REASONABLE CERTAINTY OF CONVICTION: BRIDGING THE GAP FROM PROBABILITY TO CERTAINTY*

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ABSTRACT

The Department of Justice (DOJ) has recently introduced the evidentiary standard of reasonable certainty of conviction to determine whether a person should be prosecuted for a crime or offense. It has been claimed that it provides a higher standard than executive determination of probable cause. This Comment argues that the two are virtually equivalent. The definitions of reasonable certainty of conviction in pertinent DOJ Circulars are analyzed and compared to the standard applied by prosecutors in determining probable cause. The examination reveals that both reasonable certainty of conviction and probable cause require prosecutors to establish a *prima facie* case to justify filing an information against the accused, which involves presenting uncontroverted evidence sufficient to establish all the elements of the crime or offense charged. Despite this, it seems unclear whether the two differ as to the necessary evidence—specifically, whether admissible evidence is required or mere hearsay suffices—since there is no settled standard for probable cause due to conflicting jurisprudence. In response to this, it is argued here that the 2024 DOJ Department Circular No. 015 attempts to settle the conflict by unequivocally requiring admissible and credible evidence equivalent to the proof required under the Rules of Court for establishing a *prima facie* case. Therefore, reasonable certainty of conviction effectively bridges the gap in the evidentiary standard for preliminary investigations.

KEYWORDS: reasonable certainty of conviction, probable cause, *prima facie* case, preliminary investigation

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I. INTRODUCTION

On July 16, 2024, the Department of Justice (DOJ) introduced a major shift in the conduct of preliminary investigations.[1] Following multiple prosecutorial developments,[2] the DOJ's new rules on preliminary investigations are notable, among other things, for changing the quantum of evidence from the long-established and well-entrenched probable cause to "*prima facie* evidence with reasonable certainty of conviction."[3] This "elevated" quantum of evidence promises that only strong cases will be brought to trial, thereby helping reduce the perennial problem of clogged court dockets.[4]

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[1] *See* DOJ Dep't Circ. No. 015 (2024). The 2024 Department of Justice-National Prosecution Service (DOJ-NPS) Rules on Preliminary Investigations and Inquest Proceedings.

[2] *See infra* Part II.B.

[3] DOJ Dep't Circ. No. 015 (2024), § 5.

[4] Ferdinand Marcos, Jr., Speech delivered at the Signing Ceremony of the DOJ Rules on Criminal Investigation (July 10, 2024), *at* https://pco.gov.ph/presidential-speech/speech-by-president-ferdinand-r-marcos-jr-at-the-signing-ceremony-of-the-doj-rules-on-criminal-investigation/.

Despite the praises heaped on the passage of this reform,[5] the author argues that the two are virtually identical. *Prima facie* evidence with reasonable certainty of conviction is the same as executive determination of probable cause for two reasons. First, both require prosecutors to establish a *prima facie* case to justify the filing of an information against an accused. Second, both require the same standard in establishing a *prima facie* case. However, while there is an equivalence between the two standards, conflicting jurisprudence on the type of evidence needed to establish probable cause or a *prima facie* case—specifically, whether admissible evidence is required or mere hearsay suffices—makes it difficult to determine definitively whether a *prima facie* case with reasonable certainty of conviction is a true upgrade over probable cause.

The author argues that given this perceived equivalence and despite the Court's contradicting rulings on the subject, the DOJ's new rules are an attempt to reconcile the persistent inconsistencies in jurisprudence. By requiring admissible and credible evidence in establishing a *prima facie* case, the DOJ's new policy bridges the gap between mere probability and certainty of conviction.

This Comment shall proceed in the following manner. Part II shall briefly discuss the formerly prevailing standard of executive determination of probable cause and likewise trace the development of the new quantum of evidence of *prima facie* evidence with reasonable certainty of conviction. Part III shall establish that, contrary to popular rhetoric, the two standards are virtually equivalent. Furthermore, this portion shall also highlight the existing jurisprudential conflict on the evidence that establishes probable cause or a *prima facie* case, and how the DOJ's new rules attempt to remedy this conflict. Part IV concludes.

[5] *See Lawmakers Hail DOJ Accomplishments During 2025 Budget Hearing*, DOJ WEBSITE, *at* https://doj.gov.ph/news_article.html?newsid=PUJnlMkrYTH5_kuzRpScSgHzlz2Qchap2dOtXdS9zvI.

II. PRELIMINARY INVESTIGATION, *PRIMA FACIE* EVIDENCE WITH REASONABLE CERTAINTY OF CONVICTION, AND PROBABLE CAUSE

A. Preliminary Investigation

A preliminary investigation is "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof, and should be held for trial."[6] Although initially a judicial function,[7] preliminary investigation has evolved into a proceeding that is executive in nature. As jurisprudence has recognized:

> [P]reliminary investigation is an executive, not a judicial, function. As the officer authorized to direct and control the prosecution of all criminal actions, a prosecutor is primarily responsible for ascertaining whether there is sufficient ground to engender a well-founded belief that an offense has been committed and that the accused is probably guilty thereof.[8]

Courts have adhered to the policy of non-interference in the conduct of preliminary investigation by the public prosecutor, recognizing the DOJ's "prerogative to direct and control the conduct of preliminary investigations."[9]

In preliminary investigation, the quantum of evidence is generally fulfilled by the finding that "there exists *prima facie* evidence of [the accused's] involvement in the commission of the crime,"[10] which itself must be "sufficiently supported by the evidence presented and the facts obtaining therein."[11] In turn, *prima facie* evidence is "evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts, or to counterbalance the presumption of innocence to warrant a conviction."[12]

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[6] RULES OF COURT, Rule 112, § 1.

[7] Leila De Lima & Geronimo Sy, Essay, *A Short History of Preliminary Investigation*, 88 PHIL. L.J. 375, 384 (2014).

[8] People v. Navarro, G.R. No. 96229, 270 SCRA 393, 400, Mar. 25, 1997.

[9] *In re* Draft Department of Justice-National Prosecution Service's [DOJ-NPS] Rules on Preliminary Investigations and Inquest Proceedings [hereinafter "*In re DOJ-NPS Rules*"], 955 Phil. 15, 22 (2024).

[10] Paderanga v. Drilon [hereinafter "*Paderanga*"], G.R. No. 96080, 196 SCRA 86, 93, Apr. 19, 1991.

[11] *Id.*

[12] Salonga v. Paño [hereinafter "*Salonga*"], G.R. No. 59524, 134 SCRA 438, 450, Feb. 18, 1985.

Preliminary investigations are conducted "only for the determination of probable cause, and []probable cause merely implies probability of guilt and should be determined in a summary manner."[13] Moreover, preliminary investigations "[are] not a part of [the] trial,"[14] and "the rights of a respondent in a preliminary investigation are limited to those granted by procedural law."[15]

B. Development of *Prima Facie* Evidence with Reasonable Certainty of Conviction

For much of the history of preliminary investigation made by prosecutors in the Philippines, the quantum of evidence has always been probable cause,[16] a standard that, while ideally "protect[s] the accused from the inconvenience, expense, and burden of defending himself in a formal trial until the reasonable probability of his guilt has first been ascertained in a fairly summary proceeding by a competent officer,"[17] nevertheless causes delays in the criminal justice system.[18] As described in literature, the disadvantages of preliminary investigation are two-fold:

> The preliminary investigation stage carries at least two distinct disadvantages: First, prosecutors generally believe they should not be involved in the investigative stage because it would destroy their neutrality. Second, cases are automatically processed to the trial court with the bare minimum of probable cause, an evidentiary standard well below the much higher requirement of reasonable doubt needed for conviction at trial. Only when pressured by the media will a prosecutor direct the police to collect more evidence to shore up a case.[19]

This changed, however, when the DOJ introduced prosecutorial reforms aimed at creating a more proactive and efficient prosecution service. The phrase "reasonable certainty of conviction" first appeared in DOJ

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[13] Estrada v. OMBUD. [hereinafter "*Estrada*"], G.R. No. 212140, 748 SCRA 1, 39, Jan. 21, 2015.

