

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

4 **INDICTMENT NO: 53/2017; 54/2017 & 57/2017**

7 **THE QUEEN**

9 **v.**

11 **LESHAWN SHAHEEM FORRESTER**



15 **Appearances:**

Greg G. Walcolm for the Crown

Mrs. Lee Halliday-Davis of Brady Attorneys for the Defendant

19 **Before:**

Justice Marlene I Carter (Actg.)

22 **Heard:**

7th February 2019

26 **SENTENCE JUDGMENT**

- 29 1. The Defendant was found guilty at trial of Possession of an Imitation Firearm with Intent to Resist
30 Arrest contrary to Section 18 (6) of the Firearms Law (2008 Revision). The Defendant had
31 previously pleaded guilty to Dangerous Driving, contrary to Section 76 of the Traffic Law, 2011
32 and stands to be sentenced for both offences. Both offences arise out of the same facts.

34 **Facts**

- 36 2. The facts can be summarized as followed:

38 "1. On the night of Saturday June 3, 2017 a team of RCIPS police officers were
39 conducting a police check point at the roundabout near to the Public Beach which
40 link Esterley Tibbetts Highway and West Bay Road. Several marked police vehicles

*Sentence Ruling in Ind. No. 53/2017; 54/2017 & 57/2017, R. v. Leshawn Shaheem Forrester. Coram: Carter, M. (Actg.)
Date: 11.03.19*



were clearly visible at the scene, and there were several officers in full uniform visible in the area, to include PC Brandaughn Phillips, PC Javid Myers and PC Creig Hunter.

2. At approximately 11:20 p.m. the police saw a dark Honda Sedan motor vehicle approach the check point. There were three persons in the vehicle including the defendant, who was the driver.
3. PC Hunter and PC Phillips were standing at different areas in the roadway, while PC Myers was standing off to the side of the roadway. All officers were armed. PC Phillips was focused on another motor vehicle when the dark Honda Sedan approached the checkpoint.
4. The defendant was given instructions to stop at the checkpoint. He briefly stopped but then sped away at a high rate of speed when a male on the left rear passenger seat spoke to him. PC Phillips had to jump out of the way of the vehicle to avoid being hit.
5. PC Phillips got into his service vehicle and pursued the black Honda Sedan as it travelled along Esterley Tibbetts Highway heading towards George Town in speeds in excess of the speed limit. PC Myers and PC Hunter followed in another marked police vehicle.
6. The defendant accelerated to speeds in excess of 85 mph as the officers followed behind it. During the chase PC Phillips never lost sight of the defendant's motor vehicle, whilst at points along the journey PC Myers and PC Hunter lost sight of both vehicles.
7. At the next roundabout the defendant turned right unto (sic) Lime Tree Bay Avenue, where it entered the wrong carriageway into oncoming traffic. The defendant failed to give way to oncoming traffic and then made a dangerous



manoeuvre as he turned unto (sic) West Bay Road and headed in the direction of the Public Beach at a high rate of speed.

8. When the defendant reached the area of the Public Beach he turned harshly left into the entrance of the parking lot and came to a stop near the construction site adjacent to the Kimpton Sea Fire Resort.

9. PC Phillips came to a stop behind the black Honda Sedan. He saw two males jump from the left side of the black Honda Sedan and ran towards the resort. He noted that one of the males had an object which appeared to be a firearm in his right hand. This was the male who spoke to the defendant whilst at the police check point before he sped off.

10. PC Phillips shouted at the men to stop, but they continued to make good their escape, on foot, towards the resort.

11. PC Phillips approached the Honda Sedan and saw the defendant in the driver's seat. He was arrested at the scene, and made no reply to caution. PC Hunter and PC Myers arrived at the area whilst the defendant was being arrested.

12. He was taken into custody and booked at the Cayman Islands Detention Centre at Fairbanks Road.

13. The defendant was interviewed on the afternoon of Sunday June 6, 2017, in relation to the incident that gave rise to his arrest and the incident which occurred in the George Town area the night before. He made no comment answers to all questions.

