

THE OFFICE OF THE OMBUDSMAN, PETITIONER, VS. P/SUPT. ROGER JAMES BRILLANTES, PO3 PETER PAUL PABLICO, AND PO1 NOEL FABIA, RESPONDENTS.

G.R. No. 213699. September 28, 2016

Ponente: PERALTA, J.

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PERALTA, J.:

Before the Court are two consolidated petitions for review on certiorari under Rule 45 of the Rules of Court.

In G.R. No. 213699, petitioner assails the Decision[3] and Resolution[4] of the Court of Appeals (CA), dated January 14, 2014 and July 21, 2014, respectively, in CA-G.R. SP No. 127487. The assailed CA Decision nullified and set aside the Decision dated January 20, 2012, as well as the Order dated May 16, 2012 of the Ombudsman, which dismissed respondents Brillantes, Pablico and Fabia from the Philippine National Police (PNP), in an administrative case for oppression, grave misconduct and conduct unbecoming of a police officer; while the CA Resolution denied petitioner's motion for reconsideration and modified the appellate court's January 14, 2014 Decision.

In G.R. No. 215008, petitioner questions the Decision[5] dated July 24, 2014 and Amended Decision[6] dated October 15, 2014, of the CA in CA-G.R. SP No. 127647. The questioned CA Decision reversed and set aside the same Decision dated January 20, 2012, and Order dated May 16, 2012 of the Ombudsman which also dismissed respondent Yang from the PNP. The assailed Amended Decision denied petitioner's motion for reconsideration and modified the July 24, 2014 CA Decision.

The facts of the case are as follows:

Herein respondents were officers of the PNP who, at the time material to this case, were assigned at the District Intelligence and Investigation Division, Quezon City District Command, Camp Karingal, Quezon City.

On October 15, 2003, the Regional Trial Court (RTC) of Pasig City, Branch 162, issued an Order of Arrest[7] against twenty-three (23) persons who stand charged in an Information for twenty-one (21) counts of kidnapping and serious illegal detention with ransom. Among those ordered to be arrested was "a certain Ali." [8]

Subsequently, a group of police officers, consisting of thirty-eight (38) members, who all belonged to the Quezon City District Command's Anti- Terrorism Operations Team, was formed in order to effect the arrest of the persons named in the above Order of Arrest. This group included herein respondents, together with a certain PO2 Reynaldo Yap (PO2 Yap). As a result of the group's operation on March 10, 2006, a certain Allan Almoite (Almoite) was arrested in Quezon City. In respondents' Joint Affidavit of Arrest,[9] as well as respondent Brillantes' Special Report[10] dated March 12, 2006, Almoite was identified as the same person who carries the aliases "Alih Ambing" and "Alih Bin Nasser" and that his identification and subsequent arrest was the product of a series of surveillance and other follow-up operations. The report alleged that he is a bomb expert of the Rajah Sulaiman Islamic Movement which has close ties with the Abu Sayyaf Group and that he is linked to a series of

bombings in Zamboanga City as well as the 2005 Valentine's Day bombing in Makati City. As incident to Almoite's arrest, the anti-terrorism team conducted a search of his residence which yielded unlicensed explosives consisting of an "MK2 fragmentation grenade," three (3) pieces of "40 MM Ammunition (live)," "one (1) pc. 1/2 lbs. C4 Explosive," "one (1) pc. 1/4 lb. block of C4," "two 2-and-1/2 meters of detonating cord," "twenty-seven (27) pcs. non-electric blasting cap with time fuse," and several strands of electric wire.[11]

Almoite was then detained at Camp Crame in Quezon City and was subsequently charged with violation of P.D. No. 1866,[12] as amended by R.A. No. 8294,[13] for his unlawful possession of explosives.[14]

On March 17, 2006, the Commission on Human Rights (CHR) conducted a physical and psychological examination of Almoite based on the latter's complaint that he was tortured during his detention. Subsequently, the Forensic and Medical Division of the CHR issued a report indicating that physical injuries were found on different parts of Almoite's body and that these injuries are consistent with torture and ill-treatment.[15]

On June 21, 2006, the RTC which issued the arrest warrant came out with an Order which, among others, directed the release of Almoite on the ground that he was not identified as the same person mentioned in the Information as "Ali" and that neither was the name "Allan Almoite y Morales" mentioned in the same Information for kidnapping and serious illegal detention with ransom.[16]

Thereafter, Almoite filed an administrative complaint against herein respondents for oppression, grave misconduct and conduct unbecoming a police officer before the Office of the Ombudsman.

The Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices then came up with a report finding respondents guilty of simple misconduct and recommending to the Ombudsman that they be penalized with suspension from office for three (3) months without pay.[17]

However, on January 20, 2012, the Ombudsman issued its questioned Decision finding respondents administratively liable for grave misconduct and imposed upon them the penalty of dismissal from the service. The dispositive portion of the Ombudsman's Decision reads, thus:

WHEREFORE, [this] Office finds respondents P/SUPT. ROGER JAMES BRILLANTES, PO3 NOEL FABIA, PO3 PETER PAUL PABLICO, PO2 REYNALDO YAP and PO1 DANTE YANG GUILTY of Grave Misconduct and hereby metes upon them the penalty of DISMISSAL FROM THE SERVICE with cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from re-employment in the government service.

SO ORDERED.[18]

Respondents filed a motion for reconsideration but the Office of the Ombudsman denied it in its Order[19] dated May 16, 2012.

Respondents Brillantes, Pablico and Fabia then filed with the CA a petition for review under Rule 43 of the Rules of Court assailing the above Decision and Order of the Ombudsman. The petition was docketed as CA -G.R. SP No. 127487.

In the same manner, respondent Yang filed a separate petition for review with the CA questioning the same January 20, 2012 Decision and May 16, 2012 Order of the Ombudsman. The petition was docketed as CA- G.R. SP No. 127647.

In its Decision in CA-G.R. SP No. 127487, dated January 14, 2014, the CA ruled in respondents' favor and set aside the assailed Decision and Order of the Ombudsman. The dispositive portion of the CA Decision reads as follows:

WHEREFORE, premises considered, the Petition is GRANTED. The Decision of public respondent Ombudsman dated January 20, 2012 and the Order dated May 16, 2012 are NULLIFIED and SET ASIDE. Petitioners are ABSOLVED from administrative liability. The Chief PNP, Camp Crame Quezon City is DIRECTED to REINSTATE PETITIONERS to their former positions.

SO ORDERED.[20]

The Office of the Ombudsman filed a motion for reconsideration. On the other hand, respondents filed a Manifestation with Motion[21] praying that the above dispositive portion of the CA Decision be amended to include the payment of respondents' backwages from the time of their illegal dismissal up to the date of their actual reinstatement. Respondents also prayed that the CA Decision which orders their reinstatement be immediately enforced.

In its Resolution dated July 21, 2014, the CA denied the Ombudsman's Motion for Reconsideration and granted respondents' Manifestation with Motion and modified the dispositive portion of its January 14, 2014 Decision to read as follows:

WHEREFORE, premises considered, the petition is GRANTED. The Decision of public respondent Ombudsman elated January 20, 2012 and the Order dated May 16, 2012 are NULLIFIED and SET ASIDE. Petitioners are absolved from administrative liability. The Chief Philippine National Police (PNP), Camp Crame, Quezon City is directed to reinstate petitioners to their former positions upon receipt or this decision. Likewise, the said office must pay their backwages and other monetary benefits from the time of their dismissal up to the time of their reinstatement upon finality of this decision.

SO ORDERED.[22]

Subsequently, the CA rendered its Decision in CA-G.R. SP No. 127647 on July 24, 2014, granting POI Yang's petition for review by reversing the Decision of the Ombudsman and also absolving him from administrative liability. The dispositive portion of the CA Decision reads, thus:

WHEREFORE, the instant appeal is GRANTED. The Decision dated January 20, 2012 and the Order dated May 16, 2012 of the Office or the Ombudsman are REVERSED and SET ASIDE. Petitioner Police Senior Inspector Dante G. Yang is ABSOLVED from administrative liability and is deemed ENTITLED to retirement benefits.

SO ORDERED.[23]

The Office of the Ombudsman also filed a Motion for Reconsideration. On the other hand, respondent Yang filed an Omnibus Motion consisting of an Opposition to herein petitioner's Motion for Reconsideration and a Motion to Amend/Modify Decision to Include Payment of Backwages.[24] Yang prayed that petitioner's Motion for Reconsideration be denied and that the CA Decision be affirmed with modification by requiring the payment of his backwages and other monetary benefits from the time of his dismissal up to the date of his reinstatement.

