



Neutral Citation Number: [2020] EWCA Crim 124

Case No: 201902062 C3

**IN THE COURT OF APPEAL (CRIMINAL DIVISION)**  
**ON APPEAL FROM THE CROWN COURT AT SNARES BROOK**  
**HHJ SHANKS**  
**T20180277**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: Wednesday 12<sup>th</sup> February 2020

**Before:**

**LADY JUSTICE THIRLWALL DBE**  
**MRS JUSTICE CHEEMA-GRUBB DBE**

and

**HHJ WENDY JOSEPH QC (sitting as a judge of the CACD)**

-----  
**Between:**

**ROBERT ODUM-TOLAND**  
**- and -**  
**REGINA**

**Appellant**

**Respondent**

-----  
**Ms Emma Goodall for the Appellant**  
**Mr Toby Fitzgerald for the Respondent**

Hearing dates: Tuesday 21<sup>st</sup> January 2020  
-----

**Approved Judgment**

**THIRLWALL LJ:**

1. This is the judgment of the Court.
2. Robert Odum-Toland is 33 years old. On 3<sup>rd</sup> May 2019 after a trial he was convicted by an 11-1 majority of Conspiracy to Possess Prohibited Firearms with Intent to Endanger Life. That was Count 1 on the indictment. He had pleaded guilty on 16<sup>th</sup> April to Count 2, Conspiracy to Possess Firearms, a plea which was not accepted by the Crown and the trial ensued.
3. At the same trial, his co-defendant, Jorel Edgecombe, was convicted of Count 2. The jury were unable to reach a verdict in respect of Count 1 in his case. A retrial took place at a later date and he was convicted of Count 1.
4. Both men were sentenced on 4<sup>th</sup> October 2019 to 15 years imprisonment.
5. This is Odum-Toland's appeal against conviction which he brings with limited leave of the single judge.
6. We understand that Edgecombe has now lodged an application for leave to appeal against both convictions arising out of the two trials. His grounds have not yet been considered by Single Judge and we understand there are no grounds in common with this appeal. We proceed accordingly.
7. There are three grounds of appeal brought with the leave of the single judge. There is no renewed application for permission to appeal in respect of a further ground

**FACTS**

8. It is an unusual feature of this case that most of the prosecution case was agreed. The appellant and Edgecombe were friends. In December 2017 Edgecombe lived at 88 Lowther Drive. When he was arrested in May 2018 he was living at 25 Pinnell Road, London SE9.
9. Edgecombe was the subject of a police surveillance operation. It was an agreed fact that on 6<sup>th</sup> December 2017 he was seen going into Pinnell Road. It was further agreed that on 8<sup>th</sup> December police seized a package from a Fedex driver. The box had come from the U.S. and was addressed to Wyatt Young at 25 Pinnell Road. It contained a number of soft toys, inside three of which were hidden 9mm handguns: the first, a Smith and Wesson, the second, a Ruger, and the third, a Sig Sauer.
10. On the morning of 8<sup>th</sup> December Edgecombe was seen again going into 25 Pinnell Road. He was seen using his mobile phone. At around midday the appellant arrived at Pinnell Road driving a Mercedes motor vehicle that belonged to Edgecombe. He too was seen using his phone. He stayed in the car and remained on the road for about an hour. At 12:53, Edgecombe came out of 25 Pinnell Road and got into the Mercedes. He was in the car for 12 minutes before returning to the house. The Mercedes remained in the vicinity.
11. On 11<sup>th</sup> December the police intercepted and seized another package from Fedex which had been sent from the same address in the U.S. and was also addressed to Wyatt Young at 25 Pinnell Road. In this box two more handguns (a Taurus and a Sig

Sauer) were found wrapped in paper and concealed inside a Mickey Mouse soft toy. Also recovered from inside a Disney Cars box were 20 rounds of live 9mm ammunition which were suitable for use in the Smith and Wesson firearm seized from the earlier package and five live rounds of .380 Auto ammunition suitable for use with the Sig Sauer firearm.

