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J A M A I C A.

IN THE COURT OF APPEAL
CRIMINAL APPEAL NO. 155/62

R E G I N A

VS.

J. BURROWES

BEFORE: Mr. Justice Phillips (President Ag.)
Mr. Justice Duffus , J.A.
Mr. Justice Waddington (Ag.) J.A.

5th November, 1962.

Mr. I. Ramsay for the Appellant

Mr. Barnett for the Crown

JUDGMENT OF THE COURT DELIVERED BY MR. JUSTICE DUFFUS:

The appellant was convicted in the Resident Magistrate's Court for the parish of Kingston on the 30th July, 1962, on an information which charged that he

> "on the 10th day of April, 1962 —— the day for the election of members for the House of Representatives and at 12 noon, while in a public place within an electoral area in which the said election was taking place to wit, the Spanish Town Road, Kingston, had with him certain offensive weapons to wit, one length of iron pipe and two bits of stick, and an old toy pistol, otherwise than in pursuance of lawful authority, contrary to section 29(4) of Law 44 of 1957."

He appeals from this conviction. The evidence led for the Crown showed that on April 10, 1962 at about 12 noon, while the General Election for the election of members to the House of Representatives was being held, Desmond Campbell an Assistant Superintendent of Police who was on mobile patrol duty, in Trench Town saw a crowd of men around a motor car in which were the appellant and three other men. The crowd appeared to be very hostile to the men in the car and so the Superintendent requested the appellant, who stated that he was the owner of the car, to accompany him to the Denham Town Police

Station which was nearby. The appellant drove his car behind the police vehicle to the station. At the station a search was made of the appellant's car and in it were found, a short length of iron pipe, 2 sticks and a toy pistol. In reply to a question by Superintendent Campbell as to whether he knew that these things were in his car, the appellant said "Yes" and that he had "put them there for his own protection as well as the other occupants of the car." The appellant, who is a registered medical practitioner, further stated that he was in that particular area as he was engaged in first aid work at the request of one of the candidates for election. The appellant was subsequently summoned on this charge.

At the trial, the appellant gave evidence on oath in which he admitted thatthe iron pipe sticks and toy pistol were in his car. It was conceded before us by counsel for the Crown that the toy pistol could be disregarded as it was quite clearly only a toy.

With regard to the iron pipe, the appellant said in evidence:

> "-----I have had it for some threeor four years. I curry it in my car whenever out on night calls or country runs involving night travelling. I had it to protect myself if necessary------"

and with regar to the sticks, he said:

> "-----At the Police Station Superintendent Chase arrived. I mention to Chase that exhibit 1b were to be used as splints, but to protect myself, if necessary. By that means if someone were injured and there was a hostile crowd, my companions would protect me while I attend to the injured--------"

The learned Resident Magistrate appears to have rejected the appellant's assertion that the sticks (Ex. 1 b) were to be used as splints, and, having seen the exhibits in this court, we can only say that we wholly agree with him.

Two main grounds of appeal were argued before us:

1. That it had not been established that the pipe and sticks were offensive weapons within the meaning of the Law, and
2. That the appellant had discharged the burden of

proof cast on him by the Law, by showing that the pipe and sticks were not used or intended to be used as offensive weapons within the meaning of the Law, and that the learned Resident Magistrate had misdirected himself on the degree of proof required when the burden of proof was placed on a defendant.

The term "offensive weapon" is defined in S.2 of the Public Order Law (Law 44 of 1957) as follows:

> "Offensive weapons" includes -
> (a) Any firearm as defined in the Firearms Law; and
> (b) any stick, rod, bar, or similar implement or any stone, brick or other missile, whether similar to the foregoing or not, or any catapult or similar implement unless it is proved to the satisfaction of the Court that it was not used or intended to be used as such by the person charged;"

Section 29(4) of the same Law, under which the appellant was charged, reads as follows:

> " Any person who on the day of any election for a member of the House of Representatives or of any Parish Council or for a Councillor of the Kingston and Saint Andrew Corporation or a member of the Federal House of Representatives at any time during the period between one hour before the hour appointed for the opening of the poll and six hours after the closing of the poll, while in any public place within the constituency or electoral division or electoral area in which the election is taking place, has with him any offensive weapon otherwise than in pursuance of lawful authority, shall be guilty of an offence against this subsection and shall be liable on conviction to imprisonment with or without hard labour for any term not exceeding one year or to a fine not exceeding one hundred pounds and in default of payment to imprisonment with or without hard labour for any term not exceeding twelve months."

