



**Joshua Andrew Granger v Law Officers of the Crown**  
Court of Appeal  
15th July, 2014

**JUDGMENT**  
**33/2014**

**Appeal against sentence imposed by the Royal Court for assault on two police officers.**

Approved Judgment  
15.07.2014

**IN THE COURT OF APPEAL OF GUERNSEY**  
**CRIMINAL DIVISION – APPEAL NO 455**

**Before:** **Sir John Nutting Bt, Q.C.,**  
**Nigel Fleming, Q.C.**  
**Sir Hugh Bennett**

**7<sup>th</sup> July 2014**

**Between:** **JOSHUA ANDREW GRANGER** (Applicant)  
**V**  
**LAW OFFICERS OF THE CROWN** (Respondent)

**Advocate C M Fooks appeared for the Applicant**  
**Crown Advocate Graeme McKerrell appeared for the Crown**

**THIS IS THE JUDGMENT OF THE COURT**

**The President NUTTING, JA**

**Introduction**

1. On 14th Jan 2014 this appellant was indicted before the Royal Court (Judge Finch and Jurats) on four charges. The first and third charges concerned assaults on two police officers, PC Potter and PC Du Port. The Appellant pleaded not guilty to these charges, pleas which the Crown accepted and on which they offered no further evidence.
2. The second and fourth charges alleged an assault on each officer while they were acting in the execution of their duty, each count alleging that at the material time the appellant had in his possession an imitation firearm, contrary to section 18(2) of the Firearms (Guernsey) Law 1998. The appellant pleaded guilty to both these charges.

3. The Royal Court having heard an outline of the facts and having considered the mitigation offered by Advocate A Richardson sentenced the appellant to three years imprisonment concurrent on each count.
4. On 23rd January 2014 the appellant applied for leave to appeal his sentence on the ground, inter alia but essentially, that the sentence was manifestly excessive. In her perfected grounds Miss Fooks submitted (Ground 5) that the Royal Court treated the offence as "more serious than it was"; (Ground 6) that it placed too much emphasis on "how realistic the gun appeared"; (Ground 7) that it adopted "too high a starting point of 4.5 years"; (Ground 8) that it placed too much weight on "the deterrent aspect of the sentence element" and (Ground 9) insufficient weight on "the domestic violence suffered by the Appellant and his mental state".
5. The Bailiff, as a Single judge, referred the application to the Full Court but did not grant leave to appeal. In a carefully considered judgment on 18th June 2014 he said:

".....in my view there is justification in referring the application for leave to appeal to the plenary court in circumstances where this is the first offence of its type to come before the Royal Court.....I also direct his Advocate to come prepared to address the general sentencing issues highlighted in the earlier decision of Wicks. It would also be helpful to have the CCTV footage available as it may assist the Court in assessing the severity of the offence."

6. On 7th July 2014 the Full Court heard this appeal. Advocate Fooks addressed the Court on behalf of the Appellant. In the light of her submissions we decided to grant leave to appeal, because, as it seemed to this Court, the issues raised were ones of some public importance which required a judgment at appellate level rather than merely as an application for leave. Accordingly we granted leave to appeal but determined to dismiss the appeal. We now give reasons for our decision.
7. In the light of the submissions made by Miss Fooks it is necessary to go into some detail into the background circumstances which gave rise to the indictment. Those circumstances concerned the appellant's relationship with Joanna Saunders by whom he has a young son. In the autumn of last year the relationship had become somewhat tempestuous. On 19th October 2013, Miss Saunders terminated the relationship in a text message. The appellant found the termination difficult to accept.
8. In the early hours of 21st October Miss Saunders contacted the police to report that the appellant had threatened to take an overdose. She also suggested that he had access to a BB gun which for the purposes of the Firearms legislation constitutes an imitation firearm. This information was passed to PC Potter.
9. In response to Miss Saunders' information, PC Potter arrived at the appellant's address in Les Banques, St Peter Port at about 1.45 am. The appellant reassured the officer by saying:

*"I'm okay. I'm pissed off and angry because of that bitch but I am fine". He also said "I haven't taken anything and I am not going to do anything stupid. Sorry for you coming around here and wasting your time."*
10. PC Potter left the scene. Some time later Miss Saunders contacted the police station to complain that the appellant was harassing her on the telephone. PC Potter returned to the address at about 2.00 am
11. When he arrived at the appellant's house, the appellant was seated in the kitchen using his mobile telephone. The officer noticed an open bottle of liquid medicine on the table. He explained to the appellant that he must not keep pestering Miss Saunders because she was getting "fed up with it." The appellant replied: *She's getting fed up of it? How do you think I*

*fucking feel? Years of physical abuse I put up with and she's getting fed up?"* He then punched his mobile phone, which was lying on the kitchen table.

12. The officer asked him to calm down but the appellant was clearly irate and said *"I'm fucking raging. I'm going to kill her. I'm going to go there tonight and fucking slit her throat. You'd better call your boys because I'm up for a fucking fight."* He was urged again to calm down and the officer explained that he was there to try and help.
13. At this point the appellant stood very close to the officer with both arms raised to his side. The officer, with an open palm, placed his hand on the appellant's chest to stop him getting too close. The officer could see the appellant was clearly pumped up and was concerned that the appellant might strike him. The appellant then said *"Well you can fucking help by arresting her otherwise I'll go around there and kill her."* It was explained that she had not apparently committed any offences. This appeared to make the appellant more irate and he claimed he had been abused by Miss Saunders for years. By this time both the appellant and the officer were standing outside the house. The appellant turned round and punched the window of the door to the kitchen.
14. The officer took a few more steps backwards towards the main road and again asked the appellant to calm down. He attempted to explain that he was merely trying to help. He told the appellant to back off because he did not want to have to draw his Pava spray.
15. At this point the appellant said *"You know what, fuck this! I've fucking had enough"* and went back inside the house. The officer was concerned the appellant might come back outside with a weapon so he drew his Pava spray and began walking backwards towards the main road. The appellant did indeed venture back outside and the officer could see something in his hand. It took a second for the officer to realise that it appeared to be a firearm. The appellant pointed it at the officer and shouted *"Call your fucking boys out. That's the only thing that's going to stop me"* and as he was saying this he held the firearm at head height in his right hand and pointed it directly at the officer. The aim of the firearm changed several times between the officer's chest and his upper body.
16. Although PC Potter originally suspected the weapon might be a BB gun he feared the possibility that it was real. He could not tell for certain but did note that it looked very real. He described feeling *"terrified"* and concerned that he was going to be shot. The appellant was still shouting *"call the fucking boys out, come on, do it!"*
17. At this point PC Potter backed away with his Pava spray pointing at the defendant shouted at him to *"back off"*.
18. When the officer was about two to three metres away the appellant cocked the gun which, to the officer, sounded very real and frightened him further. He immediately utilised his Pava spray and made direct contact with the eyes of the appellant. At this point PC Potter was becoming more and more concerned that the gun was real. Despite making a direct hit the Pava spray did not appear to have any effect on the appellant other than to make him even more angry that the officer should have sprayed him. The officer turned and ran back towards his vehicle, which was about 10 metres away. In a state of panic he contacted the control room. Later he said that at that point he had never felt so much fear in his life and ran to the front of the vehicle so as to use the engine block as protection lest he should be shot at.
19. The appellant walked towards the officer holding the gun at arm's length in both hands and pointed it directly towards the officer, who moved around the vehicle to keep it between them. Due to the appellant's movements, PC Potter felt he could not stay where he was and had to keep moving but at the same time try to keep the appellant in sight. PC Potter said that he was shaking at this point because he was petrified that the appellant was going to discharge

the gun at him. As the officer tried to move the appellant continued to point the gun in the officer's direction.

