

**EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

TERRITORY OF THE VIRGIN ISLANDS

BVIMCRAP2018/0002

BETWEEN:

SELVIN CHINNERY

Appellant

and

THE COMMISSIONER OF POLICE

Respondent

Before:

The Hon. Mde. Louise Esther Blenman

Justice of Appeal

The Hon. Mde. Gertel Thom

Justice of Appeal

Hon. Mr. Paul Webster

Justice of Appeal [Ag.]

Appearances:

Mr. Patrick Thompson for the Appellant

Ms. Leslie-Ann Faulkner, Senior Crown Counsel for the Respondent

2019: December 9;

2020: February 24.

Criminal appeal – Illegal possession of firearm - Appeal against conviction – Statutory interpretation – Section 2 of the Firearms and Air Guns Ordinance – Definition of firearm – Whether corroded firearm is a firearm within meaning of the Firearms Ordinance – Whether learned Chief Magistrate erred in accepting guilty plea for illegal possession of firearm – Ejusdem generis principle – Possession of explosives - Definition of explosive – Section 2 of Explosives Ordinance - Whether definition of explosive in Explosives Ordinance includes ammunition – Whether learned Chief Magistrate erred in accepting guilty plea for illegal possession of explosives

On 12th April 2016, members of The Royal Virgin Islands Police Force (“the police”) conducted a search around the house of Mr. Selvin Chinnery (“Mr. Chinnery”) and found a grey case. A firearm was discovered in the case. The case also contained three rounds of .22 ammunition. The case was shown to him and after being cautioned, he indicated that the case was given to him by a friend a while ago and he had forgotten about the firearm.

He was then arrested and taken to the Road Town Police Station and interviewed under caution.

Mr. Chinnery was subsequently charged with the offences of carrying a firearm without a licence contrary to section 11(1)(a) of the Firearms and Air Guns Ordinance (“the Firearms Ordinance”) and possession of explosives contrary to sections 6 and 26 of the Explosives Ordinance. Sergeant Carty provided evidence in the Magistrates’ Court to the effect that though in its corroded state the firearm could not be fired, once properly soaked, it would be fully functional as a firearm. On the advice of his then legal practitioners, Mr. Chinnery pleaded guilty to the offences mentioned above. He was sentenced to a 5-year term of imprisonment for the offence of illegal possession of a firearm and 3 months imprisonment for possession of explosives.

He appealed against this conviction and filed three grounds of appeal. During oral submissions, it emerged that this appeal raises two questions: (i) whether the weapon that Mr. Chinnery admitted to having falls within the statutory definition of “firearm”; and (ii) whether in relation to the ammunition, he could have been properly charged under the Explosives Ordinance for possession of explosives.

Held: allowing the appeal in part; setting aside the conviction for possession of explosives; and affirming the conviction for illegal possession of firearm, that:

1. The courts have moved away from adopting a strict constructionist view of interpretation which required them to adopt the literal meaning of the language to a purposive construction when interpreting statutes. Since the meaning of words take their colour from the context in which they appear, the Court, in ascertaining Parliament’s intention, has to consider not only the section in which the words under consideration appear but also the enactment as a whole.

Pepper (Inspector of Taxes) v Hart [1993] A.C. 593 applied; **Asiyah Grant v Javier Maduro** BVIHCVAP2019/0001 (delivered 13th November 2019, unreported) followed; **Telecommunications Regulatory Commission v Cable & Wireless (BVI) Limited** BVIHCVAP2016/0013 (delivered 30th May 2018, unreported) followed; **R v Secretary of State for the Environment, Transport and the Regions, ex parte Spath Holme Ltd** [2001] 2 AC 349 applied.

2. On any reading of the Firearms Ordinance, it is clear that Parliament’s intention is to exercise control over and regulate the sale, purchase, importation, exportation, use, disposal and possession of firearms and provide for and/or improve transparency. The appellant’s fundamental argument that the firearm, in its corroded state, was not a firearm within the meaning of the Firearms Ordinance is flawed. This interpretation does not accord with the context and overall framework of the legislation and would lead to the absurd result that the weapon, in its existing state, was not a firearm but after being properly soaked, would fall squarely within the statutory definition. Accordingly, the learned Chief

Magistrate did not err in accepting the appellant's guilty plea for illegal possession of firearm.

Section 2 of the **Firearms and Air Guns Ordinance**, Cap. 126, of the Revised Laws of the Virgin Islands 1991 applied; **R v Bewley** [2013] 1 All ER 1 distinguished; **Cafferata v Wilson** [1936] 3 All ER 149 applied; **Kashorn John v Commissioner of Police** SVGMCRAP2007/0086 (delivered 16th September 2008, unreported) followed; **Telecommunications Regulatory Commission v Cable & Wireless (BVI) Limited** BVIHCVAP2016/0013 (delivered 30th May 2018, unreported) followed; **R v Secretary of State for the Environment, Transport and the Regions, ex parte Spath Holme Ltd** [2001] 2 AC 349 applied.

