

ST. CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO.1 OF 2004

BETWEEN:

QUINCY DUNCAN

Appellant/Defendant

and

CHIEF OF POLICE

Respondent/Complainant

Before:

The Hon. Mr. Brian Alleyne, SC

Justice of Appeal

The Hon. Mr. Michael Gordon, QC

Justice of Appeal

The Hon. Mr. Hugh A. Rawlins

Justice of Appeal [Ag.]

Appearances:

Dr. Henry Browne, Mr. Anthony Johnson with him for the Appellant/Defendant

Mr. Dennis Merchant, Ms. Janine Harris with him for the Chief of Police

2004: July 27; 28;

JUDGMENT

- [1] **RAWLINS, J.A. [AG.]:** Quincy Duncan was convicted on a charge of possession of an unlicensed firearm. He was sentenced to 6 months imprisonment with hard labour. He appealed against his conviction and sentence. The appeal was heard yesterday. The decision was reserved and is now delivered against a brief background to the case.

The Background

- [2] Quincy Duncan was charged in the District A Magistrate's Court on 2 counts. The

offences were allegedly committed in Basseterre on 17th December 2002. One count was for the possession of a .32 calibre revolver that was not kept in accordance with the terms and conditions of a firearms users licence, contrary to section 20(1)(b) of the Firearms Act No. 23 of 1967 of the Laws of the Federation of St. Christopher (St. Kitts) and Nevis (this legislation may also be referred to as "the Act"). The second count was for the unlawful possession of 2 rounds of .32 ammunition. Section 20(1)(b) of the Act prohibits a person from being in possession of any firearm, as defined by the Act, unless that person first obtained a licence to hold the firearm. On the 12th May 2003 Duncan was acquitted on the charge of unlawful possession of the ammunition. He was however convicted for the unlawful possession of the firearm.

[3] The case for the Prosecution was that on 17th December 2002, several members of the Defence Force were on duty in Basseterre. They proceeded along George Street, Newton in a vehicle. They saw Duncan walking along the street. Some officers alighted from the vehicle and followed him. He looked back and ran. As the officers gave chase, Duncan took a chrome object from his pocket and threw it into the air with some force. The object hit a building. It broke into pieces and the pieces fell into the surrounding yard. In the search that ensued, the officers found a metal frame of what appeared to be a firearm and pieces of what appeared to be the handle of a firearm. They also found 2 rounds of ammunition. Police personnel who were called to the scene took possession of the items. They subsequently turned the items over to Police Sergeant Keithley Bradshaw, a firearms expert, who examined them.

[4] Defence Force Officer, Cornell Williams, was one of the persons who chased after Duncan. His evidence is that after Duncan threw the object into the air, he (Williams) recognized it as a .22 firearm. He said that when he searched the yard of the building that the object hit, what he saw was the frame of a .22 firearm. He also saw 2 rounds of .22 ammunition. However, Sergeant Bradshaw who examined the items

that were retrieved certified that they consisted of a firearm frame of an H & R .32 revolver from which the cylinder and break down lever were missing; pieces of the handle of the firearm and 2 rounds of .32 ammunition.

- [5] Quincy Duncan's evidence was that he ran when he saw the Defence Force Officers because he had some weed (marijuana). He insisted that what he threw away was the weed. The learned Magistrate rejected this evidence.

The Grounds of Appeal

- [6] The appeal is based on 2 substantive grounds. The first ground is that the learned Senior Magistrate erred in law in that she failed to appreciate that the so called "firearm" that was produced in evidence is not a "firearm" as defined in section 2(1) of the Firearms Act. The second ground is that the decision of the Magistrate to convict Duncan on the charge of unlawful possession of a firearm was unreasonable and cannot be sustained having regard to all the evidence.

