Neutral Citation No: [2022] NICA 1	*Ref:* **COL11715**
	ICOS No: **20/022560/A01**
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered*: **14/01/2022**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

_____

THE QUEEN

v

PAUL PATTERSON

_____

Before: McCloskey LJ, Colton J and McBride J

_____

Mr John P O'Connor (instructed Madden & Finucane, Solicitors) for the Appellant
Mr Robin Steer (instructed by the Director of Public Prosecutions) for the Respondent

_____

COLTON J (delivering the judgment of the court)

Introduction

[1] On 7 July 2020 the appellant was arraigned and pleaded not guilty to one count of possession of ammunition in suspicious circumstances contrary to Article 64(1) of the Firearms (Northern Ireland) Order 2004 (Count 1). On the same date he pleaded guilty to two counts of possession of a Class B drug (Counts 2 and 3).

[2] The trial in relation to Count 1 took place at Belfast Crown Court on 20 and 21 October 2020. On 21 October 2020 the applicant was found guilty by the jury.

[3] On 1 December 2020, the total sentence imposed on the applicant was a determinate custodial sentence of three years (one year six months' imprisonment and one year six months licence period). On 3 October 2021 the appellant was granted leave to appeal against conviction and sentence by Mr Justice O'Hara.

[4] At the commencement of the appeal hearing Mr O'Connor, realistically, and on instruction from the appellant, abandoned the appeal against sentence.

Factual Background to the Offence

[5] On 20 September 2019, the police searched 27 Sunnylands Avenue in Carrickfergus, the home of the appellant's deceased mother. In the course of the search they discovered small quantities of Class B drugs and a small box of 37 x .22 LR calibre cartridges found in a yellow "Marigold" glove which was in the front pocket of a black rucksack along with other items. The rucksack was found inside a cupboard in the dining room. The appellant was present in the house when the search was conducted. He was arrested and cautioned at the scene.

[6] During police interview, the appellant denied any knowledge of the ammunition, but accepted he owned the rucksack and some of its contents. The appellant stated that he was his mother's carer and was at the house practically all the time leading up to her death. He indicated that other people had access to the property including family members and family friends.

[7] A forensic examination of the glove concluded that the appellant's DNA was present on the inner and outer regions of the glove, but not on the ammunition box or the cartridges found therein. At the trial the forensic scientist accepted that there were mixed profiles in relation to the gloves from at least two contributors, but the minor profiles were too partial for any meaningful interpretation.

[8] The appellant gave evidence at the trial and denied any association or knowledge of the ammunition. The appellant's explanation as to how his DNA was on the glove was that he would have worn gloves due to his cleaning responsibilities in caring for his mother. He stated that there were lots of rubber gloves at the property. However, Detective Constable Bevington (who arrested and cautioned the appellant) gave evidence at the trial that there was only one glove found on the premises which was the one that was seized.

[9] In summary the prosecution case was that the ammunition found was under the care and control of the appellant. The prosecution relied on the forensic link to the appellant, the general circumstances of the find of the ammunition including the fact the rucksack and items within it were his, the fact that he was present in the house extensively and that there were no other items belonging to any other person other than his wife or mother which were found on the property.

[10] The defence case was that the ammunition was hidden in the rucksack by another individual unknown to the appellant and that he had an innocent explanation as to how his DNA got onto the glove.

[11] It will be seen that this was a short trial. Much of the evidence at the trial was agreed. The only issue for determination by the jury was whether or not the appellant was in possession of the ammunition in question.

