

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**CRIMINAL DIVISION**

**Indictment No. 12/2020**

**BETWEEN:**

**THE QUEEN**

**Prosecution**

**v**

**BRYAN ONEAL SMALL**

**Accused**

**AND**

**JASON OMAR MORGAN**

*Before: The Honourable Carlisle Greaves, Judge of the High Court*

**Date of Judgement: 2021 May 25**

**Appearances:**

**Mr. Neville Watson for the Prosecution**

**Mr. Andrew Pilgrim, Q.C., for the Accused**

**DECISION**

*Firearms Act Cap 179, Theft Act Cap 155 - Possession of firearm, going equipped with implements for stealing, 15 years imprisonment for firearm, firearm a 9mm Luger including extended magazine with 10 rounds, capable of 50 rounds, starting point 10 years, aggravating factors, including proximity to Airport, flight from police by reckless driving along highway, flipped vehicle, endangering community, determination to retain the firearm, aiming at police but no discharge of the firearm, possession of implements including ski mask, gloves, torch 15 years imprisonment for the firearm, 10 years for the ammunition, 5 years for going equipped to steal.*

**CARLISLE GREAVES J:****INTRODUCTION**

- [1] The two convicted men Bryan Oneal Small and Jason Omar Morgan appeared before this court for first arraignment on the 24<sup>th</sup> July 2020 on Indictment No. 12 of 2020 dated May 10<sup>th</sup> 2020, which charged that on the 11<sup>th</sup> October 2013, Small had in his possession a firearm namely, a semi automatic pistol without a valid licence and 10 rounds of ammunition without a valid permit, contrary to the **Firearms Act, Cap. 179**.
- [2] It also charged that both Small and Morgan on the said date had with them articles for use in the course of or in connection with theft, namely a pair of gloves, two ski masks and a torch, contrary to the **Theft Act**.
- [3] Both defendants pleaded not guilty. Trial dates were warned for the 16<sup>th</sup> November, 2020 and alternatively fixed for the 25<sup>th</sup> January 2021.
- [4] A course of case management was commenced with mention dates on the 17<sup>th</sup> August 2020, 28<sup>th</sup> September 2020, 16<sup>th</sup> November 2020 and 17<sup>th</sup> November 2020, to accommodate the accused men to obtain lawyers if they desired and to receive any disclosures they required.
- [5] Trial proceeded on the 18<sup>th</sup> November 2020 when the accused men informed the court they were ready. They represented themselves.

- [6] On 1<sup>st</sup> December 2020 the jury returned a unanimous verdict of guilty against both accused men on all their respective counts.
- [7] Presentencing reports were ordered in respect of both men and both were remanded in custody pending sentence to be on 22<sup>nd</sup> January 2021.
- [8] Unfortunately, a Covid 19 outbreak subsequently occurred, the courts, probation department and the country were put in abeyance for several months and consequently sentence was delayed.

### **THE EVIDENCE**

- [9] The evidence was that on the 11<sup>th</sup> October 2013 several police officers met at Grantley Adams International Airport police station and then left in several police motor vehicles on an operation at the nearby Airport Industrial Park.
- [10] There, they saw the two now convicted men sitting in a motor car in a carpark.
- [11] As they approached, the accused, upon seeing them, sped off in the motor car driven by Mr. Morgan.
- [12] There was some dispute as to whether the police shot at them as or before they fled or not.
- [13] They sped on to the ABC Highway and eventually in a westerly direction. The police pursued them with blaring sirens.

- [14] Upon reaching the Lower Greys area some where in the vicinity of St. George or Christ Church, the car hit an embankment, flipped on its top and skidded to a stop.
- [15] From it crawled the two accused men. Both fled and jumped a chain link fence of a neighbouring home.
- [16] A glove was left stuck atop a fence which appeared similar to another subsequently found to be worn by Morgan.
- [17] As the men fled over the lawn of the adjoining house, Small was seen carrying a firearm in hand which, according to the evidence, he turned in the direction of the pursuing police officers but it did not fire.
- [18] Two of the pursuing officers then fired at both fleeing men felling them onto the lawn.
- [19] The police entered the compound, secured the firearm and the injured men. They were treated or assisted by a retired nurse at the home and later by her daughter, a doctor, who shortly after arrived at the home. The ambulances were summoned and they were both taken to the hospital.
- [20] Crime scene officers were summoned and items were recovered and secured, inclusive of those mentioned in the indictments.

