

AN CHUIRT DUICHE THE DISTRICT COURT

DUBLIN METROPOLITAN DISRICT



Appellant

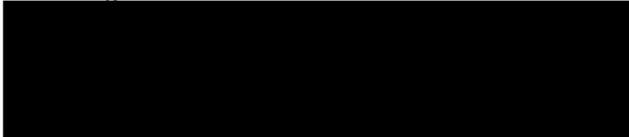
-v-

Chief Superintendent Coburn  
&  
The Commissioner of an Garda Siochana

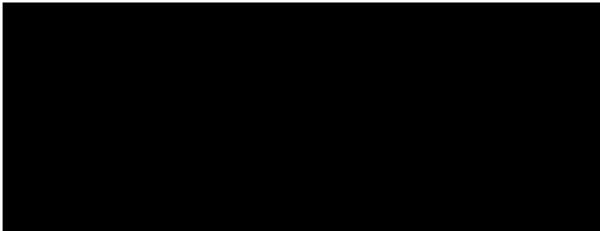
Respondent

This Appeal is against a refusal to grant restricted licences for two guns under the Firearms Acts (as amended) and was heard over two days on 10<sup>th</sup> October 2013 and 17<sup>th</sup> October 2013 in Court 8 at the Four Courts.

The guns:



Witnesses for Appellant:



Witness for Respondent

- Detective Inspector K. Brooks – Ballistics Section
- Chief Superintendent Declan Coburn – Respondent

1. The Court was furnished with booklets of papers prior to and during the hearing together with all the relevant Acts of the Oireachtas and Statutory Instruments. Written submissions were also furnished at the end of the appeal hearing by both sides.

2. It was indicated to this Court that the result of this case may have a bearing on outstanding appeals in the Dublin Metropolitan District.
3. Two D.V.Ds of demonstrations of different target shooting disciplines were furnished in advance of the hearing and were viewed prior to the hearing. These were originally made for the benefit of Judge Elizabeth McGrath for an appeal in the case of Patrick O'Connor and Chief Superintendent Sheehan – where the appeal was allowed.

#### Brief History of the Case

4. The appellant was refused his licences on the 1<sup>st</sup> November 2009. He appealed to the High Court together with approximately 160 other people whose licences were refused. Nine were selected as test cases and three were heard. The grounds for the High Court applications were four, briefly paraphrased as follows:
  - (i) No reasoned decision had been given for refusal;
  - (ii) Refusal documentation was not disclosed;
  - (iii) That a fixed policy of refusal was *ultra vires* the Fire Arms Acts (as amended); and
  - (iv) That the Chief Superintendent was not delegated to make the decision.
5. The matters came before Mr. Justice Hedigan and were settled on the ground set out at point (i) above and it was agreed to quash the refusal decision and that the matter be remitted for a fresh consideration.
6. The Court understands anecdotally that approximately 90% of the reconsiderations resulted in the granting of licences. However, the Appellant was refused again in November 2012 and he appealed to the District Court.

#### The Law Now

7. To put it simply when the law was changed in 2006 and 2009, no one would henceforth be entitled to apply for a restricted pistol licence, but existing licence holders could continue to apply to renew their licences (for the same guns only) subject to certain conditions that apply to all guns, together with some further conditions, the most relevant being:-
  - (i) they had to have a good and significant reason for requiring such a firearm, and
  - (ii) have demonstrated that the firearm is the only type of weapon that is appropriate for the purpose for which is required.

Further it became an offence to engage in the use of a firearm for the purpose of practical or dynamic shooting, which means any form of activity in which firearms are used to simulate combat or combat training.

