

ERNESTO CUENCA Y CUEVAS, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND COURT OF APPEALS, RESPONDENTS.

G.R. No. L-27586. June 26, 1970

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal, by certiorari, taken by defendant Ernesto Cuenca y Cuevas, from a decision of the Court of Appeals affirming that of the Court of First Instance of Manila, convicting him of the crime of illegal possession of a firearm and seven rounds of ammunition and sentencing him to imprisonment for one year and to pay the costs, as well as directing the confiscation and forfeiture of said firearm and ammunition.

The facts, as found by the trial court, and adopted by the Court of Appeals, are as follows:

"The accused was a special watchman and security guard of the Bataan Veterans Security Agency. In that agency, they were more than forty security guards. It was the practice in the agency that when the security guards reported for work, they were provided with fire-arms and ammunition, which they would return after their tour of duty.

"On January 3, 1963, the accused was detailed at the Philippine Savings Bank as security guard. He was wearing the uniform of the agency and was armed with a pistol, Ithaca, .45 cal., with Serial No. 1009738, which had a magazine containing seven rounds of ammunition. The firearm and the ammunition were provided by the agency. The firearm was not always used by him alone, as at other times the same firearm was used by the other security guards. On the date and at the place mentioned, Pat. Paul Sabate, who was stationed at Plaza Miranda as security officer of the stage show, arrested the accused for illegal possession of the said firearm and ammunition. When asked to produce his license to possess the firearm and ammunition, the accused told him that he was a special watchman and security guard of the Bataan Veterans Security Agency to which the fire-arm and ammunition belonged, and the license to possess the same was in the office of the agency. The accused told Pat. Sabate that the owner of the agency was one Mr. Forbes, who had the license for the said firearm and ammunition. According to Pat. Sabate, the agency was under the supervision of the Manila Police Department.

"It appears that the agency has no license to possess the firearm and ammunition in question; hence, neither the accused nor the agency is a licensed possessor of said firearm and ammunition. The accused claimed that he was made to believe in the agency that Mr. Forbes had license to possess them."

The issue in this case is whether appellant is guilty of the offense charged, considering that, at the time above-mentioned, he was a regular security guard of the Bataan Veterans Security Agency, which was duly licensed to operate as such security agency; that, in the course of its regular operation, the same provides its security guards, who are in the discharge of their duties as such, with the usual firearms and ammunitions, which, at the end of their respective shifts, are either kept in the proper locker or returned to the agency and then delivered by the latter to the security guards assigned to the next shift; that the firearm and ammunitions in question were found in appellant's possession at the time when, and at the place where, he was actually

discharging his duties, wearing the corresponding uniform, arm band and badge; that, upon being asked by Patrolman Paul Sabate to produce the requisite license, appellant stated that the same was in the possession of Jose Forbes, the owner and operator of the Bataan Veterans Security Agency, of which he (appellant) is, and has been, since April, 1961, one of its approximately forty (40) security guards; and that, soon thereafter, Jose Forbes confirmed, in the police station, the statements made by appellant, but added that he (Forbes) was still in the process of getting the said license.

The trial court and the Court of Appeals convicted appellant herein, despite his protests of good faith, upon the ground that the crime of illegal possession of a firearm and ammunition is not *ma-lum in se*, but *malum prohibitum*, and that it, accordingly, requires neither malice nor evil purpose or intent. It should be noted, however, that the Bataan Veterans Security Agency is duly licensed to operate as such. Consequently, it may legally engage the services of competent persons to discharge the duties of special watchmen and security guards, and provide them, as such, with the corresponding firearms and ammunitions. The agency is thus supposed to obtain the license necessary therefor. Had it done so, there would be no question about the absence of any criminal liability on the part of appellant herein for the possession of the firearm and ammunition in question, even though the license were not in his name, but in that of the agency or its owner and operator, Jose Forbes. Hence, the query boils down to whether or not appellant is guilty of the crime charged owing to the failure of Jose Forbes to comply with his duty to obtain such license, before he got said firearm and ammunition and delivered the same to his aforementioned employee.

Upon mature deliberation, the Court feels and so holds that the answer must be in the negative. The reason is that appellant was entitled to assume that his employer had the requisite license to possess said firearm and ammunition and to turn them over to him while he was on duty as one of the regular security guards of the Bataan Veterans Security Agency, the same being a duly licensed security agency. As such, those dealing with it, either as clients or as employees thereof, are entitled to presume, in the absence of indicia to the contrary - and there were none in the present case - that it has complied with pertinent laws, rules and regulations. What is more, Jose Forbes had told appellant that the firearm and ammunition in question were duly licensed, and, as an employee of the agency, appellant could not be expected to demand from his employer proof of the veracity of the latter's assertion before relying thereon.

We are not unmindful of the danger posed by the possibility or probability of abuse or misuse of the license of security agencies to operate as such. The danger arises, however, when said license is granted improvidently, without taking the necessary precautions therefor - prior to and subsequently to the issuance of said license - in terms of adequate measures to see to it, *inter alia*, that the agency is a trustworthy and responsible one; that it is properly managed by persons possessed of the moral character necessary therefor; that only those having the requisite qualifications are engaged as security guards; that suitable rules are adopted and enforced governing their discipline, and the assignment, care and custody of firearms and ammunitions, as well as the keeping of registers and the entry therein of annotations or memoranda setting forth, at all times, the location and/or disposition of each one of the aforementioned firearms and ammunitions; and that the operation of the agency is effectively supervised by the Government.

Needless to say, this decision must be deemed restricted in its application to duly licensed security agencies and to regular security guards thereof. Moreover, the owner, manager and/or operator of the security agency, who failed to secure the requisite license - in the case at bar, Jose Forbes, as the owner and operator of the Bataan Veterans Security Agency - should be prosecuted for illegal possession of firearms and/or such other crime as may have been committed in consequence of the breach of the laws and regulations above referred to.

WHEREFORE, the decision appealed from is hereby reversed and herein appellant, Ernesto Cuenca y Cuevas,

accordingly, acquitted, with costs de oficio. Let a copy of this decision be served upon the City Fiscal of Manila for appropriate action in accordance with the preceding paragraph, with due advise to this Court of the action taken hereon.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, and Teehankee, JJ., concur.
Barredo and Villamor, JJ., no part.

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