

**REGINA -v- HUDSON MALEFO & TWO OTHERS**

**High Court of Solomon Islands**

**(Palmer J.)**

**Criminal Case No. 31 of 1993**

**Hearing: 1 November 1993**

**Judgment: 5 November 1993**

**DPP for Prosecution**

**C. Tagaraniana for Aaron Loea**

**R. Teutao for Stanton Buka,**

**PALMER J:** The accused Stanton Buka is charged under section 37(2) of the Firearms and Ammunition Act [Cap. 107], that he did between the 1st of January 1992 and 31st of December 1992 at Honiara give ammunitions to Nathan who is not a firearm's licensed dealer or person entitled to acquire ammunition without a licence.

The crucial and only evidence which prosecution relied on is contained in the evidence under Oath given by the witness, Hudson Malefo.

The evidence relied on is that when the accused approached Hudson Malefo to ask for his firearm's licence he told him that he wanted to use it to get bullets for his friend in Bougainville. The accused took the licence sometime in December and returned in January 1993. During the period the licence was not in his possession, various purchases were made. He identified ten purchases which were not made by him.

Under Cross-examination the witness Hudson Malefo stated that the accused asked him for his firearm licence to give to his friend from Bougainville who wanted to buy some bullets.

Under re-examination he stated that the accused asked him for his licence to buy bullets for his friend.

Michael Quan, Manager of QQQ Wholesale Ltd was called to identify various sales that he had made in respect of Firearms and Ammunition Licence book no. 9072. He identified two sales he had made on the 25/11/92 and 1/12/92. However, he could not say who he made those sales to.

In the voluntary statement made by this accused to police on the 20th of January 1993 he stated:

" .....I full admit that I am the one who asked Malefo for the licence so that a friend of mine from Bougainville to purchase bullets which he did. After he finished he handed me back the L /Book and a pkt of .022 bullets to H. Malefo. (By the way the Bougainville man was Nathan.)"

In his evidence under oath, the accused stated that he obtained the firearms licence for his friend, Nathan from Bougainvillea. He denied however making any purchases and giving any ammunition to Nathan. His defence in essence is that the licence book was given to Nathan, and Nathan must have done the purchases himself as recorded in the licence book.

The crucial element in section 37(2) of the Firearms and Ammunition Act (Cap.107) needed to be proved by the prosecution beyond reasonable doubt, is that the accused gave ammunition to Nathan.

In real terms this means that the prosecution must necessarily prove that the accused had the ammunition in his possession or control, and transferred them to Nathan.

The only material evidence produced by prosecution is in what the witness, Hudson Malefo told the court, in his evidence in chief about what the accused had said to him. That piece of evidence however by the end of the day had been rendered unreliable. But even if it could be relied on, its value in my view will be very limited. All it shows is that the accused said that he would get the witness Hudson Malefo's licence to purchase bullets for Nathan.

There is no evidence whatsoever to show that that's what he did. The accused has denied that.

The only evidence that has been established is that the accused did take the firearm's licence and in his own words, gave it to Nathan.

I am however not satisfied beyond reasonable doubt that the accused used the firearms licence to purchase bullets with it and then give them to Nathan. There is no evidence other than the evidence of Malefo to convince me beyond a reasonable doubt that the accused did that.

It seems to me that the charge against this accused is inappropriate. If he is to be charged in accordance with section 21 of the Penal Code as an aider and abettor, the appropriate charges it seems should be either the charges made against Hudson Malefo or any possible charges against Nathan.

As against this charge, the accused will have to be acquitted and I so do order.

The Second accused is charged under section 17(1) as read with section 20 of the Firearms and Ammunition Act. There are two counts which related to the exporting of ammunition and a firearm (.22 rifle) to Samson Loea at Bougainville. The crucial evidence against this accused is contained in the confession statement made by him to Police on the 15th of January 1993. In his statement to police he admitted purchasing ammunition from the 9 April 1992 and gave them all to his brother Samson Loea at Bougainville. He also gave him his rifle. The reason for this was because he had heard that his nephew had been killed by the Papua New Guinea Defence Force and that his brother had then requested that he give him his firearm to defend himself and his family.

The interviewing Officer, Sergeant Filia gave very clear evidence as to the voluntariness of the statement made by this accused. He stated clearly that no force or threats were used. The accused was very co-operative and explained in detail what had happened.

The accused on oath was unimpressive as an honest and sincere witness. At several places in his evidence he contradicted himself. In his evidence in chief he stated that when he was asked at the police station if he wanted to make any statement, he stated that he told the police officer that he would speak in court. This however was never put in cross-examination to Sergeant Filia. Also in his examination in Chief, he first stated that Sergeant Filia wrote the statement himself without him telling him anything. He however, changed tact and then explained that he gave the statement to Sergeant Filia out of fear and concern for his family. Under cross-examination he eventually admitted that he gave the statement voluntarily to the interviewing officer and then signed it.

