

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

3 **INDICTMENT NO: 11 of 2020**

4 **THE QUEEN**

5
6 **v.**



7
8 **CAROL ANN LAZZARI**

9 **AND**

10 **CARLEY LYNN LAZZARI**

11
12 **Appearances:**

Mr. Greg Walcolm for the Crown

13 **Mr. Alex Davies of McGrath Tonner for Carol**
14 **Ann Lazzari**

15 **Mr. Greg Burke of McGrath Tonner Carley**
16 **Lynn Lazzari**

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19
20 **Before:**

Justice Cheryll Richards Q.C.

21 **Submissions on Sentencing:**

28th October 2020

22
23 **Delivery of Sentence Judgment:**

12 February 2021

24
25 **HEADNOTE**

26 ***Criminal Law – Wounding with Intent – Inflicting Grievous Bodily Harm –***
27 ***Conviction following trial – Principles on Sentencing – Aggravating and Mitigating***
28 ***Factors.***
29

30 **SENTENCE JUDGMENT**

- 1 1. The Defendants are before the Court for sentencing. They were convicted after trial by
2 jury. The First Defendant Carol Ann Lazzari was convicted of the offence of Inflicting
3 Grievous Bodily Harm contrary to s.204 of the *Penal Code* (2019 Revision). The
4 particulars are that she, on the 31st day of March 2019, at premises in Cayman Brac,
5 unlawfully and maliciously inflicted grievous bodily harm upon Brinsley Lazzari. The
6 maximum penalty is seven years' imprisonment.
- 7
- 8 2. The Second Defendant Carley Lynn Lazzari was convicted of the offence of Wounding
9 with Intent contrary to s. 203 of the said *Code*. The particulars as to time and place are
10 the same. The maximum penalty is life imprisonment.
- 11
- 12 3. The Defendant Carol Ann Lazzari is the wife of the victim Brinsley Lazzari who, at the
13 time of the trial against the Defendants, was eighty (80) years of age. The Defendant
14 Carley Lazzari is the only daughter of the couple. She is 28 years old.
- 15
- 16 4. All three resided on the same premises on East Bay Road, Cayman Brac. According to
17 the evidence of the victim, shortly after the birth of Ms. Lazzari in 1992, the relationship
18 between husband and wife began to deteriorate. By the date of these offences Mr. Lazzari
19 was seeking a divorce. He had moved out of the main family house and resided in a
20 separate and smaller building on the property which he ordinarily used as his office
21 space. It was his custom when the weather was good, to swim in the pool closer to the
22 main house, for exercise purposes.

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1 **CASE FOR THE PROSECUTION**

2
3 5. The facts are summarised by the Crown in their written submissions on sentencing as set
4 out below.

5
6 6. On the day in question, at about midday, Mr. Lazzari walked to the pool and as he did
7 so he passed both Defendants sitting outside the main house. They appeared to have just
8 had lunch as they had plates in hand. He spoke briefly with them and told them that he
9 was going to the pool. He then went to the pool house and changed into his swim trunks.

10
11 7. He put on his snorkel gear, entered the pool which was half full and began doing his
12 regular exercises. He was swimming in one spot, face down when he felt something hit
13 him to the back of his head. He looked to one side and saw Carley Lazzari with her right
14 hand above her head with something in it. He grabbed on to her hand in order to prevent
15 her from hitting him again but whenever she moved her hand he was again hit to the
16 head. When this was taking place, Carol Lazzari was standing on the pool deck watching.

17
18 8. Mr. Lazzari struggled with Carley Lazzari who was trying to push him under the water
19 until he finally got hold of the item which she had in her hand. He recognized then that
20 it was a meat tenderizer which was wrapped around her wrist with a piece of twine. He
21 continued to struggle with her until Carol Lazzari entered the pool. Carol Lazzari said to
22 him that he is not leaving here today. Both were trying to overpower him. However, he
23 struggled until he made it to the steps and ran out of the pool.

24
25 9. He was attempting to make his way to the pool house but before he could do so, Carley
26 Lazzari came out of the pool and blocked his path. Carol Lazzari also came out of the
27 pool, went around the pool from the opposite side and his path was then blocked on both
28 sides. He took up a piece of PVC pipe from among a few pieces which were lying on

1 the side of the pool deck. Carol Lazzari also took up a piece of pipe. She attempted to
2 hit him with it, but he blocked its descent with the piece of PVC pipe which he had. He
3 then held on to the piece of pipe which she used to try to hit him. She was pulling it away
4 from him. He let go of it and she fell into the lilies by the side of the pool deck.

5
6 10. Carley Lazzari then tried to hit him with the meat tenderizer a few times but he blocked
7 the hits and used the piece of PVC pipe which he had by swinging it towards her. When
8 he did so, she stepped backwards and fell into the pool.

9
10 11. By that time he was bleeding heavily from the wounds to his head. He ran into the pool
11 house, retrieved his clothes and his keys and then ran to the office. Once inside he locked
12 the door and called the police.

13
14 12. The police arrived shortly thereafter and took some photographs. Mr. Lazzari was taken
15 to the hospital by ambulance for treatment. He was observed to be bloody and allowed
16 to wash off the blood before he got into the ambulance. The meat tenderizer was not
17 recovered.

18
19 **DEFENCE CASE AT TRIAL**



20
21 13. Both Defendants gave evidence at trial.

22
23 14. Carley Lazzari gave evidence that she had been walking along the walkway towards the
24 pool when she saw her father face down in the water. He was not moving and did not
25 appear to be breathing. She called out to him but he did not respond or make any
26 movement.



1 15. When she got closer to the pool she saw what appeared to be fresh blood on the north
2 interior wall of the pool. She called out for her mother who was in the house. She shouted
3 to her father again but he did not respond. She believed that her father had fallen into the
4 pool and was injured or possibly dead and entered the pool in order to assist him.

