

Jano v. FSM
12 FSM Intrm. --- (App. 2004)

FSM SUPREME COURT APPELLATE DIVISION

MARTIN JANO,)	APPEAL CASE NO. P3-2000
)	
Appellant,)	
)	
vs.)	
)	
FEDERATED STATES OF MICRONESIA,)	
)	
Appellee.)	
_____)	

OPINION

Argued: March 24, 2004

Decided: July 30, 2004

BEFORE:

Hon. Andon L. Amaraich, Chief Justice, FSM Supreme Court
Hon. Martin G. Yinug, Associate Justice, FSM Supreme Court
Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court

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HEADNOTES

Constitutional Law – Interpretation; Statutes – Construction

The nation's laws are presumed to be constitutional. A fundamental principle of statutory

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interpretation is that where a statute can be read in two ways, one raising constitutional issues and the other interpreting the language as affecting matters clearly within Congress's constitutional reach, the latter interpretation should prevail so that the constitutional issue is avoided. Jano v. FSM, 12 FSM Intrm. ---, --- (App. 2004).

Constitutional Law – Interpretation; Statutes – Construction

Courts should, where possible, avoid selecting interpretations of a statute which may bring into doubt that statute's constitutionality. Jano v. FSM, 12 FSM Intrm. ---, --- (App. 2004).

Criminal Law and Procedure – Major Crimes

Major crimes jurisdiction was based upon defining a major crime by the severity of the penalty. Jano v. FSM, 12 FSM Intrm. ---, --- (App. 2004).

Criminal Law and Procedure – Major Crimes; Criminal Law and Procedure – National Crimes

The 1991 constitutional amendment that changed the word "major" to the word "national" narrowed Congress's power by allowing it to define national crimes instead of major crimes and prescribe penalties, having due regard for local custom and tradition. Jano v. FSM, 12 FSM Intrm. ---, --- (App. 2004).

Weapons

National government jurisdiction over possession of firearms and ammunition under the Weapons Control Act was not removed by the 1991 constitutional amendment that removed national government jurisdiction over major crimes, because there was an independent national government jurisdictional basis for it under the Constitution's foreign and interstate commerce and national defense clauses. Jano v. FSM, 12 FSM Intrm. ---, --- (App. 2004).

Constitutional Law – Interpretation; Statutes – Repeal

The final test in determining whether a statute is repealed by implication by a constitutional provision is: Has the legislature, under the new constitutional provision, the present right to enact statutes substantially like the statutes in question? Jano v. FSM, 12 FSM Intrm. ---, --- (App. 2004).

Criminal Law and Procedure – National Crimes; Weapons

In an examination to determine whether it is a national crime, the focus is: Does the regulation of the possession of firearms and ammunition involve a national activity or function, or is it one of an indisputably national character? Jano v. FSM, 12 FSM Intrm. ---, --- (App. 2004).

Criminal Law and Procedure – National Crimes

Congress's power to define national crimes is generally restricted to three areas: 1) actions occurring in places where the national government has jurisdiction; 2) actions involving an instrumentality of the national government; and 3) actions involving an activity or function that the national government has the power to regulate. Jano v. FSM, 12 FSM Intrm. ---, --- (App. 2004).

Criminal Law and Procedure – National Crimes; Weapons

The national government can regulate firearms and ammunition possession since there is an international commerce aspect to the regulation of possession of firearms and ammunition that is related to its manufacture outside of the FSM and to its movement through the nation's customs and immigration borders and on the additional jurisdictional basis rooted in the national defense clause.

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Criminal Law and Procedure – National Crimes; Weapons

There is a national government interest in regulating the possession of firearms and ammunition in order to provide for the national security, which furthers the nation's interest in its defense, and this, in combination with the international commerce aspects, provides a jurisdictional basis for the national government's regulation of the possession of firearms and ammunition. Jano v. FSM, 12 FSM Intrm. ---, --- (App. 2004).

Constitutional Law; Federalism

The Constitution's broadly stated express grants of power to the national government contain within them innumerable incidental or implied powers, as well as certain inherent powers. Jano v. FSM, 12 FSM Intrm. ---, --- (App. 2004).

Federalism

The power to provide for the national defense includes the inherent authority to protect the nation from threats both foreign and domestic. Protecting the nation from these threats would include regulating the possession of firearms and ammunition. Jano v. FSM, 12 FSM Intrm. ---, --- (App. 2004).

