APPEAL COURT, HIGH COURT OF JUSTICIARY

[2024] HCJAC 42
HCA/2024/125/XC

Lord Justice General
Lord Matthews
Lord Armstrong

OPINION OF THE COURT

delivered by LORD CARLOWAY, the LORD JUSTICE GENERAL

in

NOTE OF APPEAL AGAINST CONVICTION

by

STUART DEMPSEY MCMILLAN

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondents

Appellant: S Collins (sol adv); Collins & Co
Respondents: Mohammad KC AD; the Crown Agent

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9 October 2024

Introduction

[1] On 1 February 2024, at the Sheriff Court in Edinburgh, the appellant was convicted of a contravention of section 1(1)(a) of the Firearms Act 1968; being in possession of a shotgun without a firearms certificate. The appellant pled guilty to a second charge under

the Misuse of Drugs Act 1971. On 29 February 2024 he was sentenced to two years imprisonment *in cumulo*.

[2] The ground of appeal is that the sheriff misdirected the jury by telling them that they would be "entitled to infer" knowledge, and hence possession, of a package containing a shotgun which was found in his van.

Evidence

[3] The police received intelligence that a shotgun was to be collected from a house in Hamilton. They put the address under surveillance. The house was visited by the appellant in his van. The appellant was later stopped by the police near his own home. The van was searched. An object, which transpired to be a sawn off shotgun wrapped in a black plastic bin bag, was found in the back of the van along with a set of wheels. The appellant appeared surprised on being stopped.

[4] At trial the issue was whether the appellant knew that the package containing the shotgun was in the back of his van. He did not give evidence. In his interview by the police, the appellant gave a detailed, if not convoluted, explanation of his movements on the day. He had received a telephone call from a prisoner, whom he knew, asking him to hire a vehicle. He declined. In a further call from the same mobile number, but from a different prisoner who was unknown to him, the appellant was asked to collect an alloy wheel for an urgent repair to a car. The appellant had a van for his work as a builder. He agreed to collect the wheel from Hamilton.

[5] Whilst in transit, the appellant was contacted by another man, who provided him with a specific address. When he arrived at the address, another man got into his van and directed him to another, nearby, location. The appellant backed the van into a drive. The

other man went into a garage and put something, which the appellant assumed to be the wheel, into the back of the van. The appellant did not look into the back, nor were the contents visible to him.

[6] In due course, the procurator fiscal depute asked the jury rhetorically how many times they had been out driving and ended up with a shotgun in their car. The PFD invited the jury to consider that these things did not happen and to infer that the appellant must have had knowledge of the package. The appellant's solicitor advocate submitted to the jury that they should not draw any inference of knowledge in the circumstances.

Charge to the jury

[7] The sheriff provided the jury with opening directions covering their respective roles. He advised them that the law was a matter for him but the facts were a matter for them. He explained that, at the end of the case, it was for the jury to consider what conclusions should be drawn from circumstantial evidence.

[8] In the sheriff's charge to the jury, he dealt with the concept of knowledge in possession of firearm cases. He explained that the jury could not look into the appellant's mind. Inferences required to be drawn from the proved facts and circumstances. He directed the jury that the Crown had presented sufficient evidence from which they could infer knowledge. In particular, he said that the jury would be "entitled to infer that he was in possession of the package" because it was found in his van with other items belonging to him. The sheriff said that this was not a conclusion which the jury required to reach. It was a matter for them to determine. He explained that the appellant's police interview was not under oath or subject to cross-examination. The jury could draw appropriate conclusions based on whether they believed or disbelieved different aspects of the interview. It was for

the jury to come to their own conclusion on whether they believed what the appellant had said. The jury had to be satisfied beyond reasonable doubt that the appellant knew that the bin bag package was in his van.

Submissions

[9] The appellant maintained that the sheriff had misdirected the jury. In the ground of appeal, the complaint was about the jury being told that they were "entitled to infer" that the appellant was in possession of the package containing the gun. The direction, it was said, went beyond telling them that there was a sufficiency in law to allow them to convict. It directed the jury that they would be entitled to do what the procurator fiscal depute had asked the jury to do. The misdirection was a material one and was likely to have significantly influenced the verdict. In oral submissions, this complaint was not so much about the jury being entitled to infer knowledge but the sheriff going on to describe the basis for drawing the inference.

[10] The Crown replied that parts of the charge should not be taken in isolation. The charge should be viewed as a whole and in a context in which the jury had heard the evidence and the speeches. In the opening directions and in his charge, the sheriff told the jury that they were responsible for decisions of fact and that this was their responsibility alone. He made it clear that he was not saying that the jury had to draw an inference of knowledge. It was entirely a matter for them to decide what to make of the evidence and, in particular, whether they could make the required inference of knowledge.

Decision

[11] The sheriff's directions to the jury, set in the context of a short trial in which the jury

had heard the evidence and the speeches, were unexceptional. He correctly told the jury that they were entitled to infer from the facts and circumstances that, notwithstanding what the appellant had said during his interview with the police, he knew that he was carrying the package in which the shotgun was wrapped. He told them that they did not have to draw this inference. It was made clear to the jury that this was a matter of fact for their determination.

[12] The appeal is refused.