

RE: MOTU PROPRIO FACT-FINDING INVESTIGATION ON THE ISSUANCE OF SEARCH WARRANT AND OTHER PENDING INCIDENTS IN THE CASE OF THE DECEASED MAYOR ROLANDO ESPINOSA, SR.

A.M. No. RTJ-17-2494 (Formerly A.M. No. 16-11-03-SC). January 26, 2021

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PER CURIAM:

Before this Court are two consolidated administrative cases against respondents, Hon. Carlos O. Arguelles (Judge Arguelles), Presiding Judge of the Regional Trial Court (RTC) of Baybay, Leyte, Branch 14; Hon. Janet M. Cabalona (Judge Cabalona), Presiding Judge of the RTC of Calbiga, Samar, Branch 33; and Hon. Tarcelo A. Sabarre, Jr. (Judge Sabarre), Presiding Judge of the RTC of Basey, Samar, Branch 30. A.M. No. RTJ-17-2494 pertains to the motu proprio fact-finding investigation of the Court on the issuance of search warrants and other pending incidents in the case of deceased Mayor Rolando Espinosa, Sr. (Espinosa, Sr.). A.M. No. RTJ-19-2557 refers to the Anonymous Letter from Confused Citizens of Region 8 on alleged improper conduct of the respondents and the Criminal Investigation and Detection Group of Region 8 (CIDG - Region 8).

Facts of the Case

Two criminal cases[1] were filed before the RTC of Baybay, Leyte, Branch 14 against deceased Espinosa, Sr., and his son Roland "Kerwin" Espinosa for violation of Section 28 of R.A. No. (R.A.) 10591[2] and against Espinosa Sr. alone for violation of Section 11, Article II, R.A. 9165.[3] On October 6, 2016, Espinosa, Sr. filed a Notice of Entry of Appearance with concomitant Very Urgent Motion of Transfer Detention[4] (Urgent Motion) seeking his transfer from the Sub-Provincial Jail of Baybay, Leyte to Albueria Police Station, Albueria, Leyte, for security reasons. He alleged that:

He continuously fear (sic) for his life after receiving threats, especially when it has become public that he has implicated personalities linked to the drug trade of his son and co-accused Roland Espinosa.

Every minute that he stays at the Leyte Sub-Provincial Jail, he becomes very vulnerable and poses as an easy target from (sic) unknown elements which wanted him dead or other imminent danger that may likely occur now that he is on his own.

Although the accused does not doubt the capacity of the personnel of the BJMP to keep him safe, however (sic) it is also undeniable that the accused is not the only one that these personnel will look out for.[5]

On October 12, 2016, Judge Arguelles heard the motion during the scheduled arraignment. The prosecution filed its opposition.[6] To give Espinosa, Sr. time to substantiate his position, Judge Arguelles set the motion for another hearing on October 19, 2016. During said hearing, Judge Arguelles ordered an ocular inspection to be conducted on October 26, 2016. [7]

After the ocular inspection, Judge Arguelles conducted another clarificatory hearing. During the hearing, the court was confronted with differing opinions about the security of Espinosa Sr. in the detention facility. The sub-provincial warden expressed doubts on their ability to keep him safe due to the insufficiency of guards and

firearms.[8] Meanwhile, Provincial Warden Homobono Bardillon manifested that Espinosa Sr. is safe at the Sub-Provincial Jail of Baybay.[9] He reported that additional personnel from the Philippine Army and the Philippine National Police (PNP) had been detailed to augment the security force and CCTV cameras would also be installed.[10] The prosecution filed an Ex-Parte Counter-Manifestation to the Very Urgent Motion to Transfer of Detention[11] (Ex-Parte Counter-Manifestation), pointing out that Albuera Police Station is not a detention facility and that it is the Sub-Provincial Jail which has custodial responsibility over Espinosa Sr.[12] On October 26, 2016, the Urgent Motion was submitted for resolution.[13]

On November 4, 2016, pending resolution of both the Urgent Motion and its Ex-Parte Counter-Manifestation, elements of the CIDG - Region 8, led by Police Chief Inspector Leo D. Laraga (PCI Laraga), Team Leader of Northern Leyte CIDG Group 8 (NLCIDG-CIDG8), PNP-CIDG, applied for two search warrants[14] before the RTC of Basey, Samar, Branch 30 before Judge Sabarre to search Cell Nos. 1 and 2 of the Sub-Provincial Jail of Baybay, Leyte, where Espinosa Sr. and his co-accused Raul Yap (Yap) were detained.[15]

The Application for Search Warrant[16] against Espinosa Sr. was for violation of R.A. 10591[17] wherein it was alleged that despite being an inmate, Espinosa, Sr. "has in his possession an unlicensed firearm x x x (one caliber .45 pistol and magazine assembly and several rounds of live ammunitions) x x x kept and concealed particularly under his pillow in his bedside inside Cell No. 1, Baybay Sub-Provincial Jail, Baybay City, Leyte." [18] The Application for Search Warrant[19] against Yap was for violation of R.A. 9165[20] and states that Yap has in his possession "several grams of Illegal Drugs and paraphernalia kept and concealed particularly under his pillow in his bed inside his cell at Cell No. 2, Baybay Sub-Provincial Jail." [21]

At around 1:08 p.m. of November 4, 2016, after hearing the applicant and his witnesses and propounding searching questions, Judge Sabarre issued Search Warrant No. 2016-11-20[22] against Espinosa, Sr. for one unit caliber .45 pistol and Search Warrant No. 2016-11-19[23] against Yap for an undetermined quantity of shabu to be served at the Sub-Provincial Jail in Baybay, Leyte.

At around 4:10 a.m. of November 5, 2016, the search warrants were served by elements of the CIDG - Region 8 in the premises of the Sub- Provincial Jail in Baybay, Leyte. PCI Laraga reported that during the implementation of the search warrant against Espinosa at Cell No. 1, "respondent fired upon the raiding team that (sic) resulted to (sic) a firefight causing his untimely death." [24] Items seized "during the conduct of the crime scene by the SOCO" include "one (1) unit firearm with serial number 288282-0 (chamber loaded) with six (6) live ammos, six (6) fired cartridge cases, two (2) deformed bullets, one (1) fragmented bullet, a transparent cellophane containing suspected shabu, and other paraphernalia." [25]

During the implementation of the search warrant against Yap, PCI Laraga alleged that Yap was not present in Cell No. 2. One of the jail guards told the team that Yap was transferred to Cell No. 7. The team then proceeded to Cell No. 7 to fetch Yap "in order to implement the search in Cell No. 2, but during the confrontation, respondent fired upon the raiding team that resulted to a firefight causing his untimely death." [26] The search conducted inside the cell of Yap yielded, among others, 15 pieces of heat- sealed cellophane containing suspected shabu, 27 pieces of heat-sealed cellophane containing suspected marijuana, other paraphernalia, "one unit .45 caliber (chamber loaded with empty shell) with six live ammos with serial no. 418572, two fired bullets, two deformed bullets and five empty shells." [27]

In the course of the service of the two search warrants, the occupants of the cells, Espinosa Sr. and. Yap, were killed under circumstances that are not yet clear.

On November 8, 2016, the Court motu proprio resolved to direct the Office of the Court Administrator (OCA) to conduct an independent investigation on the following specific matters: (1) the necessity for and the

circumstances surrounding the issuance of search warrants directed against persons already under the custody of a government detention facility, including the existence of any compelling reason by the RTC of Basey, Leyte to entertain the application for the search warrants under Section 2, Rule 126 of the Rules of Court (Rules), and the procedure undertaken by the CIDG - Region 8; and (2) the reasons behind the failure to immediately resolve the motion of the deceased Espinosa, Sr. for the transfer of his place of detention. The OCA was directed to determine the respective participation and liability, if any, of Judge Sabarre and Judge Arguelles, and any possible connection between the failure to resolve the deceased Espinosa, Sr.'s motion for transfer of detention, the application and service of search warrants, the procedure for service of such warrants, and the ensuing deaths of Espinosa Sr. and Yap.[28]

In the course of the OCA investigation, it received two anonymous letters from Concerned Citizens of Tacloban City, one dated November 10, 2016,[29] and the other November 13, 2016.[30] The letter dated November 10, 2016 touched on the possibility that Judge Sabarre issued the search warrants as a quid pro quo to the police. It was narrated that the police previously threatened a young boy to desist from filing a criminal complaint for seduction against Judge Sabarre.[31]

The second letter dated November 13, 2016 alleged that Judge Cabalona issued Search Warrant No. 2016-074[32] to the same Police Supt. Marvin Wynn Marcos (P.Supt Marcos) who was able to enter and conduct a search inside the Abuyog Penal Colony, and shot to death one Allan Alvarez y Enriquez @ Igay[33] Alvarez, a prisoner serving a final judgment of imprisonment on August 11, 2016.[34] It was reported that during the implementation of the warrant, Alvarez threw a hand grenade and pulled out a handgun to the raiding team prompting the latter to fire upon the former causing his instantaneous death.[35]

Incidentally, Judge Cabalona also issued Search Warrant No. 2016-089[36] against Fernando Balagbis y Mejia @ Entoy (Balagbis) who was detained at Baybay City Jail. Balagbis died after he allegedly fired upon the members of the implementing team.[37] The letter dated November 13, 2016 suggested that Samar RTC judges are very friendly with the CIDG of Region VIII because Judge Cabalona's husband was a PNP Superintendent.[38]

On March 16, 2017, Judge Arguelles issued two Warrants of Arrest[39] against 15 members of the CIDG - Region 8 headed by PSupt. Marcos for the killing of Espinosa Sr. and Yap. They have been charged of murder before Branch 14 of the RTC of Baybay, Leyte. On March 21, 2017, Judge Arguelles issued a commitment order directing that the 15 members of the CIDG - Region 8 be detained at the CIDG - Region 8 office and compound located in the port area of Tacloban City. The order was based on the assessment of SJO4 Lourdes Noveda, wardress of the City Jail of Baybay City, that the Bureau of Jail Management and Penology (BJMP) of Baybay City is incapable of accommodating the 19 accused as the facility is 300% overcrowded.[40]

Report of the Office of the Court Administrator dated December 5, 2016

In a Report[41] submitted by the OCA on December 5, 2016, Court Administrator Jose Midas P. Marquez made the following recommendations:

WHEREFORE, in view of the foregoing, it is hereby respectfully recommended that Judges Tarcelo A. Sabarre, Jr., of Br. 30, RTC, Basey, Samar, and Janet M. Cabalona of Br. 33, RTC, Calbiga, Samar, be fined in the amount of TEN THOUSAND PESOS (P 10,000.00) each, with a WARNING that a repetition of the same or similar act shall be dealt with more severely, while Judge Carlos O. Arguelles of Br. 14, RTC, Baybay, Leyte, be REMINDED to be more circumspect in resolving pending matters before his court.[42]

The OCA found that there was no deliberate intent to delay the resolution of the Urgent Motion of Espinosa, Sr. For the OCA, at most, Judge Arguelles should only be reminded to be more circumspect in resolving 'very urgent' motions.[43]

With regard to the search warrants Judge Sabarre and Judge Cabalona respectively issued, the OCA considered that in cases involving a drug lord, mere allegation that the accused has wide and vast connections from different agencies of the government, or has relatives, henchmen, and friends who can influence and compromise the application and implementation of the search warrant, may be considered s compelling reason to permit the application in any court within the judicial region where the warrant shall be enforced.[44]

