



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL DIVISION**

IND0021 OF 2024

THE CROWN

V.

HAROLD JOSEPH MILLER

Coram: Hon. Justice Marlene I. Carter
Appearances: Ms. Shauna-Kay James for the Crown
Mr. Crister Brady for the Defendant
Sentence Hearing: 11 October 2024
Judgment: 18 October 2024

*Sentence Judgment - Possession of an Unlicensed Firearm - Firearms Act, Ss 15(1) & (5)
– Air Rifle - Recreational Use*

JUDGMENT

Background

1. The Defendant is before the Court to be sentenced after pleading guilty to the offences of Possession of Unlicensed Firearm, contrary to sections 15(1) and (5) of the Firearms Act (2008 Revision) (hereinafter '**the Act**'), Common Assault, contrary to section 215 of the Penal Code (2022 Revision), and Causing Harassment, Alarm, or Distress, contrary to section 88B(1) of the Penal Code (2022 Revision).



2. On 24 May 2024, the Defendant pleaded guilty to Counts 3 and 4 of the Indictment, following which a trial date was set. Subsequently, on 15 July 2024, the Defendant pleaded guilty to Count 1.

The Facts

3. The following facts are not challenged and are reproduced from the Crown's written submissions:

"4. The complainant Alisha Jackson Forbes and the Defendant were previously in a relationship. That relationship came to an end in December 2023. The parties have a three-year-old son together.

5. Early in the morning of Friday, March 1, 2024, the complainant was sleeping in her room with her son. The Defendant barged into the room, turned on the lights and woke them. He took up the complainant's phone but was unable to open it due to fingerprint security.

Common Assault

6. The Defendant [confronted] the complainant while she was on the bed. The Defendant then held on to the complainant's finger – pressing and twisting it to unlock the complainant's phone. Eventually the Defendant was able to unlock the phone. He began scrolling through the contacts and dial[l]ed the number of a male whom the complainant stated is a friend of hers. The male contact was Barrington Morrison.

Harassment, Alarm or Distress

7. On the said March 1, 2024, Barrington Morrison received a voicemail from the complainant's phone. The voicemail was sent by the Defendant where he stated: "Big man I going be honest with ya, I looking fa ya. I getting information from around the place. When I find ya, I going find ya and fuck ya up.



Because ya fucking with my woman on top of that she telling u all kind of bullshit but I tell yu one thing, if I hold u big man I sorry fa ya".

8. *These threats were overheard by the complainant while the Defendant used her phone to call Mr. Morrison.*

Possession of an Unlicensed Firearm

9. *The complainant then tried to leave the premises however, the Defendant went outside and forced her back into the house. Once back inside the house, the Defendant produced an air rifle which he took from the laundry room. Video Footage captured the Defendant in possession of a rifle. [The rifle, which is the basis of Count 1 of the Indictment, was subsequently recovered from the complainant's home.]*

.....

12. *The rifle has been examined by an authorized firearms officer and firearms instructor employed by the RCIPS. It is a .22 calibre "Gamo", Pre-Charged Pneumatic (PCP) air rifle with an attached scope, silencer and a (10) pellet capacity magazine. The magazine contained six (6) lead pellets.*

13. *The air rifle was in good working condition and capable of discharging .22 calibre pellets from its barrel by using compressed air and bolt action.*

14. *The silencer is capable of reducing the noise of discharge.*

15. *The Defendant was arrested on the March 4, 2024 on suspicion of possession of an unlicensed firearm and causing fear and provocation of violence."*

4. Following the Defendant's arrest he was interviewed under caution. He accepted possession of the rifle which he described as "a low-level BB gun".



The Law

5. Section 15 (1) and (2) of the Act states:

“(1) Subject to subsection (2), no person shall be in possession of any firearm except under and in accordance with the terms of a Firearm User’s (Restricted) Licence.

...

(5) Whoever contravenes this section is guilty of an offence and, subject to section 39, is liable on conviction to a fine of one hundred thousand dollars and to imprisonment for twenty years.”

6. Section 39 of the Act imposes a mandatory minimum sentence of seven (7) years imprisonment on a guilty plea for offences contrary to Section 15(5) of the Act. It is accepted that there is no evidence in this case that the air rifle is a lethal barreled weapon capable of causing death or serious injury. The air rifle does not, therefore, fall within the provision of Section 39(1) (c) of the Act which refers to a qualifying offence for the mandatory minimum sentence being:

“(c) the offence is in respect of a machine gun, sub-machine gun, rifle, shot gun, pistol, or any lethal barreled weapon from which any shot, bullet or other missile can be discharged.”

