



Republic of the Philippines
Department of Environment and Natural Resources
MIMAROPA Region 287

OUTGOING	
Received by:	
Date:	3/6/23

March 03, 2023

MEMORANDUM

FOR : The Regional Executive Director
MIMAROPA Region

THRU : The Assistant Regional Director for Technical Services

FROM : The OIC, PENR Officer

SUBJECT : **REQUEST LETTER OF ATTY. ROLLY F. ROLDAN, JR. IN BEHALF OF NAPTALY C. CASTELLANO ET.AL. FOR THE RELEASE OF THE ISUZU ELF TRUCK WITH CHASSIS NO. NPR75G4646906, ENGINE NO. 4BC1-136065 AND PLATE NO. UEU958 APPREHENDED ON FEBRUARY 17, 2015 AT BRGY. TABING-DAGAT, ODIONGAN, ROMBLON**

Respectfully forwarding the attached request letter of Hon. Atty. Rolly F. Roldan, Jr. pertaining to the above-cited subject.

Please be informed that the apprehension was transpired on February 17, 2015 and apprehended by the personnel of DENR-PENRO, Romblon. Said forest products and conveyances, machinery/tools were deposited at DENR-PENRO for safekeeping and proper disposition. Further, this office conducted administrative proceedings in accordance to DAO 97-32 and existing Environmental Laws, Rules, and Regulations. In addition, this office filed a case to a certain Naptaly C. Castellano et.al.to the Regional Trial Court (Fourth Judicial Region) Branch 82, Odiongan, Romblon with Criminal case No. OD-2607 and Violation of Section 77, PD 705 as amended by EO No. 277.

Attached are the following pertinent documents:


- 1) Copy of request letter of Hon. Atty. Rolly F. Roldan, Jr.;
- 2) Copy of Order from the Regional Trial Court (Fourth Judicial Region) Branch 82 signed by Hon. Executive Judge Edwin B Buffe dated September 11, 2019 ; and
- 3) Copy of Decision from the Regional Trial Court (Fourth Judicial Region) Branch 82 signed by Hon. Executive Judge Edwin B Buffe dated November 10, 2022.



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

In this regard, this office seeks your assistance or legal opinion pertaining to the request of Hon. Atty. Rolly F. Roldan, Jr.

For information, review and further instruction.


ARNOLDO A. BLAZA, JR.


Cc:

HON. ATTY. ROLLY F. ROLDAN, JR.



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

Document Routing Slip

Document Number: 2023-104212 Date Endocded: 01-Mar-2023

Sender: Atty. Rolly F. Roldan Jr.

Address: Tabin-Dagat, Odiongan, Romblon

Subject: Letter dtd March 1, 2023 - RE: Isuzu ELF truck with Chassis No. NPR75G4646906, Engine No.4BC1-136065 and Plate No. UEU958 confiscated by the DENR on February 17, 2015.

Addressee: THE OIC, PENR OFFICER

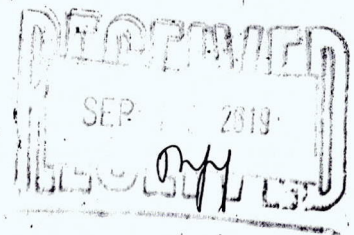
Attachment(s): Letter; copies of the decision and order of release are attached

Urgent: Yes; received by Rochell

Date Received: 01-Mar-2023

ROUTING AND ACTION INFORMATION				
FROM	DATE RECEIVED	FOR/TO	DATE RELEASED	ACCEPTANCE REMARKS/ACTION REQUIRED/TAKEN REMARKS/STATUS
OP	2023-03-01	OFFICE- PENRO (OP)	2023-03-01	Date: 2023-03-01 Status: IN From: leianegracemgan Message: Forwarded to PENRO for his info and instructions. TY
	02 MAR 2023 for James		3-2-2023 4:19 pm	For, Attn: NTS For your review/evaluation and further P.A. - Pks. coordinate w/ Atty. Rolly Roldan Jr. Thanks March 01, 2023 See the instruction of penro and do for A/A Thanks \$

Republic of the Philippines
REGIONAL TRIAL COURT
Fourth Judicial Region
BRANCH 82
Odiongan, Romblon



PEOPLE OF THE PHILIPPINES

CRIM. CASE NO. OD-2607

Plaintiff,

-versus-

-for-

NAPTALY CASTELLANO, ET AL.

