

OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS. ATTY. JERRY R. TOLEDO, THEN BRANCH CLERK OF COURT [NOW CLERK OF COURT V], AND MENCHIE A. BARCELONA, CLERK III, BOTH OF THE RE...*A.M. No. P-13-3124. February 04, 2020*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/0f0a1834a4ca/>**PER CURIAM:**

We resolve the administrative matter involving Atty. Jerry Toledo (Atty. Toledo), Clerk of Court V, and Menchie R. Barcelona (Barcelona), Clerk III, of the Regional Trial Court (RTC), Branch 259, Parañaque City for the loss of physical evidence in Criminal Case No. 01-1229 (People of the Philippines v. Enrico Javier) and Criminal Case No. 03-0408 (People of the Philippines v. Norie Ampuan). Barcelona was the trial court's evidence custodian and clerk-in-charge for criminal cases while Atty. Toledo was then the Branch Clerk of Court.

The antecedents follow.

On November 18, 2003, Barcelona notified Atty. Toledo that the 960.20 grams of shabu presented as evidence in Criminal Case No. 01-1229, a case for violation of Section 16, Article III of Republic Act (R.A.) No. 6425,[1] was missing from the steel cabinet where court exhibits were stored. Thereafter, Barcelona and Atty. Toledo informed Presiding Judge Zosimo V. Escano (Judge Escano) about the incident.[2]

On November 19, 2003, Judge Escano ordered Atty. Toledo to submit a report on the said case.

In the Report[3] dated November 24, 2003, Atty. Toledo disclosed that upon inspection of the steel cabinet on November 18, 2003, it was found out that the following evidence were missing:

PHYSICAL EVIDENCE

QUANTITY

CASE NO.

CASE TITLE

Methamphetamine Hydrochloride (shabu) placed in a cake box[4]

960.20 grams

Criminal Case No. 01-1229

People of the Philippines v. Enrico y Javier

Methamphetamine Hydrochloride (shabu) placed inside a cylindrical lockset box[5]

293.92 grams

Criminal Case No. 03-0408

People of the Philippines v. Ampuan

Records of the trial court and that of the Office of the Public Prosecutor show that it was Aren Esguerra (Esguerra), Stenographer III, who received the evidence in Criminal Case No. 01-1229. Esguerra averred that she handed the evidence to Barcelona after it was identified by the prosecution witness in a hearing conducted on February 10, 2003. But Barcelona instructed Esguerra to place the specimen under her computer table.[6] Meanwhile, Barcelona personally received the evidence in Criminal Case No. 03-0408 on October 16, 2003 and thereafter kept it in the steel cabinet.

In an Indorsement[7] dated December 1, 2003, Judge Escano forwarded Atty. Toledo's Report to the Office of the Court Administrator (OCA). Acting thereon, Deputy Court Administrator Christopher O. Lock (DCA Lock) referred the matter to then National Bureau of Investigation (NBI) Director Reynaldo Wycoco. After an investigation by the Anti-Graft Division, on August 31, 2004, the NBI issued its Report[8] recommending that Barcelona be administratively charged with gross negligence and criminally charged for failure to account for the confiscated/seized/surrendered dangerous drug under Section 27 of R.A. No. 9165.[9] It stated that Barcelona was grossly remiss in her duty as evidence custodian to safeguard the subject physical evidence while in the court's custody. It likewise provided that the results of the investigation shall be furnished to DCA Lock so that disciplinary action can be taken against Judge Escano and Atty. Toledo for their inefficiency in supervising court employees in the safekeeping of evidence.[10]

On January 9, 2006, Atty. Wilhelmina D. Geronga of the Legal Office of the OCA recommended that the NBI Report be treated as a complaint against Judge Escano, Atty. Toledo, and Barcelona for Gross Neglect of Duty.[11]

In her Comment[12] dated May 20, 2006, Barcelona asserted that she could not recall having received the evidence in Criminal Case No. 01-1229 from Esguerra. She insisted that it was impossible for her to receive the evidence in February 2003 since she only had the key to the steel cabinet in May 2003 when Neneng Maghirang (Maghirang), Clerk III, gave it to her. Moreover, there was no proof that Esguerra handed the evidence to her. Barcelona admitted that she had no experience and training in handling physical evidence under the custody of the court.

