



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL DIVISION**

INDICTMENT NO: 0019 OF 2023

THE CROWN

V.

ANTON PARYGIN

Coram: The Hon. Mrs. Justice Marlene Carter

Appearances: Mrs. Hema Soondarsingh for the Crown

**Mr. Ben Tonner K.C. of McGrath Tonner instructed by Mr. James Stenning
of Stenning's Chambers, Counsel for the Defendant**

Heard: 05 February 2024

Ruling: 06 February 2024

HEADNOTE

***Criminal Law – Importation of Firearms – Trial - Preliminary Legal point – Firearms Act -
Interpretation of Section 5***

RULING

BACKGROUND

1. The Defendant is charged with three counts of Possession of an Unlicensed Firearm contrary to section 15(1) and section 15(5) of the ***Firearms Act*** (2008 Revision) and three counts of Unlawful Importation of an Unlicensed Firearm contrary to s.3(1) and s.3(4) of the ***Firearms Act*** (2008 Revision).
2. The Defendant pleaded not guilty to all of the offences on 21 July 2023.
3. On 28 January 2023, the Defendant arrived at Owen Roberts International Airport, George Town, Grand Cayman, with three firearms for which no import permit was in place.



4. It is not in dispute that prior to his arrival on Island, the Defendant was in contact with the RCIPS firearms licensing department. He sought information regarding arrangements for his guns, the three firearms which form the basis of the offences for which he is charged, to accompany him to the Cayman Islands when he travelled to the Islands for residence and for work purposes.
5. Counsel have proposed that the Court deal with the purely legal question of the interpretation of section 5 of the *Firearms Act*.

ISSUE FOR DETERMINATION

6. The Court has been invited to determine an issue regarding the interpretation of section 5 of the *Firearms Act*. For the purpose of the argument, the agreed proposition is that the Defendant is taken to have disembarked with the firearms with the intention of declaring them to Customs and that he, in fact, so declared them to a Customs officer when he entered the Owen Roberts International Airport. At issue is whether having done so, he has a defence to the allegation of importation of firearms for which he has been indicted.
7. Section 5 of the *Firearms Act* states as follows:

“Traveller’s option

5. (1) *Every traveller who declares under section 4 that he has any firearm or bullet-proof vest in his possession shall either —*
 - (a) *cause such firearm or bullet-proof vest to be retained upon the vessel or aircraft upon which he arrived into the Islands until after such vessel or aircraft departs from the Islands; or*
 - (b) *deliver such firearm or bullet-proof vest to a customs officer in a sealed packet to be dealt with in accordance with section 6, unless the traveller is the holder of a permit under section 19, or he has the written approval of the Commissioner under section 3(2), authorising the importation of such firearm or bullet-proof vest into the Islands.*
- (2) *Whoever contravenes subsection (1) is guilty of an offence and liable on conviction to a fine of one hundred thousand dollars and to imprisonment for twenty years.*

8. The Crown accepts that section 5 permits a traveller to enter the Cayman Islands with a firearm for which he has no import permit or the written approval of the Commissioner and after he has made a declaration to a Customs officer that he has the firearm in his possession, deliver the firearm to a Customs officer in a sealed packet to be dealt with in accordance with section 6.
9. This is the scenario employed by the Defendant in this case. The Defendant utilized the option of section 5(1)(b). He was not the holder of a permit under section 19, nor did he have the written approval of the Commissioner under section 3(2) authorising the importation of such firearms.
10. Section 6 of the Act states:

“Custody of firearms and bullet-proof vests by customs officer

6. Every firearm and bullet-proof vest received by any officer of Customs under paragraph (b) of section 5(1) shall be retained in the sealed packet in which it is received until either —

(a) the traveller from whom it was received produces to a customs officer a permit, or the Commissioner’s written approval, authorising the importation of such firearm or bullet-proof vest into the Islands and pays the appropriate duty on such firearm or bullet-proof vest, in which event it shall be delivered to the traveller; or

(b) such traveller gives not less than seven days’ notice in writing to the Collector of Customs specifying some port at which he intends to embark for some place outside the Islands and the date, time and vessel upon which he intends so to embark, in which event the sealed packet containing such firearm or bullet-proof vest shall be delivered to the traveller immediately before he so embarks.”

11. The Crown has invited this Court to find that the lodgment of the firearms with Customs under section 5(1)(b) could only be for a short period of time. The Crown, in written submissions, stated.

