



IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL DIVISION

IND0046 OF 2024

THE CROWN

V

TYRELL CARLTON SMITH

Coram: Hon. Justice Marlene I. Carter
Appearances: Angelique McLaughlin for the Crown
Stacy-Ann Kelly for the Defendant
Hearing: 18 October 2024
Judgment: 29 October 2024

*Sentence Judgment – Robbery – Possession of an Imitation Firearm
with Intent to commit an offence – Firearms Act S. 18(6) – Theft*

JUDGMENT

Background

1. The Defendant has entered guilty pleas to the offences of Robbery, contrary to section 242 of the Penal Code (2019 Revision); Possession of an imitation firearm with intent to commit an offence, contrary to section 18(6) Firearms Act (2008 Revision) and Theft, contrary to section 241(a) of the Penal Code (2024 Revision).

The Facts

2. The following are agreed facts taken from the Crown’s Written Submissions for Sentence:

“5. Shortly before midnight on 5 May 2024, the Island bar located at the junction of Shedden Road and Dr. Roy’s Drive George Town, was in the process of closing, however, there were a few patrons and staff still on the property when the defendant entered the bar brandishing what appeared to be a firearm silver in colour with black handle. The defendant was wearing a dark coloured cap, with a yellow/orange



bandana tied around his face. He was wearing a dark coloured top and white pants.

6. *The defendant goes behind the bar and takes a bag belonging to one of the bar staff. At this time, he can be seen on the [CCTV] footage to be in possession of what appears to be a silver firearm with black handle.*
7. *The male then approached one of the patrons, ... and takes his wallet from which is said to have contained CI\$2,500. ...The defendant then fled the location in the direction of Mary Street via a path which leads from Dr. Roy's Drive.*
8. *At 2:30am on the 6 May 2024, the police searched the grounds of Arch and Godfrey on Mary Street where they located some of the items taken from the bar, in particular a handbag containing the passport of Mayelin Perez, the bartender whose bag was stolen during the robbery.*
9. *At approximately 5ft from where some of the items from the bar were recovered, items of clothing were also recovered which included orange bandana, dark Nike cap and a pair of light jeans/pants."*

DNA Evidence

10. *The orange bandana was later analyzed and the DNA match number 24CN7100 can be said to be attributed to the defendant, Tyrell Smith.*

ARREST

11. *On 9 May 2024 the defendant was arrested in the vicinity of Gwent Way in George Town....*
12. *The defendant at the time of his arrest was also in possession of an orange flare gun which had been painted silver. It had black tape around the handle. It resembles the item seen in his hand of the robbery on the CCTV footage."*

Count 1 - Robbery

3. The maximum penalty for robbery is imprisonment for life. The Crown submitted that with regard to this offence, the Court should find that this was an offence of High culpability based on the following factors: The imitation firearm was produced by the Defendant who had the weapon in his hand when he entered the establishment and stole the items and cash



mentioned herein; the production of an imitation firearm to threaten violence; an imitation firearm was used to cause fear to the patrons of the establishment.

4. Regarding Harm, it was submitted that this was at Category 3 - There was, on the facts, no or minimal physical or psychological harm caused to the victims.
5. The Defence submitted that although the imitation firearm was produced, there was a mere threat of its use, and there was no infliction of violence, as contemplated by the highest level of culpability. Counsel for the Defendant, therefore, submitted that the Court should find only medium culpability, rather than the high culpability proposed by the Crown. Counsel agreed with the Crown's submission of this being on the facts Category 3 on the question of Harm.
6. For a High culpability Category 3 harm offence the starting point is 5 years custody with a sentence range of 4-8 years. For an offence of medium culpability and Category 3 harm, the sentence range is 2 to 5 years imprisonment, with a starting point of 3 years. Counsel for the Defendant invited the court to place the sentence at the lower end of the scale of 2 to 5 years in the present case.

Count 2 - Possession of an Imitation Firearm

7. Section 18 (6) of the Firearms Act (2008 Revision) imposes a maximum sentence or a fine of one hundred thousand dollars and to imprisonment for 20 years for the offence of possession of an imitation firearm with intent to commit an offence.
8. Regarding this count, the Crown referred to the case of *Avis* as follows:

*“In the case of **Tony Avis and others [1998] 1 Cr. App. R. 420, CA** the English Court of Appeal stated that the appropriate level of sentence for a firearm offence 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:*

- i. What sort of weapon is involved?*
- ii. What if any use has been made of the firearm?*
- iii. With what intention, if any, did the defendant possess or use the firearm?*
- iv. What is the defendant's record?*



