

[G.R. No. 1803. March 20, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. GEORGE HERRMAN,
DEFENDANT AND APPELLANT.**

D E C I S I O N

CARSON, J.:

George Herrman, the appellant in this case, was charged with the crime of robbery, of which he was acquitted, the facts proven at the trial not being sufficient to sustain a conviction. The court, however, found him guilty of the crime of theft, defined and penalized in paragraph 1 of article 517 and paragraph 1 of article 518 of the Penal Code, said theft being an offense included in the principal charge set out in the complaint.

The evidence adduced at the trial fully sustains the findings of the court and establishes the guilt of the accused beyond a reasonable doubt, and we are of opinion that there was no error in the proceedings prejudicial to the rights of the accused.

In the opinion of the trial court the fact that the crime was committed with deliberate premeditation is set out as an aggravating circumstance, but this court has frequently held that deliberate premeditation should not be so considered in connection with the crimes of theft, *estafa*, and analogous offenses. This, however, in no wise affects the penalty to be imposed, as the other aggravating circumstances mentioned in the decision of the trial court were properly taken into consideration in connection with the crime committed and are sufficient of themselves to raise the penalty to be imposed to the maximum degree prescribed by law.

The sentence appealed from should be affirmed, with the costs of the appeal against the appellant. So ordered.

Arellano, C.J., Torres, Mapa, and Johnson, JJ., concur.

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