3. In relation to the possession of explosives conviction, this Court applies the principle of *ejusdem generis*. The definition of explosive in the Explosives Ordinance cannot be expanded to include ammunition. Furthermore, in the absence of the Explosives Ordinance and the Firearms Ordinance being in *pari materia* or the Firearms Ordinance providing for cross-reference when interpreting any word, phrase or part thereof, this Court cannot unilaterally seek refuge in the definition of ammunition in the Firearms Ordinance. In view of the totality of the circumstances, Mr. Chinnery could not have been properly charged and convicted of possession of explosives contrary to sections 6 and 26 of the Explosives Ordinance. The learned Chief Magistrate therefore erred in accepting a guilty plea in relation to this offence.

Section 12(2) of the **Interpretation (Amendment) Act, 2014** considered; Section 2 of the **Firearms and Air Guns (Amendment) Act 2015** applied; Section 2 of the **Explosives Ordinance**, Cap. 124, of the Revised Laws of the Virgin Islands 1991 applied.

JUDGMENT

Introduction

- [1] **BLENMAN JA:** This appeal raises two important questions, namely: the question of the correct interpretation that should be accorded to the definition of firearm in section 2 of the **Firearms and Air Guns Ordinance**¹ (the “**Firearms Ordinance**”) and whether ammunition falls within the definition of explosive as provided for in the **Explosives Ordinance**.²

¹ Cap 126 of the Revised Laws of the Virgin Islands 1991.

² Cap 124 of the Revised Laws of the Virgin Islands 1991.

Background

- [2] On 12th April 2016, members of The Royal Virgin Islands Police Force (“the police”) conducted a search in the bushes around Mr. Selvin Chinnery’s (“Mr. Chinnery”) house and a grey case was found under some old zinc behind his house. A firearm was found in the case. When the case was shown to him and after being cautioned by the police, the appellant indicated that he had seen the case before and that a friend had given it to him a long time ago to keep. He was then arrested and taken to the Road Town Police Station where he was interviewed under caution. He admitted that he had forgotten about the firearm.
- [3] The case contained three rounds of .22 ammunition. He was then charged with the offences of carrying a firearm without a license contrary to section 11(1)(a) of the **Firearms Ordinance** and possession of explosives contrary to sections 6 and 26 of the **Explosives Ordinance**. Sergeant Carty, a certified armourer and firearm instructor, provided evidence in the Magistrates’ Court in relation to the firearm and ammunition and indicated that it was rusty.³ On the advice of his then legal practitioners, Mr. Chinnery pleaded guilty to the offences mentioned above. He was then remanded into custody. On 9th March 2019, the learned Chief Magistrate sentenced Mr. Chinnery to a 5 year term of imprisonment for the offence of illegal possession of a firearm and 3 months imprisonment for possession of explosives.
- [4] Mr. Chinnery appealed against this conviction. He has filed two grounds of appeal. He argued, in the main, that he received wrong advice from his then counsel to plead guilty to the offences. He complains that he is not guilty of the offences for which he had been convicted for the following reasons:
- (i) The “firearm” in question was not a lethal barreled weapon from which any shot, bullet or other missile can be discharged and therefore he could not be guilty of the offence of unlawful possession of a firearm;

³ The details of Sergeant Carty’s evidence will be provided shortly.

- (ii) The “firearm” in question was not a component part of any such weapon from which any shot, bullet or other missile can be discharged; and
- (iii) The “ammunition” is not an explosive within the meaning of the **Explosives Ordinance** and as such he is not guilty of the offence of possession of explosives.

[5] It was against that backdrop that the appellant contended that this advice was based on a fundamental misapprehension of the law and thereby making his conviction liable to be set aside.

[6] During the hearing of the appeal, we allowed Mr. Chinnery to adduce fresh evidence in order to place before the Court the advice that he had received from his then counsel. This came in the form of a letter from his legal counsel dated 8th June 2018 which indicated as follows:

“ ...

Re: Selvin Chinnery

...

I write to confirm our discussions and the reasons for my advice to Mr. Chinnery to plead guilty to possession of the firearm and explosives pursuant to charges against him preferred by the Commissioner of Police in or about 12th April 2016.

I was less concerned with the definition of explosives and more concerned with the definition of firearm:

“firearm” means a lethal barreled weapon of any description from which any shot, bullet or other missiles can be discharged and includes –

- (a) any weapon which is so designed or adapted that, if pressure is applied to trigger, missiles continue to be discharged until pressure is removed from the trigger or the magazine containing the missiles is empty;
- (b) any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or thing;

and any component part of any such weapon and accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon...

