

MARTIN APA -v- REGINAM

High Court of Solomon Islands

(Palmer J.)

Criminal Case No. 41 of 1992

Hearing: 23 November 1992

Judgment: 23 November 1992

A. Rose for the Appellant

R. B. Talasasa for the Respondent

PALMER J: This is an appeal against conviction in the Central Magistrates Court by the Appellant who had been charged with carrying a firearm in a disorderly manner contrary to section 40 of the Firearms and Ammunition Act.

The grounds of appeal were:

- i. that the learned Magistrate erred in finding that there was evidence to establish the offence charged on the facts as presented to the Court by the Prosecution.
- ii. that the learned Magistrate erred in not treating the Appellant's guilty plea as an equivocal plea of guilty and treating it as a 'not guilty' plea especially in the light of the fact that the facts presented to the Court by the Prosecution did not disclosed the fact that the Appellant committed the offence he is charged with.

This case first came before the Magistrates Court sitting at Yandina on the 14th of October 1992. The charge then was carrying a fire-arm whilst drunk contrary to section 40 of the Firearms and Ammunition Act.

The Defendant was represented at that time by Mr Augustine Rose.

When the original charge was put to the Accused he entered a plea of guilty. When the facts were read out, his counsel then made a submission that there was no evidence presented in the facts to show that his client was drunk. This submission was accepted by the learned Magistrate.

The case was then adjourned to the next day the 15 October 1992. The charge was amended to read 'behaving in a disorderly manner'.

When court resumed the next day at 8.30 a.m., learned counsel for the Defendant pointed out that the facts did not specify how his client was acting in a disorderly manner. A further adjournment was then made by the learned Magistrate to 10.00 a.m.

At 10 a.m. when court resumed, learned counsel for the Defendant then made further submissions. The submissions made in essence were to contradict the facts as presented to the court by the prosecution.

One of the facts presented to the court by the prosecution was that the Defendant proceeded through the main village with his rifle and his intention was to go and threaten the boys who had attacked him earlier on. This was denied in the submissions of the Defendant's learned counsel. In his submissions, Mr Rose pointed out that the Accused followed a sea side track to see his in-law. This track will not take them to the Primary School Compound in the bush area where the attackers were alleged to be staying.

His client denied being disarmed by a Jacob Ofe. The fire-arm was removed by the Accused's in-law at his house and there was no resistance.

In his ruling the learned Magistrate stated and I quote:-

"From the facts adduced I ruled that the manner in which the "A" was acted at that material time whilst carried the .22 rifle was amounted to acting in a disorderly manner.

The facts stated that the 'A' and his brother had an earlier argument that night with some boys. At his home he got his .22 rifle and asked his brothers to accompany him to the main village where the boys were. He was pursued by his mother and wife to stay but refused. The mother and wife followed him and others and begged him to return but refused. He was met by someone on the way and took the rifle from him. On the facts I ruled that such behaviour at that material time amounted to acting in a disorderly manner in public whilst carried a firearm."

The learned Magistrate then considered the submissions of fact presented by the learned counsel for the Defendant. He stated:-

"His attitude when having in his possession his .22 rifle and left following the main road (public road) to the main village at night in my view amounted to acting in a disorderly manner in public whilst carried a firearm.

The question of whether the gun was loaded or otherwise is irrelevant. Even if I accept that it was not loaded that is still irrelevant. What matters in law is the state of mind of those whom the 'A' may come up But I believe it was loaded."

It is important to note that a crucial element of this offence is that there must be evidence of disorderly conduct. This can only be assessed from the factual circumstances surrounding the case. It is a question of fact. And where the facts as presented by prosecution are disputed then that should put the Magistrate on alertness as to whether the plea of guilty is to be treated as an unequivocal admission of guilt. This was one of the matters that the learned Chief Justice Ward referred to in his judgment in the case of *Yaneo -v-DPP 1985/1986 SILR 199 at page 200* where he said:

There must be something at the earlier hearing that suggests the plea was not an unequivocal admission of guilt. Usually this will only be apparent on the record, but, in exceptional circumstances, the court will consider other matters that may be thought to show some equivocation."

It is not an offence to carry a firearm. In this particular case it does not appear to be an issue that the Defendant had a valid licence for the .22 rifle.

The submissions of learned counsel for the Defendant on the facts as presented by the prosecution imply that there was an absence of disorderly behaviour when the firearm was carried. The disorderly elements in the facts were denied and a different version of events presented. This is the crucial part because as soon as the key elements pertaining to the disorderliness were disputed in the facts as presented by prosecution, the learned Magistrate should have changed the plea to a not guilty one. However, where he is satisfied that the elements of the offence have been established on the facts and are not disputed, but that the only facts disputed were those that would affect the seriousness of the offence then the guilty plea can be maintained but he should allow witnesses to be called to give evidence on the disputed facts only and then make a ruling.

In this particular case for instance he made a ruling on one of the disputed facts which was not proper for him to do. One of the facts disputed was that the rifle was not loaded. He however pointed out that in his opinion it was loaded. The proper thing for him to do is to hear evidence and then make a ruling. His opinion then would carry weight. It is possible that after hearing evidence he may come to the conclusion that the rifle was not loaded.

Having considered the record of proceedings and the ruling made by the learned Magistrate and noting the fact that the Accused was represented, I am satisfied that the guilty plea was an equivocal plea and that it should have been changed to a not guilty

plea after the Defendant's counsel had pointed out disagreements to the facts presented by the prosecution that go to the root of the offence.

The appeal accordingly is allowed and the conviction quashed. The case is remitted to the Magistrates' Court for hearing by another Magistrate.

(A. R. Palmer)
JUDGE