

263.15 Supplying or storing firearms for criminals Cases

R v Valnuchinas 2014 EWCA Crim 652 D pleaded to selling or transferring a prohibited firearm (×3) and possessing ammunition without a certificate. Police officers on surveillance saw D drive onto a shop forecourt. Five seconds later S drove onto the forecourt and parked next to D. D got out of his car with a carrier bag. He went straight to the boot of S's car and placed the carrier bag inside. D then sat in the front passenger seat of S's car and D and S spoke for a short time. D returned to his car and S drove off. The officers followed S and stopped it shortly after. In the carrier bag was another carrier bag inside which was a black bin liner. The bin liner contained three hand guns. There was another bin liner inside which were three magazines containing live ammunition. The firearms were Soviet 7.62 self-loading pistols, all in working order. They were originals as opposed to converted or reactivated weapons, thereby making them more desirable in the criminal market. The bullets were live bullets for those pistols. D was sentenced on the basis that he knew what was in the bags. There was an 8-month delay between plea and sentence. D was aged 38 at conviction and was treated as if he was of good character. Held. The Judge failed to identify any circumstance which required a departure from the normal practice, namely that consecutive sentences are not normally appropriate for offences arising out of the same incident. The 8 years for the firearms would remain, but the 3 years consecutive for the ammunition would be concurrent. So **8 years** not 11.

R v Gribbin 2014 EWCA Crim 115 D pleaded to possession of a prohibited firearm counts and other related offences. Police executed a drugs warrant and discovered nine firearms including self-loading pistols, sawn-off shotguns, an Army issue light support rifle and 446 live rounds of ammunition which could be fired from the weapons. There was a self-loading pistol in a lockable tool box which had had its serial numbers ground down. One of the weapons was linked to four shootings in Manchester between 2008 and 2010. D shared the house with his partner and children. The Judge imposed consecutive sentences on the basis that the weapons had been acquired at different times and storage had been at two addresses where he had lived. The defence appealed on the basis that the Judge imposed consecutive sentences in order to circumvent what he felt was an inadequate maximum sentence. The Judge found that D played a significant role in the preservation and storage of the weapons so they could be used by criminals. Held. The Judge was fully entitled to reach that conclusion. A deterrent sentence was fully justified. Credit was given for his pleas and **13 years** (6½ years × 2, consecutive) was not excessive or wrong in principle.

263.27 Firearms Act 1968 s 5(1A)(a) Stun gun

R v Zhekov 2013 EWCA Crim 1656, 2014 1 Cr App R (S) 69 (p 448) D pleaded to possessing a disguised firearm. D, a lorry driver from Bulgaria, entered the UK to make a delivery. He was routinely stopped by Border Agency staff who located the torch-style stun gun in a drawer in his cab. It looked like a torch and could be used as a torch. It was described as a non-lethal defence weapon. D, aged 50, was of exemplary character, genuinely remorseful and unaware that such items were illegal in the UK. Possession of such items was permitted in Bulgaria. Held. The factors were a) the purchase, possession and use were legal in Bulgaria, b) D was a foreign national who had lived his entire life in Bulgaria, c) he was in the UK for a lawful purpose, d) his stay was just the time it took to deliver his load and for most of that time he would be in his cab, e) D had no knowledge of the UK law, and f) there was no charging device and there was no evidence the stun gun had ever been used. His regret and remorse was genuine. The Judge was correct to find exceptional circumstances that justified departure from the mandatory provisions but wrong to find

that immediate custody was required. A deterrent sentence was not necessary as any publicity would highlight that possession was illegal in the UK. **52 weeks suspended**, not 2 years immediate custody.

263.30 Firearms Act 1968 s 16 *Guideline case and judicial guidance*

Att-Gen's Ref Nos 4 to 8 of 2014 2014 EWCA Crim 651 D and others were convicted of possession of a firearm with intent to endanger life. Held. para 21 Courts are taking an ever increasing and stern view of firearms offences of this particular kind.

