



Republic of the Philippines

Sandiganbayan

Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-0253
For: Violation of Section 1(b)
of P.D. No. 1829

- versus -

Present:

SOCRATES C. FERNANDEZ,
Accused.

LAGOS, J., *Chairperson,*
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, JJ.

Promulgated:

October 25, 2019 *jal*

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DECISION

CORPUS-MAÑALAC, J.:

Before this Court is the Information against accused Socrates C. Fernandez, City Mayor of Talisay, Cebu, for violation of Section 1(b) of Presidential Decree (P.D.) No. 1829 (*Decree Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders*), docketed as Criminal Case No. SB-17-CRM-0253.

The accusatory portion of the Information¹ dated July 26, 2016 reads:

That on 4 June 2010 at about 5:00 p.m., in Sitio Zombria, Brgy. Lawaan 2, City of Talisay, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, accused SOCRATES CABIGAS FERNANDEZ (Socrates), public officer, being the City Mayor of the City of Talisay, Province of Cebu, in such capacity and committing the offense in relation to office and taking advantage of his official position, with deliberate intent, did then and there willfully, unlawfully, and criminally retrieve a red lady's bag from a red Sport Utility Vehicle (SUV) Isuzu Bighorn with Plate No. YEZ 460, then under police custody and control in relation to the warrantless arrest of his adopted son, Joavan Fernandez, for Grave Threats, against the objection of police officer exercising custody and control on the said vehicle, with Socrates insisting that he could do

¹ Records, Vol. 1, pp. 1-2.

anything with his vehicle being owned by him and being the City Mayor of Talisay, Cebu, and refusing to turn over the retrieved bag despite being asked to do so by the said police officers, thereby concealing and/or suppressing the same with intent to impair its availability as possible evidence in the investigation of the criminal case against Joavan Fernandez.

CONTRARY TO LAW.

The Antecedent Proceedings

This case stemmed from a letter-complaint² dated June 11, 2010 filed by the Cebu Provincial Police Office, Philippine National Police, against the accused before the Office of the Ombudsman–Visayas (OMB-VIS) for violations of P.D. No. 1829 and Republic Act No. 6713,³ and Grave Misconduct and Abuse of Authority, docketed as OMB-V-C-10-0252-F (criminal) and OMB-V-A-10-0273-F (administrative).

The complaint averred that on June 4, 2010, at around 5:00 p.m., the accused retrieved a red lady's bag, and refused to turn over the same, from his sport utility vehicle, a red Isuzu Trooper (Bighorn) with plate number YEZ 460, parked inside OIKOS Auto Repair Shop in Sitio Zombria, Brgy. Lawaan 2, Talisay City, despite having been informed by a police officer that the vehicle was under police custody and investigation. The accused purportedly remarked, "*Unsay problema do? Ako ning sakyanan. Way makapugong nako. Mayor ko sa Talisay*" (What is the problem, man? This is my car. Nobody can prevent me. I am the Mayor of Talisay).⁴ It was allegedly under police custody and investigation at the time after its driver, Joavan S. Fernandez (**Joavan**), the adopted son of the accused, was placed under warrantless arrest inside the auto shop for reportedly poking a gun at a certain Vincent Joe R. Castrodes (**Castrodes**) when his BMW Sedan and the Isuzu Trooper nearly collided with each other in front of Vista Grande, Brgy. Bulacao, Talisay City at around 3:30 p.m. of the same day.

The following day, June 5, 2010, Judge Soliver Peras of the Regional Trial Court (RTC), Branch 10, of Cebu City issued a search warrant⁵ against the Isuzu Trooper for the seizure of certain firearms and ammunitions believed to be inside the vehicle. In the evening of said day, the police implemented the search warrant and recovered from the vehicle one (1) .45 caliber pistol with two (2) magazines containing thirteen (13) live ammunitions.⁶

² Records, Vol. 1, pp. 23-25. The complaint was signed by SPO1 Elmo Y. Rosales, investigating officer, with the concurrence of P/SInsp. Rubin A. Cuizon, OIC, PIDMB, and approved by P/SSupt. Erson U. Dugal, Provincial Director.

³ *Code of Conduct and Ethical Standards for Public Officials and Employees*.

⁴ Records, Vol. 1, p. 30 (Joint-Affidavit dated June 11, 2010 of SPO1 Ciriaco G. Luab and PO2 Epifanio G. Comedido, p. 2).

⁵ *Id.* at 37.

⁶ *Id.* at 24 (Complaint, p. 2).

The accused filed his Counter-Affidavit⁷ dated October 18, 2010. By Resolution⁸ of April 28, 2011 in OMB-V-C-10-0252-F, the OMB-VIS found probable cause against him for violation of Section 1(b) of P.D. No. 1829. In OMB-V-A-10-0273-F, he was likewise found administratively liable for Simple Misconduct and meted the penalty of suspension from the service for three months without pay.⁹ In an Order¹⁰ dated May 23, 2016, the Ombudsman denied the accused's motion for reconsideration filed on January 6, 2016, and sustained the finding of probable cause and administrative liability.

On February 13, 2017, the Office of the Special Prosecutor filed the above-quoted Information against the accused with the *Sandiganbayan*, and the same was eventually raffled to this Court.