5
6 16. As she approached him and touched his shoulder, he stood up and lunged at her,
7 punching her to the face. She attempted to push him away but he grabbed her upper right
8 arm and tried to pull her down into the water. He used his fist to strike her repeatedly to
9 her face and on the top of her head. Her mother, Carol, entered the pool and attempted
10 to restrain her father. They were both screaming for him to stop. He then hit Carol
11 Lazzari to the top of her head repeatedly with his fists. He went back and forth between
12 hitting her and then her mother. At some point he exited the pool. Her mother, Carol,
13 then left the pool and was holding her face. When Carley Lazzari was getting out of the
14 pool she saw her father use a piece of PVC pipe and strike her mother across the head.
15 The blow to her mother sounded like a gunshot, and her mother fell to the ground. She
16 then leaned over her mother to see if she was all right and heard her mother say “*watch*
17 *out.*” She then felt a blow to her head and she fell into the pool.

18
19 17. Her father then threw the piece of PVC pipe into the pool. She was in the pool for a
20 while then got out of the pool and helped her mother up and into the house. Her mother
21 called the police. They remained in the house until the police arrived. Carley Lazzari
22 was bleeding from her head.

23
24 18. The following day, 1st April 2019 Carley Lazzari made contact with a locksmith who,
25 on the same day, changed the locks on the two exterior doors of the house.

1 19. At trial Carol Lazzari asserted that on that date and at that time, she was in her room
2 resting when she heard her daughter calling out, “*mother, mother come call 911.*” She
3 went to get the phone and she heard her daughter scream, “*dad stop, dad stop.*” She
4 looked out the patio window and saw her daughter struggling with her husband in the
5 pool. He was holding on to her by the arm and he was hitting her in the face and head.
6 She made her way out to the pool and saw blood on the side of the pool and in the water.
7 She screamed to her husband to stop, entered the pool, and went toward him but he
8 continued. When she got closer he started hitting her to the side and top of her head. She
9 managed to grab his arm and was approaching the bench in the pool in order to get him
10 to sit down and get him away from her. He then hit Carley Lazzari to her face, eye,
11 forehead and on top of her head.

12
13 20. After a struggle with him, simultaneously hitting both of them, he left the pool and she
14 followed. Carley Lazzari was still in the water. She looked to make sure her daughter
15 was conscious and getting out of the pool behind her and that was when her husband got
16 a piece of PVC pipe and hit her twice to her head and neck and she fell down. Carley
17 Lazzari came out of the pool and was shouting for him to stop. Her husband stood up
18 and moved away from her and Carley Lazzari then came towards her. Her husband then
19 swung the piece of PVC pipe as if he was about to hit Carley Lazzari with it. She shouted
20 to Carley Lazzari to look out and her husband hit Carley Lazzari with the PVC pipe to
21 the top of her head. Carley Lazzari then fell into the pool. She was still on the ground
22 when Carley Lazzari came from the pool and assisted her into the house. By that time
23 her husband was gone. She saw that Carley Lazzari was bleeding from the top of her
24 head. She then located her phone and called 911.



1 The police arrived and transported them to the Faith Memorial Hospital where they were
2 treated for their respective injuries. Later that afternoon, Carol Lazzari returned to the
3 house leaving the others at the hospital. She took photographs of the pool area.

4
5 **INJURIES SUSTAINED**

6
7 21. The medical evidence was agreed.

8
9 22. Brinsley Lazzari suffered the following injuries:

10 i. 3 stellate-shaped deep lacerations on:

- 11 1. The left parietal scalp;
12 2. Anterior parietal scalp in the midline; and
13 3. Mid-parietal scalp;

14 ii. 4cm-deep, semilunar-shaped laceration to the occipital scalp;

15 iii. Penetrating injury to the right temporal scalp;

16 iv. 1.5 cm deep laceration on the dorsal surface of the left thumb over the
17 proximal phalanx;

18 v. Abrasion to the medial surface of right great toe; and

19 vi. Right lateral subconjunctival hemorrhage.

20 He was admitted for a short time to the hospital.

21
22
23 b. Carol Lazzari suffered the following injuries:

24 i. Bruising to the right forehead and extending to the scalp along the
25 hairline;

26 ii. Pain on palpation of the right occipital region laterally;

27 iii. Haematoma palpated to the occipital region;

28 iv. Small amount of bruising noted to the scalp in the right occipital region in
29 the area of the haematoma.

30
31 c. Carley Lazzari suffered the following injuries:

32 i. Pain to the entire head;



- 1 ii. Approximate 4.5 cm x 4 cm haematoma to the left frontal bone area of the
- 2 head. Pain over the left jaw. No bony deformity upon examination by touch;
- 3 iii. Raccoon eye noted to the left eye;
- 4 iv. Bruising noted over the left maxilla and the right side of the nasal ridge;
- 5 v. Approximate 2.5 cm to 3cm laceration noted over the parietal bone just
- 6 lateral of the midline;
- 7 vi. Bruising noted to the inner aspect of the right arm; and
- 8 vii. Small bruise noted to the left upper arm.



9

10 **SOCIAL INQUIRY REPORTS- CAROL ANN LAZZARI**

11

12 23. The Department of Community Rehabilitation (DCR) has provided a Social Inquiry

13 Report (SIR) dated 28th October 2020 with respect to the Defendant Carol Ann Lazzari.

14 This provides details as to her personal circumstances.

15

16 24. She is 68 years old, and has no previous convictions. Following her graduation from

17 university she has been consistently and gainfully employed firstly in the United States

18 and more recently in Cayman Brac - excepting for a period when she remained at home

19 to care for her daughter. She retired from her teaching job in 2014.

20

21 25. She described the relationship with the victim as being one of physical and emotional

22 abuse. The Officer records that Mrs. Lazzari presented as being somewhat dependent on

23 her daughter, physically, emotionally and financially.