7. In respect of the other counts on the indictment, both contrary to the Penal Code (2024 Revision), the maximum penalty under Section 215 for Common Assault is imprisonment for one (1) year. For the offence of Causing Harassment, Alarm or distress contrary to Section 88B (1) the maximum penalty is imprisonment for three (3) years or, if the offence is committed at night, imprisonment for four years.”

The Sentencing Guidelines

Count 1 - Possession of an Unlicensed Firearm



8. The Cayman Islands Statement on Tariffs and Guidelines for Sentencing for certain offences, 2002 provides general guidelines for sentencing that would be appropriate to this offence. The court must also consider the approach as set out in *Avis*¹ to arrive at the appropriate sentence for the commission of this offence.
9. The *Avis* approach is as follows:

“... [the] appropriate level of sentence for a firearms offence, as for any other offence, will depend on all the facts and circumstances relevant to the offence and the offender, and it would be wrong for this Court to seek to prescribe fully restrictive sentencing guidelines. It will, however, usually be appropriate for the sentencing court to ask itself as series of questions.”

- i. What sort of weapon was involved? Genuine firearms are more dangerous than imitation firearms....*
- ii. 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 the 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.*
- iii. 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 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.*
- iv. What is the defendant’s record? The seriousness of any firearms offence is inevitably increased if the*

¹ [1998] 1 Cr. App. R. 420, CA



offender has an established record of committing firearm offences or crimes of violence.”

10. Applying this approach, the Crown invites the Court to consider, looking at the first proposition, that there was no indication in the Crown’s case that the air rifle, though in operable condition, had been used or discharged; that the Defendant had indicated that he did not intend to use the air rifle in a violent manner; that the air rifle appeared to have only been used for gaming within the confines of the parties’ premises and that the Defendant has no previous convictions for a firearms offence.
11. Crown Counsel referred the Court to *Chavarría-Atily v R*, [2009] CILR 118, a case in which the possession of an air rifle was the subject of the charge. In that case, the air rifle was found to be a lethal barreled weapon. However, the Court determined that there were exceptional circumstances present on the basis that initially, the Appellant did not know that the air rifle was illegal. Once he had understood that to be the case, the Appellant took steps to register the firearm and was only using the rifle to shoot at vermin. The Appellant was initially sentenced to two (2) years imprisonment. However, the Cayman Islands Court of Appeal held that this sentence was excessive and reduced the term to twelve (12) months imprisonment, having taken into account his guilty plea. I note that in *Chavarría-Atily*, the Appellant, after becoming aware of the need to licence the air rifle and before he had done so, used the air rifle outside his own premises to shoot vermin.

Count 2 - Common Assault

12. The Cayman Islands Sentencing Guidelines for Violent Offences, June 2021 apply with regard to this offence.
13. The Crown submitted that for this offence, the Court should, on the facts, classify the offence as one of lower culpability and lower harm which would make the offence a Category 3 offence. The Crown noted:

“Culpability and Harm



37. *The culpability of the Defendant can be classified as “lower culpability”. This is on the basis of lack of premeditation, no use of weapon or weapon equivalent.*

38. *The harm suffered can be classified as “lower harm” – injury or apprehension of injury which is less serious in the context of the offence. The complainant received bruises to her wrists, thumbs and arms. The complainant suffered psychological effects such as migraines, depression and anxiety. The complainant remains fearful of the Defendant.*

39. *The Crown submits that this offence be classified as a Category 3 offence the starting point is a fine, with a range of discharge to a fine.”*

14. The Crown identified the following aggravating factors:

- The three-year-old son of the Complainant and Defendant was present during the incident and witnessed the entire incident.
- The Defendant has a 2015 conviction for the offence of Assault occasioning bodily harm.

Count 3 – Causing Harassment, Alarm or Distress

15. The Cayman Islands Sentencing Guidelines for Public Order, October 2022 apply with regard to this offence.

16. Crown Counsel submitted the following in respect of this offence:

“Culpability and Harm

42. *The culpability of the Defendant can be classified as “lower culpability”. This is on the basis of there was little or no planning, offence was limited in scope and duration. The conduct was also unlikely to cause significant fear or distress.*



43. *The harm suffered can be classified as “category 1”. The complainant has made considerable changes to his lifestyle to avoid contact with this defendant*

44. *The Crown submits that this offence be classified as Category 1B. The offence occurred during the day at about 6:00 a.m.*

As a category 1B offence, the starting point of 6 months custody, with a range of 3 – 9 months custody.

