

IN THE CROWN COURT IN NORTHERN IRELAND

—————  
THE QUEEN

-v-

HYDE AND HYDE  
—————

**MORGAN J**

[1] The defendants are jointly charged with possession of ammunition with intent on count 1 and in the alternative possession of ammunition in suspicious circumstances on count 2. The crown has presented its case and this ruling relates to the direction application made on behalf of both accused.

**The Crown Case**

[2] The Crown case was set out in the edited depositions received by me on the date of the hearing. These were admitted by agreement and relied upon by the Crown. Accordingly no cross-examination of the Crown witnesses was undertaken by the defence.

[3] The following facts were established:

- (a) The first names defendant, Neil Boyd, was the tenant of an address at Lurgan and resided there with the second named defendant who was his girlfriend at that time. They are now married.
- (b) At approximately 2 pm on 27 December 2002 a planned police search of the premises was carried out.
- (c) The following items were recovered:

- (1) One pair of blue/black gloves from a furniture unit in the living room.
  - (2) One LVF plaque from the living room.
  - (3) One LVF flag from a bedroom.
  - (4) Twenty five blank 8mm rounds in a plastic bag inside a hollow brick surround in the living room.
  - (5) A spent shotgun cartridge inside a blue nylon bag which was lying under two bin liners at the entrance to a built up cupboard in a spare room.
  - (6) A blue holdall behind clothing in the top shelf of a built in wardrobe in an upstairs room containing 6 black woollen balaclavas.
  - (7) Two replica handguns in a green plastic wheelie bin at the rear of the house capable of firing the blank ammunition found in the living room.
  - (8) 73 blank rounds and 61 live rounds of ammunition found inside a lunchbox inside a blue wheelie bin located at the front door of the house. The 61 rounds were the subject of the charge.
  - (9) The evidence suggested that the wheelie bins were emptied every week.
- (d) Each of the defendants was interviewed and each denied ever having seen the lunchbox in which the ammunition was found.
- (e) There was no forensic evidence to link either of the accused to the lunchbox or the wheelie bin.

### **The Section 77 Point**

[4] In order to establish the possession count against each accused the Crown relied upon section 77 of the Terrorism Act 2000 which provides as follows:

77. - (1) This section applies to a trial on indictment for a scheduled offence where the accused is charged with possessing an article in such circumstances as to

constitute an offence under any of the enactments listed in subsection (3).

(2) If it is proved that the article –

- (a) was on any premises at the same time as the accused, or
- (b) was on premises of which the accused was the occupier or which he habitually used otherwise than as a member of the public, the court may assume that the accused possessed (and, if relevant, knowingly possessed) the article, unless he proves that he did not know of its presence on the premises or that he had no control over it.

(3) The following are the offences mentioned in subsection (1) –

*The Explosive Substances Act 1883*

Section 3, so far as relating to subsection (1)(b) thereof (possessing explosive with intent to endanger life or cause serious damage to property).

Section 4 (possessing explosive in suspicious circumstances).

*The Protection of the Person and Property Act (Northern Ireland) 1969*

Section 2 (possessing petrol bomb, &c. in suspicious circumstances).

*The Firearms (Northern Ireland) Order 1981*

Article 6(1) (manufacturing, dealing in or possessing certain weapons, &c.).

Article 17 (possessing firearm or ammunition with intent to endanger life or cause serious damage to property).

Article 18(2) (possessing firearm or imitation firearm at time of committing, or being arrested for, a specified offence).

Article 22(1), (2) or (4) (possession of a firearm or ammunition by a person who has been sentenced to imprisonment, &c.).

Article 23 (possessing firearm or ammunition in suspicious circumstances).

[5] That section has to be read subject to the provisions of section 118 of the 2000 Act which says:

**118.** - (1) Subsection (2) applies where in accordance with a provision mentioned in subsection (5) it is a defence for a person charged with an offence to prove a particular matter.

(2) If the person adduces evidence which is sufficient to raise an issue with respect to the matter the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(3) Subsection (4) applies where in accordance with a provision mentioned in subsection (5) a court -

(a) may make an assumption in relation to a person charged with an offence unless a particular matter is proved, or

(b) may accept a fact as sufficient evidence unless a particular matter is proved.

(4) If evidence is adduced which is sufficient to raise an issue with respect to the matter mentioned in subsection (3)(a) or (b) the court shall treat it as proved unless the prosecution disproves it beyond reasonable doubt.

(5) The provisions in respect of which subsections (2) and (4) apply are -

(a) sections 12(4), 39(5)(a), 54, 57, 58, 77 and 103 of this Act, and

- (b) sections 13, 32 and 33 of the Northern Ireland (Emergency Provisions) Act 1996 (possession and information offences) as they have effect by virtue of Schedule 1 to this Act.

[6] The first question to determine is whether in the circumstances set out above the defendants have adduced evidence. A party adduces evidence if he presents or offers evidence in support of his case. The fact that the evidence is first offered by the Crown does not in my view prevent the same evidence being “adduced” on behalf of the defendant if he subsequently chooses to rely upon it.

[7] The defendants rely upon the circumstances of the find and the interviews of the defendants to put in issue the question as to whether the offending items were possessed by them jointly or one of them individually. Because of the connection between the blank ammunition, the replica handguns and the live ammunition I am satisfied that these were the alternative possibilities.

[8] I accept that the matters relied upon by the defendants put in issue the question as to whether each defendant was in possession and that it follows that the onus of proving that each defendant was in possession had to be discharged by the Crown beyond reasonable doubt without the benefit of section 77.

[9] The circumstances of this case do not assist me in concluding that the possession was joint or that one of the defendants was individually or jointly in possession. In particular I consider that the materials in the hollow in the living room, the balaclavas and the spent cartridge might have been secreted by one of the defendants without the knowledge of the other. In respect of the materials in the wheelie bins it is impossible to form any view as to how long they may have been there given that the bins are emptied weekly or where they may have been beforehand. Accordingly I have to approach this case in accordance with the principles set out in *R v Whelan* [1972] 153 and accede to these applications for a direction that the defendants have no case to answer on the basis that a reasonable jury properly directed could not convict either of the accused. On each counts there will be a verdict of not guilty.