

## **Firearms**

This file contains three directions;

- 1, Possession of a prohibited firearm where the only issue is knowledge;
- 2, Possession of Firearm with intent to endanger life; and
- 3, Possession of a prohibited firearm and ammunition with a defence of duress

### **Firearm (Possession of a prohibited firearm where the only issue is knowledge)**

You can see what the prosecution have to prove by looking at the Particulars on the indictment

“without the authority of the Secretary of State”. It is agreed that D\* did not have any authority or permission to have a firearm, so you do not need to consider these words.

“a firearm.” Our exhibit \*, the gun seized by the police is a \*\*sawn off shot gun\*\*. It is a prohibited firearm. So, again, you do not need to consider this.

“possession.” Someone has possession of something if he has physical control or custody of it and knows that he has custody or physical control of it. The prosecution do not have to prove that D\*\* owned the firearm or that he had used it or intended to use it - merely that he was in possession of it. Someone who is given a firearm by another person and who holds it, even for a very short time, is in possession of it, provided that he knows that it is a firearm.

The prosecution say that D\* ... . D\* denies that he had the gun. He says that \*\*\*.

So, the key question for you to answer in relation to Count \*, having regard to all the evidence and the directions which I give you, is this

Did D\*\* know that \*\*?

If you are sure that the answer is “yes”, he is guilty of Count \*. If the answer may be “no”, he is not guilty of Count \*.

### **Possession of Firearm with intent to endanger life**

Breaking the offence down into its various elements, in order to convict the defendant, you would have to be sure of the following:

#### **“he had in his possession”**

Someone has possession of something if he has physical control or custody of it and knows that he has custody or control of it. Someone who holds a shotgun in his hands is in possession of it.

#### **“a firearm”**

A shotgun is a fire arm.

#### **“with intent by means thereof to endanger life”**

The prosecution do not have to prove an immediate or unconditional intention to endanger life. What is required is an intention to behave in such a way that will, in fact, to the defendant’s knowledge, endanger life. For these counts, the prosecution do not have to prove that a defendant actually intended to kill someone.

So, the key questions for you to answer, having regard to all the evidence and the directions which I give you, are these

- Was the defendant holding a shot gun?
- Did he intend to behave in such a way that would, in fact, to his knowledge endanger life?

If you are you sure that the answer to both questions is “yes” he is guilty.

If the answer to either question may be “no”, he is not guilty.

## **Firearm (duress)**

### Possession of a prohibited firearm

### Possession of ammunition without a firearm certificate

Breaking that down into the two elements of the offences, in order to convict the defendant, you would have to be sure of the following:

“Possession.” Someone has possession of something if he has physical control or custody of it and knows that he has custody or physical control of it. He does not have to know that it is a gun or ammunition. He simply has to know that he had possession of the object or objects. If someone has a gun and ammunition in \*\*a bag in his bedroom and has physical control or custody of the bag and knows that it is there, he has possession of the gun or ammunition.

“A firearm.” Our exhibit \*, the gun found by the police is a prohibited firearm.

“Ammunition” Our exhibit \*, the ammunition found is ammunition which requires a firearms certificate.

The prosecution do not have to prove that D\*\* owned the firearm or ammunition or that he intended to use them, merely that he was in possession of them.

## Duress

As I have said, D\*\* does not dispute that he was in possession of the \*\*machine pistol or the ammunition. He says though that he was acting under duress, that he was in possession of the firearm and ammunition because of a combination of threats and circumstances which amount to duress. He says that \*\*

Duress may be a defence to a criminal charge. As it is for the prosecution to prove the defendant's guilt, it is for them to prove that the defence of duress does not apply in this case. The defendant does not have to prove that it does apply.

When considering duress, having regard to all the evidence, you must answer a number of questions

### Was D\*\* intimidated or threatened in the way that he says he was?

If your answer is ‘no’, the defence of duress does not apply and, \*\*\*\*

If your answer is ‘yes’, go on to consider the second question.

### Was D\*\*, or might he have been, driven to be in possession of the firearm and ammunition because he genuinely believed that if he did not do this, either he or a member of his immediate family would there and then, or in the near future, be killed or seriously injured?

If your answer is ‘no’, the defence of duress does not apply and he is guilty (and you do not have to consider any further questions.)

If your answer is ‘yes’, go on to consider the third question.

Would a reasonable person with D\*\*'s belief and in his situation have been driven, or might he have been driven, to be in possession of the firearm? By a reasonable person, I mean a person of reasonable firmness, and of the defendant's age, sex

and background. The reactions of a reasonable person may or may not be the same as those of the defendant himself.

If your answer is 'no', the defence of duress does not apply, and you must find the defendant guilty (and you do not have to consider any further questions.)

If your answer is 'yes', (and only if your answer is “yes”), go on to consider the fourth question.

Was there an opportunity for the defendant to escape from the threats without damage to himself or his family by running away or going to the police which a reasonable person in his situation would have taken but which he did not take? If you are sure that there was such an opportunity, the defence of duress does not apply and he is guilty.

N.B. voluntary association