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IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT
AT CROYDON
MS RECORDER HARDEN-FROST
T20227073 T20227178 T20227075



CASE NO: 2023 01643/01644 B5

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 23 July 2024

Before:

LORD JUSTICE SINGH

SIR ROBIN SPENCER

HIS HONOUR JUDGE TIMOTHY SPENCER KC

REX

v

RENEE SAMARA COX

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MR KIERAN MORONEY appeared on behalf of the Applicant
MR JAMES MURRAY-SMITH appeared on behalf of the Crown

J U D G M E N T
(Approved)

LORD JUSTICE SINGH:

Introduction

1. We have three applications before us.
 - First, the Applicant requires an extension of time of 50 days which, because of its length was rightly referred to the Full Court by the Single Judge.
 - Secondly, we have an application for leave to appeal against conviction. While the Single Judge would have refused leave on most of the grounds of appeal (of which there are five) she referred one in particular (Ground 2) to the Full Court, but she referred the application for leave to appeal against conviction generally to the Full Court in view of the fact that the Court would have to consider the application for an extension of time in any event.
 - Thirdly and lastly, we have a renewed application for leave to appeal against sentence after refusal of leave by the Single Judge.

The proceedings in the Crown Court

2. On 1 March 2023, in the Crown Court at Croydon, the Applicant was convicted by a majority of 11 to 1 on counts 6 and 7 and unanimously on counts 8 and 9 in respect of the following matters. She was sentenced on 5 May 2023 (aged 21) by Ms Recorder Harden-Frost in the following manner.
 - On count 6, which was an offence of possessing a firearm with intent to endanger life contrary to s.16 Firearms Act 1968, there was a sentence of 5 years' imprisonment.
 - On count 7, which was an offence of possessing ammunition with intent to endanger life contrary to the same provision, there was a sentence of 4 years' imprisonment, made concurrent.
 - On count 8, which was an offence of possessing a prohibited firearm contrary to s.5(1) (aba) of the 1968 Act there was a sentence of 5 years' imprisonment, again made concurrent.
 - Finally, on count 9, which was an offence of possessing ammunition without a firearms certificate, contrary to s.1(1)(b) of the 1968 Act there was a sentence of 6 months'

imprisonment made concurrent.

In the result, therefore, the total sentence was one of 5 years' imprisonment. The court directed that 161 days should count towards that sentence, that being half of the 321 days spent on a qualifying curfew. Other relevant orders included an order for deprivation of the firearms and the ammunition.

3. We should mention that there was a co-defendant, Donell Morgan. He pleaded guilty to counts 8, 9 and 10 on 13 June 2022. He was convicted of counts 1 to 7. He was sentenced to an extended determinate sentence of imprisonment of 16 years, comprising a custodial term of 12 years and an extended licence period of 4 years on count 6. His application for leave to appeal against sentence was refused by the Single Judge and has not been renewed.

Application for an extension of time in which to apply

4. It is submitted that the delay was reasonable in the circumstances. The Judge did not upload her reasons for refusing the application to dismiss (that is the judge's ruling on the submission of No Case to Answer) until 14 March 2023 (13 days after the trial had finished). In addition, the indictment was not uploaded until 5 May 2023. It is therefore submitted that the 28-day limit for applying for leave to appeal to this Court only started on 14 March 2023. The Prosecution Sentencing Note, uploaded on 31 March 2023, it is suggested would further extend the time limit. There was a delay in the Applicant being sentenced. The appeal against sentence, it is suggested, is inextricably related to the conviction application. Further delays were caused by the Applicant being in prison and in view of the complexities of the proposed appeal.
5. Like the Single Judge, we are unimpressed with any of those submissions. In particular, we disagree that time did not start to run until 14 March 2023. In fact it began to run on the date of conviction. In all the circumstances, however, we have come to the conclusion that it would be better to consider the applications for leave on their merits and so we will grant the extension of time required. The fault lies not with the Applicant herself but with her representatives.

