


REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF JUSTICE
NATIONAL PROSECUTION SERVICE
CITY PROSECUTION OFFICE
OLONGAPO CITY


Complainant,

I.S. No. 05-N-1999

- versus -

For: Rape

CHAD CARPENTIER,
Respondent.

X-----X

REPUBLIC OF THE PHILIPPINES }
OLONGAPO CITY }S.S.

COUNTER-AFFIDAVIT

I, SSGT. CHAD BRIAN CARPENTIER, married, 27 years old, an American Citizen, with postal address at c/o the Embassy of the United States of America, Roxas Boulevard, City of Manila, Philippines, do hereby depose and state that:

1. I am one of the respondents in the above-entitled case.
2. I am a Staff Sergeant of United States Marine Corps assigned to the 31st Marine Expeditionary Unit, III Marine Expeditionary Force based in Okinawa, Japan.
3. On 22 October 2005, I, along with approximately 5,000 US Marines and US Navy sailors, arrived in the Philippines aboard several US carriers to participate in the RP-US joint military exercises.
4. On 1 November 2005, US Marines stationed on the USS Essex docked at the Alava Pier in Subic were allowed to go on liberty for rest and relaxation.

5. At approximately 9:50 p.m. of 1 November 2005, I left the USS Essex with GySgt. Paul Taylor ("Gunny") to look for something to eat. We boarded a dark green 9-passenger van which was provided to us by the US Marine Corps for transportation. The van, driven by a Filipino male named Timoteo L. Soriano ("Soriano"), had been our transportation for the previous three (3) weeks.

6. After driving around the Subic Bay area for about thirty (30) minutes, we eventually found a place called Aresi. By this time, it was already approximately 10:30 p.m.

7. While at the Aresi restaurant, I used Gunny's cell phone to call Cpl Cory Burris ("Cpl Burris"), a member of my platoon, to ask where he was and what he was doing. Burris told me that everyone was at the Neptune Club dancing. I asked Cpl Burris to call me back in thirty (30) minutes.

8. At approximately 11:30 p.m., Cpl Burris called me. I instructed him to have the members of the platoon meet me outside of the club in about five (5) to ten (10) minutes for the ride back to the ship, as their 12:00 midnight curfew was fast approaching. As Platoon leader, it was my duty to make sure that all the members of my platoon were back at the ship by curfew.

9. I then left the restaurant with Gunny and the driver Soriano. Before proceeding to the Neptune club, we dropped off Gunny at a hotel after he complained of feeling sick. Afterwards, we proceeded directly to the Neptune club.

10. I met Cpl Burris outside the club where he informed me that the members of my platoon were still inside. I then entered the club through the front door with Cpl Burris and Soriano. I started walking around the club to round up the members of my platoon.

11. While walking around, I noticed LCpl Daniel Smith ("Lcpl Smith"), another member of my platoon, sitting in a chair with a Filipino girl on his lap. They were necking and petting.

12. After a while, I directed the members of my platoon to get out of the bar and to board the van. I noticed that Cpl Burris and LCpl Albert Lara ("LCpl Lara") were not in the club. I was informed that they took off to get some pizza. This upset me because I was trying to get them on board the van and back at the ship before the curfew.

13. I continued to round up the members of my platoon and steered them to the van. When I finally got to the van, I saw LCpl Keith Silkwood ("LCpl Silkwood") and LCpl D. Duplantis ("LCpl Duplantis") there. The driver, Soriano, however, could not be found. As I turned around towards the club to find him, I saw Soriano come out of the club. It was then that I noticed LCpl Smith with the Filipino girl that was with him.

14. Once Soriano opened the doors for us, we all got in. I checked to make sure everyone was on board and noticed that the Filipino girl was with LCpl Smith at the back seat of the van. I decided to let it pass since we were in a hurry to get back to the ship, what with only about ten (10) minutes before curfew. LCpl Silkwood and LCpl Duplantis took the middle seats while I sat up front at the passenger seat beside Soriano.

15. As we were driving on the way to the ship, we saw Cpl Burris and LCpl Lara walking, carrying their pizza. We stopped to pick them up. They did not, however, board the van. They merely poked their heads in and said that they were going to find their own way back to the ship.

