

[JACKSON, C.J., AND MELISSAS, J.]  
(December 10 and 19, 1949)

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KYRIACOS COSTI, *Appellant,*

KYRIACOS  
COSTI

*v.*

THE POLICE, *Respondents.*

*v.*  
THE POLICE.

(*Criminal Appeal No. 1874.*)

*Air-gun—Carrying air-gun during Close Season—Special permit—Firearms Laws, 1933 and 1934, section 5 (1)—Absolute prohibition.*

By section 5 (1) of the Firearms Law, 1933, as amended by section 5 of Law 5 of 1934, “. . . no person shall have in his custody . . . or shall use or carry a firearm unless such person is the holder of—(a) a certificate of registration; and (b) in the case of a firearm other than a revolver, pistol, air-gun, air-rifle or air-pistol, an annual licence . . . issued by the Commissioner (hereinafter called a ‘firearms licence’): . . . Provided further that no person shall during any Close Season as defined in the Game and Wild Birds Law, 1934, or any amendment thereto, use or carry a firearm except—(i) under a special permit . . . under the hand of the Commissioner authorizing the carrying of a firearm . . .”. By section 2 of the same Law a “firearm” includes an air-gun and air-rifle.

During the Close Season for game and wild birds, the appellant fixed up a wooden target against a tree in the Children’s Garden in Nicosia and invited children to shoot at it with his air-gun for a small charge. He was in possession of a certificate of registration and a game licence, but he had not obtained a special permit from the Commissioner authorizing him to carry his air-gun during a Close Season. On those facts the appellant was convicted under paragraph (i) of the second proviso to section 5 (1) of the Firearms Laws, 1933 and 1934. It was argued for the appellant that the prohibition in that proviso applied only to firearms for which a firearms licence was required and that, by the sub-head (b) in the sub-section, air-guns and air-rifles, like revolvers and pistols, were exempt from that requirement. It was also argued that the prohibition was limited to firearms for which a game licence was necessary.

*Held:* (i) that, as the proviso was worded, and as it was placed in the section, it was clearly an absolute prohibition applying to all firearms as defined by the Law and having no limitation to circumstances from which any particular intention might be inferred; and that the necessity of a game licence did not depend on the kind of firearm used but on the use that was made of it.

(ii) Consequently, the carrying of an air-gun during a Close Season without a special permit from the Commissioner authorizing the carrying thereof was prohibited.

Appeal dismissed and conviction affirmed.

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THE POLICE.

Appeal from conviction by the District Court of Nicosia  
(Case No. 1085/49.)

*Ch. D. Ioannides* for the appellant.

*P. N. Paschalis*, Crown Counsel, for the respondents.

The facts of the case are fully set out in the judgment of the Court which was delivered by :

JACKSON, C.J. : The appellant was convicted by the District Court of Nicosia, of the offence of carrying a firearm, in this case a small air gun, on a particular day during a Close Season without a special permit from the Commissioner authorizing him to carry it. (Section 5 (1) (b) of the Firearms Law, 1933, as amended by section 5 (b) (i) of Law No. 5 of 1934.)

The circumstances out of which the charge arose were as follows :

The appellant is a man who earns, or supplements, his living by entertaining children in one of the open spaces beneath the Walls of Nicosia. There he fixes up a wooden target against a wall or a tree and invites children to shoot at it with his air-gun for a small charge. The gun in question is a small-sized B.S.A. air-rifle of the type which small boys commonly use as soon as they are allowed to use anything. The appellant has carried on this little business for several years and there is no suggestion that he ever uses his air-gun for any other purpose. It appears that, about two years ago, he was warned by the Police that he needed a permit of some kind and, on the 3rd June, 1947, he had his air-gun registered by the Police as a firearm. That certificate is still current. According to his evidence, the appellant also presented himself at the Commissioner's Office, told a clerk that he had an air-gun which he used for shooting at a target and asked for the necessary permit. He was given a game licence, under the Game and Wild Birds Law, 1934, and paid 11s. for it. This being an annual licence, he renewed it on the 25th July in this year and paid another fee. This second licence is valid until the 31st July, 1950, and the appellant produced it at his trial, with the certificate of registration for his air-gun.

