (sic) his

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<sup>22</sup> G.R. No. 136292 dated January 15, 2002.

<sup>23</sup> See Annex "C" and "G" of the petition.

<sup>24</sup> G.R. No. 99050 dated September 2, 1992.



person or premises, he is precluded from later complaining thereof (Cooley, Constitutional Limitations, 8th ed., vol. I, page 631.) The right to be secure from unreasonable search may, like every right, be waived and such waiver may be made either expressly or impliedly.

32. Equally damning to the private respondents was the fact that when asked by the police officers for a permit they failed to present any document showing lawful possession and transportation of the wood charcoal. Such failure only strengthened the suspicion of the police officers that the private respondents were indeed committing a criminal activity and hence justified the warrantless search and arrest.

33. Besides, the private respondents readily admitted that they had 33 sacks of wood charcoal inside the truck prior to their arrest. This amounted to extrajudicial confession. Section 3, Rule 133 of the Revised Rules of Evidence accordingly provides that extrajudicial confession made by an accused shall be sufficient ground for conviction when corroborated by evidence of *corpus delicti*. In this case, the extrajudicial confession made by the private respondents that they had 33 sacks of wood charcoal was supported by the actual, direct, object evidence of the *corpus delicti*, that is, the 33 sacks of wood charcoal found inside the truck of the private respondents.

34. In sum, there was probable cause premised on circumstances other than the original tip concerning a truck illegally transporting wood charcoal for the police officers to search the truck of the private respondents. The respondent Judge therefore gravely erred in granting the private respondents' motion to suppress evidence.



*II. The respondent Judge gravely abused his discretion amounting to lack or excess of jurisdiction in concluding that there was no basis for the arrest of the private respondents because charcoal is neither a forest product nor a finished wood product within the purview of P.D. No. 705.*

35. In the assailed Resolution, the respondent Judge declared that the private respondents did not violate P.D. No. 705 because charcoal is not considered as among the forest products. The ruling must be reversed.

36. Section 3(q) of P.D. No. 705 defines forest products as follows:

Section 3. *Definitions...*

(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....

37. Under DENR Administrative Order No. 97-32 dated October 10, 1997, forest products refer to timber including lumber, pulpwood, firewood, bark, tree top, resin, gum, wood, oil, honey, beeswax, nipa, ratan, **charcoal**, or other forest growth, such as but not limited to grass, shrub, flowering plants in forest lands, and others.<sup>25</sup>

38. In *Merida v. People of the Philippines*,<sup>26</sup> the Supreme Court clarified what constitutes timber and other forest products, thus:

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<sup>25</sup> Emphasis supplied.

<sup>26</sup> G.R. No. 158182 dated June 12, 2008.



**PETITION**

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We further hold that the lone narra tree petitioner cut from the Mayod Property constitutes "timber" under Section 68 of PD 705, as amended. PD 705 does not define "timber," only "forest product" (which circuitously includes "timber.")—Does the narra tree in question constitute "timber" under Section 68? The closest this Court came to defining the term "timber" in Section 68 was to provide that "timber," includes "lumber" or "processed log." In other jurisdictions, timber is determined by compliance with specified dimensions—or certain "stand age" or "rotation age." In *Mustang Lumber, Inc. v. Court of Appeals*, this Court was faced with a similar task of having to define a term in Section 68 of PD 705 "lumber" to determine whether possession of lumber is punishable under that provision. In ruling in the affirmative, we held that "lumber" should be taken in its ordinary or common usage meaning to refer to "processed log or timber," thus:

The Revised Forestry Code contains no definition of either timber or lumber. While the former is included in forest products as defined in (A) of Section 3, the latter is found in (aa) of the same section in the definition of "Processing plant," which reads:

(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, blackboard, paper board, pulp, paper or other finished wood products.

This simply means that lumber is a processed log or processed forest raw material. Clearly, the Code uses the term lumber in its ordinary or common usage. In the 1993 copyright edition of Webster's Third New International Dictionary, lumber is defined, *inter alia*, as "timber or logs after being prepared for the market." Simply put, lumber is a processed log or timber.

It is settled that in the absence of legislative intent to the contrary, words and phrases used in a statute should be given their plain, ordinary, and common usage meaning. And in so far as possession of timber without the required legal documents is concerned, Section 68 of PD No. 705, as amended, makes no distinction between raw and processed timber. Neither should we.



39. The inclusion of charcoal as a forest product is clear pursuant to P.D. No. 705, DAO No. 97-32, and the jurisprudence. As such, the respondent Judge was incorrect when he concluded that the private respondents did not violate P.D. No. 705 when they were found in possession of 33 sacks of charcoal without the required permit.

40. To recall, the private respondents were prosecuted for violation of Section 68 of P.D. No. 705, as amended by P.D. No. 1559 and re-numbered by Republic Act (R.A.) No. 7161:

Sec. 1. Section 68 of Presidential Decree (P.D.) No. 705, as amended, is hereby amended to read as follows:

"Sec. 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."<sup>27</sup>

41. The foregoing law criminalizes two distinct and separate offenses, namely: (a) the cutting, gathering, collecting, and removing of timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority; and (b) the possession of timber or other forest products without

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<sup>27</sup> Emphasis supplied.



the legal documents required under existing laws and regulations. In the first offense, the legality of the acts of cutting, gathering, collecting, or removing timber or other forest products may be proven by the authorization issued by the DENR. In the second offense, however, it is immaterial whether the cutting, gathering, collecting and removal of forest products are legal precisely because mere possession of forest products without the requisite documents consummates the crime.<sup>28</sup>

42. In this case, the private respondents were caught *in flagrante delicto* transporting, and thus, in possession of, 33 sacks of charcoal without proper authority from the DENR. The private respondents never denied this fact. Clearly, the fact of possession by the private respondents of the charcoal and their subsequent failure to produce the requisite legal documents, taken together, had already given rise to criminal liability under Section 68 of P.D. No. 705, as amended. The direct and affirmative statements of the arresting officers on the circumstances surrounding the apprehension of the private respondents established the latter's liability. Furthermore, P.D. No. 705 is a special penal statute that punishes acts essentially *malum prohibitum*, in which case good faith and absence of criminal intent are not valid defenses. When the crime is punished by a special law, as a rule, intent to commit the crime is not necessary. It is sufficient that the offender has the intent to perpetrate the act prohibited by the special law.<sup>29</sup>

43. The respondent Judge likewise gravely erred in concluding that charcoal is not considered as forest product because it is too small for other uses except for combustion material for cooking. Such declaration is misplaced. As previously discussed, charcoal is a processed forest raw material and is among those enumerated as forest products. The law did not distinguish between big and small forest products. Neither should the respondent Judge. Moreover, the respondent Judge's conclusion that charcoal is a non-forest product would give rise to a dangerous interpretation wherein any person can escape liability by converting forest products or finished wood products into charcoal.

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<sup>28</sup> Monge v. People of the Philippines, G.R. No. 170308 dated March 7, 2008.

<sup>29</sup> Fajardo v. People of the Philippines, G.R. No. 190889, January 10, 2011.



44. To stress, the intention of Sec. 68 of P.D. No. 705, as amended, is to treat the possession of timber and other forest products without the required permit as a criminal offense. This is to deter people from committing illegal charcoal production activities. To interpret otherwise is to defeat the very purpose of the law. A statute must be read according to its spirit and intent.<sup>30</sup> A too literal reading of the law constrict rather than fulfill its purpose and defeat the intention of its authors.<sup>31</sup> The too literal interpretation of the law leads to absurdity which the Honorable Court should not countenance.

45. Prescinding, charcoal production has adverse effects on the environment as it is contributory to global warming. As stated in a scholarly journal, "[t]he most commonly cited impact [of charcoal production] is deforestation, *i.e.*, the clearance of forest or woodland..."<sup>32</sup> Charcoal production has also adverse effects on health. A Brazilian study among charcoal production workers reported a prevalence of 35.8% of upper airways symptoms (sneezing and nasal secretion), cough (22.3%), rhinitis (20.8%), asthma (5-9796), and COPD (5-97%). Charcoal processing activities are associated with charcoal dust exposure, which may increase the risk of workers developing adverse respiratory outcomes. Charcoal production may result in an increased risk of cough, chronic bronchitis, bronchial asthma.<sup>33</sup> Hence, it is the responsibility of the State to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.<sup>34</sup> *Oposa v. Factoran*<sup>35</sup> provided the occasion for the Supreme Court to discuss this important right:

While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow

<sup>30</sup> Cometa, et al. v. CA, et al., G.R. No. 141855, February 6, 2001.

<sup>31</sup> Cagas v. COMELEC, et. al., G.R. No. 209185, October 25, 2013.

<sup>32</sup> Chidumayo, E., et al., 2013, The Environmental Impacts of Charcoal Production in Tropical Ecosystems of the World: A Synthesis, Energy for Sustainable Development, Volume 17, Issue 2, April 2013, pp. 86-94., <https://www.sciencedirect.com/science/article/pii/S0973082612000476>, retrieved on January 21, 2023.

<sup>33</sup> Hamatui, N., et al., 2016, Respiratory Health Effects Of Occupational Exposure to Charcoal Dust in Namibia, National Library of Medicine, [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5102234/#:~:text=Charcoal%20production%20may%20result%20in,\(95%25%20CI%3A%201%E2%80%933,](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5102234/#:~:text=Charcoal%20production%20may%20result%20in,(95%25%20CI%3A%201%E2%80%933,) retrieved on January 21, 2023.

<sup>34</sup> 1987 Constitution, Article II Declaration of Principles and State Policies, Section 16.

<sup>35</sup> G.R. NO. 101083 dated July 30, 1993.



that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation — aptly and fittingly stressed by the petitioners — the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come — generations which stand to inherit nothing but parched earth incapable of sustaining life.

46. Having stated thus, our forest resources may be effectively conserved and protected only through the vigilant enforcement and implementation of our forestry laws.<sup>36</sup> Strong paramount public policy should not be degraded by narrow constructions of the law that frustrate its clear intent or unreasonably restrict its scope.<sup>37</sup>

*III. The respondent Judge gravely abused his discretion amounting to lack or excess of jurisdiction in ordering the release of the confiscated vehicle and the 33 sacks of charcoal to the registered owner.*

47. The respondent Judge does not have jurisdiction to release the vehicle and the 33 sacks of charcoal being held by the DENR by virtue of an administrative case.

48. The administrative proceeding pending before the DENR is separate and different from the criminal aspect

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<sup>36</sup> DENR vs. Daraman, G.R. No. 125797, February 15, 2002 citing 111 VLD 73.

<sup>37</sup> *Id.*, citing Republic v. Sandiganbayan, 240 SCRA 376, 472, January 23, 1995.



before the respondent Judge. It is well settled that a single act may offend against two or more distinct and related provisions of law, or that the same act may give rise to criminal as well as administrative liability.<sup>38</sup> As such, they may be prosecuted simultaneously or one after another, so long as they do not place the accused in double jeopardy of being punished for the same offense.<sup>39</sup>

49. This is what happened in the present case. While a criminal case was filed and was given to the respondent Judge, a separate administrative case was filed and is still pending before the DENR.

50. Thus, it is erroneous for the respondent Judge to claim that he has acquired exclusive jurisdiction over the case to the exclusion of other courts or tribunals. While it is true that the respondent Judge acquired jurisdiction over the criminal aspect of the violation of the law committed by the private respondents, it did not divest the DENR of its administrative jurisdiction over the forest product subject of the case.

51. Criminal and administrative cases are distinct from each other. The settled rule is that criminal and civil cases are altogether different from administrative matters, such that the first two will not inevitably govern or affect the third and *vice versa*. It is indeed a fundamental principle of administrative law that administrative cases are independent from criminal actions for the same act or omission. Thus, an absolution from a criminal charge is not a bar to an administrative prosecution, or *vice versa*. One thing is administrative liability; quite another thing is the criminal liability for the same act. Administrative cases may proceed independently of criminal proceedings. Thus, while the criminal case pending before the respondent Judge had already been dismissed, this has no effect whatsoever on the administrative case pending before the DENR.

52. Because the criminal and administrative proceedings are separate, the respondent Judge cannot order

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<sup>38</sup> Paredes, Jr. v. Sandiganbayan, 322 Phil. 709, 730 [1996].

<sup>39</sup> *Id.*



the release of the vehicle and the 33 sacks of charcoal because they are being legally held in custody by virtue of a separate administrative proceeding pending before the DENR. While the vehicle and 33 sacks of charcoal were originally seized by virtue of a valid warrantless search, they are now being held because of a separate administrative proceeding in the DENR.

53. Simply put, there already exists a separate administrative proceeding. The respondent Judge sitting as a court with criminal jurisdiction, cannot order the DENR to release the vehicle and the 33 sacks of charcoal because the administrative proceedings before the DENR are completely separate and are therefore outside the jurisdiction of the respondent Judge.

54. To emphasize the point that the DENR has the power to seize and confiscate illegal forest products and that the respondent Judge may not order its release, it must be pointed out that even the remedy of replevin is not available if the forest product is in *custodia legis* by virtue of an administrative proceeding before the DENR.