The facts

6. For present purposes the facts can be summarised as follows. The Applicant and the co-defendant Morgan were in a relationship at the material time. The first five counts on the indictment concerned only Morgan and arose from a search of premises at Crosby Walk, London SW2. Suffice to say for present purposes that firearms were found in his possession at those premises.
7. We are particularly concerned with counts 6 to 10 on the indictment, which concerned a Vauxhall Corsa which was stopped by the police at Thornlaw Road, London SE27, on 10 April 2022. The vehicle was registered to this Applicant. The police were looking for the co-defendant. Police stopped the vehicle near Thornlaw Road, which was the road where the co-defendant's grandmother lived. The police followed the car and the driver parked up. The car had tinted windows, so the police were unable to see who was driving.
8. The police waited for backup and, within a couple of minutes of the car having been parked up, armed officers approached it. When officers reached the car, the Applicant was in the driver's seat with her black handbag to her left. An officer removed her from the vehicle. Armed officers surrounding the vehicle saw that there was a man in the back of the car. An officer opened the passenger side rear door and the co-defendant was sprawled on the back seat of the car on top of various items. He was removed via the driver's side rear door. He was wearing a gardening glove on his left hand, an open-faced balaclava or snood, together with a hooded top and coat.
9. The car was searched from the boot to the front. Officers searched the handbag which was on the driver's seat. They found that it contained what proved to be a 5-shot .38 calibre Rimfire revolver. (This was the subject of counts 6 and 8.) The revolver contained a cartridge of ammunition (this was the subject of counts 7 and 9) and a hex (Allen) key. The keys to the vehicle were found very near the handbag. A set of house keys with a letter 'D' were recovered from the driver's footwell. The police also found a quantity of cannabis in the front passenger glove compartment. (This was the subject of count 10.)
10. The Applicant and the co-defendant were both arrested and taken to the police station.

11. The co-defendant made no comment to most of the questions asked in interview but nodded when the police asked whether the keys with the D on them were his.
12. This Applicant provided a Prepared Statement at the end of her interview. In that statement she said that she was unaware of the gun and that if she had known that the gun was in the car she would have refused to drive. She said she did not know if the other person in the car was in possession of the gun. She said that she had put her handbag on the back seat and that when she had got out of the vehicle the bag was not in the front of the car. She had been to McDonald's prior to the police stop and had been on her own. She said she had paid using a card and the gun was not in her handbag then. She said that the co-defendant was not allowed to sit in the front seat of the car because he was subject to bail conditions which prohibited him from doing so and that he was in the car between five to eight minutes before they were stopped. She denied any knowledge of the cannabis and denied that the co-defendant had been in the front of the vehicle at any time.
13. The Prosecution case against the Applicant was that she was in possession of the gun (and the ammunition within it). The co-defendant could not have placed it in her handbag without her knowing. Given that the revolver had a bullet in the chamber, she must have either intended to use it or intended to enable someone else to use it to shoot at someone and therefore she had the necessary intent to endanger life.
14. In order to prove the case against this Applicant, the Prosecution relied in particular on the following items of evidence.
 - First, the expert evidence relating to the Rimfire revolver found in the Applicant's handbag, which was a prohibited firearm.
 - Secondly, the evidence of the body worn video, which showed the Applicant's handbag containing the revolver on the front driver's seat as she exited the vehicle, as evidence in support that she was in possession of it.
 - Thirdly, the fact the firearm was a prohibited weapon and there was a bullet in the chamber, as evidence in support of her intention.
 - Fourthly, adverse inferences to be drawn from her failure to give evidence.

15. The Defence case was that she was not in possession of the gun or the ammunition. She had no knowledge that the gun had been placed inside her handbag by the co-defendant.
16. The Applicant did not herself give evidence at the trial. However, she relied on the following evidence in support of her defence.
 - First, the evidence of the co-defendant that she did not know that he had placed the package containing the gun into her handbag.
 - Secondly, evidence of her good character.
 - Thirdly, the fact there was no forensic evidence linking her to the gun.
17. The issue for the jury in relation to the Applicant was whether she was in possession of the revolver found in her handbag and, if so, with what intention.

