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**EN BANC**

[A.M. No. P-20-4067. November 3, 2020]
(Formerly OCA I.P.I. No. 19-4968-P)

**JUDGE LILIBETH O. LADAGA,** *Complainant, v.* **ATTY. ARNAN AMOR P. SALILIN, Clerk of Court, and ELGIE G. BONGOSIA, Utility Worker I, both of Branch 28, Regional Trial Court (RTC), Surigao del Sur,** *Respondents*.

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; DUTIES OF CLERKS OF COURT; CLERKS OF COURT ARE MANDATED TO ENSURE PROPER SAFEKEEPING OF THE COURT'S FUNDS, PROPERTIES, RECORDS, AND EVIDENCE SUBMITTED IN COURT. —** The clerk of court is mandated with safekeeping [of] all submitted pieces of evidence. . . .

. . .

Clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes, and concerns. They perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they generally are also the treasurer, accountant, guard and physical plant manager of the trial courts.

Given the fundamental role of evidence in court proceedings, the clerk of court's duties is crucial, having control and management of all court records, exhibits, documents, properties, and supplies. As record and evidence keeper, it is respondent's duty to conduct periodic inventory of dockets, records, and exhibits, as well as to ensure that the records and exhibits of each case are accounted for. Being the custodian, the clerk of court is liable for any loss, shortage, destruction, or impairment to these items.

**2. ID.; ID.; ID.; GROSS NEGLECT OF DUTY; LOSS OF DRUG SACHETS TO BE INTRODUCED AS EVIDENCE IN**

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**PENDING CASES CONSTITUTES GROSS NEGLECT OF DUTY.—** [I]t is apparent that Atty. Salilin did not properly manage the evidence under his custody. That the loss of the drug sachets was discovered during trial, while the witness was about to identify the same, highlighted Atty. Salilin's failure to conduct the necessary inventory. It also brought undue embarrassment to the court. Had he been performing his duties faithfully, he would have definitely noticed the loss of such a considerable number of evidence.

. . .

. . . [T]his Court does not share the OCA's view that Atty. Salilin should be held liable for simple neglect of duty. It is true that in the past, loss of exhibits resulted to the clerk of court's liability for simple neglect of duty and a penalty of suspension and/or fine.

. . .

More recently however, this Court imposed a graver penalty for the loss of drug evidence in *Office of the Court Administrator v. Toledo*. In that case, the Court held the clerk of court liable for gross neglect of duty. The court found that the loss of the *corpus delicti* adversely affected the integrity of two (2) criminal cases decided within close proximity to the discovery of the loss.

In the case at bar, this Court finds that Atty. Salilin should be similarly held liable for **gross neglect of duty**, and not merely simple neglect of duty since the loss of the drug sachets will undoubtedly affect the nine (9) pending cases for which these were to be introduced as evidence.

**3. ID.; ID.; ID.; CLERKS OF COURT SHOULD DEVELOP RELIABLE SAFETY MEASURES TO SECURE THE SAFETY OF EVIDENCE VITAL IN DETERMINING THE GUILT OF THE ACCUSED.—** Atty. Salilin did not have a system for guarding the evidence vault's key, and was unsure whether he left the keys in his drawer or his bag at the time of the theft. If he truly believed that the lock of the evidence vault is old and faulty, or that there were difficulties in maintaining it, he should have requested for a new one, or at least raised the concern to Judge Ladaga. A simple exercise of diligence would have prompted him to inform the judge of the necessary repair and device reliable safety measures to ensure the safety of the contents of the vault.

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A clerk of court's office is the hub of activities, and he or she is expected to be assiduous in performing official duties and in supervising and managing the court's dockets, records, and exhibits. Court evidence cannot and should not be treated like any ordinary court supply, as they are indispensable to the court's adjudicative functions. Atty. Salilin should have been more circumspect in securing the contents of the evidence vault. This, considering that the evidence vault contained vital pieces of evidence necessary in determining the guilt of the accused with pending cases before their Court.

**4. ID.; ID.; ID.; CONSIDERING THAT DRUG SACHETS ARE INDISPENSABLE IN THE ADJUDICATION OF DRUG-RELATED OFFENSES, LOSS OF SUCH EXHIBITS ULTIMATELY RESULT IN THE FAILURE OF DISPENSATION OF JUSTICE.—** As officer of the Court, Atty. Salilin was expected to discharge his duty of safekeeping court records, exhibits, properties with diligence. . . .

