

DEPARTMENT OF JUSTICE

**OFFICE OF THE
SECRETARY APPEALS
MANAGEMENT OFFICE
(SAMO)**

TEL. NO. 523-84-81

LOCAL 414 AND LOCAL 207

Republic of the Philippines
Department of Justice
Office of the Secretary
PETITION FOR REVIEW/ APPEAL

N.P.S. Docket No. XV-14-INV-19J-02070

Mode of Filing _____

Complainant/s:

JAMES ARTHUR WATKINS
U-4 Phoenix Heights, 40 Canley
Road, Bagong-ilog, Pasig

Respondent/s:

FREDRICK ROBERT BRENNAN
Unit 20E, Manhattan Parkway Residences
Tower 1, Gen. Malvar Ave
Cubao, Quezon City

Offense/s Charged:

Violation of Sec 4(c) 4 of RA 10175 in
relation to Section 6 and Art. 355 of the RPC

Prosecutor's Office Pasig City

Date of Appealed RESO: 02 January 2020

Resolution No. _____

Findings: Probable Cause for Sec 4 (c) paragraph 4 of RA 10175

Date of Appealed RESO: N/A

MR Findings: N/A

Criminal Case No. (if any) _____

Remarks: _____

Petitioner/s:

FREDRICK ROBERT BRENNAN
UNIT 20E, Manhattan Parkway Residences
Tower 1, Gen. Malvar Avenue
Cubao, Quezon City

Date appeal/Petition Filed: (mm/dd/yyyy) _____

Offense/s Appealed: Sec 4 (c) par 4 of RA 10175

To be accomplished by complainant/counsel/law enforcer

1. Has a similar petition been filed before any other office? YES ___ No X
2. Is this petition related to another case/petition before this office? YES ___ NO X
If yes, indicate details:

NPS Docket No. _____
Handling Prosecutor _____

CERTIFICATION

I CERTIFY, under oath that all the information on this sheet are true and correct to the best of my knowledge and belief, that I have not commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency, and that if I should thereafter learn that a similar action has been filed and/or is pending, I shall report that fact to this Honorable Office within five(5) days from knowledge thereof.

ATTY. ALEXANDER LLANES ACAIN JR.

Signature over printed name

SUBSCRIBED SWORN STATEMENT TO before me this _____ day of _____, 20__ in _____

Prosecutor Administering Oath

1. Date Raffled: _____ Confidential Number: _____ Prosecutor Assigned: _____ Folder Number: _____	2. Date Received by Prosecutor: _____ Due Date: _____
3. Reviewer: _____ Date Received by Reviewer: _____	4. Office of Prosecutor General: _____ Date Received: _____
5. Office of the Undersecretary: _____ Date Received: _____	6. Office of the Secretary: _____ Date Received: _____
7. Docket Section (for release): _____ Date Released: _____	

To be accomplished by the office concerned

RECEIVING JPY

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Attorneys for Respondent-Appellant
Fredrick Robert Brennan

Republic of the Philippines
DEPARTMENT OF JUSTICE
M a n i l a

DEPARTMENT OF JUSTICE
OFFICE
APPEALS MANAGEMENT

FEB 26 2018
TIME: 1:20pm
BY: [Signature]
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JAMES ARTHUR WATKINS
Complainant-Appellee,

XV-14-INV-19J-02070

-for-

- versus -

**Violation of Sec.
4(c)(4)
of RA 10175, in rel. to
Sec.6 and Art. 355 of
RPC**

FREDRICK ROBERT BRENNAN
Respondent-Appellant.

X - - - - - /

**APPEAL/PETITION FOR REVIEW TO THE
HONORABLE SECRETARY OF JUSTICE**

PREFATORY STATEMENT

*I may utterly detest what you write, but I shall fight to the
death to make it possible for you to continue writing it. —*

Voltaire

VOLTAIRE'S PONTIFICAL VERSE bestirs once again the
basic liberties to free speech and free press — liberties that
belong as well, if not more, to those who question, who do
not conform, who differ. For the ultimate good which we all

strive to achieve for ourselves and our posterity can better be reached by a free exchange of ideas, where the best test of truth is the power of the thought to get itself accepted in the competition of the free market — not just the ideas we desire, but including those thoughts we despise.¹

RESPONDENT-APPELLANT FREDRICK ROBERT BRENNAN (“Respondent”), by counsel, most respectfully files this APPEAL/PETITION FOR REVIEW (“Appeal”) to the Honorable Secretary of Justice to REVERSE AND SET ASIDE the highly arbitrary, completely baseless, grossly unjustified and manifestly erroneous RESOLUTION of the investigating prosecutor Juliene Raymond A. Cabanacan, acting as Assistant City Prosecutor of Pasig City (“ACP Cabanacan”), dated January 02, 2020 (“Resolution”), copy was received by the undersigned counsel on February 19, 2020, finding probable cause for the offense of cyber libel against respondent.