The OCA also opined that the issuance of search warrants to search jail facilities of the government can be considered as gross ignorance of the law for which judges can be held liable. The OCA stated that if there is indeed collusion between the detainees and the jail guards, the police officers should have first exhausted all administrative remedies by going to the superiors of the jail guards such as the Secretary of the Department of Interior and Local Government and the Secretary of Justice.[45]

In a Minute Resolution[46] dated January 24, 2017, the case was referred to Associate Justice Gabriel T. Ingles for investigation, report, and recommendation within 90 days from receipt of the records.[47]

Incidentally, while the case was under investigation, the Department of Justice (DOJ) Panel of Prosecutors issued a Resolution[48] dated March 2, 2017 in the case of National Bureau of Investigation Eastern Visayas Regional Office (NBI EVRO), et al. v. PSUPT Marvin Wynn Marcos, et al. The panel of prosecutors recommended the filing of the appropriate administrative complaint against Judge Sabarre for issuing Search Warrant Nos. 2016-11-20 and 2016-11-19.[49]

In Committee Report No. 46[50] of the Senate dated March 7, 2017, the Committee on Public Order and Dangerous Drugs and the Committee on Justice and Human Rights which were investigating the controversy made the following pronouncements and recommendations:

Let us be reminded that the public hearings conducted by the Committees do not in any way intend to overstep the authority and jurisdiction of our courts in the determination of the ESPINOSA and YAP case. However, as co-equal branch, may we request the Judiciary to expedite the determination as to the propriety and liabilities or sanctions, if any, of the following:

1. JUDGE CARLOS ARGUELLES, for his failure to act upon the motion of MAYOR ESPINOSA to be transferred to a safer prison facility, notwithstanding the fact that the deceased has expressed his intention to fully cooperate with the government and provide vital information relevant and of value to the Administration's war against illegal drugs;
2. JUDGE TARCELO SABARRE, JR. of RTC Branch 30 Basey, Samar for issuing search warrants upon persons detained in a government detention facility located outside his Court's jurisdiction;
3. JUDGE JANET CABALONA of RTC Branch 33, Calbiga, Samar, also for issuing search warrants upon persons detained in a government detention facility located outside her Court's jurisdiction.

Moreover, the Supreme Court should remind lower courts to exercise caution in issuing search warrants. Strict adherence to the policy that 'judges should personally examine the applicant and the witnesses he may produce,' with underlying emphasis on the words 'personally examine', should be observed. In the instant case, there is no need to issue search warrants because there is no reasonable expectation of privacy inside Baybay Sub-Provincial Jail. Applications such as the ones made by PCI LARAGA should have been denied because the proper action in this case should have been coordination with the jail guards or the PNP personnel augmented inside the jail premises.

Reference must also be made to the Supreme Court Office of the Court Administrator (OCA) Circular No. 40-2016 entitled Constitutional Requirements and Rules in the issuance of Arrest and Search Warrants which provides that the heads of National Bureau of Investigation, the Philippine National Police, the Anti-Crime

Task Force and the Philippine Drug Enforcement Agency shall personally endorse or authorize all applications for search warrants, involving illegal possession of firearms and violations of the Comprehensive Dangerous Drugs Act, among others. OCA Circular No. 88-2016 provides for the delegation by the PNP Chief of his authority to endorse the applications to certain key officers of the PNP in their respective territorial jurisdictions. There is no indication that the application for search warrants, which were later granted by JUDGES TARCELO SABARRE, JR and JANET CABALONA were personally endorsed by head of the PDEA. Moreover, there is also no indication that the application for search warrant was endorsed by any of the delegated key officers of the PNP, specifically by then IDG REGIONAL CHIEF MARCOS.[51] (Emphasis in the original)

Report on the Investigation and Recommendation of the Investigating Officer

On August 11, 2017, the designated Investigating Officer issued a Report on the Investigation and Recommendation[52] wherein he proposed the following:

WHEREFORE, in view of the foregoing, the Investigating Officer respectfully RECOMMENDS:

1. That the instant administrative case against respondent- Judge Carlos O. Arguelles of Branch 14, Regional Trial Court, Baybay, Leyte, be DISMISSED.
2. That respondent-Judge Tarcelo A. Sabarre, Jr. of Branch 30, Regional Trial Court of Basey, Samar, and respondent-Judge Janet M. Cabalona of Branch 33, Regional Trial Court, Calbiga, Samar, be FINED in the amount of TWENTY THOUSAND PESOS (P20,000.00) each, with a WARNING that a repetition of the same or similar act shall be dealt with more severely.

RESPECTFULLY SUBMITTED.[53] (Emphasis in the original)

The Investigating Officer agreed with the findings and recommendation of the OCA that there exists no reason to impose any administrative liability against Judge Arguelles. The Investigating Officer held that Judge Arguelles had nothing to do with the incident nor did he incur delay in resolving the Urgent Motion. There was simply no evidence which can link the death of Espinosa Sr., directly or indirectly, to the acts (or the lack of it) on the part of Judge Arguelles to warrant an imposition of administrative liability against him. From the Investigating Officer's perspective, all actions of Judge Arguelles in relation to the motion to transfer detention from the moment it was filed, were done with prudence and good faith.[54]

With regard to the claim that the killing of Alvarez and Balagbis should have alerted Judge Arguelles that the perceived threats on the life of Espinosa Sr. while in detention at the Sub-Provincial Jail in Baybay City were not merely imagined, the Investigating Officer opined that Judge Arguelles should not be held liable even if he was aware of said threats.[55] The Investigating Officer pointed out that the circumstances surrounding the death of Alvarez and Balagbis was never brought to the attention of the trial court through an appropriate pleading. For the Investigating Officer, a judge can only rely on the evidence submitted by the parties and not on any extraneous matter. Citing *State Prosecutors v. Judge Muro*,[56] the Investigating Officer held that mere personal knowledge of the judge is not the judicial knowledge of the court, and he is not authorized to make his individual knowledge of a fact, not generally or professionally known, the basis of his action.[57] In concluding that Judge Arguelles had reason to believe that Espinosa Sr. was safe inside the Sub-Provincial Jail in Baybay City, the Investigating Officer noted that it had augmentations of police officers from the Provincial Public Safety Battalion and personnel from the Philippine Army to boost jail security unlike the penal facilities where Alvarez and Balagbis were detained.[58]

With regard to the search warrants issued by Judge Sabarre and Judge Cabalona, the Investigating Officer found that these were not in compliance with OCA Circular No. 88-2016 as the applicants for these did not secure the

necessary endorsement from the key officials enumerated in said circular.[59] Therefore, the presumption of regularity in the performance of official duties cannot prevail.[60]

Report of the Office of the Court Administrator dated October 10, 2018

On October 10, 2018, the OCA issued its Report recommending the following:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that:

- the instant administrative complaint against Judge Carlos O. Arguelles, Presiding Judge, Branch 14, RTC, Baybay, Leyte, be DISMISSED and considered CLOSED and TERMINATED;
- the instant administrative complaint against Judge Janet M. Cabbalona, Presiding Judge, Branch 33, RTC Calbiga, Samar and Judge Tarcelo A. Sabarre, Branch 30, RTC, Basey, Samar, be CONSOLIDATED with A.M. No. RTJ-17-2494 (OCA v. Judge Carlos O. Arguelles, et al.); and
- Judge Cabalona and Judge Sabarre be furnished a copy of the instant administrative complaint and be DIRECTED to comment thereon within ten (10) days from notice and to submit the same to Associate Justice Gabriel T. Ingles, Court of Appeals, Cebu City.[61]

The OCA suggested that the anonymous complaint against Judges Cabalona and Sabarre should be consolidated with A.M. No. RTJ-17-2494 as they pertain to identical issues.[62] As for the commitment order Judge Arguelles issued against members of the CIDG - Region 8, the OCA found his proffered explanation to be reasonable. His decision to detain the accused members of the CIDG - Region 8 inside the CIDG - Region 8 compound was based on the assessment of the wardress of the BJMP of Baybay City that the jail facility is overly congested. The OCA noted that the detention of the CIDG - Region 8 members at the CIDG - Region 8 compound is only temporary and that they can be transferred when the conditions in the BJMP improve.[63]

Thereafter, the Court issued a Minute Resolution[64] dated April 10, 2019 resolving to adopt and approve the findings of fact, conclusions of law and recommendation of the OCA in its Report dated October 10, 2018. The administrative complaint docketed as A.M. No. RTJ-19-2557 against Judges Cabalona and Sabarre were consolidated and referred to the Court En Banc where A.M. No. RTJ-17-2494 belongs.[65]

In his Comment,[66] Judge Arguelles maintained that he observed caution in resolving the issue of the transfer of Espinosa Sr. due to factors that might compromise his security as well as the dispensation of justice. He emphasized that the breach of security that resulted in the death of Espinosa Sr. cannot be attributed to his failure to resolve the Urgent Motion as any perpetrator clothed with killer instinct can perpetrate the act regardless of the place of detention.[67]

For his part, Judge Sabarre insisted in his Comment[68] that he was in good faith when he issued the questioned warrants as it was based on the assessment of the court on the testimonies of PCI Laraga, PO3 Norman Abellanosa, and Paul Granados Olendan. He also argued that there is no law nor circular which prohibits the issuance of a search warrant in a jail facility and that the ruling of the Court in the case of *In the matter of the petition for Habeas Corpus of Capt. Alejano v. Gen. Cabuay*[69] is not applicable to the present issue.[70] He also denied the allegation that he personally knows PCI Laraga and that he previously asked for a favor from the CIDG - Region 8 in convincing a young boy to drop a seduction case against him.[71] On July 8, 2019, Judge Sabarre reiterated that he is adopting all the previous pleadings and documents he previously submitted to the Court and highlighted awards and recognitions' he received for his work performance.[72]

Meanwhile, in the Comment[73] Judge Cabalona filed, she highlighted that the case of *In the matter of the petition for Habeas Corpus of Capt. Alejano v. Gen. Cabuoy*[74] is not applicable to the present case because an application for a writ of habeas corpus cannot be equated with an application for search warrant. She also

contended that Section 1, Rule 126 of the Rules does not exclude any specific place or building.[75] Although she admitted that her husband is a Police Senior Superintendent who was assigned in Region 8 in June 2016, she denied knowing P.Supt Marcos.[76]

Issues

The issues to be resolved are:

- whether there was an intentional delay to resolve the Very Urgent Motion of Transfer Detention of Espinosa Sr.; and
- whether the issuance of a search warrant against an inmate in a government-controlled detention facility was proper.

Ruling of the Court

After a careful review of the records, We resolve to adopt the findings and recommendation of the Investigating Officer only with respect to the administrative case against Judge Arguelles. With regard to the administrative case tiled against Judges Sabarre and Cabalona, the findings and recommendation of the Investigating Officer with regard to the administrative liability of Judges Sabarre and Cabalona must be modified.

There was no deliberate intent to delay the resolution of the Urgent Motion of Espinosa, Sr.

As correctly determined by the OCA and the Investigating Officer, there was no deliberate intent on the part of Judge Arguelles to delay the resolution of the Urgent Motion of Espinosa Sr. All actions carried out by Judge Arguelles in relation to the Urgent Motion were done with prudence and in good faith. Instead of denying outright the Urgent Motion for being insufficient in form and substance, Judge Arguelles took the pragmatic and reasonable recourse of conducting an ocular inspection and hearings in order to properly evaluate the security concerns of Espinosa, Sr. in his detention facility. In personally examining the situation on the ground, and in allowing Espinosa Sr. to substantiate his claims, Judge Arguelles acted judiciously and carefully to avoid any miscarriage of justice. The Court cannot attribute any intention to purposely delay the resolution of the Urgent Motion simply because Espinosa, Sr. was killed while in detention ten days after the Urgent Motion was submitted for resolution.

