

## **IN RE: SPECIAL REPORT ON THE ARREST OF ROGELIO M. SALAZAR, JR., SHERIFF IV, REGIONAL TRIAL COURT-OFFICE OF THE CLERK OF COURT, BOAC, MARINDUQUE, FOR VIOLATION OF REPUBLIC ACT NO...**

*A.M. No. 15-05-136-RTC. December 04, 2018*

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### **PER CURIAM:**

No less than the Constitution mandates that a public office is a public trust and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives.

The image of the court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat. The conduct of a person serving the Judiciary must, at all times, be characterized by propriety and decorum and above all else, be above suspicion so as to earn and keep the respect of the public for the Judiciary. The Court would never countenance any conduct, act or omission on the part of all those in the administration of justice, which will violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary.[1] (Emphasis ours)

No other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than the Judiciary. The Court is mindful that any act of impropriety on the part of judicial officers and personnel, be they the highest or the lowest members of the work force, can greatly erode the people's confidence in our justice system. Hence, it is the sacred duty of every worker in the Judiciary to maintain the good name and standing of the courts. Every employee of the court should be an exemplar of integrity, uprightness, and honesty. The Court will not hesitate to impose the ultimate penalty on those who have fallen short of their accountabilities.[2] (Emphasis ours)

Before this Court are two consolidated administrative matters against Rogelio M. Salazar, Jr. (respondent), Sheriff IV, Regional Trial Court (RTC), Office of the Clerk of Court, Boac, Marinduque, for grave misconduct and conduct prejudicial to the best interest of the service.

### **Factual Antecedents**

These administrative matters stemmed from criminal cases filed against respondent for violation of Republic Act (RA) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002". Specifically, Criminal Case No. 63-15 was filed for violation of Section 11 (Illegal Possession) in relation to Section 28 of RA 9165; while Criminal Case No. 62-15 was filed for violation of Section 15 (Prohibited Use) in relation to Section 28 of the same Act.[3] Also, I.S. No. XV-05-INV-15C-087 was filed against respondent for violation of Sections 5 (Illegal Sale) and 15 of the said Act but was, however, dismissed by the Provincial Prosecutor and now the subject of an automatic review before the Department of Justice (DOJ).[4]

The factual backdrop of the said cases are as follows:

On March 7, 2015, pursuant to Search Warrant No. 5043, the Philippine Drug Enforcement Agency (PDEA) and

Philippine National Police (PNP) searched respondent's property, which resulted in the confiscation of seven plastic sachets, later on found to be containing a total of 9.4993 grams of methamphetamine hydrochloride, otherwise known as "shabu". Consequently, respondent was arrested and detained. The confirmatory test conducted on respondent's urine sample likewise yielded positive of shabu. The Provincial Prosecutor also noted that respondent admitted the use of dangerous drugs.[5]

On April 21, 2015, Criminal Case Nos. 63-15 and 62-15 were filed. No bail was recommended for the respondent's release.[6] Meanwhile, as a result of an alleged buy-bust operation, I.S. No. XV-05-INV-15C-087 was also filed.[7]

Documents relative to Criminal Case No. 63-15 were then forwarded to the Office of Administrative Services (OAS), Office of the Court Administrator (OCA). Pursuant to the Court En Banc Resolution dated March 12, 1981, which authorized the OCA to initiate motu proprio the filing of administrative proceedings against judges and/or employees of the inferior courts who have been convicted and/or charged before the Sandiganbayan or the courts, the OCA charged respondent with grave misconduct and conduct prejudicial to the best interest of the service, which case was then docketed as A.M. No. 15-12-379-RTC.[8]

In a Report[9] dated November 6, 2015 in the said administrative matter, the OCA found respondent's acts to constitute grave misconduct and conduct prejudicial to the best interest of the service. Hence, it recommended that the case be re-docketed as a regular administrative matter; that respondent be ordered suspended from service pending the outcome of the criminal case or until further order from the Court; and, that respondent be ordered to comment on the administrative charge. The Court, in its April 11, 2016 Resolution,[10] adopted and approved the OCA's findings and recommendation. Pursuant to the said April 11, 2016 Resolution, the case was re-docketed as A.M. No. P-16-3450.

Meanwhile, P/Supt. Lorenzo Junio Holanday, Jr., Provincial Director, Marinduque Police Provincial Office, informed the Court, through a letter[11] dated March 25, 2015, of the Special Report on respondent's arrest and the criminal cases filed against the latter for violations of RA 9615. This brought about A.M. No. 15-05-136-RTC.

In a Report[12] dated January 28, 2016 in A.M. No. 15-05-136-RTC, the OCA likewise found respondent's acts to be constitutive of grave misconduct and conduct prejudicial to the best interest of the service.

In the main, respondent's separate Comments[13] in the instant administrative matters constitute denial of the charges against him in the criminal cases and allegations of evidence-planting and frame-up.

Upon recommendation of the OCA, the Court, in its April 11, 2016 Resolution,[14] suspended respondent from service pending the final outcome of the criminal case filed against him or until further order of this Court considering that the evidence of guilt is prima facie strong.

In a letter[15] dated August 11, 2016, respondent requested that the instant administrative cases be consolidated and that the cases be submitted for resolution based on the pleadings filed.

On April 7, 2017, the OCA issued a Memorandum[16] regarding A.M. No. 15-05-136-RTC, with the following recommendations:

1. A.M. No. P-16-3450 xxx and A.M. No.15-05-136-RTC be CONSOLIDATED;
2. Respondent Rogelio M. Salazar, Jr., Sheriff IV, Office of the Clerk of Court, Regional Trial Court, Boac, Marinduque be found GUILTY in both A.M. No. P-16-3450 and A.M. No. 15-05-136-RTC of grave misconduct and conduct prejudicial to the best interest of the service pursuant to Sections 46(A)(3) and (B)(8), respectively, under Rule 10 of Revised Rules for Administrative Cases in the Civil Service; and

3. Respondent Salazar, Jr. be meted out the penalty of DISMISSAL from the service with forfeiture of all benefits, except accrued leave credits, if any, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

In its Memorandum, the OCA emphasized that only substantial evidence is needed in administrative proceedings; that administrative liability is separate and distinct from criminal liability; and that in administrative proceedings, the Court is not bound by technical rules of procedure and evidence. The OCA also noted that the instant administrative cases are not intended to preempt the DOJ's review of the dismissal of I.S. No. XV-05-INV-15C-087 nor to determine respondent's guilt in Criminal Case Nos. 62-15 and 63-15.[17]

The OCA found that the evidence on record, which include, the undisputed fact that respondent was found to be positive for shabu in the drug test following his arrest, and that the finding of probable cause in the criminal charges against him constitute more than substantial evidence to hold respondent administratively liable for grave misconduct and conduct prejudicial to the best interest of service. The OCA grounded its conclusion on Civil Service Memorandum Circular No. 13, series of 2010, which provides that any official or employee found positive for use of dangerous drugs shall be subjected to disciplinary/administrative proceedings with a penalty of dismissal from the service for the first offense pursuant to Section 46(19) of Book V of Executive Order No. 292 and Section 22(c) of its Omnibus Rules.[18]

On even date, the OCA also issued a Memorandum[19] as regards A.M. No. P-16-3450, with the same findings and recommendation as in A.M. No. 15-05-136-RTC above-stated.

In a letter[20] dated August 25, 2017, respondent manifested to this Court that on May 4, 2017, Judge-Designate Dennis R. Pastrana (Judge Pastrana) of the RTC of Boac, Marinduque, granted his Motion to Quash Search Warrant with Motion to Suppress Evidence for lack of probable cause and non-conformity with established constitutional rules and statutory guidelines in the implementation of such search warrant.[21] In the said May 4, 2017 Order, Judge Pastrana found that the officers who applied for the search warrant committed deliberate falsehoods to obtain the same. Thus Judge Pastrana ruled that due to the nullity of the search warrant, the search conducted on its authority is likewise null and void and with the inadmissibility of the drugs seized from respondent's home, there is no more evidence to support his conviction.

Respondent further manifested that his motion to dismiss the criminal cases against him was also granted by the RTC on August 18, 2017. In the said August 18, 2017 Order,[22] Judge Pastrana added that even the urine test conducted on the respondent, having been done as a result of an arrest occasioned by the search is also inadmissible like the seized drugs for being fruits of the poisonous tree.

Thus, in his August 25, 2017 letter,[23] respondent requested for the dismissal of the instant administrative cases against him in view of the dismissal of the criminal cases, revocation of his suspension order, and payment of his back salaries and other benefits withheld during his suspension and detention.

#### The Issue

The pivotal issue for this Court's resolution is whether or not respondent should be held administratively liable despite dismissal of the related criminal cases against him.

#### This Court's Ruling

Respondent was charged with illegal sale, possession, and use of illegal drugs. Respondent, however, pounds on the fact that the criminal cases against him from which these administrative cases rooted, had already been dismissed by virtue of the quashal of the search warrant and the suppression of the evidence taken by virtue of the said warrant. It is the respondent's position that since the evidence obtained through such search warrant were

declared illegal and inadmissible by the RTC, the same cannot likewise be used in the instant administrative cases. Hence, respondent argued that the administrative cases against him has no leg to stand on and must be dismissed.

We do not agree.

At the outset, We find it necessary to first place the instant case in its proper context.

This is an administrative case against a Sheriff of the court charged with the administrative offenses of grave misconduct and conduct prejudicial to the best interest of the service as an offshoot of a prior arrest and criminal charges for violations of RA 9165 or the Comprehensive Dangerous Drugs Act of 2002 against said officer.

Owing to the administrative nature of the instant case, several important considerations must be taken into serious account: first, the finding of administrative guilt is independent of the results of the criminal charges against the Sheriff; second, the Sheriff stands scrutiny and treated not as an accused in a criminal case, but as a respondent court officer; third, the Supreme Court, in taking cognizance of this administrative case, acts not as a prosecutor, but as the administrative superior specifically tasked to discipline its Members and personnel; fourth, the quantum of proof required for a finding of administrative guilt remains to be substantial evidence; and fifth, the paramount interest sought to be protected in an administrative case is the preservation of the Constitutional mandate that a public office is a public trust.

Well settled is the rule that an absolution from a criminal charge is not a bar to an administrative prosecution or vice-versa.[24] Evidence to support a conviction in a criminal case is not necessary, and the dismissal of the criminal case against the respondent is not a ground for the dismissal of the administrative case. It bears stressing that a criminal case is different from an administrative case and each must be disposed of according to the facts and the law applicable to each case.[25] Thus, the dismissal of Criminal Case Nos. 62-15 and 63-15 does not automatically entail the dismissal of the instant administrative actions.

The fact that the pieces of evidence obtained from the voided search were declared inadmissible for being fruits of the poisonous tree will not result to the outright dismissal of the administrative cases at bar.

