



Republic of the Philippines
 Supreme Court
 Baguio City

THIRD DIVISION

HERMINIO A. BESMONTE,
 Petitioner,

G.R. No. 260148

Present:

- versus -

CAGUIOA, J.,
 Chairperson,
 INTING,
 GAERLAN,
 DIMAAMPAO, and
 SINGH, JJ.

NATIONAL POLICE
 COMMISSION-NATIONAL
 CAPITAL REGION
 (NAPOLCOM-NCR),
 Respondent.

Promulgated:
 April 3, 2024

MichDCAH

X-----X

DECISION

GAERLAN, J.:

This is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court, as amended, assailing the Decision² dated October 29, 2021 and the Resolution³ dated March 28, 2022 of the Court of Appeals (CA), in CA-G.R. SP No. 161581.

The challenged issuances dismissed the Rule 43⁴ Petition for Review⁵ interposed by petitioner Herminio A. Besmonte (Besmonte) which, in turn, disputed the Civil Service Commission's (CSC) Decision No. 180629⁶ dated November 22, 2018 and Resolution No. 1900696⁷ dated June 18, 2019. The

¹ *Rollo*, pp. 15–35.

² *Id.* at 40–52. Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Tita Marilyn B. Payoyo-Villordon and Raymond Reynold R. Lauigan of the Thirteenth Division of the Court of Appeals, Manila.

³ *Id.* at 55–57.

⁴ RULES OF COURT.

⁵ *Rollo*, pp. 131–148.

⁶ *Id.* at 96–103. Signed by Chairperson Alicia dela Rosa-Bala and Commissioner Leopoldo Roberto W. Valderosa, Jr.

⁷ *Id.* at 111–116. Signed by Chairperson Alicia dela Rosa-Bala along with Commissioners Leopoldo Roberto W. Valderosa, Jr. and Aileen Lourdes A. Lizada.

A

CSC affirmed the Decision⁸ dated March 9, 2011 and the Resolution⁹ dated May 16, 2017 of the National Police Commission (NAPOLCOM) in SD Case No. 2004-026(NCR) finding Besmonte liable for grave misconduct, albeit modifying the same by meting against the latter the penalty of dismissal from the service and its accessory penalties.

Antecedents

The present controversy had at its inception the conduct of a buy-bust operation for the purpose of apprehending a person who was suspected of illegally peddling dangerous drugs. The *dramatis personae* are Besmonte, a member of the Philippine National Police (PNP), and the suspect, Evangeline Abenojar (Abenojar).

Following a tip which was made by a confidential informant alleging that Abenojar was involved in the illegal drug trade, a buy-bust operation was conducted by Besmonte who, at that time, held the rank of Police Officer 2 (PO2), along with PO2 Gil Anos (PO2 Anos), and PO2 Junnifer Tuldanes (PO2 Tuldanes), at around 10:30 p.m. of April 11, 2003.

Based on the uniform narration¹⁰ of Besmonte, PO2 Anos, and PO2 Tuldanes, upon arriving at the target site which was situated at Factor Compound, Almanza Uno, Las Piñas City, Abenojar called Besmonte's attention and asked the latter, "*Kukuha ba kayo?*"¹¹ Besmonte, being the designated poseur-buyer, approached Abenojar and signified his intention to buy PHP 100.00 worth of *shabu*, a dangerous drug. Then, Abenojar left for a while. When she returned with a plastic sheet containing suspected *shabu*, she demanded payment from Besmonte. The buy-bust transaction was consummated when Besmonte gave Abenojar the marked money in exchange for the said plastic sheet containing suspected *shabu*. It was at this point that Besmonte held Abenojar's hand and introduced himself as a police officer. However, Abenojar resisted. PO2 Anos and PO2 Tuldanes as back-up members of the buy-bust team, assisted Besmonte by helping to restrain Abenojar. However, Abenojar was still trying to resist them by kicking and uttering vituperative words such as "*Putang ina nyo! Hindi naman kayo mga pulis! Mga adik kayo! Nagpapanggap lang kayong mga pulis!*"¹² Besmonte claimed that after exerting reasonable force, they successfully arrested Abenojar who was later charged with violation of Section 5, Article II of

⁸ *Id.* at 117–122. Signed by Chairperson Jesse M. Robredo and Commissioner Eduardo U. Escueta, Vice Chairperson and Executive Officer, along with Commissioners Luisito T. Palmera, Alejandro S. Urro, Constanca P. De Guzman, and Raul M. Bacalzo.