24

25 26. Mrs. Lazzari provided information to the Officer as to her health which information was

26 verified by medical documentation. She has had a number of surgical procedures

27 including total knee replacement, arthroscopy of the knee and suffers from bleeding

28 ulcers, gout and rheumatoid arthritis. She also reported that following on the incident in

29 March 2019 she suffers from increased unsteadiness, anxiety and panic, slight memory

30 loss and increased pain in her spine, right hip, leg and groin area, increased numbness in

31 hands and feet, stiffness in joints and decreased mobility. She has also had to have the



1 dosage of prescribed blood pressure medication increased. She takes a number of other
2 medications for various illnesses. She is experiencing sadness and depression which is
3 caused by worrying about the sentence to be imposed on her daughter, her health
4 concerns and the emotions arising from the March incident. She was referred for
5 counselling by the Officer.

6
7 27. Mrs. Lazzari provided 24 character references to the Probation Officer dating back to
8 1989 from persons in the United States and in Cayman Brac. The Officer states that these
9 referred to her as of good character, respectful, kind and compassionate. Fifteen of these
10 dated 2019 and 2020 are attached to the Report. These have been read by the Court. In
11 summary they speak to her good character, her work as an educator over a period of
12 many years, her caring nature, both as an educator and a mother, her strong work ethic,
13 contributions to the community as a whole and the very high regard and respect with
14 which she is held and viewed by her community.

15
16 28. Under the heading attitude towards offending, the Officer notes that Mrs. Lazzari's
17 comments about the incident demonstrate her concerns about the impact on her own
18 reputation and the way in which she is treated by others. While she expressed regret that
19 the victim was injured she demonstrated limited victim empathy.

20
21 29. She was assessed using the LS/CMI/Risk/Need Assessment Tool. Her overall risk of re-
22 offending was assessed as very low. Of the eight criminogenic factors, none were at the
23 high or very high levels and only one was at medium level.

24
25 30. Under sentencing options the Officer noted that despite her health concerns Mrs. Lazzari
26 has expressed her willingness to engage in community service should an appropriate
27 project be available to her.

1 31. The Court inquired of the Probation Officer at the sentencing hearing, whether any
2 suitable community service could be identified for her given the nature of her health
3 issues. At that time the Officer indicated that she was not aware of any appropriate
4 placements being available and that she would make every effort possible to find a
5 suitable one for her. It was likely that one would have to be specially designed for her.

6
7 32. An updated report was provided dated the 27th November 2020. This indicates that she
8 has been receiving counselling. The diagnosis is adjustment disorder with anxiety with
9 the concern being, domestic abuse/violence related to ongoing Court case. She had
10 attended three counselling sessions to that date and intended to continue attending. There
11 has been improvement with a reduction in anxiety symptoms and a more positive overall
12 attitude and mood.

13
14 33. The Officer also indicated therein that she had made contact with community service
15 placements where the Defendant would be granted permission to perform services at
16 places which will be mindful of her physical disabilities and have tasks to suit her
17 abilities.

18
19 **SOCIAL INQUIRY REPORT- CARLEY LYNN LAZZARI**

20
21 34. Carley Lazzari has no previous convictions and has been gainfully employed since
22 completing school in 2011. Initially she was employed as an airport security officer
23 before undertaking training overseas and locally, at the end of which, she became the
24 first woman hired as an air traffic controller in Cayman Brac.



1 35. Her supervisor at work describes her work performance and work ethic as excellent and
2 states that she is an asset to the organisation. From her earnings, she has been paying the
3 majority of the household bills for her parents. She is concerned about her ability to work
4 in the future, should a conviction be recorded against her, and is worried about her
5 mother's ability to cope if she were to be sent to prison.

6
7 36. She describes her father as having been emotionally abusive to her mother and herself
8 and through the Officer has asked the Court to consider two Police incident reports which
9 she says provide evidence of her father's negative behaviour towards her mother. Due
10 to the stress of the case, she has been undergoing counselling.

11
12 37. Under Assessment/Evaluation, the Officer states that she is an intelligent, competent and
13 generous young adult who by all accounts is of benefit to the Brac community and is
14 well liked. There is a concern that she needs to acquire skills to enable her to set
15 boundaries and enrich her life rather than to continue to be enmeshed with her mother's
16 physical, emotional and material needs.

17
18 38. Her overall risk of re-offending is assessed as low. None of the eight criminogenic
19 factors were assessed at high levels.

20
21 39. Of the three factors which were at a medium level, one was pro-criminal
22 attitude/orientation. That level was informed by her lack of empathy with the victim's
23 injury and some implied blaming of him.



1 40. Under sentencing recommendations the Officer states that it would be of no benefit to
2 her or to the community for her to be imprisoned. Various options are recommended
3 including a minimum term imprisonment, suspended sentence with supervision and
4 community service orders.

5
6 **VICTIM IMPACT REPORT- BRINSLEY LAZZARI**

7
8 41. A Victim Impact Report dated 26th October 2020 is provided by the DCR. Mr. Lazzari
9 is a retired business man from his work in the construction industry. He describes the
10 offence as being a great shock to him. It was unexpected because, in particular, it
11 occurred in his own home, with his own family where one should feel safe. He has
12 written a letter which states in part:

13 *“The pool was one of the few pleasures in my life. It cost me a great deal of money,*
14 *both to build and to maintain. I enjoyed swimming in it and I found swimming to be*
15 *one of the best exercise[s]. One hour in the pool each day, kept me in good physical*
16 *shape. I maintained my body weight, slept better, and I felt good.*

17
18 *Since the day of the attack, I have not been in the pool. I do not feel safe there*
19 *anymore, alone with Carol and Carley nearby. That is affecting my health. I do not*
20 *sleep well, and I am gaining weight. Regularly they have their friends visit the house*
21 *to drink with them, which makes me feel uneasy. I no longer enjoy living on this*
22 *property with them so near, and I could not bring anyone here to live, not knowing*
23 *what they will do. At the present I can see no alternative, but to move and find a new*
24 *home.*