Ruling on submission of no case to answer

18. It is of some significance that there was no application made that there was no case to answer at the close of the Prosecution case. In fact the application was made only after the evidence of the co-defendant had been given. The Defence submitted that there was no case to answer, the co-defendant having given evidence that he planted the revolver without the Applicant's knowledge in her handbag moments before the police took them both out of her car. As his evidence was the only evidence of what had taken place in the car and that evidence exculpated this Applicant, it was submitted that there was insufficient evidence for a properly directed jury to convict her.
19. In response the Prosecution submitted that there was sufficient evidence for a jury to convict the Applicant and pointed out that the jury might reject the co-defendant's account.
20. In her ruling the Judge noted that the Defence appeared to concede that they could not have made the application at the close of the Prosecution case as there was at that stage a case to answer on all counts and that it was open to the jury to reject the co-defendant's account.
21. In relation to the evidence it was agreed that a loaded revolver was found in the Applicant's handbag. The body worn video footage showed that her handbag was on the driver's seat of the car whilst she was sat on the driver's seat. It was agreed that immediately before arrest

the co-defendant was sitting in the back of the car.

22. There was evidence from which the jury could infer that the co-defendant was at some point sitting in the front of the vehicle and he was found in the car wearing a balaclava and gloves.
23. As the Defence had conceded in writing, there was a case to answer on all counts at the close of the Prosecution case. The Judge said that it was incorrect to suggest that because the co-defendant had now given evidence there was insufficient evidence for this Applicant to be convicted. There were inconsistencies between their accounts.
24. The Judge said that it was for the jury to assess the co-defendant's evidence and the Applicant might or might not choose to give evidence.
25. The Judge therefore ruled that there was a case to answer on all counts and it was for the jury to assess the evidence, including that of the co-defendant. Accordingly the application was rejected.

Grounds of appeal against conviction

26. As we have mentioned, there have been five grounds of appeal set out in writing. We will refer to all of those grounds other than Ground 2 initially. The reason for that is that it was only Ground 2 which the Single Judge considered might have some merit. She advised those representing the Applicant only to prepare to argue Ground 2. Despite that warning, the Applicant through her representatives has in fact pursued all of the grounds. We must therefore deal with them, albeit briefly.
27. Ground 1 is that the body worn video footage put forward by the Prosecution was incorrectly used as evidence to show that the Applicant had possession of the handbag; that it was in the driver's seat hidden by the Applicant and that there was no opportunity for the co-defendant to have placed it there as the Applicant got out of the vehicle. Had the Applicant been informed of this prior to the trial, the Defence would have obtained expert evidence regarding the video.
28. We have the advantage of a written Respondent's Notice with Grounds of Opposition filed

by Mr Murray-Smith on behalf of the Respondent. He submits, in writing, that there was a case to answer and the body worn video footage was clear. It is unknown what issue the expert evidence would have addressed. He further submits that the Prosecution position was known to the Defence well in advance of the trial.

29. Like the Single Judge, we can see no arguable merit in Ground 1 at all. There was no reason for the trial to proceed in any other way than it did. There was certainly no warrant for any expert evidence having to be obtained.
30. Ground 3 is that the Applicant's submission of no case to answer, after the evidence of Morgan, should have been granted. It is submitted that the Judge, in her ruling, wrongly concluded that the Defence were conceding that there was a case to answer; and secondly, that the Judge erred in giving any evidential weight to the body worn video footage. It was wrong to imply the co-defendant could not have moved the gun without its being captured on the footage.
31. In response to this Mr Murray-Smith submits, in writing, that the written submissions for the Applicant did indeed concede that the submission could not have been made at the conclusion of the Prosecution case. The inference therefore was that there was a *prima facie* case at the close of the Prosecution case. Once it is accepted that the jury were entitled to reject the co-defendant's evidence, that was the end of the submission. He further submits that it is not correct that without the video evidence there would have been no case against the Applicant because the gun was found in her handbag. That, of course, is real evidence.
32. Like the Single Judge, we respectfully agree with the Respondent that there is no arguable merit in Ground 3. It is, to our mind, an extraordinary submission to make because it was, and certainly should have been accepted that there was a case to answer at the conclusion of the Prosecution's evidence. As the trial Judge rightly observed, the fact that the co-defendant gave evidence which might be thought to assist this Applicant did not mean that there was no case for her to answer. It would be a matter for the jury to assess that evidence, as well, of course, as the totality of the evidence before them.