⁹ *Id.* at 123–124. Signed by Commissioner Atty. Rogelio T. Casurao, Vice Chairperson and Executive Officer, along with Commissioners Felizardo M. Serapio, Jr. and Job M. Mangente.

¹⁰ *Id.* at 125, Joint Affidavit of Arrest dated April 14, 2003.

¹¹ *Id.* at 42, CA Decision.

¹² *Id.*

A

Republic Act No. 9165,¹³ otherwise known as the Comprehensive Dangerous Drug Act of 2002, and violation of Article 151 of the Revised Penal Code (*Resistance and Disobedience to a Person in Authority or the Agents of Such Person*).¹⁴

Diametrically opposing the foregoing account, Abenojar asserted that the police officers tried to extort her and, failing to do so, physically harmed her.

Abenojar expounded that at around 9:30 p.m. of April 11, 2003, while she was on her way to the house of a certain Auring, she came across the three police officers who were wearing civilian clothes. One of the police officers shouted “*Hoy!!! Hoy!!!*”¹⁵ and asked about her name, residential address and what was inside her pocket. Abenojar pulled the amount of PHP 700.00 from her pocket but did not give the same to the police officers. This resulted in PO2 Tuldanes and PO2 Anos holding her arms while Besmonte cursed at her, blurting out “*Putang ina mo! Akina yang pera!*”¹⁶ When Abenojar still refused to give the money, Besmonte punch the left side of her face and kicked her knee. This caused Abenojar to feel intense pain and dizziness. Then, Abenojar was brought to a vacant lot where Besmonte declared, “*Tuluyan na natin yan dito.*”¹⁷ Abenojar then broke free and kicked Besmonte’s thigh. However, Besmonte managed to kick her abdomen. The police officers then brought Abenojar to the Drug Enforcement Unit, Las Piñas City Police Station where she was incarcerated.¹⁸

In view of the foregoing, Abenojar filed a handwritten letter-complaint¹⁹ against Besmonte, PO2 Anos, and PO2 Tuldanes before the NAPOLCOM. To corroborate her claim of physical abuse at the hands of the members of the buy-bust team, Abenojar presented a Medical Certificate²⁰ which was issued on April 14, 2003 by Dr. Ferdinand C. Eusebio (Dr. Eusebio) of the Las Piñas City Health Office. Dr. Eusebio found that Abenojar sustained “Left Zygomatic area (+) Swelling (+) Tenderness. Right Inguinal Area (+) Tenderness (-) Hematoma.”²¹ In layman’s terms, Dr. Eusebio reported that Abenojar’s left cheek and groin area were swollen and tender.²²

¹³ Approved on June 7, 2002.

¹⁴ *Rollo*, pp. 41–42, CA Decision.

¹⁵ *Id.* at 41.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 162–169.

²⁰ *Id.* at 222.

²¹ *Id.*

²² *Id.* at 154, CSC Decision.

Thereafter, the Regional Investigation Unit of the NAPOLCOM, National Capital Region, as nominal complainant, formally charged Besmonte, PO2 Anos, and PO2 Tuldanes with Grave Misconduct as follows:

That on April 11, 2003 at around 9:30 in the evening at Las Piñas City and within the administrative jurisdiction of this Honorable Commission, PO2 Gil Anos, PO2 Herminio Besmonte and PO2 Junnifer Tuldanes taking advantage of their position as police officers, conspiring, confederating and helping one another did then and there willfully, unlawfully and feloniously without legal ground arrest, search and detain complaining witness Evangeline Abenojar. Even without resistance from complaining witness respondent PO2 Tuldanes holds [sic] her right arm while PO2 Anos was holding her left arm, thereafter without any aggression from the same complaining witness PO2 Besmonte hit her left face and threatens [sic] her by uttering scary words to wit: “TULUYAN NA NATIN YAN DITO”, thereby inflicting upon her physical injuries and emotional sufferings [sic] and depriving her of liberty and freedom, to the damage and prejudice of complaining witness Evangeline Abenojar.

