

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

3
4 **IND. No: 35/22**

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6
7 **REX**

8 **V**

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10
11 **OMAR BADOU ROBINSON**



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14 **Appearances:**

Mr. Kenneth Ferguson for the Crown

15
16 **Ms. Carina Clare of Samson Law for the**
17 **Defendant**

18
19 **Before:**

Justice Dale Palmer (Actg.)

20 **Judge Alone trial dates:**

14th, 17th 18th October 2022

21
22 **Verdict Judgment:**

25th October 2022

23
24
25 **HEADNOTE**

26 *Criminal Law – Wounding with intent contrary to s.203 of the Penal Code –*
27 *Guilty plea to the lesser offence of Unlawful Wounding contrary to s.204 of the*
28 *Penal Code not accepted by the Prosecution – Prosecution proceeding to trial on*
29 *the s.203 offence – Trial by Judge Alone*

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33 **VERDICT JUDGMENT**
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1 **BACKGROUND**

2 1. The case arises out of an incident that occurred outside the *Brown's On-The-Run*
3 *Esso Service Station* located at 165 Shamrock Road, George Town, Grand Cayman,
4 Cayman Islands in Red Bay (hereinafter referred to as “the Gas Station”). What
5 appears to have been a chance encounter between two strangers and began as a
6 misunderstanding, quickly escalated as the two men hurled insults at each other. The
7 two eventually had a scuffle during which the defendant, Omar Badou Robinson, is
8 alleged to have used a sharp item to inflict wounds to the complainant’s neck and
9 abdomen. The complainant was taken to the hospital, where his wounds were treated,
10 but the defendant was not held and charged until about a year later.

11
12 2. When interviewed by the police, the defendant said that he was attacked and
13 defended himself. He explained that he was not armed with a knife or sharp object
14 but that the complainant’s injuries were likely to have been caused by a ring he was
15 wearing that had sharp edges.

16
17 3. Count One on the Indictment charges the Defendant with the offence of Wounding
18 with Intent contrary to s.203 of the *Penal Code* (2019 Revision). The particulars
19 allege that on 18 July 2020, at Brown’s On-The-Run Esso Service Station, 165
20 Shamrock Road, George Town, Grand Cayman, Cayman Islands, unlawfully and
21 maliciously wounded Jossue David Miller with intent to do him grievous bodily
22 harm. The defendant was previously arraigned on this count, to which he entered a
23 plea of “Not Guilty”. The case was fixed for trial and the indictment was later
24 amended to include the lesser offence of unlawful wounding, contrary to s.204 of
25 the *Penal Code*, as a count in the alternative.

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27
28

1 4. The defendant refused to enter a plea when arraigned in respect of this second count.
2 In accordance with ss.122 (1) of the *Criminal Procedure Code* (2021 Revision), a
3 formal plea of not guilty was entered on the record on that count, and the trial
4 commenced.

5
6 5. However, after the conclusion of evidence for the first Crown witness, the defendant
7 asked (through his Counsel) to be re-arraigned on this second count and pleaded
8 guilty. The prosecution announced that it still intended to proceed with the trial on
9 Count one, effectively rejecting the plea on Count two. The trial proceeded to
10 determine the issue of intent in relation to Count one.

11
12 **BURDEN AND STANDARD OF PROOF**

13
14 6. In considering the evidence and issues in this case, I remind myself that the burden
15 of proof rests on the prosecution to make me feel sure of the defendant's guilt.
16 Failing such proof, the presumption of innocence which clothes him cannot be
17 displaced and I must return a verdict of not guilty.



18
19 **THE LAW ON JUDGE ALONE TRIALS**

20
21 7. The Cayman Islands Court of Appeal (CICA) has given some guidance on the duties
22 of a Judge in a Judge Alone trial. In *K. Richards v R*¹ Rowe JA, stated:

23 *“When a trial judge sitting alone has advised himself to the*
24 *applicable principles of law, and given himself any necessary*
25 *warning, he must indicate clearly in his judgment his reasons for*
26 *acting as he did in order to demonstrate that he has acted with the*
27 *requisite degree of caution in mind and has therefore heeded his own*
28 *warning. No specific form of words is necessary for this*
29 *demonstration, what is necessary is that the Judge’s mind upon the*
30 *matter should be clearly revealed.”*
31

¹ 2001 CILR 496



1 8. In *Randy Martin v R*², Mottley JA stated as follows:

2 *“A judge sitting in a criminal case without a jury, in rendering his*
3 *decision and giving his reasons for so concluding is not required to*
4 *review every fact and to detail each argument on which the*
5 *prosecution and defence rely as if he were summing up to a jury. The*
6 *judge must set out the conclusion reached and make clear the reasons*
7 *for arriving at that conclusion. He is required to have regard to any*
8 *difficult or unusual points of law and to show how those points of law*
9 *has in any way impacted the conclusion that he has reached.”*

10
11 9. It is not necessary to review every single detail of the evidence but will address my mind
12 to the important aspects of the evidence in deciding the critical issues in this case, and
13 only such matters that will enable me to determine whether the charges on the indictment
14 have been proved. If after considering all the evidence in this case, I have any reasonable
15 doubt as to whether the Defendant is guilty or not, I must resolve that doubt in favour of
16 the Defendant and find him not guilty of the offence for which he has pleaded not guilty.

17
18 **INCONSISTENCIES AND DISCREPANCIES**

19
20 10. This incident occurred in June 2020 and, as with most criminal trials, it is possible
21 to find inconsistencies and discrepancies in the evidence of witnesses, especially
22 when they speak of events that took place long ago. The witnesses agreed that their
23 recollection of events was better a few days after the incident than at the time of trial,
24 over two years later. An inconsistency, for the purposes of this trial, occurs when the
25 same witness is proved to have said something different on a previous occasion. A
26 discrepancy occurs, for the purposes of this case, when two or more witnesses each
27 give different evidence on the same point. In assessing inconsistencies and
28 discrepancies, I consider whether there is an explanation for them, whether from the
29 witness or any other evidence, and whether the inconsistency or discrepancy is

² CICA Crim. Appeal No. 2/2010 (Ind. 27/2009)



1 important. Here the primary disputed issue is the intent of the defendant and as such,
2 inconsistencies or discrepancies affecting that issue could be vital. Where important
3 to the case or credibility of the witness, I may reject that witness on the particular
4 point or reject the witness's evidence in its entirety.

5
6 **PROSECUTION CASE**

7
8 11. The prosecution called evidence from Crisella Connor, Jossue Miller, Michael
9 Robinson and Nohely Verde, and the evidence of the investigator, DC Owen Santo,
10 was tendered and admitted by agreement. Photographs of Mr. Miller's injuries, a
11 transcript and video footage of the defendant's interview with the police and video
12 footage taken from the Gas Station were tendered and admitted into evidence,
13 pursuant to s.34 of the Evidence Act (2021 Revision).

14
15 12. The four civilian witnesses all say that they had been out celebrating the coming
16 birthday of Nohely Verde and visited '*The Cotton Club*' and '*(Da) Station Bar*' from
17 the night of July 17th into the early morning of 18 July 2020. By the early morning,
18 they were all hungry and went to the Gas Station for a bite to eat.

19
20 *Crisella Connor's Evidence*

21
22 13. They had been in high spirits, Ms. Connor said in cross-examination, but had stopped
23 drinking by 1:40 am when they left the Cotton Club. According to her account, they
24 arrived at the Gas Station in separate cars, which is discrepant with all of the other
25 civilian witnesses who say that they dropped one vehicle off at Michael Robinson's
26 home and travelled to the Gas Station together in the other. The CCTV footage also
27 shows them arriving together. This is a minor discrepancy. While I find her
28 unreliable as to how many vehicles went to the Gas Station, nothing much turns on
29 this issue.



1 14. She gave evidence that as she and Ms. Verde entered the store section of the Gas
2 Station, Jossue Miller and Michael Robinson remained outside. Jossue Miller later
3 came inside the store to retrieve his card to purchase something and went back
4 outside. Ms. Connor said that when she returned outside, she heard quarrelling in the
5 back of the Gas Station premises and went to sit on one of the parking blocks. She
6 then heard scuffling in the background to her right. The scuffling was coming from
7 the same direction as the voices but she could not see what was happening until she
8 saw persons pulling Jossue Miller away from a fight and noticed his neck tied with
9 a scarf. Mr. Miller was immediately taken to the hospital. She said that before the
10 fight she heard a woman saying “*Let’s go*” when speaking to the man fighting Mr.
11 Miller. It is not disputed that the defendant, Omar Robinson, was the other person in
12 the fight.