It is also desirable to set out section 29(5)

> "For the purposes of this section, a person shall not be deemed to be acting in pursuance of lawful authority unless -
>
> (a) if the offensive weapon involved be a firearm, he is acting in his capacity as a member of the Armed Forces of the Crown or as a Constable; or
>
> (b) if the offensive weapon involved be other than a firearm, he is acting in his capacity as a servant of the Crown or of any local authority or as a constable or as a member of a fire brigade."

It was not contended that the appellant was acting "in

pursuance of lawful authority" but it was argued by Counsel for the appellant that the implements were not "offensive weapons" as the evidence showed that they were not used or intended to be used as such, i.e. as offensive weapons, but only for the lawful purposes of self-defence or first aid.

It was submitted that at its highest the case against the appellant showed that he only intended to use the implements in self defence, if the necessity arose; that self-defence was a lawful user, and if the implements were used for self defence such user would make them "defensive weapons" as opposed to "offensive weapons."

Counsel for the Crown, on the other hand contended that the qualifying word "offensive' was a term of art and that any weapon which was capable of being used or intended to be used so as to cause offence or injury was an offensive weapon within the meaning of the law irrespective of whether it was used or intended to be used only for purposes of self defence.

Both counsel referred to the dictionary meaning of the words "offensive" and "offensive weapons" but not much assistance could be derived from this as the meanings given supported either view. However, in any case the usual object of inserting the word "includes" in a statutory definition such as that under discussion is to enlarge the ordinary meaning of the word being defined. Eye v. Eye, 1962 A.C. 308.

Counsel for the appellant cited the following cases in support of his argument:-

R.v. Palmer, 1 Moo & R. 70
R.v. Johnson, Russ & Ry. 492.
R.v. Fry & Webb, 2 Moo & R. 42
R.v. Grice and others, 7 C.& P. 803.

The cases of R.v. Palmer, R.v. Fry & Webb and R.v. Grice and others were all cases for offences under the statute 9 Geo. IV. C. 69, S. 9, which dealt with poaching by "persons being armed with any gun, crossbow, firearm, bludgeon, or any other offensive weapon"

The case of R.v. Johnson was for an offence under the Statute 7 Geo. II.C. 21, which dealt with assaults "with any offensive weapon or instrument" with intent to rob.

In R.v. Palmer supra. the prisoner was lame and had with him a stick large enough to be called a bludgeon, but which he was in the constant habit of using a crutch. It was held that it was a question for the jury whether the prisoner had taken out the stick with the intention of using it as an offensive weapon or merely as a crutch. This case does not help the appellant's argument as the Court made no distinction between "offensive" and "defensive" user of the stick and it seems clear that if the prisoner had intended to use the stick as a bludgeon instead of as a crutch, he would have been found guilty irrespective of whether he was using it for attack or defence.

In R.v. Johnson supra, the weapon was a "common walking stick" and the question was whether such a stick could be said to be an offensive weapon within the meaning of the Statute (7 Geo. II. C. 21 supra). It was held that if the prisoner used his stick by way of attack for the purpose of effecting the robbery it might be considered an offensive weapon within the meaning of the Statute. It is obvious that the word "attack" was not used in contradistinction to "defence" and the case merely decided that if the walking stick was used for committing an assault with intent to rob and not merely as a walking stick simpliciter that could make it an offensive weapon within the meaning of the statute. So here again, this case does not help the appellant's argument.

R.v. Pry & Webb supra, also concerned a very small stick fairly answering the description of a common walking stick. It was held in that case that if a man goes out with a common walking stick and there are circumstances to show he intended to use it for purposes of offence it may perhaps be called an offensive weapon within the statute (9 Geo.. IV.C. 69, S. 9); but if he has it <u>in the ordinary way</u> (i.e. as a walking stick simpliciter)

and upon some unexpected attack or collision is provoked to use it in his own defence, it would be carrying the statute too far to say it is an offensive weapon within the meaning of the Act. Here again this case does not assist the appellant's argument as it could hardly be said that the appellant had the implements "in the ordinary way" as one could have a common walking stick. It was clear on the evidence that the appellant intended to use the implements, if necessary, for the purpose of causing harm or injury albeit in self defence.

In R.v. Grice and others the question was whether some large, smooth stones were offensive weapons within the meaning of the statute (9 Geo. IV.C. 69 S. 9.). It was left to the jury to say whether the stones had been brought by the defendants to the place or found upon the spot; whether the stones were of such description as to be capable of occasioning serious injury to the person if used offensively and whether they were brought and used for that purpose. If these questions were answered in the affirmative, then the stones were offensive weapons within the statute. Here again, this case does not assist the appellant's argument, as the terms "offensively" and "offensive" were not used in contradistinction to "defensively" or "defensive".

