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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

ROY ALEXANDER OLIVER ROULSTON

CARSWELL LCJ

In this application the applicant seeks leave to appeal against his conviction at Omagh Crown Court on 8 March 1999 before His Honour Judge Foote QC and a jury on two counts. He was charged on the indictment with three offences:

1. attempted evasion of liability by deception;
2. forgery of a document;
3. using a false instrument.

The learned judge directed the jury to find the applicant not guilty on count 2, and the jury found him guilty on counts 1 and 3. The judge imposed on each count a sentence of six months' imprisonment, suspended for two years. The sole ground on which the application for leave to appeal proceeded before us was that the conviction was unsafe because of the extent to which the judge intervened in the conduct of the trial and made his adverse views apparent to the jury.

The applicant was at all times a serving constable in the Royal Ulster Constabulary,

stationed at Ballinamallard, Co Fermanagh. One of his regular duties concerned the processing of applications for the grant and renewal of firearms certificates. He himself owned firearms and was the holder of a firearms certificate. The certificate was due for renewal in May 1996. According to the evidence an additional fee was payable for variation of a certificate by amending the firearms covered by it, but it was charged only if the application was out of time; it was not the practice to charge the fee if it was made within about a month of the due date for renewal.

An application for variation and renewal of the applicant's certificate was received in October 1996 in the Firearms Licensing Branch of the RUC, bearing the date 20 August 1996. The variation in question was the addition of a Webley .177 air rifle. The application was accompanied by a receipt for the standard fee for renewal, with no extra payment for variation on renewal out of time. The receipt purported to have been issued by the applicant himself on 15 June 1996, which would have been within the usual month's grace. With the application there was also a letter purporting to be signed by Mr N Cathcart of Magheracross, Ballinamallard and dated 20 August 1996, in which it was stated that he had sold the air rifle to the applicant.

Mrs Carolyn Barr of the Firearms Licensing Branch gave evidence that she had taken the matter up with the applicant, and that he had then claimed that he had submitted the original application in May or June 1996 but it had been lost in the Branch. Mrs Barr said that she asked him how if the original application form had been lost he was now able to produce the supporting documents, which he had said were forwarded with the form. According to her the applicant did not produce an explanation but became agitated and asked her to forget about the whole thing.

Mr Neville Cathcart stated in evidence that the signature on the letter dated 20 August 1996 did not appear to be his and that he had not sold the air rifle to the applicant. The prosecution case was that the letter had been forged by the applicant, but the judge held that there was insufficient evidence to go to the jury that he had done so and

withdrew that count from them. The jury did, however, have before them the charge contained in the third count that the applicant had used this false document, knowing or believing it to be false.

The applicant made the case in evidence that he had completed his application for renewal and variation of his firearms certificate in June 1996 and left it in the sergeant's office in Ballinamallard station for processing. He next saw it in the sergeant's tray in August, at which time it had been defaced by someone scribbling on it. He prepared a fresh application and left it in the sergeant's office with the supporting documents. It was the sergeant's function to forward the application, as it would not have been correct for the applicant to process his own application, but they were very short-handed in the station that summer. He maintained that he had not told Mrs Barr that the application had been lost by her Branch, but informed her that it had been "misplaced in the system", a version which had first appeared in cross-examination of Mrs Barr at trial.

The submission advanced by Mr Weir QC on behalf of the applicant was that the judge had intervened so much and with such effect that he may have unduly influenced the jury, and that the conviction accordingly was unsafe. He made it clear that he was not suggesting any bias or partiality on the judge's part, nor did he criticise the content of his charge to the jury, which was fair and we agree balanced. He submitted, however, that in the course of the trial he strayed on too many occasions from the detachment required of a judge into a more adversarial mode. The principles to be applied in consideration of such a submission were set out in some detail in our judgment in *R v Close* (1997, unreported), and we do not propose to repeat them *in extenso*. It is sufficient to say that if a judge's interventions, whether in the form of questions or comment, so indicate his belief in the defendant's guilt that they may influence the thinking of a jury to such an extent that the decision is in effect taken out of their hands, a conviction may be unsafe: cf the remarks of Lord Parker CJ in *R v Hamilton* (1969, unreported), set out in the judgment of Lawton LJ in *R v Hulusi* (1973) 58 Cr App R 378 at 382. The principle is accurately and conveniently

summarised in Valentine, *Criminal Law of Northern Ireland*, vol 1, Tab 6, p 11:

> "The cardinal principle is that the defendant should receive a fair trial. He must not make remarks so weighted against him that the jury are left little real choice. If none by itself was unfair, the cumulative effect of the interventions must be judged in the context of the length of the trial and the strength of the evidence against the defendant."

