

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 122

Criminal Case No 28 of 2016

Public Prosecutor

v

Agbozo Billy

JUDGMENT

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act] – [Illegally importing controlled drugs]

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Public Prosecutor

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High Court — Criminal Case No 28 of 2016
Choo Han Teck J
17–18, 24–25 May 2016

4 July 2016

Judgment reserved

Choo Han Teck J:

1 On 4 April 2013, the accused, Agbozo Billy (“Agbozo”), a Ghanaian national, made his first trip out of his country. He was then 34 years old. He travelled by plane from Accra to Dubai, where he transited before boarding a plane bound for Singapore. He planned to spend five nights here. He arrived at the Changi Airport on 5 April 2013 at around 9.25pm, and at around 10.04pm, he was stopped for his luggage, which consisted of one black haversack (“the haversack”) and one red-and-black suitcase (“the suitcase”), to be screened. Abnormalities in his luggage were detected. Checkpoint Inspector Norhazli Mohamad Amin (“PW6”) then conducted a physical search of the haversack in Agbozo’s presence. PW6 observed that the stitching along the wall of the haversack was irregular, and proceeded to cut the stitching. Two grey-and-brown packages (marked “A1A” and “A1B”) were found strapped to the wall of the haversack and concealed therein. They contained white, crystalline

substances. Similar substances (marked “B1”) were subsequently also recovered from within the inner plastic casing of the suitcase. Forensic laboratory analysis revealed that “A1A”, “A1B” and “B1” contained not less than 111.3g, 105.6g and 1,418g of methamphetamine respectively. The total weight of the drug recovered was not less than 1,634.9g, with an estimated street value of about S\$135,600.

2 In proving the charge against Agbozo under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”) for illegally importing not less than 1,634.9g of methamphetamine into Singapore, the *actus reus* of the offence is not disputed. The only issue before this court is whether Agbozo knew that the drug was hidden in the haversack and suitcase. Agbozo claims that he did not know. He says that he was a trader of second hand goods in Accra and had travelled to Singapore on the instructions of one “Fred” to acquire second hand mobile phones for sale in Accra. “Fred” also worked as a trader of second hand goods in Accra. Sometime in 2013 not long after Ghana Independence Day on 6 March, “Fred” asked Agbozo for his contact number and Agbozo gave it to him. Around Easter in the same year (Sunday, 31 March 2013), Fred called Agbozo and told him that he was thinking of sending him overseas to acquire second hand mobile phones for sale. “Fred” asked Agbozo for his passport for the purpose of applying for a travel visa on Agbozo’s behalf, and Agbozo complied. Soon after, on the Tuesday after Easter (2 April 2013), “Fred” called Agbozo again to tell him that his visa was ready. On 3 April 2013, “Fred” told Agbozo to pack his bag for the trip which was to happen on the next day. On 4 April 2013, “Fred” picked Agbozo up in a taxi to send him to the airport. While in the taxi, “Fred” produced the red-and-black suitcase and opened it. Agbozo says that he saw that the suitcase

was empty. “Fred” then told Agbozo that the suitcase was new and asked Agbozo to transfer his clothing and other belongings from another bag (a blue haversack) which Agbozo had brought along into the suitcase. Agbozo did so accordingly without asking any question. When the taxi reached the airport, “Fred” produced the black haversack. He opened it and Agbozo saw that it was empty. “Fred” told Agbozo that this haversack was also new, and asked Agbozo to empty the remaining of his belongings in the blue haversack into the black haversack. Agbozo again complied. “Fred” then passed to Agbozo a blue SIM card, Agbozo’s travel documents, as well as cash amounting to US\$2,600. He instructed Agbozo that he was to insert the SIM card into his phone and wait for his phone call so that he could arrange for his friend to contact Agbozo to help Agbozo to find his way around Singapore to buy the mobile phones. The US\$2,600 was for Agbozo to buy the mobile phones. Agbozo told the court that he left his original blue haversack in the taxi and travelled to Singapore with the suitcase and black haversack which “Fred” gave to him. He says that he never suspected that “Fred” would hide any drugs in the haversack and suitcase.