VIOL. OF SEC. 77, PD NO. 705

Accused.

AS AMND. BY EO NO. 77

X-----X

ORDER

This case was filed on Mar. 21, 2016.

The rules of procedure shall be strictly observed, such as the *one witness, one day rule*. Conflicts of schedule shall be manifested within 3 days from notice; otherwise, hearing shall proceed. Following this order, testimonial evidence shall be terminated within 90 days from initial hearing, excluding any periods beyond 30 days from the last hearing. To keep to this time limit, and to avoid surprise witnesses, motions for additional settings and to subpoena witnesses shall be filed immediately.

The pre-trial will be terminated and the corresponding order be issued on the forthcoming setting.

The "Ex Parte Motion for Production and Release of Evidence" filed by accused through counsel also pends resolution.

WHEREFORE, terminate the pre-trial on the forthcoming setting.

The said "Ex Parte Motion for Production and Release of Evidence" is hereby granted, the subject vehicle being not illegal per se, and is otherwise used in lawful commerce.

The DENR—Odiongan, Romblon is hereby directed, at the expense of the accused, to cause the photographing of the subject vehicle (with details Isuzu Elf Chassis No. NPR75G4646906 Engine No. 4BC1-136065 Plate No. UEU958, owned by Pepe Gombuc), and to thereafter release said vehicle to its driver or last known possessor accused Naptaly Castellano.

The DENR shall immediately turn over the resulting photographs to the prosecution office.

Under pain of contempt of court, accused shall not make any alterations thereto until this case is terminated, or allow any person to do so, and shall produce the vehicle in court whenever

7. 1.
Motu proprio, the court hereby moves for the provisional dismissal of this case should none of the arresting officers be present to testify.

Set the presentation of prosecution evidence on Jan. 6, 7 and 8, 2020 at 8:30 a.m.

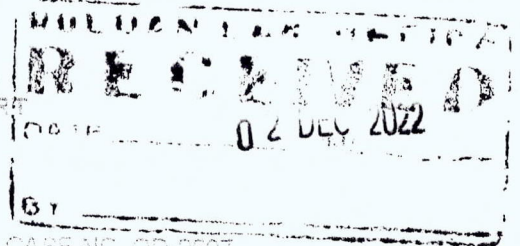
Odiongan, Romblon, September 11, 2019.


EDWIN B. BUFFE
Executive Judge

Copy furnished :

OIC PP Cesar Carreon III
Atty. Rolly Roldan Jr.

Republic of the Philippines
REGIONAL TRIAL COURT
Fourth Judicial Region
BRANCH 82
Odiongan, Romblon



PEOPLE OF THE PHILIPPINES
Plaintiff,

CRIM. CASE NO. OD-2607

-versus-

-for-

NAPTALY C. CASTELLANO
ARCEL M. ROSACENA, and
TERESITO G. SALAMAT

VIOL. OF SEC. 77, PD NO 705
AS AMD. BY EO NO. 277

Accused.

X-----X

DECISION

Accused NAPTALY C. CASTELLANO, ARCEL M. ROSACENA and TERESITO G. SALAMAT were charged with under the following information.

"XXX

That on or about the 17th February 2015, at Barangay Tabin-dagat, Municipality of Odiongan, Province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain being then without the legal documents as required under existing forest laws and regulations, conspiring, confederating and mutually helping each other, did then and there willfully, unlawfully, and feloniously, without any legal authority, possess 88 pieces of assorted sizes of Antipolo lumbers, with a total volume of 771.3 board feet valued at P25,945.50 Philippines currency, to the damage and prejudice of the environment and government in the aforestated amount.

