

PEDRO ENTERA AND IGNACIO MONTES, PETITIONERS, VS. THE PEOPLE OF THE PHILIPPINES AND THE HON. COURT OF APPEALS, RESPONDENTS.

G.R. No. L-37431. September 30, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

There is no dispute as to the facts of the case.

Petitioners, Patrolmen Ignacio Montes and Pedro Entera of the Police Department of Cebu City, were directed in a memorandum from the Cebu City Mayor "to proceed to Surigao, Surigao and neighboring towns to verify and investigate the reported indiscriminate employment of security guards who were granted permits by this office in violation of existing ordinance and to reinforce the advance security of Senator Sergio Osmeña, Jr. at Dapa, Surigao del Norte."

Accordingly, petitioners proceeded to Surigao. Upon their arrival on November 2, 1969 they were apprehended by PC soldiers and invited for questioning regarding their firearms. Upon revealing their identities as well as their authority to carry firearms, they were released and allowed to proceed on their way. However, their firearm and ammunition were confiscated as shown in a receipt issued, as follows:

" 2 November 1969

R E C E I P T

"THIS IS TO CERTIFY that I have received from Patrolman IGNACIO MONTES of Cebu City one (1) Rev. Cal. 38 Smith & Wesson SN: 0746791 with six (6) Rds of Ammo Cal. 38 and one (1) Rev. Cal. 38 Smith & Wesson SN: C748335 with twelve (12) Rds of Ammo Cal. 38.

"The two (2) FAs above were confiscated by 2d Lt. PORFERIO P. MAGADIA I & O Officer and 22LT ASPIRAL MAKAIRAL all members of this command, for having no papers."

A case of illegal possession of firearms and ammunition was filed against herein petitioners before the Municipal Court of Surigao, Surigao. They were charged for illegally possessing the firearms without first having obtained from the authority, permit to carry outside residence and permit from the Provincial Commander of Cebu City to carry their firearms outside its jurisdiction.

The trial court convicted petitioners of the crime of Illegal Possession of Firearms and Ammunitions "as defined and penalized under Section 878 and Section 2692 of the Revised Administrative Code as amended by Republic Act No. 4 and hereby sentences each of them to suffer imprisonment of THREE (3) YEARS and to pay one-half each of the costs."

The Court of Appeals sustained the trial court's decision stating that:

"x x x In the case of *People vs. Recio*, G.R. No. 15452-R, July 31, 1957 (Note: The correct title of this case, which the trial court likewise erroneously cited in its decision, is *People vs. Reaño*, CA-G.R. No. 15452-R), this Court ruled that a person duly licensed to possess firearm within a definite place is guilty of illegal possession of firearms if the licensee is carrying such firearm outside of the place specified in the license without a special permit to do so. So that, it was necessary for the police authorities of Cebu City to have secured a special permit for the aforementioned accused-appellants to carry their firearms outside of their jurisdiction.

"True enough that the accused-appellant proceeded to Surigao in compliance with the aforequoted memorandum of the Mayor of Cebu City, but it was not lawful for him to order the reinforcement of the advance security of Senator Sergio Osmeña, Jr. at Dapa, Surigao del Norte. Indeed, the designated place is beyond the jurisdiction of His Honor, the Mayor of Cebu City. The security of the life and limbs of an individual in Dapa, Surigao del Norte is the concern of its public and peace officers. Therefore, and since the order in question issued by the City Mayor of Cebu was not lawful, compliance therewith by the herein accused-appellants was not also lawful. Stated in another way, they were not in the performance of their official duties when apprehended in Surigao del Norte with their firearms duly issued to them as members of the Police Department of Cebu City. It may be stated in this connection that where an accused was arrested inside the premises of the Garcia Building on Rizal Avenue in actual possession of a grease gun, together with its magazine and thirty rounds of ammunitions, not in the performance of his official duties, this Court refused to acquit him under the aforequoted provisions of Section 879 of the Rev. Adm. Code (*People vs. Sator*, CA-G.R. No. 00915-Cr, May 21, 1962)."

