



SHERIFF APPEAL COURT

**[2020] SAC (Crim) 5
SAC/2020/000158/AP**

Sheriff Principal C D Turnbull
Sheriff Principal A Y Anwar
Appeal Sheriff W H Holligan

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL A Y ANWAR

in

STATED CASE

by

ROBERT RIGGS

Appellant

against

PROCURATOR FISCAL, ABERDEEN

Respondent

Appellant: Findlater, Faculty Services, Edinburgh; George Mathers & Co, Aberdeen

Respondent: Donald, Advocate Depute; Crown Agent

13 November 2020

[1] On 11 December 2019 the appellant was convicted after trial at Aberdeen Sheriff

Court of the following charge and was fined the sum of £3,000:

“(001) You ROBERT RIGGS being the holder of a Firearms Certificate No F4372 issued to you by Stephen House, then Chief Constable of the Police Service of Scotland, on 15 January 2014 and amended by Iain Livingstone, Chief Constable of the Police Service of Scotland, on 16 February 2018 containing certain conditions

namely that the firearms and ammunition to which the certificate relates, must at all times be stored securely so as to prevent, so far as is reasonably practicable, access to the firearms or ammunition by an unauthorised person, did fail to comply with the said conditions on 15 July 2018 at XXX that you did leave a rifle, a sound moderator, out-with a locked cabinet when you were away on holiday: CONTRARY to the Firearms Act 1968, Section 1(2) as amended by the Firearms Amendment Act 1988.”

[2] The appellant appeals both his conviction and the sentence imposed. Question one posed by the sheriff relates to his decision to reject the appellant’s submission of no case to answer. Before this court, the appellant conceded that the sheriff had been entitled to do so. Accordingly, that question falls to be answered in the affirmative.

[3] The appellant was the holder of firearms licence F4372 specifying a Tikka (bolt action rifle) and an associated sound moderator. Condition 4 of the appellant’s licence provided as follows:

- “(a) the firearms and ammunition to which this certificate relates must at all times (except in the circumstances set out in paragraph (b) below) be stored securely so as to prevent, so far as is reasonably practicable, access to the firearms or ammunition by unauthorised persons.
- (b) where a firearm and/or ammunition to which the certificate relates is in use or the holder of the certificate has the firearm with him/her for the purposes of cleaning, repairing or testing it or for some other purpose connected with its use, transfer or sale, or the firearm or ammunition is in transit two or from a place in connection with its use for any such purpose, reasonable precautions must be taken for the safe custody of the firearm and/or ammunition.”

[4] The sheriff made eight findings in fact. It was not disputed that the sheriff had directed himself to the appropriate question, namely, whether the appellant had breached the terms of condition 4(a) of his firearms licence. The sheriff’s decision to convict proceeded on the basis of findings in fact [5] to [8], which read as follows:

- “5. On 15 July 2018 the [appellant] had a metal gun cabinet which provided added security to guns in his possession so as to prevent, access to the other firearms and ammunition by an unauthorised person;
- 6. On that date the rifle and moderator CL1 were stored beside the gun cabinet and not in it;

7. It would have been reasonably practicable store the rifle and moderator CL1 in the gun cabinet;
8. In the circumstances, the [appellant] was in breach of the relevant condition of his firearms licence."

[5] Notwithstanding the brevity of those findings, much of the evidence was uncontroversial and is narrated by the sheriff in his note (particularly at paragraphs [15] to [23]). On 15 July 2018, the appellant had been out shooting vermin; he had removed the bolt from the rifle, being the working part of the rifle; having returned home, the appellant cleaned the rifle and left it out of the gun cabinet, leaning it against a wall to dry; the following morning he and his wife left their home for a pre-planned holiday; in their absence, the home was extensively damaged by fire. A firefighter found the appellant's rifle leaning against a wall next to the gun cabinet in an unlocked room on the first floor.

[6] None of the sheriff's findings in fact narrate in detail the security measures at the locus. Again, that evidence was uncontroversial; the appellant's home is 150 yards from the main road in a wood; the external doors are fire-doors reinforced by sheet steel or solid hard wood with a triple lock; the windows are double-glazed with hardwood frames; there are four external CCTV cameras focussed on the house and accesses to it; the CCTV is connected to the internet; and there had been no break-in or incidences of vandalism at the locus over the last 15 years.