14. At the time of these offences the defendant was on police bail in relation to two separate investigations.



1 15. *The defendant has no previous convictions....”*
2

3 **A. Possession of an Imitation Firearm**
4

5 3. Section 18(6) of the Firearms Law, 2011 states that a person convicted of the offence of possession
6 of an imitation firearm is liable on conviction to a fine of one hundred thousand dollars and to
7 imprisonment for twenty years.
8

9 4. It has been the practice in this jurisdiction to draw a distinction between a defendant found guilty
10 of the possession of a firearm and the possession of an imitation firearm. Consequently, although
11 Section 39 of the Firearms Law prescribes a mandatory minimum sentence for possession of a
12 firearm which applies equally to offences involving an imitation firearm, the approach in this
13 jurisdiction has been to apply a sentence below the mandatory minimum in relation to offences
14 involving imitation firearms based on the nature of the firearm involved.
15

16 5. Both parties agree that the Court should adopt the approach as set out in Avis¹ to arrive at the
17 appropriate sentence for the commission of this offence:
18

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

24 i. *What sort of weapon was involved? Genuine firearms are more dangerous*
25 *than imitation firearms....*
26

27 ii. *What (if any) use has been made of the firearm? It is necessary for the court,*
28 *as with any other offence, to take account of all the circumstances*

¹ [1998] 1 Cr. App. R. 420, CA



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

6. Applying the approach in *Avis*, the offence relates to an imitation firearm. The firearm was not brandished during the course of the incident nor was there any evidence that it had been used in the commission of any offence. The defendant's role was as an aider and abettor to the possession of the imitation firearm. The defendant does not have a criminal record and therefore there is no indication of him having previously committed any firearm offence or crime of violence.

7. Related to these factors I also take into consideration the following submission by counsel for the defendant. The defence accept the facts presented by the Crown but emphasize:

"1. The facts as reported by the prosecution are accepted save for the following observations.

i. There is no evidence presented by the prosecution that the defendant knew about the presence of the gun in his car before he pulled up at the road block.

ii. There is no evidence presented by the prosecution that the defendant was ever in physical possession of the items that PC Philips said looked like a firearm.



iii. *The evidence of PC Myers is that the car that the defendant was driving stopped at the road block. He sped away after he was spoken to by the male in the back of the car.*

iv. *The defendant did not attempt to run away after the car stopped.*

v. *The defendant complied with instructions and was arrested.*

8. I have considered the authorities cited by counsel for the Court's consideration especially *R. v. Fabian Thompson*², *R. v. Jonathan Welcome*³, *Omari*⁴ and *Duffy*⁵. In all of these, the defendants were convicted after trial. Sentences ranged from 3 years to 6 years imprisonment. Crown counsel has drawn the Court's attention to *R. v. Fabian Thompson* as being the authority which seems to bear most similarity in terms of the facts to the instant case. In this regard, he invited the Court to adopt a starting point of 4 ½ years imprisonment.

9. Mrs. Halliday-Davis contended that the facts of the authorities offered by the Crown are so different from those of the present case that they are distinguishable for that reason and as such the Court should consider them of limited assistance in this sentencing exercise.

10. She further submitted:

"14. *Usually the distinction between the principle and the aider is of little importance, however in this case there should be a distinction as it seems from the evidence that knowledge of the firearm can only be inferred after there was communication from the man (principle) that sat in the back of the car. APS Philips also stated that the gun came from the back of the car.*"

² Ind. 92/2016

³ Ind. 57/2016

⁴ [2004] 2 Cr.App.R. (S) 96

⁵ [2005] 1 Cr.App.R. (S) 75

1 11. Mrs. Halliday-Davis therefore invited the court to invoke a Suspended Sentence Supervision Order
2 of the sort suggested in the Social Inquiry Report.

3
4 **Social Inquiry Report**

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6 12. A comprehensive Social Inquiry Report was prepared which provided details of the defendant's
7 upbringing and associations as well as the social worker's finding of the level or risk and needs of
8 the defendant. The defendant was assessed as having a high risk of reoffending. The Social Worker
9 also noted that the defendant appeared amenable to engaging in the rehabilitative process and had
10 made efforts to obtain and maintain employment and to make positive changes to his life.

11
12 13. The recommendation of the social worker was as follows:

13
14 *... the Honourable Court may consider suspending the custodial period and*
15 *impose the following: A Suspended Sentence Supervision Order of 2 years with the*
16 *following conditions:*



- To complete 240 hours of Community Service
 - To be placed on a curfew for six months from 8PM to 6AM
 - To cease his drug use and submit to random drug testing at the instruction of a Probation Officer
 - To attend The Counselling Centre for a substance use assessment and adhere to treatment recommendations made by the Counsellor
 - To participate and complete any programme deemed appropriate by his supervising Probation Officer."
- 23
24
25
26

