

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

4 INDICTMENT NO: 0088/2012  
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6  
7 THE QUEEN

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9 V

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11 SEYMOUR PATRICK RAMSAY  
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14 **Appearances:**

**For the Crown:**

15 **Ms. Laura Manson Crown Counsel, on behalf of the**  
16 **DPP**

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18 **Defence Counsel:**

19 **Mr. Guy Dilliway-Parry of Priestleys on behalf of**  
20 **the Defendant**

21 **Before:**

**Honourable Mr. Justice Charles Quin**

22 **Sentencing Submissions Heard:**

**18<sup>th</sup> January 2013**

23  
24 **SENTENCE RULING**  
25

- 26
- 27 1. On the 23<sup>rd</sup> November 2012 the Defendant pleaded guilty to the single count on this  
28 Indictment – possession of an unlicensed firearm contrary to s.15(1) and s.15(5) of  
29 the Firearms Law (2008 Revision). The particulars of the offence are that the  
30 Defendant, on the 6<sup>th</sup> July 2012, along Sound Road, in the vicinity of Welly's Cool  
31 Spot, Grand Cayman, had in his possession a firearm, except under and in  
32 accordance with the terms and conditions of a Firearms Users Licence.

1 *SUMMARY OF THE FACTS*

2 2. On the 5<sup>th</sup> July 2012 the Royal Cayman Islands Police Service (RCIPS) received  
3 information that the Defendant was at Welly's Cool Spot ("Welly's") and that he  
4 was in possession of unlicensed firearm. As a result of that information police  
5 officers went to Welly's for observation purposes. Sometime after 1a.m. on Friday  
6 the 6<sup>th</sup> July 2012 the Defendant was seen with two others leaving Welly's. They left  
7 in a blue Hyundai motorcar and went towards Sound Way. The Defendant was the  
8 driver of the car. As the car entered the car park the police entered through the exit,  
9 with their emergency lights illuminated and blocked the Defendant's car. The  
10 Defendant manoeuvred his car in an effort to avoid the police. When this was not  
11 possible the Defendant got out of the vehicle and ran away.

12 3. The Defendant was pursued by the police officers who shouted commands for him  
13 to stop. The Defendant ignored these commands and continued to run away.

14 4. As he was running the Defendant was seen pulling a gun from his waistband. The  
15 police issued further commands for him to stop, but the Defendant continued to run  
16 away. Eventually the Defendant fell and he finally gave himself up to the police.

17 5. At the scene, the police recovered one black handgun and four shotgun cartridges. In  
18 addition, the police found a small quantity of ganja in the Defendant's possession.  
19 The Defendant was charged with possession of a controlled drug, namely ganja,  
20 which charge is Case Number 03500/2012 in the Summary Court.





1 *SUBMISSIONS BY THE CROWN*

2 9. Crown counsel, Ms. Manson, helpfully reviewed a number of cases heard before the  
3 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 ii. *R v. Rohan Marshall* Indictment 21/2009: This 29-year old Defendant  
16 pleaded guilty, on the 8<sup>th</sup> March 2010, to possession of a .38 firearm  
17 and was sentenced to 7 years imprisonment.

18 iii. *R v. Leon Hydes* Indictment 28/2008: This 27 year old Defendant  
19 pleaded guilty on the 3<sup>rd</sup> October 2008 to possession of a Pietro Beretta  
20 handgun with magazine and ammunition. The firearm was found  
21 hidden in a sock, which was in the Defendant's presence, and the  
22 firearm was loaded. A sentence of 8 years imprisonment was upheld by  
23 the CICA in CICA #26/2008 on the 2<sup>nd</sup> September 2009.



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

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

10. Crown counsel points out that, in the case before this Court, this was a “*lethal barrelled weapon*” and the Defendant did not possess a firearm users’ licence. In addition, forensic examination of the firearm disclosed that the Defendant’s DNA was on various parts of the firearm. As the cartridges could not be fired, the Crown is not proceeding with any charge under that heading.

11. Ms. Manson submits that this case is most similar to the case of **R v. Rohan Marshall** Indictment No. 21 of 2009 in which the Defendant was sentenced to seven years’ imprisonment.