Acts contrary to Law and existing rules and regulations.²³

The NAPOLCOM Ruling

In its Decision²⁴ dated March 9, 2011, the NAPOLCOM upheld the validity of the buy-bust operation which led to Abenojar’s arrest. It also exculpated PO2 Anos and PO2 Tuldanes from administrative liability. However, the NAPOLCOM found that Besmonte inflicted unnecessary coercion and violence against Abenojar. It reasoned that Abenojar could have been neutralized without Besmonte necessarily resorting to excessive force considering that there were three arresting officers against a lone female suspect. Thus, Besmonte was punished with demotion by one rank.

The NAPOLCOM disposed as follows:

WHEREFORE, premises considered, respondents **PO2 Gil Anos** and **PO2 Junnifer Tuldanes** are hereby **EXONERATED** of Grave Misconduct for lack of substantial evidence, while, **PO2 Herminio Besmonte** is found culpable of the offense charged and is hereby meted the penalty of **ONE (1) RANK DEMOTION**.

SO ORDERED.²⁵ (Emphasis in the original)

²³ *Id.* at 177, Complaint dated March 3, 2004.

²⁴ *Id.* at 117–122.

²⁵ *Id.* at 122.

Besmonte's Motion for Reconsideration²⁶ was denied by the NAPOLCOM in its Resolution²⁷ dated May 16, 2017.

Undaunted, Besmonte beseeched the CSC's intercession by way of appeal²⁸ under Rule 12 of the Revised Rules on Administrative Cases in the Civil Service (RRACS).

Highlighting his unblemished record in the public service since 1997 and the various commendations that he has received in the performance of his duties,²⁹ Besmonte postulated that Abenojar's complaint was merely motivated by a desire to free herself from criminal liability for the crime of illegal sale of dangerous drugs. Besmonte likewise denounced as unreliable the Medical Certificate prepared by Dr. Eusebio because the same was done three days after Abenojar's arrest. According to Besmonte, the findings of Dr. Eusebio are negated by the Temporary Medical Certificate³⁰ which was issued by Dr. Myrna O. Ferrer (Dr. Ferrer) of the Las Piñas District Hospital the day after Abenojar was apprehended. The said document states that there was "no pertinent ext[ernal] physical injury noted at the time"³¹ of Abenojar's medical examination. Further, Besmonte argued that the penalty of demotion had already been rendered moot by virtue of his promotion³² to the rank of Senior Police Officer 3 (SPO3) on July 31, 2017.

The CSC Ruling

In its Decision No. 180629³³ dated November 22, 2018, the CSC rejected Besmonte's appeal and found that the evidence at hand squarely points to the conclusion that Besmonte used exorbitant physical force in arresting Abenojar, thereby inflicting injuries upon her. The CSC reasoned that as opposed to Dr. Eusebio's Medical Certificate, Dr. Ferrer's Temporary Medical Certificate, which only bears her initials, cannot be the basis for negating Abenojar's claim that she was physically harmed by Besmonte because the same was never formally offered as evidence before the NAPOLCOM. Further, unlike Dr. Ferrer, Dr. Eusebio was able to personally testify and was duly examined with regard to his medical findings.

²⁶ *Id.* at 179–182.

²⁷ *Id.* at 123–124.

²⁸ *Id.* at 70–87. The document was denominated as "Appeal and/or Petition for Review."

²⁹ *Id.* at 204–207, PNP Personal Data Sheet.

³⁰ *Id.* at 203.

³¹ *Id.*

³² *Id.* at 208. In Special Orders No. 3082 dated September 7, 2017, Besmonte was included in the list of police officers who were promoted to Senior Police Officer 3 effective July 31, 2017.

³³ *Id.* at 96–103.

Nevertheless, things took a turn for the worse for Besmonte. Instead of demotion by one rank, the CSC ordered Besmonte to suffer the penalty of dismissal from the service and its accessory penalties. Thus:

WHEREFORE, the Appeal of Herminio A. Besmonte, Senior Police Officer 2, Drug Enforcement Unit of Las Piñas Police Station, Philippine National Police (PNP), is **DISMISSED**. The Decision dated March 09, 2011 of the NAPOLCOM *En Banc* finding him guilty of Grave Misconduct and imposing upon him the penalty of one (1) rank demotion; the Resolution dated May 16, 2017 denying his motion for reconsideration; and the Order for Implementation of NAPOLCOM S.D. Case No. NCR-2004-026 dated June 9, 2017 are hereby **AFFIRMED with MODIFICATION** in that Besmonte is hereby imposed the penalty of dismissal from the service with the accessory penalties of cancellation of eligibility, perpetual disqualification from holding public office, bar from taking civil service examinations, and forfeiture of retirement benefits, except terminal leave benefits and personal contributions to the PNP Retirement and Benefits Administration Services (PRBAS), if any.