Proceedings before this Court

On February 20, 2017, the Court found probable cause against the accused and ordered the issuance of a warrant of arrest,¹¹ and issued a Hold Departure Order¹² of even date. On February 21, 2017, the Court issued the warrant of arrest.¹³ On March 1, 2017, the accused posted cash bail bond in the amount of PhP12,000.00.¹⁴ On even date, the Court set the arraignment of the accused on April 5, 2017.¹⁵

On March 16, 2017, the accused, through counsel, filed a *Motion to Dismiss*¹⁶ dated March 8, 2017 on the ground of inordinate delay on the part of the Office of the Ombudsman in the conduct of preliminary investigation, alleging a violation of his constitutional right to a speedy disposition of his case. The arraignment was reset to May 9, 2017¹⁷ and, upon motion¹⁸ by the accused, further reset to June 6, 2017.¹⁹ On May 3, 2017, the prosecution filed its *Comment and/or Opposition*²⁰ dated April 27, 2017. By Resolution²¹ of June 1, 2017, the Court denied the motion to dismiss.

Upon arraignment on June 6, 2017, the accused entered a plea of not guilty.²²

⁷ *Id.* at 48-54.

⁸ *Id.* at 6-12.

⁹ *Id.* at 15 (*Vide* Joint Order dated May 23, 2016, p. 2).

¹⁰ *Id.* at 14-21.

¹¹ *Id.* at 65.

¹² *Id.* at 66.

¹³ *Id.* at 68.

¹⁴ *Id.* at 77-78.

¹⁵ *Id.* at 78.

¹⁶ *Id.* at 96-102.

¹⁷ *Id.* at 205.

¹⁸ *Id.* at 218-220.

¹⁹ *Id.* at 221.

²⁰ *Id.* at 222-231.

²¹ *Id.* at 246-253.

²² *Id.* at 259.

In view of the absence of the accused and his counsel, the scheduled preliminary conference on June 27, 2017²³ was reset to and conducted on July 20, 2017,²⁴ and concluded on August 24, 2017.²⁵ On September 11, 2017, the Court received from the accused an undated *A Plea of Consideration*,²⁶ with attached documents on his achievements,²⁷ praying for the dismissal of this case. The Court noted the same.²⁸

On October 24, 2017,²⁹ during the pre-trial hearing, the parties, including the accused, have all signed their conformity to the Pre-Trial Order³⁰ of even date, as corrected. In the Pre-Trial Order, the parties admitted the following matters:

1. The identity of the accused and the jurisdiction of this Court; and
2. At the time material to this case, the accused was the City Mayor of Talisay, Cebu.³¹

Trial on the merits then ensued.

The prosecution presented its witnesses on November 8 and 21, 2017, January 31, 2018, April 10, 2018, May 29, 2018, July 3, 2018, and September 19, 2018, viz.: (1) Senior Police Officer 1 (SPO1) **Ricardo M. Balbutin, Jr.**;³² (2) **Castrodes**;³³ (3) PO2 **Epifanio G. Comedido**;³⁴ (4) PO3 **Rusty B. Pelayo**;³⁵ (5) former Police Senior Inspector (P/SInsp.) **Isagani V. Abalo**;³⁶ (6) SPO1 **Arnold D. Damasco**;³⁷ (7) Police Chief Inspector (P/CInsp.) **Rubin A. Cuizon**;³⁸ (8) and SPO1 **Ciriaco G. Luab**.³⁹

On October 15, 2018, the prosecution filed its *Formal Offer of Evidence*⁴⁰ dated October 10, 2018. On November 12, 2018, the defense filed its *Comment/Objections*⁴¹ dated November 9, 2018. In a Resolution⁴² dated November 15, 2018, the Court admitted all the documentary evidence

²³ *Id.*

²⁴ *Id.* at 263-264, 279.

²⁵ *Id.* at 280, 290-291.

²⁶ *Id.* at 295.

²⁷ *Id.* at 296-299.

²⁸ *Id.* at 300.

²⁹ *Id.* at 291, 302, 308, 320. In view of the work suspension in all courts, the pre-trial scheduled on September 21, 2017 was reset to October 16, 2017, and further reset to October 24, 2017.

³⁰ *Id.* at 313-319.

³¹ *Id.* at 315-316 (Pre-Trial Order, pp. 3-4).

³² *Id.* at 353.

³³ *Id.* at 375.

³⁴ *Id.* at 407.

³⁵ *Id.* at 431.

³⁶ *Id.* at 431.

³⁷ *Id.* at 485.

³⁸ *Id.* at 494.

³⁹ Records, Vol. 2, p. 27.

⁴⁰ *Id.* at 37-44.

⁴¹ *Id.* at 88-91.

⁴² *Id.* at 93-94.

offered by the prosecution, viz.: “A to A-3 with submarkings;”⁴³ “B to B-1 with submarkings,”⁴⁴ “C to C-3,”⁴⁵ and “K and submarkings;”⁴⁶ “D to D-2 with submarkings;”⁴⁷ “E with submarkings;”⁴⁸ “F to F-2 with submarkings;”⁴⁹ and “G,”⁵⁰ “H with submarkings,”⁵¹ “I to I-1,”⁵² “J to J-12.”⁵³

On December 3, 2018, the defense filed a *Motion for Leave to File Demurrer to Evidence*⁵⁴ dated November 28, 2018. On December 11, 2018, the prosecution filed its *Comment and/or Opposition*⁵⁵ dated December 10, 2018. The Court denied the motion for leave by Resolution⁵⁶ of January 10, 2019.

On March 21, 2019, the defense presented its sole witness, Police Superintendent (P/Supt.) **Marlu P. Conag**, the incumbent Chief of Police, Talisay City Police Station.⁵⁷

On July 3, 2019, the Court received the *Memorandum*⁵⁸ dated June 18, 2019 of the defense. On July 29, 2019, the prosecution filed its *Memorandum*⁵⁹ dated July 26, 2019.

