IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

INDICTMENT NO: 0057/2016

THE QUEEN

v.

JOHNATHON (JONATHAN) SAMUEL WELCOME

Appearances:	**Mr. Neil Kumar for the Crown**
	Ms. Parthna Bodden of Samson & McGrath for the Defendant
Before:	**Dame Linda Dobbs**
Sentence Hearing:	**15th December 2016**
Delivery of Decision:	**15th December 2016**

HEADNOTE

Criminal Law – Possession of an imitation firearm with intent to commit an offence *– Paucity of cases in the UK and in the Cayman Islands on stand-alone cases of possession of an imitation firearm with intent to resist arrest – Starting point – Aggravating and Mitigating Factors.*

SENTENCE JUDGMENT

1. The Defendant, Jonathan Welcome, faced an indictment charging him with possession of a firearm with intent to resist arrest contrary to s.18(6) of the Firearms Law. Following trial he was convicted.

2. The facts can be simply stated. On Sunday the 17th of April 2016, at approximately 1:25 a.m., RCIPS officers PS McKay and PC Wolliston were travelling together in a marked police vehicle on School Road (coming from the Eastern Avenue side of George Town), heading towards Rock Hole Road. They were near the Annex playing field and McField Square. Upon reaching the vicinity of the Annex football field, PC Wolliston saw a male he knew from previous dealings to be Jonathan Welcome (the Defendant). PC Wolliston pointed out Welcome, who was walking beside two unknown males towards the junction of School Road and Rock Hole Road, to PS McKay, who parked the police car next to the sidewalk. PC Wolliston exited the police car and called out to the Defendant Jonathan Welcome, who turned and smiled and walked over to him. By then he was about 5 or 6 feet away. Officer Wolliston then said "*Jonathan I need to talk with you*" and they both walked towards the rear of the vehicle. By then the Defendant was less than 5 feet away. The Defendant said "*what happen now*" and kept walking towards the left side of the vehicle. Officer McKay had just opened his driver's door at which point the Defendant started to run off in the direction of Rock Hole Road.

GRAND COURT - CAYMAN ISLANDS

3. PC Wolliston began chasing after the Defendant. PS McKay joined the chase and instructed the Defendant to "*drop the gun, drop the gun*!" Both officers described the Defendant as holding a black and silver gun in his right hand which was stretched out and pointing in the direction of the officers. PS McKay continued to shout "*drop the gun*". The Defendant did not attempt to drop or throw away the gun. As the officers chased the Defendant he was sweeping his arm around and pointing the gun not only in the direction of the officers but also towards two members of the public – a woman and a man. Both Officers heard the male bystander shout out to the woman "*Get down don't you see the man has a gun!*". The police were unable to use their firearms due to the presence of people and houses and the Defendant made good his escape. The officers radioed for assistance. A search was conducted but the Defendant could not be found, nor has the weapon he had been carrying.

4. On the 22nd of April 2016 at approximately 4:00 a.m. police attended a residence in George Town in search of the Defendant. Police used a 'loud hailer' to instruct all occupants of the house to exit the premises. After a period of time, two females exited through the front door. The police entry team waited at the front door shouting repeatedly that anyone else in the house should exit.

5. Police subsequently entered the premises and went through the house room by room. The Defendant was found hiding in the attic. He was cautioned and replied "*Wah this fah offica, I nah did nothing wrong*".

6. At approximately 6:05 a.m. the Defendant was arrested by Detective Sergeant Andrew Graham for possession of a firearm. He was cautioned and replied "*What firearm*?" When interviewed the Defendant made no comment to all questions asked.

DEFENDANT'S PREVIOUS CONVICTIONS

7. This 23-year-old Defendant has a number of previous convictions dating back to 2012: for handling, failure to surrender to custody, escaping lawful custody, consumption and possession of ganja; in 2013 for possession of a prohibited weapon, two offences of attempted robbery and two offences of possession of an imitation firearm with intent to commit an offence. In respect of the latter offences he was sentenced to six (6) years' imprisonment in January 2013. He was released in July 2015.