20. The officer was then aware of flashing blue lights in the distance coming from the direction of Salerie Corner and knew that back up was on its way. When PC Du Port arrived he said in his statement that he had never been so glad to see another police officer in his life. He still, however, remained in considerable fear for his life.
21. The appellant was distracted by the blue lights and the officer took the opportunity to use his Pava spray again and was again able to make direct contact. As before, however, the spray did not seem to affect the appellant who continued to point his weapon towards the officer. A further attempt by him to use his spray proved to be ineffective.
22. When PC Potter was able to get behind his van PC Du Port came onto the scene as part of the back up team. He could see PC Potter taking cover and also the appellant in the middle of the main road. The officer could see that the appellant had in his right hand what appeared to be a black hand gun and which he could also see was being pointed towards him.
23. PC Du Port at this point was still in his vehicle. He later said in his statement *“To me the gun looked real and I feared for my life. I was terrified. I thought he was going to shoot me. The appellant was clearly in a heightened emotional state and was very unpredictable. I could see from his facial expression he was set on a mission and at that point his anger was directed at me. I had to get out of that situation. I immediately backed my vehicle away about 20 metres to the yellow line with the Bouet, St Peter Port. I left my vehicle blue lights on and the engine running so as to keep the video camera running to record the incident. I then exited the vehicle, taking a PR24 baton from the boot, and taking hard cover in the entrance to Gas Lane”*.
24. Shortly thereafter other officers arrived. The appellant started pacing towards PC Du Port, pointing the gun at him and shouting at him to get back. The officer retreated down the road about 40 metres before taking cover. He attempted to engage the appellant in conversation, telling him to put the gun down and to calm down, but the appellant appeared to be angered further by these requests. PC Du Port therefore desisted in trying to engage further and noticed that the appellant was hitting the gun against the side of his head in anger. The weapon sounded metallic, further raising the officer's concerns that it was a real firearm.
25. PC Du Port then became aware of two females, in fact the appellant's mother and sister, approaching the appellant, who was still in the middle of the road. He appeared to engage and respond to them and they were able to move him towards the sea wall and talk to him there. This continued for some time. However, whilst talking with the females the appellant from time to time burst into a fit of anger towards PC Du Port and other officers, pointing the gun at them and making threats. At no point did he put the gun down. The appellant's sister then approached PC Du Port and told him that she had been present when the appellant had purchased a BB gun. However she could not say with any certainty that the gun he holding was the same gun. Despite advice to the contrary she returned to her brother.
26. Throughout the incident the appellant consistently made threats to PC Du Port and other officers, saying things like *“Come here and let's fucking do this”, “Get the big boys out”, “Lets fucking have it out”, “I will fucking kill you if you come any closer” and “If you fucking come any closer I will fucking have you”* whilst pointing the gun at the police officers.
27. After a while an officer trained as a negotiator arrived. He was able to engage with the appellant who explained that he had taken a quantity of medication as he wanted to end his life. He was persuaded to surrender the gun to his sister and was arrested at 2:45am by which time he had calmed significantly, became apologetic and walked to the police van of his own accord without restraint. He was then transported to the police station.

