

EN BANC

[A.M. No. P-13-3124, February 04, 2020]

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.
ATTY. JERRY R. TOLEDO, THEN BRANCH CLERK OF COURT [NOW
CLERK OF COURT V], AND MENCHIE A. BARCELONA, CLERK III,
BOTH OF THE REGIONAL TRIAL COURT, BRANCH 259,
PARAÑAQUE CITY, RESPONDENTS.**

DECISION

PER CURIAM:

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

The antecedents follow.

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

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

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

PHYSICAL EVIDENCE	QUANTITY	CASE NO.	CASE TITLE
Methamphetamine Hydrochloride (shabu) placed in a cake box ^[4]	960.20 grams	Criminal Case No. 01-1229	People of the Philippines v. Enrico y Javier
Methamphetamine Hydrochloride (shabu) placed inside a cylindrical lockset box ^[5]	293.92 grams	Criminal Case No. 03-0408	People of the Philippines v. Ampuan

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

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

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

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

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

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

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

1. That the corresponding penalty be imposed on respondent Ms. Menchie Barcelona for being GUILTY of NEGLIGENCE in the performance of her duties and responsibilities as evidence custodian over the loss of 960.20 grams of

[*shabu*] in Criminal Case No. 01-1229 entitled People vs. Javier as well as the loss of 293.92 grams of *shabu* in Criminal Case No. [03-0408] entitled People vs. Ampuan.

2. That the corresponding penalty be imposed on erstwhile Branch Clerk of Court respondent Atty. Jerry R. Toledo for being GUILTY of NEGLIGENCE for violation of Section 7, Rule 136 of the Rules of Court and Section E (2) par. 2.2.3, Chapter VI of the 2002 Revised Manual for Clerks of Court.^[15]

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

The OCA's Report and Recommendation

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

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

Our Ruling

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

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

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

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

A clerk of court's primary duty is the safekeeping of all the records and pieces of evidence submitted to the court in cases pending before it including the properties furnished to his office. This obligation extends to ensuring that the records and exhibits in each case are complete and accounted for, and continues even after the termination of the case as long as the same have yet to be disposed or destructed in accordance with the existing rules. Accordingly, it is the clerk of court who shall assume liability for any loss, shortage, damage or destruction of court records, exhibits and properties.^[19]

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

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