Verily, the consequences of irresponsible safekeeping of court exhibits ultimately result in the failure of dispensation of justice. Prosecution and adjudication of guilt are adversely affected, if not halted, by the loss of relevant pieces of evidence caused by fault or neglect of court custodians.

In this case, the sensitive nature, as well as indispensability of the drug sachets in the adjudication of RA 9165 offenses in their court, should have impelled Atty. Salilin to be more watchful and cautious in safeguarding the evidence vault. After all, the success of any litigation is almost always dependent on the evidence presented by the parties. In drug related offenses, the dangerous drug itself constitutes the very *corpus delicti* of the offense, and the fact of its existence is vital to a judgment of conviction. It is vital in these cases that the identity of the prohibited drug be established beyond doubt. However, instead of being vigilant, Atty. Salilin became overconfident and lax since there were no prior incidents of theft or loss of evidence in their court.

**5. ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY DISTINGUISHED FROM GROSS NEGLECT OF DUTY.—** Simple neglect of duty is defined as the failure of an employee to give one's attention to a task expected of him or her. Gross neglect of duty is such neglect which, from the gravity of the

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case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare. It refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected.

**6. ID.; ID.; ID.; CLERKS OF COURT SHOULD OBSERVE GREATER VIGILANCE AND CARE IN THE CUSTODY AND HANDLING OF SMALL PIECES OF EVIDENCE.—** Determination of neglect or negligence largely depends on the circumstances of every given case. It is not determined by reference to the personal judgment of the actor in the situation before him but on the supposed conduct of a prudent man in a given situation in the light of human experience and in view of the facts involved in the particular case. Applying the said principle to the clerk of court's duties, greater vigilance and care should be observed in the custody and handling of small pieces of evidence, like sachets containing miniscule amounts of prohibited drugs and/or drug paraphernalia, given the relative ease by which they can be taken. Sufficient safeguards should be undertaken to ensure security of the aforesaid items such as the use of secure vaults, cabinets and locks. Further, it may not be amiss to point out that periodic inventory of the court's respective properties and exhibits is indispensable in minimizing and discouraging loss of various court items.

**7. ID.; ID.; ID.; GRAVE MISCONDUCT, DEFINED.—** Grave misconduct is defined as a serious transgression of some established and definite rule of action (such as unlawful behavior or gross negligence by the public officer or employee) that tends to threaten the very existence of the system of administration of justice an official or employee serves. It may manifest itself in corruption, or in other similar acts, done with the clear intent to violate the law or in flagrant disregard of established rules.

**8. ID.; ID.; ID.; GRAVE MISCONDUCT; DISHONESTY; THEFT OF DRUG EXHIBITS AND USE OF THE SAME AMOUNT TO GRAVE MISCONDUCT, DISHONESTY, AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.—** In *Zarate-Fernandez v.*

*Lovendino*, this Court held respondent court aide liable for grave misconduct because of the theft of the exhibits in the court's vault and the illegal sale of the pilfered firearm. It concluded that the element of corruption had also been established from the respondent's use of his position to procure some benefit for himself and to the detriment of the Judiciary. This Court also found therein respondent guilty of dishonesty because his misappropriation of the court's evidence demonstrates his disposition to lie, cheat, deceive, defraud, or betray. Finally, respondent was also found guilty of conduct prejudicial to the best interest of the service because he violated the norm of public accountability which subsequently diminished the people's faith in the Judiciary.

Bongosia is no different. He deceived the guard on duty to gain access to the vault. He also admitted to using the drugs contained in one of the sachets, which was essentially confirmed by the results of his drug test. More importantly, his theft of the drug sachets would unduly and adversely affect the conduct and integrity of pending court cases.

. . . Bongosia is held liable for grave misconduct, dishonesty, and conduct prejudicial to the best interest of service.

**9. ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; CONSPIRACY; MERE PRESENCE IN THE CRIME SCENE AND INACTION TO PREVENT THE COMMISSION OF THE CRIME DO NOT MAKE ONE A CO-CONSPIRATOR.—** Atty. Salilin's negligence notwithstanding, the Court agrees with the OCA that there is no proof that he conspired with Bongosia to steal the drugs from the vault. There is nothing that directly shows he consented to, or even knew that, Bongosia took the drug sachets from the vault. The finding of conspiracy entails that the alleged conspirator performed at least an overt act that showed his concurrence in the criminal design. His mere presence in the crime scene, as well as the showing of his inaction to prevent the commission of the crime, will not make him a co-conspirator because such is not of the nature of overt acts essential to incurring criminal liability under the umbrella of a conspiracy.

