

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CRIMINAL DIVISION

Indictment No. 46/2020

BETWEEN:

THE QUEEN

Prosecution

AND

RASHEED OMAR HAYNES

Accused

Before: The Honourable Carlisle Greaves, Judge of the High Court

Date of Hearing: 2020 July 24

Date of Judgment: 2020 October 30

Appearances:

Mr. Rudolph Burnett for the Prosecution

Mr. Andrew Pilgrim, Q.C., for the Accused

DECISION

Firearms Act, Cap. 179. Possession of 50 rounds of ammunition; guilty plea; sentence starting point 8 years imprisonment; 2 years imprisonment after discounts.

CARLISLE GREAVES J:

INTRODUCTION

[1] On 24th July 2020 the accused plead guilty to an indictment dated 5th March 2020, that he on the 12th August 2017, possessed 50 rounds of ammunition

without a licence contrary to **sections 3 (1) (b) (d) and 3 (9)** of the *Firearms Act, Cap. 179*.

FACTS

- [2] The accepted facts are that on Saturday 12th July 2020 police on patrol in the area of Fontabelle, St Michael, observed the accused acting suspiciously along a road way in the vicinity of a night club as he was about to enter a H car.
- [3] They approached him and he consented to a search. Found in his rear pants pocket in a bag containing a plastic bag were 50 rounds of ammunition.
- [4] When asked to account for them the accused replied he found them in the club.
- [5] The police firearms expert test fired some of the rounds and found that the 50 rounds were 9 mm live cartridges.
- [6] A search of the police record revealed the accused possessed no permit to have or carry such ammunition. He was subsequently charged for the above offence.

SUBMISSIONS

- [7] The prosecution submits that an appropriate starting point in this case is 8 years imprisonment. He relies upon *Jerome Bovell v The Queen [2020]20 BB CA*, which establishes a range of 8-10 years for possession of a firearm and *Elvis Alexander v The Queen Crim. App. 14 of 2007* for the proposition that

there be no disparity between possession of a firearm and possession of ammunition.

[8] Thus he argues, **“Citizens in this island are currently under threat from firearm violence. A firearm is no use without ammunition and so a strong message must be sent that this type of behaviour will no longer be tolerated.”**

[9] There is substantial merit in that argument - particularly when the ammunition is of such large quantities. This court accepts those submissions.

[10] The prosecution therefore submits as held per *Lord Bingham CJ in Tony Avis [1998] 2 Cr. App. Rep 178*, followed in *Jerome Bovell v The Queen Crim. App. 23 of 2000*, the same four questions in ammunition cases as in firearm cases must be considered by the court, namely; what sort of firearm/ammunition was involved, what use had been made of it, with what intention did the accused possess or use it and what was his record. There is merit in that submission.

[11] He identified the aggravating factors as including the large quantity of ammunition, the accused’s attempt to conceal from the police by turning away as he saw them, an act which aroused their suspicion, and his refusal to cooperate.

- [12] I accept as an aggravating factor the large amount of ammunition but I am not able to accept the other two mentioned factors as aggravating factors.
- [13] In my opinion, the mere turning away from the police cannot be an aggravating factor and the evidence does not support a failure to cooperate since the accused immediately agreed to the search of his person and took full responsibility for the items even if it was arguable that he absolved others. There is insufficient evidence in the circumstances to support an inference that those whom he absolved were indeed connected to the crime.
- [14] The prosecution identified the mitigating factors to be inclusive of his guilty plea only and a good probation report.
- [15] He therefore submitted that the starting point be 8 years, that the aggravating factors exceed the mitigating factors and thus the sentence should be 9 years less 1/3rd for the guilty plea, less time in custody of 1039 days, hence a sentence of a further two years to be served.
- [16] The defence submits the appropriate starting point should be six years. He argues that since the **Alexander** case few offenders have been sentenced above 6 years for simple possession of ammunition.
- [17] He identified the aggravating factors as including the large quantity of ammunition, which I accept.

[18] The mitigating factors, he submits to include; that the ammunition were for a handgun not a high powered firearm, they were neither sophisticated nor advanced, nor was the commission of the offence sophisticated nor planned but was opportunistic as the ammunition was found in a well known nightclub whilst partying.

[19] I am unable to accept as mitigating factors any of those latter submissions.

[20] The ammunition was good enough to cause considerable harm regardless of their sophistication or not and given the large quantity, though I will not apply any weight to the following I would say the inference of possession for supply is difficult to overcome even in the face of the accused's assertion that they were found on the dance floor.

[21] The question is left unanswered why would anyone pick up a bag on a dance floor and put it in his pocket without more, never check it, nor report it, leave the building with it and attempt to duck the police outside. And why is it that in so many of these cases the excuse so often tends to be, I found it. It's not like it's a \$100 note laying around in plain sight. It's often concealed in something, like a plastic bag. One may think it could be anything in there not nice. Why would anyone pick it up and worse put it in their pocket?

[22] Perhaps the old Bajan lesson needs to be re-emphasized to our youthful ones who are so fortunate or unfortunate to keep on finding guns and ammunition,

taking and keeping them. “*When you come here, what you hear here, what you see here, when you leave here, let it stay here*”.

- [23] From a starting point of six years the defence submits, the personal mitigating factors to be taken into account are; the accused’s age 28 at the time, his genuine contrition, no previous convictions for like offence, a strong family structure, his cooperation with the police which should reduce that starting point by 1 ½ years.
- [24] In addition, his early guilty plea should be discounted for by a further 1/3rd reduction and his time in custody of 1150 days should be accounted for. Thus says the defence, the sentence should be three years and says the defence, if he is fully accounted his time in custody and is further discounted for the time he would have received for good behaviour he would have effectively served the three year sentence and should be sentenced to time served.
- [25] I am unable to fully agree with the defence submissions and I seem to detect some measure of double counting in their submissions.
- [26] In any event, I have considered **section 35** of the *Penal System Reform Act, Cap. 139* together with the particular factors of this case and consider a custodial sentence is appropriate. Furthermore, I am satisfied that given the large quantity ammunition possessed in this case the appropriate starting point is 8 years imprisonment.

[27] I find no further aggravating factors either in relation to the offence or to the accused personally to merit any increase of that sentence.

[28] I also find no mitigating factors of any sufficient degree to merit a reduction of that starting point.

[29] I will grant the accused a full 1/3rd reduction for his guilty plea and I will take into account the 1153 days he spent in custody as at 9th October 2020, which I shall round off at 3 years 2 months.

DISPOSAL

[30] In the circumstances I will sentence the accused to 8 years imprisonment less those amounts, which are, 973.3 days and 1153 days respectively, which means he shall serve a further rounded sentence of two years imprisonment with effect from 9th October 2020.

Carlisle Greaves
Judge of the High Court