



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

ANTHONY DE SILVA CRUZ,  
Petitioner,

G.R. No. 210266

Present:

CARPIO, J., Chairperson,  
VELASCO, JR.,\*  
MENDOZA,\*\*  
LEONEN, and  
MARTIRES,\*\*\* JJ.

-versus-

PEOPLE OF THE PHILIPPINES,  
Respondent.

Promulgated:  
07 JUN 2017

*[Handwritten signature]*

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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

\* Designated additional member per Raffle dated May 29, 2017.  
\*\* On official leave.  
\*\*\* On official leave.  
<sup>1</sup> Rollo, pp. 9-27.  
<sup>2</sup> Id. at 28-41.  
<sup>3</sup> Id. at 42-43.

*[Handwritten mark]*

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 ₱18,876.00 more or less.

CONTRARY TO LAW.

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Under Criminal Case No. 06-0481

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<sup>4</sup> Id. at 46-56.

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 ₱4,992.00 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

<sup>5</sup> Id. at 46–47, Regional Trial Court Decision.

<sup>6</sup> Id. at 47.

<sup>7</sup> Id.

<sup>8</sup> Id. at 49 and 55.

<sup>9</sup> Id.

<sup>10</sup> Id. at 48 and 55.

<sup>11</sup> Id.

<sup>12</sup> Id. at 55.

<sup>13</sup> Id. at 30.

<sup>14</sup> Id. at 48.

<sup>15</sup> Id. at 48.

<sup>16</sup> Id.

<sup>17</sup> Id.

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

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<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> Id. at 50.

<sup>21</sup> Id. at 31.

<sup>22</sup> Id. at 51.

<sup>23</sup> Id. at 50-51.

<sup>24</sup> Id. at 49.

<sup>25</sup> Id. at 49.

<sup>26</sup> Id. at 53.

<sup>27</sup> Id. at 31. A.M. No. 03-1-09-SC (2004), Proposed Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures.

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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>

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<sup>28</sup> Id. at 31–32.

<sup>29</sup> Id. at 31.

<sup>30</sup> Id. at 32.

<sup>31</sup> Id. at 46–56. The Decision, docketed as Criminal Case No. 06-0479, was penned by Presiding Judge Fortunito L. Madrona of Branch 274 of the Regional Trial Court, Parañaque.

<sup>32</sup> Id. at 55.

<sup>33</sup> Id. at 56.

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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 (₱10,000.00).

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 of ten (10) years, as minimum, to twelve (12) years, as maximum, and to pay a fine of US\$726.00 or ₱37,752.00.

<sup>34</sup> Id. at 28–41. The Decision, docketed as CA-G.R. CR No. 33756, was penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Fernanda Lampas Peralta (Chair) and Francisco P. Acosta of the Tenth Division, Court of Appeals, Manila.

<sup>35</sup> Id. at 35.

<sup>36</sup> Id. at 36.

<sup>37</sup> Rep. Act No. 8484 (1998), sec. 10 provides:

SECTION 10. *Penalties*. – Any person committing any of the acts constituting access device fraud enumerated in the immediately preceding section shall be punished with:

- (a) a fine of Ten thousand pesos (P10,000.00) or twice the value obtained by the offense, whichever is greater and imprisonment for not less than six (6) years and not more than ten (10) years, in the case of an offense under Section 9 (b)-(e), and (g)-(p) which does not occur after a conviction for another offense under Section 9;
- (b) a fine of Ten thousand pesos (P10,000.00) or twice the value obtained by the offense, and imprisonment for not less than ten (10) years and for not more than twelve (12) years, in the case of an offense under Section 9 (a), and (f) of the foregoing section, which does not occur after a conviction for another offense under Section 9; and
- (c) a fine of Ten thousand pesos (P10,000.00) or twice the value obtained by the offense, or imprisonment for not less than twelve (12) years and not more than twenty (20) years, or both, in the case of any offense under Section 9, which occurs after a conviction for another offense under said subsection, or an attempt to commit the same.

<sup>38</sup> *Rollo*, p. 39.

**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

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<sup>39</sup> Id. at 40.