The Evidence for the Prosecution

The open court testimony of **SPO1 Balbutin, Jr.** was dispensed with upon stipulation by the parties that he could testify on the matters stated in the *Joint-Affidavit of Arrest*⁶⁰ dated June 7, 2010 of SPO1 Balbutin, Jr., SPO1 Luab and then PO1 Pelayo, with the counter-stipulations by the defense that Joavan was “already arrested and there was already a search incidental to a lawful arrest effected by the said witness as contained in the affidavit he executed,”⁶¹ and that “the subject vehicle was not subject to any traffic violation.”⁶²

⁴³ *Id.* at 45-48 (Letter-Complaint dated June 11, 2010).

⁴⁴ *Id.* at 49-50 (Affidavit dated June 7, 2010 of Castrodes).

⁴⁵ *Id.* at 51 (Joint-Affidavit of Arrest dated June 7, 2010 of SPO1 Balbutin, Jr., SPO1 Luab, and PO1 Pelayo).

⁴⁶ *Id.* at 70, 78-79 (Information dated June 7, 2010 for Grave Threats in Criminal Case No. 13349, *People of the Philippines v. Joavan Saw Fernandez*), 71-77, 80-86 (Decision dated November 27, 2013 of Judge Mario V. Manayon, Municipal Trial Court, Br. 1, Talisay City, Cebu, in Criminal Case No. 13349).

⁴⁷ *Id.* at 52-54 (Joint-Affidavit dated June 11, 2010 of SPO1 Luab and PO2 Comedido).

⁴⁸ *Id.* at 55-56 (Joint-Affidavit dated June 7, 2010 of PO3 Damasco, PO2 Lofranco, and PO1 Pelayo).

⁴⁹ *Id.* at 57-59 (Affidavit dated June 11, 2010 of P/SInsp. Abalo).

⁵⁰ *Id.* at 60 (Search Warrant dated June 5, 2010).

⁵¹ *Id.* at 61 (Joint-Affidavit dated June 10, 2010 of PO1 Jennis P. Lamosao, et al.).

⁵² *Id.* at 62-63 (Police Blotter on the complaint for Grave Threats against Joavan Fernandez).

⁵³ *Id.* at 64-69 (Photographs of the Isuzu Trooper with plate number YEZ 460 and PO1 Pelayo).

⁵⁴ *Id.* at 101-124.

⁵⁵ *Id.* at 132-139.

⁵⁶ *Id.* at 146-152.

⁵⁷ *Id.* at 167.

⁵⁸ *Id.* at 177-202.

⁵⁹ *Id.* at 218-228.

⁶⁰ *Id.* at 51 (Exh. “C” to “C-3”).

⁶¹ TSN, November 8, 2017, p. 16.

⁶² *Id.*

The *Joint-Affidavit of Arrest* stated that on June 4, 2010, SPO1 Balbutin, Jr., SPO1 Luab and then PO1 Pelayo, all of the Talisay City Police Station, arrested Joavan in the premises of OIKOS Auto Repair Shop, following the report and request for assistance from Castrodes at around 4:00 p.m. regarding the gun-poking incident during a traffic dispute in front of Vista Grande, Brgy. Bulacao, Talisay City; that they found no gun from Joavan upon a body search; and that since the Isuzu Trooper was not under the immediate control of Joavan, who was standing around three (3) meters away from the vehicle, they opted not to search the same.

The parties likewise stipulated that **Castrodes** could identify his *Affidavit*⁶³ dated June 7, 2010, as well as testify on the matters stated therein. He testified that Joavan was convicted in the case filed against him, in relation to the gun-poking incident, where the Municipal Trial Court (MTC), Branch 1, Talisay City, Cebu, in a Decision⁶⁴ dated November 27, 2013 in Criminal Case No. 13349, found Joavan guilty of the crime of *Other light threats* under paragraph 1, Article 285 of the Revised Penal Code, as amended, and imposed the penalty of imprisonment for ten (10) days, and that a case for illegal possession of firearms was still ongoing.⁶⁵

His *Affidavit* stated that on June 4, 2010, at around 3:30 p.m., in front of Vista Grande, Brgy. Bulacao, Talisay City, Joavan poked a gun at him after the Isuzu Trooper being driven by the former almost hit the vehicle, a BMW Sedan, that he was driving at the time. Thereafter, he followed the Isuzu Trooper and noticed that it stopped at an auto shop. He then sought police assistance and, with three police officers, went to the shop for the arrest of Joavan, corroborating the material statements in the *Joint-Affidavit of Arrest* dated June 7, 2010 of SPO1 Balbutin, Jr., SPO1 Luab and then PO1 Pelayo.

PO2 Comedido testified that on June 4, 2010, he went to OIKOS Auto Repair Shop upon the instruction of their superior, P/SInsp. Abalo, to accompany SPO1 Luab, who was already in the shop, in securing the Isuzu Trooper; that the accused arrived in the auto shop at around 5:00 p.m. on said day; that he informed the accused that he and SPO1 Luab were guarding the vehicle following the arrest of Joavan; that the accused answered "*Unsay problema do? Ako ning sakyanan. Ako'y Mayor sa Talisay. Way magboot nako.*" (What is the problem, Sir? This is my car. I am the Mayor of Talisay); that after PO2 Comedido answered back that the vehicle was under police investigation, the accused went to the Isuzu Trooper, opened the front door on the passenger side and took a red lady's shoulder bag; and that the accused refused to turn over the same before hurriedly walking towards his own vehicle and leaving the premises.⁶⁶

⁶³ Records, Vol. 2, pp. 49-50 (Exh. "B" to "B-1" with submarkings).

⁶⁴ *Id.* at 71-77, 80-86 (Exh. "K-1" to "K-7").

⁶⁵ TSN, November 21, 2017, pp. 6, 9-13.

⁶⁶ TSN, January 31, 2018, pp. 6-10.

