Libby

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

CRIMINAL APPEAL 1/2016
(Ind. 20/15)
C00547/2015

HER MAJESTY THE QUEEN

Respondent

and

Jordan Manderson

Appellant

CRIMINAL APPEAL 3/2016
(Ind. 27/15)
C00569/2015

HER MAJESTY THE QUEEN

Respondent

and

Austin Jackson

Appellant

BEFORE:

The Rt Hon Sir John Goldring, President
The Hon John Martin QC, Justice of Appeal
The Hon Dennis Morrison, Justice of Appeal

Appearances: Laurence Aiolfi of McGrathTonner for the appellant Manderson and Crister Brady of Brady Law for the appellant Jackson. Greg Walcolm for the DPP

JUDGMENT

Revised from transcript of oral judgment 8 March 2017 and Approved
Released 27 April 2017

Sir John Goldring:

1. On the 20th of November 2015, both these applicants were convicted of count one, of possession of an unlicensed firearm, contrary to s. 15(1) and 15(5) of the Firearms Law (2008 Revision), and count two, of a further similar offence. Count one related to a black hi-point .380 pistol. Count two to its rounds of ammunition.

2. A co-defendant called Julia Lewis had pleaded guilty to the offences on the 9th of February 2009. Each appellant was sentenced to ten years' imprisonment concurrently, and Julia Lewis, who had not only pleaded guilty, but also given evidence against her co-defendants, was sentenced to two years' imprisonment concurrent.

3. The applicant Mr. Manderson appeals against conviction and sentence. The applicant Mr. Jackson appeals against conviction only.

   The case was heard by the Honourable Justice Mettyear sitting alone.

The facts

We can take the facts substantially from the respondent's skeleton.

4. On Friday the 16th of October 2013, at approximately 18:39, a police unit on patrol in Shamrock Road observed a motor vehicle which had been involved in an accident earlier. They attempted to stop the vehicle. The driver, who was the applicant Jackson, initially stopped. He then drove around the police unit. There was a short chase. It resulted in a collision after a short distance.

5. Jackson left the vehicle. Shortly afterwards, Julia Lewis came from the front left passenger seat. At around the same time, from the rear right side of the vehicle, the applicant Manderson disembarked.

6. When the police approached, Jackson attempted to run away. He was held shortly thereafter by two police officers.

7. On the Crown's case, after leaving the vehicle, Miss Lewis and Mr. Manderson both stood for a short while facing each other. Miss Lewis was asked for the firearm by Mr. Manderson. She told him she had thrown it from the car. He told her to retrieve it. She went to the point of the collision at a trot. She retrieved the firearm from the ground and ran into a nearby shopping village.

8. Mr. Manderson went to where the police had held Mr. Jackson and then walked off in the general direction of the shopping complex. Miss Lewis went into the shopping complex. She hid the firearm in a garbage bin. Shortly thereafter, a security officer retrieved the firearm. On seeing him removing the firearm, Miss Lewis returned and pleaded with the security officer to return the firearm to her. He reluctantly complied. She took it to the back of a supermarket and threw it into the bushes.

9. The applicant Mr. Manderson went into the shopping complex. He was picked up by the occupants of another vehicle. He requested they pick up Miss Lewis nearby. He asked Miss Lewis for the firearm. She told him she had thrown it away at the back of Foster's. At Mr. Manderson's request, the occupants of the vehicle in which they then were, went to the rear of the supermarket where Miss Lewis showed him where she had thrown the firearm. Ultimately, Mr. Manderson asked to be dropped off. He also asked the driver if he could borrow his shirt, but the driver refused. Miss Lewis was dropped off along the side of the road.

10. Ultimately Mr. Manderson was arrested when he had returned to the compound. He was in an area which provided a line of sight to where Julia Lewis had thrown the firearm.

11. There were interviews with the applicants, which we need not go into, although we shall shortly refer to them.

12. Ultimately, when still in custody, Miss Lewis gave a statement in which she implicated both applicants, and, as we have said, she gave evidence. We shall come to her evidence shortly.

13. The applicant Manderson now raises two grounds of appeal against conviction. First he submits that the judge wrongly refused a request to adjourn the case for the defence to obtain and adduce evidence going to Manderson's suggested mental impairment. Second, and very late in the day, it is submitted that the judge erred in his approach to the evidence of Julia Lewis, which implicated Manderson in the offence.

