

## EN BANC

[ A.M. No. P-12-3049, June 29, 2021 ]

**IN RE: LETTER OF ATTY. JOSE C. CORALES, CLERK OF COURT VI,  
OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT,  
BATANGAS CITY, RELATIVE TO THE FILING OF CRIMINAL CASE  
AGAINST HERMOGENES M. GUICO, JR., CLERK III, SAME OFFICE,  
FOR VIOLATION OF R.A. NO. 9165.**

**(FORMERLY A.M. NO. 12-2-31-RTC)**

**OFFICE OF THE COURT ADMINISTRATOR, COMPLAINANT, VS.  
HERMOGENES M. GUICO, JR., CLERK III, OFFICE OF THE CLERK  
OF COURT, REGIONAL TRIAL COURT, BATANGAS CITY,  
RESPONDENT.**

### DECISION

**LOPEZ, J., J.:**

This administrative case stemmed from a Letter<sup>[1]</sup> dated September 23, 2011, wherein Atty. Jose C. Corales (*Atty. Corales*), Clerk of Court VI of the Regional Trial Court, Batangas City (*RTC-Batangas City*) wrote the Office of the Court Administrator (*OCA*), requesting the latter office for instruction on the proper course of action following the filing of a criminal case against Hermogenes M. Guico, Jr. (*Guico*), Clerk III of the same court.

### FACTUAL AND PROCEDURAL ANTECEDENTS

On September 23, 2011, the Assistant City Prosecutor of Batangas City charged Guico before the RTC-Batangas City with violation of Article II, Section 11 of Republic Act (*R.A.*) No. 9165, the "Comprehensive Dangerous Drugs Acts of 2002," in an Information<sup>[2]</sup> which reads:

CRIMINAL CASE No. 17123

That on or about September 21, 2011 at around 11:30 in the evening at Brgy. Sta. Clara, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there knowingly, willfully, and criminally possess or have under his custody and control one (1) heat sealed transparent plastic sachet containing Methamphetamine Hydrochloride, more commonly known as *Shabu* [*Shabu*], a dangerous drug, weighing 0.06 gram, which is a clear violation of the above-cited law.<sup>[3]</sup>

Officers of the Batangas City Police Station responded late September 21, 2011 to a shooting incident involving an alyas "Apaw." As Apaw's known residence was in Villa

Anita, *Barangay* (Brgy.) Sta. Clara, Batangas City, the police proceeded thereto to form a "blocking force" in the hopes of cutting him off. While the police were stationed thereat, Guico rode his motorcycle out of Villa Anita and, despite being accosted by the police, just sped on. The police chased him until his motorcycle toppled over and he just ran, whereupon they caught up to and apprehended him. Police Officer 1 Rudy C. Añonuevo, Jr. (*PO1 Añonuevo*) asked Guico who he was, and Guico identified himself, mentioning that he was a government employee. PO1 Añonuevo then frisked Guico for weapons or illegal items, which search yielded a packet that PO1 Añonuevo believed to be *shabu*, along with two (2) pieces of aluminum foil, and two (2) disposable lighters.<sup>[4]</sup>

The police requested the conduct of a laboratory examination on the seized substance,<sup>[5]</sup> for which the forensic chemist found that the specimen tested positive for methamphetamine hydrochloride, or *shabu*.<sup>[6]</sup> Guico also tested positive for *shabu* use following a Request for Drug Test<sup>[7]</sup> dated September 22, 2011.

While Criminal (*Crim.*) Case No. 17123 proceeded before Branch 7 of the RTC-Batangas City, the Court issued a Resolution dated March 5, 2012, re-docketing the Letter dated September 23, 2011 as a regular administrative matter, requiring Guico's comment, indefinitely suspending him from office pending resolution of *Crim.* Case No. 17123, and suspending the administrative case pending final outcome of the criminal case.<sup>[8]</sup>

Eventually, Branch 7 of the RTC-Batangas City convicted Guico in a Decision dated October 22, 2014, disposing as follows:

WHEREFORE, judgment is hereby rendered finding accused-appellant HERMOGENES GUICO, JR. y MERCADO GUILTY beyond reasonable doubt of violation of Section 11 of Article II, R.A. No. 9165 and is hereby sentenced to suffer imprisonment for twelve years (12) and one (1) day as minimum up to fourteen (14) years as maximum, and to pay a fine of P300,000.00.<sup>[9]</sup>

On appeal, the Court of Appeals (CA) Special Sixth Division, in CAG.R. CR No. 37519, acquitted Guico by a Decision<sup>[10]</sup> dated April 22, 2016, the dispositive of which reads:

WHEREFORE, the Decision dated October 22, 2014 of the trial court is REVERSED and SET ASIDE. Accused-appellant Hermogenes Guico, Jr. y Mercado is ACQUITTED of the crime of [I]llegal [P]ossession of [D]angerous [D]rugs on ground of reasonable doubt; accordingly, he is ordered to be immediately released from detention, unless his continued confinement is warranted by some other lawful cause.<sup>[11]</sup>

In so disposing, the CA ruled that the substance seized from Guico was inadmissible in evidence, since he was apprehended and searched without a warrant for either intrusion. As the officers fashioned a blocking force for intercepting Apaw after a shooting incident, such circumstances bore no relation to Guico's apprehension, arrest, and search for dangerous drugs, and his flight from the police was erroneously appreciated as guilt.

Following the CA's Decision dated April 22, 2016, the Court issued a Resolution<sup>[12]</sup> dated October 3, 2016, referring the case to the OCA for evaluation, report, and recommendation. Thus, in a Memorandum<sup>[13]</sup> dated January 12, 2017, the OCA recommended that:

1. respondent Hermogenes M. Guico, Jr., Clerk III, Office of the Clerk of Court, Regional Trial Court, Batangas City, Batangas, be found GUILTY of grave misconduct pursuant to Section 46 (A) (3), Rule 10 of the Revised Rules for Administrative Cases in the Civil Service; and
2. respondent Guico, Jr. be ordered DISMISSED from the service with cancellation of eligibility, forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from holding public office.<sup>[14]</sup>

The OCA capitalized on Guico's positive result for drug use, upon which his administrative guilt could be premised:

It is of no moment that only a criminal case for illegal possession was filed against respondent. The fact remains that he was found positive for drug use. Indeed, respondent had no duty to raise a defense for drug use, which is not the subject of the criminal case. However, he may still be held liable for any other flagrant violation of the law arising from the facts in the criminal case.<sup>[15]</sup> (Underscoring in the original)

Ultimately, due to the gravity of the OCA's recommended penalty, the instant case was referred to the Court *En Banc*.

### **ISSUE**

Whether Hermogenes M. Guico, Jr. may be held administratively liable for testing positive for use of methamphetamine hydrochloride.

### **RULING**

The Court absolves Guico of any administrative liability in the absence of any incriminating evidence that may be used against him.

Article III, Section 2 of the Constitution provides:

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.

In relation thereto, Article III, Section 3(2) provides for an exclusionary rule of evidence, thus:

Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding. (Underscoring

supplied)

That the provision excludes "any evidence" obtained in transgression of the privacy of communication or correspondence and the right against unreasonable searches and seizures evinces the intent of the Framers of the 1987 Constitution not to limit the exclusionary rule only to evidence directly obtained in violation of those rights. So long as the evidence sought to be presented is fairly traceable to the illegal search or seizure or the intrusion into privacy, then the same must be excluded. Indeed, no restrictions or limitations should be read into the law where there are none; especially so when what is at stake are fundamental liberties, such as the right against unreasonable searches and seizures, as the Court has declared in *People v. Tudtud*:<sup>[16]</sup>

The Bill of Rights is the bedrock of constitutional government. If people are stripped naked of their rights as human beings, democracy cannot survive and government becomes meaningless. This explains why the Bill of Rights, contained as it is in Article III of the Constitution, occupies a position of primacy in the fundamental law way above the articles on government power.

