

**HON. PRIMO C. MIRO, DEPUTY OMBUDSMAN FOR THE VISAYAS,
PETITIONER, VS. CARPIO, J., CHAIRPERSON, BRION, DEL CASTILLO,
ABAD, AND PEREZ, JJ. REYNALDO M. DOSONO, RESPONDENT.**

G.R. No. 170697. April 30, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This resolves the petition for review on certiorari [1] of the Decision[2] of the Court of Appeals absolving respondent Reynaldo M. Dosono, an internal revenue officer, from administrative liability for extortion.

The Facts

Respondent Reynaldo M. Dosono (respondent) is an examiner of the Bureau of Internal Revenue (BIR) at its district office in Mandaue City, Cebu. As such, respondent takes care in assessing tax liabilities.

On 14 July 2003, the spouses Vicente G. Igot and Paterna C. Igot (complainants) went to the BIR office in Mandaue City for an assessment of their tax liabilities from the transfer of two parcels of land. The complainants narrated what transpired at the BIR office:

[A]tty. Reynaldo DOSONO assessed the aforementioned properties at eighty nine thousand eight hundred pesos (P89,800.00) which we believed that the computation is too much for the capital gains tax of my [sic] two aforementioned lots valued at one hundred thousand pesos per lot. We asked him for a re-computation that [sic] he agreed and told us to follow him to his table. In his re-computation, it turned out that the capital gains tax amounted only to twenty four thousand nine hundred sixty pesos (P 24,960.00) x x x. At this point, he told us that from the amount reduced, we have already saved more than sixty thousand pesos wherein he demanded an amount of thirty thousand pesos (P30,000). We suggested to pay him the said amount after we have paid the taxable amount with the Philippine National Bank x x x the following day which he agreed.[3]

Complainants sought the help of the Cebu City police which arranged an entrapment. As pay-off money, complainants were given eight P500 bills and fake notes ("boodle money") placed in a white envelope, with the bills and envelope dusted with ultraviolet fluorescent powder. The policemen who took part in the operation, Police Inspector Joie Pacito P. Yape, Jr. (Yape), PO2 Bernard Calzada (Calzada), and CI-I Douglas C. Castillon, Jr., described how the entrapment unfolded on 15 July 2003:

2. After briefing with our Investigation Chief, in the presence of Vicente IGOT, we proceeded to the said BIR office, and arrived thereat at about 10:30 a.m.;

3. At the said office particularly at the Capital Gains Tax Division, we saw Vicente IGOT and his wife approached [sic] Atty. Reynaldo DOSONO, an examiner, and who is the subject of the entrapment. Spouses IGOT handed the envelope containing the marked "boodle" money with eight (8) pieces of P500 bills;

4. After Atty. Reynaldo DOSONO received the marked "boodle" money and place [sic] it under his drawer, we introduced ourselves and informed him of our purpose and recovered the said marked money, whereby we apprehended and informed him of his offense, and subsequently read him his constitutional rights. x x x [4]

Respondent was brought to the police headquarters in Camp Sotero Cabahug in Cebu City where he was tested and found positive for fluorescent powder in both hands.

The complainants filed with the Office of the Ombudsman Visayas (Ombudsman) an administrative complaint against respondent for Grave Misconduct.[5]

Respondent denied any wrongdoing. Respondent alleged that in assessing complainants' tax liabilities on 14 July 2003, he merely followed the schedule of zonal values prominently displayed at his office and that after informing complainants of their tax liability (P24,960 for two transfers covering capital gains and documentary stamp taxes), complainants requested an assessment for a third transfer. Because complainants did not have with them a copy of the deed of sale, respondent told complainants to come back with the document. On 15 July 2003, complainants returned and "unceremoniously gave him several documents." [6] Before respondent knew it, several men placed him under arrest and brought him to Camp Sotero Cabahug for booking and testing for fluorescent powder. Respondent denied holding the dusted envelope but surmised that he must have been contaminated at the police headquarters where one of the arresting officers seized his handkerchief and rubbed it against the white envelope containing the marked money and when he was made to pose before mediamen holding the same white envelope.

As a preventive measure, the Ombudsman suspended respondent from office for six months as the evidence "appear to be strong enough to establish probable guilt x x x for Grave Misconduct x x x." [7]

At the hearings before the Ombudsman, only respondent and the arresting policemen testified as complainants failed to appear.