It must be emphasized that Espinosa, Sr. is not an ordinary detainee. At the time of his detention, he requested to be transferred to the police station of Albueria, Leyte, the place where he was serving as its incumbent mayor. Due to the obvious influence he wields in Albueria, Leyte, Judge Arguelles cannot be faulted for requiring an ocular inspection and for probing further the sub-provincial warden and the provincial warden responsible for securing Baybay Sub-Provincial Jail. Judge Arguelles was reasonably expected to be more circumspect in resolving the urgent motion in order to avoid giving Espinosa, Sr. any undue advantage or special treatment that could defeat the purpose of his detention.

The applicants of the subject search warrants were justified in filing their respective applications to trial courts within the judicial region where the warrants were intended to be enforced.

Section 2, Rule 126 of the Rules states:

Section 2. Court Where Application for Search Warrant Shall be Filed. - An application for search warrant shall be filed with the following:

- a) Any court within whose territorial jurisdiction a crime was committed.
- b) For compelling reasons stated in the application, any court within the judicial region where the crime was

committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.

However, if the criminal action has already been tiled, the application shall only be made in the court where the criminal action is pending.

Paragraph (b), Section 2 of Rule 126 of the Rules does not give unbridled authority to the court to issue search warrants anywhere. While the Rules allow the applicant to apply in "any court within the judicial region where the crime was committed x x x or any court within the judicial region where the warrant shall be enforced,"[77] the applicant must show that there are compelling reasons to permit it.

In this case, the applicants of the assailed search warrants explained that the personalities involved were high-value targets in illegal drug operations in the Visayas region which had extensive connections in law enforcement agencies and other branches of government that could compromise the implementation of the search warrants.[78]

The Court agrees that the extensive influence that personalities in illegal drug operations wield in the government may be considered a compelling reason for law enforcers to seek the issuance of a search warrant from a trial court located in a place different from where the purported crime was committed but within the same judicial region. The concern of the authorities who applied for the search warrant is not trivial nor made-up. It is supported by events that transpired prior to the application for the issuance of the search warrants. Two persons allegedly involved in drug operations in the Leyte were killed while they were detained on August 11, 2016 and October 28, 2016.[79] Moreover, parallel investigations initiated by other branches of the government were also being conducted at the time the applications were made in an effort to shed light on the proliferation of illegal drugs in the country. Therefore, the search warrants issued in relation to a crime allegedly committed inside the Baybay Sub Provincial Jail and the Baybay City Jail may be issued by a trial court in Basey, Samar as both courts belong to the same judicial region. Similarly, the search warrant implemented in the Albuyog Penal Colony may be issued by the trial court of Calbiga, Samar.

The issuance of a search warrant against an inmate to be implemented in a government detention facility by law enforcers not in charge of securing the facility is proper.

While the present consolidated cases involve administrative proceedings, We deem it proper to clarify the extent of the authority of trial court judges in issuing search warrants to be implemented in government- controlled facilities as this is a case of first impression. Our exhaustive discussion on this matter is crucial in determining the administrative liability of Judges Sabarre and Cabalona. It must be stressed that the issuance of a search warrant is not absolutely prohibited provided that the stringent requirements under the Rules and other issuances of the Court are observed.

In Senate Committee Report No. 46[80] prepared by the Committees on Public Order and Dangerous Drugs and Justice and Human Rights, it was stated that:

A controversial question was raised with respect to the necessity of securing a search warrant against MAYOR ESPINOSA and YAP considering that they were detainees inside the Baybay Sub-Provincial Jail, a facility under the control of the government. When it comes to the right against unreasonable search, such prohibition applies only when the person seeking to invoke its protection has exhibited a subjective expectation of privacy that society is willing to recognize as reasonable.

In this regard, US jurisprudence instructs that there is no need to secure a search warrant when the subject of the search is locked up in a prison/detention facility. The US Court has held that society is not prepared to recognize that a prisoner has any legitimate expectation of privacy in his prison cell. Accordingly, the

constitutional proscription against unreasonable searches and seizures is inapplicable in that context.[81]
(Emphasis in the original, citation omitted)

The tenor of the foregoing finding of the Senate is that search warrants are not necessary to search a jail facility even if there is an allegation of collusion among the inmates and the jail guards. There are also reports published in newspapers of senators and lawyers expressing doubt on the regularity of the issuance of the search warrants issued by Judges Sabarre and Cabalona.[82]

Our discussion is intended to allay the confusion and wrong impression of the public that judges are absolutely prohibited from issuing search warrants to be implemented in penal institutions. We do not want to give the impression that judges are absolutely prohibited from doing this. We cannot simply limit Our discussion on the administrative liability of the judges for their failure to observe OCA Circular No. 88-2016 because the more important and critical question on the authority of judges to issue search warrants in government-controlled facilities will be left unanswered. The search warrants involved in these cases are not the ordinary warrants issued by the court in relation to a criminal investigation as these are issued against incarcerated individuals to be implemented in penal institutions and there are serious allegations of connivance between jail guards and inmates. The discussion on the limited expectation of privacy is intrinsically-related with the authority of judges to issue search warrants and lays the basis for the determination of the administrative liability of the judges.

At first glance, it may appear that a search warrant is superfluous, impractical, and unnecessary in conducting a search within a government-controlled detention facility. After all, the State, through correctional officers assigned to maintain penal institutions, have custodial responsibility over inmates. Unfettered access to jail cells is necessary to carry out reasonable measures in order to fulfil the objectives of penal institutions. This is buttressed in paragraph(b), Section 4 of R.A. 7438[83] which states:

The provisions of the above Section notwithstanding, any security officer with custodial responsibility over any detainee or prisoner may undertake such reasonable measures as may be necessary to secure his safety and prevent his escape. (Emphasis supplied)

Accordingly, the BJMP has adopted specific guidelines on handling inmates to deter the smuggling of narcotics, dangerous drugs, liquors, and other contrabands in detention facilities. Section 34 of the BJMP Comprehensive Operations Manual 2015 Edition (BJMP Manual) states:

Section 34. HANDLING INMATES WITH SPECIAL NEEDS - The following guidelines shall be observed in handling inmates with special needs:

x x x x

2. Drug Users/ Dependents/ Alcoholics

- Inmates found to be drug users/ dependents/ alcoholics should be segregated from other inmates, especially during the withdrawal period;
- Inmates undergoing drug/ alcohol withdrawal must be referred to the jail psychiatrist, physician or nurse for evaluation and management;
- Appropriate measures should be taken to enable inmates to follow strictly the jail physician's advice regarding diet and other medical interventions/ treatments during the withdrawal period;
- Maintain close supervision over inmates to prevent attempts to commit suicide or self-mutilation by designating a jail personnel trained to manage such cases; and
- Conducts a regular search of the inmate's dorm and maintain constant alertness to prevent the smuggling of

narcotics, liquors and other dangerous drugs. (Emphasis and underscoring supplied)

Similarly, surprise searches on inmates and their quarters are also conducted regularly, to wit:

Section 35. CUSTODY, SECURITY AND CONTROL

x x x x

B. Each jail shall, as much as practicable, maintain the following minimum standards with regard to security of the facility:

x x x x

- Conduct surprise searches on inmates and inspection of their quarters and other areas accessible to inmates at least once a week to detect and flush out contraband;

x x x x. (Emphasis in the original, underscoring supplied)

BJMP manned detention facilities are mandated to organize an Operations Group within the Greyhound Force tasked to administer searches within any BJMP facility and preserve custody over seized contrabands. This mandate is detailed in paragraph 2, subsection B, Section 49 of the BJMP Manual which states:

SECTION 49. GREYHOUND FORCE - It aims to eliminate in all BJMP manned facilities any form of contrabands that could have adverse implications on overall administration of the facilities and to ultimately establish order in all jails, promote operational efficiency and encourage adherence to prescribed operating policies.

All regions should create a Greyhound Force whose composition shall be in accordance with BJMP Manual on Operation Greyhound and SOP on Control of Contraband and Physical Evidence. This way, surprise major greyhound operation in all jails to be spearheaded by the Regional Director or Assistant Regional Director for Operations may [be] launched anytime.

x x x x

B. OPERATIONS GROUP

1.

Security Teams - They shall ensure the security of operatives throughout the span of the operation.

a.

Perimeter Security Elements - They shall secure the perimeter of the facility.

b.

Holding Area Security Elements -They shall secure the holding area of the inmates.

2.

Contraband Search and Seizure Teams - They shall be responsible in thoroughly searing and checking the quarters of inmates and personnel for contraband and such other items that may pose hazards to the overall security of the facility.

a.

Team Supervisor - Other than the team leader and the assistant team leader, a team supervisor will be designated to directly oversee the inspection of each cell. He shall be responsible in making sure that all items

confiscated are properly documented, tagged and turned-over to the contraband custodian.

b.

Searching Elements - They shall be primarily responsible in the search and seizure of contraband and the removal of unauthorized structures inside the facility.

c.

Inmate Representative - An inmate made to witness the operation must come from the particular cell being searched. He will act as the representatives (sic) of his fellow inmates to validate the claims of ownership of the items seized.

3.

Friskers

a.

Friskers of Personnel - They shall have all operatives designated to frisk inmates and cell searchers frisked before the conduct of the search and seizure operations. They have to make sure those designated friskers of inmates and cell searchers do not bring any of their personal belongings with them in the conduct of their function to preclude malice that these possessions were ill-gotten; hence, they have to have their personal belongings turned-over to their designated assistant team leader for safekeeping. They will likewise ensure that personnel directly handling contraband do not furtively take any of the items they have confiscated.

b.

Friskers of inmates - They shall have all inmates lined up and frisked before sending them to the holding area. Any contraband found to have been concealed by the inmate will be confiscated and turned over to the recorder for proper documentation.

c.

Strip Searching-in-Charge - He shall primarily be responsible, when deemed necessary, to have inmates stripped in search for contraband. It will likewise be his primary responsibility to coordinate with the legal services group in executing legal procedures [so] as not to infringe the rights of the inmate being subjected to strip search. In no manner will the person supervising the strip search be allowed to touch his subject in any part of his body during the searching process.

4.

Contraband Custodian - He shall be primarily responsible in taking custody of all confiscated contraband before these are turned-over to the jail warden.

a.

Contraband Inventory Control-in-Charge - He shall be responsible in maintaining a theoretical and an actual inventory account of all confiscated contraband.

5.

Contraband Recorder - He shall be responsible in the on-site recording of all contraband confiscated.

a.

Facility Representative - He shall act as the representative of the jail warden of the facility inspected. He shall maintain a separate record of all contraband confiscated to be reconciled with the theoretical inventory report

being maintained by the contraband recorder. In the absence of the jail warden, he shall take part, in a representative capacity[,] in the validation of inventory balances during the turnover of custody of all contraband to the former.

b.

Contraband Sorters - They shall take primary responsibility in the sorting, labelling and (sic) confiscated contraband. (Emphasis in the original)

However, it must be clarified that the searches contemplated in the relevant paragraphs of the BJMP Manual cited above refer only to those conducted by members of the BJMP who are in-charge of the subject detention facility. The cited provisions cannot be applied to the search conducted by the CIDG - Region 8 in the Albuyog Penal Colony, Baybay Sub Provincial Jail, and Baybay City Jail as these were carried out not by correctional officers administering the detention facilities but by law enforcers who do not have custodial responsibility over the subject inmates. These provisions do not confer non-correctional officers who are not supervising detention facilities carte blanche to search inmates' quarters or jail cells without complying with the relevant provisions on searches and seizures in the Rules.