[7] Counsel for the appellant relied upon the decision of the Queen's Bench Division in *DPP v Houghton-Brown* [2010] EWHC 3527. He submitted that the sheriff had failed to consider all of the facts and circumstances when considering what was "reasonably practicable" in terms of condition 4(a) of the appellant's licence and has erroneously focussed exclusively upon the failure to store the rifle in the gun cabinet. The facts and circumstances to which the sheriff ought to have paid due regard included the security

measures at the locus and its remote location, the lack of history of prior thefts or vandalism at the locus, the appellant's decision to remove the bolt from the rifle and the absence of any condition requiring the appellant to store the rifle in a gun cabinet.

[8] The advocate depute contended that the conditions of the appellant's licence required him to store the rifle "securely". She submitted that by failing to store the rifle in the gun cabinet the appellant had breached the conditions of his licence. Relying upon dicta in *Walkingshaw v Wallace* 1990 SCCR 203, the advocate depute submitted that the rifle had been accessible to unauthorised persons, including the appellant's wife.

[9] We have carefully considered the sheriff's stated case. It is correct to note that the findings in fact are brief and focus on the failure to use the gun cabinet. It is of course not a condition of the appellant's licence that the firearm be stored in a locked gun cabinet. The appellant's failure to store the firearm in a locked gun cabinet was a significant adminicle of evidence, however, it is not determinative of the issue. Whilst the sheriff may have expressed himself in clearer terms, he plainly accepted the uncontroversial evidence before him. Finding in fact [5] refers to the gun cabinet providing "added security", thereby indicating that the sheriff had in fact paid due regard to the other security measures identified by counsel for the appellant and which had been narrated by the sheriff in his note. The sheriff has carefully noted the uncontroversial evidence of the appellant and of his wife each of whom spoke to the factors now relied upon on behalf of the appellant.

[10] The sheriff concluded in paragraph 27 that those factors did not assist the appellant.

[11] We do not regard either *DPP v Houghton-Brown* or *Walkingshaw v Wallace* to be of assistance; the former was concerned with a different condition of a firearm licence and the latter dealt with a condition requiring the licensee to keep a firearm in a "secure place". It is noteworthy that condition 4(a) in the present case is not concerned simply with the security

of the premises in which the firearm is stored, but rather with the requirement that it be “stored securely”.

[12] These decisions are fact-sensitive and the court requires to consider all of the facts and circumstances when considering the question of whether a firearm has been stored securely so as to prevent, as far as is reasonably practicable, access to it by unauthorised persons. The particular mischief that condition 4(a) is designed to address is the possibility that the firearm may end up “in the wrong hands” – those “wrong hands” may belong to a child or a visitor to the property or to those who are uninvited, such as intruders. The facts and circumstances upon which the appellant relies and which relate to the security measures at the locus, relate to the latter category of “unauthorised persons”. Notwithstanding those security measures, had an intruder entered the property, the firearm would have been visible in plain sight in an unlocked room. It would not have been “stored securely”. In relation to the former category of “unauthorised persons”, the facts and circumstances upon which the appellant relies are the measures designed to make the firearm safe (such as the removal of the bolt), not measures to securely store the firearm. Self-evidently, it was reasonably practicable for the appellant to store the rifle, as he had intended to, in the gun cabinet before he left the property. Notwithstanding the other factors referred to, anyone entering the unlocked room in which the firearm was found by the firefighters, would have had immediate access to it.

[13] Accordingly, we are not persuaded that the sheriff failed to take account of the factors referred to in submissions nor that he attached insufficient weight to them. He considered all the facts and circumstances, including the undisputed evidence of the appellant and his wife however he concluded that those factors “did not assist the appellant”. That was a conclusion that he was entitled to reach.

[14] On the question of sentence, we note that the sheriff had before him a number of letters from individuals all of whom describe the appellant as diligent in all matters pertaining to firearm use and security. The appellant is a 59 year old individual with no previous history of offending. It was clear from the evidence before the sheriff that the failure to securely store the firearm within the gun cabinet on the day in question had been an oversight rather than a deliberate contravention of the appellant's firearms certificate. The sheriff notes that the removal of the bolt from the rifle was "significantly mitigatory". In the circumstances, we consider a fine of £3,000 to be excessive and we shall instead impose a fine of £1,000.

[15] Accordingly, we shall answer question 2 in the affirmative and refuse the appeal against conviction. We shall answer question 3 in the affirmative, quash the sentence imposed by the sheriff and substitute a fine of £1,000.