It is necessary to emphasize that to sustain a finding of administrative culpability, only substantial evidence is required, that is, more than a mere scintilla of relevant evidence as a reasonable mind might accept as adequate to support a conclusion,[26] even if other minds equally reasonable might conceivably opine otherwise.[27] In the case of *Ombudsman Marcelo v. Bungubung and CA*,[28] this Court explained:

xxx The standard of substantial evidence is satisfied when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant. While substantial evidence does not necessarily import preponderance of evidence as is required in an ordinary civil case, or evidence beyond reasonable doubt as is required in criminal cases, it should be enough for a reasonable mind to support a conclusion. xxx (citations omitted and emphasis ours)

The question now is, taking into consideration the inadmissibility in the criminal cases of the drugs obtained by virtue of the search warrant and the positive result of the confirmatory test conducted on the respondent upon arrest, is there substantial evidence to hold the respondent administratively liable in this case?

We answer in the affirmative.

Respondent's admission of drug use, albeit with an allegation that he had stopped doing it as a promise to his mother on her deathbed in December 2014,[29] coupled with the confirmatory test that yielded a positive result, are more than substantial evidence to support the conclusion that respondent is a drug-user, which would warrant

this Court's exercise of its disciplinary power over court personnel.

First. Respondent's admission of drugs use during the inquest cannot be considered as a fruit of the poisonous tree and as such, may legally and validly be admitted as evidence in the instant administrative case.

It is noteworthy that nowhere in the trial court's order quashing the search warrant and dismissing the criminal cases did the trial court exclude the respondent's admission of drug use. This must necessarily be so for two reasons:

- (1) The admission partakes of a testimonial evidence, and not a "personal property" that can be the subject of a search and seizure.

Section 3, Rule 126 of the Rules of Court enumerates the personal property that may be seized for which a search warrant may be issued: (a) the subject of the offense; (b) stolen or embezzled and other proceeds, or fruits of the offense; or (c) used or intended to be used as the means of committing an offense. In *Retired SPO4 Bienvenido Laud v. People*[30], We explained that "personal property" as used under the Rules pertain to the thing's mobility. Referencing Article 416 of the Civil Code, We expounded that in general, all things which can be transported from place to place are deemed to be personal property. Testimonial evidence, therefore, cannot be treated as a "fruit" of the quashed search warrant. *People v. Uy*[31] was emphatic in saying that the "inadmissible evidence termed as the fruit of the poisonous tree" refers to "object, not testimonial, evidence" and even more constricting when it held that "it refers to an object seized in the course of an illegal search and seizure."

- (2) The admission was already far removed from the illegal search warrant that it cannot be regarded as a fruit of the poisonous tree.

The lapse of time from the illegal search and the admission itself sufficiently "attenuate[s] the link." [32] It should be stressed that the adjudged irregularity in the application and implementation of the search warrant does not have any clear causal relation between the evidence which was illegally obtained by virtue of such quashed warrant and respondent's admission before a separate and distinct proceeding and authority. Stating it in a different manner, the admission cannot be considered as a logical consequence of the latter. As eloquently put by one Justice's opinion, "[t]he admission was a voluntary act of respondent; it was not as if he was put into such an inescapable situation wherein he would be forced to admit to his guilt, since nothing precluded him from contesting the admissibility - as he did, in fact, contest the admissibility - of the evidence illegally obtained from him. Thus, as respondent had valid claims and defenses, it would be a stretch to conclude that the admission made during the preliminary investigation was a direct result of the evidence illegally seized from him. That being said, the admission is a distinct and separate piece of evidence that should not be tarnished by the illegal search conducted and hence, cannot be deemed as a fruit of poisonous tree."

In the same vein, it would also be not logical nor legal to find nexus between the arrest which resulted from the illegal search and seizure and the admission during the preliminary investigation. The admission was made by respondent during the preliminary investigation stage which is a source independent from the illegal search, seizure, and arrest, and is presumed to have been regularly performed. While the search, seizure, arrest and preliminary investigation may be sequential, the admission made during the preliminary investigation was not a necessary, logical, and automatic consequence of the search, seizure and resulting arrest. We must consider that respondent may, or may not have made such admission despite the search and the arrest. Notably, respondent never questioned the voluntariness of such admission as well as the regularity of the preliminary investigation.

In *Wong Sun v. United States*, [33] the U.S. Supreme Court, under the "independent source exception" - admits evidence that was discovered through an independent source sufficiently distinguishable to be purged of the primary taint. If the evidence is not obtained directly from the violation, it is freed from the initial taint of the

violation.[34]

In addition, the admission was made before the Prosecutor (and not before the erring police agents) who, concededly, had no participation in the illegal search and arrest. The Prosecutor, during the preliminary investigation, was regularly performing his duty, relying upon the validity of the search warrant and respondent's arrest. Hence, respondent's drug use was discovered by the Prosecutor independently and in good faith.

Verily, the admissibility of respondent's admission in the instant administrative case cannot be questioned. Said admission is a separate and distinct piece of evidence that should not be tarnished by the illegal search and thus, cannot be regarded as a fruit of the poisonous tree. Further, it must be stressed that there is no allegation, much less proof, that any of respondent's basic rights in giving such admission were violated. Lastly, respondent's admission of his drug use is relevant for purposes of the present administrative case and as such, it may properly be considered by this Court in this administrative proceeding as substantial evidence.

Second. The legal basis of the admissibility of the result of the confirmatory drug test cannot, likewise, be denied.

The procedure for laboratory examination or test is outlined in Section 38[35] of RA 9165. Section 38 provides that when there is reasonable ground to believe that an apprehended or arrested offender is under the influence of dangerous drugs, such offender shall be subjected to a screening laboratory examination or test. The positive results of a screening test shall be challenged within fifteen (15) days from the receipt of the results. The positive screening test result is not valid in a court of law unless confirmed.

Following the prescribed procedure, the confirmatory urine test is therefore not the direct or indirect result of the illegal search; rather, it comes into play not only upon the apprehension or arrest of the offender, but also, (1) when the apprehending or arresting officer has reasonable ground to believe that the offender is under the influence of dangerous drugs; and (2) only after a screening laboratory test yields a positive result. The basis for the confirmatory drug test was, in fact, a reasonable belief of drug use and a positive screening test, both of which are neither a necessary nor automatic consequence of an illegal search.

Parenthetically, Section 36, Article III of RA 9165 provides for the mandatory drug testing of:

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(d) Officers and employees of public and private offices. - Officers and employees of public and private offices, whether domestic or overseas, shall be subjected to undergo a random drug test as contained in the company's work rules and regulations, which shall be borne by the employer, for purposes of reducing the risk in the workplace. Any officer or employee found positive for use of dangerous drugs shall be dealt with administratively which shall be a ground for suspension or termination, subject to the provisions of Article 282 of the Labor Code and pertinent provisions of the Civil Service Law;

xxxx

(f) All persons charged before the prosecutor's office with a criminal offense having an imposable penalty of imprisonment of not less than six (6) years and one (1) day shall have to undergo a mandatory drug test; and

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In addition to the above-stated penalties in this Section, those found to be positive for dangerous drugs use shall be subject to the provisions of Section 15[36] of this Act.

Further, in A.M. No. 06-1-01-SC dated January 17, 2006, the Court has adopted guidelines for a program to prevent drug use and eliminate the hazards of drug abuse in the Judiciary, specifically in the first and second level courts. Its objectives are as follows:

1. To detect the use of dangerous drugs among lower court employees, impose disciplinary sanctions, and provide administrative remedies in cases where an employee is found positive for dangerous drug use.
2. To discourage the use and abuse of dangerous drugs among first and second level court employees and enhance awareness of their adverse effects by information dissemination and periodic random drug testing.
3. To institute other measures that address the menace of drug abuse within the personnel of the Judiciary.

There is thus no reason to turn a blind eye, for purposes of this administrative proceeding, on the results of the confirmatory urine test when RA 9165 itself, as well as this Court's guidelines, sanction the conduct of a mandatory random drug testing of officers and employees of public and private offices.[37] The character of the drug test being made at random actually dispenses with the usual requirement of probable cause. In the case of *Social Justice Society (SJS) v. Dangerous Drugs Board, et al.*,[38] We upheld the validity and constitutionality of the mandatory but random drug testing of officers and employees of both public and private offices. This is allowed "for purposes of reducing the risk in the workplace." This legitimate intrusion of privacy in the workplace is upheld because an employee's privacy interest is "circumscribed by the company's work policies, the collective bargaining agreement, if any, entered into by management and the bargaining unit, and the inherent right of the employer to maintain discipline and efficiency in the workplace." [39] Specifically, as regards public officers, this Court pronounced in *SJS* that:

Like their counterparts in the private sector, government officials and employees also labor under reasonable supervision and restrictions imposed by the Civil Service law and other laws on public officers, all enacted to promote a high standard of ethics in the public service. And if RA 9165 passes the norm of reasonableness for private employees, the more reason that it should pass the test for civil servants, who, by constitutional command, are required to be accountable at all times to the people and to serve them with utmost responsibility and efficiency.[40]

Thus, despite the absence of probable cause, and the basis being only a positive drug test result, an employer is allowed by law to pursue an administrative case against the public or private officer or employee and thereafter, to suspend or terminate them.

Notably, in the instant administrative matter, respondent never questioned the authenticity, validity, and regularity of Chemistry Report No. CRIMDT-005-15[41] of the Marinduque Provincial Crime Laboratory Office. No objection or question was raised as to the regularity of the conduct of the confirmatory test. The finding of respondent's positive use of methamphetamine hydrochloride or shabu remains un rebutted. Certainly, such compelling evidence cannot merely be ignored.

The foregoing pieces of evidence thus constitute more than substantial evidence that respondent was found positive for illegal drugs use. The confirmatory drug test which yielded a positive result confirms respondent's admission of drug use and also, reflects respondent's propensity to lie as it negates his statement in his admission that he already stopped using illegal drugs.

With the admissibility, relevance, and probative value of the subject evidence being established, We now proceed to rule on respondent's infraction and the proper sanction therefor.

Misconduct has been defined as:

xxx a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge

grave misconduct.[42]

There is no doubt that the use of prohibited drugs constitute grave misconduct. It is a flagrant violation of the law, in fact a crime in itself, thus considered as grave misconduct. In *Re: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug ("Shabu") of Reynard B. Castor, Electrician II, Maintenance Division, Office of Administrative Services*,[43] the Court ruled that under Section 46(A)(3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), grave misconduct is a grave offense punishable by dismissal even for the first offense. Also, under Civil Service Memorandum Circular No. 13, series of 2010,[44] any official or employee found positive for use of dangerous drugs shall be subjected to disciplinary/administrative proceedings with a penalty of dismissal from the service at first offense pursuant to Section 46(19) of Book V of Executive Order (E.O.) 292 and Section 22(c) of its Omnibus Rules Implementing Book V of E.O. No. 292 and other pertinent civil service laws.[45]

Further, undeniably, respondent's conduct tarnished the very image and integrity of the Judiciary,[46] constitutive of a conduct prejudicial to the best interest of the service. Conduct prejudicial to the best interest of the service is classified as a grave offense under Section 22(c) of the Omnibus Rules, with a corresponding penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense, and the penalty of dismissal for the second offense.