In its Amended Decision dated October 15, 2014, the CA denied the Ombudsman's Motion for Reconsideration and granted respondent Yang's Motion to Amend by modifying its July 24, 2014 Decision to read as follows:

WHEREFORE, the Motion for Reconsideration is DENIED for lack of merit. The assailed Decision dated July 24, 2014 of this Court is MODIFIED to the extent that petitioner is likewise deemed ENTITLED to backwages and other monetary benefits from the time of his dismissal up to the date of his retirement, plus retirement benefits.

SO ORDERED.[25]

Hence, the present petitions filed by the Office of the Ombudsman. In G.R. No. 213699, petitioner contends that:

THE COURT OF APPEALS ERRED IN REVERSING THE FINDING OF THE OFFICE OF THE OMBUDSMAN THAT RESPONDENTS ARE GUILTY OF GRAVE MISCONDUCT BASED ON SUBSTANTIAL EVIDENCE.[26]

In the same manner, the Office of the Ombudsman raised the following ground in G.R. No. 215008, to wit:

THE COURT OF APPEALS GRAVELY ERRED IN REVERSING THE OMBUDSMAN'S FINDINGS SUPPORTED BY SUBSTANTIAL EVIDENCE, THEREBY SUBSTITUTING ITS OWN JUDGMENT FOR THAT OF A CONSTITUTIONAL OFFICE.[27]

Petitioner's basic contention in both petitions is that the Ombudsman properly found respondents liable for grave misconduct based on substantial evidence. In support of its position, petitioner's main argument is that respondents failed to establish that Almoite was the same person referred to as "Ali" in the RTC's order of arrest.

The petition lacks merit.

Misconduct, in the administrative sense, is a transgression of some established and definite rule of action.[28] It is an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official.[29] Misconduct is considered grave if accompanied by corruption, a clear intent to violate the law, or a flagrant disregard of established rules, which must all be supported by substantial evidence.[30] If the misconduct does not involve any of the additional elements to qualify the misconduct as grave, the person charged may only be held liable for simple misconduct.[31]

Moreover, in administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[32] The standard of substantial evidence is satisfied when there is reasonable ground to believe that a person is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant.[33]

In the present case, the Court finds no cogent reason to depart from the rulings of two Divisions of the CA finding that respondents are not guilty of grave misconduct.

Respondents were acting on the strength of a warrant which directs the arrest of certain personalities including one who goes by the alias of "Ali". The validity of the subject arrest warrant issued by the RTC may be put in question but this is not the issue in the instant petition. The matter sought to be resolved here is whether or not respondents are guilty of grave misconduct in the arrest and detention of Almoite.

The Court agrees with the CA that no substantial evidence was adduced to show the presence of the elements of corruption, clear intent to violate the law or flagrant disregard of established rule on the part of respondents when they arrested and detained Almoite. Neither are respondents liable for simple misconduct as there was also no showing that they are guilty of any intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior.

The settled rule is that law enforcers are presumed to have regularly performed their duties in the absence of proof to the contrary.[34] Almoite failed to show that respondents have any reason to arrest him for no cause or that they were impelled by any unlawful motive to arrest him. As found by the CA, respondents acted in good faith and in the honest belief, as based on the information they have gathered from their surveillance and intelligence operations which points to Almoite as the same "Ali" being referred to in the warrant of arrest. As pointed out by the CA, Almoite goes by different names or aliases. Nonetheless, he was sufficiently identified through a profile as well as a cartographic sketch provided by a detained suspected terrorist who pointed to Almoite as the same

person who goes by the alias of Ali Ambing.

Petitioner contends that the cartographic sketch presented by the police "cannot be linked to [Almoite] inasmuch as no official photo of the latter was presented by respondents before the Office of the Ombudsman showing that Almoite is indeed the person depicted in the cartographic sketch." [35] But herein respondents are acting under and are dealing with peculiar circumstances. In fact, petitioner agrees with the CA in its statement that criminal elements use different aliases to hide their true names or identities and to avoid arrest and prosecution. In the instant case, Almoite was also known as Alih Bin Nasser Morambi, Alih Muallamin Murabbi and Abu Alih. [36] However, whatever name Almoite may have been using, the fact remains that the cartographic sketch provided by the police informant fit his profile, which led respondents to conduct further surveillance and later conclude that he was indeed the Abu Sayyaf bomber they were looking for.

