



Neutral Citation Number: [2020] EWHC 1307 (Admin)

Case No: CO/4626/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
(sitting in Bristol)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/05/2020

Before :

LADY JUSTICE CARR
and
MR JUSTICE SAINI

Between :

Stuart James JENKINS
- and -
DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

Respondent

-and-
PORTSMOUTH MAGISTRATES' COURT

Interested Party

Andrew Stephens (instructed by Wannops LLP) for the **Appellant**
Lucy Organ (instructed by the Crown Prosecution Service) for the **Respondent**

Hearing date: 19 May 2020

JUDGMENT

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, released to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:00am on the 22nd May 2020

Lady Justice Carr :

Introduction

1. This is an appeal against conviction by way of case stated. The appellant, Stuart Jenkins (“Mr Jenkins”), challenges the decision of the lay justices (“the Magistrates”) sitting at Portsmouth Magistrates’ Court on 1 July 2019 finding him guilty on summary conviction of an offence of possession of a weapon designed or adapted for the discharge of electrical current for incapacitation contrary to s. 5(1)(b) and Schedule 6 of the Firearms Act 1968. The weapon, namely a stun gun (“the stun gun”), was found in the glove compartment of the car being driven by Mr Jenkins.
2. The question for the opinion of this court (as re-framed with the consent of the parties) is as follows:

“Did we err in finding that the appellant was in possession of the stun gun when his vehicle was stopped by the police?”

The facts

3. The facts can be summarised as follows: at around 8.40pm on 20 October 2018 police on uniformed patrol identified a vehicle of interest to them. They followed it for a short distance before causing it to stop. Mr Jenkins was the driver and a female, Ms Samantha Price, was in the front passenger seat. On searching the vehicle, a stun gun was found in the glove compartment. It was an agreed fact that Mr Jenkins knew at the time that the stun gun was in the car and that he was the owner, driver and registered keeper of the car at the time.
4. At 9.09pm Mr Jenkins was arrested on suspicion of possessing a prohibited weapon (and other offences not relevant for present purposes). He gave a prepared statement in interview stating that the stun gun had nothing to do with him. He did not know what it was and it did not belong to him. He was not the only person in the car.
5. The matter proceeded by way of postal charge. Having pleaded not guilty and indicated that his case was that at no time had he had possession of the stun gun (which belonged to Ms Price), Mr Jenkins faced trial on 1 July 2019. There was no oral evidence for the prosecution which relied on police statements read pursuant to s. 9 of the Criminal Justice Act 1967 and a forensic report confirming that the item was a prohibited weapon as described in s. 5(1)(b) of the Firearms Act 1968, which was also read.
6. Mr Jenkins gave oral evidence in his defence including as to how the stun gun came to be in his car, namely that it was put in the glove compartment by his passenger, Ms Price. He said that he did not know that Ms Price had the stun gun until she produced it in the car only very shortly before the police apprehended him. When she did so, he told her to “get that thing away from me”. She then placed the stun gun in the glove compartment. He believed that she would remove the stun gun from the car when he dropped her back home.
7. Upon his conviction, Mr Jenkins applied successfully for a case to be stated, as it was on 10 October 2019.

8. In the case stated the Magistrates indicate that upon their retirement to consider their decision the agreed relevant facts were as follows:
- i) a stun gun was found in the glove box of Mr Jenkins' car on 20 October 2018;
 - ii) Mr Jenkins knew the stun gun was in the car at the time the vehicle was stopped by the police;
 - iii) Mr Jenkins was the owner, driver and registered keeper of the car at the time of the alleged offence.
9. Their finding was recorded as follows:

“The defendant became in possession of the stun gun from the moment it was placed in the glove box of the car. Our reasons for this finding were that from that point on, knowing of its existence, he exercised at least a degree of control over the stun gun and was therefore in possession.”