Section 50 of the RRACCS provides:

Section 50. Penalty for the Most Serious Offense. - If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

Finding respondent guilty of both grave misconduct and conduct prejudicial to the best interest of the service, We find the penalty of dismissal for grave misconduct, the most serious offense in this case, proper, pursuant to the aforecited provision.[47] Besides, respondent's propensity to lie as above-mentioned, which bolsters a finding of moral turpitude, thus aggravating the offense, cannot go unnoticed.

In all, the absurd consequences of excluding the seized evidence in this administrative case, constrain Us to hold respondent Sheriff administratively liable. Here is an officer of the court and an agent of law who is an admitted drug-user as evidenced by his admission during the preliminary investigation and the positive result of his confirmatory drug test, who will walk scot-free and whose claimed right to hold his public office will be sustained by this Court if We will heed to the dissent and dismiss these administrative cases merely because the related criminal cases were dismissed due to the quashal of the search warrant. We have, in the past, meted severe penalties against erring Court employees on the basis of mere affidavits or on mere allegations spelled in the pleadings filed. There is no reason for the Court to treat the instant administrative case differently, when the evidence is far more compelling.

We always have to keep in mind the primordial consideration in resolving disciplinary actions. The paramount interest sought to be protected in an administrative case is the preservation of the Constitutional mandate that a public office is a public trust. It must be remembered that no person has a vested right to a public office, the same not being property within the contemplation of the constitutional guarantee. In the case of *Office of the Court Administrator v. Reyes, et al.*,[48] where We dismissed an RTC clerk mainly for yielding a positive result in a drug test, We ruled:

This Court is a temple of justice. Its basic duty and responsibility is the dispensation of justice. As dispensers of justice, all members and employees of the Judiciary are expected to adhere strictly to the laws of the land, one of which is Republic Act No. 9165 which prohibits the use of dangerous drugs.

The Court has adhered to the policy of safeguarding the welfare, efficiency, and well-being not only of all the court personnel, but also that of the general public whom it serves. The Court will not allow its front-line representatives xxx to put at risk the integrity of the whole judiciary. xxx.[49]

This Court's mandate to preserve and maintain the public's faith in the Judiciary, as well as its honor, dignity, integrity, can only be achieved by imposing strict and rigid standards of decency and propriety governing the conduct of Justices, judges, and court employees. Thus, it is only by weeding out the likes of respondent from the ranks that We would be able to achieve such objective.

WHEREFORE, finding Rogelio M. Salazar, Jr., Sheriff IV, Regional Trial Court - Office of the Clerk of Court, Boac, Marinduque, liable for grave misconduct and conduct prejudicial to the best interest of the service due to his drug use, the Court orders his DISMISSAL from service with FORFEITURE of all benefits, except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government including government-owned or controlled corporations. This decision is immediately executory.

**SO ORDERED.**

Bersamin, C. J., Carpio, Peralta, Del Castillo, Perlas-Bernabe, Jardeleza, Tijam, A. Reyes, Jr., Gesmundo, J. Reyes, Jr., and Hernando, JJ., concur.

Leonen, J., see separate opinion.

Carandang, J., on leave.

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[1] Re: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug ("Shabu") of Reynard B. Castor, Electrician II, Maintenance Division, Office of Administrative Services, 719 Phil. 96, 101-102 (2017).

[2] Security and Sheriff Division, Sandiganbayan v. Ronald Allan Gale R. Cruz, A.M. No. SB-17-24-P, July 11, 2017.

[3] Rollo (A.M. No. 15-05-136-RTC), p. 67.

[4] Id. at 69.

[5] Id. at 68-69.

[6] Id. at 69.

[7] Id.

[8] Rollo (A.M. No. P-16-3450), p. 148.

[9] Id. at 1-2.

[10] Id. at 8-9.

[11] Rollo (A.M. No. 15-05-136-RTC), pp. 2-3.

[12] Id. at 54-57.

[13] Rollo (A.M. No. 15-05-136-RTC), pp. 7-9 and rollo (A.M. No. P-16-3450), pp. 10-32.

[14] Rollo (A.M. No. P-16-3450), p. 8.

[15] Rollo (A.M. No. 15-05-136-RTC), pp. 61-63.

- [16] Id. at 67-75.
- [17] Id. at 69-71.
- [18] Id. at 73.
- [19] Rollo (A.M. No. P-16-3450), pp. 148-154.
- [20] Id. at 163-164.
- [21] Id. at 168-177.
- [22] Id. at 178-179.
- [23] Id. at 163-164.
- [24] Office of the Court Administrator v. Enriquez, 291-A Phil. 1 (1993).
- [25] Office of the Court Administrator v. Lopez, 654 Phil. 602, 607 (2011).
- [26] Hon. Ombudsman Marcelo v. Bungubung, et al., 575 Phil. 538, 557 (2008).
- [27] Dadulo v. Court of Appeals, 549 Phil. 872, 877 (2007).
- [28] Hon. Ombudsman Marcelo v. Bungubung, et al., supra note 26, id. at 557-558.
- [29] Rollo (A.M. No. 15-05-136-RTC), p. 49.
- [30] 747 Phil. 503, 524 (2014).
- [31] 508 Phil. 637, 655 (2005).
- [32] Hudson v. Michigan, 547 US 586, 592 (2006).

**[33] 371 U.S. 471 (1963).**

[34] The Journal of Criminal Law & Criminology, Arizona v. Evans: Expanding Exclusionary Rule Exceptions and Contracting Fourth Amendment Protection by Heather A. Jackson.

[35] Section 38. Laboratory Examination or Test on Apprehended/Arrested Offenders. - Subject to Section 15 of this Act, any person apprehended or arrested for violating the provisions of this Act shall be subjected to screening laboratory examination or test within twenty-four (24) hours, if the apprehending or arresting officer has reasonable ground to believe that the person apprehended or arrested, on account of physical signs or symptoms or other visible or outward manifestation, is under the influence of dangerous drugs. If found to be positive, the results of the screening laboratory examination or test shall be challenged within fifteen (15) days after receipt of the result through a confirmatory test conducted in any accredited analytical laboratory equipment with a gas chromatograph/mass spectrometry equipment or some such modern and accepted method, if confirmed, the same shall be prima facie evidence that such person has used dangerous drugs, which is without prejudice for the prosecution for other violations of the provisions of this Act: Provided, That a positive screening laboratory test must be confirmed for it to be valid in a court of law.

[36] Section 15. Use of Dangerous Drugs. - A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment

ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (P50,000.00) to Two hundred thousand pesos (P200,000.00): Provided, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section II of this Act, in which case the provisions stated therein shall apply.

[37] Section 36. Authorized Drug Testing. - xxx

The following shall be subjected to undergo drug testing:

xxxx

(d) Officers and employees of public and private offices. - Officers and employees of public and private offices, whether domestic or overseas, shall be subjected to undergo a random drug test as contained in the company's work rules and regulations, which shall be borne by the employer, for purposes of reducing the risk in the workplace. Any officer or employee found positive for use of dangerous drugs shall be dealt with administratively which shall be a ground for suspension or termination, subject to the provisions of Article 282 of the Labor Code and pertinent provisions of the Civil Service Law;

xxxx

[38] 591 Phil. 393 (2008).

[39] Social Justice Society (SJS) v. Dangerous Drugs Board, et al., supra note 38 at 414.

[40] Id. at 417.

[41] Rollo (A.M. No. 15-05-136-RTC), p. 51.

[42] Re: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug of Castor, supra note 1, id at 100-101.

[43] Id at 101.

[44] Guidelines for a Drug-Free Workplace in the Bureaucracy.

[45] Re: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug ("Shabu") of Reynard B. Castor, Electrician II, Maintenance Division, Office of Administrative Services, supra note 1.

[46] Id. at 101.

[47] Laspiñas, et al. v. Judge Banzon, A.M. No. RTJ-17-2488, February 21, 2017.

[48] 635 Phil. 490 (2010).

[49] Id. at 498-499.

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## SEPARATE CONCURRING OPINION

### PER CURIAM:

#### I.

I concur. Respondent Rogelio M. Salazar, Jr. (respondent) should be held administratively liable for grave misconduct and conduct prejudicial to the best interest of the service in view of his admitted drug use, and thus,

ought to be dismissed from service. I do, however, find it fitting to expound on the parameters of the exclusionary rule under Section 3 (2), Article III of the 1987 Constitution in order to address respondent's averments in his August 25, 2017 letter[1] to this Court.

To recount, in said letter, respondent requested for the dismissal of the instant administrative cases due to the prior dismissal of Criminal Case Nos. 62-15 (for violation of Section 15 in relation to Section 28 of Republic Act No. [RA] 9165) and 63-15 (for violation of Section 11 in relation to Section 28 of RA 9165) after the Regional Trial Court (RTC) ruled that the drugs seized under the void search warrant, as well as the fruits thereof (i.e., the results of the confirmatory drug test), were inadmissible in evidence by operation of the exclusionary rule.[2] Notably, the documents relative to the foregoing criminal cases were forwarded to the Office of Administrative Services, Office of the Court Administrator and hence, spurred these administrative cases against respondent.[3] Thus, as presented in the ponencia, "[i]t is respondent's position that since the evidence obtained through such search warrant were declared illegal and inadmissible by the RTC, the same cannot likewise be used in the instant administrative cases [which hence] have no leg to stand on and must be dismissed." [4]

## II.

It is well settled that "an administrative case is independent from the criminal action, although both arose from the same act or omission xxx. Given the differences in the quantum of evidence required, the procedure observed, the sanctions imposed, as well as in the objective of the two proceedings, the findings and conclusions in one should not necessarily be binding on the other. Thus, as a rule, exoneration in the administrative case is not a bar to a criminal prosecution for the same or similar acts which were the subject of the administrative complaint or vice versa." [5]

Nevertheless, the demarcations between administrative and criminal cases do not negate the general application of the exclusionary rule to both of these cases under the Constitution's present formulation.

The exclusionary rule is found under Section 3 (2), Article III of the 1987 Constitution, to wit:

Section 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding. (Emphasis and underscoring supplied)

The "preceding section" referred to in Section 3 (2) pertains to the guarantee against unreasonable searches and seizures found under Section 2, Article III:

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. (Emphasis and underscoring supplied)

According to case law, the exclusionary rule is the "practical means of enforcing the constitutional injunction against unreasonable searches and seizures." [6] In the language of Judge Learned Hand:

As we understand it, the reason for the exclusion of evidence competent as such, which has been unlawfully acquired, is that exclusion is the only practical way of enforcing the constitutional privilege. In earlier times the action of trespass against the offending official may have been protection enough; but that is true no longer. Only in case the prosecution which itself controls the seizing officials, knows that it cannot profit by their

wrong, will that wrong be repressed.[7]

In simple terms, the purpose of the exclusionary rule is to deter law enforcement in engaging in fishing expeditions,[8] and ultimately, protect the right of the people against unreasonable searches and seizures.