8. The facts of the 2013 convictions can be summarized briefly. On 5th February 2011, two men, with faces covered by t-shirts, entered the Blackbeards Liquor store, in Grand Harbour. One male had what looked like a rifle and the other a can of pepper spray. They demanded money from one of the workers who, without responding, went outside to inform the manager of what was happening. The two armed males followed and approached another man outside demanding money and jewellery. The victim managed to wrestle the firearm from the male and the two males took off, followed by a number of men who, by then, had armed themselves.

9. They detained the two males until the police were called. One of the males was this Defendant. The weapon was seized and found to be a shotgun which was not operating properly.

GRAND COURT - CAYMAN ISLANDS

MITIGATION

10. Miss Bodden on behalf of her client advances the following mitigation:

    a. The defendant is a young man of 23;

    b. There was no physical violence or injury caused;

    c. This was not pre-meditated;

    d. The incident was over very quickly.

11. The point is also made that the offences resulting in the 2013 conviction relate to a single incident.

12. The court enquired about the Defendant's relationship with his parents. It appears that the Defendant's parents, who are religious people, are appalled by the Defendant's conduct yet are still prepared to stand by and support him. They are willing to try to help him through what will be a difficult time and support him on his release.

13. In prison the Defendant has been working and attending Math classes in an effort to improve his education so that he can do something positive on release.

THE LAW

14. The maximum sentence for this offence is one of 20 years' imprisonment. I have considered the cases of ***Avis***[1]; ***Bentham***[2]; ***Omari***[3]; ***Duffy***[4]; ***MacDonald & Others***[5]; ***Ramoon***[6]. My attention was drawn by prosecuting counsel to the cases of ***McLaughlin***[7]; ***Bryan***[8] and an extract from UK Current Sentencing Practice. These cases can be distinguished from the present one – not least because they are either cases of possession of real firearms and/or are linked to other offences such as robbery.

SENTENCE

15. The case of ***Avis*** set out a number of questions which a court should consider when sentencing a firearms case:

    a. What sort of weapon is involved?

    b. What use, if any, was made of the firearm?

    c. With what intention, if any, did the defendant possess the firearm?

    d. What is the defendant's record?

16. Most cases involving the use of imitation firearms are associated with other offences, most particularly, robbery. The sentences passed for the firearm offence do not often represent the sentence that would have been passed were the offence a stand-alone one, that is, because the possession of the imitation firearm or firearm is usually treated as an aggravating factor of the main offence.

---

[1] [1998] 1 Cr.App.R. 420, CA
[2] [2005] UKHL 18
[3] [2004] 2 Cr App R (S) 96
[4] [2005] 1 Cr App R (S) 75
[5] [2006] NICA 4
[6] Indictment 24/2010
[7] Ind 47b/2012
[8] Ind. 64/2013

GRAND COURT CAYMAN ISLANDS

Hence there is a paucity of cases both in the UK and in the Cayman Islands on stand-alone cases of possession of an imitation firearm with intent to resist arrest.

17. In ***R v Omari*** (*supra*) the appellant pleaded guilty to possessing an imitation firearm with intent to cause fear of violence. He had been with a group of youths when a police patrol passed. He stretched out his right arm and made a pistol gesture. The police officers stopped the car and approached the group. The appellant ran off, chased by an officer. The appellant stopped and turned, pointed a gun at an officer and threatened him. He later threw the gun over a wall into a yard. He was subsequently arrested. The gun was found to be an imitation firearm, capable of firing ball bearings. His appeal against a sentence of five years' imprisonment was dismissed.