### The Hearing

8. All the witnesses were heard – but when the Appeal opened there was an Application to the Court by the Appellant that “opinion evidence” from Detective Inspector Kevin Brooks should not be admitted, particularly his evidence regarding centerfire target shooting disciplines i.e. WA 1500, T+P1 and T+P2 – that he was not to be allowed to give evidence as to what was a criminal offence.
9. As [REDACTED] was going to give similar evidence the Court decided that Inspector Brooks should be allowed give his evidence. The Court was satisfied he is an expert witness and is extremely knowledgeable on various topics relating to guns and gun crime, having heard him in many cases previously.
10. The Court does not intend to go through the evidence in detail.
11. [REDACTED] did a survey of shooting disciplines i.e. which ones could be shot with restricted weapons and which ones required 6 shot centerfire weapons only, and which could be shot by both.
12. [REDACTED] vice president of the world governing body of a shooting discipline known as WA 1500 – is secretary of Irish Branch and shoots also. He got his pistol licence on appeal in Cork District Cork recently, having previously got his licence on Appeal. In the present case one of the grounds of refusal is that the Appellant shoots WA 1500 which was illegal because it simulates combat or combat training. The witness said it did not and explained why and described the discipline in detail. He told the Court how difficult it was to shoot big calibre guns accurately at 50 yards and said no one yet had got a perfect score.
13. [REDACTED] retired Garda – 28 years in the ballistics section prior to Inspector Brooks – he had extensive expertise in guns. He described training of An Garda Soichana; how he had trained them and soldiers and described the differences between combat training and WA 1500. He said it did not simulate combat training or combat.
14. The Appellant [REDACTED] was described in the Chief Superintendent’s letter of refusal as “of impeccable character and beyond reproach”. He described his guns in detail and what he did with them and when he took part in competitions. He went into the various disciplines he shot previously with his licensed guns and what he intended to do in the future and which gun was appropriate and required for which discipline. For instance the [REDACTED] could not be shot in 1500 standard and various other disciplines and so on. He had a very extensive history of experience with guns

in the army and the Garda and held a firearm himself from time to time and continuously for 2 years. He described the Garda and military training as different from the firing range. That he had the highest score in a competition in Italy and won a gold medal in Northern Ireland last year. He wouldn't engage in anything that was illegal i.e. he did not consider WA 1500 illegal because it was not simulating combat or combat training. He is the holder of a Scott Medal. He complained that the whole licensing or Appeal procedure had been long and tedious, he referred to his age, the amount of time lost (4 years), and the possible deterioration in his eye sight as he gets older; that every obstacle had been put in his way. In cross examination there was a full discussion and questioning on the types of guns he had and the disciplines he was shooting and whether he had a good and sufficient reason for having them.

15. Detective Inspector Brooks has 20 years experience in ballistics he investigates shooting accidents and has experience in the forensic investigations of firearms, shooting scenes and homicides. He advises the Gardai on technical aspects of firearms - gives expert advice and technical information. He has a Diploma in Forensic Firearms Investigation. His qualifications, experience and vast knowledge are well known to the Court. More importantly he advises to Chief Superintendents in these cases and also this Chief Superintendent. The Court is aware that some Chief Superintendents will freely admit they know nothing about firearms and rely on Inspector Brook's view – that is not the case here. It does however point up how crucial Inspector Brooks view can be in the entire licensing of restricted weapons area.
16. In the present case he said in evidence the [REDACTED] pistol was designed for police use, he didn't consider it suitable for target shooting. That sounds very damning to a Chief Superintendent or Judge who knows nothing about guns – of course it's not true, because we all know it is used for target shooting, has been found suitable for target shooting in the past and has been licensed for target shooting. Target shooting is the only lawful use it can have.
17. It appears what he is saying is in his ideal world he wouldn't use it for target shooting and therefore nobody else should either – and then advises Chief Superintendents and Courts accordingly. This Court does not accept this. When the [REDACTED] was discussed he was not happy with it - higher risk, more powerful, etc. He described it as expensive, customised, and sold mostly to competitors (i.e. target shooters) in the United States of America and for practical shooting. The Appellant has previously given evidence how it was specifically adapted and changed for target shooting which in total had cost €3600.

