IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2023/01957/B5

Royal Courts of Justice
The Strand
London
WC2A 2LL
Neutral Citation: [2024] EWCA Crim 341
Wednesday 20th March 2024

B e f o r e:

LADY JUSTICE MACUR DBE

MR JUSTICE HOLGATE

HIS HONOUR JUDGE PATRICK FIELD
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

CHRISTOPHER KYEI

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Mr L Walker KC appeared on behalf of the Applicant

J U D G M E N T

Wednesday 20th March 2024

LADY JUSTICE MACUR:

Introduction

1. On 15th May 2023, the applicant, Christopher Kyei changed his plea to guilty to a single offence of possessing ammunition without a firearm certificate, contrary to section 1(1)(b) of the Firearms Act 1968 following a ruling from the prospective trial judge. He was sentenced to ten months' imprisonment. The period of 843 days spent in custody or on tagged curfew was ordered to count towards sentence. An order was made for the forfeiture and disposal of the ammunition, pursuant to section 52(1) Firearms Act 1968.

The Facts

2. On 17th August 2020, the applicant was arrested on an unconnected matter. The police searched his vehicle and recovered a shoe box with a Nike logo, and covered by black tissue, from the boot. The lidless box contained a further box inside a latex glove which contained ten unfired rounds of 9 millimetre ammunition.

3. When the applicant was arrested for possession of the ammunition, he replied "My boot?" When he was interviewed, he declined to answer questions. Two of the applicant's fingerprints were found on the outside of the box.

4. A man named Abukor gave a prepared statement to the applicant's solicitors, but declined to answer questions thereafter. He said that on 10th August he had been present at a video shoot. The applicant was also present and had left his vehicle unlocked for the participants to use as a changing room and to relax. Abukor had been given the box to look after by someone he knew, and whom he described as dangerous. He had worn gloves to avoid leaving his fingerprints. The police had arrived at the shoot, and at that point he had

panicked, put the box on the back seat of the applicant's vehicle and had run off.

5. There was evidence that Abukor suffered from some mental health issues and was sectioned. He was never charged and was out of the country at the time the applicant's trial was listed.

6. On the day of the trial, and prior to swearing a jury, counsel sought a ruling on whether the applicant had a defence in law. The judge ruled that he did not.

7. The applicant then pleaded guilty and tendered a basis of plea which was not accepted, and a *Newton* hearing was conducted prior to sentence.

8. The applicant's case was, or would have been before the jury, that he was a successful rap artist and had attended the video shoot for a fellow artist. He had one previous conviction for possession of ammunition ten years previously. He had seen the box on the back seat of his vehicle for a couple of days before he had pushed it through to the boot. He had no idea of its contents. He had not looked inside; nor had he been told. He had not answered questions in interview on the advice of his solicitor who was present throughout.

9. The judge accepted for the purposes of the *Newton* hearing that Mr Abukor had put the box into the car.

10. Seeking a ruling on the defence, Mr Walker submitted: (i) that the box containing the ammunition was "planted" in the applicant's vehicle without his knowledge; consequently, (ii) that he was not "in possession" of the same; and therefore, (iii) that the prosecution could not prove *actus reus* nor *mens rea*.

11. Mr Walker initially sought to distinguish between sections 1 and 5 of the Firearms Act 1968. He therefore advanced the matter before the court on the basis that section 1 should be distinguished since it was less serious and therefore different policy considerations should apply.

12. The judge rejected the arguments**.** In summary, he said that in *R v Zahid* [2010] EWCA Crim 2158, this Court had examined the argument that different considerations applied between sections 1 and 5, and had determined that both sections imposed strict liability. Further, in *R v Hannat Hassan* [2022] EWCA Crim 786, this Court found that a vehicle in which a container had been found was itself capable of description as a container. Pausing there, we note that *Hannat Hassan* relates to a renewed application for leave to appeal which was refused. There has been no indication in the authority, or otherwise sought from the presiding judge of that constitution, to refer to the judgment as authority in any future considerations if similar facts.

13. On the facts of this case, the judge found that the offending article had been placed into the boot of the applicant's car no less than seven days prior to his arrest, and had there been discovered by the police. It was not "planted" in the sense that the applicant had had the opportunity to exercise control over the item since it was deposited. He had been in possession of the vehicle, itself a container, in which the box and ammunition must have been present for seven days; he was "in possession" of it.

14. We summarise the draft grounds of appeal. First, it is said that the applicant did not "possess" the ammunition, since he had no knowledge of it. The question of whether the ammunition was "planted" on the applicant was a question of fact that should have been left to the jury.

15. Secondly, it is said that the judge should not have found that the principle to be derived from *Hannat Hassan* applied to an offence under section 1 of the Firearms Act 1968.

16. Thirdly, it is said that the judge was wrong to conclude that the car and the shoe box were a "container"; and that the applicant's knowledge of the ammunition box should have been left to the jury.

