

## SECOND DIVISION

[ G.R. No. 210266, June 07, 2017 ]

**ANTHONY DE SILVA CRUZ, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### DECISION

**LEONEN, J.:**

The possession and use of a counterfeit credit card is considered access device fraud and is punishable by law. To successfully sustain a conviction for possession and use of a counterfeit access device, the prosecution must present not only the access device but also any evidence that proves that the access device is counterfeit.

This resolves a Petition<sup>[1]</sup> for Review on Certiorari assailing the Decision<sup>[2]</sup> dated July 4, 2013 and Resolution<sup>[3]</sup> dated November 26, 2013 of the Court of Appeals, which affirmed the conviction of petitioner Anthony De Silva Cruz (Cruz) by the Regional Trial Court<sup>[4]</sup> for violation of Republic Act No. 8484, otherwise known as the Access Devices Regulation Act of 1998.

Cruz was charged with violation of Section 9(a) and (e) of Republic Act No. 8484, which provide:

SECTION 9. *Prohibited Acts.* — The following acts shall constitute access device fraud and are hereby declared to be unlawful:

(a) producing, using, trafficking in one or more counterfeit access devices;

. . . . .

(e) possessing one or more counterfeit access devices or access devices fraudulently applied for[.]

The Informations against him read:

Under Criminal Case No. 06-0479

That on or about the 18<sup>th</sup> day of April 2006, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession and control a counterfeit access device (Citibank Visa Card with No. 4539 7207 8677 7008) in violation of the aforecited law.

CONTRARY TO LAW.

. . . . .

Under Criminal Case No. 06-0480

That on or about the 18<sup>th</sup> day of April 2006, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously use a counterfeit Citibank Visa Card with No. 4539 7207 8677 7008 an access device, in buying from complainant Duty Free Philippines herein represented by Redentor M. Quejada, one (1) pair of Ferragamo shoes worth US\$363.00, to the damage and prejudice of the complainant in the aforementioned amount of US\$363.00 or P18,876.00 more or less.

CONTRARY TO LAW.

. . . . .

Under Criminal Case No. 06-0481

That on or about the 18<sup>th</sup> day of April 2006, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously use a counterfeit Citibank Visa Card with No. 4539 7207 8677 7008 an access device, in buying from complainant Duty Free Philippines herein represented by Redentor M. Quejada, two (2) bottles of perfume worth US\$96.00, to the damage and prejudice of the complainant in the aforementioned amount of US\$96.00 or P4,992.00 more or less.

CONTRARY TO LAW.<sup>[5]</sup>

Cruz was arraigned on October 17, 2006, where he pleaded not guilty for each charge.<sup>[6]</sup> Trial on the merits ensued.<sup>[7]</sup>

According to the prosecution, on April 18, 2006, at around 7:30 p.m., Cruz allegedly tried to purchase two (2) bottles of Calvin Klein perfume worth US\$96.00 from Duty Free Philippines Fiesta Mall. Danilo Wong (Wong), the cashier at the Perfume Section, testified that Cruz paid for the purchase using a Citibank Visa credit card.<sup>[8]</sup> The transaction was approved, although Wong doubted the validity of the credit card since the number at the back was not aligned.<sup>[9]</sup>

At around 8:00 p.m., Cruz allegedly tried to purchase a pair of Ferragamo shoes worth US\$363.00.<sup>[10]</sup> Ana Margarita Lim (Lim), the cashier on duty, facilitated the sales transaction.<sup>[11]</sup> Cruz paid for the purchase using a Citibank Visa credit card bearing the name "Gerry Santos," with credit card number 4539 7207 8677 7008.<sup>[12]</sup> When Lim asked for Cruz's Duty Free shopping card, Cruz presented a shopping card with the name of "Rodolfo Garcia."<sup>[13]</sup> Lim asked for another identification card, and Cruz gave her a driver's license bearing the name "Gerry Santos."<sup>[14]</sup>

Lim proceeded to the mall's Electronic Section to swipe the credit card for approval.<sup>[15]</sup> The card was approved, but she noticed that the last four (4) digits of the card were not properly embossed and its validity date started in November 2006.<sup>[16]</sup> She called Citibank to verify the credit card.<sup>[17]</sup>