The accused has been charged for exporting without a licence under section 17(1). The main reason being that the firearm and ammunition had been taken out of the country. On the other hand the facts show that the act of taking out was not done in the commercial sense of the word 'export' but more out of a desire to assist a brother of the accused living in Bougainville. The rifle and ammunition were not taken out for gain or profit but rather were given by the accused to his brother for purposes of self-defence, and out of a genuine concern for his safety.

The word 'export' is defined in the Customs and Excise act as:

*"with its grammatical variations and cognate expressions means to take or cause to be taken out of the Solomon Islands."*

I am satisfied that the crucial element of the offence has been proven beyond reasonable doubt.

I am satisfied that the statement made by the accused to the Police was a voluntary one. The accused understood clearly what was said to him and what he subsequently stated to police. I am satisfied he was not threatened in anyway or forced to make the statement.

His evidence under oath on the other hand was not convincing.

One of the clear inconsistencies is as follows. In his additional statement made to Police on the 22 January 1993 this is what he says:

*"Me rememberem last year 1992, me askem Firearms licence belong George Satu long date 1 June 1992. Me askem licence ia for me buyim cartridge. There nao George Satu hem givim me licence book belong hem. So long same day ia, me go long Y.T.L store long china Town and me buyem 2 x 50 .22 cartridges long store ia. Long ologeta dates 2/6/92, 3/6/92, 11/6/92, 5/8/92 and 25/8/92; hem nao ologeta dates me payem cartridges long Firearm licence belong George Satu. Ologeta cartridges ia me givim waitem Firearm rifle belong me for brother belong me Samson Loea who hem married long Bougainville and hem stap there. After ologeta purchasing me doim finish Stanton Buka hem come long me and hem askem me that hem likem licence belong George Satu. There me givim hem and hem go nao."*

The last purchase he made was on 25 August 1992. He gave those cartridges to his brother Samson Loea in Bougainville. The purchases recorded in his statement for the following dates: 2/6/92, 3/6/92, 11/6/92, 5/8/92 and 25/8/92 were done using George Satu's firearms and ammunition licence. This is quite understandable as he had exhausted his entitlement under his firearm and ammunition licence book for 1992. The last purchase recorded in his book was for the 28 May 1992. George Satu's book was obtained on the 1st June 1992. This makes sense and in my view he was speaking the truth in his statement. He then stated that after those purchases, Stanton Buka came to him and asked for George Satu's licence.

Under cross-examination by Mr. Teutao he stated that it was not Stanton Buka who got the book from him but another Stanton. He stated it was Stanton Loea and that the Police Officer had made a mistake in recording the name. However, Stanton Loea had

already been alleged killed in April of 1992 and therefore he could not possibly have been the Stanton referred to in his cautioned statement.

Under cross-examination he stated that the Police Officer misquoted him. In other words his allegation in examination in chief that the cautioned statement was not voluntary could not be true, because he admitted that he did make a statement, but was misquoted by the Police Officer.

I am satisfied I can rely on his cautioned statement and disbelieve what he said under oath about its involuntariness and his changed version under oath.

There is one final point to make. It seems that firearms and ammunition licence holders are freely giving their licences to unauthorised persons to use. Currently, there is no means of checking that the person buying the ammunition is the licence holder. One consideration that can be given is to require that all licence holders must have a passport size photo affixed to their licences. The dealers can then ensure as far as is possible that the person purchasing the ammunition is no one else but the licence holder.

It also seems to me that dealers are not checking the records in the licence books. A licence holder can only purchase a maximum of 1,200 rounds of ammunition in one year. In one licence book a total of 1,400 rounds were purchased in one year; 1,100 rounds being bought over a period of only two months from the same dealer. Dealers who sell more than the maximum number of rounds to any licence holder should either be warned or their dealer's licence considered for revocation.

Licence holders must understand that a licence is personal to the holder and not to be given to anyone for use.

The accused is convicted of both offences.

(A.R. Palmer)

JUDGE

**SENTENCE:**

Give credit for a guilty plea. Note have previous convictions but disregarded and treated as a first offender. Offences are serious and usually, sentences imposed are for imprisonment. I have considered a custodial sentence.

However when I consider the circumstances surrounding the commission of the offence, I am drawn to the conclusion that I can particularise the circumstances surrounding the offence to this accused.

The facts showed that this accused's nephew had been killed by the Papua New Guinea Defence Force in a horrible manner. Subsequently, his brother in Bougainville had requested that he give his fire-arm and ammunition to him for purposes of self-defence. Out of a moral sense of obligation this accused gave his fire-arm to his brother.

I note the motivation was not out of profit, but one of genuine concern for his blood brother. This is to be distinguished from other instances of assistance been given directly to Bougainvilleans by selling arms and ammunition to them for profit.

He is convicted of both offences and fined a total of \$500.00.

Count 1	-	\$250	
Count 2	-	\$250	Payable in 7 days 1/d 6 moths.

Firearms and ammunition to be forfeited and I recommend too that his licence be revoked.

(A.R. Palmer)  
JUDGE