

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL No. 129 of 1971

BEFORE: The Hon. Mr. Justice Smith, Presiding
The Hon. Mr. Justice Edun, J.A.
The Hon. Mr. Justice Hercules, J.A.(Ag.).

ERROL HEWITT v. R.

David Coore, Q.C. for the appellant.

Norman Wright for the Crown.

1971

November 12, December 3

SMITH, J.A.:

The appellant was convicted in the resident magistrates' court for Saint Andrew on July 29, 1971 for having in his possession a ".22 revolver 1962 model not under and in accordance with the firearm users licence as required by s.20 (1) (b) of Act 1 of 1967." He appealed against his conviction.

The section of the Firearms Act, 1967 (Act 1 of 1967) under which the appellant was charged provides that "a person shall not be in possession of any firearm except under and in accordance with the terms and conditions of a Firearm User's Licence."

In s.2(1) of the Act "firearm" is defined, so far as is relevant, as follows:-

" 'firearm' means any lethal barrelled weapon from which any shot, bullet or other missile can be discharged and includes any component part of any such weapon and any accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon"

The subject-matter of the charge appears to have been a starting pistol. It was described by detective inspector Daniel Wray, the expert witness called at the trial, as a .22 calibre R.I.S. revolver which was originally designed to discharge .22 blank cartridges. He said it had been converted "in order that it may be adapted to discharge bullets by drilling through the six chambers in the cylinder and removing an obstruction from the bore." Inspector Wray said that when he received the pistol

for inspection and testing it could not discharge a bullet or missile or anything as the firing pin was broken. He said that a striking pin could be welded on to the nose of the hammer and that if this is done the pistol will be able to discharge .22 calibre cartridges.

In R. v. Freeman (1970) 2 All E.R. 413 the appellant was charged and convicted of a similar offence. The subject-matter of the charge was a starting pistol which was incapable of discharging a missile but could easily be adapted for this purpose. The jury were directed that it was a firearm within the meaning of the Firearms Act, 1968 (U.K.). This Act defined "firearm" as "a lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged and includes

(b) any component part of such a lethal or prohibited weapon" The Court of Appeal (of England) held that the direction to the jury was correct as in giving the direction the judge had founded himself^{on} and followed the judgment of the Divisional Court in Cafferata v. Wilson, Reeve v. Wilson (1936) 3 All E.R. 149 and the decision in this case had been embodied in the law when the Act of 1968 was passed.

In Cafferata's case (supra) Lord Hewart, C.J. said (at p. 150):-

"Everything turns on the definition of "firearms" in the Act of 1920. At the material time the article was incapable of being fired, but a part of it needed alteration to make it suitable for firing. The magistrate has held that the article as a whole is part of a firearm within the meaning of the definition. That is quite a tenable proposition. If something had had to be added to the dummy to make it into a complete revolver, the dummy might be said to be part of a revolver. It seems to make no difference that the decisive part was not to be an addition but an adaptation of what was already there. It is easier to support the decision from another point of view. The dummy contains everything else necessary for making a revolver except the barrel, and therefore all the other parts of it except those which required to be bored are "parts thereof" within the meaning of the section."

In the case under consideration, it was submitted at the trial that the prosecution had not discharged the onus of proving that the subject-matter of the charge was a firearm as defined in the Act of 1967. Freeman's case (supra) was cited but it was sought to distinguish it. It was said that the definition of "firearm" in the Act of 1968 (U.K.) is different from that in

our Act of 1967 because the words "of any description" which appear in the former are absent in the latter. The submission was not accepted and the appellant was convicted.

In arguing the appeal Mr. Coore conceded that, following the decision in Freeman's case (supra), under the relevant legislation in the United Kingdom, the subject-matter of the charge against the appellant would be treated as coming within the definition of "firearm"; that since it only required the addition of a firing pin it was a component part of a "firearm". He conceded further that the only way in which it could be contended that the decision in Freeman's case (supra) is not relevant and should not be followed is if it can be shown that the definition in our Act of 1967 is so significantly different that the legislature must have clearly intended to define "firearm" in a significantly different way. He observed that though Freeman's case (supra) had not been decided when our Act was passed, Cafferata's case was. Mr. Coore said that he had given the matter the best consideration he could and, quite candidly, could not support the proposition that the omission of the words "of any description" from the definition in the Act of 1967 gives "firearm" a different meaning from that which it bears in the Act of 1968 (U.K.).

We agree that there is no material difference in the defined meaning of "firearm" in the two Acts. Nor is there any material difference between the meaning in those Acts and that contained in the Act of 1920, which was under consideration in Cafferata's case (supra). In our judgment, the subject-matter of the charge against the appellant was rightly held to be a "firearm" as defined in the Act of 1967. We base our decision on the reasoning of Lord Hewart, C.J. in the cited extract from his judgment in Cafferata's case (supra). The subject-matter of the charge against the appellant consisted of everything else, except a firing pin, which was necessary to make it a lethal barrelled weapon from which a bullet can be discharged. It was, therefore, a component part of such a weapon within the definition.

For the above reasons the appeal was dismissed.