Upon verification, Citibank informed Lim that the credit card was counterfeit and that the real Gerry Santos was the Head of Citibank's Fraud Risk Management Division.<sup>[18]</sup> Lim was advised to transfer the matter to the Security Department.<sup>[19]</sup>

Redentor Quejada, Security Supervisor of Duty Free Philippines, testified that he and two (2) other guards held Cruz and his companion, Rodolfo De Silva Cruz, at the security office until the representative from Citibank arrived. At around 9:00 p.m. to 10:00 p.m., Gerardo T. Santos, Head of Citibank's Fraud Risk Management Division, arrived with members of the Philippine National Police - Criminal Investigation Detective Group, together with a certain Atty. Abad Santos, who was allegedly Cruz's lawyer.<sup>[20]</sup> Before Redentor Quejada could turn Cruz over to the police, Cruz tried to escape with the help of Atty. Abad Santos. The security officers, however, were able to close the mall's main gate, which prevented their escape.<sup>[21]</sup>

Cruz and Rodolfo De Silva Cruz were turned over to the Criminal Investigation Detective Group and brought to Camp Crame for questioning.<sup>[22]</sup> Citibank Visa credit card number 4539 7207 8677 7008 was also turned over to the Criminal Investigation Detective Group.<sup>[23]</sup>

Gerardo T. Santos (Santos) testified that he first heard of Cruz's name in May 2004.<sup>[24]</sup> Cruz and his wife Aileen were then managing Antonely's Fabric Warehouse and were involved in incidents related to credit card fraud. Santos did not file a case against them for lack of basis. He came across Cruz's name again in 2005, with regard to a fraudulent transaction with a Thai restaurant in Shoemart Megamall.<sup>[25]</sup> He also testified that the credit card number was validly issued to a certain Jessamine Bongat, and that the counterfeit credit card had been previously used on several fraudulent occasions.<sup>[26]</sup>

After the prosecution formally offered their evidence, Cruz filed a Demurrer to Evidence asserting that the credit card was inadmissible since it was presented and offered by the prosecution in violation of A.M. No. 03-1-09-SC.<sup>[27]</sup>

On August 6, 2009, Branch 274 of the Regional Trial Court of Parañaque City denied the Demurrer to Evidence and stated that the credit card receipts were properly identified by the witnesses.<sup>[28]</sup> The trial court also stated that the alleged counterfeit credit card was offered in evidence by the prosecution.<sup>[29]</sup>

Despite notice, Cruz and his counsel did not appear during the scheduled hearings for the presentation of his defense. Later, Cruz manifested to the trial court that he was waiving his right to present evidence.<sup>[30]</sup>

On May 5, 2010, the trial court rendered its Judgment<sup>[31]</sup> finding Cruz guilty beyond reasonable doubt of violation of Section 9(a) and (e) of Republic Act No. 8484 in Criminal Case Nos. 06-0479 and 06-0480, when he used a counterfeit access device

to purchase a pair of shoes worth US\$363.00. However, it acquitted Cruz in Criminal Case No. 06-0481 upon finding that the prosecution failed to prove his guilt beyond reasonable doubt of using a counterfeit access device to purchase two (2) bottles of perfume worth US\$96.00.<sup>[32]</sup> The dispositive portion of the Judgment reads:

WHEREFORE, all the foregoing considered, the Court finds the accused ANTHONY DE SILVA CRUZ as follows:

(1) Under Criminal Case No. 06-0479, GUILTY beyond reasonable doubt of the offense of Violation of Section 9, par. (a) of Republic Act No. 8484, as stated in the Information, and accordingly hereby penalizes the said accused to suffer indeterminate sentence of fine of Ten Thousand Pesos (P10,000.00) and imprisonment of six (6) years prison correccional as minimum, to ten (10) years prison mayor as maximum.

(2) Under Criminal Case No. 06-0480, GUILTY beyond reasonable doubt of the offense of Violation of Section 9, par. (a) of Republic Act No. 8484 as stated in the Information, and accordingly hereby sentences the said accused to suffer indeterminate sentence of fine of Ten Thousand Pesos (P10,000.00) and imprisonment of ten (10) years prison mayor as minimum to twelve (12) years prison mayor as maximum.

(3) Under Criminal Case No. 06-0481, NOT GUILTY of the offense of Violation of Section 9, par. (a) of Republic Act No. 8484 as charged in the Information, and accordingly hereby acquits the said accused therefrom.