[14] *Id* at 97.

[15] *Id.* at 39.

[16] *See, generally*, De Lima & Sy, *supra* note 7.

[17] *In re DOJ-NPS Rules*, 955 Phil. 15, 20, *citing* Salta v. Ct. of Appeals, 227 Phil. 213, 219 (1986).

[18] Peter Strasser, *A Marine's Murder Trial and the Drug War: The "Delicate Balance" of Criminal Justice in the Philippines*, 14 U. PA. ASIAN L. REV. 158, 196 (2019).

[19] *Id.* (Citations omitted.)

Department Circular ("D.C.") No. 008,[20] issued on February 10, 2023, which directed prosecutors to apply reasonable certainty of conviction before proceeding with a preliminary investigation in criminal cases cognizable by first-level courts.

D.C. No. 008 mandates prosecutors to determine if a case has a reasonable certainty of conviction based on the following: (1) evidence on hand; (2) availability of witnesses; and (3) continued interest of private complainants. If there is no reasonable certainty of conviction, the prosecutor must file a motion to withdraw information. These directives are in keeping with the goal of unclogging and decongesting court dockets. It is interesting to note that at this early development, the DOJ has already qualified the evidentiary standard of reasonable certainty of conviction as pertaining to those "cases supported by *prima facie* evidence."[21]

Within the same month, the DOJ promulgated D.C. No. 016 to serve as guidelines for the implementation of D.C. No. 008.[22] D.C. No. 016 is concerned with the duty of prosecutors to identify the cases covered by the relevant circulars and to withdraw information where necessary.[23] Its crucial role, however, lies in its attempt at defining the term "reasonable certainty of conviction,"[24] and mandating that "no case shall henceforth be filed with the [first-level courts] *if there is no reasonable certainty of conviction for the same*."[25]

Subsequently, on March 31, 2023, the DOJ promulgated DOJ D.C. No. 020,[26] which laid down the policy of proactive involvement of prosecutors in the investigation of specified heinous crimes, e.g., violations of Republic Act ("RA") No. 9165, RA No. 9160, and other capital offenses punishable by *reclusion perpetua* or life imprisonment, allowing them to assist or cooperate with the complainants or the relevant law enforcement agencies.[27] Aside from likewise adopting reasonable certainty of conviction as quantum

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[20] *See* DOJ Dep't Circ. No. 008 (2023). Assessment of Pending Criminal Cases for Offenses Cognizable by the Municipal Trial Courts (MTCs), Municipal Trial Courts in Cities (MTCCs), and Metropolitan Trial Courts (MeTCs).

[21] *Id.*

[22] DOJ Dep't Circ. No. 016 (2023). Guidelines on the Implementation of D.C. Nos. 008 and 008-A, s. 2023, on the Assessment of Pending Criminal Cases for Offenses Cognizable by the Municipal Trial Courts (MTCs), Municipal Trial Courts in Cities (MTCCs), and Metropolitan Trial Courts (MeTCs).

[23] *See* §§ 3–8.

[24] § 2.

[25] § 9. (Emphasis supplied.)

[26] DOJ Dep't Circ. No. 020 (2023). Policy on Pro-Active Involvement of Prosecutors in Case Build-Up.

[27] §§ 1, 3.

of proof in determining the necessity of a preliminary investigation or an inquest proceeding,[28] D.C. No. 020's contribution to the development of the new evidentiary standard is its elucidation that a "*prima facie* case" must be established by "*prima facie* evidence," the latter being defined as "such status of evidence which on its own and if left uncontroverted, is sufficient to establish all the elements of a crime."[29] The author observes that this definition tracks closely with how jurisprudence defines *prima facie* evidence.[30]

D.C. No. 020 also mandated the extra step of evaluation. Before proceeding to a preliminary investigation of the crimes covered by D.C. No. 020, prosecutors must first evaluate the complaints "to determine if they contain all the necessary evidence to prove the essential elements of the crime and should be docketed for preliminary investigation."[31] If the evaluation shows that the complaint or referral contains all such evidence, the same must be docketed for preliminary investigation.[32] Thus:

> [i]n all cases for preliminary investigation, the investigating prosecutor shall issue a Certification as to the evidence of *prima facie* case and of a *reasonable certainty of conviction* based on available documents, witness/es, real evidence and the like, or the lack thereof.[33]

A similar evaluation is required for cases that are subject to inquest proceedings. Assisting prosecutors must first evaluate the necessary documents and "shall certify that there is sufficient ground to conduct inquest proceedings"[34] if all the necessary evidence to prove the essential elements of the crime exists. As in the case for preliminary investigations, heads of prosecution offices must ensure a reasonable certainty of conviction.[35]

Further, consistent with the oft-cited doctrine that preliminary investigation is now purely an executive function,[36] the DOJ has maintained that the involvement of prosecutors during case build-up involves no

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[28] §§ 5–6.
[29] § 2.
[30] *See Salonga*, 134 SCRA 438, 450.
[31] DOJ Dep't Circ. No. 020 (2023), § 5.
[32] § 5.
[33] § 5. (Emphasis supplied.)
[34] § 6.
[35] § 6.
[36] *In re DOJ-NPS Rules*, 955 Phil. 15, 20–22.

violation of neutrality or impartiality,[37] because "prosecutors are not judicial (or even quasi-judicial) officers [but] are part of the executive branch of the government whose mandate is to enforce the law."[38]

The foregoing developments culminated in the issuance of D.C. No. 015 ("2024 DOJ-NPS Rules")[39] to "govern the conduct of preliminary investigations and inquest proceedings in all prosecution offices in the National Prosecution Service of the Department of Justice."[40] The 2024 DOJ-NPS Rules took effect on July 31, 2024, and is now the prevailing rule for "crimes or offenses where the penalty prescribed by law is at least six (6) years and one (1) day without regard to fine."[41] This marks a change from Rule 112 of the Rules of Court, which previously required a preliminary investigation for crimes or offenses with a much lower threshold—those penalized by imprisonment of at least four years, two months, and one day.[42]

The 2024 DOJ-NPS Rules now require that the quantum of evidence for preliminary investigations and inquest proceedings for the cases covered therein be *prima facie* evidence with reasonable certainty of conviction. The said rules further specify the evidence necessary to establish a *prima facie* case under this standard, as follows:

> [A] *prima facie* case is established by the evidence-at-hand, including but not limited to testimonial evidence, documentary evidence, and real evidence; and such evidence, on its own and if left uncontroverted, shall be sufficient to establish all the elements of a crime or offense charged, and consequently warrant a conviction beyond reasonable doubt.[43]

This quantum of evidence is met when:

> the prosecutor is convinced that the entirety of evidence presented by the parties is (a) admissible, (b) credible, and (c) capable of being preserved and presented to establish all the elements of the crime

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[37] DOJ Dep't Circ. No. 020-A (2023), 1. Answers to Commonly Asked Questions, Flowchart and Template Certifications in the Implementation of Department Circular No. 020, Series of 2023 on Pro-Active Involvement of Prosecutors in Case Build-Up.

[38] *Id.*

[39] DOJ Dep't Circ. No. 015 (2024) [hereinafter "2024 DOJ-NPS Rules"]. The 2024 Department of Justice-National Prosecution Service (DOJ-NPS) Rules on Preliminary Investigations and Inquest Proceedings.

[40] § 2.

[41] § 3.

[42] RULES OF COURT, Rule 112, § 1.

[43] 2024 DOJ-NPS Rules, § 5.

