

IN THE SUPREME COURT OF  
THE TURKS AND CAICOS ISLANDS  
CRIMINAL

REGINA

v

ALOYSIUS EBNER

BEFORE the Chief Justice, the Hon. Mme Justice Margaret Ramsay-Hale  
Mr. Leonard Franklyn for the Crown  
Mr. Clayton Greene for the Defendant  
Heard on the 11 October, 2019

---

**RULING ON SUFFICIENCY OF EVIDENCE**

---



**CHARGE**

1. The Defendant is charged with the following offences:
  - (a) 12 counts of keeping ammunition under section 3 of the **Firearms Ordinance**;
  - (b) 8 counts of keeping a firearm under section 3 and
  - (c) 1 count of failing to surrender firearms under section 4;

**FACTS**

2. The facts were set out by Mr. Greene in his written submissions on behalf of the Defendant who is a retired Navy Seal who served in the United States Navy for 22 years as part of an Underwater Demolition Team.
3. The facts are that, on Saturday 10 August, 2019, the Defendant left the Dominican Republic at about 6:30 am on his 44 foot vessel, "Lucky Strike", en route to Georgia, United States ("USA"). He arrived at Big Sand Cay in TCI waters at about 2:00 am on 11 August, which was the first of several planned rest stops. He was wrecked at Big Sand Cay because of strong winds. He sent up flares but got no substantive assistance until Monday 12 August at midday when the captain of the Salt Cay Ferry, with two other people, came to his rescue and took him back to Salt Cay. There, he met with the District Commissioner. The Defendant brought his passport, computer and documents related to the Lucky Strike on the ferry to Salt Cay with him. He did not mention to the ferry captain or the District Commissioner that there were firearms or ammunition on the Lucky Strike.
4. On 13 August, the District Commissioner made arrangements for the Defendant to be taken back to the Lucky Strike on a dive boat, to collect personal items. When they returned to Big Sand Cay, he took his firearms and ammunition off of Lucky Strike, and put them onto the dive boat. When the dive boat was in deep water, he threw 7 rifles overboard, intending to dispose of all his

weapons, because he “*didn’t want to get in any trouble and [he] didn’t want anyone to get them. ... [He] figured if he disposed of them it would be less trouble for everyone ... in the deep water they would have become unrecoverable.*”<sup>1</sup> It was on this dive boat that the police apprehended him.

5. On 14 August, he gave his statement to the police in which he admitted that the firearms and ammunition were his and informed them that there were more firearms and ammunition on the Lucky Strike and told the police where on the boat they could be found. He later went with the police on 15 August to collect the remaining firearms and ammunition.
6. The Defendant, in accounting for his having the firearms and ammunition with him on his boat, explained that he enjoyed shooting and had stocked up because he anticipated that the costs would continue to rise. He said,  
  
*“Back when I was with my buddies we used to go shooting all the time thousands of rounds and all kind of different guns. We would go to gun shows and the more ammunition we buy the cheaper you get it, since we used so much rounds it was cheaper to buy it cases at a time. ... The reason I kept the ammunition is because I could foresee the rise in cost later on. I had no intent at using it but I know eventually I would get back into shooting and the cost would have been astronomical to what it was. So it was my intention to keep what I had.”*<sup>2</sup>
7. The Defendant was formally charged on 22 August 2019 and granted bail which imposed a restriction on his travel. Mr. Greene sought to make submissions on the day the matter was listed for hearing with a view to having the charges against the defendant dismissed but the matter was adjourned to the 28 November 2019.
8. Mr. Greene subsequently filed an application to vary the Defendant’s bail to permit him to return to the USA. Any variation of bail would require a consideration of the strength or otherwise of the case against the Defendant. Accordingly, the Court heard Mr. Greene’s submissions on the sufficiency of the evidence and has determined both the question of sufficiency and the application to vary the Defendant’s bail.