55. The preamble of the amendment in Executive Order (E.O.) No. 277 underscores the urgency to conserve the remaining forest resources of the country for the benefit of the present and future generations. Pursuant to this, the enforcement of forestry laws, rules and regulations and the protection, development and management of forest lands fall within the primary and special responsibilities of the DENR.<sup>40</sup> The DENR is the agency responsible for the enforcement of forestry laws. Section 4 of E.O. No. 192 states that the DENR shall be the primary agency responsible for the conservation, management, development, and proper use of the country's natural resources.<sup>41</sup> Section 68 of P.D. No. 705, as amended by E.O. No. 277, states that possessing forest products without the required legal documents is punishable. Section 68-A states that the DENR Secretary or his duly authorized representatives may order the confiscation of any forest

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<sup>40</sup> Paat v. Court of Appeals, G.R. No. 111107 January 10, 1997.

<sup>41</sup> Dagudag v. Judge Paderanga, A.M. No. RTJ-06-2017, June 19, 2008.



product illegally cut, gathered, removed, possessed, or abandoned.<sup>42</sup>

56. Furthermore, it must be reiterated that while the vehicle in question was seized by virtue of a valid warrantless search, this did not prevent the institution of the separate administrative proceeding. And while criminal case has been terminated because the motion to suppress evidence was granted, the respondent Judge cannot order the release of the vehicle.

57. Property used as evidence must be returned once the criminal proceedings to which it relates have terminated, unless it is then subject to forfeiture or other proceedings.<sup>43</sup> In the present case, the vehicle and the 33 sacks of charcoal are being held because of the administrative proceeding pending before the DENR in exercise of its administrative jurisdiction, and thus cannot be released by the order of the respondent Judge.

58. In fine, the DENR does not want to defy the orders of the respondent Judge. It must, however, insist on upholding its jurisdiction and mandate in confiscating the vehicle in question.

*IV. The respondent Judge gravely abused his discretion amounting to lack or excess of jurisdiction in granting the motion to suppress evidence out of personal bias.*

59. The respondent Judge glaringly displayed personal bias and extreme partiality against the DENR and police officers as evident in the reading of the assailed Resolution:

However, Philippine National Police (PNP) obstinately filing (sic) this kind of case in order to exhibit an

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<sup>42</sup> *Id.*

<sup>43</sup> PDEA v. Brodett, G.R. No. 196390 dated September 28, 2011 citing 24 CJS, Criminal Law, §1733, c., citing United States v. Premises Known as 608 Taylor Ave., Apartment 302, Pittsburgh, Pennsylvania, C.A. Pa., 584 F. 2d 1297.



'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.

The 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 (sic) 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 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 (sic) using a motorcycle or tricycle in conveying their commodities and was caught with charcoal (sic) [t]he vehicle would be confiscated and for lack of financial resources to 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.

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, Mansalav 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.<sup>44</sup>

60. Moreover, the personal bias of the respondent Judge is very obvious during the hearings that transpired last

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<sup>44</sup> See Annex "A.". Emphasis supplied.



August 17, 2022<sup>45</sup> and November 23, 2022,<sup>46</sup> wherein the respondent Judge falsely accused the police officers and the DENR of generating revenues from the apprehension of conveyance and charcoal, to wit:

COURT:

*...Pero ako ay sawang sawa na talaga. Kapag yan ay isinampa pa dito yang charcoal na 'yan ay naku magkakasubukan tavo. Sinasayang nyo and oras ng Hukuman. Madami kaming kaso dito, rape, heinous crime. Tapos ang pag-uusapan natin dito uling. Alin ang mas mahalaga, ang uling o' yung mga kasong rape, murder, homicide o ilang minuto na ako ditong nagadadakdak o dahilan sa uling. Let us not waste the time of this Court, energy and effort of this kind of charcoal, my goodness! Basahin ang susunod na habla.<sup>47</sup>*

61. Indeed, a judge must, at all times, maintain the appearance of fairness and impartiality. His language, both written and spoken, must be guarded and measured, lest the best of intentions be misconstrued.<sup>48</sup> Verily, due process of law requires a hearing before an impartial and disinterested tribunal, and that every litigant is entitled to nothing less than the cold neutrality of an impartial judge.<sup>49</sup>

### **THE PETITIONER IS ENTITLED TO THE ISSUANCE OF A TRO AND/OR A WRIT OF PRELIMINARY INJUNCTION**

62. The petitioner repleads the foregoing allegations in support of its application for the issuance of a temporary restraining order and writ of preliminary injunction to enjoin the respondent Judge from ordering the release of the vehicle and the 33 sacks of charcoal under the custody of the DENR.

63. Under Section 3, Rule 58 of the Rules of Court, as amended, the issuance of a temporary restraining order and a writ of preliminary injunction may be granted if the following grounds are established:

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<sup>45</sup> A copy of the TSN dated August 17, 2022, pp. 7-9 is attached as Annex "I."

<sup>46</sup> A copy of the TSN dated November 23, 2022, pp. 12-13 is attached as Annex "J."

<sup>47</sup> See Annex "J."

<sup>48</sup> People v. Serrano, G.R. No. L-44712, October 28, 1991.

<sup>49</sup> People v. Ong, G.R. Nos. 162130-39, May 5, 2006.



**PETITION**

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a. That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

b. That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

c. That a party, court, agency, or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

64. The requisites for the issuance of the injunctive writ are: (a) the right of the complainant is clear and unmistakable; (b) the invasion of the right sought to be protected is material and substantial; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage.

65. These requisites are present here. The DENR has a clear and unmistakable right to confiscate the vehicle and the 33 sacks of charcoal pending the administrative case for violation of P.D. No. 705. The non-issuance of these provisional remedies greatly affects the DENR's right to prosecute the private respondents for their illegal acts in violation of P.D. No. 705, and there exists no other speedy and adequate remedy available to the petitioner to enjoin the execution of the assailed Resolution.

66. To stress, there is an urgency for the issuance of the writ to prevent serious damage to the State, as this involves paramount public interest since it undeniably affects the adjudicatory power granted to the DENR. Also, the administrative case against the private respondents is for violation of P.D. No. 705. If not enjoined, the private respondents will never be held accountable for their acts, if later found liable.



67. An injunctive relief is warranted to prevent injury and damage from being incurred, otherwise it will render any judgment in the administrative case before the DENR ineffectual.<sup>50</sup> It is a well-settled rule that the sole object of a preliminary injunction, whether prohibitory or mandatory, is to preserve the status *quo* until the merits of the case can be heard. It is usually granted when it is made to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the status *quo* of the controversy before a full hearing can be had on the merits of the case.<sup>51</sup>

68. In sum, if a temporary restraining order or writ of preliminary injunction will not be issued to enjoin the execution of the assailed Resolution, the DENR will be deprived of its right and duty to hear the administrative case against the private respondents and to resolve the case on the merits.

### **PRAYER**

The petitioner consequently prays that the Honorable Court **GIVE DUE COURSE** to, and **GRANT** the petition by:

1. **REVERSING** and **SETTING ASIDE** Resolution dated August 17, 2022 and Order dated November 23, 2022;
2. **ISSUING** an Order reinstating Criminal Case No. CR21-11806; and
3. **ISSUING** a Temporary Restraining Order and/or Writ of Preliminary Injunction enjoining the execution of Resolution dated August 17, 2022 and Order dated November 23, 2022.

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<sup>50</sup> Angeles City v. Angeles City Electric Corporation, G.R. No. 166134, June 29, 2010.

<sup>51</sup> Palm Tree Estates, Inc. v Philippine National Bank, G.R. No. 159370, October 3, 2012.



**PETITION**

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The petitioner likewise requests that the Honorable Court grant such other forms of relief as may be just and equitable under the circumstances.

Makati City for Manila, January 18, 2023.

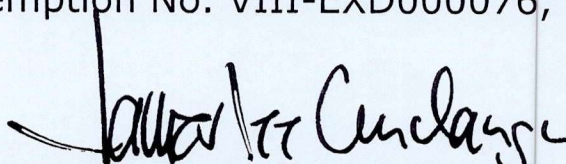
**MENARDO I. GUEVARRA**

Solicitor General

Roll No. 33957

IBP No. 292878 , 01/09/23

MCLE Exemption No. VIII-EXD000076, 08/13/19



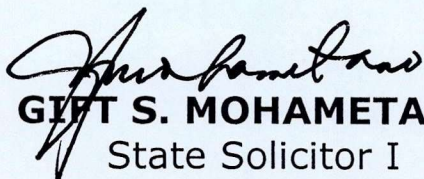
**JAMES LEE CUNDANGAN**

Assistant Solicitor General

Roll No. 47481

IBP Lifetime Membership No. 09142, 04/29/10

MCLE Exemption No. VIII-OSG000001, 04/18/22



**GIFT S. MOHAMETANO**

State Solicitor I

Roll No. 58739

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MCLE Compliance No. VI-0023161, 04/11/19

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Copy furnished:

**HON. ERWIN Y. DIMAYACYAC**

*Presiding Judge*

Regional Trial Court, 4<sup>th</sup> Judicial Region

Pinamalayan, Oriental Mindoro, Branch 42

(Criminal Case No. CR21-11806)



**PETITION**

x-----x

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*Private Respondent*

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Oriental Mindoro

**GABRIEL PANERA/PAERA SERUJANO**

*Private Respondent*

Brgy. Subaan, Socorro,  
Oriental Mindoro

**BENEDICTO A. MALCONTENTO**

*Prosecutor General*

Department of Justice  
Manila

**LORMELYN E. CLAUDIO, CESO IV**

*Regional Executive Director*

DENR MIMAROPA Region

**EXPLANATION**

Service on the other parties are being done through registered mail due to distance and lack of personnel.

  
**GIFT S. MOHAMETANO**  
State Solicitor I

JLC/GSM/mbg



**PETITION FOR CERTIORARI**

*People of the Philippines v. Hon. Erwin y Dimayacyac, et. al.*

CA GR SP No. \_\_\_\_\_

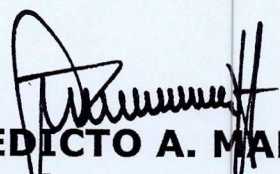
X-----X

**VERIFICATION & CERTIFICATION  
OF NON-FORUM SHOPPING**

I, **BENEDICTO A. MALCONTENTO**, of legal age, Filipino, with office address at the Department of Justice (DOJ), Padre Faura Street, Ermita, Manila, after having been duly sworn in accordance with law, hereby depose and state that:

1. I am the Prosecutor General of the National Prosecution Service, Office of the Prosecutor General, Department of Justice, Manila;
2. I caused the preparation of the foregoing *Petition for Certiorari* and I have read the same, the contents and allegations of which are true and correct based on personal knowledge, and/or on the basis of authentic official records;
3. The pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
4. The factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery;
5. I have not commenced any action or filed any claim involving the same issues in any Court, tribunal or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein;
6. Should I thereafter learn that the same or a similar action or claim has been filed or is pending, I undertake to promptly report that fact to this Honorable Court within five (5) calendar days from such notice.

**IN WITNESS WHEREOF**, I have hereunto affixed my signature this 18<sup>th</sup> day of January 2023 in the City of Manila, Philippines.

  
**BENEDICTO A. MALCONTENTO**  
Prosecutor General



PETITION FOR CERTIORARI

People of the Philippines v. Hon. Erwin y Dimayacyac, et. al.

CA GR SP No. \_\_\_\_\_

X-----X

**SUBSCRIBED AND SWORN TO** before me this JAN 19 2023 day  
of \_\_\_\_\_ 2023 in the City of Manila, Philippines, affiant having  
exhibited to me his valid Identification Card No. \_\_\_\_\_  
issued at \_\_\_\_\_, bearing his photograph.

Doc. No. 71;  
Page No. 15;  
Book No. LXXXV  
Series of 2023.