13
14 15. Ms. Connor agreed in cross-examination that in her written statement to the police,
15 she recounted that the complainant said to the defendant, whom she described as the
16 man in the braided hair, “*What yuh saying now*”, but remarked that he said so in an
17 average voice. The defendant responded to say, “*You think you a bad man...*” and
18 Michael Robinson was encouraging Jossue Miller to leave it alone as it was over
19 something stupid. After the scuffle, a man she did not know pushed the defendant
20 away as the lady that came with him was crying and insisting that they leave.

21
22 *Jossue Miller’s Evidence*

23
24 16. Jossue Miller’s evidence is that his girlfriend’s birthday was the following Monday,
25 and they went out on that Friday night to celebrate. He arrived at the Cotton Club
26 right after work at 5 p.m. or 5:30 p.m., where he met with Michael Robinson. Nohely
27 Verde and her friends joined them later. They drank alcohol at The Cotton Club and
28 left for (Da) Station Bar, where they remained drinking until midnight. Mr. Miller
29 stated that he was likely drinking beers all night and though he could not recall how



1 many he had, believes it was not too many as he was still driving Ms. Verde's car at
2 that time. The group left together in separate vehicles and went to Michael
3 Robinson's home, where they left Ms. Verde's car. Thereafter, they all drove
4 together to The Cotton Club in Michael Robinson's car and left in the early morning
5 of 18 July 2020 and went to the Gas Station to get food.

6
7 17. After they parked, the ladies went inside the Gas Station store to get food while he
8 and Michael Robinson remained outside. He said he became aware of a presence
9 behind him and turned to see the defendant, who mumbled something, and he turned
10 and asked the defendant what he said. He said that the defendant looked at him
11 weirdly and responded by asking him why he was talking to him. He asked the
12 defendant for one of his cigarettes, but the defendant responded with offensive
13 language and refused the request. Confused at the defendant's response, Mr. Miller
14 claimed that he could not recall what he said to the defendant, but this began a series
15 of expletive-laced exchanges between the two men. He said that he told the
16 defendant that it was not that deep, meaning that he did not need to react as he was.

17
18 18. He said that the defendant went to the right of where they were parked, out of the
19 view of the cameras, and told him to come there as he (the defendant) wanted to
20 show him something. Mr. Miller said he refused the invitation as he believed the
21 defendant intended to harm him out of the view of the cameras. Michael Robinson
22 attempted to calm the defendant down but, having failed, went with Mr. Miller into
23 the Gas Station store to purchase cigarettes. Mr. Miller said that the defendant
24 appeared drunk to him and did not notice anyone with him.

25
26 19. Mr. Miller says that they entered the store because the defendant was outside, and
27 after they entered, the defendant did as well. He said he kept staring at the defendant,
28 whom he believed might do something to one of them. The defendant was also
29 mumbling unintelligibly, but he could not tell to whom the defendant was speaking.



1 20. After returning outside, Mr. Miller went for a smoke in the area to the far right of
2 where they were parked, by some benches. Their female friends joined them there
3 about five to ten minutes later. Ms. Verde went to the bench and was fixing her heels
4 or eating, when Mr. Miller said he saw the defendant exit the Gas Station store with
5 a female and said to him, “*Go suck your mother*”, to which he retorted, “*You’re a*
6 *pussy*”. He said that it was clear that the defendant did not take his words lightly as
7 he went to his car, put down his food and came towards them with something small
8 in his hand. Mr. Miller said he knew that the item in his hand was sharp as he saw
9 the tip of it and felt worried as the defendant approached and pushed Michael
10 Robinson out of the way. Mr. Miller said that he ran towards the camera to the right
11 of the entrance door, but in doing so, tripped on a parking block. As he attempted to
12 regain his footing, he said felt the defendant slash him to his right abdomen, and he
13 punched the defendant, dislocating his shoulder. Mr. Miller did not know exactly
14 when he received the neck injuries and was unaware of them until persons on the
15 scene informed him.

16
17 21. After they were separated, he noticed a chain in his hand, which he handed to a lady
18 who later entered a Honda Fit motor car with the defendant. He was assisted to stop
19 the bleeding to his neck and taken to the hospital, where he received twenty-four
20 stitches for his neck wounds and had his shoulder dislocation addressed. Mr. Miller
21 said that he and his friends were unarmed during the encounter with the defendant.

