IN THE COURT OF APPEAL

TURKS AND CAICOS ISLANDS

CRIMINAL DIVISION

CR-AP 6 of 2013

BETWEEN

LORENZO GERBEX

APPELLANT

AND

REGINA

RESPONDENT

BEFORE:
The Honourable Mr. Justice Mottley, President
The Honourable Mr. Justice Stollmeyer, Justice of Appeal
The Honourable Mdme Justice Weekes, Justice of Appeal

APPEARANCES:
Mr Keith James for the Applicant
Mr Leonard Franklyn for the Respondent

16th November 2017, 25th April 2018

REASONS

Weekes, J.A.

1. We heard this matter on 16th November 2017, when we dismissed the appellant's appeal and affirmed his conviction and sentence. These are our reasons.

2. The appellant was convicted on 4th October 2013 of the offence of having an imitation firearm with intent to put another in fear. It was alleged that he had acted together with a co-accused, who had been the one in physical possession of the imitation firearm. The appellant was sentenced to 5 years imprisonment.

3. Counsel for the appellant filed two grounds of appeal but conceded at the hearing that the appellant was really making a single complaint that the evidence at trial could not and did not prove the charge against him. The thrust of his argument was that the circumstances outlined on the Crown's evidence did not establish that he was a joint participant in the offence charged.

4. There were a number of authorities on the principle of joint enterprise advanced by both the appellant and the Crown including of ***R v Jogee and Ruddock v The Queen (2016) UKSC 8, (2016) UKPC 7*** and ***R v Anwar and otrs [2016] EWCA Crim 551***. They, together with ***Regina v Lewis Johnson et al [2016] EWCA Crim 1613*** outline the present-day position on the principles of joint enterprise and, in particular, secondary participation. None of these authorities is, however, relevant to the appellant's arguments since his arguments are based purely on the facts of the case. The nub of the case is, taking the law to be settled, does the Crown's evidence rise to the standard that allows it to properly

have been put before the tribunal of fact. We will not, therefore, rehearse the authorities here, they are settled and beyond dispute.

5. The case for the Crown was that the virtual complainant, Richard Gail, was at a neighbourhood shop watching television when an argument and eventual altercation broke out among three men, one of whom was the appellant. One, Emanjoe, during the course of the altercation, struck the appellant repeatedly. The owner of the establishment eventually ordered the combatants to leave the premises and Gail relayed that instruction. The appellant then replied to Gail that he, the appellant, was "coming back to shoot up the area". The appellant then left together with the other man. Gail remained on the premises.

6. Within twenty minutes the appellant returned with his brother, Gino, and the other man. At that time Gino was brandishing a gun. They approached Gail and asked where Emanjoe was. When Gail was unable to give them a satisfactory answer, they surrounded him, and Gino cocked his gun, pointed it at Gail and then began striking him in the head. At that point the appellant was standing immediately behind Gail, though he did not say or do anything further.

7. The proprietor then approached the group and the appellant, Gino and the third man left the premises. As they drove by Gail, two shots were fired from the vehicle.

8. The sole question to be determined on this appeal is whether this evidence if accepted by the tribunal of fact was capable of proving that the appellant was part of a joint enterprise, together with Gino and the third man, to use a firearm or imitation firearm,

with the intention of putting Gail in fear. Mr James submits that the evidence is wholly inadequate in this regard.

9. The principle of joint enterprise is that where two or more persons embark on a joint enterprise, each is liable for the acts done in pursuant of that joint enterprise. It is for a jury to decide whether what was done was part of the joint enterprise or whether it may had been an unauthorised act outside of its scope. ***R v Anderson & Morris [1966] 1 Q.B. 110***.

10. On the Crown's evidence, the appellant was the one who evinced and intention to return to the shop and "shoot up the place". After leaving, he returned in quick time, accompanied by his brother, who had not been there for the earlier incident. His brother came armed. While it is likely that they returned to "deal with" Emanjoe, they ended up approaching, surrounding, and attacking Gail. Joint enterprises need not be of vintage and can be formed at the spur of the moment. It was a reasonable inference that the appellant and his companions intended to put fear into Gail, either that he would give up Emanjoe's whereabouts, or in frustration, with his non-cooperation. Given the appellant's earlier utterances and part he played on his return, it was clearly for the jury to decide whether he was part of a joint enterprise as alleged.

11. There was, therefore, a sufficiency of evidence to call upon the appellant to answer the case against him, as well as for the jury to have found, once they accepted Gail's evidence, that the appellant had been part of the joint enterprise.

12. Mr James misconceived his submissions because in his collation of his evidence against the appellant, he omitted to include the appellant's threat to return and "shoot up the place" and harped upon the evidence, taken out of context, that on his return the appellant did and said nothing.

13. In the circumstances, we dismissed the appeal and affirmed the appellant's conviction and sentence.

E. Mottley
Justice of Appeal

H. Stollmeyer
Justice of Appeal

P. Weekes
Justice of Appeal