*SUBMISSIONS BY THE DEFENCE*

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12. Defence counsel, Mr. Dilliway-Parry, submits that the Defendant does have previous convictions, but they are all for low-level offences – the majority of which are for either the possession or consumption of ganja.
13. Defence counsel asked the Court to take into account the Defendant’s guilty plea. Defence counsel also submits that the Defendant was given the weapon by another person, and that he took it out of curiosity. The Defendant said he tried to fire it at the beach but it did not work.
14. Defence counsel submits that there is no evidence that the Defendant was going to commit a further criminal offence and further, when one examines the facts and the circumstances surrounding this Defendant, there is no underlying criminality in this matter.
15. The Defendant is 38 years of age and has a good work record. In addition, the Defendant has no previous convictions for firearms.
16. However Defence counsel argues that there are exceptional circumstances relating to the offence, which justify not imposing the minimum sentence pursuant to s.39(2) of the Firearms Law.
17. Defence counsel describes the weapon as being in a very poor state of repair. Counsel accepts that the weapon could be fired but contends that it could only be fired with some risk to the user of the firearm. Counsel describes the firearm as a “contraption”. He said it is a flare gun with a chamber bolted on in a most rudimentary fashion. The chamber is for a shotgun cartridge. When a new Remington cartridge was loaded into the firearm it did not fire at the first attempt but

1 then it did fire. Counsel said it is certainly far removed from being a sleek handgun.  
2 Counsel also said that when the gun was fixed into a clamp at the police firing range,  
3 the gun fired but then fell out of the clamp.

4 18. Accordingly, Defence counsel submits that these are exceptional circumstances and  
5 therefore the Court should not impose the minimum sentence.

6 *ANALYSIS*

7 19. To seek guidance on the question of exceptional circumstances I have been referred  
8 to the English Court of Appeal case of *R v. Zakir Rehman and Gary Dominic*  
9 *Wood* [2006] 1 Cr. App. R. (S.) 77 and the Judgment of the former Lord Chief  
10 Justice Lord Woolf in which he considered the previous cases of *Offen* [2001] 1 Cr.  
11 App. R. 372 and the Judgments of another former Lord Chief Justice, Lord  
12 Bingham, in *Kelly* [2000] Q.B. 198 and *Buckland* [2000] 1 W.L.R. 1262.

13 20. In *R v. Zakir Rehman and Gary Dominic Wood* at paragraph 11, Lord Woolf  
14 describes Lord Bingham’s dicta as follows:

15 *“First, they show that he [Lord Bingham] was focussing on cases requiring*  
16 *consideration of whether there are exceptional circumstances when there is a*  
17 *need to look at all the circumstance (sic) involved. Then it is not appropriate to*  
18 *look at each [circumstance] separately and to conclude that it does not amount*  
19 *to an exceptional circumstance. [An] holistic approach is needed. There will be*  
20 *cases where there is one single striking feature, which relates either to the*  
21 *offence or the offender, which causes that case to fall within the requirement of*  
22 *exceptional circumstances. There can be other cases where no single factor by*  
23 *itself will amount to exceptional circumstances, but the collective impact of all*  
24 *the relevant circumstances truly makes the case exceptional.”*

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26 The Court of Appeal granted Rehman’s appeal and found exceptional circumstances.  
27 In the 7<sup>th</sup> holding the report states:



1                   “7H: The Court decided that the sentencing judge was wrong not to conclude  
2                   that the case involved exceptional circumstances. The Appellant’s background  
3                   was particularly important, as was his ignorance of the unlawfulness of the one  
4                   weapon that he had in his possession. It was not possible to identify one  
5                   particular circumstance, but looking at all the matters which were relied on the  
6                   case fell on the right side of the line. Those matters include the Appellant’s plea  
7                   of guilty at the first opportunity, his previous good character, his cooperation  
8                   throughout the search and arrest procedure, and his employment with a public  
9                   authority of which he was a valued employee. The weapon was a replica which  
10                  had not been converted for use, no blank ammunition was found or had been  
11                  acquired by the Appellant, the weapon had not been fired prior to its being  
12                  tested following its seizure, it was found in its original wrapping, the Appellant  
13                  had done nothing to disguise his identity as a purchaser, and the Appellant had  
14                  purchased the weapon as a collectors’ model. He was not aware that it was  
15                  capable of being converted until he was told so in interview following his  
16                  arrest. Those circumstances collectively made it possible to come to the  
17                  conclusion that the Court was not required to impose the minimum term.”

