



Republic of the Philippines
NATIONAL POLICE COMMISSION
PHILIPPINE NATIONAL POLICE
POLICE REGIONAL OFFICE CALABARZON
Camp BGen Vicente P Lim, Calamba City



PHILIPPINE NATIONAL POLICE,
Complainant,

Administrative Case No.
PRO4A-AC-586-1118-21-LAG

-versus-

For:

PSSg John Ryan S Bernabe
PSSg Anthony DC De Guzman
PSSg Gerald Bassong Ollibac
Laguna PPO

Incompetence
(Dismissed Drug Cases)

Respondents,

X-----X

DECISION

This resolves the administrative case filed by the Philippine National Police through the Regional Investigation and Detective Management Division (RIDMD) against the respondents, PSSg John Ryan Sulpico Bernabe 210324, PSSg Anthony Dela Cruz De Guzman 210239, and PSSg Gerald Bassong Ollibac 210254, PNP personnel assigned in Laguna PPO, charged for Incompetence, docketed as PRO4A-AC-586-1118-21-LAG.

ANTECEDENT FACTS

In the Complaint Sheet and Certificate of Non-Forum Shopping signed by Nominal Complainant PMAJ EDGAR M SUMADSAD, Chief PCEIS of RIDMD PRO4A on November 2, 2021, the Summary of Complaint reads:

The nominal complainant hereby accuses the respondents for Incompetence (Dismissed Drug cases) pursuant to RA 8551 in relation to NAPOLCOM MC 2016-002 committed as follows;

"Respondents, PSSg John Ryan Sulpico Bernabe, PSSg Anthony Dela Cruz De Guzman, and PSSg Gerald B Ollibac being members of Sta. Cruz MPS failed to follow procedural standard laid down by RA 9165 during the conduct of police operation on or about 5:00 PM of July 6, 2018 at Brgy. Santo Angel Sur, Sta. Cruz, Laguna which deliberately caused the dismissal of criminal charges filed against the accused Mon Fernando C Castillo for Violation of Sections 5 and 11 of RA 9165."

The respondents were complained of being incompetent by reason of the dismissal of the criminal case when the court granted the Demurrer to Evidence filed by the accused. The Court had a different factual findings contrary to the version of herein respondents. In its Decision, the Court observed that accused was not arrested through a valid buy-bust operation and that the circumstances surrounding this case amounts to an instigation rather than entrapment.

Respondents, as a matter of defense, argue that they could not be held administratively liable for incompetence for the following reasons:

- a. Incompetency is the manifest lack of adequate ability and fitness for the satisfactory performance of the official duties by reason of the officer's vice or vicious habits. This has reference to any physical, moral or intellectual quality the lack of which substantially incapacitates one to perform the duties of a peace or public safety officer;
- b. The very basis of the instant charges against the herein respondents was allegedly the failure to follow the standard procedure laid down by RA 9165 in the conduct of police operation;
- c. The Honorable Court dismissed the criminal case as it found that doubt exists whether the accused was arrested during a valid buy-bust operation. It also noted that there was no surveillance nor a test buy conducted by the police operatives and that they merely relied on the information extended to them by their confidential agent. The Court likewise found that the manner employed by the respondents amounted to instigation, a means prohibited by law; and
- d. Herein respondents averred that accused was apprehended through a valid buy bust operation that was properly coordinated with PDEA and in accordance with the law. They further claimed that they performed their duties in a regular manner and that the dismissal of the criminal case should not solely be blamed on them considering that their version of the circumstances is a faithful account of what transpired during the buy-bust operation.

On account of the dismissal of the criminal case, the respondents were administratively indicted for Incompetence. Summary Hearing Proceedings ensued and was conducted by PLT SHIELA V YBIO, who found the respondents innocent of the charge and recommended for their Exoneration.

ISSUES AND FINDINGS

The issue to be resolved is whether the respondents are liable for Incompetence by reason of the dismissal of the drug charges filed against accused Castillo.

This Disciplinary Authority finds for the respondents.

NAPOLCOM MC 2016-002, Rule 21, Section 1 (6) provides:

Incompetence is ignorance or the material lack of adequate ability and fitness for the satisfactory performance of police duties. This refers to any physical, intellectual, psychological and moral quality, the lack of which substantially incapacitates a person to perform the duties of a police officer.

A careful examination of the records reveal that the Court found doubts as to whether the accused was arrested through a valid buy-bust operation. The Court further noted that the police operatives heavily relied on the information given by the confidential informant and that the manner employed by the respondents amounts to Instigation, a means prohibited by law.

The undersigned find no glaring errors on the part of the respondents in heavily relying on their confidential agent in building up the said buy-bust operation. We recognize the fact that illegal drug operations are conducted in stealth by drug offenders and it is but logical that police operatives employ ingenious means in order to penetrate these surreptitious illegal activities.

The Court pointed out that there was no surveillance conducted by the respondents. However, in many decisions of the court, a prior surveillance is not at all times necessary to successfully prosecute cases of sale of illegal drugs. We have held that prior surveillance is not necessary to render a buy-bust operation legitimate, especially when the buy-bust team is accompanied to the target area by the informant.¹ Further, the Court also has ruled that the absence of test buy does not necessarily renders the buy-bust operation as invalid.

