

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
3

4 INDICTMENT NO: 0093/2011
5

6
7 THE QUEEN

8
9 V

10
11 ROBERT AARON CRAWFORD
12



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14 **Appearances:**

For the Crown:

15 **Ms. Tricia Hutchinson, Senior Crown Counsel, on**
16 **behalf of the DPP**

17
18 **Defence Counsel:**

19 **Mr. Nicholas Hoffman of Priestleys on behalf of the**
20 **Defendant**

21 **Before:**

Honourable Mr. Justice Charles Quin

22 **Sentencing Submissions Heard:**

15th January 2013
23

24 **Preamble**

25 *This Ruling is distributed with the strict understanding that, in any report of it, the anonymity of*
26 *the police officers must be strictly preserved, that is, the officers may not be identified by name,*
27 *badge number, rank or unit.*

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29 **SENTENCE RULING**
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- 32 1. On the 31st October 2012 the Defendant was found guilty of one charge of
33 possession of an unlicensed firearm contrary to s.15(1) and s.15(5) of the Firearms
34 Law (2008 Revision). The particulars of the offence are that the Defendant, on
35 Friday the 18th day of November 2011, at the Esterley Tibbetts highway, in the
36 vicinity of the Island Heritage Roundabout had, in his possession a firearm, namely

1 a Stock German Luger containing a magazine with six 9mm Luger rounds, except
2 under and in accordance with the terms and conditions of a Firearm User's Licence.

3 *SUMMARY OF FACTS*

4 2. On the evening of the 18th November 2011 PC Wayne Gordon was on duty at the
5 Grand Pavillion complex when he received information from two individuals that
6 the Defendant, who was in a vehicle with another male on the complex, had a gun.
7 Upon receipt of this information PC Gordon went over to the Defendant and
8 engaged him in conversation. PC Gordon asked the Defendant to turn off the
9 ignition and get out of the car. The Defendant did not comply with the police
10 officer's request. In the course of that exchange the Defendant began to drive away.
11 PC Gordon tried to stop the Defendant, who was the driver, from driving away and
12 shouted to other officers to stop the Defendant's car because he had a gun.

13 3. USG Officers Rabess and Bradley gave chase to the Defendant who turned left out
14 of the carpark and drove at high speed towards and into the Gecko Link roundabout,
15 before turning onto the Esterley Tibbetts Highway. The Defendant began to lose the
16 police car, but he subsequently crashed the vehicle he was driving into the Island
17 Heritage roundabout on the Esterley Tibbetts highway.

18 4. The Defendant and the other male in the vehicle immediately ran away from the
19 scene but Officer Bradley gave chase after the Defendant.

20 5. PC Bradley saw the Defendant pull a gun out of his waist and shortly afterwards saw
21 the Defendant throw the gun into the bushes. PC Bradley eventually apprehended
22 the Defendant, who, upon being apprehended, immediately said, "*That guy had a*
23 *gun*" – meaning, the passenger in his vehicle had a gun.



1 *SUBMISSIONS BY THE CROWN*

2 9. Senior Crown counsel, Ms. Hutchinson, helpfully reviewed a number of cases heard
3 before the Grand Court and the Cayman Islands Court of Appeal.:

4 i. *R v. Robert Terry* Indictment 46/2011 and CICA 29/11: In this case the
5 Defendant, who was 26 years of age, pleaded guilty to possession of a 9
6 mm Glock pistol. He was apprehended, with others in a car park on the
7 Seven Mile Beach trying to switch the licence plates on a vehicle. The
8 car in question contained a suitcase with a mask, a shoulder strap, a
9 holster, a pair of gloves, two straps and one green and brown bag.
10 There is evidence that, in addition to the possession of the unlicensed
11 firearm, based on the paraphernalia in the car, the Defendant was
12 planning to carry out other criminal offences. The Grand Court
13 imposed a sentence of 12 years of imprisonment, which the CICA
14 reduced to 9 years.

15 Defence counsel in the case now before the Court, Mr. Hoffman,
16 submits that *R v. Robert Terry* was a much more serious offence, due
17 to the discovery of the gloves and the mask.

18 ii. *R v. Rohan Marshall* Indictment 21/2009: This 29-year old Defendant
19 pleaded guilty, on the 8th March 2010, to possession of a .38 firearm
20 and was sentenced to 7 years imprisonment.

21 iii. *R v. Leon Hydes* Indictment 28/2008: This 27 year old Defendant
22 pleaded guilty on the 3rd October 2008 to possession of a Pietro Beretta
23 handgun with magazine and ammunition. The firearm was found



1 hidden in a sock, which was in the Defendant's presence, and the
2 firearm was loaded. A sentence of 8 years imprisonment was upheld by
3 the CICA in CICA #26/2008 on the 2nd September 2009.

4 Defence counsel in the case now before the Court submits that the
5 Defendant Hydes had many more previous convictions than this
6 Defendant, Aaron Crawford, and that is a matter that should be taken
7 into account by this Court.