**ATTY. GARY CAMITAN AURE**

NOTARY PUBLIC, ROLL NO. 60777

PTR No. 0861143 Issued on Jan. 3, 2023 until Dec. 31, 2023 Manila

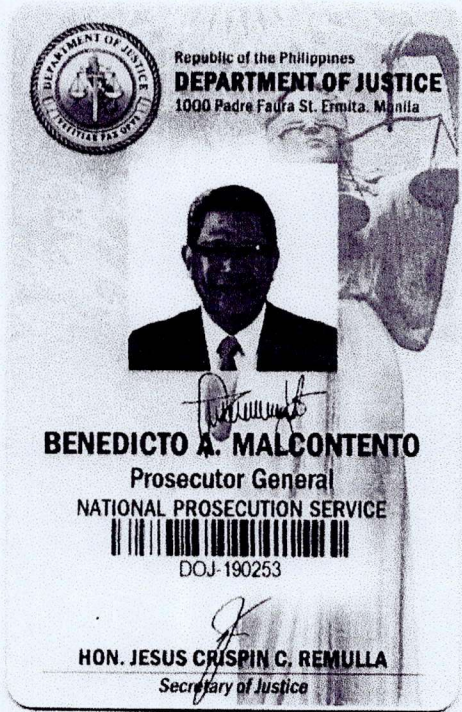
IBP Lifetime No. 14599 Issued on Feb. 2, 2016

Commission No. 2023-010 issued Nov. 18, 2022 Effective Jan. 1, 2023 Until Dec. 31, 2024 Manila

MCLE No. VII-0001648 issued on Nov. 20, 2019 Valid Until April 14, 2025 Pasig City

Office Address: L2F1 Upper Ground Floor, Burgundy Transpacific Place,  
2444 A. Taft Avenue, Manila 1004





Date Issued: SEPTEMBER 27, 2022	Date of Birth: DECEMBER 10, 1968
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**BENEDICTO A. MALCONTENTO**  
 Prosecutor General

Date: 18 January 2023



REPUBLIC OF THE PHILIPPINES

AFFIDAVIT OF SERVICE

(Revised as of April 1992)

I, XYLAN UJE S. SYCAYCO OFFICE OF THE SOLICITOR GENERAL,  
with Office address at 134 Amorsolo St., Legaspi Village Makati City, after being sworn to depose and say:

That on 01/23/2023, I caused to be served a copy of the following pleading/paper:

NATURE OF THE PLEADING

PETITION

In case No. CA-G.R. SP NO., entitled PEOPLE OF THE PHILIPPINES  
VS. HON. ERWIN Y. DIMAYACYAC, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL

pursuant to Section 3,4,5 and 10, Rule 13 of the Rules of Court, as follows:

By Personal Service To:

( ) By depositing a copy to the party or his/her attorney  
on \_\_\_\_\_ as shown on p \_\_\_\_\_.

( ) By leaving a copy in his/her clerk or with a person  
having charge thereof on \_\_\_\_\_ as shown on p \_\_\_\_\_.

( ) By delivering a copy to the Court/Tribunal Office on  
\_\_\_\_\_ as shown on p \_\_\_\_\_.

By Registered Mail To:

ATTY. MARY LYKA M. OLITA-CABARLES  
Counsel for the Private Respondents  
Public Attorney's Office-Pinamalayan District  
Office  
A and G Building, Mambil Street, Sto. Niño  
Subdivision  
Marfrancisco, Pinamalayan, Oriental Mindoro  
BENEDICTO A. MALCONTENTO  
Prosecutor General  
Department of Justice  
Manila

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, , Philippines

HON. ERWIN Y. DIMAYACYAC

Presiding Judge

Regional Trial Court, 4th Judicial Region

Pinamalayan, Oriental Mindoro, Branch 42

(Criminal Case No. CR21-11806)

, , Philippines

LORMELYN E. CLAUDIO, CESO IV

Regional Executive Director

DENR MIMAROPA Region

, , Philippines

GABRIEL PANERA/PAERA SERUJANO

Private Respondent

Brgy. Subaan, Socorro,

Oriental Mindoro

, , Philippines



GABRIEL PANERA/PAERA SERUJANO  
Private Respondent  
Brgy. Subaan, Socorro,  
Oriental Mindoro

, , Philippines  
MARK REY HERNANDEZ ABEL  
Private Respondent  
Brgy. Subaan, Socorro,  
Oriental Mindoro, , Philippines

Makati, Metro Manila, Philippines

XYLAN UJE S. SICAICU  
GSIS # CM 0000047302

JAN 23 2023

(Affiant)

XYLAN UJE S. SICAICU  
GSIS # CM 0000047302

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ of \_\_\_\_\_ at Makati  
City, Philippines. Affiant exhibiting to me his \_\_\_\_\_ JAN 23 2023 \_\_\_\_\_ issued at Pasay City.



23-000829-0003

*[Signature]*

MA TERESA ANAV. BERMEO

Solicitor, Officer Administering the Oath  
Office of the Solicitor General



Republic of the Philippines  
**Regional Trial Court**  
Fourth Judicial Region  
**Branch 42**  
Pinamalayan, Mindoro Oriental  
e-mail address: [rtc1pin042@judiciary.gov.ph](mailto:rtc1pin042@judiciary.gov.ph)  
contact number: 0437382186

"A" (Go)  
**ANNEX "A"**

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.

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**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

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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 determined 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)

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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 acquiescence 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

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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

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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

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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.

Furthermore, 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.

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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,

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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 17<sup>th</sup> of August 2022 at Pinamalayan, Oriental Mindoro, the Philippines.

ERWIN Y. DIMAYACYAC  
Presiding Judge

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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

ORDER

This case was called for hearing of the Motion for Reconsideration filed by the prosecution through the Department of Environment and Natural Resource (DENR). Atty. Frances Margarette Mendoza appeared for the DENR and Atty. Mary Lyka O. Cabarles for both accused.

After series of arguments of both parties, the court scrutinized further the meaning of forest product under Sec. 3(q) of PD 705, *as amended*. The law defines the meaning of forest product:

Sec 3. . . "(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)

The argument of the DENR that the word "wood" in the law includes "wood charcoal". This argument holds no water.

It is basic that construction and interpretation of penal statute is strict as the liberty of the people is at stakes. The Supreme Court held:

"One other rule of interpretation that quarrels with the theory of implied repeal or amendment is that penal law is to be construed, in case of doubt, strictly against the state. 'Criminal and penal statutes must be strictly construed, that is, they cannot be enlarged or extended by intendment, implication, or by any equitable considerations. In other words, the language cannot be enlarged

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beyond the ordinary meaning of its terms in order to carry into effect the general purpose for which the statute was enacted. Only those persons, offenses, and penalties, clearly included, beyond any reasonable doubt, will be considered within the statute's operation. They must come clearly within both the spirit and the letter of the statute, and where there is any reasonable doubt, it must be resolved in favor of the person accused of violating the statute; that is, all questions in doubt will be resolved in favor of those from whom the penalty is sought.' (People v. Garcia, G.R. No. L-2873, 28 February 1950)" (Emphasis supplied).

The law includes the word "wood" as one of the forest products. In interpretation and construction of the law, particularly the word "wood" in its ordinary meaning - a hard fibrous substance consisting basically of xylem that makes up greater part of stems, branches, and roots of trees or shrubs. While the ordinary meaning of "charcoal" - a dark or black porous carbon. Wood is not a charcoal, and charcoal is not a wood.

The Supreme Court interpreted the meaning of "wood" 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.

Further, Sec 1 (e) of DENR Administrative No. 97-32 is not a legislative act that can include charcoal as forest product. The meaning of forest product in the administrative order:

"e. **FOREST PRODUCTS** - Refers to timber including lumber, pulpwood, firewood, bark, tree top, resin, gum, wood, oil, honey, beeswax, nipa, rattan, charcoal, or other forest growth, such as but not limited to grass, shrub, flowering plants in forest lands, and others." (Emphasis supplied).

This Court recognizes the authority of DENR to issue order, memorandum and circular as part of its quasi-legislative function to implement the laws enacted

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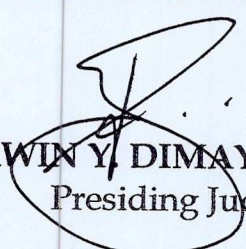


by legislature. However, for reiteration, this administrative order not a penal law and the DENR has no authority to amend the law.

WHEREFORE, the Motion for Reconsideration is hereby DENIED of lack of merit.

SO ORDERED.

Given in open court this 23<sup>rd</sup> day of November 2022 at Pinamalayan, Oriental Mindoro, the Philippines.

  
ERWIN Y. DIMAYACYAC  
Presiding Judge

  
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Republika ng Pilipinas )  
Lalawigan ng Silangang Mindoro )  
Bayan ng Gloria ) S.S  
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ANNEX "C" (4)

**PINAGSAMANG SINUMPAANG SALAYSAY**  
(Imbestigador)

Na, kami sina **PSMS Roderick Red** at **PSSg Jaybert Jadraque Sosa**, mga kawani ng Pambansang kapulisan ng Pilipinas at kasalukuyang nakatalaga sa Gloria Municipal Police Station matapos maiaman ang aking mga karapatan alinsunod sa ipinag-uutos ng ating Saligang Batas ay malaya at kusang loob na nagsasalaysay gaya ng mga sumusunod;

1. Na, noong ika-30 ng Oktubre 2021 sa ganap na 3:30 hapon, nagsagawa ng Simultaneous checkpoint sa kahabaan ng Strong Republic Nautical Hi-way sa Brgy Maligaya, Gloria Silangang Mindoro sa ang aming DCOP na si **PLT THERESITA A SALMORIN** at kasama din nila ang personnel ng 2<sup>nd</sup> PMFC na sina **Patrolman Arvy Manguera** at **Patrolman Nikon Hernandez**;

2. Na, sa ganap na ika-4:00 ng hapon ng parehong petsa, habang kami ay nasa aming tanggapan inatasan kami ng aming Hepe na si **PCPT EDWIN VILLARBA** na magpunta sa checkpoint sapagkat may dadaaan na trucking na manggagaling sa Brgy Malayong, Gloria Silangang Mindoro na diumanoy nagkarga itong mga uling na kahoy na walang kaukulang permit. Na ang nasabing impormasyon ay galing diumano sa isang impormante na hindi na nagpabanggit ng kanyang pangalan para sa kanyang kaligtasan.

3. Na, ang nasabing sasakyan na pinagkakargahan ng uling ng kahoy ay may plaka na **CJV 670** at may nakasulat sa unahan sa bandang itaas nag wind shield na **Saint Augustine** at bandang taas nito at **Mama Mary** at bandang ibaba ay **Abel Family** at ang nasabi ding sasakyan ay may trapal ng kulay asul sa magkabilang gilid at nakasulat din sa trapal ang plaka ng sasakyan na **CVJ 670** at may karga ding mga sako ng bigas sa ibabaw na napapailalim nito ay mga saging sa bandang hulihan ng sasakyan may trapal din na stripe ng kulay pula, dilaw at berde.

4. Na, bandang 4:55 ng hapon ng araw din yoon dumaan na sa checkpoint ang nasabing trucking na may karga na mga uling ng kahoy at ito ay pinara nina **Patrolman Arvy Manguera** at **Patrolman Nikon Hernandez** na mga personnel ng 2<sup>nd</sup> PMFC at pinatabi na sa gilid ng hi-way habang ito ay kinukunan nina **PSSg Normelito Saguid** at **PCpl Ronnel Delmo** ng video na ninirequired ng korte hinggii sa mga mahuhuiing nagkasaia sa batas, sa aming pagbi-video nakita namin na ang lahat ng impormasyon na sinabi ng aming hepe na si **PCPT EDWIN H VILLARBA** ay nagtutugma lahat sa pinarang trucking ;

5. Na, na aking tinanong ang mapagkilanlan ng mga dalawang taong sakay ng trucking at ito ay sina **Mark Rey Hernandez Abel** at **Gabriel Paera Serujano** matapos na makunan ko ng buong detalye at ang nasabing trucking ay pinadala na sa aming himpilan upang doon na ipagpatuloy ang aking pag-iimbestiga upang hindi na makaabala pa sa mga dumaraan sa hi-way.

6. Na, nang makarating na sa harap ng estasyon ang nasabing trucking aking(**PSSg Jaybert Jadraque Sosa**) pinaalis ang mga nasabing trapal na trucking tumambad na sa amin ang mga uling na nasa bandang hulihan ng truck at aking tinanong kung ilang sakong uling ang kanilang karga ang sabi

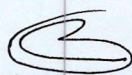


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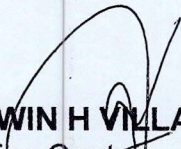
truck at aking tinanong kung ilang sakong uling ang kanilang karga ang sabi ng drayber tatlumput tatlong sako ng uling kahoy ang kanilang sakay at wala silang maipakitang dokumento na nagpapatunay na legal ang kanilang dalang uling sila ay aking inaresto sa salang iligal na pagtransport ng uling na walang permit at sinabihan ko din sila ng kanilang mga karapatan (MIRANDA DOCTRINE) at Anti-Torture iaw.

**AT KATUNAYAN NG LAHAT NG ITO**, kami ay lumagda ng aming buong pangalan sa ibaba nito ngayong ika- 31 ng Oktobre 2021 dito sa Bayan ng Gloria Silangang Mindoro.

**PSMS Roderick Red**  
Nagsalaysay

  
**PSSg Jaybert J Sosa**  
Nagsalaysay

**PINANUMPAAN AT NILAGDAAN** sa harap ko ngayong ika- 31 ng Oktobre 2021 dito sa Himpilan ng Pulisya ng Bayan ng Gloria Silangang Mindoro.

  
**EDWIN H VILLARBA**  
Police Captain  
Officer-In-Charge  
(Administering Officer)





Republic of the Philippines  
REGIONAL TRIAL COURT  
FOURTH JUDICIAL REGION  
BRANCH 42

Pinamalayan, Oriental Mindoro

**ANNEX D**

PEOPLE OF THE PHILIPPINES,  
Plaintiff,

CRIM. CASE NO.  
CR-12-10643

-versus-

MARK REY HERNANDEZ ABEL  
and GABRIEL PANERA  
SERUJANO

FOR: VIOLATION  
OF SEC. 77 OF P.D.  
705, AS AMENDED

Accused.