“Sections 4 through to 7 should be construed to capture those situations where the traveller is on island temporarily (i.e. mooring a boat for a day or so in Cayman and

the traveller wishes to lodge his firearm for safe keeping etc.) or where necessary paperwork is not in the traveller's possession but soon would be. This proposition is reflected in the options provided to the traveller in section 5(1)(a) and 5(1)(b) namely to keep the firearm on board the vessel on which the person has travelled or lodge it with a Customs official."

12. The Crown submits that the Defendant – whom there is no dispute, was in possession of a valid work permit for a period of two years – could not avail himself of section 5(1)(b). He was not a traveller on Island temporarily. Further, the Crown submitted that the Defendant was not a traveller, who, although the necessary paperwork was not in his possession at the time of lodgment, would soon be able to provide it to Customs.

13. The Crown submits that section 5(1)(b), read with section 6(a) cannot:

"... enable a traveller to hand over his firearms in the hope that retrospectively he may apply for and be granted an import permit or that he may take weeks and/or months to seek and obtain approval from the commission of police. Lodging of firearms with customs officers in those circumstances would be based upon hope speculation or both. In addition. It would be inconsistent with the purposes of the legislation."

INTERPRETATION

14. Interpretation of a statute is the process of ascertaining the true meaning of the words used in the statute. If the words of a statute are clear and unambiguous and only one meaning can be derived, it is the duty of the Court to give effect to the natural meaning of the words used in the provision. Penal statutes, in particular, must be strictly construed.

15. Maxwell on Interpretation of Statutes states:

"Express language is necessary for the creation of criminal offences, therefore no action is to be deemed criminal unless it is clearly made so by the words of the statute concerned."

16. I have these principles in mind as I consider the issue for determination. I have these in mind as I consider that the Crown has made no submission that there is any ambiguity arising from



the words of the particular provisions of the statute with which we are concerned on this application.

THE FIREARMS ACT

17. As the Crown conceded during oral arguments, the *Firearms Act* does not limit the operation of section 5(1)(b) to a traveller who is only in the Cayman Islands for a short period of time.
18. In answer to a query from the Court, the Crown acknowledged that the *Act* only identifies one class of “traveller”. Section 2 of the *Act* defines “traveller” to mean “any person who arrives in the Islands as an officer or member of the crew or passenger or stowaway upon any vessel or aircraft.”
19. There is no distinction made in the *Act* between an overnight tourist, a traveller who enters by yacht for a short period of time, a work permit holder, or even a temporary work permit holder. While it may be that section 5(1)(b) is employed by persons in situations where the traveller is on island temporarily “*i.e. mooring a boat for a day or so in Cayman and the traveller wishes to lodge his firearm for safe keeping etc.*”¹, there is nothing in the legislation to state that even such a traveller could not moor his yacht in the waters of the Cayman Islands for more than a day or even up to a month. In the clearest of terms, section 5 affords *any traveller* the option to deliver a firearm in his possession to a Customs officer in a sealed packet to be dealt with in accordance with section 6 once he has disembarked with the intention of so doing and has declared this intention to Customs.
20. Section 6 of the *Act* is mandatory in its terms. The section is stated in the clearest of terms and without ambiguity. Every firearm received by any officer of Customs under paragraph (b) of section 5(1) shall be retained in the sealed packet in which it is received. The Customs officer must retain that packet unless and until the traveller satisfies the officer by producing a permit, or the Commissioner’s written approval, authorising the importation of such firearm and paying the appropriate duty on such firearm, in which event it shall be delivered to the traveller.
21. Neither section 5 nor section 6 of the *Act* imposes a time limit if the Traveller Option employed in this case is engaged. If the legislature considered that it was necessary to impose a finite

¹ To use the Crown’s example

period in which the firearm was to be so retained by the Customs officer under section 6(a), given the nature of the statute, the legislature would have provided such in the statute.

22. Indeed, in the very next subsection at section 6(b) the legislature does impose such a timeframe. A traveller who had lodged a firearm with Customs and wished to leave the Islands must give requisite notice of at least seven (7) days to the Collector of Customs of his intention to leave the Islands in order that:

“...specifying some port at which he intends to embark for some place outside the Islands and the date, time and vessel upon which he intends so to embark, in which event the sealed packet containing such firearm ...shall be delivered to the traveller immediately before he so embarks”.

