

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL SIDE**

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4 **INDICTMENT NO.: 10/2018**

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8 **THE QUEEN**

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11 **-v-**

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14 **DEXTER KELVIN ALONSO BODDEN**



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19 **Appearances:** **Mr. Kenneth Ferguson for the Crown**  
20 **Mr. Nicholas Dixey of Nelson and Co. for the**  
21 **Defendant**

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23 **Before:** **Justice Marlene I. Carter (Actg.)**

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25 **Sentencing Hearing:** **11<sup>th</sup> October 2019**

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28 **Sentence Delivered:** **25<sup>th</sup> October 2019**

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33 **HEADNOTE**

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35 *Criminal Law – Wounding – Exceptional Circumstances – Suspended Sentence*

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40 **SENTENCE JUDGMENT**

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43 1. The Defendant was charged on Indictment No. 10 of 2018 with one count of Wounding with Intent  
44 to Cause Grievous Bodily Harm. On the 11<sup>th</sup> June 2019, the Defendant entered a plea of Guilty to  
45 the lesser offence of Wounding contrary to *Section 204 of the Penal Code*. This plea was accepted  
46 by the Crown with the following as the basis of the plea:



1. The Defendant had previously been the victim of two burglaries at his residence at No.9 Avon Way, George Town in 2013 when the Defendant was away from the Islands. These had been reported to police but had not been resolved.
2. On 10 December 2016 the Defendant was sleeping at his home. His vehicle was parked in earshot of his bedroom, and he had left the vehicle unlocked the night before with the key in the ignition so that he could listen to the car radio.
3. The Defendant awoke at some time after 7 am. He went outside and encountered the Complainant on his property. He formed the reasonable belief that the Complainant wanted to steal his car, or from his car. The Defendant's belongings from the passenger seat glove box had been emptied and strewn onto the passenger seat. The Defendant was also concerned that the Complainant may cause him an injury when confronted. The Defendant was both angry and fearful – he was subject at that time to adrenalin.
4. The Defendant used a machete to strike the Complainant at least three times. In doing so, his intention was not to cause serious injuries, but to stop the Complainant from stealing his property or from attacking him and causing him injury. The Defendant stopped when he realized that the Complainant was seriously hurt and shouted to neighbours to call the police.
5. Although the Defendant's primary position is that he was lawfully acting in self-defence and protecting his property, he acknowledges that it is open to the jury to find that the force he used in doing so was excessive in all the circumstances, and therefore unlawful. On this basis, he would be guilty of Count 2 of the indictment, simple wounding.
6. This was an entirely isolated incident, there was no previous animosity between the parties.
7. The Defendant co-operated entirely with the police and gave a full and frank account of the incident in his police interview. He did not seek to minimize his role.
8. The Complainant suffered the injuries as set out in the report of Dr. Chandrasekhar. The injuries included lacerations to the scalp, forearm and left hip; a puncture wound to the chest; and a deep penetrating wound to his leg above the ankle, which included fractures of the right tibia and fibula.



1 *Although the injuries were described by the treating physician as serious, they*  
2 *were not considered permanent.*

3 9. *The Defendant has entered a guilty plea to the second count at the earliest*  
4 *opportunity when the Crown indicated it would accept such a plea on such a*  
5 *basis as herein set out to dispose to the indictment.”*  
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7 2. The Complainant sustained the following injuries as a result of the incident:  
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- 9 i. A 3 inch laceration to the left side of the forehead in the scalp.  
10 ii. A 4 inch laceration on the ulnar aspect (inner aspect) of the left forearm, bone  
11 deep with no evidence of fracture.  
12 iii. A punctured wound on the right side of the chest in the middle of a linear  
13 contusion.  
14 iv. A 2 inch muscle deep laceration on the outer aspect of the left hip.  
15 v. A deep penetrating wound on the front of the right leg, slant 3-4 inches along  
16 the ankle and involving the bone, and  
17 vi. Fractures of the right tibia and fibula at the level and site of the wound at (v)  
18 above.  
19 vii. The victim underwent surgery to repair his damaged right leg.  
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### 22 Sentencing Guidelines 23

24 3. The maximum sentence for this offence is 7 years imprisonment. On 11<sup>th</sup> June 2019, a Goodyear  
25 Directions hearing was held before Brooks J. (Actg.). The Learned Judge considered the agreed  
26 basis of plea outlined above and the *UK Sentencing Guidelines* and determined that the offence  
27 was a Category 2 offence of greater harm and lesser culpability. The Learned Judge found that (i)  
28 the custody threshold had been passed;(ii) the sentencing range was two to four years custody and  
29 (iii) the maximum sentence was one of 2 ½ years custody.  
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31 4. In *R v Grant Christopher Smith*<sup>1</sup>, the Court of Appeal in the judgment delivered by Mr. Justice  
32 Green noted, at paragraph 14, that  
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<sup>1</sup> [2015] EWCA Crim 1482



