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*Judgment: approved by the court for handing down  
(subject to editorial corrections)\**

ICOS No: 21/101525

Delivered: 09/01/2024

IN THE CROWN COURT OF NORTHERN IRELAND

SITTING AT LAGANSIDE COURTHOUSE

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THE KING

v

BOND

**Her Honour Judge Smyth**

**Recorder of Belfast**

*Introduction*

[1] The defendant was arraigned on 19 January 2023 and pleaded not guilty to all three offences on the indictment-

- (1) Possession of a firearm and ammunition, namely an improvised 12 bore slam fire shotgun and two 12 bore shotgun cartridges with intent to endanger life or cause serious damage to property or to enable another person to endanger life or cause serious damage to property contrary to Article 58 (1) of the Firearms (Northern Ireland) Order 2004
- (2) Possession of a firearm or ammunition in suspicious circumstances, contrary to Article 64 (1) of the Firearms (Northern Ireland) Order 2004
- (3) Possessing a handgun without Certificate, contrary to Article 3 (1) (a) Firearms (Northern Ireland) Order 2004

[2] Following the arraignment, there were discussions between prosecution and defence and the defendant was then re-arraigned on 24 April 2023, pleading guilty to the first count on the indictment. The plea was entered, and accepted by the prosecution, on the basis of the *second limb* of the offence, namely that the defendant possessed a homemade firearm and ammunition *with the intention to enable others to*

*endanger life or cause serious damage to property.* Counts two and three were left on the books in the usual terms.

[3] On 15 November 2021 police conducted a planned search of the defendant's home in Limavady. In a wooden shed in the corner of the back garden, a homemade firearm was found in a bag which also contained two shotgun cartridges. Four black gloves were also found. From the house, items of UDA related paraphernalia were recovered, including three UDA flags, paramilitary badges, a plaque with the UDA crest on the display shelf and a mug with a UDA motif on a shelf by the kitchen.

[4] The homemade firearm was found to consist of two lengths of metal pipe which fitted together to produce a "slam-fire" shotgun. The smaller diameter tube acted as a barrel and chamber which would hold a 12 bore shotgun cartridge at one end. A metal fore grip had been welded onto the barrel towards the muzzle end. The other tube had a larger internal diameter and acted as a breech, it had an improvised firing pin in the centre of the tube and an improvised metal hand grip was welded to the closed end of the tube.

[5] The firearm functioned by inserting the 12 bore cartridge into the chamber end of the barrel. It was successfully test fired with a FSNI stock 12 bore shotgun cartridge. Forensic tests on the barrel of the improvised shotgun demonstrated that it had been fired previously.

[6] Both cartridges were in good condition with some surface corrosion on the cartridge heads. FSNI confirmed that the improvised shotgun was a firearm as defined by the Firearms (NI) Order 2004 and that the shotgun cartridges were ammunition.

[7] The defendant was interviewed and questioned about the UDA paraphernalia and admitted that the items belonged to either him or his partner. He said that they were all bought at stalls at band parades and that the badges, which he had intended to throw out had been taken from a house party. He said that he had bought the black gloves for his work in a local hardware shop.

[8] The defendant was asked about the two shotgun cartridges that were found in the bag in his shed and he made no comment in respect of them or if his DNA or fingerprints would be found on those items or if he was holding those items on behalf of North Antrim UDA.

[9] He was asked about the improvised shotgun and again made no comment in respect of a series of questions which included whether he had seen that item before, knew anything about it, or how long he had been storing it.

[10] In a subsequent interview, he stated that he did know about the firearm and that it had been given to him by an unnamed person to dispose of, but he had put it in his shed and forgotten about it. He stated that it was not to be used and he was

going to dispose of it because it looked dangerous. He refused to name the person who had given him the firearm saying he would only be called a “tout” or a “grass”. The defendant further stated that he was known to Limavady Police and his local councillor in respect of resolving local sectarian conflicts.

[11] The defendant then provided further detail about the circumstances in which the firearm had come into his possession; he said that a person had come to his door one night and mentioned the firearm. He told him that he would dispose of it and a couple of days later, he met this person on a back path in the estate, collected it and took it away. He said this was about one or two weeks earlier. He said the firearm was in a black bag and he put it and the two cartridges into a Tesco bag. He accepted that he knew that it was a firearm but denied being a member of the UDA. The defendant again repeated that he was well known about the community for bands and for breaking up disturbances between both sides of the community.

