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ROYAL COURT
(Samedi Division)

87.

14th May, 1997

Before: Sir Peter Crill, K.B.E., Commissioner, and
Jurats de Veulle and Le Brocq

Between:	Derek John Charles Bernard	Appellant
And:	The Constable of St. Clement	Respondent

Appeal under Rule 12 of the Royal Court Rules, 1992, as amended, in exercise of the right of appeal conferred by Article 4(8) of the Firearms (Jersey) Law, 1956, as amended, against the Respondent's decision to remove the Appellant's Firearms Certificate, the authority to purchase or acquire an Arwen 37 firearm and ammunition therefor.

The Appellant on his own behalf.
Advocate W.J. Bailhache for the Respondent.

JUDGMENT

THE COMMISSIONER: This is an appeal by Mr. Derek John Charles Bernard from the decision of the Constable of St. Clement of 11th November, 1994, to remove from his Firearms Certificate his authority to possess a Royal Ordnance Arwen 37 and 100 37mm. baton rounds. The letter is couched in the following terms:

"Dear Mr. Bernard,

Re: Arwen 37 and Associated Ammunition

Police Headquarters have again drawn my attention to the fact that your Firearms Certificate still shows authority to possess or acquire a 37mm. Royal Ordnance Arwen 37 and associated ammunition.

Having had further discussions with the States Police I am of the opinion that this authority was granted in error upon recommendation from the Police.

I therefore must inform you that the authority to possess or acquire the said weapon and ammunition will be removed from your Certificate as from this date.

Yours sincerely,
L.R. HAMEL

Connétable."

We set out very briefly the background because, as will become apparent from our decision, we do not think it necessary to go into the facts of the granting of the Certificate in any great detail.

Mr. Bernard was first granted permission to have the Arwen 37 and the ammunition, together with other weapons, in July, 1985. His Certificate was renewed in April, 1992, on his undertaking not to acquire an Arwen 37 and ammunition until the Constable had made up his mind following representations to him by the States of Jersey Police. In fact, as a matter of record, Mr. Bernard has never acquired an Arwen 37 or the ammunition. He could have in 1985; but he told us he was not able to do so in 1996, at least, not from the Royal Ordnance Factory or its successor.

The first matter which we have to consider is the scope of an appeal of this sort. Were it not for the Court of Appeal's decision in Fairview Farm Limited -v- IDC (30th October, 1996) Jersey Unreported, we might have felt constrained by the decisions of this Court in Mesch -v- Housing Committee (1990) JLR 269 and in Steven -v- Constable of St. Saviour (18th February, 1991) Jersey Unreported. As it is, we have felt able to look at the matter *de novo*, and have done so. It is now necessary for us to set out the law in a little more detail.

The long title to the Firearms (Jersey) Law, 1956 is this:

> *"A law to control the manufacture, acquisition, transfer, possession and use of firearms, imitation firearms and other weapons, and ammunition, and to make provision in relation to matters ancillary thereto sanctioned by Order of Her Majesty in Council".*

In Article 1, that is to say the Article of Interpretation there is, as one may expect, an interpretation of the word "firearm" as follows:

> *" "firearm", except where otherwise expressly provided, means any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged, and includes any prohibited weapon, whether it is such a lethal weapon as aforesaid or not, any component part of any such lethal or prohibited weapon, and any accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon".*

Part II of the Law deals with the *"regulation of purchase, possession, manufacture and sale of certain firearms and ammunition and other transactions"* and Article 4(2) of that part provides as follows:

> *"The Constable shall grant a certificate if satisfied that the applicant has a good reason for purchasing, acquiring, or having in his possession the firearm or ammunition in respect of which the application is made, and can be permitted to have in his possession that firearm or ammunition without danger to the public safety or to the peace:*
>
> *Provided that a certificate shall not be granted to a person whom the Constable has reason to believe to be prohibited by*

this Law from possessing a firearm to which this Part of this Law applies, or to be of intemperate habits or unsound mind, or to be for any reason unfitted to be entrusted with such a firearm".

Sub-paragraph (7) of Article 4 is as follows:

"A firearm certificate may be revoked by the Constable of the Parish in which the holder resides if -

(a) the Constable is satisfied that the holder is prohibited by this Law from possessing a firearm to which this Part of this Law applies, or is of intemperate habits or unsound mind, or is otherwise unfitted to be entrusted with such a firearm; or

(b) the holder fails to comply with a notice under paragraph (5) of this Article requiring him to deliver up the certificate".

