SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

MCRAP 2007/086

BETWEEN:

KASHORN JOHN

Appellant

and

COMMISSIONER OF POLICE

Respondent

Before :

The Hon. Mde. Ola Mae Edwards — Justice of Appeal [Ag.]
The Hon. Mr. Dane Hamilton, QC — Justice of Appeal [Ag.]
The Hon Mr. Tyrone Chong, QC — Justice of Appeal [Ag.]

Appearances:

Mr. Bertram Stapleton for the Appellant
Mr. Colin Williams, Director of Public Prosecutions and
Mr. Carl Williams for the Respondent

2008: May 20;
September 16.

Criminal Appeal – Unlawful possession of a firearm – Section 4(3) of the Firearms Act No. 12 of 1995 of the Laws of St. Vincent and the Grenadines – Appeal against conviction – whether safe or unsatisfactory – quality of evidence that must be adduced by the prosecution from the ballistics expert – whether the homemade gun was a firearm – definition of firearm – Appeal against sentence – what are the guidelines for sentencing in firearm offences – whether the chief magistrate took all of the guidelines into account –

The appellant was convicted for unlawful possession of a firearm and sentenced to three (3) years imprisonment. She appealed against her sentence only on the ground that it was severe and too harsh having regards to her personal circumstances, but was given leave to appeal against her conviction at the hearing. The weapon in question is a homemade gun and the appellant contends that there is no evidence that it is one from which a missile can be discharged and that it is impossible to get a license for the alleged firearm. The main issue on this appeal is whether the prosecution led sufficient evidence from the ballistics expert to secure a conviction for unlawful possession of a homemade firearm.

Held: dismissing the appeal against conviction and allowing the appeal against sentence by reducing the sentence of 3 years imprisonment to 18 months imprisonment:

(1) The prosecution had adduced sufficient evidence from which the chief magistrate could find that the homemade gun was the "component part" of what was necessary to make a lethal barreled gun from which a deadly 12 gauge shot could be discharged; and the homemade gun in question was a "firearm" as defined in section 2(c) of the Firearms Act.

(2) Where on the ballistics expert evidence there is insufficient proof or doubt that the weapon has the capacity to discharge a deadly missile the court should proceed and consider whether the subject of the charge is the "component part" of such a weapon. There is no requirement under the Firearms Act that the subject matter should be the "component part" of a lethal barreled weapon that is in existence. What is required is that the subject matter is a necessary part to make a lethal barreled weapon from which a deadly missile can be discharged, or that the subject matter in its existing state can be made to work as such a weapon by adapting it, or adding to it a missing component part, or replacing a defective component part. There must be evidence adduced which proves beyond a reasonable doubt that the subject of the charge is the "component part" of a weapon described under section (a) or (b) of the definition of a "fireman."

R v Elliston Watson (1979) 28 W.I.R. 123; Leroy Clint v The State (2001) 62 W.IR. 366; R v Kenneth Rose (1977), 16 J.L.R. 8 considered and distinguished.

Cafferata v Wilson; Reeve v Wilson [1936] 3 All E.R. 149; R v Brandford Freeman (1970) 54 Cr. App. T. 251; Quincy Duncan and Chief of Police Mag. Cr App No. 1 of 2004 (St. Christopher and Nevis) delivered 28th July 2004 followed.

(3) In determining the appropriate level of sentence the chief magistrate ought to have taken into account the fact that the homemade gun was the "component part" of a lethal barrelled weapon, and that the appellant had no previous conviction and was not the user of the firearm; and these circumstances should serve to reduce the appellant's period of imprisonment from 3 years to 18 months.

Kenrick Marksman and Commissioner and Police Mag. Cr. App. No. 41 of 2003 (St. Vincent and the Grenadines) 6/12/04; R v Avis and Others [1998] Cr. App. R. 420 applied.