The firearm and ammunition was found in a case on Mr. Chinnery's property. Mr. Chinnery admitted to being the owner of the case and its contents, although he denied that where he was told by the police officers where it was found, was where it had in fact been left.

The ammunition found fell within the definition of bullets.

Of the firearm, I was of the view that the definition of a firearm was inclusive of other weapons and thus, would include weapons from which things cannot be discharged, but were in fact designed for such purpose. The firearm, though it could not discharge, was a **weapon designed** for the **discharge** of a **thing**, to wit, bullets (emphasis mine of the language of the legislation).

Further, in light of the case law, and having admitted to the police, possession of the items, I was of the view that he could not successfully defend the charge. I was further of the view that he would perhaps suffer a higher sentence than would have been meted out on a plea of guilty.

...”

Issues on appeal

- [7] During the oral submissions, it emerged that, essentially, this appeal revolves around two questions: (i) whether the weapon that the appellant admitted to having, falls within the statutory definition of “firearm”; and (ii) whether in relation to the ammunition, he could have been properly charged under the **Explosives Ordinance** for possession of explosives.

Appellant's Submissions

- [8] Learned counsel, Mr. Patrick Thompson argued that then counsel who represented the appellant, based on a fundamental misapprehension of the law, wrongly advised him to plead guilty to the complaints before the court since neither the firearm in question nor the ammunition satisfied the statutory requirements of the **Firearms Ordinance** and the **Explosives Ordinance**, respectively. Mr. Thompson submitted that this Court has jurisdiction to allow an appeal where a

guilty plea was entered following mistaken, misleading or wrong advice. He relied on the case of **R v Emmett and Another**⁴ in support of this submission.

[9] On the conviction for the unlawful possession of a firearm, Mr. Thompson argued that there was insufficient evidence before the learned Chief Magistrate that the firearm had the capacity to discharge a deadly missile. In support of his contention, he purported to rely on **Kashorn John v Commissioner of Police**.⁵ He contended, as lethality was one of the essential attributes of a firearm, to simply say that the firearm could fire, would not meet the threshold for lethality. He relied on the case of **R v Elliston Watson**⁶ on this issue. Therefore, he argued, in order for the appellant to have been convicted of the offence, it would have had to be established that the item was a component part of a “firearm” within the meaning of the **Firearms Ordinance**.

[10] Mr. Thompson's primary argument focused on the evidence given by Sergeant Carty, which included that the weapon could not fire due to the rust. He urged the Court to hold that this was fatal to the conviction since there was no evidence that any shot, bullet or missiles can be discharged from it. He said that it was not sufficient for the Crown to establish that if the rust were removed, the firearm would be able to fire. He said that the essential question to be answered was whether the firearm could fire. The answer to that question, he posited, was in the negative. This, he said brought the firearm outside of the parameter of section 2 of the **Firearms Ordinance**.

[11] Mr. Thompson submitted that **Cafferata v Wilson**⁷ is no longer good law on the issue of the component parts of a firearm in light of the decisions in **R v Bewley**⁸ and **Kelly (John Joseph) v Mackinnon**.⁹ He opined that **Bewley** squarely

⁴ [1998] AC 773.

⁵ SVGMCRAP2007/0086 (delivered 16th September 2008, unreported).

⁶ (1976) 28 WIR 123 at pp. 3-4.

⁷ [1936] 3 All ER 149.

⁸ [2013] 1 All ER 1.

⁹ 1982 SCCR 205.

addresses the issue of what amounts to a “firearm” for the purpose of Section 57(1) of the UK Firearms Act 1968 which is *in pari materia* with Section 2 of the Act. He contended that his reliance on **Bewley**, for the purposes of this appeal, is on the issue of whether the item is a component part of a lethal barreled weapon. Referring this Court to paragraph 34 of **Bewley**, Mr. Thompson maintained that Mr. Chinnery is not guilty of the offence of unlawful possession of a firearm since the “firearm” in question was not a lethal barreled weapon from which any shot, bullet or other missile can be discharged, nor was it a component part of any such weapon from which any shot, bullet or missile can be discharged.

- [12] In relation to the possession of explosives charge, Mr. Thompson contended that ammunition was not an “explosive” within the meaning of the **Explosives Ordinance**. Mr. Thompson urged this Court to apply the *unius est exclusio alterius* rule of statutory interpretation in finding that the three rounds of .22 ammunition do not fall within the definition of “explosive” in the **Explosives Ordinance**. He submitted that a review of the entire legislative framework shows that the **Explosives Ordinance** is directed at explosives as defined therein. He then compared the definition of explosives in the **Explosives Ordinance** to that of the UK Explosives Act 1875; the latter, he contended, intended to govern ammunition of all descriptions. In short, Mr. Thompson submitted that the general words “substance or mixture capable of being used for the purpose of producing an explosion” cannot extend to include ammunition since, ammunition by itself is not a substance or mixture capable of being used for the purpose of producing an explosion.