Copies of this Decision shall be furnished the Commission on Audit-PNP, and the NAPOLCOM, for their reference and appropriate action.³⁴ (Emphasis in the original)

The Motion for Reconsideration³⁵ filed by Besmonte was denied by the CSC in its Resolution No. 1900696³⁶ dated June 18, 2019.

Resolute in his belief that he did nothing wrong, Besmonte elevated the matter to the CA. In his Petition for Review³⁷ under Rule 43 of the Rules of Court, Besmonte asseverated that Abenojar failed to prove her claim by substantial evidence; that there is no corroborative evidence that it was Besmonte who caused Abenojar's injuries; that he merely employed reasonable force in neutralizing Abenojar who, at the time of arrest, was vigorously kicking the arresting officers; and that, at any rate, considering his 17 years of service which were untainted, the penalty of dismissal from the service is unjust.

The CA Ruling

In the herein assailed Decision³⁸ dated October 29, 2021, the CA affirmed *in toto* the findings and conclusions of the CSC, ratiocinating that the standard of substantial evidence was met and the evidence adduced against Besmonte prove his liability for Grave Misconduct. According to the CA, Besmonte "should have exercised prudence in employing force upon

³⁴ *Id.* at 103.

³⁵ *Id.* at 104-109.

³⁶ *Id.* at 111-116.

³⁷ *Id.* at 131-148.

³⁸ *Id.* at 40-52.

Abenojar considering that Abenojar is a woman and [Besmonte] was accompanied by two other police officers in conducting the arrest.”³⁹ It also ruled that the correct penalty was meted upon Besmonte.

Thus:

WHEREFORE, the Petition for Review of Herminio A. Besmonte is hereby **DISMISSED**.

SO ORDERED.⁴⁰ (Emphasis in the original)

Besmonte filed a Motion for Reconsideration⁴¹ but the same was denied by the CA in the herein assailed Resolution⁴² dated March 28, 2022.

Hence, the present recourse.

The instant petition reiterates Besmonte’s insistence that the evidence adduced by Abenojar against him have failed to pass the standard of substantial evidence as would justify a finding of guilt for Grave Misconduct. On the other hand, the NAPOLCOM, through the Office of the Solicitor General, maintains that Besmonte used unnecessary force in treating Abenojar with wanton violence, thereby justifying his dismissal from the service.

Issue

The Court is tasked to determine whether the CA erred when it affirmed the finding of Grave Misconduct against Besmonte, thereby resulting in the latter to suffer the ultimate penalty of dismissal from the service and its accessory penalties.

The Ruling of the Court

The petition is partly meritorious.

I.

A cursory review of the nature and manner of commission of the administrative offense of Grave Misconduct is imperative.

³⁹ *Id.* at 48.

⁴⁰ *Id.* at 51.

⁴¹ *Id.* at 260–267.

⁴² *Id.* at 55–57.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.⁴³ It is the intentional wrongdoing or deliberate violation of a rule of law or standard of behavior.⁴⁴

In administrative cases, misconduct can be classified as either simple or grave. Simple misconduct has been defined as an unacceptable behavior which transgresses the established rules of conduct for public officers, work-related or not.⁴⁵ On the other hand, in grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest.⁴⁶

Corruption as an element of grave misconduct consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his or her station or character to procure some benefit for himself/herself or for another person, contrary to duty and the rights of others.⁴⁷ Clear intent to violate the law or flagrant disregard of an established rule presupposes that there is an order or regulation defied by the public official.⁴⁸ In *Imperial, Jr. v. Government Service Insurance System*:⁴⁹

Flagrant disregard of rules is a ground that jurisprudence has already touched upon. It has been demonstrated, among others, in the instances when there had been open defiance of a customary rule; in the repeated voluntary disregard of established rules in the procurement of supplies; in the practice of illegally collecting fees more than what is prescribed for delayed registration of marriages; when several violations or disregard of regulations governing the collection of government funds were committed; and when the employee arrogated unto herself responsibilities that were clearly beyond her given duties. The common denominator in these cases was the employee's propensity to ignore the rules as clearly manifested by his or her actions.⁵⁰

Without any of these elements, the transgression of an established rule is properly characterized as simple misconduct only.⁵¹

Under both the Uniform Rules on Administrative Cases in the Civil Service,⁵² which was in effect at the time of the incident in question, and the

⁴³ *Office of the Ombudsman v. De Zosa*, 751 Phil. 293, 299 (2015) [Per J. Perlas-Bernabe, First Division].