In the case of *In the matter of the petition for Habeas Corpus of Capt. Alejano v. Gen. Cabuay*[84] the Court upheld the power of the detention officer to open and read the non-confidential letters of detainees and considered it as a reasonable measure necessary to secure the safety of detainees and prevent their escape.[85] The Court examined American jurisprudence, including the case of *Hudson v. Palmer*,[86] where the US Supreme Court upheld the "shakedown" search conducted by Ted S. Hudson, a correctional officer at Bland Correctional Center in Virginia, of the locker and cell occupied by Russell Thomas Palmer, Jr., an inmate. It was explained that:

While persons imprisoned for crime enjoy many protections of the Constitution, it is also clear that imprisonment carries with it the circumscription or loss of many significant rights. These constraints on inmates, and in some cases the complete withdrawal of certain rights, are "justified by the considerations underlying our penal system." The curtailment of certain rights is necessary, as a practical matter, to accommodate a myriad of "institutional needs and objectives" of prison facilities, chief among which is internal security. Of course, these restrictions or retractions also serve, incidentally, as reminders that, under our system of justice, deterrence and retribution are factors in addition to correction.[87] (Citations omitted; emphasis supplied)

The US Supreme Court determined that due to the nature of a detention facility, a prison "shares none of the attributes of privacy of a home, an automobile, an office, or a hotel room." [88] For the US Supreme Court, "[a] right of privacy in traditional Fourth Amendment terms is fundamentally incompatible with the close and continual surveillance of inmates and their cells." [89] The US Supreme Court concluded that:

x x x [T]he prisoner's expectation of privacy always yield to what must be considered the paramount interest in institutional security. We believe that it is accepted by our society that "[l]oss of freedom of choice and privacy are inherent incidents of confinement." [90] (Emphasis supplied)

It is clear that a prison inmate's right against unreasonable search and seizure and right to privacy, cannot be equated or likened to the rights and personal liberties enjoyed by individuals outside penal institutions. To permit prisoners to enjoy the same level of expectation of privacy will defeat the inherent objectives of penal institutions. Extending to prison inmates the same standard of liberties enjoyed by private individuals is incompatible with penal institutions' duty to stop the proliferation of illegal activities within the facility. The loss of privacy is a natural consequence of incarceration. Nevertheless, it must be emphasized that this limitation should only be made applicable to searches conducted by correctional officers or other law enforcers in charge of securing the subject detention facility.

Although personal rights and liberties are restricted as a consequence of an individual's arrest and detention, inmates are not totally stripped of their constitutional rights, particularly Section 2, Article III of the Constitution which states:

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.

Legitimate government interest in the preservation of internal order and security is a compelling ground to permit warrantless inspections of jail cells. However, this exception pertains only to searches incidental in adopting of reasonable measures based on the needs and exigencies of penal institutions. Where the purpose of the search goes beyond maintaining internal order and security in a detention facility, and the search is used as a tool to gather evidence against an inmate in order to prosecute him, compliance with the provisions in Rule 126 of the Rules must be made.

In *South Dakota v. Opperman*,^[91] the US Supreme Court held that a warrantless search made on the glove compartment of Opperman's car that was under government custody for multiple parking violations was not an unreasonable intrusion in violation of the Fourth Amendment. It was held that the expectation of privacy in one's automobile is significantly less than that relating to one's home or office. When vehicles are impounded, police routinely follow caretaking procedures by securing and inventorying the cars' contents. This procedure was followed in Opperman's vehicle, and there is no suggestion of any investigatory motive on the part of the police.^[92]

While the case of *South Dakota v. Opperman*^[93] does not involve the same factual circumstances as in the present case, it is worthy to point out the analysis of the Court regarding searches conducted as a protective measure and those conducted as an incident to criminal investigations which We find relevant in Our discussion. The Court explained that:

In analyzing the issue of reasonableness *vel non*, the courts have not sought to determine whether a protective inventory was justified by "probable cause." The standard of probable cause is peculiarly related to criminal investigations, not routine, noncriminal procedures. The probable cause approach is unhelpful when analysis centers upon the reasonableness of routine administrative caretaking functions, particularly when no claim is made that the protective procedures are a subterfuge for criminal investigations. In view of the noncriminal context of inventory searches, and the inapplicability in such a setting of the requirement of probable cause, courts have held -- and quite correctly -- that search warrants are not required, linked as the warrant requirement textually is to the probable cause concept. We have frequently observed that the warrant requirement assures that legal inferences and conclusions as to probable cause will be drawn by a neutral magistrate unrelated to the criminal investigative enforcement process. With respect to noninvestigative police inventories of automobiles lawfully within governmental custody, however, the policies underlying the warrant requirement, to which MR. JUSTICE POWELL refers, are inapplicable.^[94] Citations omitted; emphasis supplied)

Guided by the foregoing discussion, it is clear that there are marked differences between a search in relation to a criminal investigation and a search that is meant as a protective measure in prison management.

A comprehensive analysis of searches that may be conducted in a penal institution by correctional officers and those that may be implemented by law enforcers other than correctional officers in charge of the detention facility reveal their manifest differences in terms of purpose, frequency, and scope.

In a search conducted by jail guards, the search is routinary and is intended to preserve internal order and security in the entire detention facility. A search conducted as a protective measure in prison management is noncriminal in nature and does not require a finding of probable cause.

Meanwhile, a search carried out as an incident to a criminal investigation and intended to uncover evidence of a crime may be narrower in scope and may be limited only to a specific jail cell and articles specified in the warrant, as in the case. As a rule, a warrant is still necessary to execute a search in a controlled detention facility in relation to a criminal investigation. Strict compliance with governing laws, rules, and procedures on the issuance of search warrants and implementation of the search in a controlled detention facility is required to carry out a valid search.

The OCA and the Investigating Officer erroneously applied the ruling of the Court in *Alejano*[95] and *Hudson*[96] in justifying their respective recommendation to hold Judge Sabarre and Judge Cabalona administratively liable. While the limited right to privacy of detainees was discussed in *Alejano* and in *Hudson*, this discussion is not applicable to a situation where the search is incident to a criminal investigation and the search is sought to be implemented by law enforcers who do not have supervision over the controlled detention facility, as in the case.

A cursory reading of *Hudson* would reveal that the person who conducted the search on Palmer's locker and cell is a correctional officer of the detention facility where he was incarcerated. In the present case, members of CIDG – Region 8 applied for the search warrants Judge Cabalona and Judge Sabarre issued.[97] Though the search warrants were intended to be implemented in a detention, there is nothing irregular in the issuance of the warrants applied for by non-correctional officers. The members of the CIDG – Region 8 had no supervision over the Baybay Sub Provincial Jail, Baybay City Jail, and Albuyog Penal Colony and the purpose of their search is to gather evidence against the inmates. They cannot simply enter the detention facility, an alleged haven for illegal drugs without complying with Rule 126 of the Rules.

The glaring challenge with the proposition that only prior coordination with correctional officers of the facility is needed to conduct a search on a particular jail cell is that these correctional officers are the very same people who are accused of supporting the illegal drug activities of the inmates. Although it appears on its face that requiring only internal arrangement or prior coordination to validly search a jail cell is more convenient and practical, it actually makes it almost impossible for the government to suppress the proliferation of drugs, weapons and other contrabands in a detention facility where unscrupulous correctional officers are accused of protecting illegal drug activities. PCI Laraga raised this problem when he was propounded searching questions by Judge Sabarre for the search warrants issued against *Espinosa Sr.* (Search Warrant No. 016-11-20) and *Yap* (Search Warrant No. 2016-11-19), the relevant portion of which is reproduced below:

Q.

Why are you applying a search warrant when this can be done internally, you just coordinate with the Chief of the Sub-Provincial Jail of Baybay, Leyte instead of applying for a search warrant.

A.

Because there is connivance with the Jailguards [sic].

Q.

Did you really exert effort to coordinate with the Chief of the Sub-Provincial Jail of Baybay, Leyte?

A.

Yes, but he refused to cooperate.

Q.

Why not make representation with the Provincial Governor of Leyte since the Sub-Provincial Jail of Baybay is under his supervision?

A.

We cannot do that your Honor because he is in the payola list of Mayor Espinosa.

Q.

There are Courts near Baybay RTC, why did you apply here?

A.

We decided to apply before this Court [sic] not to compromise our operation considering that the subject according to our witness is still a drug lord.

Q.

How sure are you that he is still a drug lord now

A.

From the mouth of our subject he became a drug lord from the time he became the Vice Mayor of Albueria Leyte up to the present.

Q.

There are plenty of RTC you have RTC Ormoc two Branches, RTC Carigara has two Branches and RTC Hilongos but why in RTC Basey?

A.

Because we trust that our application will not leak in anyway considering also that there are no personnel in this Court who are living near the area which are under the control of Espinosa. In Ormoc the Mayor was allegedly involved and the affidavit of subject also mentioned the congressman of the third District, so we decided to apply here in order to ensure no leakage.

Q.

What about RTC Tacloban, why not in Tacloban?

A.

Because of so many people who can see or hear us in Bulwagan, there are so many talks.

Q.

Did you coordinate in the Baybay Sub-Provincial jail before filing this application for search warrants?

A.

We have coordinated with the warden but he refused to cooperate.[98] (Emphasis supplied)

When Police Superintendent Santi Noel G. Magtira and Police Senior Inspector J-Rale Oco Paalisbo were also probed with regard to their respective search warrant applications, they also raised the same concerns PCI Laraga

raised. They feared that a leakage of information about the intended searches could compromise their operations and that they had reason to believe that there is collusion between their respective targets and the jail guards.[99]

To allow an indiscriminate application of the ruling in *Hudson*, without taking into account the realities on the ground, and its evident factual differences from the present case, would significantly hinder authorities from pursuing corrupt individuals responsible for the proliferation of illegal drug trade within detention facilities.

Requiring members of the CIDG - Region 8, who do not have jurisdiction over the Baybay Sub Provincial Jail, Baybay City Jail, and Albuayog Penal Colony, to make a prior coordination with the detention facility administrators could compromise their operation and render their efforts futile. Prior coordination will only give the 'high value targets' and detention officers allegedly in cahoots with them ample time to prepare for the search and hide their contraband. No recourse is left for non-correctional officers in the event that the correctional officers refuse to cooperate and accede to their request. This is precisely the conflict the members of CIDG - Region 8 seek to resolve in applying for the subject search warrants. In asking for the trial court's assistance to implement the search, crooked correctional officers will now be compelled to cooperate in implementing the search and there will be no opportunity to conceal illegal activities inside detention facilities.

The Court is not unmindful of the present condition of the country's detention facilities. Personalities involved in illegal drug trade have now become more cunning and sophisticated in their operations. They now conspire with corrupt law enforcers and capitalize on the aid of technology to continue their illegal drug trade business even while under the custody of the State. We cannot allow penal institutions to become cesspools of illegal drug trade and other unlawful activities that defeat the very essence for these facilities: to protect society from crimes; and to rehabilitate offenders.

The search warrants Judges Sabarre and Cabalona issued failed to comply with OCA Circular No. 88-2016.

