

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LIN TIAO, DEFENDANT AND APPELLANT.

G.R. No. 9041. December 22, 1913

Ponente: CARSON, J.

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CARSON, J.:

The defendant and appellant in this case was convicted in the court below of a violation of the Opium Law and sentenced to the payment of a fine of P300 and the costs of the trial.

The information charges: "That on or about the 19th day of April, 1913, in the city of Manila, P. I., the said accused did then and there willfully, unlawfully, and feloniously have in his possession and under his control one-half gram of opium; contrary to law."

It appears that defendant's premises were searched by police officers on the 19th day of April, 1913, and that as a result of the search eight small tins and a match box containing in all about one-half a gram of opium were found in the attic, rolled up in a petate, and secreted upon some boards laid loosely across the rafters. It is not quite clear from the evidence how much of the drug was found in the different receptacles, but it does appear that a little was found in each of the seven tins and also in the match box, and it is very evident that the amount found in any one of them must have been very small indeed. Indeed it is very doubtful whether any greater amount of opium was found in any one of the receptacles than one might expect to find sticking to the sides and bottom of a carelessly emptied can or box containing the drug.

The defendant testified that the tins and the box did not belong to him and that he did not know that they contained opium; that they had been left in the attic by a Chinaman named Lee Uy, who formerly lived in the house, but who had gone to China some two months prior to the search; that he had been absent in the provinces for about ten months before Lee Uy left for China; and that during that time Lee Uy occupied the premises and had charge of his tienda. His testimony stands uncontradicted, and is in some respects corroborated by the testimony of one of the police officers who said that the place where the tins were found was covered with dust, and apparently unused and neglected.

We are of opinion that the evidence introduced at the trial is not sufficient to sustain a conviction. It is true that the statute penalizes the unauthorized possession of opium on one's person or on one's premises, and that we have held that it matters not how small the quantity of the contraband drug may be, if one knowingly has it in his possession or control he is guilty of a violation of the statute (U. S. vs. Lim Poco, 25 Phil. Rep., 84) But in that case as well as in the cases of the United States vs. Tan Tayco (12 Phil. Rep., 739), and the United States vs. Tin Masa (17 Phil. Rep., 463), we held that in no case could a conviction of unlawful possession of opium be sustained where it appears that the animus possidendi is absent, or that the defendant was not aware that the prohibited drug was in his possession or on his premises and under his control. And it may well happen that the fact that the amount of opium found in the possession of an accused person is very small will be sufficient, under all the circumstances of a particular case, when taken together with his denial of knowledge of the fact that he had

it in his possession, to sustain a finding that the animus possidendi is absent. We are of opinion, and so hold, that in the case at bar, the insignificant amount of the drug which was found in the receptacles left in defendant's attic by a former occupant of the house, taken together with defendant's denials of knowledge that opium would be found in these apparently empty receptacles, is sufficient under all the circumstances of this case to justify and require a holding that the animus possidendi was absent, and that the defendant is not guilty of the offense with which he is charged.

The judgment of the lower court convicting and sentencing the defendant and appellant should therefore be reversed and he should be acquitted of the offense with which he is charged in the information, with the costs in both instances de officio. So ordered.

Arellano, C. J., Torres, Moreland, and Trent, JJ., concur.

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