> or offense, as well as the identity of the person or persons responsible therefor. Reasonable certainty of conviction also includes a summary evaluation of the evidence presented by the respondents through their counter-affidavit.[44]

With the formal adoption of this standard, the 2024 DOJ-NPS Rules also empowers the investigating prosecutor to, "*motu proprio*, at any stage of the proceeding, dismiss the complaint if there is no *prima facie* evidence with reasonable certainty of conviction."[45]

The 2024 DOJ-NPS Rules also introduced a minor change in the wording of the quantum of proof. While D.C. No. 020 states that "prosecutors must ensure the existence of a *prima facie* case *and* a reasonable certainty of conviction,"[46] the 2024 DOJ-NPS Rules instead requires "*prima facie* evidence *with* reasonable certainty of conviction."[47] Likewise, whenever it is practicable under the 2024 DOJ-NPS Rules, the suppletory application of the Rules of Court is permissible.[48]

The Supreme Court has notably given its imprimatur to the DOJ's move months before the official promulgation of the 2024 DOJ-NPS Rules. In a Resolution,[49] the Court reiterated its adoption of the policy of non-interference in the conduct of preliminary investigations by the public prosecutor given the executive nature of the proceeding, stating thus:

> [P]reliminary investigation, as a vehicle to determine whether a person should be indicted, used to be a function shared by judges and prosecutors. The paradigm, however, shifted to one of exclusivity in favor of public prosecutors. As early as 1986 in *Salta v. Court of Appeals*, the Court has held that the conduct of preliminary investigation is an executive, not a judicial function.
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> By reason of this shift in the nature of preliminary investigation, the Court has adopted a policy of non-interference in the public prosecutor's conduct thereof.

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[44] § 5.
[45] § 3.
[46] DOJ Dep't Circ. No. 020 (2023), § 2.
[47] 2024 DOJ-NPS Rules, § 5. (Emphasis supplied.)
[48] § 24.
[49] *In re DOJ-NPS Rules*, 955 Phil. 15.

> For instance, in *People v. Navarro*, it was held that a trial court "cannot directly order an assistant prosecutor to, particularly over the objections of the latter's superiors, to conduct a preliminary investigation," because to allow the court to do so is to "authorize [the court] to meddle in the executive and administrative functions of the provincial or city prosecutor." Most noteworthy, however, was the Court's ruling in *Chan y Lim v. Secretary of Justice*, where it was held:
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> > Albeit the findings of the Justice Secretary are not absolute and are subject to judicial review, *this Court generally adheres to the policy of non-interference in the conduct of preliminary investigations, particularly when the said findings are well-supported by the facts as established by the evidence on record.* Absent any showing of arbitrariness on the part of the prosecutor or any other officer authorized to conduct preliminary investigation, courts as a rule must defer to said officer's finding and determination of probable cause, since the determination of the existence of probable cause is the function of the prosecutor.[50]

The Court also recognized the "DOJ's prerogative to direct and control the conduct of preliminary investigations"[51] and its authority to promulgate the 2024 DOJ-NPS Rules.[52] Hence, without prejudice to the Court's subsequent exercise of its rulemaking power as regards preliminary investigations, the Court ordered the repeal of Rule 112 provisions that were inconsistent with the 2024 DOJ-NPS Rules.[53]

As of writing, the Court has conducted regional consultations for the proposed amendments to the Rules of Criminal Procedure, including the provisions of Rule 112 that are affected by the 2024 DOJ-NPS Rules.[54] Further, the Court has also held "writeshops," which examined inputs from the said regional consultations.[55]

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[50] *Id.* at 20–22. (Citations omitted.)

[51] *Id.* at 22.

[52] *Id.*

[53] *Id.* at 22–23.

[54] *Improving the Philippines' justice system with the SPJI 2022-2027*, THE MANILA TIMES, June 17, 2024, *at* https://www.manilatimes.net/2024/06/17/supplements/improving-the-philippines-justice-system-with-the-spji-2022-2027/1951754. *See also CrimPro Regional Consultations*, SUP. CT. OF THE PHIL. WEBSITE, *at* https://sc.judiciary.gov.ph/crimpro-revision-project/.

[55] *SC Holds Writeshop for Proposed Amendments to the Revised Rules of Criminal Procedure*, SUP. CT. OF THE PHIL. WEBSITE, *at* https://sc.judiciary.gov.ph/sc-holds-writeshop-for-proposed-amendments-to-the-revised-rules-of-criminal-procedure/; *SC Holds Final Writeshop for Proposed Amendments to the Revised Rules of Criminal Procedure*, SUP. CT. OF THE PHIL. WEBSITE, *at* https://sc.judiciary.gov.ph/sc-holds-final-writeshop-for-proposed-amendments-to-the-revised-rules-of-criminal-procedure/.

The 2024 DOJ-NPS Rules were later followed by D.C. No. 028,[56] which introduced two additional kinds of investigation: summary investigation and expedited preliminary investigation. D.C. No. 028 essentially fills the gaps left by the 2024 DOJ-NPS Rules, as it governs "the conduct of investigation of crimes or offenses […] where the penalty prescribed by law is one (1) day to six (6) years,"[57] regardless of the amount of fine. The issuance of D.C. No. 028 formalized the earlier policy laid down in D.C. No. 008, particularly because "[t]he quantum of evidence for summary investigation and expedited preliminary investigation shall be the same as that required under [the 2024 DOJ NPS Rules]—*prima facie* evidence with reasonable certainty of conviction."[58]

Summary investigation refers to "an *ex parte* proceeding to determine whether a person should be indicted in court after ascertaining, based on the evidence provided, that there is *prima facie evidence with reasonable certainty for the respondent's conviction* and that he/she should be held for trial."[59] Crimes or offenses penalized by imprisonment of one day to one year, regardless of fine, must undergo summary investigation.[60]

To date, only the 2025 case of *People v. Consebido*[61] has cited D.C. No. 028, but only with the admonition that the investigating prosecutor "must immediately resolve a case subject of summary investigation upon receipt of its records."[62] The Court ultimately ruled, however, that "the filing of the complaint before the prosecution office and the conduct of the summary investigation should toll the running of the prescriptive period."[63]

Meanwhile, an expedited preliminary investigation is "a proceeding to determine whether a person should be indicted in court after ascertaining, based on the evidence provided, and if necessary, after Case Build-Up (CBU), that there is *prima facie evidence with reasonable certainty for the respondent's conviction* and that he/she should be held for trial."[64] This is required for crimes or offenses penalized by imprisonment from one year and one day to six years

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[56] DOJ Dep't Circ. No. 028 (2024). The 2024 Department of Justice-National Prosecution Service (DOJ-NPS) Rules on Summary Investigation and Expedited Preliminary Investigation.

[57] § 2.

[58] § 4.

[59] § 6. (Emphasis supplied.)

[60] § 6.

[61] G.R. No. 258563, slip op. (Apr. 2, 2025).

[62] *Id.* at 14.

[63] *Id.*

[64] DOJ Dept. Circ. No. 028, § 8. (Emphasis supplied.)

without regard to fine, or both imprisonment and fine, "if exclusively falling within the jurisdiction of first level courts."[65] However, if the case is "by law cognizable by the Regional Trial Courts," they shall instead be subjected to regular preliminary investigation or inquest proceedings under the 2024 DOJ-NPS Rules.[66]

Taken together, both the 2024 DOJ-NPS Rules and D.C. No. 028 constitute the prevailing policy of the DOJ to require the evidentiary standard of *prima facie* evidence with reasonable certainty of conviction for all crimes or offenses punished by at least one day of imprisonment. This completes the shift from the old standard of executive determination of probable cause.

C. Executive Determination of Probable Cause

Having discussed the new evidentiary standard in the form of *prima facie* evidence with reasonable certainty of conviction, it is necessary to likewise examine the old evidentiary standard: probable cause. A brief discussion of the concept of probable cause shall thus be made here, to facilitate the comparison between the two evidentiary standards.

