

**Regina**  
**v**  
**Estifanos Soloman**

Court of Appeal Criminal Division

**[2019] EWCA Crim 1356**

Before: Lord Justice Leggatt Mr Justice Popplewell His Honour Judge Marson QC (Sitting as a Judge of the CACD)

Tuesday 16 July 2019

**Representation**

Mr T Boulter appeared on behalf of the Appellant.

Mr T Dyke appeared on behalf of the Crown.

**Judgment**

Lord Justice Leggatt:

1. On 20 July 2018 in the Crown Court at Woolwich, following a trial before His Honour Judge Heathcote Williams and a jury, the appellant was convicted of possessing a firearm with intent to endanger life, contrary to section 16 of the Firearms Act 1968 ; possessing ammunition with intent to endanger life, contrary to the same statutory provision; and an offence of failing to comply with a notice under section 49 of the Regulation of Investigatory Powers Act 2000 in failing to disclose the passwords to two mobile telephones. For the firearms offences he was sentenced to concurrent terms of 12 years six months' imprisonment and for the non-disclosure offence to a concurrent term of 18 months' imprisonment. The total sentence imposed on the appellant was therefore one of 12 years six months' imprisonment. He appeals against his convictions for the firearms offences with leave of the single judge, who has referred to this court, if it arises, an alternative application for permission to appeal against sentence.

2. The prosecution case against the appellant at his trial was that he had given to an individual called Mr Abdul Kikwera a bag which he knew contained a revolver and 17 live rounds of ammunition for delivery to a third party, knowing when he did so that the gun would be used for criminal purposes and an intent to endanger life. The gun was found inside a box inside a bag in Mr Kikwera's car when it was stopped by the police on the evening of 23 May 2017.

3. The evidence on which the prosecution relied to support this case included the following:

(1) On the day in question the appellant's home address in West Hampstead was under surveillance by a police undercover surveillance team. Just after 8pm, a red Toyota Prius car driven by Mr Kikwera was seen to pull up and park around the corner from the appellant's address. A few minutes later the appellant left his house. He was photographed walking along the road towards Mr Kikwera's car carrying a black plastic bag which appeared to contain a rectangular object. Pink writing could be seen on the outside of the bag. The appellant was seen to get into the rear passenger seat of the Toyota, which then drove a few metres down the road. About two minutes later the appellant was observed getting out of the vehicle, no longer carrying the black plastic bag. He then walked back to his house.

(2) The Toyota car was followed by the police and kept under constant surveillance throughout the journey. During the journey the car did not stop nor did anyone get in or out of it. About 20 minutes after it

had set off, the Toyota car was stopped by armed police officers. In the front passenger footwell a black plastic bag with pink writing on it was found. Inside this bag was a white Tesco plastic bag and inside that bag was a rectangular cardboard box. Inside the box, wrapped in white tissue, was a 4mm calibre revolver with three spent cartridges inside it and a further 17 live rounds of ammunition beside it. Also found loose under a jacket on the front passenger seat was £80 in cash, which the prosecution suggested was likely to have been money paid to Mr Kikwera by the appellant for transporting the firearm.

(3) Three mobile telephones were found in the Toyota. One of these, which was agreed to belong to Mr Kikwera, received a total of 75 missed calls from a number ending 570 during the period of one hour 40 minutes from the time of Mr Kikwera's arrest until the phone was later turned off. The 570 number was associated with two i-Phones later seized from the appellant. The appellant initially denied but later admitted that the 570 number was his.

(4) Later that night, at around 2am, the police searched Mr Kikwera's home address which was in North Finchley, about 10km away from where the appellant lived. When the police arrived to carry out the search, they noticed a grey BMW car parked across the road from Mr Kikwera's house. An officer approached the car, which had its lights off, and saw a man sitting inside it whom he identified as the appellant. In addition, the registration number of the BMW car matched that of a grey BMW which the appellant had been seen getting out of the previous day and for which he was an insured driver. When he saw the officer, the appellant drove off erratically and at speed.

(5) The appellant was arrested about a month later and was interviewed by the police. When asked if he knew Mr Kikwera or had any explanation for the bag containing the revolver, he answered "no comment". He gave the same answer when asked if his fingerprints would be found on any items. He denied ever having driven a grey BMW car and denied that the 570 number was his.

(6) On forensic analysis two fingerprints matching those of the appellant were found on the white Tesco plastic bag in which the box containing the revolver was found.

(7) The appellant was served with a notice requiring him to disclose the PIN codes for the two i-Phones seized from him. He did not comply with the notice and this was the subject of the third count of which he was convicted. On each of those i-Phones photographs were found showing the appellant holding and posing with various firearms at what appeared to be a shooting range.

(8) Messages were also found on the phones, on some of which the prosecution relied. These included a message sent about 10 days after the incident in which the appellant said: "I just lost two quid from them other things/ Old bill took it". The prosecution suggested that this was a reference to the seizure of the gun by the police and that "two quid" probably meant £2,000 and referred to the value of the gun which, according to the prosecution evidence, had a street value of between £1,200 and £3,000.