**10. ID.; ID.; ID.; IN VIEW OF THE NATURE OF A PUBLIC OFFICE, IT IS IMPERATIVE FOR COURT PERSONNEL TO PERFORM THEIR TASKS EFFICIENTLY AND**

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> **COMPETENTLY. —** [C]ourt employees must always be mindful of the relevance and delicate nature of their tasks. Administrative tasks are inseparable and complement the courts' adjudicative functions. Hence, it is imperative that they are performed efficiently and competently. Public office is a public trust. No less than the fundamental law of the land requires that "public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." Nothing short of faithful adherence is expected from those involved in the administration of justice. Public servants are mandated to uphold public interest over personal needs. Everyone, from the highest official to the lowest rank employee, must live up to the strictest norms of probity and integrity in the public service.

## D E C I S I O N

***PER CURIAM*:**

The instant administrative case stemmed from a 30 August 2019 Letter[1] (Letter) from Judge Lilibeth Ladaga (Judge Ladaga), Presiding Judge, Branch 28, Regional Trial Court (RTC), Lianga, Surigao del Sur to the Office of the Court Administrator (OCA) charging Atty. Aman Amor P. Salilin (Atty. Salilin), Clerk of Court, and Elgie G. Bongosia (Bongosia), Utility Worker I, both from Branch 28, RTC, Lianga, Surigao del Sur with grave misconduct.

### Factual Antecedents

On 16 July 2019, during the hearing of Criminal Case Nos. 18-3322, 18-3323 and 18-3324, entitled *People v. Quilaton, et al.*, before Judge Ladaga's sala, it was discovered that two (2) sachets of "shabu" the subject of the prosecution witness' testimony that day, were missing from the evidence container.[2] Two weeks later, or on 30 July 2019, at the hearing of Criminal

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[1] *Rollo*, pp. 2-7.

[2] *Id.* at 2.

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Case Nos. 2216 to 18-3320, entitled, *People v. Dormitorio, et al.*,[3] the court discovered another sachet of "shabu" had gone missing.

Judge Lagada requested the National Bureau of Investigation (NBI) District Office in Prosperidad, Agusan del Sur to conduct an investigation on the missing drug evidence. She also requested the Philippine National Police (PNP) Provincial Laboratory to conduct drug testing on all court personnel, including herself and her spouse, the security guards, and the staff assigned to the court on a job order status.[4]

All the court personnel tested negative for drugs,[5] except for Bongosia,[6] which did not preclude the possibility that he used illegal drugs at least four (4) days prior to testing. On 02 August 2019, the NBI agents interviewed all the court personnel of Branch 28, RTC, Lianga, Surigao del Sur. During his interview, Bongosia confessed that he took the sachets of shabu from the evidence vault.[7]

Judge Ladaga called the court personnel to a meeting after the NBI agents left, with court stenographer Mercedita Tolentino recording the proceedings.[8] Bongosia repeated his confession. He admitted that he took the sachets of drugs out of the evidence vault one Saturday in June 2019. He claimed an unknown person threatened to inflict dreadful consequences upon him if he will not destroy the records and evidence in the drug cases pending in Branch 28.[9] When Atty. Salilin started looking for the missing drug evidence, Bongasia admitted having kept some and surrendered the same in a crumpled bond paper. Upon instruction

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[3] *Id.* at 3.

[4] *Id.*

[5] *Id.* at 20.

[6] *Id.* at 4.

[7] *Id.*

[8] *Id.*

[9] *Id.*

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of Judge Ladaga, the sachets were placed inside a zip lock pouch, sealed and signed by Atty. Salilin.[10] Afterwards, Bongosia committed to reduce his confession to writing.[11]

In his affidavit, Bongosia recounted that sometime in mid-June 2019, while he was out for some office errands, someone placed an arm on his shoulder, and told him, "Do not look back, and just keep on walking. We have a request to you. Burn the records of the drug cases and the evidence. So that nothing will happen to all of you. Don't tell anyone. Don't look back, just proceed and keep on walking."[12] He was confused by the conversation, but continued walking. He claimed that he was overcome with anxiety and confusion by what happened.[13]

One Saturday in June 2019, Bongasia went to the court and told the guard on duty to buy food for their lunch. He immediately went to Atty. Salilin's table, opened his drawer, took the keys to the vault, and opened the same.[14] He took the evidence box from inside the vault and randomly pulled out sachets of drugs which he placed inside different cellophanes. He returned the evidence box, closed the vault, and placed the key back to Atty. Salilin's drawer.

