

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ALFONSO DE OCAMPO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 9563. March 11, 1915

Ponente: CARSON, J.

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CARSON, J.:

The only evidence in the record connecting these defendants and appellants with the theft of the mare as charged in the information is the testimony of two witnesses who claim to have seen them riding her on the night of the robbery.

The owner of the mare, the two accused, and the two witnesses against them were all close neighbors living in the same barrio and well known to each other.

One witness, a woman, testified that on the night upon which the mare of the complaining witness disappeared, the two accused came to her tienda (store) at about 8 o'clock at night, riding upon a mare, which was followed by a colt; and that they stopped at the store and asked whether she had any cigarettes for sale, and as she had not they rode away without dismounting. She claims that she recognized the animal as the property of the complaining witness, because its face was turned toward her so that she could see it distinctly, though she admits that her attention was not drawn particularly to the fact that the accused were riding the animal, because she knew that they had hired it from its owner on previous occasions.

The other witness testified that he met the two accused riding upon a mare, followed by a colt, not long after 8 o'clock on the night in question, and that seeing the mare and knowing its owner, he called out, thinking that the owner himself was riding the animal; that the two accused drew up in answer to his greeting, but that when he asked them where they were going they went on their way without answering; and that the mare they were riding was the property of the complaining witness.

The two accused admitted that they rode together on a mare followed by her colt on the night in question; that it was true, as testified by the witnesses for the prosecution, they had stopped at the store and asked for cigarettes, and that they had met and been hailed on the road by the witness who so testified; but they claimed that they had borrowed the mare from another party, whose name they gave, and disclaimed all knowledge of the stolen animal.

We do not think that this evidence establishes beyond a reasonable doubt the identity of the animal which the accused were riding on the night in question with the animal lost by the complaining witness.

The possibility of mistake in identification by the two witnesses who at most got but a passing glimpse on a dark night, of the animal the accused were riding is apparent. And when to this we add the manifest improbability that these accused, if they were in fact riding a stolen mare, followed by her colt, would have stopped at the store to ask for cigarettes and would have stopped again on the road on being hailed by a passer-by, we are forced to the conclusion that these two witnesses, learning upon the following day that the complaining witness had lost his mare and colt, jumped to the conclusion that the mare ridden by the accused was the stolen animal. It is to be

remembered, moreover, that these parties were all near neighbors, and knew each other well, and it seems highly improbable, to say the least, that conscious of having just committed the theft, they would voluntarily and unnecessarily expose themselves to the risk of discovery and punishment by riding up to a store in the little barrio in which all the parties lived, and stopping on the road just outside the barrio long enough to give another neighbor an opportunity to identify them and the stolen animal on which they were riding.

It may be proper to add that there is nothing to indicate that they made any attempt to escape with the animal, and as far as we can learn from the record, they were back in the barrio the following day, apparently unconscious that their conduct the night before had directed suspicion against them as the thieves who had taken their neighbor's mare and colt.

We conclude that the judgment entered in the court below convicting and sentencing these appellants should be reversed, and that they should be acquitted of the crime with which they are charged, with the costs of both instances de officio, and set at liberty forthwith. So ordered.

Arellano, C. J., Torres, Moreland, Trent, and Araidlo, JJ., concur.
Johnson, J., dissents.

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