X - - - - - X

## EXPLANATION

The DENR-CENRO Socorro, through the undersigned officer, unto this Honorable Court, respectfully states that:

1. On 17 August 2022, this Honorable Court issued a Resolution directing CENRO Socorro to release the seized conveyance and sacks of wood charcoal involved in the case, to wit:

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.

2. Prior to the promulgation of the Resolution, CENRO Socorro treated wood charcoal as forest product. It was guided by the understanding that as by-product of trees or forest product, its source must also be legal. Hence, failure to provide the necessary permit or legal document relative thereto constitutes a disputable presumption that it was obtained from an illegal source;<sup>1</sup>
3. The said interpretation is *not* tainted with abuse of authority more so, desire for any kind of profit. Instead, it is anchored on the simple intention to protect trees and forests within its

<sup>1</sup> Section 7, Paragraph 3 (c) in relation to Section 2 (a), DAO No. 97-32.




jurisdiction which is in line with the mandate of CENRO Socorro;

4. Accordingly, upon taking custody of the above-described, CENRO Socorro conducted a summary administrative confiscation hearing and submitted the corresponding recommendation to the Regional Executive Director (RED) pursuant to Section 77-A of P.D. 705, as amended in relation to DENR Administrative Order No. 97-32;<sup>2</sup>
5. On 18 August 2022, upon receipt of the Resolution's copy, CENRO Socorro coordinated with the office of RED and was informed recently that the *administrative case is still pending*;
6. The RED was also furnished a copy of the said Resolution and CENRO Socorro is in continuous communication with the former as regards the necessary actions to be taken; and
7. As an inferior agency or a mere recommending authority, CENRO Socorro cannot comply immediately with the Order of this Honorable Court to release the conveyance and sacks of wood charcoal *without* the Order or Decision of RED.

**WHEREFORE**, this office respectfully prays for the Honorable Court's benevolent understanding and consideration.

**RESPECTFULLY SUBMITTED.**

Pinamalayan, Oriental Mindoro, 1<sup>st</sup> day of September 2022.

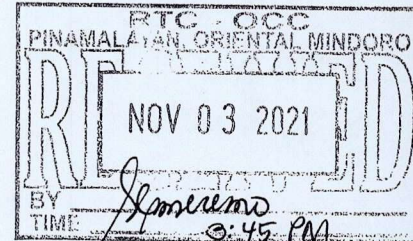
  
**RODEL M. BOYLES**  
CENR Officer

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<sup>2</sup> Section 7, Paragraphs 2 and 4, Ibid.



Republic of the Philippines  
REGIONAL TRIAL COURT  
FOURTH JUDICIAL REGION  
BRANCH \_\_\_\_\_  
Pinamalayan, Oriental Mindoro  
-oOo-



PEOPLE OF THE PHILIPPINES,  
Plaintiff,

CRIMINAL CASE NO. CR21-11806

-versus-

-for-

MARK REY HERNANDEZ ABEL  
& GABRIEL PANERA SERUJANO,  
Accused.

VIOLATION OF PD 705

X-----X

### INFORMATION

The undersigned, Associate Prosecutor under oath accuses MARK REY HERNANDEZ ABEL (38 y/o) and GABRIEL PANERA SERUJANO (44 y/o) and both resident of Sitio Bahugan, Barangay Subaan, Socorro, Oriental Mindoro, of the crime of VIOLATION OF PD 705, committed as follows, to wit:

*That on or about the 30<sup>th</sup> day of October, 2021 at around 4:55 o'clock in the afternoon, along Strong Republic Nautical Highway (SRNH), Barangay Maligaya, Municipality of Gloria, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, MARK REY HERNANDEZ ABEL and GABRIEL PANERA SERUJANO, in active conspiracy with each other, with intent to gain and without any license, authority or legal documents as required under existing forest laws and regulations, did then and there, willfully, unlawfully, feloniously and knowingly gather, collect and transport THIRTY THREE (33) SACKS of manufactured wood charcoal with an estimated value of NINE THOUSAND NINE HUNDRED (PHP 9,900.00) PESOS, Philippine Currency, loaded to a Utility Vehicle MITSUBISHI with Plate No. CVJ670, Engine No. 800087 and Chassis No. SPM75298-94C registered and owned by Rollen Jhune Hernandez Abel and driven by accused MARK REY HERNANDEZ ABEL, without any permit from lawful authority, to the damage and prejudice of the Republic in the aforementioned amount.*

CONTARY TO LAW:

Pinamalayan, Oriental Mindoro, 3 November 2021

WITH THE PRIOR WRITTEN AUTHORITY OF THE  
PROVINCIAL PROSECUTOR  
UNDER OPP MEMO 21-1 DATED APRIL 05, 2021

MART NOEL M. RILLORTA  
Associate Provincial Prosecutor  
MCLE V-0002812-04/14/2022  
Inquest Prosecutor

BUREAU OF POST  
PHILIPPINES

POSTMARK OF DELIVERY



2

**WITNESSES:**

1. PSMS Roderick Red (Arresting Officer) of Gloria MPS - Gloria, Oriental Mindoro
  2. PSSg Jaybert J Sosa (Arresting Officer), -do-
  3. PSSg Normelito M. Saguid (Videographer), -do-
  4. PCpl Ronnel de Leon Delmo (Videographer), -do-
  5. Rodel M Boyles, OIC-CENRO, Pasi, Socorro, Oriental Mindoro
  6. Marjorie Joyce S. Acuzarm Administrative/Records Officer), also of the same CENRO office stated above
- and OTHERS RESERVED. . .

**EXHIBITS:**

- A. Joint SS of PSMS Roderick Red and PSSg Jaybert J Sosa
  - B. Joint SS of PSSg Normelito Saguid and PCpl Ronnel de Leon Delmo
  - C. Booking Sheet and Mugshot
  - D. Two (2) pieces CD of recording Alternative Recording Device (ARD) marked as "GMPS A" and "GMPS B"
  - E. Turn-over Receipt
  - F. Certification from CENRO (No Transport Permit and Forest Product)
  - G. Pictures
  - H. Apprehending Receipt
  - I. Chain of Custody of "ARD"
  - J. Xerox copy of Driver's License and OR/CR
- And OTHERS RESERVED . . .

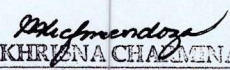
**CERTIFICATION**

I HEREBY CERTIFY that this Information is filed pursuant to Section 7, Rule 112 of the 1985 Rules on Criminal Procedure, as amended; accused not having opted to avail of his right to a preliminary investigation and not having executed a waiver pursuant to Art. 125 of the Revised Penal Code.

I further CERTIFY that the foregoing Information is being filed with the prior written authority of the Provincial Prosecutor under OPP MEMO 21-1 dated April 5, 2021.

  
**MART NOEL M. RILLORTA**  
Associate Provincial Prosecutor

SUBSCRIBED AND SWORN to before me this 3<sup>rd</sup> day of November 2021 at Pinamalayan, Oriental Mindoro.

  
**ATTY. MARA KHRILENA CHALMIRA F. MENDOZA**  
Clerk of Court VI  
Clerk of Court & Ex-Officio Sheriff

**BAIL RECOMMENDED:**  
PHP 30,000.00 / each

MNR/bcr



(73)

MAY 31 2022  
10:45 a.m.

**ANNEX** **G F**

**Republic of the Philippines**  
**REGIONAL TRIAL COURT**  
**FOURTH JUDICIAL REGION**  
**ORIENTAL MINDORO**  
**BRANCH 42**  
**Pinamalayan**

PEOPLE OF THE PHILIPPINES,  
Plaintiff,

CRIMINAL CASE NO.  
CR21-11806

- versus -

MARK REY HERNANDEZ ABEL  
and GABRIEL PANERA  
SERUJANO,  
Accused.

For:

VIOLATION OF P.D. 705

X-----X

**COMMENT TO THE ACCUSED'S  
MOTION TO SUPPRESS EVIDENCE  
with  
FORMAL ENTRY OF APPEARANCE  
and  
MANIFESTATION**

The Community Environment and Natural Resources Officer (CENR Officer) of the Community Environment and Natural Resources Office – Socorro, Oriental Mindoro (CENRO) of the Department of Environment and Natural Resources Office (DENR), through the undersigned counsel, in compliance with the Honorable Court's Order dated May 18, 2022 made in open court, hereby respectfully submits this Comment with Formal Entry of Appearance and Manifestation and avers that:

1. By virtue of Section 3<sup>1</sup> of Rule 9 of A.M. No. 09-6-8-SC otherwise known as the Rules of Procedure for Environmental Cases, the undersigned counsel enters her

<sup>1</sup> Section 3. *Special prosecutor.* - In criminal cases, where there is no private offended party, a counsel whose services are offered by any person or organization may be allowed by the court as special prosecutor, with the consent of and subject to the control and supervision of the public prosecutor.



appearance in the above-entitled case under the supervision and control of the Public Prosecutor.<sup>2</sup> Accordingly, it is respectfully prayed that the undersigned be furnished copies of all pleadings, orders, and notices relative to the instant case at the address indicated below.

- 2. The accused in their *Motion to Suppress Evidence* alleged that the process of gathering evidence against them was tainted by violation of their right against unreasonable searches and seizures, as such, they prayed that the evidence against them be suppressed and the case against them be dismissed. According to them, without the seized items, the accused's conviction cannot stand.
- 3. With due respect, the undersigned begs to differ. To begin with, the arrest of the accused without a warrant is lawful. Section 5 (a) of Rule 113, of the Revised Rules of Criminal Procedure provides that a peace officer or private person may, without a warrant arrest a person "[w]hen, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense." In the instant case, the accused were actually committing an offense punishable under PD 705 when they were caught to be in possession and in transport of 33 sacks of wood charcoals without legal documents.
- 4. The Supreme Court in *People of the Philippines vs. Sucro*<sup>3</sup> gave weight to the stance of the Solicitor General to wit:

"As the Solicitor General has pointed out:

**There are several instances when a warrantless search and seizure can be effected without necessarily being preceded by an arrest provided the same is effected on the basis of probable cause (e.g. stop and search without warrant at checkpoints). Between warrantless searches and seizures at checkpoints and in the case at bar the latter is more reasonable considering that unlike in the former, it was effected on the basis of probable cause. Under the**

<sup>2</sup> A copy of the Authority to Prosecute Environmental Cases issued by the Provincial Prosecutor is attached hereto as Annex "A".

<sup>3</sup> G.R. No. 93239, March 18, 1991.



75

circumstances (monitoring of transactions) there existed probable cause for the arresting officers, to arrest appellant who was in fact selling marijuana and to seize the contraband." (emphasis and underscoring ours)

5. Anent the allegation of the accused that the search and seizure were unreasonable, the same has no leg to stand on. "The general rule is that a search and seizure must be carried out through a judicial warrant; otherwise, such search and seizure violates the Constitution. Any evidence resulting from it "shall be inadmissible for any purpose in any proceeding." However, the constitutional proscription only covers *unreasonable* searches and seizures. Jurisprudence has recognized instances of reasonable warrantless searches and seizures, which are:

1. *Warrantless search incidental to a lawful arrest* recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence;

2. Seizure of evidence in "plain view," the elements of which are:

(a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;

(b) the evidence was inadvertently discovered by the police who had the right to be where they are;

(c) the evidence must be immediately apparent, and

(d) "plain view" justified mere seizure of evidence without further search;

**3. Search of a moving vehicle.** Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a **highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;**



**4. Consented warrantless search;**

5. Customs search;

6. *Stop and Frisk*; and

7. *Exigent and Emergency Circumstances*.”<sup>4</sup>

6. The surrounding circumstances of the instant case elucidate that the warrantless search falls under the two exceptions: search of a moving vehicle and consented warrantless search.
7. While it is settled that “law enforcers cannot act solely on the basis of confidential or tipped information.”<sup>5</sup> “The Court explained that in prior cases wherein the Court validated warrantless searches and seizures on the basis of tipped information, ‘the seizures and arrests were not merely and exclusively based on the initial tips. Rather, they were prompted by other attendant circumstances. Whatever initial suspicion they had from being tipped was progressively heightened by other factors, such as the accused’s failure to produce identifying documents, papers pertinent to the items they were carrying, or their display of suspicious behavior upon being approached.’ In such cases, the finding of probable cause was premised ‘on more than just the initial information relayed by assets. It was the confluence of initial tips and a myriad of other occurrences that ultimately sustained probable cause.’”<sup>6</sup>
8. In the instant case, the police officers received a reliable tip and confirmed the same by seeing through their naked eyes the exact descriptions matching the tip. In the *Pinagsamang Sinumpaang Salaysay* of PSMS Roderick Red and PSSg Jaybert Jadruque Sosa, they narrated in this wise:

“2. Na, sa ganap na ikaw-4:00 ng hapon ng parehong petsa, habang kami ay nasa aming tanggapan inatasan kami ng aming Hepe nas si **PCPT EDWIN VILLARBA** na magpunta sa checkpoint sapagkat may dadaan na trucking na manggagaling sa Brgy Malayong, Gloria Silangang Mindoro na diumanaoy nagkarga itong mga uling na kahoy na walang

<sup>4</sup> *Manibog vs. People of the Philippines*, G.R. No. 211214, March 20, 2019.