⁴⁴ *Daplas v. Department of Finance*, 808 Phil. 763, 772 (2017) [Per J. Perlas-Bernabe, First Division].

⁴⁵ *Office of the Court Administrator v. Chavez*, 806 Phil. 932, 961 (2017) [Per Curiam, En Banc].

⁴⁶ *Ganzon v. Arlos*, 720 Phil. 104, 113 (2013) [Per J. Bersamin, En Banc].

⁴⁷ *Civil Service Commission v. Belagan*, 483 Phil. 601, 623 (2004) [Per J. Sandoval-Gutierrez, En Banc].

⁴⁸ *Mahinay v. Court of Appeals*, G.R. No. 230355, March 18, 2021 [Per J. Carandang, First Division].

⁴⁹ 674 Phil. 286 (2011) [Per J. Brion, En Banc].

⁵⁰ *Id.* at 297.

⁵¹ *Office of the Ombudsman v. Espina*, 807 Phil. 529, 541 (2017) [Per Curiam, First Division].

⁵² CSC Resolution No. 991936 dated August 31, 1999. See <<https://www.csc.gov.ph/phocadownload/userupload/irmo/mc/1999/mc19s1999.pdf>> last accessed October 25, 2023.

RRACS, Grave Misconduct is classified as a grave offense which is punishable by dismissal from the service. Indeed, the Court has on several occasions not shied away from affirming the imposition of the penalty of dismissal against public officials who commit the offense of Grave Misconduct even for the first time.⁵³ On the other hand, simple misconduct is classified as a less grave offense with a corresponding penalty of suspension for one month and one day to six months for the first offense, and the penalty of dismissal for the second offense.⁵⁴

In administrative proceedings such as in this case, 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.⁵⁵ This standard is satisfied when there is a 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.⁵⁶

The question of whether there was sufficient evidence to find a person liable for Grave Misconduct is an evidentiary matter which, generally, the Court will not look into⁵⁷ because only questions of law may be raised in a petition for review on *certiorari*.⁵⁸ Not being a trier of facts,⁵⁹ it is not the Court's function to analyze or weigh all over again the evidence that were already considered in the proceedings below.⁶⁰ The Court is confined to the review of errors of law that may have been committed in the judgment under review.⁶¹

In addition, it is also settled that the factual findings of administrative officials and agencies that have acquired expertise in the performance of their official duties and the exercise of their primary jurisdiction are generally accorded not only respect but, at times, even finality if such findings are supported by substantial evidence.⁶² These factual findings carry even more weight when affirmed by the CA.⁶³

⁵³ *Pantaleon v. Ombudsman-Mindanao*, G.R. No. 248819, January 13, 2021 [Per J. Inting, Third Division]; *Herrera v. Mago*, 868 Phil. 702, 719 (2020) [Per J. Lazaro-Javier, First Division]; *Field Investigation Office of the Office of the Ombudsman v. Castillo*, 794 Phil. 53, 65–66 (2016) [Per J. Perlas-Bernabe, First Division]; *Civil Service Commission v. Almojuela*, 707 Phil. 420, 437 (2013) [Per J. Brion, *En Banc*]; *Gonzales v. Civil Service Commission*, 524 Phil. 271, 280 (2006) [Per J. Corona, *En Banc*].

⁵⁴ *Miranda v. Civil Service Commission*, 847 Phil. 232, 251 (2019) [Per J. J.C. Reyes, Jr., Second Division].

⁵⁵ *Department of Health v. Aquintey*, 806 Phil. 763, 772 (2017) [Per J. Peralta, Second Division].

⁵⁶ *Office of the Ombudsman-Visayas v. Castro*, 759 Phil. 68, 77 (2015) [Per J. Brion, Second Division].

⁵⁷ *Dela Cruz v. National Police Commission*, 845 Phil. 350, 361 (2019) [Per J. Leonen, Third Division].

⁵⁸ *Pascual v. Burgos*, 776 Phil. 167, 182 (2016) [Per J. Leonen, Third Division].