4. The appellant gave evidence at the trial. He said that he knew Mr Kikwera who worked as an Uber driver and mini cab driver and that on occasions he also used Mr Kikwera as a personal fitness trainer. He denied that he had a bag with him when he got into Mr Kikwera's car on the day in question and said that he had disposed of the bag after leaving the house and before entering the car. Reliance was placed on the fact that the police surveillance officer who saw him get into the car had not noted that at that time he was carrying a bag. The appellant also said that he would on occasions have touched and discarded plastic bags which he could have left in Mr Kikwera's possession or in his car after taxi journeys or personal training sessions. He said that the reason why he was trying to contact Mr Kikwera repeatedly on the evening of 23 May 2017 was that Mr Kikwera had failed to pick up the appellant and some friends as he had agreed to do.

5. Two grounds of appeal against the appellant's convictions for the firearms offences are advanced on his behalf by his counsel, Mr Boulter. Both are directed to the admission of particular matters in evidence at the trial. The two matters are:

(1) Evidence that on a different occasion the appellant's fingerprints had been found on some newspaper in which 19 rounds of ammunition were wrapped. The ammunition, along with a &Scaron;korpion sub-machine gun, had been found hidden in a loft at an address in Hackney in October 2014. No connection between that address and the appellant was established. He was arrested and interviewed in relation to that incident, but was not charged with any offence.

(2) Evidence of a note found on one of the appellant's mobile telephones, which it was agreed had been created two days before the incident. The note appeared to be lyrics of a rap song of which the title line was "sold guns to str8 killers". This title line was admitted in evidence.

6. It is argued on the appellant's behalf that each of these items was evidence of bad character and was inadmissible or ought not to have been admitted under the relevant provisions of the Criminal Justice Act 2003 . It is argued that the judge was therefore wrong to admit this evidence and the appellant's convictions are unsafe as a result.

7. The judge did not give a formal ruling for his decision to admit this evidence, having been told by defence counsel that such a ruling was not required. However, the judge made it clear that he considered that the evidence of the fingerprints was admissible under section 101(1)(d) of the 2003 Act, as relevant to an important matter in issue between the defendant and the prosecution, that matter being whether it was an innocent coincidence that the appellant's fingerprints were found on the bag which contained the firearm found inside Mr Kikwera's car. The judge further explained that he considered the title of the rap lyric to be admissible evidence under section 98 of the Act – not as evidence therefore of bad character but as evidence which had to do with the alleged facts of the offence, the relevance of it being that it indicated what was or may have been in the appellant's mind at the relevant time and could be interpreted as referring to the activity in which he was engaged, namely that of selling guns to street killers or potential killers.

8. Taking first the fingerprint evidence, Mr Boulter made the bold submission that that evidence was not relevant at all. He contended that it was irrelevant to the jury's consideration to take account of the fact that the appellant's fingerprints had been found on a previous occasion in proximity to an illegal firearm in circumstances where the appellant had not been charged in relation to that incident and had no proven connection, other than the presence of his fingerprints, to the firearm or to the relevant address. Mr Boulter further submitted that the evidence was highly prejudicial to the appellant and ought to have been excluded by the judge under section 101(3) on the ground that its admission would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it. Mr Boulter candidly accepted, however, that he did not make any application at the trial to exclude the evidence after the judge had ruled that it was admissible under section 101(1)(d) .

9. In our view, the evidence of the fingerprints found on the previous occasion was plainly relevant and admissible under section 101(1)(d) of the 2003 Act. It was, as we have indicated, the appellant's defence at the trial that the fingerprints found on the bag containing the gun found in Mr Kikwera's car were the result of innocent contact and were not present because the appellant had any connection with or knowledge of that firearm. It was plainly relevant in considering the credibility of that explanation to take account of the fact that his fingerprints had on a previous occasion been found on some paper used to wrap ammunition which was found with an illegal firearm. Being in contact with the wrappings of an illegal weapon is on any view an unusual occurrence in ordinary everyday life. The possibility of innocent contact is obviously significantly reduced when it is known when there are two such innocent coincidences to explain. Contrary to what Mr Boulter sought to urge on us, it is unquestionably a sound and rational approach to reason that an unusual event such as this, which could be the result of innocent coincidence if it happened alone, is less likely to be so if it has happened on another occasion too.

10. As to the potentially prejudicial effect of the evidence, Mr Boulter at one point in his submissions argued that the prejudice derived from the fact that the jury were told that the ammunition on the wrapping of which the fingerprints were found on the earlier occasion was found in proximity with a sub-machine gun. However, Mr Boulter informed us that he did not at the trial make any application to exclude from the jury's knowledge the fact that the weapon with which the ammunition was found was a sub-machine gun, taking the view at the time that it was an advantage to the defence case to be able to make the point that the weapon in connection with which the fingerprints were found was, as it was submitted, one of a totally different kind to the weapon which was the subject of these charges and therefore was not a matter on which the jury should place reliance.

