



Republic of the Philippines

Supreme Court

Manila

EN BANC

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE

RECORDED  
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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]

X-----X

**CONFUSED CITIZENS OF REGION 8,** A.M. No. RTJ-19-2557 [FORMERLY OCA IPI NO. 18-4897-RTJ]  
Complainants,

Present:

PERALTA, C.J.,  
PERLAS-BERNABE,  
LEONEN,  
CAGUIOA,  
GESMUNDO,  
HERNANDO,  
CARANDANG,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ,  
DELOS SANTOS,  
GAERLAN, and  
ROSARIO, JJ.

- versus -

**HON. CARLOS O. ARGUELLES,** Presiding Judge, Regional Trial Court (RTC), Baybay, Leyte, Branch 14,  
**HON. JANET M. CABALONA,** Presiding Judge, RTC, Calbiga, Samar, Branch 33,  
**HON. TARCELO A. SABARRE, JR.,** Presiding Judge, RTC, Basey, Samar, Branch 30,

Promulgated:

Respondents.

January 26, 2021

*Janet M. Cabalona*

X-----X

## DECISION

### *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<sup>1</sup> 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<sup>2</sup> and against Espinosa Sr. alone for violation of Section 11, Article II, R.A. 9165.<sup>3</sup> On October 6, 2016, Espinosa, Sr. filed a Notice of Entry of Appearance with concomitant Very Urgent Motion of Transfer Detention<sup>4</sup> (Urgent Motion) seeking his transfer from the Sub-Provincial Jail of Baybay, Leyte to Albuera Police Station, Albuera, 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*)

<sup>1</sup> *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.

<sup>2</sup> Section 28 of R.A. 10591.

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

<sup>3</sup> Section 11 of R.A. 9165.

Section 11. *Possession of Dangerous Drugs.*

<sup>4</sup> *Rollo* (A.M. No. RTJ-17-2494, Vol. I), pp. 117-118.

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it is also undeniable that the accused is not the only one that these personnel will look out for.<sup>5</sup>

On October 12, 2016, Judge Arguelles heard the motion during the scheduled arraignment. The prosecution filed its opposition.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> Meanwhile, Provincial Warden Homobono Bardillon manifested that Espinosa Sr. is safe at the Sub-Provincial Jail of Baybay.<sup>9</sup> 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.<sup>10</sup> The prosecution filed an *Ex-Parte* Counter-Manifestation to the Very Urgent Motion to Transfer of Detention<sup>11</sup> (*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.<sup>12</sup> On October 26, 2016, the Urgent Motion was submitted for resolution.<sup>13</sup>

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<sup>14</sup> 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.<sup>15</sup>

The Application for Search Warrant<sup>16</sup> against Espinosa Sr. was for violation of R.A. 10591<sup>17</sup> 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

<sup>5</sup> Id. at 118.

<sup>6</sup> Id. at 136-140.

<sup>7</sup> TSN dated October 19, 2016, pp. 31-32; *rollo*, (A.M. No. RTJ-17-2494, Vol. I), pp. 241-242.

<sup>8</sup> TSN dated October 26, 2016, pp. 14-15; *rollo* (A.M. No. RTJ-17-2494, Vol. I), pp. 273-274.

<sup>9</sup> Id. at 287; *rollo* (A.M. No. RTJ-17-2494, Vol. I), p. 287.

<sup>10</sup> Id.

<sup>11</sup> *Rollo* (A.M. No. RTJ-17-2494, Vol. I), pp. 162-164.

<sup>12</sup> Id. at 163-164.

<sup>13</sup> Penned by Executive Judge Carlos O. Arguelles; id. at 159-160.

<sup>14</sup> Id. at 23-24, 61-62.

<sup>15</sup> Id.

<sup>16</sup> Id. at 23-24.

<sup>17</sup> Comprehensive Firearms and Ammunition Regulation Act.

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.”<sup>18</sup> The Application for Search Warrant<sup>19</sup> against Yap was for violation of R.A. 9165<sup>20</sup> 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.”<sup>21</sup>

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<sup>22</sup> against Espinosa, Sr. for one unit caliber .45 pistol and Search Warrant No. 2016-11-19<sup>23</sup> 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.”<sup>24</sup> 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.”<sup>25</sup>

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.”<sup>26</sup> 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.”<sup>27</sup>

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<sup>18</sup> *Rollo* (A.M. No. RTJ-17-2494, Vol. I), p. 23.

<sup>19</sup> *Id.* at 61-62.