⁵⁹ *Gatan v. Vinarao*, 820 Phil. 257, 265 (2017) [Per J. Leonardo-De Castro, First Division].

⁶⁰ *Miro v. Vda. De Erederos*, 721 Phil. 772, 785 (2013) [Per J. Brion, Second Division].

⁶¹ *Spouses Sibay v. Spouses Bermudez*, 813 Phil. 807, 813 (2017) [Per J. Peralta, Second Division].

⁶² *NGEI Multi-Purpose Cooperative, Inc. v. Filipinas Palmoil Plantation, Inc.*, 697 Phil. 433, 443 (2012) [Per J. Mendoza, Third Division].

⁶³ *Encinas v. Agustin, Jr.*, 709 Phil. 236, 261 (2013) [Per C.J. Sereno, *En Banc*].

The Court finds no compelling reason to depart from the foregoing precepts.

The records show that Besmonte never denied hitting Abenojar. The former merely asserted that he employed reasonable force in apprehending the latter. However, Besmonte failed to explain how the punch to Abenojar's face and the kick to her groin area were reasonable and necessary under the circumstances. Thus, the Court is duty-bound to uphold the finding that Besmonte used excessive force against Abenojar.

Nevertheless, the Court does not agree with the characterization of Besmonte's transgression as Gross Misconduct. He is guilty only of Simple Misconduct.

II.

The PNP's rule on the use of force reads as follows:

2.8 Application of Necessary and Reasonable Force. In the lawful performance of duty, a police officer shall use necessary and reasonable force to accomplish his/her mandated task of enforcing the law and maintaining peace and order.

A police officer, however, is not required to afford the offender/s attacking him/ her the opportunity for a fair or equal struggle. The necessity and reasonableness of the force employed will depend upon the number of aggressors, nature and characteristic of the weapon used, physical condition, size and other circumstances to include the place and occasion of the assault. The police officer is given the sound discretion to consider these factors in employing reasonable force.

During confrontation with an armed offender, only such necessary and reasonable force shall be applied as would be sufficient to overcome the aggression by the offender; subdue the clear and imminent danger posed by him/her; or to justify the force/act under the principles of self-defense, defense of relative, defense of stranger or fulfillment of duty, in accordance with the elements laid down by law and jurisprudence. The excessive use of force to arrest or immobilize the suspect during police operation is prohibited.⁶⁴ (Emphasis in the original)

The finding that Besmonte employed excessive force constitutive of a clear intent to violate the law or a flagrant disregard of an established rule is premised on the NAPOLCOM's assessment that there were three members of the buy-bust team who outnumbered one female suspect:

⁶⁴ Revised Philippine National Police Operation Procedures (2021), pp. 7–8. Available at <<https://pnp.gov.ph/pop-manual-2021/>> last accessed October 26, 2023.



It is noted that there were three (3) members of the team that conducted the buy-bust operation which is composed of the herein respondents and the subject of their operation is only one female person. Assuming that there was intense resistance from the private complainant at the time of the arrest, the respondent arresting officers could have still made an all-out-effort to neutralized [sic] the former without the [sic] necessarily resorting to excessive force considering the facts that there were three of them (Respondents) as against the lone female suspect (Private Complainant).⁶⁵

Further, the CSC declared that “[a]s a police officer, Besmonte should have exercised the prudence to employ force upon the woman suspect.”⁶⁶ The CA, citing Section 2,⁶⁷ Rule 113 of the Rules of Court, expounded that Besmonte’s exercise of force was not necessary because Abenojar acted “without aggression”⁶⁸ and that “Besmonte should have exercised prudence in employing force upon Abenojar considering that Abenojar is a woman and Besmonte was accompanied by two other police officers in conducting the arrest.”⁶⁹

Indeed, the events in this case happened very quickly. From the perspective of a police officer who was conducting a buy-bust operation in an open street in the middle of the night, Abenojar’s incessant shouting and kicking were potentially drawing people—innocent bystanders and lawless elements alike—to the crime scene. Nonetheless, while it cannot be denied that putting a quick end to Abenojar’s resistance was imperative, there was a problem with Besmonte’s application of excessive force.