<sup>5</sup> *People of the Philippines vs. Guerrero*, G.R. No. 244045, June 16, 2020.

<sup>6</sup> *People of the Philippines vs. Guerrero*, G.R. No. 244045, June 16, 2020.



kaukulang permit. Na ang nasabing impormante na hindi na nagpabanggit ng kanyang pangalan para sa kanyang kaligtasan.

3. Na, ang nasabing sasakyan na pinagkakargahan ng uling ng kahoy ay may plaka na **CJV 670<sup>7</sup>** at may nakasulat sa unahan sa bandang itaas nag (sic) wind shield na **Saint Augustine** at sa bandang taas nito at **Mama Mary** at bandang ibaba ay **Abel Family** at ang nasabi ding sasakyan ay may trapal ng kulay asul sa magkabilang gilid at nakasulat din sa trapal ang plaka ng sasakyan na CVJ 670 at may karga ding mga sako ng bigas sa ibabaw na napapailalim nito ay mga saging sa bandang hulihan ng sasakyan may trapal din na stripe ng kulay pula, dilaw at berde.

4. Na, bandang 4:55 ng hapon ng araw din yoon dumaan na sa checkpoint ang nasabing trucking na may karga na mga uling ng kahoy at ito ay pinara nina **Patrolman Arvy Manguera** at **Patrolman Nikon Hernandez** na mga personnel ng 2<sup>nd</sup> PMFC at pinatabi na sa gilid ng hi-way habang ito ay kinukunan nina PSSg Normelito Saguid at PCpl Ronnel Delmo ng video na ninirequired ng korte hinggil sa mga mahuhuling nagkakasala sa batas, sa aming pagbi'video nakita namin na lahat ng impormasyon na sinabi ng aming hepe na si PCPT EDWIN H VILLARBA ay nagtutugma lahat sa pinarang trucking."

9. The above quoted narrations were corroborated by PSSg Normelito Saguid and PCpl Ronnel De Leon Delmo in their *Pinagsamang Sinumpaang Salaysay*.
10. The tip being so specific and exactly matching the truck of the accused roused the suspicion of the police officers. Furthermore, it is humbly submitted that the tip is not the sole basis of the search of the police officers. As narrated by

<sup>7</sup> The photograph on page 17 of the Court's Records shows that the plate number is CVJ 670.



78

the police officers in their respective *Pinagsamang Sinumpaang Salaysay*, the “trapal” was at the endmost part of the truck.<sup>8</sup> This fact is confirmed by a careful examination of the photograph<sup>9</sup> showing the side body of the truck which reveals that **the truck is not completely covered by the “trapal” and there are openings in the truck which can peep through. The goods loaded were visible through the openings and sacks were visible topping the truck.** All these are contributory to a **highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity justifying the warrantless search of a moving vehicle.**

11. The Supreme Court in *Caballes vs. Court of Appeals, et al.*<sup>10</sup> discussed in an unequivocal manner the definition of probable cause that would justify warrantless search and seizure at checkpoints and the appreciation of tipped information, in this wise:

“Still and all, the important thing is that there was probable cause to conduct the warrantless search, which must still be present in such a case.

Although the term eludes exact definition, probable cause signifies a **reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged;** or the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched. **The required probable cause that will justify a warrantless search and seizure is not determined by a fixed formula but is resolved according to the facts of each case.**

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<sup>8</sup> Pinagsamang Sinumpaang Salaysay of PSMS Roderick Red and PSSg Jaybert Jadraque Sosa, paragraph 3; Pinagsamang Sinumpaang Salaysay of PSSg Normelito Saguid and PCpl Ronnel De Leon Delmo, paragraph 3.

<sup>9</sup> Uppermost photograph on page 16 of Court's Records.

<sup>10</sup> G.R. No. 136292, January 15, 2002.



79

One such form of search of moving vehicles is the "stop-and-search" without warrant at military or police checkpoints which has been declared to be not illegal per se, for as long as it is warranted by the exigencies of public order and conducted in a way least intrusive to motorists. A **checkpoint** may either be a mere routine inspection or it may involve an **extensive search**.

XXX

On the other hand, when a vehicle is stopped and subjected to an extensive search, such a warrantless search would be constitutionally permissible only if the officers conducting the search have reasonable or probable cause to believe, before the search, that either the motorist is a law-offender or they will find the instrumentality or evidence pertaining to a crime in the vehicle to be searched.

This Court has in the past found **probable cause** to conduct without a judicial warrant an **extensive search of moving vehicles** in situations where (1) there had emanated from a package the distinctive smell of marijuana; (2) agents of the Narcotics Command ("Narcom") of the Philippine National Police ("PNP") had received a **confidential report from informers that a sizeable volume of marijuana would be transported along the route where the search was conducted**; (3) Narcom agents had received information that a **Caucasian coming from Sagada, Mountain Province, had in his possession prohibited drugs** and when the Narcom agents confronted the accused Caucasian, because of a conspicuous bulge in his waistline, he failed to present his passport and other identification papers when requested to do so; (4) Narcom agents had **received confidential information that a woman having the same physical appearance as that of the accused would be transporting marijuana**; (5) the accused who were riding a jeepney were stopped and searched by policemen who had **earlier received confidential reports that said accused would transport a large quantity of marijuana**; and (6) where the moving vehicle was stopped and searched on the basis of **intelligence information and clandestine reports by a**



**deep penetration agent or spy** - one who participated in the drug smuggling activities of the syndicate to which the accused belonged - that said accused were bringing prohibited drugs into the country.

xxx

Our jurisprudence is replete with cases where **tipped information has become a sufficient probable cause to effect a warrantless search and seizure.**" (emphasis ours)

12. Moreover, there was a waiver on the part of the accused when they allowed the removal of the "trapal". This amounted to the exceptional circumstance of consented warrantless search. The Supreme Court in *People of the Philippines vs. Omañeng*<sup>11</sup> ruled in this wise:

"Accused was not subjected to any search which may be stigmatized as a violation of his Constitutional right against unreasonable searches and seizures. If one had been made, this Court would be the first to condemn it "as the protection of the citizen and the maintenance of his constitutional rights is one of the highest duties and privileges of the Court." He willingly gave prior consent to the search and voluntarily agreed to have it conducted on his vehicle and travelling bag. xxx

xxx

Thus, the accused waived his right against unreasonable searches and seizures As this Court stated in *People v. Malasugui*:

**". . . When one voluntarily submits to a search or consents to have it made of (sic) his person or premises, he is precluded from later complaining thereof (Cooley, Constitutional Limitations, 8th ed., vol. I, page 631.) The right to be secure from unreasonable search may, like every right, be**

<sup>11</sup> G.R. No. 99050, September 2, 1992.



(8)

**waived and such waiver may be made  
either expressly or impliedly."**  
(emphasis ours)

13. It also bears stressing that the failure on the part of the accused to present document when asked by the police officers showing their lawful right over the wood charcoals<sup>12</sup> **not only strengthened the suspicion amounting to probable cause, but in fact, brought the matter into clarity** that they were committing a criminal activity justifying their warrantless search and arrest. **The accused even admitted prior their arrest that they had with them 33 sacks of wood charcoals** when the police officer asked them as to how many were loaded on the truck.<sup>13</sup> This amounted to an extrajudicial confession.
14. While Section 3 of Rule 13<sup>3</sup> of the Revised Rules of Evidence provides that "[a]n extrajudicial confession made by an accused shall not be sufficient ground for conviction." The said Section continues stating the exception to wit: "unless corroborated by evidence of *corpus delicti*."<sup>14</sup> Here, the extrajudicial confession of the accused that they had 33 sacks of wood charcoals loaded was supported not only by a corroborative evidence, in fact, there is an **actual and direct object evidence of the *corpus delicti***, the 33 sacks of wood charcoals possessed and transported without legal documents.
15. Thus, the tipped information **coupled with** the probable cause surrounding the warrantless search of a moving vehicle, the waiver of consent of the accused, their failure to present document in support of their lawful right over the wood charcoals and the extrajudicial confession that they were in possession of 33 sacks of wood charcoals prior their arrest supported the case and pieces of evidence against them.
16. At this juncture, it is worthy to emphasize that the accused were caught *in flagrante delicto* for violation of PD 705 for the possession and transportation of 33 sacks of wood

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<sup>12</sup> Pinagsamang Sinumpaang Salaysay of PSMS Roderick Red and PSSg Jaybert Jadraque Sosa, paragraph 6; Pinagsamang Sinumpaang Salaysay of PSSg Normelito Saguid and PCpl Ronnel De Leon Delmo, paragraph 6.

<sup>13</sup> Ibid.

<sup>14</sup> Section 3. An extrajudicial confession made by an accused shall not be sufficient ground for conviction, unless corroborated by evidence of *corpus delicti*.



charcoals without legal documents. To finally settle the point that wood charcoal is a forest product, the Supreme Court had the opportunity to make an interpretation of PD 705 in *Merida vs. People of the Philippines*<sup>15</sup> in this wise:

"We further hold that the lone narre tree petitioner cut from the Mayod Property constitutes "timber" under Section 68 of PD 705, as amended. PD 705 does not define "timber," only "forest product" (which circuitously includes "timber.")—Does the narra tree in question constitute "timber" under Section 68? The closest this Court came to defining the term "timber" in Section 68 was to provide that "timber," **includes** "lumber" or "processed log." In other jurisdictions, timber is determined by compliance with specified dimensions—or certain "stand age" or "rotation age." In *Mustang Lumber, Inc. v. Court of Appeals*, this Court was faced with a similar task of having to define a term in Section 68 of PD 705 - "lumber" - to determine whether possession of lumber is punishable under that provision. In ruling in the affirmative, we held that "lumber" should be taken in its ordinary or common usage meaning to refer to "processed log or timber," thus:

The Revised Forestry Code contains no definition of either timber or lumber. While the former is included in forest products as defined in paragraph (q) of Section 3, the latter is found in paragraph (aa) of the same section in the definition of "Processing plant," which reads:

(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, blackboard, paper board, pulp, paper or other finished wood products.

This simply means that *lumber* is a processed log or processed forest raw

<sup>15</sup> G.R. No. 158182, June 12, 2008.



material. Clearly, the Code uses the term *lumber* in its ordinary or common usage. In the 1993 copyright edition of Webster's Third New International Dictionary, *lumber* is defined, *inter alia*, as "timber or logs after being prepared for the market." Simply put, lumber is a *processed* log or timber.

**It is settled that in the absence of legislative intent to the contrary, words and phrases used in a statute should be given their plain, ordinary, and common usage meaning.** And in so far as possession of *timber* without the required legal documents is concerned, Section 68 of PD No. 705, as amended, makes no distinction between raw and procesed timber.<sup>16</sup> Neither should we. (Underscoring ours.)

17. In the same way that the Supreme Court in the abovequoted decision found that although "lumber" is not included in the definition of "forest product" in PD 705, nonetheless it is included in Section 3 (aa) of the said law, "charcoal" is also within the purview of the latter in the form of "other finished wood products." The interpretation of the Supreme Court must be given weight and authority for "[j]udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."<sup>16</sup>
18. In view of the foregoing ratiocination, the Honorable Office of the DENR, through the CENR Officer of the CENRO – Socorro, Oriental Mindoro, as manifested by the undersigned, hereby respectfully expresses its opposition to the accused's Motion to Suppress Evidence for lack of merit. Their arrest and search and seizure of the truck and the wood charcoals were justified. Consequently, the pieces of evidence were lawfully obtained and are admissible.
19. The undersigned respectfully manifests that this be made part of the records of the case and the formal entry of appearance be duly noted.

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<sup>16</sup> Article 8 of the Civil Code.