JUDGMENT

[1] EDWARDS J.A. [AG.]: This appeal raises the question as to the quality of the evidence that must be adduced by the prosecution from the ballistics expert in order to sustain a conviction for illegal possession of a homemade firearm under section 4 (3) of the Firearms Act No. 12 of 1995 of the Laws of St Vincent and the Grenadines ("the Act").

[2] On the 9th August, 2007 the appellant Kashorn John was tried and convicted in the First Magisterial District Court at Kingstown, St. Vincent for unlawful possession of a firearm under section 4(3) of the Act. She was not represented by a lawyer at her trial. She was sentenced to three (3) years imprisonment.

[3] The appellant had appealed against sentence only. At the hearing of the appeal the court gave her leave to appeal against her conviction also. The grounds of appeal were: (1) there is no evidence that the "gun" is one from which a missile can be discharged; (2) it is impossible to obtain a license for the alleged firearm. The other grounds relate to the sentence imposed by the Chief Magistrate which the appellant contends was severe and too harsh having regard to her personal circumstances.

[4] At the trial the prosecution called 5 witnesses including Inspector Ardell Tannis who is a gazetted ballistics expert. The weapon in question is a homemade "firearm" which was found in a knapsack that the appellant had taken up from a window ledge on the approach of the police, put it at the side of her house, and had then run with it to the eastern side of her house where she threw it through an open window into a bedroom occupied by a child. The finding of Chief Magistrate Simone Churaman that the appellant was in possession of the homemade firearm has not been challenged by the appellant on appeal.

Ballistic Expert's Evidence

[5] Inspector Tannis testified that on Tuesday 7th August, 2007 PC Morgan gave him a home made firearm, which had the characteristics of a professionally manufactured firearm. It had a perfect working trigger mechanism. The barrel was made from pipe. The hammer was made of scraps of metal. He said he checked the caliber of weapon; put a 12 gauge cartridge in the barrel which fit perfectly. He then attempted to close the weapon with the bullet in it, the weapon closed. The fire mechanism was in perfect working condition. He was unable to lock the round in the barrel. He did not test fire the weapon as it was possible that on explosion of the bullet he might sustain personal injury. In his opinion, the gun, if fired will discharge the 12 gauge cartridge and the weapon is capable of discharging

12 gauge shots. His opinion was not challenged as the appellant failed to cross-examine the witnesses for the prosecution.

The Law

[6] The learned chief magistrate, had to determine whether the homemade gun in the knapsack was "a firearm" or a "component part" of a firearm within the definition in section 2 of the Act which states that "firearm" means –

(a) any lethal barreled weapon capable of discharging any shot, bullet or missile;

(b) any restricted or prohibited weapon;

(c) any component part of a weapon described at (a) or (b);

(d) any accessory to any weapon described at (a) or (b) designed or adapted to diminish the noise or flash or discharge of such weapon.

[7] Under the Act a "restricted weapon" means "any weapon designed or adapted for the discharge of noxious liquid, gas or other substance; and a "prohibited weapon" means "(a) any automatic firearm; (b) any grenade, bomb or other similar missile."

Submission of Appellant's Counsel

[8] Learned counsel Mr. Stapleton, referred us to Archbold on Criminal Practice 2006 where it is stated that "whether a weapon is a firearm is a question of fact; and reported cases do not establish as a matter of law that a particular type of weapon is a firearm."[1] Mr. Stapleton submitted that the magistrate as trier of fact had to satisfy herself that the homemade weapon was a lethal barreled weapon; capable of discharging a shot, bullet or missile; and that the evidence did not establish this beyond a reasonable doubt.

[9] In the course of the arguments before us we were referred to the following cases in which each appellant had appealed against his conviction for unlawful possession of a

[1] See paragraph 24-86

homemade firearm under the respective firearms legislation: R v Elliston Watson;[2] Leroy Clint v The State[3] The definition of a "firearm" in section 2 of the Firearms Act (Jamaica) is similar to the statutory definition in St Vincent and the Grenadines and Trinidad and Tobago.