33. Ground 4 is that the Judge's summing-up of the evidence was consistent with her reasons for refusing the application of no case to answer and was therefore also wrong. It is submitted that the jury should have been told that the body worn video footage was not expert evidence and that no weight should be given to it other than to confirm that it showed the Applicant's handbag was on the driver's seat as she exited the vehicle.
34. Like the Single Judge, we consider that this is indeed closely related to Ground 3. In response Mr Murray-Smith submits that it was never suggested to the jury by the Prosecution or by the Judge that the footage was expert evidence. It was there for the jury to be able to see exactly where the handbag was at the moment in time when the Applicant was getting out of the vehicle. We should observe that we have looked at the footage for ourselves and we respectfully agree with that submission. There is no arguable merit in Ground 4 either.
35. Ground 5 is that the Applicant did not get a fair trial because of the pre-trial history and the subsequent decisions made at trial. It is submitted the Applicant was ambushed by the Prosecution in relation to the body worn video footage. The Applicant had no warning of the co-defendant's "Newton hearing" points on counts 8 and 9. It is submitted the evidence before the jury was partial and misleading.
36. In response Mr Murray-Smith submits that the cases were properly joined and any application to sever would inevitably have failed. He submits that the evidence of the co-defendant Morgan was not used against the Applicant but sought to exonerate her. Finally, he submits there was no Prosecution ambush.
37. We have not heard Ground 5 developed in any way at the oral hearing before us. In any event we find that it has no arguable merit whatsoever. There was no ambush in this case. This trial was properly and fairly conducted.
38. So far as the appeal against conviction is concerned therefore, what that leaves is Ground 2, which was the only ground which the Single Judge thought might have merit. As we understand it, this has really been the subject of the oral submissions we have heard by Mr Moroney on behalf of the Applicant at this hearing. He has submitted that the essence

of the appeal is whether the jury were entitled to convict the Applicant on the basis that she was truly in possession of the gun in the car. He accepts that these were points that he made to the jury after the submission that there was no case to answer had been rejected by the trial Judge. In essence he repeats the points which were made before the jury, with a view no doubt to seeking to persuade this Court that the conviction is simply unsafe on the facts. In a nutshell he submits that there was no evidence that the Applicant was in fact in possession of the gun and the error of the Judge was to allow the issue therefore to go to the jury at all. Further he submits that, even if there was evidence of the offence of mere possession, there was certainly no evidence of the offence of possession with intent to endanger life. He has gone so far as to submit that should have been stopped at half-time.

39. He makes a number of criticisms also about the way in which the Judge dealt with matters in her directions and summing up, which we will now turn to. In the written Ground 2 as formulated, it was expressed in wide-ranging and to our mind potentially confusing terms. It was submitted that the convictions in to counts 6 and 7 were perverse; that the jury's verdict was clearly wrong; that the Judge's legal directions were at best confusing; and the jury may well have convicted assuming these offences (that is the offences of intent) were also ones of strict liability.