3 The learned Deputy Public Prosecutor, Mr Ng, submits that Agbozo had actual knowledge that methamphetamine was hidden in the suitcase and haversack. To support its case, the Prosecution adduced evidence in the form of a recorded telephone conversation between Agbozo and an unknown caller. After Agbozo was arrested at the Changi Airport, one of his mobile phones (“HP2”) rang and Senior Staff Sergeant Daniel Tor (“PW20”) allowed him to answer the call. Sergeant Ridzuan Dino bin Mustaffa (“PW16”) instructed Woman Sergeant Glynis Loh (“PW14”) to record the telephone conversation using her mobile phone, as he expected the telephone conversation to be

conducted in a foreign language. The telephone conversation, which was conducted in Twi, was translated to English as follows:

Agbozo:	Now?
Agbozo:	Hello?
Unknown caller:	Charles but where are you?
Agbozo:	Yes, please who is this?
Agbozo:	Hello?
Unknown caller:	Charles where are you?
Agbozo:	Ah but where is your brother because but I am at the place, you know? If your brother is not there inform if your brother is over here inform him that I am there at the Singapore airport.
Unknown caller:	You said?
Agbozo:	I am here at the airport
Unknown caller:	What did you say?
Agbozo:	I said I am there at the airport.
Unknown caller:	Are you not coming out soon?
Agbozo:	Not really
Unknown caller:	Why?
Agbozo:	I am at the airport I am there at the airport so if your your brother does not come tell him I am there at the airport so, alright?
Unknown caller:	What are they saying?
Agbozo:	When he comes tell him that right now, this is what has happened where is the person? The person whom you asked me to go and give the thing to where is it?
Unknown caller:	Okay...(indistinct sentence).

Agbozo: Okay bye.

At that point, the telephone conversation apparently ended. The recording then captured Agbozo's voice speaking in a mixture of Pidgin English, Twi and French, which translates to English as follows:

Agbozo: ...He does not know. I think it is as you said, Sir.

Voice (unidentified officer): Huh?

Agbozo: He said it is not him so he will call me. He said it is not him.

4 Mr Ng submits that the telephone conversation incriminates Agbozo and that Agbozo had tried to cover that up by lying to the CNB officers on the content of the telephone conversation. PW14, PW16 and PW20 gave evidence that after the telephone conversation with the unknown caller ended, Agbozo informed them in English that the unknown caller asked him why he did not answer the call from “Frank” (another name for “Fred”), and that he had replied to the unknown caller that he was busy with checking-in at the Singapore airport. The unknown caller reportedly then told Agbozo that “Frank” would call Agbozo later. Based on the English translation of the recorded telephone conversation, this was not what Agbozo had in fact said to the unknown caller. Agbozo maintains that he did not lie to the CNB officers, and says that he had asked the unknown caller where the person who he was supposed to give the “thing” to was because the officers had specifically instructed him to ask this question. PW16 and PW20 deny ever giving such instruction to Agbozo. It is not disputed that Agbozo knew that his telephone conversation was being recorded, and so Agbozo says that he would not have said anything incriminating in the telephone conversation unless he was specifically instructed to do so by the CNB officers. In response, Mr Ng

submits that a person who is arrested may not always act rationally. In evaluating evidence, the court is entitled to assume that people act rationally as ordinary persons in their positions are expected to act, unless the contrary is proved. A person in Agbozo's position who knew that the telephone conversation would be recorded is unlikely to voluntarily make statements that incriminate himself. However, in the present case, I do not believe Agbozo's testimony that he was specifically instructed by the CNB officers to ask the unknown caller who the person he was supposed to pass the "thing" to was; if this is true, Agbozo should have mentioned it when he was later given the chance to do so when he was recording his statements to the CNB. Yet, he did not do so. In his statement recorded on 13 April 2013, he merely said that the unknown caller had asked him where he was and on learning that he was at the Singapore airport, said that he (the unknown caller) would inform "Fred". Although Agbozo knew that his telephone conversation was being recorded, he might not have expected that the conversation would be translated, as he had spoken mainly in Twi which is a language that very few people in Singapore can understand. Nonetheless, I am of the view that the telephone conversation is, on its own, insufficient to prove, beyond a reasonable doubt, that Agbozo had actual knowledge that methamphetamine was hidden in the haversack and suitcase. At best, the telephone conversation only shows that Agbozo knew that he was supposed to pass a certain "thing" to someone in Singapore, but it is not clear that this "thing" was methamphetamine.