[10] In Ellison Watson the Court of Appeal in Jamaica held that a ballistics expert, in the light of his knowledge and experience of firearms, may well upon examination of a weapon express a valid opinion as to its potential ability to discharge deadly missiles and if that opinion is unchallenged a court would be entitled although not obliged to act upon it. If the court accepted the ballistics expert's evidence that with the addition of a firing pin the weapon was capable of discharging deadly missiles it would be a "component part" and therefore within the definition of firearm.

[11] Henry J.A. "observed that a test firing need not be conducted in order to establish that the weapon in question is or is not a firearm… At the same time where a home made weapon is involved more evidence will generally be required to enable a court to draw inferences as distinct from indulging in mere speculation as to its capability. In order to qualify as a firearm a weapon must be lethal barreled and capable of discharging a shot, bullet or other missile. That it is barreled may be determined by mere observation. That it is lethal will have to be determined by having regard to the possible effect of any shot, bullet or missile it discharges. That it is capable of discharging a shot, bullet or missile must, where a cartridge is involved, be determined having regard to its ability to accommodate the cartridge, to contain the explosive force involved in the firing of the cartridge and to ensure the discharge through the barrel of any shot, bullet or missile contained in the cartridge"[4].

[12] Henry J.A. also referred to a previous decision of that court in R v Kenneth Rose where a homemade gun was the subject matter of the illegal possession of a firearm charge.[5] In Kenneth Rose, the ballistics expert described the weapon as "a homemade gun having as

[2] (1979) 28 W.I.R. 123
[3] (2001) 62 W.I.R. 366
[4] At page 126 paras b to e
[5] Rv Kenneth Rose, Morris Dixon & Laurel Dixon (1977), 16 J.L.R. 8

its barrel a 4¾ - inch long piece of metal tubing 3/8th of an inch in diameter, the rear end of which was adapted to receive a .38 calibre revolver cartridge. This barrel was welded to a piece of flat iron shaped to form the stock of the gun. There was a strap hinge at the breech block. To the back of the block was attached a lever and to the breech face was attached a metal wire, this latter supposedly representing a firing pin."

[13] There was however no trigger or spring. The ballistics expert had test fired the weapon with a cartridge from which the bullet had been removed as a safety measure. The attorney for the appellant argued that the test firing could not support the conclusion that the weapon was capable of discharging deadly missiles through its barrel. Graham-Perkins J.A. stated (at page 9 paras G to I) that "The fact that …[the ballistics expert] had not tested the gun with a deadly missile was, perhaps, not necessarily fatal. It may be that he should have given some evidence as to the nature of the metal from which the barrel was shaped and the capacity of this metal to withstand the passage of a bullet propelled by the explosive force of the charge in the cartridge and the heat following thereupon." The Court held that the evidence adduced was incapable of sustaining a conclusion beyond reasonable doubt that this homemade gun exhibited at the trial was a lethal barrelled weapon capable of discharging a deadly missile within the definition of "firearm" in section 2 of the Firearms Act 1967.[6]

[14] Henry J.A. in Elliston Watson explained (at page 125 at para I) that "what Rose's case really decided was that, at least in relation to a home-made weapon, where the evidence discloses that the only basis for the expert's opinion as to the capability of a weapon to discharge deadly missiles is a test in which such missiles have not been discharged, then his opinion and a court's finding based on it cannot be supported."

[6] However the Court of Appeal went on to hold (Graham-Perkins J.A. dissenting) that the prosecution had established the case of illegal possession of firearm by proving the commission of a section 25(2) offence against the 3 appellants in that Kenneth Rose who had an "imitation firearm" was about to use it in a manner prejudicial to public order or public safety, and the other 2 appellants were acting in concert with Rose, and they were aiding and abetting each other in their criminal intent, and in the absence of reasonable excuse are to be treated as being also in possession of a firearm .