40. In order to unpack those wide-ranging submissions it is necessary, therefore, to go in a little more detail to the Judge's written legal directions and her summing-up. The Judge provided the jury, in accordance with good modern practice, with both written legal directions and a Route to Verdict. The Judge also then gave a split summing up to the jury, with closing speeches taking place after her legal directions had been delivered and before her summary of the evidence. Of relevance to the present issues are the following paragraphs in the written Directions of Law. At paragraphs 12 and 13 the Directions read:

"12. Possession includes physical possession, but also custody or control. In this case in relation to Counts 1 and 2, the Prosecution say that Donell Morgan had been in physical possession of the shotguns on or prior to 31 March 2022, but also that they were hidden in a premises he had access to and were therefore under his control. They say that Donell Morgan was in possession of the revolver on 10

April 2022 and that is accepted.

13. The Prosecution have to prove that the Defendant had in his/her possession an article which was in fact a firearm. If they do that, then it matters not a Defendant says they did not know it was a firearm. The offence is one of strict liability."

Turning to the issue of intention to endanger life, the Judge said:

"15. What is required is an intention to behave in such a way as will, in fact, to the Defendant's knowledge, endanger life. It is immaterial by whom life was to be endangered. This means that the Prosecution have to prove that either the Defendant intended himself to endanger life by means of the firearm or that he intended that someone else would endanger someone's life by means thereof. This means something more than to give opportunity to someone else. Being indifferent, negligent or reckless as to once happened once he passed on the firearm is not an intention to endanger life."

At paragraph 16 the Judge directed the jury that:

"It is not necessary for the Prosecution to prove an intention to kill."

Finally, so far as relevant to present issues, at paragraphs 19 and 20 the written directions stated as follows:

"19. For the definition of 'possession' see paragraphs 12 and 13. The revolver was found in Ms Cox's handbag on the driver's seat of her car. The Prosecution prove possession if they prove Ms Cox exercised some control of the handbag after the gun had been put into it. Possession must be more than merely momentary.

20. Ignorance of the contents of a bag of which a person is in possession can afford no defence if its contents include a firearm. It makes no difference whether there is something in the bag that the person in possession of it is unaware or is mistaken as to its nature or does not know the bag has any contents, far less that it contains a gun."

41. As we have mentioned, the Judge also provided the jury with a Route to Verdict. It is not necessary for present purposes to go through that in any detail.
42. Although it was not helpful to use the phrase "strict liability" in the written directions of law, we are satisfied that those directions adequately reflected the law and did not misdirect the jury as to the elements of the offences charged: either the offence of possession of a firearm or ammunition or the offence of doing so with intent to endanger life. So far as this Applicant is concerned, we note that the Judge also returned to the elements that had to

be proved in her summing-up to the jury at page 7B to E, where in substance she read out the legal written direction.

43. In referring the case to the Full Court, the Single Judge observed that the specific directions at paragraphs 19 and 20 which we have read out were tailored to this Applicant's case, although they could have been fuller. What appears to have caused some concern to the Single Judge was that there was not anywhere in the summing-up where the defence was explained fully in the context of all the evidence at the end of the trial, including the co-defendant's evidence. The Single Judge observed that this was necessary even though this Applicant had chosen not to give evidence. Nevertheless, as the Single Judge also observed, the Judge did remind the jury of what the Applicant had said in interview and of what her advocate's cross-examination of the co-defendant had been. Nevertheless the Single Judge observed that the legal directions were not "crisply" related to the factual issues in the Applicant's case and that is why she was persuaded that the Applicant should be able to make her submissions on Ground 2 to the Full Court.
44. We have considered these matters with care. We have also listened with care to the oral submissions which have been made before us. They have not in fact focused on this aspect of the proposed appeal so far as we can discern. It is true, and perhaps unfortunate, that the Judge did not summarise the Applicant's defence in her summing-up to the jury: no doubt because the Applicant had chosen not to give evidence at the trial. Nevertheless, it was incumbent upon the Judge to remind the jury of the essence of what the defence case for this Applicant was. Nevertheless, we do note that the Judge did summarise the evidence which the jury had heard from the co-defendant Morgan. This included a summary of his cross-examination on behalf of this Applicant: see in particular page 40F to 41C.