PO2 Comedido identified the *Joint Affidavit*⁶⁷ dated June 11, 2010 that he and SPO1 Luab executed, affirming its contents,⁶⁸ which substantially narrated the same incident, but with the addition that PO2 Comedido made a call to P/SInsp. Abalo upon the accused's arrival in the shop, and that he likewise informed his superior about the incident immediately thereafter.

The parties stipulated that **SPO1 Luab** could identify the *Joint-Affidavit of Arrest* dated June 7, 2010 and the *Joint Affidavit* dated June 11, 2010, which both served as his direct testimony.⁶⁹ In relation to him, the *Joint Affidavit* dated June 11, 2010 stated that after arresting Joavan, he was left behind in the auto shop upon the instruction of P/SInsp. Abalo to secure the Isuzu Trooper.

The parties likewise stipulated that **PO3 Pelayo** could identify the *Joint-Affidavit of Arrest* dated June 7, 2010, as well as the *Joint-Affidavit*⁷⁰ dated June 7, 2010 that he executed with then PO3 Damasco and PO2 Roy Lofranco, as the designated searcher, photographer and recorder, respectively, in the implementation of the search warrant, and that PO3 Pelayo made the statements in said affidavits. On the witness stand, PO3 Pelayo identified the search warrant⁷¹ dated June 5, 2010 issued by Judge Peras of the RTC of Cebu City, as basis for the search.⁷²

The *Joint-Affidavit* dated June 7, 2010 stated that the search warrant was executed on the Isuzu Trooper on June 5, 2010 at around 10:20 p.m., resulting in the recovery of one (1) .45 caliber pistol, thirteen (13) pieces of .45 caliber live ammunitions, two (2) .45 caliber magazines, one (1) .45 holster, and one (1) magazine pouch.

SPO1 Damasco identified the *Joint-Affidavit* dated June 7, 2010, which served as its direct testimony.⁷³

P/SInsp. Abalo identified his *Affidavit*⁷⁴ dated June 11, 2010 which served as his direct testimony.⁷⁵ Therein, he stated that on June 4, 2010, after Jovan's arrest, he directed SPO1 Luab to stay in the auto shop to secure the Isuzu Trooper, and instructed PO2 Comedido to proceed thereto to serve as back up to SPO1 Luab. He confirmed that he twice received a cellular phone call from PO2 Comedido, informing him of the accused's arrival in the auto shop and the taking away of the lady's bag from the vehicle by the latter.

⁶⁷ Records, Vol. 2, pp. 52-54 (Exh. "D" to "D-2" with submarkings).

⁶⁸ TSN, January 31, 2018, pp. 11-12, in relation to TSN, September 19, 2018, pp. 24-25.

⁶⁹ TSN, September 19, 2018, pp. 7-8.

⁷⁰ Records, Vol. 2, pp. 55-56 (Exh. "E" with submarkings).

⁷¹ *Id.* at 60 (Exh. "G").

⁷² TSN, April 10, 2018, pp. 6-11.

⁷³ TSN, May 29, 2018, pp. 7-9.

⁷⁴ Records, Vol. 2, pp. 57-59 (Exh. "F" to "F-2" with submarkings).

⁷⁵ TSN, April 10, 2018, pp. 15-16.

As the then Officer-in-Charge of the Provincial Investigation and Detective Management Branch, Cebu Provincial Police Office in June 2010, **P/CInsp. Cuizon** identified the letter-complaint⁷⁶ dated June 11, 2010, he being a signatory thereto, filed by the Cebu Provincial Police Office against the accused before the OMB-VIS, affirming its contents.⁷⁷

The Evidence for the Defense

As the defense's sole witness, **P/Supt. Conag**, the incumbent Chief of Police, Talisay City Police Station, testified that the blotter book containing the entries from June 4 to 11, 2010 could not be located despite conducting a full search therefor.⁷⁸

Issue

The parties agreed to limit the issue in this case as to whether the accused is guilty of violation of Section 1(b) of P.D. No. 1829 or obstruction of justice.⁷⁹

Ruling

Under Section 1(b) of P.D. No. 1829, the crime of obstruction of justice is committed through the following acts:

Section 1. The penalty of *prision correccional* in its maximum period, or a fine ranging from 1,000 to 6,000 pesos, or both, shall be imposed upon any person who knowingly or willfully obstructs, impedes, frustrates or delays the apprehension of suspects and the investigation and prosecution of criminal cases by committing any of the following acts:

x x x x

(b) altering, destroying, suppressing or concealing any paper, record, document, or object, with intent to impair its verity, authenticity, legibility, availability, or admissibility as evidence in any investigation of or official proceedings in criminal cases, or to be used in the investigation of, or official proceedings in, criminal cases[.]

In this case, the prosecution proved that, indeed, on June 4, 2010, despite having been informed by a police officer that the Isuzu Trooper was under police custody and investigation, the accused opened the vehicle's front door on the passenger side and took away a lady's shoulder bag therefrom, and refused to turn over the same.

As reflected in the direct-examination of PO2 Comedido:

⁷⁶ Records, Vol. 2, pp. 45-48 (Exh. "A" to "A-3" with submarkings).

⁷⁷ TSN, July 3, 2018, pp. 7, 10-13.

⁷⁸ TSN, March 21, 2019, pp. 7-8.

⁷⁹ Records, Vol. 1, pp. 316-317 (Pre-Trial Order, pp. 4-5).

PROS. LAGUTING:

Q: Mr. Witness, x x x. Where were you on June 4, 2010, if you can remember?

A: I am on duty at that time at Talisay City Police Station, Ma'am.

Q: And in relation to your function as Police Officer II, who was on duty at that time. [sic] What [sic] instruction if any did you receive from your chief of police?

