

THOMAS FRANZ WOLFGANG WINTER v STATE (HAA0006 of 2012B)

HIGH COURT — APPELLATE JURISDICTION

5 GOUNDAR J

9, 10 May 2012

10 **Criminal Law — appeals — appeal against sentence — guilty plea — possession of bow and arrow without licence — whether bow and arrow amounts to arms and ammunitions — defective charge — Arms and Ammunition Act ss 2, 4.**

15 The appellant pleaded guilty to possessing arms and ammunition in the form of a bow and arrow without a licence, contrary to s 4 of the Arms and Ammunition Act. The magistrate fined the appellant without entering conviction and ordered the appellant to obtain a licence for the bow and arrow. The appellant appealed against the sentence, but the petition of appeal also appeared to challenge guilt.

Held –

20 (1) The guilty plea and the fine cannot stand as the charge and the facts did not disclose essential elements of the offence under s 4. The charge and the facts must disclose that the bow was designed to discharge arrows, dangerous to persons.

(2) The magistrate accepted the appellant's guilty plea without having regard to whether the bow was designed to discharge an arrow, dangerous to the public.

Appellant's guilty plea is set aside. Sentence quashed.

25 Appellant in person.

M. Fong for the Respondent.

[1] **Goundar J.** On 3 June 2011, the appellant was charged with the following offence:

30 ***Statement of Offence***

IN POSSESSION OF ARMS AND AMMUNITIONS:- Contrary to s 4 of the Arms and Ammunition Act 11 of 2003.

Particulars of Offence

35 THOMAS FRANZ WOLFGANG WINTER between May 2008 and May 2011 at Savusavu in the Northern Division was found in possession of an arm and ammunitions in the form of bow and arrows without a licence.

40 [2] On 20 February 2012, the appellant pleaded guilty to the charge, after expressing his frustration over delays caused in the Magistrates' Court. He told the learned Magistrate that he was a foreigner but had lived in Fiji for nearly 20 years. He had applied for a Fiji citizenship, and any conviction could have an adverse impact on his application.

45 [3] After hearing mitigation, the learned Magistrate fined the appellant \$1000.00 (in default 3 months imprisonment), without entering conviction. The appellant was further ordered to obtain a licence for the bow and arrow. This is an appeal against sentence but the petition of appeal filed in person by the appellant also appears to challenge guilt.

[4] Since the appellant is unrepresented, I invited the State to make submissions on the validity of his guilty plea as well.

50 [5] The charge was brought contrary to s 4 of the Arms and Ammunition Act (the Act). Section 4 states:

“No person shall possess, use or carry any arm or ammunition except under a licence in respect of each arm and such ammunition so possessed, used or carried and in accordance with the prescribed conditions of such licence”.

5 [6] Arm means “any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged, or which can be adopted for the discharge of any such shot, bullet or other missile, and any weapon of whatsoever description designed or adopted for the discharge of noxious liquid, gas or other thing dangerous to persons, ...” (s 2).

10 [7] Ammunition means “ammunition for any arm as hereinafter defined and includes bullets, cartridges, shells or anything designed or adopted for or capable of use with any arm...”(s 2).

[8] The question is whether the bow and arrow found in the appellant’s possession was an arm and ammunition as defined by s 2 of the Act.

15 [9] There is no suggestion that the bow in question was a lethal barrelled weapon from which a shot, bullet or other missile could be discharged. The second limb of the definition appears to be more relevant. If the bow was designed to discharge a thing, in this case an arrow, dangerous to persons, then the weapon falls under the definition provided by s 2.

20 [10] According to the facts, the appellant was arrested after his neighbours suspected him of damaging their vehicle and abducting their dog. A search was done of the appellant’s residence. The police found the bow and arrow in question inside the house together with a pistol. Further investigation revealed that the appellant had a licence for the pistol but not for the bow and arrow. The
25 appellant told the police and the learned Magistrate that the bow and arrow was a souvenir gift that was given to him by a friend in Germany. When he brought the bow and arrow into Fiji, he declared the item to the customs officers at the airport and he was allowed to take the item with him. The appellant was not aware that he was required to apply for a licence to possess the bow and arrow.

30 [11] Neither the charge nor the facts tendered in support of the charge, describe the bow and arrow found in the appellant’s possession. Section 4 does not require a licence for every bow and arrow. The charge and the facts must disclose that the bow was designed to discharge arrow, dangerous to persons. Both the charge and facts failed to state this essential element of the offence under s 4. The charge
35 was indeed defective and the facts failed to cure the defect. Since the appellant was unrepresented, the learned Magistrate was obliged by law to take care in ensuring that the plea was not equivocal.

[12] According to the court record, the learned Magistrate made no enquiry about the nature of the bow and arrow found in the appellant’s possession. The
40 guilty plea was accepted having no regard as to whether the bow was designed to discharge arrow, dangerous to the public. The proper course was to reject the guilty plea, grant leave to amend the charge and to proceed with the trial.

[13] Given my finding that the charge and the facts did not disclose an offence
45 under s 4, the guilty plea and the fine cannot stand. The proceedings in the Magistrates’ Court were a nullity. The guilty plea is set aside and the sentence is quashed. There will be no order for a retrial. The bow and arrow are to be returned to the appellant forthwith.