IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

CLIVE JONES

The Right Honourable The Lord Chief Justice

The Honourable Mr Justice McCollum

HUTTON LCJ

This is an appeal by Clive Jones who pleaded guilty to count 19 on the indictment and upon re-arraignment pleaded guilty to count 21 on the 19 December 1994 at Belfast Crown Court. The appellant was then sentenced as follows by His Honour Judge McKay QC. On count 19, where he was charged with possession of an unauthorised firearm without a certificate, which was a Browning pistol, he was sentenced to 6 months' imprisonment which sentence was suspended for 3 years. On count 21, which was possession of an AR rifle, without a firearms certificate, he was sentenced also to 6 months' imprisonment which sentence was suspended for 3 years, both sentences to be concurrent.

In very brief summary the facts were these: the appellant is a sergeant in the army and has served in the army for 19 years and he is an armourer and obviously is very experienced in firearms and in their repair and maintenance. As regards the Browning automatic pistol in respect of which he was charged on the 19th count, it appears that he acquired that in England from a man about 20 years ago, but he never obtained a firearm certificate in respect of it. In relation to the AR15 rifle in respect of which he was charged on the 21st count, it appears that on some date in 1990 or 1991 he took possession of that rifle from a co-accused, Davidson, for the purpose of activating it and the court will refer hereafter to what that involved. He was charged with having possession of that rifle without a firearms certificate.

In sentencing the appellant the learned trial judge said this in part of his sentencing remarks:

"To re-activate an AR15 weapon and to release it into civilian hands in Northern Ireland in 1991 could only be viewed as a serious matter. The making up of

a firearm which has no registration and whose presence is unknown to security forces is also a serious matter. I am satisfied that on each of these charges it is appropriate to impose a sentence of imprisonment."

On first impression of this case the view taken by the learned trial judge seems to be an entirely proper 1 from which no appellate court would differ, but when 1 comes to look at the background facts to this somewhat unusual case, a different picture and 'feel' about the case emerges as Crown Counsel Mr McMahon QC has very fairly stated. In order to appreciate the full background to the case a number of matters have to be considered. First of all, it is necessary to have regard to the statement made by the appellant to the police officers who interviewed him which was as follows:

"I am a sergeant with REME based at HQ Northern Ireland and I work as an armourer. I have been based at HQ Northern Ireland for approximately 2 years. I have always had a very deep interest in weapons and, indeed, joined the army 15 years ago to pursue that interest. I have been an armourer for the whole of my service. Within 3 days of my arrival in Northern Ireland I joined a rifle club called the Ulster Rifle Association, which is based at Craigantlet and Ballykinlar. My main interest is the pistol shooting section of the club. The first time I went to the club was at Craigantlet Quarry and the armourer whom I replaced introduced me to some members of the club, approximately 15 - 20 persons in all. One of the members whom I was introduced to was a person called Arthur Davidson and I spoke briefly to him through the course of the afternoon. During some of the meetings at the club I got to know Arthur Davidson as a knowledgeable and keen gun enthusiast similar to myself and we talked a lot about guns and shooting in general. Shortly after we came back from a shooting competition over 5 days at Bisley, which was in May 1990, Arthur asked me would it be possible for me to activate an AR15 which he had got. I told him that it could be done and asked him what he wanted it for. He told me his father owned land and that he would use it for shooting on the lands. I didn't confirm on that occasion that I would do this, but at a later club meeting I agreed to activate the AR15 for him. Shortly after this, I cannot remember the exact date, he brought the AR15 to myself and over the next 2 to 3 months I built the gun up with parts and components at my disposal. I then returned the gun to Davidson with some minor adjustments to be made by him to make the gun fully activated. He asked me what he owed me and I gave him an amount of £300. He paid me this by cash or cheque, I can't remember which. I want to say that I only carried this out because I believed Arthur to be a true gun enthusiast like myself and that the weapon would be retained as a collector's item and not to be used for any purpose than this. Prior to joining the army approximately 20 years ago I acquired a Browning 9 mm pistol from a person who is now deceased. I cannot remember his name. When I acquired it, it was not on certificate, so I could not get a certificate for it. From I acquired it I would has used it as a test gun for modifications I intended to make on service weapons and in total I would not have fired any more than 100 rounds. I would like to add that I hold a firearms certificate and on that certificate I hold 17 pistols and 2 shotguns and but for the problem I would have encountered