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MANUEL ROMERO, DENR PENRO Forester III—Odiongan, Romblon (TSN Jan. 6, 2020), testified for the prosecution to the following notable effects: on Feb. 17, 2015, he as team leader (and his 2 fellow DENR PENRO officers were) instructed, by cellphone call ("He has seen a suspected Elf truck covered with trapal", p. 6; "suspected to have illegal lumbers loaded on it", per Joint Affidavit dated Mar. 28, 2015) that he received at their said office, by their OIC-PENRO Benjamin Jovinal, to watch out for a vehicle, an Elf truck, that was seen by Mr. Jovinal, Mr. Jovinal's basis could have been something like a tip that was relayed to him; he and his fellow officers stationed themselves at the main road, in front of the Odiongan police station and waited for the vehicle to pass; when they saw the vehicle, they flagged it down, so it stopped, and they introduced themselves as DENR officers; they asked the driver, accused Naptaly Castellano, whether they could take a look at the load of the vehicle, since there was a trapal covering the load; they did not make the driver/anybody on the truck remove the trapal, but he and his companions merely looked into a portion at the back of the driver, which was open, and saw the pieces of lumber (TSN, p. 11).

the driver smiled because he knew/ s familiar with the witness; when asked for legal documents (permit to cut, to transport) for the pieces of lumber loaded aboard the truck, the driver failed to present them; they directed the driver to drive the truck to the DENR PENRO office for investigation, together with the lumber; there being no such documents presented to them, they impounded the vehicle and confiscated 88 pieces of *Antipolo* tree lumber, measuring 771.3 board feet; they submitted a report of the incident ("A"-Memorandum dated Feb. 17, 2015) to their superior officer, for the conduct of an administrative proceeding; the seizure of the lumber were shown by said Memorandum, "B"-Apprehension Receipt, "E"-Seizure Order, "C"-On-site Report, "F"-Seizure Receipt, "G"-pictures of the incident, and Joint Affidavit dated Mar. 23, 2015; the estimated value of the pieces of lumber is based on the tariff price of lumber from in the locality, or based on say-so of certain people.

GERARDO SABIGAN, Head of Management Services Division of DENR PENRO, Odiongan (TSN Jan. 7, 2020), who next testified to the following notable effects: he conducted the corresponding administrative proceeding; he did not look for or subpoena the person/s who may have personal knowledge of the subject tip that may have been given to Mr. Jovinal.

DEFENSE EVIDENCE commenced with the testimony of accused NAPTALY CASTELLANO (TSN May 27, 2020; July 28, 2020; Sinumpaang Salaysay—exh. "1"), who testified to the following notable effects: he was the abovesaid driver of the subject Elf truck; the said DENR apprehending officers flagged them down, and after he asked them of the reason, said officers said that they suspected that the truck was loaded with lumber, which was covered with *trapal* so that the lumber could not be seen;

he asked for any warrant of arrest/search warrant, and having said none, said officers immediately opened the canvass cover of the lumber; said officers, particularly Manuel Romero, were only able to know that what accused were carrying were lumber when they opened the canvass/tarpaulin; the lumber were loaded onto the truck by the workers of Diona Gabo, the owner of the lumber.

ARCEL ROSACENA and TERESITO SALAMAT (TSN Nov. 5, 2020; Feb. 23, 2022; July 25, 2022) essentially corroborated the above testimony.

THE CRITICAL issue, thus, is whether the subject lumber depicted in pictures (exhs. "3" and "4"), and shown partly exposed under the *trapal* after such covering was partially retracted following the flag-down, could be admissible in evidence. In this regard, the following enlightens:

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Petitioner contends that the flagging down of his vehicle by police officers who were on routine patrol, merely on "suspicion" that "it might contain smuggled goods," does not constitute probable cause that will justify a warrantless search and seizure. He insists that, contrary

to the rulings of the trial court as adopted by the appellate court, he did not give any consent, express or implied, to the search of the vehicle. Perforce, any evidence obtained in violation of his right against unreasonable search and seizure shall be deemed inadmissible.

Enshrined in our Constitution is the inviolable right of the people to be secure in their persons and properties against unreasonable searches and seizures, as defined under Section 2, Article III thereof, which reads:

"Sec. 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."

The exclusionary rule under Section 5(2), Article III of the Constitution bars the admission of evidence obtained in violation of such right.

The constitutional prescription against warrantless searches and seizures is not absolute but admits of certain exceptions, namely: (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; (3) search of moving vehicles; (4) consented warrantless search; (5) customs search; (6) stop and frisk situations (Terry search); and (7) exigent and emergency circumstances.