<sup>40</sup> Id. at 42-43. The Resolution was penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta of the Former Tenth Division, Court of Appeals, Manila.

<sup>41</sup> Id. at 9-27.

<sup>42</sup> Id. at 19.

<sup>43</sup> Id. at 20-23.

<sup>44</sup> Id. at 23-24.

<sup>45</sup> Id. at 92, Comment.

<sup>46</sup> Id. at 94.

<sup>47</sup> Id. at 95.

<sup>48</sup> Id. at 95-96.

<sup>49</sup> Id. at 107.

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>

The issues for resolution are:

First, whether the prosecution was able to prove beyond reasonable doubt that petitioner was guilty of violating Section 9(a) and (e) of Republic Act No. 8484. Corollary to this is whether the counterfeit access device can still be presented in trial despite not having been presented and marked during pre-trial; and

Second, whether the negligence of petitioner's former counsel binds petitioner.

## I

Republic Act No. 8484, otherwise known as the Access Devices Regulation Act of 1998, defines an access device as:

any card, plate, code, account number, electronic serial number, personal identification number, or other telecommunications service, equipment, or instrumental identifier, or other means of account access that can be used to obtain money, good, services, or any other thing of value or to initiate a transfer of funds (other than a transfer originated solely by paper instrument).<sup>55</sup>

Since a credit card is "any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, goods, property, labor or services or anything of value on credit,"<sup>56</sup> it is considered an access device.

<sup>50</sup> Id. at 110–127. The Entry of Appearance was not read by this Court in a Resolution dated August 31, 2016.

<sup>51</sup> Id. at 118.

<sup>52</sup> Id. at 121–123.

<sup>53</sup> Id. at 115–118.

<sup>54</sup> Id. at 124.

<sup>55</sup> Rep. Act No. 8484 (1998), sec. 3(a).

<sup>56</sup> Rep. Act No. 8484 (1998), sec. 3(f).

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Section 9(a) and (e) make the possession and use of a counterfeit access device as “access device fraud” that is punishable by law:

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[.]

A counterfeit access device is “any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or counterfeit access device.”<sup>57</sup> Under Section 9(a) and (e) of Republic Act No. 8484, the possession and use of an access device is not illegal. Rather, what is prohibited is the possession and use of a *counterfeit* access device. Therefore, the *corpus delicti* of the crime is not merely the access device, but *also* any evidence that proves that it is counterfeit.

Petitioner was found in possession of Citibank Visa credit card number 4539 7207 8677 7008, which bore the name “Gerry Santos.”<sup>58</sup> He used the same credit card to purchase Ferragamo shoes worth US\$363.00 at Duty Free Fiesta Mall.<sup>59</sup> Citibank Visa credit card number 4539 7207 8677 7008 was later proven to be a counterfeit access device.<sup>60</sup>

Possession of a counterfeit access device is punishable by imprisonment of not less than six (6) years and not more than 10 years and a fine of ₱10,000.00 or twice the value obtained by the offense, whichever is higher. On the other hand, use of a counterfeit access device is punishable by imprisonment of not less 10 years but not more than 12 years and a fine of ₱10,000.00 or twice the value obtained by the offense, whichever is higher:

SECTION 10. *Penalties.* — Any person committing any of the acts constituting access device fraud enumerated in the immediately preceding section shall be punished with:

- (a) a fine of Ten thousand pesos (₱10,000.00) or twice the value obtained by the offense, whichever is greater and imprisonment

<sup>57</sup> Rep. Act No. 8484 (1998), sec. 3(b).

