

7 Phil. 332

[G.R. No. 3223. January 19, 1907]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. MILTON COMIS,
DEFENDANT AND APPELLANT.**

D E C I S I O N

JOHNSON, J.:

This defendant was charged with the crime of theft in the Court of First Instance of the city of Manila, was found guilty of said crime and sentenced by said court to be imprisoned for the period of one year eight months and twenty-one days of *presidio correccional*, with the accessories of article 58 of the Penal Code, and to pay the costs.

An examination of the evidence adduced during the trial of said cause discloses the following facts:

That on or about the 18th of November, 1905, the defendant presented a post-office money order, amounting to \$15, gold, to the cashier of the Department of Posts for the city of Manila, signed by said Milton Comis; that said money order was made payable to Milton Cumins instead of Milton Comis; that said cashier directed the defendant to also sign said post-office money order with the name of Cumins, it being explained by the accused to said cashier that the name contained in said post-office money order was a mistake and that it should have been made payable to him (Milton Comis); that while the accused was signing said money order with the name of Cumins a certain Chinaman presented to said cashier two money orders, each for the amount of \$100, gold; that when the defendant returned to the cash window of the said cashier with said money order containing the signatures of "Cumins" and "Comis" as directed by the said cashier, said cashier was in the act of handing to the said Chinaman the amount of his money orders, amounting to \$200, gold, or P400, Philippine currency; that said P400, Philippine currency, were made up of ten-peso bills, amounting to 40; that said P400 were placed through the cash window by said cashier; that said defendant picked up the said 400 pesos and left the window and went outside the

building; that said cashier, after examining the signatures placed upon the money order of the accused and finding them to be sufficient, proceeded to make payment of the same, but at that moment discovered that the defendant had left the cash window and that the Chinaman was still remaining; that upon inquiry of the Chinaman made by the cashier, the latter discovered that he, the Chinaman, had not yet received his P400; that thereupon the said cashier went to look for the defendant and found him outside the building; that the cashier inquired of the defendant if he had not received more money than was due him upon his said money order; that the defendant replied that he had; that said cashier inquired of the defendant if he did not know that he had carried away money which did not belong to him; that the defendant replied that he believed that the said cashier had made a mistake but that he, the accused, did not believe it to be his duty to return the said money; that later upon request the defendant returned to the said cashier the said P400; that the P400 belonged to the Chinaman and did not belong to the defendant; that the cashier placed the P400 through the cash window and left the same upon the window sill for said Chinaman; that the accused picked up the said money and appropriated it to his own use, knowing at the same time that it did not belong to him. All of the foregoing facts are practically admitted to be true by the accused.

These facts show clearly that the defendant is guilty of the crime of theft as defined in article 517 of the Penal Code and should be punished in accordance with the provisions of paragraph 2 of article 518 of said code.

The sentence imposed by the lower court was in accordance with the above-cited provisions of the Penal Code. The decision of the lower court is therefore affirmed with costs. After expiration of ten days, let judgment be entered accordingly and ten days thereafter the case will be returned to the lower court for execution. So ordered.

Arellano, C. J., Torres, Carson, Willard, and Tracey, JJ., concur.