Our constitutional guarantee against unreasonable searches and seizures is an almost faithful reproduction of the Fourth Amendment to the United States of America (US) Constitution, viz.:

ARTICLE [IV] (Amendment 4 - Search and Seizure) The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

However, it should be highlighted that under the Fourth Amendment, the phrase "of whatever nature and for any purpose" does not appear as a qualifier to the above-stated right.

Furthermore, the US Constitution does not contain a corresponding exclusionary rule. Tracing its origins from the cases of *Boyd v. United States* (Boyd)[9] and *Weeks v. United States*,[10] the exclusionary rule in the US has been regarded as a "prophylactic doctrine"[11] created by the Judiciary in relation to the Fourth and Fifth Amendments.[12] As there was no standard exclusionary rule codified in the US Constitution, it therefore appears that its application - particularly, in administrative disciplinary cases - remains nuanced by the attending circumstances.

To illustrate, in *Department of Transportation v. State Personnel Board*,[13] the Court of Appeal of the Second District of California refused to apply the exclusionary rule since the social consequences of applying the same did not outweigh the effect thereof on the integrity of the judicial process. Thus, the court did not favor its application to shield an erring government employee from administrative sanction.

On the other hand, in *Dyson v. State Personnel Board*,[14] the Court of Appeal of the Third Appellate District of California applied the exclusionary rule, holding that "because of the particular nature of the investigation of this case and the extent of agency involvement, xxx the exclusionary rule applies to remedy the agency invasion of its employee's constitutional rights."

Meanwhile, in *City of Omaha v. Savard-Henson*,[15] the Court of Appeals of Nebraska opined that the exclusionary rule should not be extended to administrative proceedings where its purpose of deterring police conduct would not be served. Nevertheless, if the balancing test finds that the social benefits of excluding unlawfully seized evidence outweighs the likely costs, it may apply.

In the Philippines, the exclusionary rule was similarly brought to light through jurisprudential pronouncements. The rule first appeared in *Kheylin v. Villareal* (Kheylin),[16] wherein Boyd was cited as basis. While the exclusionary rule had been utilized in cases succeeding Kheylin,[17] the Court halted its application in the case of *Moncado v. Peoples Court*. [18] Moncado's abandonment of the exclusionary rule echoed in subsequent jurisprudence until the case of *Stonehill v. Diokno* (Stonehill),[19] wherein its application was reinstated. In Stonehill, the Court rationalized that:

Indeed, the non-exclusionary rule is contrary, not only to the letter, but, also, to spirit of the constitutional injunction against unreasonable searches and seizures. To be sure, if the applicant for a search warrant has competent evidence to establish probable cause of the commission of a given crime by the party against whom the warrant is intended, then there is no reason why the applicant should not comply with the requirements of the fundamental law. Upon the other hand, if he has no such competent evidence, then it is not possible for the judge to find that there is probable cause, and, hence, no justification for the issuance of the warrant. The only

possible explanation (not justification) for its issuance is the necessity of fishing evidence of the commission of a crime. But, then, this fishing expedition is indicative of the absence of evidence to establish a probable cause.

Moreover, the theory that the criminal prosecution of those who secure an illegal search warrant and/or make unreasonable searches or seizures would suffice to protect the constitutional guarantee under consideration, overlooks the fact that violations thereof are, in general, committed by agents of the party in power, for, certainly, those belonging to the minority could not possibly abuse a power they do not have. Regardless of the handicap under which the minority usually - but, understandably - finds itself in prosecuting agents of the majority, one must not lose sight of the fact that the psychological and moral effect of the possibility of securing their conviction, is watered down by the pardoning power of the party for whose benefit the illegality had been committed.[20]

In contrast to the US experience, our evolving jurisprudence on the exclusionary rule culminated in its express incorporation in Section 4 (2), Article IV of the 1973 Constitution. Significantly, this ensured the firm application of the exclusionary rule in our jurisdiction.[21] As one constitutionalist pointed out, "by making such evidence inadmissible, the Constitution has closed the door to any judicial temptation to erode the rule by distinguishing and splitting hairs." [22] Therefore, the very act of expressly incorporating the exclusionary rule in our fundamental law begs a different treatment of the same from that in the US.

To bolster this point, not only has the exclusionary rule been codified in our Constitution, it is further couched in general and comprehensive language, which is hence, expressive of its overarching force. As previously stated, the exclusionary rule applies to any evidence obtained in violation of Section 2, Article III, i.e., the guarantee against the right to unreasonable searches and seizures, and has the effect of rendering such evidence inadmissible for any purpose in any proceeding. The phrase "for any purpose in any proceeding" in Section 3 (2), Article III correspondingly reflects - as it is made to implement - the equally expansive "right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose" under Section 2 as above-said.

Indeed, the phrase "for any purpose in any proceeding" in Section 3 (2), Article III means that the exclusionary rule should apply in all kinds of cases, whether criminal, civil, or administrative. It is a cardinal rule in statutory construction that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[23] Likewise, if "the language of the subject constitutional provision is plain and unambiguous, there is no need to resort to extrinsic aids such as records of the Constitutional Commission." [24] In fact, while there is yet no definitive ruling which traverses head-on the exclusionary rule's comprehensiveness, it deserves mentioning that this Court has already applied the same in Anonymous Letter-Complaint against Morales,[25] an administrative case, and Zulueta v. Court of Appeals,[26] a civil case.

### III.

As for the present matter, it is my humble view that the exclusionary rule finds application in both the criminal and the administrative cases against respondent. As mentioned, the primary evidence against respondent is the subject drugs seized from him. However, these drugs were obtained by virtue of a void search warrant and hence, fall within the ambit of the exclusionary rule, rendering them inadmissible in evidence.

Likewise, the exclusionary rule applies to render inadmissible the results of the confirmatory drug test because it is the direct fruit of the unlawful search and seizure. In *People v. Alicando*, [27] the Court explained that "once the primary source (the 'tree') is shown to have been unlawfully obtained, any secondary or derivative evidence (the 'fruit') derived from it is also inadmissible. xxx The rule is based on the principle that evidence illegally obtained

by the State should not be used to gain other evidence because the originally illegally obtained evidence taints all evidence subsequently obtained."[28]

Section 38 of RA 9165 states that "[a]ny person apprehended or arrested for violating the provisions of this Act shall be subjected to screening laboratory examination or test within twenty-four (24) hours, if the apprehending or arresting officer has reasonable ground to believe that the person apprehended or arrested, on account of physical signs or symptoms or other visible or outward manifestation, is under the influence of dangerous drugs."[29]

In this case, respondent's apprehension was based on the drugs illegally seized from him. Without said evidence, there would be no reasonable basis for the apprehending officers to subject respondent to a confirmatory drug test. Thus, the results thereof should be deemed as fruits of the poisonous tree and perforce, should be excluded.

These notwithstanding, records disclose that respondent voluntarily admitted before the public prosecutor during the preliminary investigation that he was a drug user. As aptly pointed out by the ponencia, "[t]he admission was made by respondent during the preliminary investigation stage which is a source independent from the illegal search, seizure, and arrest, and is presumed to have been regularly performed. xxx Notably, respondent never questioned the voluntariness of such admission[,] as well as the regularity of the preliminary investigation."[30] As I see it, there is no clear causal relation between the evidence which were illegally obtained and the admission made by respondent. The latter is not a logical consequence of the former. As earlier stated, the admission was a voluntary act of respondent; he was not put into such an inescapable situation wherein he would be forced to admit to his guilt, since nothing precluded him from contesting the admissibility - as he did, in fact, contest the admissibility - of the evidence illegally obtained from him. Thus, as respondent had valid claims and defenses, it would be a stretch to conclude that the admission made during the preliminary investigation was a direct result of the evidence illegally seized from him. That being said, the admission is a distinct and separate piece of evidence that should not be tarnished by the illegal search conducted and hence, cannot be deemed as a fruit of the poisonous tree.

Without a doubt, the admission of respondent constitutes substantial evidence to hold him administratively liable for grave misconduct and conduct prejudicial to the best interest of the service. "Substantial evidence is such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The standard of substantial evidence is justified when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence is not overwhelming or even preponderant."[31]

An admitted drug user has no place in the ranks of the Judiciary. As the Court held in *Office of the Court Administrator v. Reyes*,[32] "all members and employees of the Judiciary are expected to adhere strictly to the laws of the land, one of which is [RA 9165] which prohibits the use of dangerous drugs. xxx [T]he conduct of a person serving the judiciary must, at all times, be characterized by propriety and decorum and above all else, be above suspicion so as to earn and keep the respect of the public for the judiciary. The Court would never countenance any conduct, act or omission on the part of all those in the administration of justice, which will violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary."[33]

ACCORDINGLY, respondent Rogelio M. Salazar, Jr., Sheriff IV, Regional Trial Court - Office of the Clerk of Court, Boac, Marinduque, is GUILTY of grave misconduct and conduct prejudicial to the best interest of the service, and thus DISMISSED from service, with forfeiture of all benefits, except accrued leave credits, and with prejudice to his reemployment in any branch or instrumentality of the government, including government-owned

or controlled corporations.

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[1] Rollo (A.M. No. P-16-3450), pp. 163-164.

[2] Ponencia, pp. 5-6.

[3] Id. at 3.

[4] Id. at 6.

[5] *Jaca v. People of the Philippines*, 702 Phil. 210, 250 (2013).

[6] *Stonehill v. Diokno*, 126 Phil. 738, 750 (1967).

[7] Id.

[8] *People v. Cogaed*, 740 Phil. 212 (2014).

[9] 116 U.S. 616, 6 S. Ct. 524, 29 L. Ed. 746, 1886 U.S. LEXIS 1806, 3 A.F.T.R. (P-H) 2488.

[10] 232 U.S. 383, 34 S. Ct. 341, 58 L. Ed. 652, 1914 U.S. LEXIS 1368.

[11] See *Michigan v. Tucker*, 417 U.S. 433, 94 S. Ct. 2357, 41 L. Ed. 2d 182, 1974 U.S. LEXIS 71.

[12] *United States v. Herrera*, 2006 U.S. App. LEXIS 9830, 444 F.3d 1238.

[13] 178 Cal. App. 4th 568, 100 Cal. Rptr. 3d 516, 2009 Cal. App. LEX IS 1690, 158 Lab. Cas. (CCH) P60,883.

[14] 213 Cal. App. 3d 711, 262 Cal. Rptr. 112, 1989 Cal. App. LEXIS 886.

[15] 9 Neb. App. 561, 615 N.W.2d 497, 2000 Neb. App. LEXIS 243.

[16] 42 Phil. 886, 899 (1920).

[17] See *Alvarez v. Court of First Instance of Tayabas*, 64 Phil. 33, 47 (1937).

[18] See 80 Phil. 1, 3-4 (1948).

[19] *Supra* note 6.

[20] Id. at 753-754.

[21] See *People v. Marti*, 271 Phil. 51 (1991); Bernas, Joaquin, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, p. 229.

[22] Id.

[23] See *National Food Authority v. Masada Security Agency, Inc.*, 493 Phil. 241, 250-251 (2005); and *Philippine National Bank v. Garcia, Jr.*, 437 Phil. 289, 295 (2002).