8 iv. ***R v. Christopher Kelvin Ebanks*** Indictment 86/2007: This 21 year old
9 Defendant was found guilty, on the 6th October 2007, of possession of
10 an unlicensed firearm, namely a silver handgun, and sentenced to 10
11 years imprisonment.

12 Again, counsel for the Defendant in the case now before this Court
13 points to the fact that the Defendant, Ebanks, had seventeen previous
14 convictions.

15 v. ***Richard Parsons v. R*** SCA #17/11: This 22 year old Appellant had
16 pleaded guilty in the Summary Court to possession of a 12-gauge
17 shotgun and was initially sentenced to a period of imprisonment of 9
18 years, which was reduced by the Chief Justice to 7 years. Mr. Parsons
19 was cooperative with the police and pleaded guilty.



20 10. Senior Crown counsel points out that, in the case before this Court, this was a "*lethal*
21 *barrelled weapon*", a loaded firearm with six rounds of ammunition. The Defendant
22 did not possess a firearm users' licence.

1 11. The submission is also that, although there is no evidence of any intention to commit
2 any further offences, possessing the firearm itself must be the Court's focus – in
3 light of the “*massive increase in offences under the Firearms Law.*” On this point,
4 Senior Crown counsel submits that the danger to be considered is that the firearm
5 could fall into the hands of someone who could possess the necessary intent to
6 commit further offences.

7 12. Counsel also submits that, again, although there is no evidence of any intention to
8 commit any further offences, the Defendant made serious and determined efforts to
9 evade apprehension.

10 13. Senior Crown counsel also points that although this Defendant does not have any
11 serious convictions, he is not a man of good character.

12 14. Counsel submits that the Court must also consider the lengthy Social Inquiry Report
13 (SIR) which raises serious concerns as, based on the historical conduct of the
14 Defendant, his risk of re-offending is high.

15 15. Counsel points the Court to the fact of sentences ranging between 7 and 9 years are
16 after guilty pleas, and asks the Court to consider “*a sentence north of the 10-year*
17 *mark*” to act as a deterrent to those in society who would perpetrate these firearm
18 offences.



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SUBMISSIONS BY THE DEFENCE

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16. Defence counsel stated that the Defendant is not raising any exceptional circumstances but would ask the Court to take an holistic view of the offence in question and the Defendant’s age of 20 years.

17. Mr. Hoffman also speaks to the issue of a deterrent sentence and submits that the legislation itself has an inbuilt deterrent which removes the discretion from the Judge and enjoins the Court to provide the minimum of 10 years which, itself, has an effective deterrent result.

18. Mr. Hoffman submits that there is no suggestion that the firearm was going to be used for other offences or for any ulterior motive. He also adds that, save for the fact that the firearm was loaded, there is an absence of any further aggravating features.

19. The Defendant has one previous conviction for handling stolen goods on the 25th February 2010 and also one conviction for breach of probation.

20. Mr. Hoffman asks the Court to “*place front and centre this young man’s age*” and relies on the SIR prepared by Marvo Callender on the 3rd January 2013. Ms Callendar points out that the Defendant was raised in a dysfunctional environment. His mother used drugs and his father had several prison sentences for illegal drugs. In addition, it is apparent that the Defendant spent a considerable amount of time smoking ganja with his family members and friends – which inevitably created his substance abuse dependency and meant that he made friends with the wrong persons.



1 21. Mr. Hoffman submits that the Defendant did not receive any parental guidance. In
2 fact, Mr. Hoffman submits that the activities of his parents made matters even worse
3 for the Defendant – as he received little or no support to change his antisocial and
4 unlawful conduct from the very persons, namely his parents, who are supposed to
5 care for him and guide him as a young man. Consequently the Defendant had a
6 complete absence of a moral compass and he grew into a young adult who acted on
7 the spur of the moment and who did not know how to deal with difficult
8 circumstances.

9
ANALYSIS AND CONCLUSION

10 22. The Court is pleased to record that another illegal firearm and as well as ammunition
11 have been taken off the streets. The RCIPS officer who gave chase must be
12 commended for his quick thinking and quick action in apprehending the Defendant
13 and recovering the gun and ammunition, despite the Defendant’s persistent efforts to
14 avoid detection.

15 23. The SIR makes it clear that the Defendant still denies the offence and continues to
16 submit that he was unaware that he was being chased by the police – as he was never
17 the driver of the vehicle. This, regrettably, is contrary to all the evidence, and makes
18 it extremely difficult for defence counsel to make any further mitigating submissions
19 on behalf of the Defendant.

20 24. The SIR states that the Defendant’s overall risk of reoffending within one year of
21 release is assessed as very high, and this paints a very pessimistic picture.