The Ruling of the Ombudsman

In its Decision dated 27 January 2004, the Ombudsman found respondent liable as charged and dismissed him from service. The Ombudsman gave credence to complainants' allegation on respondent's extortion attempt, prompting them to seek police assistance. The Ombudsman found pivotal the presence of fluorescent powder on respondents' hands. The Ombudsman rejected respondent's unsubstantiated frame-up theory as inadequate to overcome the presumption of regularity in the performance of official duties clothing the acts of the arresting policemen. On the complainants' failure to testify, the Ombudsman did not consider this fatal in light of the testimonies of the arresting policemen.

Upon the denial of his motion for reconsideration,[8] respondent appealed to the Court of Appeals.

The Ruling of the Court of Appeals

In its Decision dated 18 April 2005, the Court of Appeals reversed the Ombudsman and dismissed the complaint against respondent. The Court of Appeals found the Ombudsman's findings unsupported by substantial evidence. Further, the Court of Appeals held that complainants' failure to testify during the hearings rendered their joint affidavit hearsay and the testimonies of the arresting policemen baseless. Lastly, the Court of Appeals found merit in respondent's claim of frame-up in light of the testimonies of Yape and Calzada that during the entrapment, the dusted envelope and money were placed inside a folder which respondent immediately placed in his table drawer unopened.

Petitioner's motion for reconsideration was denied in the Resolution dated 30 November 2005.

Hence, this petition.

The Issue

The question is whether the Court of Appeals erred in exonerating respondent for grave misconduct involving extortion.

The Ruling of the Court

We hold in the affirmative, grant the petition and reinstate the Ombudsman's ruling.

Substantial Evidence Supports

Respondent's Liability

We are loathe to relax the beneficent rule limiting reviews under Rule 45 to questions of law.[9] Nevertheless, we are sometimes called to review rulings which reverse initial factual findings,[10] draw unreasonable inferences[11] or overlook relevant facts,[12] constraining us to widen the scope of review to cover factual questions. This is one such case.

As an administrative proceeding, the evidentiary bar against which the evidence at hand is measured is not the highest quantum of proof beyond reasonable doubt, requiring moral certainty to support affirmative findings. Instead, the lowest standard of substantial evidence,[13] that is, such relevant evidence as a reasonable mind will accept as adequate to support a conclusion, applies.[14] Because administrative liability attaches so long as there is some evidence adequate to support the conclusion that acts constitutive of the administrative offense have been performed (or have not been performed), reasonable doubt does not ipso facto result in exoneration unlike in criminal proceedings where guilt must be proven beyond reasonable doubt.[15] This hornbook doctrinal distinction undergirds our parallel findings of administrative liability and criminal acquittal on reasonable doubt for charges arising from the same facts.[16]

Here, no one disputes that complainants, ordinary taxpayers who were complete strangers to respondent, immediately sought police help for respondent's illegal solicitation. As the joint affidavit of Yape and Calzada attested:

1. [O]n July 15, 2003, we were instructed by our Regional Chief to conduct an entrapment operation at the BIR Office in Subangdaku, Mandaue City, pursuant to the complaint lodged by Mr. Vicente IGOT of Lapu-Lapu City x x x for alleged [a]ttempted bribery [sic].[17] (Emphasis supplied)

x x x x

3. At the said office particularly at the Capital Gains Tax Division, we saw Vicente IGOT and his wife approached [sic] Atty. Reynaldo DOSONO, an examiner, and who is the subject of the entrapment. Spouses IGOT handed the envelope containing the marked "boodle" money with eight (8) pieces of P500 bills;

Following the entrapment, respondent was brought to the police headquarters where he was tested and found positive for ultraviolet fluorescent powder in both hands, the same substance dusted on the pay-off envelope. The Ombudsman found substantial evidence to pin respondent:

The taxpayers, upon realizing that the demand was too much and the amount would go to the pocket of the respondent Dosono instead, sought the assistance of the CIDG-7, which in turn set up an entrapment operation against said respondent. After preparation, the CIDG-7, through its investigation Section headed by P/Insp. Enrique Lacerna, created a team composed of P/Insp. Joie Yape, Jr., PO2 Bernard Calzada and CI-1 Douglas Castillon, Jr. which would be tasked to execute the said entrapment operation.