As mentioned, probable cause was the previous standard under the Rules of Court, which determines the propriety and necessity of holding the accused for trial. Jurisprudence recognizes four different instances where probable cause must be established,[67] namely: (1) the personal determination by the judge of probable cause in the issuance of warrants of arrest;[68] (2) the personal determination by the judge of probable cause in the issuance of search warrants;[69] (3) the determination of probable cause by a peace officer or private person in effecting a warrantless arrest;[70] and (4) the determination by the investigating officer of whether there is ground to engender a well-founded belief that a crime was committed and the respondent is probably guilty of the same.[71] A common thread among all these types of probable cause is that "the evidence necessary to establish probable cause is based only on the likelihood, or probability, of guilt."[72]

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[65] *Id.*
[66] *Id.*
[67] *Estrada*, 748 SCRA 1, 48–49.
[68] RULES OF COURT, Rule 112, §§ 6, 9.
[69] Rule 126, § 4.
[70] Rule 113, § 5(b).
[71] Rule 112, §§ 1, 3.
[72] *Estrada*, 748 SCRA at 49.

Of particular concern to this paper is the fourth type of probable cause, found in Sections 1 and 3, Rule 112 of the Rules of Court.[73] Also known as the "executive determination of probable cause" made during a preliminary investigation (hereinafter referred to only as "probable cause"),[74] this form of probable cause is concerned with determining "whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."[75] "The executive determination of probable cause concerns itself with whether there is enough evidence to support an Information being filed."[76]

In *Pestilos v. Generoso*, the Court defined probable cause as:

> [T]he existence of facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[77]

It is well-established in jurisprudence that probable cause requires "less than evidence which would justify […] conviction."[78] "A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt."[79] Moreover, the Court ruled that:

> A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspects. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and definitely, not on evidence establishing absolute certainty of guilt.[80]

With the two standards having been discussed, the new quantum of proof of reasonable certainty of conviction shall now be compared with the old quantum of proof, namely, the executive determination of probable cause.

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[73] RULES OF COURT, Rule 112, §§ 1, 3. These two provisions define and prescribe the procedure for conducting preliminary investigations.

[74] Tagastason v. People [hereinafter "*Tagastason*"], G.R. No. 222870, 907 SCRA 621, 626, July 8, 2019, *citing* People v. Castillo, G.R. No. 171188, 590 SCRA 95, 105, June 19, 2009.

[75] *Estrada*, 748 SCRA 1, 48.

[76] *Tagastason*, 907 SCRA at 626.

[77] Pestilos v. Generoso, G.R. No. 182601, 739 SCRA 337, 366, Nov. 10, 2014, *citing* Buchana v. Vda. de Esteban, 32 Phil. 363, 365 (1915).

[78] Webb v. De Leon, G.R. No. 121234, 247 SCRA 652, 676, Aug. 23, 1995, *citing* Brinegar v. United States, 338 U.S. 160, 175 (1949).

[79] *Id.*

[80] *Id.* at 675–76. (Emphasis omitted.)

III. *PRIMA FACIE* EVIDENCE WITH REASONABLE CERTAINTY OF CONVICTION FOLLOWS THE SAME STANDARD AS EXECUTIVE DETERMINATION OF PROBABLE CAUSE

With the issuance of the above Department Circulars, particularly the 2024 DOJ-NPS Rules and D.C. No. 028, there are claims that the evidentiary standard of executive determination of probable cause has "leveled up" to reasonable certainty of conviction.[81] This notion was reflected during the signing ceremony of the 2024 DOJ-NPS Rules, where it was noted that the reform has "[elevated] the quantum of evidence from probable cause to *prima facie* evidence with a reasonable certainty of conviction. This means that only strong cases are brought to trial, reducing frivolous suits and malicious prosecution that clog our courts."[82]

However, it is argued in this Comment that reasonable certainty of conviction is merely a reiteration of probable cause, as the standard for determining the latter is essentially the same as that for the former. There are two arguments forwarded here. First, both require prosecutors to establish a *prima facie* case to justify the filing of an information against an accused. In doing so, both require establishing the presence of all the elements of the crime or offense charged. Second, both require admissible and credible evidence equivalent to proof under the Rules of Court in establishing a *prima facie* case. Despite this equivalence, it shall nevertheless be shown that the 2024 DOJ-NPS Rules may be an attempt by the DOJ to reconcile conflicting jurisprudence on the necessity of admissible and credible evidence in establishing a *prima facie* case. This, in the author's view, bridges the gap in the evidentiary standard for preliminary investigations.

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[81] *See Lawmakers hail DOJ accomplishments during 2025 budget hearing*, DOJ WEBSITE, *at* https://www.doj.gov.ph/news_article.html?newsid=h262xE-uDFWSRKzavhM1OJhkraHbwREgIWleZY4xPNQ; Joahna Lei Casilao, *Lawyer challenges DOJ circular on standards of evidence*, GMA NEWS ONLINE, June 4, 2025, *at* https://www.gmanetwork.com/news/topstories/nation/948378/lawyer-challenges-doj-circular-on-standards-of-evidence/story/; Ian Laqui, *Lawyer fights DOJ's evidence standard in criminal cases*, PHIL. STAR, June 4, 2025, *at* https://www.philstar.com/headlines/2025/06/04/2448207/lawyer-fights-dojs-evidence-standard-criminal-cases.

[82] Marcos, Jr., *supra* note 4. (Emphasis supplied.)

A. The Standards for Establishing a *Prima Facie* Case under Reasonable Certainty of Conviction and Probable Cause are the Same

Both probable cause and reasonable certainty of conviction require prosecutors to establish a *prima facie* case to justify the filing of an information against the accused. Moreover, both probable cause and reasonable certainty of conviction require the same standard in establishing a *prima facie* case, i.e., the uncontroverted evidence must be sufficient to establish all the elements of the crime or offense charged.

To reiterate, D.C. No. 016 provides that reasonable certainty of conviction requires the existence of a *prima facie* case. In other words, it is required that the evidence at hand, not yet disputed by the accused, is "sufficient to establish all the elements of the crime or offense charged, and consequently warrant a conviction beyond reasonable doubt."[83] This is substantially echoed by D.C. No. 020, which defines *prima facie* evidence as "such status of evidence which on its own and if left uncontroverted, is sufficient to establish all the elements of a crime."[84] Aside from adopting the above definitions, the 2024 DOJ-NPS Rules likewise require that the evidence provided by the parties is "(a) admissible, (b) credible, and (c) capable of being preserved and presented to establish all the elements of the crime or offense, as well as the identity of the person or persons responsible therefor."[85]

On the other hand, in the case of probable cause, *prima facie* evidence is such "evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts, or to counterbalance the presumption of innocence to warrant a conviction."[86] A *prima facie* case is present when a cause of action or defense "is sufficiently established by a party's evidence to justify a verdict in his or her favor, provided such evidence is not rebutted by the other party."[87] This definition of *prima facie* evidence is further supported by an examination of Rule 65 cases concerning the executive determination of probable cause. Such an examination reveals that the prosecution must demonstrate the presence of all the elements of the crime to establish a *prima facie* case and to formally charge a person with a crime or offense. This jurisprudential requirement aligns with what the 2024 DOJ-NPS Rules now require.

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[83] DOJ Dep't Circ. No. 016 (2023), § 2.
[84] DOJ Dep't Circ. No. 020 (2023), § 2.
[85] 2024 DOJ-NPS Rules, § 5.
[86] *Salonga*, 134 SCRA 438, 450.
[87] People v. Ramon [hereinafter "*Ramon*"], G.R. No. 229735, Mar. 4, 2019 (Res.).