263.31 Firearms Act 1968 s 16 *Cases*

Att-Gen's Ref Nos 4 to 8 of 2014 2014 EWCA Crim 651 D, TD, (who were brothers), K, W and T were convicted of conspiracy to possess firearms with intent to endanger life or to enable another to endanger life. Some were convicted of similar counts relating to ammunition. D and TD were 'the leading lights' in the conspiracy. With W and T, they were members of a south London gang with a very significant reputation for drugs and violence. D and TD were prominent members and W and T were 'juniors'. The gang members travelled in a hired car to avoid detection, and went to collect a gun from K in Bedford. K was a drug dealer who had regularly supplied the two brothers with drugs in the past. W and T travelled back by train and were stopped by police at Kings Cross. W had a rucksack with a .38 Ivor Johnson revolver and five rounds of ammunition in it. D and TD travelled back to London in the hired vehicle. D was aged 24 and TD was aged 26. Both had been arrested for murder before the offence. After the offence D was convicted of murder and received a 30-year minimum term. He also had a robbery and drug offences on his record. TD was acquitted of murder but convicted of perverting the course of justice (8 years). He had a robbery with an imitation firearm (54 months' detention). K was 22 and had convictions for robbery and other less serious offences. W was aged 19 and had no convictions. T was aged 18 and had a concealing property offence (community order). He was at University. The Judge sentenced W and T on the basis they knew the other two would use the gun. K was sentenced on the basis he had dealt with TD on a regular basis. Held. The entire gangland context must be reflected in the sentence. For D and TD the sentence had to be not less than 15 years, so **15 years** not 10. K was not a gang member but he knew the sort of man TD was. **11 years** not 8. W and T were younger. They were under the influence of the brothers. They were making real efforts educationally and otherwise to advance themselves. The Judge was right to have regard to the statutory minimum sentence even though it did not strictly apply. There were no exceptional circumstances so it was wrong to go below the minimum. For W and T **7 years**, not 4.

See also: *R v Jones and Skyers* 2014 EWCA Crim 632 (J convicted, S pleaded on re-arraignment, to conspiracy to supply heroin, cocaine and cannabis and conspiracy to possess a firearm with intent x3. Members of a south London gang involved. Violent dispute with a rival gang. Over 7 months, firearms used to protect drugs stored in a safe house. Weapons included a self-loading rifle with hollow point bullets. Weapons linked to two previous shootings. 200g of heroin, 60g of cocaine and half a kilo of skunk found. J aged 19 with previous for firearms and robbery. He was on licence. S aged 20 with previous for robbery. S and J both leaders and organisers. 15% credit for S could not be faulted. For J **19 years' YOI**. For S **16 years' YOI**. The sentences were undoubtedly severe but not unduly long for what was extremely serious offending.)

263.55 Minimum sentences *Basic principles*

Att-Gen's Ref Nos 4 to 8 of 2014 2014 EWCA Crim 651 D and others were convicted of conspiracy to possess firearms with intent to endanger life. They were members of a South London gang with a very significant reputation for drugs and violence. Held. The Judge was right to have regard to the statutory

minimum sentence even though it did not strictly apply. There were no exceptional circumstances so it was wrong to go below the minimum.

263.60 *Minimum sentences Are these exceptional circumstances? On the facts, Yes Firearm originally held lawfully*

R v Zhekov 2013 EWCA Crim 1656, 2014 1 Cr App R (S) 69 (p 448) D pleaded to possessing a disguised firearm. D, a lorry driver from Bulgaria, entered the UK to make a delivery. He was routinely stopped by Border Agency staff who located the torch-style stun gun in a drawer in his cab. It looked like a torch and could be used as a torch. It was described as a non-lethal defence weapon. D, aged 50, was of exemplary character, genuinely remorseful and unaware that such items were illegal in the UK. Possession of such items was permitted in Bulgaria. Held. The factors were a) the purchase, possession and use were legal in Bulgaria, b) D was a foreign national who had lived his entire life in Bulgaria, c) he was in the UK for a lawful purpose, d) his stay was just the time it took to deliver his load and for most of that time he would be in his cab, e) D had no knowledge of the UK law, and f) there was no charging device and there was no evidence the stun gun had ever been used. His regret and remorse was genuine. The Judge was correct to find exceptional circumstances that justified departure from the mandatory provisions but wrong to find that immediate custody was required. A deterrent sentence was not necessary as any publicity would highlight that possession was illegal in the UK. **52 weeks suspended**, not 2 years immediate custody.

263.64 *Consecutive or concurrent sentences to other firearm offences*

R v Gribbin 2014 EWCA Crim 115 D pleaded to possession of a prohibited firearm counts and other related offences. Police discovered nine firearms including self-loading pistols, sawn-off shotguns, an Army issue light support rifle and 446 live rounds of ammunition which could be fired from the weapons. The Judge imposed consecutive sentences on the basis that the weapons had been acquired at different times, storage had been at two addresses where he had lived, payments of money were made and the offences were committed over years. The defence appealed on the basis that the Judge imposed consecutive sentences in order to circumvent what he felt was an inadequate maximum sentence. Held. Consecutive sentences are appropriate if offences are not all committed at the same time. **13 years** (6½ years × 2, consecutive) was not excessive or wrong in principle.

See also: *R v Valnuchinas* 2014 EWCA Crim 652 (The Judge failed to identify any circumstance which required a departure from the normal practice, namely that consecutive sentences are not normally appropriate for offences arising out of the same incident. Sentences made concurrent.) For more details see para **263.15** above.