<sup>20</sup> Comprehensive Dangerous Drugs Act of 2002.

<sup>21</sup> *Rollo* (A.M. No. RTJ-17-2494, Vol. I), p 61.

<sup>22</sup> *Id.* at 33-34.

<sup>23</sup> *Id.* at 69.

<sup>24</sup> *Id.* at 35.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 72.

<sup>27</sup> *Id.*

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.<sup>28</sup>

In the course of the OCA investigation, it received two anonymous letters from Concerned Citizens of Tacloban City, one dated November 10, 2016,<sup>29</sup> and the other, November 13, 2016.<sup>30</sup> 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.<sup>31</sup>

The second letter dated November 13, 2016 alleged that Judge Cabalona issued Search Warrant No. 2016-074<sup>32</sup> 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<sup>33</sup> Alvarez, a prisoner serving a final judgment of imprisonment on August 11, 2016.<sup>34</sup> 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.<sup>35</sup>

Incidentally, Judge Cabalona also issued Search Warrant No. 2016-089<sup>36</sup> against Fernando Balagbis y Mejia @ Entoy (Balagbis) who was

<sup>28</sup> *Rollo* (A.M. No. RTJ-17-2494, Vol. II), pp. 624-625.

<sup>29</sup> *Rollo* (A.M. No. RTJ-17-2494, Vol. I), p. 317

<sup>30</sup> *Id.* at 318

<sup>31</sup> *Id.* at 317.

<sup>32</sup> *Id.* at 92-93.

<sup>33</sup> Sometimes referred to as "Egay" in the records.

<sup>34</sup> *Rollo* (A.M. No. RTJ-17-2494, Vol. I), p. 318.

<sup>35</sup> *Id.* at 334.

<sup>36</sup> *Id.* at 94-94A.

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detained at Baybay City Jail. Balagbis died after he allegedly fired upon the members of the implementing team.<sup>37</sup> 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.<sup>38</sup>

On March 16, 2017, Judge Arguelles issued two Warrants of Arrest<sup>39</sup> 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.<sup>40</sup>

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

In a Report<sup>41</sup> 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 (P10,000.00) 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.<sup>42</sup>

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.<sup>43</sup>

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 a compelling reason to permit the

<sup>37</sup> Id. at 372.

<sup>38</sup> Id. at 318.

<sup>39</sup> Id. at 612-615.

<sup>40</sup> *Rollo* (A.M. No. RTJ-19-2557), pp. 18-19, 20-21, 49-51; TSN dated March 21, 2017, pp. 17-19.

<sup>41</sup> *Rollo* (A.M. No. RTJ-17-2494, Vol. II), pp. 628-650.

<sup>42</sup> Id. at 650.

<sup>43</sup> Id. at 645.

application in any court within the judicial region where the warrant shall be enforced.<sup>44</sup>

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.<sup>45</sup>

In a Minute Resolution<sup>46</sup> 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.<sup>47</sup>

Incidentally, while the case was under investigation, the Department of Justice (DOJ) Panel of Prosecutors issued a Resolution<sup>48</sup> 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.<sup>49</sup>

In Committee Report No. 46<sup>50</sup> 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;

<sup>44</sup> Id. at 647-648.

<sup>45</sup> Id. at 650.

<sup>46</sup> Id. at 651-658.

<sup>47</sup> Id. at 657-658.

<sup>48</sup> *Rollo* (A.M. No. RTJ-17-2494, Vol. I), pp. 600-618.

<sup>49</sup> Id. at 618.

<sup>50</sup> Id. at 565-599.

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 **CIDG REGIONAL CHIEF MARCOS**.<sup>51</sup> (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<sup>52</sup> wherein he proposed the following:

<sup>51</sup> Id. at 596.

<sup>52</sup> Rollo (A.M. No. RTJ-17-2494, Vol. III), pp. 3-33.

**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.**<sup>53</sup> (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 Investigation 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.<sup>54</sup>

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.<sup>55</sup> 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*,<sup>56</sup> 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.<sup>57</sup> 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

<sup>53</sup> Id. at 33.

<sup>54</sup> Id. at 17-18.

<sup>55</sup> Id.

<sup>56</sup> 306 Phil. 519 (1994).

<sup>57</sup> Id. at 538.

