

**IN THE DISTRICT COURT
AT GREYMOOUTH**

**CRI-2016-018-000871
[2017] NZDC 18838**

**NEW ZEALAND POLICE
Prosecutor**

V

TROY ANDREW PERRIN

Date of Ruling: 23 August 2017
Appearances: G Henderson for the Prosecutor
R Bodle for the Defendant
Judgment: 23 August 2017

REASONS FOR VERDICT OF JUDGE P R KELLAR

[1] Mr Perrin is charged with an offence under s 51(c) Arms Act 1983 of being unlawfully in possession of a military-style semi-automatic firearm as specified in the charging document.

[2] The prosecution is required to prove beyond reasonable doubt two things; first: that Mr Perrin was in possession of the specified firearm. In order that a person has “possession,” of an item, the person must be aware of where the item is, be aware of what the item is, have actual or potential control over the item and have an intention to exercise that control. The second matter the prosecution must prove beyond reasonable doubt is that the item was a military-style semi-automatic firearm. In that respect, I refer to and incorporate within this decision, the interpretation provisions of

s 2 Arms Act defining semi-automatic firearm and military-style semi-automatic firearm respectively. Once the prosecution has proved that the defendant is in possession of a military-style semi-automatic firearm, the burden of proving that the possession was authorised under the Arms Act lies on the defendant on the balance of probabilities.

[3] Mr Perrin is the holder of a firearms' licence. In order to be authorised to be in possession of a military-style semi-automatic firearm, he would require an "E" endorsement on his firearms' licence. It is not an issue that Mr Perrin does not have such an endorsement and accordingly would not be authorised to be in possession of a military-style semi-automatic firearm. I will abbreviate military-style semi-automatic firearm simply to the words: military-style firearm.

[4] The issue is whether Mr Perrin was in possession of a military-style firearm. The defence case is that the police have not proved beyond reasonable doubt that the firearm, that was in Mr Perrin's possession, was a military-style firearm.

[5] On 25 October 2015, Mr Perrin purchased what is described as a new 7.62 X39 Norinco NHM 90 tactical package rifle from Gun City, the serial number of which was [number deleted]. He also purchased some ammunition, a bag and a cleaning kit. Almost a year later to the day on 26 October 2016, Mr Perrin posted various items for sale on a Facebook page. He posted pictures of a rifle with the following words, "7.62 x 39 near new 250 rounds, 150 grains, 250 FMJS rounds or swap... licence required." That entry was posted at about 11.21 in the morning on 26 October 2016. At 1.56 pm on the same day Mr Perrin posted these words, "It's a semi-auto model AK, it is AK." He received an enquiry from a [potential purchaser] enquiring whether, "Is it SKS or Klash?" to which Mr Perrin replied, "MACK90 1.5 mill receiver. Comes in either configuration X3," meaning by three, "15-round mags, 1 30-round all Tapco mags." He also posted a picture of the rifle with the different setup.

[6] On 4 November 2016 police executed a search warrant at Mr Perrin's home and seized a number of exhibits including a telescopic stock pistol grip, 7.62 x 39 ammunition and a five-shot magazine. The police also uplifted a recoil spring, gas piston assembly and a bolt for a semi-automatic 7.62 x 39 rifle which featured the

numbers 0030 stamped on it. Mr Perrin chose to make a statement to the police. He said that he had a defective Norinco NHM 90 for sale. He said the gas block was defective and that the bolt could no longer be fitted to the rifle. He also said the gas block and bolt housing was rusted. He said that he changed the rifle out from what he purchased from Gun City by the addition of a foregrip and stock. Mr Perrin also told the police that the, what I will call “the rifle” was in second hand condition and a very worn state when he purchased it. That statement seems contrary to the unchallenged evidence of Mr Tipple from Gun City, that the rifle was new when sold. Mr Perrin denies that the rifle was a semi-automatic when he purchased it and said that, “It was just a single shot.” He did not accept that he changed the rifle from being a single shot to a semi-automatic.