22
23 22. Mr. Miller was later shown the video footage from three cameras at the Gas Station
24 and began by noting that he did not recall initially going inside the Gas Station store
25 on an occasion prior to the occasion referred to in his evidence. He also noted that
26 while the video showed where he punched the defendant, he only did so after the
27 defendant had ‘slit’ him to his abdomen.

28



1 23. In cross-examination, Mr. Miller recounted that in preparation for the trial he was
2 never interviewed together with his girlfriend, though they attended the office of the
3 Director of Public Prosecutions together. He agreed that they had been in high spirits
4 that evening and were drinking for about eight hours in total, but, insisted that he
5 was not drunk when he arrived at the Gas Station. He also agreed that when the
6 defendant came out of the Gas Station store, he said to him, “*So what you saying*
7 *now*”, because he wanted to understand what he was saying and explained further
8 later that he did so because he noticed the defendant staring at him, which annoyed
9 him. Mr. Miller said that he went inside the Gas Station store that second time, to
10 get away from the defendant. He said that after he called the defendant a “*Pussy*”,
11 Michael Robinson spoke to the defendant and encouraged him to leave it alone. Mr.
12 Miller admitted that the comment was a bit aggressive but that it was caused by all
13 that had happened.

14
15 24. Mr. Miller initially denied that Michael Robinson took him outside because he too
16 was staring at the defendant inside the store, and that he was staring to make trouble.
17 Therefore, he had been staring at the defendant in the store, but, instead of saying
18 that he was taken out by Mr Robinson for that reason, he insisted that he had left
19 because the food was taking some time.

20
21 25. The complainant admitted that he was calling the defendant out for a fight but did
22 not know that he was armed and that his belief was that real men fought with their
23 fists. Mr. Miller agreed that in his written statement he had mentioned seeing the
24 defendant approaching with something cupped in his hand, but did not mention
25 seeing the sharp tip of it. He stated however that he used his common sense to arrive
26 at that conclusion. It was what he saw in the defendant’s hand that he said caused
27 him to run towards the Gas Station cameras so that he could have an alibi, just in
28 case. He agreed that he could have run out into the road but said he didn’t because



1 he didn't want to get stabbed. When he ran towards the defendant as he approached,
2 it was to get to the cameras and only punched him in self-defence, after he had
3 already slit him to the abdomen.

4
5 26. After he and the defendant struggled, a number of persons intervened to separate
6 them. Mr. Miller, when shown the video footage, conceded that when he had said
7 that the defendant had gone to his car immediately before their encounter and
8 retrieved something to cut him, he was mistaken. He explained that that was his
9 perception at the time.

10
11 Michael Robinson's Evidence

12
13 27. Michael Robinson's evidence corroborated much of Mr. Miller's account. They met
14 at The Cotton Club, where they celebrated Nohely Verde's birthday and had drinks.
15 They went to Station Bar but, contrary to Mr. Miller's account, Mr. Robinson did
16 not recall them having drinks while there as they did not stay long. On this account
17 of how long they stayed, Mr. Miller had stated that they were there for about forty-
18 five minutes, and Ms. Verde said up to two hours. At some stage they went to his
19 home to deposit Ms. Verde's car and returned to The Cotton Club.

20
21 28. When they arrived at the Gas Station, according to Michael Robinson, he parked to
22 the right of the front door as one faces the Gas Station building. Ms. Verde went
23 inside the Gas Station with her female friends while he and Mr. Miller remained
24 outside. He saw the defendant whom he did not know at that time, come from the
25 building mumbling something, and Mr. Miller turned to him and asked him what he
26 was saying. After Mr. Miller asked the defendant for a cigarette a heated exchange
27 began between the men, which the defendant's female companion attempted to quell.

28

1 29. He and Mr. Miller went into the Gas Station store and purchased a pack of cigarettes
2 and eventually returned outside to where they had been earlier. The defendant came
3 out of the Gas Station store with the same lady, and the heated verbal exchanges with
4 Mr. Miller continued. The defendant went into the back seat of his vehicle, Michael
5 Robinson said, but when he returned, he did not see anything in his hand. He
6 attempted to calm the defendant down by speaking to him but was unsuccessful. He
7 says that the defendant walked towards Mr Miller who was backing away and then
8 the two began to fight. When they were separated, blood was seen coming from Mr.
9 Miller's neck, which he wrapped with a scarf, and they went to the hospital.