That is not to say that the judge must preserve an unbroken silence until the end of a witness's evidence. As Rose LJ remarked in *R v Tuegel* [2000] 2 All ER 872 at 888-9:

> "... it is of course trite law that a judge's role is to hold the ring fairly between prosecution and defence and this cannot be done properly if a judge enters into the arena by appearing to take one side or the other. Questioning which might suggest this should, therefore, be avoided. Often the best course will be for a judge to remain silent until counsel have had the opportunity to deal with the matter. But it is not only permissible for a judge, it is his duty to ask questions which clarify ambiguities in answers previously given or which identify the nature of the defence, if this is unclear. Such questions, particularly in a very long case, are most likely to help the jury and everyone else if they are asked at, or close to, the time when the ambiguity is first apparent. If a witness is in the box for many days, it would be contrary to good sense and the proper conduct of the trial to require the judge to save his questions until the end of the witness's evidence."

Most of the reported cases are concerned with interventions in a defendant's examination-in-chief which prevent his counsel from putting his narrative fairly before the jury, but application of the principle is not confined to such cases: see, eg, *R v Roncoli* [1998] Crim LR 584.

It was submitted on behalf of the applicant that the main damage was done in his cross-examination, in the course of which the judge asked about 200 questions, which may be compared with the total of about 270 asked by counsel for the prosecution. For quite significant stretches the judge took over the cross-examination and pursued a point in a mode which was more like that of a prosecutor than a judge. At other times he allowed himself to make comments which indicated very clearly his disbelief of the applicant's

evidence. It is understandable that the judge should have become impatient over some of the evidence given by the applicant, which he might well have thought evasive and unsatisfactory, and have wished to obtain clarification, but judges should be careful about pursuing a line of questioning too far and appearing to take the conduct of the questioning out of the hands of counsel.

We do not propose to set out *in extenso* the instances catalogued at length by counsel, but we have considered them individually and cumulatively with some care, and cannot escape the conclusion that they give a clear impression of disbelief on the judge's part and evince a tendency to confront the witness in an adversarial fashion. A few instances will suffice. At page 373 of the transcript the judge had been asking questions the record of which takes up two full pages, and was asking the applicant why he did not go to the sergeant and ask him what had happened to his application for renewal of his firearms certificate. When the applicant could produce no reason why he failed to do so, the judge then said:

> "Let me suggest to you, Mr Roulston, that it is so likely that it would be inevitable, is it not?"

At page 378, again after an extended series of questions, the judge received an answer from the applicant which he clearly regarded as evasive, and said to him:

> "Don't talk gobbledegook to me. I want a straight answer to that."

At page 400 he received another answer which he thought unsatisfactory and asked the applicant "Are you serious about that answer?" Then at page 424, when the applicant said that he had adopted a certain policy, the judge remarked:

> "It's Firearms Licensing policy. It's not up to you, a Constable in Ballinamallard, to make decisions about firearms policy, is it, now?"

Finally, at page 427, when the applicant again gave evidence which the judge regarded as unsatisfactory, the following exchange took place between them:

> "Q. You are changing your evidence about that, Mr

> Roulston?
>
> A. Well, OK, if that's seen as changing …
>
> Q. It would be easier to say, would it not be easier to say 'What I said was wrong. I was *(inaudible.)*"

Mr Mateer submitted on behalf of the Crown that the case against the applicant was of such strength that even if the judge's interventions went beyond desirable limits they did not have the effect of influencing the jury to a conclusion which they might not otherwise have reached. That this may in some cases be the situation appears from such decisions as *R v Wiggan* [1999] Times LR 205 and our own decision in *R v Close.* We do not consider that this can be said to have been so in the present case. The verdict turned upon which evidence the jury believed, and the applicant was entitled to have a fair opportunity to make his case. We fear that the judge's interventions eroded that opportunity and that he allowed his scepticism about the applicant's case and his bona fides and his impatience with answering which he regarded as unsatisfactory to divert him away from judicial impartiality into giving an impression to the jury of hostility to the applicant and disbelief in his case. He made his views clear to such an extent that the jury may have been influenced by them to reach a verdict of guilty.

In these circumstances we have come somewhat reluctantly to the conclusion that the conviction is not safe and cannot be allowed to stand. We grant leave to appeal, allow the appeal and order a new trial.

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JUDGMENT

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