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"...it is axiomatic that all violence in the context of a Section 18 offence is serious, but that some violence is more serious than others. The purposes behind the words "which is serious in the context of the offence" in the guidelines is to distinguish between that level of violence which is inherent or par in a standard section 18 offence and that which will, by definition, go beyond what may be viewed as par for the course. In our view, given that there is such a marked disparity in the starting point between categories 1 and 2, the sorts of harm and violence which will justify placing a case within category 1 must be significantly above the level of harm which is normal for the purpose of section 18."

5. Section 18 is of course analogous to *Section 204 of the Penal Code, (2103 Revision)*

6. The injuries sustained by the Complainant, noted in the summary of the facts above, were significant and serious in the context of the offence. While the injuries may not be permanent or life threatening, they are severe and several and inflicted with the use of a weapon, here a machete and a mottle (club). I accept that the use of a weapon may be a factor that indicates greater Culpability. However, in the circumstances of this case the fact that the attack on the Complainant was not premeditated and that it is accepted to be a case of excessive self-defence appear to be the more significant factors of note.

7. This Court agrees with the maximum sentence indication of Brooks J. and I therefore accept that the maximum sentence is one of 2 ½ years custody.

#### **Aggravating Factors**

8. There is an aggravating factor in this case;

i) Use of a weapon to commit the offence.

9. The Crown has made submission to this Court that the Defendant's previous convictions should be considered an aggravating factor in this case, however at the sentence hearing Crown Counsel accepted that any relevant convictions had long been spent and should not be considered.

1            **Mitigating Factors**  
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3    10.    The mitigating factors are as follows:  
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- 5            i)    The offence was not premeditated.  
6            ii)   The Defendant’s Guilty plea.  
7            iii) Remorse shown by the Defendant which it is agreed should be accepted as genuine.  
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9    11.    Apart from these, Counsel for the Defendant has asked this Court to consider Brooks J’s assessment  
10           of the mitigating factors:  
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12                            *“...First, of course there is a guilty plea, there would be a deduction; and I would*  
13                            *say, however, that it is a small deduction based on the late stage in which his plea*  
14                            *would have been tendered. A second would be the fact that the defendant is a*  
15                            *productive member of society. Third, the fact that the offence took place at his*  
16                            *home, where people should feel safe. The fourth is remorse, which was expressed*  
17                            *at an early stage. Fifth, the lapse of time, bearing in mind that the prosecution*  
18                            *took 15 months to decide to charge the defendant. And, sixthly, the medical report*  
19                            *does not suggest that there are any permanent disabilities to the virtual*  
20                            *complainant arising from the injury. Seventh, the defendant assisted the*  
21                            *prosecution readily in finding the machete and what is called a mallet, which*  
22                            *apparently is a club, which featured in the incident. And, finally, I would say the*  
23                            *offer to pay compensation would also be a mitigating factor.”*  
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25           **The Social Inquiry Report (“SIR”)**  
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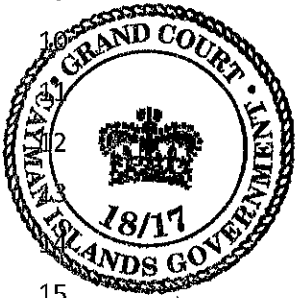
27    12.    The SIR records the Defendant as having grown up in a loving, caring and comfortable home  
28           environment. He lost his father and brother at sea when he was fourteen years old and for some  
29           years after this tragic incident, the Defendant related to the Social Worker, his emotional state  
30           deteriorated, he was unable to focus on his education and he eventually dropped out of school at  
31           the age of sixteen years.  
32

33    13.    Although the Defendant found himself in conflict with the law during his late teens, any offences  
34           that were committed at that time are now spent and are not for the court’s consideration. There are  
35           no relevant offences, offences of violence, recorded against the Defendant. Seemingly, after this

1 period, the Defendant has been employed in the construction field as well as in the hotel industry  
2 and from sometime around 2010, when he returned to the Cayman Islands after living abroad, he  
3 has been working as a self-employed musician.