10
11 30. In cross-examination, Michael Robinson agreed that both men were referring to each
12 other in a derogatory fashion calling each other "Pussy" and being aggressive
13 towards each other. He said he asked Mr. Miller to go inside the store, but the
14 defendant also came inside. The defendant and Mr. Miller were staring at each other
15 inside the store, and he (Michael Robinson) was caught in the middle. He agreed in
16 cross-examination that when Mr. Miller came out of the Gas Station store, he said to
17 the defendant, "What you saying now". He, however, denied that Mr. Miller said this
18 aggressively, as they were talking to each other when Mr. Miller turned and
19 addressed the defendant. Michael Robinson agreed that having seen the CCTV
20 footage, he realized that there were things he did not remember. In re-examination,
21 he explained that the defendant went towards the car, but he was unsure whether he
22 went inside it. He thought, however, that he had gone to the car and grabbed
23 something.





1 Nohely Verde's Evidence

2
3 31. Nohely Verde corroborated much of the evidence already given, in that they
4 remained at The Cotton Club for a time and also spent some time at the Gas Station
5 Bar. They went to Michael Robinson's house, where she left her car and all five of
6 them returned to The Cotton Club in Michael Robinson's car. She said they were
7 about to call it a night but wanted to stop for food and went to the Gas Station.
8 Michael Robinson and Jossue Miller remained outside while she and her female
9 friends went inside to purchase food. As they waited inside the store for their food,
10 Mr. Miller joined her inside and requested the use of her credit card. He in his
11 evidence that it was his card, but nothing turns on this minor discrepancy.

12
13 32. Ms. Verde observed a verbal confrontation between Mr. Miller and the defendant,
14 with each using expletives to the other. She responded by calling Mr. Miller to come
15 to her and saw when Mr. Miller and the defendant crossed paths. Mr. Miller made a
16 quick turn, took a step back and then forward and tripped on a parking block and
17 swung at the defendant. The two men went to the right of the building out of her
18 view, which was obstructed by the building.

19
20 33. Ms. Verde recounted that she heard the voice of a woman saying, "Let's go" and
21 next saw Mr. Miller come to her with blood coming from the side of his neck.
22 Someone gave her a scarf that she placed on his neck and told Michael Robinson to
23 take Mr. Miller to the hospital. Based on where she was when the scuffle began, she
24 said that she did not see when he received his injury and did not see the entire
25 incident.



1 34. In cross-examination, Ms. Verde agreed that she had said in her written statement
2 that when the man (the defendant) approached Mr. Miller, she saw when the guy got
3 very close to Mr. Miller and that he made a quick turn and punched the defendant in
4 the face. From the distance she was at, she said, the punch looked like a slap. Ms.
5 Verde was the last of the witnesses to give oral evidence.

6

7 Other Evidence

8

9 35. The CCTV footage from three cameras at the Gas Station, cameras 2, 5 and 8, was
10 tendered into evidence. There is also video footage and an associated transcript from
11 the interview with the defendant and his Attorney-at-Law. Also admitted into
12 evidence were photographs of the slashes to the neck of the complainant and to his
13 abdomen.

14

15 36. The defendant was interviewed by the police on 11 November 2021. The video
16 recording of the interview and the attendant transcript were tendered and admitted
17 into evidence on the prosecution's case.

18

19 **THE DEFENDANT'S POLICE INTERVIEW**

20

21 37. At the close of the prosecution's case, Counsel for the defendant advised the Court
22 that he wished to rest on his account given in the police interview and neither gave
23 sworn evidence, nor called any witnesses on his case. The Court gave consideration
24 to s.149 of the *Police Act* and having determined that the defendant's guilt regarding
25 Count one is in fact in issue, sought to satisfy itself that he was aware that we had
26 reached the stage at which evidence can be given on his case if he wished. It was
27 indicated to him that, at that point, if he opted to give no evidence or if sworn, refused
28 without good cause to answer questions put to him, that the Court could draw such



1 inferences as appeared proper from such failure to give evidence or answer questions
2 without good cause. After further opportunity to consult his Counsel, the defendant
3 stated that he understood but would still give no evidence nor call witnesses.
4

5 38. I remind myself that not only is the defendant not compellable by threat of sanction
6 for contempt to give evidence, but his choice not to give evidence is his right. The
7 exercise of this right has the following consequences:

8
9 i. He has given no evidence in the trial nor called any witnesses to rebut,
10 contradict, explain or undermine the evidence of the prosecution
11 witnesses, in particular Jossue Miller, Crisella Connor, Michael
12 Robinson or Nohely Verde. He gave an account to the police that his
13 Counsel advises he wishes to stand by, but while I have reviewed his
14 account during the interview in the review of the evidence, it was not
15 given on oath nor tested in cross-examination.

