

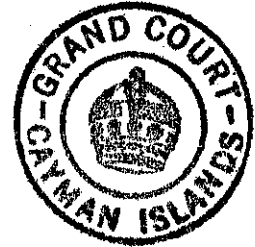
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **HOLDEN AT GEORGE TOWN, GRAND CAYMAN**
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5 **Ind. No. 74 of 2013**
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8 **REGINA**

9
10 **V.**

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12 **ALEXANDER CARABALLO-KELLY**
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14



15 **Appearances:** **Ms. Candia James of the Office of the Director of Public Prosecutions**
16 **for the Crown**
17

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19 **Mr. Ben Tonner of Samson & McGrath for the Defendant**
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22 **Before:** **Hon. Justice Henderson**
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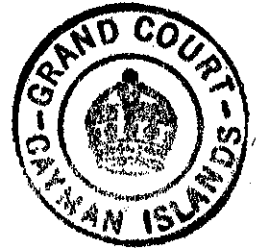
24 **Heard:** **April 15, 2014**
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JUDGMENT

1. *The Firearms Law* (2008 Revision) (“the Law”) defines a firearm in this way:

“firearm’ means artillery, machine gun, sub-machine gun, rifle, shot gun, pistol, air gun, air pistol or any lethal barreled weapon from which any shot, bullet or other missile can be discharged or noxious fumes can be emitted except any air rifle, air gun or air pistol of a type prescribed by the Governor and of a caliber so prescribed, and includes any component part of any such weapon and such accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon, and includes any ammunition capable of being used in any firearm and any reloader which is capable of or designed for the reloading of shotgun cartridges or any other type of ammunition;” [underlining added]



2. Section 3 of the *Law* provides that no person shall import into the Cayman Islands a firearm except with the appropriate permit; section 15 prohibits the possession of any firearm without a permit. After the Defendant was found to have imported a shotgun magazine without the benefit of a permit he was charged with both offences.

3. Mr. Caraballo-Kelly, at the time of the alleged offences, was a serving police officer and the Authorized Firearms Officer on Cayman Brac. He was also the properly-licensed owner of a firearm – a 12-gauge semi-automatic “Saiga 12” shotgun (“the shotgun”). The shotgun can fire a single cartridge which is loaded by hand into the breech. For most purposes, a magazine would be preferable. The shotgun apparently (the evidence is not entirely clear) was sold with a 5-round box magazine which would enable the user to fire 5 consecutive shots with 5 consecutive pulls of the trigger and without reloading. Other

1 magazines to fit the shotgun are available separately for purchase. Mr. Caraballo-Kelly
2 imported a 20-round drum magazine (“the magazine”) made by a different manufacturer
3 (“ProMag”) without obtaining an import permit intending, I infer, to attach it to the
4 shotgun to replace the box magazine.

5
6 4. The Crown says that the magazine is a component part of the shotgun and, by his failure
7 to obtain the necessary permits, Mr. Caraballo-Kelly has committed both offences. The
8 Defendant argues that the law is unclear and that since the magazine is not clearly a
9 component part he has committed no offence.

10
11 5. At first impression it may seem that the phrase “component part” admits of no ambiguity.
12 A firearm is an object composed of a collection of smaller objects arranged and attached
13 in a specified manner. Each of these is a component part. The magazine was clearly
14 intended to be affixed to the shotgun and was designed for just that purpose. Thus, it is a
15 component part. Much the same view has been expressed in *Kelly v Mackinnon* 1983
16 SLT 9 (HCJ. At page 3 the Court said:

17 *“The language of that definition presents no difficulty of comprehension*
18 *and one is tempted to say merely that it means precisely what it says.*
Essentially it means a lethal barreled weapon (of any description) from
which any shot, bullet or other missile can be discharged. The emphasis
is mine. It also includes, inter alia (b) any component part of such a lethal
weapon. This, in my opinion, admits of only one construction and that is
that the part in question is identified as a component of a lethal barreled
weapon from which any shot, bullet, or other missile can be discharged.
Again the emphasis is mine. Putting the matter in another way the part
must be identified as a component of something which is in fact a lethal
weapon. A component part of something which is not a lethal weapon
cannot, by itself, be a firearm and it is nothing to the point that parts of



1 *that which is not a lethal weapon could be stripped therefrom and used in*
2 *the construction of something which, when completed, would become a*
3 *lethal weapon. It is nothing to the point either that a part which is a*
4 *component of an article which, not being a lethal weapon, might in*
5 *various ways be converted or adapted in order to become such a lethal*
6 *weapon. That this is not only the obvious interpretation of the definition*
7 *in s. 57 (1) (b) but the correct and only interpretation thereof appears*
8 *clearly from a consideration of 2.4 (3) of the Act which is in these terms:*
9 *'It is an offence for a person other than a registered firearms dealer to*
10 *convert into a firearm anything which, though having the appearance of*
11 *being a firearm, is so constructed as to be incapable of discharging any*
12 *missile through its barrel'."*

13
14 6. It seems to me that the question cannot be disposed of so easily. The real question is what
15 was intended by the Legislative Assembly when it decided that importation or possession
16 of a component part would attract criminal liability in the same manner as importation or
17 possession of a firearm. Many objects forming part of a firearm are, by themselves, no
18 different from objects readily available in any hardware store: nuts, bolts, washers,
19 springs, etc. Accepting a literal definition of the phrase "component part" would
20 stigmatize the importation and possession of such minor parts if they are intended for use
21 in a firearm. That cannot have been the Legislature's intent.