1 25. Both counsel refer to the English Court of Appeal decision of *R v. Avis et al* [1998]
2 1 Cr. App. R. 420, and the Judgment of the then Lord Chief Justice, Lord Bingham
3 who set out the following guidelines:

4 “*The appropriate level of sentence for firearm offences will depend on all the*
5 *facts and circumstances relevant to the offence and the offender. It will usually*
6 *be appropriate for the sentencing court to ask itself a series of questions:*

7 (1) *What sort of weapon is involved?* *Genuine firearms are*
8 *more dangerous than imitation firearms. Loaded*
9 *firearms are more dangerous than unloaded firearms.*
10 *Unloaded firearms for which ammunition is available*
11 *are more dangerous than firearms for which no*
12 *ammunition is available. Possession of a firearm which*
13 *has no lawful use (such as a sawn-off shotgun) will be*
14 *viewed even more seriously than possession of a*
15 *firearm which is capable of lawful use.*

16 (2) *What (if any) use has been made of the firearm?* *It is*
17 *necessary for the Court, as with any other offence, to*
18 *take account of all circumstances surrounding any use*
19 *made of the firearm – the more prolonged and*
20 *premeditated and violent the use, the more serious the*
21 *offence is likely to be.*

22 (3) *With what intention (if any) did the Defendant possess*
23 *or use the firearm?* *Generally speaking, the most*
24 *serious offences under the Act are those which require*
25 *proof of a specific criminal intent (to endanger life, to*
26 *cause fear of violence, to resist arrest, to commit an*
27 *indictable offence). The more serious the act intended,*
28 *the more serious the offence.*

29 (4) *What is the Defendant's record?* *The seriousness of*
30 *any firearms offence is inevitably increased if the*
31 *offender has an established record of committing*
32 *firearm offences or crimes of violence.”*



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34 26. In *R v. Avis et al* Lord Bingham went on to state:

35 “*Given the clear public need to discourage the unlawful possession and use of*
36 *firearms both real and imitation, and the intention of Parliament expressed in a*
37 *continuing increase in maximum penalties, the court should treat any offence*
38 *against the provisions of the Firearms Act 1968 as amended, as serious.”*

1 27. The Cayman Islands Court of Appeal in the case of *Chavarria-Atily v. R* [2009]
2 CILR 118 applied Lord Bingham’s dicta in *R v. Avis et al.* The Acting President
3 Forte JA set out Lord Bingham’s guidelines and added the following words at
4 paragraph 10 of his Judgment:

5 *“In the Cayman Islands, it has been the massive increase in offences under the*
6 *Firearms Law that has led Parliament to enact the minimum sentences in*
7 *respect of those offences, while at the same time making special provision for*
8 *cases of exceptional circumstances. The mere possession of a firearm, even*
9 *without any intention to use it for a criminal offence, can still be a danger to*
10 *the public for the reason that it could get into the hands of someone who does*
11 *have that intent.”*

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13 28. In the case before this Court I follow the Court of Appeal in adopting Lord
14 Bingham’s guidelines and ask myself the same questions.

15 i. What sort of weapon was involved?: The weapon in this case was a
16 Luger handgun of some antiquity. However, it was loaded with live
17 ammunition and is therefore more serious than an unloaded firearm. As
18 the Acting President Forte JA stated in *Chavarria-Atily v. R*:

19 *“The mere possession of a firearm, even without any intention*
20 *to use it for a criminal offence, can still be a danger to the*
21 *public.”*

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23 ii. What (if any) use has been made of the firearm?: There is no evidence
24 of any premeditated use for this particular firearm.

25 iii. With what intention (if any) did the Defendant possess or use the
26 firearm?: There is no evidence of any specific criminal intent to
27 endanger life or to cause fear of violence. However, possession of a
28 loaded firearm is, by its very nature, a very serious criminal offence. In



1 order to discourage the unlawful possession of illegal firearms, the
2 Legislative Assembly laid down a minimum sentence of 10 years
3 imprisonment.

4 iv. What is the Defendant's record? The Defendant has no previous
5 convictions for any firearms offences.

6 29. I take into account that the Defendant is a young man of 20 years of age. I also take
7 into account the fact that the Defendant has no previous convictions for firearm
8 offences or offences of violence.

9 30. Accordingly, I sentence the Defendant to ten (10) years imprisonment pursuant to
10 s.39(2)(b) of the Firearms Law, with time spent in custody to be taken into
11 consideration. I also order the destruction of the weapon and the ammunition.

12 31. Ten years in prison is a long time and must act as a deterrent to others contemplating
13 such an offence. For this Defendant, who is only 20 years of age, I hope that he will
14 make full use of the opportunities which will be afforded to him for rehabilitation at
15 HMPS Northward in order to equip himself with skills which he can use to lead a
16 crime-free and productive life in the many years which will lie ahead of him after his
17 release.

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19 **Dated this the 22nd January 2013**

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23 **Honourable Mr. Justice Charles Quin**
24 **Judge of the Grand Court**