For lack of attention to detail, ACP Cabanacan erroneously cited an incorrect provision of cyberlibel under RA 10175. He cited Section 4 paragraph 4 as an offense that has been violated by respondent. This is defective and is not the correct provision on Cyberlibel in RA 10175. The correct provision is Section 4 (c) paragraph 4 of RA 10175. The pertinent dispositive portion of the Resolution² states, thus:

“WHEREFORE, respondent Fredrick Robert Brennan is charged with Cyberlibel under Section 4 paragraph 4 of RA 10175”

A certified true copy of the questioned Resolution, which, is attached as ANNEX “A” and made an integral part hereof.

¹ Justice Oliver Wendell Holmes dissenting *Abrams v. United States*, 250 U.S. 616 (1919)

² Page 8 of the Resolution.

TIMELINESS OF THE APPEAL

1. Section 3 of Department Circular No. 70 provides that the appeal shall be taken within fifteen (15) days from receipt of the resolution.
2. The counsel of Respondent received a copy of the questioned Resolution on February 19, 2020;
3. The 15-day period within which to appeal the Resolution will expire on March 05, 2020 hence the filing of this Appeal is within the 15-day reglementary period.

THE PARTIES

4. The Complainant is JAMES ARTHUR WATKINS ("Complainant"), American national of legal age, and currently residing at U-4 Phoenix Heights Condominium 40 Canley Road, Bagong Ilog Pasig City. The Respondent is FREDRICK ROBERT BRENNAN, likewise American national of legal age, married to a Filipino citizen, and a resident of Unit 20E, Manhattan Parkway Residences Tower 1, General Malvar Avenue, Cubao Quezon City.

5. On October 30, 2019, the Complainant executed and filed the Complaint for cyberlibel or for violation of Section 4 (c) (4) of the Cybercrime Prevention Act of 2012 before the City Prosecution Office of Pasig. The Complaint was docketed as XV-14-INV-19J-02070 entitled James Arthur Watkins, Complainant vs. Fredrick Robert Brennan, Respondent.

A copy of the Complaint is attached as **ANNEX "B"** and made an integral part hereof.

STATEMENT OF MATERIAL FACTS

6. Complainant filed a complaint for cyberlibel against respondent for calling him "senile" in the series of

tweets made by respondent in his twitter account @HW_BEAT_THAT dated September 6, 2019 and on September 12, 2019.

2. The tweets in question are as follows:

“September 6, 2019

“Jim is wearing a Qanon pin to Congress was truly awful.

Either:

Jim is wearing the pin cynically. He knows Q is a LARP, but is wearing it to trick Cultists into donating him.

Jim is going senile and believes Q is real to some degree and is wearing it as a talisman.”

September 6, 2019

“My theory that Jim Watkins himself is going senile and actually believes in Q is no longer a theory. Wow...”

September 12, 2019

“I’ve had a theory for a while that Jim Watkins doesn’t talk to the media as he’s going senile and can’t control his emotions while on the phone. He can’t just say, “I decline to answer” or “I have no comment at this time but may e-mail you later”³

7. On December 4, 2019, Respondent executed and filed his Counter-Affidavit vehemently denying that he committed libel. According to him, he was only expressing his opinion about the complainant when he made those tweets in question. Respondent humbly manifested that all his tweets, taken in their entirety are not libelous as per definition in law and jurisprudence.

³ Page 2 and 3 of the James Arthur Watkins Complaint-Affidavit dated 30 October 2019.

8. The fact is, respondent was only expressing his opinion relating to complainant regarding his behavior and demeanor when he appeared for an investigation at the United States Congress relating to the mass shooting incidents in the United States. These are matters in which the public as a whole has a legitimate interest.

9. Respondent further alleged that the word "senile" which he used in his tweets is not a defect. It is not a medical condition. It has no medical meaning whatsoever. Moreso, the entirety of his tweets did not portray that Complainant has a defect.

A copy of the Counter-Affidavit is attached as **ANNEX "C"** and made an integral part hereof.

10. Respondent also submitted the affidavit of his witnesses, namely, Mae T. Torremucha.

Copy of the Affidavit is attached as **ANNEX "D"** and made an integral part hereof.

11. In the questioned Resolution, ACP Cabanacan erroneously found probable cause to indict respondent for the offense of cyberlibel. In finding probable cause, ACP Cabanacan cited and heavily relied on the case of U.S. vs. Ortiz et. al. ⁴. The reliance to this case is misplaced. This case is not about calling the complainant senile. The cited case dealt with the libelous statement of the accused for calling complainant "coward, vile soul, dirt-sucker, savage, hogs always look forward the ground".