It must be pointed out that the search warrants issued by Judge Sabarre and Judge Cabalona were not in compliance with OCA Circular No. 88-2016, the pertinent portion of which states:

Paragraph 5, OCA Circular No. 40-2016, provides, among others, that "[t]he heads of the National Bureau of Investigation (NBI), the Philippine National Police (PNP), the Anti-Crime Task Force (ACTAF) and the Philippine Drug Enforcement Agency (PDEA) shall personally endorse (or authorize) all applications for search warrants involving heinous crimes, illegal gambling, illegal possession of firearms and ammunitions as well as violations of the Comprehensive Dangerous Drugs Act of 2002, the Intellectual Property Code, the Anti-Money Laundering Act of 2001, the Tariff and Customs Code, as amended, and other relevant laws that may hereafter be enacted by Congress, and included by the Supreme Court"

In a subsequent letter dated 30 March 2016 addressed to the Court Administrator, Police Director Ricardo C. Marquez, PNP Chief, has delegated his authority to endorse or authorize all applications for search warrants to the following key officers of the PNP in their respective territorial jurisdictions:

1. Deputy Chief for Operations;
2. Director for Investigation and Detective Management;
3. Directors for Integrated Police Operations;
4. Regional Directors;
5. Directors, National Support Units;
6. Regional Chiefs, National Support Units;
7. Provincial Directors;
8. Provincial Officers, National Support Units; and,
9. Chiefs of Police

Accordingly, all applications for search warrants enforceable within the territorial jurisdiction of the issuing

court endorsed or authorized by the above-named officers of the PNP shall be sufficient compliance with OCA Circular No. 40-2016.[100] (Emphasis and italics in the original)

A perusal of the records shows that the applicant police officers failed to secure the endorsement of any of the enumerated key officers of the PNP in any of the search warrants they secured from Judges Sabarre and Cabalona. The Search Warrants against Espinosa, Sr. (Search Warrant No. 016-11-20) and Yap (Search Warrant No. 2016-11-19) were filed by PCI Laraga, Team Leader of the NLCIDG - Region 8. The search warrant against Alvarez (Search Warrant No. 2016-074) was applied for by Police Superintendent Santi Noel G. Magtira, Deputy Chief of the CIDG - Region 8. The search warrant (Search Warrant No. 2016-089) against Balagbis was secured by Police Senior Inspector J-Rale O. Paalisbo, Team Leader of the Regional Anti-Illegal Drugs Special Operations Task Force - Region 8. The positions held by the applicants of the search warrants are not among the positions authorized under OCA Circular No. 88-2016 to issue an endorsement for search warrants issued in relation to violations of the Comprehensive Dangerous Drugs Act of 2002. There is nothing in the records that would show that endorsement from the proper key officers of CIDG - Region 8 was secured in any of the applications for search warrant in compliance with OCA Circular No. 88-2016.

Considering the foregoing, Judges Sabarre and Cabalona should have required the applicants to comply with OCA Circular No. 88-2016 before issuing the subject search warrants implemented inside the Abuyog Penal Colony, the Baybay Sub Provincial Jail, and the Baybay City Jail.

Sections 3 and 4, Canon 6 of the Code of Judicial Conduct provide:

CANON 6

Competence and Diligence

Competence and diligence are prerequisites to the due performance of judicial office.

x x x x

Section 3. Judges shall take reasonable steps to maintain and enhance their knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.

Section 4. Judges shall keep themselves informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.[101] (Underscoring supplied).

Judges, like lawyers, are mandated to constantly keep themselves abreast of developments in the field of law. As officers of the court, they are expected to strictly adhere to any relevant statute, decision, or court issuance that govern applications for search warrants involving violations of the Comprehensive Dangerous Drugs Act of 2002. Accordingly, Judges Sabarre and Cabalona are guilty of violation of Supreme Court rules, directives, and circulars, an offense classified under Section 9, Rule 140 as a less serious charge.

Section 11 of Rule 140 provides for the following sanctions:

Section 11. Sanctions. -

x x x x

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or
2. A fine of more than P10,000.00 but not exceeding P20,000.00.

C. If the respondent is guilty of a light charge, any of the following sanctions shall be imposed:

1. A fine of not less than P1,000.00 but not exceeding P10,000.00 and/or
2. Censure;
3. Reprimand;
4. Admonition with warning. (Emphasis supplied)

Taking into consideration Section 11, Rule 140 of the Rules, and the fact that this is the first instance Judges Sabarre and Cabalona have been held administratively liable for violation of Supreme Court rules, directives, and circulars, the Court is imposing a fine in the amount of P20,000.00 each with a stern warning that a repetition of the same or similar act shall be dealt with more severely is retained. The penalty imposed is reasonable and consistent with Section 11, Rule 140.

WHEREFORE, in view of the foregoing, the Court MODIFIES the recommendation of the Investigating Officer as follows:

- The instant administrative case against Judge Carlos O. Arguelles of the Regional Trial Court, Baybay, Leyte, Branch 14, be DISMISSED.
- Judge Tarcelo A. Sabarre, Jr. of the Regional Trial Court of Basey, Samar, Branch 30 and Judge Janet M. Cabalona of the Regional Trial Court, Calbiga, Samar, Branch 33, be FINED in the amount of P20,000.00 each, with a STERN WARNING that a repetition of the same or similar act shall be dealt with more severely for violation of Supreme Court rules, directives, and circulars.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, Gaerlan, and Rosario, JJ., concur.

Caguioa, J., see concurring and dissenting opinion.

Leonen, J., join the opinion of Justice Caguioa.

[1] Rollo (A.M. No. RTJ-17-2494, Vol. I), pp. 417-422; rollo (A.M. No. RTJ-17-2494, Vol. III), pp. 34-35; rollo (A.M. No. RTJ-19-2557, Vol. I), pp. 153-154.

[2] Section 28 of R.A. 10591.

Section 28. Unlawful Acquisition, or Possession of Firearms and Ammunition.

[3] Section 11 of R.A. No. 9165.

Section 11. Possession of Dangerous Drugs.

[4] Rollo (A.M. No. RTJ-19-2557, Vol. I), pp. 117-118.

[5] Id. at 118.

[6] Id. at 136-140.

[7] TSN dated October 19, 2016, pp. 31-32; rollo (A.M. No. RTJ-17-2494, Vol. I), pp. 241-242.

[8] TSN dated October 26, 2016, pp. 14-15; rollo (A.M. No. RTJ-17-2494, Vol. I), pp. 273-274.

[9] Id. at 287; rollo (A.M. No. RTJ-17-2494, Vol. I), p. 287.

[10] Id.

- [11] Rollo (A.M. No. RTJ-17-2494, Vol. I), pp. 162-164.
- [12] Id. at 163-164.
- [13] Penned by Executive Judge Carlos C. Arguelles; id. at 159-160.
- [14] Id. at 23-24, 61-62.
- [15] Id.
- [16] Id. at 23-24.
- [17] Comprehensive Firearms and Ammunition Regulation Act.
- [18] Rollo (A.M. No. RTJ-17-2494, Vol. I), p. 23.
- [19] Id. at 61-62.
- [20] Comprehensive Dangerous Drugs Act of 2002.
- [21] Rollo (A.M. No. RTJ-17-2494, Vol. I), p. 61.
- [22] Id. at 33-34.
- [23] Id. at 69.
- [24] Id. at 35.
- [25] Id.
- [26] Id. at 72.
- [27] Id.
- [28] Rollo (A.M. No. RTJ-17-2494, Vol. II), pp. 624-625.
- [29] Rollo (A.M. No. RTJ-17-2494, Vol. I), p. 317.
- [30] Id. at 318.
- [31] Id. at 317.
- [32] Id. at 92-93.
- [33] Sometimes referred to as "Egay" in the records.
- [34] Rollo (A.M. No. RTJ-17-2494, Vol. I), p. 318.
- [35] Id. at 334.
- [36] Id. at 94-94A.
- [37] Id. at 372.
- [38] Id. at 318.
- [39] Id. at 612-615.
- [40] Rollo (AM. No. RTJ-19-2557), pp. 18-19, 20-21, 49-51; TSN dated March 21, 2017, pp. 17-19.
- [41] Rollo (A.M. No. RTJ-17-2494, Vol. II), pp. 628-650.

- [42] Id. at 650.
- [43] Id. at 645.
- [44] Id. at 647-648.
- [45] Id. at 650.
- [46] Id. at 651-658.
- [47] Id. at 657-658.
- [48] Rollo (A.M. No. RTJ-17-2494, Vol. I), pp. 600-618.
- [49] Id. at 612.
- [50] Id. at 565-599.
- [51] Id. at 596.
- [52] Rollo (A.M. No. RTJ-17-2494, Vol. III), pp. 3-33.
- [53] Id. at 33.
- [54] Id. at 17-18.
- [55] Id.
- [56] 306 Phil. 519 (1994).
- [57] Id. at 538.
- [58] Rollo (A.M. No. RTJ-17-2494, Vol. III), p. 18.
- [59] Id. at 21-24.
- [60] Id. at 24-25.
- [61] Id. at 4-5.
- [62] Id. at 3.
- [63] Id. at 4.
- [64] Rollo (A. M. No. RTJ-19-2557), pp. 73-74.
- [65] Id. at 73.
- [66] Rollo (A.M. No. RTJ-17-2494, Vol. II), pp. 668-676.
- [67] Id. at 669-671.
- [68] Id. at 697-703.
- [69] 505 Phil. 298 (2005).
- [70] Rollo (A.M. No. RTJ-17-2494, Vol. IV), pp 698-699; rollo (A.M. No. RTJ-17-2494, Vol. IV), p. 140.
- [71] Rollo (A.M. No. RTJ-17-2494, Vol. II), pp. 701-702; rollo (A.M. No. RTJ-17-2494, Vol. IV), pp. 140-141.
- [72] Temporary rollo (A.M. No. RTJ-19-2557), pp. 1-2.

[73] Rollo (A.M. No. RTJ-17-2494, Vol. I), pp. 486-492.

[74] Supra note 69.

[75] Rollo (A.M. No. RTJ-17-2494, Vol. I), p. 487.

[76] Id. at 489.

[77] Section 2(b), Rule 126 of the Rules of Court.

[78] TSN dated November 4, 2016, pp. 2-4; rollo (A.M. No. RTJ-17-2494, Vol. I), pp. 44-46.

[79] Rollo (A.M. No. RTJ-17-2494, Vol. I), pp. 318, 372.

[80] Id. at 565-599.

[81] Id. at 576.

[82] Quismundo, Tarra. SC sanction sought on judge for search warrant on Mayor Espinosa, accessed on December 2, 2016 at <<https://newsinfo.inquirer.net/849955/sc-sanction-sought-on-judge-for-search-warrant-on-mayor-espinosa>>; Del Mar, George. A search warrant on a person in jail?, accessed on November 25, 2016 at <<https://opinion.inquirer.net/99500/search-warrant-person-jail>>.

[83] Rights of Persons Arrested, Detained or Under Custodial Investigation.

[84] Supra note 69

[85] Supra note 69 at 311-312.

[86] 468 U.S. 517 (1984)

[87] 468 U.S. 524 (1984)

[88] 468 U.S. 527

[89] Id.

[90] 468 U.S. 528

[91] 428 U.S. 364 (1976).

[92] Id.

[93] Id.

[94] Id.

[95] Supra note 69.

[96] Supra note 86

[97] Application for Search Warrant No. 2016-11-20, rollo (A.M. No. RTJ-17-2494 [Volume 1]), pp. 23-24; Application for Search Warrant No. 2016-11-19; rollo (A.M. No. RTJ-17-2494), pp. 61-62.