(84)

**RESPECTFULLY SUBMITTED.** This May 31, 2022, in  
Pinamalayan, Oriental Mindoro.

For the DENR:

  
**FRANCES MARGARETTE A. MENDOZA**  
Attorney III

Legal Division – DENR MIMAROPA Region  
Address: DENR-PENRO, Ilang-Ilang Street,  
Sitio II, Suqui, Calapan City, Oriental  
Mindoro

Roll of Attorneys No. 65579


IBP Lifetime No. 014841

MCLE Compliance No. VII-0002773

Email: denr4blegal@gmail.com

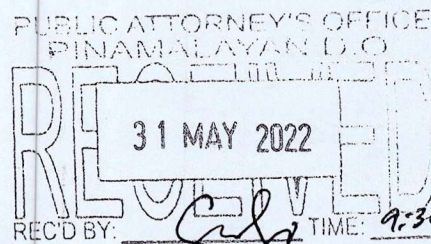
atty.margomendoza@gmail.com

Noted:

  
**ENRIQUE D. SAN MIGUEL, JR.**  
Public Prosecutor

**Copy Furnished:**

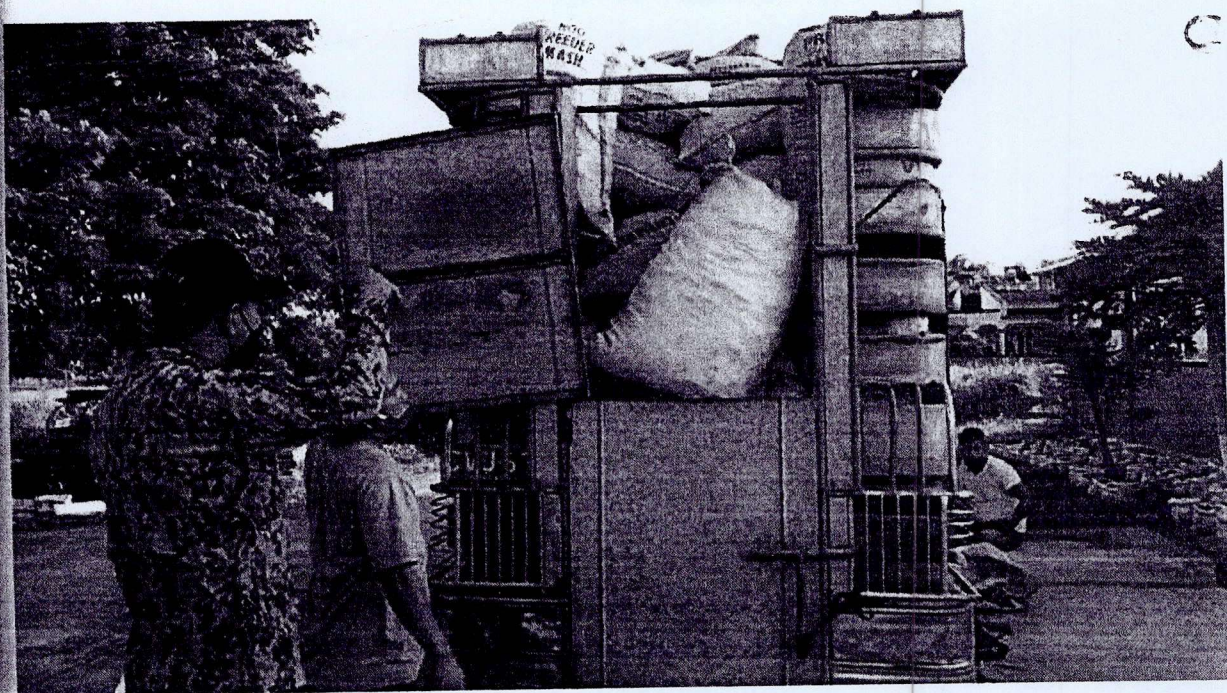
*Atty. Mary Lyka M. Olita-Cabarles  
Counsel for the Accused  
Public Attorney's Office-Pinamalayan District Office  
A and G Building, Mambil Street, Sto. Niño Subdivision  
Marfrancisco, Pinamalayan, Oriental Mindoro*





(12)  
**ANNEX "G"**  
6

PICTURES





Republika ng Pilipinas )  
Lalawigan ng Silangang Mindoro )  
Bayan ng Gloria ) S.S  
X-----X

ANNEX "H" "3"

H

**PINAGSAMANG SINUMPAANG SALAYSAY**

(Videographer)

Na, kami sina **PSSg Normelito Saguid at PCpl Ronnel De Leon Delmo**, mga kawani ng Pambansang kapulisan ng Pilipinas at kasalukuyang nakatalaga sa Gloria Municipal Police Station matapos maiaman ang aking mga karapatan alinsunod sa ipinag-uutos ng ating Saligang Batas ay malaya at kusang loob na nagsasalaysay gaya ng mga sumusunod;

1. Na, noong ika-30 ng Oktubre 2021 sa ganap na 3:30 hapon, kami ay nagsagawa ng Simultaneous checkpoint sa kahabaan ng Strong Republic Nautical Hi-way sa Brgy Maligaya, Gloria Silangang Mindoro sa pamumuno ni **PLT THERESITA A SALMORIN** at kasama din namin ang personnel ng 2<sup>nd</sup> PMFC na sina **Patrolman Arvy Manguera at Patrolman Nikon Hernandez**;

2. Na, sa ganap na ika-4:00 ng hapon, ng parehong petsa, habang kami ay nagsasagawa ng pagsisita at pagpapara sa mga dumaraang mga sasakyan nakatanggap ng tawag sa cellphone ang aming DCOP na si **PLT THERESITA SALMORIN** sa mula sa aming Hepe na si **PCPT EDWIN VILLARBA** na may dadaaan na trucking na manggagaling sa Brgy Malayong, Gloria Silangang Mindoro na diumanoy nagkarga itong mga uling na kahoy na walang kaukulang permit. Na ang nasabing impormasyon ay galing mismo sa isang impormante na hindi na nagpabanggit ng kanyang pangalan para sa kanyang kaligtasan.

3. Na, ang nasabing sasakyan na pinagkakargahan ng uling ng kahoy ay may plaka na **CJV 670** at may nakasulat sa unahan sa bandang itaas nag wind shield na **Saint Augustine** at bandang taas nito at **Mama Mary** at bandang ibaba ay **Abel Family** at ang nasabi ding sasakyan ay may trapal ng kulay asul sa magkabilang gilid at nakasulat din sa trapal ang plaka ng sasakyan na **CVJ 670** at may karga ding mga sako ng bigas sa ibabaw na napapailalim nito ay mga saging sa bandang hulihan ng sasakyan may trapal din na stripe ng kulay pula, dilaw at berde.

4. Na, bandang 4:55 ng hapon ng araw din yoon dumaan na sa aming checkpoint ang nasabing trucking na may pangarga na mga uling ng kahoy at ito ay pinara nina **Patrolman Arvy Manguera at Patrolman Nikon Hernandez** na mga personnel ng 2<sup>nd</sup> PMFC at pinatabi na sa gilid ng hi-way at kami **PSSg Normelito Saguid at PCpl Ronnel Delmo** ay nagsimula na kaming magrecord ng video na ninirequired ng korte hinggil sa mga mahuhuling nagkasala sa batas, sa aming pagbi-video nakita namin na ang lahat ng impormasyon na sinabi ng aming hepe na si **PCT EDWIN H VILLARBA** ay nagtutugma lahat sa pinarang trucking ;

5. Na, na nang dumating na ang imbestigador na si **PSSg Jaybert Sosa** kanya ng tinanong ang mapagkilanlan ng mga dalawang taong sakay ng trucking matapos na makunan ng buong detaiye subaiit ang aking personal na cellphone(**PSSg Normelito Saguid**) na ginamit ko sa pagkuha ng video bilang alternative Recording device ay biglang nagmalfuction at ito ay natigil ang pagrecord ng may 01:08 lng na minuto ang nairecord at nang magresume muli ang video recorded ko muli akong nagvideo sa pag-



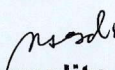
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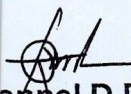
iimbestiga, di naman nagtagal ang nasabing trucking. ay pinadala na sa aming himpilan upang doon na ipagpatuloy ang pag-iimbestiga upang hindi na makaabala pa sa mga dumaraan sa hi-way. At mula sa aming lugar ng checkpoint ito ay patuloy naming kinukunan ng video hanggang makarating sa harap ng aming estasyon.

6. Na, na nang ipaaalis na ng imbestigador ang mga nasabing trapal na trucking tumambad na sa amin ang mga uling na nasa bandang hulihan ng truck at narinig din namin na tatlumput tatlong sako ng uling kahoy ang kanilang sakay sa trucking at nang wala silang maipakitang dokumento na nagpapatunay na legal ang kanilang dalang uling sila ay inaresto na at binasahan na ng kaniang mga karapatan (MIRANDA DOCTRINE) at sila ay dinala na sa loob ng estasyon

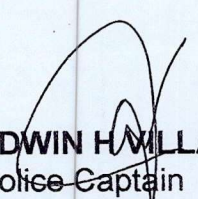
7. At patuloy pa rin naming itong kinunan ng video hanggang sa makarating kami sa aming himpilan at maipasok sila sa loob ng selda at ako PSSg Normelito Saguid ay nakapagrecord ng video na (01:08) minuto at (29: 33) minuto at ako PCpl Ronnel Delmo ay nakapagrecord ng (31:04) minuto.

**AT KATUNAYAN NG LAHAT NG ITO**, kami ay lumagda ng aming buong pangalan sa ibaba nito ngayong ika-31 ng Oktobre 2021 dito sa Bayan ng Gloria Silangang Mindoro.

  
**PSSg Normelito Saguid**  
Nagsalaysay

  
**PCpl Ronnel D Delmo**  
Nagsalaysay

**PINANUMPAAN AT NILAGDAAN** sa harap ko ngayong ika- 31 ng Oktobre 2021 dito sa Himpilan ng Pulisya ng Bayan ng Gloria Silangang Mindoro.

  
**EDWIN H. MILLARBA**  
Police Captain  
Officer-In-Charge  
(Administering Officer)



Republic of the Philippines  
Regional Trial Court  
Fourth Judicial Region  
Branch 42  
Pinamalayan, Mindoro Oriental  
e-mail address: [rtc1pin042@judiciary.gov.ph](mailto:rtc1pin042@judiciary.gov.ph)  
contact number: 043-738 2186

PEOPLE OF THE PHILIPPINES,  
Plaintiff.

*versus*

Crim. Case No. CR21-11806  
For: Violation of PD705

MARK REY HERNANDEZ ABEL  
AND GABRIEL PANERA  
SERUJANO,

Accused.

X-----X

**TRANSCRIPT**  
*of stenographic notes taken by  
the undersigned Stenographer  
during the hearing of this case held  
on August 17, 2022 at 8:30 a.m.*

**P R E S E N T :**

HON. ERWIN Y. DIMAYACYAC-----Presiding Judge  
Mr. EDMUNDO VILLA DEL REY, JR.----- OIC-Br. Clerk of Court  
Acting as Court Interpreter  
MRS. PERLA FATIMA M. HERNANDEZ ----Court Stenographer III

**A P P E A R A N C E S :**

PROS. ENRIQUE SAN MIGUEL, JR.: For the Prosecution.  
ATTY. FRANCES MARGARETH MENDOZA: For the DENR.  
ATTY. MARY LYKA CABARLES: For the Accused.

✓



t.s.n.

PEOPLE OF THE PHILIPPINES,  
Plaintiff.

*versus*

Crim. Case No. CR21-11806  
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MARK REY HERNANDEZ ABEL  
AND GABRIEL PANERA  
SERUJANO,

Accused.

August 17, 2022  
Richard Apostol  
Page-2-

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COURT: Call the case.

COURT INTERPRETER: (Calling the case)

*"Promulgation: Criminal Case No. CR21-11806, People  
of the Philippines versus Mark Rey Hernandez Abel and  
Gabriel Panera Serujano for Violation of PD705".*

COURT:

*Pagharap?*

PROS. ENRIQUE SAN MIGUEL, JR.:

*Para sa Taga-usig, Magandang umago po!*

ATTY. FRANCES MARGARETH MENDOZA:

*Mapagpalang araw po, Kagalang-galang na Hukom, ako po si  
Atty. Frances Margareth Mendoza, magalang na humaharap  
para sa Department of Environment and Natural Resources.*

ATTY. MARY LYKA CABARLES:

*Magandang umaga po, Kagalang-galang na Hukom! Ako po ay  
humaharap para sa nasasakdal.*





t.s.n.

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MARK REY HERNANDEZ ABEL  
AND GABRIEL PANERA  
SERUJANO,

Accused.

August 17, 2022

Promulgation

Page-3-

x-----x

HUKOM:

*Nasaan ang mga nasasakdal?*

*Nandito po sila.*

*Nasaan ang mga dumakip sa mga nasasakdal?*

OIC-BRANCH CLERK OF COURT:

Sarhento Red, Sarhento Sosa, Sarhento Saguid and  
Corporal Delmo?

*Nandito po ang mga kapulisan.*

HUKOM:

*Ang pulis. Dalawa lang 'yan. Pulis at pulisya. Walang  
kapulisan, walang kasundalohan, walang kaguroan.*

*Handa na ba sa pagbabasa ng Pasya?*

MANANANGGOL CABARLES:

*Handa na po.*



t.s.n.

PEOPLE OF THE PHILIPPINES,  
Plaintiff.

*versus*

Crim. Case No. CR21-11806  
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MARK REY HERNANDEZ ABEL  
AND GABRIEL PANERA  
SERUJANO,

Accused.

August 17, 2022

Promulgation

Page-4-

x-----x

HUKOM:

*Tumindig ang mga nasasakdal. Basahin ang Pasya sa wikang English.*

Read the dispositive portion.