[7] As to Mr Perrin’s comments on Facebook that the firearm was a, “Semi-auto,” Mr Perrin told the police that he could say whatever he liked and that he was lying when he gave that description. It is not an element of the offence but Mr Perrin would not name the person to whom he disposed of the firearm or say where it is now.

[8] Mr Namoki, a senior police armourer, examined the various items found in Mr Perrin’s home during execution of the search warrant. Mr Namoki is undoubtedly an expert in firearms and related matters. He examined each of the items and said this, “The first was a buffer tube and stock designed to fit an M4 rifle.” Mr Namoki opined that, “If they were fitted to a semi-automatic firearm that is not a pistol it would make that firearm a military-style semi-automatic.” He also examined a pistol grip made by Tapco. Again Mr Namoki expressed the opinion that, “If that were fitted to a semi-automatic firearm that is not a pistol it would make that firearm a military-style semi-automatic.”

[9] There was also a five-round capacity magazine designed for an AK47 or a derivative of such a firearm found at Mr Perrin’s property. Mr Namoki said in evidence that, “The magazine, if fitted to an AK47 or something of that nature, would be classed as a semi-automatic firearm in sporting configuration as long as the rifle did not have any other military-style semi-automatic features.”

[10] He also examined a bolt carrier, bolt and recoil spring for an AK47 or a derivative of such a weapon. “Those parts,” he said, “Could fit in either a semi-automatic in sporting configuration or a military-style semi-automatic.” He examined a buffer and buffer spring for an M4 model rifle and again said that, “Those items could fit in a semi-automatic in sporting configuration firearm or a military-style semi-automatic.” Lastly, he examined a site bracket which attaches to the side of an AK47 or a derivative of it and again said, “That could be attached to a semi-automatic firearm in sporting configuration or a military-style semi-automatic.”

[11] Mr Namoki noted that the bolt carrier and the bolt bore the serial number [four numbers deleted]. His evidence was that those numbers matched the last four digits of the serial number of the firearm Mr Perrin had purchased from Gun City and that those items appeared to be new. It is an inescapable inference that Mr Perrin purchased the rifle and the bolt carrier, bolt and recoil spring as part of the package he obtained from Gun City because they bear matching numbers or parts of the serial number and both were in new condition. If Mr Perrin had purchased or otherwise acquired the bolt carrier, bolt and recoil spring for another rifle then they would necessarily have had a different serial number.

[12] The definition of firearm in s 2 of the Arms Act relevantly states the following, s 2 – Definition of Firearm (b)(ii):

Anything which is not for the time being capable of discharging any shot, bullet, missile or other projectile but which, by its completion or the replacement of any component part or parts or the correction or repair of any defect or defects, would be a firearm within the meaning of paragraph (a) of this definition or subparagraph (i) of this paragraph, hence anything that comes within those provisions is included within the definition of a firearm.

[13] There are a number of aspects to this. Firstly: an inoperable weapon that is rendered capable of discharging a bullet or projectile comes within the definition of a firearm in three possible ways. The first is its completion. In *P v Jackson*¹, the enquiry as to whether parts of a firearm satisfy the definition under that paragraph is determined objectively by reference to the characteristics of a firearm and not by reference to the state of knowledge or mind of the possessor as to its completeness, so

¹ *P v Jackson*. 1981 NZLR 78

that is the first respect. The second respect relates to modification or repair. It is not every alteration that transforms an object into a firearm. Only, “Completion or replacement of any component, part or parts or the correction or repair of any defect or defects,” will suffice.

[14] Mr Tipple was involved in a proceeding with the Chief Executive of the New Zealand Customs Service². Courtney, J said in that case:

In respect of a blank firing pistol, that having regard to the changes required to be made to the barrel and the relatively sophisticated machinery needed, the extent of modification required to enable live firing was too great to bring the pistol within the definition of a firearm.