25
26 *Desire in regards to sentencing: My feelings are neutral. I bear them no malice. I*
27 *am sure the court will give them a fair judgment.*



1 *It would be a relief for me, if I could have my property returned to me, which Carol*
2 *had her and Carley's name put on the records, in a very conniving manner. Other*
3 *than that, I wish no further dealings or contact with them.*
4 *I thank you very much for your help."*

5
6 **INFLECTING GRIEVOUS BODILY HARM – SECTION 204 OF THE PENAL CODE- CAROL ANN**
7 **LAZZARI**

8
9 42. In the absence of offence-specific guidelines in the Cayman Islands in respect of the
10 offence of Inflicting Grievous Bodily Harm, reference is made to the *United Kingdom*
11 *Sentencing Council Guidelines.*

12
13 43. Under these Guidelines, in respect of the offence of Inflicting Grievous Bodily Harm,
14 the factors indicating greater harm include:

- 15 i. Injury which is serious in the context of the offence;
- 16
17 ii. Victim is particularly vulnerable because of personal circumstances; and
- 18
19 iii. Sustained or repeated assault on the same victim.
- 20

21
22 44. The factors indicating higher culpability include:

- 23 i. Use of weapons or weapon equivalent; and
- 24
25 ii. Deliberate targeting of a vulnerable victim.
- 26





1 **SUBMISSIONS BY THE PROSECUTION**

2 45. In respect of the possible sentence for Carol Lazzari, the Prosecution submits that the
3 offence is one of greater harm for three reasons. Firstly, that the injuries sustained by the
4 victim are serious in the context of this offence. He suffered a 5 cm laceration to the
5 top of his head, a laceration to his left thumb, an abrasion to his great toe, a blood shot
6 right eye and other injuries. It is argued that the number and location of these injuries,
7 being mostly to the head, evidence the serious nature of them.

8
9 46. Secondly, it is submitted that the victim is particularly vulnerable because of his age. It
10 is argued that although he is quite fit, this does not take away from the vulnerable status
11 which would normally be accorded to a person of this advanced age. Additionally,
12 reference is made to his position at the time of the attack. He was face down within the
13 swimming pool when he was hit to the back of his head which position is tantamount to
14 being in a state of vulnerability at the time of the attack.

15
16 47. Thirdly, it is submitted that this was a sustained attack on him. This was an attack by
17 two persons. It began in the pool, where there was a struggle. The Second Defendant
18 continued to raise the meat tenderizer in an endeavour to strike the victim to his head.
19 The assault continued outside the pool. At that stage the First Defendant armed herself
20 with a weapon. The Second Defendant was still armed with the meat tenderizer which
21 was wrapped around her wrist. Both blocked the path of the victim. It is argued that
22 there was thus a repeated nature to the assault such that the Court can find that it was
23 sustained in nature. There was a clear intention by the Defendants not to relent, and it
24 was only because of the assiduous efforts of the victim that the attack ended at the time
25 it did.

1 48. As to the second limb of culpability, the Prosecution submits that there is one factor
2 indicative of higher culpability. This was a joint enterprise in which this Defendant also
3 armed herself with a weapon. However, the Prosecution quite properly points to the role
4 played by this Defendant, in that, she played a lesser role in the assault which is a factor
5 indicating lower culpability. Consequently it is submitted that in striking the appropriate
6 balance in respect of Carol Lazzari this offence should properly be categorized as one of
7 lower culpability.

8
9 49. The Prosecution therefore submits that this offence is one of greater harm and lower
10 culpability and is thus a category 2 offence, which, subject to an appropriate uplift given
11 the higher maximum in the Cayman Islands, would have a starting point of 18 months'
12 imprisonment and a range of sentence of 12 months to 36 months custody.

13
14 50. By way of aggravating factors, the Prosecution points to the fact that the meat tenderizer
15 was not recovered and that there was a period of time when both Defendants were alone
16 in the pool area and would have had the opportunity to dispose of the weapon so that it
17 was not found on the arrival of the police.

18
19 **SUBMISSIONS BY THE DEFENCE**

20
21 51. The Defence submit that this is a category 3 offence. It is argued that the injuries
22 sustained by the victim are not serious in the context of the offence. While the injuries
23 were serious, they were not life threatening and in the range of possible injuries these
24 are not at the higher end of the scale.



1 52. In support of this submission Counsel noted that the victim has fully healed and suffered
2 no lasting disabilities. The assertion by the Prosecution of psychological or long term
3 damage is not supported by the victim impact report or a report from a doctor. There is
4 some effect says the Defence, but it falls short of a psychological injury.

5
6 53. On the issue of vulnerability Counsel for both Defendants submit that the victim cannot
7 be described as particularly vulnerable, noting that age alone cannot serve to place him
8 into this category. He exercised regularly, is fit for his age, and is stronger and faster
9 than both Defendants. He was able to overpower them and left both with visible injuries.
10 Counsel for the First Defendant argued forcefully that the victim's advanced age does
11 not equate to infirmity and that to make such a statement may equate to prejudice.

12
13 54. Counsel on behalf of the First Defendant also said that it is accepted that the victim was
14 somewhat vulnerable because of being in a swimming pool but that he was not
15 particularly vulnerable.

16
17 55. It is further submitted that while the incident could properly be described as sustained,
18 there is no reliable evidence as to how long it actually lasted. In evidence the victim said
19 that it may have only been a few minutes but it felt longer. It is argued that the incident
20 can also be fairly described as a struggle by the victim who accepted striking back and
21 gaining the upper hand.