28. There is no doubt that the BB gun was very similar in appearance to a real pistol and, having seen the CCTV record of the incident, it comes as no surprise to this Court that two officers first at the scene and who were the targets of most of the appellant's anger and threats should have been thoroughly frightened by the experience. Although PC Potter had been told by the Operations Room the nature of the information conveyed by Miss Saunders, nonetheless he could not be sure that the very life like pistol which the appellant pointed at him for some time when he was alone in the street was indeed the gun referred to by Miss Saunders or a real gun.
29. The state of PC Du Port's knowledge about the gun as he approached the vicinity is less clear. And although it is certain that he was told at the scene some time after he arrived by the appellant's sister that she knew that her brother had purchased a BB gun, the fact that she acknowledged to the officer that she could not be sure whether the gun in her brother's possession that night was a BB gun or a real one did nothing to reassure him.
30. In her submissions Miss Fooks placed considerable emphasis on the fact that Miss Saunders had told the operations room that the appellant had access to a BB gun, that PC Potter had been told of this, that in a message from the scene he had referred to the gun as a BB gun and that after the appellant had been arrested the gun was found to be just such a gun.
31. In a careful submission in which not a word was wasted and not a word out of place, Miss Fooks also emphasised that neither the appellant's mother nor his sister exhibited fear of the armed appellant during the incident and appeared to accept the true nature of the gun. She pointed to the fact that neither PC Potter nor PC Du Port made an attempt to clear the scene, despite the additional presence of the appellant's younger sister who was a mere child, and that the officers may have exaggerated the extent of their fear.
32. We do not agree. Unlike the police officers, the appellant was posing no threat to his relatives: he was not abusing or taunting them. Moreover by themselves the two police officers could do nothing to cordon off the area, faced as they were with an armed man who was alternately threatening them verbally and physically by pointing the gun first at one and then at the other. Furthermore the appellant was clearly in the most agitated and volatile state of mind. In such circumstances the full concentration of both officers had to be directed at the appellant while they waited for reinforcements to arrive to cordon off the area and to try to bring the incident to an peaceful end by disarming the appellant.
33. The following matters are also relevant: first, the fact that the appellant apparently had access to a BB gun did not preclude the possibility that he also had access to a real gun; second, the appellant's sister was unable to confirm to police the true nature of the gun in her brother's possession; third, in any situation involving firearms, the police are trained to assume that the gun is real until and unless it is proved to be an imitation weapon; and fourth, the appellant's behaviour at the scene, including the fact that he cocked the weapon at one point, the fact that the gun looked real and the fact that the appellant demonstrated that it was made of metal, were all clearly matters which could hardly have allayed the officers' fears. We consider that these police officers' fears were genuine and justified as the appellant himself recognised when interviewed by the police – see the last sentence of para 37 below.
34. PC Potter made clear his reaction in a statement about these events made shortly after them. He wrote:

*"I got back into my vehicle and I was immediately hit by the seriousness of the situation, while travelling back to the police station I felt very stressed and on getting into the locker room I broke down in tears because I have never felt so scared in my entire life. I was very relieved that it was all over but due to being at a stand-off with Granger who was acting in a very aggressive manner and wielding a gun at me, I*

*found the aftermath of this incredibly difficult and could not help but cry. After about 10 or 15 minutes I managed to control my emotions and went upstairs to sit down, as soon as I got into the canteen and was asked how I was I began crying again. I can honestly say this has been the worst situation I have ever been faced with and have never felt so scared in my entire life."*

35. Later that same morning the appellant was interviewed. He explained that he had split up with his girlfriend two days earlier and had not coped well with that. He said that on the Sunday night he went drinking at the Wicked Wolf in St Martin before driving into St Peter Port where he continued to drink. At about 1.00 am he stopped drinking and walked home. He estimated that he had by then consumed four shots and about four to five pints. He then contacted Miss Saunders and took an assortment of prescription drugs as an overdose. He said that he recalled an officer attending his house to give him words of advice about contacting Miss Saunders.
36. He confirmed the circumstances of the police officer's return and admitted he was hostile towards him. Not convinced that the overdose was working he said he wanted the officer to come and shoot him because he was unable to kill himself. He stated that he went inside, picked up his imitation firearm, followed the officer into the street and threatened him with it. He accepted that he had cocked the weapon to try to convince the officer that the weapon was real and to make him think he was preparing the weapon for firing. The appellant confirmed he made the various threats referred to above.
37. He said that he had no intention to injure anyone and maintained that he wanted an armed response officer to attend to shoot and kill him. He recalled other officers attending and confirmed that he had pointed the gun at them as well. Importantly he acknowledged that he could fully understand why the officers believed that the weapon was real and why, therefore, they would have been in genuine and real fear for their lives.
38. The Royal Court had the advantage of a Probation Report compiled by Mrs Pearce. It is, if we may be allowed to say so, a most helpful report. Mrs Pearce read and consulted widely and had three interviews with the appellant while he was on remand in prison.
39. The appellant gave an account to Mrs Pearce which corresponded with what he had told the police. In relation to the incident she concluded:

"On the arrival of the Police Officer on the second occasion, Mr Granger informed me that he felt that he had reached the 'point of no return'.....Throughout my interviews with Mr Granger he maintained he had no intention to harm anyone other than himself. He described the attempted overdose and decision to kill himself as impulsive, however (he) acknowledged that he had taken the BB gun from the boot of his car an hour before the offence, which indicates more premeditation than he is perhaps prepared to admit. Mr Granger demonstrated an awareness of the extreme nature of his behaviour, and stated that, in hindsight, he can see the "mayhem" he caused. Whilst he did not attempt to apportion blame for his behaviour and accepts responsibility, I remain concerned that he described his behaviour as being beyond his control."
40. Mrs Pearce continues: "Mr Granger demonstrated a limited understanding of the impact of his behaviour on the victims; whilst he understood that the Police Officers would have felt scared, he also insisted that as the Police were aware that he owned BB guns they would not have believed there was a real threat to their lives. Moreover, Mr Granger does not demonstrate a good awareness of the impact of his behaviour on his partner."
41. We are not convinced by the validity or truthfulness of the gloss which the appellant was trying to put on what he had said in interview at the police station.

42. The appellant is 22 years of age. He has convictions for public order offences involving drunkenness and disorderly behaviour in 2009 and 2010 for which he was respectively cautioned and bound over to keep the peace. In September 2010 he was ordered to undergo 60 hours Community Service for an offence of burglary.
43. Since he left school, his adolescence has been marked with bouts of homelessness and periods of unemployment. He admitted to Mrs Pearce that he had abused drugs and alcohol. She summarised the period leading up to the offences thus: “Despite Mr Granger’s previous difficulties detailed above, the past two years appear to have brought more stability. He reported having been in consistent employment, having worked at CI Ceramics for two years, and, prior to this offence, he was working at Forest Road Garage and the Wicked Wolf. He described his employment as secure, he stated he was enjoying his work, and other than the relationship difficulties he was experiencing (which I will address in the following paragraph), he was relatively settled in life.”
44. Mrs Pearce continued: “In terms of Mr Granger’s relationship, he informed me that he and his partner had been together for three years and they have a two year old son. He told me that he and his partner lived together for about seven months before he moved out in April 2013. Whilst they remained in the relationship, Mr Granger stated that he could not live with his partner as she was abusive towards him. I understand from Mr Granger that the relationship has now ended and he stated they are communicating in order to facilitate contact with his son. I have spoken with Mrs Cook, Manager, Family Partnership Team, who informed me that there have been no concerns regarding Mr Granger’s contact with his son. Following sentencing, I anticipate that liaison between the probation Service and Child and Maternity Services will continue to ensure that any appropriate assessment is undertaken prior to release.”
45. The Royal Court also had the advantage of a long and carefully worded letter from the appellant’s mother. It is clear that the Jurats carefully considered this letter. We, too, have born its contents in mind in reviewing the sentence passed in this case.
46. In addition to the matters raised in her Skeleton Argument to which we have already referred Miss Fooks asked us to take into consideration a number of other factors in assessing whether sentence passed by the Royal Court should have been as long as 3 years.
47. She emphasised that the only harm which the appellant intended to cause was harm to himself, and that, in fact, no harm was done to anyone. She submitted that the premeditation was minimal, that the appellant is still a young man and that he was in an abusive relationship with a woman who was clearly a much stronger and more forceful personality and who broke up the relationship in circumstances which clearly traumatised him.
48. We turn to the law and to the assistance available from other jurisdictions. Fortunately in this Bailiwick gun crime, whether it involves real or imitation firearms, is rare. In terms of sentencing authority, although there are various cases emanating from the Court of Appeal in London, and two first instance decisions in Jersey, the researches of Counsel have found none in this jurisdiction to assist the Court.
49. We must emphasise, as has been said most recently in the 7 judge authority of *Wicks, Sharp and Towers v Law Officers of the Crown* [2011-12 GLR 482] that sentencing in Guernsey is a matter for the Guernsey courts which should resolutely guard their independence as a separate sentencing jurisdiction. In giving the judgment of the Court, the Bailiff, Sir Geoffrey Rowland said:

"Guernsey is a separate jurisdiction and has its own legal system. It is, therefore, free to set its own sentencing levels as the Island’s

courts think appropriate for Guernsey. Guernsey no more has to follow sentencing practice in England than it has to follow sentencing practice in Scotland, Northern Ireland, Jersey or, for that matter France; it can, of course, in exercise of its autonomy choose, but for the same reason of autonomy cannot be compelled, to do so. In our judgment, no authority is required to justify this elementary statement of the constitutional position which has been regularly stated on previous occasions.