[24] *Chavez v. Judicial Bar Council*, 691 Phil. 173, 201 (2012).

[25] 592 Phil. 102 (2008).

[26] 324 Phil. 63 (1996).

[27] 321 Phil. 656 (1995).

[28] Id. at 690.

[29] Emphasis supplied.

[30] Ponencia, p. 9.

[31] Menor v. Guillermo, 595 Phil. 10, 15 (2008).

[32] 635 Phil. 490 (2010).

[33] Id. at 498-499.

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## DISSENTING OPINION

### LEONEN, J.:

I disagree with the ponencia.

The right against unreasonable searches and seizures is absolute. If it is shown that the primary source, the "tree," was unlawfully obtained, any secondary evidence, the "fruit," derived from it is deemed inadmissible for any purpose in any proceeding.

On March 2, 2015, Anju O. Villanueva (Villanueva)[1] and Daphne Chloe G. Alcima (Alcima)[2] of the Philippine Drug Enforcement Agency applied for a search warrant to search the house of Sheriff Rogelio Salazar (Salazar) of the Office of the Clerk of Court, Regional Trial Court, Boac, Marinduque.[3]

On March 4, 2015, Villanueva testified before Executive Judge Fernando T. Sagun, Jr. (Executive Judge Sagun) of Branch 78, Regional Trial Court, Quezon City that the application for search warrant was lodged with the Regional Trial Court in Quezon City because Salazar was a court personnel of the Regional Trial Court in Boac, Marinduque.[4]

Villanueva further testified that Salazar had been under their surveillance since January 11, 2015 and that they had observed him committing 10 violations of Republic Act No. 9165, with Villanueva personally witnessing two (2) of them.[5]

Villanueva then stated that on February 12, 2015 and February 19, 2015, he and Alcima conducted successful test-buys at Salazar's beach house at Brgy. Ihatub, Boac, Marinduque.[6]

That same day, Executive Judge Sagun granted the application and issued a search warrant,[7] authorizing the Philippine Drug Enforcement Agency agents to look for dangerous drugs in Salazar's beach house.

On March 6, 2015, Villanueva received reports that Salazar and a certain Raymond Mistal (Mistal) were selling shabu in Boac. Mistal and Salazar were part of the Philippine National Police Boac, Marinduque's listed target personalities. A buy-bust operation was then planned, with a confidential informant setting up the transaction with Mistal.[8]

The following day, at around 9:00 a.m., Mistal sold shabu to Alcima, the poseur-buyer, after which he was immediately arrested and frisked by PO1 Jayson Quindoza.[9]

While being led to the police car, Mistal supposedly told the agents that he had a scheduled transaction to purchase shabu from Salazar at 10:00 a.m. that same day at Salazar's beach house. Villanueva immediately planned a buy-bust operation against Salazar and directed PO1 Jervin Estoya (PO1 Estoya) to accompany Mistal.[10]

PO1 Estoya and Mistal met up with Salazar at his beach house. However, Salazar merely accepted the money from Mistal and instructed them to get the shabu from a certain Melvin Lubrin (Lubrin) at Lalay, Boac.[11]

PO1 Estoya and Mistal went to Lalay, Boac where they found Lubrin overseeing his "lugawan" stall. Lubrin handed a small plastic sachet to PO1 Estoya, who arrested him on the spot.[12]

After arresting Lubrin, the agents proceeded to Salazar's beach house, served the search warrant, closed off the area, and conducted their search.

Their search yielded seven (7) plastic sachets of white crystalline substance, which succeeding tests revealed to be shabu.[13] Consequently, Salazar was arrested and detained. His urine sample tested positive for shabu.[14]

Following the buy-bust operation, Salazar and Lubrin were charged with violations of Sections 5 and 15 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002. The complaint against them was docketed as XV-05-INV-15C-087.[15]

On April 26, 2015, the Office of the Provincial Prosecutor dismissed the charges against Salazar and Lubrin. In dismissing the charges, Provincial Prosecutor Edwin Valdez (Provincial Prosecutor Valdez) pointed out the many inconsistencies and "inexplicable things"[16] in the statements of the arresting officers.[17]

The dispositive portion of the Provincial Prosecutor's Resolution read:

WHEREFORE, the following is ordered:

1. An information for violation of Section 5 and 15 of R.A. 9165 be filed against respondent Raymond Mistal @Raymond. No bail and Php100,000, respectively, is recommended.
2. The same charges be dismissed against respondent Rogelio Salazar[,] Jr. or @Ogie and Melvin Lubrin or @Melvin. Consequently[,] they are ordered released, unless detained for some other lawful cause or causes.
3. Let the records of this case be elevated to the Department of Justice for its automatic review of the herein resolution as per Department Circular No. 46, Series of 2003.[18]

On the other hand, a complaint for violation of Sections 11 and 15 of Republic Act No. 9165, which was docketed as IV-05-INQ-ISC-086, was also filed against Salazar, due to the seizure of seven (7) sachets of shabu in his beach house.[19]

On April 20, 2015, Provincial Prosecutor Valdez[20] found probable cause against Salazar and directed the filing of an information against him. The following day, Criminal Case Nos. 63-15[21] and 62-15[22] were filed against Salazar before the Regional Trial Court of Boac, Marinduque for violation of Sections 11 and 15, respectively, of Republic Act No. 9165.

Pertinent documents related to Criminal Case No. 63-15 were forwarded by the Office of the Administrative Services to the Office of the Court Administrator, which then docketed the case as A.M. No. 15-12-379-RTC.[23]

On November 6, 2015, the Office of the Court Administrator[24] opined that Salazar's actuations constituted grave misconduct and conduct prejudicial to the service. It recommended that the matter be re-docketed as a regular administrative matter, that Salazar be directed to comment on the Information dated April 21, 2015, and that he be suspended from service pending the final outcome of the criminal case against him.[25]

On April 11, 2016,[26] this Court adopted the recommendations of the Office of the Court Administrator, re-docketed the case as A.M. No. P-16-3450, and suspended Salazar from service.

On July 14, 2016, Salazar submitted his Comment,[27] where he denied selling shabu[28] or that a bag with shabu was found in his beach house. He claimed that after the search warrant was served on him by the Philippine Drug Enforcement Agency agents, he was made to lie face down on the floor, with an agent stepping down on his head to prevent him from looking up.[29]

Salazar narrated that while he was lying on the ground, his children were herded to the back of the house and were prevented by an agent from using their phones or from entering the house. However, his children saw another agent enter the house on the pretext of getting drinking water and then deposit a black bag on top of a cabinet. This unknown agent then left the house, got inside a car and the perimeter of the beach house was cordoned off with yellow tape. The sachets of shabu were eventually discovered inside the black bag planted by the agent.[30]

Meanwhile, Police Senior Superintendent Lorenzo Junio Holanday, Jr., the Provincial Director of the Philippine National Police Marinduque Police Provincial Office, wrote[31] to then Chief Justice Maria Lourdes Sereno to inform her of the buy-bust operation against Salazar and the seizure of seven (7) sachets of shabu in his beach house. The Office of the Chief Justice directed[32] the Office of the Court Administrator to act on the matter and the ensuing inquiry was docketed as A.M. No. 15-05-136-RTC.

On January 28, 2016,[33] the Office of the Court Administrator, recommended Salazar's continued suspension from service and for the matter to be re-docketed as a regular administrative matter.[34]

On April 7, 2017, in A.M. No. 15-05-136-RTC,[35] the Office of the Court Administrator recommended that A.M. No. 15-05-136-RTC be consolidated with A.M. No. P-16-3450, that Salazar be found guilty in both administrative cases of grave misconduct and conduct prejudicial to the best interest of the service, that he be dismissed from service with all his benefits forfeited, except for his accrued leave credits, and that he be disqualified from re-employment in government service.[36]

The Office of the Court Administrator in A.M. No. 15-05-136-RTC found that the undisputed fact that Salazar's urine sample, which was taken immediately after his arrest, tested positive for shabu, constituted substantial evidence to hold him administratively liable for grave misconduct and conduct prejudicial to the best interest of the service.[37]

The Office of the Court Administrator had the same conclusions and recommendations for A.M. No. P-16-3450.[38]

On May 4, 2017, the Regional Trial Court, acting on Salazar's Motion to Quash Search Warrant with Motion to Suppress Evidence, quashed the search warrant and granted the motion to suppress evidence.[39]

The Regional Trial Court stated that it conducted an ocular inspection of Salazar's beach house, together with some court employees, agents of the Philippine Drug Enforcement Agency and Salazar's witnesses. In its inspection, it found the beach house to be no more than a small shanty without any partitions and with a gravel floor. This belied the floor plan presented during the application for search warrant where Alcima described the hut as having a terrace and a partition wall separating the kitchen and bedroom.[40]

The Regional Trial Court also pointed out that in their application for a search warrant, Villanueva and Alcima emphasized that they had conducted surveillance operations on Salazar and his house; yet, they repeatedly mistakenly referred to Salazar's perimeter fence as being made of bamboo, when it was really made of hollow blocks. Furthermore, the Regional Trial Court found inconsistencies in the statements of Villanueva and Alcima as to whether or not Villanueva was actually present during the test-buys.[41] It held:

In the present case, after a careful and thorough review of the records, the inconsistencies on the testimonies of both police officers from their Sworn Affidavit and from their testimony that was given before Executive

Judge Sagun provides a clear and convincing justification to cast reasonable doubt whether test-buy operations actually occurred. It can be concluded that when Agents Villanueva and Alcima applied for a search warrant with the Quezon City, Regional Trial Court, they [did] not have personal knowledge about Salazar. Deliberate falsehoods were made by both Intelligence Officers just to impress [upon] the Quezon City Executive Judge that they had reason to believe that a crime ha[d] been committed.

....

Applying the rule on the present case, the finding of probable cause is a nullity, because the trial judge was intentionally misled by the witnesses.

....

Under Section 2, Article III of the Constitution, the existence of probable cause for the issuance of a warrant is central to the right, and its existence largely depends on the finding of the judge conducting the examination. In the light of the nullity of Search Warrant No. 5043 (15), the search conducted on its authority is likewise null and void. Based on the above provision, any evidence obtained in violation of a person's right against unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding. With the inadmissibility of the drugs seized from Salazar's home, there is no more evidence to support his conviction. Thus, we see no reason to further discuss the other issues raised in this petition.

WHEREFORE, with the foregoing, Search Warrant No. 5043 (15) is hereby QUASHED. The Motion to Quash Search Warrant with Motion to Suppress Evidence is hereby GRANTED for lack of probable cause and non-conformity of the conducted searches with established constitutional rules and statutory guidelines.

