

weapon. Then, Montalba went to respondent and confiscated the Swiss knife, a concealed deadly weapon and showed it to the people around and demonstrated to them by opening the folded Swiss knife exposing a 5-inch one-side sharp bladed knife with 5 inches handle for the video camera to take pictures of it. Montalba then continued demonstrating by folding the Swiss knife and the exposed 5 inches sharp blade knife was inserted back into the 5 inches black handle.

On the other hand, respondent submitted his Counter-Affidavit and vehemently denied the allegations lodged against him.

That on November 22, 2006, at about 4:00 o'clock in the afternoon, he was with RTC Branch 20 Sheriff Johnson Tan Jr., Police Superintendent Antonio Montalba, Atty. Alejandro Jose C. Pallugna and some twenty (20) policemen, to serve the Writ of Replevin upon Marisyl Castillon at Calamansi Drive, Carmen, Cagayan de Oro City.

At the height of the service of the Writ of Replevin, he was opening and examining the computer CPU's to find more stolen items by Marisyl Castillon and her co-conspirators at the second floor of the building and he used his *Multi-Purpose Tool Kit* with a brand of Leatherman, a common tool kit sold at any tool shop in the Philippines and the United States of America.

The tool kit has a screwdriver, Phillips, flathead, scissors, file, wire cutter, saw, nipper, and other useful parts, including a makeshift knife and others. When complainants came upstairs, he had already stopped his work and had already put the Leatherman *Multi-Purpose Tool Kit* back into its case on the hips of his pants and then he proceeded to take a video camera shots of complainants and their son Salvador Castillo, Jr. That he never pulled the leatherman out of its case until Montalba asked him to take it out.

Complainant's submitted a Joint Reply-Affidavit in answer to the allegations found in the Counter-Affidavit of respondent and arguing among others that respondent was in possession of a bladed weapon at the time of the incident and not a mere pliers as appearing in the pictures attached to the Counter-Affidavit.

First, we resolve the offense of **GRAVE THREATS** whether the elements of the said crime are present in the instant complaint.

Elements of the crime of Grave Threats as defined in Article 282 of the Revised Penal Code and penalized by its paragraph 2 namely: *(1) that the offender threatened another person with the infliction upon his person of a wrong; (2) that such wrong amounted to a crime; and (3) that the threat was not subject to a condition.*

Perusal on the Complaint-Affidavit apparently reveals that none of the above-mentioned elements are present in the instant complaint.

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The alleged incident on November 22, 2006 where respondent allegedly showed his *Multi-Purpose Tool Kit* (Leatherman) or Swiss Knife as complainants call it... tucked on his waist placed on a leather pouch and handed it over to P/Supt Antonio Montalba, without saying anything, nothing can be deduced that such gesture constitute Grave Threats.

In the crime of *Grave Threats* punished under Article 282 of the Revised Penal Code, *intimidation* must be present. In the complaint at hand, these alleged acts by respondent above do not create intimidation.

Second, as to the complaint for *Concealing of Deadly Weapon*.

I would like to underline, however, the important point in the Supreme Court "EN BANC" Decision in the case of PP vs. Purisima, et al., G.R. No. L-42050-66; PP vs. Maceren, et al., G.R. No. L-46229-32; PP vs. Maceren et al., G.R. No. L-46313-16 and PP vs. Polo, et al., G.R. No. L-46997, that the Court holds that *the offense carries two elements: first, "the carrying outside one's residence of any bladed, blunt, or pointed weapon, etc. not used as a necessary tool or implement for a livelihood; and second, that the act of carrying the weapon was either in furtherance of, or to abet, or in connection with subversion, rebellion, insurrection, lawless violence, criminality, chaos, or public disorder.*

It is the second element, which removes the act of carrying a deadly weapon, if concealed, outside of the scope of the statute xxx. In other words, the simple act of carrying any of the weapons described in the presidential decree is not a criminal offense in itself. What makes the act criminal or punishable under the decree is the motivation behind it. Obviously, in the complaint at hand, the *Second element* of the crime is absent which according to the Supreme Court removes the act of carrying a deadly weapon, if concealed, outside of the scope of the statute xxx.

WHEREFORE, premises considered, let these complaints be dismissed for want of probable cause.

Cagayan de Oro City, April 30, 2007.


RODRIGO D. TALLEDO, SR.
Asst. City Prosecutor

Approved: ORIGINAL SIGNED
YOLANDA A. CARBONELL
City Prosecutor

Copy furnished:

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