The parties' respective positions

10. For Mr Jenkins, the central submission is that, whilst the Magistrates were directed correctly as to the law (in particular by reference to *R v Taylor* [2011] EWCA Crim 1646 and *Warner v Metropolitan Police Commissioner* [1969] 2 AC 256), the Magistrates misapplied the law to the facts of the case. There was insufficient evidence for a finding that Mr Jenkins exercised words or actions revealing such power or control of the stun gun as could fairly amount to possession of it. Mr Jenkins had only the “barest custody” of the stun gun such that he was not in possession of it (see *Sullivan v Earl of Caithness* [1976] All ER 844 at 847).
11. It is submitted (by reference to their finding as recorded) that the Magistrates must have accepted Mr Jenkins' evidence as to how the stun gun came to be in the glove compartment. The only evidence on this issue came from Mr Jenkins. There is no basis for interfering with that finding (see *DPP v Chand* [2007] EWHC 90). By natural extension, the Magistrates must have accepted the balance of Mr Jenkins' evidence as well: the stun gun belonged to Ms Price; it had been brought into the car by her and placed in the glove compartment. Mr Jenkins was unaware of the weapon until it was produced in the car, some 10 minutes before he was stopped by the police. When he first saw it, he told Ms Price to “get it away from [him]”.
12. The Magistrates' key error was then to find that Mr Jenkins came into possession of the stun gun in that “knowing of its existence, he exercised at least a degree of control over it”. There was no forensic link between him and the stun gun. Heavy weight is placed on Mr Jenkins' direction to Ms Price to get the stun gun away from him. This is said to be clear evidence that he was not in control of the stun gun, let alone assenting to be in control of it. It was the very opposite of exercising control or assenting to be in control.
13. For the Respondent, it is said that this court will not usually interfere with findings of fact by magistrates unless there was no evidence to support those findings or they were such that no reasonable magistrates, directing themselves properly and applying the

proper considerations, could reach them (see *DPP v Chand* (supra)). There was more than sufficient evidence for the Magistrates to reach the finding of fact that they did.

Analysis

14. Although a number of authorities have been referred to, the relevant law relating to the unlawful possession of a firearm is uncontroversial and need only be summarised shortly for present purposes.

15. S. 5(1)(b) of the Firearms Act 1968 provides:

“(1) A person commits an offence if, without authority, he has in his possession, or purchases or acquires

(b) any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing....”

16. The offence is a strict liability offence. No *mens rea* is required except in so far as it is necessary to establish that the defendant was in possession of the weapon. Parliament intended to impose a draconian prohibition on the possession of firearms for the obvious social purpose of controlling dangerous weapons (see *R v Dyemi* [2007] EWCA Crim 2060; [2008] 1 Cr App R 25 (345) at [23]).

17. Whether a person is in possession of a weapon is a question of fact; possession can be proprietary and/or custodial (see *Hall v Cotton* [1987] QB 504 at 509C and 510C). It is not confined to physical possession. As the Magistrates were advised, there is no need for the prosecution to prove a conscious decision to be the possessor. What is required are words or actions revealing power or control, even if only for a very short period, such as fairly amount to possession; the prosecution must prove that an accused was knowingly in control of something in circumstances in which he was assenting to be in control of it (see *R v Taylor* (supra) at [25] and *Warner v Metropolitan Police Commissioner* (supra) at 289C).

18. In *Warner v Metropolitan Police Commissioner* (supra) (at 305D) Lord Pearce when referring to physical possession said this:

“By physical possession or control I include things in his pocket, in his car, in his room and so forth. That seems to me to accord with the general popular wide meaning of the word “possession” and to be in accordance with the intention of the [Firearms] Act.”

19. Turning to the application of the law to the facts, mere knowledge of the existence and presence of the gun would not by itself establish possession on the part of Mr Jenkins. Nor did the Magistrates proceed on that basis. Here, as the Magistrates found, there was more than mere knowledge; there was at least a degree of control on the facts as expressly found by them: the presence, to Mr Jenkins’ knowledge, of the stun gun in the glove box of his car which he was driving when stopped by the police.

20. Even on the basis that the Magistrates accepted all of Mr Jenkins’ oral evidence, the stun gun was, to Mr Jenkins’ knowledge, in his car which he chose then to drive. Despite initially objecting to its presence, he then allowed the stun gun to be placed and

remain in his car which he then drove away (for some 10 minutes), controlling its location. He could have insisted Ms Price leave the car with the stun gun; he could have left the car in the event that she refused. Whilst Mr Jenkins may have expressed concern at the outset, any objection did not prevent him from voluntarily continuing on his way with the stun gun in place. The fact that the period of possession was short-lived did not afford Mr Jenkins any defence.

21. Comparison with decisions on different facts is not always helpful. But all this amounted to more than the “barest custody” (the sufficiency of which as a concept for the purpose of establishing possession the court in *Sullivan v Earl of Caithness* (supra) in any event did not have to determine) and more than the fleeting encounter of the defendant in *R v Taylor* (supra) with the gun in that case.
22. The Magistrates were thus entitled to make the finding of fact that they did, namely that Mr Jenkins exercised at least a degree of control over the stun gun. There is no proper basis for this court to interfere with that finding.

Conclusion

23. For these reasons, I would answer the question posed in the negative. There was no error in the Magistrates’ finding that Mr Jenkins was in possession of the stun gun when his vehicle was stopped by the police. This was always an ambitious appeal involving effectively a challenge to the Magistrates’ finding of fact and I would dismiss it.

Saini J:

24. I agree with the judgment of Carr LJ and would dismiss the appeal for the reasons she has given.