Respondent’s Submissions

- [13] Learned Senior Crown Counsel, Ms. Faulkner saw it differently. She argued that the learned magistrate quite properly accepted Mr. Chinnery’s guilty plea to the charge of being in possession of the firearm and that Mr. Chinnery was properly charged with having contravened section 11(1)(a) of the **Firearms Ordinance**.

[14] Ms. Faulkner contended that the housing that contains the substance is the basis for the appellant's complaint rather than the substance itself. She contended that on the plain language of the **Explosives Ordinance**, it is the substance or material that is capable of causing an explosion is what terms a particular device as an explosive. Ms. Faulkner contended that the definition in the **Firearms Ordinance** is not limited to ammunition for guns but includes other material and explosive substances. She submitted that if this Court is of the view that a .22 round is a form of ammunition capable of producing an explosion when used as Sergeant Carty explained, then they are explosives for the purposes of the **Explosives Ordinance**. Ms. Faulkner referred to the definitions of explosive and ammunition in the **Explosives Ordinance** and **Firearms Ordinance** respectively and submitted that section 12(2) of the **Interpretation (Amendment) Act, 2014**¹⁰ informs how statute ought to be considered where reference of a statute is made in another statute. She contended that the **Explosives Ordinance** should be read with the **Firearms Ordinance** in order to ascertain its true meaning.

[15] Ms. Faulkner submitted that the **Explosives Ordinance** does not categorise any particular item and rightly so, in order to capture a wide variety or categorisation of various types of explosives which, she argued, includes ammunition for guns. She further contended that ammunition as defined in the **Firearms Ordinance** is not limited to ammunition for guns, but that it includes other material and explosive substances. She referred to the evidence of Sergeant Carty that he retrieved a .22 caliber pistol from the police stock and took one of the .22 round of ammunition/explosive recovered with the firearm to the police mobile range to test fire. Sergeant Carty stated that he squeezed the trigger and there was an explosion.

[16] Ms. Faulkner highlighted Sergeant Carty's statement in which he indicated to the court that if the rust were removed, the firearm would have been a genuine, functional firearm and a lethal barrelled weapon. She argued that it was clear that

¹⁰ Act No. 4 of 2014.

the weapon which Mr. Chinnery admitted to being in possession of clearly satisfied section 2 of the **Firearms Ordinance**. She relied on the cases of **Kashorn John v The Commissioner of Police, Quincy Duncan v Chief of Police**¹¹ and **Cafferata v Wilson**.

- [17] Ms. Faulkner was adamant that **Bewley** was based on very different factual circumstances and an entirely different legislative framework. She therefore urged this Court to be slow to apply the reasoning of **Bewley** to the case at bar. She submitted that statute on a particular issue in England and Wales cannot be applied to the Territory of the Virgin Islands (“the Territory”), when there is legislation which addresses the same issue. She relied on the case of **Andre Penn v The Queen**¹² in support of this argument. She therefore urged this Court to dismiss the appeal and affirm the conviction.

Discussion and Analysis

- [18] Section 160(3) of the **Magistrate’s Code of Procedure Act**¹³ provides for the right to appeal to the Court of Appeal from any judgment or order of a magistrate. There is common ground that the Court of Appeal is empowered to review a conviction on a point of law or fact in circumstances where a mistake of law or fact has occurred. Authority for this proposition is found in the well-known case of **R v Emmett and Another**. In this case, Lord Steyn, in considering whether section 3(1) of the Drug Trafficking Offences Act 1986 ousted the right of appeal against a confiscation order, pronounced that:

“Earlier in this century it may not have been possible to put forward as a ground of appeal that the plea of guilty arose from a mistake of law or fact of the defendant...Nowadays it is clear that as a matter of jurisdiction the Court of Appeal has power in such a case to consider an argument that the plea of guilty was induced by a fundamental mistake of law or fact: see *R v Boal* [1992] 3 All ER 177, [1992] QB 591 (a mistake of law), *R v Lee* [1984] 1 All ER 1080 at 1084, [1984] 1 WLR 578 at 583 (a mistake of fact) and *Blackstone’s Criminal Practice* (7th edn, 1997) D 22.12. Given that the powers of the Court of Appeal extend to cases when a plea was

¹¹ Saint Christopher and Nevis Magisterial Criminal Appeal No.1 of 2004.

¹² BVIHCRA2013/0006 (delivered 29th September 2014, unreported).

¹³ Cap. 44, of the Revised Laws of the Virgin Islands 2013.

entered on a mistaken view of the law or fact, it is difficult to see what rational basis there could be to exclude such a right of appeal under s 3(1) of the 1986 Act. Even drug traffickers have rights and they too are entitled to justice.”