In his Comment[13] dated May 19, 2006, Atty. Toledo maintained that the NBI Report did not show his alleged failure to exercise due diligence in supervising court employees in the safekeeping of evidence. He explained the procedures and instructions relative to the receipt and handling of court exhibits to ensure their safety while in the custody of the trial court. Atty. Toledo recommended the continuation of the investigation to determine the identity of the real culprit/s.

In a Resolution[14] dated November 22, 2006, the Second Division of the Court resolved to re-docket the instant administrative matter as an initial preliminary inquiry against Atty. Toledo and Barcelona and refer the matter to Executive Judge Raul E. De Leon (Judge De Leon) for investigation, report and recommendation.

On October 23, 2007, Judge De Leon issued the following recommendations:

- That the corresponding penalty be imposed on respondent Ms. Menchie Barcelona for being GUILTY of NEGLIGENCE in the performance of her duties and responsibilities as evidence custodian over the loss of 960.20 grams of [shabu] in Criminal Case No. 01-1229 entitled People vs. Javier as well as the loss of 293.92 grams of shabu in Criminal Case No. [03-0408] entitled People vs. Ampuan.
- That the corresponding penalty be imposed on erstwhile Branch Clerk of Court respondent Atty. Jerry R. Toledo for being GUILTY of NEGLIGENCE for violation of Section 7, Rule 136 of the Rules of Court and Section E (2)

par. 2.2.3, Chapter VI of the 2002 Revised Manual for Clerks of Court.[15]

Judge De Leon found that both Atty. Toledo and Barcelona did not give plausible explanations for the loss of the court exhibits and even tried to escape liability by blaming each other. He declared that Atty. Toledo was "very lax in his duties and responsibilities and did not even know the pieces of physical evidence kept in the steel cabinet since they did not conduct any inventory relative thereto." Barcelona, on the other hand, gave an inconsistent testimony as to her access to the steel cabinet even before she had possession of the key in May 2003. Judge De Leon stressed that Barcelona testified that she was the one who placed the court exhibit back in the steel cabinet after the first hearing in Criminal Case No. 01-1229 in 2002, contrary to her claim that she did not have access to the steel cabinet until May 2003.[16]

The OCA's Report and Recommendation

On February 6, 2013, Court Administrator Jose Midas P. Marquez recommended: that the case against Atty. Toledo and Barcelona be redocketed as regular administrative matter; that Atty. Toledo be found guilty of simple neglect of duty and be meted the penalty of suspension of two months and one day without pay; and that Barcelona be found guilty of simple neglect of duty and be meted the penalty of suspension of one month and one day without pay. Both Atty. Toledo and Barcelona were further warned that a repetition of the same or similar acts in the future shall be dealt with more severely by the Court.[17]

The OCA agreed with the findings and recommendation of Judge De Leon and enunciated that Atty. Toledo, as then Branch Clerk of Court, had the primary duty of safekeeping all physical evidence coming into the court's custody pursuant to Sec. E(2), paragraph 2.2.3, Chapter VI of the 2002 Revised Manual for Clerks of Court and Section 7, Rule 136 of the Rules of Court. Hence, he cannot shift the entire burden on Barcelona and blame her for the loss of the court exhibits as he remains responsible for the lapses of his subordinate. Moreover, considering that Branch 259 was designated as a special court for drugs cases, Atty. Toledo was expected to exercise heightened prudence and caution in the reception of all physical evidence and to monitor his court staff in handling and storing them while in the court's custody. But the evidence on record shows that Atty. Toledo failed to satisfy these expectations. The OCA went on to state that Barcelona had also been negligent in the exercise of her functions as manifested by her failure to conduct an inventory of the court's physical evidence inside the steel cabinet. The OCA concluded that the loss of more than one kilo of shabu in Criminal Case Nos. 01-1229 and 03-0408 without the knowledge of Atty. Toledo and Barcelona erodes the much-valued public confidence in the courts of justice.[18]

Our Ruling

The Manual for Clerks of Court and the Rules of Court define the role of a clerk of court in the administration of justice. Section E(2), paragraph 2.2.3, Chapter VI of the 2002 Revised Manual for Clerks of Court reads:

All exhibits used as evidence and turned over to the court and before the easels involving such evidence shall have been terminated shall be under the custody and safekeeping of the Clerk of Court.