Bongasia further declared that he took his lunch from the guard and went home, in a rented room above Atty. Salilin's house, and kept the drugs inside his cabinet. During nightfall, he went to the vacant area behind Atty. Salilin's house and burned the drugs with dried leaves and cellophane. He poured diesel on the drugs to hide the smell. He also admitted taking two (2) sachets and using one of them.[15] Finally, he claimed

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[10] *Id.* at 23.

[11] *Id.* at 5.

[12] *Id.* at 26-27.

[13] *Id.* at 27.

[14] *Id.*

[15] *Id.* at 28.

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that he acted alone and was ready to face the consequences of his transgression.[16]

Meanwhile, the sachets recovered from Bongosia were confirmed to contain methamphetamine hydrochloride.[17] Thereafter, Judge Ladaga issued a memorandum prohibiting Bongosia from entering the premises[18] and directing Atty. Salilin to explain how Bongosia had access to the drug evidence vault.[19]

Atty. Salilin submitted his explanation, which and emphasized that for more than seven (7) years of service, he has never encountered problems regarding missing drug evidence, lost court property, or even misappropriate a single centavo.[20] He admitted Bongosia had been living in the second floor of his rented house for a year. He acknowledged the possibility that Bongosia might have taken the keys of the evidence vault either from his bag[21] or from his office drawer. He surmised that the vault's locking mechanism might have failed to engage, or Bongosia might have tinkered with the same.[22] As to the combination lock of the evidence vault, Atty. Salilin claimed that nobody knew how to change the number combination, since it was merely inherited from the former clerk of court. He asserted that he was also a victim of Bongosia's acts, since the latter took the key from his drawer, in violation of his right to privacy. He denied being negligent because he never left his drawer open.[23]

After an inventory, it was found that Bongosia took a total of thirty-six (36) sachets of drugs from sixteen (16) cases, viz.:

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[16] *Id.* at 29.

[17] *Id.* at 25.

[18] *Id.* at 61.

[19] *Id.* at 62.

[20] *Id.* at 63.

[21] *Id.* at 66.

[22] *Id.*

[23] *Id.* at 67.

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1) twenty-two (22) sachets from nine (9) active/pending cases;[24] 2) nine (9) sachets from four (4) cases subject of plea bargaining;[25] 3) three (3) sachets from two (2) decided cases;[26] and 4) two (2) sachets from one (1) case subject of a demurrer, with a total net weight of 16.0766 grams.[27]

In a 09 September 2019 letter,[28] Atty. Salilin reported the theft of drug exhibits from the court's evidence vault, and the subsequent filing of criminal action for qualified theft against Bongosia. Atty. Salilin alleged that Judge Ladaga called a meeting of all court personnel where she announced that she had forwarded the investigation report to the Supreme Court, and that criminal and administrative cases were filed against him and Bongosia.[29] He claimed that during the meeting and in the presence of all the staff, Judge Ladaga asked him to resign from his post to avoid the pain of being terminated. Moreover, the court could look for an OIC-Clerk of Court in the meantime as preventive suspension for ninety (90) days was expected claiming that Judge Ladaga already prejudged him. Atty. Salilin requested to be transferred to another station, particularly to the RTC of Dapa, Surigao del Norte.[30]

In a 10 September 2019 Supplemental Letter Complaint,[31] Judge Ladaga informed the Court that the NBI had already charged Atty. Salilin and Bongosia with violation of Section 27[32]

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[24] *Id.* at 176-180.

[25] *Id.* at 181 and 183.

[26] *Id.* at 182.

[27] *Id.* at 6.

[28] *Id.* at 173-175.

[29] *Id.* at 174.

[30] *Id.*

[31] *Id.* at 148-149.

[32] Section 27. *Criminal Liability of a Public Officer or Employee for Misappropriation, Misapplication or Failure to Account for the Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous*

Supreme Court E-Library



of Republic Act (RA) No. 9165 before the Office of the Provincial Prosecutor of Surigao del Sur City. She also submitted the 05 September 2019 NBI Investigation Report [33] (NBI Report) and claimed that Atty. Salilin filed a case for qualified theft against Bongosia.

