

IN THE HIGH COURT OF NEW ZEALAND  
PALMERSTON NORTH REGISTRYM. No. 144/83

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BETWEENWALLAppellantA N D POLICERespondent

Hearing: 16 February 1984  
Counsel: T.C. Thackery for Appellant  
 D.C. McKegg for Respondent  
Judgment: MAR - 6 1984

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JUDGMENT OF QUILLIAM J

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The appellant was convicted on a charge under s 7A (1) of the Arms Act 1958 that he was in possession of a pistol while not being authorised or permitted to be in possession of the same. The case is to be decided within the narrow compass of whether the article in question fell within the definition of "pistol" in s 2 of the Arms Act. Accordingly the facts, which are not in dispute, may be briefly stated.

In the course of a search of a room occupied by the appellant the Police found what was described as the mechanical portion of a semi-automatic .22 rifle. It was acknowledged that this was in the possession of the appellant. Two charges were laid as alternatives. One was under s 16 (1) of the Act, namely, that the appellant was in possession of a firearm except for some lawful, proper and sufficient purpose, and the other was the charge with which I am now concerned. Having decided he should convict on the latter the District Judge dismissed the former.

The relevant definitions in s 2 of the Arms Act are:

" 'Firearm' includes a firearm which for the time being is not capable of discharging any shot, bullet, or other missile but which, by its completion or the replacement of any

component part or parts or the correction or repair of any defect or defects, would be so capable; and also includes any firearm which for the time being is dismantled.

'Pistol' 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 overall length of the article found was 150 millimetres and accordingly the prosecution relied upon that part of the definition of a pistol which provides that it includes a firearm less than 762 millimetres in length. The measurement not being in dispute, the only question then was whether it was a firearm. This in turn depended upon whether this article, although for the time being incapable of discharging a shot, would on its completion or the replacement of any component parts be capable of discharging a shot.

The evidence was that what was found comprised the breech block, the sliding bolt, safety catch, trigger guard, trigger, sears and springs, and a magazine clip. The fore-end of the breech block had a threaded part to it where the barrel would normally screw in. It had no butt or stock. It may have been possible to discharge a single bullet but this would have been a haphazard and dangerous operation.

The view reached by the District Judge was that this was a firearm because -

1. It was the central mechanism of a pistol or rifle.
2. It was probably capable of firing a missile or bullet although that was highly unlikely. (I assume this was intended to mean that it was probably capable of firing a missile or bullet although it was highly unlikely that it would be safe to do so.)

3. With the addition of a magazine and barrel and probably a butt and stock it would be completed as a firearm in the ordinary sense.

He therefore concluded that it fell within the definition by being capable of completion.

The first argument for the appellant is that what was found in the appellant's room was only some parts of a firearm and these could not properly be described as a firearm itself, that is, that he may have had part of a firearm but not a firearm.

This argument cannot succeed. There is not only nothing in the definition of firearm which requires that the article be complete in itself but on the contrary it expressly contemplates that it may be something which requires the addition of further parts to make it complete.

The second submission for the appellant was that even if the article is a firearm it is not a pistol because it is part of a dismantled rifle and that, no matter what its length, it could not be a pistol. It was sought to support this argument by the submission that the word "firearm" where it appears in the definition of "pistol" is not to be given its defined meaning but its more usual dictionary meaning. This argument is plainly untenable and I do not think it necessary to deal further with it. I have no doubt that if the article in question is a firearm within the definition in s 2, and if it is less than 762 millimetres in length, then it is a pistol.

The real question in this case is whether what was found in the appellant's possession can properly be described as a firearm or whether it lacks so many of the characteristics of what is generally understood as a firearm to mean that it cannot be brought within the definition at all. In other words it is a matter of degree. Assistance may be derived from the decision of Somers J in Police v Jackson [1980] 1 NZLR 78. That was a case of a charge under s 16 (1) of the Arms Act of carrying a rifle without some lawful, proper and sufficient purpose. The rifle had

been taken by the respondent from a bedroom in his brother's house but the bolt had been left in the bedroom. The Magistrate dismissed the information on the basis that unless it was possible for the respondent to have restored the rifle to usefulness on that occasion it was not a firearm. Somers J differed from that view. That is not a question arising here but in the course of his judgment Somers J considered the definition of "firearm" and his comments in that regard are relevant and helpful for the present case.