17. The aggravating factors are accepted as follows:

- The Defendant has a previous conviction for a similar offence. The Defendant has a 2017 conviction for the offence of Causing fear and provocation of violence. The Defendant received a sentence of a Good Behaviour Bond for twelve (12) months.
- The commission of the instant offence occurred during the currency of a suspended sentence. The Defendant has a conviction dated September 14, 2022, for the offence of Harassment, Alarm or Distress for which he received a suspended sentence for two years. At the time of this offence, the Defendant was in breach of that suspended sentence.

Defence Submissions

18. Counsel for the Defendant did not disagree with the classification and ranges advanced by the Crown in respect of the offences on the indictment. He submitted that the rifle is what is locally referred to as a BB gun, an air rifle made for recreational use. He emphasized, as the Crown has quite fairly conceded, that the ballistic certificate produced by the Crown is silent on the air rifle’s lethality, *“making it a fair presumption that it is not capable of discharging deadly bullets.”*

19. Counsel stated that the Defendant was firm in his instructions that the firearm was, in fact, a gift from Ms. Jackson-Forbes. He agreed that this fact does not change the Defendant’s possession of the firearm; however, he states that it *“puts context to that possession.”* Counsel submitted that Ms. Jackson-Forbes knew where the



rifle was in the house and had recommended its place of security away from reach and sight.

20. Counsel referred the Court to two local authorities: *R v Kaleb Leslie Ebanks*² and *R v Codie Antonio McLaughlin and Roland Murphy Welcome*³ both matters in which the defendants were charged with importation and possession of an air rifle respectively. In the first case, the defendant was charged with importing an air rifle while returning from school overseas and held at the airport. He was fined and sentenced to 240 hours community service and supervision for 2 years. In *Codie Antonio McLaughlin and Roland Murphy Welcome*, the defendants were charged with possession of the same model and brand rifle as Kaleb Leslie Ebanks. They had used it to shoot bottles and at wild chickens and there was no indication that they had intended to use it for any illegal purpose. They were sentenced to 12 months imprisonment for the offence of possession of the air rifle upon their guilty pleas to that offence.
21. Counsel acknowledged that the Defendant has antecedents recorded but emphasized that there are no convictions for Possession of a firearm. He urged the Court to consider the Defendant's early guilty plea to the Possession of the air rifle and to accept the Defendant's explanation that he was of the belief that it was not necessary to have a license as it was not a deadly firearm and further that he has only used it for gaming in the yard previously shared with Ms. Jackson-Forbes.
22. Counsel submitted that the Court, in arriving at a final sentence, should consider that the Defendant has been in custody for a number of months, that he pleaded guilty at an early stage, and has expressed remorse for his conduct. He acknowledged the other charges on the indictment as being serious and should not be minimized, inviting the Court to have in mind the totality principle for a sentence to be passed that reflects due consideration of all the charges.
23. The defendant himself submitted a document to the court entitled: "Plea for leniency". He noted therein:

²Sentenced 14 August 2017

³Sentence reported on 11 August 2014



“For the past nine years, I have worked hard to stay away from trouble and to build a better life for myself and my family. I am a family man and have dedicated myself to creating a positive and stable environment for my loved ones. Over the last four years, I have nurtured two small businesses and strengthened my relationships with my children and their mothers, especially Miss Jackson, with whom I have shared a loving home. She has always supported and encouraged me to do well, making it even more painful to face the reality of my actions.

Regarding the incident on March 1st, I acted impulsively and without thought. The air gun, which has become a significant part of this case, was never intended to cause harm. I only took it out of the house because Miss Jackson requested its removal when I mentioned I was planning to leave. At no point was the air gun used in a violent manner. If I had known it was illegal, I would never have accepted it as a gift. Neither Miss Jackson nor I were aware of the specific firearms laws, as we have never engaged in any criminal activity.”⁴

24. For these offences before the Court, the mitigating factors include the Defendant’s remorse and his early guilty plea. The Crown has submitted that the Defendant is entitled to the full discount to sentence for a guilty plea of 1/3 for the second and third counts of the indictment to which the Defendant pleaded on 24 May 2024. Regarding the first count of the indictment, the Crown submits that that plea having come later on 15 July 2024, the Defendant should only receive a discount equal to 1/4 any sentence to be imposed for that offence.