Finally I turn to Article 19 of the Law, paragraph (1) of which is as follows:

It shall not be lawful for any person without the authority of the Committee to manufacture, sell, transfer, purchase, acquire, or have in his possession -

(a) any firearm which is so designed or adapted that, if pressure is applied to the trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty; or

(b) any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing; or

(c) any ammunition containing, or designed or adapted to contain, any such noxious thing".

It is common ground that we are only concerned with paragraph (b) in this context, although Mr. Bernard has urged upon us that in fact it is paragraph (c) which is the relevant one for our consideration.

Lastly, I cite sub-paragraph (7) of Article 19:

"The foregoing provisions of this Article shall be in addition to and not in derogation of any other provisions of this Law or any other Law relating to the manufacture, sale, transfer, purchase, acquisition or possession of firearms".

Our reading of the above provisions indicate that an applicant wishing to acquire a prohibited weapon has to satisfy two authorities; he has to satisfy the Defence Committee and he has to satisfy the Constable. If an Arwen 37 is within the definition of a prohibited weapon, it would in our opinion, be inappropriate for us to make any order to restore it and the ammunition to Mr. Bernard because to do so would usurp the proper functions of the Defence Committee.

We therefore agree with Mr. Bailhache that we have to decide on the evidence before us whether or not we find that an Arwen 37 falls within the definition of a prohibited weapon under Article 19(1)(b) of the Law.

It is important, we think, to bear in mind the purposes of the Law, and I have already cited the long title where the stress is, as Mr. Bailhache has rightly pointed out, on the control of firearms. Nevertheless, we have had regard in our consideration of the matter to a passage in a Scottish case, Anderson -v- Neilans [1940] SLT 13 where the Sheriff-Substitute, Mr R.C. Malcolm, has this to say at p.15:

> *"The whole provisions of the Act* (he is referring to the Firearms Act 1937 which is very similar to ours) *make it clear that the intention is not general and indiscriminate prohibition of possession of firearms, but regulation and, where necessary, restriction of the common law right of possession in the interests of public safety".*

That seems to us to have been the deciding factor both as regards the Constable's decision and also the advice he was given by the Police.

As regards the evidence we heard from Mr. Pryor who was a forensic expert from the Forensic Services Metropolitan Laboratory who has had 25 years experience in firearms. He was in no doubt that an Arwen 37 is a prohibited weapon in the United Kingdom. The equivalent section to our Article 19(5) is section 5 of the Firearms Act 1968 the sub-section of which 5(b) is identical to Article 19(5). There was an amendment to the 1968 Act in 1988, but it is not germane to the present case.

Secondly, Sergeant Picot, for many years experienced in dealing with firearms in the States Police Force, was of the same opinion.

Finally, we have to look at the makers' own description illustrated in a pamphlet entitled "ARWEN - A Development Success story" emanating from the Royal Ordnance Factories in Southwark Street, London, published by Strategic Publishing Ltd and reprinted from Law Enforcement Technology International (now International Law Enforcement) Volume 1 No. 3. The first paragraph in the extract from the article is as follows:

> *"The majority of internal security campaigns throughout the world have seen the deployment and use of riot guns as one of the methods employed to keep rioting crowds at bay from security forces and ultimately to disperse them".*

[It is quite true, as Mr. Bernard has mentioned, that certain ammunition, such as the AA1 Ferret Barrier Penetration Round can be used in an ordinary shotgun, but that is not germane to the present argument]. At p.000122D, after there had been a recital of the history of anti-riot guns, the pamphlet continues:

> *"After further final developments, RSAF produced its new anti-riot weapon which was designated ARWEN 37".*

There are a number of different types of ammunition that can be used with an Arwen 37; there is the baton round which I shall come to in

a moment; there is a multi-source irritant smoke round; there is a frangible nosed baton round; there is a smoke screening round; and a barrier penetrating irritant round. I read finally from the last paragraph:

> *"In any one of its different configurations ARWEN provides police or para-military forces with a highly effective and flexible method of containing situations involving riots and civil disobedience. In riot situations, selective use of the relevant natures of ammunition, combined with the weapon's firepower, will enable principle targets within a crowd to be rapidly isolated and neutralised, and the crowd itself to be subsequently dispersed. In addition, ARWEN has great potential as a non-lethal weapon for specialist police use. There is no doubt that ARWEN is impressive and that RSAF are to be congratulated on producing such a versatile weapon capable of performing a variety of roles".*

Mr. Bernard submitted with great skill and clarity that the weapon itself could not be a prohibited weapon because it was the ammunition and not the weapon that was designed for the prohibited use. The weapon had been designed to be a more accurate method for shooting batons. He was supported by the written evidence of Mr. Colin Greenwood, himself a firearms consultant of many years experience which, unfortunately, was not open to cross-examination and to that extent might be said to be weaker than the oral evidence we have heard in the report. His conclusion at the end of his report is as follows:

