



IN THE GRAND COURT OF THE CAYMAN ISLANDS (*Criminal*)
 HOLDEN AT GEORGE TOWN, GRAND CAYMAN
 BEFORE THE HON. CHIEF JUSTICE, SIR JOHN SUMMERFIELD
 CASE NOS. 551-552/85 & 554-559/85
 APPEAL NO. 52/85

17 OCTOBER 1985

BILLY RAY MARTINEZ VS REGINA

Norman Hill Esq. Q.C. (with him Mr. Roger) for appellant

A. Smellie Esq., for respondent

AG	Sk
LD	mm
SCC	Sk
CC1	Smellie
CC2	RD
CC3	Sk
CC4	DAB
II	SE
P.	
For Ac. On	AG
10	
M/A	
Put Away	

JUDGMENT

The appellant was convicted on six charges relating to the possession of unlicensed firearms contrary to section 15 (1) (3) (f) of the Firearms Law. Three charges related to firearms in the conventional sense - one to a Browning 9 m.m. semi automatic revolver, one to a winchester rifle and the third to a titan .25 calibre automatic revolver. The three other charges related to ammunition - one to 20 rounds of 30 - 30 Remington, one to 3 rounds of .25 and the third to 10 rounds of 9 m.m. On each charge he was sentenced to three months imprisonment, the sentences to run concurrently. Additionally, on each charge other than those for the possession of ammunition he was fined \$500 or 30 days imprisonment in default.

He appeals against conviction and sentence on each charge.

At the hearing the appellant was acquitted of two charges relating to the possession of a prohibited weapon contrary to section 67 (sic) of the Penal Code. He was also acquitted on a charge of assault.

The appellant possesses, and has a firearm licence for, a 12 gauge shotgun.

The narrative starts with an incident in June or July of 1984 when the appellant was in a rescue launch which was being tested on the North Sound. The crew came across John Ramoon who had a fish-pot in his possession. The appellant recognised the fish-pot as his and claimed it. There was a heated exchange of words and Mr. Ramoon delivered it up. There has been tension and bad blood between the two ever since that incident.

Early in March of this year Mr. Ramoon was at Delworth's Gas Station. The appellant came upon the scene. There was some talk, with acrimonious undertones, about the purchase of beers. According to Mr. Ramoon, in the course of this exchange, the appellant went outside and, on return, put his hand in his pocket and took out a handgun, pointed it at Mr. Ramoon and threatened to blow his brains out.

That incident was the subject matter of the charge of assault. Mr. Ramoon was the complainant. When, in the course of his evidence, Mr. Ramoon made it clear that the threatened use of the firearm never put him in fear in any way the prosecution indicated to the court that it would not proceed with that charge of assault. The learned Magistrate made it clear that absence of any fear was the ground for acquittal on that charge.

The importance of that incident is that, because of that threat with a firearm, Mr. Ramoon reported it to the police; perhaps motivated by the animosity between the two. That was on 4 March 1985.

On the same day at about 10.00 a.m. D/Sgt Hunte and D/Constable Bush, armed with a search warrant, went to the two bedroom apartment on Hospital Road where the appellant lived with his wife and infant child and a female relation of his wife. They went to search for firearms.

There appear to be minor differences in the evidence of Detective Sergeant Hunte and Detective Constable Bush as they related how the search went, but it is apparent that the learned Magistrate accepted the evidence of Detective Sergeant Hunte in most cases when there appeared to be some discrepancy.

On arrival at the appellant's apartment the appellant was asked whether he had a firearm. He told the officers that he had a shotgun and that it was licensed. The appellant led the officers to a linen closet where, on opening the closet door, the shotgun, in its case, was visible. One of the officers took out the shotgun and Detective Sergeant Hunte asked the appellant if he had any more firearms. He said: "no".

One may pause here because much was made of Detective Sergeant Hunte's evidence to the effect that the Winchester, later found, was behind the shotgun; that on opening the door you could see the shotgun but not the Winchester. The interpretation sought to be placed on this evidence, which received some support in Detective Constable Bush's evidence, was that on removing the shotgun one would immediately see the the Winchester. If that were so, one would not have expected the exchange just recorded to have taken place. It would be pointless to ask whether he had another firearm if another one was visible for all to see. What he might have been asked is whether the other one was his. There can be no doubt that the exchange occurred because the appellant himself, in examination in chief, said that that is what happened. For this reason one can properly take issue with one finding of the learned Magistrate, namely, that anyone moving the shotgun would see the Winchester. On no one's account did that happen.

