

Republic of the Philippines  
REGIONAL TRIAL COURT  
Third Judicial Region  
BRANCH-73  
Olongapo City

PEOPLE OF THE PHILIPPINES,  
Plaintiff.

-versus-

CRIM. CASES NOS. 205-2014FC to  
210-2014FC

LILIAN MAY ZIMMER,  
Accused.

X-----X

RESOLUTION

For consideration is a "Motion To Quash" filed by the accused's counsel praying that the Informations in the above-entitled cases be quashed based on the following grounds:

- a. The facts charged do not constitute an offense;
- b. The Honorable Court has no jurisdiction over the person of the accused considering that the pieces of evidence are inadmissible.

The said motion to quash was set for hearing and the public prosecutor was given ten (10) days from June 5, 2015 to file her comment or opposition thereto, thereafter, the said motion will be deemed submitted for resolution with or without the comment/opposition to be filed by the public prosecutor.

On June 29, 2015, accused's counsel filed a manifestation stating among other things that the public prosecutor failed to file her comment/opposition to accused's motion to quash within the ten-day period given and prays that the motion to quash be submitted for resolution.

The record of this case shows that the accused's lead counsel, Atty. Ronald Mark C. Lleno of the Sycip Salazar Hernandez & Gatmaitan filed an "Urgent Omnibus Motion 1.) To Quash the Information; 2.) for Reinvestigation; 3.) To Defer Issuance of a Commitment Order Pending Reinvestigation; (4) for Bail in Criminal Cases Nos. 205-2014 to 209-2014; and 5.) for Reduction of Bail in Criminal Case No. 210-2014.

The public prosecutor filed its comment/opposition to the Urgent Omnibus Motion filed by the former accused's counsel.



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During the hearing of the Omnibus Motion filed by the former accused's counsel, the latter manifested that they will be deferring the resolution of the other issues raised in their Omnibus Motion and that the petition for bail be first resolved by the Court.

A summary hearing on the petition for bail was conducted by the Court and in the resolution of the Court, the Court granted the petition for bail filed by the accused in Criminal Cases Nos. 206, 207, 208 and 209 but denied the accused's petition for bail in Criminal Case No. 205, the dispositive portion of the Court's resolution states the following:

*"WHEREFORE, in Criminal Case No. 206, 207, 208 and 209 the court grants the petition for bail filed by the accused and a bail of Php500,000.00 each case is fixed for her provisional liberty.*

*In Criminal Case No. 205, the court finds the evidence of guilt is strong and hereby denies accused petition for bail."*


Thereafter, the accused's new counsel filed a "Motion for Reduction of Bail". Likewise, the accused new counsel filed a "Motion for Reinvestigation" which was granted by the Court there being no objection interposed by the public prosecutor as contained in the Court's Order dated February 13, 2015.

During the hearing set on March 6, 2015, the public prosecutor informed the Court that the prosecution will be filing a manifestation in relation to the motion for reinvestigation filed by accused's counsel, Atty. Jerrylee Soriano and the hearing of these cases was reset.

During the hearing set on April 17, 2015, the public prosecutor manifested that their office will be conducting reinvestigation of these cases.

Before the public prosecutor's office can resolve the motion for reinvestigation filed by the accused's counsel, the latter filed on May 13, 2015 a "Motion to Quash the Informations".

The accused alleged as the first ground in her motion to quash, the fact charged do not constitute an offense. The defense alleged that the accused was charged based on the mere testimony of the NBI agents and the DSWD officers with total disregard of the sequences of events that transpired in the arrest of the accused Lilian May Zimmer. According to the accused, the information was based merely on the affidavit of arrest of the NBI agent alleging that the accused is committing illegal detention of children under R.A. 7610 for Angelina Melomida. The accused claims that she has no criminal intent to commit the alleged crimes filed against her. She claims that she took care of the children under the consent of their parents.





In the Court's resolution granting bail for Criminal Cases Nos. 206, 207, 208 and 209, the Court stated that the accused has no criminal intent to detain the other children however, it ruled that the evidence of the guilt of the accused is strong under Criminal Case No. 205. The Court stated in its resolution that Angelina was deprived of her liberty when her hands was tied in a wooden chair as shown in the pictures submitted by the prosecution. Additional evidence submitted by the defense thereafter shows that there was no actual deprivation of Angelina's liberty and that there was no indubitable proof submitted in the intent of the accused to effect such deprivation. The defense submitted in its supplemental motion for reconsideration pictures showing that Angelina Melomida was seen under the table of Nely Pagar, DSWD, Subic when the mother of Angelina was asking for help regarding Angelina's medical condition. There was also a picture submitted showing that Angelina celebrated her 4th birthday and was given a birthday cake. Picture was likewise submitted by the defense that Angelina was in the hospital for the treatment of her illness. It appears that the important element of the crime of serious illegal detention, which is deprivation of liberty, is not present here. It is basic that for the charge of serious illegal detention to prosper, the deprivation of the victim's liberty, which is the essential element of the offense, must be duly proved. Likewise, the intent of the accused to deprive the victim of the latter's liberty needs to be established by indubitable proof. As confirmed by the Supreme Court, the essence of kidnapping and serious illegal detention is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect such deprivation. (People v. Siongeo, et al., 623 SCRA 510, People v. Borromeo, 380 Phil. 523 and People vs. Soberano, 346 Phil. 449).