SO ORDERED.[42] (Emphasis supplied)

Salazar moved for the dismissal[43] of the cases against him, and on August 18, 2017, the Regional Trial Court[44] granted the motion. The Regional Trial Court reiterated that all evidence obtained through the quashed search warrant, including the urine test conducted on Salazar, was considered illegal:

In the May 4, 2017 resolution of this Court, Search Warrant No. 5043 which was obtained and used by the police was Quashed and declared NULL AND VOID for lack of probable cause and non-conformity in the search with the established constitutional rules and statutory guidelines. It was also declared that in the light of the nullity of Search Warrant No. 5043(15), the search conducted on its authority is likewise null and void. Based on the above provision (Section 2, Article III of the Constitution), any evidence obtained in violation of a person's right against unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding. All the evidence obtained as a result of such search is considered illegal, being the fruit of the poisonous tree. Ergo, even the urine test conducted on accused Salazar, having been done as a result of such arrest, occasioned by the search, is also considered as a fruit of such search, hence illegal.

WHEREFORE, in the light of the foregoing, there being no more prosecution evidence to support the charges against the accused with the Quashal of the Search Warrant used thereto, the Motion is hereby granted. Criminal Case No. 62-15 for Violation of Sec. 15 in relation to Sec. 28, Art. II of R.A. 9165 and Criminal Case No. 63-15 for violation of Section 11 in relation to Sec. 28, Art. II of R.A. 9165 against accused Rogelio Salazar, Jr. y Mondragon are hereby DISMISSED.

The Provincial Jail Warden or any of his authorized representative is hereby directed to release the accused from custody unless his further detention is warranted for some other lawful cause or causes.

SO ORDERED.[45] (Emphasis supplied)

Following the quashal of the search warrant and the dismissal of the criminal charges against him, Salazar prayed for, among others, the dismissal of the administrative cases against him, the revocation of his suspension order,

and payment of his back salaries and other benefits withheld during his suspension and detention.[46]

Salazar's prayer should be granted.

## I

The Bill of Rights guarantees the right of people against unreasonable searches and seizure, and declares that any evidence obtained in violation of this right cannot be used for any purpose in any proceeding:

### Article III Bill of Rights

Section 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.[47]

This prohibition on utilizing any evidence obtained through an illegal search and seizure is also known as the exclusionary rule, or the fruit of the poisonous tree doctrine, which originated in *Stonehill v. Diokno*.<sup>[48]</sup> *Stonehill* overturned the ruling in *Moncado v. People's Court*,<sup>[49]</sup> which deemed as admissible into evidence the things seized through an illegal search and seizure, in line with the common law rule that a criminal should not be allowed to go scot-free "because the constable has blundered."<sup>[50]</sup>

*Stonehill* emphasized that the abandonment of the *Moncado* doctrine and adoption of the exclusionary rule was the only "practical means of enforcing the constitutional injunction against unreasonable searches and seizures."<sup>[51]</sup> It pointed out that unreasonable searches and seizures occur when there is no competent evidence to back an application for the issuance of a search warrant and that they are resorted to by government agents as a form of fishing expedition:

Indeed, the non-exclusionary rule is contrary, not only to the letter, but, also, to spirit of the constitutional injunction against unreasonable searches and seizures. To be sure, if the applicant for a search warrant has competent evidence to establish probable cause of the commission of a given crime by the party against whom the warrant is intended, then there is no reason why the applicant should not comply with the requirements of the fundamental law. Upon the other hand, if he has no such competent evidence, then it is not possible for the judge to find that there is probable cause, and, hence, no justification for the issuance of the warrant. The only possible explanation (not justification) for its issuance is the necessity of fishing evidence of the commission of a crime. But, then, this fishing expedition is indicative of the absence of evidence to establish a probable cause.

Moreover, the theory that the criminal prosecution of those who secure an illegal search warrant and/or make unreasonable searches or seizures would suffice to protect the constitutional guarantee under consideration, overlooks the fact that violations thereof are, in general, committed by agents of the party in power, for, certainly, those belonging to the minority could not possibly abuse a power they do not have. Regardless of the handicap under which the minority usually - but, understandably - finds itself in prosecuting agents of the majority, one must not lose sight of the fact that the psychological and moral effect of the possibility of securing their conviction, is watered down by the pardoning, power of the party for whose benefit the illegality had been committed.<sup>[52]</sup> (Emphasis in the original)

*People v. Alicando*<sup>[53]</sup> explained how the fruit of the poisonous tree doctrine was adopted in our jurisdiction:

We have not only constitutionalized the *Miranda* warnings in our jurisdiction. We have also adopted the libertarian exclusionary rule known as the "fruit of the poisonous tree," a phrase minted by Mr. Justice Felix Frankfurter in the celebrated case of *Nardone v. United States*. According to this rule, once the primary source

(the "tree") is shown to have been unlawfully obtained, any secondary or derivative evidence (the "fruit") derived from it is also inadmissible. Stated otherwise, illegally seized evidence is obtained as a direct result of the illegal act, whereas the "fruit of the poisonous tree" is the indirect result of the same illegal act. The "fruit of the poisonous tree" is at least once removed from the illegally seized evidence, but it is equally inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the originally illegally obtained evidence taints all evidence subsequently obtained. We applied this exclusionary rule in the recent case of *People vs. Salanga, et al.*, a ponencia of Mr. Justice Regalado. Salanga was the appellant in the rape and killing of a 15-year old barrio lass. He was, however, illegally arrested. Soldiers took him into custody. They gave him a body search which yielded a lady's underwear. The underwear was later identified as that of the victim. We acquitted Salanga. Among other reasons, we ruled that the underwear allegedly taken from the appellant is inadmissible in evidence, being a so-called "fruit of the poisonous tree." [54] (Emphasis in the original, citations omitted)

In the case at bar, the sachets of shabu seized from the beach house, a positive finding for shabu of Salazar's urine sample, and his admission of using shabu during the preliminary investigation before the Provincial Prosecutor are all by-products, or fruits, of the quashed search warrant.

The ponencia claims that Salazar's admission before the Provincial Prosecutor is testimonial evidence and not an object that can be the subject of a search and seizure. Furthermore, it contends that "[t]he admission was already far removed from the illegal search warrant that it cannot be regarded as a fruit of the poisonous tree." [55]

After seven (7) sachets of shabu were allegedly seized from Salazar's beach house, a complaint for violations of Sections 11 and 15 of Republic Act No. 9165 was filed against him. It was during the preliminary investigation of this complaint, occasioned by the sachets of shabu which were eventually suppressed from evidence because of an illegal search warrant, that Salazar supposedly admitted his drug use to the Provincial Prosecutor. The ponencia claims that the time difference between the illegal search and the preliminary investigation negates a causal relation between the illegal search warrant and the admission.

Again, I disagree with the ponencia.

Salazar's very presence during the preliminary investigation was brought about by the illegal search warrant. He would not have been subject of a preliminary investigation in the first place if there was no illegal search warrant. Clearly, his purported admission before the Provincial Prosecutor was an indirect result of the illegal search. Thus, under established jurisprudence and the categorical pronouncement of the Constitution, his admission, which was a derivative evidence obtained from an illegal search warrant, "shall be inadmissible for any purpose in any proceeding." [56]

Additionally, the Regional Trial Court May 4, 2017 Order, [57] quashing the search warrant and suppressing the seized evidence, included all forms of evidence that resulted from the illegal search, such as testimonial evidence, since they were brought about by virtue of the quashed search warrant:

In the light of the nullity of Search Warrant No. 5043 (15), the search conducted on its authority is likewise null and void. Based on the above provision, any evidence obtained in violation of a person's right against unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding. With the inadmissibility of the drugs seized from Salazar's home, there is no more evidence to support his conviction. [58] (Emphasis in the original)

The inadmissibility of both seized and derivative evidence was reiterated by the Regional Trial Court in its August 18, 2017 Order [59] dismissing the criminal case against Salazar:

All the evidence obtained as a result of such search is considered illegal, being the fruit of the poisonous tree. Ergo, even the urine test conducted on accused Salazar, having been done as a result of such arrest, occasioned

by the search, is also considered as a fruit of such search, hence illegal.[60] (Emphasis supplied)

Furthermore, it is irrelevant that XV-05-INV-15C-087 is still pending automatic review before the Department of Justice. The evidence involved is also subject to the exclusionary rule since the evidence relative to Salazar's use of dangerous drugs, i.e., the positive finding of his urine sample and his admission to using dangerous drugs, was the same tainted evidence occasioned by the illegal and quashed search warrant. Thus, recognizing the illegality of his arrest on an imaginary buy-bust operation, the Provincial Prosecutor dismissed the charges for illegal sale and use of dangerous drugs against him:

It seems that the scenario of continuing operation of complainants against respondents was a mere build up to the search conducted at the beach house of [Salazar], thereby projecting him as the person behind the rampant selling of dangerous drugs in Marinduque. Doubtless, it was intended to convey the probability of the positive search of dangerous drugs in his beach house. There was no need for this unless nothing was really found inside the beach house of [Salazar].

Considering the improbability of the succeeding buy-bust operation against [Salazar] and [Lubrin], with all the safeguards of the law against "instant" or imaginary buy bust operation, the charges against these respondents for illegal sale of drugs are hereby dismissed.

Consequently, the charges of illegal use of drugs, the filing of which can be warranted only upon their lawful arrests on drug[-]related charges, are likewise dismissed.[61] (Emphasis supplied)

In as much as all forms of evidence obtained by the agents using the illegal search warrant had been suppressed as evidence, including the derivative evidence derived from the suppressed evidence, there is no substantial evidence to support a finding of administrative liability against Salazar because, as the ponencia correctly stated, substantial evidence is "more than a mere scintilla of relevant evidence as a reasonable mind might accept as adequate to support a conclusion." [62] In this case, there is not even a scintilla of evidence to support the conclusion that Salazar is guilty of the administrative charges of grave misconduct and conduct prejudicial to the best interest of the service against him.

## II

An extrajudicial confession made before the provincial prosecutor enjoys the same safeguards available to an accused under Republic Act No. 7438, or An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties for Violations Thereof. The safeguard of having a written and signed confession before competent counsel still applies because this right springs from the exclusionary rule. This was emphasized by *People v. Sunga*: [63]

The right to counsel applies in certain pretrial proceedings that can be deemed "critical stages" in the criminal process. The preliminary investigation can be no different from the in-custody interrogations by the police, for a suspect who takes part in a preliminary investigation will be subjected to no less than the State's processes, oftentimes intimidating and relentless, of pursuing those who might be liable for criminal prosecution. In the case at bar, Sunga was thrust into the preliminary investigation and while he did have a counsel, for the latter's lack of vigilance and commitment to Sunga's rights, he was virtually denied his right to counsel.

The right to counsel involves more than just the presence of a lawyer in the courtroom or the mere propounding of standard questions and objections; rather it means an efficient and decisive legal assistance and not a simple perfunctory representation. As in *People v. Abano* where the confession by the therein accused in the preliminary investigation was excluded as inadmissible due to the absence of her counsel, this Court will not admit Sunga's. This makes it unnecessary to discuss and emphasize the conflict on material points of

Sunga's and Locil's accounts of the incident.[64] (Emphasis supplied, citations omitted)

A careful review of the records of the case shows that Salazar was not assisted by counsel during his preliminary investigation before the Provincial Prosecutor. Neither was any written and signed confession on his use of dangerous drugs found or adverted to within the records. In fact, his confession was only briefly mentioned in the Provincial Prosecutor's April 20, 2015 Resolution finding probable cause against him:

With respect to the dangerous drug found in his urine sample, he readily admitted using drugs but he was quick to add that he had stopped doing it as he had promised her (sic) mother on her deathbed in December 2014.

