



1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL DIVISION**
3

4 **INDICTMENT NO: 91 of 2023**
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8 **R**
9

10 **V.**
11

12 **KEVIN KUMAR WALTERS**
13
14

15 **Appearances:** **Mr. Neil Kumar, Crown Counsel, Office of the Director of Public**
16 **Prosecutions for the Prosecution**
17

18 **Mrs. Prathna Boddan of Samson Law for the Defence**
19

20 **Before:** **The Hon. Justice Cheryll Richards KC**
21

22 **Submissions Heard:** **24th May 2024**
23

24 **Sentence Judgment:** **24th May 2024**
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29 ***Criminal Law, Sentencing, Possession of Imitation Firearm contrary to section 18 (6) of the***
30 ***Firearms Act (2008 Revision). Guilty Plea, United Kingdom Sentencing Council Guidelines.***
31 ***Starting Point, Difference in Maximum Sentences.***
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SENTENCE JUDGMENT

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4 1. The defendant is before the Court for sentencing following his guilty plea to a single
5 count of Possession of Imitation Firearm contrary to section 18 (6) of the *Firearms Act*
6 (2008 Revision).
- 7
8 2. The particulars are that he on the 21st day of September 2023 at No 5. Birchwood Road,
9 George Town, Cayman Islands, had in his possession an imitation firearm with intent to
10 commit an offence, namely causing fear or provocation of violence. The maximum
11 sentence is 20 years imprisonment.
- 12

13 **THE BACKGROUND**

- 14
15 3. The defendant first appeared before the Grand Court on the 13th October 2023. He was
16 arraigned on his next appearance on the 27th October 2023 and entered a not guilty plea.
17 He elected a jury trial. A trial date was set for the 27th November 2023. On the 21st
18 November 2023, the defendant indicated that he wished to change his attorney. A new
19 attorney came on record for him on the 24th November 2023 and the trial date was
20 vacated. New trial dates were set.
- 21
22 4. On the 21st May 2024 a jury was empaneled. The trial was due to begin on the 23rd May
23 2024. On that day, defence Counsel advised that following a pre-trial interview a new
24 statement had been provided by witness Curtis Cory Campbell. Mr. Campbell said in that
25 statement that he heard a sound as if a bullet was selected but did not (as he had earlier
26 said) see a firearm in the hand of the defendant. The defendant was re-arraigned at the
27 request of Counsel and pleaded guilty.
- 28

1 5. On the 24th May 2024, Counsel provided an agreed basis of plea. Defence Counsel noted
2 that the defendant has been in custody for some time and asked that the case proceed to
3 sentence rather than be further delayed for reports.

4
5 6. The prosecution offers no evidence on the scheduled offence to the Indictment of Causing
6 Fear or Provocation of Violence contrary to s.88 of the *Penal Code* (2019 Revision). A
7 formal verdict of not guilty is entered and the defendant is discharged thereon.

8
9 **THE FACTS**



10
11 7. The prosecution provided a detailed summary of facts which is set out below.

12
13 8. The defendant is a twenty-two year-old foreign national who in September 2023 was
14 employed on a work permit in the Cayman Islands. He was previously in a relationship
15 with Mary Hibbert. Mary Hibbert is now in a relationship with Curtis Campbell. They
16 have been in a relationship for more than a year. Mr. Campbell and Ms. Hibbert share
17 one child together. There is an issue as to whether the child is the child of the defendant
18 or the child of the witness Campbell. Ms. Hibbert told the police that she had known the
19 defendant for about a year. She had met the defendant through social media and started
20 to communicate. A week later they met personally. They started a relationship one month
21 afterwards, and she began visiting him at his family home. She ultimately ended the
22 relationship with him. Shortly before she became pregnant, she had just met Mr.
23 Campbell.

24
25 9. The incident occurred on the 21st of September 2023, sometime after 10:30pm, outside
26 the residence of Ms. Hibbert at Birchwood Road. Mr. Campbell was also present at the
27 residence at the time of the incident. At the material time, he was by the trunk of his car
28 in order to remove clean clothes from the laundry.