explaining where the 9mm Browning originated from I would have had it on a firearms certificate also. I want to again emphasise that when I re-activated the AR15 for Davidson it was done totally in good faith for a person whom I only regarded as a true gun enthusiast. I realise now that my actions were foolhardy and deeply regret it."

The court would add that it is clear from his verbal replies to the interviewing police officers that the appellant, when he acquired and then kept the Browning pistol, did so so that he could fit it with certain parts and try out certain modifications on it which, in the course of his work as an armourer, he wanted to do to see if his ideas in relation to that pistol were practicable and would tend to make the Browning pistol more effective.

It is clear also from what Crown counsel has stated to this court that the investigating detectives accepted the statement which the appellant made as being true and accepted that it set out in an honest manner the circumstances in which he came to have possession of these 2 weapons, that is the Browning pistol and the AR15 rifle. Therefore, it is clear that this is not the case of a man who is in possession of a gun and who activates it for some other purposes for a person whom he suspects would use the weapon for sinister purposes. It is clear that both the appellant and his co-accused Davidson are men who are gun enthusiasts. As Crown counsel put it `they are men who are obsessed with guns as an interest', and Crown counsel also informed us that Davidson had shot for Northern Ireland at the Bisley shooting competition. Therefore, this appellant who was a skilled armourer, activated this rifle as 1 gun enthusiast for another, although, of course, as he states in his statement, he was paid a few hundred pounds for the work he did and in respect of the additional parts which he supplied. Now, that is 1 part of the background to the case.

Another very important feature is this: Crown counsel, who, as we have already stated, conducted this appeal as 1, of course, expects in a very fair and helpful way, informed the court that he prosecuted at the trial before the learned trial judge and that the whole atmosphere and impression about the case changed as it went on and that the impression of the case was quite different at its end in comparison with what the impression was at the beginning. What Crown counsel meant by that was that the case changed from being 1 that looked very suspicious and as being a sinister case, to a case which at the end appeared to be 1 where it was clear that these 2 men had been influenced at all stages by their interest in firearms and not for some other sinister purpose. The result of that was that the learned judge acquitted this appellant on a more serious count which he faced, count 20, which charged him with possession of a firearm in suspicious circumstances, the particulars of the offence being that Clive Jones on a date unknown between 1 January 1990 and 1 November 1991 in the County Court Division of Craigavon, had in his possession a 5.56 mm calibre AR15 rifle under such circumstances as to give rise to a reasonable suspicion that he did not have it in his possession for a lawful object.

If the learned trial judge had taken the view that this appellant had activated this rifle, had worked on it and had it in his possession for a sinister purpose or for a purpose that he knew might lead to a sinister use such as that it would be handed over to a person who himself might use it for illegal purposes, or who might pass it on to some illegal paramilitary organisation, that count, the 20th count, would have been the appropriate count on which to convict the appellant if the judge thought that those were the circumstances. But the judge found him not guilty of that count and therefore in approaching sentencing on the 19th and 21st counts, which related to possession of a rifle and the pistol without a firearms certificate, the judge had to approach that sentencing on the basis that, whilst he was in possession of these 2 weapons without a certificate, nonetheless, he was innocent of having them and working on them for some sinister purpose and that is also a very significant feature of the case.

