

6 Phil. 664

[G.R. No. 2968. November 10, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AGNELIO
VINCO, DEFENDANT AND APPELLANT.**

D E C I S I O N

ARELLANO, C.J.:

Agnelio Vinco, the defendant in this case, was the municipal treasurer of the town of La Carlota, in the Province of Occidental Negros.

The court below made the following findings:

(1) "On the 18th of April, 1905, the acting Treasury inspector of this province, Mr. Brooks, sent a circular letter (Exhibit C 1) to the defendant in this case, notifying him that a thorough examination of his accounts was to be made, and directing him to report in person to the office of the provincial treasurer, on or before the 5th of May following, bringing with him all the money then in his possession belonging to the municipal, provincial, and, trust funds, etc.

(2) "When the defendant reported to the provincial treasurer in pursuance of the aforesaid order, it was found upon an examination of his accounts that there was a balance in favor of the municipality of W,966.49, which said balance the defendant, there and then, turned over to the provincial treasurer.

(3) "It appears, however, that the defendant had not included in his accounts, K20.52 which was a part of the funds he retained in his possession according to Exhibits B 1 and 2.

(4) "The defendant's attention having been called to this discrepancy, he informed the examiner that this sum of W20.52 was then in the municipal safe of his town and asked permission to return to La Carlota, accompanied by an official of the provincial treasurer's office, to see that he, in fact, had the said sum in the municipal safe. He made a similar

petition to the provincial board when the latter investigated the matter.

(5) "Several witnesses presented by the defendant testified that the latter upon his return to La Carlota, after the examination of his accounts, opened the municipal safe in their presence and found there the sum of P820.52.

(6) "The sum of P820.52 was subsequently paid by the accused into the provincial treasury."

It appears, therefore, that the defendant did not abstract or misappropriate any sum of money.

"But," the court below says, "the P820.52, not having actually been taken from the safe, the crime was not consummated, and the original liability incurred by the defendant was not complete.

"However," the court continues, "the defendant having executed; most of the acts which were necessary to consummate the crime of embezzlement of public funds, he is liable for his attempt to commit such crime, which he did not consummate—not on account of his voluntary desistance, but because the shortage was discovered in time to prevent it."

(7) The court below continuing found that: "on the 31st of August, 1904, the defendant sent to the provincial treasurer invoice No. 8 (Exhibit B 1), informing the provincial treasurer that he had retained in his possession the sum of K53.12, representing the receipts for that month. On the 31st of October he sent invoice No. 10 (Exhibit B 2) to the provincial treasurer, also informing him that he had retained in his possession the sum of P935.69½, representing the receipts of that month.

"The attempt, therefore, consisted in that, of the amount stated in these two invoices, he applied only part to his account current for those two months, leaving a balance of P820.52 on hand unaccounted for, and if nothing had been said after his accounts were approved, the defendant would have misappropriated that sum. Nothing else can be inferred," continued the court, "from the fact that the amount which the defendant failed to enter in his accounts was exactly the same, to a cent, as that which he retained on hand notwithstanding the order received by him to turn over all the money then in his

possession.”

Two admissions, at most, might be considered in this case as constituting a beginning of the commission of the crime in question, the defendant having performed no direct overt acts of execution, as required by the Penal Code in order to establish an attempt to commit the crime.. The fact that the accused did not enter upon his municipal current account mixed funds retained by him Avhich should have been first transferred to the municipality, and the further fact that he did not take with him to the capital of the province all the money then, on hand, as he had been ordered to do in connection with the examination of his accounts, did not constitute such an attempt.

Considering that the defendant had reported the existence of these funds to the provincial treasurer by means of his invoices for the months of August and October, there was no attempt on the part of the accused to conceal such funds, as would be the case where one conceals the receipt of a certain sum and omits the same entirely or partially from his accounts, and it can not be said that it was the intention of the defendant in this case to appropriate to himself the funds then on hand which were in his custody simply because he omitted part of such funds from his accounts.

We accordingly reverse the judgment of the court below and acquit the defendant, with the costs *de officio*. After the expiration of ten days from the entry of final judgment, the case will be remanded to the court of its origin for proper action. So ordered.

Torres, Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.
