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IN THE COURT OF APPEAL  
CRIMINAL DIVISION



No. 202400495 B1  
202400556 B1

[2024] EWCA Crim 258

Royal Courts of Justice

Thursday, 22 February 2024

Before:

LORD JUSTICE WILLIAM DAVIS  
MRS JUSTICE STACEY  
HIS HONOUR JUDGE MENARY KC RECORDER OF LIVERPOOL

REX  
V  
REYON VINCENT (1)  
DEAN VINCENT (2)

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MR A. PIERCY appeared on behalf of the First Appellant.  
MR R. PANESAR appeared on behalf of the Second Appellant.  
MR A. ASANTE appeared on behalf of the Respondent.

J U D G M E N T

MRS JUSTICE STACEY:

- 1 The applicants seek leave to appeal their convictions for possession of prohibited ammunition under s.5(1)(c) of the Firearms Act 1968 ("the Act").
- 2 The application was referred by the Registrar to the full court and expedited since the applicants are due to be sentenced on 7 March 2024 and the outcome of this application may affect their sentences. We grant leave.
- 3 Both appellants, who are not related but share the same surname, each faced a multi-count indictment of two offences of possession of a prohibited firearm contrary to s.5(1)(aba) of the Act (Counts 1 and 2), three offences of possessing prohibited firearm ammunition contrary to s.5(1)(c) of the Act (Counts 3, 4, and 5), and a number of class A and C drugs possession and supply offences and possession of criminal property. While some of the offences were admitted and guilty pleas entered, the firearms offences and some of the drugs supply offences were not admitted.
- 4 A trial commenced on 5 December 2023 and verdicts were returned by the jury on 12 January 2024. Reyon Vincent was acquitted of both counts of possession of a prohibited firearm and two of the three counts of possession of prohibited ammunition (Counts 3 and 4), but he was convicted of the third offence of possession of prohibited ammunition in Count 5. Dean Vincent was convicted of both counts of possession of the prohibited firearm, and all three counts of possession of prohibited ammunition in Counts 3, 4 and 5. Both appellants were also convicted of a number of the drugs and criminal property offences which are not relevant to this appeal.
- 5 Only following conviction did counsel notice that the defendants had been convicted in relation to prohibited ammunition under s.5(1)(c) of the Act in each of Counts 3, 4 and 5, when the ammunition in the three counts was not prohibited under s.5, but rather, it required a firearms certificate to be authorised and the technical evidence relating to the type of

ammunition was consistent with restricted ammunition under s.1 of the Act, not prohibited ammunition under s.5. The error was only spotted when counsel considered the sentencing regime in preparing for sentence, since an offence under s.5 carries a mandatory minimum term of five years, whereas the maximum term for an offence under s.1 is five years.

6 All sides agree that the appellants had been incorrectly charged under s.5(1)(c) and that the prosecution had failed to identify and rectify the error prior to the appellant's conviction on some of those counts. It is also common ground that the indictment as drafted was in breach of Criminal Procedure Rule 10.2(1) because the prosecution identified the incorrect statement offence and particulars. The appellants should have been charged in the trial indictment with an offence under s.1(1)(b) of the Act. It was agreed that their convictions under s.5(1)(c) cannot stand and are unsafe.

7 The Crown now also accepts that the appeal must succeed in full and withdraws its application to substitute verdicts of convictions under s.1(1)(b) of the Act pursuant to s.3 of the Criminal Appeals Act 1968. This court has twice considered the question of substitution of the more serious offence of possession of prohibited ammunition with the lesser offence of unauthorised possession in the context of guilty pleas that were unsafe because it transpired that the ammunition in question did not meet the definition in s.5: *R v Lawrence* [2013] EWCA Crim 1054 and *R v Buddington* [2015] EWCA Crim 1127.

8 In both cases it was noted (1) that the power under s.3A only applied where an offender could "on the indictment" have pleaded guilty to, or been found guilty of, the lesser offence, and (2) that his plea of guilty indicated an admission of facts which proved him guilty of the lesser offence. Since a count under s.1 of the Act requires the crown to establish that the relevant offender had no firearms certificate, both Mr Buddington's and Mr Lawrence's guilty pleas to s.5 did not prove either of them guilty of the lesser offence. The additional element of the lack of a firearms certificate had not been proved. The court therefore had no power of substitution.

- 9 The same principles under s.3A of the Criminal Appeals Act are equally applicable here, after conviction by jury. There was no evidence before the jury that either appellant had a firearms certificate which is a necessary component of proving the offence under s.1. It follows that the unsafe conviction under s.5(1)(c) cannot be substituted with convictions under s.1(1)(b).
- 10 The appeals are granted. We order that Dean Vincent's convictions on Counts 3, 4 and 5 are quashed and Reyon Vincent's conviction on Count 5 is also quashed.
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**CERTIFICATE**

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