## SUBMISSIONS

### Section 3 Offences

9. Mr. Greene contends, as set out in his written submissions, that the evidence in support of the section 3 offences does not disclose a *prima facie* case against the Defendant for the reason that the offences are not offences of strict liability and that the Prosecution must prove that the Defendant was *keeping* the firearm and ammunition and that he was keeping them in circumstances where he was required to have a licence.
10. Mr. Greene submits that before the Prosecution can satisfy the court of liability they must present evidence capable of showing an intention on the part of the Defendant to “keep” the

---

<sup>1</sup> Witness Statement to the Police by Defendant, page 91 of Sufficiency Bundle

<sup>2</sup> Witness Statement to the Police by Defendant, pages 91-92 of Sufficiency Bundle

firearm/ammunition in circumstances where he had no licence. He contends that it is not sufficient for the Prosecution to show that, for a moment in time, the firearms and ammunition were in the Defendant's possession and that, for that moment, the Defendant did not have a licence. What the evidence must show is that, in all the circumstances of the case, the facts evince an intention on the part of the Defendant to put himself in breach of the legislation.

11. Mr. Greene submits that the evidence does not support a finding that the Defendant was keeping the firearms and ammunition. He relies on the case of *Dudley v Holland* [1963] 3 All ER 732 in which the Court considered the meaning of 'keep' as it appeared in section 8 of the **Vehicles (Excise) Act 1971 (UK)**, which made it an offence to 'keep' a car which was not licensed on a public road. A car which was not licensed had been moved onto a public road while the showroom was being cleaned. Lord Parker CJ stated at p 734 that,

*"I approach the word "keeps" in what seems to me the ordinary meaning of some continuing process; not a mere isolated moment, but a keeping of the car there, at any rate for some interval of time. It is no doubt a matter of degree and fact in every case. So far as this case is concerned, the point left for the decision of the court is whether the mere presence, albeit for a moment in time, of the vehicle on the road amounts to a keeping of that vehicle on the road. In my judgment, keeping means something more than that, both according to its ordinary meaning and when it appears in conjunction with the other word "uses".*

12. Mr. Greene also relies on the case of *Blue v Pearl Assurance Co Ltd* [1940] 3 WWR 13, a Canadian case, in which the court considered whether, through oversight, gasoline was illegally 'kept' in a garage overnight. Ewing J found, at pp 19-20,

*"In the case at Bar, the gasoline did not remain in the garage continuously for an extended period. On the contrary a small quantity was brought into the garage occasionally for a particular purpose, and when this purpose was served, as it was in the course of one or two hours, the gasoline was taken out of the garage. I am of the opinion that on these facts gasoline was not 'kept' or store in the garage. Nor, in my opinion, should this view be altered because of the fact that on one occasion, by mistake, the can containing gasoline remained in the garage overnight ... that single instance would not, in the circumstances, constitute 'keeping' gasoline in the garage"*

13. Mr. Greene contends that, given the meaning ascribed to 'keep' in the authorities referred to, the Defendant could not be said to have kept the firearms and ammunition as he expected to be at Big Sand Cay for an overnight rest only. He had no intention of interacting in any way with any community in the Turks and Caicos Islands and further, had no opportunity to either apply for a licence or surrender his firearms and ammunition to the Police.
14. Mr. Greene further contends that under section 3 of the Ordinance, an individual who becomes obliged to hold a licence for a firearm has 14 days to obtain a licence. He relies in support of this submission on section 11(2) of the Ordinance which provides that a person shall take out such licence within 14 days upon becoming liable to do so.<sup>3</sup>

---

<sup>3</sup> **11. Licence to expire on 31 December**

*"(1) Subject to sections 10 and 13, every licence issued under this Ordinance shall expire on the thirty-first day of December next following.*

15. He submits that the Defendant would have had 14 days after entering the Islands to take out a licence and says further that a person who had arrived in the territorial waters of the TCI with a firearm could not be in a worse position *vis a vis* licensing than a person who had come into possession of a firearm as, for example, an executor on the death of the owner.

#### Section 4 Offence

16. With respect to the offence of failing to surrender a firearm, Mr. Greene submits that the evidence cannot support a charge under section 4 as there is no evidence that the accused would not have been able to obtain a firearm licence and no evidence that the Defendant took or attempted to take the firearm into a community.
17. Further, while the statement of offence speaks to 'surrender' of a firearm, the particulars speak to disposal. The section that deals with disposal of a firearm is section 18. Counsel argues that the Defendant is not in breach of that section. Mr Greene submits that disposal of a firearm is an option that is always open to the keeper of a firearm in circumstances where the disposal does not offend the legislation and this was what the Defendant was trying to do when the officers approached.
18. Mr. Franklyn, in a short reply, submits that there is an established procedure for the captains of vessels to call ahead to TCI authorities to inform them that they or their crew were keeping firearms or ammunition. These would then be held by the Commissioner of Police for the duration of their stay and returned when they were leaving the jurisdiction. There was no reason for the Defendant not to do the same and his failure to do so was sufficient to ground the charges of keeping firearm and ammunition.