To be clear, the alleged deprivation of liberty must have been caused with the specific intent to cause such deprivation. It is not enough that the deprivation of liberty was the effect of the action of a person's intent on achieving a goal other than the deprivation of a person's liberty. In other words, the intention to deprive a person of his liberty, to constitute the essential element of serious illegal detention, should not be merely incidental. In these cases, there was no indubitable proof that was presented. In this case, there was no sufficient proof showing that the alleged tying of Angelina with a chair is not for the purpose of detaining her.

The Court did not acquire jurisdiction over the person of the accused. The Court took a second look at the evidence presented by the prosecution and the comment/opposition/motion filed by the accused's counsel, it appears that there was no lawful arrest of the accused and therefore, the ensuing search of the accused is not valid. Accordingly, any evidence collected or any photo taken during the invalid search incident to an unlawful arrest are inadmissible evidence for being "fruits of the poisonous tree". This section is necessity for securing a valid warrant before an arrest is made is found in Rule 113 of the Rules of Court. The evidence adduced



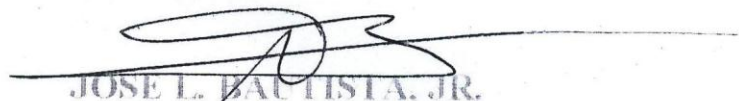
shows that this case does not fall under Section 5(a) of Rule 113 which is better known as in flagrante delicto, this rule requires that the person of the search perform some overt act that would indicate that she has committed, is actually committing, or is attempting to commit an offense.

The Supreme Court in the case of *People v. Aminnudin* declared that an in flagrante delicto arrest is not justified when the accused was not committing a crime in the presence of the police officer. More so, if the police officers did not have personal knowledge of the facts indicating that the person to be arrested had committed an offense. The ruling in *Aminnudin* case squarely fits into the instant case as the evidence adduced shows that over a week had elapsed from that time the agents of the NBI were informed, the accused illegal activities and the warrantless arrest was conducted on July 3, 2014. The arresting officers have sufficient time to secure a warrant of arrest from the courts. More important in their alleged "script surveillance" the NBI and DSWD officers did not actually witness Angelina illegally detained. The NBI and DSWD themselves admit that they saw Angelina tied in the chair after they entered the house without search warrant. In fact, the implementing rules and regulations of R.A. 7610 of the Anti-Child Law provides that if the investigation of the DSWD discloses sexual abuse, serious physical injury, or life-threatening neglect of a child, the duly authorized officer of the DSWD shall immediately remove the child from custody and placed him under protective custody to ensure his safety. The evidence shows that the DSWD did not follow the foregoing procedure. From the said IRR, the immediate removal of a child which necessitates a rescue operation is allowed only if there is a finding of either: sexual abuse, serious physical injuries or life-threatening neglect of a child. There appears no sufficient evidence for the NBI and the DSWD personnel to make "rescue operation".

WHEREFORE, the *Motion to Quash Informations* filed by the accused's counsel is **GRANTED**. The Informations in the above-entitled cases are quashed. The above-entitled cases are **DISMISSED**.

SO ORDERED.

Olongapo City, Philippines, this 14th day of July 2015.



JOSE L. BAUTISTA, JR.  
Acting Presiding Judge-RTC, Branch 73,  
Olongapo City  
Presiding Judge, RTC, Branch 107,  
Quezon City

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Nov 10 - 5:01  
Amad. B. B. B.  
P.V.P.  
M.P. 1, 2, 3, 4

For: atty - Bactad - For the Accused  
by: [Signature]  
7-28-15

PROSECUTOR OFFICE  
OLONGAPO CITY  
RECEIVED  
DATE: JUL 28 2015  
TIME: 11:00 AM  
BY: [Signature]



Republic of the Philippines  
**MUNICIPAL TRIAL COURT**  
Third Judicial Region  
Subic, Zambales