[12] The prosecution does not accept the account given in interview and by his guilty plea, the defendant has acknowledged that he was in possession of the firearm *with the intention of enabling another person to endanger life or cause serious damage to property*.

### ***The Sentencing Guidelines***

[13] The maximum sentence for an offence under Article 58 (1) of the 2004 order is life imprisonment. In *R v Avis and Others* [1998] 1 Cr App R 420 Bingham CJ at 424 set out guiding principles to be invoked in cases of gun crime.

“The appropriate level of sentence for a firearms offence ... will depend on all the facts and circumstances relevant to the offence and the offender, and it would be wrong for this court to seek to prescribe unduly restrictive sentencing guidelines. It will, however, usually be appropriate for the sentencing court to ask itself a series of questions:

(1) What sort of weapon is involved? Genuine firearms are more dangerous than imitation firearms. Loaded firearms are more dangerous than unloaded firearms ....

(2) What (if any) use has been made of the firearm? It is necessary for the court, as with any other offence, to take account of all circumstances surrounding any use made of the firearm ...

(3) With what intention (if any) did the defendant possess or use the firearm? *Generally speaking, the most*

*serious offences under the Act are those which require proof of a specific criminal intent (to endanger life, to cause fear of violence, to resist arrest, to commit an indictable offence). The more serious the act intended, the more serious the offence.*

(4) What is the defendant's record? The seriousness of any firearms offence is inevitably increased if the offender has an established record of committing firearms offences or crimes of violence."

[14] In *R v Greer* [2014] NICA 43 at paragraph [24] the court said -

"[24] We take this opportunity to emphasise the gravity of gun crime. It is necessary to ensure that sentences for this type of offence contain a sufficient element of deterrence to discourage others. Those who so offend must expect to be dealt with severely with lengthy sentences of imprisonment save in very exceptional circumstances."

[15] In *R v Corr* [2019] NICA 64 the court considered a reference from the DPP. The defendant had pleaded guilty to possession of a sub-machine gun with intent to endanger life under the "*second limb*" of Article 58(1) and to possession of a prohibited weapon under Article 45(1). The prosecution had submitted that the appropriate sentencing range (after trial) for an offence of this type is in the region of 10-13 years. The court cited Lord Bingham LCJ in *Avis* when he stated:

"the appropriate level of sentence for a firearms offence, as for any other offence, depends on all the facts and circumstances relevant to the offence and the offender and it would be wrong for this court to seek to prescribe unduly restrictive sentencing guidelines"

[16] The court did not accept that the facts and circumstances of this particular case justified a range of 10-13 years and considered that the statutory minimum of five years' imprisonment (unless exceptional circumstances exist) introduced to the firearms legislation in 2004 for certain offences, including Article 45, must have a bearing. The court considered that effect must be given to this legislative development so that the bottom end of the sentencing range for the Article 45 offence must be at least five years' imprisonment and Article 58(1) was, in the hierarchy of offences, the more serious offence.

[17] In that case, it was accepted in a written basis of plea that the defendant was a vulnerable adult with a medical history of very poor mental health and the

prosecution could not disprove as a possibility that he was placed under pressure from paramilitaries to store the items.

[18] The court identified two aggravating features in that case namely (a) the fact that the weapons and ammunition were to be available for terrorist activity and (b) the quantity of the weapons and ammunition (three weapons). The importance of deterrence in these types of offences was emphasised and the court concluded that the sentence of 18 months' imprisonment (9 months in custody and 9 months on licence) was unduly lenient. The starting point in that case ought to have been at least five years.

[19] In *Attorney General's Reference (No.3 of 2004) (Hazlett)* [2005] NIJB 196 [2004] NICA 20 the offender was convicted of Article 58(1) possession of a machine gun and ammunition under the *first limb* and sentenced to seven years custody and two years probation, with a commensurate sentence of eight years. The offence arose out of an operation in which shots were fired at the upstairs windows of a house as part of a loyalist paramilitary feud and a bullet struck a young girl in the house. The offender participated in the attack. On appeal, the court stated that the range for this offence should have been 12-15 years and a substantial deterrent sentence was required, especially in paramilitary cases. The sentence of eight years was unduly lenient and a sentence of 12 years was imposed.

[20] The prosecution submits that this case is more serious than *Corr* and less serious than *Hazlett*. The starting point should be at least five years and the court should then consider the answers to the four *Avis* questions and must also decide whether the offence is aggravated by having a *terrorist connection* pursuant to section 30 of the Counter Terrorism Act 2008 as amended by section 1(4) and 1 (5) of the Counter Terrorism and Sentencing Act 2021.