In *Clarete v. Ombudsman*,[88] the Court ruled that the Sandiganbayan gravely abused its discretion in holding that the informations filed against the petitioner for violating Section 3(e) of RA No. 3019[89] contained allegations sufficient to indict her for the offenses charged. In arriving at that conclusion, the Court essentially held that the presence of the elements of a crime must be established to successfully prosecute an accused for a crime.[90] The Court juxtaposed the elements of the crime of malversation and those under Section 3(e) with the allegations in the subject informations, finding that such allegations ruled out the petitioner's culpability. First, the elements of Section 3(e) were not established, as "the mere signing of a MOA, which, in itself, does not present any iota of irregularity or illegality, does not prove that a person conspired with her co-accused public officials in violating" the said provision.[91] Second, the elements of malversation were not established as the information lacked averments on how exactly the petitioner can be "considered an accountable officer who exercised effective control over the public funds or property suspected to have been appropriated or misappropriated."[92]

In *Salendab v. Paglas*,[93] another case involving Section 3(e), the Court pronounced that "probable cause indicates probability of guilt and requires more than bare suspicion, but less than evidence which would justify a conviction,"[94] hence requiring the "establishment of facts showing that a crime has been committed and that the accused is probably guilty thereof."[95] The Court went on to state that the elements of the crime charged must be determined for purposes of arriving at a finding of probable cause and that "only facts sufficient to support a *prima facie* case against the [accused] are required, not absolute certainty."[96] In finding that the Ombudsman did not gravely abuse its discretion in dismissing the criminal complaint for lack of probable cause, the Court found that Salendab's complaint against Paglas contained bare allegations that were not supported by a finding of probable cause. First, there was no showing that Paglas acted with manifest partiality, evident bad faith, or gross negligence. Second, Salendab's complaint failed to establish that Paglas gave unwarranted benefits, advantage, or preference to a

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[88] [Hereinafter "*Clarete*"], 953 Phil. 107 (2024).

[89] Rep. Act No. 3019 (1960) [hereinafter "RA No. 3019"], § 3(e). This is the Anti-Graft and Corrupt Practices Act of 1960.

[90] *Clarete*, 953 Phil. 107, 130.

[91] *Id.*

[92] *Id.*

[93] G.R. No. 232971, Dec. 13, 2023 (Res.).

[94] *Id.*

[95] *Id.*

[96] *Id.*, *citing* Reyes v. OMBUD. [hereinafter "*Reyes*"], G.R. No. 212593, 787 SCRA 354, 388, Mar. 15, 2016.

private party.[97] These conclusions were made with particular reference to the elements of Section 3(e). Note that while the Court enumerated the evidence submitted by Salendab,[98] the Court discussed only the insufficiency of the evidence in establishing the elements of the crime, and not its admissibility.

Espina v. Soriano,[99] also a case involving a violation of Section 3(e), involved petitioners who were implicated for allegedly committing the following acts:

> (a) Duque, as a member of the LSS-BAC, signed the bidding documents, making it appear that a public bidding was conducted when there was none, thereby recommending the award of contracts which are grossly disadvantageous to the PNP;
> (b) Fuentes, as a Supply Accountable Officer of the LSS, accepted the purported equipment and materials and certifying that they were received in good order and condition; and
> (c) Espina, as Former Acting Chief of the Management Division, processed the payments for the bidders without exercising due diligence to ensure that the procedures in the procurements were faithfully observed.[100]

In determining probable cause, the Court stated thus:

> To engender a well-founded belief that a crime has been committed, and to determine if the suspect is probably guilty of the same, *the elements of the crime charged should, in all reasonable likelihood, be present*. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense. Moreover, considering the nature and purpose of a preliminary investigation, the elements of the crime are not required to be definitively established. It is enough that the elements are reasonably apparent.[101]

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[97] *Id.*

[98] *Id.*, which reads:

> To prove his allegations, [Salendab] submitted the following pieces of evidence: (1) the Industrial and Sand Gravel Permit he was issued; (2) Purchase Order by Gemma Construction Supply, Inc.; (3) Purchase Order by Delinanas Development Corp.-Philippines; (4) Municipal Resolution No. 26-15; (5) photo of the Notice of Immediate Closure; (6) DENR-EMB Commitment Form; (7) December 9, 2015 letter of Atty. Badr to Paglas; (8) Philippine National Police Incident Record Form; (9) December 10, 2015 letter of Paglas to Atty. Badr; (10) Atty. Badr's reply letter dated December 11, 2015; (11) Joint Affidavit of Datu Noran *(Datu Noran)* and Flora Salendab *(Flora)*; (12) Affidavit of Atty. Badr; (13) Affidavit of Jolly E. Salendab *(Jolly)*; and (14) Affidavit of Tangcuangan.

[99] 944 Phil. 467 (2023).

[100] *Id.* at 471.

[101] *Id.* at 491–92. (Emphasis supplied.)

The Court ultimately ruled that the Ombudsman did not gravely abuse its discretion in finding probable cause to indict the petitioners. Here, it was found that the elements of both Section 3(e) and the crime of malversation of public funds through falsification of public documents were, "in all reasonable likelihood," present.[102]

Notably, the Supreme Court ruled that, as to the defense of forgery of one of the petitioners, "the best avenue for him to assail the genuineness of the signatures in the purported documents is during his turn to present evidence in court,"[103] as "any evidence of forgery or findings of purported handwriting experts on the matter cannot be readily credited at the preliminary investigation stage."[104]

The author observes that once the prosecutor determines that the admissible evidence, "on its own and if left uncontroverted, is sufficient to establish all the elements of a crime,"[105] such determination gives rise to a finding of probable cause. However, if the respondent raises forgery as a defense, such defense would be best ventilated during the trial and not during preliminary investigation.

In *Asignado v. Ombudsman*,[106] the Court looked into the elements of each of the offenses charged in resolving the question of whether the Ombudsman committed grave abuse of discretion in finding no probable cause to charge the private respondent for violation of Sections 3(e) and 3(f) of RA No. 3019 and Article 286 of the Revised Penal Code.

First, there was no probable cause to indict the private respondent of violating Section 3(e). The Court found no concrete proof of the private respondent's manifest partiality, evident bad faith, or gross inexcusable negligence relative to his actions on the remittances, with the corresponding conclusion that "one cannot adduce anything that points to [the respondent's] criminal intent."[107] Second, there was no probable cause to indict the private respondent of violation of Section 3(f), as the fourth element of the crime was absent. The Court did not accept the bare allegations submitted by the petitioners, which were unsubstantiated by any evidence of the private

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[102] *Id.* at 492.
[103] *Id.* at 485.
[104] *Id.*
[105] DOJ Dep't Circ. No. 020 (2023), § 2.
[106] 939 Phil. 106 (2023).
[107] *Id.* at 126–27.

respondent's alleged actions.[108] Third, the Court also found no probable cause to indict the private respondent for grave coercion. In examining the elements of grave coercion, the Court found "no evidence on record of any violence, threats, or intimidation on the part of private respondent save for their bare and unsubstantiated allegations."[109]

Further, in *Fainsan v. Field Investigation*,[110] the Court ruled that the Ombudsman did not commit grave abuse of discretion in finding probable cause against the petitioners. The Court agreed that there was probable cause as the elements of Section 3(e) were present in this case. In fact, "[t]he COA report detailing the acts and violations of petitioners, unless sufficiently rebutted, qualifies as evidence justifying probable cause," a report whose findings the petitioners never denied.[111] The Court also upheld the following findings in the assailed Ombudsman Resolution, concluding that such findings were not arbitrary, capricious, whimsical, or despotic:

> The first element of Section 3 (e) of RA 3019 is present since petitioners are public officials. As to the second element, the Ombudsman found that the lack of approved payrolls and committee resolutions authorizing the disbursements, and the failure to comply with auditing regulations, were indicative of petitioners' bad faith and partiality. Lastly, the Ombudsman found that the government suffered injury because of the depletion of MMFF's funds was occasioned by petitioners' irregular and illegal spending.[112]

Finally, in *Domingo v. Deputy Ombudsman for Military and Other Law Enforcement Offices*,[113] the Court pronounced that there must be *prima facie* evidence of the elements of the crime of murder in determining the presence of probable cause. Thus, the Court stated:

> In order to arrive at probable cause, there must be *prima facie* evidence that the following elements of the crime of murder are present: "(1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the [Revised Penal Code]; and (4) that the killing is not parricide or infanticide."[114]

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[108] *Id.* at 129.
[109] *Id.* at 130.
[110] 936 Phil. 970 (2023).
[111] *Id.* at 995.
[112] *Id.*
[113] [Hereinafter "*Domingo*"], 948 Phil. 377 (2023).
[114] *Id.* at 392.

