

**SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY
COURT OF APPEAL**

Case Title: The Director of Public Prosecutions v Graham

Citation: [2018] ACTCA 23

Hearing Dates: 17 May 2018

Decision Date: 15 June 2018

Before: Murrell CJ, Loukas-Karlsson and North JJ

Decision: Question: Whether the phrase “likely to cause danger to life or harm to the person” in s 27(3)(c) of the *Crimes Act 1900* (ACT) refers to the use of the offensive weapon or to the nature of the offensive weapon.
Answer: The phrase refers to the use of the offensive weapon.
See [37]–[38].

Catchwords: **CRIMINAL LAW** – REFERENCE APPEAL – Statutory interpretation – Construction of s 27(3)(c) of *Crimes Act 1900* (ACT) – Whether “likely to endanger human life or cause a person grievous bodily harm” relates to the use of the weapon or the characteristics of the weapon – Relates to the use of the weapon

Legislation Cited: *Crimes Act 1900* (ACT) ss 27(3), 27(4)
Legislation Act 2001 (ACT) s 139
Supreme Court Act 1933 (ACT) s 37S

Cases Cited: *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28; 194 CLR 355
R v Chifuntwe (No 2) [2017] ACTSC 134
R v Draunikau [2012] ACTSC 133
R v ML [2013] ACTSC 32
R v O’Neill [2004] ACTSC 64
SZTAL v Minister for Immigration and Border Protection [2017] HCA 34; 91 ALJR 936
The Queen v Maurice Herbert Vagg [2005] ACTSC 134

Parties: The Director of Public Prosecutions (Applicant)
Troy Graham (Interested Party)

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ACT Director of Public Prosecutions (Applicant)

N/A (Interested Party)

File Number: ACTCA 47 of 2017

Decision under appeal: Court/Tribunal: ACTSC
Before: Mossop J
Date of Decision: 15 September 2017
Case Title: R v Graham
Citation: [2017] ACTSC 267
Court File Numbers: SCC 294 of 2016; SCC 295 of 2016

THE COURT:

The application

1. Before the Court is an application for a reference appeal filed on 9 October 2017 by the Director of Public Prosecutions (the DPP).
2. The application is brought under s 37S of the *Supreme Court Act 1933* (ACT) (the Supreme Court Act) which provides:
 - (1) This section applies if a person has been charged on indictment in the court and the proceeding in relation to all or any part of the indictment has concluded.
...
 - (2) The Court of Appeal may, on application by the Attorney-General, solicitor-general or the director of public prosecutions (the **applicant**), hear and decide (by a **reference appeal**) any question of law arising at or in relation to the proceeding.
 - (3) An application must be made within 6 weeks after the end of the proceeding, or within any longer period allowed by the Court of Appeal.
 - (4) Either or both of the following people (an **interested party**) may be heard in the reference appeal:
 - (a) a person charged in the proceeding;
 - (b) a person affected by any decision in the proceeding.
 - (5) If an interested party is not represented in the appeal, the applicant must instruct counsel to argue the reference appeal on the party's behalf.
 - (6) The decision on the reference appeal does not invalidate or affect any verdict or decision given in the proceeding.
3. In a reference appeal under s 37S(2), the Court of Appeal may hear and decide questions of law arising at or in relation to a proceeding. The questions of law stated in the present application are:
 - a) What are the elements of an offence against s 27(3)(c) of the *Crimes Act 1900*?
 - b) Is it appropriate to read into paragraph 27(3)(c) of the *Crimes Act 1900* a requirement that an offensive weapon be used "in a manner" likely to endanger life or cause grievous bodily harm?
4. Section 27(3) and (4) of the *Crimes Act 1900* (ACT) (the Crimes Act) provide as follows:

- (3) A person who intentionally and unlawfully—
- (a) chokes, suffocates or strangles another person so as to render that person insensible or unconscious or, by any other means, renders another person insensible or unconscious; or
 - (b) administers to, or causes to be taken by, another person any stupefying or overpowering drug or poison or any other injurious substance likely to endanger human life or cause a person grievous bodily harm; or
 - (c) **uses against another person any offensive weapon likely to endanger human life or cause a person grievous bodily harm;** or
 - (d) discharges any loaded arms at another person or so as to cause another person reasonable apprehension for his or her safety; or
 - (e) causes an explosion or throws, places, sends or otherwise uses any explosive device or any explosive, corrosive or inflammable substance in circumstances likely to endanger human life or cause a person grievous bodily harm; or
 - (f) sets a trap or device for the purpose of creating circumstances likely to endanger human life or cause a person (including a trespasser) grievous bodily harm; or
 - (g) interferes with any conveyance or transport facility or any public utility service in circumstances likely to endanger human life or cause a person grievous bodily harm; or
 - (h) interferes with a prescribed traffic control device (within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*) in circumstances likely to endanger life or cause a person grievous bodily harm;