(i) Since Gunter, a five judge Court of Appeal in the case of Burton v Law Officers of the Crown (6th February 2012) has described the constitutional position and sentencing practice in some detail (paras 28 to 37) and, at para 35, the judgment states:-

*“... the Royal Court can rightly claim that in matters of criminal sentencing it is not bound by English sentencing decisions and that it exercises its own discretion in determining an appropriate disposal in criminal matters coming before it.”*

(ii) In Ryder v Law Officers of the Crown (16th September 2009 at paras 14 – 16) this Court made it clear that it is open to the Guernsey courts to impose heavier sentences for offences of violence than are imposed in England and Wales simply because of the desire to maintain the particular and relative safety of Guernsey.

(iii) In Campbell v Attorney General [1995] JLR 136, a five judge panel of the Jersey Court of Appeal said this at 141:-

*“The Island cannot be impervious to outside influences but there are nevertheless important differences between the sentencing process in Jersey and that which pertains in England... As we have already stated, Jersey is a separate jurisdiction and entitled to fix its own sentencing levels.”*

49. It is against that constitutional and jurisdictional background that we come to consider sentencing principles guidance appropriate for this Bailiwick which we consider can be usefully derived from other jurisdictions.

50. The leading case on the sentencing of firearms offences in England and Wales is R v Avis and others [1998] 1 Cr App Rep 420, in which Lord Bingham LCJ (as he then was) set out the following guidelines:

*“The appropriate level of sentence for a firearms 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:*

*1. What sort of weapon is involved? 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 shotgun) will be viewed even more seriously than possession of a firearm which is capable of lawful use.*

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

3. *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 proof of 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.*
4. *What is the defendant's record? The seriousness of any firearms offence is inevitably increased if the offender has an established record of committing firearms offences or crimes of violence.*

Lord Bingham continued at page 423:

*“Where imitation firearms are involved, the risk to life and limb is absent, but such weapons can be and often are used to frighten and intimidate victims in order to reinforce unlawful demands. Such imitation weapons are often very hard to distinguish from the real thing – for practical purposes, impossible in the circumstances in which they are used – and the victim is usually as much frightened and intimidated as if a genuine firearm had been used. Such victims are often isolated and vulnerable”.*

*“... given the clear public need to discourage the unlawful possession and use of firearms, both real and imitation, and the intention of Parliament expressed in a continuing increase in maximum penalties, the courts should treat any offence against the provisions referred to above as serious”.*

51. R v Thomas (2000) 2 Cr. App. R. (S) 155 concerned an offence contrary to section 17(2) of the Firearms Act 1968. This is the equivalent provision to section 18(2) of The Firearms (Guernsey) Law, 1998, as amended, which is the subject of counts 2 and 4 of the indictment in the instant case. The Court said at page 157:

*“In our judgment the law on imitation firearms exists to prevent or deter anyone minded to commit a criminal offence from carrying a firearm or imitation firearm. It is for that very reason that there is such a high maximum sentence, not only for section 18 of the Firearms Act 1968, which requires particular intent by a defendant, but also section 17(2), which deals with actual possession whilst an offence is committed. It might be that if someone carries an imitation firearm whilst committing an offence, does not produce it and has some entirely credible or innocent reason for its possession, the court might be persuaded to unusual leniency. In other circumstances, however, it calls for a substantial custodial sentence.”*

52. In R v Omari [2004] EWCA Crim 911 [2004], the Court of Appeal considered it an important feature of the case that,

*“it involved a direct threat by an apparently real weapon to police officers doing their duty, at night ... A message must be sent, which this Court supports, that the carrying of firearms, and particularly the use of them by pointing them at people, is something that is to be deterred”* (see page 518).