A: I was instructed by my chief of police to accompany SPO1 Ciriaco Luab in securing and guarding the vehicle that was driven by Joavan Fernandez, Ma'am.

x x x x

Q: And you were instructed to accompany SPO1 Luab to secure the vehicle. Where is that vehicle?

A: As being told by our chief of police, Ma'am, the vehicle was inside the Oikos Auto Repair Shop, Ma'am.

x x x x

Q: After receiving that instruction from the chief of police to proceed to Oikos Auto Repair Shop to accompany SPO1 Luab to secure the vehicle, what did you do if any?

A: I immediately proceeded to the Oikos Auto [R]epair Shop wherein SPO1 Luab was there on board the patrol car which was driven by our civilian employee from LGU, Ma'am.

x x x x

Q: While you were there upon the instruction of your chief of police to guard the vehicle, who arrived if any?

A: When I was there, together with SPO1 Luab, Mayor Socrates Fernandez from Talisay City arrived, Ma'am.

Q: What time did former Mayor Fernandez arrive?

A: At around 5:00 o'clock in the afternoon, Ma'am, on that day.

x x x x

Q: When you saw former Mayor Socrates Fernandez arriving at Oikos Auto Repair Shop, what did you do if any?

A: I approached Mayor Socrates Fernandez, Ma'am, and informed him that we are guarding and securing that vehicle which was driven by Joavan Fernandez who has been arrested for the crime of Grave Threats, Ma'am.

Q: So, after approaching former Mayor Fernandez and telling him that you are guarding that vehicle what happened next, if any?

A: He told me that in Visayan term that: **"UNSAY PROBLEMA DO?" AKO NING SAKYANAN.**

INTERPRETER

- A: What is the problem, Sir. This is my car.
“AKO’Y MAYOR SA TALISAY.”
- A: I am the mayor of Talisay. **“WAY MAGBOOT NAKO.”**
- Q: After saying those words to you, what did Mayor Fernandez do, if any?
- A: I politely told him that: “Mayor, that vehicle was under our police investigation” and still then the mayor directly went to that vehicle and opened the front door passenger’s side and extended his arm with the color red lady’s bag, Ma’am.
- Q: After seeing Mayor Fernandez retrieved that red lady’s bag inside the vehicle despite your request that he is not allowed to get inside the vehicle, what did you do?
- A: After he got the one piece of bag color red, Ma’am, I told him to turn over that bag to me, Ma’am, because that bag may contain pieces of evidence that would be useful for the investigation or any proceeding charged against his son.
- Q: When you told him to return the alleged lady’s bag, what did he do, if any?
- A: He hurriedly walked towards his vehicle and speed away.
- Q: Did he return the red lady’s bag?
- A: No, Ma’am.⁸⁰ (Emphasis and capitalization in the original)

The *Joint-Affidavit*⁸¹ dated June 11, 2010 that both PO2 Comedido and SPO1 Luab identified and affirmed during the trial,⁸² and served as the direct testimony of SPO1 Luab,⁸³ corroborated the foregoing testimony:

3. Upon the order of PSINSP ABALO, I (PO2 COMEDIDO) went to OIKOS AUTO REPAIR SHOP to accompany and serve as back up of SPO1 LUAB in providing security and guarding of the RED SUV ISUZU BIGHORN with plate number YEZ 460;

4. While waiting for the arrival of our request for the police yellow line from our office, we posted ourselves inside the OIKOS AUTO REPAIR SHOP in order to secure and preserve the vehicle of Joavan to prevent any persons from contaminating, altering, suppressing, destroying or concealing the probable pieces of evidence such as but not limited to unlicensed firearms, prohibited drugs or any objects to be used in the investigation of, or during proceeding of the criminal complaint filed by Vincent Castrodes against Joavan Fernandez;

5. At about 5:00 in the afternoon of 04 JUNE 2010, we noticed that MAYOR SOCRATES FERNANDEZ of TALISAY CITY, CEBU arrived on board his vehicle. At this juncture, I (referred to PO2 COMEDIDO)

⁸⁰ TSN, January 31, 2018, pp. 6-10.

⁸¹ Records, Vol. 2, pp. 52-54 (Exh. “D to D-2” with submarkings).

⁸² TSN, January 31, 2018, pp. 11-12, in relation to TSN, September 19, 2018, pp. 24-25; TSN, September 19, 2018, pp. 7-8.

⁸³ TSN, September 19, 2018, p. 7.



immediately made a call to PSINSP ABALO informing him about the presence of Mayor Fernandez;

6. PSINSP ABALO instructed me to zealously secure the vehicle and to prevent any persons including the Honorable Mayor Fernandez from getting inside the vehicle;

7. I (PO2 Comedido) politely and courteously informed the HONORABLE MAYOR FERNANDEZ that the vehicle driven by his son was under police investigation and nobody is allowed to get inside the said vehicle[;]

8. However, the HONORABLE MAYOR Fernandez was adamant of what I had told him. He hurriedly walked towards the parked RED SUV [ISUZU] BIGHORN with plate number YEZ 460 and told me in vernacular with a raised and angry voice which I quote **“UNSAY PROBLEMA DO?, AKO NING SAKYANAN, WAY MAKAPUGONG NAKO, MAYOR KO SA TALISAY, which means in English WHAT IS THE PROBLEM MAN?, THIS IS MY CAR, NOBODY CAN PREVENT ME, I AM THE MAYOR OF TALISAY”**, unquote;

9. MAYOR SOCRATES FERNANDEZ sneakily opened the front door of the vehicle in the PASSENGER’S side, extended his arm inside and got **ONE PC LADY’S SHOULDER BAG color RED** and then closed the same;

10. I (PO2 COMEDIDO) respectfully requested the Honorable Mayor to turn over the bag he got from the vehicle to me because such might contain probable pieces of evidence to be used in our investigation or in proper proceedings against his adopted son Joavan which was earlier arrested for Grave Threats (gun totting). However, Mayor Fernandez refused to turn over the bag but instead he hurriedly boarded his car and sped away.