The Bad Character Evidence

[12] This appeal centres on the decision by the Learned Trial Judge ("LTJ") to admit bad character evidence under the Criminal Justice (Evidence) (Northern Ireland) Order 2004 ("the 2004 Order"). The prosecution served a notice to adduce evidence of bad character on 14 October 2020, two working days before the trial was due to commence. The application was in the standard form 7F and sought to admit the following evidence -

> ***"Particulars of Bad Character Evidence:***
>
> *The defendant's convictions for drugs and firearms offences are summarised below:*
>
> *(i) Possession of a Class A drug with intent to supply on 19.06.96. On 20.09.94 convicted 19.06.96 at Belfast Crown Court.*
>
> *(ii) Possession of a Class A drug on 29.9.94 convicted 19.06.96 at Belfast Crown Court.*
>
> *(iii) Attempted robbery convicted 27.01.04 at Sheffield Crown Court.*
>
> *(iv) Possession of an imitation firearm convicted 27.01.04 at Sheffield Crown Court."*

The admission of the first two convictions was not pursued ultimately. Only the conviction at (iv) was admitted and shall be described as the "Sheffield Crown Court conviction."

[13] The grounds for admission of the evidence were stated as follows –

> "*Article 6(1)(d) and 8(1)(a), the defendant has a propensity to commit offences of the kind charged.*
>
> *The prosecution also submit that the previous convictions can be regarded as not bad character because they are simply relevant to the issue of rebutting any defence of innocent association in respect of his association with the drugs and ammunition seized, see* ***R v Colliard*** *[2008] EWCA Crim 1175 and* ***R v Cambridge*** *[2011] EWCA Crim 2009."*

[14] Attached to the application was the entirety of the appellant's criminal record which contained 102 previous convictions, including the convictions referred to in the application. The court considers that it is best practice in such applications to exhibit only those convictions which the prosecution seek to introduce in evidence.

[15] The application is dated 18 November 2019 but according to the prosecution it was not served until 14 October 2020 due to "*an oversight.*" The application did include an application for an extension of time for service of the application which had been drafted at a time prior to the appellant's arraignment. The grounds for seeking an extension of time were that "*it is submitted that no prejudice is caused by reason of a short delay in service of this notice*." Obviously this had no relevance for the application when it was actually served on the appellant on 14 October 2020. At the hearing the court was told that Mr Steer actually drafted the bad character application in June 2020 (which calls into question the 18 November 2019 date) but that for some reason this was not served until the date in October 2020.

[16] The appellant served a notice in response to the prosecution application on 15 October 2020 applying to exclude the evidence of bad character. The grounds of the opposition were set out as follows:

> "*The application is out of time. It ought to have been served on the defendant within 14 days of committal (in this case by 30 March 2020). It was served on 14 October 2020. Objection is taken [sic] the lateness of the application and the extension of time application.*
>
> *If the extension of time is granted, it is submitted that this application should be deferred until the conclusion of the prosecution case due to the potential weaknesses in the evidence, see* ***R v Gyima*** *[2007] EWCA Crim 429 as bad character evidence (whether defendant or non-defendant) ought not be used to bolster up a weak or unsatisfactory Crown case.*
>
> *No details of the bad character to be introduced included with notice and it appears to be two convictions from 16 years ago. The other convictions relate to drugs offences for which pleas of guilty have been entered. Details on circumstances of the convictions ought to be properly proved, per* ***Humphreys*** *[2005] EWCA Crim 2030.*
>
> *Given the [sic] of the convictions, the difference [sic] circumstances and the relevant principles in* ***Hanson & Others*** *[2005] EWCA Crim 824 it is submitted that the admission of the evidence would have such an unfair impact on the proceedings that the court ought not to admit it.*
>
> *It is not accepted that the circumstances of the previous convictions are capable of rebutting the defence of innocent explanation, per* ***McAllister*** *[2008] EWCA Crim 1544."*

[17] The application to admit the bad character evidence was dealt with by the LTJ at the completion of the prosecution evidence but before the prosecution had closed its case. The court has the benefit of the transcript of the application and ruling which was dealt with on 20 October 2020.