Thus, on July 14, 2003 at about 10:30 o'clock in the morning, the team of P/Insp. Yape, together with Spouses Igot, proceeded to the BIR Mandaue City Office to carry out the entrapment operation which led to the arrest of respondent Dosono who was caught in flagrante delicto receiving an envelope containing marked "boodle" money and eight (8) marked P500 bills from complainant Vicente Igot. As stipulated by the parties, the envelope, marked "boodle" money and eight (8) marked P500 bills all were dusted with ultraviolet fluorescent powder. x x x

x x x x

From the facts obtaining, the acts committed by respondent Dosono appeared to have been motivated by bad faith and corruption and thus, constitute Grave Misconduct x x x and the evidence at hand is found to be substantial enough to convict him as the said offense, the quantum of evidence required in an administrative case.[18] x x x x

We affirm the Ombudsman's ruling. To a reasonable - as opposed to a suspicious - mind, the circumstances leading to the filing of the complaint against respondent, his arrest following his entrapment, and the results from the laboratory tests are more than adequate to support the conclusion that respondent illegally solicited money from complainants and was caught red-handed receiving the pay-off money. This is clear-cut grave misconduct - corrupt conduct inspired by an intention to violate the law, or constituting flagrant disregard of well-known legal rules.[19]

The Court of Appeals found the evidence inadequate because it dwelt on the doubts respondent conjured to weaken the case against him. In doing so, the Court of Appeals unwittingly mutated this proceeding to a quasi-criminal litigation and employed heightened standard of proof approximating proof beyond reasonable doubt. How else could it explain its invocation of *Formilleza v. Sandiganbayan*,[20] a criminal appeal of a verdict rendered by the Sandiganbayan finding the respondent guilty of Indirect Bribery under Article 211 of the Revised Penal Code?[21] In the process, the Court of Appeals discarded without basis the crucial presumption of regularity in the performance of official duties[22] by the arresting policemen and took respondent's word as veritable truth. Yet, a considered study of respondent's defense reveals that the so-called doubts respondent conjured are not even reasonable.

The presence of ultraviolet powder in respondent's hands anchors his administrative liability; thus, respondent had to discredit Yape and Calzada's statement in their joint affidavit that complainants "handed [to respondent] the envelope containing the marked 'boodle' money" and respondent "received the marked 'boodle' money." [23] Respondent does so by alleging frame-up: a rogue member of the arresting team snatched his handkerchief at Camp Sotero Cabahug, rubbed it against the dusted envelope to contaminate it with ultraviolet powder and gave it back to respondent who, in his absentminded state, received the handkerchief. (In an ancillary, less-sinister tale, respondent claimed he was further contaminated when he was later made to pose before mediamen holding the envelope).

Instead of taking respondent's story for a fact, the Court of Appeals should have accorded greater weight to the following findings of the Ombudsman rejecting respondent's untenable story, being the fact-finding body which saw and heard respondent testify:

As to respondent's claim that in the CIDG-7 one of the apprehending police officers snatched his handkerchief and wiped a white envelope with the same and then was asked to pose in front of media holding the said envelope, he is insinuating that said police officer planted ultraviolet powder on his handkerchief so that when he happened to hold either the handkerchief or the envelope, he could be tested positive [for] ultraviolet fluorescent powder. 'In order for the defense of frame-up to prosper, the evidence adduced must be clear and convincing.' x x x Moreover, the said contentions are found to be more fictional than real because during the

formal investigation of the case, the respondent could not even identify, when required to do so, who among the apprehending police officers did the same to him.[24] x x x (Emphasis supplied; internal citations omitted)

Indeed, respondent was arrested not by a battalion of law enforcers but by three policemen who were with him at the BIR office and who transported him from Mandaue City to Cebu City. All respondent had to do to substantiate his claim was point to the erring officer during the hearings before the Ombudsman. This omission and respondent's failure to corroborate his alleged prejudicial picture-taking (by submitting the relevant photograph) undercuts his goal of casting reasonable doubts on complainant's case.