12. The same morning the appellant arrived at Pinnell Road in the Mercedes and used his mobile phone. He went to number 25 and returned to the car with Edgecombe. They drove away and returned an hour later. Edgecombe went inside and the appellant waited outside in the car for another hour before driving off. He returned 10 minutes later.
13. On the same date, the appellant went to the Fedex depot to see what had happened to the two undelivered parcels. He returned again in the afternoon and made two subsequent phone calls in his attempts to obtain the undelivered packages.
14. Between 6<sup>th</sup> and 12<sup>th</sup> December the appellant and co-accused contacted one another a total of twenty times by phone.
15. On the afternoon of 19<sup>th</sup> December police conducted observations at Landmann House. At 12:50 a man carrying a box pushed the intercom and went in. At 13:25 a Parcelforce delivery man went to the communal door holding a box bearing the address of 22 Landmann House. He went into the address and left subsequently without the box. At 13:52 the appellant left the address and collected a black Nike holdall from the boot of the Mercedes car and went back into Landmann house. At 14:00 he left the address carrying the black holdall which he placed into the boot of the car before driving from the estate. At 14:20 he was stopped by police whilst in the car. He was found to be in possession of a phone on which Google Maps was in use with the destination address set as 88 Lowther Drive.
16. From inside the black holdall police recovered two revolvers (a Ruger .22 calibre and an RG .38 special calibre), two self-loading pistols (a Smith and Wesson .40 calibre and an MP-25 .25 auto calibre), four live rounds of .25 Auto calibre cartridges suitable for use with the MP-25, thirteen live .40 Smith and Wesson cartridges in a pistol magazine, and a further large quantity of live .40 calibre Smith and Wesson cartridges.
17. In the light of this evidence, all of which was agreed, it is unsurprising that the appellant pleaded guilty to Count 2.
18. In addition to the evidence to which we have already referred, the Crown also relied on evidence of many WhatsApp messages between the appellant and Edgecombe, discovered following the seizure of the appellant's phone. On 31<sup>st</sup> August 2017 the appellant provided Edgecombe with the address at 22 Landmann House. On 3<sup>rd</sup> December he sent him a picture of five handguns with a message indicating that guns of this type would be arriving that week and that Edgecombe needed to tell people to have payment ready as they would be sold on a 'first come, first served' basis. The following day the appellant sent another message indicating that they were ready to make some money. Edgecombe provided the appellant with his bank details. The appellant provided him with parcel tracking information and sent him further pictures of firearms.

19. Investigators established that the person in the U.S. responsible for dispatching the Fedex parcels was a Maurice ('Mo') Taylor, who would later plead guilty to the illegal export of firearms. From 23<sup>rd</sup> September 2017 onwards the appellant was in contact with Taylor via WhatsApp. Taylor sent him photographs of firearms and asked him which one he wanted, to which the appellant replied, "Either one don't matter. Revolver would be my last option tho". Different addresses were provided to Taylor, including the Landmann House address, Edgecombe's home address and two other addresses linked to him. Taylor continued to send the appellant photos of different firearms. During October they shared tracking information and on 24<sup>th</sup> October the appellant sent Taylor a photo of a handgun with the caption, "Made it bro". Cell-site evidence suggested that the appellant and Edgecombe were together when the appellant sent Taylor photographs of guns that had arrived.
20. Throughout November the two men continued to exchange messages regarding the on-going importation of firearms, which were to be concealed in soft toys, and those exchanges appeared to relate to a shipment delivered by Fedex on 27<sup>th</sup> November. Further messages during December clearly referred to the importation of firearms and there was speculation as to why the intercepted packages had not arrived. The messages sent to Taylor by the appellant included the following: "What else in the line-up for the future? Them things will move."; "Them 2/3 week could be at least \$2 - 3K/week for you if them things could get in rotation like that thru here"; "Damn, that's a whole lot of dollars to be made"; "Muhfuckas want them shells"; "yeah everybody asking for shells on that one"; "I got a guy keep bullshitting me saying that he'd grab it without the shells but ain't getting back to me"; following a reference to a 9mm: "As many 9's as you can get. Them seem to be in high demand"; following an offer of an AK assault rifle: "Let's wait on getting the choppers over here. Pistol money is cool for now"; "Whatever pistols there are, grab and send them through"; in respect of a picture of a revolver: "Yeah, it'll sell. Anything else? Get as many as you can. These joints will be gone today."; and "You holding onto that 380? Whatever you get, grab it and it'll sell here. Wanna get a nice consistent rotation a them joints".
21. On 3<sup>rd</sup> April 2019 Taylor was interviewed by United States authorities. He said that he was friends with the appellant's girlfriend and it was through her that he began communicating with the appellant. The appellant had told him that club bouncers and security companies were looking for guns. He was aware that the appellant had already been arrested because the appellant's girlfriend had told him so. He had never heard of Edgecombe.
22. It was accepted by the Crown that the police had not uncovered any evidence as to onward supply of the guns during the course of their investigation and nor had they found any links to gangs or organised crime.
23. As evidence of the necessary intent, the prosecution relied on the following factors:
  - i) The nature of the firearms: They were prohibited, they were small and easily concealed, and they were accompanied by ammunition. They were guns designed for endangering life and possibly killing people.
  - ii) The circumstances of the importation: They were smuggled into the country with children's toys, sent to different addresses, and had no accompanying