32. *In the case of a bar, these questions can be answered respectively: (i) the imitation firearm was recovered. (ii) The defendant brandished the imitation firearm, which at the time the patrons would not have known it was an imitation, this action was to instill fear and rob them. (iii) The defendant used the imitation firearm to rob the Island Bar and its patrons. (iv) This offender has no previous convictions for any offences involving firearms/imitation firearms or acts of violence.”*

9. Crown Counsel referred to the case of ***R v. Johnathon (Jonathan) Samuel Welcome***¹ in which Dobbs J (Atg.) noted that while the fact that the weapon in question is an imitation firearm is “a highly relevant factor...The fact that the gun was an imitation one does not take the offence out of the clearly serious category which Parliament intended not least as Lord Bingham in the case of *Bentham* at paragraph 6 said:

“While an imitation firearm lacks the capacity of a real loaded firearm to kill or injure, it has much the same capacity to frighten and enforce compliance, not least because many imitations are almost indistinguishable from the real thing and those threatened have little opportunity or inclination to examine the nature of the weapon used”.

10. Counsel submitted that the Court may have regard to Section 17 (1) of the Firearms Act 1968 (UK) for guidance when sentencing for a similar offence to that section. This reference is made because the Cayman Islands Sentencing Guidelines do not contain any specific guidelines for the offence of Possession of an Imitation Firearm with Intent to commit an offence. However, counsel noted that because of discrepancies between the jurisdiction with respect to maximum sentences, the statutory minimum sentencing regime in the UK and the nature of gun crime as a whole that that reference may not be of much assistance to this Court.
11. For the Defendant, it was submitted that he does not seek to deny the presence of an imitation firearm, but he questioned whether the firearm in question appeared to be real, such that it raised a level of fear or apprehension in the victims of the crime, to take the matter to a more serious level of culpability. When the Court examined the CCTV stills it was apparent that the firearm did have such an appearance, a fact which counsel for the Defendant conceded.

¹ *R v. Johnathon (Jonathan) Samuel Welcome (IND # 57/2016)*



Count 3 – Theft

12. The maximum penalty for theft where the value of the goods stolen, as in this case, does not exceed CI\$5000.00 is 7 years imprisonment.
13. Taking the UK Sentencing Council Guidelines into account, the Crown submits that for the offence of theft, this is at medium culpability based on there being some degree of planning involved - the Defendant disguised himself before he entered the bar and committed the offence. As to Harm, the Crown submits that it is at Category 3, given the value of the goods stolen (500-10,000) and no significant additional harm caused during the commission of the offence. As such, the Crown suggests that the starting point is a high-level community order, the Category range being a low-level community order – 36 weeks' custody.
14. As to this offence, counsel for the Defendant submitted that *“it is entirely open to the Court to assess the matter as one of low culpability, on the basis that there would appear to have been little or no planning to the matter. The Court may take account of the facts surrounding the totality of the conduct, to demonstrate that the offence seems to have been somewhat ad hoc in nature, and, within the terms of the UK sentencing guidelines, there was “little or no planning”.*

Aggravating Factors

15. The following are identified as aggravating factors. The Court is mindful that it must not double count when taking these into account in arriving at an appropriate sentence since some of these factors have already been considered when determining sentence ranges for the offences for which the Defendant is being sentenced:
 - (i) There was threat of violence when the offender brandished the imitation firearm at patrons.
 - (ii) The vulnerability of small commercial premises.
 - (iii) Attempt to conceal identity- the Defendant was wearing a bandana over his face.
 - (iv) Attempts to dispose of evidence- the Defendant discarded some of the stolen items including clothing he was wearing at the time of the commission of the offence.
 - (v) Steps taken to make the imitation firearm appear more realistic- the Defendant painted the imitation firearm silver and wrapped black duct tape around the handle.



Relevant Mitigating Factors

16. The Defendant has no relevant previous convictions.
17. Counsel for the Defendant submits, on behalf of the Defendant, that the following are also relevant as mitigating factors:
 - (i) The Defendant has a drug dependency issue, which has been the instigator of the offending. It was submitted that the drug dependency has impacted his behaviour and caused conduct which, in the balance of his life, can be construed as aberrant behaviour.
 - (ii) The Defendant has expressed remorse at his conduct, reflected in the fact that he entered a guilty plea to the charges before the Court at the first available opportunity.
 - (iii) The Defendant has undertaken courses while in custody as a means of allowing him to accept responsibility for his offending behaviour and to develop methods of avoiding committing such offences in future.
 - (iv) Counsel submitted that the Court should also take note that the Defendant has a 5-year-old daughter and the impact which may be suffered upon that child by the custodial sentence which will be imposed. This Court has, time and again, stated that matters of this sort are not highly relevant when one considers a sentence for a serious crime such as that presently before the Court. The Defendant himself should have had such thoughts in his mind before he committed these offences. Indeed, if he had he may have reconsidered his actions.