On the testimonies of Yape and Calzada (that upon receiving payment during the entrapment, respondent immediately placed in his table drawer the folder containing the dusted envelope without opening it), it was error for the Court of Appeals to treat this as added proof of respondent's innocence. First, both the bills and the envelope were dusted with ultraviolet fluorescent powder.[25] Anyone who touches the envelope would be contaminated with the powder even if the envelope is not opened. Second, the Court of Appeals overlooked the fact that Yape and Calzada declared under oath in their joint affidavit that complainants "handed [to respondent] the envelope containing the marked 'boodle' money" and that respondent "received the marked 'boodle' money." The records do not show that Yape and Calzada were confronted with this statement when they took the stand thus depriving them of the chance to reconcile the seeming variation between their statement and testimonies. As the party seeking to exploit this fact, it was incumbent on respondent to have done so. We cannot allow respondent to capitalize on his omission. Yape and Calzada's statement that complainants "handed [to respondent] the envelope containing the marked 'boodle' money" and respondent "received the marked 'boodle' money," coupled with the presence of the fluorescent powder in respondent's hands and the inconceivability of respondent's frame-up defense lead to no other conclusion: respondent was contaminated during the entrapment.

Indeed, it is a self-evident fact that our law enforcement officers are sworn to uphold the law, not to invent crimes. The imperative of ensuring the smooth functioning of the government machinery grounds the evidentiary presumption that public officers have performed their duties regularly. True, this presumption is not conclusive, but it is also not meaningless. It takes more than a bare tale of malfeasance by an unidentified perpetrator to overcome it. To accept as presumption-overcoming dubious tales of the likes respondent purveyed is to leave the smooth functioning of our government to the mercy of the fertile imagination of litigants, free to concoct all sorts of devious plots and attribute them to unnamed civil servants. We could not imagine a more insidious way to slowly paralyze state apparatuses of governance.

The Court of Appeals' error was compounded when it treated complainants' non-appearance at the hearing as fatal to their case and rendering the testimonies of the arresting policemen baseless. Considering the physical evidence on record and the arresting officers' unimpeached testimonies (proving that (1) they conducted the entrapment based on the complainants' complaint and (2) respondent was the target of the entrapment for his illegal solicitation), the Ombudsman committed no error in proceeding to hear the case and render judgment. Indeed, the Court of Appeals' disposition is akin to a court dismissing an administrative complaint because the complainants desisted. This runs counter to the deeply ingrained policy that disciplinary administrative proceedings are imbued with public interest which cannot be held hostage by fickle-minded complainants. This policy explains our refusal to dismiss the administrative complaint in *Office of the Court Administrator v. Atty. Morante* [26] despite the desistance of the complainants and to use the evidence on record to hold the respondent public officer liable for grave misconduct for extortion, as here.

Lastly, the cases the Court of Appeals invoked for doctrinal support are unavailing. *Tapiador v. Office of the Ombudsman* [27] rose and fell exclusively on the affidavits of the complainants: no entrapment was conducted, no arresting officers testified to substantiate its execution, and no physical evidence linked the respondent to the

pay-off money. Further, the identity of the pay-off recipient in Tapiador was not proven. With the failure of the complainants to testify during the hearings, the Court was left with no choice but to discard the case for insufficiency of evidence. Indeed, even the liberal standard of substantial evidence demands some adequate evidence.

Suffering from substantially the same defect, *Boyboy v. Yabut* [28] pitted the bare allegations of the complainants charging the respondent with extortion against the respondent's denial of the charge. Again, unlike here, no entrapment operation was conducted in *Boyboy* and no laboratory findings implicated the respondent there. Thus, we held in *Boyboy* that the failure of the investigating body to hold hearings, which would have tested the parties' credibility, undermined the veracity of the complainants' case.

Public Office Imbued with Highest Trust

Unlike private offices which are held largely on the dictates of market forces, public offices are public trust.[29] Public officers are tasked to serve the public interest, thus the excessive burden for their retention in the form of numerous prohibitions. The liberal evidentiary standard of substantial evidence and the freedom of administrative proceedings from technical niceties effectuate the fiduciary nature of public office: they are procedural mechanisms assuring ease in maintaining an efficient bureaucracy, free of rent-seeking officials who exploit government processes to raise easy money. Respondent's hold on his item at the Mandaue City revenue office, which, like our customs offices, is a common situs for corrupt activities, is no more lasting than his fidelity to his trust. Although no criminal verdict deprives respondent of his liberty, adequate evidence justifies his removal from the bureaucracy for forfeiting the public trust.