22
23 **ANALYSIS – CAROL ANN LAZZARI**

24
25 56. I have given consideration to all the submissions made. Although this was a case of joint
26 enterprise, the Prosecution does not argue that the factor of possession of a weapon
27 should be taken into account in respect of this Defendant, Carol Lazzari. This is because

1 of the presence of a factor indicating lower culpability on her part, i.e. the subordinate
2 role played by her. The Prosecution therefore submits that the case against her is one of
3 lower culpability. Thus the issue in dispute is the level of harm.

4
5 57. With respect to the nature of the injuries sustained, the principle to be applied is set out
6 in the cited case of *R v Smith*¹. A court should seek to distinguish between the level of
7 violence which is inherent or par in a standard offence and that which will go beyond
8 what may be viewed as par for the course. This is important given that there is such a
9 marked disparity in the starting points between the categories. Thus the level of harm
10 and violence which will justify placing a case within a higher category must be
11 significantly above the serious level of harm which is normal.

12
13 58. The injuries in this case are serious injuries, in particular those to the head which are
14 described by the medical evidence as being deep. The evidence at trial was that there
15 was substantial bleeding. However there was no evidence as to negative impact on vital
16 organs. There was no evidence of incapacitation. The victim was able to leave the pool,
17 disarm his assailants, access the pool house, retrieve his clothing and call for help. He
18 did not require extensive treatment in hospital. He has fully healed. Additionally while
19 I am mindful that permanence of injury is not a prerequisite for a finding that an injury
20 is serious in the context of the offence, there is no evidence as to significant effect upon
21 him. He has clearly been affected in some way by the incident but from the available
22 evidence this does not appear to be extensive. The Probation Officer indicated at the
23 hearing that he has declined counselling on the basis that he does not need it.



¹ 2016 1 Cr. App. R. (S) 8

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1 59. In my view, considering the nature of the injuries and all the surrounding circumstances
2 such as the effect upon the victim, the injuries are not such as to justify a finding that
3 they are serious in the context of the offence.

4
5 60. I note also that the Prosecution appears to argue that the injuries are serious in the context
6 of the offence in relation to the First Defendant who is charged with Inflicting Grievous
7 Bodily Harm and accepts that they are not serious in the context of the offence of
8 Wounding with Intent. I consider that there should be consistency where the factual
9 matrix of the injury is the same notwithstanding the different charges.

10
11 61. On the issue of particular vulnerability due to his age, it is difficult to accept the
12 submissions of the Defence. Notwithstanding varying levels of fitness, there are clear
13 practical differences - including mobility and agility - between someone at the advanced
14 age of 80 years and someone younger. Additionally in this case, the assault began when
15 the victim was face down in the swimming pool. He was in a vulnerable position when
16 he was hit to the back of his head.

17
18 62. I am mindful that the question is not whether he was vulnerable which he clearly was. It
19 is whether he was “particularly” vulnerable. In my view his advanced years made him
20 particularly vulnerable, even more so given the position that he was in when the assault
21 began.

22
23 63. With respect to the factor of sustained or repeated assault, I note that the concept of
24 “sustained or repeated” imports some degree of persistent repetition. An assault may be
25 sustained because it continued over a significant period of time or, may be considered
26 “repeated” because it involved multiple blows over a short period of time.



1 64. The evidence at trial was that there were multiple blows to the victim in the pool where
2 the assault began and multiple attempts to strike him to his head. Even after exiting the
3 pool, the victim was again approached by both Defendants. The First Defendant sought
4 to arm herself with a piece of PVC pipe and to continue with the assault. The Second
5 Defendant raised the meat tenderizer to strike again. The uncertainty as to the duration
6 of the assault is noted but there was clearly a degree of persistence and repetition about
7 it.

8
9 65. There are thus two factors which would place this matter into the category of greater
10 harm. Counsel for the First Defendant argues that, in the absence of injury which is
11 serious in the context of this offence which should normally be present, the other two
12 factors are not of such a notable nature that they would aggravate the seriousness of the
13 offence.

14
15 66. In my view, the fact that there are not one but two such factors and the nature of them,
16 (particular vulnerability, and the sustained/repeated nature of the assault) does cause this
17 matter to rise to the level of greater harm. In all the circumstances I conclude that it
18 would be appropriate to categorise this as a category 2 offence with a starting point in
19 the United Kingdom of 18 months' imprisonment and a range of sentencing of between
20 12 months' imprisonment and 36 months.

21
22 67. Counsel on behalf of the Defendant Carol Lazzari has referred me to the case of ***R v***
23 ***Rainer Naomi Blackwood***². In that case the Court applied an adjusted starting point
24 reflecting the higher maximum sentence in the Cayman Islands. This was done by
25 reference to the Cayman Islands Court of Appeal (CICA) case of ***R v Seth O'Neil***

² Unreported GC judgment 8th May 2020

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1 **Watler**³. In that case the Respondent/Defendant was sentenced to a suspended term of
2 imprisonment after pleading guilty to the s.204 offence of Inflicting Grievous Bodily
3 Harm. The sentencing Court applied the said Guidelines, and found that it was a
4 Category 3 offence. Upon hearing the appeal by the Prosecution, the Appellate Court
5 stated that it was appropriate for the sentencing Judge to apply the Guidelines, making
6 broad adjustments for the higher maximum sentence in the Cayman Islands. The Court
7 stated:

8 *“In England and Wales, that would mean a starting point of a high-level*
9 *community service order, with a range of a low level order up to 51 weeks*
10 *in custody. As we have said, some adjustment to the available range was*
11 *necessary to reflect the higher maximum sentence in the Cayman Islands.*
12 *We can understand how, in the Cayman Islands context, the judge took, as*
13 *a starting point, a sentence in the order of 12 months imprisonment, with a*
14 *range in the order of 9 months to 2 years custody. However as we emphasize*
15 *these can only be broad figures, we are not seeking to lay down an*
16 *invariable approach to be applied in every case.”*⁴
17

18
19 68. In the instant case, it is proposed to adopt a higher starting point of 30 months’
20 imprisonment rather than 18 months.