16. We then proceeded to the front gate of the wharf leading to the ship. At about fifty (50) meters away from the gate, we stopped. The van could not go further from this area because there was a security post which would not have allowed the van to stop right at the gate of the wharf. I disembarked from the van and whipped open the doors yelling "Let's go, let's go!". By then, I had only a few minutes left to get the men back to the ship in time for curfew.

17. As the men were getting out, I noticed the Filipino girl also getting out of the van. I vaguely recall someone saying "Say goodbye to your bitch", to which the Filipino girl replied, "I am not a bitch. Don't say that."

18. After everyone disembarked, I told them to get back to the ship. I did not see them take off because I immediately got back on the van to go to pick up Gunny.

19. Soriano and I went to Dewey's where we had some drinks. We stayed there until around 12:45 a.m. Afterwards, we picked Gunny up at the hotel where we earlier dropped him off and headed back to the ship. We were back at the ship at approximately 1:00 a.m.

20. Anent the allegations of complainant [REDACTED] and her witnesses, I hereby declare that:

20.1 I categorically deny the allegation that I, along with the other marines in the van, gang raped complainant [REDACTED]. No such crime occurred. At no instance, in any point in time, did I have sex, forcibly or otherwise, with complainant [REDACTED].

20.2 In her Complaint Affidavit dated 2 November 2005, complainant [REDACTED] herself categorically stated that she had allegedly been sexually assaulted/abused by only one (1) US serviceman. When asked why she was at the Office of the Intelligence and Investigation Office, Subic Bay Metropolitan Authority, Subic Bay Freeport Zone, complainant [REDACTED] stated, thus:

"S: Para magreklamo po tungkol sa Sexual Assault/Abuse na ginawa sa akin kagabi nang isang U.S. servicemember" (Emphasis supplied).

The foregoing statement shows beyond doubt that the sexual assault/abuse alleged by complainant [REDACTED] was committed by one (1) person only, thereby negating the imputation that the complainant was gang raped.

20.3 It bears stressing, as well, that Soriano, the driver of the van, has already disowned his allegation of gang rape, as contained in his Affidavit dated 2 November 2005. In a radio interview with Vice President Noli De Castro aired on 12 November 2005, Soriano denied that there was gang rape and revealed that he was physically coerced into alleging gang rape by the investigators. This shows the falsity of the allegation of gang rape.

20.4 And even if Soriano had not disowned his allegation of gang rape, the Affidavit of Soriano, while alleging gang rape, fails to substantiate the same. In fact, the only person alleged to have raped complainant [REDACTED] is LCpl Smith. Nowhere in Soriano's Affidavit does it state that any other person in the van had forcible sexual intercourse with the complainant. Soriano, in his Affidavit stated, thus:

"S: x x x At naririnig ko rin na nagsisigaw sila ng "Go, go, go Smith" na sa tingin ay pinagsasamantalahan na nitong si Smith ang nasabing babae na sakay ko.

x x x

T: *Sinabi mong pinagsamantalahan ang nasabing babae na iyong sakay si [REDACTED] sino ang nagsamantala sa kanila kay [REDACTED] kung alam mo?*

S: *Si Smith ang katabi niya at pangalan din ni Smith ang isinisigaw ng mga kasama niya x x x*"

- 20.5 It should be noted, further, that I was seated at the front passenger seat beside Soriano. The fact that I was seated right up front while the alleged victim was seated at the last row of the van clearly shows the physical impossibility of participation on my part in the alleged rape.
- 20.6 Contrary to the allegation of complainant [REDACTED] she was not forced into the van, the fact being that she voluntarily boarded the van with LCpl Smith.
- 20.7 I did not notice anything unusual happening in the van during our ride back to the ship from the Neptune club.
- 20.8 I deny the allegations of Soriano that LCpl Smith was being cheered on as he was allegedly raping complainant [REDACTED]. Further, I deny the imputations of complainant [REDACTED] that my men and I were laughing while she was being allegedly raped by LCpl Smith. This did not happen. But assuming that some cheering and laughing was indeed going on, the same does not constitute conspiracy. I was advised that Article 8 of the Revised Penal Code defines conspiracy, thus:

"Art. 8. x x x

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.

x x x"

The Supreme Court of the Philippines, in the case of *People vs. Elljorde (G.R. No. 126531, 1999)*, the Supreme Court had occasion to rule, thus:

"Conspiracy must be proved as indubitably as the crime itself through clear and convincing evidence, not merely by conjecture. To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. Hence, conspiracy exists in a situation where at the time the malefactors were committing the crime, their actions impliedly showed unity of purpose among them, a concerted effort to bring about the death of the victim. In a great majority of cases, complicity was established by proof of acts done in concert, i.e., acts which yield the reasonable

inference that the doers thereof were acting with a common intent or design. Therefore, the task in every case is determining whether the particular acts established by the requisite quantum of proof do reasonably yield that inference."

Further, in *People vs. Manda* (G.R. No. 135048, 3 December 2002), the Supreme Court ruled, as follows:

"x x x Thus, mere knowledge, acquiescence or approval of the act -- without the cooperation and the agreement to cooperate -- is not enough to establish conspiracy. Even if the accused were present and agreed to cooperate with the main perpetrators of the crime, their mere presence does not make them parties to it, absent any active participation in the furtherance of the common design or purpose."

And in *People vs. Guittap* (G.R. NO. 144621, 9 May 2003), citing *People vs. Berroya* (347 Phil. 410, 430 [1997]), *People v. Campos* (G.R. No. 111535, 19 July 2001, 361 SCRA 339, 349), *People v. Listerio* (G.R. No. 122099, 5 July 2000, 335 SCRA 40, 59), *People v. Leaño* (G.R. No. 138886, 9 October 2001, 366 SCRA 774, 788), *People v. Tamayo* (G.R. No. 138608, 24 September 2002), the Supreme Court held:

"In *People v. Berroya*, we held that to hold an accused liable as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the conspiracy. That overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the time of the commission of the crime, or by exerting moral ascendancy over the other co-conspirators by moving them to execute or implement the conspiracy.

In the case at bar, no overt act was established to prove that appellant shared with and concurred in the criminal design of Osabel, Dador and Purcino. Assuming that she had knowledge of the conspiracy or she acquiesced in or agreed to it, still, absent any active participation in the commission of the crime in furtherance of the conspiracy, mere knowledge, acquiescence in or agreement to cooperate is not sufficient to constitute one as a party to a conspiracy. Conspiracy transcends mere companionship.

Conspiracy must be proved as convincingly as the criminal act itself. Like any element of the offense charged,

conspiracy must be established by proof beyond reasonable doubt. Direct proof of a previous agreement need not be established, for conspiracy may be deduced from the acts of appellant pointing to a joint purpose, concerted action and community of interest. Nevertheless, except in the case of the mastermind of a crime, it must also be shown that appellant performed an overt act in furtherance of the conspiracy."

In rape cases, the Supreme Court, in the case of *People vs. Binarao* (414 SCRA 117), ruled that conspiracy existed in the commission by the three accused of the crime of rape, thus:

"For one, the trial court failed to note the existence of conspiracy among appellants in raping Emma. They dragged her to an uninhabited house and thereafter perpetrated their criminal acts one after the other. The evidence sufficiently demonstrated that, while each of the appellants was raping Emma, the other two appellants assisted him by cupping her mouth and holding her legs. Appellants also repeatedly threatened her after the rape incidents. Certainly, the acts of appellants before, during and after the commission of the crimes, taken together, were enough to show that they had a commonality of criminal design. From the circumstances narrated, it was evident that there was a community of purpose on the part of appellants. Thus, the act of one was the act of all. Consequently, appellants should be meted the appropriate penalty for each count of rape and therefore penalized for three counts of rape each."

Such was also the finding of the Supreme Court in the case *People vs. Sanchez* (GR No. 121039, January 25, 1999), thus:

"Appellants Ama, Kawit and Brion would assail the trial court's finding that they were part of the conspiracy to commit the rape-slay. Their concurrency of sentiment with the other appellants, however, was evident from the time they abducted Eileen and Allan, brought the two to Eras Farm where Eileen was raped by the Mayor and Allan beaten up black and blue, headed for a sugarcane field killing Allan along the way, sexually abused Eileen in rapid succession and finally killed her. In not an instance did any of the three appellants (Ama, Kawit and Brion) desist from that common design. Likewise, the complicity of the Mayor in the crime can be deduced from the following conversations

he had with some of the appellants at the Eras Farm (per Centeno's testimony), viz.:

LUIS CORCOLON: Mayor, ito po yung regalo namin sa inyo. Ito po yung babae na matagal na po ninyong kursunada.