23. The Crown has submitted that the Court should interpret section 5 as connoting only a temporary arrangement which is afforded to a traveller on a boat or plane in order to avoid the criminality to be found in section 3.
24. This Court cannot agree with such an interpretation.
25. It may be that section 5(1)(b) is commonly employed in the manner in which the Crown has argued. As a shipping and tourism destination, this is not unusual. However, the language of the statute does not preclude the section being employed by a traveller who is not a transient visitor.
26. The argument that the Crown offers in support of the position that it has taken on this application also undermines it. The Crown submits that it must be a temporary arrangement because the grant of an import permit or approval may take weeks or months to obtain. Yet the provision allows for such to be delivered to a Customs officer after lodging of the firearm(s) without setting a time limit for same. It cannot be taken that the legislators would have been unaware of what was involved in applying for and obtaining such permits or approvals. The positive proposition must be implied, that is that the legislature was well aware that permits and approvals may take some time and that it was imperative to ensure any such firearm remains in the possession of a Customs officer while these were being obtained.
27. The mischief that section 5(1)(b) read with section 6(a) seeks to mitigate is that persons entering the jurisdiction who may be lawfully in possession of a firearm but for which they do not have



an import permit or approval, arrive and do not declare the firearm and it is taken into the community. The section allows such persons to lodge their firearms with Customs and then seek to obtain the necessary approvals. Had the intention of the legislature been, otherwise, the *Act*, penal in nature, would have stated clearly that persons may not enter until such permits or approvals have been obtained. To this Court's mind, to interpret the legislation otherwise than is plainly stated by its terms would run counter to and defeat the legislative intent, and the Islands would then run the risk of persons seeking to conceal firearms as they entered the jurisdiction. The procedures outlined in the *Act* seek to protect the community by ensuring that no firearm will be returned to a traveller without the necessary permissions.

28. The Collector of Customs may, where there is no time limit supplied by the legislation, seek to impose a reasonable time limit within which such permits or approvals may be sought and obtained, failing which the firearm may be forfeited, destroyed or sent back to the destination from which it came.
29. At the request of this Court, the Crown has produced a copy of a form entitled "*Ship's Report*" from the Cayman Islands Customs and Border Control. Crown Counsel confirmed that this is a form presently in use by the CBC, which is issued to those persons who may choose to employ section 5 of the *Act*. This document is instructive on the procedures employed by Customs. The document or form allows for a declaration of the firearm to be lodged and states as follows:

"Firearms and Ammunition may not be retained on board without a permit whilst the vessel is in Cayman Waters. Any unlicensed weapons must be delivered to Customs and Border Control for retention in their custody until the vessel clears outwards." It is further stated on the form that *"Weapons which are not reclaimed within 12 months of deposit with CBC are forfeited to the Crown."*

30. It appears that Customs' procedure is to allow persons who have utilized the Traveller Option at section 5, the comfort of the firearm being retained by Customs for at least twelve (12) months. The Collector has set what may be considered a reasonable time limit for retention of firearms which come in on ships or vessels. The Crown has not satisfied this Court that there is a basis for making a distinction between a traveller who comes into the Islands on an aircraft rather than on a ship or vessel. It is difficult to understand any such basis given the definition of Traveller at Section 2 of the *Act* and the provisions of Section 5 of the *Act* which make no such distinction.



31. The short issue for determination is whether section 5 is merely a temporary arrangement such that a person who intends to reside in this jurisdiction for a longer period cannot avail himself of the options furnished by that section upon arrival in the Cayman Islands.
32. This Court concludes that the legislation does permit such a traveller to avail himself of the option under section 5(1)(b). Once the Defendant entered the jurisdiction with the intention of declaring that he had firearms to a Customs officer and he did so declare them, the fact that he did not then produce an import permit or authorization from the Commissioner of Police at that stage is of no moment. Customs were obliged to retain the firearms.
33. There is no basis in law for stating that the Defendant could only lodge the firearm if he was on the island temporarily, nor is there a basis in law for stating that he could not do so if he would not soon be able to produce the necessary permits or approvals a short time after the firearms were lodged. I have made no determination on the question of whether the Defendant was given any time to produce the necessary permits or approvals. In accordance with the clear provisions of the *Act*, the Defendant is entitled to the protection afforded him as a “traveller” by the deeming provision in section 7 of the *Firearms Act*.
34. In the language of section 7 the Defendant...

“...shall not be deemed to import any firearm [...] into the Islands merely by reason of such firearm being in his possession or under his control although he has caused such firearm to be disembarked from an aircraft in the Islands it being for the purpose of being delivered to a customs officer in accordance with section 5.”

Carlene J.

The Hon. Mrs. Justice Marlene Carter
Judge of the Grand Court