21
22 69. From a starting point of 30 months there is a single aggravating factor of disposal or
23 concealment of evidence which would serve to increase the sentence to one of 32
24 months.

25
26 70. In mitigation, Counsel on behalf of the First Defendant submitted that this was a sad
27 incident at a family home which was a tragedy for all concerned. Mrs. Lazzari, herself
28 had no weapon and did not in fact inflict injuries upon the victim. She sustained injuries
29 to her own body. Prior to the incident and after the incident, the Defendant continues to

³ CICA 34/2017, judgment dated 25th April 2018

⁴ Paragraph 30

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1 have significant medical issues which include osteo-arthritis to both knees, one of which
2 has been surgically replaced, hip replacement surgery and pain and problems associated
3 with her back. She is awaiting spinal surgery, the timing of which is dependent on her
4 blood pressure issues being controlled.

5
6 71. The parties all continue to reside on the same premises pending the completion of
7 divorce proceedings which have been ongoing for some time. There is no evidence of
8 continuing problems.

9
10 72. I have considered all the matters raised by Counsel on behalf of the First Defendant, her
11 letter to the Court, the detailed Social Inquiry Reports and the many letters provided on
12 her behalf from members of the community in the Cayman Islands and the United States
13 during the trial and those provided at this sentencing hearing. Mrs. Lazzari has no
14 previous convictions, she has been gainfully employed throughout her life, is well
15 respected by the community and is of good character. She is 68 years old, has had
16 multiple surgeries and has significant continuing health issues which affect her mobility.
17 She is remorseful in respect of the injuries sustained by the victim. I also take note of
18 her family circumstances to a limited extent. While the issues raised in respect of divorce
19 are not matters for this Court, each party in this case accuses the other of abuse. It is
20 plain without coming to any finding or conclusion on the matter that the family
21 circumstances and disharmony in the family are difficult for all concerned including for
22 this Defendant.

23
24 73. Taking into account everything which has been said about her in mitigation, the sentence
25 would be reduced to one of 14 months' imprisonment.
26

1 74. The *Cayman Islands Sentencing Guidelines* provides general guidance as to the aims
2 of sentencing, assessing the seriousness of an offence, the custody threshold and the
3 principle of proportionality. The Court reminds itself of this guidance - including that
4 in sentencing an offender, the Court has to balance a number of competing interests and
5 objectives and to tailor the punishment to the individual circumstances of the offender
6 while ensuring that it is in line with the seriousness of the offence. The Court should
7 consider which of the aims which govern the sentencing process will be best served by
8 the sentence to be passed. The aims which are set out in the *Alternative Sentencing Law*
9 *2008* include deterrence, punishment, rehabilitation and restitution. The Guidelines also
10 provide that a custodial sentence should not be imposed unless the offence is so serious
11 that no other sentence can be justified for the offence. Custody should be reserved for
12 the most serious offences. Even where the custody threshold is passed, custody can still
13 be avoided in light of personal mitigation or if there is suitable community intervention
14 which would meet the aims of punishment and rehabilitation.

15
16 75. The jury by their verdict rejected the account of the Defendant. The circumstances are
17 such that, had the victim not had the wherewithal and presence of mind to fight back,
18 the outcome may well have been very different.

19
20 76. The injuries sustained were serious. There is some continuing impact on the victim who
21 now feels restricted in his use of the premises, as a result of what occurred. The
22 offending was of a serious nature. It is important that the factors of deterrence and
23 punishment be given significant weight in a case such as this. I consider that the custody
24 threshold has been firmly passed.



1 77. The next issue is whether this sentence should be one of immediate imprisonment or
2 whether a sentence of immediate custody is unavoidable.

3
4 78. I have considered the personal circumstances of this Defendant with some care.

5
6 79. In her letter to the Court dated 28th October 2020, which was read out by Counsel on her
7 behalf, the Defendant states:-

8 *“Almost nineteen months to the day of the Marchs 31st, 2019 incident, I*
9 *Carol Ann Lazzari, stand before you again as a physically challenged and*
10 *disheartened woman. I relive that horrific incident in my mind on a daily*
11 *basis. I am truly remorseful for the physical injuries sustained by all of us.*
12 *The only one concern I have is losing my beautiful, loving, and*
13 *compassionate daughter, my only child, my only surviving blood relative*
14 *and my heart string.*

15
16 *She willingly and lovingly serves so many other functions in my life. She*
17 *makes sure all my financial and physical needs are met. She is the one that*
18 *encourages me to get out of bed in the morning and to embrace the day when*
19 *at times I would rather just lie there. She takes me everywhere that I need*
20 *to go, grocery shopping, the bank, and to local doctors’ appointments. She*
21 *travels with me for off island hospital visits and has been my only source of*
22 *support during my many surgeries.*

23
24 *Every night she tucks me in, making sure I have my medicines and*
25 *everything I need at my fingertips. She checks on me throughout the night.*
26 *She is my reason for getting up in the morning. She is such an amazing,*
27 *loving daughter and caregiver. She is my relentless coach cheering me on*
28 *during my therapy. She is constantly inventing new techniques for me to do*
29 *things despite my limitations and challenges. She is my life and my only*
30 *source of unconditional love.*



1 *Your Honour, it is my heartfelt and fervent prayer that I will be blessed with*
2 *her in my physical life with what remaining days I have left on earth.*
3 *It is my prayer that we will both be granted suspended sentences so we may*
4 *begin the healing process and start to move forward as a family. I remain*
5 *your respectful and humble servant.”*
6

7 80. Note is taken that the Defendant is assessed as being at low risk of re-offending and of
8 her personal mitigation, which includes her advanced age and significant health issues –
9 with the latter requiring further surgeries. By all accounts this offence is an aberration
10 in an otherwise productive life, which has included service to the communities in which
11 she resided. The conduct is not likely to be repeated – based on her “very low” risk-of-
12 re-offending rating on the LS/CMI/Risk/Need assessment Tool used by DCR. Against
13 the background of the totality of her personal circumstances, I do not consider that a
14 sentence of immediate imprisonment is unavoidable.