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1. Search of 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. XXX

The mere mobility of these vehicles, however, does not give the police officers unlimited discretion to conduct indiscriminate searches without warrants if made within the interior of the territory and in the absence of probable cause. 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 the selves 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. XXX.

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.

Routine inspections are not regarded as violative of an individual's right against unreasonable search. The search which is normally permissible in this instance is limited to the following instances: (1) where the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds; (2) simply looks into a vehicle; (3) flashes a light therein without opening the car's doors; (4) where the occupants are not subjected to a physical or body search; (5) where the inspection of the vehicles is limited to a visual vehicle or visual inspection; and (6) where the routine check is conducted in a fixed area.

None of the foregoing circumstances is obtaining in the case at bar. The police officers did not merely conduct a visual search or visual inspection of herein petitioner's vehicle. They had to reach inside the vehicle, lift the kakawati leaves and look inside the sacks before they were able to see the cable wires. It cannot be considered a simple routine check.

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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

object seized was inside a closed package, the object itself is not in plain view and therefore cannot be seized without a warrant. However, if the package proclaims its contents, whether by its distinctive configuration, its transparency, or if its contents are obvious to an observer, then the contents are in plain view and may be seized. In other words, if the package is such that an experienced observer could infer from its appearance that it contains the prohibited article, then the article is deemed in plain view. It must be immediately apparent to the police that the items that they observe may be evidence of a crime, contraband or otherwise subject to seizure.

It is clear from the records of this case that the cable wires were not exposed to sight because they were placed in sacks and covered with leaves. The articles were neither transparent nor immediately apparent to the police authorities. They had no clue as to what was hidden underneath the leaves and branches. As a matter of fact, they had to ask petitioner what was loaded in his vehicle. In such a case, it has been held that the object is not in plain view which could have justified mere seizure of the articles without further search.

XXX (Caballes vs. CA, et al., G.R. No. 136292, January 15, 2002).

In the instant case, which features a moving vehicle, first—there should have been a showing that there was probable cause for flagging it down and subjecting the same to a warrantless search thereafter.

The testimony of Manuel Romero, however, was simply to the effect that he had received a cellphone call from his superior OIC PENRO Jovinal to the effect that the latter "*has seen a suspected Elf truck covered with trapal*", or "*suspected to have illegal lumbers loaded on it*". Even from the standpoint of Jovinal, there was mere suspicion, suspicion that he simply then passed on to Romero. Considering that Jovinal should have testified, but did not, on the basis of such "suspicion", the court was not enabled to assess whether any such suspicion may have amounted to probable cause, and thus, has found none.

Secondly, in the alternative scenario of a "stop and search", instead of conducting a mere visual search of the vehicle, the apprehending officers had to have the *trapal* partly retracted to expose the cargo thereunder, which turned out to be lumber. Such lumber and its pictures are, thus, inadmissible as evidence, strictly from the vantage point of a "stop and search", considering that there was even no testimony to the effect that the apprehending officers could have otherwise positively testified to the effect that the lumber was in *plain view*, or that the configuration or tell-tale contours of what was under the *trapal*, from their experience or by their trained eye, was evidently lumber.

Now, however, witness Romero also testified that they did not make the driver or anybody on the truck remove the *trapal*, but he

and his companions merely looked into a portion at the back of the driver, which was open, and saw the pieces of lumber, alluding, in other words, to the same *plain view* doctrine.

The court has found the asseveration problematic, however, inasmuch as such critical details of the search and discovery process nowhere appeared in their sworn statement, or their Joint Affidavit dated Mar. 23, 2015. What they simply asserted therein was to the effect that after they checked what the truck contained under the *trapal*, they discovered the lumber.

Concededly, affidavits generally do not contain as much details as in-court testimonies, and so neither affidavit nor witness can hardly be deprecated for shortage or discrepancy in details. That being said, the following is equally true:

"Although the general rule is that contradictions and discrepancies between the testimony of a witness and his statements in an affidavit do not necessarily discredit him, this rule is not without exception, as when the omission in the affidavit refers to a very important detail of the incident that one relating the incident as an eyewitness could not be expected to fail to mention, or when the narration in the sworn statement substantially contradicts the testimony in court" (PEOPLE vs. ANTONIO ALVARADO Y GALON, G.R. No. 104399. March 20, 1995).