11. I immediately informed PSINSP ABALO of such unlawful, improper, malicious and highly unprofessional acts of Mayor Socrates Fernandez being the Local Chief Executive of Talisay City. He is supposed to be the role model of justness and uprightness and have unwavering commitment to uphold the public interest over and above personal interest[.]⁸⁴ (Underscoring and additional emphasis supplied; capitalization in the original)

The *Affidavit*⁸⁵ dated June 11, 2010 of former P/SInsp. Abalo, who identified and affirmed the contents thereof as his direct testimony,⁸⁶ corroborated PO2 Comedido’s testimony that he instructed the former to proceed to the Oikos Auto Repair Shop, and that PO2 Comedido informed him about the arrival of the accused and the taking of the lady’s bag:

8. Later, I instructed PO2 EPIFANIO GARCIA COMEDIDO to proceed to OIKOS Auto Repair Shop to serve as back up to SPO1 Luab with the instruction to place a police line to the vehicle as part of Standard

⁸⁴ Records, Vol. 2, pp. 52-53 (Joint-Affidavit, pp. 1-2).

⁸⁵ *Id.* at 57-59 (Exh. “F to F-2” with submarkings).

⁸⁶ TSN, April 10, 2018, pp. 15-16.

Operating Procedure because we have a probable cause to believe that the gun and other pieces of evidence to be used in the investigation or in criminal proceedings of the criminal complaint filed against JOAVAN FERNANDEZ and while also we were preparing for the documents for the application of the SEARCH WARRANT to search firearms and other evidence inside the said vehicle;

9. At about 5:00 in the afternoon of 04 June 2010, I received a cellular phone call from PO2 COMEDIDO that HONORABLE MAYOR SOCRATES FERNANDEZ arrived on board his vehicle. I instructed PO2 COMEDIDO to zealously secure the vehicle while the investigation was going on and pending for the application of the SEARCH WARRANT and to inform the HONORABLE MAYOR that nobody is allowed to enter/open the vehicle at that time;

10. Then again I received another cell phone call from PO2 COMEDIDO that they were caught off guard and pressured by the presence of the HONORABLE MAYOR wherein the latter was stealthily in split of seconds, able to open the vehicle and got a RED LADY'S BAG inside and hurriedly left the place on board his vehicle[.]⁸⁷ (Capitalization in the original)

In his *Counter-Affidavit*⁸⁸ dated October 18, 2010 in OMB-V-C-10-0252-F and OMB-V-A-10-0273-F, which is part of the records of this case, the accused *openly admitted*, as quoted hereunder, the happening of the incident. He justified his acts, however, alleging therein that he took away the lady's bag as requested by its owner, a certain Katherine Jane Mahinay; that no one among the policemen at the premises prevented him from approaching the vehicle nor anyone told him that it was under police custody; that the area was not cordoned off, or that he was not shown any search warrant; and that he uttered words different from what PO2 Comedido has been claiming he said:

IV

THUS, I am now showing the following environmental circumstances of the events occurring on **FRIDAY, JUNE 4, 2010, IN THE AFTERNOON THEREOF**, which are the alleged "**BASES**" for the charges against me, as follows:

1. Sometime in the *afternoon of FRIDAY, JUNE 4, 2010*, a lady friend of my son Joavan S. Fernandez, **MS. KATHERINE JANE MAHINAY**, came to my office at the Talisay City Hall and sought for my help in recovering her Red Bag which she said she had inadvertently left inside my motor vehicle (**Red SUV Isuzu Bighorn**) which was driven on the same date, *JUNE 4, 2010*, by Joavan S. Fernandez who I had asked to bring the said motor vehicle for repair at the **OIKOS AUTO REPAIR SHOP** x x x;

x x x x

⁸⁷ Records, Vol. 2, p. 58 (Affidavit, p. 2).

⁸⁸ Records, Vol. 1, pp. 48-54.

4. When I arrived at the said **OIKOS AUTO REPAIR SHOP** in the company of Ms. Mahinay, the latter indicated to me where in the car she had inadvertently left her Red Bag;
5. Forthwith, I then approached the Red SUV Isuzu Bighorn and I opened its front door and I retrieved the Red Bag belonging to Ms. Mahinay;
6. At the time I and Ms. Mahinay arrived at the **OIKOS AUTO REPAIR SHOP**, I noticed that there were about three (3) policemen who were standing by at the **OIKOS AUTO REPAIR SHOP**; I did not know why they were there;

x x x x

VIII

PO2 EPIFANIO G. COMEDIDO has made a **concoction** x x x:

a.) I never said to him: ***“WHAT IS THE PROBLEM MAN? THIS IS MY CAR, NOBODY CAN PREVENT ME, I AM THE MAYOR OF TALISAY!”***

x x x x

I merely told him: ***“I own this vehicle, and I want to get something from inside the vehicle.”*** I said those words politely to him.⁸⁹ (Emphasis, italics and capitalization in the original)

The accused has made a 180-degree turn, however, in his *Memorandum*,⁹⁰ denying that the incident had taken place, as well as in his motion for leave to file demurrer to evidence,⁹¹ anchored primarily on the absence of a police blotter on the incident. But neither the prosecution nor the defense presented this counter-affidavit as evidence, although it is part of the records of this case. **In any event, as discussed above, the evidence adduced by the prosecution has established the fact that the incident had indeed occurred.**

In his *Memorandum*, as quoted hereunder, the defense is harping on the purported inconsistencies in the testimonies of the prosecution's witnesses, particularly of Castrodes, PO2 Comedido and SPO1 Luab, insisting that the two police officers were not present at OIKOS Auto Repair Shop at the time the accused allegedly arrived therein:

The prosecution's evidence is fatally contradicted by prosecution's own evidence which totally destroyed [the] credibility of the eyewitness account of Luab ang Comedido.

x x x x

In his affidavit dated 7 June 2010 x x x, Castrodes declared that after the arrest of Joavan Fernandez, **he and the three officers left the repair shop and brought Joavan Fernandez to the Talisay Police Station.**

⁸⁹ *Id.* at 48-51 (Counter-Affidavit, pp. 1-4).

