

SECOND DIVISION

[A.M. No. P-98-1264 (Formerly OCA IPI No. 97-263-P), July 28, 1999]

BASILIO P. MAMANTEO, FLORENTINO B. TRINIDAD, BONIFACIO MANGANIP AND EDGAR S. SALLIDAO, COMPLAINANTS, VS. DEPUTY SHERIFF MANUEL M. MAGUMUN,[1] RESPONDENT.

DECISION

BELLOSILLO, J.:

What should the sheriff do when he is informed by the defendant in a *replevin* that the property to be seized is in *custodia legis* and in fact already forfeited in favor of the government by order of another government agency?

This question assumes importance in light of the charges of grave misconduct filed by complainants Basilio P. Mamanteo, Provincial Environment and Natural Resources (PENR) Officer; Florentino B. Trinidad, Community Environment and Natural Resources (CENR) Officer; and Bonifacio Manganip and Edgar S. Sallidao, both DENR forestry employees stationed in Tabuk, Kalinga, against Deputy Sheriff Manuel M. Magumun of the Regional Trial Court, Br. 4, Tuguegarao, Cagayan.

On 12 April 1996 forestry employees of the DENR, Cordillera Administrative Region, Tabuk, Kalinga, tasked with the enforcement of forestry laws, intercepted a San Miguel Corporation van with Plate No. PJC-321 loaded with narra flitches wrapped in nylon sacks and covered with empty beer bottles and cartons. Confronted by the forestry employees, Villamor Martinez, driver of the van, could not produce any legal permit authorizing him to transport the narra lumber. Hence, after issuing seizure receipts, the vehicle and its load of narra flitches were confiscated by the DENR forestry employees.

On 24 May 1996 a criminal complaint against driver Villamor Martinez was filed before the Provincial Prosecutors Office of Tabuk, Kalinga, for violation of Sec. 78 of P.D. 705^[2] as amended, and implemented by DENR Administrative Order 59.^[3] On 24 July 1996, after due notice and opportunity to be heard, an order of forfeiture of the vehicle and its load was issued by the DENR Regional Office pursuant to its quasi-judicial authority to administratively order the confiscation and forfeiture of lumber possessed without permit including its conveyance.

Thereafter, San Miguel Corporation, the owner of the vehicle, through its agent Aimardo V. Interior, filed a case for recovery of personal property and damages with application for writ of *replevin* with the Regional Trial Court, Br. 4, Tuguegarao, Cagayan, against herein complainants. The trial court issued a warrant of seizure of personal property directing its sheriff to take hold of the van and its contents.

On 1 August 1996 Deputy Sheriff Manuel M. Magumun, escorted by Sheriff Jacinto

Contapay of RTC-Br. 1, Tabuk, Kalinga, and agents of the Philippine National Police, went to the office of the DENR in Tabuk, Kalinga, to enforce the warrant issued by the trial court but the forestry employees and officials refused to release the van on the ground that it had already been forfeited in favor of the government and was now in *custodia legis*. Despite this explanation, on 7 August 1996, Deputy Sheriff Magumun accompanied this time by Sheriff John Dongui-is Jr. of the Office of the Clerk of Court of Tabuk, Kalinga, and twenty (20) other persons, took the van without permission of the employees and officials of the DENR. On 13 August 1996, after the lapse of the five-day period prescribed by law for filing an opposition to the writ, the vehicle was delivered to Aimardo V. Interior, agent of SMC.

In his comment, Deputy Sheriff Magumun explained that it was his ministerial duty to execute the warrant in accordance with its mandate and his duties as sheriff under the Rules of Court and the Manual for Clerks of Court.^[4] He conceded that he was informed by the forestry employees and officials of the forfeiture of the vehicle subject of the warrant of seizure but he reasoned that it was not within his discretion to withhold the implementation of the warrant.^[5] The execution of a warrant of seizure on a vehicle allegedly forfeited in favor of the government was a question of law too technical for him to resolve^[6] and faced with such a dilemma he opted to follow the order of the court and execute the warrant in accordance with its mandate.

On 20 October 1997 the complaint was referred to the Office of the Court Administrator (OCA) for evaluation, report and recommendation. The OCA observed that Deputy Sheriff Magumun made a very literal interpretation of Sec. 4, Rule 60, of the Rules of Court as amended.^[7] The OCA noted that while Rule 60 was silent on what should be done when the sheriff is informed by the defendant in the *replevin* that the personal property to be seized has been forfeited in favor of the government and is already in *custodia legis*, Deputy Sheriff Magumun should not have insisted on seizing the property subject of the warrant of seizure.^[8] The appropriate action should have been for respondent to inform his judge of the situation by way of partial Sheriff's Return and wait for instructions on the proper procedure to be observed.^[9] For such ignorance of proper procedure the OCA recommended that Sheriff Magumun be penalized in the amount of P5,000.00 at the very least.^[10]

We agree. Respondent was placed in a difficult situation where the vehicle subject of the warrant of seizure had already been confiscated by another government agency and forfeited in favor of the government. However, the novelty of his predicament did not call for him to use his discretion and justify his insistence on taking the property subject of the warrant without waiting for instructions from his judge. A sheriff's prerogative does not give him the liberty to determine who among the parties is entitled to the possession of the attached property,^[11] much less does he have any discretion to decide which agency has primary jurisdiction and authority over the matter at hand.

When a writ is placed in the hands of a sheriff, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to execute it according to its mandate.^[12] However, the prompt implementation of a warrant of seizure is called for only in instances where there is no question