- [19] Therefore, should this Court conclude that Mr. Chinnery pleaded guilty to having committed the offences due to a mistake of law, it is open to this Court to set aside the conviction. The focus of this decision is whether the learned judge erred in accepting Mr. Chinnery’s guilty plea to the illegal possession of firearm and possession of explosives offences. In order to provide context to the ensuing discussion, it is noteworthy that the weapon, which Mr. Chinnery admitted belonged to him, had all of its component parts. Significantly it is the uncontroverted evidence of Sergeant Carty that if the weapon were properly soaked, it would have become workable.

Whether the weapon that the appellant admitted to having, falls within the statutory definition of “firearm”

- [20] The issue of whether or not the weapon that Mr. Chinnery had satisfied the definition of firearm in the **Firearms Ordinance** is a straightforward one. The question therefore has to be discussed against the backdrop of the interpretation of the relevant statutory provision. Put another way, the question is whether a firearm that is rendered unworkable due to corrosion, but which could be functional if properly soaked, falls outside the statutory definition of a firearm.
- [21] The transcript reveals that the appellant’s former counsel was alive to the fact that the weapon was corroded. His then counsel, during the course of the trial, made the following statement to the court:

“...In our discussions I think he was candid with the court I think Sergeant Carty said it obviously had been exposed for several years. He said it was so corroded. In fact, during his disclosure he did also say he tried to clean it and he said it would take quite a bit of soaking. And he did say it was capable based on if it was soaked long enough. Hence we did not take this initial point.”¹⁴

¹⁴ Record of Proceedings, p. 47, lines 3 to 10.

[22] It is essential to examine the statutory definition of firearm as provided by section 2 of the **Firearms Ordinance**, as amended. A firearm is defined as:

“Any lethal barrelled weapon of any description from which any shot, bullet or other missiles can be discharged and includes -

(a) any weapon 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; and

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

and any component part of any such weapon, and any accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon;

...”

[23] In seeking to resolve the first issue, I bear in mind Sergeant Carty’s witness statement provided during disclosure, and in particular the following evidence:

“On opening the case, I observed a silver pistol with Black Hand grip, a magazine was attached to it. I removed same from the case to carry out a closer examination of it; same is a **Sturm Ruger Mark 2 Target** semi-automatic pistol its calibre .22 bearing serial **#213-69681**. I observed that the firearm exterior was much corroded...The weapon was not functional as its working parts appeared to be seized due to exposure to moisture which caused it to rust. I applied oil to the firearm and removed some of the corrosion, however the charging handle for the firearm is seized and thus the weapon is unable to load...Although I was unable to test fire the .22 Ruger Pistol. It is a genuine firearm, a lethal barrel weapon with all the components parts required for a firearm to discharge when armed. If the Firearm was in good condition, it is my opinion that this said firearm would be able to fire.”¹⁵

Whilst it is accepted that the firearm was unable to load and fire, I agree with Ms. Faulkner’s submission that the firearm was a lethal barrelled weapon with all the component parts and can be made to work by addressing the corrosion and rust. Sergeant Carty examined the firearm, made his observation as to the corroded

¹⁵ Witness statement of D’Urville Carty dated 30th August 2016, paras 2-4.

aspect and how it affected the functionality of the firearm in its current state. He goes on to opine that if the rust were removed by soaking, the firearm would be capable of being fired.

[24] By way of emphasis, Mr. Chinnery relied on the authorities of **R v Bewley** and **Kelly (John Joseph) v Mackinnon** in support of his complaint that the firearm in question does not satisfy the criteria of the **Firearms Ordinance**. However, in my view, the appellant's submission is flawed and his reliance is misplaced. The legislative framework in the United Kingdom (UK) under the UK Firearms Acts of 1968 and 1982 as to the definition of a firearm is different from that of the Territory.

[25] In my view, in the UK, there are three definitions with respect to firearms, sections 57(1) and 57(4) of the Firearms Act 1968 ("the 1968 Act") and section 1 of the Firearms Act 1982 ("the 1982 Act") which amended the 1968 Act. Section 57(1) of the 1968 Act states:

"In this Act, the expression "firearm" means—

- (a) a lethal barrelled weapon (see subsection (1B));
- (b) a prohibited weapon;
- (c) a relevant component part in relation to a lethal barrelled weapon or a prohibited weapon (see subsection (1D));
- (d) an accessory to a lethal barrelled weapon or a prohibited weapon where the accessory is designed or adapted to diminish the noise or flash caused by firing the weapon; and so much of section 1 of this Act as excludes any description of firearm from the category of firearms to which that section applies shall be construed as also excluding component parts of, and accessories to, firearms of that description."

[26] Section 57(4) of the 1968 Act provides that an imitation firearm is anything which has the appearance of being a firearm (other than such a weapon as mentioned in section 5(1)(b) of the Act) whether or not it is capable of discharging any shot, bullet or other missile.