29
30 10. According to Ms. Hibbert, the defendant drove to her residence and came out of his car.
31 He asked what was going on ("what a gwane yah so") and she told him "Kevin you need



1 to leave." The defendant said threatening words to the effect that he will shoot him. She
2 walked up to the defendant in order to keep the distance from him and Mr. Campbell.
3 The defendant said that he had something in his waist. She saw him push his hand down
4 to his waist. She heard a click but did not see what made the click sound. She told him
5 to stop and leave and words to the effect that he would get in trouble. As she was saying
6 that to him, she put her right hand to where she saw him put his hand. She felt something
7 hard inside his waistband but did not see what it was.

8
9 11. Mr. Campbell got into his car and drove out from the parking lot. Shortly afterwards, the
10 defendant got into his own car and went after Mr. Campbell. Both vehicles turned left
11 onto Crewe Road and travelled in the direction of George Town.

12
13 12. Mr. Campbell told the police that he heard the threats of the defendant which caused him
14 fear. He was then told by the defendant to leave, and so he went to his car and left the
15 location. Shortly thereafter, he saw the defendant driving his silver car. The defendant
16 stopped right next to him near to the Smith Road stoplight, where the light was red. As
17 soon as he saw the defendant's vehicle, he drove off. He drove at a fast rate of speed
18 towards the George Town Police Station to get away from the defendant because he was
19 in fear for his life. Mr. Campbell reported the matter to the police.

20
21 13. In his further statement dated 22nd May 2024, Mr. Campbell stated that he did not see the
22 defendant with a gun on the night in question. It was dark, and he was more than ten feet
23 away from the defendant at the time. Mr. Campbell said that he could hear the 'click
24 click' sound, which sounded like when a 9mm pistol is charged. He said that when the
25 defendant threatened him was the time that he heard the sound. Mr. Campbell said that
26 he can identify the sound. It is the sound when you pull a part of a pistol and select a
27 bullet to fire. Mr. Campbell said that he has five uncles who are police officers in Jamaica,
28 and he knows the sounds that a gun makes when you 'charge it'.

29
30 14. Following the report of Mr. Campbell, the police began making checks for the
31 defendant's vehicle (a silver Honda Accord registration 136 465). They searched along

1 West Bay Road and then onto Eastern Avenue. Upon approaching the Kirk Supermarket
2 entrance, police saw the vehicle approaching, heading towards the West Bay Road
3 junction. Upon seeing the police vehicle, the defendant's vehicle went straight towards
4 the junction passing the police vehicle. The police vehicle turned around and started to
5 follow the silver Honda Accord which had increased its speed. The Honda Accord made
6 a right turn at the stoplight and went through the red light. The defendant then threw a
7 flare gun out of the window of the vehicle. This was captured on Closed Circuit
8 Television ("CCTV") footage. The police caught up to the vehicle in the vicinity of 105
9 West Bay Road where it came to a complete stop. The defendant was arrested.

10
11 15. Police Officer Caswell Ferguson conducted a search on-foot along the road where the
12 defendant's vehicle had travelled. At 12:13am in the vicinity of 19 West Bay Road,
13 George Town, he recovered an orange and black flare gun and one black tam.

14
15 16. The defendant was interviewed by the police on the 22nd of September 2023. The
16 defendant told the police that he did attend Mary Hibbert's residence on the night in
17 question, but he denied threatening anyone. He also denied pulling a gun or being in
18 possession of a flare gun whilst in anyone's presence at the residence of Ms. Hibbert. He
19 did, however, admit to police that he threw a flare gun out of his vehicle before he was
20 apprehended. He was shown the CCTV footage of this at the time of the interview.

21
22 **THE BASIS OF PLEA**



23
24 17. The following is the agreed basis of plea: -

25 *"I Kevin Walter plead guilty to Count 1 on the following basis: -*

26
27 *a. On 21st September 2023 there was an exchange of words between myself and*
28 *Mary Hibbett, during which threats were made which caused fear to Curtis*
29 *Campbell.*

30 *b. No imitation firearm was ever shown.*

- 1 c. *I had work tools in my pocket which made a click sound – I accept that the*
2 *complainants suspected that this was a gun.*
3 d. *Later, I threw the flare gun, which was in my car, out of the window out of fear*
4 *as I was being chased by the police.”*