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.<sup>58</sup>

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.<sup>59</sup> Therefore, the presumption of regularity in the performance of official duties cannot prevail.<sup>60</sup>

### 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:

1. the instant administrative complaint against Judge Carlos O. Arguelles, Presiding Judge, Branch 14, RTC, Baybay, Leyte, be **DISMISSED** and considered **CLOSED and TERMINATED**;
2. 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
3. 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.<sup>61</sup>

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.<sup>62</sup> 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

<sup>58</sup> *Rollo* (A.M. No. RTJ-17-2494, Vol. III), p. 18.

<sup>59</sup> *Id.* at 21-24.

<sup>60</sup> *Id.* at 24-25.

<sup>61</sup> *Id.* at 4-5.

<sup>62</sup> *Id.* at 3.

compound is only temporary and that they can be transferred when the conditions in the BJMP improve.<sup>63</sup>

Thereafter, the Court issued a Minute Resolution<sup>64</sup> 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.<sup>65</sup>

In his Comment,<sup>66</sup> 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.<sup>67</sup>

For his part, Judge Sabarre insisted in his Comment<sup>68</sup> 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 Abellanos, 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. Alejandro v. Gen. Cabuay*<sup>69</sup> is not applicable to the present issue.<sup>70</sup> 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.<sup>71</sup> 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.<sup>72</sup>

Meanwhile, in the Comment<sup>73</sup> Judge Cabalona filed, she highlighted that the case of *In the matter of the petition for Habeas Corpus of Capt. Alejandro v. Gen. Cabuay*<sup>74</sup> 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

<sup>63</sup> Id. at 4.

<sup>64</sup> *Rollo* (A.M. No. RTJ-19-2557), pp. 73-74.

<sup>65</sup> Id. at 73.

<sup>66</sup> *Rollo* (A.M. No. RTJ-17-2494, Vol. II), pp. 668-676.

<sup>67</sup> Id. at 669-671.

<sup>68</sup> Id. at 697-703.

<sup>69</sup> 505 Phil. 298 (2005).

<sup>70</sup> *Rollo* (A.M. No. RTJ-17-2494 Vol. II), pp. 698-699; *rollo* (A.M. No. RTJ-17-2494 Vol. IV), p. 140.

<sup>71</sup> *Rollo* (A.M. No. RTJ-17-2494, Vol. II), pp. 701-702; *rollo* (A.M. No. RTJ-17-2494, Vol. IV), pp. 140-141.

<sup>72</sup> *Temporary rollo* (A.M. No. RTJ-19-2557), pp. 1-2.

<sup>73</sup> *Rollo* (A.M. No. RTJ-17-2494, Vol. I), pp. 486-492.

<sup>74</sup> *Supra* note 69.

of the Rules does not exclude any specific place or building.<sup>75</sup> 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.<sup>76</sup>

### Issues

The issues to be resolved are:

1. whether there was an intentional delay to resolve the Very Urgent Motion of Transfer Detention of Espinosa Sr.; and
2. 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 filed 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 Albuera, Leyte, the place where he was serving as its incumbent mayor. Due to the obvious influence he wields in Albuera, Leyte, Judge Arguelles cannot be faulted for requiring an ocular inspection and for

<sup>75</sup> Rollo (A.M. No. RTJ-17-2494, Vol. 1), p. 487.

<sup>76</sup> id. at 489.

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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 filed, 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,”<sup>77</sup> 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.<sup>78</sup>

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

<sup>77</sup> Section 2(b), Rule 126 of the Rules of Court.

<sup>78</sup> TSN dated November 4, 2016, pp. 2-4; *rollo* (A.M. No. RTJ-17-2494, Vol. I), pp. 44-46.

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.<sup>79</sup> 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<sup>80</sup> 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.<sup>80</sup> Accordingly, the constitutional proscription against unreasonable searches

<sup>79</sup> Rollo (A.M. No. RTJ-17-2494, Vol. I), pp. 318, 372.

<sup>80</sup> Id. at 565-599.

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and seizures is **inapplicable in that context.**<sup>81</sup> (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.<sup>82</sup>

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<sup>83</sup> 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)

<sup>81</sup> Id. at 576.

<sup>82</sup> 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>>.

<sup>83</sup> Rights of Persons Arrested, Detained or Under Custodial Investigation.

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**
  - a. Inmates found to be drug users/ dependents/ alcoholics should be segregated from other inmates, especially during the withdrawal period;
  - b. Inmates undergoing drug/ alcohol withdrawal must be referred to the jail psychiatrist, physician or nurse for evaluation and management;
  - c. 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;
  - d. 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
  - e. 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

3. 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.