Manderson's first ground of appeal

14. Mr. Aiolfi, who has represented the applicant before us with his usual conspicuous skill, having learned from Manderson's mother that he had a mental impairment, obtained a report overnight. It had been written by Dr. Clement Von Kirchenheim, the then assistant director of Psychiatry and Behavioural Health employed by the Health Services Authority in Grand Cayman, for previous proceedings. It was dated the 24th of April 2011.

15. It recounted, among other things, that the applicant Mr. Manderson had an IQ of 70. It was described in these terms in that report: "This score is at the cusp of the 'Mentally Retarded'..." It referred to the "Borderline" range of functioning. It put his overall cognitive ability at about the same level of an eight year old. He was also functionally illiterate.

16. In an additional report, the doctor, among other things, said that Mr. Manderson knew the difference between right and wrong, that someone of his IQ tended to be more suggestible and that his memory function would be poor and his attention span short.

17. A subsequent report obtained in 2013, which we have carefully read, is in broadly similar terms.

18. The judge refused the application. He said he would give his reasons during the course of his judgment.

19. It was put in the written skeleton argument succinctly in the following way. It is clear the judge disbelieved the appellant's account. The appellant should have had the benefit of expert evidence on the effects of his cognitive impairment before that contrary assessment was made. As a result, the appellant has been deprived of evidence which would have supported his credibility. Accordingly, the conviction is unsafe.

20. Mr. Aiolfi reinforced those submissions before us. He submitted, in essence, that the judge should have had the benefit of the medical evidence when he was considering the whole account, the whole picture.

21. In his judgment, on the topic of psychiatric evidence, the judge said this (page 47/21):

> "Just before he was due to give evidence Mr. Aiolfi asked for an adjournment. He said that the defendant's mother had attended court and informed him that in an earlier case or cases reports had been obtained concerning the defendant's mental capacity. He mentioned concerns about suggestibility and memory. This case is two years old. The police felt able to interview him without seeking any support for him. Neither he nor his solicitor had requested such support. He followed his solicitor's advice throughout and answered no comment. Nobody working on his behalf over the following two years had thought that it was necessary to investigate his mental capacity. Mr. Aiolfi, an experienced and able advocate, had not thought it necessary. Manderson is and has for seven years been a sea captain, responsible for up to 60 tourists each trip. Further, it was apparent from the questions put by Mr. Aiolfi that the defendant's case is a very simple one, mainly that he was asleep throughout a good deal of the journey and if anything untoward had happened in the car he was unaware of it. I thought it was unlikely that evidence about his mental capacity would be available within such time as it will allow the case to carry on to the conclusion, and extremely unlikely that evidence would be found that would be admissible or helpful. I refused the application but said that matters could be raised again the next day if further inquiries came up with further information...
>
> Jordan Manderson gave evidence. He did so in accordance with the case being put and without any apparent difficulty. His account was straightforward and he gave it. He was not moved from his story in cross-examination. He did say 'I can't remember' on occasions but that was in the context of him claiming to be drunk but not very drunk and tired. The next morning Mr. Aiolfi again sought an adjournment initially to seek information about a particular doctor's whereabouts. He handed me some medical report that had been produced for earlier proceedings. I asked Mr. Aiolfi what issues medical evidence might go to. First he raised the question of the offender's possible failure to understand the caution. I was able to let him know that I had formed a provisional view (since firmed up) that I would not draw any adverse inference from silence in the interview. The second was that such evidence might help on the issue of memory i.e. whether his assertion of not remembering a certain thing was made more likely as a consequence of his low IQ. I refused the adjournment. I find it impossible to accept that such evidence, assuming it to be admissible, could possibly assist me in

determining whether something claimed to be not remembered from two years ago was a genuine non-memory and if it was, whether it was caused by drink, tiredness or low IQ.

In any event, his averment of not remembering certain things has played no substantial part in my conclusion. So far as the manner of his giving evidence was concerned, I was unable to draw any conclusions to such a simple account. I do not accept his evidence regarding Julia Lewis being present..."

22. In short, therefore, the judge decided that psychiatric evidence would be unlikely to help, whether or not admissible. He explained why. That was a permissible approach. He was therefore entitled to refuse the adjournment. It is plain to us that for the reasons expressed by the judge, the absence of a medical report does not in the applicant Manderson's case render the convictions unsafe or unsatisfactory. It is not, in the circumstances, necessary for us to decide whether or not such a report would have been admissible.