SO ORDERED.<sup>[33]</sup>

Aggrieved, Cruz appealed to the Court of Appeals. On July 4, 2013, the Court of Appeals rendered the Decision<sup>[34]</sup> denying the appeal and upholding Cruz's conviction.

According to the Court of Appeals, the prosecution was able to establish that Cruz had in his possession a counterfeit access device.<sup>[35]</sup> It also held that A.M. No. 03-1-09-SC does not absolutely preclude the admission of evidence that has not been pre-marked during pre-trial since courts may, in its discretion and "for good cause shown," still admit the evidence.<sup>[36]</sup>

However, the Court of Appeals modified the penalties to delete the words "*prision correccional*" and "*prision mayor*" as the law itself<sup>[37]</sup> provides the penalties to be imposed.<sup>[38]</sup> The dispositive portion of the Decision reads:

**WHEREFORE**, the appeal is **DISMISSED**. The Judgment of the Regional Trial Court of Parañaque City in Criminal Case Nos. 06-0479 & 06-0480 are **AFFIRMED** with **MODIFICATIONS**.

In Criminal Case Nos. 06-0479, accused-appellant **ANTHONY DE SILVA CRUZ** is found guilty beyond reasonable doubt of violation of Section 9(e) of R.A. No. 8484 and is sentenced to a prison term of six (6) years, as minimum, to ten (10) years, as maximum, and to pay a fine of Ten Thousand Pesos (P10,000.00).

In Criminal Case No. 06-0480, accused-appellant ANTHONY DE SILVA CRUZ is found guilty beyond reasonable doubt of violation of Section 9(a) of the R.A. No. 8484 and is sentenced to a prison term often (10) years, as minimum, to twelve (12) years, as maximum, and to pay a fine of US\$726.00 or P37,752.00.

**SO ORDERED.**<sup>[39]</sup> (Emphasis in the original)

Cruz moved for reconsideration, but the Motion was denied in the Resolution<sup>[40]</sup> dated November 26, 2013.

Hence, petitioner Anthony De Silva Cruz filed before this Court a Petition for Review on Certiorari.<sup>[41]</sup>

Petitioner argues that according to A.M. No. 03-1-09-SC, the *corpus delicti* or the alleged counterfeit credit card is inadmissible since it was not marked and identified during pre-trial.<sup>[42]</sup> He alleges that the testimonies of the prosecution's witnesses were inconsistent as to the identification of the credit card and its eventual turnover to the police.<sup>[43]</sup> Petitioner asserts that the trial court and the Court of Appeals disregarded the constitutional presumption of innocence by making an inference of guilt based on his silence during trial.<sup>[44]</sup>

The Office of the Solicitor General, on the other hand, maintains that the counterfeit credit card is admissible as evidence since A.M. No. 03-1-09-SC allows the trial court to admit the evidence, if, in its discretion, there was "good cause shown" for its admission.<sup>[45]</sup> It also notes that there was no inconsistency between Lim's and Wong's testimonies, since they were testifying on two different situations they witnessed.<sup>[46]</sup>

The Office of the Solicitor General further argues that "the unexplained failure of the accused to testify . . . gives rise to an inference that he did not want to testify because he did not want to betray himself."<sup>[47]</sup> It points out that petitioner's attempt to flee the premises is an implied admission of guilt.<sup>[48]</sup>

While the case was pending before this Court, petitioner's counsel withdrew<sup>[49]</sup> and another counsel entered an appearance on his behalf. A Motion for Leave of Court to File Supplemental Petition for Review was filed together with the Entry of Appearance of his new counsel.<sup>[50]</sup>

Aside from reiterating that the prosecution witnesses' testimonies were inconsistent with each other,<sup>[51]</sup> petitioner insists that his former counsel negligently defended his cause by failing to present evidence on his behalf and failing to cross-examine the prosecution's witnesses.<sup>[52]</sup> Petitioner adds that Redentor Quejada was not duly authorized by Duty Free Philippines to file the complaint on its behalf based on an invalid Special Power of Attorney.<sup>[53]</sup> Thus, he prays that the July 4, 2013 Decision and November 26, 2013 Resolution be reversed, or in the alternative, the case be remanded to the trial court for the presentation of his evidence.<sup>[54]</sup>