[98] TSN dated November 4, 2016, pp. 2-4, rollo (A.M. No. RTJ-17-2494, Vol. I), pp. 44-46.

[99] TSN dated August 9, 2016, pp. 2-3, rollo (A.M. No. RTJ-17-2494, Vol. I), pp. 342-343, 387-388; TSN dated October 26, 2016, pp. 2-3.

[100] Delegation by the Chief of the Philippine National Police Authority to Personally Endorse or Authorize Applications for Search Warrants to Key Officers, OCA Circular No. 88-16, April 4, 2016.

[101] New Code of Judicial Conduct for the Philippine Judiciary, A.M. No. 03-05-01-SC, April 27, 2004.

CONCURRING AND DISSENTING OPINION

CAGUIOA, J.:

I concur with the ponencia's conclusions in (1) affirming the finding of the Office of the Court Administrator (OCA) that respondent Judge Carlos o. Arguelles (Judge Arguelles) did not deliberately delay the resolution of Rolando Espinosa, Sr.'s (Espinosa) motion to transfer his place of detention,[1] and (2) that respondents Judge Janet M. Cabalona (Judge Cabalona) and Judge Tarcelo A. Sabarre, Jr. (Judge Sabarre) violated OCA Circular No. 88-2016,[2] in relation to OCA Circular No. 40-2016,[3] when they issued search warrants even without the endorsement of the required officers from the Philippine National Police (PNP).[4]

I also agree, for the reasons stated in this Concurring and Dissenting Opinion, with the ponencia's holding that a trial judge has the jurisdiction and obligation to issue search warrants even when the subject thereof are incarcerated individuals.

That said, I maintain my view that in assessing the administrative liability of the respondent judges, the Court should likewise address the question of whether or not the said respondents observed, or failed to observe, the relevant rules on the issuance of a search warrant as herein explained.

In particular, I find that, based on the records:

(1)

Judge Sabarre did not comply with Section 5, Rule 126 of the Rules of Court when he asked perfunctory and superficial questions to the applicant and his witnesses to determine the presence of probable cause to issue the search warrants; and

(2)

Judge Sabarre and Judge Cabalona violated Section 2, Rule 126 of the Rules of Court when they issued search warrants outside the territorial jurisdiction of their respective courts despite the unsubstantiated allegations of the applicants (i.e., that the persons subject of the search possessed undue influence over the Regional Trial Court (RTC) of Baybay, Leyte).

Overview

Judge Sabarre is the Presiding Judge of Branch 30 of the Basey, Samar RTC. He was investigated for issuing a search warrant against Espinosa for a caliber .45 pistol, and another search warrant against Espinosa's co-accused, Raul Yap (Yap), for an undetermined quantity of shabu. The search warrants were directed at the holding cells of Espinosa and Yap, who were respectively detained at Cell Nos. 1 and 2 of the Sub-Provincial Jail of Baybay, Leyte. Law enforcement officers who implemented the search warrants alleged that Espinosa and Yap fired upon the raiding team, resulting in a firefight that eventually lead to their deaths.[5]

Judge Cabalona, on the other hand, is the Presiding Judge of Branch 33 of the Calbiga, Samar, RTC. She was

investigated after an anonymous complaint was filed against her for likewise issuing search warrants against an inmate and a detainee. In particular, she issued a search warrant against Edgar Allan Alvarez (Alvarez), an inmate serving a final judgment of imprisonment at the Abuyog Penal Colony, and Fernando Balagbis (Balagbis), a detainee incarcerated in the Baybay City Jail. Alvarez and Balagbis, similar to Espinosa and Yap, died during the course of the implementation of the search warrants after they allegedly fired upon the members of the implementing team.[6]

After investigation, the OCA found that the issuance of search warrants on jail facilities of the government can be considered gross ignorance of the law for which Judge Sabarre and Judge Cabalona may be held liable. According to the OCA, the police officers should first exhaust all administrative remedies by coursing the request through the Secretaries of the Department of Interior and Local Government (DILG) and the Department of Justice (DOJ).[7]

The Investigating Officer, Court of Appeals Associate Justice Gabriel T. Ingles, held the same view. He found that the respondent judges had no reason to issue the subject search warrants because there is no legitimate expectation of privacy in the detention cells.[8]

The ponencia holds otherwise, ruling that a search warrant is necessary if the search of a penal institution is performed by law enforcers other than correctional officers. Citing some decisions of the Supreme Court of the United States (SCOTUS), the ponencia holds that it was not improper for respondents Judge Sabarre and Judge Cabalona to have issued the subject search warrants.[9]

I.

I am not aware of any Philippine jurisprudence or case law that has directly settled the matter of the propriety and legality of issuing a search warrant against an inmate or detainee in a penal facility, for purposes of obtaining evidence for the commission of another crime. The Court has only addressed the right to privacy of inmates or detainees in contexts other than the situation presented to the respondent judges.

In *Alejano v. Cabuay*[10] (*Alejano*), one of the issues raised in the petition is whether the officials of the detention center violated the detainees' right to privacy of communication when they opened and read the detainees' folded personal letters. The Court upheld the validity of inspecting the letters as long as the letters do not contain confidential communication between the detainees and their lawyers. The inspection was deemed a valid measure that serves the same purpose as the inspection for the detection of contraband.[11] In light of this, the Court ruled that the detainees, as well as convicted prisoners, have a reduced expectation of privacy while incarcerated.[12]

In *Boratong v. De Lima*[13] (*Boratong*), the issue concerned the application for the writ of habeas data filed by the relatives of inmates from the National Bilibid Prison (NBP) in Muntinlupa seeking to compel the DOJ to produce documents justifying the transfer of several inmates from the NBP in Muntinlupa to the NBP Extension Facility in Manila.[14] While the petition was mooted by the subsequent return of the inmates to the NBP, the Court nonetheless stated that the petition for the issuance of the writ of habeas data has no relation to their right to privacy, "which has since been restricted by virtue of [their] conviction." [15] The Court further stated that there is no reasonable expectation of privacy "when one is being monitored and guarded at all hours of the day." [16]

The Court's ruling in *Alejano*, and, to a certain extent, *Boratong*, involved the examination of several SCOTUS cases that passed upon the issue of a prisoner's expectation of privacy. Foremost is *Hudson v. Palmer*[17] (*Hudson*), which was also cited by the ponencia, where the SCOTUS adopted a bright-line rule that the guarantee against unreasonable searches and seizures does not apply within the confines of the prison cell.[18] This is similar to the ruling in *Lanza v. New York*[19] (*Lanza*), a case decided before *Hudson*, where the SCOTUS ruled

that a public jail cannot be equated to one's house, in which one can claim the immunity against unreasonable intrusions of the State.[20] Despite the rulings in Lanza and Hudson, there are still varying interpretations by the U.S. courts on the right to privacy of prisoners.[21]

In contrast with the bright-line rule in Hudson, there is no such basic or settled rule in our jurisdiction that detainees or inmates are absolutely deprived of their right to privacy while incarcerated, such that all State intrusions in their holding cells or their persons are valid. The Court's rulings in Alejano and Boratong only acknowledged that the privacy rights of an incarcerated individual are limited.[22] It should also be emphasized anew that the Court's pronouncements in Alejano and Boratong were decided based on a factual context different from the case at bar.

That incarcerated individuals have only "limited" or "circumscribed" rights does not necessarily sanction the targeted search of their prison cell for purposes of uncovering evidence to aid in the prosecution of a crime. Based on this premise, I agree with the ponencia that the fact of detention or imprisonment does not necessarily dispense with the requirement of a search warrant.[23]

In my view, the necessity for a search warrant is hinged on the determination of a detainee or inmate's reasonable expectation of privacy, which should be balanced against a competing State interest that depends on the circumstances of each case. The Court in Alejano examined the detainees' right to privacy therein using this framework, eventually arriving at the conclusion that the inspection of their letters was justified by the need to maintain the security of the penal facility:

In assessing the regulations imposed in detention and prison facilities that are alleged to infringe on the constitutional rights of the detainees and convicted prisoners, U.S. courts "balance the guarantees of the Constitution with the legitimate concerns of prison administrators." The deferential review of such regulations stems from the principle that:

[s]ubjecting the day-to-day judgments of prison officials to an inflexible strict scrutiny analysis would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration.

The detainees in the present case are junior officers accused of leading 300 soldiers in committing coup d'etat, a crime punishable with reclusion perpetua. The junior officers are not ordinary detainees but visible leaders of the Oakwood incident involving an armed takeover of a civilian building in the heart of the financial district of the country. As members of the military armed forces, the detainees are subject to the Articles of War.

Moreover, the junior officers are detained with other high-risk persons from the Abu Sayyaf and the NPA. Thus, we must give the military custodian a wider range of deference in implementing the regulations in the ISAFP Detention Center. The military custodian is in a better position to know the security risks involved in detaining the junior officers, together with the suspected Abu Sayyaf and NPA members. Since the appropriate regulations depend largely on the security risks involved, we should defer to the regulations adopted by the military custodian in the absence of patent arbitrariness.

The ruling in this case, however, does not foreclose the right of detainees and convicted prisoners from petitioning the courts for the redress of grievances. Regulations and conditions in detention and prison facilities that violate the Constitutional rights of the detainees and prisoners will be reviewed by the courts on a case-by-case basis. The courts could afford injunctive relief or damages to the detainees and prisoners subjected to arbitrary and inhumane conditions. However, habeas corpus is not the proper mode to question conditions of confinement. The writ of habeas corpus will only lie if what is challenged is the fact or duration of confinement.[24] (Emphasis supplied)

The Court has often adhered to this approach when resolving issues that concern the State's encroachment on a person's privacy rights.[25] In the case of Espinosa, Yap, Alvarez, and Balagbis, it would appear that the compelling interest of the State is to obtain evidence for the crimes committed within their respective penal facilities. This is apparent from the relevant applications for a search warrant prepared by the Criminal Investigation and Detection Group (CIDG) officers.[26] The Senate Committee Report of the Committees on Public Order and Dangerous Drugs, and Justice and Human Rights likewise revealed that the briefing for the implementation of the search warrants against Espinosa and Yap were pursuant to Oplan Big Bertha (Campaign against Illegal Drugs) and Oplan Paglalansag Omega (Campaign against Illegal Possession of Loose Firearms).[27]

From the foregoing circumstances, a warrant was indeed necessary for the search to be valid. The search was evidently not for a legitimate interest in institutional security. Neither was the search random nor suspicionless, or applicable to all prison inmates or detainees as when there are routine inspections for contraband.[28] The clear purpose of the search was to further a criminal investigation and the law enforcement objectives of the State, and ultimately, to obtain evidence for the prosecution of Espinosa, Yap, Alvarez, and Balagbis for crimes in addition to the offense for which they were incarcerated. The ostensible objective of the search, therefore, determines the necessity for a warrant.[29]

Having established the parameters of issuing a search warrant against incarcerated individuals, I respectfully disagree with the ponencia's ruling that: "[r]equiring members of the CIDG-Region 8, who do not have jurisdiction over the [the prison facility] to make a prior coordination with the detention facility administrators could compromise their operation and render their efforts futile." [30] The implementation of a search warrant is an entirely different issue from the propriety of the respondent judges' conduct in taking cognizance of the applications, and thereafter, issuing the search warrants. Regardless of whether the search was made solely by police officers or in coordination with penal facility administrators, the requirement of a warrant stems from the limited privacy rights of detainees and inmates. At any rate, there are not enough facts in the records by which the Court can state this with certainty — indeed, by doing so, the Court overly extends itself to a posture of already vindicating the involved CIDG officers — a matter that is clearly beyond the confines of the present administrative proceedings.