The Second Ground

- [7] By way of elaboration of the second ground, Dr. Browne, learned Counsel for the Appellant, submitted that the Magistrate should have dismissed the charge because of the discrepancy between the description of the object that Defence Force Officer Williams said that he saw flying through the air when Duncan threw the object, and what the expert, Sergeant Bradshaw, said he examined. He noted that while Williams said he saw a .22 firearm, Sergeant Bradshaw said that he examined parts of a .32 firearm. Dr. Browne submitted that this raises a grave doubt that what Sergeant Bradshaw examined originated at the scene, particularly as Sergeant Bradshaw was not at the scene of the incident. He urged this Court to find that there was such a doubt and to resolve it in favour of the accused, Duncan.

[8] It is my view that in the circumstances, Defence Force Officer Williams could not have testified with any authority or precision as to the specifics of the object that he said he saw floating through the air. It suffices that it appeared to be a firearm. Thus a part of his evidence-in-chief that is recorded at page 16 of the Record is as follows:

Prosecutor: For the frame that you saw, what, what frame is that?

Glen Williams: It's a firearm, a firearm.

Prosecutor: And in relation to the firearm that you say you identify as you see it was floating in the air.

Glen Williams: Yes, I identified the firearm that I saw

Prosecutor: That firearm was thrown in the air?

Glen Williams: Yes the firearm was thrown in the air.

Prosecutor: The firearm that you saw floating in the air and the frame that you saw, what are you able to say 'bout that?

Glen Williams: It's the same thing I saw.

[9] There is no evidence that the learned Magistrate concluded that the object was a firearm because Officer Williams said that it was. It is important that it is not controverted that the object that was found in the yard was that which Duncan threw in the air. Neither is it controverted that it was retrieved by Police Constable Denver Herbert and ultimately delivered to Sergeant Bradshaw who is a firearm expert for examination. He examined the object and gave evidence that it was, in the main, the frame of a .32 calibre revolver.

[10] I agree that the learned Magistrate was entitled to accept Sergeant Bradshaw's evidence on this issue, since he, rather than Officer Williams, gave evidence as a firearm expert after he examined the items. In effect, therefore, there was no

material discrepancy on this issue going to the fundamentals of the charge. The learned Magistrate simply accepted Bradshaw's expert evidence. The second ground of the appeal accordingly fails.

The First ground: Is the Frame a "firearm"?

- [11] The more critical issue is whether the frame that was retrieved and which Sergeant Bradshaw examined falls within the meaning of "firearm" under the Act. It gave me some pause to consider, carefully, the definition that the interpretation section of the Act provides.

The definition

- [12] So far as it is relevant to this case, section 2(1) of the Act provides:
- " '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 accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon ..."
- [13] The rationale for this definition is clear. Parliament not only intended to prohibit a person from having a complete weapon that is capable of firing a projectile or missile that is lethal. It also intended to prohibit a person from having in possession any part of such a weapon that is capable, if put into place, to assist in the assembly of such a weapon. Parliament further intended to prohibit the possession of even an accessory such as a silencer.
- [14] The words "lethal barrelled weapon" in the definition do not require that the object possessed should actually have a barrel intact in order for it to fall within the meaning of the definition. In the present case, the evidence of Sergeant Bradshaw is that the frame was rusted on the barrel. There is, on the other hand, evidence in the cross-

examination of Sergeant Eldrin Dickenson that the barrel was missing from the frame.

It is not clear whether the frame only had a cavity where the barrel should have been. However, this is not critical because, in the first place, the definition seeks to prohibit the possession of any part of a weapon that is capable of firing a lethal or deadly missile. In the second place, in **Cafferata v Wilson; Reeve v Wilson** [1936] 3 All. E.R. 149, it was held that even where a dummy pistol that had everything else that was necessary for making a revolver, except the barrel, all of the other parts of it except those that needed to be bored were parts of a firearm and were therefore prohibited under a similar definition. (See per Lord Hewart, C.J. at page 150.)

- [15] A firearm expert could give the evidence that goes to the proof of the possession of any prohibited part of a weapon. Thus it was held in **R. v Elliston Watson** (1979) 28 W.I.R. 123 that if a Court accepts a firearm expert's evidence that with the addition of a firing pin a weapon was capable of discharging a deadly missile, the weapon would be a "component part" and a "firearm" within the definition of the prohibiting statute. (See per Henry, J.A. at pages 126J – 127A.). The firing pin could itself also be a component part and a firearm within the definition.