[27] Section 1(6) of the 1982 Act stipulates that:¹⁶

“For the purposes of this section an imitation firearm shall be regarded as readily convertible into a firearm to which section 1 of the 1968 Act applies if –

- (a) it can be so converted without any special skill on the part of the person converting it in the construction or adaptation of firearms of any description; and
- (b) the work involved in converting does not require equipment or tools other than such as are in common use by persons carrying out works of construction and maintenance in their own homes.”

[28] It is noteworthy that **Bewley** was decided in 2012. It is useful to have a look at the essential facts of **Bewley**. Indeed, it was a case that concerned a starting pistol that was originally designed to fire blank cartridges. A forensic scientist was able to fire the weapon by employing special skill and using extraneous implements. The defendant was convicted of possession of a prohibited firearm contrary to section 5(1) (aba) of the 1968 Act as amended, after a judge ruled that the starting pistol in his possession was one from which a shot, bullet or other missile could be discharged. The appellant appealed against his conviction. The question for determination before the court was whether the weapon was capable of discharging any shot, bullet or other missile, when the only means of doing so was the elaborate technique the forensic scientist used. The court, giving consideration to the 1982 Act and earlier authorities,¹⁷ concluded that the applicable principle in this case was that where a later Act of Parliament covered the same material as an earlier one, then the test as to whether the later provisions altered the meaning of the earlier one was to examine Parliament’s intention. Moses LJ observed at paragraphs 27 – 28 that:

“It is plain that Parliament intended to widen the scope of the meaning of firearm to include an imitation firearm falling within s.1(1) of the 1982 Act. But it is equally plain that Parliament intended only to widen that description in cases where the conversion could be achieved without any special skill and without the use of equipment or tools other than those in common use. By imposing what could loosely be described as safeguards, Parliament clearly expressed the intention to exclude from the

¹⁶ This Amendment expanded the remit of the 1968 Act to include imitation firearms readily convertible into firearms.

¹⁷ *Cafferata v Wilson* [1936] 3 All ER 149 and *R v Freeman* [1970] 2 All ER 413.

application of the 1968 Act imitation firearms which could not be readily convertible into a firearm by equipment or tools which were not in common use. Accordingly, the principle identified in *R v Freeman* is, under the current statutory scheme, no longer of any application. If the item can be easily adapted into a lethal weapon, to adopt Sachs LJ's words (at 256), with the use of equipment described in s.1(6) of the 1982 Act, then it will, subject to the statutory defence, fall within the 1968 Act. But no conclusion can be reached as to whether an imitation firearm is readily convertible without proper consideration of s.1(6) and, if it is raised, the defence in s.1(5). Those subsections raise questions of fact which must be resolved. Whether an item falls within s.57(1) should no longer be answered by reference to *R v Freeman* or to *Cafferata's* case. Courts should look to the 1982 Act read with the 1968 Act. It would be absurd to allow the prosecution to sidestep the safeguards within the 1982 Act merely by construing firearm as meaning an item which could 'easily' be converted into a lethal-barrelled weapon, capable of discharging a missile, in the application of the principle in *R v Freeman*."

[29] I must admit that Mr. Thompson's submission on lethality is quite novel in the context of the factual matrix of the appeal at bar. There is no doubt the case at bar is distinguishable from the case of **Bewley** since the latter was decided in the specific legislative context as provided for in the UK. Sergeant Carty's opinion as to what is required for making the firearm in question fire is limited only to condition; that is, the rust and corrosion on the firearm which made it inoperable. There is no indication in the present case, as in **Bewley**, that the firearm in the case at bar would need apparatus extraneous to the weapon itself, such as mallets, clamps, etc. to make it function. I have no doubt that the appellant can take no comfort, nor place reliance on **Bewley** since the case differs from the case at bar in several respects; namely, the legislative framework being different and the fact that the weapon in question in **Bewley** was a modified or redacted firearm.

[30] Having reviewed the rival submissions, I am attracted and persuaded by Ms. Faulkner's submission that **Bewley** was decided on its own facts and the decisions of **Cafferata**, **Kashorn John** and **Quincy Duncan** have not been overturned and remains applicable in light of what the legislative framework would have been under **Cafferata** (identical to the Territory). In fact, the court in **Bewley**,

applied the statutory interpretation rule that where a later Act covers the same material as an earlier one, the provisions of the later Act can be used to aid in construction of the earlier one. They can both be regarded as a single code. By adopting this approach, the court neither held or needed to hold that any of the cases were wrong. The court was, in that case, saying that whether an item fell within s. 57 of the 1968 Act should no longer be answered by reference to **Cafferata**. Instead, courts should look to the 1982 Act read with the 1968 Act.