[21] In their defence, the convicted men alleged that they fled because the police shot at them in the Airport parking lot. In addition the firearm was planted by the police. They were not in any way equipped for theft.

### **THE SUBMISSIONS**

[22] The prosecution submits that Mr. Small should be sentenced to a term of 9 years imprisonment for the firearm and ammunition, starting at 8 years with an uplift by one year due to the aggravating factors he identified as outweighing the mitigating factors.

[23] He relied upon the decided cases of *R v Avis [1998] 1 Cr. App. R 420, Bovell v R, Crim App No. 23 of 2000 and Teerath Persaud v The Queen [2018]CCJ 10 (AJ)*.

[24] He identified the aggravating factors as, a powerful intratec hand gun fitted with an extended magazine in excellent working order, 10 rounds of ammunition, no licence nor permit, a deliberate and intentional plan to possess them, possession in a public place, a clear intent to dispose of the evidence and the prevalence of these firearms in the society.

[25] He identified the mitigating factors as inclusive of the recovery of the firearm and the ammunition by the police and that the firearm was not discharged.

- [26] As for the charge of going equipped, he identified the aggravating factors to include, significant steps to conceal his identity by possession of the ski mask and gloves, as well as evidence of significant planning.
- [27] As to the offender himself he submitted as aggravating his medium risk of re-offending referenced in the presentencing report and his six previous convictions. He submitted there were no mitigating factors.
- [28] He suggested a term of imprisonment, started at 3 years, uplifted to 4 years due to the outweighing aggravating factors.
- [29] In respect of Mr. Morgan, he suggested a starting point of 3 years imprisonment uplifted to 4 years for the going equipped. He submitted the aggravating factors to include the significant steps to conceal his identity by use of the ski mask and gloves and significant planning outweighing the mitigating factors which were the failure to steal anything.
- [30] As to his personal aggravating factors, he identified 4 previous convictions and submitted they were no mitigating factors.
- [31] Mr. Pilgrim QC, who did not represent the accused men at trial but now represents them at their sentencing, called several character witnesses for each who testified to a change in each of their attitudes. In respect of Mr. Morgan, one of his references was a pastor and in respect of Mr. Small, one was a well known teacher.

[32] Mr. Pilgrim submitted inter alia in the case of Mr. Small, that given the age of the offences, the injuries suffered by Mr. Small when he was shot down by the police, the 4 years he spent as a cripple before recovering in the last 3 years, the long painful therapies he had to endure and his now changed attitude and little likelihood that he would in future commit a similar offence, he should be sentenced to time served.

[33] In respect of Mr. Morgan he submitted that the charge of going equipped is generally one handled at the magistrate court level and would attract a sentence of around 6 months there, that this case was brought to the Supreme Court by the prosecution not the now convicted man. Given his improved character since the offence, family connections and responsibility to them and the vintage of the offence he too should not be further incarcerated.

## **REASONINGS**

[34] I have carefully read the prosecutions written and oral submissions. I have also carefully listened to and considered the defence's oral submissions.

[35] I have had the advantage of being the trial judge in this case and have carefully listened to and considered the evidence, particularly that which the jury must have accepted and that which it must have rejected.

[36] It is acknowledged that defence counsel is the guardian of his clients' interests. His submissions should be duly heard and respectfully considered and I have done so.

[37] It is also acknowledged that the prosecution is the guardian of the people's interest and his submissions should be duly heard and respectfully considered.

[38] I have done so.

[39] And though I consider that a court may not divert to any substantial degree above the prosecutions submission and perhaps in some cases below or above the defence's, I am cognizant of the duty of the court to after careful consideration affix a sentence befitting the crime according to the circumstances and the law even if it substantially varies from those suggested by competing counsel.