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

- (4) A person who does an act referred to in subsection (3)—
- (a) intending to commit an indictable offence against this part punishable by imprisonment for a maximum period exceeding 10 years; or
 - (b) intending to prevent or hinder his or her lawful apprehension or detention or that of another person; or
 - (c) intending to prevent or hinder a police officer from lawfully investigating an act or matter that reasonably calls for investigation by the officer;

is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

(emphasis added)

5. The dictionary in the Crimes Act provides a definition of “offensive weapon” as:

- (a) anything made or adapted for use, or capable of being used, for causing injury to or incapacitating a person; or
- (b) anything intended for that use by the person who is carrying it or otherwise has it in his or her possession;

and includes an imitation or replica of an offensive weapon.

6. The proceeding in which the questions of law arise was the hearing of a charge against Troy Graham on indictment under s 27(3)(c) and s 27(4) of the Crimes Act for the offence of using an offensive weapon to prevent or hinder lawful apprehension or investigation. The indictment read as follows:

[O]n 18 December 2015 at Canberra in the Australian Capital Territory TROY GRAHAM, used against another person, namely Paul Yates, an offensive weapon likely to endanger

human life or cause a person grievous bodily harm, and did so intending to prevent or hinder his lawful apprehension or detention, or intending to prevent or hinder a police officer from lawfully investigating an act or matter that reasonably called for investigation by the officer.

7. Mr Graham, as the person charged in the proceeding, is the respondent to this application as an interested party under s 37S(4)(a) of the Supreme Court Act.

The facts

8. The hearing of the charge under s 27, together with a number of traffic offences took place before the primary judge sitting alone. On 15 September 2017, his Honour returned a verdict of not guilty on the charge under s 27.
9. The facts relevant to that charge occurred around 6.30 pm on 18 December 2015. Senior Constable Yates and Constable Wilson-Smith went to Allawah Court where they knew Mr Graham frequented. They wanted to speak with Mr Graham about having seen him earlier in the day riding a motorcycle without wearing a helmet and to arrest him for breaching his bail conditions. When Senior Constable Yates and Constable Wilson-Smith arrived at Allawah Court they saw Mr Graham with some others. Mr Graham then ran away.
10. The primary judge set out the evidence of Senior Constable Yates about what then happened thus:
 14. ... Senior Constable Yates got out of the car and ran after the accused. He ran after him because he thought he could catch him and wished to arrest him for a breach of his bail conditions as well as in order to speak to him about the riding of the motorcycle.
 15. At the end of Block 8 there was a carport similar to that where he had first seen the accused and he saw the accused on a motorbike which had the engine running. While this carport was located at the Ainslie Avenue end of the complex, the nearest exit was onto Cooyong Street in the direction from which the officer had come. He saw the accused at a distance of 15 metres and when about 10 metres away "screamed out in a very loud voice to stop" and raised his hand so as to indicate that he should stop. He described that the motorcycle accelerated suddenly directly at him and he jumped to his right, out of the way of the motor cycle, in order to avoid being struck. He felt something strike the left side of his hip. During the incident he was looking directly at the rider of the motorcycle who was not wearing a helmet. He did not observe the rider of the motorcycle make any attempt to manoeuvre so as to avoid him. His radio pouch was torn from his belt and he had some grazes on his arm and a small cut to his elbow.
11. There was a contest at the trial concerning identification which was determined against Mr Graham. On that issue the primary judge had some reservations about aspects of the evidence of Senior Constable Yates, but there was no criticism of his evidence on the essential facts relating to the charge under s 27. Further, his Honour accepted the evidence of Constable Wilson-Smith which corroborated the evidence of what occurred in relation to the charge in question.

