

**ONTARIO COURT OF JUSTICE**

<b>B E T W E E N :</b>	)	
	)	
<b>HER MAJESTY THE QUEEN</b>	)	<b>Eric Taylor,</b>
	)	<b>for the Crown</b>
<b>— AND —</b>	)	
	)	
<b>LLOYD MOFFATT</b>	)	<b>Calvin Martin, Q.C.,</b>
	)	<b>for the defendant</b>
	)	
	)	<b>DATED: April 14<sup>th</sup>, 2005</b>

**J U D G M E N T**

**AND**

**R U L I N G O N S E C T I O N 1 1 1 W E A P O N S P R O H I B I T I O N A P P L I C A T I O N**

**MAUND, J.:**

[1] The accused before the Court, Lloyd Moffatt is charged with five weapons offences in relation to the firearms as described in the five counts. Counts #1 and #2 allege storage of firearms in a careless manner contrary to Section 86(1), of the Criminal Code. Count #3 is a charge of unlawful possession of various firearms without being the holder of a licence pursuant to Section 91(1). Count #4 alleges possession of a loaded prohibited firearm and count #5 the possession of a loaded restricted weapon contrary to Section 95(1) of the Code.

[2] The seizure of these weapons was on December 14<sup>th</sup>, 2001 at the Town of Mono, pursuant to the execution of a search warrant by the Ontario Provincial Police. The facts giving rise to the execution of the search warrant were set out in my previous ruling in connection with the search and seizure issue of January 28<sup>th</sup>, 2005.

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**THE FACTS**

**[3]** The following issues are not in dispute:

- (a) That the firearms as described in the charges were firearms as defined by the Criminal Code;
- (b) That the accused, on December 14<sup>th</sup>, 2001 was not the holder of any current licence or authorization which permitted him to possess the firearms, prohibited firearms or restricted weapons;
- (c) That the two Smith & Wesson firearms described in Count #4 were loaded prohibited firearms as defined; and
- (d) That the firearms described in Count #5 were loaded restricted weapons as defined by The Criminal Code.

**[4]** In addition, exhibits #10, #11 and #12 were admitted on consent and contained documentary evidence from the Centre of Forensic Sciences and the Canadian Firearms Centre. These documents establish that the various firearms were duly tested and that the defendant was not the holder of a valid licence or permit in relation to any of these weapons at the material time. They further indicate that Mr. Moffatt had previously been the holder of a Firearms Acquisition Certificate (FAC) in relation to the 9 restricted weapons but that authorization had expired prior to the date of his arrest.

**[5]** Sergeant Skelding of the Ontario Provincial Police was engaged in the execution of the search warrant and was the officer responsible for the seizures. He testified that the

police seized a total of 16 firearms and a variety of approximately 1000 rounds of live ammunition. Fifteen of the firearms were found in an upstairs room at the residence. This was the only upstairs room which was fitted with a door. When the officers entered this room, the door was closed but not locked. A total of 6 handguns were found as well as long guns. In addition, the officers located and seized a 45 calibre semi-automatic pistol which was in a holster and found in the kitchen pantry covered by a towel. The pistol had one live bullet in the chamber when it was located.

[6] The officer indicated the seizures of the various firearms as set out and described in the charges before the Court. He testified that five of the firearms found in the bedroom were loaded with live ammunition. None of the firearms were equipped with trigger lock mechanisms.

[7] Photographs were entered of the areas within the house where the firearms were seized, together with photographs of the firearms themselves. These photographs showed that the firearms found in the bedroom were stacked up in a corner or were throughout the room on the floor. The photographs also illustrated the fact that some, but not all, of these firearms were found with loaded magazines.

[8] The search was executed between 7:08 p.m. and 7:57 p.m. Sergeant Skelding testified that none of the exterior or interior doors were found to be locked during the search. However, he acknowledged that the front door to the residence was capable of being locked. He was unaware whether the rear door could be locked or not as he could not access the rear door given the quantity of debris and materials in the front of it.

[9] Sergeant Skelding also acknowledged that Mr. Moffatt had previously held certificates which authorized his possession of nine restricted firearms. He testified that these had been grandfathered at the time that the original legislation came into force. However this status had lapsed on the expiry of his most recent certificate.

[10] With reference to the handgun located in the kitchen pantry, the defendant showed the police where that firearm was located. Prior to being shown by Mr. Moffatt, the police had been unable to locate it.

[11] Finally Sergeant Skelding indicated that the police were aware of a series of break and enters in the Town of Mono in the period leading up to December, 2001 where persons were breaking into homes and seasonal residences in an apparent search for firearms. These had occurred on the 5<sup>th</sup> side road and other county lines and roads relatively close by to the Defendant's residence. He indicated that he was concerned about the state of storage of all the firearms found in Mr. Moffatt's residence as he believed that they could readily be found by any intruder to the residence.