[40] In the present circumstances, I find myself unable to agree with both the prosecution and the defence in this case as to what the sentence should be.

[41] Firstly, let me say that in respect of both convicted men, I have considered **section 35** of the Penal Reform Act, Cap. 139 and have concluded that this case does not merit a non custodial sentence. It requires a custodial sentence.

[42] Now in respect of Mr. Small and the firearm and ammunition charges, I have applied the considerations laid out in R v Avis:

“1. What kind of firearm is it. I find this firearm an extremely dangerous and lethal one indeed. It is described as a 9mm Luger Tec

DC9. A closer look at reveals breather or air holes along the outer casing surrounding the barrel like a submachine gun. It had fitted to it an extended magazine with 10 rounds of ammunition in it but said to be capable of carrying about 50. It's in my opinion the sight of this large ugly type of a firearm is likely to shock you before it shoots you. No man should be illegally carrying around such a weapon in this country.

2. What use if any was made of the firearm. I would rework that question and ask what possible use could any man want with that firearm with its extended magazine and all. In this age of mass killings and the sort. The thoughts of its potential are shuddering.

3. What was the intention of the accused. Was it to endanger life, cause fear or violence, resist arrest, commit a serious offence. Given that in addition to this fierce looking lethal firearm and the other equipment they were carrying what could be expected of their reaction if confronted needs no speculation. The thoughts of the possible carnage that could possibly follow this particular firearm is shuddering.”

4. What is the accused's record. I will disregard his previous convictions, even including notice of one for assault.

## **THE PENALTY**

[43] The maximum penalty for possession of a firearm in this jurisdiction is 15 years imprisonment, per the *Firearms Act*.

[44] *R v Bovell*, held that upon a conviction for possession of a firearm a starting point in the range of 8 to 10 years is appropriate.

[45] Given the particular facts of this case and the factors I have above outlined I cannot find it possible to start at a point below 10 years imprisonment.

[46] As for the aggravating factors. In addition to those outlined by the prosecution, I find there are other serious aggravating factors.

- [47] This was an armed man in the fashion I have described lingering with it in the precincts of or adjacent to the islands international airport, an area that common sense dictates should be seen as a prohibited area, in the company of another man, both in possession of ski masks and thick gloves when it was not yet the covid masks era. The question is what in the world would he or they be up to like that. What effect would he or they may have had on this country if he or they found themselves in a situation considered necessary to make use of the firearm.
- [48] I consider this factor of the possession of that firearm in the precinct of the international airport, a substantial aggravating factor.
- [49] Furthermore, the accused's determination, it seems by any means necessary, to deny apprehension of himself and his dispossession of the firearm was such a strong factor that they sped with it along the most busy highway in Barbados, leading westward from the airport, according to the evidence swerving in and out sometimes against the traffic, causing them to swerve to avoid collision and in my opinion endangering the lives and limbs of innocent citizens. In my opinion these factors are powerful aggravating factors.
- [50] In addition they never stopped until they crashed and toppled over, again raising the risk to innocent citizens. They fled over a fence into the yard of a

citizen with Mr. Small carrying this firearm in hand. Again raising the risk to innocent citizens.

[51] This is further evidenced by the police finding it necessary to fire shots into the compound to bring them to a stop when in addition he Mr. Small, according to the evidence, turned and pointed that firearm towards some police officers.

[52] Why it did not fire is not known to this court and this court will not speculate about that. However, these are actions done by him or caused by him to be done that further exposed to violent injury innocent citizens, the police or himself and his accomplice.

[53] In my opinion these are aggravating factors of significant degree.

[54] This jurisdiction has a long history of police officers being shot and sometimes even killed by fleeing gunmen determined to keep their illegal firearms.

[55] A few cases we may recall, include, Marlon Norville in 1990, in the New Orleans, St. Michael, Dexter Yarde in 2004, Holetown, St James, Shane Newton in 2016, St. Thomas and Steve Brathwaite in 2020, St John.