[15] In Leroy Clint the ballistics expert's report that was tendered by the prosecution stated: "that Inspector Best the police armourer tested the exhibit registered and numbered 72/92, one homemade firearm with 1.32/7.65mm pistol cartridge each with markings SS 16-5-9, and I find that it is a firearm and ammunition as defined within the meaning of the Firearms Act". The court declared that the expert "should confine himself…to describing the object which he has examined…with an eye to the statutory definition. He should leave it to the judge to decide whether in the light of his description the object is capable of falling within the statutory definition of firearm, and to the jury to decide whether it in fact does."[7]

[16] De la Bastide C.J. delivering the judgment of the Court said that "the fact that the gun was homemade immediately raises the possibility that it may not have satisfied the conditions prescribed in the statutory definition of firearm to be classified as a fireman, as defined by the Act." …It is incumbent on an expert who sets out to establish either by a written report or by viva-voce evidence, that an object is a firearm within the meaning of the Firearms Act to indicate by what 'door' the object enters the definition ….he must identify to which of the various categories of objects covered by the definition this particular object belongs and demonstrate by such means as are appropriate, why this object falls into that category …In the case of a factory-made gun, it may well be sufficient for the expert to state that he has examined the gun that it has a barrel and it is so constructed as to be capable of discharging a bullet of a particular size and description at a speed sufficient to kill a person. In the case of a homemade weapon it is necessary for the expert to go further and to point to the individual components of the gun which match the features of a firearm as described in the definition and explain the capabilities of the gun by reference to what the definition requires for classification as a firearm. If it is safe for the gun to be fired, it would be helpful for the armourer to have fired it and to include in his report the effect which this produced, although this is a matter which is best left to the direction of the armourer….[8]"

[7] At page 379 paras h to i
[8] At page 378 para g supra

The Submissions of the D.P.P

[17] The learned Director of Public Prosecutions, Mr. Colin Williams, submitted that the evidence did not fall short of establishing that the homemade weapon was a firearm; and although the round did not lock in the barrel the homemade weapon had everything else that was necessary for making it a firearm, and it would be a "component part" and a firearm" within the definition of section 2 of the Firearms Act. Mr. Williams also submitted that where the weapon is a "component part" no distinction should be made between a homemade weapon and a manufactured firearm. Mr. Williams relied on the well known English case Cafferata v Wilson; Reeve v Wilson[8]; and a case decided by our court Quincy Duncan and Chief of Police[9].

[18] It is important to note that in Cafferata a "firearm" did not have to have a barrel under section 12 (1) of the repealed Firearms Act, 1920 (U.K which stated:

> "In this Act, unless the context otherwise requires –
> The expression "firearm" means any lethal firearm other weapon of any description from which any shot, bullet, or other missile can be discharged, or any part thereof…"

[19] In Cafferata Lord Hewart, C.J. said (at page 150): "Everything turns on the definition of firearms in the Act …. At the material time the article was incapable of being fired, but a part of it needed alteration to make it suitable for firing. The magistrate has held that the article as a whole is part of a firearm within the meaning of the definition. That is quite a tenable proposition. If something had to be added to the dummy to make it into a complete revolver, the dummy might be said to be part of a revolver. It seems to make no difference that the decisive part was not to be an addition but an adaptation of what was already there. It is easier to support the decision from another point of view. The dummy contains everything else necessary for making a revolver except the barrel, and therefore all the other parts of it except those which are required to be bored are "parts thereof" within the meaning of the section."

[8] [1936] 3 All E.R. 149
[9] Magg. Cr. App No 1 of 2004 (St Christopher and Nevis) delivered 28th July 2004

[20] In Quincy Duncan the weapon in question was the frame which was the basic portion of a .32 calibre revolver which had its cylinder and break down lever missing. The expert had testified that it was an H & R Arms .32 revolver. No serial number was present. It was chrome coloured and had rusted on the barrel and around the trigger guard area. The cylinder was missing. The breakdown lever was missing. There were 4 pieces of plastic like material that were a part of the pistol grip which was broken up in several pieces. The expert had concluded that this H & R Arms Revolver with the 2 missing component parts was a firearm.