"The immediate conduct of the buy-bust routine is within the discretion of the police officers, especially, as in the case, when they are accompanied by the informant in the conduct of operation. We categorically ruled in People vs. Lacbanes"

Xxx In People vs. Ganguso, it has been held that prior surveillance is not prerequisite for the validity of an entrapment operation, especially when the buy-bust team members were accompanied to the scene by their informant. In the instant case the arresting officers were led to the scene by the poseur buyer. Granting that there was no surveillance conducted before the buy-bust operation this court held in People v Tranca, that there is no rigid or textbook method of conducting buy-bust operation. Flexibility is a trait of good police.

In People v. Dela Rosa there is leeway given to the police officers in conducting buy-bust operations:

That no test buy was conducted before the arrest is of no moment for there is no rigid or textbook method of conducting buy-bust operations. For the same reason, the absence of evidence of a prior surveillance does not affect the regularity of a buy-bust operation, especially when, like in this case, the buy-bust team members were accompanied to the scene by their informant.

¹ G.R. No. 179150, June 17, 2008, 554 SCRA 741 748-751.

In this instant case, the undersigned finds that the respondents were able to satisfy what is material to the prosecution for illegal sale of drugs, that is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of corpus delicti. In other words, the essential elements of the crime of illegal sale are (1) the accused sold and delivered a prohibited drug to another; (2) the accused sold and delivered a prohibited drug.

With regard to the observation of the Court that the respondents employed instigation rather than entrapment, the undersigned opines otherwise. A buy-bust operation has been recognized in this jurisdiction as a legitimate form of entrapment of the culprit. It is distinct from instigation, in that the accused who is otherwise not predisposed to commit the crime is enticed or lured or talked into committing the crime. While entrapment is legal, instigation is not.

In the present case, the Court construed the act of PSSg Bernabe in asking the accused that he wanted to buy shabu as instigation and not entrapment. The undersigned is not convinced.

A police officer's act of soliciting drugs from the accused during a buy-bust operation, or what is known as a "decoy solicitation," is not prohibited by law and does not render invalid the buy-bust operations. The sale of contraband is a kind of offense habitually committed, and the solicitation simply furnishes evidence of the criminal's course of conduct. In *People v. Sta. Maria*, the Court clarified that a "decoy solicitation" is not tantamount to inducement or instigation:

It is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the "decoy solicitation" of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting its commission. Especially is this true in that class of cases where the offense is one habitually committed, and the solicitation merely furnishes evidence of a course of conduct.

As here, the solicitation of drugs from appellant by the informant utilized by the police merely furnishes evidence of a course of conduct. The police received an intelligence report that appellant has been habitually dealing in illegal drugs. They duly acted on it by utilizing an informant to effect a drug transaction with appellant. There was no showing that the informant induced the appellant to sell illegal drugs to him.²

Applying the foregoing, we declare that the accused was not arrested following an instigation for him to commit the crime. Instead, he was caught *in flagrante delicto* during an entrapment through buy-bust. In a buy-bust operation, the pusher sells the contraband to another posing as a buyer; once the transaction is consummated, the pusher is validly arrested because he is committing or has just committed a crime in the presence of the buyer. Here, PSSg Bernabe asked the accused if he could buy *shabu*, and the latter, in turn, quickly transacted with the former, receiving the marked money and turning over the sachet of *shabu*. The accused was shown to have been ready to sell the *shabu* without much prodding

² *People vs. Bajo*, GR 191726, February 6, 2013

from PSSg Bernabe. There is no question that the idea to commit the crime originated from the mind of the accused.

To secure administrative sanction, it is inevitable that the complainant must establish a reasonable ground to believe based on substantial evidence that the act being complained of was truly committed by the respondent. Each party in an administrative case must prove his affirmative allegation with substantial evidence – the complainant must prove the affirmative allegations in his complaint, and the respondent has to prove the affirmative allegations in his affirmative defenses and counterclaims (*Ang Tibay v. Court of Industrial Relations*, G.R. No. L-46496, February 27, 1940).

Basic is the rule that, in administrative cases, the quantum of evidence necessary to find an individual administratively liable is substantial evidence. Section 5, Rule 133 of the Rules of Court is explicit, to wit:

Sec. 5. Substantial Evidence. In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

Under existing premises, the undersigned finds that the Prosecution failed to prove its allegations by substantial evidence. Accordingly, the respondents are found innocent of the charge of Incompetence.

CONCLUSION

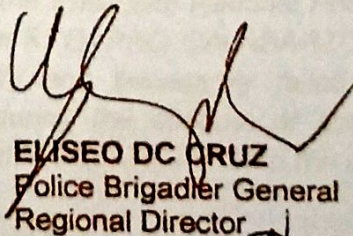
This Disciplinary Authority, after careful review of the Report of Investigation submitted by the Summary Hearing Officer concurs with the findings that there is no substantial evidence to hold the respondents liable for Incompetence.

DISPOSITIVE PORTION

WHEREFORE, foregoing premises considered, this Disciplinary Authority finds the respondents **PSSg John Ryan S Bernabe, PSSg Anthony Dela Cruz De Guzman and PSSg Gerald B Ollibac NOT LIABLE** and they are hereby **EXONERATED** from the charge of Incompetence (*Dismissed Drug Case*).

SO ORDERED.

Done this JAN 25 2022 at Police Regional Office, PRO CALABARZON, Camp BGen Vicente P Lim, Calamba City, Laguna.


ELISEO DC CRUZ
Police Brigadier General
Regional Director