15
16 81. I propose that the sentence of imprisonment be suspended.

17
18 82. By s.42 of the ***Penal Code*** a Community Service Order may be made in addition to any
19 other sentence. The Probation Officer has advised that the appropriate arrangements can
20 be made for the Defendant to undertake suitable work in the community. By request
21 made 10th December 2020, Counsel for the Defendant had asked for her sentencing to
22 be put back to a later date in January 2021 to allow for certain medical investigations to
23 be concluded. Counsel has confirmed today that there are no medical issues which
24 would prevent the Defendant from complying with a Community Service Order.





1 83. The sentence imposed is therefore one of 14 months' imprisonment which will be
2 suspended for a period of two years with a supervision order. The Defendant is to
3 undertake 120 hours of community service under the direction of the Officer and is
4 encouraged to continue counselling under the direction of the assigned DCR Officer.

5
6 **WOUNDING WITH INTENT - SECTION 203 OF THE PENAL CODE - CARLEY LYNN LAZZARI**

7
8 84. The United Kingdom Sentencing Guidelines provide that category 2 offences involve
9 greater harm (serious injury must normally be present) and lower culpability or lesser
10 harm and higher culpability.

11
12 85. With respect to the Defendant Carley Lazzari, as to the injuries sustained by the victim:
13 The Prosecution agree with the Defence that the injuries are serious but are not serious
14 in the context of the offence. The victim did not receive extensive treatment at the
15 Hospital. He did not undergo substantial surgery and the injuries were not life
16 threatening. However, the harm is submitted to be greater harm because of two of the
17 three factors mentioned above – in particular, vulnerability and the sustained nature of
18 the assault.

19
20 86. The culpability is said to be at the higher level given the use of a weapon. Reliance is
21 also placed on two other matters – those are, an intention to cause more serious harm
22 than actually resulted from the offence and a leading role in a group. It is argued that this
23 Defendant raised the meat tenderizer and attempted to strike the victim's head several
24 times and that this evidences an intention to cause more serious injury than was actually
25 caused. Additionally it is submitted that she played a leading role in the attack.

1 87. The Prosecution therefore submits that under the United Kingdom Sentencing
2 Guidelines this may be an offence involving greater harm and higher culpability and thus
3 a category 1 offence with a starting point of 12 years' custody and a range of 9 to 16
4 years' custody.

5
6 88. However, it was accepted that in the absence of injury which is serious in the context of
7 the offence, which must normally be present for a category 1 offence that, in striking the
8 balance, this should be categorised as a category 2 offence, with a starting point of 6
9 years' custody and a range of sentencing of 5 to 9 years. It was further submitted that
10 consideration should be given to treating this as being at the higher end of category 2
11 and, to increasing the starting point given the factors indicating greater harm.

12
13 89. The Prosecution also submits that there is an additional aggravating factor. The weapon
14 (the meat tenderizer) was not recovered. Therefore, it can be reasonably inferred that
15 this Defendant must have played some role in secreting or disposing of it.

16
17 90. Defence Counsel for the Second Defendant submitted that this is a category 2 offence as
18 it is one of lesser harm and higher culpability. It is agreed that the injuries are less serious
19 in the context of the offence. It is further submitted that given the personal characteristics
20 of the victim, he is not particularly vulnerable due to his age. Further that there is no
21 reliable evidence as to the length of time over which the incident lasted and that the
22 factors must be considered in light of the significant difference between the starting
23 points for categories 1 and 2. There is no evidence of an intention to cause more serious
24 harm than actually resulted and there is no evidence that this was a group offence as the
25 Prosecution urges.



1 91. Applying the guidance in the cited case of *Smith*⁵, I conclude that the injury is less
2 serious in the context of this offence. The matter falls squarely into the category of
3 higher culpability due to the use of a weapon.

4
5 92. In my view it is thus at the very least an offence of lesser harm and higher culpability.
6 From a starting point of 6 years' custody, there is the single aggravating factor of
7 disposal of evidence which would serve to increase the sentence to one of 6 years and 2
8 months imprisonment or 74 months' imprisonment.

9
10 **THE SUBMISSIONS OF COUNSEL**

11
12 93. Counsel provided for the Court's attention two additional cases. In the case of *Kenroy*
13 *Rowe v. R.*⁶, following an altercation in a nightclub, the appellant stabbed the victim
14 with a flick knife just below the heart. He sustained a wound as a result of which he was
15 found to be bleeding into his chest and a tube had to be inserted to remove the blood. He
16 was convicted after trial by jury and sentenced to a term of imprisonment of six years.
17 The learned trial Judge applied the United Kingdom Sentencing Guidelines and
18 concluded that the matter fell into category 2 of the Guidelines. The sentence was upheld
19 on appeal, the Appellate Court holding that the sentence was not manifestly excessive
20 or wrong.

21
22 94. In the case of *Webster v the Queen*⁷, the Appellant, who was then 24 years old, was
23 sentenced to six years imprisonment following his guilty plea to the offence of
24 Wounding with Intent. This was reduced on appeal to a sentence of 5 years with



⁵ *Supra*

⁶ CICA 9/2015 Unreported judgment of the 11th February 2016

⁷ CICA 24/2018 Unreported judgment of the 2nd September 2019

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1 additional credit being given for his guilty plea. The appellant had 15 previous
2 convictions including convictions for violence. The victim sustained an injury to his
3 lower abdomen which caused his bowel to be visible and required surgical repair to his
4 small bowel and to the tissue that attached the bowel to the abdominal wall. After a week
5 following discharge from hospital, he was readmitted as a result of having severe
6 abdominal pain. He required further surgery and was hospitalised for an additional 4
7 days. The Court rejected the appellant's submissions as to the seriousness of the injury.

