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THE QUEEN

v

CULLING

Coram: Richardson J  
McMullin J  
Somers J

Hearing: 20 May 1986

Counsel: B D Young for applicant  
T M Gresson for Crown

Judgment: 20 May 1986

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ORAL JUDGMENT OF THE COURT DELIVERED BY RICHARDSON J

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This is an appeal by way of case stated on a question of law reserved for the opinion of this Court pursuant to s 380 of the Crimes Act 1961.

The appellant stood trial in the District Court at Timaru on a charge under s 51 of the Arms Act 1983 of having in her possession in a public place, namely Marine Parade, Timaru, ammunition and explosives, namely shotgun cartridges, .303 cartridges, molanite, gelignite, number 8 detonators and a quantity of ammax, except for some lawful purpose. Her de facto husband had been arrested in connection with a bombing incident

at Timaru. She collected the explosives and other items, the subject of the charge, from a farmhouse in the Winchester area and had them in her possession in the boot of her car when stopped in Marine Parade. In her written statement to the Police she explained her intentions in this way:

" I was not sure what to do with the explosives. I did not want the Police to get hold of it as it would not look good for Ian. I thought I'd take it home and think what to do with it. I probably would have dumped the explosives somewhere. Anyway, the police stopped me while I was driving through Timaru and located the explosives in the boot. "

On a s 347 application before trial it was accepted for the appellant that her object in shifting the explosives was unlawful in the sense that it would hamper the Police in their investigations and would prevent or obstruct the course of justice, but it was submitted that it was lawful within the statutory proscription which was concerned with the intended use or disposition of the explosives as explosives. The District Court Judge rejected that submission observing that s 51 was directed at possession not use and concluding that in imposing liability on that basis and at the same time allowing the defence of lawful purpose s 51 balances the general public interest, namely the undesirability of having explosives in a public place at all, with the practical fact that there will obviously be times when people will for legitimate purposes have to have explosives in public places. On that approach the appellant's admitted object in having the explosives in her possession in Marine Parade could not be a lawful purpose within

s 51. The Judge accordingly dismissed the s 347 application and directed the jury that the appellant's explanation for her conduct could not constitute a lawful purpose within the section.

A person who is in possession of explosives in a public place is guilty of an offence under s 51 unless that person proves on the balance of probabilities that he or she was in possession of them for some lawful purpose. The natural and ordinary meaning of that expression "some lawful purpose" in that context is any purpose that is not criminal, not punishable by law (Hays v Stevenson (1860) 3 LT 296). Wilfully attempting to obstruct, prevent, pervert or defeat the course of justice is an offence against s 117(1) of the Crimes Act 1961 and Mr Young accepted, rightly in our view, that the appellant's object in shifting the explosives and so her possession of them in Marine Parade being for the purpose of seeking to prevent Police discovery of the explosives was within s 117(d) and on the ordinary and natural meaning of the words was not a lawful purpose.

His submission, however, was that when considered in its statutory context s 51 has a more limited function and if the possession does not involve illegal use of the explosives the purpose is lawful within its provisions. The other 2 provisions of the Arms Act on which he relied are ss 45 and 55. Under s 45 which carries a maximum penalty of 3 months' imprisonment it is an offence to have explosives in one's possession except for some lawful, proper and sufficient purpose. Under s 55 it is an

offence punishable by 5 years' imprisonment for a person to have explosives with him or her with intent to commit an offence punishable by imprisonment for a term of 3 years or more or with intent to resist arrest or prevent the arrest of another person. Mr Young submitted that the offences under the 3 sections are in ascending order of gravity reflecting the degrees of seriousness of the intent involved.

We cannot agree with these submission. Under s 55 the Crown must prove that the defendant has explosives with him or her and it must also prove the positive intent to commit a serious offence. On the other hand, under s 51 the Crown need only prove possession in a public place and the defendant may then excuse himself or herself by proving that possession was for some lawful purpose. The distinguishing feature between s 45 and s 51 is that the offence under the latter section is committed in a public place, the legislature thus recognising the potentially greater danger to the public where explosives are in a public place.

For the reasons we have given the appeal is dismissed and the question posed in the case stated, namely:

" Whether I was correct in ruling that the accused's admitted purpose could not be a 'lawful purpose' within the meaning of those words as they appear in Section 51 of the Arms Act 1983 "

is answered in the affirmative.

Solicitors:

*Campbell, Clarke & Young Timaru*  
~~Petrie, Mayman, Timpany & More~~, Timaru, for applicant  
Crown Solicitor, Timaru