

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARTEMIO TEJERO Y ALCOPRA, DEFENDANT-APPELLANT.***G.R. No. 13570. January 29, 1960*

Ponente: BAUTISTA ANGELO, J.

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On July 6, 1956, at about 11:00 o'clock in the morning, while Patrolman Zosimo Talavera of the Manila Police Department was on his way from the Bureau of Civil Service to attend to an official errand, he met the accused near the corner of Lepanto and P. Campa Streets, Manila. Talavera notices that the accused had a gun tucked on the left side of his waist which was visible because the shirt he was then wearing was transparent. Talavera introduced himself as a peace officer and asked him whether he had a license to possess the gun and the accused answered that he had none. Asked why he was carrying an unlicensed gun, the accused said that he was then on his way to the city jail to see Lt. Cariño of the Manila Police Department. When Talavera accompanied the accused to the city jail, Lt. Cariño was out so the accused was brought to the police station for investigation. There he made a written statement regarding the possession of the gun which he did not sign because he wanted first to have the benefit of a lawyer.

The accused was charged with illegal possession of firearm before the Court of First Instance of Manila who, after trial, was found guilty and sentenced to suffer 1 year and 1 day imprisonment as minimum to 2 years as maximum, and to pay the costs, and as a result the gun confiscated in his possession was declared forfeited in favor of the Government. After his motion for reconsideration was denied, he appealed directly to this Court.

One of the questions raised by appellant is that the trial court erred "in not giving credit to the intention of the accused of surrendering the firearm to the proper authorities pending the proper replacement of the licensed firearm." According to appellant's counsel, the accused was a holder of a licensed firearm and when he was accosted by Pat. Talavera and was asked if he had a license for the gun tucked on the left side of his waist he answered in the negative but stated that he was on his way to the city jail to surrender the same Lt. Jesus Cariño of the Manila Police Department. Appellant also claims that the reason why he intended to surrender said firearm was because his licensed firearm was defective or out of order and he wanted to replace it with the gun he had then in his possession. The trial court did not give credence to this claim of appellant which finds support in the testimony of Lt. Teofilo Salvador and Capt. Elazigue of the Philippine constabulary.

The Solicitor General, on the other hand, disputes the claim of appellant that when he was accosted by Pat. Talavera he was on his way to the office of Lt. Cariño to surrender the firearm in question, and on this point, he makes the following comment: "This contention x x x cannot prevail. In the first place, if we were to believe his story, appellant had been in possession of the firearm in question (Exh. A) since July 1, 1956, when he was apprehended at the corner of Lepanto and P. Campa streets x x x. In the second place, if it were really true that on July 3, 1956, Lt. Cariño of the MPD advised him to first apply for a license to possess Exhibit A, why didn't appellant take concrete steps to apply for said license before carrying it in public? In the third place, since appellant is a licensed possessor of firearm (Exh. 2) in his capacity as overseer of his widowed mother, he knew

that one of the conditions imposed upon him was not to carry the said firearm outside of his residence x x x. Why then did appellant carry outside of his residence Exh. A which was unlicensed?

It would therefore appear that the appeal before us involves an evaluation of the evidence submitted by the parties, or a determination of certain questions of fact relative to the theory of appellant, and hence this appeal comes under the jurisdiction of the Court of Appeals. It should therefore be certified to the latter court for adjudication.

Wherefore, it is hereby ordered that this case be certified to the Court of Appeals for adjudication in accordance with law.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Reyes, J.B.L., Endencia, Barrera, and Gutierrez David, JJ., concur,

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