8
9 95. In mitigation, Counsel on behalf of the Second Defendant, Ms. Lazzari, asked the Court
10 to consider her personal circumstances, which include that:-

11 i. She is 28 years of age.



12
13 ii. The only child for her parents.

14
15 iii. She was raised in a challenging environment.

16
17 iv. She is a witness to domestic violence.

18
19 v. She is the primary carer for her mother who has significant health issues.

20
21 vi. She provides significant family support financially.

22
23 vii. She was the first woman on the Island of Cayman Brac to become an air
24 traffic controller.
25

26
27 96. In her letter to the Court which was read out by Counsel on her behalf the Defendant
28 states:
29

1 *“My greatest fear is going to prison. My mother is in poor health and she*
2 *depends on me greatly to take care of her financially and physically. Over*
3 *the last year she’s suffered a heart attack and a stroke and her mobility has*
4 *deteriorated drastically due to her arthritis. She frequently has to travel to*
5 *Grand Cayman for doctors’ visits and she requires assistance and I am the*
6 *only person who can accompany her.*

7 *I’m her only child and I’m truly all that she has. Her only sibling and her*
8 *entire family is deceased. I have hopes of starting a family of my own. I*
9 *have animals which I care for, 3 dogs, one being a certified service dog, and*
10 *10 cats. I have worked so incredibly hard to pursue my passion and*
11 *childhood dream of becoming an Air Traffic Control Officer, and I will lose*
12 *everything.*

13
14 *Since trial I’ve started going to counselling because I never imagined that I*
15 *would be in this position. This has been of the most stressful and depressing*
16 *chapters of my life and counselling is an outlet for me to speak openly to*
17 *someone completely unbiased who offers tools that I can use to navigate this*
18 *difficult period and the guidance to help me move forward with my life. It*
19 *also allows me to talk and reflect about certain aspects of my adolescence*
20 *which were emotionally painful and gives me a better understanding of*
21 *myself as an adult.*

22
23 *I’ve been asked what I thought the imposed sentence should be. I will do*
24 *any requested or required counselling, rehabilitation, community service,*
25 *probation, fine, suspended sentence or any other type of sentence other than*
26 *prison time. I humbly ask that there please be a “No Convictions*
27 *Recorded”. My career and value to the aviation community and country is*
28 *vitaly important that this conviction be struck out. The stress of this has*
29 *been very painful on my entire family and served as punishment in itself. At*
30 *this point I think we all deserve to move forward with our lives and heal.”*



1 97. Counsel conceded that the suggestion of the Probation Officer of a non-custodial
2 sentence was a rather unusual suggestion but that he would endorse same if the Court is
3 minded to do so. More forcefully Counsel urged that the Court should seek to impose a
4 sentence which is as short as is possible.

5
6 **ANALYSIS AND CONCLUSION**

7
8 98. Account is taken of all the submissions made by Counsel on the Defendant's behalf, her
9 letter to the Court, her personal circumstances as outlined in the Social Inquiry Report
10 and of the many letters of reference provided by members of the community. Seventeen
11 letters were provided by Counsel at the sentencing hearing and others at the trial. These
12 all attest to the belief of members of the community that she is an honorable individual,
13 and a valuable member of the community who is well respected, hardworking, kind and
14 devoted to her family and friends.

15
16 99. The Defendant has no previous convictions, is of good character and has been a diligent
17 student and hardworking member of her community following completion of her studies.
18 She has had difficult family circumstances at home and is relatively young. She has
19 provided financial support to both her parents and emotional and physical support to her
20 mother. Any term of imprisonment will have a significant impact upon her and the
21 family as a whole. She will likely not be able to return to her present employment given
22 the fact of her conviction. She has shown some remorse at the injuries suffered by the
23 victim. This offence appears to be entirely out of character for her and is unlikely to be
24 repeated.



1 100. In considering a reduction in mitigation of the proposed sentence, I also take into account
2 her mother's state of health and the mother's deep reliance on this Defendant for support.
3 I give some significant weight to this. I have also considered that there has been some
4 delay between the date of the offence, the verdict and this date. The information provided
5 indicates that this has been a period of considerable stress for this Defendant.

6
7 101. Considering the totality of the circumstances, the sentence of 6 years and 2 months, (74
8 months) is reduced to one of 40 months. This is a sentence which is significantly lower
9 than the recommended Guidelines. It reflects the somewhat unusual circumstances of
10 this case and the reliance on the Second Defendant by the First Defendant in relation to
11 health and financial support issues. In my view balancing all factors this is the very least
12 sentence which would meet the justice of this serious case. It would allow for the
13 elements of punishment and deterrence to be satisfied while being as short as is possible
14 to allow this Defendant to return to her mother who is in need of support. This was a
15 brutal assault on an elderly man who was lying face down in a pool of water and as the
16 jury found this Defendant intended to cause him serious harm.

17
18 102. In the case of this Defendant, her personal circumstances are not such as to indicate that
19 a custodial sentence is unavoidable.



20
21 **CONCLUSION**

22
23 103. In the case of the First Defendant the sentence is 14 months' imprisonment suspended
24 for 24 months with a supervision order and 120 hours of community service to be
25 completed within one year.

1 104. In the case of the Second Defendant the sentence is one of 40 months immediate
2 imprisonment.

3

4

5 **Dated this the 12th February 2021**

6

A handwritten signature in blue ink, consisting of several fluid, connected strokes that form a stylized, somewhat abstract shape.

7

8 **Honourable Justice Cheryll Richards Q.C.**
9 **Judge of the Grand Court**