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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. Alejandro v. Gen. Cabuay*<sup>84</sup> 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.<sup>85</sup> The Court examined American jurisprudence, including the case of *Hudson v. Palmer*,<sup>86</sup> 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.<sup>87</sup> (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."<sup>88</sup> 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."<sup>89</sup> 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."<sup>90</sup>  
(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

<sup>84</sup> Supra note 69.

<sup>85</sup> Supra note 69 at 311-312.

<sup>86</sup> 468 U.S. 517 (1984)

<sup>87</sup> 468 U.S. 524 (1984)

<sup>88</sup> 468 U.S. 527

<sup>89</sup> Id.

<sup>90</sup> 468 U.S. 528

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*,<sup>91</sup> 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.<sup>92</sup>

While the case of *South Dakota v. Opperman*<sup>93</sup> 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:

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<sup>91</sup> 428 U.S. 364 (1976).

<sup>92</sup> Id.

<sup>93</sup> Id.

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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.**<sup>94</sup> (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.

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Id.

The OCA and the Investigating Officer erroneously applied the ruling of the Court in *Alejano*<sup>95</sup> and *Hudson*<sup>96</sup> 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.<sup>97</sup> 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.**

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<sup>95</sup> Supra note 69.

<sup>96</sup> Supra note 86.

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

- 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<sup>98</sup> 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.**<sup>98</sup> (Emphasis supplied)

When Police Superintendent Santi Noel G. Magtira and Police Senior Inspector J-Rale Oceso 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.<sup>99</sup>

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 Albuyog Penal Colony, to make a prior coordination with the detention facility administrators could compromise their operation and render their

<sup>98</sup> TSN dated November 4, 2016, pp. 2-4; *rollo* (A.M. No. RTJ-17-2494, Vol. I), pp. 44-46.

<sup>99</sup> 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.

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.<sup>100</sup> (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,

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

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.<sup>101</sup> (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<sup>o</sup> 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<sup>o</sup> 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.

<sup>101</sup> New Code of Judicial Conduct for the Philippine Judiciary, A.M. No. 03-05-01-SC, April 27, 2004.

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

1. The instant administrative case against Judge Carlos O. Arguelles of the Regional Trial Court, Baybay, Leyte, Branch 14, be **DISMISSED**.
2. 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 ₱20,000.00 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.

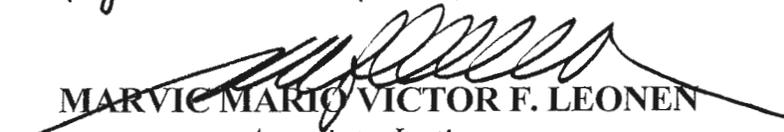
**SO ORDERED.**



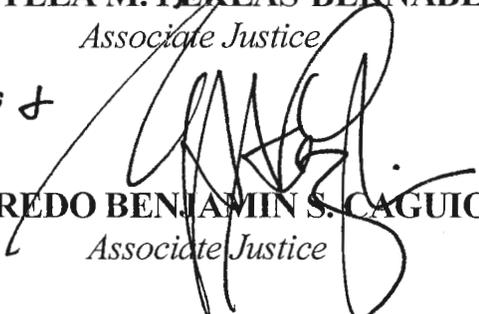
  
**DIOSDADO M. PERALTA**  
*Chief Justice*

*I join the opinion of Justice Caguioa*

*W. de m*  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

  
**MARVIC MARIO VICTOR F. LEONEN**  
*Associate Justice*

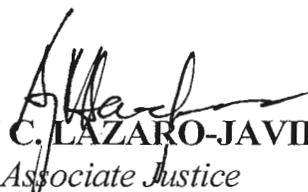
*See Concurring &  
Dissenting  
Opinion*

  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

  
**ALEXANDER G. GESMUNDO**  
*Associate Justice*

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

  
**ROSMARI D. CARANDANG**  
*Associate Justice*

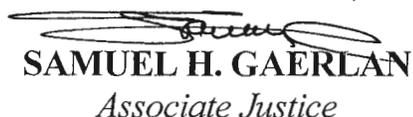
  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*

  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

  
**RODIL V. ZALAMEDA**  
*Associate Justice*

  
**MARION V. LOPEZ**  
*Associate Justice*

  
**EDGARDO L. DELOS SANTOS**  
*Associate Justice*

  
**SAMUEL H. GAERLAN**  
*Associate Justice*

  
**RICARDO R. ROSARIO**  
*Associate Justice*

*Anna-Li R. Papa-Jomben*  
**ANNA-LI R. PAPA-JOMBEN**  
Deputy Clerk of Court En Banc  
COC En Banc Supreme Court