ASSIGNMENT OF ERRORS

12. ACP Cabanacan committed the following manifestly unjust and patent errors:

⁴ G.R. No. L-2704. December 6, 1906.

I.

ACP CABANACAN ERRONEOUSLY FOUND PROBABLE CAUSE TO INDICT RESPONDENT FOR THE OFFENSE OF CYBERLIBEL BASED ON HIS MISAPPRECIATION OF THE FACTS AS HE FAILED TO FIND THAT:

1. RESPONDENT'S DEFENSE THAT THE TWEETS IN QUESTIONS ARE HIS MERE OPINION WHICH ARE NOT LIBELOUS.

2. THE ELEMENT OF DEFAMATORY IMPUTATION IS ABSENT. TWEETING THAT COMPLAINANT IS "GOING SENILE" WOULD NOT BE CONSTRUED TO MEAN THAT COMPLAINANT WILL BE RIDICULED BECAUSE THE WORD "GOING SENILE" IS INACCURATE AND CONFUSING TO DIRECTLY REFER TO COMPLAINANT'S MENTAL STATE.

3. RESPONDENT IS NOT MOTIVATED BY MALICE.

4. COMPLAINT IS A PUBLIC FIGURE.

5. COMPLAINANT DID NOT SUFFER ANY HARM.

II.

ACP CABANACAN MISAPPRECIATED THE FACTS WHEN HE DISREGARD THE UNREFUTED PERSONAL KNOWLEDGE OF RESPONDENT ABOUT COMPLAINANT'S STATE OF MIND.

III.

ACP CABANACAN GRAVELY ABUSED HIS DISCRETION WHEN HE RELIED THE CASE OF U.S. VS. ORTIZ ET. AL. AS HIS BASIS IN FINDING PROBABLE CAUSE TO INDICT RESPONDENT FOR THE OFFENSE OF CYBERLIBEL.

ARGUMENTS IN SUPPORT OF THE APPEAL

I.

(A) ACP CABANACAN ERRONEOUSLY FOUND PROBABLE CAUSE TO INDICT RESPONDENT FOR THE OFFENSE OF CYBER LIBEL BASED ON HIS MISAPPRECIATION OF THE FACTS AS HE FAILED TO FIND THAT:

1. RESPONDENT'S DEFENSE THAT THE TWEETS IN QUESTIONS ARE HIS MERE OPINION WHICH ARE NOT LIBELOUS.

2. THE ELEMENT OF DEFAMATORY IMPUTATION IS ABSENT. TWEETING THAT COMPLAINANT IS "GOING SENILE" WOULD NOT BE CONSTRUED TO MEAN THAT COMPLAINANT WILL BE RIDICULED BECAUSE THE WORD "GOING SENILE" IS INACCURATE AND CONFUSING TO REFER TO COMPLAINANT'S MENTAL STATE.

3. RESPONDENT IS NOT MOTIVATED BY MALICE.

4. COMPLAINT IS A PUBLIC FIGURE.

5. COMPLAINANT DID NOT SUFFER ANY HARM.

13. ACP CABANACAN gravely abused his authority and discretion when he issued the questioned Resolution. He erroneously found probable cause to indict respondent for the offense of cyber libel based on his misappreciation of the facts of the case.

14. All the tweets of the respondent which have become the subject of this complaint for cyberlibel are not defamatory or libelous. They are honest expression of respondent's opinion on complainant about matters in which the public as a whole has a legitimate interest;

25

15. Lest we be too repetitive, please allow us to restate the tweets in question for purposes of discussion, thus:

“September 6, 2019

“Jim is wearing a Qanon pin to Congress was truly awful.

Either:

Jim is wearing the pin cynically. He knows Q is a LARP, but is wearing it to trick Cultists into donating him.

Jim is going senile and believes Q is real to some degree and is wearing it as a talisman.”

September 6, 2019

“My theory that Jim Watkins himself is going senile and actually believes in Q is no longer a theory. Wow...”

September 12, 2019

“I’ve had a theory for a while that Jim Watkins doesn’t talk to the media as he’s going senile and can’t control his emotions while on the phone.

