IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

INDICTMENT NO: 0040/2016

THE QUEEN

V

JUSTIN ALVIN EBANKS

Appearances:	**Mr. Patrick Moran, Deputy DPP for the Crown**
	Mr. John Furniss for the Defendant
Before:	**The Hon. Mr. Justice Charles Quin Q.C.**
Sentencing Hearing:	**13th September 2016**

SENTENCE JUDGMENT

SUMMARY OF FACTS

1. On the 31st January 2016 the Royal Cayman Islands Police Service (RCIPS) officers received a report that this defendant may have had a firearm in his possession. As a result, police officers went in search of the defendant and apprehended him whilst he was riding his bicycle in the West Bay area. The defendant was searched by the police and a Berretta semi-automatic pistol with three rounds of .25 ammunition were found to be in the defendant's possession.

2. The defendant immediately admitted that the firearm and ammunition were his, and he said that he had the firearm for his own protection.

3. At the time the defendant was stopped and searched by the police a crowd had gathered and were behaving angrily and aggressively towards the police offices but the defendant did nothing to incite the behaviour of the crowd.

4. The weapon recovered was old and worn but still operable and it successfully discharged one of the rounds of ammunition.

PROCEEDINGS

5. At the time of his arrest the defendant was given the opportunity to discuss the case with an attorney and then proceeded to give a no-comment interview.

6. At 14:50 on the 31st January 2016 the Defendant was charged with Possession of an unlicensed firearm, contrary to s.15(1) and (5) of the Firearms Law (2008 Revision).

7. From February 2016 to April 2016 there were some appearances in the Summary Court due to legal aid issues before counsel came on record for the defendant. A Short Form Preliminary Inquiry was held in the Summary Court on the 12th April 2016.

8. On the 12th April 2016 the Defendant was committed to the Grand Court and this Indictment was signed by the Deputy DPP on the 21st April 2016.

9. On the 29th April 2016 the Defendant made his first appearance in the Grand Court and the case was adjourned to the 5th May 2016 for arraignment.

10. On the 5th May 2016 the defendant appeared before the Grand Court and pleaded guilty to Possession of an unlicensed firearm, contrary to s.15(1) and (5) of the Firearms Law (2008 Revision) – the particulars being that on the 30th day of January 2016 at 131 Bankers Road, West Bay, Grand Cayman, Cayman Islands, the defendant had in his possession a firearm, namely a Berretta semi-automatic pistol with three rounds of .25 ammunition otherwise than in accordance with the terms of a Firearm User's (Restricted) licence.

THE LAW

11. Under s.39 of the Firearms Law, where a person pleads not guilty and then is found guilty after a trial, there is a minimum sentence of 10 years' imprisonment. However, where a person pleads guilty to Possession of an unlicensed firearm, there is, pursuant to s.39(2)(a) a minimum sentence of seven (7) years' imprisonment unless there are "exceptional circumstances relating to the offence or to the offender" which justify the Court not imposing a minimum of seven years' imprisonment.

EXCEPTIONAL CIRCUMSTANCES – SELF DEFENCE

12. In ***R v Zakir Rehman and Gary Dominic Wood***[1] the Court of Appeal of England and Wales gave the following guidance to sentencing judges in that jurisdiction when considering the issue of exceptional circumstances. The Court stated:

> *"The question of exceptional circumstances in that context has been considered in Buckland (2000) 2 Cr. App R (S) 217. In the light of that decision the court considered that it was not appropriate to look at each circumstance separately and then to conclude that it did not amount to an exceptional circumstance. A holistic approach was needed. There would be cases where there was a single striking feature which related either to the offence or the offender, which caused that case to fall within the requirement of "exceptional circumstances." There could be other cases where no single factor by itself would amount to an exceptional circumstance, but the collective impact of all the relevant circumstances truly made the case exceptional."*

This case has been applied and followed by the Courts in the Cayman Islands.

[1] [2005] EWCA Crim 2056; [2006] 1 Cr. App. R. (S) 77

13. Although counsel on behalf of the Defendant is relying on the Defendant's assistance to the police as an exceptional circumstance, the issue of whether self defence can also amount to an exceptional circumstance has been raised, and I have been invited by counsel to provide some guidance on this issue.

14. I am grateful to both the Deputy DPP Mr. Moran, and Defence counsel, Mr. Furniss, for their helpful written and oral submissions, and to Mr. Moran for his helpful review of the United Kingdom authorities which I have adopted and followed.