#### DISCUSSION

19. The word 'keep' is not defined in the Ordinance. We have then to look at the ordinary meaning of the word. The dictionary defines the ordinary meaning of the word keep as "to hold, to maintain, to support, to retain in possession and to take care of" and "to have or continue to have in your possession" and "to continue or cause to continue in a specified condition, position, course, etc." or "(cause to) stay in a particular place or condition..."<sup>4</sup>
20. In the cases to which Mr. Greene referred the Court, the Court ascribed the latter meaning to the word 'keep.' This is plain from the judgments where the Courts held,

*"In the case at bar the gasoline was not "kept" in the garage [within a statutory condition of a policy]. The gasoline **did not remain in** the garage continuously for an extended period. On the contrary a small quantity was brought into the garage occasionally for a particular purpose...": Blue v Pearl Assurance Co Ltd. Per Ewing J. [my emphasis].*

---

(2) Any person who becomes liable to take out any licence shall take out such licence within fourteen days next after the day upon which he becomes liable to do so"

<sup>4</sup> Cambridge dictionary online

And,

*"I approach the work "keeps" in what seems to me the ordinary meaning of **some continuing process**; not a mere isolated moment, but a keeping of the car there, at any rate for some interval of time": Dudley v Holland per Lord Parker CJ. [my emphasis]*

21. In the instant case, where the Defendant is charged with keeping firearms and ammunition, the meaning most readily and logically to be ascribed to 'keeping' is '*retaining possession of*' or '*having in your possession*'. There is no question that when the Defendant entered Turks and Caicos Islands territorial waters, he was keeping firearms in that he had those firearms in his possession on arrival and he remained in possession and control of those firearms, as a matter of law, even after he had been rescued from his boat which was beached on the Cay.
22. The *mens rea* of the offence is satisfied by the Defendant's knowledge of the presence of the firearms on his boat, his intention to bring them into the Islands and to keep them with him until he left the Islands, *en route* as he says he was to the USA. It is irrelevant that he did not know that he would, by anchoring at Big Sand Cay, be offending against the Firearms Ordinance. Ignorance of the law is no excuse.
23. That he was throwing the firearms overboard when found by the police the day following his rescue, in an ostensible effort to ensure they did not fall into the wrong hands, and evinced no further intention to keep the firearms, is not evidence that he was not keeping the firearms and ammunition when he entered the Islands. It is evidence that points rather to the conclusion that he knew his continued possession of the firearms was problematic, at the very least, unlawful at its highest.
24. There may be - and I put it no higher than that - special circumstances that could mitigate his keeping of the firearms and ammunition, but in my judgment, there is no question that the evidence is sufficient to commit the Defendant for trial.
25. There is also a case to answer under section 4 of the **Firearms Ordinance**. The Defendant would not have been able to obtain a firearm licence as a transient visitor to the Islands and ought to have surrendered his firearms to the police. I do not accept the submissions Mr. Greene advanced in open Court which tended to suggest that boaters may anchor wherever they like in the Islands with whatever contraband they have on board with impunity. That said, it seems to me that the addition of that charge serves only to layer the Information as the section 3 charges adequately address the Defendant's offending.

## RULING

26. There being a *prima facie* case that the Defendant was keeping firearms and ammunition in the Turks and Caicos Islands, he having deliberately entered its territorial waters with the firearms and ammunition in question without advising the Immigration authority of his intention to set anchor on Big Sand Cay and the customs authority of his possession of the firearms and ammunitions in question, the Defendant is, hereby, committed to stand and take his trial in the Supreme Court.

27. On the question of varying his bail to permit him to go to the USA for medical reasons, it is the opinion of this Court that as he is, on the face of it, facing a sentence of 7 years in a foreign jail, there is reason to suspect that, if the Defendant were allowed to return to the USA where the attitude to firearm possession is markedly different to ours, it is unlikely he would return.

DATED THIS 25 OCTOBER 2019

*Alex G*

CHIEF JUSTICE