11. In those circumstances, it seems to us that, even if an application under section 101(3) had been made by the defendant, it would not have been right to exclude the evidence and certainly the judge was entitled to admit it. It was necessary to give appropriate directions to the jury as to the ways in which the evidence of the fingerprints was and was not relevant to their deliberations. But the judge did that in his written legal directions to the jury and no criticism has been made of the soundness of those directions. Accordingly, we reject the first ground of appeal.

12. Turning to the second ground and the evidence of the rap lyric title, in our view that evidence was relevant for the reason given by the judge at the time he gave his decision to admit it that it was reasonably capable of being regarded as showing what was on the appellant's mind at the relevant time and as referring to the activity in which he was allegedly engaged, namely selling guns to street killers or potential killers. That said, the lyric seems to us of little weight in the context of this case, for the obvious reason that it appears to have been just that - a lyric - and that the lyrics of songs that people choose to record on their phones will often or perhaps typically have no connection to the factual reality of their own lives. That was a point which in our view, obvious as it might be, was one that it was necessary and appropriate for the judge to remind the jury of, either in his written directions or in his summing-up.

13. In our view, no criticism could reasonably have been made of the decision to admit that evidence, provided that appropriate directions as to its relevance or potential relevance were given. Where we consider criticism can be made is in the directions that the judge gave to the jury about this evidence in the course of his summing-up. After referring to the relevant rap lyric, he said this:

"I may say members of the jury the only possible relevance of that rap lyric would be if independently of it you were satisfied that this defendant did knowingly have custody of the revolver and/or the ammunition, and it would only then be relevant if you consider it so to the question whether he had knowingly had possession of that revolver and ammunition with the intention to endanger life. Whether having that rap lyric, if it came to his attention was a reminder of what guns may be used for."

Two criticisms can, in our view, be made of that direction. First, the statement that the lyric was potentially relevant as "a reminder of what guns may be used for" did not adequately explain the potential relevance of the lyric. That relevance was not as any sort of reminder or aide-memoire of the potential use of guns, which may be thought blindingly obvious; rather it was potentially as a reflection of what was in the appellant's mind at the relevant time.

14. Secondly, we consider that the judge ought to have explained to the jury the limitations of the relevance of the lyric. When he made the decision to admit the evidence, the judge said:

"The jury will certainly be told, if not by the prosecution, by me that rap lyrics commonly contain references to criminality, shootings and so on..."

It does not appear, however, that the judge did remind the jury of that point in the course of his summing-up

and, in our view, he should have done.

15. That said, the judge's error in that regard cannot, in our view, be said to make the appellant's conviction unsafe. Even without such a direction, it would have been apparent to the jury that the title of a lyric found on the appellant's phone could not be given much weight or significance and it would have been reasonably apparent to the jury that lyrics of a song do not necessarily or perhaps commonly bear a connection with actual real life events. Furthermore, there was other, much more weighty evidence upon which the prosecution relied which we have mentioned earlier in this judgment which provided compelling proof of the appellant's guilt. This lyric was of marginal significance in the case. We consider in those circumstances that the failure to give an appropriate direction in relation to it does not impair the safety of the appellant's conviction and accordingly this ground of appeal also fails and the appeal against conviction must be dismissed.

16. We can deal with the application for leave to appeal against sentence more briefly because in our view there are no reasonably arguable grounds of appeal. The firearm which the appellant was convicted of possessing was a small compact revolver which could be easily concealed. It was somewhat under-powered but was in full working order and capable of causing lethal injury if fired at close range. It contained three spent cartridges, indicating that it had been test-fired. It was accompanied by 17 rounds of live ammunition suitable for it. It was therefore ready for immediate use. From the jury's verdicts and the evidence adduced at the trial, the judge was entitled to find, and to sentence the appellant on the basis, that he was supplying the firearm and ammunition for criminal use and with the intention of enabling the recipient to endanger life. Although at times during the course of his submissions this morning Mr Boulter sought to suggest that different inferences might have been drawn, he ultimately accepted that proposition. He was clearly right to do so.

17. Further, the judge was entitled to conclude, as he did, that the presence of the appellant's fingerprints on the packaging of ammunition found with an illegal sub-machine gun found in October 2014 was also not a coincidence and indicated that this was not the first occasion on which the appellant had been involved in possession of illegal firearms. Account needed to be taken of the appellant's relatively young age – he was 22 years old at the time of the offence. He was by no means of good character with 11 previous convictions for 20 offences, but it is right to say that he had no previous conviction for an offence anything like as serious as these offences.

18. There are no sentencing guidelines for firearms offences but the authorities make it clear that for criminals involved in gun crime of this seriousness it is appropriate to impose long determinate sentences. In our view, given the nature and circumstances of the firearms offences in this case, no criticism can be made of the length of the sentence imposed by the judge and on no view can it be characterised as manifestly excessive.

19. Accordingly, the application for permission to appeal against sentence is refused.