IN THE GRAND COURT OF THE CAYMAN ISLANDS

CRIMINAL SIDE

INDICTMENT NO: 15 of 2020

THE QUEEN

V.

DEAN RYAN DERBY

Appearances:	**Mr. Neil Kumar for the Crown**
	Mr. Keith Myers for the Defendant
Before:	**Justice Cheryll Richards Q.C.**
Submissions:	**4th September 2020**
Date of Decision:	**15th September 2020**

HEADNOTE

Criminal Law - Section 15(1) and (5) of the Firearms Law, (2008 Revision) Possession of Unlicensed Firearm and Ammunition – Section 39 of the Firearms Law - *Minimum Sentence – Issue of Exceptional Circumstances.*

SENTENCE JUDGMENT

1. The Defendant is before the Court for sentencing in respect of two offences of Possession of Unlicensed Firearm and Possession of Unlicensed Firearm (Ammunition) contrary to s.15 (1) and (5) of the ***Firearms Law*** 2008.

2. The particulars of the first count of the indictment are that he on the 13th day of February 2020 at Ms. Francis Lane in the vicinity of #3 Myles Lane, George Town, Cayman Islands, had in his possession an unlicensed firearm, namely a Smith and Wesson M & P 9mm semi-automatic pistol, serial number DVF5443 which was not under and in accordance with the terms of a Firearm User's License. The second count charges that he, on the said date and at the same time had in his possession 9 rounds of ammunition, namely 9mm cartridges, which was not under and in accordance with the terms of a Firearm User's License.

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3. The Defendant was convicted following a trial by Judge alone. The facts are detailed in the Verdict Judgment dated 26th August 2020. In summary, on the date in question, at about 7:15pm, the described firearm and ammunition were found by the Police in the glove compartment of a silver Mitsubishi Colt motor car registration number 173 015 which was driven by and in the possession of the Defendant. The car had been left open, whilst parked along the street in the vicinity of a house where the Police executed a search warrant. The Defendant had been seen earlier coming from the house and was asked by the Police to wait until the search of the house was completed. He told the police that he had arrived at the area on foot and remained there for about an hour before being allowed to leave. He walked away leaving the car behind. After he left, the Police who had seen the car on initial arrival, made inquiries as to the owner of the car, given that it appeared to have been left unattended for a lengthy period. They searched the

vehicle under the ***Misuse of Drugs Law*** and found the described firearm and ammunition. A Police search then began to locate the Defendant. They spoke to his mother. He handed himself in to the Police station just before midnight on the said day.

4. The case for the Defendant at trial and in interview with the Police was that he found the gun in the glove compartment of the car while driving towards the house, about three minutes before the arrival of the Police. The Defendant thus alleged that he had been *"set up"*. This, on the basis that the car had, in the course of that day, been in the possession of other persons, that the firearm and ammunition did not belong to him, had not been placed in the car by him and must therefore have been planted by a person or persons unknown. The Court rejected his account, concluding that the Prosecution had discharged its burden of proof to the required standard and that his claim of possession for only three minutes was not true. There was no evidence as to the length of time that he had been in possession.

5. Sentences for these offences are prescribed by s.15(5) of the said Law. The maximum term of imprisonment is liability to a fine of $100,000.00 and to imprisonment for 20 years. Section 39 of the Law provides minimum terms where the offence is in respect of a lethal-barreled weapon from which any shot, bullet or other missile may be discharged.

6. Section 39(2) provides that:

> *"Notwithstanding section 6(2) and ~~(8)~~ 8 of the Criminal Procedure Code, (2006 Revision), the 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 7 years (with or without a fine); or*

(b) in any other case, impose a sentence of imprisonment for a term of at least ~~10~~ 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."

7. Counsel on behalf of the Defendant argues that there are, in this case, exceptional circumstances. The matters prayed in aid are, the age of the Defendant, he is 26 years old, he is of good character, he has a good family background and that his possession of the firearm and ammunition could only have been for a limited time.

8. Counsel also submits that, looking at the matters as a whole, that is, the collective impact of all the circumstances in this case, the imposition of the statutory minimum term would amount to an arbitrary and disproportionate sentence.

9. The Prosecution submits that there is nothing exceptional about the circumstances of the Defendant or the offending in this case and that the application of the minimum sentence provisions would not be arbitrary and disproportionate for a number of reasons. These include:

i. That the gravity of gun crime cannot be exaggerated and that public protection is a paramount consideration, thus a deterrent sentence is required in this case.