Manderson's second ground of appeal

Mr Aiolfi's submissions

23. The submission Mr. Aiolfi makes is that on the evidence his client should not have been convicted. It was inadequate. The balance of the Summing Up as a whole failed to have sufficient regard to the many inconsistencies and weaknesses in the evidence of the only witness incriminating him, namely, Miss Lewis. Her credibility should have been considered, he submits, in the light of the incentive she had to give evidence in order to seek a reduction in sentence. The danger of her evidence being unreliable was stronger than in normal cases for several reasons. She gave her witness statement at the latest possible stage in the proceedings, after a Goodyear indication. In the absence of assisting the Crown, she was not going to bring herself into the exceptional circumstances provision resulting in a reduction of the mandatory ten-year sentence. Miss Lewis gave her account knowing the Crown would support an argument on sentencing that exceptional circumstances applied.

24. The motivation for giving evidence was increased by the draconian nature of that sentence. She was reluctant to accept in evidence that her motivation for giving a statement was a reduced sentence. The evidence for her possession of the firearm was overwhelming. Her account was almost entirely exculpatory of herself. When that account was given, she knew the entire state of the evidence against her and her co-accused.

25. She had demonstrated that she was capable and able at fabricating lies. They were well thought out and tailored around the truth in order to make them more convincing. She was a practiced liar who showed no remorse or shame at. She appeared in respect of some of her lies proud.

26. As to her evidence implicating Manderson in the possession of the firearm, namely, the passing of it between Jackson and him, and the "instructions" given by Manderson after the crash to go and get the gun, there many significant differences and contradictions in her accounts. It had not before been said. The summary of events set out in a letter written by her then attorneys in April of 2014 was inconsistent with her statements and evidence. We need not set out the precise detail of what is said in that letter and the submissions regarding it.

27. There was a difference between what she said in a statement of the 7th of October and her evidence. She gave two different demonstrations regarding the handing over of the weapon.

28. What Miss Lewis said about the directions to her to get the gun was inconsistent. There was inconsistency in her account advanced in the Goodyear hearing and the evidence that she gave.

29. In short, it is submitted that what takes this case out of the ordinary run of cases was Miss Lewis' fundamental change of story, her poor explanation for those changes, her reluctance to accept the role of an incentive of a reduced sentence and her almost entirely exculpatory account for her actions.

30. Moreover, there was no supporting evidence such as DNA or fingerprints or firearm residue, or anything on the CCTV supporting her account. Her was inherently unreliable and gave rise to the suspicion that it had been tailored for her own purposes.

31. In short, the submission is that the learned judge failed to have sufficient regard to those many weaknesses and inconsistencies in her evidence.

Jackson's ground of appeal

32. A similar submission is advanced, in an echo of Mr. Aiolfi's submissions, by Mr. Brady on behalf of the appellant Mr. Jackson. It was submitted, in short, that the judge was not entitled to rely on Miss Lewis' evidence fundamentally for the reasons we have already expressed. There was also reference to the late disclosure of some evidence concerning a weapon in a car in which Miss Lewis was a passenger on a previous occasion.

Our view

33. In our judgment, it is quite plain that the judge had very well in mind the matters raised by the applicants. He set them out in a clear and coherent manner. What, no doubt, was said by him was, in part, to meet the submissions which were made to him on behalf of both the applicants. He referred to the absence of other evidence. He referred to Miss Lewis wiping the gun before throwing it away. He referred to the fact that the case revolved around the evidence of Miss Lewis. He went on to summarise what she had to say in great detail and with obvious care. He was entitled to give his impression of her, which he did. She appeared, as he put it, articulate and confident. (*See summing up page 7, line 23.*)

34. The judge carefully set out, Miss Lewis' lies to her landlord and to the police. It involved her, as the judge set out, dealing with the various inconsistencies which Mr. Aiolfi has drawn our attention to.

35. We should set out the judge's conclusions in some detail (page 39):

> "Julia Lewis is, as I have already said, central to the case. Without her evidence these men wouldn't have been indicted. My assessment of her is crucial. She was on the 16th of August 2013 a mother of two small children. She had rented accommodation and a car. She had a job at Governor's Square which involved 'troubleshooting' and other jobs, including dealing with customers and the retail section of the branch. At the time of the trial two years later she had left that job and was learning interior design. In the witness box she appeared clean, tidy and businesslike she appeared capable

and intelligent. She gave her evidence in a clear and coherent way. Not surprisingly, she was as her most impressive giving evidence-in-chief and the cross-examination she had more difficult questions to answer and she clearly found the experience more difficult.