The Court ruled that the Ombudsman "did not act with grave abuse of discretion when it found that no probable cause exists that the killings of Luis and Gabriel were qualified by treachery, evident premeditation, and abuse of superior strength" by considering the petitioner's admissions that: (1) "the police officers who entered their house declared their purpose and introduced themselves as police officers" which negates the fact that the "accused-respondents' act of using their firearms was sudden and unexpected;" and (2) they did not witness the shooting incident.[115]

The foregoing cases demonstrate that insofar as the executive determination of probable cause is concerned, jurisprudence requires the prosecution to establish all the elements constituting the crime or offense before a person may be formally charged therefor. Since the 2024 DOJ-NPS Rules expressly impose the same requirement, it can thus be said that virtually the same standard applies in establishing a *prima facie* case under the standard of reasonable certainty of conviction.

B. The Evidence that Establishes Probable Cause Can Likewise Establish a *Prima Facie* Case

Preliminarily, in *Salonga*, the Supreme Court noted that either probable cause or *prima facie* case must be established for an accused to be indicted and held for trial, thus:

> It is, therefore, imperative upon the fiscal or the judge as the case may be, to relieve the accused from the pain of going through a trial once it is ascertained that the evidence is insufficient to sustain a ***prima facie* case** or that no **probable cause** exists to form a sufficient belief as to the guilt of the accused.[116]

The correlation between probable cause and *prima facie* case was clarified in the 2019 case of *People v. Ramon*,[117] where the Court ruled that "the evidence that establishes probable cause can and does, as well, establish a *prima facie* case. The perceived dichotomy between probable cause and *prima facie* case is thus more imagined than real."[118] Further, as the Court stated:

> The evidence that "clearly" establishes probable cause to justify the filing of an information against an accused is the same evidence that

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[115] *Id.* at 392, 394–95.
[116] *Salonga*, 134 SCRA 438, 462. (Emphases supplied.)
[117] *Ramon*, G.R. No. 229735, Mar. 4, 2019 (Res.).
[118] *Id.*

> is sufficient to establish a *prima facie* case; and a *prima facie* case necessarily rests on *prima facie* evidence. The quantum of proof that establishes probable cause and a *prima facie* case is congruent.[119]

The evidence on record clearly establishes probable cause if it forms "a well-grounded belief that a crime has been committed, the elements thereof being present, and that the accused is probably guilty thereof." Hence, if the prosecutor finds that the evidence on record establishes a *prima facie* case or probable cause against the accused, the accused should be indicted and held for trial. Conversely, if the evidence is insufficient to establish a *prima facie* case against the accused, "then the imperative is for the prosecutor or the judge to relieve the accused from the pain of going through trial." Finally, the Court clarified that "the required evidence in either (probable cause or *prima facie* case) is definitely less than proof beyond reasonable doubt."[120]

The author is aware that in *Board of Commissioners of the Bureau of Immigration and the Jail Warden v. Yuan Wenle*,[121] the Court stated that *prima facie* evidence is "[a] quantum greater than probable cause."[122] This statement was made in reference to the 1998 case of *People v. Montilla*, where the Court noted that *prima facie* evidence is "of a higher degree or quantum" and "used with dubiety as equivalent to 'probable cause.'"[123] However, the author here submits that *Ramon* is the controlling doctrine and that the above-cited statements from *Yuan Wenle* are mere *obiter dictum*.

A careful reading of the reference in *Yuan Wenle* shows that the Court's passing remark on *prima facie* evidence being greater than probable cause was made in the overarching context of administrative warrants. That statement merely served as background for what the Court ultimately sought to establish—an evidentiary rule that non-compliance with any of the seven guidelines for the issuance of administrative warrants serves as "*prima facie* evidence of an administrative infraction or guilt, under applicable laws, against quasi-judicial officers and law enforcers, without prejudice to criminal and civil actions that those aggrieved may pursue."[124] It should also be noted that *Yuan Wenle* was deeply concerned with the effects of administrative warrants, such that they must not pertain to a criminal offense or be used as a precursor

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[119] *Id.*

[120] *Id.*

[121] [Hereinafter "*Yuan Wenle*"], 937 Phil. 148 (2023).

[122] *Id.* at 203, *citing* Cometa v. Ct. of Appeals, G.R. No. 124062, 321 SCRA 574, 582, Dec. 29, 1999; People v. Montilla [hereinafter, "*Montilla*"], G.R. No. 123872, 285 SCRA 703, 720, Jan. 30, 1998.

[123] *Montilla*, 285 SCRA at 720.

[124] *Yuan Wenle*, 937 Phil. at 203–04.

to a criminal prosecution. The Court was quick to specify that quasi-judicial bodies cannot make pronouncements "beyond [their] specialized bounds so as to include criminal cases. Likewise, it cannot be extended to include incidents of criminal proceedings."[125] The Court's deliberate distinction in *Yuan Wenle* between administrative warrants from criminal proceedings, demonstrates that the aforementioned remark cannot be regarded as controlling doctrine.

Meanwhile, *Montilla* does not squarely apply to the issue of executive determination of probable cause. That case involved an accused-appellant apprehended by the police without a warrant and only on the strength of an informant's tip. The accused was thereafter charged with violating the Dangerous Drugs Act[126] and subsequently convicted. Before the Supreme Court, the accused argued that the evidence obtained from him through the warrantless search was inadmissible. The Court rejected that argument and held that the warrantless search was justified as a search incidental to a lawful warrantless arrest under the Rules of Court. Warrantless arrests are justified on the basis of probable cause—a term which, although relative, is "understood as having reference to such facts and circumstances which could lead a reasonable, discreet, and prudent man to believe and conclude as to the commission of an offense, and that the objects sought in connection with the offense are in the place sought to be searched."[127] The question that the Court then had to consider in *Montilla* was the definition of "probable cause" when used specifically in the context of a legitimate warrantless arrest. It was in this light that the Court observed that previous statutory rules and jurisprudence required the "higher degree or quantum" of *prima facie* evidence for the purpose of filing criminal charges.[128]

While the Court delved into the discussion of what constitutes probable cause in preliminary investigations to create the proper framing for defining probable cause in warrantless arrests,[129] the author submits that this comparison was not decisive in how the Court ultimately ruled in *Montilla*. The Court's quoted remark in *Montilla*, therefore, should not be treated as binding precedent insofar as executive determination of probable cause is concerned, especially since its primary concern was the existence of probable cause preceding the accused's warrantless arrest.

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[125] *Id.* at 196. (Emphasis omitted.)

[126] Rep. Act No. 6425 (1972), § 4. This is the Dangerous Drugs Act of 1972, *as amended by* Rep. Act No. 7659 (1993).

[127] *Montilla*, 285 SCRA at 720.

[128] *Id.* at 720–21.

[129] *Id.*

Ramon,[130] therefore, provides the controlling doctrine: a *prima facie* case is synonymous and interchangeable with probable cause in the context of preliminary investigations. The Court's survey of jurisprudence in *Ramon* is highly persuasive of the case's status as controlling doctrine.[131]

At this juncture, however, the author points out that there exists conflicting jurisprudence on the evidentiary standard that must be applied in preliminary investigations.

In general, probable cause is "not a pronouncement of guilt."[132] Thus, to determine the probable cause, "only facts sufficient to support a *prima facie* case against the respondents are required, not absolute certainty."[133] It is required that the evidence shows "that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused."[134] This is compared with the more recent holding in *Ramon* that the same evidence can establish both probable cause and a *prima facie* case.