18. Inspector Brooks said he associated it with the F.B.I. and its original design was military / police. Even though this is a pistol very much designed for target shooting he still doesn't approve of it because of its past. The Court is of the view that guns can't be dismissed so easily because of who used them in the past, who uses them now or, who might suddenly decide to use them in the future.
19. No matter what gun is mentioned Inspector Brooks can come up with some history, some characteristic, or some association which appears to make it not suitable. In cross examination he was asked was it the calibre he didn't approve of - he was asked whether there was "any 9mm you approve of?" to which he responded "no"; he stated that "no .45 is suitable for target shooting"; that a .38? was "not suitable"; that a .357 was "not suitable"; he did state that a .32 revolver was "ok"; that there is a gun used in World Championships and Olympics with a small magazine which he would let through.
20. In the Courts view he can't adopt that position and neither can the Chief Superintendent. He is potentially "fettering his discretion". The Inspector gave details of guns stolen in Offaly, Tipperary, Tullamore and in Dublin West involving a double murder. These were further questions on the advice he had given in other cases, i.e. that a .32 was a military weapon when he was advising Chief Superintendent Manley.
21. Chief Superintendent Coburn gave his very impressive curriculum vitae. He got advice from Inspector Brooks, made a decision, then the High Court, then reconsideration, meetings, submissions, further advices from Inspector Brooks, each considered individually - risk assessment, etc. He showed to the Court that he had followed correct procedure and took into account all the factors he should including public safety. He didn't want to comment on the 90% of other licences granted.
22. The Court is of the view that maybe he should have commented on these, as his decision making process is under scrutiny; why shouldn't he explain how the 90% were picked. The refusal of one case can't be taken in isolation.
23. He looked at all aspects and has spent many years on the firing range, he believed the WA 1500 does simulate combat and told how in the past of a situation where he "had to get out my firearm and my training helped". The Court agrees that training helps. He went on to describe the most serious crime rates in his division and details of gun crime and how a legal gun was stolen in his division and used with another illegal gun in a double murder.

24. Listening to the Chief Superintendent it was clear that he feels the heavy responsibility for the safety of people in his division and the Court has no doubt that what he was saying was in good faith and his opinions were sincerely held and that his decision in these cases were for the greater good and safety of the public in his division. He clearly would prefer no licensed pistols in circulation. He has a difficult and responsible job.
25. There was a very robust cross examination as to the authorship of the letter of refusal, but in spite of the threat of forensic linguists, he insisted he and his clerk were the authors of the letters. He was also asked why he didn't comply with the High Court decision for 9 months; he said he did not know about it. When asked in what circumstances would you licence a centerfire gun, he responded "I have a balancing act to go through, for me there is no reason that would satisfy me". This was a significant comment. The Court is of the view that he can't adopt that view either. He also said there are more criminals around and fewer guns around; that legal ones are in more danger, that there is a risk of guns being stolen.

#### Public Safety

26. Regardless of the technical evidence the Court got the impression that public safety was a crucial factor in the Chief Superintendents decision making process. He didn't want the responsibility of it or the risk that licensing hand guns entails; which is now the Court's responsibility.
27. The Court was very interested and concerned to know how the granting of gun licences or not granting them would effect the crime rates in Dublin West. Would there be more or less crime as a result or would there be the same amount of gun crime but committed with different guns. If a legal gun was not stolen would it mean a murder would not be committed by another means, i.e. illegal pistol, shotgun, whatever. How significant was the connection between a legal gun being stolen and the increase in the occurrence of gun crime. This was not analysed sufficiently, maybe it's a difficult thing to assess. Maybe it is the number of criminals in his division that effects the crime rate and not the existence or otherwise of legally held guns – can we be sure, is there a clear connection? The Court is not sure that there is having heard the evidence.
28. The Court was not clear how the Chief Superintendent exercised his discretion in this case; in that he originally refused all or virtually all pistols. Then on reconsideration granted 90%. How does he now distinguish between the ones he subsequently granted (after Judicial Review) and the ones refused again?

29. Since his main objection seemed to be public safety and security, surely this applied equally to the ones granted? Why did the security situation not affect their applications; no evidence was given to the Court on this important point.
30. The Chief Superintendent must take in the security situation specific to his division, but also the overall situation in the country and what is happening in the other divisions adjoining his. His authority is a delegated one from the Commissioner who if he the Commissioner were deciding would surely have to take into account the situation in the Country generally - and this Court does that to the extent that it can. One would expect decisions in one division to be roughly in line with decisions in other adjoining divisions (the criminals don't care about which division they are in) with minor variations. The Court has been given the impression that this is not the case in West Dublin; one would expect a more coordinated approach.
31. The Court is of the opinion that the Chief Superintendent did not go into the public safety and security aspect enough – in his evidence to the Court. The dangers of someone holding a gun were not analysed enough – the letter of refusal specifies transport of the gun as a big factor in the refusal. It is clear the gun is either going to be taken from a house or in transit or at a shooting range – it seems to this Court that a criminal can rob a house or kidnap someone but the transport was pinpointed as the crucial reason (within that scenario) by the Chief Superintendent so the Court will focus on that.
32. If one were trying to steal [REDACTED] gun, would one accost him as he left his house or as he drove along up the road? How do we know he has his gun with him; he may be going to the supermarket. I don't think so. However, if we follow him to the shooting range then we are sure he has his gun on his way home. However the shooting range in this instance is Wicklow or around the country elsewhere and a criminal can attack anybody leaving that shooting range – preferably not a formerly armed Garda.
33. The Court is not convinced that the connection has been made. Why does anyone think that criminals in West Dublin will confine themselves to stealing guns in West Dublin or be more likely to steal them there? The Court doesn't know, but it doesn't seem likely.