[21] Section 2 of the Firearms Act No 23 of 1967[10] defines "firearm" to mean:

> "any lethal barreled weapon from which any shot, bullet or other missile can be discharged…. and includes any component part of any such weapon and accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon."

[22] Relying on the decision in Cafferata Rawlins J.A. said at paragraph 15 of his leading judgment:

> "A firearm expert could give the evidence that goes to the proof of the possession of the prohibited part of a weapon. Thus it was held in R v Elliston Watson (1979) 28 W.I.R.123 that if a Court accepts a firearm expert's evidence that with the addition of a firing pin a weapon was capable of discharging a deadly missile, the weapon would be a "component part" and a "firearm" within the definition of the prohibiting statute. (See Henry J.A. at pages 126J – 127A). The firing pin could itself also be a component part and a firearm within the definition."

[23] The court held in Quincy Duncan that the expert's evidence was sufficient to bring the frame within the definition of "firearm".

[24] The fact that the definition of a "firearm" in Cafferata did not require it to have a barrel is apparently immaterial when applying this decision to a case in which the statutory definition of "firearm" requires that it be a lethal barrelled weapon capable of discharging any shot, bullet or missile. In R v Brandford Freeman[11] (a case involving possession of a partially drilled solid barrelled starting pistol which would be capable of firing missiles

[10] The Laws of the Federation of St Christopher (St Kitts) and Nevis)
[11] (1970) 54 Cr. App. R. 251

where the constrictions in the front end were removed by drilling), the appellant was convicted under the Firearms Act 1968 (U.K.) which defined a firearm" to mean:

> "a lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged and includes –
>
> (a) any prohibited weapon, whether it is such lethal weapon as aforesaid or not; and
> (b) any prohibited weapon, whether it is such lethal weapon as aforesaid or not and
> (c) any component part of such a lethal or prohibited weapon; and
> (d) any accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon."

[25] The history of the statutory definitions of firearm was traced from the 1920 Act [12] to the 1968 Act. Sachs L.J justified the Court's acceptance of the decision in Cafferata as having been embodied in the 1968 Act in the following manner (at pages 255 to 257):

> "At no time since it was decided has any challenge been offered in any of the courts of this country, so far as can be ascertained for the authorities cited to us, to Cafferata v Wilson ....In the view of this Court the Acts of 1937 and 1968 must each be deemed to have been enacted by a legislature acquainted with the actual state of the law and the practice of the courts as at the date when they were passed. The principle then applicable is as stated in Maxwell on Statutes, p 303; "When the words of an old statute are either incorporated in or by reference made part of a statute this is understood to be done with the object of adopting any legal interpretation which has been put on them by the courts."...it has been stated in the course of many decisions that "when Parliament has re-enacted the same words with full knowledge of an earlier decision, it is perfectly clear that this Court, observing the intention and seeking to honour the intention of Parliament, must inevitably uphold the principles of the earlier decision."[13]... In conclusion there are two observations to be made. In this particular case the subject-matter of the charge was identical with that in Cafferata v Wilson... Other cases, of course may arise when it is a question of fact and degree whether the subject-matter of the charge does or does not fall within the ambit of the Act and in such cases the issue must be left to the jury... It is also useful to remember...that the intention of the manufacturer of the subject-matter of the charge is irrelevant to the issue which a jury must try."[14]

---

[12] Section 32 (1) of the repealed 1932 Firearms Act (U.K.) defined "firearm" to mean " any lethal barreled weapon of any description from which any shot bullet or other missile can be discharged and includes ... any component part of any such lethal or prohibited weapon."

[13] That quotation is from a passage in the judgment of Lord ParkerC.J. in Jackson and Hart (1969) 53 Cr. App R. 341; [1969] 2 WLR 1339 at page 1345.