Nonetheless, upon examination of relevant jurisprudence, there appear to be conflicting rulings on the said evidentiary standard. In particular, these conflicting rulings revolve around two seemingly contradictory assertions: first, hearsay evidence is allowed in establishing probable cause; and second, admissible evidence is necessary to establish the same. Thus, it becomes essential to first examine jurisprudence forwarding these rulings.

1. Jurisprudence Permitting Hearsay in Establishing Probable Cause or Prima Facie Case

In *Paderanga*, the Supreme Court ruled that in a preliminary investigation, the accused "has no right to cross-examine the witnesses which

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[130] G.R. No. 229735, Mar. 4, 2019 (Res.).

[131] *See* Zulueta v. Nicolas, 102 Phil. 944, 946 (1958), where the Court stated that the fiscal has the duty "not to prosecute when[,] after an investigation[,] he becomes convinced that the evidence available is not enough to establish a *prima facie* case."; *Salonga*, 134 SCRA 438, 461–62, where the Court stated that the fiscal or judge has the duty to relieve the accused from the pain of going through a trial if the evidence is insufficient to sustain a *prima facie* case or that no probable cause exists.); Sales v. Sandiganbayan, G.R. No. 143802, 369 SCRA 293, 303–05, Nov. 16, 2001, where the Court relied on both probable cause and *prima facie* case; Miller v. Perez, G.R. No. 165412, 649 SCRA 158, 180, May 30, 2011, where the Court held that "to establish probable cause, only *prima facie* evidence is required."

[132] Galario v. OMBUD. [hereinafter "*Galario*"], G.R. No. 166797, 527 SCRA 190, 204, July 10, 2007.

[133] PCGG v. Navarro-Gutierrez [hereinafter "*PCGG*"], G.R. No. 194159, 773 SCRA 434, 451, Oct. 21, 2015.

[134] *Galario*, 527 SCRA at 204.

the complainant may present," and that the "admissibility or inadmissibility of said testimonies should be ventilated before the trial court during the trial proper and not in the preliminary investigation,"[135] thereby implying that hearsay evidence is allowed in establishing probable cause. The *Paderanga* ruling was formally recognized in *Estrada*, where the Supreme Court held that probable cause can be established with hearsay evidence:

> Thus, probable cause can be established with hearsay evidence, as long as there is *substantial basis* for crediting the hearsay. Hearsay evidence is admissible in determining probable cause in a preliminary investigation because such investigation is merely *preliminary*, and does not finally adjudicate rights and obligations of parties.[136]

Estrada further elaborated that probable cause does not depend on either the "validity or merits of a party's accusation or defense" or "the admissibility or veracity of testimonies presented," as both matters are better asserted during the trial proper.[137] This is in line with the characterization of probable cause, which "implies mere probability of guilt, i.e., a finding based on more than bare suspicion, but less than evidence that would justify a conviction."[138] The Court reiterated this characterization in the following manner:

> The determination of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. What is merely required is "probability of guilt." *Its determination, too, does not call for the application of rules or standards of proof that a judgment of conviction requires after trial on the merits.* Thus, in concluding that there is probable cause, it suffices that it is believed that the act or omission complained of constitutes the very offense charged.[139]

Further, in *Philippine Deposit Insurance Corp. v. Casimiro*,[140] citing *Estrada*, the Supreme Court ruled that the Ombudsman erred in treating Gomez's

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[135] *Paderanga*, 196 SCRA 86, 93.

[136] *Estrada*, 748 SCRA 1, 51.

[137] *Id.* at 50, *citing* Unilever Phil., Inc. v. Tan [hereinafter "*Unilever*"], 725 Phil. 486, 498 (2014).

[138] *PCGG*, 773 SCRA at 451.

[139] *Estrada*, 748 SCRA at 49–50, *citing Unilever*, 725 Phil. at 497–98. (Emphasis supplied.)

[140] G.R. No. 206866, 769 SCRA 110, Sept. 2, 2015.

affidavit as inadmissible evidence for being hearsay. The Court then pointed out that "owing to the initiatory nature of preliminary investigations, the technical rules of evidence should not be applied in the course of its proceedings."[141] The same principle was applied in *PCGG v. Navarro-Gutierrez*, where the Ombudsman was held to have erred in discrediting "the TWG's findings contained in the Executive Summary which were adopted by the *Ad Hoc* Committee for being hearsay, self-serving, and of little probative value."[142]

In *Reyes v. Ombudsman*,[143] it was ruled that the *res inter alios acta* rule under Rule 130, Section 128 of the Rules on Evidence "constitutes a technical rule on evidence which should not be rigidly applied in the course of preliminary investigation proceedings." Furthermore, "[t]he technical rules on evidence are not binding on the fiscal who has jurisdiction and control over the conduct of a preliminary investigation."[144]

Estrada was later upheld in the 2016 case of *Cambe v. Ombudsman*,[145] which was thereafter cited in the 2023 case of *Napoles v. Carpio-Morales*,[146] where the Court stated thus:

> *In determining probable cause therefor, only a showing of the ostensible presence of the aforementioned elements is required.*
>
> *Cambe* instructs how probable cause is determined, thusly:
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> > It should be borne in mind that probable cause is determined during the context of a preliminary investigation which is "merely an inquisitorial mode of discovering whether or not there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it." *It "is not the occasion for the full and exhaustive display of the prosecution's evidence."* Therefore, "the validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level." Accordingly, "owing to the initiatory nature of preliminary investigations, the technical rules of evidence should not be applied in the course of its proceedings." In this light, and as will be elaborated upon below, this Court has ruled that "probable cause can be established with hearsay evidence, as long as there

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141 *Id.* at 122.
142 *PCGG*, 773 SCRA 434, 449.
143 *Reyes*, 787 SCRA 354.
144 *Id.* at 420–21.
145 [Hereinafter "*Cambe*"], G.R. No. 212014, 812 SCRA 537, Dec. 6, 2016.
146 948 Phil. 169 (2023).

> is substantial basis for crediting the hearsay," and that even an invocation of the rule on *res inter alios acta* at this stage of the proceedings is improper.[147]

2. Jurisprudence Requiring Admissible Evidence in Establishing Probable Cause or Prima Facie Case

On the contrary, other cases hold that the type of evidence required to establish probable cause or a *prima facie* case must be substantiated by evidence equivalent to the proof admissible under the Rules of Court.

For instance, in *Salonga*, the Supreme Court stated that a testimony that is "based on affidavits of other persons and purely hearsay," cannot qualify as *prima facie* evidence of a crime, as "[h]earsay evidence, whether objected to or not, has no probative value as the affiant could not have been cross-examined on the facts stated therein."[148] Note however, that in *Salonga*, the preliminary investigation was conducted by an inquest court.

In *Tamargo v. Awingan*,[149] the Supreme Court ruled that, given that there is "no sufficient basis for a finding of probable cause against respondents, [the Judge's] orders denying the withdrawal of the Informations for murder against them were issued with grave abuse of discretion."[150] It thus stated that:

> [A]side from the extrajudicial confession, which was later on recanted, no other piece of evidence was presented to prove the alleged conspiracy. There was no other prosecution evidence, direct or circumstantial, which the extrajudicial confession could corroborate. Therefore, the recanted confession of Columna, which was the sole evidence against respondents, had no probative value and was inadmissible as evidence against them.
>
> Considering the paucity and inadmissibility of the evidence presented against the respondents, it would be unfair to hold them for trial. Once it is ascertained that no probable cause exists to form a sufficient belief as to the guilt of the accused, they should be relieved from the pain of going through a full blown court case. When, at the outset, the evidence offered during the preliminary investigation is nothing more than an uncorroborated extrajudicial confession of an alleged conspirator, the criminal complaint should

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[147] *Id.* at 183, *citing Cambe*, 812 SCRA 537, 583–84.
[148] *Salonga*, 134 SCRA 438, 451.
[149] G.R. No. 177727, 610 SCRA 316, Jan. 19, 2010.
[150] *Id.* at 333.