[12] The accused, Lloyd Moffatt testified on his own behalf. He is currently 67 years of age. At the time of his arrest Mr. Moffatt had been living on the farm property for his entire life. The farm was currently listed for sale and was in the process of being sold.

[13] At the time of his arrest Mr. Moffatt was organizing an auction sale of the furniture and farm equipment to facilitate the sale of the property. He stated that he was expecting the auctioneer's representatives to come inside the house for the auction and he had furniture stored in various rooms. Mr. Moffatt said that he stored his firearms in the upstairs bedroom

which had been occupied by his late mother. The door to that room was normally kept locked, but it was not locked on the day of the search.

[14] The accused also testified that he kept the loaded 45-calibre pistol in the kitchen pantry under a towel. The police told him during the search that they were specifically looking for this firearm and warned him that it must be produced. Accordingly, he agreed to show them where it was located.

[15] Mr. Moffatt indicated in his evidence that he was interested in collecting firearms throughout his life starting back in 1971 or 1972. He said that while he never took the guns away from the property, he occasionally engaged in target shooting at the farm.

[16] Further, Mr. Moffatt indicated that when the firearms legislation originally came into effect in the late 1970's, he obtained a Firearms Acquisition Certificate (FAC) and passed the necessary examination to do so. He acknowledged that the FAC had expired in June, 2001 and he never applied for a PAL (Possession and Acquisition Licence) after the expiry of the original Certificate. He said that he would have done so if he had realized that it had expired.

[17] With respect to his practice, Mr. Moffatt testified that generally when he left his property it was not his habit to lock the exterior doors unless he intended to be away for longer periods of more than half a day. He said that he had never experienced any break-ins at his home nor had he heard of any break-ins in the area. He testified that he kept a loaded 45-calibre pistol in the kitchen for his "personal protection".

[18] The accused testified that he did not believe that his manner of storage of the firearms within the house would be of potential harm to anyone. He did acknowledge that any intruder who was determined enough could get into the house and gain access to the firearms.

[19] On cross-examination Mr. Moffatt indicated that in keeping a loaded pistol in his kitchen, he had put his mind to the possibility that an intruder might try to enter the house. However he subsequently testified that he was not really aware that that was a possibility. I find Mr. Moffatt's responses to those questions contradictory.

[20] Finally, the Defendant said that he was aware that his FAC expired after a five year period and that this was stamped on the card which he carried in his wallet. He knew that the RCMP sent renewal notices out but he does not recall ever receiving one. He says the fact of the expiry of the Certificate "skipped my mind". In any event, he made no effort to renew his authorization prior to the date of his arrest.

### ANALYSIS

[21] I will deal first with Counts #3, #4 and #5, the charges of unauthorized possession of firearms as well as prohibited and restricted weapons. The Defence submits that the accused had no mens rea; that the defendant lacked the necessary criminal intent and failed to renew the licence due to inadvertence only.

[22] The Crown argues that the degree of fault was established by the fact that the accused continued to be in actual possession of firearms, including restricted and prohibited firearms, without the required official authorization. Further, the Crown submits that even if

the Defendant had an honest but mistaken belief concerning his obligation to obtain a renewed licence to possess his firearms, that is not a defence to these charges. And, even if he had such a mistaken belief, he was either reckless or wilfully blind to the fact that his FAC had expired. Mr. Moffatt knew that the Certificate was time limited and did not take any steps to determine whether it was still in effect.

[23] The actus reus in connection with counts #3, #4 and #5 was established by the evidence and was not in dispute in argument. On the issue of mens rea, I agree with the submission by the Crown that the evidence by Mr. Moffatt concerning his intentions on the issue of the expiry or renewal of his certificate does not afford him a defence.

[24] Mr. Moffatt was well aware of the fact that his firearms and in particular the prohibited and restricted firearms were subject to registration requirements. He was aware that the Certificate was time limited and required renewal. It is not a defence in law for an accused in this situation to simply fail to put his mind to the legal requirement to renew the authorization licence. Wilful blindness is not a defence in my view.

[25] Accordingly, there will be a conviction on counts #3, #4 and #5.

[26] Dealing with counts #1 and #2, the charges of careless storage, the Defence submits that the efforts by Mr. Moffatt to store and secure his firearms were reasonable. The accused did lock the door to his residence when he left for long periods and he was unaware that there had been an organized theft ring operating within the Town of Mono which was seeking out firearms from private homes. He had never experienced a break-in during his lifetime at the family farm and, the Defence argues, he was therefore entitled for all of these

reasons to believe that his home was secure from theft. Further, that his intention and practice was to lock the bedroom door when he was aware that persons would be coming inside his residence such as the staff of the auctioneer. The position of the Defence was that his standard precautions were reasonable based on his experience over his lifetime on the property and was not a marked departure within the meaning of caselaw.