The evidence in the present case

- [16] It is critical in the present case that there is some evidence that the frame that was found and examined by the expert was a part of a weapon that was capable of firing a lethal or deadly missile. If all of its components were to be assembled they would become a weapon that would be capable of firing or discharging such a missile. The definition prohibits the possession of even 1 part of such a weapon.
- [17] In the present case there is evidence that the cylinder and the break down lever were missing from the frame. In her reasons for decision, the learned Magistrate found that the parts that were retrieved and which Sergeant Bradshaw examined were

component parts of a firearm. I think that there was sufficient evidence, particularly in the evidence-in-chief of Sergeant Bradshaw to satisfy her finding.

[18] The evidence-in-chief at page 25 of the Record is as follows:

Keithley Bradshaw: ... Sergeant Sutton submitted to me a brown paper bag containing weapon, two (2) cartridges and four (4) pieces of black plastic like material Your Worship. He told me something. As a result of what he told me I remove the weapon and examine it. I note that it is a H & R Arms .32 revolver. No serial number present. It was chrome in colour and has rusted on the barrel and around the trigger guard area. The cylinder was missing. The break down lever was also missing.

Dr. Henry Browne: What? What?

Keithley Bradshaw: The Break down lever.

Dr. Henry Browne: Lever. OK.

Keithley Bradshaw: Lever. I examined the, the four (4) pieces of plastic like material and note they were a part of the grip, the pistol grip Your Worship, which was broken up in several pieces. I also remove the two (2) round ammunition, cartridges from the bag. I examined them and note they were all .32 round of ammunition. Based on my examination of the H & R Arms .32 revolver which had a missing component or two (2) missing components along with the two (2) .32 cartridges I find that they fall within that meaning....

[19] At page 26 of the Record:

Keithley Bradshaw: I was saying with the, with the exception of the two (2)

components parts Your Worship, I, the weapon is a firearm.
The ammunition are also ammunition, the cartridges are also ammunition capable of being discharged, so by the identity of the caliber firearm, Your Worship.

[20] At page 27 of the Record:-

Keithley Bradshaw: These are the two (2) .32 round Your Worship. On it you'll find my initial on both of them.

Prosecutor: And you say they are able to discharge?

Keithley Bradshaw: These are able to discharge from an identical caliber firearm Your Worship. These are the pieces of the black material, plastic like material, which when fitted together they were, when they were examined and fitted together they form part of the, one (1) part of the pistol or the grip Your Worship.

Prosecutor: The grip is also what?

Keithley Bradshaw: The grip is also the handle where you hold the weapon Your Worship.

Prosecutor: And you say that not despite, inspite of the missing parts?

Keithley Bradshaw: Yeah.

[21] Again at page 27:-

Keithley Bradshaw: What you have here Your Worship is more or less the frame of the weapon which is also the basic portion of the firearm, of the weapon. From that frame you could get any other part to fit on the fr..., to fit on it, you should be able to fire as the manufacture would have it to.

Finding and Conclusion

[22] Cumulatively, Sergeant Bradshaw's evidence is, in effect, that the frame that he examined was a part of a .32 calibre weapon. If that frame were assembled with all of the other necessary parts, it would be a lethal or deadly barreled weapon. It would be capable of discharging .32 rounds of ammunition as its manufacturers intended it to fire. That evidence was sufficient to bring the frame within the definition of "firearm" in section 2(1) of the Act. The result is that the first ground of the appeal also fails.

[23] In the foregoing premises, the appeal is dismissed. The conviction and sentence are accordingly affirmed.

Hugh A. Rawlins
Justice of Appeal [Ag.]

I concur.

Brian Alleyne, SC
Justice of Appeal

I concur.

Michael Gordon, QC
Justice of Appeal