15. There is a clear body of case law, developed in England and Wales, which sets out the principle that the possession of a prohibitive firearm for the purpose of self defence, cannot amount to exceptional circumstances – no matter how serious or significant the perceived threat may be. A clear statement of the principle and reasons underpinning it are found in the final paragraph in the judgment of the Court of Appeal of England and Wales in ***R v. Shaun Smith***[2]. The judgment of Mr. Justice Field, (now a Judge of the Cayman Islands Court of Appeal (CICA)), stated:

> "*The possession of firearms poses a major threat to the security of society. Offences involving the use or threat of the use of guns are worryingly on the increase. It would, in the judgment of this court, be wholly contrary to the purpose of the Firearms Act if possession of a firearm, even without ammunition, for the purpose of warding off an armed attack, were to be upheld to constitute exceptional circumstances.*"

[2] [2007] EWCA Crim 1434

16. There has been a marked increase in serious gun crimes in the Cayman Islands over the past seven years, which has led to the loss of the lives of many young Caymanians and, further, has led to many businesses being subject to very serious armed robberies in which unlicensed firearms were employed. It would not be an understatement to say that guns have become a curse here in the Cayman Islands – leading to so much untold grief and anguish.

17. For the avoidance of any doubt I make the following statement. In the Cayman Islands the possession of an unlicensed firearm for the purpose of self defence or the defence of others cannot amount to exceptional circumstances "*relating to the offence or to the offender*" – to result in a sentence lower than the statutory minimum years of imprisonment. If the Courts were to decide otherwise, such a decision would inevitably lead to the further breakdown in law and order. The possession of illegal firearms is a major threat to the security of society in the Cayman Islands and can never be tolerated.

18. What is absolutely vital is for the community to assist the police in identifying, apprehending and bringing to justice persons who are in possession of, or have in their custody or control, unlicensed firearms or indeed any information in relation to unlicensed firearms and their locations.

19. Mr. Furniss, counsel for the Defendant, submits that exceptional circumstances should apply for the defendant in this case and makes the following submissions in support of this.

20. Mr. Furniss submits that it is well established that evidence leading to a conviction merits a substantial discount in sentence and therefore points out that this Defendant has given material and compelling evidence in a trial for the offence of murder – evidence that contributed to the conviction of the two defendants charged.

21. Mr. Furniss submits that, prior to the commencement of that murder trial, the Defendant's identity was revealed and threats were received by him. However, despite these threats the defendant was not swayed and continued in his resolve to give evidence for the prosecution in the murder trial. Mr. Furniss reminds the Court that this Defendant was cross-examined at some length by experienced leading counsel, but his evidence was accepted by the Court.

22. Mr. Furniss also submits that the defendant's determination and continued resolve to give evidence is a vital development in the Cayman Islands as many high-profile trials have been unable to proceed as a direct result of witnesses refusing to give evidence even after making earlier statements to the police.

23. Further, Mr. Furniss submits that this case is unusual, in that, this Defendant was at no time identified by the police as a suspect in the murder of the deceased in that trial, nor is the Defendant facing any penalty for that offence of murder.

24. Mr. Furniss submits that, in summary, the facts for the Court's consideration are that the charges against this Defendant arose because the murder trial had been delayed – allowing time for him to be identified as a Crown witness, following which he was threatened and, therefore, feared for his life and sought to protect himself. Following his arrest and remand in custody there were further threats against this defendant's life. Therefore, for all these reasons this Defendant, Justin Alvin Ebanks, deserves to receive a substantial discount.

25. In England, assistance to law enforcement agents is governed by the **Serious Organised Crime and Police Act 2005** (SOCPA). In the Cayman Islands we do not have any corresponding legislation. This is legislation that the Attorney General's Chambers may wish to consider.

26. The English Court of Appeal in the case of ***R v. P and Derrick Stephen Blackburn***[3] reviewed the case law in relation to Defendants assisting investigations and prosecutions – both before the SOCPA and since. This Court notes that the UK statute did not include any direct provisions suggesting the level of discount appropriate to be provided to the Defendant who entered into and performed an agreement to assist the prosecution. At Chapter E 1.13 of ***Blackstone's Criminal Practice 2016***, the learned editors state that s.73 and 74 of the SOCPA are silent as to the appropriate extent of any reduction to reflect actual or promised assistance by the offender. The former Lord Chief Justice, Lord Judge, in ***R v. P and Derrick Stephen Blackburn*** stated that the pre SOCPA Court of Appeal authorities are still relevant despite the introduction of the statutory scheme.

27. The learned editors of the ***Archbold 2016*** review the case law provided other than in accordance with the new SOPCA 2005 Act. At paragraph 5-139 the learned editors of ***Archbold*** refer to ***R v. P and Derrick Stephen Blackburn*** and ***R v. Sinfield***[4] and state that an offender who assists the police by giving information that leads to the apprehension and prosecution of his associates or of other offenders may expect a discount – possibly substantial – from his sentence.