Victim Impact Report – Barrington Morrison

25. Apart from the very helpful submissions of Counsel, the Court has before it the Victim Impact Report of Barrington Morrison, the Complainant against whom the offence at Count 3 of the Indictment was directed. Barrington Morrison provided

⁴ Paragraphs 3 & 4



a statement, dated 3 October 2024 relating to the impact of the offence on him. He related that the defendant would call him on the telephone.

He was calling me so much times that I had to change my telephone number. Even when I changed my number, he was calling one of my coworkers trying to get my new number.

[He related being fearful because the defendant lives in the same area that he works]

I normally goes out on Friday nights with my friends, but from since these threats, I will stay home. Also, if I was to go out, I will let my cousin come and pick me up and leave my vehicle at home so that he will not track me in my vehicle. These [threats] have really cause me to be aware of my surrounding. I am of the opinion that when he comes out of prison, he is going to look for me and try to hurt me.”

Victim Impact Report – Alisha Jackson-Forbes

26. The Court also has the Victim Impact Statement of Alisha Jackson-Forbes. Ms. Forbes described that as a result of the incident:

“Psychological effects were significant, with migraines, depression, lack of sleep, hormonal imbalance with weight gain, anxiety and the need to rely on medication multiple times a day for months.

...

The incident caused emotional trauma to myself and my 3-year-old (Ace) who saw the entire incident. The stress from the incident also impacted my father, which brought on a heart condition. The stress from [the] incident impacted my job and stability to function clearly for a few months.

I would like the appropriate authorities to see to it that Harold receives anger management, and a proper mental health



evaluation to prevent this from happening again in the future. I do feel that with the correct guidance, that he will be rehabilitated. However I am not sure that he will respect the restraining order to stay away from me, as he is incarcerated and still contacting me through various different methods.

...

I do have a safety concern since being assaulted and threatened, and people closest to me being threatened. Mr. Miller has shown a lack of respect for authority in the past and has a tendency to manipulate the situation in his favor.”⁵

27. The probation officer notes that:

“Based on the information in Ms. Jackson-Forbes’ statement it is evident that she is fearful of Mr. Miller and her safety concerns are ongoing. She has expressed that she has been impacted physically, mentally, and emotionally by Mr. Miller’s actions.”⁶

The Social Inquiry Report

28. A Social Inquiry Report (“SIR”) was prepared by the Department of Community Rehabilitation in their usual careful and scrupulous manner for which the Court is very grateful. The SIR noted that Mr. Miller *“attended Red Bay Primary School followed by George Hicks Middle School. He reported that he generally enjoyed his time at these establishments but occasionally struggled academically. Mr. Miller transitioned to John Gray High School where he stated he did reasonably well academically but encountered some disciplinary issues including being suspended on one occasion for fighting. Following Hurricane Ivan in 2004, and prior to him graduating high school, Mr. Miller relocated to Jamaica, where he resided with family members, and enrolled at college where he spent four years studying auto-mechanics.”*

⁵ Pages 15, 16 & 17 of VIS

⁶ Page 12, para. 2 of Crown’s sentencing bundle.



29. Regarding his employment, *“Mr. Miller denied having ever been dismissed from any place of employment and presented as a hard-working individual who has maintained employment since completing his education.”*
30. Regarding his relationships, *“Mr. Miller has three children from three relationships. ... Mr. Miller summarised his relationship with Ms. Jackson-Forbes by stating that things had sometimes been difficult between them and that they regularly separated before getting back together. He denied having ever been physically abusive towards her but acknowledged that he sometimes behaved in an emotionally abusive manner which he expressed regret for.”*
31. With regard to the Defendant’s recent history of offending behaviours or response to supervision, *“In 2021, Mr. Miller was made subject to a two-year Suspended Sentence Supervision Order for the offence of Harassment, alarm or distress. Departmental records indicate that the client was not compliant with the conditions of this order and was issued with several verbal warnings during the duration of the order.*

A breach report was filed on February 20, 2023 following Mr. Miller's non-compliance with a further Suspended Sentence Supervision Order issued on September 14, 2022 for the offence of Cruelty to a child. Whilst it is noted that Mr. Miller was compliant with the condition of this order to attend one-to-one sessions, the breach was submitted due to issues with completing his Community Service hours...”