In all, the present cases involve the administrative liability of respondents Judge Cabalona and Judge Sabarre for gross ignorance of the law. I concur with the ponencia that they should not be held liable for taking cognizance of the applications for the search warrants. By doing so, they were merely observing the constitutional guarantee against unreasonable searches and seizure. That being said, I respectfully submit that corollary to the determination of whether the issuance of a search warrant is proper, the Court should also determine whether the respondent judges strictly observed the requirements for the warrants they issued. The Court should also determine whether there are badges of bad faith, corruption, or ill-motive on the part of the respondent judges in issuing the search warrants. These are the elements of the offense of gross ignorance of the law for which the respondent judges must answer.[31]

II.

Accordingly, if the Court now is to hold that respondents Judge Sabarre and Judge Cabalona can, or cannot, be held liable for gross ignorance of the law — it should not solely be for the reason that a search warrant can still properly issue if the search is to be implemented by non-correctional officers; it should likewise consider the respondent judges' compliance with the basic requirements for the issuance of a search warrant.

Section 5, Rule 126 of the Rules of Court provides that before issuing a warrant, the judge must "personally

examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted." In *Balayon, Jr. v. Dinopol*,^[32] the Court explained that the judge's examination must not be merely routinary, but should elicit the required information necessary to determine the existence or non-existence of probable cause.

In the case of Judge Sabarre, the application for the search warrants on the holding cells of Espinosa and Yap was signed by Police Chief Inspector Leo D. Laraga (PCI Laraga), the Team Leader of the Northern Leyte CIDG-8. Attached to his application are the depositions of two witnesses, PO3 Norman T. Abellanos (PO3 Abellanos), and their confidential informant, Paul G. Olendan (Olandan).^[33]

Olandan stated that he was a former inmate in Tacloban City Jail who was directed by a certain Jojo to visit Espinosa and Yap in Baybay Sub-Provincial Jail. While he was there, he observed several people repacking shabu in Yap's cell, which he identified as Cell No. 2. Yap allegedly asked him if he could be trusted to distribute the shabu, to which he responded by nodding yes. He was then told to proceed to Cell No. 1, Espinosa's cell, where he allegedly saw a .45 caliber gun placed on the pillow of Espinosa.^[34] PCI Laraga claimed that when Olandan reported this incident, he directed PO3 Abellanos to verify the information.^[35]

An examination of the transcript shows that Judge Sabarre asked Olandan leading questions that effectively reiterated the contents of Olandan's deposition. As a result, no new information was obtained:

Q.

How were you able to go inside the Baybay Sub-Provincial Jail?

x x x x

A.

I was with Jojo.

Q.

You mean [J]ojo is a frequent visitor of Baybay Sub-Provincial Jail?

A.

Yes.

Q.

You mean he always go there (sic)?

A.

Yes.

Q.

You were able to enter the cell of Raul [Y]ap?

A.

Yes

x x x x

Q.

You were not called upon by the jail guard when you went inside?

A.

Yes as a matter of fact we were questioned.

Q.

You mean you were allowed to go inside the cell of Raul Yap?

A.

Because Jojo has connections with the guards.

x x x x

Q.

When you enter[ed] the cell of [R]aul Yap, am I to conclude that Mayor Espinosa was not there?

A.

No. Mayor Espinosa has a different cell.

Q.

But you were not able to get inside the cell of Mayor Espinosa?

A.

Yes I was able to enter the cell of Espinosa while I was in the cell of Raul.[36]

When Judge Sabarre addressed questions to PO3 Abellanos, the following exchange took place:

Q.

In your deposition you said you were tasked by PCI Leo Laraga to conduct an investigation on the confidential informant Paul Olendan, you confirmed the veracity on the report of Mayor Espinosa who is

Q

(cont'n) currently detained at Baybay Sub-Provincial Jail, Baybay, Leyte?

A.

Yes.

Q

When did you conduct the investigation?

A.

I conducted the same on Oct. 29, 2016 in the morning.

Q

How did you conduct the said investigation as the respondents are presently detained at Baybay Sub-Provincial Jail?

A.

After I have talked to [S]ir [L]araga, I was told to get his statement according to him it was a certain [J]oyo who was tasked by Raul Yap to talk to him and told to visit Raul Yap inside the sub-Provincial jail according to him he is hesitant and afraid to visit Raul Yap to know what Raul wants from him.

Q

But you were not able to go personally inside the jail?

A.

No sir.

Q

You only depend[ed] on the information from the confidential informant?

A.

Yes.

Q

How sure are you that he was telling the truth that what was told to you by Paul Olendan was true?

A.

He was very consistent to his statement he still get into the point of his answer.

Q

No more?

A.

No more sir.[37] (Emphasis supplied)

The cursory manner by which respondent Judge Sabarre examined the witnesses is evident. His queries can be described as deficient in eliciting the required information from Olendan, whose unsubstantiated allegations became the primary basis for the search warrant. Worse, Judge Sabarre did not ask further questions from PO3 Abellanos, the police officer who was supposed to verify the information from Olendan.[38] Judge Sabarre appears to have been immediately convinced with PO3 Abellanos's answers, which utterly failed to provide details, but simply repeated the factual claims of Olendan. There was a neglect to probe further even after PO3 Abellanos himself was forthcoming that he merely relied on Olendan's information. On this point, the Court's ruling in *Roan v. Gonzales*[39] is instructive:

In other words, the applicant was asking for the issuance of the search warrant on the basis of mere hearsay and not of information personally known to him, as required by settled jurisprudence. The rationale of the requirement, of course, is to provide a ground for a prosecution for perjury in case the applicant's declarations are found to be false. His application, standing alone, was insufficient to justify the issuance of the warrant sought. It was therefore necessary for the witnesses themselves, by their own personal information, to establish the applicant's claims.

x x x x

It is axiomatic that the examination must be probing and exhaustive, not merely routinary or pro-forma, if the claimed probable cause is to be established. The examining magistrate must not simply rehash the contents of the affidavit but must make his own inquiry on the intent and justification of the application.[40] (Emphasis supplied)

The case of Judge Cabalona appears to be different. She propounded probing questions to the CIDG officers that applied for the warrants against Alvarez in Abuyog Penal Colony and Balagbis in Baybay City Jail.

The transcript during the hearing for the warrant on Alvarez revealed that the applicant, PSupt. Santi Noel G. Matira (PSupt. Matira), Deputy Chief of the CIDG-8, received information from an informant, Sherman Enciso (Enciso). Enciso claimed that Alvarez was in possession of illegal drugs inside his prison cell in the Abuyog Penal Colony.[41] PSupt. Matira sought to confirm the veracity of the information by asking Enciso to make arrangements for the purchase of dangerous drugs from Alvarez, through a phone call in speaker mode made in his presence.[42] In order to test the credibility of the informant, Judge Cabalona asked him to describe Alvarez. The confidential informant was also requested to show his mobile phone to the court, which contained messages purportedly from Alvarez regarding the plan to sell dangerous drugs.[43]

As regards the application for the search warrant against Balagbis, the applicant, Police Senior Inspector J-Rale Paalisbo (PSINSP Paalisbo), received several reports regarding a certain Balagbis, who was engaged in the sale of shabu from inside the Baybay City Jail. His team conducted surveillance operations to confirm the information. After several days, one of his officers, PO2 Randy Merelos (PO2 Merelos), acted as a poseur buyer for a test-buy inside the Baybay City Jail, which they managed to arrange through a confidential informant.[44] Both PSINSP Paalisbo and PO2 Merelos testified during the hearing.[45]

From the foregoing, it appears that Judge Cabalona's questions were sufficiently thorough and not perfunctory. She also examined the supporting documents and other evidence from the witnesses to substantiate the allegations in the depositions.

III.

Judge Sabarre and Judge Cabalona were not only faced with the peculiar situation of resolving applications for a search warrant on a detainee or inmate. The applications involved warrants to be implemented outside the territorial jurisdiction of their respective courts. For this reason, they should have approached the applications with more circumspection and prudence. This means ensuring that all the requirements for the application were observed and no irregularities taint the proceedings.

Generally, the rules require that the application for a search warrant should be filed in the court within whose territorial jurisdiction the crime was committed.[46] The application may be filed with any court within the judicial region where the crime was committed or where the warrant shall be enforced, only if there are compelling reasons to do so.[47]

Here, the crimes were allegedly committed in the detention and prison facilities located in Leyte, which are clearly outside the territorial jurisdiction of Judge Sabarre, as the presiding judge in Basey, Samar, and of Judge Cabalona, as the presiding judge in Calbiga, Samar.

Notably, when Judge Sabarre examined the application of PCI Laraga for the search warrants against Espinosa and Yap, he immediately asked why the application was lodged with his Branch, considering that there are plenty of other RTCs that can take cognizance of the application.[48] During the hearings for the search warrants against Alvarez and Balagbis, Judge Cabalona also asked the applicant CIDG officers straightaway regarding their choice of venue.[49]

It is apparent therefore that both respondent judges were aware that it is only in exceptional cases that they can issue the search warrants. The applicants reasoned out that the targets possessed considerable influence over Leyte, and as such, it is highly probable for information on the planned operation to sooner or later reach them.[50] But instead of making further inquiries to get to the bottom of these allegations, Judge Sabarre and Judge Cabalona were satisfied right away, and moved on to another topic.

In his Report on the Investigation and Recommendation, submitted to the Court on August 16, 2017, the Investigating Officer made the following observations:

Turning now to the Supreme Court's observation that the applicants for the search warrants sought another venue citing as ground the drug operators' undue connections and even categorically stated in the application for a search warrant against Balagbis that there was likelihood that these connections might influence the RTC of Baybay, Leyte, Branch 14, the Investigating Officer perused the said applications and the pertinent transcript of stenographic notes, and finds that the said allegations on undue influence were just empty allegations bereft of any substantiation.

On the part of respondent-Judges Sabarre, Jr. and Cabalona however, the Investigating Officer observed that they did not bother to go deeper into the allegations of undue influence.[51] (Emphasis supplied)

Consequently, I respectfully disagree with the ponencia's observation that "[t]he concern of the authorities who applied for the search warrant is not trivial nor made-up"[52] is a consideration that can be positively appreciated by the Court in this case. Indeed, except for their bare allegations, the respondent judges were not presented with evidence to substantiate the claimed likelihood of leaking information to the concerned individuals. More importantly, as an exception to the general rule, it was incumbent upon the respondent judges to ascertain the existence of the alleged compelling reasons that would eventually warrant the application of the exception. Supporting documents to bolster this claim would not have been difficult to obtain and present in court, considering that the subject individuals were already incarcerated. Furthermore, had they been more prudent in the examination of the application, they would have easily noticed that the required indorsements under OCA Circular No. 88-2016, in relation to OCA Circular No. 40-2016, were lacking.