[27] It was also submitted on behalf of the accused that his storage of the pistol in his kitchen pantry for self protection was not inconsistent with the argument that he took reasonable precautions; that by having ready access to a handgun in the kitchen, Mr. Moffatt acknowledged the mere possibility that an intruder might break into the home. However, that it was possible for Mr. Moffatt to have the firearm available in the kitchen for his personal protection without necessarily realizing that a break-in might be imminent.

[28] With respect, I find that there is an inherent contradiction in this argument. The fact that Mr. Moffatt kept a loaded pistol readily available to him inside his kitchen for self-protection clearly indicates that he considered the danger of intruders. While this handgun was not in plain view, it could readily be discovered by an intruder who had the time and determination to look under a few things in the kitchen pantry. The upstairs bedroom door, even if locked on occasion as claimed by the accused, would offer little impediment to someone looking to obtain firearms illegally.

[29] I am indebted to the summary of the law concerning section 86(1) of the Criminal Code by my colleague Justice Duncan in the decision of R. v. Lulic [2003] OJ No.5961 (OCJ). In paragraph 7, the Court relates observes the standard of proof established by R.v. Finlay [1993] 3SCR 103 that:

“the fault requirement is to be assessed objectively and consists of conduct which constitutes a marked departure from the standard of care of a reasonably prudent person in the circumstances”.

And in paragraph 11:

“In my view, under subsection 1, the Court must assess the danger or risk created by the manner of storage, and determine whether, in all the circumstances, there has been a marked departure from the standard of care of a reasonable person. It is a fundamentally different and separate issue from that of regulatory compliance.”

[30] On the facts before me, Mr. Moffatt took few if any precautions to secure his firearms. Five of the firearms found in the bedroom were loaded with live ammunition. None of them were equipped with trigger lock mechanisms. And, as shown in the photographs, the firearms were stacked in a corner or lying about the floor in disarray. Ammunition for the weapons was available in plain sight. While the door to the room was closed, it was not found in a locked condition when the officers entered. The loaded handgun in the kitchen was hidden from view but covered only by a towel.

[31] In my view, no prudent person would store firearms either loaded or not, in such a haphazard manner. The state of these firearms was such that there was a real and obvious risk that they might fall into illegal hands. This would require very little effort on the part of any culprit who wished to obtain them or even persons who had lawful entry into the residence.

[32] Finally, the evidence of Mr. Moffatt's practice in securing the exterior doors of the premises does not support his contention that his efforts to secure the firearms were reasonable. He acknowledged that when he left the property for periods of at least a few hours, left the doors unlocked. That was his practice. He only found it necessary to lock the outside doors when he was away for periods of longer than half a day. Again, during the Defendant's brief absences from his property, anyone could readily obtain access to his residence and the firearms.

[33] The issue, to be determined as identified by Justice Duncan in Lulic, is the danger that the firearms might come into the hands of some third party other than the Defendant and that this might cause potential harm. In my view the accused took no reasonable steps to eliminate this danger. Accordingly, these charges have been established beyond a reasonable doubt and there will be a finding of guilt on counts #1 and #2.

### **RULING ON PROHIBITION APPLICATION**

#### **Pursuant to Section 111, CCC**

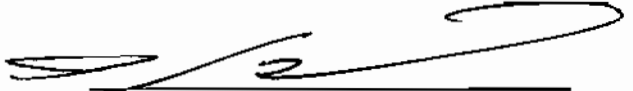
[34] It was agreed by Counsel at the outset of the criminal trial that the evidence might be applied to the prohibition application. The standard of proof in a section 111 application requires, that the Court must be satisfied that there are reasonable grounds to believe, that it is not desirable in the interests of the safety of the respondent or of others, that the party who is subject to the prohibition application should possess firearms. There must be an objective basis for such reasonable grounds. And the standard is necessarily lower than proof beyond a reasonable doubt.

[35] Having entered a conviction of Mr. Moffatt on the charges of careless storage and given my findings of fact, I have concluded that the Respondent displayed a blatant disregard for the most basic safety standards required for the possession and storage of firearms. I noted in my reasons that a variety of prohibited and restricted weapons were found scattered about the bedroom in Mr. Moffatt's residence. Six of the fifteen firearms were found loaded with live ammunition. One loaded handgun was found readily accessible in the kitchen area. There was no indication that the firearms were fitted with trigger lock mechanisms or that they were stored within locked cabinets. None of the precautions as set out in the firearms regulations were adhered to by Mr. Moffatt.

[36] And I also have concluded from my review of the evidence given by Mr. Moffatt that he did not display any level of concern with respect to the safe storage of his firearms. In the circumstances I find that it is in the interest of general public safety that the prohibition order be made.

[37] Accordingly, pursuant to Section 111(5) of the Criminal Code, I make an Order prohibiting Lloyd Moffatt from possessing any firearm, crossbow, prohibitive weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance for a period of five (5) years from the date that of this Order.

**Released: April 14<sup>th</sup>, 2005**

  
Justice Douglas B. Maund  
Ontario Court of Justice at Orangeville