As earlier discussed, in the absence of sufficient evidence to the contrary, respondents are presumed to have regularly performed their duties and that they acted in good faith and with good motives. In common usage, the term good faith is ordinarily used to describe that state of mind denoting honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious. [37] In short, good faith is actually a question of intention. [38] Although this is something internal, a person's intention can be ascertained by relying not on his own protestations of good faith, which is self-serving, but on evidence of his conduct and outward acts. [39] Indeed, there is no showing in the present case that, in arresting Almoite, respondents were driven by any motive other than to apprehend a suspected bomber who is linked to notoriously known terrorist groups. On the contrary, their operation leading to the arrest of Almoite was based on data gathered through intelligence which was later on confirmed when they recovered several pieces of highly explosive materials from his possession. Indeed, this is a sufficient validation of their belief in good faith that Almoite is the Ali Ambing they were looking for.

Even assuming that respondents committed a mistake in identifying Almoite as the same person referred to as Ali in the warrant of arrest, the fact remains that they have sufficient information to establish probable cause to arrest Ali as, in fact, a warrant for his arrest was issued.

In the case of *US. v. Marshall*, [40] the police had an arrest warrant for a person named Beasley and, based on information from an informant, mistakenly arrested a person named Marshall thinking he was Beasley. A subsequent search of Marshall's person revealed that he was carrying a loaded gun. After the denial of his motion to suppress the evidence on the ground that the search was illegal, Marshall pleaded guilty to a federal gun charge. Marshall later appealed and raised a single issue, whether the gun seized incident to his arrest should have been suppressed. In its ruling against Marshall, the United States Court of Appeals, 7th Circuit had occasion to discuss that in a circumstance where the police mistake a person for someone else they seek to validly arrest, the arrest is constitutional if the arresting officers (1) have probable cause to arrest the person sought, and (2) reasonably believe that the person arrested is the person sought. In affirming the conviction of Marshall, the court also held that the arrest warrant gave the police a sufficient basis to arrest Beasley and, taking into consideration the totality of the circumstances, the court found that the actions of the police in thinking that Marshall was Beasley were reasonable.

In *Hill v. California*, [41] decided by the United States Supreme Court, and which was cited in the Marshall case, it was held that when the police have probable cause to arrest one party, and the arresting officers had a reasonable, good-faith belief that the person arrested was in fact the one being sought for a crime, then the arrest of the second party is a valid arrest.

From the foregoing, it is clear that courts upheld the actions of the police in mistakenly apprehending a person whom they believe in good faith as the one they are seeking for the commission of a crime. Applying this principle in the instant case, even granting that respondents mistakenly identified Almoite as Ali, they cannot be held guilty of misconduct for his arrest because they acted in their belief in good faith that Almoite was indeed Ali. Their act in arresting Almoite was not proven to be predicated on or attended by corruption, a clear intent to violate the law, or a flagrant disregard of established rules.

As aptly cited by the CA, this Court, speaking through Justice Malcolm, in the case of *U.S. v. Santos*,^[42] ruled that:

One should however not expect too much of an ordinary policeman. He is not presumed to exercise the subtle reasoning of a judicial officer. Often he has no opportunity to make proper investigation but must act in haste on his own belief to prevent the escape of the criminal. To err is human. Even the most conscientious officer must at times be misled. If, therefore, under trying circumstances and in a zealous effort to obey the orders of his superior officer and to enforce the law, a peace officer makes a mere mistake in good faith, he should be exculpated. Otherwise, the courts will put a premium on crime and will terrorize peace officers through a fear of themselves violating the law.

While the issue in the said case is the liability of a police officer who arrested and detained suspected criminals in the absence of a warrant, the Court finds that the principle enunciated therein, as quoted above, is applicable to the instant case.

Lastly, as to the alleged torture, it is true that the physical examination conducted by the Commission on Human Rights (CHR) indicates that, at the time of examination, Almoite had slight physical injuries consisting of abrasions and contusions on different parts of his body.^[43] However, the Court agrees with the findings of both the two Divisions of the CA that Almoite failed to specifically and categorically identify respondents as the persons who supposedly maltreated him. This is evident in the report of the CHR.^[44] It was only in his *Sinumpaang Reklamo*,^[45] which he subsequently filed, that Almoite implicated respondents and made a sweeping statement that they were the ones who tortured him. Nonetheless, the records at hand show no competent evidence to prove this allegation. It is settled that mere allegation is not evidence and is not equivalent to proof.^[46] Hence, for Almoite's failure to substantiate his accusations, the administrative complaint against respondents was correctly dismissed.