The NBI recommended that Atty. Salilin and Bongosia be charged for violation of Sec. 27 of RA 9165.[34] While Bongosia admitted the theft of the evidence, the NBI found his story bore holes and lapses which defied logic.[35] First, the NBI found it suspicious that the missing sachets were taken from pending cases, while some from already terminated cases. Second, he failed to confide the threats of the unknown person to Judge Ladaga and Atty. Salilin.[36] On the other hand, the NBI also found Atty. Salilin's conduct highly unusual in that he failed to notice and report the substantial loss of evidence — a total

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*Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment Including the Proceeds or Properties Obtained from the Unlawful Act Committed*. — The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00), in addition to absolute perpetual disqualification from any public office, shall be imposed upon any public officer or employee who misappropriates, misapplies or fails to account for confiscated, seized or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment including the proceeds or properties obtained from the unlawful acts as provided for in this Act.

Any elective local or national official found to have benefited from the proceeds of the trafficking of dangerous drugs as prescribed in this Act, or have received any financial or material contributions or donations from natural or juridical persons found guilty of trafficking dangerous drugs as prescribed in this Act, shall be removed from office and perpetually disqualified from holding any elective or appointive positions in the government, its divisions, subdivisions, and intermediaries, including government-owned or -controlled corporations.

[33] *Rollo*, pp. 151-163.

[34] *Id.* at 163.

[35] *Id.* at 159.

[36] *Id.*

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of thirty-six (36) sachets — in a single occasion.[37] He did not take any action, and instead, waited for Judge Ladaga to initiate an investigation. The NBI found it suspicious that Atty. Salilin was nonchalant and unperturbed, instead of being the first person to charge Bongosia.[38]

**Report and Recommendation of the OCA**

In its 08 June 2020 Report and Recommendation,[39] the OCA submitted the following:

> The instant administrative complaint against Atty. Salilin and Bongosia be re-docketed as a regular administrative matter;
>
> Bongosia be held liable for grave misconduct and be dismissed from service, with forfeiture of his retirement and other benefits, except accrued leave credits, and be perpetually disqualified from re-employment in the government service;
>
> Atty. Salilin be found guilty of simple neglect of duty and suspended for three (3) months without pay, with a stern warning that a repetition of the same will be dealt more severely; and
>
> The complaint against Atty. Salilin for grave misconduct be dismissed for insufficiency of evidence.[40]

The OCA agreed with Judge Ladaga that Bongosia was guilty of grave misconduct when he took the drug evidence from the vault and used one of the sachets.[41] However, the OCA disagreed that Atty. Salilin is liable for grave misconduct, finding no evidence that he actually conspired with Bongosia in taking the drug evidence from the vault.[42] Instead, it recommended

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[37] *Id.* at 161.

[38] *Id.*

[39] *Id.* at 230-236.

[40] *Id.* at 235-236.

[41] *Id.* at 34.

[42] *Id.*

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holding Atty. Salilin liable for simple neglect of duty, particularly in the safekeeping of drug evidence.[43]

**Issue**

The sole issue for the Court's resolution is whether Atty. Salilin and Bongosia are administratively liable for the loss of drug evidence in the court's custody.

**Ruling of the Court**

The Court adopts the OCA's findings but modifies the designation of the offense and the penalty to be imposed in accordance with recent jurisprudence.

The clerk of court is mandated with safekeeping all submitted pieces of evidence. 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 case/s involving such evidence shall have been terminated shall be under the custody and safekeeping of the Clerk of Court.

Meanwhile, 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.

Clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes, and concerns.[44] They perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they generally are also the

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[43] *Id.* at 235.

[44] *Office of the Court Administrator v. Nicolas*, A.M. No. P-10-2840, 23 June 2015, 761 Phil. 582 (2015); 760 SCRA 273, 285.

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treasurer, accountant, guard and physical plant manager of the trial courts.[45]

Given the fundamental role of evidence in court proceedings, the clerk of court's duties is crucial, having control and management of all court records, exhibits, documents, properties, and supplies.[46] As record and evidence keeper, it is respondent's duty to conduct periodic inventory of dockets, records, and exhibits, as well as to ensure that the records and exhibits of each case are accounted for.[47] Being the custodian, the clerk of court is liable for any loss, shortage, destruction, or impairment to these items.[48]

In this case, it is apparent that Atty. Salilin did not properly manage the evidence under his custody. That the loss of the drug sachets was discovered during trial, while the witness was about to identify the same, highlighted Atty. Salilin's failure to conduct the necessary inventory. It also brought undue embarrassment to the court. Had he been performing his duties faithfully, he would have definitely noticed the loss of such a considerable number of evidence.