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19                  21.       The second case from which the Court draws considerable assistance is the case of **R**  
20                  **v. Michelle Marie Edwards** [2007] 1 Cr. App. R. (S.) 111 and the Judgment of Mr.  
21                  Justice Mackay who gave the Judgment of the English Court of Appeal and stated at  
22                  paragraph 20:

23                       “20: It seems to us that the Court’s task is to step back and look at this case in  
24                       the round. No single factor is decisive, but we adopt the holistic approach  
25                       commended by this Court in its earlier decision previously set out. (The  
26                       Defendant gave the police the names of the persons who had given her the gun  
27                       to hide and she had been set up by them). These factors taken together, and  
28                       listed below, not in order of priority, do lead us to conclude that there are  
29                       exceptional circumstances present in this case. First, the reasons for which the  
30                       appellant committed the offence, which we have set out above, her inability to  
31                       resist the pressure of apparently seasoned criminal acquaintances. Secondly,  
32                       the fact that those who commissioned her to do this were, in our judgment,  
33                       probably the cause of her detection. Thirdly, her immediate reaction not just to  
34                       admit the offence, but to name those who gave her the gun. So far as this Court  
35                       knows, no action of any sort has been taken against them, notwithstanding the  
36                       information provided. Fourthly, her plea of guilty linked to the previous factor.  
37                       Fifthly, the fact that the gun itself, though undoubtedly a prohibited weapon  
38                       within the grip of the section, was barely capable of any meaningful use, in  
39                       normal operational circumstances. Sixthly, the fact that she presents a low risk  
40                       of any form of future offending. Finally, and seventhly, her role as a mother of  
41                       three young children.”



1       22.    In the case before this Court the Defendant did not cooperate with the police. In fact,  
2       the Defendant made determined and persistent efforts to evade detection. When he  
3       was initially apprehended he was verbally abusive to the police and uncooperative –  
4       far from assisting the police to recover the firearm, the Defendant made deliberate  
5       attempts to prevent the police from recovering the firearm with one loaded cartridge  
6       and the three shotgun cartridges found near the scene.

7       23.    I turn now to the evidence regarding the weapon itself.

8       24.    Officer Anthony Stewart has been an authorised firearms officer with the RCIPS  
9       since September 2007. Prior to 2007 he had experience with firearms deployment in  
10      the Jamaica Constabulary Force (JCF) and he is currently a National Police Firearms  
11      Instructor in the RCIPS.

12     25.    On the 9<sup>th</sup> July 2012 Officer Stewart visited the firing range with other officers to  
13     test fire the firearm in question with the four rounds of 12-gauge cartridges found at  
14     the scene. All four rounds were struck but did not fire, and Officer Stewart said that  
15     they appeared to be old ammunition. Officer Stewart then inserted one round 12-  
16     gauge cartridge from the RCIPS armory and again the round did not discharge.  
17     However, on inserting a second round from the same batch of RCIPS ammunition he  
18     repeated the firing process and the weapon fired. The Officer also confirmed that  
19     the weapon sustained no damage as it fired, and the spent casing was recovered and  
20     exhibited. It is Officer Stewart’s opinion that the modified flare gun, having  
21     discharged a viable round of ammunition, falls within the definition of a lethal  
22     barrelled weapon, and as such is a firearm under the Firearms Law. However,  
23     Officer Stewart confirmed that the ammunition found at the scene was not viable.



1       26.    On the 20<sup>th</sup> July 2012 Allen Greenspan, a United States firearms and tool-mark  
2            examiner, examined the black modified Orion Flare Gun and the four 12-gauge  
3            bullets. Mr. Greenspan found that the gun is a 25 mm Orion Flare Gun that was  
4            modified to chamber 12-gauge shot shells. The gun was examined and found to be  
5            good operating condition and was test fired using a Remington 12-gauge shot shell  
6            from a separate RCIPS case. The 12-gauge shot shells could not be discharged from  
7            the firearm. Mr. Greenspan's opinion is that the four 12-gauge shot shells would  
8            have to be chambered in an actual 12-gauge shot gun for test firing purposes. Mr.  
9            Greenspan's opinion is that the firearm contains a lethally viable barrel and is  
10          capable of causing death or serious injury if discharged.