<sup>58</sup> *Rollo*, pp. 35 and 55.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

for not less than six (6) years and not more than ten (10) years, in the case of an offense under Section 9 (b)-(e), and (g)-(p) which does not occur after a conviction for another offense under Section 9;

- (b) a fine of Ten thousand pesos (₱10,000.00) or twice the value obtained by the offense, and imprisonment for not less than ten (10) years and for not more than twelve (12) years, in the case of an offense under Section 9 (a), and (f) of the foregoing section, which does not occur after a conviction for another offense under Section 9[.]<sup>61</sup>

Petitioner, having been found guilty beyond reasonable doubt, was sentenced to suffer the penalty of imprisonment of 10 years as minimum to 12 years as maximum and a fine of US\$726.00 for violation of Section 9(a) of Republic Act No. 8484. He was also sentenced to suffer the penalty of imprisonment of six (6) years as minimum to 10 years as maximum and a fine of ₱10,000.00 for violation of Section 9(e) of Republic Act No. 8484.<sup>62</sup>

## II

Petitioner argues that according to A.M. No. 03-1-09-SC,<sup>63</sup> the alleged counterfeit credit card should not have been admitted as evidence because it was not pre-marked during pre-trial.<sup>64</sup>

A.M. No. 03-1-09-SC, sec. I(A)(2) provides that:

2. The parties shall submit, at least three (3) days before the pre-trial, pre-trial briefs containing the following:

....

- d. The documents or exhibits to be presented, stating the purpose thereof. (No evidence shall be allowed to be presented and offered during the trial in support of a party's evidence-in-chief other than those that had been earlier identified and pre-marked during the pre-trial, except if allowed by the court for good cause shown)[.]

The rule is that no evidence shall be allowed during trial if it was not identified and pre-marked during trial. This provision, however, allows for an exception: when allowed by the court for good cause shown. There is no hard and fast rule to determine what may constitute "good cause," though this Court has previously defined it as any substantial reason "that affords a

<sup>61</sup> Rep. Act No. 8484 (1998), sec. 10.

<sup>62</sup> *Rollo*, p. 40.

<sup>63</sup> Re: Proposed Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures (2004).

<sup>64</sup> *Rollo*, p. 16.

legal excuse.”<sup>65</sup>

The trial court retains its discretion to allow any evidence to be presented at trial even if not previously marked during pre-trial. Here, the trial court allowed the presentation of the counterfeit credit card at trial due to the prosecution’s explanation that during pre-trial, the counterfeit credit card was still in the Criminal Investigation and Detective Group’s custody:

Court: Additional direct?

Pros. Rodriguez: Yes, additional direct. For identification only of the credit card. The credit card is already here.

Atty. De Guia: Your Honor, we would like to put our continuing objection to the presentation of the credit card because it was not presented during pre-trial.

Pros. Rodriguez: This credit card, Your Honor, is part of Exhibit “F,” Your Honor.

Atty. De Guia: In fact, Your Honor, if I am not mistaken, this is supposed to be the cross-examination already of the . . .

Pros. Rodriguez: *We made a reservation considering that this document was not available during pre-trial, Your Honor.*

Atty. De Guia: Precisely, Your Honor, that’s our objection.

Pros. Rodriguez: *But it forms part of Exhibit F, Your Honor, the Certification that this card is not a genuine card of the Citibank.*

Atty. De Guia: But then precisely, Your Honor, the prosecutor is alleging that this credit card is actually the document, their failure to present them during pre-trial and mark properly, this is the consequence of their omission, Your Honor, with due respect.

Pros. Rodriguez: During the pre-trial, this card was not available at that time. At that time this card was not yet available, it was in the custody of the police. The police never turned over this card to us.

Atty. De Guia: That’s precisely the reason, Your Honor, that the prosecution had ample time to present their case, make their case before filing this complaint, this information. And their failure should be taken against them, Your Honor. The rule on pre-trial order is mandatory, Your Honor. Any other

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<sup>65</sup> *Fortune Corporation v. Court of Appeals*, G.R. No. 108119, January 19, 1994, 229 SCRA 355, 371 [Per J. Regalado, Second Division].