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ii. The circumstances of this case are that a lethal-barreled weapon with nine live rounds of ammunition were left unsecured during the afternoon and

early evening in an open and unattended motor car with the keys inside. It was therefore readily accessible by anyone.

iii. There is no evidence of any significant adverse effect on the Defendant's health should the minimum term be imposed.

iv. There are no circumstances which suggest exceptionality in terms of the Defendant's personal circumstances. The fact that the Defendant is a young man with no previous convictions cannot be considered as an exceptional circumstance. To do so would create a real risk that those persons looking for safe havens for firearms would recruit such persons in the hope of eliciting the sympathy of the Court.

APPLICABLE PRINCIPLES

10. Both Counsel have helpfully provided a number of authorities on sentencing for firearm offences and on the approach to exceptional circumstances. The ***Cayman Islands Sentencing Guidelines*** provides guidance as to the general principles which are applicable in the course of the sentencing exercise. There are no specific sentencing guidelines in respect of firearm offences in the Cayman Islands.

11. In the ***2002 Statement on Tariffs and Guidelines for Sentencing for Certain Offences***, the Chief Justice stated:

> *"As regards to firearm offences contrary to the Firearms Law, the Legislation is quite clear that the possession or use of any unlicensed lethal barreled firearm is an extremely serious offence. Under the Firearms Law, the maximum penalty for possession of an unlicensed firearm is 20 years and a fine of $100,000. 00. The tariff for that offence unless there are very mitigating circumstances will be 10 years. If on the other hand aggravating circumstances ~~exists~~ exist, for instance, the use of the*

firearm for the commission of a serious offence, the tariff will be in keeping with decided cases and will be significantly higher."

12. These Guidelines pre-dated the Amendment to the Firearms Law which imposed a minimum term of 10 years following conviction after trial.

13. In the 2009 case of, ***Chavarria-Atily v. R***[1], the Cayman Islands Court of Appeal considered the issue of exceptional circumstances following the Appellant's sentence for the offence of Unlawful Possession of an air rifle. The Court stated:

> *"In the Cayman Islands it has been the massive increase in offences under the Firearms Law that has led Parliament to enact the minimum sentences in respect of those offences, while at the same time making special provision for cases of exceptional circumstances. The mere possession of a firearm even without any intention to use it for a criminal offence can still be a danger to the public for the reason that it could get into the hands of someone who does have that intent".*

14. The Court referred in its judgment to the cases of ***R v. Avis***[2] and ***R v. Zakir Rehman and Gary Wood***[3].

15. In the case of ***R v. Avis***, the English Court of Appeal stated that the appropriate level of sentence for a firearm offence will depend on all the facts and circumstances relevant to the offence and the offender. It will usually be appropriate for the sentencing court to ask itself a series of questions:

    i. What sort of weapon is involved?

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[1] 2009 CILR 118
[2] 1998 1 Cr. App. R. 420
[3] 2006 1 Cr. App. R. (S) 77

i. Genuine firearms are more dangerous than imitation firearms. Loaded firearms are more dangerous than unloaded firearms. Unloaded firearms for which ammunition is available are more dangerous than firearms for which no ammunition is available. Possession of a firearm which has no lawful use such as a sawn off shot gun will be viewed even more seriously than possession of a firearm which is capable of lawful use.

ii. What if any use has been made of the firearm?

iii. With what intention, if any, did the defendant possess or use the firearm?

iv. What is the defendant's record?

i. The seriousness of any firearms offence is inevitably increased if the offender has an established record of committing firearm offences or crimes of violence.

16. In the case of ***Zakir Rehman and Gary Wood***, the English Court of Appeal considered s.51A of the UK ***Firearms Act 1968*** with regard to the imposition of a minimum term of 5 years' imprisonment unless there were exceptional circumstances relating to the offence or the offender. The Court noted that the rationale for the section, that is, the policy behind it, was to send out a deterrent message. The mere possession of firearms could create dangers to the public. It might result in a firearm going into circulation which could then come into the possession of someone other than the particular offender in whose hands the firearm would be a danger to the public.

17. The Court held that Parliament had therefore said that usually a consequence of merely being in possession of a firearm would itself be sufficiently serious to require the imposition of a term of imprisonment of 5 years irrespective of the circumstances of the offence or the offender unless they passed the exceptional threshold to which the section referred.

