

ZALDY NUEZ v. ELVIRA CRUZ-APAO
A.M. No. CA-05-18-P, 12 April 2005, Per Curiam

The text messages were properly admitted by the Committee since the same are now covered by Section 1(k), Rule 2 of the Rules on Electronic Evidence. , ephemeral electronic communications shall be proven by the testimony of a person who was a party to the same or who has personal knowledge thereof. In this case, the complainant, who was the recipient of the text messages from the respondent and therefore had personal knowledge thereof, testified on their contents and import.

The complainant's case for illegal dismissal against PAGCOR had been pending with the CA for more than two years. The complainant sought the assistance of the respondent sometime in July 2004, allegedly thinking that the latter, who was Executive Assistant II of the Acting Division Clerk of Court of the CA 15th Division, would be able to advise him on how to achieve an early resolution of the case. During their first telephone conversation and thereafter through a series of messages they exchanged via SMS, complainant informed respondent of the particulars of his pending case. Thereafter, the respondent allegedly told complainant that a favorable and speedy decision of his case was attainable but the person who was to draft the decision was in return asking for P1,000,000.00.

The complainant initially lodged a complaint with the Action Center of the Television program *Imbestigador* of GMA Network. This led to the conduct of an entrapment operation by elements of the Presidential Anti-Organized Crime Task Force (PAOCTF) at the Jollibee Restaurant corner Taft and UN Avenues, Manila, the place where the supposed hand-over of the money was going to take place. The complainant had with him an unsealed long brown envelope containing 10 bundles of marked money and paper money, which was to be given to the respondent. The envelope did not actually contain the ₱1, 000, 000.00 by the respondent, but instead contained paper money in. There were also authentic bills which had been previously dusted with ultra-violet powder by the PAOCTF. When respondent touched the unsealed envelope to look at the money inside, the PAOCTF agents converged on her and invited her to the Western Police District Headquarters for questioning. She was brought to the PNP Crime Laboratory at the WPD where she was tested and found positive for ultra-violet powder that was previously dusted on the money. She was later detained at the WPD Headquarters. That evening, she tearfully confessed by phone to Atty. Gepty, her immediate superior in the CA, that "she asked for money for a case and was entrapped by police officers and the media."

An administrative case for Dishonesty and Grave Misconduct was filed against respondent. During the hearing thereof, she maintained that what happened was a case of instigation and not an entrapment, asserting that the offer of money in exchange for a favorable decision came not from her but from the complainant. To support her contention, she presented witnesses who testified that it was complainant who allegedly offered money to anyone who could help him with his pending case. She likewise claimed that she never touched the money on 28 September 2004, rather it was Capt. Maclang who forcibly held her hands and pressed it to the envelope containing the money.

ISSUES:

1. Whether what happened on 28 September 2004 was a case of entrapment or an instigation
2. Whether or not respondent is guilty of the charge against her

HELD:

Respondent Elvira Cruz-Apao is DISMISSED from government service.

In entrapment, ways and means are resorted to for the purpose of ensnaring and capturing the law-breakers in the execution of their criminal plan. In instigation, on the other hand, the instigator practically induces the would-be defendant into the commission of the offense, and he himself becomes a co-principal. In this case, complainant and the law enforcers resorted to entrapment precisely because the respondent demanded the amount of ₱1, 000, 000.00 from the complainant in exchange for a favorable decision of the latter's pending case. The complainant's narration of the incidents, which led to the entrapment operation, are more in accord with the circumstances that actually transpired and are more credible than the respondent's version.

The text messages were properly admitted by the Committee since the same are now covered by Section 1(k), Rule 2 of the Rules on Electronic Evidence, which provides: "Ephemeral electronic communication refers to telephone conversations, text messages...and other electronic forms of communication the evidence of which is not recorded or retained." Under Section 2, Rule 11 of the said Rules, ephemeral electronic communications shall be proven by the testimony of a person who was a party to the same or who has personal knowledge thereof. In this case, the complainant, who was the recipient of the text messages from the respondent and therefore had personal knowledge thereof, testified on their contents and import. The respondent herself admitted that the cellphone number reflected in complainant's cellphone from which the messages originated was hers. Furthermore, respondent and her counsel signed and attested to the veracity of the text messages between her and complainant. Moreover, in administrative cases, technical rules of procedure and evidence are not strictly applied.

The respondent's solicitation of money from the complainant in exchange for a favorable decision violates Canon I of the Code of Conduct for Court Personnel. Under Section 1 thereof, it is provided that Court personnel shall not use their official position to secure unwarranted benefits, privileges or exemption for themselves or for others, while it is provided in Section 2 that Court personnel shall not solicit or accept any gift, favor or benefit based on any explicit or implicit understanding that such gift, favor or benefit shall influence their official actions.

Indeed, the respondent's actuations from the time she started communicating with the complainant in July 2004 until the entrapment operation on 28 September 2004 show a lack of the moral fiber demanded from court employees. Time and again, the Court has declared, thus: "Everyone in the judiciary bears a heavy burden of responsibility for the proper discharge of his duty and it behooves everyone to steer clear of any situations in which the slightest suspicion might be cast on his conduct. Any misbehavior on his part, whether true or only perceived, is likely to reflect adversely on the administration of justice."