[15] That is an example of a situation where the degree of modification or replacement of parts to render the weapon operable is so substantial as to go beyond what is contemplated by the wider definition of a firearm.

[16] The third respect in which a thing becomes a firearm is where its inoperability is remedied by the correction or repair of any defect. There is no need to import into this part of the definition a requirement for the possessor to have a present ability to complete, replace, correct or assemble the article.

[17] In *Wall v P*³, an article that comprised the essential working parts of a firearm but without features such as a barrel, magazine, butt or stock was held to fall within the definition as all that was required to render it operable was the replacement of some parts. On the other hand, possession of a bolt by itself was not sufficient. That is perhaps self-evident and the situation must be considered also where there is a dismantled or partly dismantled firearm. The firearm may come within the definition of firearm but all the dismantled parts have to be in the possession of or carried by a person at the relevant time.

[18] There had been much made in cross-examination of the police witnesses, Mr Namoki, in particular, about what would be required to render this firearm a semi-automatic or military-style semi-automatic firearm. The upshot of the evidence

² *Tipple v Chief Executive of the New Zealand Customs Service*. [2014] NZHC 2356

³ *Wall v P*. (198) i CRNZ 223 NZHC

that I accept is that all that would be required to render the firearm semi-automatic that would also have the features of a military-style semi-automatic firearm would be the creation of a hole into the gas port fitted to the firearm. That is assuming that the hole did not already exist.

[19] Lastly, in terms of a review of the legal provisions, Mr Bodle very promptly referred me to *P v Cmunch*⁴ where a 30-shot magazine was found close by a semi-automatic firearm fitted with a seven-shot magazine. The rifle was not in sporting configuration, thus was a military-style semi-automatic firearm. Possession of the body of the rifle and the larger magazine was sufficient even though the larger magazine was not fitted at the time.

[20] The relevant considerations appear to be these. Mr Perrin purchased what Gun City described as a new firearm package from Gun City in October 2016. He must also have purchased the bolt carrier, bolt and recoil spring for the rifle at that time or some time near to it because those items bear the last four numbers of the serial number of the firearm and the firearm was new according to Mr Tipple's evidence. The bolt carrier and the recoil spring and the bolt itself also appeared to be new according to Mr Namoki's unchallenged evidence on that point. Those parts could fit in either a semi-automatic in sporting configuration or a military-style semi-automatic firearm. The addition of the buffer tube, stock and pistol grip to a semi-automatic firearm would make that firearm into a military-style semi-automatic firearm according to the evidence of Mr Namoki which I accept, hence the addition of the bolt carrier, the bolt and the recoil spring that must have come with the firearm; render the firearm a semi-automatic. Furthermore, the addition of the other components to which I have referred render the semi-automatic firearm a military-style semi-automatic firearm.

[21] I reject Mr Perrin's statement to the police that the firearm was not semi-automatic and that it was defective for the reasons I have given above. Fitting a bolt carrier, the bolt and the recoil spring to the firearm make it a semi-automatic firearm. Those items must have been purchased and in Mr Perrin's possession at the same time.

⁴ *P v Cmunch*. NZDC 1997 1016

[22] In any event, the enquiry as to whether the parts of a firearm satisfy the definition as determined objectively by reference to the characteristics of the firearm and not by reference to the state of knowledge or mind of the possessor as to its completion, Mr Perrin acknowledged that the firearm was a, "Semi-auto," although he told the police that he was lying about that and could say whatever he liked about it and his comment on Facebook in relation to a query about the firearms consistent with Mr Namoki's evidence, that fitting the bolt carrier, bolt and recoil spring to the firearm would make the firearm a semi-automatic. For those reasons, I am sure that Mr Perrin was in possession of what was a military-style semi-automatic firearm on 26 October 2016.

[23] The charge is, therefore, proved.

P R Kellar
District Court Judge