

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. EPIMACO TABUNARES, DEFENDANT AND APPELLANT.

G. R. No. L-4710. March 19, 1953

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal from a judgment of the Court of First Instance of Samar, finding the defendant-appellant, Epimaco Tabunares, guilty of illegal possession of a firearm, and sentencing him to an indeterminate term of imprisonment ranging from 5 years to 8 years and 4 months, and to pay the costs.

The following findings of the trial court form the basis of appellant's conviction: "The accused returned to Basey in the year 1949 after his discharge from the Philippine Scouts where he served for three years as an enlisted man. Three months before the incident, he transferred to live from the house of his father to that of Ponciano Gadores which is but one kilometer from the former house. He was helping the son of Gadores plant and cultivate the camote plantation of Gadores. Nothing could be inferred from this conduct but that he was interested in Jovita, the daughter of Gadores. But Jovita and her parents showed indifference to the attention of the accused. That indifference hurt him. Gadores reprimanded the accused for his approaches to Jovita. Gadores knew that the accused had a gun. Fearing that he might use the said weapon against them, Gadores reported the matter to the Chief of Police who ordered the two policemen to go with Gadores for the purpose of taking the gun from the accused. He denied to the policemen to be in possession of a firearm. But because the policemen persisted in their demand for the weapon hidden; and accompanied by the policemen, took it from where he kept it—in the abandoned house of Gregorio Casica.

"There is no doubt in the mind of the court that the accused hid the rifle, Exhibit A; that he was holding it in control. He could have taken and made use of it any time he wanted to; because it was within his control. This control is possession. Possession is not necessarily an actual physical holding. And for that possession, he had not provided himself with the necessary license; which is a violation of Republic Act No. 4."

In the very recent case of *People vs. Feliciano* (supra, p. 688) we ruled that Republic Act No. 482, approved on June 10, 1950, in effect legalized mere unlicensed possession within one year from said date, and punished only (1) the use of a firearm or ammunition or (2) the carriage thereof on the person except for purpose of surrender. Appellant's conviction cannot stand, since it is rested solely on unlicensed possession on or about November 6, 1950.

The Solicitor General has cited in his brief the decision in *Viernes vs. Director of Prisons*, G. R. No. L-5575, May 13, 1952, as authority for the proposition that "La ley de la Republica No. 482 solamente exime al poseedor del arma de fuego sin licencia si lo presenta a la autoridad y ha suprimido la otra circunstancia, la de ser usada para propia defensa que concedia la anterior Ley No. 4. Bajo la Ley No. 482, toda posesion de arma de fuego sin licencia, constituye delito, excepto cuando si lo posee para presentarlo a la autoridad." In said case, however, which was a petition for habeas corpus originally instituted in this court, it appears that Viernes had previously been convicted by final judgment of illegal possession of firearms after pleading guilty to the information which

alleged that he was not "one of the persons exempted by law."

Wherefore, the appealed judgment is reversed and the defendant-appellant acquitted, with costs de oficio. So ordered.

Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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