"Of Renee Cox, he said, 'Well she's my girlfriend of about four years' at the time. He said, 'I asked her to pick me up about eight minutes before I got stopped by the police.' He said when he gave evidence when Mr Rosenberg was asking him questions, 'I had no-one else to pick me up and I knew I could count on her to pick me up.' Members of the jury, you know and it came out in cross-examination that, in fact, he'd driven a motorbike to his nan's that morning. He said, 'I asked her to pick me up and I told her that I had something to drop

off. I didn't tell her what it was and she didn't know what. I told her I needed to go to Croydon. I put the package in my right pocket and it was me that moved the package into her handbag', which he said was behind her seat, so on the rear of the seats. Asked why, he said, 'I thought that was the safest spot because I didn't think that she would be arrested.' Asked when, he said, 'I did this as soon as I saw the police driving up the hill. She didn't know.' He said he was in the back seat. He said that's 'because I'm not allowed to sit in the front seat because of bail conditions I had then'. Members of the jury, where Mr Morgan was in fact sitting is one of the matters that you may wish to consider in this case, but it's a matter of fact for you to decide along with everything else."

We would also note what the Judge said in her summing-up at page 47G to 48B:

"Then the slowed down body worn footage, I think of Police Constable Jenkins, was played to him. Members of the jury, you'll be able to look at this if you wish to. Essentially Mr Morgan agreed that you can see the handbrake and that you could see the bag on that footage. He was asked about something else which, members of the jury, you may well think is the gearstick of the car, but it's a matter for you. It was suggested to him that 'There's no sign of your hand in that footage?' and Mr Morgan agreed that there wasn't. Mr Murray-Smith said, 'The handbag is on the driver's seat?' and Mr Morgan said, 'Yes.' Mr Murray-Smith said, 'You knew the police were behind you for seconds or minutes before they came to the Corsa?' He said, 'Yes.' Mr Murray-Smith said, 'I suggest it's impossible for that handbag to be there if you had not had a conversation with Ms Cox and Mr Morgan said, 'No, she was coming out of the car.'"

It is clear therefore, from those questions and answers which were summarised to the jury, that there was an issue at the trial about whether they accepted Mr Morgan's evidence that he had slipped the gun into the handbag and that she was already coming out of the car.

45. It is also important to bear in mind that the jury had before them the Prepared Statement which had been given by this Applicant to the police when she was interviewed. We have also seen that. It reads as follows:

"I, Renee Cox, make this statement at Bromley Police Station on 10.4.22.

It has been written by my solicitor on my instructions.

I am aware of the allegations against me and have gone through the disclosure with my solicitor.

I was unaware of the cannabis or the firearm in the car. My fingerprints and DNA will not be on the drugs or gun. I have never

been arrested before. I work full time. If I was aware that the cannabis and the gun were in the car, I would have refused to drive it. I have a full licence and I am insured to drive the vehicle. It is my car.

I don't want to discuss the person in the car with me. I don't know whether they were in possession of the cannabis and gun. If they were I would hope they will own up to it.

Having received legal advice, I will make no comment to all questions."

46. We have reached the conclusion therefore that, although no doubt more could have been said in a perfect world, the Judge did adequately summarise what the nature and essence of this Applicant's defence before the jury was. They had the evidence of the co-defendant which was supportive of the Applicant's defence. It is clear from their verdicts that they did not accept that or any other evidence which would have suggested that the Applicant was not guilty. In all the circumstances we have reached the conclusion that the convictions of this Applicant are safe. Suffice to say that the oral submissions we have heard at the hearing today are, in essence, complaints that the jury reached the wrong verdict. As is well known, it is no function of this Court to second-guess the verdict of the jury in a case of this type. Questions of fact were quintessentially ones for the jury to decide.
47. For those reasons, we have reached the conclusion that the proper course we should take is to refuse the application for leave to appeal against conviction. When the substance of the five grounds is examined, it turns out that they are not properly arguable on their merits.