[18] It appears from the transcript that the matter was dealt with in fairly short compass. By this stage it was confined to the Sheffield Crown Court convictions. The primary ground relied upon by Mr Steer was that the Sheffield Crown Court convictions were relevant under Article 6(1)(d) of the 2004 Order to rebut the appellant's defence of innocent association rather than relevance based on propensity, relying on the cases of *R v Colliard* [2008] EWCA Crim 1175 and *R v Cambridge* [2011] EWCA Crim 2009 that the appellant had a previous relevant conviction for a firearm offence, albeit an imitation firearm. The prosecution argued that the conviction for a firearm offence, albeit an imitation firearm, was a relatively unusual type of offence by its nature and as such was relevant to the issue of the appellant's defence that the presence of the ammunition in his rucksack was a coincidence. In short form the prosecution argued that the evidence should be admitted to rebut the appellant's case of innocent association or coincidence.

[19] In the course of submissions the LTJ asked about the background to the Sheffield Crown Court convictions. She was told:

> *"Yes. The only background I was able to obtain, Your Honour, essentially was there is a news report, essentially, which said that this defendant plus three others attempted to hold up a Post Office in Sheffield …*
>
> *… and that an imitation firearm was used. And that's essentially the height of the circumstances. But it is really the – the use of the firearm*
>
> *… is the relevant part."*

[20] It was confirmed to this court that the newspaper article was sent previously to the appellant's lawyers but was not shown to the LTJ. Thus, the only material grounding the application was the appellant's criminal record.

[21] Mr Farrell, who appeared for the appellant at the trial, in the course of his submissions made an objection to the admission of the material on the grounds of the lateness of the application. It is to be noted that this issue was not addressed by Mr Steer in his opening submissions to the judge.

[22] Mr Steer in response indicated that he had drafted directions in the case in June 2020 and that he had attached a bad character notice in his directions which had not been served "by oversight."

[23] The LTJ suggested that it had not been served because of the pandemic *"... or partially, at least partially."* Mr Steer said in response that it was *"just simply an oversight that wasn't served and I presume the pandemic had some influence on that."*

[24] That appears to have been the end of any discussion on extension of time.

[25] Mr Farrell went on to point out that the court had no details of the circumstances in which the offence was committed. At this stage the LTJ intervened to suggest that Mr Farrell could speak to his client about the matter. He pointed out in response that the incident occurred 16 years ago and that the appellant had a host of medical issues in the meantime. The LTJ's intervention suggests she was somewhat sceptical – *"he got 10 years for his troubles and he doesn't remember what it was about?"*

[26] Mr Farrell went on to set out the substance of his objection, relying on the principles set out in the well-known case of *R v Hanson* [2005] EWCA Crim 824. He was very critical of the lack of detail or summary of the offences. He pointed to the potential differences between the offence for which the appellant was being tried and the one for which he had been convicted in 2004. He also submitted that the admission of the convictions would have such an adverse effect on the fairness of the proceedings that the court ought not to admit them.

[27] The LTJ ruled on the application in the following way:

> *"Yes, thank you very much. Well, this is an application under Article 6(1)(d) and 8(1)(a) to admit evidence of the defendant's previous convictions for attempted robbery, convicted at Sheffield Crown Court on 27 January 2004, on possession of an imitation firearm, convicted on 27 January 2004, again at Sheffield Crown Court. The first issue I have to deal with is whether or not the court is prepared to exercise its discretion and extend time for the application. I am prepared to accede to that element of the application on the basis that Mr Steer assures the court that he had the application drafted and there are a number of intervening factors which are peculiar to or at times have intervened and I will therefore extend the time. I am somewhat concerned that the court does not have precise details in relation to both of these convictions, however, on the basis that the defendant has raised a defence of innocent association in terms of the ammunition found in respect of his mother's home, where he appears to have been residing for at least a period of time immediately prior to the commission or to these charges arising, I am prepared to allow the Crown to introduce the second conviction – possession of an imitation firearm, for the which the defendant was convicted on 27 January 2004, first of all under the propensity element and*

also to rebut innocent explanation. Not the attempted robbery. Is that clear?"