18. In considering exceptional circumstances, the Court concluded that it was not appropriate to look at each circumstance separately and then to conclude that it did not amount to an exceptional circumstance. A holistic approach was needed. The Court held that there would be cases where there was one single striking feature which related either to the offence or the offender which caused that case to fall within the category of exceptional circumstances and there could be other cases where no single factor by itself would amount to an exceptional circumstance but the collective impact of all of the relevant circumstances truly made the case exceptional. Thus in the case of the Appellant ***Rehman***, the Court determined that the sentencing judge was wrong not to conclude that the case involved exceptional circumstances.

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19. The Court considered that it was not possible to identify one particular circumstance looking at all the matters. These included the Appellant's guilty plea which was entered at the first opportunity, his previous good character, his co-operation throughout the search and arrest and his continued gainful employment with a public authority where he was a valued employee. Additionally the weapon was a replica which had not been converted for use, it had not been fired prior to its being tested after it was seized and no ammunition had been found. The weapon was still in its original wrapping. The Appellant had done nothing to disguise his identity as a purchaser. He had purchased it

as a collector's model and had not been aware that it could be converted until he was told this by the police. In the Court's view, all these circumstances taken together, made it possible to come to the conclusion that the Court was not required to impose the minimum term.

20. The case of ***Zakir Rehman and Wood***, was cited with approval in the Grand Court case of ***Parsons v. Attorney General***[4]. In that case the Grand Court upheld the finding of the Summary Court that there were no exceptional circumstances. In considering the collective impact of all the circumstances including the Appellant's medical condition, the Court stated:

> *"21. ... Nor, in my view, does the subjectively harsh effect that imprisonment will likely have upon this appellant as described by Prof. Shaw, present "exceptional circumstances." Each offender will be impacted in a subjective and unique way by a sentence of imprisonment. The appellant's condition is not such as to make him "unfit to serve a [7-]year sentence" (per Lord Woolf, C.J. in Rehman (3) ([2006] 1 Cr. App. R. (S.) 77, at para. 15)). The concern is that due to his proneness to ADHD, paranoia and depression "incarceration will increase significantly the risk of further depression, damaged self-efficacy and would destroy any hope of rehabilitation ..." That kind of prognosis is, in my view, insufficient to found a conclusion now that the appellant is unfit to serve a term of imprisonment.*
>
> *22 While I am deeply concerned about the possibility of such an unfortunate outcome as that prognosed by Prof. Shaw, such concerns would attend the incarceration of very many young offenders for whom imprisonment is indicated as the only appropriate sentence. And while his previous good character would serve to distinguish the appellant from very many of those others, good character is, by itself, not enough to found "exceptional circumstances." This is made clear enough by the passage cited above from Rehman (ibid., at para. 4) which advises that the statute prescribes deterrent sentences which pay less attention to the personal circumstances of the offender and focuses primarily upon the need to deter others who would possess and use illegal firearms.*
>
> *23 The appellant's wilful disregard of the Law and the potentially lethal consequences of possessing the shotgun avoid, in this case, any notion of the statutory minimum sentence being an "arbitrary and disproportionate" sentence: Rehman (ibid., at para. 16)."*

[4] 2012 1 CILR 388

21. In the more recent case of ***R v. Nancarrow***,[5] the English Court of Appeal stated:

> "*Under section 51A (2) of the Firearms Act 1968, the Court must impose a minimum term of five years for an adult offender convicted of such an offence unless "the court is of the opinion that there are exceptional circumstances which in the opinion of the court justifies not doing so*"".

22. The Court identified eight principles from decided cases which apply:

> "*19. The authorities in this court establish the following principles as to the application of section 51A(2):*
>
> *(1) The purpose of the mandatory minimum term is to act as a deterrent (R v Zakir Rehman and Wood) [2005] EWCA Crim 2056; [2006] 1 Cr App R 77 at paragraph 12.*
>
> *(2) Circumstances are exceptional for the purposes of subsection (2) if to impose five years' imprisonment would amount to an arbitrary and disproportionate sentence (Rehman at paragraph 16).*
>
> *(3) It is important that the courts do not undermine the intention of Parliament by accepting too readily that the circumstances of a particular offence or offender are exceptional. In order to justify the disapplication of the five-year minimum, the circumstances of the case must be truly exceptional (R v Robert Dawson [2017] EWCA Crim 2244 at paragraphs 12 and 19).*
>
> *(4) It is necessary to look at all the circumstances of the case together, taking a holistic approach. It is not appropriate to look at each circumstance separately and conclude that, taken alone, it does not constitute an exceptional circumstances. There can be cases where no single factor by itself will amount to exceptional circumstances, but the collective impact of all the relevant circumstances makes the case exceptional (Rehman at paragraph 11).*
>
> *(5) The court should always have regard, amongst other things, to the four questions set out in R v Avis [1998] 2 Cr App R (S) 178, namely: (a) What sort of weapon was involved? (b) What use, if any, was made of it? (c) With what intention did the defendant possess it? (d) What is the defendant's record? (See, for example, R v Mccleary [2014] EWCA Crim 302 at paragraph 11.)*
>
> *(6) The reference in the section to the circumstances of the offender is important. It is relevant that an offender is unfit to serve a five-year sentence or that such a sentence may have a significantly adverse*