....

On the charge of illegal use of dangerous drugs, probable cause exists with a positive result of the confirmatory test conducted on the urine sample of [Salazar]. He himself admitted that he had used dangerous drugs. It is as simple as that.[65] (Emphasis supplied)

However, it is not as simple as the Provincial Prosecutor would like to believe. Any person arrested, detained, or under custodial investigation has the right to be assisted at all times by a competent counsel[66] and the records show that Salazar was not afforded that right.

### III

The fundamental rights of an accused can be found in Article III, Section 14 of the Constitution and these rights follow the accused throughout every stage of the criminal proceedings:

Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

Additionally, the rights afforded to an accused are available even before an arrest is made, as these rights not only encompass persons arrested, detained, or under custodial investigation, but also embrace invitations or requests for appearance[67] extended by State agents to persons suspected of committing crimes.

People v. Deniega[68] emphasized that the modifiers "competent and independent," describing a counsel of an accused, were not present previous to the 1987 Constitution; thus, their inclusion in the present Constitution stresses the importance of a voluntary confession by an accused based on informed judgment during custodial investigation:

[T]he primacy accorded to the voluntariness of the choice, under the uniquely stressful conditions of a custodial investigation, by according the accused, deprived of normal conditions guaranteeing individual autonomy, an informed judgment based on the choices given to him by a competent and independent lawyer.[69]

On the other hand, a person's rights in a preliminary investigation are derived from statute and not the Constitution; hence, such rights are subject to the limitations of procedural law.[70] Furthermore, a preliminary investigation is considered merely preparatory to a trial and not part of a trial; thus, while parties may submit affidavits, they have no right to examine witnesses.[71]

Nonetheless, this Court has established in *Sunga* and *People v. Bokingo*[72] that the right to counsel and the requirement of a signed confession with the assistance of a counsel also obtain during preliminary investigation. Moreover, the failure to respect the rights of an accused during preliminary investigation also renders inadmissible any resulting evidence obtained from it, even supposedly voluntary confessions.

In the case at bar, the quashal of the illegal search warrant, the suppression of the tainted evidence obtained using the quashed search warrant, and the failure to present Salazar's written confession signed in the presence of a counsel compel this Court to dismiss the administrative case against him for utter lack of evidence to support the charges brought against him.

ACCORDINGLY, I vote to DISMISS Administrative Matter Nos. 15-05-136-RTC and P-16-3450. I also vote to REVOKE the suspension order against Sheriff Rogelio M. Salazar, Jr. and to ALLOW him to report back to his position as Sheriff IV of Regional Trial Court, Office of the Clerk of Court, Boac, Marinduque, with the concomitant payment of his back salaries and other benefits which were withheld during his suspension.

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[1] Rollo (A.M. No. P-16-3450), pp. 48-49.

[2] *Id.* at 50-52.

[3] *Id.* at 56.

[4] *Id.* at 58.

[5] *Id.* at 60-61.

[6] *Id.* at 61-62.

[7] *Id.* at 46-47.

[8] *Id.* at 139.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.* at 169.

[14] Rollo (A.M. No. 15-05-136-RTC), pp. 46-47.

[15] Rollo (A.M. No. P-16-3450), p. 138.

[16] *Id.* at 142.

[17] *Id.* at 142-143.

[18] *Id.* at 143-144.

[19] Rollo (A.M. No. 15-05-136-RTC), p. 48.

[20] *Id.* at 48-50.

[21] *Id.* at 18 and 21.

[22] Id. at 19-20.

[23] Rollo (A.M. No. P-16-3450), p. 1.

[24] Id. at 1-2.

[25] Id.

[26] Id. at 8-9.

[27] Id. at 10-32.

[28] Id. at 16-25.

[29] Id. at 11.

[30] Id. at 11-12.

[31] Rollo (A.M. No. 15-05-136-RTC), pp. 2-3.

[32] Id. at 1.

[33] Id. at 54-57.

[34] Id. at 56-57.

[35] Id. at 67-75.

[36] Id. at 75.

[37] Id. at 72.

[38] Rollo (A.M. No. P-16-3450), pp. 148-154.

[39] Id. at 168-177. The Order in the consolidated cases of *People of the Philippines v. Salazar* (Criminal Case No. 62-15) and *People of the Philippines v. Salazar* (Criminal Case No. 63-15) was penned by Judge Designate Dennis R. Pastrana.

[40] Id. at 173.

[41] Id. at 174-175.

[42] Id. at 176-177. The Order was penned by Judge Designate Dennis R. Pastrana.

[43] Id. at 178.

[44] Id. at 178-179.

[45] Id. at 179.

[46] Id. at 163-164.

[47] CONST., art. III, sec. 3.

[48] 126 Phil. 738 (1967) [Per C.J. Concepcion, En Banc].

[49] 80 Phil. 1 (1948) [Per J. Pablo, Second Division].

[50] *Stonehill v. Diokno*, 126 Phil. 738, 750 (1967) [Per C.J. Concepcion, En Banc], citing *People v. Defore*, 140 NE 585.

[51] Id.

[52] Id. at 753-754.

[53] 321 Phil. 656 (1995) [Per J. Puno, En Banc].

[54] Id. at 690-691.

[55] Ponencia, p. 9.

[56] CONST., art. III, sec. 3(2).

[57] Rollo (A.M. No. P-16-3450), pp. 168-177.

[58] Id. at 177.

[59] Id.

[60] Id. at 179.

[61] Id. at 143.

[62] Ponencia, p. 7, citing Ombudsman Marcelo v. Bungubung, 575 Phil. 538 (2008) [Per J. Chico-Nazario, Third Division].

[63] 447 Phil. 776 (2003) [Per J. Carpio Morales, En Banc].

[64] Id. at 807.

[65] Rollo (A.M. No. 15-05-136-RTC), pp. 49-50.

[66] Rep. Act No. 7438 (1992), sec. 2(a).

[67] Lopez v. People, G.R. No. 212186, June 29, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/212186.pdf>> [Per J. Leonen, Second Division].

[68] 321 Phil. 1028 (1995) [Per J. Kapunan, First Division].

[69] Id. at 1041.

[70] Dichaves v. Office of the Ombudsman, G.R. Nos. 206310-11, December 7, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/206310-11.pdf>> [Per J. Leonen, Second Division]

[71] De Lima v. Reyes, G.R. No. 209330, January 11, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/209330.pdf>> [Per J. Leonen, Second Division].

[72] 671 Phil. 71 (2011) [Per J. Perez, Second Division].

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## DISSENTING OPINION

**CAGUIOA, J.:**

I dissent.

The ponencia finds Rogelio M. Salazar, Jr. (Salazar) liable for grave misconduct and conduct prejudicial to the best interest of the service due to his drug use, despite the dismissal of the related criminal cases that had been filed against him. Consequently, Salazar is ordered dismissed from service.

The ponencia points out that only substantial evidence is required to sustain a finding of administrative culpability, which it submits has been satisfied in this case. According to the ponencia, Salazar's admission of drug use, coupled with the confirmatory urine test that yielded a positive result, are more than substantial evidence to support the conclusion that Salazar is a drug-user, which would warrant the Court's exercise of its disciplinary power over court personnel.

As stated at the outset, I respectfully disagree.

I submit that Salazar's guilt has not been proven by substantial evidence because the pieces of evidence against him, by virtue of the illegality of the search conducted, are covered by the exclusionary rule.

The exclusionary rule

Article III of the 1987 Constitution provides:

SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

SEC. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding. (Emphasis and underscoring supplied)

Known as the "exclusionary rule," this Constitutional mandate renders inadmissible any evidence obtained in violation of the Constitution, for any purpose, and in any proceeding. Thus, it is immaterial that what is involved here is merely an administrative case-the exclusionary rule still applies as long as it is shown that evidence was obtained in violation of the Constitution.

This Constitutional precept also embodies the "fruit of the poisonous tree" doctrine, which had been elucidated by the Court in *People v. Alicando*,<sup>[1]</sup> to wit:

We have not only constitutionalized the Miranda warnings in our jurisdiction. We have also adopted the libertarian exclusionary rule known as the "fruit of the poisonous tree," a phrase minted by Mr. Justice Felix Frankfurter in the celebrated case of *Nardone v. United States*. According to this rule, once the primary source (the "tree") is shown to have been unlawfully obtained, any secondary or derivative evidence (the "fruit") derived from it is also inadmissible. Stated otherwise, illegally seized evidence is obtained as a direct result of the illegal act, whereas the "fruit of the poisonous tree" is the indirect result of the same illegal act. The "fruit of the poisonous tree" is at least once removed from the illegally seized evidence, but it is equally inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the originally illegally obtained evidence taints all evidence subsequently obtained. xxx<sup>[2]</sup> (Additional emphasis, italics and underscoring supplied)

Applying the foregoing to the present case, the admission and the confirmatory urine test should be considered as fruits of the poisonous tree because both were obtained as a result of an illegal search.

The confirmatory urine test is inadmissible.

The confirmatory urine test conducted on Salazar was brought about by virtue of Section 38 of Republic Act No. (R.A.) 9165 or the Comprehensive Dangerous Drugs Act of 2002, which provides:

SEC. 38. Laboratory Examination or Test on Apprehended/Arrested Offenders. - Subject to Section 15 of this Act, any person apprehended or arrested for violating the provisions of this Act shall be subjected to screening laboratory examination or test within twenty-four (24) hours, if the apprehending or arresting officer has reasonable ground to believe that the person apprehended or arrested, on account of physical signs or symptoms or other visible or outward manifestation, is under the influence of dangerous drugs. If found to be positive, the results of the screening laboratory examination or test shall be challenged within fifteen (15) days after receipt of the result through a confirmatory test conducted in any accredited analytical laboratory equipment with a gas chromatograph/mass spectrometry equipment or some such modern and accepted method, if confirmed the same shall be prima facie evidence that such person has used dangerous drugs, which is without prejudice for the prosecution for other violations of the provisions of this Act: Provided, That a positive screening laboratory test must be confirmed for it to be valid in a court of law. (Emphasis and underscoring supplied)

In ruling that the confirmatory urine test was not the direct or indirect result of the illegal search, the ponencia concludes that "[t]he basis for the confirmatory drug test was, in fact, a reasonable belief of drug use and a positive screening test, both of which are neither a necessary nor automatic consequence of an illegal search." [3] I disagree as this statement is wholly belied by the facts and the law.

A plain reading of Section 38 of R.A. 9165 shows that what triggers the "confirmatory" urine test is the initial apprehension or arrest of the accused. Here, the confirmatory urine test conducted on Salazar was triggered by his arrest occasioned by the search, which was found to be illegal. The only logical conclusion is that if it were not for the illegal search, then the police officers could not have performed the confirmatory urine test on Salazar. Consequently, contrary to the postulate of the ponencia, the urine test is a "fruit" of the illegal search.