The reasoning of the primary judge

12. So far as is relevant to this application, the primary judge considered the meaning of the phrase "likely to endanger human life or cause a person grievous bodily harm" in s 27(3)(c) of the Crimes Act.
13. In respect of that phrase his Honour reasoned as follows:

77. ... Section 27(3)(c) is similar to s 27(3)(b) in that the "likely" consequence is used to describe the item or substance used rather than the circumstances in which it is used. Section 27(3)(b) refers to an "injurious substance likely to endanger human life or cause a person grievous bodily harm". Section 27(3)(c) refers to an "offensive weapon likely to endanger human life or cause a person grievous bodily harm". In contrast paragraphs (e)-(h) of s 27(3) use the word "likely" as a description of consequences of the circumstances in which the act occurs:
- (e) causes an explosion or throws, places, sends or otherwise uses any explosive device or any explosive, corrosive or inflammable substance ***in circumstances likely to*** endanger human life or cause a person grievous bodily harm; or
 - (f) sets a trap or device for the purpose of ***creating circumstances likely to*** endanger human life or cause a person (including a trespasser) grievous bodily harm; or
 - (g) interferes with any conveyance or transport facility or any public utility service ***in circumstances likely to*** endanger human life or cause a person grievous bodily harm; or
 - (h) interferes with a prescribed traffic control device (within the meaning of the Road Transport (Safety and Traffic Management) Act 1999) ***in circumstances likely to*** endanger life or cause a person grievous bodily harm;
78. The contrasting language used suggests that in paragraphs (b)-(c) of s 27(3) the words "likely to" describe the thing itself rather than a set of circumstances involving the use of the thing.
79. However even in the case of offensive weapons which clearly would be capable of endangering life or causing a person grievous bodily harm (for example, a gun or a knife) there will be uses of those weapons against a person which are clearly not likely to endanger human life or cause a person grievous bodily harm even though the weapon has that capacity. Likewise an "injurious substance" capable of endangering human life or causing a person grievous bodily harm may be harmless if used in a particular way (such as at very low concentrations). These examples suggest that the quest to establish the relevant likelihood from the inherent nature of the item or substance will prove impossible.
80. In my view, the likelihood of endangering life or causing grievous bodily harm must be assessed with at least *some* regard to the manner in which the substance (s 27(3)(b)) or weapon (s 27(3)(c)) is used. It is necessary to look, in the case of s 27(3)(c), to some aspect of the use and intention behind its use. That is particularly so where the offensive weapon only falls within limb (b) of the definition, that is, because of the intention of the user rather than the nature of the item (limb (a)). When greater emphasis is placed on the word "use" the paragraph asks whether the use of the offensive weapon was likely to endanger human life or cause grievous bodily harm. In the same way s 27(3)(b) asks whether the administration of the injurious substance was likely to have that effect. In the case of an offensive weapon within limb (b) of the definition this allows an examination of the manner of use in order to reach a conclusion as to whether or not there was a substantial, real and not remote chance of the endangering of human life or causing a person grievous bodily harm. Having regard to the structure of the section which, as pointed out above, suggests that the likely consequences are directed to some inherent quality of the weapon, this interpretation has a degree of artificiality about it. It requires the paragraph to be read as though it in fact read "uses ... any offensive weapon *in a manner* likely to ... " when an apparently deliberate decision has been made not to draft the paragraph in that way. However unless so interpreted the paragraph calls for an enquiry which is even more artificial, that is, an inquiry about the inherent nature of a weapon divorced from the manner in which it is used.

81. The interpretation that I have given the section is consistent with the interpretation apparently given to it by Connolly J in *R v O'Neill* [2004] ACTSC 64 although his Honour does not appear to have given detailed consideration to the issue.
82. As Higgins J explained in *R v Galvin* (1998) 147 FLR 182 at 184, s 27 was inserted by an amending ordinance in 1990, the explanatory statement for which stated that the new provisions had the effect of "replacing archaic offences and language, removing anomalies and inconsistencies and standardising language". This worthy law reform intention does not appear to have been fully achieved in s 27(3)(c). Provisions of the criminal law which have the capacity to result in imprisonment of citizens for 10 years or, in the case of s 27(4), 15 years, should be drafted so that informed citizens may make choices about how they behave. The theory of citizens making rational choices under law which forms the foundation of the criminal law is undermined when statutory provisions are not drafted in a way to clearly expose the elements of the offence. That is the case with s 27(3)(c).
83. When s 27(3) is interpreted in a manner which I have outlined above I am not satisfied that it has been proved beyond reasonable doubt that the accused committed an offence under s 27(4). I accept that a motor vehicle may be an offensive weapon for the purposes of s 27(3)(c): see *R v Hamilton* (1993) 66 A Crim R 575; *R v O'Neill* [2004] ACTSC 64 at [9]. However I am not satisfied that there was a real or substantial risk that Senior Constable Yates' life was endangered or a real or substantial risk that the use of the motorcycle would cause grievous bodily harm. There was certainly evidence that the motorcycle was accelerating over a short distance towards the officer. There was no evidence of the speed at which the motorcycle was actually travelling at the point where it would have hit him. There was no expert evidence about the nature of the injuries that could be suffered by a person who was struck by such a vehicle at that speed. Constable Yates in fact only suffered some minor grazing. While there was clearly a real or substantial risk that he might sustain actual bodily harm if the motorcycle collided with him, the nature of the weapon was not such that it was obvious that there was a real or substantial risk that life would be endangered or grievous bodily harm caused as there would have been if the incident involved a motor car: cf *R v O'Neill* [2004] ACTSC 64 at [9]. The accused is not guilty of this charge.