5 Even though there is insufficient evidence for the Prosecution to prove that Agbozo had actual knowledge that methamphetamine was hidden in the haversack and suitcase, the law presumes that the drug was in his possession

and that he knew that the drug was methamphetamine: see ss 18(1) and 18(2) of the MDA. The onus is on Agbozo to rebut the presumptions on a balance of probabilities. I find that he has not rebutted the presumptions. He was not a credible witness, and the account he gave was inconsistent and inherently incredible. First, although his testimony at trial was that the purpose of his trip to Singapore was for business to buy second hand mobile phones, Checkpoint Inspector Mimi Arief (“PW4”) who attended to Agbozo at the Changi Airport testified that when she asked Agbozo why he had come to Singapore, he answered in English that he was here on a holiday. Secondly, although Agbozo maintains at trial that the haversack and suitcase were given to him by “Fred”, he had stated in his contemporaneous statement recorded in the early morning of 5 April 2013 that the haversack belonged to him and that he had bought it in Accra about three months prior to his arrest for 50 Ghanaian New Cedis. In subsequent statements recorded on 11 and 13 April 2013, Agbozo tried to change his account by explaining that he had taken ownership of the haversack in his earlier statement because he was travelling with the haversack and also thought that the officer recording that statement (“PW13”) was just asking a “routine question”. He also said “three months ago” when PW13 asked him when he had bought the haversack because he was confused and thought that PW13 was asking him how long he had been preparing to come to Singapore. I do not accept the explanations. The statement of 5 April 2013 was recorded shortly after Agbozo was arrested after he had witnessed the officers recovering the hidden bundles “A1A” and “A1B” from the haversack. He would have realised then that PW13 was not merely asking a “routine question” when she asked him whether the haversack belonged to him. As for his claim that he had said “three months ago” when PW13 asked him when he had bought the haversack because he thought that PW13 was asking him how

long he had been preparing to come to Singapore, Agbozo had, by his own evidence, not taken three months but only days to prepare for the trip (see [2] above). I am of the view that Agbozo's account that "Fred" had given the haversack to him is not true. The truth of this claim is itself not important. It is the act of not telling the truth that damages his overall credibility.

6 Even if "Fred" had told Agbozo to travel to Singapore to buy second hand mobile phones and the haversack and suitcase were given by him to Agbozo, the circumstances should have been highly suspicious to Agbozo. The trip was Agbozo's first trip out of Ghana, and it was to a faraway land of Singapore. Yet, he readily agreed to make the trip on short notice based on scanty information provided by "Fred". He says that "Fred" asked him to come to Singapore to buy mobile phones, but he did not know what phone models and how many phones he was supposed to buy. He says that he was here to survey the market, but he knew little about Singapore and claims that he is not proficient in the English language. It would have appeared strange to Agbozo why "Fred" would ask him to come to Singapore on his behalf, and to entrust him with a large sum of US\$2,600 to buy the mobile phones. It is Agbozo's own evidence that his monthly income in Accra was about S\$64. US\$2,600 amounts to years of his salary. In his statement recorded on 13 April 2013, Agbozo said that he agreed to make the trip to Singapore because he felt that it was a good business opportunity and was "hoping" to earn a profit if "Fred" would allow him to help him ("Fred") to resell the mobile phones in Accra. In other words, he agreed to make the trip to Singapore even without any assurance as to what benefits he might get in return. In his statement of 15 August 2013, he changed his account to say that the profits from selling the mobile phones acquired in Singapore in Accra

would be equally shared between him and “Fred”. However, if, as Agbozo said, “Fred” had paid for his airfare to Singapore and had also provided the US\$2,600 for him to buy the mobile phones, the prospect of Agbozo being able to share equally with “Fred” what may potentially be a huge profit simply by making the trip to Singapore would have seem to him a deal too good to be true. But we do not know how much profit they could make from US\$2,600 worth of second hand phones after deducting the purchase price, the air fare, and expenses. There were other circumstances surrounding Agbozo’s departure from Ghana to Singapore that were highly suspicious. For instance, Agbozo should have been suspicious as to why “Fred” would give to him a haversack and suitcase immediately before his flight out of Ghana, and insisted that he bring them with him to Singapore when he had already packed his luggage in the blue haversack. Despite all the suspicious circumstances, Agbozo maintains that he never questioned “Fred” and that he had never suspected that “Fred” would make use of him to carry out any illegal transaction. I find this hard to believe.