He can’t just say, “I decline to answer” or “I have no comment at this time but may e-mail you later”

16. A libel is defined as "a public and malicious imputation of a crime or of a vice or defect, real or imaginary or any act, omission, condition, status or circumstance tending to cause the dishonor, discredit or contempt of a natural or juridical person or to blacken the memory of one who is dead." ⁵ For an imputation to be libelous, the following requisites must concur: a) it must be defamatory;

⁵ Article 353, Revised Penal Code.

b) it must be malicious; c) it must be given publicity and d) the victim must be identifiable. ⁶ Absent one of these elements precludes the commission of the crime of libel;

17. In **MVRS Pub. Inc. v. Islamic Da'wah Council of the Phils., Inc.**,⁷ the Supreme Court defined defamatory language in this wise:

Defamation, which includes libel and slander, means the offense of injuring a person's character, fame or reputation through false and malicious statements. It is that which **tends to injure reputation or to diminish the esteem, respect, good will or confidence in the plaintiff or to excite derogatory feelings or opinions about the plaintiff.** It is the publication of anything which is **injurious to the good name or reputation of another or tends to bring him into disrepute.** Defamation is an invasion of a relational interest since **it involves the opinion which others in the community may have, or tend to have, of the plaintiff.**

It must be stressed that **words which are merely insulting are not actionable as libel or slander per se, and mere words of general abuse however opprobrious, ill-natured, or vexatious, whether written or spoken, do not constitute a basis for an action for defamation in the absence of an allegation for special damages. The fact that the language is offensive to the plaintiff does not make it actionable by itself.** (Emphasis added)

⁶ Novicio v. Aggabao, 463 Phil. 510, 516 (2003).

⁷ G.R. No. 135306, 444 Phil. 230, 241 (2003).

18. In determining whether a statement is defamatory, the words used are construed in their entirety and taken in their plain, natural and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense.

19. Tested under these established standards, we humbly submit that the findings of ACP Cabanacan was erroneous as it held that the tweets of respondent are malicious imputation of senility on the part of complainant, a condition status or circumstances tending to cause dishonor, discredit or contempt of the complainant.

20. In the respondent's series of tweets, there are no derogatory imputations of a crime, vice or defect or any act, omission, condition, status or circumstance tending, directly or indirectly, to cause complainant's dishonor. Neither does the phrase in its entirety, employ any unpleasant language or somewhat harsh and uncalled for that would reflect on complainant's integrity. Obviously, the controversial word "GOING SENILE" used by respondent was plain and simple. In its ordinary sense, the word is too inaccurate or merely confusing to cast aspersion upon complainant's integrity and reputation much less directly convey the idea that complainant's state of mind is defective.

The element of defamatory imputation is absent

21. The matter claimed to be libelous must impute a crime, vice, defect, or any act, or omission, condition, status or circumstance, tending to cause the dishonor, discredit or contempt to a natural or juridical person, or to blacken the memory of one who is dead;

22. It is very clear from the controversial tweets of respondent that these are only mere expression of opinions in which the public as a whole has a legitimate interest. In our opinion, we humbly submit that these are not libelous tweets;

23. An allegation is considered defamatory if it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary or any act, omission, condition, status or circumstance which tends to dishonor or discredit or put him in contempt or which tends to blacken the memory of one who is dead;

24. To determine whether a statement is defamatory, the words used are to be construed in their entirety and should be taken in their plain, natural and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense;⁸

25. Again, the controversial words "GOING SENILE" which respondent used in his tweets were plain and simple. In its ordinary sense, the word did not directly cast aspersion upon complainant's integrity and reputation much less convey the idea that he has a defect or he was guilty of any offense;

26. Respondent did not use direct and express defamatory words, descriptions or accusations against complainant such as calling complainant defamatory words such as thief, swindler, ugly, wife beater, a crook or perhaps drawing a caricature of complainant depicting him as a crocodile. The words used by respondent is "going senile". We humbly submit that this is not defamatory or libelous.

27. Respondent did not also use any figure of speech in his tweets like Hyperbole, Irony or Sarcasm or Metaphor suggesting and imputing complainant of a crime, vice or defect;

28. Respondent's tweets were also "privileged" in the sense that it was "a fair commentary on a matter of public interest;"

⁸ Buatis, Jr. v. People, G.R. No. 142509, March 24, 2006, 485 SCRA 275, 286.

29. Simply worded as it was, the tweets were merely epithet and respondent's personal reaction on complainant's performance and demeanor when he appeared for inquiry at the U.S. Congress Committee on Homeland Security regarding the mass shooting incidents;

30. Respondent merely expressed his opinions on those tweets that based on his personal knowledge, complainant may have been going senile if he insists on operating 8chan despite the mass-shooting incidents and for believing in the non-existent QAnon conspiracy theory. Respondent did not categorically and directly call complainant "senile". He only said that complainant "is going" senile. Perforce, these tweets will not qualify as defamatory imputation. Hence, not libelous;

Respondent was not motivated by malice when he posted the controversial tweets

31. As a brief backgrounder, these series of tweets by respondent has something to do with the mass shooting incidents in the U.S. last year. Complainant was subpoenaed for investigation by the U.S. Congress for operating a website with a domain name www.8ch.net ("8chan"). This website became the bastion of hate speech and has been linked to the three incidents of deadly mass shootings in the United States and in New Zealand;

32. Respondent was merely exercising his civic duty to inform the public about the people behind 8chan and the dangers of operating a website that hosted hate speech and white nationalist creed because it has already claimed the lives of many innocent people in the United States and in New Zealand as well. For instance, all the mass shooting incidents in 2019 have a common denominator - the perpetrators of the attacks posted white nationalist rants and creed before and during the mass shootings incidents;

33. The mass shooting incidents which were perpetrated by violent extremists who posted hate speech in 8chan are as follows:

15 March 2019

Shooting at Christchurch, New Zealand – 51 Muslims dead and several injured

The perpetrator in the massacre in Christchurch, New Zealand, posted a white nationalist screed and link to his Facebook live feed on 8chan while in the act of doing the mass murder.