The apparent lack of judiciousness on the part of the respondent judges should not be sanctioned by the Court. Otherwise, bare allegations of possible leakage of information, without more, essentially renders the rules on the issuance of a search warrant nugatory. As the Court held in *Lim v. Dumlao*:^[53]

It is settled that one who accepts the exalted position of a judge owes the public and the court the ability to be proficient in the law and the duty to maintain professional competence at all times. When a judge displays an utter lack of familiarity with the rules, he erodes the confidence of the public in the courts. A judge owes the public and the court the duty to be proficient in the law and is expected to keep abreast of laws and prevailing jurisprudence. Ignorance of the law by a judge can easily be the mainspring of injustice.[54] (Italics in the original)

Finally, in light of the questions surrounding the integrity of the issuance of search warrants, I most respectfully reiterate my position that the essence of the search warrant requirements is to protect an individual from unreasonable intrusions on their privacy by the State. This objective is fulfilled by a no less than stringent observance of the constitutional and procedural conditions for its issuance. To require less is to allow the government to cloak an otherwise illegitimate operation with the guise of legitimacy. Judges, as arbiters who determine the existence of probable cause, which in turn permits an invasion of a person's privacy, should be sternly reminded of the weight that their duties carry.

In all, I vote to: (1) dismiss the administrative case against Judge Carlos O. Arguelles; and (2) hold Judges

Tarcelo A. Sabarre, Jr. and Janet M. Cabalona liable for gross ignorance of the law. However, I submit that in addition to the violation of the relevant OCA Circulars, the Court should likewise hold them liable for their imprudent performance of their duties in the issuance of the search warrants.

[1] Ponencia, pp. 12-13.

[2] DELEGATION BY THE CHIEF OF THE PHILIPPINE NATIONAL POLICE OF AUTHORITY TO PERSONALLY ENDORSE OR AUTHORIZE APPLICATIONS FOR SEARCH WARRANTS TO KEY OFFICERS, approved on April 4, 2016.

[3] CONSTITUTIONAL REQUIREMENTS AND RULES IN THE ISSUANCE OF ARREST AND SEARCH WARRANTS, approved on February 10, 2016.

[4] Ponencia, pp. 24-25.

[5] Id. at 4-5.

[6] Id. at 5-6.

[7] Id. at 7.

[8] Rollo (A.M. No. RTJ-17-2494), Vol. III, pp. 24-30.

[9] Ponencia, pp. 14-24.

[10] G.R. No. 160792, August 25, 2005, 468 SCRA 188.

[11] Id. at 213.

[12] Id. at 213-214. The pertinent part of the Decision reads:

American cases recognize that the unmonitored use of pre-trial detainees' non-privileged mail poses a genuine threat to jail security. Hence, when a detainee places his letter in an envelope for non-privileged mail, the detainee knowingly exposes his letter to possible inspection by jail officials. A pre-trial detainee has no reasonable expectation of privacy for his incoming mail. However, incoming mail from lawyers of inmates enjoys limited protection such that prison officials can open and inspect the mail for contraband but could not read the contents without violating the inmates' right to correspond with his lawyer. The inspection of privileged mail is limited to physical contraband and not to verbal contraband.

x x x x

That a law is required before an executive officer could intrude on a citizen's privacy rights is a guarantee that is available only to the public at large but not to persons who are detained or imprisoned. The right to privacy of those detained is subject to Section 4 of RA 7438, as well as to the limitations inherent in lawful detention or imprisonment. By the very fact of their detention, pre-trial detainees and convicted prisoners have a diminished expectation of privacy rights. (Emphasis and underscoring supplied)

[13] G.R. Nos. 215585 and 215768, September 8, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66886>>.

[14] Id.

[15] Id.

[16] Id.

[17] 468 U.S. 517 (1984).

[18] Id. at 524-526. The pertinent ruling in Hudson reads:

However, while persons imprisoned for crime enjoy many protections of the Constitution, it is also clear that imprisonment carries with it the circumscription or loss of many significant rights. See *Bell v. Wolfish*, 441 U.S., at 545. These constraints on inmates, and in some cases the complete withdrawal of certain rights, are "justified by the considerations underlying our penal system." *Price v. Johnston*, 334 U. S. 266, 285 (1948); see also *Bell v. Wolfish*, supra, at 545-546, and cases cited: *Wolff v. McDonnell*, supra, at 555. The curtailment of certain rights is necessary, as a practical matter, to accommodate a myriad of "institutional needs and objectives" of prison facilities, *Wolff v. McDonnell*, supra, at 555, chief among which is internal security, see *Pell v. Procunier*, supra, at 823. Of course, these restrictions or retractions also serve, incidentally, as reminders that, under our system of justice, deterrence and retribution are factors in addition to correction.

x x x x

Notwithstanding our caution in approaching claims that the Fourth Amendment is inapplicable in a given context, we hold that society is not prepared to recognize as legitimate any subjective expectation of privacy that a prisoner might have in his prison cell and that, accordingly, the Fourth Amendment proscription against unreasonable searches does not apply within the confines of the prison cell. The recognition of privacy rights for prisoners in their individual cells simply cannot be reconciled with the concept of incarceration and the needs and objectives of penal institutions. (Emphasis and underscoring supplied)

[19] 370 U.S. 139 (1962).

[20] Id. at 143-144. The pertinent part of the ruling states:

x x x Yet, without attempting either to define or to predict the ultimate scope of Fourth Amendment protection, it is obvious that a jail shares none of the attributes of privacy of a home, an automobile, an office, or a hotel room. In prison, official surveillance has traditionally been the order of the day. Though it may be assumed that even in a jail, or perhaps especially there, the relationships which the law has endowed with particularized confidentiality must continue to receive unceasing protection, there is no claimed violation of any such special relationship here. (Emphasis supplied)

[21] For instance, in *United States v. Cohen* (796 F.2d 20 [2d Cir. 1986]), the Second Circuit of the U.S. Court of Appeals ruled that pre-trial detainees retain a diminished right to privacy. The Second Circuit Court narrowly interpreted the doctrine in *Hudson* as limited to searches conducted only by prison officials, emphasizing the Court's statement in *Hudson* that "no iron curtain separates prisoners from the Constitution, and that the loss of such rights is occasioned only by the legitimate needs of institutional security" – and "since no wall of steel and stone separates prisoners from the Constitution, prisoners' rights continue to exist[.]" (Emphasis and underscoring supplied)

But in the later case of *Johnson v. Phelan* (69 F.3d 144 [7th Cir. 1995]), the Seventh Circuit of the U.S. Court of Appeals upheld the cross gender visual monitoring of inmates in showers. This time, the ruling was grounded on a broad interpretation of *Hudson* — that privacy is completely extinguished by virtue of an individual's confinement in prison.

Notably, in *Bell v. Wolfish* (411 U.S. 520 [1979]), a case decided five years prior to *Hudson*, the SCOTUS was faced with a Fourth Amendment challenge on the requirement of a visual body cavity search every time inmates had a contact visit. Since *Hudson* was not decided yet at that time, *Bell* resolved the issue by balancing the interest of the State to maintain the security of the penal institution as against the inmates' privacy interests. Eventually, *Bell* ruled that the body cavity search does not violate the Fourth Amendment right. It further implicitly

acknowledged that prisoners retain privacy rights, but these are subject to certain restrictions and limitations.

[22] *Alejano v. Cabuay*, supra note 10; *Boratong v. De Lima*, supra note 13.

[23] *Ponencia*, p. 19.

[24] *Supra* note 10, at 214-215.

[25] See *Pollo v. Constantino-David*, G.R. No. 181881, October 18, 2011, 659 SCRA 189, where the Court ruled that a government employee has no reasonable expectation of privacy on a government-issued computer, which the Civil Service Commission has the absolute right to regulate and monitor. See also *Gamboa v. Chan*, G.R. No. 193636, July 24, 2012, 677 SCRA 385, where the Court denied a petition for the issuance of the writ of habeas data of a person included in the police's list of individuals maintaining private army groups, and held that there is a legitimate state interest to investigate the existence of private armies and ultimately dismantle them permanently.

[26] *Rollo* (A.M. No. RTJ-17-2494), Vol. I, pp. 23-24, 61-62, 323-325, 354-355.

[27] Senate Committee Report No. 46, March 7, 2017, id. at 571.

[28] See *Social Justice Society (SJS) v. Dangerous Drugs Board*, G.R. Nos. 157870, 158633 & 161658, November 3, 2008, 570 SCRA 410, where the Court ruled that the random drug test of secondary and tertiary level students and public and private employees is justified by the objective of Republic Act No. 9165 to protect the well-being of the citizenry and the youth from the harmful effects of drugs. See also *People v. O'Cochlain*, G.R. No. 229071, December 10, 2018, 889 SCRA 121, where the Court discussed the reasonableness of warrantless airport inspections, which are part of routine security procedures to ensure public safety.

[29] In *People v. O'Cochlain*, id. at 156-157, the Court notably held as follows:

Hence, an airport search remains a valid administrative search only so long as the scope of the administrative search exception is not exceeded: "once a search is conducted for a criminal investigatory purpose, it can no longer be justified under an administrative search rationale." Where an action is taken that cannot serve the administrative purpose, either because the threat necessitating the administrative search has been dismissed or because the action is simply unrelated to the administrative goal, the action clearly exceeds the scope of the permissible search. To the extent that airport administrative searches are used for purposes other than screening luggage and passengers for weapons or explosives, they fall outside the rationale by which they have been approved as an exception to the warrant requirement, and the evidence obtained during such a search should be excluded. (Emphasis supplied)

[30] *Ponencia*, p. 23-24.

[31] "Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment. Such, however, is not the case with Judge Misláng. Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law. A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of the clear and unmistakable provisions of a statute, as well as Supreme Court circulars enjoining their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions." (*Department of Justice v. Misláng*, A.M. No. RTJ-14-2369 [formerly OCA I.P.I. No. 12-3907-RTJ] and A.M. No. RTJ-14-2372 [formerly OCA I.P.I. No. 11-3736- RTJ],

July 26, 2016, 798 SCRA 225, 234-235. Emphasis supplied)

[32] A.M. No. RTJ-06-1969 (Formerly OCA I.P.I. No. 05-2159-RTJ), June 15, 2006, 490 SCRA 547, 554.

[33] Rollo (A.M. No. RTJ-17-2494), Vol. I, pp. 23-28.

[34] Id. at 27.

[35] Id. at 26.

[36] TSN, November 4, 2016, pp. 9-10, id. at 51-52.

[37] TSN, November 4, 2016, pp. 5-6, id. at 47-48.

[38] See *Betoy, Sr. v. Judge Coliflores*, 518 Phil. 584 (2006).

[39] No. 71410, November 25, 1986, 145 SCRA 687.

[40] Id. at 694-695.

[41] Rollo (A.M. No. RTJ-17-2494), Vol. I, pp. 326-327.

[42] TSN, August 9, 2016, p. 4, id. at 344.

[43] TSN, August 9, 2016, pp. 7-9, id. at 347-349.

[44] Rollo (A.M. No. RTJ-17-2494), Vol. I, p. 356.

[45] TSN, October 26, 2016, pp. 1-8, id. at 386-393.

[46] RULES OF COURT, Rule 126, Sec. 2(a).

[47] Id. at Sec. 2(b).

[48] TSN, November 4, 2016, p. 3, rollo (A.M. No. RTJ-17-2494), Vol. I, p. 45.

[49] TSN, August 9, 2016, p. 2, id. at 342; TSN, October 26, 2016, p. 2, id. at 387.

[50] Id.; TSN, November 4, 2016, pp. 3-4, id. at 45-46.

[51] Rollo (A.M. No. RTJ-17-2494), Vol. III, pp. 18-19.

[52] Ponencia, p. 13.

[53] A.M. No. MTJ-04-1556, March 31, 2005, 454 SCRA 196.

[54] Id. at 202-203.

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