7 In an attempt to persuade the court that despite the suspicious circumstances, he trusted “Fred” and truly believed that “Fred” was not trying to make use of him to carry out an illegal transaction in Singapore, Agbozo told the court that Fred was a very good friend of his. On a scale of “1” to “10”, with “1” being a total stranger and “10” being a family friend, he would place “Fred” at “10”. When it was pointed out to him in cross-examination that he had, in his statement recorded on 15 August 2013, placed “Fred” at only “3” on the same scale, Agbozo said that he had misunderstood the question posed to him then and had given “Fred” a “3” because he considered “Fred” to be his third closest friend. However, in that statement, not only had

Agbozo only given “Fred” a “3”, but he had also stated in no uncertain terms that he “just know Fred as a trader and not a personal friend”. He had also stated in another statement dated 13 April 2013 that he had only seen “Fred” for a total of two times before he agreed to come to Singapore to buy mobile phones for “Fred”. At trial, he said that what he meant in his 13 April 2013 statement was that he had met “Fred” only twice in relation to preparation for the trip to Singapore. But he could not explain why in this statement of 15 August 2013, he stated that he had spoken to “Fred” for only three times. Agbozo also admits that he had given his phone number to “Fred” only after 6 March 2013, *ie* less a month before he made the trip to Singapore, and that he knew little about “Fred’s” family background, including whether or not “Fred” was married. The evidence leads me to find that “Fred” was no more than an acquaintance to Agbozo.

8 Inspector Huang Yixia gave evidence that when the suitcase was seized from Agbozo, it contained an assortment of clothes of varying sizes. Some of the clothes appeared to be of female cut or design. Agbozo accepts that some of the clothes found in the suitcase did not belong to him. He could not provide any explanation on how clothes that did not belong to him had appeared in his suitcase. It is his own evidence that when “Fred” gave the suitcase to him, he had seen that there was nothing in it. He also mentioned in his statement of 10 April 2013 that when he was checking in the suitcase at the airport in Accra, an officer opened the suitcase and physically searched through the suitcase in his presence. He did not say in that statement that clothes that did not belong to him were present in the suitcase. He claims that he did not know that those pieces of clothes which did not belong to him were in the suitcase before the trial. This cannot be true. In his statement of

11 April 2013, he admitted that at Changi Airport, officers had searched through the clothes in his suitcase in his presence and instructed him to put the clothes back into the suitcase. In his statement of 13 April 2013, he said that all his belongings were photographed in his presence following his arrest. This includes a photograph of the clothing found in the suitcase (marked “P49”). Yet, at no point did Agbozo tell the officers that the suitcase contained clothes that did not belong to him. Agbozo says at trial that although the clothing from the suitcase was photographed in his presence, he had not noticed those pieces of clothing that did not belong to him then. I find this to be an implausible excuse. The suitcase did not contain just one or two pieces of clothing that did not belong to Agbozo. Out of the nine bottoms and 11 tops found in the suitcase, Agbozo says that only three of the bottoms and five of the tops belonged to him. In other words, more than half of the clothing in the suitcase did not belong to Agbozo. He could not have missed them when the clothing was photographed. The Prosecution submits, and I am inclined to agree, that those pieces of clothing were already inside the suitcase when Agbozo received them, and Agbozo knew that they were deliberately placed there to give an appearance that the suitcase was a genuine piece of luggage.

9 In the circumstances, Agbozo fails to rebut the presumptions under ss 18(1) and 18(2) of the MDA. The elements of the charge against him have been made out. I thus find Agbozo guilty as charged, and convict him accordingly. As the Prosecution adduced no evidence which shows that Agbozo, in committing the offence, did anything more than the activities listed in s 33B(2)(a) of the MDA, namely transporting, sending or delivering drugs and/or offering to transport, send or deliver drugs and/or doing or offering to

do any act preparatory to or for the purpose of transporting, I find that Agbozo was acting no more than as a courier.

- Sgd -
Choo Han Teck
Judge

Francis Ng Yong Kiat and Jason Nim Kia Meng (Attorney-General's
Chambers) for prosecution;
Laurence Goh Eng Yau (Laurence Goh Eng Yau & Co) and Ong Lip
Cheng Peter (Templars Law LLC) for accused.