16
17 ii. As already mentioned, the defendant and his Counsel told the Court that
18 he understood that his failure to give evidence would entitle the Court
19 to draw inferences from that failure.

20
21 39. Notwithstanding the consequences, it is not automatic that I will conclude that he
22 believed he had no answer to the prosecution's case that would stand up to cross-
23 examination. It is, however, open to the Court to draw such an inference from that
24 failure, in all the circumstances, if it is reasonable to do so. I remind myself that
25 despite the fact that such inferences may be drawn, at no time has the burden of proof
26 shifted from the prosecution. They must prove the guilt of the defendant and whilst
27 his failure to present any evidence on his own case may provide support for the
28 prosecution's case, I cannot convict him wholly or mainly due to this failure.
29



1 40. At the police interview, the defendant was represented by Counsel and issued with
2 the customary caution that he did not have to say anything but that it may harm his
3 defence if he did not mention, when questioned, something that he desired to rely
4 upon in Court. The defendant was also told that anything he said, may be given in
5 evidence at his trial. Despite his indication that he understood the caution and his
6 having Counsel present, the interviewing officer went on to explain the meaning of
7 the caution in simpler terms.

8
9 41. When first questioned about the incident, the defendant said he wished to see or hear
10 some evidence before responding. He explained that it had been some time since the
11 incident, and he wanted to hear the ‘victim’s’ side of the story first to refresh his
12 memory as to what happened. He denied being asked by Mr. Miller for a cigarette.

13
14 42. As the interviewing officer summarized the statement of Mr. Miller, the defendant
15 declined to comment while this was being done. He was asked if he remembered
16 telling Mr. Miller or anyone, to go suck their mother after a brief verbal exchange.
17 He denied doing this. He denied having something sharp that he used to cut Mr.
18 Miller but said that he had on a nugget ring. In response to the allegation that he gave
19 Mr. Miller two slices across his neck, he shook his head in disagreement. When
20 asked if persons separated him and Mr. Miller, he declined to comment. Similarly,
21 he declined to respond when asked about Mr. Miller’s claim that during the scuffle,
22 Mr. Miller broke his (Omar Robinson’s) chain, which was returned to a lady.

23
24 43. The defendant asked to see the camera footage, to which the interviewing officer
25 responded by saying that he would see it later. The officer began to ask about the
26 defendant coming out of the Gas Station, to which he responded that he wished to
27 see footage of when he arrived at the Gas Station as the footage from that stage
28 would show the incident from its start.

29



1 44. After the interviewing officer once again began to summarise the complainant’s
2 allegations, the defendant indicated that the account given by Mr. Miller was the
3 other way round³ and that it was the complainant who was the instigator. The
4 defendant was once again invited to give his account before being shown the footage
5 and stated that he pulled up at the Gas Station with his wife and his mother. While
6 his mother and wife exited, Mr. Miller, whom he did not know before, was standing
7 on the sidewalk in the parking lot. As he exited the vehicle, he said that Mr. Miller
8 said, “*Pussy hole, weh yuh saying*” and he responded to say that he was talking to
9 his wife. He recounted that Mr. Miller, and another guy (presumably Michael
10 Robinson) remained outside.

11
12 45. Later in his interview, the defendant said that he and his wife went into the Gas
13 Station store, on the urging of his wife, to leave the complainant outside. He said the
14 complainant and his friend came inside as he and his wife were ordering food and
15 seemed to be looking for trouble. His wife told him they were looking at him as if
16 they wanted to do something⁴. The defendant said that they waited for their food and
17 when he returned outside, he went to his car for a cigarette and saw Mr. Miller and
18 his friends to the side of the building. Mr. Miller, who was by the ice cooler, said
19 “*Pussy weh yuh say now, you bad man*” and walked straight to him and struck him,
20 which started the fight.

