

SECOND DIVISION

[A.M. No. P-96-1179, October 10, 2003]

**COUNCILOR WINSTON C. CASTELO, PETITIONER, VS. SHERIFF
CRISTOBAL C. FLORENDO, RESPONDENT.**

R E S O L U T I O N

AUSTRIA-MARTINEZ, J.:

On December 11, 1995, Winston T. Castelo, Councilor of District II of Quezon City, filed a complaint before this Court charging Sheriff Cristobal C. Florendo of Regional Trial Court (RTC) of Quezon City with grave abusive acts, conduct unbecoming of a public officer and serious abuse of authority in the performance of duty and/or administration of justice.^[1]

Castelo's complaint alleges two wrongful acts: *first*, that respondent sheriff, while in the process of implementing a writ of possession, detained and shot him causing serious injury to him; and *second*, respondent sheriff defied and disobeyed a court order.^[2]

Complainant narrates that on August 2, 1995 at around 7:30 in the morning, he received a call from Marlyne P. Guillermo, President of the Ladies Group Association and a resident of Veterans Village of District II, telling him that an eviction operation was about to take place in said area. Complainant went to the site and reached the area at around 9:30 in the morning. There he saw several people who were already very angry. Complainant talked to respondent sheriff and asked if the eviction could be postponed. The respondent answered "*hindi pwede, hindi pwede*", which response angered the crowd even more. Respondent then pulled out his gun and held complainant by the end of his shirt. Complainant asked respondent to put away his gun, but respondent refused. As the angry crowd came nearer, respondent sheriff pulled complainant backwards, tugging the end of his shirt, and poked a gun near respondent's right hip. Complainant tried to free himself from the sheriff's hand but the latter told him "*Putang ina mo ikaw and dahilan ng gulo rito.*" Respondent then shot him at the back which bullet also hit another person, Remigio Macalulot.

^[3] Complainant was brought to Malvar Hospital Quezon City for treatment. The bullet entered his right buttock and exited at the left hip. The medical report noted injuries in the "*GSM POE (R) Posterior Lumbar Area, POX (L) Glutal area outer quadrant with weak EHL bilateral xxx will incapacitate or require medical attendance for more than 30 days if without complication.*"^[4] Macalulot meanwhile was hit on his left hand.^[5] Complainant's witness, Severino Sevilla, also said that after respondent fired his gun, he abandoned the complainant and took shelter at a nearby house.^[6]

In relation to said incident, the City Prosecutor's Office filed an Information charging respondent with frustrated homicide for the shooting of complainant Castelo and

attempted homicide for the wounding of Remigio Macalulot. The cases, docketed as Criminal Cases Nos. Q-95-62487 and Q-95-62488, were assigned to the RTC of Quezon City (Branch 104).^[7]

Anent the second alleged wrongful act, complainant avers that respondent sheriff, in the implementation of the writ, did not comply with the order issued by Judge Eduarlio B. Valencia of the RTC of Quezon City (Branch 222) which directed:

...[t]he Sheriff(s) concerned...to coordinate with the City Engineer and/or other appropriate local and national officials of Quezon City so as to ensure a just, equitable and orderly implementation of this writ of possession to be issued in virtue hereof.^[8]

In support of such claim, he presented certifications from the offices of the City Engineer, Register of Deeds, People's Bureau and the Special Task Force on Squatting and Relocation, stating that respondent did not coordinate with them for the implementation of the subject writ.^[9]

