

J A M A I C A

IN THE COURT OF APPEAL

R. M. CRIMINAL APPEAL No. 112 of 1974

BEFORE: The Hon. Mr. Justice Luckhoo, P. (Ag.) Presiding  
The Hon. Mr. Justice Swaby, J.A.  
The Hon. Mr. Justice Watkins, J.A. (Ag.)

R. v. MICHAEL SHADEED

R.A. Mahfood, Q.C. for the appellant.

J.L. Kerr, Q.C. Director of Public Prosecutions  
and H. Downer for the Crown.

March 11, 12, 25, 1976

LUCKHOO, P. (Ag.):

The applicant Michael Shadeed was convicted on September 13, 1974 in the Resident Magistrate's Division of the Gun Court on an information charging that on September 1, 1974 he unlawfully had in his possession one R.T.S. .22 calibre revolver No. 173699 not under and in accordance with the terms and conditions of a Firearm User's Licence as required by s.20 (1)(b) of the Firearms Act, 1967 (No.1). He was sentenced to be detained at hard labour during the Governor General's pleasure.

The evidence disclosed that the appellant was found in possession of a .22 calibre R.T.S. blank revolver for which he had no Firearm User's Licence. In the revolver were found 7 live cartridges and 1 spent cartridge. Of the live cartridges 6 were blanks and 1 a tear gas cartridge. Tests carried out by Asst. Supt. of Police Daniel Wray, a firearm expert, showed that the revolver was capable of discharging blank cartridges as well as tear gas cartridges. It was not in the state in which it was found capable of discharging any

shot, bullet or other missile. If a portion of the chamber were substantially widened and a hole drilled through the barrel and at least one of the firing chambers it might be possible for a .22 calibre bullet to be discharged from the revolver. However, because the chamber and barrel were made of soft metal appropriate to the use of the revolver in firing blank cartridges/<sup>firing</sup> the revolver with the amount of gunpowder necessary to cause a bullet to be discharged might result not in the bullet being discharged but disintegration of the chamber itself because of the pressure of gas resulting from the detonation acting on the chamber which would have been weakened by widening a portion of it. Asst. Supt, Wray could give no accurate opinion, as distinct from making an assumption or "intelligent guess", of the velocity or rather loss of velocity of a bullet which might be discharged from the revolver.

The term "firearm" is defined in s. 2 of Act .  
as follows -

"firearm" means any lethal barrelled weapon from which any shot, bullet or other missile can be discharged, or any restricted weapon, or, unless the context otherwise requires, any prohibited weapon 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, but does not include any air rifle, air gun, or air pistol of a type prescribed by the Minister and of a calibre so prescribed."

While it can be said that the revolver if converted might disintegrate upon being fired and cause death or serious injury to the person firing it or to a bystander it would not thereby be a lethal barrelled weapon from which any shot, bullet or other missile could be discharged. Further, unless it were also shown that serious injury to another might be caused if a shot, bullet or other missile were discharged from it, it would not be a lethal barrelled weapon. In the state of the evidence it cannot be said that there was proof beyond reasonable doubt that the revolver could be converted into such a lethal barrelled

weapon and thus be a "firearm" within the meaning of that term in s. 20 (1)(b) of the Firearms Act, 1967.

It was contended on the part of the prosecution that in any event the revolver is a restricted weapon and so would fall within the definition of "firearm" in s. 2 of the Act. The expression "restricted weapon" is defined in s.2 of the Act as follows -

"restricted weapon" means any weapon of whatever description or design which is adapted for the discharge of any noxious liquid gas or other thing."

On the other hand the contention on behalf of the appellant is that while the revolver in the state in which it was made or manufactured can be used to discharge a noxious gas it is not a restricted weapon as defined in s. 2 of the Act because the word "adapted" in that definition connotes that the weapon must be fitted or altered for the discharge of a noxious gas as distinct from being "designed" therefor. In this regard comparison was made with the definitions in s. 2 of the Act of "firearm", "restricted ammunition" and "slaughtering instrument" in which one or both of the words - "designed" and "adapted" appear -

"'firearm' means ..... and includes .....  
any accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon .....",

"'restricted ammunition' means any ammunition containing or designed to contain any noxious liquid, gas or other thing",

"'slaughtering instrument' means a firearm which is specially designed or adapted for the instantaneous slaughter of animals or for the instantaneous stunning of animals with a view to slaughtering them."