6 **THE SUBMISSIONS**

- 7
- 8 18. Both Counsel referred the Court to the ***United Kingdom Sentencing Council Guidelines***
9 for the offence of Possession of Imitation Firearm with Intent to Cause Fear. Counsel for
10 the prosecution submitted that under those guidelines this offending is Lower Culpability
11 and Category 3 Harm. Counsel said that there is no evidence of serious harm in this case.
12
- 13 19. Lower Culpability factors under the ***Guidelines*** include the following: -
14 • No intention to cause injury to persons.
15 • Lesser role where offending is part of group activity.
16 • Little or no planning or unsophisticated offending.
17 • Firearm or imitation firearm not produced or visible.
18 • Conduct limited in scope and duration.
19
- 20 20. Harm factors for Category 3 Harm are: -
21 • Alarm/distress caused.
22 • All other cases not falling into 1 or 2.
23
- 24
- 25 21. Counsel for the Prosecution provided information, which was not disputed, that at the
26 time of this offending the defendant was on bail on Summary Court charge 01307/23-
27 Assault Causing Actual Bodily Harm. The date of that offending is 8th January 2023, and
28 the complainant is Ms. Hibbert. The defendant first appeared in the Summary Court on
29 the 21st July 2023. He pleaded guilty to the lesser offence of Common Assault. He was
30 on bail for that offence in September 2023.



1
2 22. The Court brought to the attention of Counsel the judgment of the Grand Court in the
3 case of *R v Jonathan Samuel Welcome*¹ and opportunity was afforded to Counsel to
4 make submissions thereon. Counsel for the defence submitted that the case of *Welcome*
5 is significantly more serious than the present case. A firearm was produced in that case.
6

7 23. Defence Counsel disagreed with the prosecution that the fact that the offending occurred
8 at nighttime may be treated as an aggravating factor. Counsel said that the incident
9 occurring at nighttime may serve to aggravate any offence and one has to consider the
10 particular offending.

11
12 24. In mitigation, defence Counsel submitted that this defendant has no previous convictions.
13 Counsel said that the defendant has been in custody since his arrest in September 2023.
14 Prior to his arrest he had been here for some four years. He had been working as a mason
15 and during his free time occupied himself with football. His mother and grandmother are
16 resident in the Cayman Islands. Whilst in custody, he has used his time productively. He
17 has had no infractions. He goes to the Chapel at the Prison and is trying to register for
18 educational courses such as mathematics. He recognises that this is a very serious offence
19 and is apologetic. The time spent in custody to date has provided him with the opportunity
20 for sober reflection. Counsel noted that there was a change in the evidence and asked that
21 full credit be given for the defendant's guilty plea.
22

23 THE SENTENCE

24

25 25. This Court has considered the relevant questions as set out in the case of *R v Avis*².

- 26
27 i) What sort of weapon is involved in this case? It is an imitation firearm.
28

¹ Ind. No 57/2016 Grand Court Unreported Judgment dated 15th December 2016

² [1998] 1 Cr. App. R. 420

1 ii) What use if any was made of it? It was not brandished or pulled whilst in the
2 presence of the two civilian witnesses according to the accepted basis of plea. The
3 defendant says that he had a tool in his pocket and the statements of the witnesses
4 say that he placed his hand on his waist where something hard was and made a
5 threat to shoot.

6
7 iii) With what intention did the defendant possess the imitation firearm. Clearly it was
8 to instill fear into the minds of the witnesses.

9
10 iv) What is the defendant's record? He has no previous convictions for offences of a
11 similar nature.

12
13 26. Both Counsel accept that the *United Kingdom Sentencing Council Guidelines* for the
14 offence of Possession with Intent to Cause Fear can only be of limited assistance because
15 the maximum sentence in the United Kingdom is quite different, being one of 10 years
16 imprisonment compared to the 20-year maximum in the Cayman Islands.

17
18 27. The Court accepts the submission of the prosecution that this offending under those
19 *Guidelines* would fall into Category 3 Harm. This is the lowest level, being one where
20 some alarm or distress was caused to Mr. Campbell in this case. There is no evidence of
21 severe physical or psychological harm.

22
23 28. The offending would be at the level of Culpability C, because the imitation firearm was
24 not produced. This offence of Category 3 Harm and Culpability C would attract a starting
25 point in the United Kingdom of 6 months custody.

26
27 29. In the case of *Welcome* the Grand Court (Dobbs J.) said this: -



28
29 “27. Mrs. Bodden, counsel for the Defendant, has submitted that when looking at
30 the UK cases, cognizance has to be taken of the fact that the maximum sentences in

1 the UK are higher for the equivalent offence, That is correct. However, the
2 imposition of the tough mandatory minimum in the Cayman Island demonstrates
3 that these offences are taken extremely seriously and are indeed higher than the
4 mandatory minima in the UK.