The main problem she had to face was fact. If she told so many lies following the events of the 16 August, these were dealt with in detail and with great skill by Mr. Aiolfi. All the important lies she admitted only occasionally for instance concerning the short conversation of Liana Jarvis she said she couldn't remember. She agreed that sometimes her lies were quite complex, on one occasion making up a couple that did not exist. The admission of past lies in circumstances like those arising in this case are common case. People who 'turn queen's evidence' rarely do so as a first option. It is frequently preceded by denials and lies. This frequently leads to the submission advanced by defence counsel in this case 'how can a court be sure that the truth is being told by a person who has told so many lies before?' Because it is a familiar submission does not make it a bad one. On the contrary, it is made so often because it is a good point. Having said that, the reason put forward by Julia Lewis, if true, although not justifying her lies, at least explains the dilemma she was in and why she resorted to lies.

Accepting for a moment the broad thrust of her case she was a woman who had done a day's work on a perfectly ordinary day. She was picked up from work by two men, only one of whom she was expecting. The plan was to get home, relax for a short period and then pick up her children. The three of them were in the car, on the journey a gun was produced in the car and moved around but in a short time the car was blocked by a police car and have escaped that block was involved in an accident. She was in her car with a gun that she had touched and she quickly, it must have been in a split second, threw it out of the car window. Outside the car she could see that the gun was there to be found if left in that position and at the urging of Manderson she panicked, picked it up and in due course threw it away. She said that what she did was to distance herself from the gun because she knew that she was in trouble and didn't want to go to prison. If that account is true she was, nevertheless, in big trouble.

Mangatal J in due course assessed it as meriting a minimum of seven years' imprisonment and a maximum of eight years' imprisonment. In such circumstances, although not excusable, once she had begun to lie I do not find it difficult to understand how the lies continued and developed. Another problem she faced in cross-examination was the suggestion that she was giving false evidence in the hope of getting a shorter sentence. So far as the first part of that question is concerned she had no problem with it at all. She insisted again and again that what she was saying to the court was true. This was most noticeable when she looked directly into the dock from the witness

box and said 'I just want the court to know the truth, the three of us already know the truth.'

I agree with Mr. Aiolfi that she was reluctant to admit her motive for giving evidence. I do not feel that this is surprising, it would be rare and one imagines difficult for a witness to say that he or she was only giving evidence against others in the hope of getting a lesser sentence themselves. It will often, in any event, have been a difficult decision and may contain a mixture of motives. Here I accept that the primary motive for agreeing to give evidence was to do with the hope of a lesser sentence. She had already clearly demonstrated her reluctance to give evidence. However, I also accept that a person in her position as she claimed it to be would also have a burning sense of injustice if others at least guilty as she were getting away without punishment while she was facing long term in prisonment. She summed up her position in this way, 'I'm telling the truth because it's the right thing to do. If it means a lower sentence then fair is fair.'

She was, to begin with at least, overconfident in her ability to record detail. Defence counsel, particularly Mr. Aiolfi as he was first on the indictment carefully went through what were lies as they allege, or inconsistencies. I have already dealt with the principal matters falling under this head, I'll not repeat them. In the end her stance was that she had a good memory of the events although she might not recall all the details.

My overall impression of her was of a very good witness. I have given myself a warning that I mentioned at the start of this judgment and look with caution at her account. Having done that the provisional view I formed of her when she was giving her evidence has not changed. I view it as she is a decent young woman who has done her best to give a true balanced account of what happened on the 16th of August 2013. I cannot fully trust her so far as detail is concerned but I believe her account as to the weapon being passed between the men and that Manderson told her to pick up the gun after she had thrown it out of the car. Whether that view of her evidence translates to being sure of guilt of either of these men is another matter.

Austin Jackson. By contrast Austin Jackson was a very poor witness. The evidence of Julia Lewis as to their relationship had gone wholly unchallenged and was therefore a complete surprise when from the start of his evidence he totally denied her evidence on the subject. He said they were just friends. When this was explored it became apparent that he was saying that they only met once before the 16th of August. On that occasion they had been introduced by a friend and no further conversation took place. The next contact she said is when she telephoned him on the 16th and asked him to do work on the car. In effect his evidence, if true, would mean Ms. Lewis had invented her entire evidence about what occurred over the months until August. Having sign her and heard her over a period of two days that seemed

to me to be unlikely in the extreme. I accept that she has told many lies but this would have been in pointless invention which so far as she would know could be met by detail and convincing evidence to contradict it if it was untrue. At the end of his evidence I asked him, remembering a piece of Ms. Lewis' evidence whether she had visited him in prison, he paused for a while before saying yes and that it was before 16th of August. I got the clear impression that he was weighing up what he should say and I'm convinced that he wanted to say no but he couldn't risk the records being checked. Whether I'm right or wrong about that, the fact remains that her visit to him in prison gives lie to his evidence of their degree of contact.