(emphasis in original)

The submissions of the Director of Public Prosecutions

14. The essence of the argument of the DPP is that the words "likely to endanger human life or cause a person grievous bodily harm" in s 27(3)(c) of the Crimes Act describe the nature of the offensive weapon and not the manner in which the offensive weapon is used.
15. A person commits an offence under s 27(3)(c) by using an offensive weapon against another person. An offensive weapon for the purposes will have the following characteristics:
 - (a) Under (a) of the definition – anything made or adapted for use, or capable of being used, for causing injury to or incapacitating a person and further will have the characteristic of being likely to endanger human life or cause a person grievous bodily harm; or
 - (b) Under (b) of the definition – anything intended for that use by the person who is carrying it or otherwise has it in his or her possession and further will have the characteristic of being likely to endanger human life or cause a person grievous bodily harm.

16. On this construction it is not relevant to consider the use to which the weapon was put when addressing the requirement that the weapon be “likely to endanger human life or cause a person grievous bodily harm”.
17. The DPP contended that the construction proposed reflected the scheme of s 27(3). Where it is intended to proscribe the conduct by reference to the circumstance that an act is likely to endanger life or cause grievous bodily harm, such requirement is made explicit as in s 27(3)(e), (f), (g) and (h). In contrast, s 27(3)(b) and (c) proscribe the use of a thing which has a particular characteristic. The construction adopted by the primary judge did not properly reflect that scheme of the section.
18. The DPP analysed the structure of s 27(3) as containing three categories of offence which criminalised acts endangering human life or causing grievous bodily harm. In one category the targeted acts themselves have an undesirable result. Thus, s 27(3)(a) makes it an offence to choke the a person so as to render that person insensible. Section 27(3)(d) makes it an offence to discharge loaded arms at a person or discharge loaded arms so as to cause another person a reasonable apprehension for their safety. In another category are the offences proscribed in s 27(3)(e), (f), (g) and (h) where the act in question takes place in circumstances which mean that the act is likely to endanger human life or cause grievous bodily harm. In those cases the prosecution does not need to establish that the particular result occurred. Rather it is the doing of the act in circumstances likely to endanger human life which attracts the operation of the section. As to the third category the written submissions of the DPP argued:
 35. **A third category** is described in paragraphs (b) and (c). Paragraph (b) makes it an offence to administer to another person any stupefying drug likely to endanger human life. Paragraph (c) makes it an offence to use against another person any offensive weapon likely to endanger human life.
 36. The mischief at which these two offences are aimed is the administration to a person of a stupefying drug which is inherently likely to endanger human life, or the use against another person of an offensive weapon which is inherently likely to endanger human life. Unlike the first category of offences which require a result, it is not necessary to prove a particular result for these two offences. Nor is it necessary to establish that the act was done *in circumstances* likely to endanger human life as with the second category of offences.
 37. The key aspect of both these offences is the use of a thing which has a particular characteristic, namely its potential to endanger human life. If that potential is present to the degree of likelihood, then the use of the thing is criminalised. It is not all stupefying drugs or offensive weapons the administration or use of which is prohibited. The key aspect of all of this is the **likelihood** of the thing administered or used endangering human life or causing grievous bodily harm.
 38. Relevantly here, the prohibition was not against the use of an offensive weapon per se. The prohibition was against the use of an offensive weapon having a particular characteristic, that is, an offensive weapon that is likely to endanger human life or cause a person grievous bodily harm.