### ***The impact of the Counter-Terrorism and Sentencing Act 2021***

[21] Section 24 of the Counter-Terrorism and Sentencing Act 2021 (the 2021 Act) commenced on 30 April 2021. It inserted a new Article 15A of the Criminal Justice (NI) Order 2008 –

“15A(1) This Article applies where –

(a) a person is convicted after the commencement of section 24 of the Counter-Terrorism and Sentencing Act 2021 of –

(i) a serious terrorism offence;

(ii) an offence within Part 4 of Schedule 2A (terrorism offences punishable with more than two years' imprisonment); or

(iii) *any other offence in respect of which a determination of terrorist connection is made;*"

[22] Part 3 of Schedule 2A of the Criminal Justice (NI) Order 2008 specifies that an offence under Article 58 (1) of the Firearms (NI) Order 2004 is capable of being determined as having a *terrorist connection*. If the court determines that there is a *terrorist connection*, a number of consequences flow. In particular, the court is required under Section 30 (4) of the Counter-Terrorism Act 2008 as amended by the Counter-Terrorism and Sentencing Act 2021 to treat that fact as an aggravating factor and must state in open court that the offence was so aggravated.

[23] Article 15A (1), (b) and (c) collectively provide that in a case involving an offence which has a *terrorist connection*, where the court does not impose a life sentence, an indeterminate custodial sentence, a serious terrorism sentence or an extended custodial sentence and decides to impose a custodial sentence, Article 15A (4) applies -

"(4) Where the offender is aged 21 or over, a sentence under this Article is a sentence of imprisonment the term of which is equal to the aggregate of—

(ii) the appropriate custodial term; and

(b) a further period of one year for which the offender is to be subject to a licence."

[24] The term under paragraph (4) must not exceed the maximum term of imprisonment with which the offence is punishable (apart from Article 13); the "appropriate custodial term" means the term that, in the opinion of the court, ensures that the sentence is appropriate; a court which imposes a sentence under this Article shall not make an order under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968 (suspended sentences) in relation to that sentence and remission shall not be granted under prison rules to the offender in respect of a sentence under this Article (15A (6),(7),(9)).

### ***Terrorist Connection***

[25] The prosecution relies on the following matters to prove that the offence has a *terrorist connection*:

- The nature of the offence itself. The prosecution does not accept the account given by the defendant in interview that he was asked to dispose of the firearm but put it in his shed and forgot about it. By virtue of his guilty plea, the defendant accepts that his intention in possessing the firearm and ammunition was to enable someone else to endanger life or cause serious

damage to property. In the absence of any evidence of non-terrorist criminal intended use, a reasonable inference can be drawn that the offence has a *terrorist connection*.

- The nature of the firearm. This was a homemade, functioning firearm with no lawful purpose.
- The finding of UDA paraphernalia in the defendant's home supports the inference that the offence had a terrorist connection, and specifically a connection with the UDA, which is a terrorist organisation.
- The prosecution relies on CCTV evidence, which is not disputed, of the defendant marching in two parades, in a cohort of males wearing suits, with an unidentified armband, directly behind a colour party wearing paramilitary-style dress and holding plaques that are clearly identifiable as UDA plaques.

[26] The defendant disputes that the prosecution has proved a terrorist connection beyond a reasonable doubt. It submits that the nature of the paraphernalia is typical of the type of material that may be found in homes on both sides of the political divide, and "*whilst in essence it commemorates the past existence of terrorist groupings, it is insufficient in itself to establish the requisite connection*".

[27] The defence also submits that the court should bear in mind that the two parades relied upon by the prosecution were organised by a political grouping (Ulster Political Research Group) and commemorated an historical event, namely the Ulster Workers Council strike, 50 years ago in 1973, at which time the UDA was not a proscribed organisation, and in which it took an active part.

[28] The defence dispute that a connection with terrorism can properly be inferred from mere presence at commemorative parades, even where there is a paramilitary presence.

[29] Specifically, the defence submit that the connection must relate to active, present terrorism, and the demonstration of support relied on by the prosecution falls short of the necessary connection. In the alternative, if a terrorist connection is found to exist, the court must bear in mind that there are different strengths/levels of connection. An example is given of internet connection. In these circumstances, the level of connection in this case is at the lower end.

[30] Section 30 (3) of the Counter Terrorism Act 2008 provides that in determining this issue, the court may hear evidence, and/or representations with regard to that matter, and if satisfied that the offence has a terrorist connection, must treat that fact as an aggravating factor, pursuant to section 30 (4). The defendant has chosen not to give evidence about this issue and relies on the representations of counsel.