53. The Court of Appeal in R v Duffy [2004] EWCA Crim 2054 held that a severe sentence had been appropriate given the circumstances, which included subjecting the police officers to a very frightening experience (see para 11 of the judgment).

54. In R v Shepherd [2007] EWCA Crim 1604, Hooper LJ stated at para 12:

*The appellant's conduct in going out in public with the weapon which he intended people to believe was a real firearm was very serious, particularly when he was in an area where there were members of the public”.*

At para 14: *“We also have regard to the fact that although this was an imitation firearm, the police who approached very close to the appellant were convinced that it was in fact a real firearm and genuinely believed that their lives were in serious danger. We consider, therefore, that in those circumstances the judge was justified in passing a severe sentence. This is particularly so when there is so much public concern over the possession and misuse of firearms, including imitation firearms”.*

Further, at para 15: *“We bear in mind the frightening experience for those involved and the appellant's persistent indications to different people at different times that he intended to use the weapon”.*

55. In para 4.2 of the Appellant’s skeleton Miss Fooks states that his *“use of the firearm and intention was to induce the Police to kill him rather than harm them or to commit any criminal act”*. The Court of Appeal on the mainland considered such a situation in *R v Kay* [2012] EWCA Crim 2070 stated at para 12:

*“Moreover, in planning that the police should shoot him dead, the consequences for the police would have been very serious. However well trained police officers may be, if they find themselves in a position of having for their own safety or the safety of the public to shoot someone dead, that can have long term personal consequences for those involved. Yet further, there are cases where people are not slow to blame the police for conducting themselves as they do in very difficult situations. Not only would police officers be subjected to an inevitable inquest, but doubtless people might come forward to cast blame on them ...”.*

56. We have derived considerable assistance from the considerations and dicta cited above and in particular the questions posed by Lord Bingham in *R v Avis* and we answer them by reference to this case:

- (1) What sort of weapon was involved? An imitation firearm.
- (2) What use was made of the firearm? It was pointed constantly at two unarmed officers for a period of at least half an hour at night in a public place.
- (3) With what intention did the appellant use the firearm? He intended that the police officers should believe that it was a functioning firearm, that their lives were in real and present danger and that they would therefore summon assistance from armed officers to shoot the appellant.
- (4) What is the appellant's record? He has no convictions for any relevant offences.

57. We have considered carefully the approach which the Royal Court adopted in this case. In sentencing the appellant, under the heading of "Sentencing Considerations", Judge Finch said:

*“This is the first, if our collective memory is correct, and we fervently hope the last, offence of this type we have had to deal with. It is not an offence where there are guidelines or authorities here to assist us. It is our task to seek to achieve a just sentence very much on the individual facts taking into account any pertinent mitigation. We emphasise that this offence is not one we wish to see in Guernsey and where officers are not routinely armed. Had this occurred in a busy and crime ridden metropolitan area the police could not have been criticised for removing the perceived threat by drastic methods. You are lucky nothing worse happened to you and you would have deserved it*

in all these alarming circumstances. In the past, dealing with offences of violence, which these really are, this court and the court of appeal have stressed the need to apply severe sentences to maintain the peace in Guernsey and include an element of deterrence. No police officer or indeed anyone should be subjected to these experiences and we are firmly of the view that our sentence should show our repudiation of your bad and threatening conduct. When a realistic imitation firearm is used it is not open to those in the vicinity to enquire if it is real or a replica. The law in Guernsey and in England treats imitation firearms used in the commission of offence very much on a par with the real thing. Accordingly we start with the combined total, treating this as one overall incident, at four years and six months. We pause to say the CCTV footage is vivid and more telling than many words of explanation. The officers' apprehension was soundly based, this looked like the real thing."

58. Then having emphasised the considerations to which we have referred above in the Probation report, Judge Finch told the appellant that the court had given him credit for his work record, his relatively insignificant criminal record, his admissions to police and his guilty pleas. He continued; "Perhaps rather generously we recognise such mitigation that there is with a total discount of one third."