The Social Inquiry Report

18. A Social Inquiry Report (“SIR”) was prepared by the Department of Community Rehabilitation in their usual careful and professional manner for which the Court is very thankful. The SIR noted that the Defendant received his formal education both in the Cayman Islands and in Jamaica. He displayed behavioural problems in high school which resulted in him being suspended from school on a number of occasions. The Defendant enrolled in a course in electrical installation after leaving high school but was unable to complete it because of a motorbike accident. However, as foreshadowed by his counsel, the Defendant is, to his credit, presently pursuing an Electrical Installation qualification while at His Majesty's Prison (HMP).



19. The Defendant appears to have been almost continuously employed after finishing high school in different areas, including construction, landscaping, and even working as a merchandiser. He related to the probation officer that he was not in a relationship at present. He related that he enjoyed a good relationship with his parents but has recognised that many of his friends and associates have had negative influences upon him.
20. The SIR further points out the Defendant's attitude towards his offences:
- "Mr. Smith stated that majority of the time he stole money from strangers to support his drug habit. He added that drugs were in control of his life. Client noted that he sometimes feels the need to pay back what he has taken from others. He also stated that he stole money to support his daughter. He apologised for committing the offences and expressed that he cannot continue to commit robberies."*
21. The Defendant expressed to the probation officer that he is disappointed with himself and does not plan to use drugs after he leaves prison. He recognised that:
- "... he needs a job, new friends and supportive environments where he spends his time if he is to successfully live a crime free life.*
- ...
- Mr. Smith posited that his actions were stupid and he should have slowed down, acquired employment instead of committing a crime. Client admitted that his drug use is problematic and thinks that his arrest was fair. He reasoned that he could have been killed or he could have killed someone or caused physical harm during the offence. Client added that he also could have overdosed based on how frequently and heavily he was using drugs"*
22. The Defendant was assessed using the LS/CMI Risk/Need Assessment Tool. His overall risk of re-offending was assessed as "High."

Court's considerations and sentence

23. All of the relevant matters above present a picture of a young man who has lost his way. It is to his credit that he appears to have recognised now that friends may lead you astray and that when one is led to a drug habit it can be a lonely and piteous experience. In this case, the drug habit may well have led, as the Defendant himself related, to a place where he could



have been killed, or he could have killed someone or caused physical harm during the commission of the offence. These are very serious offences.

24. For the offence of robbery, I find that this is an offence of High Culpability/Category 3 Harm. The imitation firearm was produced in a clear effort to threaten violence if the patrons did not submit to the Defendant. The appropriate starting point is, therefore, 5 years custody. The aggravating factors relevant here are:
- (i) The Defendant's attempt to conceal his identity- the Defendant was wearing a bandana over his face.
 - (ii) Attempts to dispose of evidence- the Defendant discarded some of the stolen items including clothing he was wearing.
 - (iii) Steps taken to make the imitation firearm appear more realistic- the Defendant painted the imitation firearm silver and wrapped black duct tape around the handle.
25. I have also considered the factors in mitigation. I find that these, the aggravating and the mitigating factors, together cause an uplift of 6 months. The Defendant will receive a discount of 1/3 to reflect his early guilty plea. For the offence of robbery, the appropriate sentence is 3 years and 8 months custody.
26. For the offence of possession of an imitation firearm with intent to commit an offence, in *Welcome*, the Court took as its starting point 5 years custody. In this case, the firearm has been used to commit an offence. That the offence committed with the firearm is one of robbery compounds the gravity of this offence. The court is mindful that inherent in the offence of robbery charged here, is the use of that firearm to inflict fear of violence.
27. In *Tyree Jaden Welcome Ind 60 & 74 of 2021*, Richards J. adopted a starting point of 3 years custody, taking into account the nature of the offending in that case and the way in which the imitation firearm was used to distinguish and support the adoption of a lower starting point of 3 years. In that case, the defendant ran from a parked vehicle after the police had given him and another passenger instructions to exit the vehicle. As the defendant exited and ran the officers saw what appeared to be a black handgun in his right hand. That firearm was not recovered.
28. I find that the appropriate starting point in this case is 4 years custody. I take into account the *Avis* factors especially the use to which the weapon was put and balance this against this defendant's record and the matters raised in mitigation and in his social inquiry report. I find that this results in an uplift to bring the sentence to 5 years custody. For his early guilty plea this is reduced by 1/3 to bring the sentence to 3 years and 4 months custody. This sentence is to run concurrently to the sentence for robbery.



29. For the offence of theft, given the sentences for the other offences, the appropriate sentence is 24 weeks custody. This sentence will also run concurrent to the sentence for robbery.
30. The time that the Defendant has spent in custody is to be deducted.

Carter J.

Hon. Justice Marlene I. Carter
Judge of the Grand Court