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[5] 2019 EWCA Crim 470

effect on his health (Rehman at paragraph 15; R v Shaw [2011] EWCA Crim 167 at paragraphs 6-7).

(7) Each case is fact-specific and the application of the principles dependent upon the particular circumstances of each individual case. Limited assistance is to be gained from referring the court to decisions in cases involving facts that are not materially identical (see, for example, R v Stoker [2013] EWCA Crim 1431 at paragraph 22).

(8) Unless the judge is clearly wrong in identifying exceptional circumstances where they do not exist or clearly wrong in not identifying exceptional circumstances where they do exist, this Court will not readily interfere (Rehman at paragraph 14)."

23. The Court also stated that the proper approach for a judge considering whether there are exceptional circumstances would be to consider the questions in ***R v. Avis*** and any other circumstances of the defendant which would bear upon the question.

24. In the case of the ***R v. Dawson***[6], the Appellant pleaded guilty to an offence of possessing a prohibited firearm, a pistol contrary to s.5(1)(A) of the UK ***Firearms Act 1968*** and possessing ammunition without a firearms certificate, namely, seven live cartridges. He was 26 years old at the time of the offences.

25. The police went to his home address to execute a search warrant. They knocked. The Appellant did not open the door, so they entered the premises by force. At the time of entering two persons had escaped through a window and were never identified. When the officers looked through the window of the bedroom they saw a hand gun lying in the grass which was part of a children's play area and there were five unfired cartridges in

[6] 2017 EWCA Crim 2244

the magazine of the gun. In a drawer in the bedroom they found two more unfired cartridges.

26. The gun was found to be a .32 calibre automatic self-loading pistol with a broken firing pin which when replaced was found to be in working order. The Appellant gave a detailed prepared statement in which he said that the two men who had escaped through the window had given him the gun only moments before they escaped when they realised that the police were at the door. The sentencing Judge concluded that there were no exceptional circumstances. In reviewing the matter the appellate Court stated:

> *"As the single judge rightly observed in granting leave, it is important that the courts do not undermine the intention of Parliament by accepting too readily in cases of this kind that the circumstances of a particular offence or offender are exceptional and that the minimum sentence would be unjust. It must also be borne in mind that as this court has said the fact that an offender is subjected to pressure and threats cannot in itself be regarded as unusual or exceptional (see Attorney General's Reference, No. 37 of 2013 R. v Culpeper)."*

27. The Court noted that the circumstances in the case of ***R v. Culpeper***[7] were plainly more serious than in the case before the Court in which the possession of the gun was fleeting. The Court also referred to the case of ***R v. Moffat***[8] and stated that fleeting possession is a factor which has been recognised as being capable at least in combination with other factors of amounting to or contributing to exceptional circumstances. The Court stated further :

> *"Possession merely with an intention to dispose of the firearm may also be capable of amounting to or contributing to exceptional circumstances see R. v. Harrison 2006. Citation..... In that case the police officers stopped the defendant's car and found he was in possession of a handgun and live ammunition. He was sentenced on the basis that he was on his way to dispose of the gun by throwing it into a lake. It was accepted that he intended to remove it permanently from circulation and that*

[7] 2013 EWCA Crim 1466
[8] 2014 EWCA Crim 332

the gun and ammunition came into his possession only that day. The Judge imposed the minimum term of five years imprisonment and on appeal a sentence of two years was substituted."