[28] At that point Mr Farrell on behalf of the appellant intervened seeking clarification as to whether the conviction was being admitted on the ground of propensity or the defence of innocent association. The LTJ indicated that:

> *"Possession of an imitation firearm has to be relevant to an issue where the defendant is charged with possession – and possession of ammunition. It is also relevant in respect of innocent association. It is relevant in respect of both of these aspects of the case."*

[29] After the Judge's ruling the jury returned to court and prosecution counsel stated:

> *"Members of the jury, having made a legal application to the court, I am now able to tell you one further matter/piece of evidence for you to consider in this case and that is that the defendant has a conviction from Sheffield Crown Court on 27 January 2004 for the offence of possessing an imitation firearm and that is the last piece of evidence."*

[30] The prosecution then closed its case. As has been set out above the appellant proceeded to give evidence in his defence. The only reference to the conviction in the course of the appellant's evidence was when he was cross-examined by Mr Steer. The transcript records as follows:

> *"Q. And is it just a coincidence that you, yourself have a conviction for possession of an imitation firearm?*
>
> *A. Aye – well, I don't – I'm not – alls I can explain to you is I don't know anything about them bullets. To get back – to get back to my – my other ones ah – a completely different thing in my eyes."*

[31] At the hearing this court was informed that on the morning of 21 October 2020 prior to the re-commencement of the trial the PPS provided to the appellant's lawyers, a record from South Yorkshire Police which set out the background circumstances to the conviction which had been admitted. This court was provided with a copy of that record. Counsel for the appellant, wisely in our view, did not seek to address the LTJ on receipt of this material. It is this court's assessment, obviously shared by the appellant's counsel, that there was nothing in the material which would have assisted him in resisting the application.

[32] Finally, for the purposes of this appeal it is relevant to record how this matter was dealt with by the LTJ in her summing up to the jury. On this issue the transcript records as follows:

> *"The next thing I want to talk to you a little bit about ladies and gentlemen, is bad character evidence. Now, we call it bad character evidence but that is just a legal term. In this case, you have heard that the defendant has a previous conviction for being in possession of an imitation firearm in 2004. Now, as Mr Farrell told you there, for many, many years, juries were not told anything to do with the defendant's character prior to the trial that they were actually hearing, but nowadays, in certain circumstances where legal applications have been made and they have been ruled upon, then, if then, if the evidence passes the test, the evidence can go before juries. One of the circumstances in which such evidence can be laid in front of a jury is that the evidence is relevant to an important matter in issue between the prosecution and the defence. Now, in this case, the prosecution say that the fact the defendant has a conviction for possession of an imitation firearm is relevant to his tendency to commit this type of offence, in other words, the type of offences which arise under the firearms legislation. And you may think his conviction in 2004 is relevant to that or you may not, but ultimately it is a factual issue for your determination.*
>
> *The second thing that the prosecution say is that the conviction is relevant in this case because the defendant has advanced his case as one of innocent association – he knew nothing about the ammunition. And the prosecution say to you, therefore, that the fact that he has a conviction back into 2004 might help you to deal with that defence that is advanced of innocent association. You remember that the defendant says he has no idea how the ammunition came to be in that cupboard, and you may think that his conviction is relevant to how you deal with his explanation in that regard. Do you accept his explanation? If you do, so be it. Do you not accept his explanation and if so, you are entitled to take that conviction into account. Does the conviction of 2004 help you or does it not? You must remember at all times that it was 15 years before the search at his mother's house and therefore you might think it is of lesser significance. It is for you and only you to decide the extent to which, if at all, the defendant's convictions assist in whether or not he committed this offence of being in possession of ammunition. It is only part of the evidence and you should view it in that way. You must, obviously, not convict them solely or mainly because of it, it's only a tiny, tiny part of the evidence."*

Grounds of Appeal

[33] The appellant relied on the following grounds in support of his submission that the conviction is unsafe:

(i) No proper regard was given to *R v Hanson* [2005] EWCA Crim 824 and the authorities governing the admission of bad character evidence;

(ii) No proper consideration was given to the circumstances of the Sheffield Crown Court conviction and the length of time between it and the trial;

(iii) No proper consideration was given to the distinctions and differences between the conviction and the circumstances of the conviction sought to be introduction and the trial;

(iv) No proper consideration was given to the strength of the prosecution case including the fact that mixed DNA from at least two other persons was found on the yellow glove and that the appellant had given an innocent explanation as to how his DNA came to be on the glove; and

(v) No proper consideration was given to the exclusion provisions under Article 6(3) and (4) of the Criminal Justice (Evidence) Order 2004 in so far as the probative value of the evidence of bad character was limited but the prejudicial impact very real.

[34] Leave was granted by Mr Justice O'Hara on the grounds that it was arguable that the admission of the conviction was wrong because of the combination of three factors summarised as follows:

(i) Article 6(4) of the 2004 Order compels the court to have regard in particular to the length of time between the commission of the offence which led to the conviction in 2004 and the circumstances giving rise to the proceedings.

(ii) The prosecution adduced no evidence as to the circumstances of the 2003 offence in England other than what was found in a Google search i.e. a BBC news report. As a result, the court could not consider the extent of similarities or differences between the two events. (It will be noted that in fact the LTJ did not actually see the report in question but relied on the bare fact of the conviction. Furthermore, Mr Justice O'Hara was unaware of the subsequent disclosure of the record provided by South Yorkshire Police.)

(iii) The Sheffield Crown Court conviction was insufficient to establish "*propensity.*"

The Court's Analysis

[35] The test to be applied by this court in exercising its appellate jurisdiction has been set out by Kerr LCJ in *R v Pollock* [2004] NICA 34. At paragraph 32 of that judgment he set out the applicable principles established by the authorities:

> *"1. The Court of Appeal should concentrate on the single and simple question 'does it think that the verdict is unsafe?'*
>
> *2. This exercise does not involve trying the case again. Rather it requires the court, where conviction has followed trial and no fresh evidence has been introduced on the appeal, to examine the evidence given at trial and to gauge the safety of the verdict against that background.*
>
> *3. The court should eschew speculation as to what may have influenced the jury to its verdict.*
>
> *4. The Court of Appeal must be persuaded that the verdict is unsafe but if, having considered the evidence, the court has a significant sense of unease about the correctness of the verdict based on a reasoned analysis of the evidence, it should allow the appeal."*

[36] In applying this test the court bears in mind that having heard the evidence in the trial and submissions from counsel the LTJ is in a better position than an appellate court to make a judgement on the admissibility of bad character evidence.

[37] The court also recognises that judges dealing with such applications have to make decisions under pressure of time and in circumstances where such applications have to be determined in such a way as to minimise inconvenience to juries. The court also has due regard to the vast experience of the LTJ in dealing with such applications. An appellate court should be slow to interfere in the exercise of this judgement provided the LTJ has directed himself or herself correctly.

[38] All that said, the court has some concerns about the manner in which this application was considered. Of particular concern is the lateness of the application. The appellant was only put on notice of the application a matter of days before the commencement of the trial. There was no real inquiry by the LTJ as to the basis for the delay other than reference to "*an oversight*" and an assumption that restrictions arising from the pandemic had something to do with the delay. One of the consequences of the delay was that the court had very limited information about the circumstances giving rise to the conviction which the PPS sought to introduce in evidence. This was obviously of concern to the single judge who granted leave in this matter when in the course of his ruling he said:

"As a result, the court could not consider the extent of similarities or differences between the two offences."