April 27, 2019

Shooting at Poway synagogue, Poway, California – 1 dead and 3 injured

The shooting occurred on April 27, 2019, when a gunman armed with an AR-15 style rifle fired shots inside the Chabad of Poway synagogue in Poway, California, a city approximately 20 miles north of San Diego. The attack took place on the last day of the Jewish Passover holiday, which fell on a Shabbath. The suspect in the shooting posted a racist and antisemitic “open letter” on 8chan.

August 3, 2019

Shooting at Walmart Store, El Paso, Texas – 22 Dead and 24 injured.

34. In respondent’s Counter-Affidavit, respondent declared that Jim Watkins is the owner of the infamous website 8chan – a far-right message board and a notorious bastion of hate speech. Respondent further alleged that violent extremist content has proliferated on both large and small social media platforms around the world. At least three acts of deadly white supremacist extremist violence have been linked to 8chan;

35. Clearly, respondent's tweets merely informed the public that complainant who owns 8chan may be "going senile" if it does not completely retire or deactivate 8chan despite the series of violence and mass murder that have been linked to it;

36. In **Lopez vs. People**,⁹ the Court held that "were the words imputed is not defamatory in character, a libel charge will not prosper. Malice is necessarily rendered immaterial". In this light, any discussion on the issue of malice is rendered moot;

Complainant has attained the level of a Public Figure

37. Complainant became famous not only in the United States but around the world when 8chan became very controversial because of the series of mass shooting incidents in the U.S. and in New Zealand. He was invited for investigation by no less than the U.S. Congress because of 8chan. Undoubtedly, Complainant in this case, a private individual, has attained the level of a public figure through his infamous 8chan website;

38. In **Borjal vs CA** ¹⁰, the Court held that "honest criticisms on the conduct of public officials and public figures are insulated from libel judgments." And "public figure" refers to "anyone who has arrived at a position where the public attention is focused upon him as a person;"

39. When the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition. If the comment is an expression of opinion, based on established facts, then it is immaterial that

⁹ Lopez vs. People, supra

¹⁰ Jan. 14, 1999.

the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts;

40. Indeed, as early as 1918, the Court had already laid down a legal teaching recognizing the right to criticize the action and conduct of a public official and a public figure, viz:

“The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of a clear conscience. A public officer must not be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and dignity of the individual be exalted.” (emphasis supplied) ¹¹

Complainant did not suffer any harm

41. Complainant also failed to present even an iota of evidence that he was harmed by respondent tweets. Complainant was not humiliated or publicly embarrassed; or is vilified, hated, becomes the subject of gossip, nasty stories, suspected of wrongdoings, is avoided as a result of respondent’s tweets. He did neither lose face, nor become a laughing stock, nor become the object of ridicule;

42. On the contrary, complainant admits that respondent’s tweets did not harm him at all. In a live stream titled “Somewhere Out There”, which was broadcast long after my supposedly libelous statements, Jim Watkins even admits that my words and actions have done nothing to

¹¹ United States v. Bustos, 37 Phil. 731, 740-741 (1918), cited in Jalandoni v. Drilon, 383 Phil. 855, 870 (2000).

harm him, in this livestream broadcast the 7th of November, stating at timecode 14:32, thus:

“So, after I heal up I have to do some next interviews, and somebody wants me to talk on their...give a talk at their the-ater, and I will do that too. But, most important, we have to continue to make things better...I know why we’re being deplatformed now, it has nothing to do with any former em-ployees of mine. It–it’s really much higher than that. I found that out yesterday. I finally said, “oh! Why are they push-ing on me so hard?” I found out yesterday. I’m not–I’m not going to let that get to me.”

A copy of the video livestream on Youtube is copied into a USB, enclosed in the mailing envelope herein, and marked as **ANNEX “E”** hereof.