WA 1500

34. Does W. 1500 simulate combat or combat training? This has been made a big issue in this Appeal. Other Chief Superintendents don't appear to think that it is. The Court

would prefer that this would be left to a prosecution to decide. One wonders why, if the Respondents are so sure it infringes the law why no one has been prosecuted.

35. However I feel this Court is obliged to give its opinion. [REDACTED] [REDACTED] said it didn't simulate combat or combat training. Inspector Brooks said it did. [REDACTED] and Inspector Brooks both have very similar backgrounds and knowledge. The Court has viewed the disciplines on the D.V.Ds referred to and heard evidence about combat and training (perhaps not enough about combat training in general) and considered the law.
36. Having listened to Inspector Brooks objections it seems that when a centerfire target shooting discipline has elements in it which make it more difficult for the shooter to get a high score, i.e. shooting from the left or right alternately shooting faster or from a different stance or pose or any other variation other than standing and shooting with one hand, Inspector Brooks sees it as simulating combat or combat training.
37. Having seen the D.V.Ds and the slow deliberate aiming for the bullseye and the tedious movement of the shooters changing positions and going through the safety routine and starting over and repeating it at a greater distance; combat was the last thing it reminded me of or of combat training.
38. The Court heard about the distances involved and the accuracy attained by these shooters in the discipline – static shooters and a static target with a bullseye. This appears to be the direct opposite of combat or training for combat which involves:- close in action at maybe 3 meters with a requirement to hit a man sized target with no great accuracy required which target is also trying to shoot you, and you must not shoot other people; and have instant assessment of situations. There can be several targets, they may be moving, you may be moving, you are trying to protect your own life, and other innocent lives; [REDACTED] referred to a requirement for a "tactical scan" of ones surroundings in combat training.
39. Inspector Brooks went on to find similarities between combat training and W.A. 1500 and the evolution of targets from the human torsos to the present bullseye target and the way the names evolved and changed.
40. It occurs to the Court that if you have the immense knowledge that Inspector Brooks has and if you look hard enough you can make those connections and of course disciplines evolve out of other disciplines, but we are not talking about guilt by association; we must analyse the thing as it is now. All they have in common is that someone involved in combat training must first learn marksmanship to the extent of

being able to fire a gun and hit a target, after that they diverge. It is the Courts opinion that WA 1500 does not simulate combat or combat training and therefore is not practical or dynamic shooting and hence doesn't offend the legislation.

#### Good and Sufficient Reason

41. "Demonstrated that the firearm is the only type" etc. These are specific requirements under the legislation. Listening to Inspector Brooks he doesn't seem to consider centerfire target shooting as "target shooting". Target shooting for him is Olympic style target shooting. Therefore any guns used in centerfire target shooting are by his definition unsuitable for target shooting. This is a recurring theme. This is a false premise.
42. It is as if Inspector Brooks feels centerfire target shooting shouldn't exist – but clearly it does exist – whether he approves or not and the guns exist, their owners have been shooting them for years. They all have had licences for them for years. There are competitions for them in Ireland and all over Europe and farther afield for years. They have no other useful purpose; they can only be shot in approved pistol or rifle ranges at targets. The new legislation of 2006 and the extra conditions are there specifically to regulate these guns and other restricted rifles.
43. Inspector Brooks disapproves of these guns because of their closeness in design to military weapons – but all handguns have a huge amount in common – too much time has been taken up on comparing small differences between various models and who uses them. But the fact is the Appellant and many others use them for target shooting and that's indisputable. The owners have to fulfil the requirements of the legislation but they must be allowed choose their sport.
44. The evidence of the Appellant about all the competitions he has taken part in all around Europe and his success at this sport generally, shows he has a reason to have his guns. No one is allowed just to have a gun without using it as a gun; you must "use it or lose it". His evidence on the types of competitions he takes part in, which require these types of guns and of a certain calibre, indicates that he has a good reason to have these guns. The legislation now includes the extra word "sufficient". The Court accepts that "sufficient" is a new and separate requirement. The word is not a very demanding one and doesn't raise the bar too high.
45. The Court is satisfied that the Appellant has a good and sufficient reason for having those guns. Having heard from the Appellant and other evidence that these disciplines require these guns the Court is satisfied that each gun is the only type of weapon that is appropriate for the purpose for which it is required, and this covers the