At pp 80 - 81 Somers J said:

" Before the addition of the words 'its completion or' a firearm included a firearm which was not then capable of discharging a missile but which by replacement of any component part or the correction or repair of any defect would be so capable. Such a firearm as is so included meant I think a whole firearm but one distinguishable from the normal usable weapon by its incapacity to discharge a missile which incapacity was remediable by replacement or repair. That meaning is reinforced by the words 'for the time being' and gains some colour or cohesion from the reference to a dismantled firearm. The nouns replacement on the one hand and correction or repair on the other may overlap to some extent as a matter of common semantics. But they include two different notions which may be indicated by the difference between substitution and amendment. It was suggested that replacement means or includes a placing back - as the bolt in this case. The collocation of the words 'replacement correction or repair' as well as the features already mentioned indicate this is not so. I do not think the later addition of the word completion should or could be taken as affecting that construction.

The word completion however adds a new dimension to the definition. It necessarily involves a firearm that is not complete. It may for example lack a firing pin or some further work of the

nature of original construction may need to be carried out to render it capable of firing.

The object carried in the present case lacked a bolt at the time of carriage. In that sense it was incomplete. But there was a bolt for it. I see no reason to distinguish between completion in the sense of providing for the first time some part which never formed part of the 'rifle' (or doing work never done before to complete the same) and completion in the sense of joining to the part carried some other part not carried.

It is of course necessary that that which is carried has the general characteristic of a firearm. The carrying of the bolt alone would not be such a carrying. The ascertainment of the necessary characteristic may involve a visual appreciation. It may also involve the carriage of the dominant part and with the correlative distinction between the principal and the ancillary. There may be borderline cases. If the object is to all outward signs a rifle but for example the barrel had not been bored it may still be a firearm 'by its completion'. "

I have set out that passage in full, although not all of it is directly applicable to the present case, because it helps to emphasise the distinction between completion and replacement. The District Judge based his decision in the present case upon the provision as to completion, but with respect I find myself unable to accept that as the proper approach. In order to have rendered it complete there would need to have been added the barrel, the magazine, the butt and stock, and it would seem other parts as well. This could, in my view, only be described as a firearm by the application of the provision as to replacement. The real enquiry is whether it was "a firearm which for the time being is not capable of discharging any shot, bullet or other missile but which, by ... the replacement of any component part or parts ... would be so capable."

Although what was found was small in size and has almost none of the appearances of what one normally visualises as a firearm, it lacks very little to enable it to be capable of discharging a missile. It may perhaps be capable of doing so as it is, although it would obviously be highly dangerous to attempt it. By the simple device, however, of screwing in the barrel it would at once be capable of discharging a missile. It may be awkward to do so without a butt to hold the weapon steady and aim it, but there seems little doubt that the missile would then be discharged. The addition of a magazine would add to the ease of discharge and to the safety but would probably not be strictly necessary.

The result then is that what is under consideration is something which comprises the essential working parts of a rifle and which requires only the replacement of the barrel to make it capable of "discharging any shot, bullet or other missile." Once the barrel was replaced then the total length would take it out of the category of pistol but because of the definition it must, without the barrel, be regarded as a pistol.

The present is a somewhat extreme case but it is not fanciful. I have no doubt that the purpose of the Arms Act is to control the possession of firearms in order to provide a measure of protection for the public. If what was found in this case was capable, by the simple replacement of one part which was designed to go with it in any event, of discharging a missile then the danger to the public is at once evident. As I have said this is a matter of degree. Plainly, as was said by Somers J in Jackson's case, it would not be proper to say that the bolt alone comprised a firearm because the replacement of all the other parts would render it capable of discharging a missile. This, however, is not such a case. What is involved is all the essential working parts which may already be capable of discharging a missile but with the replacement of the barrel would certainly be so.

I therefore conclude, although for slightly different reasons, that the decision of the District Judge was right and the appeal is accordingly dismissed. There will be no order as to costs.

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