paperwork. Nobody who wanted to acquire a firearm for legitimate purposes would want to acquire weapons which had arrived in the UK by such means.

iii) The nature of the WhatsApp messages: These showed that the appellant just wanted some weapons to sell, rather than being concerned about what type, and that was because criminals would have little interest in the details of the weapon so long as it could be concealed and could shoot.

24. The defence case was that the appellant had no intention that the firearms would go to criminals to be used in crime to endanger life.

25. The live issue for the jury in the appellant's case was whether he had agreed with Edgecombe and/or Taylor that the imported handguns would be sold to criminals who they intended would use the handguns in a way which would endanger life as and when the occasion required.

### **KEY DEFENCE EVIDENCE**

26. In his first Defence Statement, the appellant blamed Edgecombe for everything that had happened and stated that Edgecombe must have borrowed his phone and was responsible for sending the WhatsApp messages. By the time he gave evidence he said that Edgecombe had given him the address at 25 Pinnell Road. He had pleaded guilty to Count 2 because he had formed a conspiracy to possess handguns here with both the co-accused and Taylor.

27. In evidence and in his second defence statement, he stated that he had initially talked to Taylor about importing cannabis from California. A package was sent which he expected to contain cannabis but in fact contained other items that were not supposed to be sent by international mail such as a knife and lighter fluid. He discussed with Edgecombe and Taylor the fact that these items had got through customs. He became aware from people in the UK that guns were valuable here and he shared that information with the other two men. He decided that Taylor would find the guns for him in the United States and the latter started shipping the firearms to him in the UK. Taylor and his father were both ill and so Taylor wanted to make money. Edgecombe had financial problems with his landlords. The appellant passed the firearms on to Edgecombe for onward sale. Taylor and Edgecombe did not know each other. The appellant played no role in the onward sale of the guns after the co-accused had taken possession.

28. He knew about guns as he had lived in the United States, he had owned guns there, and he knew about the regime in place there in relation to guns. He had lived in the UK since 2012 and had not been involved with guns here, had not owned one here, nor did he really know about the legalities of the matter in the UK. He was told by Edgecombe that the guns were going to be sold to military and security personnel and others with licences, i.e. people who were entitled to have the guns for recreational use, target shooting, hunting etc. There was a market in collecting this kind of item. Edgecombe had given him information about purchases and told him that he had a friend who was in the security business who had a firearms licence. He understood that a licence holder was entitled to hold firearms but he did not know until after his arrest that handguns were prohibited. He accepted that they were cutting corners, eliminating paperwork, and not doing things through the proper channels. It was

easier for them to source the firearms that way and he assumed that the buyers would get the firearms cheaper than if buying through official channels.

29. He had no intention that the firearms would go to criminals and be used in crime to endanger life. He had no connection with criminals or gangs or anything like that and, to the best of his knowledge, nor did the co-accused.
30. The reason he had falsely blamed Edgecombe for everything in his first Defence Statement was that he was trying to find out at that stage whether the co-accused was some kind of police informer.
31. Edgecombe gave evidence that he knew that the appellant was bringing guns into the country but, contrary to the appellant's evidence, he had no involvement in the enterprise. The jury disbelieved him. It is not necessary to consider any further detail of his evidence save to say that he said that on 19<sup>th</sup> December he was unwell and, so far as he was concerned, the appellant was coming to his house to take him for some treatment. It was not to deliver guns.
32. He knew that handguns were illegal in the UK and he knew that private security firms were not entitled to have guns.
33. The judge delivered his summing up in two parts. The first was at the conclusion of the evidence and before speeches. This part of the summing up included written directions. After speeches he continued with the balance of the summing up, which was oral only.