OIC-BRANCH CLERK OF COURT:

*People of the Philippines versus Mark Rey Hernandez Abel and Gabriel Panera Serujano on Criminal Case No. CR21-11806 for Violation of PD705. Resolution on the Motion to Suppress Evidence filed by the accused. The dispositive portion of the resolution read as, "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. The bail bond posted by both accused amounting to ₱30,000 each under Official Receipt No. 0522099D and 0522100D be released to the bondperson or duly authorized representative upon presentation of documents and availability of funds. The vehicle used in transporting the charcoal bearing with plate number CJV670 be released to the registered owner without any liability upon proper procedure in accordance with law on the ground that the charcoal is not a forest product nor a finish wood product. The 33 sacks of charcoal be released to its owner. The Office of the Provincial Prosecutor of Oriental Mindoro, The Department of Environment and Natural Resources, Community Environment and Natural Resources and the Philippine*

*N*



t.s.n.

PEOPLE OF THE PHILIPPINES,  
Plaintiff.

*versus*

Crim. Case No. CR21-11806  
For: Violation of PD705

MARK REY HERNANDEZ ABEL  
AND GABRIEL PANERA  
SERUJANO,

Accused.

August 17, 2022

Promulgation

Page-5-

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*National Police are reminded that filing of similar case within the jurisdiction of this Court will be held liable for indirect contempt of court. Furnished copy of this Resolution to the Office of the Secretary of DENR, Regional Office of DENR, MIMAROPA, CENRO Socorro and Roxas, Oriental Mindoro, Chief PNP of MIMAROPA, Regional Director, PNP Provincial Director, to all Chief of Police of all municipal Police Station within the territorial jurisdiction of this Court and to the Office of the Clerk of Court, Regional Trial Court of Pinamalayan, Oriental Mindoro for their information.*

SO ORDERED.

*Pinamalayan, Oriental Mindoro.*

ERWIN Y. DIMAYACYAC  
Presiding Judge"

OIC-BRANCH CLERK OF COURT:

Naiintindihan ang binasa?

HUKOM:

Dismissed na, makukuha na ang pyansa ninyo at 'yung sasakyan irerelis na.



t.s.n.

PEOPLE OF THE PHILIPPINES,  
Plaintiff.

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Crim. Case No. CR21-11806  
For: Violation of PD705

MARK REY HERNANDEZ ABEL  
AND GABRIEL PANERA  
SERUJANO,

Accused.

August 17, 2022

Promulgation

Page-6-

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Have you heard the decision of this Court, Prosec?

PROS. SAN MIGUEL, JR.:

Yes, your Honor.

Your Honor, can I make a clarification?

COURT:

Yes.

PROS. SAN MIGUEL, JR.:


When we filed a case before the Office of the Clerk of  
Court and instead to your sala the case proceeded to the  
other sala —

COURT:

But this Court if the same item, charcoal will be filed in  
this Court, the police officers even the prosecutor will be  
liable for contempt of court.

PROS. SAN MIGUEL, JR.:

We submit, your Honor.





t.s.n.

PEOPLE OF THE PHILIPPINES,  
Plaintiff.

*versus*

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MARK REY HERNANDEZ ABEL  
AND GABRIEL PANERA  
SERUJANO,

Accused.

August 17, 2022  
Promulgation  
Page-7-

x-----x

COURT:

Kahit pa pabaligbaligtarin mo pa ang batas, wala kang makikitang uling. Ano ang gagawin ko, walang uling sa batas. Kahit sa sinasabi ng mga desisyon ng Korte Suprema, iba na ang kahulugan ng forest product at ng finish wood product. Pagsinabing wood finish product, ang mga bagay na maaaring gawin ng karpentero gaya ng poste, pintuan, upuan, lamesa. Papaano mong magagawang ganun ang uling. Kung gusto ninyong baguhin at ilagay ang uling, baguhin ang batas. Pumunta kayo sa Kongreso. Baguhin ang batas, pilit nyong isinisingit ang charcoal sa department order eh. Na ang basehan naman ng department of order ay 'yung P.D. 705. Walang uling. Kung talagang seryoso ang DENR, at ang PNP na protektahan ang kalikasan, bakit hindi kayo mang raid doon sa Socorro, Mansalay at Bulalacao, mga talamak ang uling. Nakaladlad sa kalsada. Bakit Fiscal?

PROS. SAN MIGUEL, JR.:

I don't know, your Honor.

COURT:

Bakit? No vehicle, no revenue. Yes! Pagwalang sasakyan na makukuha ang DENR, wala silang kikitain. Wala silang ireremit sa National Treasury. Kaya hindi sila



t.s.n.

PEOPLE OF THE PHILIPPINES,  
Plaintiff.

*versus*

Crim. Case No. CR21-11806  
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MARK REY HERNANDEZ ABEL  
AND GABRIEL PANERA  
SERUJANO,

Accused.

August 17, 2022

Promulgation

Page-8-

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COURT: (*Continuation*)

nanghuhuli ng uling sa mga tindahan. Kahit nga lang diyan o, may uling ang dami. Bakit hindi kayo manghuli diyan sa palengke and daming uling. O, bakit hindi ninyo hinuhuli? Bakit ang hinuhuli lang ninyong uling ay 'yung mga nasa sasakyan? Bakit ha? Vehicle equals revenue. Eh iriraid nyo mga uling dito sa tindahan sa palengke, anong mangyayari? Iriraid ng PNP together with the DENR, what will happen? Confirmation from the Local Chief Executive. Kumikita ang aming mga mamamayan diyan bakit ninyo hinuhuli? Hindi ginagawa bakit? Takot! Takot sa mga mayor, takot sa mga punong-barangay, takot sa kagawad. Ang madaling paraan ng panghuli, checkpoint. Kasi sa checkpoint, pagdaan ng sasakyan, may kargang uling, hindi sila masisita ng mayor, punong-barangay. Lagi na lang ganyan eh. Ang uling na laging nahuhuli laging nakakarga sa sasakyan. Bakit hindi kayo manghuli ng uling sa mga tindahan? Atty. Mendoza, why your office never initiated such kind of action? Laging sasakyan. Dahil sa sasakyan may kita. Banned at saka ibibid ang sasakyan. Okay yun, the Court recognizes the authority of DENR to confiscate forest products without authority if reconveyance is used. But if it is not a forest product, the DENR has no authority, di ba ganun lang kasimple 'yun. Kaya copy furnished lahat ng upisina. Kung gusto nyong iapela, iapela nyo ako. Tagal na eh, dami ko ng dinidismised dito na uling nakasakay

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t.s.n.

PEOPLE OF THE PHILIPPINES,  
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AND GABRIEL PANERA  
SERUJANO,

Accused.

August 17, 2022

Promulgation

Page-9-

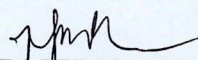
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COURT: (*Continuation*)

sa sasakyan, kahit doon sa Roxas. We just follow the law, the juris prudence. Kung 'yan ay troso, wala tayong problema dyan. Paano ba nating malalaman kung yaan baga eh mahogany. Wala hindi na kailangan ng examination eh. Eh kung yaan eh rambutan, manga, bayabas, pwede mo bang ulingin 'yun? Fruit bearing tree ginawang uling? If you want to apprehend charcoal, change the law. Di ba? Pero ako ay sawang sawa na talaga. Kapag yan ay isinampa pa dito yang charcoal na 'yan ay naku magkakasubukan tayo. Sinasayang nyo ang oras ng Hukuman. Madami kaming kaso dito, rape, heinous crime. Tapos ang pag-uusapan natin dito uling. Alin ang mas mahalaga, ang uling o 'yung mga kasong rape, murder, homicide o ilang minuto na ako ditong nagadadakdak o dahilan sa uling. Let us not waste the time of this Court, energy and effort of this kind of charcoal, my goodness! Basahin ang susunod na habla.

- ADJOURNED -

I HEREBY CERTIFY TO THE  
CORRECTNESS OF THE FOREGOING  
TRANSCRIPT.

  
PERLA FATIMA M. HERNANDEZ  
Court Stenographer III



J

T.S.N.

Crim. Case No. CR21-11806

Pp. vs. Mark Rey Hernandez  
& Gabriel Panera Serujano

For: Violation of P.D. 705

ARGUMENTS

November 23, 2022

X-----X

**AUREA STA. ANA-ORNEDO** - *Stenographer*



1

Republic of the Philippines  
**Regional Trial Court**  
Fourth Judicial Region  
**Branch 42**  
Pinamalayan, Mindoro Oriental  
e-mail address: [rtc1pin042@judiciary.gov.ph](mailto:rtc1pin042@judiciary.gov.ph)  
contact number: 043-7382186

PEOPLE OF THE PHILIPPINES,  
Plaintiff,

*versus*

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

MARK REY HERNANDEZ ABEL  
AND GABRIEL PANERA  
SERUJANO,  
Accused.

X-----X

TRANSCRIPT  
of stenographic notes taken by the undersigned Stenographer  
during the trial of this case held on November 23, 2022  
at 8:30 in the morning.

PRESENT:

Hon. ERWIN Y. DIMAYACYAC	- Presiding Judge
Mr. EDMUNDO VILLA DEL REY, JR.	- OIC/Legal Researcher
Ms. CHRISTINE M. CAMACHO	- Court Interpreter
Ms. AUREA STA. ANA-ORNEDO	- Court Stenographer III

APPEARANCES:

Pros. ENRIQUE SAN MIGUEL, JR.	- Government Prosecutor
Atty. FRANCES MARGARETTE MENDOZA	- For DENR
Atty. MARY LYKA M. OLITA-CABARLES	- Counsel for the Accused

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T.S.N.  
Crim. Case No. CR21-11806  
Pp. vs. Mark Rey Hernandez  
& Gabriel Panera Serujano  
For: Violation of P.D. 705  
ARGUMENTS – November 23, 2022  
Page ..... -2-  
x-----x

COURT:

Call the case.

OIC BRANCH CLERK OF COURT: (calling calendar)

Criminal Case No. CR21-11806, People of the Philippines *versus*  
Mark Rey Hernandez and Gabriel Panera Serujano, for  
Violation of P.D. 705.

COURT:

Appearances?

PROS. SAN MIGUEL:

For the prosecution, your Honor.

ATTY. MENDOZA:

Good morning, your Honor. Respectfully entering my  
appearance for the DENR Special Prosecutor under the control  
and supervision of the public prosecutor, your Honor.

ATTY. CABARLES:


Good morning, your Honor, same appearance for the defense,  
your Honor.

COURT:

Any comment on the Motion for Reconsideration Atty.  
Cabarles?

ATTY. CABARLES:

Yes, your Honor, may I cite my comment, your Honor.





T.S.N.  
Crim. Case No. CR21-11806  
Pp. vs. Mark Rey Hernandez  
& Gabriel Panera Serujano  
For: Violation of P.D. 705  
ARGUMENTS – November 23, 2022  
Page ..... -3-  
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COURT:

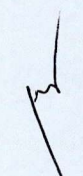
Proceed.

ATTY. CABARLES:

Your Honor we are objecting on the motion for reconsideration filed by the prosecution, your Honor. The prosecution on their motion for reconsideration claimed that the defense made an admission that the charcoal is a forest product, but stating or by using the terms "wood charcoal". However, perusal of the sworn statement of the police officers in paragraph 1, sub-par. 3, your Honor, they mentioned in vernacular "*uling na kahoy*". So the defense, your Honor, in our motion to suppress evidence we merely adopted the same without the intention of admitting it as forest product, your Honor. Second, the prosecution is claiming that the portion of the resolution of the Honorable Court is the issue whether the charcoal is a forest product. However, the resolution of the Honorable Court, it contained four pages, your Honor, discussing about the legality of the search. Only three pages, were provided for the discussion as to whether or not the charcoal is a forest product. So also we disagree with that, your Honor. Assuming that we are admit in our motion to suppress evidence that charcoal is a forest product, it would not erase the fact that the search of this charcoals were illegal, invalid and unconstitutional, your Honor. That is our comment on the motion, your Honor, and with that, we are praying that the Honorable Court reinstate its previous judgment and the motion for reconsideration be denied for lack of merit.

COURT:

Atty. Mendoza any comment?





T.S.N.  
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Pp. vs. Mark Rey Hernandez  
& Gabriel Panera Serujano  
For: Violation of P.D. 705  
ARGUMENTS – November 23, 2022  
Page ..... -4-  
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ATTY. MENDOZA:


Your Honor on the first contention, your Honor, that they are denying their allegation on their motion to suppress, we humbly disagree, your Honor, because they are bound by the admission. They are not mandated to adopt the contents of the *sinumpaang salaysay*, as the opposing counsel previously stated. She is at free will on the allegations on the motion to suppress evidence. And that, your Honor, the accused alleged that obviously the sacks of wood charcoal were hidden and not visible to anyone. So for using the term “wood charcoal” they are admitting that the charcoal emanated from the wood. Which, your Honor, wood is visibly among those enumerated under Sec. 3, par. q, of P.D. 705.

COURT:

Wood.

ATTY. MENDOZA:

Yes, your Honor. Furthermore, your Honor, the contention of the controversy is whether or not charcoal is included as the forest product. Although the opposing counsel stated, that it is just stated in the three pages and the four pages includes the legality or illegality of seized and seizure. Your Honor, after using the resolution of this Honorable Court the issue on whether or not the charcoal is a forest product is the foundation of the ruling of this Honorable Court in the resolution, that is why, your Honor, we are in the position that charcoal is a forest product based on the corroborated, your Honor, by the judicial admission that the charcoal came from wood, and, furthermore, your Honor, on our position on our motion for reconsideration that it would be reiterated interpretation that a wood can be converted into a charcoal that they allow the accused to evade responsibility, your Honor.