27 **Court's decision**

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29 14. This offence merits a custodial sentence. The defendant was convicted after trial. I take as my
30 starting point a sentence of 3/12 years imprisonment to reflect the defendant's role as an aider and
31 abettor to the possession of the imitation firearm. I do take as an aggravating factor that the

1 defendant was on police bail for other non-related matters at the time of the commission of this
2 offence necessitating an increase in the starting point to 4 years imprisonment. However, I am also
3 persuaded that there should be some account for personal mitigation including the fact that the
4 defendant has no previous conviction for any offence. The sentence of this court for the offence of
5 Possession of the Imitation Firearm is 3 years imprisonment.
6

7 **B. Dangerous Driving**
8

9 15. Section 76 of The Traffic Law 2011 states that:
10

11 “A person who drives a vehicle or animal on a road dangerously or recklessly, or
12 at a speed or in a manner or in a condition which is dangerous to the public, having
13 regard to all the circumstances of the case, including the nature, condition, and use
14 of the road or place and the amount of traffic which is actually at the time, or which
15 might reasonably be expected to be on the road or place commits an offence and
16 is liable....
17



18 (b) upon conviction on indictment, to a fine of three thousand
19 dollars or to imprisonment for a term of two years, or to
20 both, and in addition –
21

22 (i) shall without an order, automatically be disqualified for
23 two years or such longer period as the court may order,
24 form holding or obtaining a driver's licence or driving a
25 vehicle on the road....”
26

27 16. The parties are agreed that the defendant pleaded guilty to this offence at the earliest opportunity.
28 It is also agreed that the defendant has no previous convictions for any traffic offence.
29

30 17. Counsel for the defendant has asked this Court to consider the following factors in determining the
31 appropriate sentence:



- a. the condition of the roadway at the time of the commission of the offence, that it was late at night and there was minimal traffic on the road;
- b. no other road user was harmed; and
- c. that the defendant did not operate the vehicle while under the influence of alcohol or any drug.

18. Mrs. Halliday-Davis further submitted that the Court should be guided in its approach to sentence by the authorities of Kilara⁶ and Gaskin⁷ and sought to distinguish the facts of the instant case from those of the authority of Hastings⁸ tendered by the Crown.

19. The Crown's submission on this point was as follows:

"35. We submit that the Court should consider imposing a sentence of imprisonment in relation to the offence of dangerous driving in this case. Notwithstanding the distinction in the facts of this case from Regina v. Hastings, we submit that a sentence of imprisonment would be appropriate in this case as the manner of driving was not dissimilar."

20. The Crown emphasized the manner of the defendant's driving; the fact that Officer Phillips had to jump out of the vehicle's path to avoid being run over; the danger/risk to other road users because of the defendant's driving and the fact that the defendant drove in this manner for some two kilometers along the Seven Mile Beach Road, ignoring the police vehicle driving behind him, which was signaling for him to stop.

Court's Decision

21. This was an instance of unnecessarily dangerous driving. The facts as accepted are that the defendant was travelling at speeds in excess of 85 miles per hour, far in excess of the speed limits

⁶ 2013 EWCA 244

⁷ 2012 EWCA Crim 2110

⁸ [1996] R.T.R. 331

1 for both the Esterley Tibbetts Highway and Seven Mile Main Road. Not only was the defendant
2 driving at speeds far in excess of the speed limit, he also drove in the wrong lane when he sped
3 away from the road block as he sought to evade the police vehicle. I find that this Court should
4 mark its displeasure with the defendant's actions by imposing a custodial sentence. The appropriate
5 sentence is 12 months' imprisonment for dangerous Driving. The defendant will receive the full
6 credit for his guilty plea resulting in a sentence of 8 months' imprisonment.

7
8 **Sentence**

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10 22. For the offence of possession of an imitation firearm the defendant is sentenced to serve a term of
11 imprisonment of 3 years.

12
13 23. For the offence of dangerous driving the defendant will serve a term of imprisonment of 8 months.
14 This sentence will run concurrently with the sentence for the possession of the imitation firearm.

15
16 24. Any time spent on remand will count toward this sentence.

17
18 25. Pursuant to Section 76 of the Traffic Law, 2011 the defendant will be disqualified for a period of
19 three years from holding or obtaining a driver's licence or driving a vehicle on the road, the period
20 of disqualification to run from the date of the expiration of the sentence of imprisonment. The
21 particulars of the offence shall be endorsed on the defendant's driving record.

22
23 Dated this 11th day of March, 2019.

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28 **Madam Justice Marlene I. Carter**
29 **Judge of the Grand Court (Acting)**
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