- evidence not presented in the pre-trial shall be excluded.
- Pros. Rodriguez: The defense is very desperate, Your Honor, on technicalities, but then this card forms part of Exhibit F where it is specifically mentioned.
- Court: It should form part of exhibit?
- Pros. Rodriguez: Exhibit F, Your Honor, the Certification that this card is not the . . .
- Court: The certification of Citibank?
- Pros. Rodriguez: Yes, that this card is not a genuine card. So this is F-1.
- Court: How come that it will be certification? That card?
- Pros. Rodriguez: No, that this card is not the – because this is a . . .
- Court: What is the certification of the Citibank Exhibit F? Does it mention that that card is part?
- Pros. Rodriguez: Yes. Your Honor. At this point, exhibiting to this Honorable Court Exhibit “F” reads that, “Citibank Visa Card with embossed account number 4539-7207-8677-7008,” which is the physical evidence in this case presented to this Court, is a counterfeit, Your Honor. So, *this is only part of Exhibit F*.
- Court: *Okay, the Court will allow that.*
- Atty. De Guia: We will just put our continuing objection on record, Your Honor.<sup>66</sup> (Emphasis supplied)

The prosecution was able to present and mark during pre-trial Citibank’s certification that the access device used was counterfeit. It is this certification that makes the possession and use of the access device illegal. Therefore, the trial court determined that the access device could still be presented at trial since it merely formed part of an exhibit that had already been presented and marked during pre-trial.

### III

Petitioner points out the alleged inconsistencies in the testimonies of Ana Margarita Lim and Danilo Wong.<sup>67</sup> Wong testified that the credit card presented in trial was not the same credit card that petitioner used in

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<sup>66</sup> *Rollo*, pp. 57–61, TSN dated August 1, 2007.

<sup>67</sup> *Id.* at 20–21.

purchasing the Calvin Klein perfumes worth US\$96.00.<sup>68</sup>

The determination of the credibility of witnesses is a question of fact that should not be reviewed by this Court in a petition for review on certiorari under Rule 45 of the Rules of Court.<sup>69</sup> There are exceptions to this rule;<sup>70</sup> however, none of those exceptions are present here. Even if we were to review the witnesses' testimonies, petitioner's argument would still be unmeritorious.

Two (2) transactions took place on the night of April 18, 2006: the purchase of perfumes at Counter 15<sup>71</sup> and the purchase of shoes at Counter 12.<sup>72</sup> Lim, the cashier for Counter 12, and Wong, the cashier for Counter 15, were called to testify on two (2) different transactions. There can be no inconsistency between two witnesses testifying on two different occurrences.

Petitioner also points out other inconsistencies in the prosecution witnesses' testimonies, such as whom among Lim and Redentor Quejada turned over the credit card to the police;<sup>73</sup> whether petitioner introduced himself;<sup>74</sup> and why Lim did not bother to make a copy of petitioner's driver's license.<sup>75</sup>

These alleged inconsistencies are minor and do not detract from the conclusion that petitioner used a counterfeit access device in the purchase of goods.

In any case, the trial court found these witnesses credible. Its assessment on the credibility of the witnesses is entitled to great weight and respect, especially if it is affirmed by the Court of Appeals.<sup>76</sup>

<sup>68</sup> Id. at 49.

<sup>69</sup> See *Caluag v. People*, 599 Phil. 717, 724–725 (2009) [Per J. Quisumbing, Second Division], citing *Lamis v. Ong*, 504 Phil. 84, 90 (2005) [Per J. Sandoval-Gutierrez, Third Division].

<sup>70</sup> See *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990) [Per J. Bidin, Third Division]: “(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.”

<sup>71</sup> *Rollo*, p. 49.

<sup>72</sup> Id. at 48.

<sup>73</sup> Id. at 21–22.

<sup>74</sup> Id. at 22.

<sup>75</sup> Id.

<sup>76</sup> See *People v. Diu*, 708 Phil. 218, 232 (2013) [Per J. De Castro, First Division]: “Thus, it has been an established rule in appellate review that the trial court's factual findings – including its assessment of the credibility of the witnesses, the probative weight of their testimonies, and the conclusions drawn from the factual findings – are accorded great respect and even conclusive effect. These factual

“[T]he flight of an accused discloses a guilty conscience.”<sup>77</sup> Petitioner does not deny that he tried to escape from Duty Free Fiesta Mall when the police arrived. Taken together with the prosecution’s evidence, it is enough to convince this Court that petitioner is guilty beyond reasonable doubt of possession and use of a counterfeit access device.