11       27.    Accordingly, I find from the evidence put before me that this modified Orion Flare  
12            Gun is a firearm as defined by the Firearms Law and therefore I cannot find any  
13            exceptional circumstances – either for the offence or the offender in this case.



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**CONCLUSION**

28. I turn now to the Guidelines adopted by the Grand Court and the Court of Appeal for firearms offences as laid down by the former Lord Chief Justice of England and Wales, Lord Bingham in *R v. Avis et al* [1998] 1 Cr. App. R. 420. Lord Bingham set out the following guidelines:

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

- (1) *What sort of weapon is involved? Genuine firearms are more dangerous than imitation firearms. Loaded firearms are more dangerous than unloaded firearms. Unloaded firearms for which ammunition is available are more dangerous than firearms for which no ammunition is available. Possession of a firearm which has no lawful use (such as a sawn-off shotgun) will be viewed even more seriously than possession of a firearm which is capable of lawful use.*
- (2) *What (if any) use has been made of the firearm? It is necessary for the Court, as with any other offence, to take account of all circumstances surrounding any use made of the firearm – the more prolonged and premeditated and violent the use, the more serious the offence is likely to be.*
- (3) *With what intention (if any) did the Defendant possess or use the firearm? Generally speaking, the most serious offences under the Act are those which require proof of a specific criminal intent (to endanger life, to cause fear of violence, to resist arrest, to commit an indictable offence). The more serious the act intended, the more serious the offence.*
- (4) *What is the Defendant’s record? The seriousness of any firearms offence is inevitably increased if the offender has an established record of committing firearm offences or crimes of violence.”*



1           29.    In *R v. Avis et al* Lord Bingham went on to state:

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

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

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

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19           31.    In the case before this Court I follow the Court of Appeal in adopting Lord  
20                                    Bingham’s guidelines and ask myself the same questions.

21                                    i. What sort of weapon was involved?: The firearm in this case was an  
22                                    Orion Flare Gun containing a lethally viable barrel and capable of  
23                                    causing death or serious injury if discharged. Even though the firearm  
24                                    was loaded with one cartridge, the ammunition was found not to be  
25                                    viable. Ammunition was later found in the vicinity, but also deemed not  
26                                    to be viable. However, as the firearm was deemed to be a lethal  
27                                    barrelled firearm, I remind myself that the Acting President of the  
28                                    Cayman Islands Court of Appeal, Forte JA, stated in *Chavarría-Atily v.*  
29                                    **R:**



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

ii. What (if any) use has been made of the firearm?: There is no evidence of any use of the firearm nor any evidence of any prolonged, premeditated or violent use for this particular firearm.

iii. With what intention (if any) did the Defendant possess or use the firearm?: There is no evidence of any specific criminal intent to endanger life or to cause fear of violence. However, possession of an unlicensed firearm is, by its very nature, a very serious criminal offence. In order to discourage the unlawful possession of illegal firearms, the Legislative Assembly laid down a minimum sentence of 7 years imprisonment for a Defendant who pleads guilty.



iv. What is the Defendant's record? The court notes that the Defendant is not a man of previous good character but accepts that, save for one offence, the offences are for low-level criminal offences, with the majority relating to the possession and consumption of ganja, that is, the Defendant has no previous convictions for any firearms offences.

32. I take into account the Defendant's guilty plea and the fact that he has no previous offences for firearms. Accordingly, pursuant to s.39(2)(b) of the Firearms Law, I impose a sentence of seven (7) years imprisonment, with time spent in custody to be taken into consideration.

1       33.    The Court has been asked to sentence the Defendant for the offence of possession of  
2           ganja – a charge in the Summary Court. In light of the fact that the Defendant has  
3           seven previous convictions for either possession or consumption of ganja, I impose a  
4           sentence of three (3) months imprisonment. In light of the totality principle, I order  
5           these 3 months to run concurrently with the 7 years imprisonment.

6       34.    The Court is pleased to record that yet another illegal firearm has been taken off the  
7           streets. The RCIPS officers who pursued this Defendant must be commended for  
8           their quick thinking and quick action in apprehending the Defendant and recovering  
9           the gun, despite his efforts to escape from them.

10      35.    I order that the firearm, the four rounds of ammunition, and the ganja be destroyed.

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13   **Dated this the 29<sup>th</sup> January 2013**


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19   **Honourable Mr. Justice Charles Quin**  
20   **Judge of the Grand Court**