- [31] The gravamen of Mr. Thompson's submission that the word "can" in the statute makes the world of difference is difficult to follow, given the facts of this case. I am of the opinion that when the legislation is read in its proper context, there is no basis for according the meaning that Mr. Thompson has advocated. It is important to bear in mind that the meaning of words take their colour from the context in which they appear. In this regard, I note the observations of Carrington JA [Ag.] in **Telecommunications Regulatory Commission v Cable & Wireless (BVI) Limited**¹⁸ at paragraph 25 that:

"When considering the context of words in an enactment, one has to consider the enactment as a whole, and not only the section in which the words under consideration appear, as well as all facts relevant to the subject matter of the Act that are before the court, including any commentary supplied by the drafters of the Act. The ultimate aim of the court is to arrive at what **Bennion on Statutory Interpretation** refers to as an informed interpretation of the legislation under consideration..."

- [32] Lord Nicholson, in **R v Secretary of State for the Environment, Transport and Regions, ex parte Spath Holme Ltd**¹⁹ pronounced that:

"Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context. The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful so long as it is remembered that the 'intention of Parliament' is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used."

¹⁸ BVIHC VAP2016/0013 (delivered 30th May 2018, unreported).

¹⁹ [2001] 2 AC 349.

[33] The courts have moved away from adopting ‘a strict constructionist view of interpretation which required them to adopt the literal meaning of the language’²⁰ to a purposive approach in interpreting statutes. The learned Chief Justice in **Asiyah Grant v Javier Maduro**, encapsulates the purposive approach this way:

“For several decades now, there has been a discernible shift from a slavish insistence on the literal meaning of words in an enactment, and it is now well-settled that the immediate, legislative context of statutory words, along with the statute’s object and purpose, are required to inform the assessment of parliament’s intention. There is now a strong stream of jurisprudence supporting this purposive approach to interpretation.”²¹

[34] In my view, on any reading of the **Firearms Ordinance**, it is clear that Parliament’s intention is to exercise control over and regulate the sale,²² purchase, importation,²³ exportation, transshipment, use, disposal and possession²⁴ of firearms and provide and/or improve transparency. The **Firearms Ordinance** provides for the “Licensing Authority”, a public officer designated by the Governor in Council, by whom and how a firearm may be legally possessed, the various means by which to secure the legislation’s objectives and the penalties for breaches. In sum, Parliament intended to prohibit persons who do not possess the requisite license and certificate of fitness from being in possession of a firearm as defined in the **Firearms Ordinance**. It is difficult, against this background, for this Court to accept that the rust on the firearm would take it outside the statutory provision. I am of the considered view that there is no basis upon which I can accept it.

[35] For the sake of completeness and in light of Mr. Thompson’s submissions, I turn to consider the dictionary meanings of the word “can”. In the Concise Oxford Dictionary, the verb “can” is defined as “**1. a** be able to; know how to... **b** be

²⁰ *Pepper (Inspector of Taxes) v Hart* [1993] A.C. 593, p. 617.

²¹ BVIHC VAP2019/0001 (delivered 13th November 2019, unreported).

²² See for example: sections 16 and 28.

²³ See for example: sections 3 and 4.

²⁴ See for example: sections 11(1)(a) and 13.

potentially capable of...”.²⁵ Black’s Law Dictionary defines it as follows: “**1.** To be able to do something... **2.** To have permission...”.²⁶ The appellant’s fundamental argument is that due to the corrosion, the “firearm” in its current state does not fit into the definition in section 2. However, in my view, the word “can” as defined in both dictionaries denote not only an existing capability but a potential one as well. It must be emphasised that Sergeant Carty’s opinion is clear, if the rust and corrosion is corrected, the firearm will fire as all the parts necessary are present to enable the firearm to discharge when armed. When an examination is made of Sergeant Carty’s statement, there can be no doubt that the weapon that was in the appellant’s possession falls squarely within the definition in section 2. In my opinion, this interpretation accords with the context and overall framework of the **Firearms Ordinance** whilst promoting its object and purpose and avoiding an undesirable result. To conclude otherwise, would be akin to saying that the weapon, during the daytime and in its current state is not a firearm for the purposes of the legislation, but after a proper soaking, becomes a firearm by night. This interpretation would make a mockery of the legislation.

- [36] Based on everything I have foreshadowed, it is clear that I am of the opinion that the learned Chief Magistrate did not err in accepting Mr. Chinnery’s guilty plea in relation to the firearm offence. I will therefore dismiss his appeal against the conviction of the firearm.

Ammunition/Explosives

- [37] In relation to the second issue, namely, whether in relation to the ammunition, Mr. Chinnery could have been properly charged for being in possession of explosives contrary to sections 6 and 26 of the **Explosives Ordinance**, I am in full agreement with Mr. Thompson that the ammunitions could not fall within the definition of explosives in the **Explosives Ordinance**. It therefore follows that

²⁵ The Concise Oxford Dictionary of Current English (8th edn, OUP 1990) p. 161.