(emphasis in original)
19. The DPP contended that the construction of s 27(3)(c) and (4) of the Crimes Act was the subject of conflicting authorities.
20. In support of the construction proposed by him the DPP relied on *R v ML* [2013] ACTSC 32 (ML) and *R v Chifuntwe (No 2)* [2017] ACTSC 134 (Chifuntwe). In ML, the accused approached the complainant from behind wearing large rubber gloves and

carrying an extension lead with two wires ending in points wrapped around a piece of metal which appeared intended to deliver an electric shock which he dug into her hand whilst uttering a threat to kill her. Higgins CJ said:

8. If the wires were live that device would be an offensive weapon and hence likely to endanger life or cause serious bodily harm.

...

76. At the conclusion of the prosecution case, I pointed out that there was no evidence to support a conclusion that the power cord, allegedly wielded by the accused, was an offensive weapon capable of endangering life or causing grievous bodily harm.

21. In *Chifuntwe*, Elkaim J formulated the requirement of s 27(3)(c) as intending that “the offensive weapon was likely to endanger human life or cause serious bodily harm”. His Honour said:

88. ... I am not satisfied beyond reasonable doubt that the accused used the vehicle as an offensive weapon. Proof of this charge requires the establishment of an intention to drive the vehicle at the police officer. I do not think that intention has been proved. While I do not doubt the evidence of the two officers involved, it is also obvious that the accused was endeavouring to leave the scene hastily and the possibility of him briefly heading towards the officer cannot be excluded as being part of his flight.

89. The events happened over the course of seconds. The officer was running towards the vehicle. The vehicle was heading away. In my view, there must be a reasonable doubt as to whether the vehicle was ever driven at the officer or simply passed him in the rush to flee. Accordingly, there will be a verdict of Not Guilty entered on the second count.

22. The DPP then referred to several other cases which had adopted the construction favoured by the primary judge. In *R v Draunikau* [2012] ACTSC 133, Nield AJ acquitted the accused on charges under s 27(3)(c) involving the accused driving a car towards a police officer. His Honour regarded s 27(3)(c) as requiring that the offence required that the car was used “in circumstance likely to endanger human life”.

23. In *R v O’Neill* [2004] ACTSC 64 the accused was charged with an offence under s 27(3)(c) for reversing his car into a motorcycle of a police officer after the accused had been pulled over. Connolly J found the accused guilty on the basis that:

9. ... a motor vehicle deliberately driven at another person in circumstances where it is intended to knock that person off their stationary motorcycle amounts to a use that is likely to endanger human life or cause a person grievous bodily harm.

24. In *The Queen v Maurice Herbert Vagg* [2005] ACTSC 134 the accused was charged with an offence under s 27(3)(c) for raising a block splitter to shoulder level and dropping it down in a motion towards the victim. The Crown conceded that the swing was not forceful. Connolly J acquitted the accused on that charge stating that:

15. ... the Crown would have difficulty in making out beyond reasonable doubt the finding that the swing would be likely to endanger human life or cause grievous bodily harm

...

Discussion

25. A recent concise statement of the proper approach to the construction of a statute is found in the judgment of Kiefel CJ, Nettle and Gordon JJ in *SZTAL v Minister for Immigration and Border Protection* [2017] HCA 34; 91 ALJR 936 as follows:

14. The starting point for the ascertainment of the meaning of a statutory provision is the text of the statute whilst, at the same time, regard is had to its context and purpose. Context should be regarded at this first stage and not at some later stage and it should be regarded in its widest sense. This is not to deny the importance of the natural and ordinary meaning of a word, namely how it is ordinarily understood in discourse, to the process of construction. Considerations of context and purpose simply recognise that, understood in its statutory, historical or other context, some other meaning of a word may be suggested, and so too, if its ordinary meaning is not consistent with the statutory purpose, that meaning must be rejected.
- (footnotes omitted)
26. Their Honours drew on the judgment of McHugh, Gummow, Kirby and Hayne JJ in *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28; 194 CLR 355 which included the following:
69. The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute. The meaning of the provision must be determined "by reference to the language of the instrument viewed as a whole". In *Commissioner for Railways (NSW) v Agalianos*, Dixon CJ pointed out that "the context, the general purpose and policy of a provision and its consistency and fairness are surer guides to its meaning than the logic with which it is constructed". Thus, the process of construction must always begin by examining the context of the provision that is being construed.
- (footnotes omitted)
27. In the ACT the role which consideration of the purpose of a provision is to play is governed by s 139 of the *Legislation Act 2001* (Act) (the Legislation Act) which provides:
- (1) In working out the meaning of an Act, the interpretation that would best achieve the purpose of the Act is to be preferred to any other interpretation.
- (2) This section applies whether or not the Act's purpose is expressly stated in the Act.
28. Section 138 of the Legislation Act defines what is meant by the working out of the meaning of an act as follows:
- In this part:
- "working out the meaning of an Act" means—
- (a) resolving an ambiguous or obscure provision of the Act; or
- (b) confirming or displacing the apparent meaning of the Act; or
- (c) finding the meaning of the Act when its apparent meaning leads to a result that is manifestly absurd or is unreasonable; or
- (d) finding the meaning of the Act in any other case.
29. Applying those principles to the interpretation of s 27(3)(c) of the Crimes Act requires answers to two questions, namely, what is the natural and ordinary meaning of s 27(3)(c), and what is the purpose of s 27(3)(c).
30. As to the first question, read in accordance with its grammatical construction, the natural meaning of s 27(3)(c) links the danger to life or harm to a person with the use of the offensive weapon. To read the danger to life or harm to the person as a reference to characteristics of the weapon is a forced and unnatural meaning. That is because what causes danger or harm is not the nature of the weapon but rather the manner in