The ponencia bolsters its point by citing Section 36, Article III of R.A. 9165 which provides the mandatory drug testing of, among others, (i) officers and employees of public and private offices [Section 36(d)], and (ii) all persons charged before the prosecutor's office with a criminal offense having an imposable penalty of imprisonment of not less than six (6) years and one (1) day [Section 36(f)]. It also cites A.M. No. 06-1-01-SC where the Court adopted guidelines for a program to prevent drug use and eliminate the hazards of drug abuse in the Judiciary. In this regard, the ponencia makes the following pronouncements:

There is thus no reason to turn a blind eye, for purposes of this administrative proceeding, on the results of the confirmatory urine test when RA 9165 itself, as well as this Court's guidelines, sanction the conduct of a mandatory random drug testing of officers and employees of public and private offices. The character of the drug test being made at random actually dispenses with the usual requirement of probable cause. In the case of *Social Justice Society (SJS) v. Dangerous Drugs Board, et al.*, We upheld the validity and constitutionality of the mandatory but random drug testing of officers and employees of both public and private offices. This is allowed "for purposes of reducing the risk in the workplace." xxx

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Thus, despite the absence of probable cause, and the basis being only a positive drug test result, an employer is allowed by law to pursue an administrative case against the public or private officer or employee and thereafter, to suspend or terminate them. [4] (Emphasis, italics and underscoring supplied)

Once more, I cannot subscribe to the ponencia's postulations.

At the outset, the ponencia's reference to Section 36(f) of R.A. 9165 (mandatory drug testing for persons charged before the prosecutor's office) is totally inapt and should not have been made, albeit only in support of a proposition, considering that the same had already been declared as unconstitutional in *Social Justice Society (SJS) v. Dangerous Drugs Board*.<sup>[5]</sup>

More importantly, the ponencia's discussion on random drug testing is totally misplaced - even merely as a supporting argument - since what is involved here cannot be characterized as random.

While the ponencia states that "[t]he character of the drug test being made at random actually dispenses with the usual requirement of probable cause,"<sup>[6]</sup> the same cannot be said of the confirmatory urine test. Section 38 unequivocally provides that the confirmatory urine test can be performed only "if the apprehending or arresting officer has reasonable ground to believe that the person apprehended or arrested, on account of physical signs or symptoms or other visible or outward manifestation, is under the influence of dangerous drugs."<sup>[7]</sup> Thus, by the ponencia's own reasoning, there is still an element of probable cause.

At this point, I quote with approval the following pronouncements of the Regional Trial Court in this case which, I submit, are more correct:

In the May 4, 2017 resolution of this Court, Search Warrant No. 5043 which was obtained and used by the police was [q]uashed and declared NULL AND VOID for lack of probable cause and non-conformity in the search with the established constitutional rules and statutory guidelines. It was also declared that in the light of the nullity of Search Warrant No. 5043(15), the search conducted on its authority is likewise null and void. Based on [Section 3(2), Article III of the Constitution], any evidence obtained in violation of a person's right against unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding. All the evidence obtained as a result of such search is considered illegal, being the fruit of the poisonous tree. Ergo, even the urine test conducted on accused Salazar, having been done as a result of such arrest, occasioned by the search, is also considered as a fruit of such search, hence illegal.<sup>[8]</sup> (Emphasis and underscoring supplied)

That the foregoing is a factual finding by the trial court that should, as a rule, be binding on the Court, needs no further belaboring. All things considered, the confirmatory urine test imposed on Salazar should be, as it was so held by the RTC, declared inadmissible for being covered by the exclusionary rule.

The admission is also inadmissible.

Likewise, Salazar's admission should be declared inadmissible.

The ponencia claims that the admission is not covered by the exclusionary rule because: (1) the admission partakes of a testimonial evidence, and not a "personal property" that can be the subject of a search and seizure; and (2) the admission was already far removed from the illegal search warrant that it cannot be regarded as a fruit of the poisonous tree.<sup>[9]</sup> Again, I respectfully disagree.

Notwithstanding the pronouncement in *People v. Uy*,<sup>[10]</sup> as cited by the ponencia - that the evidence covered by the exclusionary rule refers to object, not testimonial evidence, which was seized in the course of an illegal search and seizure - it is still my considered view that the admission of Salazar should be considered a fruit of the poisonous tree.

The Constitutional provision is clear and unambiguous, leaving no room for interpretation. It provides that any evidence obtained in violation of its mandate shall be inadmissible for any purpose and in any proceeding. It makes no distinction whatsoever as to the kind of evidence that is to be excluded. More in point too is the ruling of the Court in the landmark case of *Alicando* earlier mentioned, that "evidence illegally obtained by the State

should not be used to gain other evidence because the originally illegally obtained evidence taints all evidence subsequently obtained." [11] In particular, Alicando provides that "once the primary source (the 'tree') is shown to have been unlawfully obtained, any secondary or derivative evidence (the 'fruit') derived from it is also inadmissible. Stated otherwise, illegally seized evidence is obtained as a direct result of the illegal act, whereas the 'fruit of the poisonous tree' is the indirect result of the same illegal act." [12]

As applied in this case, the illegal drugs seized is the direct result of the illegal search, while the admission and the confirmatory urine test, are the indirect results of the same illegal search - which are equally inadmissible.

That is not all. Section 12, Article III of the Constitution, provides for another exclusionary rule. It states:

SEC. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families. (Emphasis and underscoring supplied)

In this case, there is no showing by the ponencia that Salazar was apprised of his Constitutional rights when he made the admission. Also, the records do not disclose whether Salazar was assisted by counsel during his preliminary investigation before the Provincial Prosecutor. Nor was there any showing of a valid waiver of his constitutional rights. Consequently, Salazar's admission should be declared inadmissible for having been obtained in violation of the exclusionary rule under Section 12, Article III of the Constitution. Additionally, neither was any written and signed confession on Salazar's use of dangerous drugs found nor adverted to within the records, in violation of R.A. 7438, [13] thereby rendering the same inadmissible under said law.

Even if admissible, the admission cannot sustain Salazar's guilt.

Be that as it may, even if it were to be conceded that the admission is not covered by the exclusionary rule under either Section 3(2) or Section 12 of Article III of the Constitution, the admission made by Salazar is still not enough to hold him liable.

Based on the records, Salazar's admission was only briefly mentioned in the Provincial Prosecutor's Resolution finding probable cause against him, to wit:

With respect to the dangerous drug found in his urine sample, he readily admitted using drugs but he was quick to add that he had stopped doing it as he had promised her (sic) mother on her deathbed in December 2014.

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On the charge of illegal use of dangerous drugs, probable cause exists with the positive result of the confirmatory test conducted on the urine sample of [Salazar]. He himself admitted that he had used dangerous drugs. It is as simple as that. [14] (Emphasis and underscoring supplied)

In evaluating Salazar's admission, I am of the opinion that the same is not enough to hold him criminally or

administratively liable.

It is fundamental that the quantum of proof in administrative cases is substantial evidence, which is more than a mere scintilla of evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[15] As applied in this case, Salazar's admission cannot even be considered as substantial evidence because he made a disclaimer that he has not used drugs since 2014 (the admission in question having been made in 2015).

Hence, even if Salazar's admission was admissible, it does not carry the probative value that would be enough to satisfy even the lowest quantum of proof required to hold him administratively liable.

Lack of objection is inconsequential.

The ponencia notes that Salazar never questioned the (1) voluntariness of his admission as well as the regularity of the preliminary investigation;[16] and (2) the authenticity, validity, and regularity of the chemistry report yielding a positive finding on his use of shabu.[17]

Notwithstanding these observations, Salazar's lack of objection is totally inconsequential to the applicability of the exclusionary rule. It is immaterial that the accused failed to make a timely objection to the introduction of the constitutionally proscribed evidence since the lack of objection does not satisfy the heavy burden of proof that rested on the prosecution.[18] As held in *People v. Samontañez*,[19] "[i]n the absence of a valid waiver, any confession obtained from the [accused] during the police custodial investigation relative to the crime, including any other evidence secured by virtue of the said confession is inadmissible in evidence even if the same was not objected to during the trial by the counsel of the [accused]."[20]

Additionally, even if the admission or confession contains a grain of truth, but it was made without following the mandate of the Constitution, the same becomes inadmissible in evidence regardless of the absence of coercion or even if it had been voluntarily given.[21]

A final note

While the Court is mandated to discipline its officers and employees, it is equally mandated to uphold their constitutional rights and to temper its ruling with mercy and compassion in view of the circumstances. The supreme penalty of dismissal from service with forfeiture of all benefits is too harsh, in view of the dismissal of the criminal cases against Salazar. He had been detained for a long time and also suspended from his work on criminal charges which were eventually dismissed. He had already suffered enough. While the need to discipline court employees is recognized, the same cannot be done while disregarding the constitutional rights of the accused.

Undeniably, the proliferation of dangerous drugs is a plague to society that must be eliminated. Nevertheless, this is not a license for law enforcers to disregard the rights of the individual. A violation of the law in order to enforce another cannot be countenanced - and this bears greater emphasis when the law violated is the fundamental law of the land. To do otherwise would be to sanction the erosion of the fundamental values enshrined in the Constitution.

The end can never, and should never be allowed to, justify the means - especially by this Court.

In view thereof, the administrative cases against Rogelio M. Salazar, Jr. should be dismissed for failure to prove his guilt by substantial evidence, as the pieces of evidence against him are covered by the exclusionary rule.

- [1] 321 Phil. 656 (1995).
- [2] *Id.* at 690.
- [3] Ponencia, p. 11. Italics supplied.
- [4] *Id.* at 12-13.
- [5] 591 Phil. 393 (2008),
- [6] Ponencia, p. 12. Italics supplied.
- [7] R.A. 9165, Sec. 38. Underscoring supplied.
- [8] Rollo (A.M. No. P-16-3450), p. 179.
- [9] Ponencia, pp. 8-9.
- [10] 508 Phil. 637, 655 (2005) [Third Division, Per J. Carpio Morales].
- [11] *Supra* note 1, at 690. Additional emphasis, italics and underscoring supplied.
- [12] *Id.* Additional emphasis, italics and underscoring supplied.
- [13] AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING, AND INVESTIGATING OFFICERS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF, April 27, 1992.
- [14] Rollo (A.M. No. 15-05-136-RTC), pp. 49-50.
- [15] See *Diaz v. The Office of the Ombudsman*, G.R. No. 203217, July 2, 2018, p. 6.
- [16] Ponencia, p. 9.
- [17] *Id.* at 13.
- [18] *People v. Alicando*, *supra* note 1, at 692. Emphasis and underscoring supplied.
- [19] 400 Phil. 703 (2000).
- [20] *Id.* at 726. Emphasis supplied.
- [21] See *People v. Bariquit*, 395 Phil. 823, 852 (2000).

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