43. But granting that respondent’s tweets had caused hurt or embarrassment to Complainant and even to his family and friends, but it must be emphasized that hurt or embarrassment even if real, is not automatically equivalent to defamation; words which are merely insulting are not actionable as libel or slander per se, and mere words of general abuse however opprobrious, ill-natured, or vexatious, whether written or spoken, do not constitute bases for an action for defamation in the absence of an allegation for special damages.¹²

44. In **GMA Network, Inc. v. Bustos**,¹³ the Court held that “personal hurt or embarrassment or offense, even if real, is not automatically equivalent to defamation”. The fact that the language is offensive to the plaintiff does not make it actionable by itself,” as the Court ruled in **MVRS Publications, Inc. v. Islamic Da’ Wah Council of the Phils., Inc.**;¹⁴

¹² Lopez v. People, G.R. No. 172203, 658 Phil. 20, 31 (2011).

¹³ G.R. No. 146848, October 17, 2006, 504 SCRA 638, 654

¹⁴ 444 Phil. 230, 241 (2003).

45. If a writer in the course of temperate and legitimate criticism falls into error as to some detail, or draws an incorrect inference from the facts before him, and thus goes beyond the limits of strict truth, such inaccuracies will not cause judgment to go against him, if the jury are satisfied, after reading the whole publication, that it was written honestly, fairly, and with regard to what truth and justice require.¹⁵

II.

ACP CABANACAN MISAPPRECIATED THE FACTS WHEN HE DISREGARD THE UNREFUTED PERSONAL KNOWLEDGE OF RESPONDENT ABOUT COMPLAINANT'S STATE OF MIND.

Respondent's personal knowledge about complainant's character and state of mind was un rebutted and ACP Cabanacan disregarded this

46. Respondent has personal knowledge and well-acquainted of complainant's character and state of mind because he personally know and has worked for complainant from October 2014 until December 2018;

47. The statements in respondent's counter-affidavit which describes in detail the complainant's state of mind is restated herein for reference and made an integral part of this Appeal, thus:

“37. Complainant Jim Watkins is a 55 years old American National. He served in the US Army for 16 years, where he got his introduction to computers. His early internet success came through a streaming porn site called Asian Bikini Bar targeting the Japanese audience by marketing uncensored Japanese content to users in Japan. The porn sites

¹⁵ Flor v. People, supra

were hosted outside of Japan in order to get away with the Japanese strict regulations on pornography. These porn sites were being managed by complainant in the Philippines;

38. I have personally known and worked for private complainant for four years since October 2014, until December 2018;

39. The main reason I believe Jim Watkins to be senile is because of the incident in third quarter of 2018. This was after I wrote in a public Slack channel for Jim Watkins' U.S. company, N. T. Technology, which was then hosted at nttec.slack.com; that I would be taking a break for a week;

40. Jim Watkins charged into my condo at around 8:00 in the evening and pushed his way past my caregiver, Ms. Mae Torremucha, and began yelling at me, and repeating himself. I asked Jim Watkins at that time whether he is senile, and he answered to me at that time "yes".

Complainant insisted that I conduct a senility test on him at his house

41. While it is true that I am not a medical practitioner, upon a discussion, I agreed to go to Jim Watkins' house and administer a test, as Watkins confided in me that he was questioning his own sanity, and was afraid of what could happen to his businesses if a doctor declared him senile;

42. I stated over and over again to Mr. Watkins that I was not a doctor, but he told me to give the test anyway, even though I had no experience giving such tests;

43. I relented, and printed out on my computer two gold-standard tests used in the medical profession for the diagnosis of dementia: the clock-drawing test, and the Mini-Mental State Examination (MMSE);

44. I remember at that time that Watkins passed the MMSE, but only just barely. I later learned that there were many deficiencies in the way I gave the test, and that because Mr. Watkins took the test at home, and not in a doctor's office, some of the questions made no sense to ask him;

45. I remember at that time not being able to judge whether or not Mr. Watkins had passed the clock-drawing test. Certainly his clock was not perfect, but also not obviously deformed;

46. Jim Watkins stated to me that he doubted his own sanity but was happy to have passed the tests; after he passed my tests he said he would go to a real doctor to be tested. That was the last I heard of it.

Tom Riedel, President of N. T. Technology and longtime Jim Watkins lieutenant, was concerned about Jim's mental state as well

47. Tom Riedel, who agreed to be recorded, sat down for a meeting with me on the 27th of September, 2019, to try to work out a deal with me concerning the renaming of 8chan to an at that time unknown name, during which he stated:

Even when I met Jim, one of his ears didn't really work right. So, like, we'd be sitting in the office, and I would, you know, I'd be working on a website, he'd be working on something, he would say something to me and I'd be like, "Yeah! Blah blah blah," and he just wouldn't hear it at all, if I sat on this side of him. If I sat on that side, he'd hear what I said. So eventually

I learned, okay, I've got to talk into that side of his head. But...it just...over time, it got worse and worse. So he's got this, and I mean, none of us knew until like, last year when he went and got the hearing aides.

