EN BANC

A.M. No. RTJ-17-2494 (FORMERLY A.M. No. 16-11-03-SC) – 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-19-2557 (FORMERLY OCA IPI No. 18-4897-RTJ) – CONFUSED CITIZENS OF REGION 8, *complainants,* ***versus*** **HON. CARLOS O. ARGUELLES, Presiding Judge, Regional Trial Court, Baybay, Leyte, Branch 14, et al.,** *respondents.*

Promulgated:

January 26, 2021

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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.

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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.

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]

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5 Id. at 4-5.
6 Id. at 5-6.
7 Id. at 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]

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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.
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> 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)

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

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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.
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> 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)

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:
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> > [s]ubjecting the day-to-day judgments of prison officials to an inflexible strict scrutiny analysis would seriously hamper their

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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.

> ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration.
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> 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.
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> 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.**
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> 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]

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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.

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

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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.

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. Abellanosa (PO3 Abellanosa), and their confidential informant, Paul G. Olendan (Olendan).[33]

Olendan 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

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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 Mislang. **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. Mislang*, 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.

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 Olendan reported this incident, he directed PO3 Abellanosa to verify the information.[35]

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

> Q. How were you able to go inside the Baybay Sub-Provincial Jail?
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> 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.
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> Q. You were able to enter the cell of Raul [Y]ap?
>
> A. Yes
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> 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.
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> x x x x
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> Q. When you enter[ed] the cell of [R]aul Yap, am I to conclude that Mayor Espinosa was not there?
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> A. No. Mayor Espinosa has a different cell.
>
> Q. But you were not able to get inside the cell of Mayor Espinosa?

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[34] Id. at 27.
[35] Id. at 26.

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 Abellanosa, 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]ojo 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

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[36] TSN, November 4, 2016, pp. 9-10, id. at 51-52;
[37] TSN, November 4, 2016, pp. 5-6, id. at 47-48.

became the primary basis for the search warrant. Worse, Judge Sabarre did not ask further questions from PO3 Abellanosa, the police officer who was supposed to verify the information from Olendan.[38] Judge Sabarre appears to have been immediately convinced with PO3 Abellanosa'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 Abellanosa 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.
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> x x x x
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> 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

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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.

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

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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.

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

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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.

> 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.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[54] Id. at 202-203.