

IN THE HIGH COURT OF THE COOK ISLANDS

HELD AT RAROTONGA

(CRIMINAL DIVISION)

JP APPEAL NO. 1/90

BETWEEN PAHU TOKA

Appellant

AND POLICE

Respondent

Hearing: 13 June 1990

Mr Appleby for Appellant

Mr Gibson for Crown

Judgment:

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JUDGMENT OF ROPER CJ

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This is an appeal against conviction and sentence on two charges under the Cook Islands Arms Ordinance 1954, an appeal against a third charge under the same Ordinance having been allowed during the course of the hearing. The appeal was by way of rehearing, no notes of evidence being available from the hearing before Mr Ben Samuel JP in Penrhyn on the 1st February.

The two charges are as follows:

1. That on the 27th December 1989 at Penrhyn Pau Toka without reasonable cause did discharge a firearm, namely a double barrel 12 gauge shotgun, to the danger of a person, namely Akatiki Nanua.

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2. That on the same date and place Pau Toka did have in his possession a firearm, namely a double barrel 12 gauge shotgun without lawful, proper and sufficient purpose.

Both charges arise out of the same incident.

There was very little dispute on the facts and indeed it is hardly necessary to go beyond the Appellant's own statement to the police.

On the morning of the 27th December a number of young men, perhaps 10 or more, were drinking homebrew at the home of a Mr Walter Benedito. They were told to leave there and started to return to the village of Omoka taking the remains of their barrel of homebrew with them. Moana Marino was carrying the barrel. Their progress was fairly noisy with singing, dancing and chanting. As they passed the Appellant's property they heard a shot. It appears that the Appellant had heard the noise the men were making and came to the entrance to his property. He tried to tell them that it was illegal to drink liquor on the road, although there was no evidence that they were drinking, and when they appeared to take no notice he went to his house. He came out with his shotgun and fired one shot in the air which had the effect of attracting the youths' attention. The Appellant then demanded that Moana bring the barrel to him, at the same time pointing the gun at Moana. The Appellant denied pointing the gun but I accept the evidence of Nanua and Vaeau that he did. Moana took fright and left the barrel on the roadway. The Appellant picked up the barrel and took it back to his property. Nanua followed him and according to the Appellant he asked for the barrel. The Appellant then emptied the barrel and either gave it to Nanua or threw it on the road. He told Nanua to leave the property and reloaded the shot gun. He then fired a second shot which according to Nanua was aimed above his head. The Appellant claimed that he fired into the air and to one side of Nanua when the latter was four metres away. Whatever version is accepted there was potential danger not only to Nanua but also the youths congregated outside the property. Nanua then left.

In evidence the Appellant said that he fired the shot because Nanua and his friends had annoyed him and he feared an attack by Nanua. That is not supported by the evidence of a woman who was with the Appellant on his property. According to her Nanua told her that the Appellant had been right in what he had done and he only wanted his barrel back. This was before the second shot was fired. Neither does the Appellant's statement to the police support his evidence that he feared attack. In the statement he said:-

"As I came back into my yard I looked back and saw one youth following me into the yard. I stood there and told the youth to get out of the yard, because it was my property. He insisted and still came towards me. The youth asked me for the pail. At that moment I emptied the content of liquor and gave him back the pail, and told them to clear off. Then they started to argue back all at the same time and I did not know who to listen to. I again called out to clear off, but because of their insistence, I again shot up into the air and some left and some remained and argued. I did not argue back because I saw the Deputy Registrar (Takake Akatapuria) talking to the youths on the road."

Later he said that he had only fired "because of their insistence and backtalk."

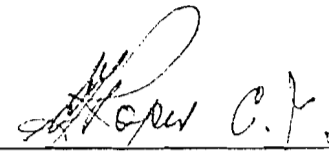
The Appellant had justification for being annoyed at the conduct of the youths, particularly on a Wednesday which has a special religious significance in Penrhyn, but he took the law into his own hands in a manner which cannot be condoned.

I am far from satisfied that the Justice erred in entering convictions and the appeals against conviction are therefore dismissed.

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As for the appeal against sentence there is nothing to say except that in my opinion the Appellant was treated with considerable leniency.

  
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CHIEF JUSTICE