One must remember that there were recesses to each side of the door jams and the shotgun could equally obscure the Winchester placed by or in either of those recesses. What the learned Magistrate also found was:

"The position in which the Winchester rifle was found is immediately behind but was obscured by the shotgun in its case. Both had been stood with butt on the floor of the closet, the barrels upturned, the Winchester leaning on the material which formed the front of the closet in an alcove to the left as one faces into the closet. The Winchester rifle was not immediately visible until the shotgun was removed, its case being wider and longer than the rifle in its case."

There was evidence to support that finding.

When the appellant denied having any more firearms Sergeant Hunte stepped into the closet and, facing outwards, reached up into a pocket, about 8 - 10 inches deep, formed by a piece of panelling affixed across from one door jamb to the other, in the space over the door.

From this pocket he took a small black .25 automatic pistol in a holster. It was loaded with 3 rounds. He then took from the pocket a 9 m.m. semi automatic pistol. It was loaded with 10 rounds and was contained in a blue Chivas Regal bag.

Detective Constable Bush then reached into the same pocket and took from it a box of 20 rounds of 30-30 Remington ammunition. Then finally, and this is of some significance in relation to all that has been said about the shotgun obscuring the Winchester, in the learned Magistrate's own words: "From an alcove in the same closet not immediately visible from the closet door Detective Constable David Bush took one Winchester rifle in a brown coloured soft case". And so the Winchester was the last firearm to be found in the closet. The 30 - 30 ammunition was ammunition for use in the Winchester.

What is significant at this stage is that the loaded .25 automatic

pistol, the loaded 9 m.m. semi automatic pistol and the 30 - 30 Remington ammunition were all found in the pocket above the door.

Later at the police station, Mr. Ramoon identified the .25 automatic pistol as similar to the firearm that the appellant had pulled oh him at Delworth's Gas Station. He did so again at the trial. The 30 - 30 ammunition in that same pocket was obviously associated with the Winchester.

In the course of the search ammunition for the shotgun was later found by the officers in a different place, in a bag behind the night table.

The evidence of Detective Sergeant Hunte, in chief, supported by detective Constable Bush is that on being shown the .25 automatic pistol the appellant walked away, threw his hands in the air and said: "Hunte, give me a chance". The officers said that he also said "Give me a chance" when the 9 m.m. pistol was found, and again upon being cautioned after arrest on the several charges. Although the learned Magistrate did not include a specific finding to this effect under the heading "Findings" in her judgment it is clear from her reference to it earlier in the judgment that she accepted this evidence. Had she not done so she would have said so.

The appellant did not contest the fact that the guns and ammunition were found in his home. He claimed that he did not know they were there. He claimed that several of his wife's relations had stayed there, one in particular, a brother in law who was in Honduras and who wanted to buy firearms to sell in Honduras. He claimed that it was he (the appellant) who showed the officers where the shotgun ammunition was. Detective Sergeant Hunte denied this. The appellant denied saying: "Give me a chance". He claimed that each time an item was found he told the officers that he knew nothing about it. That in turn was denied by Detective Sergeant Hunte. The appellant denied that he had pulled the .25 automatic pistol, or any firearm, on Mr. Ramoon.

The learned Magistrate dealt fully with the defence. Save with regard to one sentence, mentioned earlier, about the inevitability of seeing the Winchester when the shotgun was removed, the analysis was fair and full.

She rejected the appellant's defence where it conflicted by way of fact or inference with the prosecution evidence. She held as a fact that the appellant had knowledge of the firearms and ammunition found.

The evidence fully justified the finding that the appellant knowingly had possession and control of the firearms and ammunition. Having found that Mr. Ramoon's account was true it is difficult to see how she could come to any other conclusion in relation to the .25 automatic pistol and the ammunition loaded in it. The proximity of the items found in the pocket above the door together with the appellant's reaction when they were found and all the other circumstances of this case lead inevitably to the conclusion of guilt on the charges relating to the other two firearms and the ammunition for them.

As to sentence, on any view it was very lenient. Unlawful possession of three firearms and the ammunition for them leaves no room for soft options. This was a nest of extreme danger and the evidence is that he threatened to use one of the firearms. One feels sympathy for a man in the appellant's position, with a clean record, whose world must fall apart following these convictions. The humiliation and financial consequences and effects on his family are severe. But it seems to me that these factors have been taken into account in the lenient sentence imposed. Further, a man holding ^{the} responsible position the appellant did should know better. If I were to interfere with the sentence at all it should be to increase it. On no account could this small arsenal be treated as justifying a fine only or a suspended sentence. That would give the public a completely wrong view as to how offenders possessing unlicensed firearms should be dealt with in this day and age. Sentences in cases of this nature must be deterrent. The appellant is fortunate that the sentence was not much more severe.

The appeal against convictions and sentences are dismissed.


Sir John Summerfield.