On the 11th September last he was in what is known as the Children's Garden near Metaxas Square, with his air-gun and target, plying his trade. He had with him his certificate of registration for his air-gun and his current game licence. A policeman asked him to produce a special permit from the Commissioner authorizing him to carry his air-gun during the Close Season for game and small birds. More than 7 months of that season had then passed but there were still 19 days to run. This was too much for the appellant. He had no such permit and, despairing at the failure of his efforts to keep on the right side of the law, he had nothing to say.

He was brought before the District Court on the 19th November and was convicted of the offence that we have already specified. He had clearly no intention of breaking the law, and had indeed done his best to comply with what must have seemed to him its very peculiar provisions by taking out game licences in two successive years, at 11s. a time, in order to authorize the use of his air-gun by small boys to shoot at a wooden target in the Children's Garden. The District Judge accordingly sentenced him to imprisonment for one day, which meant, of course, that he was free on the rising of the Court. But the unfortunate consequence for the appellant was that his air-gun, which is his means of livelihood or part of it, was automatically forfeited under the law. That did not rest with the District Judge.

We do not know how it happened that, in two successive years, game licences were issued to the appellant by the Commissioner's Office, particularly when he had explained, as we have no reason to doubt he did, the purpose for which his air-gun was used and for which he wished to have authority.

Moreover, by section 4 of the Game and Wild Birds Law game licences may only be issued to holders of firearms licences and the appellant had not got one and did not need one, for air-guns are exempted from that requirement by section 5 (1) (b) of the Firearms Law. We were told by Counsel for the Crown that some people do in fact shoot game and small birds with air-guns and that an official notice was published not long ago warning anyone who wanted to use an air-gun for that purpose that he had to take out a game licence. How the issue of game licences to persons who have not got firearms certificates is reconciled with the provisions of the Law that we have quoted, we do not know and are fortunately not concerned to enquire. There is no suggestion that the appellant needed either of the two game licences which were issued to him. It might have required some thought, on the part of the official in the Commissioner's Office whom the appellant saw, to tell him what kind of permit he did need, and giving him a game licence which he did not need provided, at any rate, an escape from that. But it did not save the appellant.

The legal point in this case is really quite short and we have set out the circumstances as fully as we have only because it seems to us that a particularly unfortunate case has been chosen to raise it.

The prosecution maintains that the second proviso to section 5 (1) of the Firearms Law creates an absolute prohibition against using or carrying a firearm during the Close Season, except in accordance with one or other of the two special authorizations there mentioned, and that

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an air-gun is by definition a firearm. According to that argument, the prohibition is absolute and is not directed only against using or carrying a firearm in circumstances from which an intention to shoot game or small birds might be inferred. It applies even when there may quite clearly be no intention of that kind.

The defence argues that the prohibition in the second proviso applies only to firearms for which a firearms licence is required and that, by the sub-head (*b*) in the sub-section, air-guns and air-rifles, like revolvers and pistols, are exempted from this requirement.

The difficulty in the way of the argument for the defence is that there is nothing in the second proviso to support the view that it is limited in the way suggested. As the proviso is worded, and as it is placed in the section, it is clearly an absolute prohibition applying to all firearms as defined by the Law and having no limitation to circumstances from which any particular intention may be inferred. It is true that if the prohibition applies to an air-gun it must also apply to a revolver, a weapon with which few people attempt to shoot game birds or smaller ones. But that difficulty is not enough to entitle us to read into the proviso words that are not there and we cannot suppose that the legislator meant something other than what he said.

It was also argued for the appellant that the prohibition is limited to firearms for which a game licence is necessary. It is enough to say of that argument that the necessity of a game licence does not depend on the kind of firearm used but on the use that is made of it.

We are, therefore, reluctantly forced to the conclusion that the District Court was bound to convict the appellant as it did. His guilt was purely technical. He had done his best to comply with the law, incomprehensible as it must have seemed to him. He was willing to take out any permit or licence that he was told was needed, though his willingness may have been lessened when he found that, on official advice, he had spent 22s. uselessly on licences that failed to give him the sanction for which he had asked.

In these circumstances we find it very difficult to understand why, in the last expiring days of a Close Season lasting eight months, this man was brought before the District Court for a purely technical breach of the law which, if proved against him, must necessarily deprive him permanently of his means of living.

We are bound to dismiss this appeal but we are very conscious that it is beyond our powers to convince the appellant that he has been treated with justice.

*Appeal dismissed.*