[39] Turning to the substance of the matter, under the provisions of Article 6(1)(d) of the 2004 Order:

> *"(i) In criminal proceedings evidence of the defendant's bad character is admissible if, but only if -*
>
> *…*
>
> *(d) it is relevant to an important matter in issue between the defendant and the prosecution."*

[40] In practice many of the applications to introduce evidence of a defendant's bad character focus mainly or exclusively on the question of "propensity." Article 8(1)(a) of the 2004 Order provides:

> *"**Matter in issue between the defendant and the prosecution**"*
>
> *8.—(1) For the purposes of Article 6(1)(d) the matters in issue between the defendant and the prosecution include—*
>
> *(a) the question whether the defendant has a propensity to commit offences of the kind with which he is charged, except where his having such a propensity makes it no more likely that he is guilty of the offence."*

[41] The starting point for any court should be to analyse the relevance of the evidence to an important issue between the prosecution and the defence in the context of the evidence in a particular case. Having done so, in determining admissibility the court should ensure it has regard to the statutory provisions of Article 6(3) (fairness of the proceedings) and 6(4) (the length of time between the bad character evidence and the offence charged).

[42] The issue of propensity, coincidence and innocent association can sometimes be closely inter-related so that there may not be a material difference in any direction to a jury. However, clear identification of the grounds of relevance under 6(1)(a) will ensure the proper consideration of admissibility and an appropriate direction to a jury.

[43] In this case the prosecution primarily sought to introduce the evidence of the Sheffield Crown Court conviction as tending to rebut the appellant's defence of innocent association. Mr Steer confirmed to this court that this was the basis upon which it was alleged the conviction was relevant under Article 6(1)(d). Thus, in his submission to the LTJ, whilst Mr Steer did refer to Article 8(1)(a) he indicated that

> *"… the primary ground is, while there is propensity often to the ground, it is really in a sense a question of relevance, and increasingly a number of the authorities referred to the issue of relevance rather than simply propensity."*

He goes on to refer to the cases of *Colliard* and *Cambridge*. He develops his theme and says:

> *"… and talking about single convictions may, of course, establish either propensity or, in this case, relevance, and of course may depend on the nature of the conviction."*

Later he says:

> *"… and the prosecution say that it is a relevant matter for the jury and it goes to the issue of his defence essentially that it is a coincidence that this box of ammunition happened to be inside a glove with his DNA on it inside his rucksack at his mother's house in an area which he seemed to store other items belonging to him."*

We are concerned that the LTJ's decision to admit the Sheffield Crown Court conviction on the further basis of propensity went beyond what the PPS was seeking.

[44] It will be noted that the fact of the conviction was not in dispute.

[45] Clearly the LTJ was alive to the two major issues raised by the appellant, namely the lack of any detail as to the circumstances of the commission of the offence and the length of time between the commission of the offence and the current offence.

[46] In relation to the former argument this has to be seen in the context that the matter was admitted on the basis of the fact of the conviction alone. The fact that the appellant had been convicted of the offence of possession of an imitation firearm was relevant to an important matter in issue between the defendant and the prosecution, namely the appellant's defence of innocent association. The prosecution had to establish knowledge on behalf of the appellant and consequently possession of the ammunition. The prosecution had to rebut a potential defence raised by the appellant that someone else had placed the ammunition there and that therefore there was an innocent explanation for it being found in his rucksack. The previous conviction, involving as it did, an imitation firearm was relevant to the credibility of the appellant's explanation that it was sheer coincidence that ammunition was found in a rucksack belonging to him. Because it was relevant to rebutting the defence of innocent association it could lawfully be admitted under section 6(1)(d) without reference to the issue of propensity under Article 8. The conviction itself was sufficient to demonstrate the appellant's connection to firearms.

[47] In relation to the gap in time between the conviction and the offence being tried this is but one factor the LTJ had to take into account. She clearly was aware of the issue and came to the conclusion that the nature of the offence was such as to render it admissible on the relevant issue of the appellant's defence of innocent explanation. There is no rule of law which requires a judge to exclude a conviction having regard to the length of time between the date of the conviction and the offence being tried. The court is obliged to take this matter into account under Article 6(4) of the 2004 Order and this is something the LTJ clearly did.