[56] These courts by their sentences must establish in the minds of our gunmen, strong deterrents. Drop your guns.

- [57] Today we can only commend those police officers and or some other greater force that we are speaking of a sentence after a trial in this case and not a funeral or some funerals.
- [58] The prosecution has submitted as a mitigating factor, the recovery of the firearm by the police.
- [59] In this jurisdiction in several recent cases we have treated the recovery of the firearm as a substantial mitigating factor based on the objective of ridding the society of the illegal firearm scourge and these courts have been applying some discount therefor. In several cases we have imposed substantial fines for possession of firearms where it has been the accused's first conviction. In cases where the firearm was used for any unlawful reason, the sentence has been an immediate period of incarceration.
- [60] In all those possession cases the accused admitted possession of the firearm, pleaded guilty and expressed remorse.
- [61] In the instant case I cannot find that the recovery was a mitigating factor. The effort of the convicted man was too determined to now credit him when the police had to chase him down, exposed their lives and innocent citizens to danger and in the end shoot him and his accomplice down to recover it. Furthermore he claimed he never possessed it and that the police planted it.
- [62] As for the mitigating factors, I can find none.

- [63] And as for the injuries he received and the evidence of the character witnesses he has called and the vintage of the case together with the other submissions made on his behalf and his allocutus, I cannot find them to be of a sufficiently mitigating degree to reduce from the maximum the sentence I shall impose.
- [64] In fact in respect of his allocutus I am unable to see, for example, how his reference to alleged bullying against him since he was a young boy could be relevant to his decision to carry a firearm of this type together with the unlawful equipment of the sort he carried at the relevant time whilst lurking in the Airport Park precincts with another and fleeing the police with the weapon in hand as he did in this case.
- [65] Those who contribute to the scourge of firearms in this jurisdiction and their carnage must be convinced by these courts that they seriously jeopardize their liberty when they choose to possess and or use them.
- [66] This is an apt case given its circumstances to stamp that in their minds.
- [67] In the circumstances I sentence Mr. Small to 15 years imprisonment for the possession of the firearm and 10 years imprisonment for the possession of the ammunition respectively and 5 years imprisonment for going equipped, less the 1416 days already spent in custody in respect of these matters.

**JASON MORGAN**

[68] I consider a sentence of 5 years imprisonment for going equipped to be appropriate in your case.

[69] You have had a full trial and the jury unanimously rejected your defence and accepted the prosecutions evidence against you.

[70] I have listened to and carefully considered your counsels submissions.

[71] I have listened to and carefully considered the evidence of your character witnesses. But given the circumstances of this case I do not consider anything said on your behalf to be sufficiently mitigating to merit a sentence below the maximum.

[72] I have also carefully listened to your allocutus and though, like in the case of your co-accused and perhaps even more so, I find it to be hopeful of the future, I am not able consider its mitigation as sufficient to reduce the sentence I shall impose given the very serious circumstances of this case.

[73] I think you have been fortunate not to have been indicted for the joint possession of the firearm and ammunition on a joint enterprise basis as an aider and assister, if not an encourager and abettor. I find it difficult to draw an inference that you did not know or could not have known of the presence of that big gun with its long extended magazine in the circumstances. You were similarly equipped with the other equipment and you were the driver of

the motor car. You were the one who sped so recklessly along the highways of Barbados putting innocent citizens at risk of injury or death to effect your escape.

[74] The question is if you only had a ski mask, gloves and a torch in your car, why in the world would you find it necessary to speed away as you did, topple over the motor car, jump over the fence and run away with, as it turned out, a man with a big gun in his hand.

[75] I do not seek to punish you because you were not charged for the more serious offence.

[76] But I think in light of the circumstances of this case you cannot expect to receive a magistrate courts sentence as your counsel has advocated.

[77] I hope however that you have changed as your witnesses have said and as you have said in your allocutous. I see potential in you. In fact in both of you but you must pay for your crimes today and live another day.

[78] Your sentence is 5 years imprisonment less the time (176 days) you have spent in custody for this offence.

**Carlisle Greaves**  
**Judge of the High Court**