Verily, Besmonte should have been more circumspect in following the operational guidelines of the PNP on the use of reasonable force. He should have considered “the number of aggressors, nature and characteristic of the weapon used, physical condition, size and other circumstances to include the place and occasion of the assault.”⁷⁰

It bears noting, however, that the discussions of the NAPOLCOM, the CSC, and the CA zeroed in on Besmonte’s lapse of judgment. They do not mention how Besmonte’s actions were tainted with the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule as

⁶⁵ *Rollo*, pp. 121–122.

⁶⁶ *Id.* at 102.

⁶⁷ Section 2. *Arrest; how made.* — An arrest is made by an actual restraint of a person to be arrested, or by his submission to the custody of the person making the arrest.

No violence or unnecessary force shall be used in making an arrest. The person arrested shall not be subject to a greater restraint than is necessary for his detention.

⁶⁸ *Rollo*, p. 49.

⁶⁹ *Id.* at 48.

⁷⁰ Revised Philippine National Police Operation Procedures (2021), pp. 7–8. Available at <<https://pnp.gov.ph/pop-manual-2021/>> last accessed October 26, 2023.

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would qualify his transgression as Grave Misconduct. Thus, he could only be held liable for Simple Misconduct.

III.

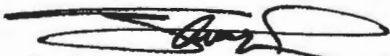
A final note.

Today's ruling is a reminder that the Court does not condone the indiscriminate use of force by police officers against persons under arrest. We no longer live in a society where might is right and the lives of the people are at the mercy of the whims of those in positions of power. No less than the Constitution sanctifies the principle that public office is a public trust, and enjoins all public officers and employees to serve with the highest degree of responsibility, integrity, loyalty, and efficiency.⁷¹ In *Valderas v. Sulse*:⁷²

When a public officer takes an oath of office, he or she binds himself or herself to faithfully perform the duties of the office and use reasonable skill and diligence, and to act primarily for the benefit of the public. In the discharge of duties, a public officer must use prudence, caution, and attention which careful persons use in the management of their affairs. Public officials and employees are therefore expected to act with utmost diligence and care in discharging the duties and functions of their office.

ACCORDINGLY, the petition is **PARTIALLY GRANTED**. The Decision dated October 29, 2021 and the Resolution dated March 28, 2022 of the Court of Appeals in CA-G.R. SP No. 161581 are hereby **AFFIRMED** with **MODIFICATION** in that petitioner **Herminio A. Besmonte** is found **GUILTY** of Simple Misconduct and is **ORDERED** suspended from office for a period of six (6) months.

SO ORDERED.

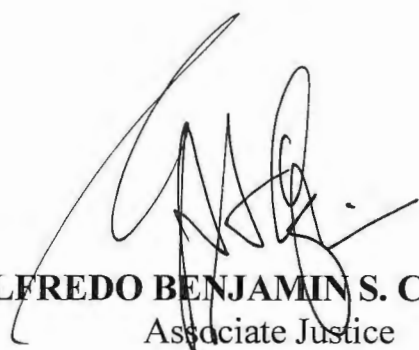

SAMUEL H. GAERLAN
Associate Justice

⁷¹ *Trinidad, Jr. v. Office of the Ombudsman*, 891 Phil. 268, 273 (2020) [Per J. Lopez, Second Division].

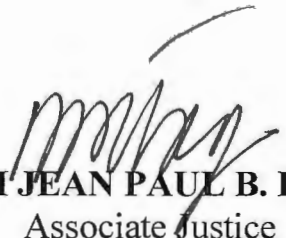
⁷² G.R. No. 205659, March 9, 2022 [Per J. Gaerlan, First Division].

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WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



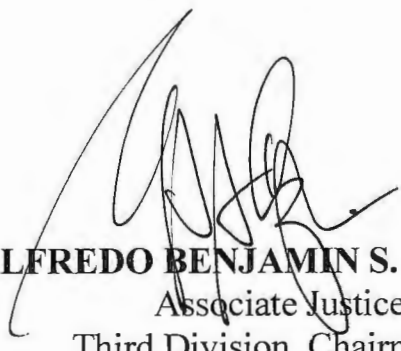
JAFAR B. DIMAAMPAO
Associate Justice



MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

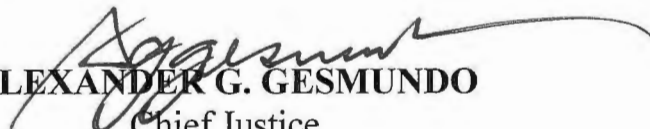


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Third Division, Chairperson

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CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice

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