Respondent sheriff, in his Comment dated March 21, 1996, denies all the charges against him and insists that he acted lawfully in the performance of his duties. He further claims that the injuries inflicted on the complainant were caused by accident.^[10] According to him, he was trying to implement a writ of possession on August 2, 1995, at Freedom Street, Veteran's Village with a small security group, composed of SPO3 Gilberto Grizola, PO2 Nestor Sancha, PO3 Mariano Gonzales, Mr. Jarvis Iconar, and Mr. Dante Ramos. Later, complainant Castelo and Brgy. Captain Benjamin Pedro arrived at the site followed by a huge crowd, numbering more than two hundred, some of whom were armed with clubs, lead pipes, knives and stones. Complainant and Pedro requested for a copy of the writ and a discussion ensued. Meanwhile, the crowd which followed the complainant started to surround respondent's group. Complainant tried to pacify them but failed. Complainant then tried to leave respondent's group which caused respondent to panic. Respondent then held complainant by the end of his shirt and said "*Konsehal huwag mo kaming iwan dito at pigilan mo ang mga tao mo.*" Respondent's left hand held complainant by his shirttail while his right hand had a gun pointed downward. Suddenly someone from respondent's right side tried to stab him while another tried to wrestle the gun from his hand. The gun accidentally fired and complainant shouted, "*Tumigil na kayo, may tama ako*" and fell down. Respondent said that he tried to pull him up with his left hand and told the crowd to move back. However, the people started throwing stones at his group. Respondent then let go of complainant and ran for cover at a shanty together with SPO3 Grizola, Iconar and Ramos. Several persons followed and tried to attack them at the shanty which forced respondent and SPO3 Grizola to fire warning shots. The siege lasted for about 40 minutes and ended when they were rescued by a SWAT team. After resting at a secure place, respondent said he proceeded to Station 3, CPDC, in Quezon City to report the incident and surrender his gun. He was then detained and brought to the CID, CPDC, Camp Karingal, Quezon City.^[11]

Dante Ramos, a security guard who assisted respondent that day, Jarvis Iconar, an Aide of the RTC, Quezon City (Branch 99) and SPO3 Gilbert Grizola, a police officer of the Sangandaan Police Station who was tasked to give police assistance during the enforcement of said writ, submitted their individual sworn statements

supporting respondent's version of the facts.^[12]

Respondent, in his Counter-Affidavit which he submitted in connection with the criminal case and which was attached to the Comment, also explains that he and his men started to implement the writ on July 31, 1995. But they received resistance from the residents, hence they were only able to clear 18 out of the 35 lots, the possession of which was ordered by the trial court to be turned over to the petitioner in the civil case. On said date, the police was able to confiscate tear gas canisters, acid, sling shots, homemade clubs and lead pipes. Respondent's group returned to Freedom Street on August 1, 1995 and was able to clear 3 more lots. On August 2, respondent went back to the site with a smaller security detail and labor force. It was on said day that respondent accidentally shot complainant and Macalulot.^[13]

As to the second wrongful act alleged by the complainant, respondent contends that there is no truth to the claim that he did not coordinate with local government offices in the implementation of the writ as directed by the court. He said he made a written request to Mayor Ismael Mathay on July 20, 1995 to dispatch several members of the CPDC to assist in ensuring the orderly implementation of the writ. Accordingly, Mayor Mathay approved said request and instructed General Ricardo De Leon to extend police assistance.^[14]

Complainant submitted a "Reaction to Respondent's Comment" dated April 16, 1996 and avers that it is not true that someone tried to grab respondent's gun. For if it were true, such person should have been arrested and brought to the police station for investigation. Complainant and another witness, Damian R. Jandayan, Jr. who took the pictures while respondent was holding the gun and yanking the complainant both claim that there was no one who tried to grab the gun from respondent.^[15] Complainant further states that it has been eight months since he started undergoing treatment for his wound.^[16]

In a Rejoinder dated July 5, 1996, respondent sheriff argues that the failure to apprehend the person who tried to grab his gun does not mean that such person does not exist. Also, there was too much violence and confusion that day which made it difficult to pinpoint the malefactor.^[17]

In a Resolution dated January 15, 1997, this Court referred the case to Executive Judge Estrellita T. Estrada of RTC, Quezon City for investigation, report and recommendation.^[18] Judge Estrada set the hearing of the investigation on several occasions but such settings were either postponed or re-set upon the agreement of the parties. Thus, complainant was not able to give his testimony against respondent sheriff.^[19] Upon expiration of Judge Estrada's term, the case was referred to Executive Judge Monina A. Zeñarosa who inhibited herself from hearing the case for the reason that the counsel for the complainant was her colleague.^[20] The case was then re-assigned to 1st Vice-Executive Judge Demetrio B. Macapagal who also voluntarily inhibited himself because complainant's counsel was his former superior in the Inquest Division and a colleague in the Office of the City Prosecutor at Quezon City.^[21] Finally, the case was raffled to Judge Lucas P. Bersamin who submitted his final report of the investigation in this case^[22] before he was

appointed Associate Justice of the Court of Appeals.