#### **GROUND OF APPEAL**

34. In summary, there are three grounds:
  - i) The direction given to the jury in respect of circumstantial evidence was wholly inadequate.
  - ii) The hearsay direction in respect of Taylor's account in interview was defective.
  - iii) The direction given in respect of lies told in the appellant's first Defence Statement was defective.
35. We have received helpful written and oral submissions from Ms Goodall for which we are grateful. We also received a comprehensive Respondent's Notice from Mr Fitzgerald who also made oral submissions.

#### **Ground 1: The direction in respect of circumstantial evidence**

36. Ms Goodall submits that the direction on circumstantial evidence should have been provided to the jury in writing, as the Crown Court Compendium advises. We agreed that it would have been better had the direction been written down but the question for us is whether or not the direction was sufficient.

37. Ms Goodall submits that the judge should have set out each piece of evidence relied on, the inference the Crown argued should be drawn from it and the appellant's account/explanation and what inference he argued should be drawn.

38. The judge said at 13D-14E:

“Before I turn to the nitty-gritty of the evidence let me make some general comments about evidence. The first thing is: there are really two types of evidence, although it is really a spectrum. But there are two types: there is what is called direct evidence of a crime, so someone comes to court and says, ‘Yes, I saw Mr A hit Mr B over the head with a hammer. I actually saw it.’ Or some CCTV might record it. That is direct evidence of the crime being committed. But there is also what is called circumstantial evidence, members of the jury, and in common with many, perhaps most criminal cases, in this case the prosecution relies to a great extent on circumstantial evidence. What does that mean? The prosecution point to various circumstances and they say if you put them all together, various facts, if you put them all together you can be sure of a particular conclusion that they ask you to draw; i.e. to put it another way there are circumstances from which you can draw an inference. It’s the same thing. Now, for example, let us take a piece of circumstantial evidence: the fact that Mr Edgecombe was in Pinnell Road on 8 December driving up and down, or whatever exactly it says in the admissions. That in itself does not tell you anything at all. The point is you combine some circumstances which may lead you to a conclusion. Now, that is a perfectly permissible way to proceed, members of the jury, as long as you are sure of the circumstances that you are putting together and you are sure of the conclusion that you consider it leads to. And I say this, members of the jury, in common with many or most criminal offences the prosecution rely to some extent or to a greater extent on the circumstantial evidence, particularly in a case of conspiracy for obvious reasons; it is not very often that someone has tape-recorded the conversation that amounted to the making of the agreement to commit the offence, for example. It is very often a matter of inference from a number of circumstances which put together the jury decide lead them to a sure conclusion, but there must have been an agreement for example. When you are dealing with people’s states of mind, what they intended, what they knew, that kind of thing, almost inevitably unless they give direct evidence about what was in their head you are going to be working on the basis, are you not, of inference and circumstantial evidence? Even if it is as simple as hitting someone over the head. What was their intent? Was it to cause really serious

harm? That is a matter of inference from what they did. But when you are looking at more complicated intent it might involve what they did, what they said, what they did afterwards, what they said afterwards which can lead you to a conclusion about what people knew, what they intended, whether they were dishonest and so on. All those kind (*sic*) of things are based on inference. ...”

39. In cases involving predominantly circumstantial evidence, the Crown seeks to prove often stage by stage a number of pieces of circumstantial evidence which, taken together may lead the jury to a certain conclusion. Here the facts were all agreed. The inference the jury were being asked to draw from them was that the appellant had the requisite intent. In the direction immediately following the one we have quoted the judge identified and set out in detail the defendant’s account and the need to be sure of things if they were deciding against a defendant. He then went on to summarise the evidence of the appellant which he said showed that the Crown were not correct in the inference they were inviting the jury to draw.