²⁶ Black’s Law Dictionary (10th edn, Thomson West 2014) p. 247.

the learned Magistrate ought not to have accepted the guilty plea in relation to that charge. I can deal with the second issue quite briefly.

[38] I accept Ms. Faulkner's indication that an ammunition is defined under the **Firearms Ordinance** as follows:

"Ammunition includes

- (a) any article consisting of a cartridge case fitted with a primer and a projectile;
- (b) any gunpowder, shot, gun-cotton or other explosive material for use in a firearm;
- (c) any article consisting of a cartridge case fitted with a primer and containing a propelling charge and a projectile; or
- (d) blank cartridges, air gun pellets, training cartridges or gas cartridges; or,
- (e) any other article prescribed by the regulations for the purposes of this definition;"²⁷

[39] The interpretation section of the **Explosives Ordinance** defines explosives as:

- "(a) nitro-glycerine, dynamite, gun-cotton, blasting powder, gunpowder, and any other substance or mixture capable of being used for the purpose of producing an explosion;
- (b) any detonating fuse, igniter cord, safety fuse, fuse igniter, detonator or percussion cap and every adaptation or preparation of any explosive;
- (c) any other substance which the Minister may from time to time, by Notice in the Gazette, declare to be an explosive;" (Underlining supplied)

[40] However, the question that has to be determined, is whether the definition of ammunition in the **Firearms Ordinance** has any relevance to the appeal at bar. Ms. Faulkner has proposed that both legislations should be read together in order to ascertain the true meaning and relied on section 12(2) of the **Interpretation (Amendment) Act, 2014**²⁸ to support this. For emphasis, section 12(2) reads:

" ...

- (2) Marginal notes, side notes or headings in an enactment and references to other enactments in the margin or at the end of an

²⁷ Section 2 of the Firearms and Air Guns (Amendment) Act, 2015.

²⁸ Act No. 4 of 2014.

enactment shall be construed as part of the enactment and may be considered in ascertaining the meaning of an enactment.”

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[41] In my view, Ms. Faulkners’ reliance on this section is misplaced. The **Explosives Ordinance** makes reference to the **Firearms Ordinance** once to specifically state that it does not apply to any ammunition for which one has a licence to possess or deal under the **Firearms Ordinance**. Furthermore, I fail to see how, in the absence the legislations being *pari materia* or the **Firearms Ordinance** providing for cross-reference when interpreting any word, phrase or part thereof, this Court could unilaterally seek refuge in the definition of ammunition in the **Firearms Ordinance** as Ms. Faulkner has invited us to do.

[42] It is obvious that the definition of explosives must be gleaned from the **Explosives Ordinance**. The *ejusdem generis* principle of construction clearly supports Mr. Thompson’s contention that ammunition cannot fall into the category of explosives. In this regard, the learned authors of **Bennion on Statutory Interpretation** formulate the principle as follows:

“The Latin words *ejusdem generis* (of the same kind or nature), have been attached to a principle of construction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character. The principle may apply whatever the form of the association, but the most usual form is a list or string of genus-describing terms followed by wider residuary or sweeping-up words”.²⁹

[43] In the context of this appeal, the focus rests on the words “any other substance or mixture capable of being used for the purpose of producing an explosion”. It seems to me that the common and dominant feature is that there is a chemical or other substance which by itself or when mixed can create a destructive and large-scale explosion. I fail to discern how, on any reading of the definition of explosives and moreso within the context of the legislation, these words could be expanded to embrace ammunition.

²⁹ Bennion on Statutory Interpretation (6th edition, LexisNexis Butterworths, 2013). p. 1105.

[44] Mr. Thompson, quite properly so, was adamant that an ammunition could never have fallen within the definition of explosive in the **Explosives Ordinance**. He therefore submitted that when the learned Chief Magistrate accepted Mr. Chinnery's plea she erred in so doing and his conviction should have been quashed. There is no basis upon which I could form the view that the learned Chief Magistrate did not err, as a matter of law, in accepting Mr. Chinnery's guilty plea in relation to being in possession of explosives contrary to sections 6 and 26 of the **Explosives Ordinance**. Accordingly, Mr. Chinnery succeeds in relation to the explosives charge. I would therefore allow the appeal and quash his conviction in relation to the second charge.

Conclusion

[45] For the reasons given above, I would dismiss Mr. Chinnery's appeal against the conviction for possession of firearm contrary to section 11 of the **Firearms Ordinance** and affirm his conviction. In relation to his conviction for possession of explosives contrary to sections 6 and 26 of the **Explosives Ordinance**, I would allow his appeal and set aside that conviction.

[46] I gratefully acknowledge the assistance of all learned counsel.

I concur.
Gertel Thom
Justice of Appeal

I concur
Paul Webster
Justice of Appeal [Ag.]

By the Court

Chief Registrar