Section 7 of Rule 136 of the Rules of Court also provides:

SEC. 7. Safekeeping of property. — The clerk shall safely keep all records, papers, files, exhibits and public property committed to his charge, including the library of the court, and the seals and furniture belonging to his office.

A clerk of court's primary duty is the safekeeping of all the records and pieces of evidence submitted to the court in cases pending before it including the properties furnished to his office. This obligation extends to ensuring that the records and exhibits in each case are complete and accounted for, and continues even after the termination of

the case as long as the same have yet to be disposed or destructed in accordance with the existing rules. Accordingly, it is the clerk of court who shall assume liability for any loss, shortage, damage or destruction of court records, exhibits and properties.[19]

Atty. Toledo miserably failed to establish a systematic and efficient documentation and record management in Branch 259 of the RTC of Parañaque City. He acknowledged that prior to the missing evidence incident, there was no inventory of the pieces of physical evidence in criminal cases pending before the court.[20] Neither was there a logbook to keep track of the date and time when each evidence was placed in the steel cabinet, as well as the persons who had access to said evidence and got hold of the same. He likewise admitted that he had no idea what pieces of evidence were kept inside the court's steel cabinet.[21] Obviously, Atty. Toledo failed to take the initial precaution to preserve and safeguard the evidence placed in the court's possession.

Atty. Toledo's management blunder did not end there. In her Comment dated May 20, 2006, Barcelona stated that she lacked the necessary training and experience in maintaining legal records and safely keeping the physical evidence in the custody of the court. She claimed that she had been performing clerical work since she was transferred to Branch 259 and that her task is limited to encoding subpoenas, court orders, decisions, resolutions, and issuances in criminal cases.[22] She confirmed that when the key to the steel cabinet was turned over to her, there was no inventory of the evidence kept in the vault.[23] She also maintained that she did not know how to carry out her tasks as she was not apprised of the duties of an evidence custodian,[24] Barcelona's averments bare Atty. Toledo's carelessness in supervising the activities of his subordinates especially the court personnel to whom his administrative function was merely delegated. He relied entirely on Barcelona and passed to her all the responsibilities of an evidence custodian without ensuring that she possesses the skill set to effectively perform custodial duties. Atty. Toledo should have known better. As the Branch Clerk of Court, he remains responsible for the shortcomings of his subordinate to whom the administrative function pertaining to him was delegated.[25]

The case of *De la Victoria v. Cañete*[26] gives an elucidation on this point:

Although respondent Mendez had been remiss in his safekeeping of the said exhibits resulting in their loss, respondent Cañete cannot escape responsibility for the loss of the exhibits. As Branch Clerk of Court he was mandated to safely keep all records, papers, files, exhibits, and public property committed to his charge, including the library of the court, and the seals and furniture belonging to his office. More specifically, with respect to all exhibits used as evidence and turned over to the Court, it was his duty to see to it that his subordinates to whom the safekeeping thereof was delegated performed their duties. In the case of respondent Mendez, strictly speaking, his duty as translator of the Court, was only to attend court hearings, administer oaths to witnesses, mark all exhibits introduced in evidence, and prepare and sign all the minutes of the session, but not to keep documents in his custody. If custody of the exhibits in question had been entrusted to respondent Mendez, respondent Cañete's duty was to see to it that the documents were kept properly. His excuse, that even before he became Branch Clerk of Court, respondent Teofilo M. Mendez had already been entrusted with the custody of case records, cannot justify his failure to exert his authority and perform a duty that by law primarily devolved on him as Branch Clerk of Court.[27] (Emphases supplied)

Equally accountable with Atty. Toledo was Barcelona who also failed to exercise reasonable care and diligence in performing her duties as evidence custodian. Esguerra attested in her Affidavit dated November 25, 2003:

That, on February 10, 2003, I was again the stenographer on duty and when Criminal Case No. 01-1229 was called, Prosecutor Uy presented SP04 Armando Octavio to the witness stand;

That, Prosecutor Uy then requested the court for the [shabu] subject of this case which a court employee relayed to the evidence custodian and shortly thereafter the shabu was handed to Prosecutor Uy and presented the same to SPO4 Armando Octavio for identification;