59. Judge Finch concluded:

"You would have no one to blame but yourself if you'd ended up in the road seriously injured or worse and the officers concerned would have to live with this themselves. Indeed we think the police acted responsibly and very fairly towards you in this case and we commend the two officers directly concerned. This sort of thing cannot be tolerated in this island. Police and also the public deserve protection. Realistic sentencing is called for. On each count the sentence is three years imprisonment with effect from the 21st October 2013 concurrent. Total three years."

60. We wish to emphasise that, subject to one consideration to which we return below, we agree with and endorse the sentiments expressed by the Royal Court in this case. The Courts of this Bailiwick must strive to prevent the curse of firearms, real or imitation, becoming a feature of life of this island community. Certainly this Court will bend every sinew to uphold severe sentences, including sentences with a significant element of deterrence, to avoid such a lamentable situation developing here. We bear in mind what was said in Wicks on this aspect of sentencing practice.

"The second consideration concerns deterrence. This factor is mentioned in para 8 of the judgment in Gunter. The Court (in Gunter) acknowledged that:

*"if a particular kind of offence is on the increase locally, or if it is becoming a serious social problem, a severe deterrent sentence may have a salutary effect in modifying criminal behaviour. It may also satisfy legitimate feelings of abhorrence which are likely to resonate more strongly in a small community such as Guernsey."*

The judgment (in Gunter) continues:

*"In our judgment, however, this is not a consideration which warrants a different approach to sentencing for this offence in Guernsey compared to England. This is because a significant element of deterrence is already incorporated in the sentencing principles applied in both jurisdictions, which is reflected in the progressive increases in the statutory maximum sentences for these offences."*

It seems to this Court (in Wicks), with respect, that the Gunter approach ignores a fundamental advantage which the administration of criminal justice enjoys in the

Bailiwick. It is rare, indeed, in England that a case involving the offence of making indecent images of a child/children receives national publicity and, therefore, that any sentence for the offence would be likely to have "a salutary effect in modifying criminal behaviour." In this jurisdiction, however, any such case is very likely to be given prominent publicity in the local media. The sentences which we propose are designed not just to reflect the increasing abhorrence towards this type of crime manifest over the last quarter century, but also to deter those in this Bailiwick who might be tempted to contribute to the abuse of children by taking, making or possessing for distribution or distributing, images of the kind we have defined."

61. As it seems to this Court what was said in Wicks concerning this jurisdiction in relation to the need and efficacy of deterrent sentences for the offence of making indecent images of children applies with equal force to offences involving the use of real or imitation firearms.
62. We conclude that the aggravating features of this case include an element of preparation and premeditation, the fact that the incident occurred at night and in a public street, the passage of time during which the incident took before the appellant voluntarily surrendered the weapon, the justified fear felt by the officers in respect of death or serious injury, and the fact that the appellant clearly intended that the two officers confronting him should believe that he intended seriously to threaten them thereby inducing them to shoot him.
63. Although we have considered carefully all the points made by Miss Fooks, the fact is that, aside from the pleas of guilty, the appellant had available to him little mitigation beyond his youth and the absence of any relevant convictions. The breakup of his relationship with Miss Saunders provided no justification for his conduct towards PC Potter and PC Du Port that night which we condemn in the strongest terms. Furthermore in the light of the overwhelming evidence he had no realistic alternative but to plead guilty. Accordingly we consider that the Royal Court was, indeed, generous in awarding a discount of one third from the starting point of 4.5 years.
64. Nonetheless we consider that the sentence which the Royal Court passed was well within the sentencing parameters available to the Royal Court in all the circumstances of this case. We wish only to add that the members of this Court would have arrived at that sentence, or something very like it, by a different route than that deployed by the Royal Court. We should have concluded that the appropriate starting point was 4 years and would have allowed a discount for mitigation of certainly no more than one year and possibly less, resulting in a sentence of at least three years.
65. Accordingly we concluded that this appeal must be dismissed.