⁹⁰ Records, Vol. 2, pp. 189-190 (Defense's Memorandum, pp. 13-14).

⁹¹ *Id.* at 111 (Motion for Leave to File Demurrer to Evidence, p. 11).

x x x x

The testimony of Castrodes comes from [an] independent source who is not a member of the police force. His testimony is highly credible and reliable.

His testimony renders doubtful the testimony of Ciriaco Luab that he was instructed and remained at the repairshop [*sic*] for which reason, he witnessed the alleged incident.

x x x x

In their affidavit executed on 7 June 2010 (four days before the 11 June 2010) which also served as their direct testimonies, SPO1 Ciriaco Luab and PO1 Resty [*sic*] Pelayo testified that after **the arrest of Joavan Fernandez they (all three arresting officers left the repair shop and brought the suspect to the police station for proper disposition.** x x x.

x x x x

The combined and mutually corroborating testimonies of Castrodes, Luab and Pelayo totally destroyed the eyewitness account of Luab that he stayed behind at the repair shop and witnessed the incident.

Likewise, their combined and mutually corroborative testimonies proved the falsity of Comedido's testimony that when he arrived at the repair shop, Luab was there. Based on the testimony of Luab and Castrodes, Luab was not at the repairshop [*sic*].

x x x x

It is clear that Luab and Comedido were not at the Oikos Repair Shop at the time of the alleged act for which the accused is being prosecuted. They could not have witnessed any incident involving the accused.⁹² (Emphasis in the original)

The Court is not impressed by this theory. Suffice it to state that the positive testimony of PO2 Comedido, as corroborated by SPO1 Luab and former P/SInsp. Abalo in its material points, convinces the Court **that the accused arrived at the auto shop, as witnessed by PO2 Comedido and SPO1 Luab, and that the incident had indeed taken place.**

Moreover, on re-direct and re-cross examinations, Castrodes clarified that there were police officers from the Talisay City Police Station that remained in the scene:

PROSEC. LAGUTING:

Q: Who went back to the police station?

A: Your Honors, due to the length of time, I could no longer recall the exact but **I made sure that there should be an officer securing the area to secure the crime scene before we went back to the police station.**

⁹² *Id.* at 180-181 (Defense's Memorandum, pp. 4-5).

X X X X

CHAIRPERSON:

Who remained at the crime scene, can you recall?

A: **There were police officers from Talisay, Your Honors.**

X X X X

CHAIRPERSON:

You said that there were officers from Talisay Police Station who remained. So, Atty. Espina is asking, how many officers remained?

ATTY. ESPINA:

Because you said there were many officers remained [*sic*] and I was asking you how many remained?

A: I could not recall how many remained **but there were officers in the area, sir.**

Q: There were officers in the area so it's more than one?

A: Probably, because **it was already reported there was a radio call already, sir.**⁹³ (Emphasis supplied)

On the accused's asseveration in his *Memorandum* that the fact that he was not arrested right then and there proved that he did not commit a crime,⁹⁴ this was sufficiently explained by SPO1 Luab and PO2 Comedido on cross-examination:

ATTY. ESPINA:

X X X X

Q: Now, you are a retired police officer you would agree that when somebody commits a crime in your presence you should arrest that person committing the crime?

[SPO1 LUAB]

A: Yes, sir.

Q: But there was no arrest made on the Mayor at that time?

A: **We can't arrest, because we are only policemen and he is a Mayor, Sir.**⁹⁵ (Emphasis supplied)

X X X X

ATTY. ESPINA:

X X X X

⁹³ TSN, November 21, 2017, pp. 17-20.

⁹⁴ Records, Vol. 2, pp. 184-186 (Defense's Memorandum, pp. 8-10).

⁹⁵ TSN, September 19, 2018, pp. 20-21.

Handwritten signature and initials in the bottom right corner of the page.

Q: My question is, because you saw the crime allegedly committed, you personally in plain sight obstruction of justice you as a police officer present and saw the incident, you did not arrest the accused. Yes or no?

[PO2 COMEDIDO]

A: **For humanitarian reason, Your Honor.**⁹⁶ (Emphasis supplied)

Regardless of whether the reasons propounded by SPO1 Luab and PO2 Comedido for not placing the accused under arrest at the time are legitimate or not, reason dictates that such non-arrest and the absence of a police blotter do not necessarily mean that the incident did not take place at all, especially in this case that the prosecution's witnesses, PO2 Comedido, SPO1 Luab and former P/SInsp. Abalo, substantially corroborated each other's positive testimonies in material points.⁹⁷ In case of contradictory declarations, greater weight is generally given to positive statements than to mere denials, as the accused did in his *Memorandum*.

It is a time-honored principle⁹⁸ that greater probative value is accorded to a positive testimony than to a negative one. Denials constitute self-serving negative evidence that cannot be given greater evidentiary weight over the declarations of credible witnesses who testify on affirmative matters. Thus, the Court accords greater evidentiary weight to the positive statements of the prosecution's witnesses here, particularly so as they are police officers who were not shown to have any ill-motive to perjure, than to the mere denial of the accused.