second precondition of the legislation. The Court understands similar guns have been licenced or licenced on reconsideration without reference to the District Court.

### Conclusion

46. The Court notes that the extra conditions under the 2006 legislation applied and pertained only to a small and discrete group of already licenced people and their existing guns (and large rifles) i.e. 99% of people were excluded. It seems unlikely that the intention of the legislators was that the existing licence holders would all, or nearly all, be refused when they applied subsequently. The Legislature could have done that in 2006 (as was done in Britain when handguns for private citizens were banned) and it can be done anytime I understand by the Minister by Statutory Instrument.
47. The cost to the Appellants in these cases in terms of the time spent in Court and the legal fees they have incurred is substantial. The fact that costs can't now be awarded in favour of successful Appellants against the Commissioner could affect the balance within the appeal process and lead to unfairness.
48. It is possible that this could lead to a "wear them down" process – whereby applicants will just give up when refused because they can't face a court appearance or can't afford the legal fees or wait four years. If some Chief Superintendents keep refusing the same people it could be a matter for the High Court again.
49. The Court is perhaps more concerned about a more serious threat to the public safety than guns being stolen, and that is that someone with a legally held gun - will develop a mental illness or a personality disorder and shoot people indiscriminately. This applies of course to shotguns, rifles and pistols and not confined to areas of high crime rates. Events in other countries particularly, and here also, have shown this to be potentially the biggest threat.
50. In our deliberations common sense must prevail. It is almost impossible to explain to anyone how two people, both of whom have had previously licenced guns living a few miles apart but in two different Garda divisions who have similar backgrounds and use identical guns and who shoot at the same range, that one can be granted a licence without a problem and the other is so easily refused - and that is remembering that it is a privilege to hold a firearms licence and not a right.
51. The District Court, particularly accepts that decision makers in licensing matters can have a "tipping point" and various factors seemingly small in themselves can accumulate and tip the decision to grant or refuse and that is what discretion means –

assuming that all factors are properly considered. Decisions are not easily analysed after the event but nevertheless the Appellant is entitled to an explanation as to how he differs from the 90% and how that difference is of such a significance as to the merit of a refusal. This has not been done; generalisations about public safety and security will not suffice.

52. Arguments about the availability of guns to civilians is a wider Political question for the Legislature to address. This not a question for the Courts; we can only deal with the law as it is.

#### Decision

53. The Applicant/Appellant has clearly already satisfied the Authorities that he has complied with all the other requirements and conditions of the legislation and these matters (although of considerable importance) are not in issue between the parties, and the Court therefore also accepts he is in compliance with these.

54. The Court is satisfied he has a good and sufficient reason and that the guns are appropriate for the purpose for which they are required.

55. The Court is satisfied that he doesn't take part in practical or dynamic shooting. I am further satisfied that the concerns expressed by the Chief Superintendent on public safety are not enough to deprive the Appellant of his licence, particularly in view of the unexplained 90% who subsequently got their licences on reconsideration.

56. I am allowing the Appeal.

57. Mr Egan Solicitor and Mr. Valentine B.C. informed the Court that the other outstanding appeal cases could now be allowed and these orders were made. Separately the Appeal in Farren was allowed on consent.

58. Mr. Egan applied for his costs in all cases opposed by Mr. Valentine. These were refused because of the decision by Mr. Justice Peart on the very point. Costs were also refused in the Farren case.

59. Typed copies of the judgement to be furnished to solicitors and Chief State Solicitor in due course.

Timothy Lucey

District Court

December 2013