That, at the end of the hearing[,] Prosecutor Uy again handed to me the [shabu] subject of this case which I again received and I immediately turned over the same to Ms. Menchie Barcelona, who is the criminal in--charge and evidence custodian of the court who told me to place the said [shabu] under her computer table and I told her, " Baka mawala iyan ha," to which Ms. Barcelona replied, " Basta, ilagay mo lang diyan";

That, as per her instruction and within Ms. Barcelona[']s view, I placed the [shabu] under her computer table and that was the last time I saw that [shabu]."[28]

Barcelona was clearly remiss in her duty as evidence custodian. She did not observe such diligence required under the circumstances when she ordered Esguerra to simply place the shabu evidence under her computer table, in total disregard of its legal value as the very corpus delicti of the offense. She cannot take refuge behind the claim that she had no training and experience in handling physical evidence in the court's custody. It would have been easier for her to approach Atty. Toledo and confess that she did not have the adequate training and experience for the job of an evidence custodian than pretend to know and fulfill the responsibilities mistakenly. As aptly pointed out by the OCA, all that is needed in the safekeeping of court evidence or property is the exercise of ordinary prudence and common sense,[29] which Barcelona obviously failed to do.

Moreover, even without a specific instruction from anyone, common sense should have impelled Barcelona to list down the physical evidence received by the court for its safekeeping inclusive of the vital details pertaining thereto such as the date and time of reception and the identity of the person who handed the evidence to her. She should have conducted a periodic and continuous inventory of the evidence kept in the steel cabinet if only to ensure that they are intact, complete, and readily available for inspection or upon request of the parties. This precautionary measure could have averted an untoward incident as in the present case. After all, while the loss of court exhibits is an event that is unexpected, it can certainly be prevented.

The Court agrees with the findings of the OCA that Atty. Toledo and Barcelona have both been negligent in the performance of their duty to safely keep the physical evidence in the court's custody. However, we find them guilty of gross neglect of duty and not merely simple neglect of duty.

Simple neglect of duty is defined as "the failure to give proper attention to a task expected of an employee resulting from either carelessness or indifference." [30] However, when an employee's negligence displays want of even the slightest care or conscious indifference to the consequences or by flagrant and palpable breach of duty, the omission is regarded as gross neglect of duty.[31] More precisely, there is gross neglect of duty when a public official or employee's negligence is characterized by the glaring want of care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected." [32]

The Court cannot take a blind eye on the quantity of the unaccounted drug evidence and the manner by which the fact of loss was discovered by the employees of Branch 259. Roberto N. Catorce (Catorce), the trial court's legal researcher, was preparing his report in Criminal Case No. 01-1229 when he found out that the 960.20 grams of drugs subject of the said case was not mentioned in the transcript of stenographic notes. He then inquired from Barcelona who immediately inspected the steel cabinet where the physical evidence were stored. Clearly, the loss of the drug evidence would not have been uncovered had Catorce not asked about it. If that were not enough, it was only in the course of the inspection intended to locate the 960.20 grams of shabu when it was found out that the drug evidence in Criminal Case No. 03-0408 weighing 293.92 grams was also missing. Thus, a total of 1.254 kilograms of shabu in custodia legis disappeared without a trace. Atty. Toledo and Barcelona could have prevented this had they taken precautionary measures to safely keep and monitor the physical evidence in the court's custody.

Further, the close proximity of the relevant dates in this case does not escape the Court's attention. The ocular inspection was conducted and the drug evidence were discovered missing on November 11, 2003. The RTC Decision in Criminal Case No. 01-1229 was rendered on November 10, 2003 while the decision in Criminal Case No. 03-0408 was promulgated on December 22, 2003. Because of Barcelona's and Atty. Toledo's display of laxity in the custody of evidence, the corpora delicti in these two criminal cases vanished even before the actions were terminated. To the mind of the Court, their inexcusable lapses in the safekeeping of the drug evidence constitute flagrant and palpable breach tantamount to gross neglect of duty as they undermine the integrity of the decisions rendered in Criminal Case No. 01-1229 and Criminal Case No. 03-0408.

