

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

4 INDICTMENT NO: 0020/2015

5
6 THE QUEEN

7
8 v.
9

10 JORDAN DARL MANDERSON
11 &
12 AUSTIN LLOYD JACKSON
13



14
15 INDICTMENT NO: 0016/2014

16
17 THE QUEEN

18
19 v.
20

21 JULIA ELIZABETH LEWIS
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24 **Appearances:**

25 Mr. Greg Walcolm on behalf of the DPP for
26 the Crown (Ind. 20/15)

27 Ms. Tricia Hutchinson on behalf of the DPP for
28 the Crown (Ind. 16/14)

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30 Mr. Laurence Aiolfi of Samson and McGrath
31 for Defendant Jordan Manderson

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33 Mr. Crister Brady of BRADY for Defendant
34 Austin Jackson

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36 Mr. Nicholas Dixey of Nelson & Co. for
37 Defendant Julia Lewis
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39 **Before:**

Justice Michael Mettyear (Actg.)

40 **Sentence Hearing:**

9th February 2016

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42 **Delivery of Decision:**

9th February 2016
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HEADNOTE

*Criminal Law – Possession of an Unlicensed Firearm and Ammunition –
Statutory minimums following trial and a guilty plea – Aggravating and Mitigating
factors – Exceptional circumstances.*



SENTENCE JUDGMENT

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1. These three defendants face sentence in the following circumstances.

2. Jordan Manderson and Austin Jackson fall to be sentenced after a judge alone trial¹, before me, during which they were convicted of:
 - i. Count 1: Possession of an Unlicensed Firearm contrary to s.15(1) and 15(5) of the Firearms Law (2008 Revision). The Particulars of this offence are that the Defendants, on the 16th day of August 2013, at Hirst Road, Bodden Town, Grand Cayman, had in their possession a firearm, namely a black hi-point .380 pistol, not under or in accordance with the terms of a Firearms Users (Restricted) Licence.

 - ii. Count 2: Possession of an Unlicensed Firearm (Ammunition) contrary to s.15(1) and 15(5) of the Firearms Law (2008 Revision). The Particulars of this offence are that the Defendants, on the 16th day of August 2013, at Hirst Road, Bodden Town, Grand Cayman, had in their possession, ammunition, that is, .380 auto rounds, not under or in accordance with the terms of a Firearms Users (Restricted) Licence.

3. Julia Lewis pleaded guilty² to count 1 and gave evidence against her co-defendants at their trial.



¹ Judge Alone trial: 4th to the 13th November 2015.
² Julia Lewis pleaded not guilty on the 9th May 2014. Trial proceedings partially commenced on the 29th September 2014. On the following day Julia Lewis requested a Goodyear indication and, on the 1st October 2014 – having received an indication of 7 or 8 years from Mangatal J. (Actg., as she then was) – pleaded guilty

1 *SUMMARY OF THE FACTS*

2 4. A summary of the facts of the offences I take from my judgment in the trial at the point
3 where I was discussing the evidence given by Lewis:

4 *“Accepting, for a moment the broad thrust of her case:*

5 *She was a woman who had done a day’s work on a perfectly ordinary day. She was*
6 *picked up from work by two men – only one of whom she was expecting. Her plan*
7 *was to get home, relax for a short while and then pick up her children. The three*
8 *were in her car.*

9 *On the journey a gun was produced in the car and moved around. Within a short*
10 *time the car was blocked by a police car, and then, having escaped that block, was*
11 *involved in an accident.*

12 *She was in her car with a gun she had unwillingly touched and she quickly – it*
13 *must have been a split second – threw it out of the car window.*

14 *Outside the car she could see that the gun was there to be found if left in that*
15 *position and, at the urging of Manderson, she panicked, picked it up and, in due*
16 *course, threw it away.*

17 *She said that she did what she did to distance herself from the gun because she*
18 *knew she was in trouble and didn’t want to go to prison.”*

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20 5. In due course, I indicated that this was the account that I accepted. I add this because it
21 has been a feature of the mitigation put forward by her counsel, Mr. Dixey, on her
22 behalf: She did in her account say that she had received a threat while she was in the
23 car. However, that didn’t feature large in her evidence and she certainly wasn’t putting
24 it forward as a reason for doing what she did.

25 6. For present purposes it is necessary to continue in summary the story of what happened
26 thereafter.

27 7. Jackson was arrested at the scene of the collision and falls out of the picture.



1 8. Lewis walked off with the gun into the nearby shopping village and put the gun in a
2 waste bin. Soon after, the gun was retrieved by a security guard and she retrieved it.
3 She then moved to a more remote spot in the village where she threw it into some
4 bushes on some rough ground.

5 9. In the meantime, Manderson had also arrived at the shopping village. He was seen by
6 Kanesha Hurlstone who picked him up in her vehicle. Lewis joined them at
7 Manderson's request, and they drove round the village to near the remote spot where
8 the gun had been thrown and Lewis pointed out to him where it was. They left that
9 area and soon afterwards Lewis and Manderson left the vehicle and separated. Lewis
10 went to where she was living. Manderson, who had tried to disguise his clothing, was
11 later arrested nearby to where the gun had been thrown.