Criminal Law and Procedure – National Crimes; Weapons

The regulation of possession of firearms and ammunition involves a national activity or function because of the international commerce aspects of its manufacture and movement, together with the national government interest in protecting the national security under the national defense clause. In combination, these provide the national government with a jurisdictional basis to regulate the possession of firearms and ammunition. Jano v. FSM, 12 FSM Intrm. ---, --- (App. 2004).

* * * *

COURT'S OPINION

DENNIS K. YAMASE, Associate Justice:

This is an appeal by Appellant Martin Jano from the trial court's August 18, 2000 judgment finding him guilty of one count of possession of a handgun pursuant to 11 F.S.M.C. 1223(5);¹ four counts of possession of a firearm without an identification card pursuant to 11 F.S.M.C. 1205(1);² and three counts of possession of ammunition without an identification card. Id. Each of the convictions are for violations of certain statutory provisions of the Weapons Control Act in effect at the time of

¹ 11 F.S.M.C. 1223(5) reads as follows: "No person shall: (5) import, sell, transfer, give away, purchase, possess, or use any handgun, automatic weapon, rifle larger than .22 caliber, shotgun larger than .410 gauge, or any other firearm."

² 11 F.S.M.C. 1205(1) reads as follows: "(1) No person shall acquire or possess any firearm, dangerous device, or ammunition unless he holds an identification card issued pursuant to this chapter. The identification card is evidence of the holder's eligibility to possess and use or carry firearms, dangerous devices, or ammunition."

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the offenses in the year 1999.³

The Appellant Jano contends that the trial court erred in not granting his March 7, 2000 motion to dismiss which challenged the jurisdiction of the trial court because a 1991 amendment to Article IX, Section 2(p) of the Constitution of the Federated States of Micronesia removed major crimes jurisdiction from the national government and made 11 F.S.M.C. 1205 and 1223, insofar as they regulate the possession of firearms and ammunition, an improper exercise of national authority. The FSM contends that the regulation of possession of firearms and ammunition remain under national government jurisdiction pursuant to its authority to regulate foreign and interstate commerce under Article IX, Section 2(g) of the Constitution.

We uphold the convictions of the trial court. We hold that the trial court did not err when it denied Jano's motion to dismiss the national government's prosecution of him under 11 F.S.M.C. 1205 and 1223, because the national government had an independent jurisdictional basis over these crimes. We determine the national government's jurisdiction over these crimes to be pursuant to the combined aspects of both the foreign and interstate commerce clause of Article IX, Section 2(g) and the national defense clause of Article IX, Section 2(a) of the Constitution. As this was the only ground raised on appeal, the convictions are affirmed.

I. ISSUE

The single issue presented on appeal by the Appellant Jano is whether, after the 1991 constitutional amendment to Article IX, Section 2(p) that removed from the FSM authority to define major crimes, 11 F.S.M.C. 1205(1) and 1223(5), insofar as they regulated the possession of firearms and ammunition, were an unconstitutional exercise of national authority.

II. DISCUSSION

Was the Weapons Control Act in effect at the time of Jano's offenses unconstitutional?

Jano contends that the Weapons Control Act under which he was convicted was unconstitutional because: (1) the violations of the Weapons Control Act were major crimes whose jurisdiction was removed by the 1991 constitutional amendment to Article IX, Section 2(p); (2) the statutory provisions of the Weapons Control Act under which he was convicted were repealed by implication by the 1991 constitutional amendment; and (3) the national government does not have jurisdiction over the regulation of possession of firearms and ammunition because this does not involve a national activity or function and because it is not of such an indisputably national character under

³ The constitutionality of this Weapons Control Act was upheld in *Joker v. FSM*, 2 FSM Intrm. 38 (App. 1985), which held that the Transition Clause of the FSM Constitution effectively adopts statutes of the Trust Territory, including the Weapons Control Act, and serves as the original enactment of a body of law, criminal as well as civil, for the new constitutional government. Further action by the FSM Congress was not necessary to establish that violations of the Weapons Control Act are prohibited within the FSM. *Id.* at 43.

In 2001, Public Law No. 11-72 was passed entitled the Revised Criminal Code Act which included a Federated States of Micronesia Weapons Control Act. Jano was convicted under the Weapons Control Act that existed prior to the passage of Public Law No. 11-72.

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Article VIII, Section 1 of the Constitution as to be beyond the power of a state to control.