40. Then at 21B-G:

“But then, members of the jury, you have got direct evidence, if you like, from Mr Odum-Toland himself. He told us that he pleaded guilty to Count 2 because he was guilty and that was because he had formed a conspiracy to possess the handguns here with Maurice Taylor and Mr Edgecombe. He said initially Mo had talked about importing cannabis but in fact it contained all that junk, the lighter fluid and so on, the pocket knife, and other junk which could not be transported by mail. That brings us back, does it not, to entry one in the WhatsApp messages? Because here is that address and there is also a picture, says Mr Odum-Toland, of the contents of that first package that had got through with a pocket knife and lighter fuel. Then he said, ‘I discussed with Mo and Mr Edgecombe that items had got through Customs. I became aware guns were valuable in the UK. I was told by people in the UK. I shared that information with Mo and Mr Edgecombe and I decided that Mo would find the firearms for me and he started shipping firearms over here. Mo was ill and his father had cancer. He wanted to make money. Mr Edgecombe was going through financial problems with his landlords. Mo sourced the firearms. I was to pass them on to Mr Edgecombe for onward sale. Edgecombe and Mo did not know each other. I didn’t tell the other the other’s name. I did not in turn have any role in the onward sale of the firearms.’ That is a summary of his evidence at the outset. But his position is that Mr Edgecombe was part of the conspiracy, Mr Edgecombe was the seller and that Mr Edgecombe received the handguns and also gave Mr Odum-Toland information about what to get or to source from America.”



41. In a break in proceedings, at page 26F, Ms Goodall properly invited the judge to add to the direction that they should not engage in guesswork or speculation or in theorising about matters which had not been proved on the evidence.

42. The judge agreed to add that later in the summing up, which he duly did at page 29:

“So what does the prosecution rely on? Well, of course, entirely on inference and circumstantial evidence. I was asked to say at this stage – in fact, I was going to say it later on but I will say it at this stage when we come back to inference and circumstantial evidence, that when you are deciding a case on the basis of circumstantial evidence, so you are saying ‘We are sure, putting together all these circumstances, of this conclusion’, you must not indulge in guesswork, speculation, or theorising, You have to have a secure basis for saying, ‘These circumstances lead us to be sure of this conclusion’, in this case that that was the intent.”

43. The judge went on to set out all the evidence of circumstance and the appellant’s response to it.

44. On the unusual facts of this case we are satisfied that the judge’s direction in respect of circumstantial evidence was adequate. We reject this ground.

**Ground 2: Hearsay direction in respect of the evidence of Taylor.**

45. The complaint is here that the hearsay direction was defective because the Judge did not direct the jury in the clear terms of the Crown Court Compendium by reminding them of the burden and standard of proof in respect of this evidence and that the weight that should be attached to the evidence was a matter for them.

46. Taylor had given a statement to the American authorities in which he had said that the appellant had told him that club bouncers and security companies were looking for guns. The prosecution did not accept that Taylor was telling the truth when he said this. The evidence was relied on by the appellant. It was his case that he believed that club bouncers and security companies were looking for guns. The judge said that the jury had not seen Taylor cross examined on the statement nor had it been given on oath. He also pointed out why Taylor might have said this was the case since it was unlikely he would admit supplying guns for onward supply to criminals. The judge went on to comment “It does to some extent confirm the Appellant’s position.” and then said “if you think that what Mr Odum-Toland told you about what he knew and intended in relation to what was going to happen to the guns then he is not guilty on Count 1.” Miss Goodall points out that he should have added “or may be true”. She is right about that but it is important to look at that direction in the context of the whole summing up in which the judge repeatedly made clear that it was for the Crown to prove the appellant’s intention so that they were sure of it. See in this regard paragraphs 58 to 60 below.

47. Ms Goodall submits that the jury should have been told that if they were sure that what Mr Taylor had said in his statement was untrue then they should not rely on it, otherwise they were entitled to accept that the appellant had said this to Mr Taylor.

The judge said in terms that the statement confirmed the appellant's position. We do not think that the words "to some extent" dilute the direction so as to lead the jury into error and Ms Goodall did not submit that they did.

48. We reject this ground.

**Ground 3: The direction given in respect of the appellant's first Defence Statement was defective**

49. The appellant served a defence statement dated 8<sup>th</sup> August 2018 in which he claimed ignorance of the nature of the items being imported and blamed his co-defendant for deceiving him. It was accepted that this was a lie. It is necessary to set out salient contents of the statement:

"1. The defendant neither took part in the importation of any firearms or ammunition, nor knowingly possessed any firearms or ammunition.

2. The defendant infers that his erstwhile friend Jorel Edgecombe (JE) was responsible for the importations. ....

...

