

COUNTY OF LUNENBURG
PROVINCE OF NOVA SCOTIA

2001

NO: 1036752

IN THE PROVINCIAL COURT OF NOVA SCOTIA

[Cite as: R. v. Selig, 2002 NSPC 10]

HER MAJESTY THE QUEEN

versus

THOMAS ALVIN SELIG

DECISION

HEARD BEFORE: THE HONOURABLE JUDGE ANNE E. CRAWFORD, J.P.C.

PLACE HEARD: BRIDGEWATER, N.S.

DATE HEARD: MARCH 23, 2001

DECISION DATE: APRIL 11, 2001

CHARGE: ...on or about the 3rd day of January A.D. 2001 at, or near Lunenburg, in the County of Lunenburg in the Province of Nova Scotia, did unlawfully have in his possession a restricted weapon, to wit: Smith & Wesson 38 calibre handgun, bearing serial number 745845 knowing that he was not the holder of a licence under which he may possess it contrary to section 91(2) of the **Criminal Code**."

COUNSEL: ANTHONY BROWN, CROWN ATTORNEY
BARRY WHYNOT, DEFENCE ATTORNEY

- [1] Thomas Alvin Selig was charged in a seven-count information with, *inter alia*, possession of a restricted weapon, viz. a Smith & Wesson 38 calibre handgun bearing serial number 745845 knowing that he was not the holder of a licence to possess it, contrary to s. 91(2) of the *Criminal Code*.

Facts

- [2] Shawn Day and Peter Walsh testified that in the early morning hours of January 3, 2001 during a night of drinking and consumption of at least some marijuana at the defendant's home in Lunenburg, N.S., the defendant showed them an unloaded handgun. On the witness stand each was shown the handgun which had later been recovered by the police. Shawn Day said that it appeared to be the same gun; it was the same shape; he had not seen the holster with it until the day of trial. Peter Walsh said that he was not sure it was the same gun. The holster he had seen that night was lighter in colour and the gun he had seen that night was bigger than those produced in court.
- [3] Shortly after he showed them the gun, the accused attacked and cut both Shawn Day and Peter Walsh with a knife or knives, resulting in injuries which required extensive stitching. As a result of these assaults the police went to arrest the accused at his home. The accused fled but was cornered by a police dog at the

side of a police car in front of the Lunenburg constituency office of M.L.A. the Honourable Michael Baker. Police ordered the accused to go to the ground and he was then hand-cuffed and formally arrested.

[4] Not surprisingly, this unusual event early in the working day attracted the attention of Mr. Baker's secretary, . She testified that within minutes of the police leaving the scene with the accused, she stepped outside the office door to have a cigarette and immediately noticed the gun produced in court. She said that it was within 3 or 4 feet from where the defendant had been held at bay by the police dog where it would have been under or partially obscured by the vehicle he was standing against. She called the police, who immediately came and retrieved the weapon.

[5] The defendant chose not to testify on any of the charges against him.

[6] Following the trial the Crown chose not to proceed on two other weapons charges against the accused. I found the accused guilty of aggravated assault and assault with a weapon on each of the two victims, Peter Walsh and Shawn Day.

[7] I set this count over for further consideration.

Issues

Wording of Charge

[8] As a preliminary matter, I note that there appears to be an inconsistency between the wording of the charge and the section number of the charge. Knowledge of not having a licence is not an element of the offence under s. 91(2) but is a required element of the more serious offence under s. 92(2). As neither counsel nor court addressed this issue at trial and summations proceeded as if the charge were under s. 91(2), I will amend the wording of the charge to conform with the case as presented and addressed by deleting the phrase “knowing that he was not the holder of a license under which he may possess it” so that it is clear that the defendant faces only the less serious charge.

[9] The defence raised two issues on this charge. Has the Crown proven beyond reasonable doubt that:

1. the weapon before the court was a firearm, and
2. the weapon was in the possession of the defendant.

Discussion

Was the weapon a firearm?

[10] Defence cites *R. v. F.(J.)* (1987), 41 C.C.C. (3d) 81 (Q.C.A.) for the proposition that the Crown must prove as an element of this offence that the weapon in question

was a working firearm, that is, that it was capable of being fired. The Crown replies that the weapon itself is entered in evidence and it can be seen that, unlike the gun in *F.(J.)*, this gun has not been tampered with, that its firing mechanism is intact; indeed, the Crown demonstrated that by pulling the trigger of the empty gun and producing what I take to be a normal clicking sound.

- [11] In *F.(J.)* there was evidence before the Court that the gun in question was not capable of being fired, whereas in the present case there is no such evidence. I find that the Crown has established that the gun in question is a firearm.

Did the defendant have possession of the firearm?

- [12] I am convinced beyond reasonable doubt that the defendant was in possession of the handgun by the following evidence:
1. Although neither Peter Walsh nor Shawn Day could state with absolute certainty that the gun produced in court was the same gun they had seen in the accused's possession, they agreed that it was similar to the one that he had shown them the night before his arrest.
 2. The handgun produced in court was found within a few feet from, and within minutes of, the accused's arrest.

3. In a town where the sight of a handgun is a rare event, it is too great a coincidence to suggest that anyone else could or would have dropped a gun at that location at that particular time.
4. The police did not find the weapon at the scene either because they were not looking for a weapon or because it was hidden under or by the police car, or both.

From the foregoing circumstantial evidence I find that the only reasonable conclusion to be drawn is that the defendant had possession of the handgun as alleged.

Conclusion

[13] As the Crown has established that the defendant was in possession of a restricted weapon and there is no evidence before the court that the defendant had a licence to possess it, I find the defendant guilty of the offence under s.91(2), as amended.

Anne E. Crawford, J.P.C.