The FSM contends that the regulation of possession of firearms and ammunition are within the national government's express authority to regulate international commerce pursuant to Article IX, Section 2(g) of the Constitution, since both items are not manufactured anywhere in the FSM and all such items must be imported and move in international commerce. Additionally, international commerce is an area of such an indisputably national character as to be beyond the power of a state to control because the customs and immigration borders of the FSM are controlled by agencies of the national government. FSM v. Fal, 8 FSM Intrm.151, 154 (Yap 1997).

A. Was national government jurisdiction over regulation of possession of firearms and ammunition made unconstitutional by the 1991 constitutional amendment?

We are mindful that the nation's laws are presumed to be constitutional. FSM v. Anson, 11 FSM Intrm. 69, 74 (Pon. 2002); Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 374, 387 (Pon. 1998). A fundamental principle of statutory interpretation is that where a statute can be read in two ways, one raising constitutional issues and the other interpreting the language as affecting matters clearly within the constitutional reach of Congress, the latter interpretation should prevail so that the constitutional issue is avoided. FSM v. Boaz (II), 1 FSM Intrm. 28, 32 (Pon. 1981). Courts should, where possible, avoid selecting interpretations of a statute which may bring into doubt the constitutionality of that statute. In re Otokichy, 1 FSM Intrm. 183, 190 (App. 1982).

Jano focuses much of his arguments on Article IX, Section 2(p) of the Constitution. Prior to its amendment in 1991, Article IX, Section 2(p) read as follows: "(p) to define major crimes and prescribe penalties, having due regard for local custom and tradition" Article IX, Section 2(p) was amended by Constitutional Convention ("Con. Con.") Committee Proposal No. 90-13, SD1 which became effective on July 2, 1991.⁴ Article IX, Section 2(p), as amended, reads as follows: "(p) to define national crimes and prescribe penalties, having due regard for local custom and tradition."

The primary change effectuated by the 1991 constitutional amendment was changing the word "major" to the word "national." When Article IX, Section 2(p) included the word "major" it allowed the Congress of the Federated States of Micronesia ("Congress") the power to define major crimes and prescribe penalties for those crimes, having due regard for local custom and tradition. Major crimes jurisdiction was then based upon defining a major crime by the severity of the penalty. When this provision was amended to change the word "major" to "national" it narrowed Congress's power by allowing it to define national crimes instead of major crimes and prescribe penalties, again having due regard for local custom and tradition.

After the 1991 constitutional amendment to Article IX, Section 2(p), the FSM states took over the major crimes jurisdiction. In re Ress, 5 FSM Intrm. 273, 275-76 (Chk. 1992) citing J. of FSM Con. Con. 744 (1990). Jano contends that since the 1990 framers intended the states' major crimes jurisdiction to be exclusive, the national government no longer had any jurisdictional basis to continue enforcing those major crimes sections of the National Criminal Code. Jano argues that 11 F.S.M.C.

⁴ Following ratification by voters of the FSM in a referendum held in accordance with Article XIV of the Constitution.

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1205 and 1223 were major crimes under the original Article IX, Section 2(p) because the penalty for each violation of those sections involved a fine of \$2,000, or imprisonment for up to five years. The definition of "major crimes" in the original National Criminal Code was "any crime which is punishable by imprisonment for a period of three years or more." 11 F.S.M.C. 104(6). However, in 1987, a new major crimes definition was enacted by Congress in Public Law No. ("Pub. L. No.") 5-40, which amended 11 F.S.M.C. 902, making the definition of major crimes as "all crimes which are punishable by imprisonment for a period of 10 years or more." 11 F.S.M.C. 902.

Jano's contention that the challenged statutory provisions were major crimes are therefore in error. The statutory provisions of the Weapons Control Act did not meet the statutory definition of major crimes effective at the time of his offenses. In 1987, when the Congress sought to amend the crimes under its jurisdiction, it made a thorough review of the National Criminal Code, including the Weapons Control Act. Congress set forth its position on its jurisdiction over the Weapons Control Act in Standing Committee Report No. ("SCREP No.") 5-128, 2d Reg. Sess. 5th Cong., on C.B. No. 5-161 that was enacted as Pub. L. No. 5-40. That report stated:

your committee does not believe that National jurisdiction over firearms and similar weapons rests upon the major crimes clause of article IX, section 2(p) of the Constitution alone. As most weapons are imported, Congress can regulate them under the foreign and interstate commerce clause of article IX, section 2(g). As events around the world have shown that such weapons can be used for destabilizing terrorist activities, we believe that Congress can also regulate them pursuant to article IX, section 2(a) power to provide for the National defense.

