

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MAMERTO AYRE, DEFENDANT AND APPELLANT.

G.R. No. 42293. February 13, 1935

Ponente: VICKERS, J.

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VICKERS, J.:

Mamerto Ayre was charged in the Court of First Instance of Capiz with a violation of section 416 of the Election Law, committed as follows:

"Que en o hacia el 5 de junio de 1934, en el Municipio de Panitan, Provincia de Capiz, Islas Filipinas, con ocasi6n de las elecciones generates y durante el periodo de votacion y escrutinio, el referido acusado siendo policia municipal intencional, maliciosa y criminalmente port6 o tuvo en su , persona y posesion un rev6lver 'Colt "s"' de calibre 32, No. 146855, estando dentro de los 50 metros a la redonda del Colegio Electoral No. 4, no habiendo ocurrido riiia, tumulto o desorden dentro de dicha distancia del referido colegio electoral. Con infraccion de la ley."

Santos Degracia was charged with a like offense, the only difference in the information being as to the description of the revolver. Both defendants pleaded not guilty, and by agreement the two cases were tried together. The lower court found the defendants guilty as charged, and sentenced each of them to suffer imprisonment for thirty days and to pay a fine of P50, with subsidiary imprisonment in case of insolvency, and to pay the costs.

The defendants have appealed to this court,, and allege that the trial court erred in holding them guilty of the offense punished by section 416 of the Election Law.

It appears from the evidence that the appellants, who were municipal policemen of Panitan, were found by a representative of the Department of the Interior on election day, June 5, 1934, carrying their service revolvers within fifty meters from the polling place; that there was no affray, riot, or disorder of any kind within said. area. The evidence shows, however, that the two policemen were in the polling place when their revolvers were confiscated, because they had been sent there by the chief of police of Panitan upon the request of the chairman of the board of inspectors of precinct No. 4 to detail thereto two policemen for the purpose of maintaining order therein.

The pertinent provisions of section 416 of the Election Law, as amended by Act No. 3387, for a violation of which the appellants were prosecuted and convicted, read as follows

"It shall be unlawful for any person to carry firearm or any kind of arms within a distance of fifty meters from any polling place during the days of registration, voting, and counting. In cases, however, of affray, riot, or disorder within the radius of fifty meters, any peace officer or public official authorized to supervise the conduct of election may carry firearms or any other kind of arm within the said radius for the purpose of maintaining order or enforcing the law."

The Solicitor-General argues that if we are to apply the literal wording of the law to the facts of the case, there can be no room for doubt that the defendants are guilty; that the prohibition established by section 416 of the Election

Law is sweeping and unequivocal; that it forbids any person without distinction from carrying firearms or any kind of arms within a radius of fifty meters from a polling place during the days of registration, voting, and counting, except only in cases of riot, affray, or disorder, in which cases peace officers or public officials authorized to supervise the conduct of election are permitted to bear arms for the purpose of maintaining order or enforcing the law; that inasmuch as in the present case there was no riot, disorder, or affray in the polling place to which they were assigned, it would seem clear that the defendants have violated the law by having firearms in their possession; that the Legislature did not, however, intend the law to be unreasonably interpreted and applied; that not all possession of arms within the prescribed area is made unlawful by the statute; that it is the possession with malicious intent, the possession intended to influence, either directly or indirectly, the free and untrammelled choice of the electors which is prohibited by the law, citing the case of *People vs. Urdeleon* (G. R. No. 31536, promulgated November 20, 1929, not reported); that in view of the absence of any proof tending to show that the appellants in carrying firearms within the distance of fifty meters from the polling place during the voting intended to commit any illegal act, but on the contrary were there to fulfill their duties as peace officers, they should be acquitted.

We have reached the same conclusion, but for different reasons.

Section 448 of the Election Law, as amended by Act No. 3387, reads as follows:

"Persons allowed in and around polling place.—While the polls are open no person shall be allowed within the guard rail in the polling place other than members of the board of inspectors, the poll clerk, voters receiving or depositing their ballots, person authorized to supervise the election, and the necessary police, Constabulary, or other peace officers who may be requested by the board to be present to maintain order, serve the process of a court, act as messenger, or execute all lawful orders of the board. However, the watchers appointed by the candidates entitled to have them, with appointments signed by said candidates, may remain within the guard rail assigned to them in the polling place while the same shall remain open.

"No persons other than the persons mentioned above and voters waiting to vote or voting shall remain, during the time the polls are open, within the distance of thirty meters of the polling place, nor shall any person solicit votes or do any electioneering within such distance."

This section, which is subsequent to section 416, under which the appellants were convicted, should be read in connection therewith. In enumerating the persons allowed in and around the polling place, it mentions "the necessary police, Constabulary, or other peace officers who may be requested by the board to be present to maintain order, serve the process of a court, act as messenger, or execute all lawful orders of the board." When the law gives the board of election inspectors the right to request the necessary police or constabulary or other peace officers to be present to maintain order, it impliedly grants these peace officers the right to bear their arms, because it intends that they should be duly equipped to maintain order, and a policeman who goes to the polling place upon the request of the board and carries his revolver for the purpose of maintaining order commits no offense so long as he carries or uses his revolver solely for that purpose. If he intervenes in the election in any manner, except for the maintenance of public order, he violates section 450 of the Election Law. A policeman that has not been requested by the board of election inspectors to be present for the purpose of maintaining order is not authorized to carry arms within the distance of fifty meters from the polling place, except in cases of an affray, riot, or disorder within that distance. As the appellants herein were sent to the polling place by the chief of police upon the written request of the chairman of the board of inspectors for two policemen to maintain order, and they made no improper use of the revolvers which they were carrying, they did not violate the law.

The mere presence of a policeman in uniform, although unarmed, may or may not be sufficient in a given case to maintain order in and around a polling place. We cannot believe the Legislature intended to make it necessary

for a policeman on duty in a polling place to go home and get his revolver in case of any serious disorder. He is there for the purpose of maintaining order, and for him to carry a revolver is the most effectual means of accomplishing the object of the law.

The decision appealed from is therefore reversed and the appellants are acquitted, with the costs de oficio. We find that the appellants Mamerto Ayre and Santos Degracia are entitled to receive any salary which they may have failed to receive as municipal policeman by reason of their prosecution and conviction in these cases in the lower court.

Avanceña, C.J., Street, Abad Santos, and Hull, JJ., concur.

Judgment reversed and defendants acquitted.

[1] The same conclusions were reached in the following cases decided on this same date: No. 42289, People vs. Buenafe; No. 42291, People vs. Buenvenida; No. 42294, People vs. Patricio; No. 42295, People vs. Caldeo; No. 42299, People vs. Oordovero; No. 42296, People vs. Delfin; and No. 42298, People vs. Besa, p. 1023, post.

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