It was urged that in the definitions of "firearm" and "slaughtering instrument" the word "adapted" used in the disjunctive with "designed" clearly means "fitted" or "altered". It is conceded that this is so. It was further urged that while recognising that the word "adapted" may be construed to mean "suitable" depending on the context in which it is used, and that this is so when the well

established legal meaning of the word can be excluded as a matter of interpretation on the ground that the well established meaning is nonsensical in the context, yet as a matter of grammar and in the context in which it appears in the definition it means "fitted" or "altered"; alternatively, its meaning is not clear and appearing as it does in a penal enactment it should be construed in favour of the person charged. Further, if (which is not admitted) there is a casus omissus in the Act it is not for the Court to supply the omission.

It was observed that s. 17 of the English Firearms Act, 1937 (now repealed) provided inter alia that it was not lawful for any person without the authority of certain specified bodies to have in his possession "any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing." Mr. Mahfood urged that in omitting the word "designed" from the Jamaica definition Parliament deliberately used language whereby a restricted weapon is a weapon which has been fitted or altered in some way for the discharge of noxious liquid, gas or other thing. Mr. Mahfood referred us to a number of reported cases where the word "adapting" used without any other word in conjunction therewith was construed as meaning "altering"- Grove v. Lloyd (1931) A.C. 450; Kinder v. Borough of Camberwell (1944) 2 All E.R. 520; and Cockram v. Tropical Preservation Co. Ltd. (1951) 2 All E.R. 520 where the words "adapting for sale of any article" fell to be construed and French v. Champkin (1920) 1 K.B. 76 and Taylor v. Mead (1961) 1 W.L.R. 435 where the words "constructed or adapted for use ..... for the conveyance of goods" fell to be construed. In those cases it was patent that the word "adapting" or "adapted" had to be construed in the sense contended for by Mr. Mahfood.

Finally, Mr. Mahfood cited Re H.P.C. Productions Ltd. (1962) 1 All E.R. at p. 47 and London County Investments Ltd. v. The Attorney General (1953) 1 W.L.R. at p. 327 in support of his

submission that where there are two reasonable interpretations of a penal enactment one favourable to the accused and the other not favourable the more lenient interpretation is to be preferred.

Certain reported cases were brought to Mr. Mahfood's attention by the Court during the course of the argument - Maddox v. Storer (1963) 1 Q.B. 451; Burns v. Currell (1963) 2 Q.B. 433; and Wurzal v. Addison (1965) 2 Q.B. 131. Those cases are illustrative of the point that the meaning of the word "adapted" when used otherwise than in conjunction with another word is to be construed as "suitable" or "altered" depending on the context in which the word is used.

The learned Director of Public Prosecutions submitted as follows -

(1) The construction of the word "adapted" in the definition of the expression "restricted weapon" as contended for by the appellant would make nonsense of the provision and result in absurdity in that if a weapon were made or manufactured specifically for the purpose of discharging noxious liquids it would be outside the scope of the provision and if a definition is capable of interpretation which would avoid absurdity the Court should give it such an interpretation. (See Maxwell on Interpretation of Statutes (11th Edition) at p. 228). The clear object and intention of the Firearms Act, in particular s. 20 of that Act, was to conditionally prohibit the possession of weapons that were potentially dangerous and so the section was to be interpreted to meet the mischief that was intended to be obviated. (See Maxwell (11th Edition) pp. 66-67 on the Mischief Rule).

(2) There is a presumption against absurdity (see Maxwell (11th Edition p. 193)).

(3) The definition of "restricted weapon" while not containing the words "designed or" as in the other definitions to which reference was made by Mr. Mahfood does include the word "design" in co-relation to "description" - "any weapon of whatever description or design" - "description" relating to physical appearance and "design" relating to style or pattern and those two

words used together are exhaustive.

(4) There is but one reasonable interpretation of the word "adapted" in the relevant definition. The word in the context of the provision should be construed as "suitable".

Bearing in mind all that has been urged by Mr. Mahfood and the learned Director of Public Prosecutions we do not find any difficulty in arriving at the conclusion that the word "adapted" in the context in which it appears in the definition of "restricted weapon" means "suitable". To give that word the meaning of "altered" would result in absurdity in that the words "of whatever ..... design" which connote "of whatever ..... purpose construction" and would therefore have the effect of including within the definition a weapon made or manufactured for the purpose of discharging noxious gas, would be incompatible with the construction of the word "adapted" as "fitted" or "altered".

In the result the appeal is dismissed and the conviction is affirmed. The sentence of detention during the Governor General's pleasure is set aside and instead the appellant who spent 14 days in prison awaiting trial and a similar period after conviction before being granted bail is sentenced to such a term of imprisonment which will result in his immediate release.