4  
5 14. The Defendant's attitude to the offence is noteworthy. The SIR notes:

6  
7 *"Mr. Bodden stated that he did not intentionally chop the victim; rather the wounds*  
8 *resulted due to victim raising his hands in defence of the slaps. Mr. Bodden*  
9 *declared that he regrets his actions deeply, especially after finding out the victim*  
10 *was a son of someone known to him. He declared that although he was protecting*  
11 *his property, he knows that his actions were excessive and was not in keeping with*  
12 *his general character. He admitted that he was very angry at the time when he*  
13 *had flashbacks about past burglaries, but shared that this was no reason for his*  
14 *uncontrolled response. He added that he is in no way proud of what he has done*  
15 *and in retrospect if placed in a similar situation, he would behave differently;*  
16 *maybe by restraining the victim and then calling the police for assistance. He*  
17 *expressed remorse for the injuries caused to the victim and informed of his desire*  
18 *to compensate him for medical bills he has incurred out of pocket..."*



19  
20 15. The Defendant was assessed by the Social Worker as being at medium risk of reoffending.

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22 **The Victim Impact Report ("VIR")**

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24 16. The Complainant has suffered physically and financially as a result of the Defendant's actions.

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26 17. The extent of the Complainant's injuries have already been noted at paragraph 2 herein. Some of  
27 the physical effects are ongoing:

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29 *"Mr. Rockett shared that in addition to the three chops he outlined in his summary*  
30 *he also received a chop to his head. He shared that upon being transported to the*  
31 *hospital, surgery was done immediately on his right leg. The wound to his hand*  
32 *was sutured. "I had to do a couple surgeries well on my right leg. I wore a brace*  
33 *on it for over a year and had to do surgery to put in the pins. The pins were to*  
34 *help keep the bones straight. They were taken out earlier this year." As reported*



1 by Mr. Rockett, "The doctor told me that the holes that were drilled in the bones  
2 to fit the pins will not close up anytime soon. At certain times I can feel the holes  
pulsating." He explained that it feels like when the heart beats. He also disclosed  
that he is still on medication which is to prevent the blood from clotting.

Mr. Rockett shared that he was provided insurance coverage government through  
the Needs Assessment Unit. This assisted with covering some of the medical costs.

8 "I had to do physiotherapy and I need to continue with it. I also need to do follow  
9 up visits regarding the progress of my leg. The doctor say me recently and spoke  
10 to me, informing me that I need to come in for an x ray to see what the current  
11 situation with the leg is." He is of the view that the coverage has now expired  
12 hence the reason he is unable to follow up with treatment.

13  
14 As shared by Mr. Rockett, the current biggest impact is "I can't walk properly.  
15 Previously I used to walk fast but now I can't move a fraction of how fast I used  
16 to. Now I have to be dragging the right leg. I can't run or jump. I feel like my life  
17 is 'done' at the age of 31, because I can't do things like I used to. The man (Mr.  
18 Bodden) has damaged me drastically; I am a young man with two children to  
19 support. People who know me from before laugh at me but I don't let that bother  
20 me." He also expressed that "The wounds from the injuries have healed leaving  
21 scars which I have to live with for the rest of my life.""

22  
23 18. The Crown has submitted copies of the Complainant's outstanding medical bills arising from his  
24 hospitalization. These bills amount to CI\$14,658.06

25  
26 **Personal Mitigation**

27 19. Counsel for the Defendant submitted character references on behalf the Defendant from various  
28 persons who have known the Defendant over a number of years. They all describe the Defendant  
29 as being a loyal and dedicated individual in both his personal and professional life. Running  
30 through these reports are repeated observations of his generosity and respectful nature. As one of  
31 his referees described, the Defendant had been up to this stage, "an honourable individual, a  
32 valuable member of society, and overall, a good human being."



Guilty Plea

1 The Defendant entered a guilty plea to the lesser count of Unlawful Wounding once the *Goodyear*  
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3  
4 *Direction* had been given by this Court. Counsel for the Defendant submits that the Court should  
5 accord the Defendant the full 1/3 discount for his guilty plea. Counsel drew to the Court's attention  
6 that the Defendant's previous attorney was taken ill soon after he was indicted for this offence and  
7 therefore, in the context of the time that the plea was offered once his present attorney became  
8 involved, it was open to the Court to find that the Defendant pleaded at a very early stage in all the  
9 circumstances. Crown Counsel did not object to the Defendant being granted the full discount for  
10 his guilty plea. I note that the agreed basis of plea sets out:

11  
12 *"The Defendant has entered a guilty plea to the second count at the earliest*  
13 *opportunity when the Crown indicated it would accept such a plea on such a basis*  
14 *as herein set out to dispose to the indictment."*

15  
16 Compensation

- 17  
18 21. Counsel for the Defendant has indicated to this court that the Defendant is willing to make  
19 compensation to the Complainant for his medical bills. This offer of compensation was also made  
20 quite early and Counsel asked the Court to consider that it is a reflection of the Defendant's genuine  
21 remorse and also his acceptance, entirely contrite, of the result of his actions. The Defendant has  
22 offered to pay half of the Complainant's outstanding medical bills.