His evidence regarding her attitude to the car is also noteworthy and difficult to believe. This must have been an important item for her, it took her to work and it was used to transport her and her children. His evidence was on the 16th after the incident that the car being driven by Ms. Savantis. He told Julia Lewis what had happened but she didn't even bother to ask about it, didn't ask to look at the damage. I do not accept his evidence on this and accept her account that she.asked if he had been in a collision and he denied it.

Further, he claimed that after the police had stopped the car in Savannah it was Julia Lewis who encouraged him to attempt to break away from them. Again, this seemed highly improbable. On all points of difference between them I prefer her evidence to his. His evidence concerning the nature of their relationship was a blatant lie told on oath. The purpose could only have been seek to distance himself from Ms. Lewis. His lies of course do not prove guilt. I have to consider the possibility that he was simply trying to bolster a true defence. Nevertheless, his lies cast a shadow over his credibility...

Conclusion. In a case like this detail can be very important but standing back on such detail and looking at the sense of things can also be productive. One thing is sure -- matters was this gun and ammunition in the car on the 16th of August. How it got there is an interesting question. The realistic possibilities are that on the one hand Julia Lewis took it into the car or on the other that one or other or both of these defendants took it in.

Julia Lewis was at work all day. Can it really have been that on that day for some unknown reason she put a pistol and ammunition into a bag and took it into work, or that during the day some unknown person brought the item into her work and she accepted it from them. Further, that at the end of the working day she then took it into the car, said not a word about it to either man there -- a police block and a collision. Of course these things are possible but having seen her and heard her over these two days in court my judgment is highly unlikely.

Her answer to this suggestion was that she didn't take the items to work or received them there. She went on, 'Guns shouldn't be in a home, let alone in

an office. An office is where you should be professional. You go there to earn a living, feed your children.' That alternative that one or other or both of these defendants who had the use of the car who were drinking and at least as far as Jackson was concerned driving in poor manner at some stage acquired the gun and brought it into the car and was showing off with it, seems to me to be much more likely. Then there is the driving around Countryside Village in the Suzuki Vitara. Firstly Manderson got into the vehicle and then he encouraged Hurlston and Edwards to pick up Julia Lewis. There was then a journey around the side to the rear of Foster's Supermarket. According to Julia Lewis, the purpose was to indicate to Manderson where she had thrown the gun. Manderson denies this. The question therefore arises as to why the Vitara drove around the back of Foster's Supermarket. The answer seems to me to be obvious, it must have been connected with the gun. Coincidences do occur in life but I do not believe that it was a coincidence that the Vitara drove around to the area where Ms. Lewis had gone to dispose of the gun. It was a deliberate decision to go there to where the gun had been thrown. The only person with an interest in that was Manderson. Julia Lewis already knew where it was and there has been no suggestion that Hurlston or Edwards was in any way concerned with the gun. Further, there is no coincidence that at about the same time Manderson gave his shirt to Ms. Lewis and asked to borrow the shirt of Edwards.

The result is I accept the evidence of Julia Lewis on this topic and reject that of Manderson, who claims not to remember or know what the reason was for this trip in the Vitara. The result of all these matters set out in this judgment in combination, in the case of Austin Jackson I'm sure that he was in possession of the gun and ammunition. I therefore find him guilty on both counts. I pause longer with the case of Jordan Manderson because I accept the submission of Mr. Aiolfi that interest in or attention to the gun and ammunition at Countryside Village does not prove possession in the car, it doesn't but it does fit in with Julia Lewis' account of Manderson's conduct in the car and just after the accident. It adds to her evidence, it supports her veracity and the result, I'm also sure of his guilt and find him guilty on both counts."

36. As the preceding extract from the judgment makes plain, this was a meticulous and careful piece of analysis by the judge. He had every aspect of the evidence well in mind. We cannot accept Mr. Aiolfi's and Mr. Brady's submissions to the contrary.

37. We should add this. At the outset of the hearing, Mr. Aiolfi submitted that we should adjourn the case to permit a transcript of the evidence of Miss Lewis to be obtained. That was to enable, he submitted, sufficiently detailed submissions to be made regarding the inconsistencies in her evidence. That did not seem to us to be necessary. What she had previously said in witness statements was clear.