The renewed application for leave to appeal against sentence

48. The Applicant was born on 5 January 2002 and was aged 21 at the date of both conviction and sentence. She was a person of previous good character. In the pre-sentence report it was maintained that she denied the offences. Her risk of reoffending and risk of serious harm were assessed to be low.
49. In her sentencing remarks the Judge stated as follows. In respect of counts 6 and 8, consideration was given to whether there were exceptional circumstances not to impose the minimum term of 5 years' custody required by statute. It was noted the Applicant was 20 at

the time she had committed the offences. Count 6 was selected as the lead offence by the Judge and the sentence imposed would reflect the totality of the Applicant's offending.

50. The Judge then turned to each of the four counts on which there had been a conviction of this Applicant in turn.

- On count 6 the Judge said that this was lower culpability, although an upward adjustment was required as the weapon was prohibited and loaded; the harm fell into category 3. In mitigation it was noted that the loaded revolver was incapable of being discharged without minor repair. The Applicant was found to have put aside her better judgment and prioritised her feelings for the co-defendant. Her good character was noted and the sentence was reduced to reflect her personal mitigation.
- Turning to count 7, the Judge said the ammunition was not prohibited and this was a lower culpability case.
- Turning to count 8, she said that there was high culpability and harm fell into category 2. The aggravating and mitigating features were the same as for counts 6 and 7.

In relation to the minimum term, it applied to 6 and 8. Exceptional circumstances were not found to be present.

- Finally, on count 9 the Judge said the offending did not materially affect the total sentence.

As we have mentioned, the sentences were to be concurrent in any event.

51. The submission made on behalf of the Applicant by Mr Moroney is that the Judge should have found that there were exceptional circumstances to warrant not imposing the mandatory 5-year sentence on the facts of this case or on the facts of the case combined with the Applicant's personal circumstances. In particular it is submitted the Applicant had substantial personal mitigation, her culpability was minimal, and the decision of the jury would not be undermined by a finding of exceptional circumstances.

52. At the hearing before us today Mr Moroney has elaborated on those written submissions. He acknowledges that the offences of intent to endanger life were serious, but he would still argue that having regard to the well-known guidance given by this Court in *Avis*, the court

should still consider, for example, the nature of the firearm and the nature of this Applicant's character and history. He submits that there were exceptional circumstances in this case, not least because the gun was 150 years old and contained only one bullet. It would also have required an expert in order to render it useable. He also submits that the Applicant has an exemplary record while having been in prison. She has now been moved to a category C prison, which is unusual in cases of this kind he submits, particularly where a firearm is concerned. The Applicant has also helped others while in prison, for example to read and write.

53. In refusing leave to appeal against sentence. the Single Judge gave the following reasons:

"The judge was obliged to pass a minimum sentence of 5 years imprisonment unless there were truly exceptional circumstances."

That was in relation to Count 8. However, the Applicant had also been convicted of count 6, which is a more serious offence given that the Applicant possessed a prohibited weapon with the necessary intent to endanger life. The Single Judge observed that stern sentences are passed on those who hold guns for others because the scourge of gun-crime is prevalent and so dangerous. This is so even if the possession and therefore intent to endanger life, is short-lived. She observed that the weapon this Applicant had was not capable of being fired unless slightly modified, but it did have a bullet in the chamber and so the Applicant had been sentenced on the basis that she intended to hide the gun from the police. The Judge had allowed for her limited culpability in terms of the period for which she was in possession. There was sadly, the judge observed, nothing in this Applicant's case which makes it "exceptional". Further, the advocate for the Applicant had made an unrealistic submission that the only justified sentence was one that could be suspended. The Judge concluded that in all the circumstances the sentence imposed was not arguably wrong in principle or manifestly excessive.

54. We would observe simply that, although the statutory minimum sentence did apply in the circumstances of this case, in fact after careful consideration of both the aggravating and mitigating features of the case, the sentencing Judge would have concluded in any event that

a sentence of at least 5 years' imprisonment was necessary in this case.

55. We entirely agree with the reasons given by the Single Judge for refusing leave to appeal against sentence. Accordingly, this renewed application for leave is also refused.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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