It is to be noted that none of the weapons concerned in the cases cited above were, per se, offensive weapons, and it was necessary for the Crown to show in R.v. Palmer, R.v. Fry and Webb and R.v. Gride and others, that the weapons came within the category of "any other offensive weapon" in the statute 9 Geo. IV.C. 69, S.9, and in R.v. Johnson that the walking stick came within the category of "any offensive weapon or instrument" in the statute 7 Geo. II.C. 21. The implements in the instant case are expressly mentioned in the definition of "offensive weapons" in par (b) of Sec. 2 of the Public Order Law and are therefore prima facie offensive weapons and would only lose their offensive character if the appellant could prove

that he did not use or intend to use them in keeping with their inherent offensive nature and quality.

We must therefore look to the Law itself in order to ascertain the proper construction of the relevant section. It is a general rule of construction that a statute must be read as a whole and the construction made of all the parts together. The title to the Law reads thus:

> " A Law to amend and consolidate the Law relating to the maintenance of public order with reference to marches, meetings and processions."

The only inference to be drawn from this is that the Legislature intended the Law to govern the maintenance of order on certain public occasions. Every section of the law is designed to regulate the conduct of marches, meetings and processions and to ensure the preservation of peace and good order. Can it be said that the Legislature having made careful and detailed provision for the preservation of law and order and having, on the one hand, expressly forbidden the possession on certain specified occasions of weapons or implements which can be used as weapons, has, on the other hand, expressly provided that any person may have in his possession any such weapons or implements for the purpose of self defence? We think not. The expression 'offensive weapon' is in fairly common usage and appears in a number of statutes in Great Britain and other countries of the Commonwealth and in no single case as far as we are aware has this term been used in contradistinction to "defensive weapon". It seems to us that for all practical purposes the word "offensive" could very well have been omitted from the term "offensive weapon" without in any way altering the meaning of "weapon" in this law. For this reason the word "offensive" may be regarded as mere surplusage.

Careful and analytical reading of the definition in section 2 clearly supports the views we have expressed.

> "2 —— In this Law ——
>
> 'Offensive weapons' includes -
>
> (a) any firearm as defined in the Firearms Law."

It is clear beyond any doubt that a firearm can be used for aggression i.e. offensively, and that it can also be used for self defence i.e. defensively, but the statute draws no distinctions - Sec. 29(4) makes it an offence to have a firearm whether or not it is used or intended to be used as such - whether in self defence or otherwise. The definition then continues "and

> (b) any stick, rod, bar, or similar implement or any stone, brick or other missile, whether similar to the foregoing or not, or any catapult or similar implement unless it is proved to the satisfaction of the Court that it was not used or intended to be used as such by the person charged;"

It is to be observed that the categories of implements or missiles mentioned here are not weapons per se, unlike a firearm, which is essentially at all times a deadly weapon. The various implements mentioned here are not weapons per se but are articles in common daily domestic usage, save perhaps a catapult, which we think could have been included with firearms as a weapon per se, unless as learned Counsel for the appellant said, it is really a sort of toy used by small boys at birds and was therefore not viewed by the Legislature as a deadly weapon per se in the same category as firearms.

For the purposes of this law, these normally innocuous implements are deemed to be, "offensive weapons" unless the person charged can prove otherwise. It is to be noted that if the person charged fails to prove that such implements are not "offensive weapons" that the implements then are in exactly the same category as firearms the possession of which is absolutely prohibited and as we have pointed out, the statute makes no distinction between the offensive or defensive use of a firearm. It is simply an offensive weapon however used or intended to be used. We can see no distinction.

If the Legislature had desired to permit persons to carry sticks, stones, bricks etc., for purposes of self-defence it has not been so expressed. The intention of the statute being to preserve order and the Legislature having by its terms disarmed persons on Election Day did not intend, in our view,

to permit persons to have with them offensive weapons to be used in self defence against those who, in obedience to the Statute, would be unarmed. We need hardly add that such a provision would completely nullify this law and render it an absurdity.

The learned Resident Magistrate did not misdirect himself on the degree of proof required when the burden of proof is on the defendant. In our view there was a prima facie case established against the appellant. The appellant was in possession of offensive weapons otherwise than in pursuance of lawful authority and he had failed to discharge the burden of proof which is placed on him by the section: that these offensive weapons in his possession, namely, the iron pipe and sticks were not used nor intended to be used as such.

For these reasons the appeal is dismissed and the conviction and sentence affirmed.

Dated this day of November, 1962.