Further, the slight difference between what the accused said to PO2 Comedido, according to the latter's testimony during direct-examination, as "*Unsay problema do? Ako ning sakyanan. Ako'y Mayor sa Talisay. Way magboot nako,*"⁹⁹ and what was uttered as stated in the Joint-Affidavit dated June 11, 2010 as "*Unsay problema do? Ako ning sakyanan, way makapugong nako, Mayor ko sa Talisay,*"¹⁰⁰ is not material, for the context and meaning of the utterances are obviously similar.

Not only did the accused take away the lady's bag from the vehicle and refuse to turn it over to the police officers, he did so with *full knowledge* that said vehicle was under police custody and investigation at the time, following the arrest of his adopted son, Joavan, for poking a gun, as proved by the prosecution.

⁹⁶ TSN, January 31, 2018, p. 20.

⁹⁷ TSN, January 31, 2018, pp. 8-10, September 19, 2018, pp. 7-8, April 10, 2018, pp. 15-16, Records, Vol. 2, pp. 52-54, 57-59 (Exh. "D" to "D-2" with submarkings, "F" to "F-2" with submarkings).

⁹⁸ *Monteverde v. People*, G.R. No. 139610, 12 August 2002, citing *People v. Parcia*, G.R. No. 141136, 28 January 2002; *People v. Gonzales, Jr.*, G.R. Nos. 143143-44, 15 January 2002; *People v. Dela Torre*, G.R. No. 98431, 15 January 2002; *People v. Reynes*, G.R. No. 134607, 12 December 2001; *Batiquin v. CA*, 258 SCRA 334, 5 July 1996.

⁹⁹ TSN, January 31, 2018, p. 9.

¹⁰⁰ Records, Vol. 1, p. 31 (Joint Affidavit dated June 11, 2010 of SPO1 Luab and PO2 Comedido, p. 2).

In this case, the accused knowingly and willfully committed acts that clearly obstructed or impeded the ongoing police investigation against Joavan. By taking away the lady's bag from the Isuzu Trooper and refusing to turn it over, the accused's intention, under the circumstances, was obviously to make the lady's bag unavailable during the investigation.

In other words, he suppressed or concealed the lady's bag, including its possible contents, with the intention to impair its availability as evidence in the investigation. Criminal intent, being a state of mind, is manifested here by the overall circumstances produced by the prosecution's evidence surrounding the taking away of the lady's bag from the vehicle, that is, despite the clear proscription from the police, as well as the refusal to turn it over despite the clear instruction therefor.

Assuming *arguendo* that the accused's acts did not actually obstruct or impede the police investigation, since Joavan had already been arrested beforehand, his acts nevertheless *tended* to obstruct or impede the investigation and prosecution of Joavan, for at the time, the police had yet to search the vehicle, considering that the search warrant had yet to be issued. As reflected in its whereas clauses, P.D. No. 1829 addresses the necessity of penalizing acts which *obstruct or frustrate or tend to obstruct or frustrate* the successful apprehension and prosecution of criminal offenders.¹⁰¹

WHEREAS, to discourage public indifference or apathy towards the apprehension and prosecution of criminal offenders, it is necessary to penalize acts which obstruct or frustrate **or tend to obstruct** or frustrate the successful apprehension and prosecution of criminal offenders[.]
(Emphasis supplied)

It is of no moment that a gun and live ammunitions were subsequently recovered from the vehicle after the implementation of the search warrant, or that Joavan was eventually prosecuted for the crime of *Other light threats* for pointing a gun. **At the time the accused had committed the acts, the crime of obstruction of justice was already committed and consummated, which obstructed or impeded or had the tendency to obstruct or impede the investigation and prosecution of Joavan.**

Good faith is a defense in a criminal prosecution for obstruction of justice, for P.D. No. 1829 is qualified by the words "knowingly" and "willfully." Nonetheless, the accused opted not to present any evidence for this purpose, thereby failing to cast any doubt on his criminal intent as proved by the prosecution.

¹⁰¹ *Padiernos v. People*, G.R. No. 181111, 17 August 2015.

In sum, the Court finds the prosecution's evidence sufficient to establish proof beyond reasonable doubt that the accused is guilty of the crime of obstruction of justice under Section 1(b) of P.D. No. 1829.

As a final word, the accused is reminded that "the Constitution stresses that a public office is a public trust, and public officers must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives. These constitutionally enshrined principles, oft-repeated in case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service."¹⁰²

WHEREFORE, the Court finds accused **SOCRATES C. FERNANDEZ**, City Mayor of Talisay, Cebu, **GUILTY** beyond reasonable doubt of the crime of Obstruction of Justice under Section 1(b) of P.D. No. 1829, and hereby sentences him to pay a fine of **Six Thousand Pesos (PhP6,000.00)**, with perpetual disqualification from holding public office, and, in case of insolvency, shall be required to undergo subsidiary imprisonment

SO ORDERED.


MARYANN E. CORPUS- MAÑALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

¹⁰² *Government Service Insurance System v. Mayordomo*, G.R. No. 191218, 31 May 2011, citing *Civil Service Commission v. Cortez*, G.R. No. 155732, 3 June 2004.

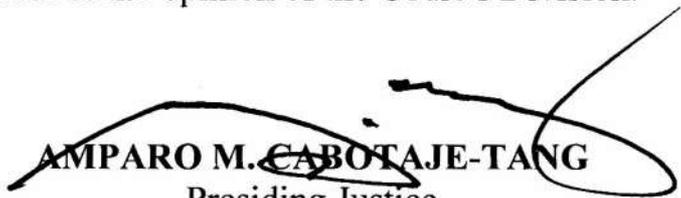
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.


RAFAEL R. LAGOS
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABOTAJE-TANG
Presiding Justice