[14] The appellant's appeal against conviction was dismissed .

[26] The cases Clint, and Kenneth Rose did not go on to consider whether the homemade gun in question qualified as a component part of:

(a) a lethal barrelled weapon capable of discharging a shot, bullet or missile; or

(b) an automatic firearm under the definition of a prohibited weapon; or

(c) a weapon designed or adapted for the discharge of noxious liquid gas or other substance under the definition of a restricted weapon.

[27] In the case of Elliston Watson the Court of Appeal's attention was engaged as to the meaning of "component part" in the definition of firearm though the trial judge had convicted the appellant on the basis that the expert had test fired the weapon with a cartridge from which the load was removed and it did not matter if it can injure or not. Henry J.A. (at page 12 para j) trenchantly observed that "It was necessary to consider …[whether the homemade shot gun was the component part of a lethal barreled weapon] because the weapon as it stood was devoid of a firing pin and therefore incapable of firing a cartridge. …[Both] counsel…agreed, that the words 'any such weapon' refer to 'any lethal barreled weapon…' and therefore a 'component part of any such weapon' means a part necessary to make the weapon a lethal barrelled weapon from which a shot, bullet or missile can be discharged. Applying that interpretation, if the court accepted the ballistics expert evidence that with the addition of the firing pin the weapon was capable of discharging deadly missiles then in its existing form it would clearly be a 'component part and therefore within the definition of firearm."[15]

[28] It is manifest from this passage that the Court of Appeal in Elliston Watson is directly alluded to the Cafferata test, amplified by Freeman without expressly saying so. The Court also referred to its previous decision in R v Anthony Hewitt[16] where the decisions in Cafferata and Freeman were approved and applied by the Court.

---

[15] The Court of Appeal found that though the comments of the trial judge amounted to a misdirection in law the proviso could not be applied as there was evidence on which it was open to the judge to convict the appellant. The appeal was allowed and a new trial ordered.

[16] (1971) 12 J.L.R. 614 The Jamaica Court of Appeal held that the appellant was properly convicted as the subject matter of the charge which was a .22 revolver 1962 model consisted of everything , except a firing pin, which was necessary to make it a lethal barreled weapon; it was therefore a component part of such a weapon within the meaning of the definition.

[29] It would seem therefore, from all these cases previously discussed, that the evidential guidelines laid down in Elliston Watson, Clint and Kenneth Rose though useful for the purposes of establishing that a homemade gun is a firearm, are not conclusive as to whether the object which is the subject of the charge is not a firearm within the statutory definition. Where on the ballistics expert evidence there is insufficient proof or doubt that the weapon has the capacity to discharge a deadly missile the court should proceed and consider whether the subject of the charge is the "component part" of such a weapon. There is no requirement under the Firearms Act that the subject matter should be the "component part" of a lethal barrelled weapon that is in existence. What is required is that the subject matter is a necessary part to make a lethal barrelled weapon from which a deadly missile can be discharged, or that the subject matter in its existing state can be made to work as such a weapon by adapting it, or adding to it a missing component part, or replacing a defective component part. There must be evidence adduced which proves beyond a reasonable doubt that the subject of the charge is a "component part" of a weapon described under section (a) or (b) of the definition of a " firearm".

[30] It is important to emphasise what Rawlins J.A. said in Quincy Duncan at paragraph 13:

> "Parliament not only intended to prohibit a person from having a complete weapon that is capable of firing a projectile or missile that is lethal. It also intended to prohibit a person from having in [his or her] possession any part of such a weapon that is capable, if put into place, to assist in the assembly of such a weapon. Parliament further intended to prohibit the possession of even an accessory such as a silencer."