His assertion that he was also a victim of Bongosia's thievery, is a lousy attempt to downplay his negligence. Atty. Salilin did not have a system for guarding the evidence vault's key, and was unsure whether he left the keys in his drawer or his bag at the time of the theft. If he truly believed that the lock of the evidence vault is old and faulty, or that there were difficulties in maintaining it, he should have requested for a new one, or at least raised the concern to Judge Ladaga.[49] A

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[45] *Id.*

[46] *Botigan-Santos v. Gener*, A.M. No. P-16-3521, 04 September 2017, 817 Phil. 655 (2017); 838 SCRA 466, 472.

47 *Id.*

[48] *Financial Audit on the Books of Accounts of Ms. Adelina R. Garrovillas*, A.M. No. P-04-1894, 09 August 2005, 503 Phil. 678 (2005); 466 SCRA 59, 65.

[49] *See Office of the Court Administrator v. Rañoco*, A.M. No. P-03-1717, 06 March 2008, 571 Phil. 386 (2008); 547 SCRA 670.

simple exercise of diligence would have prompted him to inform the judge of the necessary repair and device reliable safety measures to ensure the safety of the contents of the vault.[50]

A clerk of court's office is the hub of activities, and he or she is expected to be assiduous in performing official duties and in supervising and managing the court's dockets, records, and exhibits.[51] Court evidence cannot and should not be treated like any ordinary court supply, as they are indispensable to the court's adjudicative functions. Atty. Salilin should have been more circumspect in securing the contents of the evidence vault. This, considering that the evidence vault contained vital pieces of evidence necessary in determining the guilt of the accused with pending cases before their Court.

Atty. Salilin's negligence notwithstanding, the Court agrees with the OCA that there is no proof that he conspired with Bongosia to steal the drugs from the vault. There is nothing that directly shows he consented to, or even knew that, Bongosia took the drug sachets from the vault. The finding of conspiracy entails that the alleged conspirator performed at least an overt act that showed his concurrence in the criminal design. His mere presence in the crime scene, as well as the showing of his inaction to prevent the commission of the crime, will not make him a co-conspirator because such is not of the nature of overt acts essential to incurring criminal liability under the umbrella of a conspiracy.[52]

Nonetheless, this Court does not share the OCA's view that Atty. Salilin should be held liable for simple neglect of duty. It is true that in the past, loss of exhibits resulted to the clerk of court's liability for simple neglect of duty and a penalty of suspension and/or fine.

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[50] *Office of the Court Administrator v. Ramirez*, A.M. No. MTJ-03-1508, 17 January 2005, 489 Phil. 262 (2005).

[51] *Supra* at note 44.

[52] *People v. Raguro*, G.R. No. 224301, 30 July 2019.

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In *Office of the Court Administrator v. Ramirez*,[53] the Court found the respondent clerk of court liable for simple neglect of duty and suspended one (1) month and one (1) day for the loss of various court exhibits consisting of firearms and ammunition. Meanwhile, the respondent clerk of court in *Office of the Court Administrator v. Rañoco*[54] was held liable for simple neglect of duty, and suspended from office for three (3) months without pay for the loss of exhibits and transcript of stenographic notes.

On the other hand, in *Botigan-Santos v. Gener*,[55] the Court found the clerk of court guilty of simple neglect of duty for the loss of firearms which were subject of cases that were dismissed fifteen (15) years ago. This Court explained that the loss could have been prevented if the clerk turned the firearms over to the Firearms and Explosives Unit of the PNP, pursuant to the directive in the Manual for Clerks of Court. The Court imposed a fine equivalent to three (3) months' salary, instead of suspension, since the latter penalty could hamper the operation of the trial court.

More recently, however, this Court imposed a graver penalty for the loss of drug evidence in *Office of the Court Administrator v. Toledo*.[56] In that case, the Court held the clerk of court liable for gross neglect of duty. The court found that the loss of the *corpus delicti* adversely affected the integrity of two (2) criminal cases decided within close proximity to the discovery of the loss.

