

[WILSON, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

1962  
June 18, 20

PANAYIOTIS CHARALAMBOUS MIXIS,

*Appellant,*

PANAYIOTIS  
CHARALAMBOUS  
MIXIS,

v.

THE REPUBLIC,

v.  
THE REPUBLIC

*Respondent.*

*(Criminal Appeal No. 2495).*

*Criminal Law—Possessing firearms contrary to section 3(1) of the Firearms Law, Cap. 57—Possession.*

*Joint possession—The words “or have under his control or in his possession any firearm.....” occurring in section 3(1) include joint possession—Notwithstanding that the statute, Cap. 57, contains no provision similar to that contained in the Criminal Code, Cap. 154, section 4 and the Explosive Substances Law, Cap. 54, section 4(5) whereby the expression “has in his possession” is made to include also “knowingly having in the actual possession or custody of any other person”.*

A prospective buyer was desirous of purchasing a pistol from the appellant. The appellant did not have the pistol with him but in the house of a 3rd person who was jointly charged with the appellant for joint possession of the pistol and of four rounds of ammunition found therein and was convicted together with appellant. The prospective buyer drove along with the appellant to the 3rd person's house. The 3rd person handed the pistol to the appellant who sold it to the prospective buyer for £38. This amount was paid to the 3rd person who would then arrange sharing with the appellant.

It was contended by appellant's counsel at the High Court, that the expression “has in his possession” in the Firearms Law, Cap.57 can only mean “personal possession”. The High Court thought this argument untenable and dismissed the appeal.

*Held* : (1) The words “or have under his control or in his possession any firearm” occurring in the context in which they are found in section 3(1) of the Firearms Law, (Cap.57) must be given their usual legal meaning.

(2) So interpreted they include joint control or joint possession, as shown to have existed on the facts of this case.

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(3) The appellant was rightly convicted and the appeal must be dismissed.

*Appeal dismissed Conviction  
and sentence affirmed; sentence  
to run from conviction*

### **Appeal against conviction.**

The appellant was convicted on the 7/3/62 at the Assize Court of Larnaca (Cr. Case No. 125/62) on 2 counts of the offences of (1) possessing a pistol contrary to s.4(1) (2)(a) of the Firearms Law Cap. 57, as amended by s.3 of Law 11 of 1959 and (2) possessing explosive substances without a licence from the Inspector of Explosives, contrary to s.4(4)(d) of the Explosive Substances Law, Cap. 54, and was sentenced by Attalides P.D.C. Orphanides and Vassiliades, D.J.J. to 18 months' imprisonment on count 1 and 6 months' imprisonment on count 2, the sentences to run concurrently.

*G. Achilles* for the appellant.

*S. Georghiades* for the respondent.

The judgment of the Court was delivered by:—

VASSILIADES, J. : This appeal turns on a short point: the question whether the law of Cyprus knows of joint possession for the purposes of the Firearms Law (Cap.57) and of the Explosive Substances Law (Cap. 54) under which the Assize Court convicted and sentenced the appellant.

It is contended on his behalf, that he (the appellant) could not have joint-possession of a pistol and the four rounds of ammunition found therein, with the person who actually kept these articles in his house ; the person who was jointly charged in this case, with the appellant, and was convicted for such possession, on his own plea of guilty.

The Assize Court, accepting the evidence of the witness who proposed buying the pistol from the appellant, found that the latter's answer to the proposal was (in translation from the Greek words actually spoken) : *I do not have it with me, it is with some one else, come along with me that I may deliver it to you*".

The prospective buyer, thereupon, together with another witness who was with him, accompanied the appellant in a car to a neighbouring village, where the appellant took them to the house of the person jointly charged with the appellant in this case. There, the latter, at the request of the appellant, produced the pistol and handed it over to him (the appellant) who, in his turn, passed the pistol to the prospective buyer, explaining its good points and demonstrating its use. It already contained in its magazine the four rounds of ammunition. On the way to the place where the pistol was found, the appellant named its price, £38. After delivery to the witness, the latter paid the price to the other person, as directed by the appellant, who said that the two would arrange matters between them.

On these facts the Assize Court found that the appellant was in joint possession of the pistol and the ammunition ; and convicted him accordingly.

Learned counsel on his behalf, contended that as the expression "has in his possession", in section 4 of the Explosive Substances Law, is made by sub-section (5) to include "not only having in one's own personal possession, but also knowingly having in the actual possession or custody of any other person . . . . . " the prohibited articles, while no similar provision is made in the Firearms Law, the expression "has in his possession" in this latter law, can only mean personal possession.

In support of this argument, learned counsel submitted that the same expression, "has in his possession", in the Criminal Code, was likewise amplified by the legislator. But that definition cannot be made to apply to the Firearms Law, counsel argued, as it was only made applicable to the Criminal Code by the opening words, "In this law", of the interpretation section of the Code.

Interesting as the argument may appear to be, we are unanimously of the opinion that the contention is untenable. The words "or have under his control or in his possession any" (firearm) occurring in the context in which they are found in section 3(1) of the Firearms Law (Cap.57) must be given their usual legal meaning. And so interpreted, include, in our opinion, joint control or joint possession, as shown to have existed on the facts of this case.

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We, therefore, think that the appellant was rightly convicted ; and this appeal must be dismissed.

Appeal dismissed. Conviction and sentence affirmed; sentence to run from conviction.

*Appeal dismissed. Conviction and sentence affirmed; sentence to run from conviction.*