> not prosper so that the system would be spared from the unnecessary expense of such useless and expensive litigation.[151]

In *Camus v. Ombudsman for Luzon*,[152] bare allegations and conclusions of fact and law were declared insufficient to warrant a finding of probable cause, as "basic is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof under the Rules of Court."[153] The Court rejected the petitioner's evidence, which was solely comprised of bare allegations and conclusions of fact and law, stating that "it would be the height of indiscretion if the [Ombudsman] predicated its decisions on mere conjectures and suppositions."[154] Hence, the Ombudsman did not err in dismissing the petitioner's complaint, stating that "without proper substantiation, the [Ombudsman] cannot be faulted for deciding that there is no basis, both in fact and in law, to hold that respondents are probably guilty of the crimes charged and, hence, must be held for trial."[155]

In *Isturis-Rebuelta v. Rebuelta*,[156] the Court ruled that the public prosecutor's executive determination of probable cause is for "filing a criminal information in court, and determining if there is enough evidence to support it."[157] The Court then agreed with the Court of Appeals in ruling that there was probable cause in charging petitioners with the crime of adultery, stating that "there was sufficient evidence presented by the prosecution that supports the probability that the crime of adultery has been committed and respondents-appellants might be guilty thereof."[158]

The evidence submitted consisted of: (1) affidavits of the petitioner-husband and his witnesses; and (2) the transcriptions of the recorded sound clips on the interview of one of the sons of the petitioner-husband and the respondent-wife. Considering the affidavits, the transcriptions, and the circumstances in which the respondents-appellants were arrested, the Court agreed that the totality of evidence sufficiently engendered a well-founded belief that the crime of adultery may have been committed.[159]

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[151] *Id.* at 332–33.
[152] G.R. No. 261020, Apr. 17, 2023 (Res.).
[153] *Id.*
[154] *Id.*
[155] *Id.*
[156] 949 Phil. 1116 (2023).
[157] *Id.* at 1131.
[158] *Id.* at 1134.
[159] *Id.*

In *Panlilio v. Ombudsman*,[160] the Court ruled that the Ombudsman did not gravely abuse its discretion in indicting the petitioner for the crime of malversation of public funds and violation of Section 3(e) of RA No. 3019. The Court considered the presence of the petitioner's initials on the subject Memoranda of Agreement as showing that the petitioner had a hand in the approval of the subject fund disbursements. This also indicated that the subject disbursements were hastily approved, processed, and released in utter disregard of COA Circular No. 2007-001.[161]

And in *Domingo*, the Court ruled that the Ombudsman did not gravely abuse its discretion in finding that no probable cause existed to establish that the killing was qualified by treachery, evident premeditation, and abuse of superior strength. The Court explained that, first, evident premeditation was not established as there was no clear and convincing evidence that the police operation was conceived to kill the deceased, adding that the mere fact that police officers committed the killings during a planned police operation was not equivalent to *prima facie* evidence of evident premeditation.[162] Second, the qualifying circumstance of treachery was also not established as it "cannot be inferred from a mere opinion, presumption, or speculation."[163] Third, the qualifying circumstance of abuse of superior strength was not present, "absent any clear and positive evidence that accused-respondents deliberately took advantage of their superior strength—not simply to subdue the deceased or defend themselves—but to kill the deceased."[164]

The author notes the contrasting rulings in *Domingo* and *Panlilio*. The Court notably deviated in *Domingo*, which required clear and convincing evidence to establish *prima facie* evidence of evident premeditation. On the other hand, the Court in *Panlilio*, also promulgated on the same date as *Domingo*, ruled that "probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief."[165]

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[160] G.R. No. 252472, Oct. 11, 2023 (Res.).
[161] *Id.*
[162] *Domingo*, 948 Phil. 377, 393.
[163] *Id.* at 395.
[164] *Id.* at 397.
[165] *Panlilio*, G.R. No. 252472, Oct. 11, 2023 (Res.).

C. The 2024 DOJ-NPS Rules Attempt to Settle the Conflicting Jurisprudence on the Necessity of Admissible and Credible Evidence in Establishing a *Prima Facie* Case

As already established above, the standard of evidence for both reasonable certainty of conviction and the determination of probable cause is the same, since the standard sufficient to establish one suffices to establish the other. Nonetheless, as shown in the foregoing discussion, there exists an apparent conflict in jurisprudence regarding the type of evidence required to establish probable cause or a *prima facie* case.

Given this seeming contradiction, the 2024 DOJ-NPS Rules may be viewed as an attempt to reconcile the conflicting jurisprudence on the evidentiary standard applied in preliminary investigations. The 2024 DOJ-NPS Rules expressly mandate that the evidence used in establishing reasonable certainty of conviction must be admissible.[166] This reference to "admissibility" appears to be with respect to the Rules on Evidence, especially because the 2024 DOJ-NPS Rules expressly provide for the suppletory application of the Rules of Court.[167]

By requiring that the evidence presented by the parties be admissible, credible, and capable of being preserved and presented to establish all the elements of the crime or offense and the identity of the persons responsible,[168] the 2024 DOJ-NPS Rules theoretically enable prosecutors to weed out weak cases and file only those with a reasonable likelihood of resulting in a conviction. To the author, these more stringent requirements on the evidence is a step towards bridging the gap between mere probability and certainty, especially in view of the virtual equivalence of the old and new standards. Moreover, this policy rationale further harmonizes the concepts of probable cause and reasonable certainty of conviction in two key aspects.

First, "in line with the Judicial Sector Coordinating Council's efforts to unclog and decongest court dockets,"[169] reasonable certainty of conviction aims to achieve the same objective as probable cause, which is "to make sure that the courts are not clogged with weak cases that will only be dismissed, as well as to spare a person from the travails of a needless prosecution."[170] Second, reasonable certainty of conviction is consistent with the purpose of

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166 2024 DOJ-NPS Rules, § 5.
167 § 24.
168 § 5.
169 DOJ Dep't Circ. No. 008 (2023).
170 *Estrada*, 748 SCRA 1, 44.

preliminary investigations, which are conducted "to secure the innocent against hasty, malicious, and oppressive prosecution; to protect him from an open and public accusation of a crime, as well as from the trouble, expenses, and anxiety of a public trial." Additionally, both are "intended to protect the state from having to conduct useless and expensive trials."[171] This, in turn, could potentially help reduce the congestion of jails.

IV. CONCLUSION

As discussed, an examination of Rule 65 cases concerning the executive determination of probable cause reveals that, in establishing a *prima facie* case, the prosecution must demonstrate, through uncontroverted evidence—that is, evidence not yet disputed by the accused—the presence of all elements of the crime or offense charged. This aligns with D.C. No. 020, which defines *prima facie* evidence as "evidence which on its own and if left uncontroverted, is sufficient to establish all the elements of a crime."[172]

It can thus be said that probable cause and reasonable certainty of conviction are virtually equivalent, as both require prosecutors to establish a *prima facie* case to justify the filing of an information against the accused.

However, the underlying predicament lies in determining whether probable cause and reasonable certainty of conviction differ as to the evidence required to establish such, due to conflicting jurisprudence on whether admissible evidence under the Rules of Court or mere hearsay suffices to establish probable cause. The 2024 DOJ-NPS Rules thus attempt to settle this by finally requiring, in preliminary investigations, admissible and credible evidence equivalent to the proof required under the Rules of Court to establish a *prima facie* case. Therefore, the 2024 DOJ-NPS Rules effectively position reasonable certainty of conviction as a means to bridge the gap in the evidentiary standard for preliminary investigations.

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[171] Uy v. OMBUD., G.R. No. 156399, 556 SCRA 73, 93, June 27, 2008.
[172] DOJ Dep't Circ. No. 020 (2023), § 2.