32. The SIR further points out the Defendant’s attitude towards his offences:

“Mr. Miller stated that he regretted his actions and reported that he has apologised to Ms. Jackson-Forbes for what happened. In interview for this report, he minimised his culpability and insisted that that various details in the Summary of Facts were inaccurate or exaggerated. His actions in the commission of this offence suggest that he holds an attitude which is supportive of violence within the context of an intimate relationship. He demonstrated a lack of victim empathy and he failed to appreciate the impact on



a child of witnessing domestic violence. He did, however, express concern that his son now thinks that "his Dad is bad as he was arrested".

33. Upon assessment, the DCR determined that *"Mr. Miller 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

34. The SIR notes that this Defendant presents as *"being a volatile individual and it is assessed that the risk posed is abusive, threatening and violent behavior against former, current or future intimate partners."* The Defendant's attorney has indicated that the Defendant wants finality so that *"he can start over his life with some well needed changes"*. The Defendant in his plea for leniency, states that he was *"committed to continuing on this path of self-improvement"* and asks for *"a chance to prove that he is capable of being a positive and law-abiding citizen."*
35. This Court certainly hopes that the Defendant is able to prove the strong sentiments expressed in the SIR wrong. Relationships may fail, but no one in a relationship has the right to assault, harass or cause another distress, no matter how distressing the facts and circumstances of the breakup of the relationship. The custody threshold has been passed in this case. The Defendant, once he has served his sentence, has a chance to rehabilitate. It is hoped that he does not appear again before these Courts for offences such as these.
36. The Defendant has a record of at least sixteen (16) previous convictions, many of which are more than ten (10) years old. Regarding the firearm offence at Count 1, the fact of the Defendant's previous conviction for an offence of violence, for which the Defendant received a suspended sentence is not an indication of an *offender [who] has an established record of committing firearm offences or crimes of violence."*⁷

⁷ The only offence of violence on the defendant's antecedent record is for Assault ABH sentenced in August 2015



37. There are no aggravating factors present for the Court's consideration. The Court is satisfied of the Defendant's remorse and also of the fact that he did not know that the air rifle was, in law, an unlicensed firearm. There is no indication of the air rifle having been used or discharged, there is no indication of the Defendant having used the weapon in a violent manner or that the weapon was for anything other than what the Defendant has indicated, to shoot at vermin within the parties' premises. I take into account this Court's finding, accepted by the Crown, that the minimum mandatory term under Section 39 (1) (c) of the Act, of seven (7) years on the Defendant's guilty plea to Count 1, is not triggered in the circumstances of this case.
38. Having considered all of the foregoing, the appropriate sentence for this offence is a term of eighteen (18) months imprisonment. The Defendant will receive a discount for his guilty plea of 1/3 to take the sentence to twelve (12) months imprisonment.
39. For the offence of Causing of Harassment, Alarm or Distress, the sentence indication is for a starting point of six (6) months custody with a range of three (3) to nine (9) months custody. Taking into account the aggravating factors set out herein, the sentence is seven (7) months custody. The Defendant will receive a discount to reflect his guilty plea of 1/3 of that sentence to take the sentence to four and a half (4 ½) months custody.
40. For the offence of Common Assault, the sentence indication as a Category 3 offence is a fine with a range of a discharge to a fine. Given the nature of the recommended punishment for the offence of Common Assault, I will impose no separate penalty. This is no reflection of the Court's abhorrence to this type of behaviour committed against the Complainant for that Count. However, the Court must consider the principle of totality in its sentencing for these offences.
41. The sentence for Causing Harassment, Alarm or Distress will run concurrent to the sentence for Possession of the unlicensed firearm.
42. The Defendant is in breach of a Suspended Sentence Supervision Order imposed in the Summary Court of 14 September 2022, for the offence of Cruelty to a Child.



On 20 February 2023, a breach report was filed with respect to that Order. The Order was for a term of imprisonment of four (4) months which was suspended for two (2) years. The Defendant complied with the Order's terms for approximately eighteen (18) months before the breach. While no breach report was filed in respect of another offence of Causing Harassment, Alarm or Distress, for which the Defendant was also given a Suspended Sentence Order on the same date, the Court notes the following indication: "*departmental records indicate that the client was not compliant with conditions of this order and was issued with several verbal warnings during the duration of the order.*"

43. In light of the reported breach and taking into account the matters for which the Defendant is before this Court including the lack of a further recommendation of a community-based order, the suspended sentence is activated for a period of two (2) two months. This sentence will run consecutive to the sentence for possession of the unlicensed firearm. The time that the Defendant has spent in custody since the 5th of March 2024 will be taken into account and deduced from this sentence.

Handwritten signature of Marlene I. Carter in black ink.

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