



Neutral Citation Number : [2019] EWHC 636 (Admin)

Case No: CO/5192/2018

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**DIVISIONAL COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 19/03/2019

**Before :**

**LADY JUSTICE RAFFERTY**  
**MRS JUSTICE CARR**

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**Between :**

**Jolleh Garry**  
**- and -**  
**Crown Prosecution Service**

**Appellant**  
**Respondent**

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**Ms Hannah Thomas** (instructed by **LLM Solicitors**) for the **Appellant**  
**Mr Peter Ratliff** (instructed by **CPS**) for the **Respondent**

Hearing dates: 19<sup>th</sup> February 2019  
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**Approved Judgment**

## **Lady Justice Rafferty :**

1. The Appellant appeals against the 1st of November 2018 dismissal at the Crown Court sitting at Inner London of his appeal against conviction on 3<sup>rd</sup> September 2018 for possession of an offensive weapon - a butterfly knife - contrary to S1(1) Crime Prevention Act 1953 (“the 1953 Act”). The knife was in the glove compartment of his car. He accepts that a butterfly knife is offensive *per se*.
2. At the Magistrates’ and at the Crown Court he advanced the defence of “reasonable excuse” claiming that he used the butterfly knife for his work as a plumber, electrician and gas engineer. He said he used his personal car for work, often storing in it tools and equipment. His evidence was that he used the butterfly knife to open access panels and unsheathe aluminium from piping. He discounted alternative tools, for example Stanley knives, as ineffective.
3. He had no previous convictions for violence but had been cautioned for four offences, in 1998 for use of threatening abusive or insulting words or behaviour and in 1999 and 2001 for possession of cannabis.
4. The Crown Court accepted that the butterfly knife might have been used for work purposes and found compelling evidence of his employment and his consequential use of tools. However it concluded that this was not determinative of the issue. Even though used for work, a weapon offensive *per se* nevertheless required the court to consider whether such use were reasonable.
5. The questions posed for this court are:
  1. *Were we correct in making a distinction between items such as a Stanley knife and a butterfly knife in holding that the latter was offensive per se whereas the former was not and was capable of being a tool?*
  2. *Were we correct in law in deciding that the absence in the appellant's previous convictions of any criminal conviction for violence was, contrary to what the appellant submitted, irrelevant to our consideration of reasonable excuse?*
  3. *On the issue of reasonable excuse were we correct in law*
    - a) *in considering whether an item that was offensive per se might have been reasonably used as a tool when there were items that were not offensive per se that could be used?*
    - b) *in applying an objective rather than a subjective test?*

The question posed at 3 (b) need not trouble us since, solely for the purpose of these submissions, the Appellant conceded that the answer must be “yes”

6. The amended Case Stated of December 2018 seemed to me perhaps to add avoidable strata to the core issues. I take it that when the Case Stated recorded:

*“On the issue of reasonable excuse were we correct in law*

- a) in considering whether an item that was offensive per se might have been reasonably used as a tool when there were items that were not offensive per se that could be used?”*

the intention was to phrase the query as I have done above (in paragraph 4?).

I approached our task by considering first whether, once satisfied that a weapon offensive *per se* was used for work, the court were obliged to find that that amounted to a reasonable excuse, and, second, whether the appellant should have had a good character direction.

### The statutory framework

#### ***Possession of an offensive weapon***

7. The 1953 Act reads in relevant part:

*“1. Prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse*

*(1) Any person who without lawful authority or reasonable excuse, the proof whereof shall lie on him, has with him in any public place any offensive weapon shall be guilty of an offence, ....—”*

8. The Criminal Justice Act 1998 (“the 1998 Act”) reads in relevant part:

*“139. Offence of having article with blade or point in public place.*

*(1) Subject to subsections (4) and (5) below, any person who has an article to which this section applies with him in a public place shall be guilty of an offence.....*

*(4) It shall be a defence for a person charged with an offence under this section to prove that he had good reason or lawful authority for having the article with him in a public place.*

*(5) Without prejudice to the generality of subsection (4) above, it shall be a defence for a person charged with an offence under this section to prove that he had the article with him—*

*(a) for use at work;”*

9. The Appellant introduced into argument the 1998 Act, despite the charge being correctly laid under the 1953 Act, so as to set up the submission that where the weapon is a knife, little practical distinction can be drawn between the two Acts, which “share” a Sentencing Council Guideline, and that good reason to use a knife for work (in the later Act) should equate to a reasonable excuse (in the earlier).
10. In dialogue counsel sensibly conceded that on these facts, that a different statutory regime could have been contemplated for charging the appellant did not assist in the court in answering the questions.

### Grounds of appeal

11. It is convenient to discuss both of questions 1 and 3 together.
12. The Appellant as to question one, namely:

*“Were we correct in law in making a distinction between items such as a Stanley knife and the item in question a butterfly knife in holding that the latter was offensive per se whereas the former was not and was capable of being a tool?”*

suggests that the court found in essence that a weapon offensive *per se* cannot (lawfully) be used as a tool. The effect, he argues, is to preclude every workman using a tool which is also a weapon offensive *per se* from advancing the defence of reasonable excuse and that such must be contrary to the intention of Parliament.

### *Discussion*

13. The 1953 Act’s aim is to prevent weapons offensive *per se* being carried in a public place and it imposes a strict liability burden on a defendant to

establish reasonable excuse for possession. Whether such defence is made out depends on the facts of the case: *R v G [2009] UKHL 13*, in which regard the fact-finding tribunal enjoys a wide discretion. Additionally, where the weapon is a butterfly knife there will be a very heavy burden on the defendant to satisfy a court that he had it for such innocent purpose as to constitute a reasonable excuse: *DPP v Patterson [2004] EWHC 2744 (Admin)*.