17. A Respondent's Notice was filed which, in summary, supported the judge's ruling. It emphasised the public policy considerations that apply for interpreting section 1 and section 5 as creating absolute offences: see *R v Bradish* [1990] QB 981. None of the "plant" authorities allow for the possibility of a defence where a defendant has the opportunity to ascertain the true contents of a container or package. The applicant had had ample opportunity to inspect it; he said that he had moved the box to the boot of the car. The law in regards to "strict liability" is settled. The Court of Appeal in *Zahid* concluded that the line of authority should not be reopened. Either the box, or the car were capable of being containers.

18. The single judge refused leave to appeal in terms:

> "The difficulty with grounds 1 and 2 is that the law relevant to your offence is settled and there is no realistic prospect of establishing otherwise. The Court of Appeal has interpreted the provisions of sections 1 and 5 of the Firearms Act as imposing strict liability. The prosecution need prove no more than that (i) the item in question is prohibited, and (ii) it was in your possession. This is clear from the decision of *Zahid* [2010] EWCA Crim 2158, in which the court cited, with approval, *Bradish* [1990] 90 Cr App R 271, and stated that the exposition of the law in that case as to the effect of sections 1 and 5 constituted binding authority and that in a 'container' case a defendant could not raise a defence that he did not know what was in the container noting 'this was an absolute offence'. Whether it is an offence of strict or absolute liability does not matter on the facts of your case. The shoe box was placed on the back seat of your car seven days before your arrest. When found by the police it had your fingerprints on it, and, as you

> subsequently conceded, you had moved it within the car (by some method). You were clearly aware of, and had ample opportunity to inspect the contents of, the shoebox and your case is clearly distinguished from a classical "plant" case.
>
> Ground 3 also has no merit. It is arguably the case that a shoebox (open or closed) is a container; indeed, a commonly used one."

19. Mr Walker has revived the written submissions made in his Advice and proposed Grounds of Appeal. He provides a comprehensive exposition on the issues of "possession", and makes frequent reference to *Warner v Metropolitan Police Commissioner* [1969] 2 AC 256 , without, we note, seeking to address the point that, as Latham LJ (then Vice President of the Court of Appeal Criminal Division) pointed out in *R v Deyemi and Edwards* [2008] 1 Cr App R 25, that "their Lordships were not *ad idem* about the meaning to be ascribed to the word 'possession'".

20. Nevertheless, Mr Walker concedes that the courts have determined that section 1 offences attract strict liability, but he submits that it would be wrong to describe the section 1 offence as one of absolute liability. The prosecution must prove that a defendant had knowledge that the item was in their possession.

21. We accept this proposition as well established by the authorities in so far as it applies to "planted" articles, of which an applicant literally has no opportunity to "take control" of the item by ejection or otherwise before its discovery.

22. However, that was not the applicant's case. He was aware of the presence of the box which transpired to contain the ammunition, albeit concealed under different layers, and he said that he had moved it within his vehicle. Deliberate ignorance – that is the applicant's seeming lack of curiosity of an item located on the back seat of his vehicle and its removal

to the boot – does not support this article being "planted" and present without his knowledge.

23. The applicant was, of course, entitled to have his case of "plant" (if that is what it was) considered by the jury, but in our view these were not the facts that were put before the judge who was asked to give a ruling as to the defence in law. Thereafter, the applicant entered his guilty plea.

24. Mr Walker recognises that this court in *Bradish* concluded that there could be no defence for a defendant to claim that they did not know what was in a container; possession of a container is possession of its contents. Mr Walker challenges the extension of the definition of container to a motor vehicle, as was recently endorsed, he says, in *Hannat Hassan* on the basis that there was "no discussion on the impact on vehicle owners by extending liability in this way". He further suggests that it was *obiter dicta* on the facts of the case, as were such determinations in *Bradish* and *Deyemi*. He submits that this court is yet to consider a "container" case in the context of section 1 of the Firearms Act.

25. Frankly, we fail to see the relevance of this point to the applicant's case. There is no question but that the ammunition in this case was in a box which was, in itself, within the car. In any event, the "container" is only relevant for the purpose of considering "possession".

26. In *Zahid*, counsel for the appellant sought to submit that a distinction should be drawn between (i) cases where the defendant's case is that he was unaware of the contents of the relevant container, and (ii) cases where the defendant's case is that he believed that the contents of the container were something innocent, in the sense that the defendant believed that the contents of the container were something other than a firearm and/or ammunition,

but as this court determined in *Zahid*:

> "Whichever category of case, the essence of the defendant's argument is: 'I did not know that the object in my possession was a firearm'. …"

That is the point here – and there is no possible valid differentiation of the meaning of "possession" between sections 1 and 5 to require the court to define "container" differently in this case.

27. That a broader definition of "container" may bring a far broader range of conduct within the net of serious criminal penalty should be seen in the context of the offence charged and the facts of the individual cases. The definition of "container" only becomes an issue in section 1 and section 5 offences in terms of considering knowledge and possession.

28. We regret that we conclude that Mr Walker's conspicuous display of knowledge fails to advance any argument that has not been previously considered in this court. The single judge was right. There is absolutely no merit in this renewed application. The conviction is not arguably nor remotely unsafe.

29. The applicant is not in custody. The only order we can make, therefore, is an order under section 18(6) of the Prosecution of Offences Act 1985 for the applicant to pay the reasonable costs of the transcripts in this case. That cost is £56.70. We so order.

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

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