5
6 28. In my judgment, there has to be some correlation between sentences for a real
7 firearm and an imitation one under the section. Despite Lord Bingham’s measured
8 words, there is a strong message about the seriousness of cases involving imitation
9 firearms. In this case, the officers were clearly concerned for their safety, taking
10 cover where they could; the two members of the public must have been petrified.

11
12 29. The mandatory minimum sentence under the section, had this been a real
13 firearm, is ten years following conviction. This obviously can be increased to reflect
14 aggravating factors. With that in mind, I take a starting point of five years. A more
15 imposing weapon would have attracted a higher starting point.”

16
17 30. The learned Judge referred to the judgment of Lord Bingham in the case of **Bentham**³
18 and stated that: -

19 “24. Applying the questions set out in **Avis**: The court is concerned with an
20 imitation firearm. Although the maximum sentence under s.18 is the same whether
21 the firearm is imitation or real, commonsense dictates that the fact that the gun is
22 an imitation one is a highly relevant factor. If the gun in question had been a real
23 firearm under the section, the mandatory minimum sentence of 10 years’
24 imprisonment, unless exceptional circumstances pertained would follow
25 conviction. However, the fact that the gun was an imitation one does not take the
26 offence out of the clearly serious category which Parliament intended, not least
27 because as Lord Bingham in the case of **Bentham** (supra) at paragraph 6 said:

28

³ [2005] UKHL 18



1 *“While an imitation firearm lacks the capacity of a real loaded firearm to kill or*
2 *injure, it has much the same capacity to frighten and enforce compliance, not least*
3 *because many imitations are almost indistinguishable from the real thing and those*
4 *threatened have little opportunity or inclination to examine the nature of the*
5 *weapon used.””*
6

7 31. The Court adopted a starting point of 5 years imprisonment in the case of *Welcome*. The
8 defendant in that case had brandished an imitation firearm at police officers and two
9 members of the public at night in a public place. His intention was to resist arrest.
10

11 32. In this case the defendant, while not producing the firearm, touched his waist and
12 threatened to shoot Mr. Campbell. The witnesses heard a clicking sound as if a bullet had
13 been selected. This was clearly meant to cause the witnesses to believe that he had a
14 firearm and to frighten them. The defendant deliberately chased after Mr. Campbell after
15 Mr. Campbell had fled the premises in fear. The defendant sought to evade the police
16 thereafter and threw an imitation firearm out of his car window. The offending is serious,
17 and the custody threshold is firmly passed.
18

19 33. Given the seriousness with which these offences are treated legislatively in the Cayman
20 Islands and the nature of the offending this Court adopts a starting point of 30 months
21 imprisonment.
22

23 34. The offence was committed while the defendant was on bail for an assault on Mary
24 Hibbert. The Court considers this to be a serious aggravating factor which increases the
25 sentence by 6 months from the starting point. The Court also considers that it is an
26 aggravating factor that this offence was committed at night. The fact that this was under
27 cover of darkness would clearly have increased the fear and alarm to be felt by both
28 witnesses. This factor serves to further increase the sentence by 2 months for a total
29 sentence of 38 months imprisonment.
30



1 35. In mitigation the Court takes into account everything which has been said in the
2 defendant's favour by his Counsel. He is remorseful. He has had no similar offending in
3 the past and his personal circumstances, as detailed by his Counsel, are noted. He was
4 gainfully employed and while on remand has occupied himself productively by taking
5 various courses and intends to continue to do so.

6
7 36. All these factors serve to reduce the sentence by 12 months to one of 26 months.

8
9 37. This plea was entered after a trial date had been set and although the Court accepts that
10 circumstances changed given the new statement of the witness Campbell, there was no
11 previous acknowledgement by way of a plea that the defendant had done anything wrong
12 involving an imitation firearm. The defendant could have pleaded earlier had he chosen
13 to do so. Consequently, the Court proposes to follow the *Cayman Islands Sentencing*
14 *Guidelines* and to apply the recommended discount therein of 25%. The defendant is
15 afforded a reduction for his guilty plea of 6 months for a total sentence of 20 months
16 imprisonment. Time served is to be taken into account.

17
18 **Dated this the 24th May 2024**



19
20 **The Hon. Justice Cheryll Richards KC**
21 **Judge of the Grand Court**