28. The Court in the case of ***Dawson*** concluded that it was appropriate and important to focus on the nature and outcome of the Appellant's possession of the firearm rather than the fact that it was of a fleeting duration. The Court stated that assuming that he was handed the gun by one of the men just before they left the flat by climbing over the balcony, rather than throwing it out of the window, he could simply have put it on the floor so that when the police entered they could recover it without any risk of it falling into the wrong hands. Instead in order to obstruct the police and to help the two men, the Appellant chose to throw the gun out of the window and, having thrown it, he threw it into a children's play area with the obvious risk that it could be found by children or fall into the hands of those who might use it for criminal purposes. The Court concluded that there were no exceptional circumstances in that case such as to avoid the imposition of the minimum term of five years' imprisonment.

29. In the case of ***R v. Moffat***, the matter involved a leading seaman who was suffering from an adjustment disorder who had a grievance about his obtaining leave to attend the birth of his second child. He confronted his lieutenant commander with an assault rifle and ammunition. When he was requested to hand it over to a colleague he did so immediately. The Court concluded that a sentence of three years imprisonment was too long and a sentence of fourteen months was imposed. The Court analyzed the features of the offence and the Appellant's personal circumstances, which included the fact that he immediately regretted his actions and became tearful, no attempt was made to load the firearm, it was not aimed at any one, he did not have an evil intent, he was

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emotionally overrun, and had a character reference which described him as the very epitome of steady reliability, honesty and commitment. The Court held that the sentencing judge was correct to determine that exceptional circumstances arose in the case.

30. In the case of ***R v. Bartell***[9], the English Court of Appeal stated:

> *"Ultimately the test would be whether the imposition of the minimum sentence would lead to a sentence that is arbitrary or disproportionate, however, the answer to that question must be considered in the light of the clear statutory intent that the offences to which section 51A apply, must be met with strong, deterrent sentences. This will mean that in some cases the sentence will be a harsh sentence and may appear particularly so where the offender has pleaded guilty."*

31. In the local case of ***R v. Hydes***[10], the Grand Court on sentencing the defendant following upon his conviction for the offences of possession of unlicensed firearm and ammunition considered his personal circumstances which included evidence of his having psychiatric disorders. A psychiatric report concluded that he demonstrated signs of a mild to moderate depressive disorder with moderate anxiety disorder and panic. It was not possible to determine the long-term effects upon him of incarceration. The Court did not find the existence of exceptional circumstances such as to justify the non-imposition of the minimum term. The Court held that:

> *"The fact that a lengthy custodial sentence might impact the defendant more heavily than other defendants was relevant. However, the possibility of worsening cognition and emotional stability related to incarceration, in and of itself, was not a factor peculiar to the defendant. The psychiatrist was unable to predict the extent of the worsening condition but was clear that the defendant's background of trauma would make him more vulnerable to stress and worsening depression. The psychiatric findings were not as conclusive as those in other cases in which the court had considered similar applications concerning the impact of incarceration on a defendant's mental condition (*Bodden-Cordero *v.* R., *SCA No. 11 of 2014, unreported,*

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[9] 2020 EWCA Crim 625
[10] 2018 (2) CILR Note 3

referred to; Parsons *v.* Att. Gen., *2012 (1) CILR 388, referred to). While the court was not convinced that it was necessary to find a defendant unfit to serve before being able to accord him a reduction in the minimum mandatory term of imprisonment, there must be, in the circumstances of the offence and the offender, such matters as would cause the court to find, taken as a whole, amounted to exceptional circumstances."*

DISCUSSION IN RELATION TO THE INSTANT CASE

32. In the instant case, no Social Inquiry Report was sought by Defence Counsel. Defence Counsel expressed the view that the necessary submissions could properly be made on his behalf. Counsel stated:

> *"Can I just clear up a misconception? We call it a pre-sentence report, a social inquiry report, same thing; these are ordered for specific reasons; to assist a court. They are not ordered just for the sake of it. They are ordered if something within the report can assist the sentencing judge. It becomes -- especially in the UK, judges are not keen, not keen to order. You've really got to persuade a judge, unless it's a murder or something but you've got to persuade a judge for it to be ordered. When I first started it was the norm. Now because of resources and the fact that counsel can take instructions -especially -- most cases - and just advocate them to the judge. So, in this particular case, there was no pre-sentence report - even though the individual, it's the first time he faces a prison sentence - because everything can be advocated to yourself. This is not an individual that's been in and out the court process. He's not an individual that, in many respects, the - looking at the tariff - let's see whether he reoffends. He is not the individual that has issues, underlying issues where a psychiatric report, psychologist or abuse or drugs or alcohol is an underlying issue.*
>
> *So, once we take out those issues that a report would identify and assist, we come back to the bare bones of matters in cases that are the run of the mill of the courts, it's not required. And, I say that because even though my friend referred to the case in the sentencing - the case of the Crown and Woolfe - the circumstances are completely different. It's completely different; quite a serious case, someone who's been in and out the court process and who have underlying issues; very, very different; very, very different but even then when the Court recognised where somebody -- where the Court could have been assisted with the report, could have been assisted, still not flawed. And, I say that because I want to be very clear at the*