Petitioners contend that the Court of Appeals erred in (1) holding that the law requires policeman carrying their firearms outside their territorial jurisdiction to secure authority to do so from the Provincial Constabulary commander of their province; (2) in holding that the accused were not in the performance of their official duties at the time of the apprehension; and, (3) in affirming the decision of the trial court finding the accused guilty of illegal possession of firearms and ammunition.

They justify their presence in Surigao with their firearms on the authority given them by the Mayor of Cebu City. And, they argue that "nowhere in Sections 878 and 879 or in any of the sections under Article IV, Chapter 5 of the Revised Administrative Code are police officers restricted in carrying firearms lawfully issued to them to a specific area or territorial jurisdiction."

The aforecited Sections 878 and 879 are reproduced as follows:

"Section 878. Unlawful manufacture, dealing in, acquisition, disposition, or possession of firearms, parts of firearms, or ammunition therefor, or instruments or implements used or intended to be used in the manufacture of firearms or ammunition. - Save as allowable under this article it shall be unlawful for any person to import, manufacture, deal in, receive, acquire, buy, sell, dispose of, or possess any firearm, detached parts of firearm or ammunition therefor, or any instrument or implement used or intended to be used in the manufacture of firearms, parts of firearms, or ammunition.

"Section 879. Exception as to firearms and ammunition used by military and naval forces or by peace officers. - This article shall not apply to firearms and ammunition regularly and lawfully issued to officers, soldiers, sailors, or marines of the United States Army, and Navy, the Philippine Constabulary, guards in the employment of the Bureau of Prisons, municipal police, provincial governor, lieutenant governors, provincial treasurers, municipal treasurers, municipal mayors, and guards of provincial prisoners and jails when such firearms are in possession of such officials and public servants for the use in the performance of their official duties."

There is no dispute that at the time herein petitioners, Patrolmen Ignacio Montes and Pedro Entera, were apprehended in Surigao with their firearms duly issued to them as members of the Police Department of Cebu

City they were outside of their territorial jurisdiction. However, there is no law or regulation prohibiting a peace officer from carrying his service firearm outside of the municipality or city to which he pertains under any and all circumstances. Sections 878 and 879 of the Revised Administrative Code expressly authorize the possession of firearms by municipal policemen when such firearms are in the "possession of such x x x public servants for use in the performance of their official duties." The point is, the firearm is being used in the performance of official duties and not that it should be carried only within the territorial confines of Cebu City. To hold otherwise would be to penalize a policeman who may be in pursuit of a law violator when the latter runs or transfers to an adjoining municipality. Not only that. As a peace officer, he may be ordered to act as security to the Mayor or Governor of the province when he goes to Manila on official business, in which case how can he perform his duties without a firearm? Or, suppose he is a policeman in Manila but has his residence in Pasay City, Makati or in Quezon City, must he always secure a special permit everytime he goes home or should he leave his firearm at the office?

At any rate, in the absence of any specific law or rule which penalizes a policeman carrying his firearm outside the territorial limits of the municipality or city to which he belongs, and there being no definite ruling to that effect by competent authority, the conviction of herein petitioners would be violative of the cardinal principle that conviction of an accused may only be had for offenses which are specifically described and provided for. (Aquino , Revised Penal Code, 1976 Ed., Vol. 1, p. 13).

Finally, herein petitioners were in Surigao del Norte in compliance with the order of the Cebu City mayor "to reinforce the advance security of Senator Sergio Osmeña, Jr. at Dapa, Surigao del Norte." The contention is , the order is illegal because the Cebu City mayor had no authority to issue such order. If this is so, should not the one who gave the order be held liable as much as herein petitioners who merely obeyed such order?

WHEREFORE, the judgment appealed from is hereby set aside and another one entered acquitting the appellants of the crime charged. Costs de oficio.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Melencio-Herrera, Plana, and Vasquez, JJ., concur.
Gutierrez, Jr., J., no part.

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