18. In ***R. v Duffy*** (*supra*) the appellant pleaded guilty to having a firearm or imitation firearm with intent to resist arrest, possessing an imitation firearm with intent to cause fear of violence, and making a threat to kill. Police officers had been called to an address in the early hours of the morning where the appellant was causing a disturbance. He emerged from an upstairs window, produced a hand gun and pointed it at a police officer saying, *'I am going to shoot you'*. The appellant did not put the gun down when requested to do so and pointed the gun at three other officers threatening to shoot them. The police officers did not believe that the weapons that the defendant had brandished were real and so it proved because after his arrest they were found to be a toy hand gun and an ornamental musket. An appeal against a sentence of five years' imprisonment was also unsuccessful.

GRAND COURT CAYMAN ISLANDS

19. ***McDonald & Others*** *(supra)* was a reference by the DPP. The Defendants had pleaded guilty to an offence of affray, possession of ammunition and possession of an imitation firearm. They received sentences of three years suspended for five years in respect of the offences of affray and possession of an imitation firearm. There had been a report to the police of armed men with balaclavas in the road and military-style jackets stopping a couple of motorists and demanding to know why they were in the area. Police were contacted and drove to the village in question. They saw four persons at either side of the roadway – two had stick-like weapons which they waved above their heads, and another had a long-arm weapon with a curved magazine attached – it was a deactivated AK-47 assault rifle. The gunman adopted a kneeling position as the police car approached One of the police officers exited the car and identified himself as a police officer. The men ran away but one was apprehended.

20. The court found that the sentence was unduly lenient but the facts and the other matters taken into account by the Court, including the principle of double-jeopardy do not assist in this case; however the observations of the LCJ are of relevance. Kerr LCJ at paragraph 30 said this:

> "*We consider that the starting point for an offence under section 17A on a plea of guilty should be in the range of two to three years' imprisonment. Sentences substantially in excess of that range will be justified where the imitation weapon is used on more than one occasion or where members of the public have been put in significant fear.*"

21. The factors outlined in ***Avis*** *(supra)* will also be relevant in fixing the appropriate sentence. The court noted that the features of that case merited a sentence in the range of five to seven years.

GRAND COURT CAYMAN ISLANDS

22. In ***Ramoon***, the defendant was convicted of possession of an imitation firearm with intent to commit an offence. The defendant had approached the victim who was having a meal with friends in his yard. He pulled out what appeared to be a firearm and seemed to be trying to put a shot in the chamber. He was tackled by the victim and, with that, the defendant ran away. The defendant in that case was a young man with no previous convictions for violence. He was sentenced to three years' imprisonment.

23. Things have moved on since 2010. Gun crime is the scourge of the Caribbean. The Cayman Islands has not escaped that trend. Gun crime has risen in the intervening period and is becoming a serious problem here.

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

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

25. In relation to ***Avis*** questions 2 and 3: The Defendant not only pointed the gun continuously at the police officers but also at two members of the public who were present at the time; his clear intention being to resist arrest.

26. So far as question 4 is concerned: The defendant is relatively young. He, sadly, already has an unenviable list of previous convictions, the seriousness of which have been escalating and by virtue of this offence, repeated.

27. Mrs. Bodden, counsel for the Defendant, has submitted that when looking at the UK cases, cognizance has to be taken of the fact that the maximum sentences in the UK are higher for the equivalent offence. That is correct. However, the imposition of the tough mandatory minimum in the Cayman Island demonstrates that these offences are taken extremely seriously and are indeed higher than the mandatory minima in the UK.

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

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

GRAND COURT - CAYMAN ISLANDS

30. The aggravating factors in this case are:

a. This offence was committed in public at night-time;

b. The defendant not only pointed the gun at the police officers with the clear intent to resist arrest, the offence for which he is charged, but he also pointed the gun at the members of the public who were not in hot pursuit of him;

c. The serious and similar previous convictions.

31. Those factors significantly increase the gravity of the offence and raise the starting point to seven years.

32. There can be no credit for a plea of guilty, but a reduction is made for mitigation.

33. The sentence of the court is one of 6 years' imprisonment. Time spent on remand will count towards the sentence.

Dated this the 15th December 2016

GRAND COURT - CAYMAN ISLANDS

Dame Linda Dobbs
Acting Judge of the Grand Court