[3] [2008] 2 Cr. App R. (S) 16
[4] 3 Cr App R (S) 258

28. In ***R v. Michael King***[5] the English Court of Appeal set out some guidelines regarding the appropriate discounts for those who assist the authorities in their investigation and prosecution of offenders. Stating that it would be impossible to lay down any hard and fast rule, the then Lord Chief Justice, Lord Lane, said:

> "*The amount by which that figure should be reduced would depend on a number of variable features; the quality and quantity of the material disclosed ... its accuracy and his willingness to confront other criminals or give evidence against them.*"

The Lord Chief Justice, giving the opinion of the Court of Appeal stated that there should be an expectation of some substantial reduction of what otherwise would be the proper sentence and suggested that the amount would vary between a half and two-thirds of the appropriate sentence.

29. Some three years later the English Court of Appeal in ***R v. Sivan***[6] confirmed that it was a well-established feature of sentencing practice that credit should be given to a Defendant in certain circumstances for assistance or information given to the authorities. The Court of Appeal said that the matters that should be taken into account are:

> "*The nature and the effect of the information, did it bring to justice persons who otherwise would not have been brought to justice, and the degree of the assistance provided, namely, was the offender prepared to give evidence, and, finally, the degree of risk to which the defendant had exposed himself and his family.*
>
> *Within those limits the judge must bring himself to tailor the sentence so as to punish the Defendant, but at the same time reward him as far as possible for the help he had given, in order to demonstrate to offenders that it was worth their while to disclose the criminal activities of others for the benefit of the law-abiding public in general.*"

[5] 7 Cr. App R. (S) 227
[6] 10 Cr. App R. (S) 282

30. Finally, in considering the appropriate reduction, there are authorities to suggest that the judge should consider the reduction for the assistance separate and apart from any reduction for a plea of guilty. However, in ***R v. Sehitoglu*** [7] the English Court of Appeal stated that the sentencer should determine the final sentence by calculating a single discount – taking into account all the relevant factors including the plea of guilty and the assistance given to the authorities. I follow and adopt this approach.

31. In ***R v. P and Blackburn*** the Lord Chief Justice, Lord Judge, endorsed the totality principle when it came to sentencing in cases of this nature and stated that the normal level for reduction would continue to be a reduction of between a half and two-thirds.

32. The Grand Court of the Cayman Islands has followed and applied the principles and guidelines for the sentencing of those defendants who assist investigations and prosecutions. In ***R v. Dillon***[8], the Grand Court reviewed and adopted the Judgment of the then President of the English Court of Appeal, Lord Judge in ***Blackburn***. At paragraph 22 Lord Judge stated that those who assist the law enforcement authorities will receive reduced sentences in what he described as a *"longstanding and entirely pragmatic conv*ention." Lord Judge went on to state at paragraph 22,

> *"The stark reality is that without it major criminals who should be convicted and sentenced for offences of the utmost seriousness might, and in many cases, certainly escape justice*."

And Lord Judge continued:

> *"The solitary incentive to encourage cooperation is provided by a reduced sentence and the common law and new statute (in the UK) have accepted that this is a price worth paying to achieve the overwhelming and recurring public interest that major criminals should be caught and prosecuted to conviction*."

[7] [1998] 1 Cr. App R. (S) 89 CA
[8] (2014) 2 CILR Note 13

33. In the reported Note of the ***R v. Dillon***, the Learned Editors of the CILR set out the guidelines as to how one should calculate a discount. In that case, this Court decided that the defendant, ***Dillon***, was entitled to a very substantial discount in his sentence for reasons set out in the Note which sets out the principles to be applied when Defendants assist the authorities in the Cayman Islands:

> "***Criminal Procedure—sentence—mitigation—assistance to police***
>
> "*...The defendant was entitled to a very substantial discount from his sentence as his assistance to the police in identifying the other parties and his contributions to the Crown's case against them had secured their convictions at the cost of placing him and his family at great personal risk. In calculating how much discount would be applied, the court would consider the circumstances of the case, including the degree of assistance provided; the quality, quantity and accuracy of the material disclosed; the defendant's willingness to give evidence at trial; whether the evidence led to convictions that would not otherwise have been obtained; the seriousness of the other parties' offences; whether the convictions led to the break-up or disruption of major criminal gangs; and the amount of risk to which the defendant exposed himself and his family (*R. *v.* King *(1985), 82 Cr. App. R. 120, applied;* R. *v.* Sivan *(1988), 87 Cr. App. R. 407, applied; and* R. *v.* P.*, [2008] 2 All E.R. 684,* dicta *of Judge, P. applied). The purpose of the reduction was to encourage and reward defendants for helping to bring other criminals to justice—particularly where those criminals may not otherwise have been caught. This would typically justify a reduction of one-half to two-thirds of the sentence. Although in some extreme cases the court may consider a reduction of three-quarters of the sentence, it would never find that the defendant would not be required to serve any sentence at all due to his assistance (*R. *v.* P.*, [2008] 2 All E.R. 684,* dicta *of Judge, P. applied). This reduction should not be calculated separately from other reductions (*e.g. *for a guilty plea) but the court should calculate a single discount including all factors (*R. *v.* Sehitoglue,*(sic) [1998] 1 Cr. App. R. (S.) 89, applied). The defendant in this case would therefore be sentenced to 3 years' imprisonment for the first count of robbery, 18 months' imprisonment for the second count of robbery and 18 months' imprisonment for possession of an imitation firearm, all to run concurrently.*"