WHEREFORE, we GRANT petition. We REVERSE the Decision dated 18 April 2005 and the Resolution dated 30 November 2005 of the Court of Appeals and REINSTATE the Decision dated 27 January 2004 and Order dated 17 February 2004 of the Office of the Ombudsman Visayas in OMB-V-A-03-0426-G.

SO ORDERED.

Brion, Del Castillo, Abad, and Perez, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Per Associate Justice Enrico A. Lanzas with Associate Justices Arsenio J. Magpale and Sesonando E. Villon, concurring.

[3] Rollo, p. 63.

[4] *Id.* at 64.

[5] Docketed as OMB-V-A-03-0426-G.

[6] *Id.* at 81.

[7] Order dated 21 July 2003 (Rollo, pp. 70-74).

[8] In the Order dated 17 February 2004.

[9] Section 1, Rule 45 of the 1997 Rules of Civil Procedure.

[10] See *Ducusin v. Court of Appeals*, 207 Phil. 248 (1983).

[11] See *Luna v. Linatoc*, 74 Phil. 15 (1942).

[12] See *Abellana v. Dosdos*, 121 Phil. 241 (1965).

[13] We adverted to this fact in a previous ruling, thus:

[T]he settled rule in administrative and quasi-judicial proceedings is that proof beyond reasonable doubt is not required in determining the legality of an employer's dismissal of an employee, and not even a preponderance of evidence is necessary as substantial evidence is considered sufficient. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. Thus, substantial evidence is the least demanding in the hierarchy of evidence. (*Salvador v. Philippine Mining Service Corporation*, 443 Phil. 878, 888-889 [2003]; emphasis supplied; internal citations omitted)

[14] *Ang Tibay v. CIR*, 69 Phil. 635 (1940). This has been statutorily adopted in Rule 133, Section 5 of the Revised Rules on Evidence.

[15] Thus, the substantial evidence standard does not preclude other "equally reasonable minds" from arriving at a contrary conclusion (see *Salvador v. Philippine Mining Service Corporation*, 443 Phil. 878, 888-889 [2003]).

[16] E.g., *Barillo v. Gervacio*, G.R. No. 155088, 31 August 2006, 500 SCRA 561 (finding petitioner liable for Dishonesty despite previous acquittal on reasonable doubt for violation of provisions of Republic Act No. 3019 for misuse of public funds); *Mollaneda v. Umacob*, 411 Phil. 159 (2001) (affirming administrative liability for grave misconduct, oppression, abuse of authority and conduct prejudicial to the best interest of the service despite previous acquittal on reasonable doubt for Acts of Lasciviousness).

[17] Rollo, p. 64. The error in describing respondent's conduct as constituting attempted bribery instead of extortion does not detract from the import of the statement that respondent attempted to solicit grease money from complainants.

[18] Rollo, pp. 84-86.

[19] *Mitsubishi Motors Phils. Corporation v. Simon*, G.R. No. 164081, 16 April 2008, 551 SCRA 555.

[20] 242 Phil. 519 (1988).

[21] The relevant portion of its ruling reads (Rollo, p. 45):

In *Formilleza v. Sandiganbayan*, this Court overruled the finding of acceptance, because it was improbable for the accused to accept bribe money in front of her officemates and in a public place, even if the money had been handed to her under the table. Furthermore, the accused therein shouted at the complainant, "What are you trying to do to me?" That is not the normal reaction of one with a guilty conscience. Furthermore, the Court held in the said case that there must be a clear intention on the part of the public officer to take the gift so offered and consider it as his or her own property from then on. Mere physical receipt unaccompanied by any other sign, circumstance or act to show acceptance is not sufficient to lead the court to conclude that the crime has been committed. To hold otherwise would encourage unscrupulous individuals to frame up public officers by simply putting within their physical custody some gift, money or other property.

[22] Section 3(m), Rule 131 of the Revised Rules on Evidence.

[23] Rollo, p. 64.

[24] Rollo, p. 85.

[25] Preliminary Conference Order, OMB-V-A-03-0426-G, dated 22 September 2003 (Rollo, p. 75).

[26] 471 Phil. 837 (2004).

[27] 429 Phil. 47 (2002).

[28] 449 Phil. 664 (2003).

[29] Section 1, Article XI, Constitution.

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