#### IV

Petitioner, now grasping at straws, argues that his previous counsel, Atty. Edwin Michael P. Musico (Atty. Musico), negligently defended his cause.<sup>78</sup>

The rule is that negligence of a counsel binds the client except: when counsel exhibits reckless or gross negligence that deprives the client of due process; when the outright application of the rule results in the deprivation of liberty and property through a technicality; or when it serves the interests of justice.<sup>79</sup>

Petitioner alleges that Atty. Musico negligently failed to attend scheduled hearings before the trial court, conduct cross-examination of the witnesses, and present evidence on his behalf.<sup>80</sup>

Records, however, show that petitioner’s counsel was not prevented from objecting to the presentation of the counterfeit credit card during trial, which he repeatedly did and even offered continuing objection.<sup>81</sup> Atty. Musico was also able to cross-examine Lim and Redentor Quejada,<sup>82</sup> the two witnesses petitioner claimed had inconsistent testimonies. Atty. Musico even filed a Demurrer to Evidence after the prosecution made its formal offer.<sup>83</sup>

Although there were, indeed, instances where Atty. Musico failed to attend the scheduled hearings,<sup>84</sup> petitioner was never deprived of due process. The Order<sup>85</sup> dated February 8, 2010 of the trial court shows it was

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findings and conclusions assume greater weight if they are affirmed by the Court of Appeals.”

<sup>77</sup> *People v. Dalinog*, 262 Phil.98, 111 (1990) [Per C.J. Fernan, Third Division], citing *People v. Anquillano*, 233 Phil. 456, 460–461 (1987) [Per J. Cruz, En Banc].

<sup>78</sup> *Rollo*, pp. 121–122.

<sup>79</sup> See *Dimarucot v. People*, .645 Phil. 218, 227 (2010) [Per J. Villarama, Jr., Third Division].

<sup>80</sup> *Rollo*, pp. 121–122.

<sup>81</sup> *Id.* at 57–61, TSN dated August 1, 2007. Petitioner’s counsel on record for this hearing is a certain Atty. De Guia, although the pre-trial order (*Id.* at 44–45) states that petitioner’s counsel is Atty. Edwin Michael P. Musico.

<sup>82</sup> *Id.* at 49 and 51.

<sup>83</sup> *Id.* at 31.

<sup>84</sup> *Id.* at 128–132.

<sup>85</sup> *Id.* at 133.

petitioner's decision to forego the presentation of evidence on his behalf:

In today's hearing, the accused through counsel manifested that despite the resolution of the Demurrer to Evidence, the defense will not be presenting evidence. In view whereof [sic], the defense having considered as waiving the right to present evidence, this case is now submitted for decision.<sup>86</sup>

The burden of proof was on the prosecution. Petitioner did not even need to present evidence. To successfully sustain a conviction, the prosecution must rely on the strength of its evidence, and not on the weakness of the defense.<sup>87</sup> The prosecution's evidence in this case was enough to overcome the presumption of innocence.

We will no longer discuss petitioner's allegation that Redentor Quejada was not authorized by Duty Free Philippines to file the criminal complaint since petitioner failed to attach any proof to substantiate this allegation.

**WHEREFORE**, the Petition is **DENIED** for lack of merit. The Decision dated July 4, 2013 and Resolution dated November 26, 2013 of the Court of Appeals in CA-G.R. CR. No. 33756 are **AFFIRMED**.

The Motion for Leave of Court to File Supplemental Petition for Review on Certiorari dated November 30, 2015 is **DENIED** in view of the denial of the Petition.

**SO ORDERED.**

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

WE CONCUR:

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

<sup>86</sup> Id.

<sup>87</sup> See *People v. Magallanes*, 231 Phil. 89, 98 (1987) [Per J. Paras, Second Division].



**PRESBITERO J. VELASCO, JR.**  
Associate Justice

On official leave  
**JOSE CATRAL MENDOZA**  
Associate Justice

On official leave  
**SAMUEL R. MARTIRES**  
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.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**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.



**MARIA LOURDES P. A. SERENO**  
Chief Justice