

Police Department v Trumer

Supreme Court

10 Hill J

Cr App.16/1981

Arms and ammunition - what constitutes concealment of arms.

Arms and ammunition - importation - what constitutes importation of arms

Import - what amounts to importation

20 Trumer was charged with three offences under the Arms and Ammunition Act relating to the importation into Tonga of a small pistol and cartridges, which a customs officer noticed were in his possession as he was passing through customs clearance at the airport.

The Magistrates Court acquitted him of all three charges, and the police department appealed to the Supreme Court.

HELD:

Upholding the appeal on two charges.

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- (1) The defendant had failed to make a declaration about the firearms and so was in breach of s20 of the Act.
 - (2) The defendant had brought the firearms onto the land of Tonga and so had imported it in breach of s16 of the Act.
 - (3) It had not been proved beyond reasonable doubt that the defendant had concealed the firearms, and so no breach of s23 of the Act had been proved.

Statutes considered

40 Arms and Ammunition Act, ss16, 20, 23

Cases considered

Reg v Smith [1973] 2 All ER 1161

Counsel for Police Dept.: Mr Niu

Hill J

Judgment

This is an appeal by the police against the acquittal of the accused on three charges relating to importing into the Kingdom an arm and ammunition that is to say a small pistol gas cartridges and flare cartridges. On the 21st January the respondent to this appeal disembarked from an aeroplane coming from Samoa and he went through Immigration and got as far as customs and it appears that two or three of his bags had gone through
50 customs when a custom's officer asked him "what is that?" and "that" was a box - in a handbag which he brought with him from the plane. Then the custom's officer says he made some rather indefinite sign; the customs officer asked him again and he pointed with his finger and then the customs officer realised that it was a pistol. He was then informed that he was not allowed to import pistols and the pistol was taken away from him by a Senior Customs Officer. Now it is important to note that at no time until he was questioned about this box did he give any indication to the police or to the customs that he had got this firearm with him.

Therefore, to start with the easiest charge, which is the one under section 20, he is
60 undoubtedly guilty of an offence; because the Section says: "every person entering the Kingdom who has in his possession or among his baggage any arm or ammunition shall make a declaration thereof to customs officer on arrival and before clearing such arms or ammunition through customs; and shall produce to such customs officer a licence issued under Section 16 in this Act.

Well that he undoubtedly did not do and therefore obviously there he has committed an offence under that Section.

Section 16 which reads "No person shall import any arm or ammunition or part of arm and ammunition into the Kingdom from a place without the Kingdom unless he holds
70 a licence in that behalf." And it goes on to provide that when any arm or ammunition is imported into the Kingdom without an import licence or interim licence under this Section having been obtained, authorising the importation shall not be deemed to contravene the provisions of this section while such arm or ammunition on importation is left in the possession of the Tonga Police Force.

Now then the question which arises and it is one which has already arisen elsewhere is whether you have to go through customs to import anything or whether importation takes place at some and if so what earlier stage? Mr Niu for the prosecution suggest a very wide limit for importation; he suggests it means bringing within the declared limits of the Kingdom any goods. Well, it is not necessary to decide that in this case because there is
80 no dispute that the goods were brought on land and the sole question is whether they have to go through customs. In my view, importation, means bringing goods into the Kingdom. Now, what that expression may mean may have to be decided another day. But I think that it certainly includes actually bringing goods onto the solid land and I do not think it is necessary that the goods should have passed through Customs. Otherwise of course no smuggled goods could ever fall within the ambit of this Act.

There is some English Authority on this matter, A case called The Queen -v- Smith (Donald) [1973] 2 AER 1161 and there the prohibited goods never went through Customs at all. They came in from East Africa and they went out to the West Indies without ever going out of bond. I therefore think that this arm and his ammunition were imported. And I accordingly think that an offence was committed under Section 16(1) because the
90 Respondent cannot bring himself within the proviso. What he had to do to do that was

to go to the first police officer he saw when he arrived and say "I've got a pistol and some ammunition will you look after it for me please".

I now turn to the third section which is Section 23 and that relates to concealing goods which have been imported. Now this really turns on the evidence which I have heard and I must say that I am not satisfied beyond reasonable doubt, which is the standard, that the Respondent concealed this pistol and ammunition and therefore he must get the benefit of the doubt. The appeal will be allowed to the extent that the Magistrate's decision in respect of that charge will be upheld but there it will be a conviction in those other two cases.

The question has now arisen about what should happen to this pistol and this ammunition and the Crown Law Office have asked me to confiscate it as I have got power to do under the Act. On the whole I think it will be best if these weapons are not returned to Mr Trumer. They are forfeited and to be retained here by the Police.