22
23 7. Confusion is also created by the fact that it is a criminal offence to possess a component
24 part. All of the parts comprising Mr. Caraballo-Kelly's licensed shotgun at the moment
25 he imported the magazine were authorized by the permit for the firearm itself. Once the
26 magazine was attached to the shotgun it would have become a part of the firearm and no
27 separate licence to possess the magazine would have been needed. Presumably, the
28 Crown's case on possession is based upon the fact that the magazine was not attached to



1 the shotgun when the investigators seized it. Is it then to be assumed that a permit must
2 be obtained for any component part before it can be detached from a firearm? This
3 cannot have been the Legislature's intent. There is certainly a valid policy reason for
4 prohibiting the separate possession of some parts of firearms, such as magazines, when
5 they cannot be shown to be covered by the licence for a particular firearm; but it is silly
6 to suggest that all component parts of a licensed firearm must be licensed separately
7 whenever they are detached.

8
9 8. There are many other prohibited activities in relation to firearms in the *Law*. A customs
10 officer may search the person of an arriving traveler for a "firearm": *Law*, s. 4(4). No one
11 may repair any "firearm" except in accordance with a Gunsmith's Licence: *Law*, s. 10.
12 An executor or administrator of an estate or a trustee in bankruptcy who comes into
13 possession of a "firearm" has 30 days within which to get a licence for it: *Law*, s. 15(2).
14 One needs a Firearm Disposal Permit to dispose of an authorized "firearm": *Law*, s. 24.
15 The breadth of these provisions and the context in which they appear demonstrate that the
16 Legislative Assembly never intended that every component part of a gun, no matter how
17 insignificant, is to be treated as a firearm by this Court.

18
19 9. What, then, are the parts of a gun which amount to "component parts"? The *Law* is silent
20 on this question; it contains no definition at all. The Crown's expert says that the
21 magazine is a component part because it plays an important role in the operation of the



1 shotgun: it allows 20 rounds, rather than 1 or 5, to be fired in quick succession. He says
2 the magazine is an important part and therefore requires a separate permit.

3
4 10. The defence expert has submitted a report which describes in some detail the “great deal
5 of confusion” engendered in the United Kingdom by the absence there of a definition of
6 “component part”. A recommendation of the Firearms Consultative Committee in 1988 to
7 the effect that component parts should be limited to “pressure bearing parts only” did not
8 find favour with the Home Secretary. After more debate, the Home Office “*Guide on*
9 *Firearms Licensing Law*” of 2013 promulgated a list of parts considered to be
10 components; magazines are excluded expressly from this list. Evidently, in the United
11 Kingdom a magazine is not important enough to require a separate permit.

12
13 11. My task is not to choose between the competing views of the experts (who in any event
14 are addressing a question of law not fact) but to construe a statutory provision. In doing
15 so, I must be guided by the bedrock principle that no one should be held to have
16 committed a criminal offence unless his conduct is clearly prohibited by the words of the
17 law. This is the principle against penalization under a doubtful law, described in *Bennion*
18 *On Statutory Interpretation, 5th edition*, (at page 825) in these words:

19 *“It is a principal of legal policy that a person should not be penalized*
20 *except under clear law (in this Code called the principle against doubtful*
21 *penalization). The court, when considering, in relation to the facts of the*
22 *instant case, which of the opposing constructions of the enactment would*
23 *give effect to the legislative intention, should presume that the legislator*
24 *intended to observe this principle. It should therefore strive to avoid*
25 *adopting a construction which penalizes a person where the legislator’s*
26 *intention to do so is doubtful, or penalizes him or her in a way which was*



1 *not made clear. In some cases however the court may find that the*
2 *intention to impose the detriment was so strong as to require the doubt to*
3 *be overridden...*"

4
5 12. The definition of a firearm in section 2(1) of the *Law* does not provide clear warning to
6 the public about which parts of a firearm will or will not be treated as component parts. A
7 person with a sincere desire to comply with the *Law* may find he has violated it
8 unintentionally, with profound consequences. To make sense of the phrase, a firearms
9 licensing officer will need to decide upon a list of parts which he will treat as
10 “component” parts (perhaps, but not necessarily, based upon their importance) and for
11 which a permit will be required. By this process, the offences of importation and
12 possession of component parts are in effect defined by a mid-level police official rather
13 than by the Legislative Assembly. (Ironically, the Defendant himself had this role on
14 Cayman Brac.) That, also, cannot have been intended by the Legislature. It will be noted
15 that the definition of a firearm quoted above distinguishes between a component part and
16 an “accessory to any such weapon”. There are many accessories available for firearms
17 but the only accessory included within the definition of a firearm is a silencer; other
18 accessories such as slings and handle grips are not included. The ambiguity which is
19 latent in the phrase “component parts” is not repeated when accessories are addressed.

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21 13. I find that the phrase “component parts” suffers from a latent ambiguity which renders its
22 meaning doubtful. Since the law is doubtful, this Defendant cannot be penalized. I find
23 that the magazine is not a component part and therefore not a firearm.



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14. Both counsel have joined in requesting this ruling prior to the commencement of the trial.
I have obliged, but with some hesitation as our code of criminal procedure contains no
express warrant for doing so. The Crown may proceed to trial if so advised.

Dated this 2nd day of May, 2014

Henderson, J.

Henderson, J.
Judge of the Grand Court