[31] Returning now to the evidence of Inspector Tannis, in the absence of any evidence as to the nature of the pipe from which the barrel was made, the capacity of the pipe material to withstand the passage of a bullet propelled by the explosive force of the charge in the 12 guage cartridge and the heat following thereon, the fact that the round could not lock in the barrel, and that he had not test fired the gun with a deadly missile, this evidence in my view did not measure up to the guidelines previously mentioned in Elliston Watson, Clint and Kenneth Rose to prove that the homemade gun in its existing state was a lethal barrelled weapon capable of discharging deadly missiles. However his testimony about

the homemade gun, apart from this probably defective barrel, was that the barrel was capable of holding a 12 guage cartridge perfectly and the weapon closed perfectly with the bullet in it, and it had a hammer and perfect working trigger mechanism, also the characteristics of a professionally manufactured firearm. In my opinion this is evidence from which the chief magistrate could find that the homemade gun was the component part of what was necessary to make a lethal barrelled gun from which deadly 12 guage shots could be discharged.

[32] Accordingly, I am satisfied that the appellant's conviction is safe.

Appeal against sentence

[33] Learned counsel for the appellant urged us to consider the impact of incarceration on the appellant who has left 6 children in society with inadequate arrangements for their welfare, particularly as their father is also in prison serving a term. Counsel argued that the court ought to have taken into account that she was not a user of the firearm, apart from the fact that she had no previous conviction. The learned Director of Public Prosecutions unsympathetically argued that the court is not a forum of emotion and morally and legally persons who breach the law must suffer the consequencies.

[34] The learned chief magistrate took into account the following facts: (1) the sentence was after a trial and so no credit should be given; (2) the appellant had the gun harbouring it for someone and this was an aggravating feature; (3) she was hiding the gun so that the police would not find it; and (4) firearm offences are very prevalent in St Vincent.

[35] The maximum sentence for possession of a firearm pursuant to section 4(3) of the Firearms Act No 12 of 1995 as amended by section 2 (b) of the Firearms Act No 37 of 2004 is 7 years imprisonment on summary conviction. The court did not take into account the fact that the appellant had no previous convictions. In Kenrick Marksman and Commissioner of Police [17] Sir Dennis Byron C.J. in laying down guidelines for

[17] Magisterial Cr. App No. 41 of 2003 (St Vincent and the Grenadines) 6/12/ 04

sentencing in firearm offences pointed out that "Firearm offences are on the rise… and it would be rare for a magistrate not to impose a custodial sentence for an offence involving the use of an unlicensed firearm…." The appellant was not the user of the firearm as her counsel said.

[36] In R v Avis and Others [18] Lord Bingham CJ stated at page 424: "The appropriate level of sentence for a firearm offence, as for any other 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. Unloaded firearms for which ammunition is available are more dangerous than firearms for which no ammunition is available. Possession of a firearm which has no lawful use (such as a sawn-off shotgun will be viewed even more seriously than possession of a firearm which is capable of lawful use.
>
> (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: the more prolonged and premeditated and violent the use, the more serious the offence is likely to be.
>
> (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 specified 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 firearm offence is inevitably increased if the offender has an established record of committing firearm offence or other crimes of violence."

[37] The homemade gun in question qualifies as a firearm because it is the "component part" of a lethal barreled weapon which can be made to discharge deadly missiles and this must be taken into account in determining the appropriate level of sentence. The appellant was convicted on the 9th August 2007 and she was on remand pending her trial from the date of her arrest on the 29th July 2007.

[18] [1998] Cr App R. 420

[38] Taking into account all of the relevant circumstances and the guidelines of Sir Dennis Byron CJ some of which overlap with that of Lord Bingham CJ, I would allow the appeal against sentence to the extent of reducing it to 18 months imprisonment from the date of conviction.

[39] I would dismiss the appeal against conviction and allow the appeal against sentence by reducing the sentence of 3 years imprisonment to 18 months imprisonment.

Ola Mae Edwards
Justice of Appeal (Ag)

Dane Hamilton, QC
Justice of Appeal (Ag)

Tyrone Chong, QC
Justice of Appeal (Ag)