It is also relevant in this case that the co-accused Davidson was acquitted by the trial judge at the end of the trial on all the counts against him. Davidson was charged on 17 counts, most of which related to charges of possession of firearms or ammunition with intent to endanger life or in suspicious circumstances. It is clear that he had in his possession a considerable number of weapons and indeed Crown counsel said that when this AR15 rifle had been found by the police, it was not hidden away but simply sitting in a corner of his study. Again, the same comment applies that on first impression this was a serious case against Davidson. He was found to have possession of a considerable number of weapons but on inquiry the judge was satisfied that he did not have them with intent to endanger life or in suspicious circumstances. It appears indeed that Davidson had a certificate that covered all, or most, of these weapons and insofar as he was charged with possession of unauthorised ammunition, it appears that he was acquitted on that count because it was not clear whether the ammunition in respect of which that charge was brought was or was not covered by a firearms certificate. So it is clear that Davidson was a man who had this interest in guns with a large number of them in his house and it seems that all, or certainly a great majority of them, were covered by a firearms certificate.

Those features are the background to the case and we summarised them in this way: first of all these 2 men were genuine gun enthusiasts; they met through a shooting club and through their mutual interests in firearms. Secondly, Davidson, the co-accused, was acquitted on all the counts against him and thirdly, this appellant was acquitted of possession of the rifle under suspicious circumstances so that the judge in effect found that there was nothing sinister in his possession of this rifle.

Against that background the first matter for the learned judge to consider was whether the offences of which the appellant was guilty called for a prison sentence. Where a judge imposes a suspended sentence his approach is not that he first of all decides that the accused should not go to prison and then decides that it is appropriate to impose a prison sentence, but because the accused should not go to prison he then suspends it. His first task is to decide: should there be a prison

sentence irrespective of whether or not it is going to be suspended? That is a principle clearly set out in the authorities in R v Jeffrey 7 Cr App R(5)11. Goff LJ (as he then was) said:

"The principle is that the court, first of all, considers whether a sentence of imprisonment is appropriate. If so, it then goes on to consider whether in the circumstances it would be appropriate to suspend that sentence in whole or in part."

In the case of R v English 6 Cr App R(5)60 Stephen Brown LJ sentencing, said:

"Those facts as they have been described, in our view, could not have justified the sentence of 6 months' imprisonment and unless they justify a sentence of imprisonment the question of suspension does not arise."

So against the factual background which we have set out and against the legal principle that the issue is: should there be a sentence of imprisonment, whether it be suspended or not, the question for decision is whether this man now aged 43, with an absolutely unblemished record, free from any criminal conviction whatever, who has also given long service in the army and has reached the rank of sergeant, should have been sentenced to imprisonment?

We consider against the background which we have set out that he should not have been sentenced to imprisonment and that the sentence of imprisonment was wrong in principle and that the appropriate punishment was a fine. Therefore we quash the sentences of imprisonment on the appellant and we impose in place of the sentences of imprisonment a fine of £200 on count 19, which relates to the Browning pistol with 7 days' imprisonment -we will deal in a moment with the period in which to pay but there will be a 7 days' imprisonment in default of payment and on count 21 which relates to the AR15 rifle we impose a fine of £500 with imprisonment for 14 days in default of payment, in other words a total fine of £700.

We wish to add 2 matters: first of all, we have not been influenced by the point which was raised by Mr Finnegan QC, that this appellant would probably be discharged from the army if the sentence of imprisonment stood, because it is self evident that imprisonment often causes a man to lose his job and it may be pension rights also, but save in exceptional circumstances those economic consequences are not a reason why a proper sentence of imprisonment should be set aside. Secondly, we wish to emphasise that we decide this case on the very special facts to which we have referred in some detail and because on a careful examination, as Crown counsel has accepted and stated, the final view of this case is quite different from the first view that is formed when the papers are read. We desire to make it clear that if a man is in possession of a weapon and/or works on a weapon or firearm without a firearm certificate in suspicious circumstances where it appears that the weapon may have been held by some illegal organisation, or may find its way into the hands of an illegal organisation, invariably he should go to prison, often for many years.

As regards the time for payment the court has in mind 14 days. Very well, the fines are to be paid within 14 days and in default a period of imprisonment will be imposed.