outset what the position is. So when somebody then could be criticized, it's not the court, it's a decision and, on what basis would one ask for one.
But, putting that now to one side, one has to concede that the application before Her Ladyship is for exceptional circumstances and exceptional circumstances starts with a capital E - Exceptional. We, throughout this trial, looked at the whole process with all the offences relating to guns, the issues of liability, the issue of absolute liability and the various authorities. Now, we should be completing the circle. We are looking at the authorities relating to exceptional circumstances."

33. No health or psychiatric issues have been raised before this Court as suggesting that the Defendant would face any particular medical issues should a sentence of imprisonment be imposed upon him.

34. In applying the discussed principles to the instant case, the four questions to be considered are :

i. What sort of weapon is involved in this case?
   a. It is a genuine firearm which is a lethal weapon which was loaded with nine live rounds of ammunition inside of it. It was left in an open car.

ii. What if any use has been made of the firearm?
   a. There is no evidence as to the use of the firearm.

iii. With what intention if any did the Defendant possess or use the firearm?
   a. The only evidence as to intention comes from the Defendant himself that he was going to try to determine the owner of the firearm and to search for the owner of the firearm. There is no other evidence.

iv. What is the defendant's record?
   a. The defendant is a person with no previous convictions and he is of good character.

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35. Defence Counsel submitted that the fact of the temporary nature of the possession is a particular feature of this case and referred to the case of the ***R v. General***[11] in which Graham J stated that in hard cases, if a prosecution is proceeded with contrary to its expressed suggestion, a Court could do justice by imposing a minimal penalty or even an absolute discharge.

36. It is noted that this case appears to have been determined prior to the imposition of the minimum penalties and that Mr. General was sentenced to a term of eight years imprisonment.

37. I have considered all the circumstances of this case, the personal circumstances of the Defendant as raised by his Counsel and as indicated from the evidence in the case, to include his gainful employment, his good family background and character, and the fact that he turned himself in on the same night, and handed over his phone and his clothing.

38. I have considered the question of momentary possession, in light of all the cases cited, to include the cases of ***R. v. Dawson*** and ***R v. Bartell***. I have also considered whether in the particular circumstances of this case, given the inability to say precisely when the Defendant came into possession of the firearm, and that his possession was thus for a limited period of time, would constitute such a striking feature such as would justify a finding that exceptional circumstances are present when taken into account with his

[11] 2002 CILR 276

personal circumstances and all the other circumstances of this case. The important focus is on the nature and outcome of the possession rather than merely its fleeting duration.

39. This is a serious offence in which the Defendant was in possession of a dangerous and loaded weapon. He claimed to have been in unwilling and temporary possession yet did not seize the opportunity which he had for at least one hour, to hand it over to the authorities. Instead he left it unsecured in an open car, on the street, both before and after the arrival of the Police leading to the possibility that it could have fallen into the hands of those who might use it for a criminal purpose.

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40. In my view, there is nothing in the circumstances looked at holistically which can be regarded as exceptional, either in relation to the offence or to the offender. Neither is there any single striking or specific feature which would justify such a finding.

41. I have considered whether the minimum sentence would be disproportionate or arbitrary in light of all the circumstances of this case and am satisfied that imposing the minimum term herein would not result in such a sentence. I am mindful that care must be taken not to lower the threshold for exceptional circumstances and as discussed in the judgment of the Court in the case of ***R. v. Dawson,*** to *" blunt the effect of the scheme of deterrent sentences for which Parliament has made clear provision and which the courts have repeatedly emphasized is necessary."*

42. The sentence is therefore in respect of Count 1, the minimum term of 10 years' imprisonment as is set by the Law.

43. In respect of Count 2, I bear in mind the principle of totality as detailed in the ***Cayman Islands Sentencing Guidelines***, and therefore the sentence is one of 12 months' imprisonment which is to be served concurrently with the sentence on Count 1. Time served is to be deducted.

Dated this the 15th day of September 2020

Justice Cheryll Richards QC
Judge of the Grand Court