In his Report, the Investigating Judge stated that he set the hearing of the instant case for several days. However, for various reasons, like power failure, agreement of the parties, emergency leave of the judge and failure to appear of one of the parties, no hearing was actually conducted.^[23]

Then, on January 14, 2003, complainant, assisted by his counsel, Atty. Isabelo Tomas, filed a Manifestation/Motion stating his desistance to pursue the case against the respondent sheriff.^[24] Complainant in his affidavit explained that he is withdrawing his complaint against respondent for the following reasons:

"the lapse of time since the happening of the incident seven (7) years ago has healed not only the wounds but the pain as well and all grievances has vanished in my heart. Moreover, before my father died on August 25, 2002, he told me he wants to see the cases, Criminal... and Administrative... that I filed against the accused, Cristobal Florendo dropped for the said accused was very close and dear to him. I want to honor his death wish.^[25]

Based on said Manifestation/Motion and Affidavit of Desistance, the investigating judge then recommended the dismissal of this administrative case against respondent sheriff.^[26]

In a Resolution dated April 28, 2003, this case was referred to the Office of the Court Administrator for its evaluation, report and recommendation.^[27]

On July 25, 2003, Deputy Court Administrator Christopher O. Lock submitted his report, portions of which read as follows:

As clearly shown in his report, Investigating Judge Lucas P. Bersamin anchored his recommendation to dismiss the instant case based on the Affidavit of Desistance executed by the complainant in favor of the respondent sheriff. However, in numerous cases decided by the Court, one of which is the case Jacob versus Tambo, 369 SCRA 148 (2001), the Court held that: "*An affidavit of desistance will not automatically result to the dismissal of an administrative case or to the exoneration of respondent.*" Thus, despite said recommendation of the Investigating Judge, the instant case should not be automatically dismissed or result to vindication of respondent sheriff from administrative liability, if there is any.

This Office noted that while there are factual issues that should have been threshed out during the investigation, there are sufficient evidence in the pleadings and/or records on file that substantiate the claims of both parties. In fact, even in the absence of testimonial evidence, the following facts were undisputed by both parties, as follows:

1. That during the enforcement of the subject writ on 02 August 1995, respondent Sheriff was carrying a gun. And, that respondent sheriff had indeed held the shirttail of the complainant when the people in

front of them, were approaching;

2. That during the same incident, respondent sheriff fired his gun (either accidental or intentional) which resulted to the shooting and consequential wounding of the complainant;

In the absence of the testimony of the complainant and his witnesses, there is no basis to determine whether or not respondent sheriff's contention was true that the said shooting was accidental in nature. The only issue that is left to be resolved in this case is the respondent sheriff's propriety of bringing a gun during the enforcement of the subject writ. Resolving this issue, will determine whether or not respondent sheriff had acted within the scope of his authority and/or conducted himself in a manner that is consistent with the exacting standards of a public officer.

Records revealed that prior to the implementation of the subject writ, respondent sheriff had requested from Mayor Ismael Mathay of Quezon City the necessary police assistance to ensure an orderly and peaceful implementation of the subject writ....

Thus, there is no doubt that respondent sheriff has a full complement in order to ensure an orderly service and enforcement of the subject writ. Since respondent sheriff was not criminally charged with illegal possession of firearms, it can be safely presumed that he was carrying a license/permit to carry and possess firearms.

Given, the foregoing circumstance and notwithstanding the complainant's affidavit of desistance, which resulted in the dismissal of the criminal complaint for frustrated homicide and attempted homicide, this Office still finds respondent sheriff guilty of misconduct and conduct prejudicial to the best interest of the service for unnecessarily bringing a gun while performing his official duty of executing the subject writ of possession and by discharging the same gun, which resulted to serious injury or wounding of two (2) persons.

This Office finds that it is not necessary for respondent sheriff to be bringing along with him a gun during the implementation of the subject writ notwithstanding the fact that he may be duly licensed under the law to either possess or carry the same within or outside the premises of his home or of the court. The authority vested upon the respondent sheriff in executing the subject writ was to turn over the possession of the subject property to the plaintiff and to seek necessary assistance from local or national government agency to ensure peaceful implementation of the subject writ. Thus, respondent sheriff's authority is only limited to what was embodied in the said writ. Since the court may have anticipated danger in the lines of the court personnel during the implementation of the subject writ, it included the second order authorizing the respondent sheriff to seek necessary police assistance. Therefore, there could be no reason for respondent sheriff to be bringing along with him a firearm since the police officers and the SWAT team he requested are all armed. Their presence alone during the implementation is already an assurance