12 10. I have no doubt that the purpose of the trip in the vehicle was for Lewis to point out to
13 Manderson where the gun was. I have no doubt that she at least suspected that he
14 would try to recover it and, I do not doubt that it was his intention to seek to recover it.

15 11. All three Defendants face mandatory minimum sentences, that is, ten (10) years'
16 imprisonment in the case of Manderson and Jackson, and, 7 years in the case of Lewis,
17 because of her guilty plea, unless I find that there are exceptional circumstances
18 justifying a departure from the mandatory minimum.



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THE PERSONAL CIRCUMSTANCES OF THE DEFENDANTS

Jordan Manderson

12. Manderson is 22 years old. He is in a relationship which, comparatively recently, produced a son. I have been provided with a Social Inquiry Report (SIR) and various psychological reports from Dr. Von Kirchenheim. I have read them all. He has five previous convictions, but none of them for serious offending. He is said to have pro-criminal attitudes and is assessed as being at a very high risk of further offending

Austin Jackson

13. Jackson is 22 years of age. I have been supplied with an SIR which I have read. He has a large number of previous convictions and has served custodial sentences for Grievous Bodily Harm (GBH) Wounding and Robbery. He is assessed as being a very high risk of re-offending.

Julia Lewis

14. Lewis is 27 years old. She has two children. She has two previous convictions – neither of them serious. I have an SIR in her case and I have read it.





1 *EXCEPTIONAL CIRCUMSTANCES*

2 15. I now turn to the question of exceptional circumstances.

3 16. I accept and apply the test set out in the well-known case of *R v Rehman*³. I have
4 considered a number of other authorities that appear in the bundles that have been
5 supplied.

6 *Exceptional Circumstances Submissions: Manderson*

7 17. In the case of Manderson, Defence counsel, Mr. Aolfi, submits that there are three
8 factors that should persuade me to find exceptional circumstances.

9 18. *Psychological Evidence*: Firstly, he relies on the psychological evidence that the
10 defendant's mental functioning is perhaps at the high end of the "mentally retarded
11 range" and that his average mental functioning is that of an eight year old. These are
12 important considerations which I accept without reservation.

13 19. On the other hand the Defendant Manderson has held, for a considerable period,
14 responsible employment as a tourist ship Captain – dealing, on a frequent, if not daily,
15 basis, with large numbers of tourists from all over the world.

16 20. He also functioned at a perfectly reasonable level when giving evidence on his own
17 behalf during the trial.

18 21. It is an unfortunate truism that many people who commit crimes have mental health or
19 developmental problems. There is nothing in the circumstance of this defendant's
20 problems that would justify me in finding exceptional circumstances.

³ (2006) 1 CR App R (S) 77

1 22. Youth: Secondly, counsel refers to the defendant's youth. Manderson was just 20 years
2 of age at the time these offences were committed. Mr. Aolfi skilfully combined this
3 with his earlier point, but he has not, I am afraid, persuaded me that there is anything
4 which would justify me taking the course he urges upon me.

5 23. Limited Role: Finally counsel turns to the facts of the case and submits that the
6 defendant had a limited role. I cannot accept this. It is not possible to say which of the
7 two men took the gun into the car or who owned it. There is no proper basis for
8 distinguishing between them as to their conduct in the car. However, so far as conduct
9 after the collision is concerned, it was Manderson, not Jackson, who sought out the gun
10 and, in my view, intended to try to recover it. There are no exceptional circumstances.

11 *Exceptional Circumstances Submissions: Jackson*

12 24. In the case of Jackson Defence counsel, Mr Brady, in effect, accepted that there was
13 nothing that could count as an exceptional circumstance in relation to this Defendant.
14 Counsel was understandably concerned that the sentence might be above the statutory
15 minimum of ten years' imprisonment because of this Defendant's terrible record.

16 25. My view is that, although it might be possible to justify a sentence longer than the
17 statutory minimum, he is still very young, and I have decided it would be
18 inappropriate, in the circumstances, to do so.



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Sentences for Manderson and Jackson

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26. I therefore impose, for Manderson and Jackson, the statutory minimum sentence that I can impose, and that is a sentence of ten (10) years' imprisonment on each of the counts on the Indictment – with the sentences running concurrently. Time spent on remand will count toward those sentences.

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27. In relation to Manderson, defence counsel invited me to take into consideration the time Defendant Manderson spent on an electronically monitored (24-hour) curfew. Counsel before me confirmed that the law in the Cayman Islands is that I do not have to take this time into consideration but I can do – by applying the same percentage discount as would apply in the U.K.

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28. I therefore order that 50 percent of the time Defendant Manderson spent on an electronically-monitored curfew should be deducted from his sentence.

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1 *Exceptional Circumstances Submissions: Lewis*

2 29. The position with the Defendant Lewis is very different.