48. Riedel was also the man who handled my departure from Jim's many companies, including Race Queen Inc. and N. T. Technology Inc., and he knew my concerns about Jim's dementia, and shared in them at least partly until he found out about the supposed hearing loss.

Jim Watkins announced to the entire office that he was worried about his mental state

49. Towards the end of my working relationship with Jim Watkins, he was founding a new company, Loki Technology Inc., a Philippine corporation. This corporation was not really a new business—it was more of a representation of a corporate restructuring at the same time it was moving into an office, the office of Jim Watkins' longtime Race Queen Inc. corporation was closing;

50. While moving into his new office, in front of myself, Tom Riedel, my wife, Mae Torremucha, Bo Michael Baloran, and many other witnesses, Jim Watkins had an outburst of anger when he could not find a remote control for an air conditioner. Mr. Watkins went on a racist rant, where he sympathized with Spanish conquistadors, saying he could understand why they, in anger, would cut off the hands of their Filipino subjects who displeased them. While claiming he would not do the same in their place, he said he could understand why;

51. When it was revealed that in fact Jim Watkins misplaced the remote control he was searching for, he, seeming to be at the verge of crying, apologized

to the office, and stated that what he said was not his own feelings, but rather the effect of a drug he was taking, pregabalin, and that this drug caused him to go on his racist rant. He said that he could not control himself on this drug, which he said had effects something like “marijuana”, and vowed to stop taking it.

Believing in QAnon is per se evidence of senility or a disturbance in mental state

52. While I do not claim that belief in QAnon is by itself evidence of senility, the ridiculous nature of the QAnon conspiracy theory and completely irrational bases by which believers conclude it to be legitimate makes it, when combined with other factors, evidence of senility;

53. QAnon is a conspiracy theory which posits that a high-level US government insider posts on Jim Watkins’ website and reveals classified US government secrets to the users of the 8kun, 8chan, and 4chan messageboards via coded “drops”. These drops are collected and numbered, and believers known as “QTubers” and “bakers” post “decodes” which allegedly reveal secrets;

54. The QAnon movement has been labeled by the US FBI as a domestic terrorist threat. There is no credible or rational basis whatsoever to think that a US government insider posts on the forums of Jim Watkins. The information contained in QAnon’s “drops”, especially prophecies of future events, is false, and the events never come to pass; QAnon for example claimed that former US Senator Hillary Clinton had been detained in 2017. Clinton remains free and is unlikely to ever be jailed.

Continuing to operate 8chan after three terrorist attacks is per se evidence of senility or a disturbance in mental state

55. Three terrorist manifestos were posted on 8chan website before the violent attacks happened. The domestic terrorists who posted these manifestos went on to kill, in total, 74 people. Jim Watkins admits in his Congressional testimony, on pages four and five, that these terrorists used his website as the first point of dissemination for their manifestos;

56. Continuing to operate this website that has been known to cause so much loss of life, when even Jim Watkins admits that it would be wiser not to do so, is evidence of a disturbance in mental state.

The public has the right to know whether or not 8chan's owner is sane

57. Given all the shootings connected to 8chan, it is my oral duty to let the public know, in both the Philippines and the United States, whether or not Jim Watkins is sane. There was a clear public interest in my statements.

48. If we recall, ACP Cabanacan gave ample opportunity to complainant to file a Reply-Affidavit and rebut the statements of respondent about complainant's state of mind. But on 11 December 2019 which was the scheduled date for the submission of complainant's Reply-Affidavit, complainant manifested that they are no longer interested to file a Reply-Affidavit anymore. Resultantly, all material allegations and statements of respondent in his Counter-Affidavit remained unrefuted.

49. The detailed narration of the facts in the un rebutted counter-affidavit of the respondent about complainant's state of mind including the corroborative testimony of his witness, taken together, are gospel truth. We

submit that no additional expert witness testimony is necessary because all the allegations of the respondent in his Counter-Affidavit are unrefuted by complainant. **This means, according to Black's Law Dictionary, he who does not deny, admits, "Qui non negat fatetur".**¹⁶ Accordingly, the unrebutted statements in the Counter-Affidavit of Respondent stands as truth. Hence, no further proof of complainant's senility is required.

III.

ACP CABANACAN GRAVELY ABUSED HIS DISCRETION WHEN HE RELIED THE CASE OF U.S. VS. ORTIZ ET. AL. AS HIS BASIS IN FINDING PROBABLE CAUSE TO INDICT RESPONDENT FOR THE OFFENSE OF CYBERLIBEL.

45. In the Resolution, ACP Cabanacan stated thus:

xxx Suggesting that complainant's behavior are not normal with the effect of discrediting the person of the complainant and further opening up the complainant to public ridicule. The Supreme Court in US. Vs. Ortiz et al -

"Thus the accused was declared guilty of the crime of libel for writing and publishing an article containing the words "coward, vile soul, dirty – sucker, hog who always looks toward the ground" which refer to the offended party, thereby exposing the latter to public contempt and ridicule."