23  
24 Relevant Authorities

- 25  
26 22. The Court was referred to a number of local authorities involving excessive self-defence or defence  
27 of another which resulted in serious injuries. In each of these cases the court imposed suspended  
28 sentences. These authorities include *R v Kenneth Green*<sup>2</sup>; *R v Carla Davis*<sup>3</sup>; *R v Erin Logan*<sup>4</sup> and  
29 *R v Dilbert*<sup>5</sup>. I have considered each of these.

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<sup>2</sup> IND 84 of 2013, unreported 28 January 2014;

<sup>3</sup> IND 56 of 2013, unreported 21 March 2014;

<sup>4</sup> IND 29 of 2016, unreported 21 October 2016;

<sup>5</sup> 2009 CILR, Note 2



1 23. The sentence imposed by this Court in *R v Lelieth Welcome-Campbell*<sup>6</sup> was also referenced.  
2 However, that case is distinguishable from the instant case in a number of respects. It was not a  
3 case of self-defence but rather one of an unprovoked attack by a Defendant with numerous previous  
4 and relevant offences who had never been able to take advantage of previous community-based  
5 sentences and had committed the offence while on a suspended sentence.

6 Each sentence must be determined on the facts of the individual case. I agree with Crown Counsel's  
7 acknowledgment in his submissions that when one looks at these sentences the level of consistency  
8 to be gained from such an exercise is necessarily limited for that reason.  
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11 **Court's conclusions**

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13 25. The maximum sentence to be imposed is 2 ½ years imprisonment. In all the circumstances I believe  
14 that that maximum sentence is appropriate. I will accord the defendant the full discount for his  
15 guilty plea. The sentence is therefore reduced, taking the discount into account, to 20 months  
16 custody.  
17

18 26. In seeking to persuade this Court that a suspended sentence was the appropriate sentence in all the  
19 circumstances of this case, Counsel for the Defendant referred to Brooks J's assessment that:  
20 "*There is the scope for a reduction or a different sentence being imposed which would bring it*  
21 *below the sentence which would allow for a suspended sentence to be imposed...The gate is not*  
22 *closed.*"  
23

24 27. The Defendant is a 61 years old man who has committed a serious offence and made a grave  
25 mistake. He allowed his anger and frustration to get the better of him. However, it is to his credit  
26 that as he stood over the Complainant he came to his senses and called for assistance to get the  
27 complainant needed medical attention. Were it not so, he could have been before this Court for an  
28 even more serious offence. Defence Counsel has described his client as a national treasure. This  
29 Court is not qualified to make that assessment but the Defendant appears to be a credit to this  
30 society judging by the character references submitted on his behalf, which speak to his integrity  
31 and generosity in his private and professional life.  
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<sup>6</sup> IND 72 of 2019, unreported 9 October 2019

1 28. I take into account the injuries and ongoing medical issues of the Complainant. I balance this  
2 against the nature of this incident, one of excessive self-defence, the Defendant's genuine remorse,  
3 his offer of compensation and as I have noted above his general good character. In all the  
4 circumstances of this case I find that it is appropriate that a suspended sentence be imposed.

5  
6 29. The sentence of the Court is as follows: 20 months imprisonment suspended for two years. I also  
7 make a Suspended Sentence Supervision Order "SSSO" for 2 years from today's date. The  
8 Defendant is to obey the instructions of the assigned Department of Community Rehabilitation  
9 Officer which will include completion of an Anger Management Programme as directed by the  
10 Officer.

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12 30. The Defendant will pay compensation to the Complainant in the sum of CI\$7000.00, \$1000.00 of  
13 which is to be paid today – 25<sup>th</sup> October 2019. The balance of \$6,000.00 to be paid at CI\$300.00  
14 per month for 20 months, payable on the last Friday of each month. In default of payment, the  
15 Defendant will serve a term of 6 months imprisonment.  
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19 Dated this 25<sup>th</sup> day of October, 2019.



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24 **Madam Justice Marlene I. Carter**  
25 **Judge of the Grand Court (Acting)**  
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