MAYOR: Aba, and ganda talaga ng babaeng yan. Pero sino yung kasama ninyong lalake?

MEDIALDEA: Boss, kasama ho yan ng babae yung lalake. Isinama na rin ho namin para wala pong bullyaso.

After raping Eileen, the Mayor had this short exchange with Medialdea:

MAYOR: O sigø mga anak, salamat sa regalo ninyo. Salamat sa regalo ninyo sa akin. Tapos na ako, sa inyo na iyan. Bahala na kayo diyan. Ano naman ang gagawin ninyo diyan sa lalake?

MEDIALDEA: Boss, papatayin na rin po namin ito para wala pong bullyaso."

In the foregoing cases of rape, conspiracy, as found by the Supreme Court, was established through the overt acts of the accused showing their clear intention to commit the crime of rape.

20.9 In the case at hand, the allegations of complainant [REDACTED] and that of her witnesses fail to establish any overt act on my part to show unity of mind and common purpose with clear intent to commit the alleged rape by LCpl Smith.

20.10 It is important to note that complainant [REDACTED] does not allege that she was restrained by any person when the alleged rape was being committed. Even the Affidavit of the driver, Soriano, does not allege that complainant [REDACTED] was restrained by any US servicemen or that anyone committed any act whatsoever to facilitate and assist LCpl Smith in the commission of the alleged rape.

20.11 Further, it is worthy to emphasize that I was not singled out by Soriano to be one of those who allegedly cheered on LCpl Smith. Considering that I was seated right next to Soriano in the front of the van, it would have been very easy for him to recall if I had been cheering on LCpl Smith during the alleged rape. As it is, however, the absence of such allegation shows that I did not, at any time, cheer on LCpl Smith during the alleged rape.

20.12 Finally, there is no truth to the allegations that complainant [REDACTED] was carried out of the van and dumped on the sidewalk like a pig. Foremost, the circumstances alleged are implausible under the circumstances considering that the place where the complainant was supposed to have been dumped like a pig was very well lit and there was a good number of US Marines and locals in the area. Given these situations, we would not have, if we had just committed a crime, alighted at such a place and dump the alleged victim where we could be seen and later identified by people.

Moreover, the allegations are completely false as shown by the inconsistencies in the statements of the different witnesses. While Soriano stated that we disembarked near the Subic Telecom Building, one Fe Castro ("Castro"), meanwhile alleged that she saw us disembark near the break wall at the Waterfront Road facing the USS Essex at Alava Pier. Further, while Soriano stated that he allegedly saw that the complainant's jeans were down to her ankles, Castro contended that the complainant was wearing only her underwear. The inconsistencies in their statements puts doubt on the veracity of their allegations on the whole, so much so that it is easy to conclude that their statements on how complainant [REDACTED] was allegedly dumped on the sidewalk like a pig deserves little or no credence.

21. This Affidavit is being executed to attest to the truth of the foregoing statements, in defense of the criminal complaint filed by the complainant [REDACTED] for Rape under the Revised Penal Code of the Philippines.

Executed this 23rd day of November 2005 in Olongapo City, Philippines.



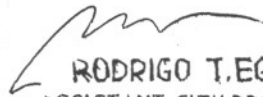
SSGT. CHAD BRIAN CARPENTIER
Affiant

SUBSCRIBED AND SWORN to before me this 23rd day of
November 2005 in the City of Manila.


RODRIGO T. EGUA
ASSISTANT CITY PROSECUTOR
Assistant City Prosecutor

CERTIFICATION

I hereby certify that I have personally examined the Affiant, and I
am satisfied that he voluntarily executed and understood his Affidavit.


RODRIGO T. EGUA
ASSISTANT CITY PROSECUTOR
Assistant City Prosecutor