T.S.N.  
Crim. Case No. CR21-11806  
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& Gabriel Panera Serujano  
For: Violation of P.D. 705  
ARGUMENTS - November 23, 2022  
Page ..... -5-  
x-----x

COURT:

So if charcoal, because there are many kinds of charcoal, they are actually five. Now if the charcoal is from wood, so there was a violation.

ATTY. MENDOZA:

Yes, your Honor, because it is stated in sec. 3, par. "q".

COURT:

Because of the word "wood" enumerated in the law as forest product.

ATTY. MENDOZA:


Yes, your Honor.

COURT:

This is the law Atty. Mendoza. (The court showed through LED monitor installed inside this court room) This is the law Atty. Mendoza. On the right side is the P.D. 705. As we all know, P.D. 705 is also contains penal provisions and on sec. 3 enumerates the forest product on "q", and the court quote again: "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, then associated water, fish game, scenic, historical, recreational and geologic resources in forest lands." That is the meaning. And you mentioned the law states "wood" in the enumeration as forest product.

ATTY. MENDOZA:

Yes, your Honor.





T.S.N.  
Crim. Case No. CR21-11806  
Pp. vs. Mark Rey Hernandez  
& Gabriel Panera Serujano  
For: Violation of P.D. 705  
ARGUMENTS – November 23, 2022  
Page ..... -6-  
x-----x

COURT:

So this is a penal Law.

ATTY. MENDOZA:

Yes, your Honor.

COURT:

In your DENR Administrative Order No. 97-32, is this a penal law?

ATTY. MENDOZA:

It is an implementing rule, your Honor.

COURT:

Implementing rule.

ATTY. MENDOZA:

Yes, your Honor.

COURT:


Implementing rule.

ATTY. MENDOZA:

Implementing P.D. 705, your Honor.

COURT:

We will follow your arguments that charcoal is included in the word "wood" in the law.





T.S.N.  
Crim. Case No. CR21-11806  
Pp. vs. Mark Rey Hernandez  
& Gabriel Panera Serujano  
For: Violation of P.D. 705  
ARGUMENTS – November 23, 2022  
Page ..... -7-  
x-----x

ATTY. MENDOZA:

Not necessarily, your Honor, I am of the position because of the judicial admission of the accused using the word "wood charcoal."

COURT:

Your argument that charcoal is included in the word "wood"?

ATTY. MENDOZA:

Your Honor in our motion for reconsideration...

COURT:

Just answer the question of the court, *yon bang* charcoal *ay* wood?

ATTY. MENDOZA:

Yes, your Honor.

COURT:

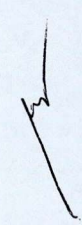
*Pag sinabi mong* charcoal *kasama na yon sa* definition *ng* P.D. 705, as wood, as forest product?

ATTY. MENDOZA:

Yes, your Honor.

COURT:

If that is your contention, then, why in the definition of your administrative order includes charcoal and wood in separate? See, this is forest product. *Yan ang* forest product *no?*





T.S.N.  
Crim. Case No. CR21-11806  
Pp. vs. Mark Rey Hernandez  
& Gabriel Panera Serujano  
For: Violation of P.D. 705  
ARGUMENTS - November 23, 2022  
Page ..... -8-  
x-----x

ATTY. MENDOZA:

Yes, your Honor.

COURT:

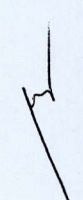
That is the meaning of forest product in your DENR Administrative Order No. 97-32, and the court quote: "Forest Product, par. "e", refers to timber, including lumber, pulpwood, firewood, bark, tree top, resin, gum, wood, oil, beewax, honey, beeswax, nipa, rattan, charcoal, *pag ininclude ang charcoal kasama na siya sa wood na term, samantalang don sa original text of the law, walang charcoal, wood lang.*

ATTY. MENDOZA:

Your Honor, probably it is turning, your Honor, to the enumeration, your Honor, because, your Honor, charcoal is also contemplated as a finished wood product.

COURT:

And the Supreme Court already mentioned the meaning of wood. Wood refers to a product that can be used in a carpentry, *di ba? Dito isiningit ng DENR yong salitang charcoal. Andiyan na nga yong "wood", yan ang "wood", wood, tapos nagsingit ng charcoal. Tapos yong original law, it is the law, "wood" lang, "wood", walang charcoal. Meaning, the intent of the legislature, that time, does not include charcoal, because charcoal is a processed product. You have to classify not only one word, the classification of other words, of other item, and they are raw nature, hindi kasama ang charcoal. Kasi ang charcoal ginawa na yan eh, processed na yan. O, bakit dito walang charcoal sa original law, don sa administrative order bukod sa "wood" may charcoal na isiningit.*





T.S.N.  
Crim. Case No. CR21-11806  
Pp. vs. Mark Rey Hernandez  
& Gabriel Panera Serujano  
For: Violation of P.D. 705  
ARGUMENTS - November 23, 2022  
Page ..... -9-  
x-----x

ATTY. MENDOZA:

Your Honor, may I respectfully invoke the rules in *Merida vs. People*, wherein the Supreme Court ruled that in so far as the lumber is concerned the law does not distinguish between a raw and processed lumber, your Honor. In the same way, your Honor.....

COURT:

Because there is no such thing as forest by product in the law. Can you find in the PD 705 forest by product, can you find in the law a forest major product and forest minor product? These are all product of the administrative order of the DENR. The problem, the agency went beyond their authority. The amending penal law, without any authority. See, the purpose of DENR Circular 97-32 is for administrative purposes, it has no penal authority. *Ikukulong n'yo ang tao base sa 705 na wala naman doong nakalagay na charcoal.*

ATTY. MENDOZA:


Your Honor, with due respect, may we look into the provision of Sec. 3, par. "aa" of P.D. 705, because it is the provisions used by the Supreme Court in *Merida vs. People*, the definition of processing plant.

COURT:

That is a processed product.

ATTY. MENDOZA:

The definition of the processing plant.





T.S.N.  
Crim. Case No. CR21-11806  
Pp. vs. Mark Rey Hernandez  
& Gabriel Panera Serujano  
For: Violation of P.D. 705  
ARGUMENTS – November 23, 2022  
Page ..... -10-  
x-----x

COURT:

(The court shown to Atty. Mendoza through LED monitor the definition of “aa” in PD 705) This is “aa”.

ATTY. MENDOZA:

Yes, your Honor.

COURT:


“aa”, *iba*.

ATTY. MENDOZA:

“bb”, your Honor, rather.

COURT:

This is the meaning of processing plant not forest product. Processing plant is any mechanical set up, device, machine or combination of machine used for the conversion of logs and other forest raw materials into lumber, venyl, flywood, fiberboard, blackboard, paperboard, bag, paper or other finish wood product. It contemplates the meaning of the machine that can produce process product. Because if this processing machine has no authority from the DENR or any government agency, it is a violation of P.D. 705. *Diyan hinuhugot, hinuhugot ng DENR yong processed product, di ba? Sinabi lang naman na ang machine ay tubo na gumagawa ng plywood at blackboard. Ngayon sinabi n'yo na, na okay pwede ang process product. Sinabi lang naman na nagpo-produce yong machine. Ngayong sinundan ko din yang inyong argument na yan sa decision, sa resolution. This is the meaning of processing plant, not forest product, of definition of charcoal. In Merida vs. People and also in Sama vs. People, wood use or suitable for building or for carpentry or joinery, woods, panels, tables. Remember P.D. 705 is a penal law.*





T.S.N.  
Crim. Case No. CR21-11806  
Pp. vs. Mark Rey Hernandez  
& Gabriel Panera Serujano  
For: Violation of P.D. 705  
ARGUMENTS – November 23, 2022  
Page ..... -11-  
x-----x

COURT: (continuing)

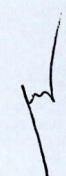
It enumerated there the forest product and it does not include the charcoal. Now, that is very dangerous because in criminal principle, in criminal doctrine, the interpretation of penal law's is strict. You cannot apply or interpret it liberally because what is at stake is the liberty and freedom of the people. *Kung strict, ang ating interpretation ng penal law, kung ano ang sinabi ng batas, yon lang. Ngayon kung gagawin nating liberal, I will agree. Kung liberal ang interpretation natin sa penal law, charcoal, wood charcoal, that is included in the wood as contemplated by the law. Yes, however, that is a penal law. Kung ano lang ang sinabi ng batas yon lang, huwag nating idagdag di ba. Ang hinuli charcoal wala naman yong charcoal sa batas.*

ATTY. MENDOZA:

Your Honor for the consideration of this Honorable Court, your Honor, on resolving the instant motion, may we invoke Article II, Sec. 16 of the Philippine Constitution wherein it states that "the State shall protect and advance the right of the people to a balance and healthful ecology" your Honor. Furthermore, your Honor, the doctrine *Oposa vs. Factoran*, regarding the third generation responsibility wherein the generation has the duty to preserve the environment for the next generation.

COURT:

Yes that is indeed 1987 constitution. That is why rule on environmental procedure was born and the writ of *Kalikasan* was promulgated by the Supreme Court. But that is beside the point, this is a criminal case indicting a person. And the court repeat in interpretation of penal law, it is strict not liberal. *Wala ang charcoal sa penal law eh, isiningit sa administrative order.* Yes. The executive department has a quasi-legislative function. They can execute order, circular and memorandum for the implementation and execution of the law, but it has no authority to amend the law, especially penal law. That is basic. And your administrative order is not a penal law. It cannot amend a penal statute. Anything to add prosec?





T.S.N.  
Crim. Case No. CR21-11806  
Pp. vs. Mark Rey Hernandez  
& Gabriel Panera Serujano  
For: Violation of P.D. 705  
ARGUMENTS - November 23, 2022  
Page ..... -12-  
x-----x

PROS. SAN MIGUEL:

None, your Honor.

COURT:

Anything to add Atty. Cabarles?

ATTY. CABARLES:

None, your Honor.

COURT:

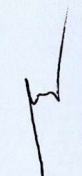
Atty. Mendoza?

ATTY. MENDOZA:

None, your Honor, we respectfully submit the matter to the Honorable Court, your Honor, for the resolution.

COURT:

In the studies conducted by Dela Salle University in Quezon Province, yes. 80% of forest destruction in the Philippines was caused by illegal logging. 20% charcoal making in Quezon Province because of the status of the people there, the local government and the DENR tolerated the people to produce charcoal on a regulated basis. They can only produce charcoal from the trees of timber that was fell down by typhoon. Then, they will trim the tree, sustainable charcoal making. *Eh bakit doon allowed, sa Quezon.* If really, with the liberal interpretation of PD 705, *illiberal natin ang interpretasyon ng PD 705 bakit yong uling doon sa tindahan na yan hindi hinuhuli kung talagang bawal ang uling at krimen ang pagingat ng uling.* Because gathering, collecting of forest product is a criminal offense, yes, under the law. Now *kung isasama nating ang uling, bakit yong*





T.S.N.  
Crim. Case No. CR21-11806  
Pp. vs. Mark Rey Hernandez  
& Gabriel Panera Serujano  
For: Violation of P.D. 705  
ARGUMENTS - November 23, 2022  
Page ..... -13-  
x-----x

COURT: (continuing)

*uling d'yan sa tindahan hindi hinuhuli? Di ba? Bakit walang pulis na nagre-raid ng tindahan na nagtitinda ng uling. Why? Because charcoal is not included in the penal law. Isinama lang naman ng DENR doon sa kanilang administrative order. Pero kapag ang uling nakasakay sa sasakyan, nakakarga sa truck hinuhuli, bakit, may kita, kumikita. Sino kumikita? Pulis, bonding company, kasi ibaban yong truck para makuha mo, bini-bid. Pero kapag ang uling sako-sako nakaladlad sa kalsada sa tapat ng tindahan, walang pakialam ang pulis, walang pakialam ang DENR. Bakit? Walang kita. Pag nasa sasakyan na, ayan na, hindi na mapakali. Have you been to Bulalacao Atty. Mendoza?*

ATTY. MENDOZA:

Twice, your Honor.

COURT:

*Napansin mo daming uling sa kalsada?*

ATTY. MENDOZA:

I have not notice, your Honor.

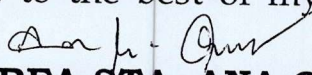
COURT:

*Tulog ka yata pag nagbibyahe. Kahit dito sa Socorro, sa Happy Valley. Bakit tinawag na Happy Valley yon, dapat Happy Hill, hindi Valley, Libis, Burol. Ang daming uling diyan, hindi hinuhuli.*

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### CERTIFICATION

I hereby certify to the correctness of the foregoing transcript of stenographic notes to the best of my ability and knowledge.

  
**AUREA STA. ANA-ORNEDO**  
Court Stenographer III