In the case at bar, this Court finds that Atty. Salilin should be similarly held liable for **gross neglect of duty**, and not merely simple neglect of duty since the loss of the drug sachets will undoubtedly affect the nine (9) pending cases for which these were to be introduced as evidence. Simple neglect of duty is defined as the failure of an employee to give one's attention to a task expected of him or her. Gross neglect of duty is such

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[53] A.M. No. MTJ-03-1508, 17 January 2005, 489 Phil. 262 (2005).

[54] *Supra* at note 47.

[55] *Supra* at note 44.

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

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neglect which, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare.[57] It refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected.[58]

Determination of neglect or negligence largely depends on the circumstances of every given case. It is not determined by reference to the personal judgment of the actor in the situation before him but on the supposed conduct of a prudent man in a given situation in the light of human experience and in view of the facts involved in the particular case.[59] Applying the said principle to the clerk of court's duties, greater vigilance and care should be observed in the custody and handling of small pieces of evidence, like sachets containing miniscule amounts of prohibited drugs and/or drug paraphernalia, given the relative ease by which they can be taken.[60] Sufficient safeguards should be undertaken to ensure security of the aforesaid items such as the use of secure vaults, cabinets and locks. Further, it may not be amiss to point out that periodic inventory of the court's respective properties and exhibits is indispensable in minimizing and discouraging loss of various court items.

As officer of the Court, Atty. Salilin was expected to discharge his duty of safekeeping court records, exhibits, properties with diligence.[61] In *Cañete v. Rabosa, Sr.*,[62] this Court had already

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[57] *Nuezca v. Verceles*, A.M. No. P-19-3989, 25 June 2019, citing *Rapsing v. Walse-Lutero*, 808 Phil. 389 (2017).

[58] *Id.*

[59] *See Cacho v. Manahan*, G.R. No. 203081, 17 January 2018, citing *Picart v. Smith*, 37 Phil. 809 (1918). *See* also *OCA v. Toledo, supra* at note 55.

[60] *See People v. Lung Wai Tang*, G.R. No. 238517, 27 November 2019.

[61] *See Cruz v. Tantay*, A.M. No. P-99-1296, 25 March 1999, 364 Phil. 602 (1999).

[62] A.M. No. MTJ-96-1111, 05 September 1997, 344 Phil. 9 (1997).

Supreme Court E-Library



succinctly reminded clerks of courts to take necessary precautions in the handling of all court properties, *viz.*:

> We take this opportunity to remind all Clerks of Court to be more vigilant in the custody and safekeeping of court exhibits, particularly firearms and other weapons, as well as dangerous and prohibited drugs. The Court has been receiving reports that these are now the favorite objects of thievery and robbery all over the country, resulting in the failure of the prosecutors to successfully bring the criminals to justice. Worse, the perpetrators go scot-free only to pursue further their nefarious activities with the use of these exhibits.

Verily, the consequences of irresponsible safekeeping of court exhibits ultimately result in the failure of dispensation of justice. Prosecution and adjudication of guilt are adversely affected, if not halted, by the loss of relevant pieces of evidence caused by fault or neglect of court custodians.

In this case, the sensitive nature, as well as indispensability of the drug sachets in the adjudication of RA 9165 offenses in their court, should have impelled Atty. Salilin to be more watchful and cautious in safeguarding the evidence vault. After all, the success of any litigation is almost always dependent on the evidence presented by the parties. In drug related offenses, the dangerous drug itself constitutes the very *corpus delicti* of the offense, and the fact of its existence is vital to a judgment of conviction. It is vital in these cases that the identity of the prohibited drug be established beyond doubt.[63] However, instead of being vigilant, Atty. Salilin became overconfident and lax since there were no prior incidents of theft or loss of evidence in their court.

Anent Bongosia's administrative liability the Court fully agrees with the OCA that he should be held liable for grave misconduct, dishonesty and conduct prejudicial to the best interest of the service.

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[63] *People v. Hilario*, G.R. No. 210610, 11 January 2018, 851 SCRA 1, 13, citing *Mallillin v. People*, G.R. No. 172953, 30 April 2008, 576 Phil. 576 (2008); 553 SCRA 619, 632.

