

[G.R. No. L-9123. November 07, 1956]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. CORNELIO MELGAR, DEFENDANT AND APPELLANT.

D E C I S I O N

MONTEMAYOR, J.:

The accused, Cornelio Melgar, is appealing from the decision of the Court of First Instance of Cebu, finding him guilty of illegal possession of firearm and ammunition, under section 878, in connection with section 2622 of the Revised Administrative Code, as amended by Commonwealth Act No. 56 and Republic Act No. 4t and sentencing him to imprisonment for one (1) year and one (1) day, and to pay the costs, at the same time ordering the confiscation in favor of the Government of the firearm and ammunition.

The facts in the case are not disputed. The only question involved being the criminal responsibility of the defendant under said facts, the appeal was taken directly to us.

Apparently receiving a tip or information that Melgar was keeping a revolver and ammunition in his house without the corresponding license, Sgt. Luis Delgado of the Philippine Army and Policeman Margarito Esdrellon of the police force of the town of Balamban, Cebu, secured a search warrant and they served it on him in his house in the barrio of Pondul, Balamban, Cebu. Melgar readily admitted that he was keeping a Smith and Wesson revolver, Cal. 38, with serial No. 960603, and eight rounds of ammunition, which he claimed he had received as a pledge from Teodulo Lador, then a member of the police force of the City of Cebu, to secure the payment of a loan of P100. Defendant surrendered the weapon and its ammunition. On the basis of this admission, the corresponding information was filed and after the trial, Melgar, as already stated, was duly convicted and sentenced.

In support of his appeal, the defendant claims that his possession of the firearm may be considered to be merely casual, incidental, temporary and harmless. According to his testimony in court, at first he was unwilling to accept the revolver because he knew that it

was a dangerous thing to keep, but that he was finally prevailed upon by his debtor Lador, who assured him that no harm would come to him by keeping the firearm because he (Lador) was a member of the police force, and what is more, he was "one of the agents- of the law to confiscate or to campaign against illegal possession of firearms". From the evidence of record it is shown that the same revolver originally belonged to one Tomas Pepito, with its corresponding license; that said license was lost or destroyed during the last Pacific War, that after the war Pepito secured a permit to carry the firearm from Lt. Col. Fidel Reyes, and later he pledged the same gun to Teodulo Lador to secure the payment of a loan of P200, and Lador subsequently pledged it to Melgar to secure the payment of a debt of P100.

We agree with Judge Ramon O. Nolasco of the trial court and with the Solicitor General that the keeping of the firearm by the accuse herein may not be regarded as merely casual, incidental, temporary, and harmless possession, and therefor, innocent. It is true that Melgar at the time of the search had been keeping the revolver for only four days, but as the trial court correctly observed, said possession was indefinite, to last as long as the loan was not paid. It might have lasted weeks, months, or even years. The meaning and scope of the word *possession* in relation to firearms without license has already been declared by us in the case of *Peopje vs. Estoista*, 49 Off. Gaz., 3330, wherein we said:

"Republic Act No. 4, amending section 2692 of the Revised Administrative Code, in its pertinent provision is directed against any person who possesses any firearm, ammunition therefor, etc. A point to consider in this connection is the meaning of the word 'possesses'.

"It goes without saying that this word was employed in its broad sense so as to include 'carries' and 'holds'. This had to be so if the manifest intent of the Act is to be effective. The same evils, the same perils to the public security, which the Act penalizes exist whether the unlicensed holder of a prohibited weapon be its owner or a borrower. To accomplish the object of this law the proprietary concept of the possession can have no bearing whatever. * * *."

"The term 'control' and 'dominion' themselves are relative terms not susceptible of exact definition, and. pinions on the degree and character of control or dominion sufficient to constitute a violation vary. The rule laid down by the United States courts—rule which we here adopt—is that temporary, incidental,

casual or harmless possession or control of a firearm is not a violation of a statute prohibiting the possessing or carrying of this kind of weapon. A typical example of such possession is where 'a person picks up a weapon or hands it another to examine or hold for a moment, or pa shoot at some object'. (Sanderson vs. State, 5 S, W. 138; 68 C. J. 22)."

The appellant may not even claim ignorance of the law requiring a license for the keeping of a firearm for the reason that, according to his own testimony, at the beginning he was averse to accepting the revolver as a pledge because he knew it was dangerous to keep it without a license. Furthermore, he once had a carbine, probably one of those firearms distributed by the U. S. Army among the male population to help it liberate the country from the Japanese forces, and he had to secure a license to continue keeping said carbine.

Appellant also contends that the, penalty of one (1) year and one (1) day imprisonment imposed upon him is a cruel and unusual punishment prohibited by the Constitution, considering the circumstances of the present case; This same point was also touched upon and discussed in the same case of *People vs. Estoista*, supra, wherein it was said that:

"* * * confinement from 5 to 10 years for possessing or carrying firearm is *not a cruel or unusual* having due regard to the prevalent conditions which the law proposes to suppress or curb. The rampant lawlessness against property, person, and even the very security of the Government, directly traceable in large measure to promiscuous carrying and use of powerful weapons, justify imprisonment which in normal circumstances might appear excessive. If imprisonment from 5 to 10 years is out of proportion to the present case in view of certain circumstances, the law is not to be declared unconstitutional for this reason. The constitutionality of an act of the legislature is not to be judged in the light of exceptional cases. Small transgressors for which the heavy net was not spread are, like small fishes, bound to be caught, and it is to meet such situation as this that courts are advised to make a recommendation to the Chief Executive for clemency or reduction of the penalty. (Article 5, Revised Penal Code; *People vs. De la Cruz*. 92 Phil., 906.)"

However, considering the circumstances surrounding the case, specially the fact that appellant did not try to hide the weapon from the authorities, but readily surrendered the

same and made voluntary admissions thereby making it easier for the prosecuting attorney to secure conviction, we are disposed to be lenient.

Finding no reversible error in the decision appealed from, the same is hereby affirmed with costs. This Tribunal would have no objection to the exercise of Executive clemency after appellant shall have served at least six (6) months of his imprisonment.

It will be noticed from the facts of this case that the revolver in question had been the subject of pledge twice. In other words, it would appear that the people had been trafficking in unlicensed firearms, which runs counter to the policy of the Government to secure, even confiscate, all loose firearms, and compel those who really need the same to obtain the corresponding licenses. This illegal traffic is specially to be condemned when practiced by a member of the local police force who, according to the defendant, had assured him that he could keep the firearm even without license because he, Teodulo Lador, was one of the agents in charge of confiscating unlicensed firearms. Let a copy of this decision be furnished the Office of the Chief Executive, the Chief of Constabulary, and the Provincial Governor of Cebu, for any action they may deem proper as regards Teodulo Lador, specially if he is still a member of the police force.

Paras, C. J., Padilla, Bautista Angela, Labrador, Concepcion, Reyes, J. B. L., and Felix, JJ., concur.