It is notable that the tweets were actually made by respondent himself as shown in Exhibits "B" to "B-3" of the complaint-affidavit as well as per admission of the respondent in his counter-affidavit. And as per evidence, the subject of the libelous tweets is the complainant.

46. The error of ACP Cabanacan has been made more egregious when he cited and relied on the case of U.S. Ortiz

¹⁶ Black's Law Dictionary Revised 4th Edition page 1414)

et al (supra) as his basis for the indictment of respondent for the offense of cyberlibel. This case is not in all fours to the subject tweets of the respondent.

47. Certainly, respondent did not tweet and call complainant coward, vile soul, dirty – sucker, hog who always looks toward the ground. The case cited by ACP Cabanacan is therefore misplaced.

There is absence of probable cause

48. As stressed by the Court in **Hashmin vs. Boncan**,¹⁷ the purpose of a preliminary investigation is only to determine probable cause. The investigating judge or prosecuting officer acts upon probable cause and reasonable belief, not upon proof beyond a reasonable doubt. The occasion is not for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. When all this is fulfilled, the accused will not be permitted to cast about for fancied reasons to delay the proceeding;

49. The evidence and allegations of complainant do not fulfill to engender well-founded belief that an offense has been committed and that I am probably guilty thereof. The tweets in question were not defamatory or libelous. Hence, there is absence of probable cause.

PRAYER

WHEREFORE, it is most respectfully prayed that the Resolution of Assistant g City Prosecutor Juliene Raymond A. Cabanacan be REVERSED and SET ASIDE and that the Honorable Secretary of Justice dismiss the complaint for lack of probable cause.

¹⁷ 71 Phil. 216. January 31, 1931

In the interest of justice and fair play, the Complainant most respectfully prays for other just and equitable relief as the Honorable Secretary of Justice may find warranted in the premises.

Makati City for Manila, February 21, 2020.

RESPECTFULLY SUBMITTED.

GUZMAN ACAIN LAW OFFICES

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By:



ALEXANDER LLANES ACAIN, JR.

Roll of Attorneys No. 42604

IBP No. 096658, issued on December 6, 2019 ZDS

PTR No. 8127509, issued Jan 07, 2020, Makati City

MCLE Compliance No. VI-0025081 April 14, 2022

Tel No. 632.84033478

Email Address: alex.acain@guzmanacain.com

REPUBLIC OF THE PHILIPPINES]
CITY OF MAKATI] S.S.

VERIFICATION AND CERTIFICATION

I, **FREDRICK ROBERT BRENNAN**, American National of legal age, married to a Filipino citizen, and a resident of Unit 20E, Manhattan Parkway Residences Tower 1, General Malvar Avenue, Cubao Quezon City, after having been duly sworn in accordance with law, do hereby depose and state, that I am the Respondent-Appellant in the above-entitled case; that I have caused the preparation and filing of the Appeal/Petition for Review to the Honorable Secretary of Justice; that I have read the same and all the allegations therein, including the documents appended thereto; that the same are true and correct based on my personal knowledge and copies of authentic records of the case in my possession; and that I have not earlier commenced a similar petition for the same cause with any other court, tribunal or quasi-judicial agency; no such petition is pending with any court, tribunal or quasi-judicial agency and if I should learn that a similar petition has been filed or is pending with any other court, tribunal or quasi-judicial agency, I hereby undertake to notify this Honorable Office within five (5) days from such notice.


FREDRICK ROBERT BRENNAN
Affiant

SUBSCRIBED AND SWORN to before me this 21st day of February 2020 at Makati City, affiant exhibiting to me his Passport No. 493725853 issued on 10 August 2012, USA.

Doc. No. 84 ;
Page No. 18 ;
Book No. 9 ;
Series of 2020.


ALEXANDER LLANES ACAIN JR.
Commission No. M-207
Notary Public for and in the City of Makati
Until December 31, 2020
6/F Cityland Pasong Tamo Tower
2210 Don Chino Roces Avenue, Makati City
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RE 174 363 067 ZZ
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Preserve this receipt for reference in case of inquiry
MAKATI CENTRAL POST OFFICE,
1200 MAKATI CITY, PHILIPPINES

By Registered Mail

RE 174 363 067 ZZ
MAKATI CPD

James Arthur Watkins
Complainant-Appellee
U-4 Phoenix Heights Condominium
40 Canley Road, Bagong Ilog Pasig

REGISTRY RECEIPT
RE 174 363 075 ZZ
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MAKATI CPD

Office of the City Prosecutor
Pasig City

By Registered Mail

RE 174 363 084 ZZ
MAKATI CPD

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