

**MALACAÑANG
MANILA**

ADMINISTRATIVE ORDER NO. 65

**IMPOSING ON ROSENDO T. BRILLANTES, ASSISTANT CITY PROSECUTOR OF
CEBU, THE PENALTY OF ONE (1) MONTH AND ONE (1) DAY
SUSPENSION WITHOUT PAY**

This refers to the administrative case for gross neglect of duty and conduct prejudicial to the best interest of the service filed by the Department of Justice against Assistant City Prosecutor Rosendo T. Brillantes of the Office of the City Prosecutor of Cebu City.

On the basis of the evidence gathered in the investigation conducted by the Office of the Regional State Prosecutor, Region VII, the Department of Justice formally charged respondent for the aforementioned offenses for the disappearance or loss of 288.20 grams of shabu used as evidence, albeit still to be formally offered, in Criminal Case No. CBU-54970 (People vs. Allan Arriegado).

In his answer, respondent asserted that the loss adverted to was not the result of his negligence, claiming that he kept the items in question inside the drawer of the steel cabinet which also contained shabu and other evidence left by the late Prosecutor Domingo Uy. In this regard, he described the cabinet as "safe", the door of the room where it is located being kept closed even during office hours. He stated that the loss of the said evidence was due to fortuitous event, adding that he joined the prosecution service only a few months before the incident happened.

The Secretary of Justice found respondent prosecutor guilty of simple neglect of duty on the strength of the following premises:

"After a careful study of the evidence on record, we find that there is substantial evidence to show that respondent prosecutor was indeed remiss in his duty of preserving and safekeeping the evidence involving 288.20 grams of shabu relative to Criminal Case No. CBU-54970... and which evidence have not been formally offered in court. There is no dispute that on November 17, 2000, Prosecutor Paderanga turned over to him the case records together with said evidence. Thus, upon receipt thereof, it behooves him to exercise due diligence in preserving and safekeeping the same to insure their presentation in court. In the case at bar, unfortunately, he failed to observe such diligence required under the

circumstances when he simply placed the evidence of shabu in the steel cabinet despite knowledge that its lock was defective. Prudence dictates that he should not have left such kind of evidence in that cabinet unclosed or not properly secured, especially so that the room wherein the said cabinet is located, is not totally free from access of other people. Given such circumstances, obviously, respondent prosecutor was too lax in his duty to insure the safety of the evidence involved.

“While it is true that Flor Mamalias, evidence custodian officer, admitted that they do not have a vault to safe keep the said evidence, however, respondent prosecutor is expected to exert utmost efforts to keep the evidence in a safe place. At the very least, he should have seen to it first that the lock of the cabinet be repaired and properly secured before keeping thereat the evidence. Or, if the evidence cannot be kept secured in the office, he should have informed his head of office about the problem so that proper representation should have been made with the PNP Crime Laboratory of the Region for the latter to accommodate the safekeeping of the evidence. It must be stressed that public prosecutors are duty bound to protect and preserve any physical and real evidence entrusted in their custody during trial. The Manual of Prosecutors mandates that measures should be taken to provide for secondary evidence consisting of photographs or pictures of the physical and real evidence, which evidence shall not be attached to the records of the case. This only shows that public prosecutors are expected to do every measure whatever prudent and necessary under the circumstances to protect and preserve the evidence to insure their presentation in court. The State cannot afford to allow prosecutors to be uncaring and neglectful of the evidence in the custody; otherwise, this would seriously affect the faith of the people in the prosecution service. Worse, it might set a dangerous precedent that would undermine the government’s campaign against criminality. Thus, public service demands that the diligence of a good father of the family should equally apply to prosecutors in protecting and preserving the evidence entrusted to them in the performance of their official duty. Regrettably, respondent prosecutor failed to live up to this expectation.

Anent the contention of respondent prosecutor that this case be dismissed because the court anyway decided the Arriegado case, not due to loss of evidence but for failure of the prosecution to prove the crime charged, even granting it to be so, suffice it to say that it does not detract from the fact that an inexcusable lapse in handling the evidence happened.... It must be pointed out that in the successful prosecution of possession of prohibited drugs or drug pushing, the presentation in court of the prohibited drug, being the *corpus delicti* of the offense, is of vital necessity. It bears stressing, too, that the rampant commission of murder, rape and other odious felonies has been largely attributed to the proliferation and accessibility of illegal drugs, notably..... shabu. Thus,

this incident should not be taken for granted because it undermines the integrity and efficiency of the prosecution service.

However, in light of the totality of the circumstances obtaining in this case, respondent prosecutor, who was then a new prosecutor and has not been thoroughly apprised of the policy of the office in the safe keeping of the evidence by his immediate superior, and there being no wrongful intention to commit the offense, we believe that this omission herein constitutes only neglect of duty for which the appropriate penalty should be suspension of one (1) month and one (1) day from the service without pay pursuant to the Omnibus Rules implementing Book V of Executive Officer No. 292 and other Pertinent Civil Service Laws.”

We concur with the findings of the Secretary of Justice. Indeed, the act of respondent in simply keeping the evidence in an unsecured filing cabinet constitutes simple neglect of duty. Such display of laxity in the custody of evidence, especially shabu, is inexcusable as it undermines the integrity and efficiency of the government’s efforts against the proliferation of dangerous drugs.


We note that respondent is relatively new in his position and apparently has not, during the period, been properly apprised by his immediate superior of his responsibility regarding safeguarding all physical evidence in his possession and control. This fact, however, cannot, standing alone, relieve him from liability. It may, at most, be considered as a mitigating factor.

WHEREFORE, as recommended by the Secretary of Justice, respondent Assistant City Prosecutor Rosendo T. Brillantes is hereby suspended from office for a period of one (1) month and one (1) day without pay, effective upon receipt of a copy of this Order.

SO ORDERED.

04 MAR 2003

By authority of the President:


ALBERTO G. ROMULO
Executive Secretary