3 30. The initial position taken on her behalf was that exceptional circumstances arose
4 because Defendant Jackson had threatened to kill her during the car journey; because
5 this Defendant never wanted any dealings with the gun; because she was acting in fear
6 of both Jackson and Manderson; because this Defendant's contact with the gun could
7 be measured in seconds rather than minutes; because she was trying to dissociate
8 herself from the gun; because, although she ought to have surrendered the gun to the
9 police, she was making a rash judgment whilst in a state of shock and panic.

10 31. Those essentially were the submissions that were made in front of Mangatal J Actg. (as
11 she then was) at a hearing which took place from the 30th September 2014 to the 1st
12 October 2014.

13 32. Mangatal J had been persuaded to consider exceptional circumstances submissions by
14 defence counsel in the expectation that a favorable ruling would produce a plea of
15 guilty. However, in fact, after a substantial period of argument, Mangatal J ruled that
16 there were no exceptional circumstances and said:

17 *"In my view, and inevitably the conclusion I have reached, allowing the plea of*
18 *guilty, a sentence of seven or eight years of imprisonment would be imposed."*

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20 33. Despite that unfavourable ruling, the Defendant Lewis pleaded guilty on the 1st
21 October 2014, and sentence was adjourned.



1 34. Defence counsel, Mr. Dixey, as he did before Mangatal J., continues to rely on those
2 same submissions, but adds two further features. Firstly, that the defendant Lewis took
3 a brave and unusual step of giving evidence against her co-accused. Secondly, that the
4 Defendant Lewis gave evidence against the co-defendants in the expectation that the
5 Crown would, on her having given such evidence against the others, support the
6 submission of exceptional circumstances. Mr. Dixey states further that the expectation
7 arose out of a long letter sent by Mr. Dixey to Crown counsel, Ms. Hutchinson, on the
8 25th April 2014 and, also from Ms. Hutchinson's response of the 7th May 2014.

9 35. The Crown have today stuck to their word and supported, not resisted, Mr. Dixey's
10 submission that the new circumstances justify a finding of exceptional circumstances.

11 36. I am persuaded by these factors, in combination, that a finding of exceptional
12 circumstances is appropriate in relation to Defendant Lewis. I am particularly
13 influenced by the factors that have arisen since the matter was last before Mangatal J.

14 37. I formed a very positive view of this witness – Defendant Lewis. She seemed to me at
15 the time ambitious and optimistic, and, I am quite sure that she regrets her part in this
16 episode.

17 38. Nevertheless her conduct after the collision was very serious. She could have told the
18 truth from the outset. She could have walked away from the collision – leaving the gun
19 where it was. But, instead, she chose to pick it up and hide it. That was bad enough,
20 but what she did next was much, much worse. She showed Manderson where the gun
21 was. She must, in my judgment, have known why he wanted to know where it was.
22 She must have suspected at least that he would try to recover it. Had things worked out
23 differently, it might still have been on the streets – posing a threat to others by its
24 possible use.

1 39. I have been referred to the case of *R. v. Sarah Louise Jones*⁴, a decision of the
2 England and Wales Court of Appeal. The case bears some similarities in the fact that
3 the defendant was in circumstances which would cause anybody to have some
4 sympathy with her, as I do with this Defendant, but the facts are very different. *Jones*⁵
5 was a case in which duress was argued, and it must have been a very close thing,
6 because the judge and the Court of Appeal seemed to have accepted that she was under
7 a great deal of stress.

8 40. That is not what I accept in the case of this Defendant, Lewis.

9 41. I mentioned the fact that it was submitted that Lewis received a threat. However, I take
10 the view that it didn't have anything like the impact that was described in the case of
11 *Jones*.

12 42. In addition, there were also very strong personal mitigation features in this case, and of
13 course the statutory minimum was different there than here.

14 43. All these cases turn very much on their own facts, to some degree or another, and the
15 case of *Jones* seems to me to be very much a case centred on its own very peculiar
16 facts. It doesn't have the feature that exists in the present case of this very serious
17 conduct – that is, in directing a dangerous man to where a gun was, in circumstances
18 where she knew there was at least a risk that he would seek to recover it and it could
19 possibly go back on to the streets. That is conduct which makes it impossible for me
20 not to pass a custodial sentence.

⁴ [2011] EWCA Crim. 1448

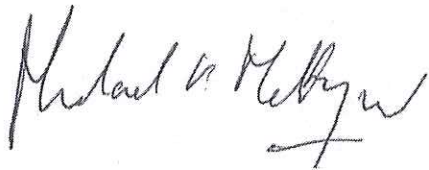
⁵ *ibid*



1 44. I listened very carefully to the submissions by Mr. Dixey, skillfully made on her
2 behalf, which, in effect, were that I should pass a sentence which doesn't mean she has
3 to go back to prison again.

4 45. Defendant Lewis has spent some considerable time in remand. Mr. Dixey certainly
5 succeeded in talking me down from the sentence I first had in mind. However, I find it
6 impossible to justify a sentence of less than two (2) years imprisonment, and that's the
7 sentence I impose. The time spent on remand will count towards that sentence.

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11 **Dated this the 9th day of February 2016**

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13 **Mr. Justice Michael Mettyear (Actg.)**
14 **Acting Judge of the Grand Court**