14. That the knife might have been used for work, together with compelling evidence of his employment and consequential use of tools, the court concluded was not determinative of the issue. Even though used for work, a weapon offensive *per se* nevertheless required the court to consider whether such use were reasonable.
15. In my view the court did no more than find that a Stanley knife, not offensive *per se*, was capable of being a tool, whereas a butterfly knife was offensive *per se*. *That* does not equate to a finding that a weapon offensive *per se* cannot be used as a tool.
16. A tribunal of fact has a wide discretion in determining whether reasonable excuse is made out. An innocent purpose for having an offensive weapon in a public place does not equate to a reasonable excuse, rather the court is entitled to consider necessity or immediate temporal connection between possession and purpose for which it is carried. In this case the evidence did not lead to a finding of fact that for the quotidian tasks of opening access panels and stripping aluminium sheathing no other implement would suffice. The evidence also included the attention of police being attracted since they suspected him of smoking cannabis (- he was convicted of a related offence and does not challenge it-) and that he was not *en route* to work on May 19th, a Saturday. All this must have contributed to the conclusion of the Crown Court.
17. The Appellant's case is that there is authority for the proposition that possession of an offensive weapon for work is a reasonable excuse, not that possession of one such for work is an excuse if its use for work is reasonable. In many instances when a defendant proves use for work, reasonableness of that use would not arise; the martial arts practitioner and his rice flails, for example. That said, conclusive proof of a habit of using the weapon for work might prompt review of whether that use were reasonable: the wedding planner supplies a sword for cake-cutting, the chef tenderises meat using knuckle dusters.

18. The starting point is *Bryan v Mott* [1975] 62 Cr App R 71 where the Lord Chief Justice said: “*In deciding whether a reasonable excuse is made out for the carrying of an offensive weapon in a public place the court should ask whether a reasonable man would accept that in the particular circumstances it was a proper occasion for carrying such a weapon.*”
19. It is thus clear that the Appellant’s proof of his habitual carrying of the butterfly knife for work is simply evidence of what he suggests is the reasonableness of its possession. That falls short of proof of habitual carrying for work being dispositive of the issue.
20. The tribunal of fact would then review the balance of evidence capable of affecting its ultimate conclusion, which would include the type of weapon, and where it was found. In this case the weapon was a butterfly knife, specifically mentioned in *Patterson* as setting a high hurdle for discharge of a defendant’s burden of proof, found not in a toolbag or box or overalls pocket but in the glovebox of his personal vehicle.
21. Additionally, context plays a part. Temporal connection could be important. Here, discovery was on a Saturday afternoon. The applicant, employed by the local council, did not lead worksheets or customer confirmation or any other evidence that he worked on Saturdays, let alone on Saturday afternoons.
22. The court, should it reject temporal proximity, will then consider whether he might have forgotten to move it out of the public place: *DPP v Gregson (1992) 96 Cr App R 240*.
23. Those consequential questions underline that proof that the weapon was for use at work is not dispositive of reasonable excuse. If it were, neither would be posed.
24. Under the 1953 Act, the questions, applied to these facts, are whether the Appellant proved it is more probable than not that a reasonable man would think he had a reasonable excuse for carrying the butterfly knife in the circumstances of that Saturday afternoon, and whether his assertion that the butterfly knife was used for work were credible.
25. Support for that conclusion lies in *Patterson*. The court found only that the magistrates were entitled to conclude that possession of the weapon for use in stables was on the facts reasonable. On appeals by way of case stated on a point of law this court adopts the same approach as does the Court of Appeal to a trial judge’s exercise of judgment, interfering with the judge’s ruling only if it be *Wednesbury* irrational or perverse: *H v*

*DPP [2007 EWHC 2192 (Admin)]*. The ruling in this case was not Wednesbury irrational let alone perverse.

26. The remaining question is whether, when it considered reasonable excuse, the court were correct in describing as irrelevant that the Appellant had no convictions for violence.
27. To advance this ground the Appellant suggests that the purpose of legislation prohibiting possession of offensive weapons is to prevent use of such in criminal activity. Simple possession is not prohibited. He seeks to rely on the absence of such convictions as highly relevant, first because it boosted the truthfulness of his account, and second because it made it more likely that he was not carrying it for a criminal or violent purpose.

### *Discussion*

28. This ground is hopeless, and was not pressed with any enthusiasm before us by Miss Thomas for the Appellant. The issue was whether the Appellant could prove reasonable excuse for possession of the butterfly knife in a public place. As the Appellant was obliged to accept, the butterfly knife is offensive *per se*: purpose or intention were not in play and it follows that the absence of convictions for violence had no relevance. The Crown did not even suggest he was lying or that he carried the butterfly knife for a criminal or violent cause. If all this were not more than sufficient to dispose of this ground, the Appellant was not even of good character: *R v Hunter* [2015] EWCA Crim 631. He was on 3<sup>rd</sup> September 2018 convicted of possession of cannabis and one of his cautions was for threatening or violent conduct. Thus to give itself a good character direction would have obliged the court to depart from the standard position for good reason, which it could justify. The facts here came nowhere near prompting such an approach.

### Conclusion

29. I would answer the questions in the affirmative and dismiss this appeal.

Mrs Justice Carr: I agree.

**Judgment Approved by the court for handing down.**

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