7. The defendant used to permit JE to use his phone, sometimes for protracted periods, and it is now clear that JE had taken advantage of this facility to arrange the importations.....Whilst the defendant was aware of the existence of some message from someone called Mo in his Whatsapp account, he assumed they were intended for JE and never read them.

8. [Referring to the address to which the first package was sent.] This was the address of defendant's partner. The defendant had no knowledge of the delivery of the package and does not know why JE used his partner's address. Neither he nor his partner had received any packages at the address, and he assumes that the package was intercepted on delivery by JE or someone else acting on his behalf. In some of the photos of guns [within the served evidence] the defendant recognises the background to be a workplace in JE's home.

9. The sender of several MoneyGram payments was called Angelina Booker. Ms Booker is the defendant's partner. The defendant and his partner sent money to the US on JE's behalf at his request, believing it was destined for the mother of JE's children.

10. The defendant accepts visiting the Fedex office on 11 December in order to enquire of two packages. He did so at the

request of JE. JE drove the Mercedes to the depot. It follows that [a witness]’s recollection that the defendant was driving is mistaken. He had no idea that the packages contained guns; instead thinking that they might have been Christmas presents.

11. On 19<sup>th</sup> December the defendant agreed to transport a package for JE to his (JE’s) address ...The defendant collected it from the address of JE’s friend at Landmann House. He believed that it contained cannabis but has pleaded guilty [sic] possession the firearms and ammunition because he accepts that he was in construction possession of them.”

50. After the appellant pleaded guilty to Count 2 he served another Defence Statement and ultimately gave evidence at trial that was broadly consistent with the second Defence Statement.
51. He was cross-examined by prosecution counsel about the false content of the first Defence Statement. It appears that there was no application to put the Defence Statement itself before the jury.
52. There must have been some reference to the point in closing speeches. However, we have been told that the trial judge was not invited to direct the jury in any particular way as to the proper approach to the change in the appellant’s account between the first Defence Statement and the second or the explanation he had given about it. The judge did not provide any written direction on the topic nor canvass submissions on how the jury was to be directed. It would have been wise to have done the latter.
53. Towards the end of the summing up, after the judge had summarised the defence evidence, the following passage appears,

“Well, the prosecution say he is lying about what he was intending to do, and that is for you to resolve. I am not going to go into what points they might rely on, except they did rely on the fact that in his defence statement he blamed everything on Mr Edgecombe. He said Mr Edgecombe must have borrowed his phone and Mr Edgecombe was responsible for all the messages and so on. He gave an explanation for that which was that at that stage he was trying to find out whether Mr Edgecombe was some kind of police informer so that is why the defence statement was put in that way. But that is a point for you to consider and if you think that there is no good reason for lying in the defence statement that may be a factor that feeds into your decision about Mr Odum-Toland’s evidence as a whole.

But, members of the jury, let me say this, even if you reject Mr Odum-Toland’s evidence and you say this is not true what he is telling us, you have still got to go a bit further and say, ‘We reject this evidence and we are sure that his intention was in fact that very stringent test that I have mentioned.’ So it is not enough to simply to say, ‘we’re sure he’s not telling us the

truth’, you have to look at everything and be sure that it goes a bit further and intention was actually that very high intention that I have mentioned.”

54. No point was taken before the jury was sent out to deliberate. However, Miss Goodall argues that this direction was inadequate because it lacked a reiteration of the burden and standard of proof and failed to make clear that if the appellant’s explanation for the lies in the first Defence Statement may be true, they could not add to the evidence against him. She refers once more to the Crown Court Compendium and the suggested directions where an adverse inference from failures in defence disclosure, pursuant to s.11 Criminal Procedure Investigations Act 1996, is sought by the prosecution. This, however, was not such a case. The prosecution did not rely on an adverse inference; rather, the focus of the prosecution attack during the relevant part of the cross-examination was that the appellant had lied and then changed his account to a fresh lie which he set out in his second Defence Statement and persisted in at trial. The question for this court is whether the jury was given adequate directions on how to approach the question of the lies.
55. Mr Fitzgerald’s position is that it was unnecessary for the judge to give any fuller direction at this point at all and, in any event, ‘the very stringent test’ would have been understood by the jury to be a reference to the burden and standard of proof which they had in writing. On this latter point Miss Goodall submits that the judge’s previous references in the summing up to a ‘stringent test’ was limited to an evaluation of the specific intent which the prosecution had to prove in Count 1, rather than the burden and standard of proof.
56. Immediately before outlining the evidence relied on by the prosecution to support the main issue in the case against the appellant on Count 1 the judge said, at page 29B-C:

“It is not sufficient for him just to be indifferent, negligent or even reckless about the use that will be made of the firearm. So, it is a stringent test of intent and you have to be sure that that intent was shared by, whichever you are looking at, Edgecombe or Odum-Toland, and at least one other person. Because to be a conspiracy there has to be an agreement and there also has to be an agreement that it will happen, and that intent is held by at least the two people who are party to the agreement. So, it is a stringent test and you have to be sure of those things before you convict either defendant of it.”
57. We are satisfied that the judge’s reference to a stringent test encompassed the burden and standard of proof. But what of the reliance on lies? The Crown Court Compendium is freely available to all advocates and judges and it is clear from other parts of the summing up that the judge was fully familiar with the use that can be made of this valuable resource. In any case, the judge must tailor his directions to the trial before him. Another pertinent matter is whether counsel raised any issue with the judge. In this case Miss Goodall did ask for the jury to be reminded of a factual matter, namely that a police officer had told the court that there was no evidence of any onward use of any of the firearms concerned in the case but she did not raise any other point in the summing up. An omission such as this is not dispositive of an

appeal predicated on alleged errors in a summing up but it is nonetheless to be borne in mind.

58. It is necessary to look at the summing up, in this relatively short trial, as a whole, to see whether the failure of the defence to seek, or for the judge to provide, any further specific direction as to how the jury should approach the issue at this point amounted to a material misdirection. At an early stage in the second half of the split summing up the judge directed the jury about the defence evidence in general terms (at page 15C-D):

“So when it comes to that kind of issue, whether someone is giving truthful evidence here in the witness box, it is you the jury who have to decide where the truth lies bearing in mind of course the burden and standard of proof, which, as I have explained to you, you have to be sure of things if you are deciding against a defendant...”

59. A little later:

“The final thing on what is called live evidence, so witnesses coming and telling you relates to lies, members of the jury. If someone tells a lie about something and you think that is not true for sure, that does not mean they are lying about everything, so you do not just throw out someone’s evidence completely because you think they have lied about that aspect; you have to look at each issue and think well, how does that reflect on how credible we find their evidence on whatever the other issue is. But one lie does not eliminate someone’s evidence completely, that is the point.”

60. When reminding the jury of the appellant’s evidence that he had believed that the guns were destined for legitimate collectors or security-type personnel with the necessary licences the judge said:

“...that is what he told you was his belief. If you think he may be telling the truth in that respect he is not guilty, is he of having that intention that is a requirement of guilt on Count 1.”

61. He had to return to the issues of lies on a number of occasions during his summary of the evidence given the cut-throat nature of the case between the two defendants. While he at no point gave a full *Lucas* direction incorporating the rubric that people may lie for a number of reasons, including ones unconnected with guilt of the offence charged, he was not asked nor was he required to do so because this was a case which turned wholly on the jury’s assessment of the credibility of the appellant as to his state of mind and, as we have seen, the judge scrupulously directed the jury that a rejection of his explanation for the contents of the first Defence Statement was not enough to prove the case against him and at the most, would be ‘a factor that feeds into your decision’. This was the critical direction in this case. Furthermore, we are satisfied that there was no danger in light of the entirety of the directions provided, that the jury would use a conclusion that the appellant had lied in that Defence Statement as a short-cut to his guilt.

## CONCLUSION

62. We have accepted that the judge could have taken a more systematic approach but we are not satisfied that, viewed overall, the summing up was confusing or inadequate, or that it rendered the trial unfair or conviction unsafe.
63. Almost all the evidence was agreed.
64. The account given by the defendant as to his beliefs and intentions was highly improbable. This was not a case simply of omitting paper work, these guns were being disguised in children's toys.
65. We accept that the police could find no evidence of gang-land connections. We can think of no sensible basis upon which it could be thought by anyone that law abiding citizens would want to have in their possession prohibited firearms. We reject without hesitation the proposition that the appellant did not know what the rules are in this country about the use of handguns. This was lawbreaking of a high order.
66. We are quite satisfied that the conviction is safe.
67. The appeal is dismissed.