[48] As to the argument that no proper consideration was given to the strength of the prosecution case, it will be noted first of all that the LTJ quite properly deferred making a ruling on the bad character application until the end of the prosecution case. She was in a strong position to assess the strength or otherwise of the prosecution case at that stage. This court agrees with the assessment of the single judge in rejecting the appellant's characterisation of the prosecution case. In the court's view there was a strong circumstantial case against the appellant. This is based on the following evidence: the fact that the appellant owned the rucksack in which the items were found; the fact that items within the rucksack belonged to him; the fact that he was present in the house extensively and that no other items belonging to any other person (other than his wife or mother) were found in the property; the strong forensic link between the appellant and the glove in which the ammunition was concealed and the rebuttal evidence to the effect that there were no other gloves found in the property notwithstanding the appellant's evidence that such gloves were used regularly by occupants in the premises.

[49] The LTJ was addressed on her discretion not to admit bad character evidence on the basis that the admission of the evidence would have such an adverse effect on the fairness of proceedings that she ought not to admit it – Article 6(3).

[50] It is clear from the arguments put to the LTJ and her consideration of the matter that she did have regard to all relevant considerations.

[51] The way that the LTJ dealt with this matter in her closing address to the jury is important. It is clear that she explained the basis upon which the evidence was admitted in the context of rebutting an innocent explanation. She referred to the length of time between the conviction and the matters the jury were considering. In that context she said that the jury might think that the conviction was of "*lesser significance*."

[52] The LTJ was careful to point out that it was a matter for the jury alone to decide the extent to which, if at all, the conviction assisted in its determination of whether or not the appellant committed the offence. She stressed that it was only part of the evidence, and that he should not be convicted solely or mainly because of it. By way of emphasis she told the jury:

"It's only a tiny, tiny part of the evidence."

[53] The jury had the benefit of hearing the appellant give evidence and was in the best position to assess whether or not it accepted his defence of "innocent association."

[54] The court does have a concern that in the course of her closing she did say that the fact that the appellant had a conviction for possession of an imitation firearm was relevant to his tendency to commit this type of offence, in other words, the type of offence which would arise under the firearms legislation. This was the focus of Mr O'Connor's able submissions to the court. In our view this was an error and the LTJ should have confined herself to the issue of relevance in terms of rebutting a defence of innocent association. Furthermore, it was not appropriate for the LTJ to admit the Sheffield Crown Court conviction as a further ground, namely propensity, not pursued by the prosecution. However, this court cannot overlook that the prosecution case was a strong one and the admission of the conviction did not serve to bolster a weak case. Overall, we consider that the issue of the appellant's previous conviction was left to the jury in a fair way by the LTJ and it did not play an inappropriate or disproportionate role in the proceedings.

[55] In the course of the hearing counsel referred us to many authorities dealing with the admission of bad character evidence. In truth there is limited benefit to be gained from comparing cases which are very much fact specific. The general principles to be applied in relation to the bad character provisions in 2004 Order are now well-established.

[56] In this case the court concludes that the LTJ was entitled to admit the evidence on the grounds that it was relevant to an important matter in issue between the defendant and the prosecution. It is significant that she excluded the potentially more prejudicial conviction of attempted robbery. The basis for the admission of the conviction was that the conviction in respect of a firearms offence, even an imitation firearm, was a relatively unusual type of offence by its nature. The fact of the conviction itself was sufficient for it be admitted as relevant in relation to the defence of innocent association. The bare nature of the detail probably operated to advantage, rather than prejudice, the appellant and does not invalidate the foregoing assessment.

[57] Returning to the test in *Pollock* we do not consider that the errors we have identified cause any sense of unease about the correctness of the verdict based on the matters we have set out above.

[58] Accordingly, the appeal is dismissed.