The right against unreasonable search and seizure in turn is at the top of the hierarchy of rights, next only to, if not on the same plane as, the right to life, liberty and property, which is protected by the due process clause. This is as it should be for, as stressed by a couple of noted freedom advocates, the right to personal security which, along with the right to privacy, is the foundation of the right against unreasonable search and seizure "includes the right to exist, and the right to enjoyment of life while existing." Emphasizing such right, this Court declared in *People v. Aruta*:

Unreasonable searches and seizures are the menace against which the constitutional guarantees afford full protection. While the power to search and seize may at times be necessary to the public welfare, still it may be exercised and the law enforced without transgressing the constitutional rights of the citizens, for the enforcement of no statute is of sufficient importance to justify the indifference to the basic principles of government.<sup>[17]</sup> (Citations omitted)

More canonically, the Court, in *People v. Alicando*,<sup>[18]</sup> interpreted the evidentiary rule to exclude, not only evidence obtained directly from the unlawful search or seizure, but also secondary or derivative evidence originating therefrom, thus:

We have not only constitutionalized the Miranda warnings in our jurisdiction. We have also adopted the libertarian exclusionary rule known as the "fruit of the poisonous tree," a phrase minted by Mr. Justice Felix Frankfurter in the celebrated case of *Nardone v. United States*. According to this rule, once the primary source (the "tree") is shown to have been unlawfully obtained, any secondary or derivative evidence (the "fruit") derived from it is also inadmissible. Stated otherwise, illegally seized evidence is obtained as a direct result of the illegal act, whereas the "fruit of the poisonous tree" is the indirect result of the same illegal act. The "fruit of the poisonous tree" is at least once removed from the illegally

seized evidence, but it is equally inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the originally illegally obtained evidence taints all evidence subsequently obtained. We applied this exclusionary rule in the recent case of *People vs. Salanga, et al.*, a ponencia of Mr. Justice Regalado. Salanga was the appellant in the rape and killing of a 15-year old barrio lass. He was, however, illegally arrested. Soldiers took him into custody. They gave him a body search which yielded a lady's underwear. The underwear was later identified as that of the victim. We acquitted Salanga. Among other reasons, we ruled that "the underwear allegedly taken from the appellant is inadmissible in evidence, being a so-called "fruit of the poisonous tree."<sup>[19]</sup> (Citations omitted; underscoring supplied)

Hence, the foregoing doctrine has been used by the Court to exclude written confessions which only distilled in writing some extrajudicial confessions previously declared before a counsel who was not independent;<sup>[20]</sup> to render inadmissible a bayonet, used as an instrument to a killing, where information regarding such weapon was obtained through an uncounselled confession, and the waiver of counsel was improperly made;<sup>[21]</sup> to deem as tainted the money and necklace, sought to be introduced as evidence in a prosecution for robbery with homicide, which was retrieved following the accused's uncounselled admissions thereon;<sup>[22]</sup> to exclude information derived from an uncounselled confession;<sup>[23]</sup> and, more recently, to bar evidence derived from a subsequent search of the accused's house after his illegal arrest.<sup>[24]</sup>

Similarly, Guico's positive result for drug use may not be used against him as this is a fruit of the poisonous tree, the tree being the methamphetamine hydrochloride illegally seized from him following his apprehension late evening of September 21, 2011. The fact that the present case is administrative in nature does not render this principle inoperative.<sup>[25]</sup> The poisoned tree and its tainted fruits are "inadmissible for any purpose in any proceeding."

In its Decision dated April 22, 2016, the CA ruled as illegal Guico's warrantless arrest, search and seizure, considering that, under the circumstances, the officers had not established probable cause to arrest and search him for violation of R.A. No. 9165:

In this case, the police officers were not surveying the area of arrest for the presence of drug violators. Neither did they have any informant's tip that the area was a known place for drug users or drug pushers. In fact, the police officers were called upon to form a blocking force to apprehended (sic) a certain alias "Apaw" who was a suspect in a shooting incident, which they did not also witness at all. The word "Apaw" is another term for "pipi" or mute.

Accused-appellant was not, at the time of his warrantless arrest, committing a crime, nor was it shown that he was about to do so or that he had just done so in the presence of the arresting officer. He was merely riding a motorcycle at the time. Notably, when the policemen