PEOPLE OF THE PHILIPPINES,  
Plaintiff,

- versus -

CRIM. CASE NO. 061-14  
FOR: DIRECT ASSAULT UPON AN  
AGENT OF A PERSON IN  
AUTHORITY

**LILIAN MAY ZIMMER alias**  
**LILIAN MAY THOMPSON alias**  
**LILIAN "SHERRY" ZIMMER,**  
Accused.

x ----- x

**WARRANT OF ARREST**

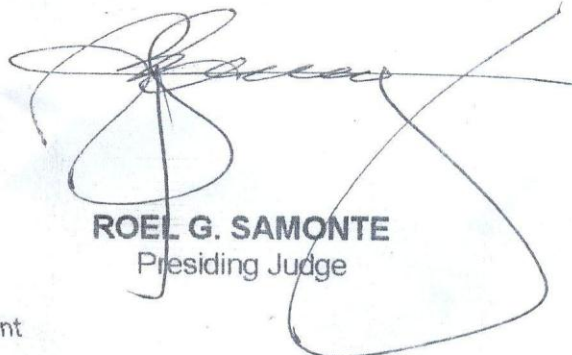
TO ANY OFFICER OF THE LAW:

You are hereby commanded to arrest **Lilian May Zimmer alias Lilian May Thompson alias Lilian "Sherry" Zimmer** who is to be found at No. 16A Echo St. Binidician, Subic Bay Freeport Zone, Olongapo City, or anywhere in the Philippines, and who stand charged before me with the crime **Direct Assault Upon an Agent of a Person in Authority** and to bring her before me as soon as possible to be dealt with in accordance with law.

The bail for the release of said accused in this case is fixed at **P15,000.00** which maybe furnished by the accused or any person acting in her behalf either by (a) depositing in cash with this Court the amount of bail thereof, or (b) by giving a property bond, the real estate being given must be worth at least the amount of the undertaking, or (c) by giving a corporate surety bond subscribed jointly by the accused and an Officer duly authorized by its Board of Directors, or (d) by recognizance, the bail shall be accompanied by a written undertaking showing compliance with the requirements of Sec. 2, Rule 114 of the Revised Rules of Court.

The bail may be filed with Court where the same is pending or in the absence or unavailability of the Judge with another branch in the same Court within the province or city. If the accused is arrested in the province, city or municipality other than where the case is pending, bail may be filed also with any Regional Trial Court or Municipal Trial Court Judge thereof.

Subic, Zambales, May 27, 2015.



**ROEL G. SAMONTE**  
Presiding Judge

RGS/lmr

1<sup>st</sup> Indorsement

RESPECTFULLY REFERRED TO THE **WARRANT OFFICER, Olongapo City Police Precinct 2, Olongapo City**, directing him to execute the herein Warrant of Arrest within ten (10) days from receipt hereof, after the expiration of which period, he is likewise directed to make a report to this Court, and in case of failure to execute, he shall state his reason for failure to do so.

**CERTIFIED MACHINE COPY:**

**MA. MAGDALENA A. ASINAS**  
Clerk of Court

**MA. MAGDALENA A. ASINAS**  
Clerk of Court II



Republic of the Philippines  
**MUNICIPAL TRIAL COURT**  
Third Judicial Region  
Subic, Zambales

PEOPLE OF THE PHILIPPINES,  
Plaintiff,

- versus -

CRIM. CASE NO. 062-14  
FOR: DIRECT ASSAULT UPON AN  
AGENT OF A PERSON IN  
AUTHORITY

**LILIAN MAY ZIMMER** alias  
**LILIAN MAY THOMPSON** alias  
**LILIAN "SHERRY" ZIMMER,**  
Accused.

X ----- X

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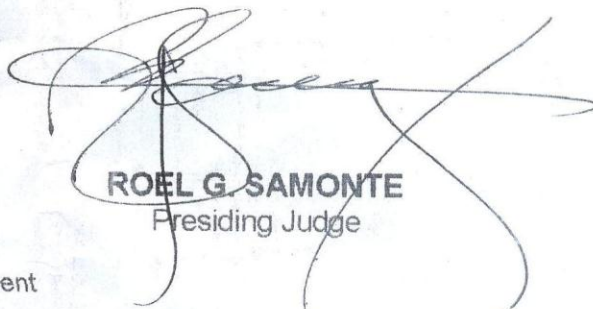
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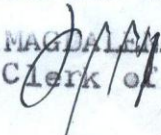
  
**ROEL G. SAMONTE**  
Presiding Judge

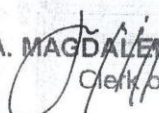
RGS/lmr

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Clerk of Court

  
**MA. MAGDALENA A. ASINAS**  
Clerk of Court II