

IN THE HIGH COURT OF NEW ZEALAND
WANGANUI REGISTRY

M.64/83

165

BETWEEN THE QUEEN

Appellant

AND D. _____ G. _____

Respondent

Hearing 28 February 1984
Counsel P. A. Moran for the Crown
 J. T. Refoy-Butler for Respondent
Judgment 2 March 1984

JUDGMENT OF ONGLEY J

This is an appeal by way of Case Stated against the dismissal in the District Court at Wanganui of two charges under the Arms Act 1958 brought against the present respondent.

The offences with which the respondent was charged were the following:

"THAT between the 1st day of December 1982 and the 11th day of June 1983 he did unlawfully possess a pistol, namely a .455 calibre Webley revolver (Section 7A(1) Arms Act 1958).

THAT on or about the 11th day of June 1983 he did deliver possession of a firearm, namely a .455 calibre Webley revolver, to S K _____, a person not entitled by virtue of a permit issued under the Arms Act 1958 to obtain the firearm (Section 7(2) Arms Act 1958)."

The relevant findings of fact made by the District Court Judge are set out in the Case as follows:

- "1. The respondent purchased the pistol to hold as an antique.
2. The pistol was of a type which had not been in use since the Second World War.
3. Ammunition for the pistol had not been manufactured for some considerable time.
4. At the time the respondent purchased the pistol it was not in a working condition.
5. The respondent repaired the pistol over a period of 12 months and put it into a working condition capable of firing ammunition through it.
6. The respondent adapted rounds of ammunition so such ammunition was capable of being fired through the pistol.
7. The respondent fired a dozen or so rounds of ammunition through the pistol in the bush some 8 months before the hearing to see if the pistol would work and to test its accuracy.
8. The pistol was possibly still capable of firing ammunition through it as at the date of the hearing.
9. The respondent gave the pistol and some ammunition to one K
10. The respondent was not compelled to give the pistol to K by threats of immediate death or grievous bodily harm (Section 24 Crimes Act 1961).
11. At all material times neither the respondent nor K was the holder of a permit issued under the Arms Act 1958 authorising the possession of firearms.
12. The pistol was not designed for and was not capable of firing ammunition currently being manufactured.
13. At all material times the respondent held the pistol solely as an antique and did not use it or intend to use it for any other purpose."

The decision on the charge laid under Section 7A(1) of the Arms Act 1958, that is, the charge of having unlawful possession of a pistol, as recorded in the Case Stated was as follows:

- "1. The pistol was an "antique firearm" as that term is defined by Regulation 2 of the Arms Regulations 1959.
2. By virtue of Regulation 12(4) of the Arms Regulations 1959 the respondent did not require a permit under the Arms Act to lawfully possess the pistol.
3. As his possession of the pistol was not unlawful the information should be dismissed."

The decision on the charge laid under Section 7(2) of the Arms Act 1958, that is, the charge of delivering a firearm to a person not entitled to obtain a firearm, as recorded in the Case was as follows:

- "1. That the respondent had not made out the defence of compulsion under Section 24 of the Crimes Act 1961.
2. That the pistol was an "antique firearm" as that term is defined by Regulation 2 of the Arms Regulations 1959.
3. That by virtue of Regulation 12(4) of the Arms Regulations 1959 the person to whom the respondent delivered possession of the pistol was not required to obtain a permit under the Arms Act 1958.
4. That as the revolver was an antique the information should be dismissed."

On the latter charge the prosecution based its case wholly on the issue as to whether the pistol was an antique and indicated to the Judge that if that were to be his finding it did not submit that delivery to Kelland was unlawful.

The questions now to be answered are framed by the Judge as follows:

"1. WAS I correct in finding that the Respondent was in possession of a pistol that was not designed for and was not capable of firing ammunition currently being manufactured?

2. WAS I correct in finding that at all material times the respondent held the pistol solely as an antique and did not use it or intend to use it for any other purpose?

3. DID I correctly apply Regulation 12(4) Arms Regulations 1959 in dismissing the charge of unlawful possession of a pistol laid under Section 7A(1) Arms Act 1958?

4. DID I correctly apply Regulation 12(4) Arms Regulations 1959 in dismissing the charge of unlawful delivery of possession of a firearm laid under Section 7(2) Arms Act 1958?"

The purpose of Section 7(1) of the Arms Act as related to firearms is to prohibit any person other than a licenced dealer from procuring possession of a firearm otherwise than pursuant to a permit under Section 7, or under Section 6 which deals with import permits. Section 7(2) prohibits delivery of possession of any firearm to any person other than a licenced dealer or a person entitled to obtain the firearm by virtue of a permit under the Act.

Section 7A deals with possession of pistols only and prohibits any person from being in possession of a pistol unless so authorised or permitted by or pursuant to the Act or Regulations made under it. A pistol, by definition (Section 2), means any firearm which is designed or adapted

to be held and fired with one hand; and includes any firearm that is less than 762 millimetres in length. The firearm mentioned in these charges was undoubtedly a pistol and so the Crown chose to frame the charge of unlawful possession as an offence against Section 7A.

Regulation 12(4) of the Arms Regulations 1959 reads as follows:

"(4) Nothing in Section 7 of the Act shall apply to any antique firearm."