34. Since ***R v. Dillon*** was decided the new **Cayman Islands Sentencing Guidelines (CISG 2015)** were published in October 2015. Principle 11 at page 19 of the **General Principles** contained in the **CISG 2015** sets out the guidelines in relation to "***Reduction in Sentence for Assistance to the Prosecuting or Enforcement Authorities***" which reads:

> *"The Court may give credit to an offender for ready co-operation with the prosecuting or enforcement authorities. Unlike credit for a guilty plea, this credit cannot be calculated in terms of a sliding scale related to timeline of the earliest opportunity and will, as with other mitigating factors, depend on the particular circumstances of the individual case and any discount should reflect the extent and nature of the assistance given or offered*[9].
> *In exceptional circumstances the cooperation and assistance with authorities could justify the imposition of a non-custodial sentence*[10].
> *In the case of R v Blackburn [2007] EWCA Crim 2290*[11], *the Court of Appeal (E&W) held that only in the most exceptional case, would the appropriate level of reduction exceed three quarters of the total sentence which would otherwise be passed, and the normal level would be a reduction of somewhere between one half and two thirds of that sentence."*

35. In this case the Court has been greatly assisted by the Statement of Inspector Sean Bryan of the RCIPS. The Court notes that Inspector Bryan appeared on television on the 2nd and 8th July 2015 appealing for witnesses to the murder of Jason Powery. Despite the fact that there were a number of persons in the Martin Drive area at the time of the shooting, only this Defendant, Justin Alvin Ebanks, and one other person came forward to give evidence at the trial which led to the conviction of Justin Ramoon and Osborne Douglas.

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[9] Burrell v R 2012 (1) CILR N13; McNulty v R 1990-91 CILR 235; Campbell v R 1997 CILR N15

[10] R v Scott (CA) 2007 CILR 175

[11] (albeit interpreting Sections 71 to 75 of the Serious Organised Crime and Police Act 2005 which give statutory foundation to discounts for assistance to authorities) Applied in R v Carter, Ebanks, Liberal (Unreported Grand Court) Indictment 85/13 per Quin J para 93-100

36. It is clear that the Defendant received a number of threats which had a seriously detrimental effect on his health and his wellbeing. Inspector Bryan states:

> *"Justin Alvin Ebanks was a crucial witness in this case **(R v. Ramoon & Douglas)**. In spite of incredible pressure, both implied and real; he appeared in the stand, was a witness of truth, even to his own detriment. His has shown incredible courage and honesty in the matter of **R v. Ramoon & Douglas**."*

Inspector Bryan also confirmed that the Defendant has not been given any promises or reward.

37. Accordingly, I am satisfied that the sustained assistance, over a considerable period of time from this defendant, Justin Alvin Ebanks, which was provided to the authorities under considerable threat and stress, viewed along with the accuracy of the evidence disclosed, which all led to the conviction of two offenders for murder, does constitute exceptional circumstances.

38. I note Inspector Bryan's evidence is that this Defendant has shown incredible courage and honesty and I agree with Mr. Furniss' submissions that, in light of all the circumstances facing this Defendant before he gave his evidence in the trial of ***R v. Ramoon & Douglas***, he deserves a substantial reduction in his sentence.

39. In addition, I take into account his early admission and his early guilty plea. I also note that this Defendant is a young man of 22 years of age who has only one previous conviction – that, for inflicting GBH – for which he was sentenced on the 2nd July 2014 in the Summary Court and received a Probation Order.

40. Finally, I take into account the reference from Captain Marvin's Watersports – dated the 31st May 2016 – which confirms that the owner, Ms. Belinda Ebanks, has known the Defendant for over 15 years and has always known him to be a well-mannered young man. She confirms that the Defendant has been employed with Captain Marvin Watersports since the 1st December 2012 as a deckhand and, during all of this time the Defendant has never had any problems with his co-workers or customers and he was well liked by all employees and customers.

CONCLUSION

41. For all the above reasons I impose a sentence of eighteen (18) months' imprisonment with time spent in custody to be taken into consideration.

42. I order that the firearm and ammunition be destroyed forthwith.

Dated this the 27th September 2016

Honourable Mr. Justice Charles Quin Q.C.
Judge of the Grand Court