### *Conclusion on the Terrorist Connection issue*

[31] The defence is correct in its submission that mere presence at a lawful commemorative parade cannot of itself justify an inference that an individual is connected with terrorism, even if there is a paramilitary presence. However, the question that must be answered in this case is focussed on the *offence* to which the defendant has pleaded guilty. The offence is the possession of a firearm and ammunition *with the intention of enabling another person to endanger life or cause serious damage to property*.

[32] The home-made firearm, capable of firing ammunition cannot have any lawful purpose. It was in the defendant's possession along with suitable ammunition and the account provided to police has been rejected. The defendant has declined the opportunity to give evidence and in all of the circumstances, the only reasonable inference is that the offence has a terrorist connection.

[33] Whilst it is not necessary to consider the additional evidence of the defendant's participation in two commemorative marches or the UDA paraphernalia found at his home in order to reach that conclusion, that evidence does demonstrate support or sympathy with that proscribed organisation. The defendant was not merely present as a bystander at each of the marches but was part of a group of suited males with armbands marching in step behind a group of males in paramilitary dress who are clearly carrying plaques with UDA insignia.

[34] I am satisfied beyond a reasonable doubt that the offence is aggravated by having a terrorist connection. This is the only aggravating factor relied on by the prosecution.

[35] In mitigation, the defendant has a minor non-relevant criminal record and has pleaded guilty to this offence. He is a working man and I have been provided with a reference from his employer who confirms that he is a valued and longstanding employee, reliable and with an exemplary work record.

[36] I have also been provided with a helpful pre-sentence report. The defendant is 52, a single man, who lives with his elderly mother and other family members. Whilst he is not his mother's carer, he plays a supportive role in her life. He is actively involved in a flute band and recognises that he is in a position of responsibility and that his offending will undermine his efforts at fostering good relations within the community.

[37] Whilst the defendant accepts that he is a Loyalist, he disputes any involvement with paramilitaries and his account of offending is contrary to his guilty plea. He is assessed as a medium likelihood of re-offending and not assessed as meeting the threshold for dangerousness, which I accept in view of his age and previous record.



[38] Whilst it is asserted that the defendant has demonstrated remorse, he has not given a truthful account either to the police or to the probation officer. In those circumstances, it is difficult not to conclude that regret at the situation he finds himself in is more likely to be the case.

### *The Appropriate Sentence*

[39] In applying the four questions in *Avis* to the present case, the prosecution submits that the answers are :

(i) In respect of the first question this was a genuine firearm and whilst the firearm was unloaded there was suitable ammunition available for it which was stored in the same bag. The weapon required only to be loaded before it was ready for immediate use. Significantly the firearm had no lawful use and should be viewed more seriously than one which is capable of lawful use.

(ii) With regard to the second question there is no available history for the firearm and whilst the forensic evidence shows that the weapon had been previously fired, it is not possible to say in what circumstances.

(iii) With regard to the third question, the defendant's intention in respect of his possession of the firearm was *to enable other persons to endanger life or cause serious damage to property*. As per *Avis* the most serious offences are those under the Act which require proof of a specific criminal intent and the more serious the act intended, the more serious the offence.

(iv) With regard to the fourth question, the defendant has a minor record with only one previous conviction for disorderly behaviour committed in 2009.

The defence make no contrary submission and I agree with the submitted answers.

[40] The prosecution submits that as the answers to the first and third questions of *Avis* are adverse to the defendant and taking due account of the presence of the additional aggravating feature of a terrorist connection, that further increases the starting point beyond that suggested in *R v Corr*.

[41] Taking into account the facts and circumstances relevant to the offence and the offender in this case, I consider that the appropriate sentence is 8 years, before reduction for the guilty plea.

[42] The defendant pleaded not guilty at arraignment on 19 January 2023 and entered a guilty plea to count one on 24 April 2023. He gave a false account to police and continues to maintain an account to PBNI that is inconsistent with his guilty plea. In those circumstances, I consider that a reduction of 25% is appropriate. In

view of the PBNI assessment of future risk, which I have accepted, I am imposing a custodial sentence.

[43] Pursuant to Article 15A (4) the sentence shall be 6 years with an additional licence period of 12 months. The defendant will serve 2/3 of that sentence before being considered for release by the Parole Commissioners.

[44] The defendant shall also be subject to notification requirements for 15 years.