WHEREFORE, the instant petitions are DENIED. The assailed Decision and Resolution of the Court of Appeals, dated January 14, 2014 and July 21, 2014, respectively, in CA-G.R. SP No. 127487, and the Decision dated July 24, 2014 and Amended Decision, dated October 15, 2014, of the same court, in CA-G.R. SP No. 127647, are AFFIRMED.

SO ORDERED.

Velasco, Jr., (Chairperson), Del Castillo,^[*] and Perez, JJ., concur.
Reyes, J., on official leave.

November 3, 2016

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on September 28, 2016 a Decision, copy attached hereto, was rendered by the Supreme

Court in the above-entitled cases, the original of which was received by this Office on November 3, 2016 at 10:50 a.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 10, 2014.

[1] Also referred to as PO3 in some parts of the rollo and records.

[2] Also referred to as PO1 in some parts of the rollo and records.

[3] Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Amelita G. Tolentino and Ricardo R. Rosario, concurring; Annex "A" to Petition, rollo (G.R. No. 213699), pp. 71-85.

[4] Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Remedios A. Salazar-Fernando and Ricardo R. Rosario, concurring; Annex "B" to Petition, id. at 86-88.

[5] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Romeo F. Barza and Ramon A. Cruz, concurring; Annex "A" to Petition, rollo (G.R. No. 215008), pp. 49-61.

[6] Annex "B" to Petition, id. at 62-65.

[7] CA rollo (G.R. No. 213699), p. 133.

[8] Id.

[9] Id. at 74.

[10] Id. at 162-163.

[11] Id. at 158.

[12] Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and or Relevant Purposes. It took effect on June 29, 1983.

[13] Took effect on June 6, 1997.

[14] See Resolution dated March 14, 2006, CA rollo (G.R. No. 213699), pp. 165-167.

[15] CA rollo, pp. 196-201.

[16] See Records (G.R. No. 215008), pp. 30-31.

[17] Id. at 100-108.

- [18] Rollo (G.R. No. 213699), p. 97.
- [19] Id. at 99-101.
- [20] Id. at 84-85. (Emphasis in the original)
- [21] CA rollo (G.R. No. 213699), pp. 278-280.
- [22] Rollo (G.R. No. 213699), pp. 87-88. (Emphasis in the original)
- [23] Rollo (G.R. No. 215008), pp. 60-61. (Emphasis in the original)
- [24] CA rollo (G.R. No. 215008), pp. 296-301.
- [25] Rollo (G.R. No. 215008), p. 64. (Emphasis in the original)
- [26] Rollo (G.R. No. 213699), p. 53.
- [27] Rollo (G.R. No. 215008), p. 35.
- [28] *Seville v. Commission on Audit*, 699 Phil. 27, 31 (2012).
- [29] *Imperial, Jr. v. Government Service Insurance System*, 674 Phil. 286, 296 (2011).
- [30] *Alejandro v. Office of the Ombudsman Fact-Finding and Intelligence Bureau*, 708 Phil. 32, 47 (2013).
- [31] Id. at 47-48.
- [32] *Office of the Ombudsman-Visayas, et al. v. Mary Ann T. Castro*, G.R. No. 172637, April 22, 2015.
- [33] *Office of the Ombudsman-Visayas, et al. v. Mary Ann T. Castro*, G.R. No. 172637, April 22, 2015.
- [34] *People v. Babac*, 281 Phil. 1074, 1081 (1991).
- [35] Rollo (G.R. No. 215008), p. 95.
- [36] See Tactical Interrogation Report, records (G.R. No. 215008), p. 73.
- [37] *Civil Service Commission v. Maala*, 504 Phil. 646, 654 (2005).
- [38] Id.
- [39] Id.
- [40] 79 F.3d 68 (7th Cir. 1996), as cited in the case of *People v. Gordon* decided by the Appellate Court of Illinois, Second District No. 2-98-0093, January 28, 2000.
- [41] 401 U.S. 797 (1971).**
- [42] 36 Phil. 853, 855 (1917).
- [43] See result of examination conducted by the Commission on Human Rights, Records (G.R. No. 215008), pp. 7-14.
- [44] Id.
- [45] Records (G.R. No. 215008), pp. 1-6.
- [46] *Dr. De Jesus v. Guerrero III, et al.*, 614 Phil. 520, 529 (2009).

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