> *"Despite its unusual appearance, the Arwen 37 is not in the same category as an ordinary firearm. In its normal role it represents little more than a mechanical means of extending the length of the arm of a truncheon wielding police officer or soldier. It is, however, capable of serving other functions which require very low energy projectiles".*

There is also a letter dated 26th June, 1996, from the principal designer of the Arwen 37, Mr. Jack Comley, to Mr. Bernard, who writes:

> *"Although I had a great deal of help from other engineers and scientists, I was considered to be the main designer of the ARWEN system. Throughout the project two of the main requirements were to improve accuracy and to reduce the risk of lethality using a standard baton round. We met these two requirements by the following means:*
> (He then goes on to give some technical reasons as to why he has succeeded in doing that).

It seems to us that whatever the description of its designer, the principle, if indeed, perhaps, the only possible use of such a weapon as an Arwen 37 is for riot control. The insertion of the various types of ammunition, including some capable of throwing an irritant gas into people's faces taken together, in our opinion, brings the Arwen 37 into the category of a prohibited weapon.

Mr. Bernard stressed that the Arwen 37 is a non-lethal weapon, as indeed it has been described in the first extract I cited which dealt with what it was, and that its use or use of other weapons of the same

sort have reduced casualties considerably in Northern Ireland, for example. However, Article 19(1)(b) makes no distinction between a lethal and a non-lethal weapon as such and indeed the interpretation Article which I read earlier in this judgment makes a specific inclusion of a non-lethal weapon.

Accordingly, we find that an Arwen 37 is a prohibited weapon as defined by Article 19(1)(b).

It is necessary now to say something about the procedure surrounding this appeal. We think the Constable cannot be blamed for the decision he took, although there was some delay, which seems to be unexplained, between being told by the police that Mr. Bernard should not have an Arwen 37 in or about April, 1992, and communicating his decision to Mr. Bernard in November, 1994. He should have been alerted by the States Police that there was indeed such a thing as a prohibited weapon as defined by Article 19. It is strange that the application form itself does not mention it so that even an applicant is not put on notice.

There is a division of responsibility between the Defence Committee and the Constables. It is the former which regulates primarily the sort of weapons which require its consent and whether they should be allowed to be held by various people who might apply to them for its authority, but it is the Constable who is charged particularly in the legislation with satisfying himself that he or she is an appropriate person to be entrusted with a firearm in accordance with a certificate. It is inconceivable, of course, although the Constable is entitled to look at the type of weapon, that he would grant a certificate for a prohibited weapon.

We think that it is unfortunate that the States Police did not brief the Constable sufficiently fully for him to become appraised of the fact that there was this provision in the Law; we say no more on that point. Having made our decision that an Arwen 37 is a prohibited weapon, we decline to order the Constable to reinstate it and its ammunition on Mr. Bernard's certificate. If Mr. Bernard wishes to apply to the Defence Committee for that Committee's authority for him to hold such a weapon he is, of course, at liberty to do so. If he is successful then we direct the Constable to reconsider his decision because we are satisfied that Mr. Bernard can be trusted not to abuse the position were he to be granted the authority to hold such a weapon.

Although it is a rule that costs normally follow the event, there is something exceptional about this case which I want to mention. Had the States Police informed the Constable that an Arwen 37 was a prohibited weapon in the United Kingdom under identical legislation, we have no doubt the matter probably would not have got to Court. If Mr. Bernard had been informed that that weapon was on the prohibited list in England, he would have immediately been alerted to the unlikelihood of his obtaining permission from the Defence Committee here and the whole matter would not have proceeded as it did. Under the circumstances I propose to make no order for costs.

Authorities

Firearms (Jersey) Law, 1956.

Firearms Act, 1968.

Steven -v- Constable of St. Saviour (18th February, 1991) Jersey Unreported.

Mesch -v- Housing Committee (1990) JLR 269.

Fairview Farm Limited -v- IDC (30th October, 1996) Jersey Unreported CofA.

R -v- Bradish [1990] 1 All ER 460.

Kavanagh -v- Chief Constable of Devon & Cornwall [1974] 2 All ER 697.

Hughson -v- Lerwick Police [1956] SLT 18.

Greenly -v- Lawrence [1949] 1 All ER 241.

Anderson -v- Neilans [1940] SLT 13.

Todd -v- Neilans [1939] SLT 12.

R -v- Formosa, R -v- Upton [1991] 1 All ER 131.