The court, accordingly, cannot simply brush aside as immaterial the said discrepancy between Romero's testimony and his said affidavit, given that the variance or shortage in details between his testimony and affidavit "refers to a very important detail of the incident that one relating the incident as an eyewitness could not be expected to fail to mention", and more important, given that such details are the very hinge on which swings the admissibility of the lumber and its pictures.

"A statute, rule or situation which allows exceptions to the requirement of a warrant of arrest or search warrant must perforce be strictly construed and their application limited only to cases specifically provided or allowed by law. To do otherwise is an infringement upon personal liberty and would set back a right so basic and deserving of full protection and vindication yet often violated" (People vs. Aruta, G.R. No. 120915, April 03, 1998).


Since there is contrariety between the unreliable, *plain view* version of prosecution witness Romero, and that of the accused, who all maintained that Romero himself had pulled aside at least a part of the *trapal*, thus exposing the lumber, the court hereby construes and resolves the doubt in favor of the accused, upon reasonable doubt. In the circumstances of the case, it was highly likely that at least one of the DENR apprehending personnel, most likely Romero, being the team leader, had to have drawn the *trapal*, in order to check whether OIC PENRO's suspicion was true, or that the cargo of the truck was lumber. The search of the truck, thus, being unreasonable for lack of probable cause, the invalid discovery of such lumber rendered the same inadmissible in evidence.

"[A]rticles which are the product of unreasonable searches and seizures are inadmissible as evidence pursuant to the doctrine pronounced in Stonehill v. Diokno" (Aruta, *supra*).

WHEREFORE, the 88 pieces of assorted sizes of Antipolo lumber and their pictures being the product of an invalid warrantless search, hence, inadmissible in evidence, and there being no other evidence showing the guilt of the accused beyond reasonable doubt, accused NAPTALY C. CASTELLANO, ARCEL M. ROSACENA and TERESITO G. SALAMAT are hereby acquitted, for insufficiency of evidence.

Considering, however, that said lumber did not have benefit of the proper authority or permit for their possession, the same pieces of lumber are hereby confiscated in favor of the government, to be disposed of in accordance with law and prevailing rules.

Odiongan, Romblon, November 10, 2022.


EDWIN B. BUFFE
Executive Judge

Copy furnished:

APP Rafael Familiaran

NOV 14 2022

Atty. Rolly Roldan Jr.

DENR-PENRO, Odiongan, Romblon

NAPTALY C. CASTELLANO

ARCEL M. ROSACENA

TERESITO G. SALAMAT

2607
DENR - PENRO

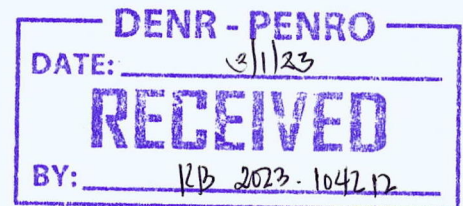
REGISTRY RECEIPT	
Post Office	
Letter/Package No.	C-4381
Posted on	11-16 20 22
Preserve this receipt for reference in case of inquiry	
Postmaster/Teller	

ROLDAN LAW OFFICE

No. 088, M.L. Quezon St. Tabin-dagat, Odiongan, Romblon, 5505
Landline-5676133, Cellular Phone 09392520068

March 1, 2023

HON. ARNOLDO BLAZA, JR.
OIC, PENRO
DENR, Odiongan, Romblon



Sir:

I am writing for and in behalf of NAPTALY C. CASTELLANO, ARCEL M. ROSACENA and TERESITO G. SALAMAT and this has reference to Isuzu ELF truck with Chassis No. NPR75G4646906, Engine No. 4BC1-136065 and Plate No. UEU958 confiscated by the DENR on February 17, 2015.

Please be informed that the Criminal Case No. 2607 against my clients that arose out of the DENR operation was already resolved and they are acquitted by RTC, Branch 82, Odiongan, Romblon.

The RTC Branch 82, Odiongan, Romblon has also previously ordered the release of the said truck.

Copies of the Decision and Order of Release are hereto attached.

Kindly advise us as to how the said truck will be released to my client NAPTALY C. CASTELLANO.

Thank you.

Very truly yours,

ATTY. ROLLY F. ROLDAN, JR.