Congress thus recognized that it had an independent jurisdictional basis for the Weapons Control Act under Article IX, Section 2(g) on foreign and interstate commerce and Article IX, Section 2(a) on national defense. While the 1991 constitutional amendment did repeal national government jurisdiction over major crimes, Jano's arguments fail to take into account the fact that the Weapons Control Act had an independent national government jurisdictional basis and thus were national crimes.

Congress has always had the power to define national crimes. This power to define national crimes is inherent in the national government and existed before the 1991 amendment made the power express. See SCREP No. 20-90, J. of FSM Con. Con. 38, 39 (legislative history of 1991 constitutional amendment). For national crimes, Congress need not have amended or reenacted the National Criminal Code, for it to have continued validity. In Joker v. FSM, 2 FSM Intrm. 38, 41 (App. 1985), this court held that the Weapons Control Act violations punishable by imprisonment of three or more years were national crimes.

In Joker, we further stated that:

We see nothing particularly absurd about a weapons control scheme that recognizes that both the national and the state governments have an interest in controlling the possession, use and sale of weapons. While Congress and the states may eventually wish to allocate their respective roles with more precision, the current Weapons Control Act appears to provide a workable system during these early years of transition and constitutional self-government. The Act seems well attuned to the recognition of shared national-state interests in maintaining an orderly society and the goal of

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cooperation in law enforcement reflected in the Major Crimes Clause, Article IX, Section 2(p) of the Constitution as well as the Joint Law Enforcement Act. 12 F.S.M.C. 1201.

Id. at 44.

For the aforementioned reasons, we determine that national government jurisdiction over possession of firearms and ammunition under the subject Weapons Control Act was not removed by the 1991 constitutional amendment that removed national government jurisdiction over major crimes, because there was an independent national government jurisdictional basis for it under the foreign and interstate commerce clause of Article IX, Section 2(g) and the national defense clause of Article IX, Section 2(a) of the Constitution.

B. Were the statutory provisions under which Jano was convicted repealed by implication by the 1991 constitutional amendment?

While we hold that there was an independent national government jurisdictional basis for the subject statutory provisions of the Weapons Control Act, we apply the test for ascertaining whether a statute is repealed by implication that was laid out in Fal and FSM v. Jano, 6 FSM Intrm. 9, 11 (Pohnpei 1993). In Jano the court stated:

"The final test in determining whether a statute is repealed by implication by a constitutional provision is: Has the legislature, under the new constitutional provision, the present right to enact statutes substantially like the statutes in question?" 16 Am. Jur. 2d Constitutional Law § 68, at 388-89 (1979). See also 1A C. Dallas Sands, Sutherland Statutory Construction § 23.20 (4th rev. ed. 1985).

Jano, 6 FSM Intrm. at 9, 11.

This test leads us to an examination of the other important sub-issues of this case that essentially determine whether a crime is a national crime. The focus here is, does the regulation of the possession of firearms and ammunition involve a national activity or function, or is it one of an indisputably national character.

Jano contends that the national government's failure to update the National Criminal Code after the 1991 constitutional amendment should not be a basis for disregarding the intent of that amendment. He contends that the power to regulate possession of firearms and ammunition is neither a power that the Constitution expressly delegated to the national government or prohibited to the states, nor a power of such an indisputably national character as to be beyond the power of a state to control, and therefore it is a state power outside the jurisdiction of the national government.

Jano further makes the point that mere possession of firearms or ammunition does not provide the requisite nexus to foreign and interstate commerce. He contends that there must be a nexus between the conduct regulated and the national activity protected or that the regulated activity has a substantial effect on commerce. United States v. Bass, 434 F.2d 488, *aff'd*, 404 U.S. 336, 92 S.Ct. 515, 30 L. Ed. 2d 488 (1971). This would require that the national government must have a rational basis in finding that the regulation of possession of firearms and ammunition has a substantial

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effect on foreign or interstate commerce. Failure to show the requisite nexus or the substantial effect will result in dismissal of an indictment. *Compare United States v. Harbin*, 313 F. Supp. 50 (N.D. Ind. 1970) *with United States v. Puntillo*, 332 F. Supp. 110 (E.D. Wis. 1971).