which it is used. This consideration is a major obstacle in the way of accepting the construction proposed by the DPP.

31. As to the second question, the purpose of s 27(3) of the Crimes Act is to criminalise conduct which is likely to cause danger to human life or cause harm to a person. The heading, which supports that view of the purpose, is not part of the Act: s 126(2) of the Legislation Act. However, the provisions themselves make that purpose plain. That purpose is express in s 27(3)(b), (c), (e), (f), (g) and (h). That is to say the offences involve the consequence of likely danger or harm. Section 27(3)(a) and (b) are expressed differently. Rather than expressing the consequence of the conduct as likely to cause danger or harm, those provisions stipulate the danger or harm themselves. For instance, s 27(3)(a) makes it an offence to choke etc another person so as to render that person insensible or unconscious. Rather than describing the consequence of the act as likely to cause danger or harm, the very danger or harm is articulated.
32. Once it is understood that the purpose of s 27(3)(c) is to make it an offence to act in a way which is likely to cause danger or harm, then the ordinary grammatical meaning of the section and the purpose it seeks to achieve are harmonious. What is proscribed is the use of an offensive weapon in such a way that there is a likely danger or harm.
33. That purpose is not achieved on the construction advocated by the DPP. If the likely harm or danger is a characteristic of the offensive weapon, then that weapon may be used in a way that is not likely to cause danger to life or harm to a person. On that construction, the section proscribes the use of an offensive weapon of a particular character whether the use is likely to endanger life or cause harm to a person. It is no answer, as the DPP proposed, that the use must be "against" the other person. Such use does not necessarily entail a required likely danger or harm.
34. The DPP placed considerable reliance on the variation in language between s 27(3)(e), (f), (g) and (h) where the proscribed act is undertaken "in circumstances" likely to cause danger or harm, and s 27(3)(c) where the words "in circumstances" are not used. However, once the purpose of the provision is understood, it can be seen that the variation in wording is of no significance.
35. The DPP made glancing reference to the history of prior provisions, but accepted in oral submissions that no real assistance could be gained from the previous form of the provision.
36. The authorities on the application of s 27(3)(c) referred to earlier in these reasons for judgment demonstrate a variation in the practice of single judges of the Court. That variation is a proper foundation for the DPP to have brought this reference appeal. However, none of those authorities provide a detailed analysis of the construction question and hence do not assist in the resolution of the present issue.
37. In the end we agree with the primary judge that an offence against s 27(3)(c) and (4) of the Crimes Act is only committed where the use of the offensive weapon is likely to endanger human life or cause a person grievous bodily harm. The offence is not committed simply by the use against a person of an offensive weapon which has particular features, but where the use is not likely to endanger life or cause a person grievous bodily harm.

38. That answers the question which was argued before the Court. The stated questions of law travel wider than the argument addressed to the Court. That argument was in effect limited to whether the phrase “likely to cause danger to life or harm to a person” relates to the use of the weapon or the characteristics of the weapon. It is not appropriate to deal with other elements which were not addressed in argument. Further, we would not answer the question as posed in (b) of the stated question because the meaning of s 27(3)(c) does not require the addition of words.

The natural meaning taking account of the purpose of the section is plain on its face.

I certify that the preceding thirty-eight [38] numbered paragraphs are a true copy of the Reasons for Judgment of their Honours Chief Justice Murrell, Justice Loukas-Karlsson and Justice North.

Associate:



Date: 15 June 2018