We have repeatedly stressed that the conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. Conduct at all times must not only be characterized with propriety and decorum, but above all else, must be above suspicion.[33] Atty. Toledo was appointed Clerk of Court of Branch 259 in 1996 while Barcelona was transferred to said court as clerk in 1994. At that time, Branch 259 was already designated as a special court for heinous crimes. In 2000, it was designated as a special court for drug cases. These considerations reasonably tell us that Atty. Toledo and Barcelona were well-aware of the degree of responsibility imposed upon them as evidence custodians and the efficiency expected of them in the reception and storage of evidence considering the nature of the cases that Branch 259 handles. Regrettably, they failed to exercise utmost prudence and diligence in the performance of their duties and adhere to the exacting standards expected of court employees. As the Court held in *Office of the Court Administrator v. Cabe*: [34]

Time and again, we have emphasized the heavy burden and responsibility which court personnel are saddled with in view of their exalted positions as keepers of public faith. They must be constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. As we have held in the case of *Mendoza v. Mabutas*, this Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary.

In 2008, Atty. Toledo had been administratively charged for violation of the lawyer's oath, violation of the Code of Professional Responsibility, oppression, dishonesty, harassment, and immorality in A.M. No. P-07-2403[35] where the OCA recommended his suspension for a period of three (3) months for conduct unbecoming a public official and a court employee. Although the Court dismissed the complaint, it reminded Atty. Toledo to be more circumspect in his public and private dealings. With the loss of court exhibits under his watch, Atty. Toledo apparently disregarded the Court's warning and continued to show lack of diligence in his administrative function, completely unmindful of the heavy burden and responsibility he carries in the dispensation of justice.

In view of the above disquisitions, we, thus, find Atty. Toledo and Barcelona liable for gross neglect of duty which merits the penalty of dismissal from the service even if the offense was committed for the first time under the Revised Rules of Administrative Cases in the Civil Service.

WHEREFORE, the Court finds respondents, Atty. Jerry R. Toledo, then Branch Clerk of Court [now Clerk of Court V] and Menchie A. Barcelona, Clerk III, both of the Regional Trial Court, Branch 259, Parañaque City, GUILTY of Gross Neglect of Duty and are hereby DISMISSED from the service. Accordingly, their respective civil service eligibility are CANCELLED, and their retirement and other benefits, except accrued leave credits, are hereby FORFEITED. Likewise, they are PERPETUALLY DISQUALIFIED from reemployment in any government agency or instrumentality, including any government-owned and -controlled corporation or government financial institution.

SO ORDERED.

Peralta (C.J.), Perlas-Bernabe, Leonen, Caguioa, A. Reyes, Jr., Gesmundo, J. Reyes, Jr., Hernando,[*] Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and Gaerlan, JJ., concur.

[*] On official leave.

[1] The Dangerous Drugs Act of 1972.

[2] Rollo, pp. 973-974.

[3] Id. at 29-30.

[4] Id. at 12.

[5] Id.

[6] Id. at 36-37.

[7] Id. at 27.

[8] Id. at 11-15.

[9] Comprehensive Dangerous Drugs Act of 2002

[10] Id. at 15.

[11] Id. at 1-4.

[12] Id. at 105-118.

[13] Id. at 121-125.

[14] Id. at 146.

[15] Id. at 819.

[16] Id. at 815-818.

[17] Id. at 983-984.

[18] Id. at 977-983.

[19] Judge Botigan-Santos v. Gener, 817 Phil. 655, 661 (2017).

[20] TSN, February 26, 2007, rollo, p. 567.

[21] TSN, February 21, 2007, id. at 295.

[22] Id. at 108.

[23] Id. at 110.

[24] Id. at 108.

[25] Office of the Court Administrator v. Cabe, 389 Phil. 685, 697 (2000).

[26] 427 Phil. 775, 782-783 (2002).

- [27] *De la Victoria v. Cañete*, 427 Phil. 775, 782-783 (2002).
- [28] *Rollo*, pp. 36-37.
- [29] *De la Victoria v. Cañete*, *supra* note 27, at 981.
- [30] *Re: Ricky R. Regala*, A.M. No. CA-18-35-P, November 27, 2018.
- [31] *Office of the Court Administrator v. Atty. Gaspar*, 659 Phil. 437, 442 (2011).
- [32] *Office of the Court Administrator v. Dequito*, 799 Phil. 607, 617 (2016).
- [33] *Office of the Court Administrator v. Judge Ramirez*, 489 Phil. 262, 272 (2005).
- [34] *Supra* note 25, at 698-699.
- [35] *Re: Toledo v. Atty. Toledo*, 568 Phil. 24 (2008).

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