The judge summarised in considerable detail her previous lies and inconsistencies, as we have pointed out. It seemed to us most unlikely that a further analysis of her evidence would make any material difference to the argument Mr. Aiolfi was running. Having heard the appeal, it seems to us plain we were right.

38. In the circumstances, therefore, for the reasons we have set out, we refuse leave to appeal against conviction.

Manderson's appeal against sentence

39. We turn now to the appeal of the applicant Manderson against sentence. Before we do so, we should refer to the relevant statutory provision. It is section 39(1) of the Firearms Law (2008 Revision). That provides:

"This section applies where-

(a) an individual is convicted following a trial or a plea of guilty, by a court of summary jurisdiction or the Grand Court, of an offence under section 3(3), 15(5) or 18(6);
(b) the offence was committed on or after 15th November, 2005; and
(c) the offence is in respect of a machine gun, sub-machine gun, rifle, shot gun, pistol or any lethal barrelled weapon from which any shot, bullet or other missile can be discharged.

(2) Notwithstanding sections 6(2) and 8 of the Criminal Procedure Code (2006 Revision), the court of summary jurisdiction or the Grand Court before which the individual pleads guilty or is convicted, shall-

a) in a case where the individual pleads guilty, impose a sentence of imprisonment for a term of at least seven years (with or without a fine); or
b) in any other case, impose a Sentence of imprisonment for a term of at least ten years (with or without a fine?),

unless the relevant court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so; and such exceptional circumstances shall be stated by the relevant court."

40. The leading case, and the authority to which the judge referred, was the Court of Appeal decision in England and Wales of *R v Rehman* (2006) 1 Cr.App.R.(S) 77.

In that case, the court was considering the mandatory minimum sentencing provisions in respect of offences committed contrary to s. 5 of the Firearms Act 1968, as amended. It provided that the court, absent exceptional circumstances relating to the offence or offender which justified its not doing so, was obliged to impose a minimum term of five years' imprisonment. The court emphasised in paragraph 14 of its judgment the circumstances in which an appeal court should intervene.

41. At paragraph 14, Lord Woolf CJ, said:

> "The section makes clear that it is the opinion of the court that is critical as to what exceptional circumstances are. Unless the judge is clearly wrong in identifying exceptional circumstances when they do not exist, or [is] clearly wrong in not identifying exceptional circumstances when they do exist, this court will not readily interfere."

42. That is the approach of this court is plain from the authorities provided to us: see, for example, the recent case of *R v Liberal and Carter* Judgment 22/2014 and 23/2014.

43. Having set out the relevant facts, the judge said this:

> "Exceptional Circumstances Submissions: Manderson
>
> 17. In the case of Manderson, Defence counsel, Mr. Aiolfi, submits that there are three factors that should persuade me to find exceptional circumstances.
>
> Psychological Evidence: Firstly, he relies on the psychological evidence that the defendant's mental functioning is perhaps at the high end of the "mentally retarded range" and that his average mental functioning is that of an eight year old. These are important considerations which I accept without reservation.
>
> On the other hand the Defendant Manderson has held, for a considerable period, responsible employment as a tourist ship Captain - dealing, on a frequent, if not daily, basis, with large numbers of tourists from all over the world.
>
> He also functioned at a perfectly reasonable level when giving evidence on his own behalf during the trial.

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

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

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

44. The submissions Mr. Aiolfi has made to us reflect those he made to the judge. The submission which has caused us to reflect to a significant extent, as to the appropriateness of the term imposed, was that relating to the applicant's mental age. We have obviously asked ourselves, with some anxiety, whether the approach of the learned judge was clearly wrong. Mr. Aiolfi emphasised in addition to his limited mental ability, the progress which, according to the probation officer, the applicant was making.

45. We have come to the conclusion, however, that the judge was entitled to come to the conclusion that he did regarding each of the three aspects raised on behalf of the applicant Manderson. We have, not without some considerable thought, come to the conclusion that he was entitled to impose the statutory minimum. In the final analysis, the appellant was 20 years old. He was three years older than the 17 year-old limit, the application of which would mean that the statutory minimum did not apply. In the circumstances, paying tribute to the very well made submissions of Mr. Aiolfi, we have concluded that it would not be right for us to interfere. However, in the circumstances, we think it appropriate to grant leave to appeal against sentence and dismiss the appeal accordingly.