We recognize that Congress's power to define national crimes is generally restricted to three areas: (1) actions occurring in places where the national government has jurisdiction; (2) actions involving an instrumentality of the national government; and (3) actions involving an activity or function that the national government has the power to regulate. *Fal*, 8 FSM Intrm. at 154. This case involves neither an area where the national government has jurisdiction nor an instrumentality of the national government; it therefore focuses on whether the challenged statute regulates action incident to a national activity or function, or regulates action of an indisputably national character.

In *Fal*, the trial court stated that:

Because firearms and ammunition are not manufactured anywhere in the Federated States of Micronesia, all such items must necessarily be imported. As such, they must move in international commerce. The national government has the express authority to regulate international commerce. FSM Const. art. IX, § 2(g). International commerce is also a power of such an indisputably national character as to be beyond the power of a state to control because the customs and immigration borders of the country are controlled by agencies of the national government. Regulation of firearms and ammunition is therefore a subject upon which Congress may legislate. See, e.g., SCREP No. 5-128, J. of 5th Cong., 2d Reg. Sess. 436, 438 (1987) ("As most weapons are imported, Congress can regulate them under the foreign and interstate commerce clause of article IX, section 2(g).") (legislative history of national criminal code revision of 1987). Because Congress has the present authority to enact firearms and ammunition statutes, such previously enacted statutes have continuing vitality.

Fal, 8 FSM Intrm. at 151, 154.

We concur with the trial court in *Fal*, to the extent that there is an international commerce aspect to the regulation of possession of firearms and ammunition that is related to its manufacture outside of the FSM and to its movement through the customs and immigration borders of the Nation. But we need not follow nor confine ourselves to the same path as in *Fal*, because we recognize an additional jurisdictional basis for national government regulation of possession of firearms and ammunition rooted in the national defense clause of Article IX, Section 2(a) of the Constitution.

C. Is there also a national defense aspect to the regulation of possession of firearms and ammunition?

We also determine that there is a national government interest in regulating the possession of firearms and ammunition in order to provide for the national security, which furthers the Nation's interest in its defense, and that this, in combination with the international commerce aspects discussed earlier, provides a jurisdictional basis for the national government's regulation of the possession of firearms and ammunition.

Article IX, Section 2(a) of the Constitution states that the power "to provide for the national defense" is expressly delegated to the Congress. The Constitution's broadly stated express grants of

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power to the national government contain within them innumerable incidental or implied powers, as well as certain inherent powers. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 431 n.2 (App. 2000). The power to provide for the national defense includes the inherent authority to protect the nation from threats both foreign and domestic. Clearly, protecting the nation from these threats would include regulating the possession of firearms and ammunition. This is in recognition that firearms and ammunition would very likely be used by those meaning to threaten or destroy the national security by coercing conduct and carrying out activities that would be detrimental to the national defense. Since these items would likely be the agents to coerce conduct in possible terrorist or other activities threatening national security or defense, the national government has the ability to regulate their possession. Such authority under this constitutional provision is not dependent upon the passage of firearms and ammunition through foreign or interstate commerce, or their manufacture outside of the FSM.

We determine that the regulation of possession of firearms and ammunition involves a national activity or function because of the international commerce aspects of its manufacture and movement, together with the national government interest in protecting the national security under the national defense clause of Article IX, Section 2(a). In combination, these provide the national government with a jurisdictional basis to regulate the possession of firearms and ammunition. Therefore, the 1991 constitutional amendment did not impliedly repeal the statutory provisions of the Weapons Control Act under which Jano was convicted, because the Congress, under the 1991 constitutional amendment, has the right to enact statutes substantially like the statutes in question. In deciding as we do, we need not decide whether the national government would have jurisdiction to regulate the possession of firearms and ammunition solely under the power to regulate foreign and interstate commerce.

III. CONCLUSION

We uphold the convictions of the trial court. We determine that the trial court did not err in convicting Jano of the aforementioned crimes pursuant to 11 F.S.M.C. 1205 and 1223 that were effective at the time of his offenses, because of the independent national government jurisdictional basis for these crimes. The regulation of possession of firearms and ammunition involves a national activity or function under the combined national government interests in aspects of the foreign and interstate commerce clause of Article IX, Section 2(g) and the national defense clause of Article IX, Section 2(a) of the Constitution.

Accordingly, we affirm the judgment of the trial court, and remand this case to the trial court to take further action consistent with this decision.

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