On this appeal it was submitted initially by the appellant that as Regulation 12(4) exempts antique firearms only from the operation of Section 7 and not from the operation of Section 7A it could not be invoked as a defence to the charge of unlawful possession brought against the present respondent under the latter section. However Mr Moran felt bound to concede that the permit required for lawful possession of a pistol is a permit for possession of a firearm granted pursuant to Section 7 from which it must follow that if the pistol is an antique firearm, which it may be, no such permit is required because by virtue of Regulation 12(4) Section 7 has no application to such a firearm.

The exemption for an antique firearm afforded by Regulation 12(4) can therefore in appropriate circumstances

have application equally as well to a charge laid under Section 7A as to a charge under Section 7.

In my view the District Court Judge applied Regulation 12(4) correctly to both charges so long as it was properly proved that the firearm in question was an "antique firearm" within the meaning of the definition contained in Regulation 2 of the Arms Regulations 1959 which is in these words:

" "Antique firearm" means any firearm which is held in the possession of any person solely as an antique (but not as a copy or replica of an antique) and which is not designed for and is not capable of firing ammunition currently being manufactured."

There are two requirements therefore; first, the firearm must be held solely as an antique and second, it must be neither designed for nor capable of firing ammunition currently being manufactured.

Mr Moran accepted the position that in order to succeed on this appeal he must show that upon the evidence before him the District Court Judge could not properly have found as he did,-

1. That the respondent was in possession of a pistol that was not designed for and was not capable of firing ammunition currently being manufactured, and,

2. That at all material times the respondent held the pistol solely as an antique and did not use it or intend to use it for any other purpose.

I am bound to accept the primary facts found by the District Court Judge as set out in the Case. The question to be considered therefore is whether the Judge could properly have drawn the conclusions which he did draw from those facts.

On the question of whether the pistol was designed for or capable of firing ammunition currently being manufactured there is no suggestion that it was designed for firing such ammunition. The issue is whether it was capable of firing such ammunition. The answer to that turns on the meaning to be given to the words, "currently being manufactured". Once the pistol was put in working order it was undoubtedly capable of firing ammunition of some sort, as the District Court Judge held. He found that the ammunition which was actually fired through the pistol was adapted by the respondent so as to make it capable of being fired through the pistol. He did not say in so many words what it had been adapted from but Mr Moran addressed his argument to me on the basis that the ammunition fired by the respondent had been cut down or modified from ammunition previously manufactured. In its original

condition it was not capable of being fired through the pistol but the adaptation, in Mr Moran's submission, brought it within the category of "ammunition currently being manufactured". The Shorter Oxford dictionary gives the primary meaning of the verb 'to manufacture' as "to work up (material) into forms suitable for use". Adopting that meaning as the one properly to be given to the word as used in the definition of "antique firearm" in the Arms Regulations, Mr Moran contended that the respondent had "manufactured" the ammunition which he fired; that he did so "currently" in the sense that the adaptation was done at a time relevant to the commission of the alleged offence; and that those facts were inconsistent with the conclusion reached by the District Court Judge. I reject that argument for two reasons. The first is that I do not believe that an adaptation of an existing product can properly be described in ordinary usage as the manufacture of the resulting product; secondly, having regard to what I believe is the purpose of the Regulations, I do not accept that the term "ammunition currently being manufactured" includes what may be described as "home made" ammunition but rather is intended to apply to ammunition currently being made by commercial manufacturers. A more modern and more acceptable dictionary meaning from the same source as that used by Mr Moran is "to produce by labour on a large scale". The word may have a number of meanings and the Regulation may be

somewhat loosely framed but I think its intention is clear enough and that is to prevent a usable firearm capable of firing ammunition currently obtainable from commercial sources of supply being held without a permit in the guise of an antique. This firearm did not have that capability and was not, in my view, prevented from belonging to the category of "antique firearms" by reason of the fact that it had the capacity to fire ammunition specially adapted for use in it.

On the question whether the respondent held the pistol solely as an antique Mr Moran submitted that once the respondent put the pistol in working order and fired ammunition through it he held it otherwise than solely as an antique, there being an additional purpose, namely the purpose of firing bullets through it. I think the soundness of that submission depends largely on the purpose with which the bullets were fired. If the purpose was something such as hunting animals or even target practice I think that might destroy the protection but each case needs to be considered on its own facts. Here the District Court Judge has found that a dozen or so rounds of ammunition were fired in the bush "to see whether the pistol would work and to test its accuracy". An antique is defined in the Shorter Oxford Dictionary as "a relic of ancient art or of the past". In order to be regarded

as an antique it is not necessary that an article should be in other than working order. A clock in working order, for instance, may yet be an antique. The discharge of a firearm in order to ascertain whether it is in working order and whether it fires accurately does not necessarily indicate that it is not held solely as an antique. The discharge of the firearm in order to discover its qualities is in my view entirely consistent with it being held solely as an antique. That is what the District Court Judge found to be the purpose of firing the ammunition through the pistol and in my view he was entitled to conclude on that basis that it was held solely as an antique.

For the reasons I have given I find that each of the four questions asked in the Case are answered "yes".

John W. Kelly, Jr.