Supreme Court E-Library



Grave misconduct is defined as a serious transgression of some established and definite rule of action (such as unlawful behavior or gross negligence by the public officer or employee) that tends to threaten the very existence of the system of administration of justice an official or employee serves. It may manifest itself in corruption, or in other similar acts, done with the clear intent to violate the law or in flagrant disregard of established rules.[64]

In *Zarate-Fernandez v. Lovendino*,[65] this Court held respondent court aide liable for grave misconduct because of the theft of the exhibits in the court's vault and the illegal sale of the pilfered firearm. It concluded that the element of corruption had also been established from the respondent's use of his position to procure some benefit for himself and to the detriment of the Judiciary. This Court also found therein respondent guilty of dishonesty because his misappropriation of the court's evidence demonstrates his disposition to lie, cheat, deceive, defraud, or betray. Finally, respondent was also found guilty of conduct prejudicial to the best interest of the service because he violated the norm of public accountability which subsequently diminished the people's faith in the Judiciary.

Bongosia is no different. He deceived the guard on duty to gain access to the vault. He also admitted to using the drugs contained in one of the sachets, which was essentially confirmed by the results of his drug test. More importantly, his theft of the drug sachets would unduly and adversely affect the conduct and integrity of pending court cases.

In sum, this Court finds Atty. Salilin liable for gross neglect of duty, while Bongosia is held liable for grave misconduct, dishonesty, and conduct prejudicial to the best interest of service. Their conduct caused great prejudice to the judiciary and plainly speaks of their unfitness to hold their positions in these august

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[64] *Cabauatan v. Uvero*, A.M. No. P-15-3329, 06 November 2017, 844 SCRA 7, 15.

[65] A.M. No. P-16-3530, 06 March 2018.

Supreme Court E-Library



halls. For this, they must be dismissed from the service, and suffer the concomitant administrative penalties.[66]

Indeed, crucial in the review of convictions involving drug offenses is the identity and integrity of the seized items, and this Court, in various instances, has not hesitated in overturning convictions if any of the links in the chain of custody of prohibited or regulated drugs has been established to be compromised. Further, this Court has been insistent in eliciting vigilance from the various sectors of the criminal justice system in complying with legal and jurisprudential standards in the custody and prosecution of illegal drugs offenses. And court employees are not exempted from this delicate duty. They are expected to be as discerning in ensuring litigants that files, records, exhibits and other court submissions are safe and unadulterated when presented in court.

In this light, court employees must always be mindful of the relevance and delicate nature of their tasks. Administrative tasks are inseparable and complement the courts' adjudicative functions. Hence, it is imperative that they are performed efficiently and competently. Public office is a public trust. No less than the fundamental law of the land requires that "public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."[67] Nothing short of faithful adherence is expected from those involved in the administration of justice.[68] Public servants are mandated to uphold public interest over personal needs.

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[66] *See Re*: *Ricky R. Regala*, A.M. No. CA-18-35-P, 27 November 2018, 887, SCRA 134, 143; *Re: Report on the Arrest of Mr. Oliver B. Maxino*, A.M. No. 16-01-3-MCTC, 09 June 2020; *In Re Alcantara*, A.M. No. P-15-3296, 17 February 2015, 754 Phil. 20 (2015); 750 SCRA 603, 611; *Judaya v. Balbona*, A.M. No. P-06-2279, 06 June 2017, 810 Phil. 375 (2017); 826 SCRA 81, 90.

[67] *Efondo v. Favorito*, OCA IPI No. 10-3423-P & A.M. No. P-11-2889, 22 August 2017, 816 Phil. 962 (2015).

[68] *Id.*

Supreme Court E-Library



Everyone, from the highest official to the lowest rank employee, must live up to the strictest norms of probity and integrity in the public service.[69]

**WHEREFORE,** the foregoing premises considered, the Court hereby finds:

1. Respondent Atty. Arnan Amor P. Salilin, then Branch Clerk of Court of the Regional Trial Court, Branch 28, Lianga, Surigao del Sur **GUILTY** of Gross Neglect of Duty; and

2. Respondent Elgie G. Bongosia **GUILTY** of Grave Misconduct, Dishonesty, and Conduct Prejudicial to the Best Interest of Service.

Both respondents are **DISMISSED** from the service. Accordingly, their respective civil service eligibilities are **CANCELLED**, and their retirement and other benefits, except accrued leave credits, are **FORFEITED**. Likewise, they are **PERPETUALLY DISQUALIFIED** from reemployment in any government agency or instrumentality, including any government-owned and -controlled corporation or government financial institution.

**SO ORDERED.**

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

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[69] *Id.*