

6 Phil. 391

[G.R. No. 2714. August 23, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PABLO MALLANAO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

The fact that the defendant had in his custody a gun without a license as charged in the complaint, for which offense he was convicted and sentenced by the court below to nine months' imprisonment and to pay a fine of 300 dollars, United States currency, was proved not only by the testimony of the various witnesses for the prosecution but by the admission of the defendant himself while testifying as a witness in his own behalf. The only question to be decided is whether or not such possession constituted a violation of section 24 of Act No. 175, as amended by Acts Nos. 610 and 652 governing the subject.

The act in question provides in part as follows:

“Any person not connected with the Army or Navy of the United States, or otherwise authorized by law, having in his custody a gun, a revolver, or other firearm, or ammunition for the same, who shall not have the license under this section provided shall be punished by a fine not exceeding one thousand dollars and imprisonment not exceeding one year and one day.”

The defendant not being included in any of the exceptions provided in the above-quoted paragraph could not have in his custody a firearm without the required license.

The defendant explained how the gun in question came into his possession, saying upon his return from a hunting party in the mountains near his town, inhabited by a non-Christian tribe called “Calingas,” he met two members of the said tribe, one armed with a gun and the

other with a bolo, and believing, on account of their actions, that they were going to attack him, spurred his horse and without giving them a chance to do him any injury ran onto them, killing the Calinga who had the gun with his spear; that the other Calinga ran away when he saw his companion fall; that he pursued him until he overtook and killed him, the body of the Calinga falling down a precipice; that he then returned where the Calinga with a gun was lying dead and that he took the gun with the intention of surrendering the same to the local authorities when he arrived in town. He further testified that after he had obtained possession of the gun he joined the other members of the hunting party whom he had left far behind; that he related to them what had happened and asked them to make haste in order to avoid the possibility of the friends of the Calingas he had killed overtaking them and taking revenge.

This last statement of the defendant was corroborated by the testimony of the witnesses for the prosecution themselves who were members of the hunting party referred to by the accused. Moreover, these witnesses for the prosecution who accompanied the accused on the hunting expedition and remained with him during the nine days they were out, stated that the defendant had carried no firearms during all that time. They did not see the gun until the time the defendant told them about his experience with the Calingas, when he asked them to make haste to avoid any possible revenge at the hands of the friends of the Calingas. The killing of the two Calingas was also proved at the trial, the Witnesses for the prosecution having testified that they saw the body of one of them when it was being brought into town. The body of the other Calinga, according to the defendant, fell over the precipice. This explains why the witnesses for the prosecution made no reference thereto. Their testimony, as well as that of the defendant himself, has not been contradicted; therefore, there is no reason why we should doubt its correctness.

It appears that the gun in question was found in the possession of the defendant by a Constabulary sergeant when the former was returning from this hunting trip and before he had reached home. This being so, it is evident that the accused had no opportunity whatever to surrender the gun to the authorities, and it is impossible to say with certainty whether it was his intention to surrender the gun as he claimed at the trial. Considering the circumstances under which he secured possession of the gun in question, such possession would be considered as unlawful if he had allowed a reasonable time to elapse and failed to surrender it or secure the necessary license. Such was not the case, however, because of the premature capture of the gun.

The judgment of the court below is hereby reversed and the defendant is acquitted with the

costs of both instances *de officio*. After the expiration of ten days let judgment be entered in accordance herewith and ten days thereafter the case will be remanded to the court below for proper procedure. So ordered.

Arellano, C. J., Torres, Carson, Willard, and Tracey, JJ., concur.

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