21
22 46. He stated further in his interview⁵ that Mr. Miller’s friend called out when he (the
23 defendant) came out of the Gas Station store, “*see him deh now*” and that is when
24 Mr. Miller rushed at him. They began wrestling he explained, and the injuries to Mr.
25 Miller’s neck were likely to have been caused by a nugget ring on his finger that has

³ Page 10 of the defendant’s interview transcript

⁴ Page 14 of the defendant’s interview transcript

⁵ Page 24 of the defendant’s interview transcript



1 sharp edges. He denied being armed with a knife or something sharp. His wife helped
2 to part them and though she recovered his chain, he lost his pendant. The
3 investigating officer in his statement indicated that he recovered a chain which was
4 tendered and admitted into evidence.

5
6 47. The defendant denied being the instigator and said he was not looking for trouble
7 and was unsure if Mr. Miller was influenced by drugs or other substances. The
8 defendant said that he did not know if Mr. Miller had a weapon but, based on the
9 bruises to the left side of his face, believed Mr. Miller was wearing brass knuckles.
10 He has taken pictures of his bruising, but the device on which they were stored was
11 destroyed. He did not seek medical attention as his injuries were minor and resulted
12 in no break to his skin.

13
14 48. The defendant, when asked if he had called the complainant to an area out of the
15 view of the camera, initially stated that he could not recall, later, rejected the
16 comment, and finally, in response to the same question, said that he had no comment.
17 He, however, stated that Mr. Miller and his friends were lying in their account. He
18 also indicated that he had had two or three beers at his mother's home but that his
19 mother was by the time of the interview, deceased.

20
21 49. Video footage from the Gas Station was played for the defendant to see during the
22 interview. He identified when he and his wife arrived at the Gas Station in a black
23 car. He was taken to a portion of footage where he walked to his car and placed his
24 drink on top then walked away. He said that at that point he must have gone over to
25 a guy in a truck who had told him not to pay the complainant any mind. As he walked
26 over to the man he said, the complainant's friend said, "*See him deh*" and the
27 complainant then came over to him. When asked why he did not walk away, he
28 responded "No comment". When his earlier account of the sequence of events was

1 repeated to him, he stated that the guy he was going to was not in the parking lot by
2 the ice machine but in one of the side parking lots.

3
4 50. The defendant identified a portion of the footage where he said the complainant
5 attacked him first and had him on the ground⁶. The defendant later stated where the
6 complainant was seen running from him, that by then the complainant had already
7 struck him and he in turn went after the complainant⁷.

8
9 51. During the interview the defendant was shown a portion of footage where there
10 appeared to be a shiny object in his hand⁸, and maintained that what he had was a
11 ring and not a knife or blade. He stated that if he had a knife or blade in his
12 possession, it would have been seen in the footage. The interview concluded with
13 the defendant repeating that the person who started the altercation was the
14 complainant and that he did not have a sharp object in his hand but a nugget ring
15 with sharp edges.

16
17 52. A document with admissions was tendered, admitted and read into evidence by
18 agreement. The complainant's injuries were outlined as a neck laceration consistent
19 with the injury seen in the tendered photograph, which showed a V-shaped wound
20 that appeared to be two lacerations that met at a V point. There was a reference to a
21 dislocated left shoulder and his wounds were sutured. His condition was not
22 considered serious and the injuries were consistent with the infliction with a sharp
23 object but were not likely to be permanent. At trial, the complainant still had visible
24 scars that he said he covered with a buttoned-up shirt to avoid being asked about it.
25



⁶ See page 31 of the defendant's interview transcript

⁷ See page 37 of the defendant's interview transcript

⁸ See page 37 of the defendant's interview transcript



1 53. The admissions include that Mr. Miller was interviewed, and footage retrieved from
2 cameras 2, 5 and 8 of the Gas Station CCTV system on the day after the incident.
3 The defendant was not arrested until over a year later and was interviewed in the
4 presence of his counsel. Footage from the CCTV footage recovered were edited to
5 include only portions relevant to the incident. They were combined into a single
6 video that played at a quarter of the screen at varying times.

7
8 54. This case rests wholly on what I make of the evidence presented on the prosecution's
9 case versus the defendant's unsworn account at the interview. Making this
10 determination is greatly assisted by the video footage recovered from three Gas
11 station CCTV cameras. All three cameras are at the front of the building and show
12 similar but distinctive perspectives, which assist this Court in arriving at a
13 determination of which account or accounts is or are truthful and reliable. The
14 accounts of the prosecution witness and the account of the defendant at the police
15 interview, cannot both be true.

16
17 55. From the CCTV footage, the defendant is seen arriving at the Gas Station parking
18 lot at 2:12 a.m. with a female in the front passenger seat of a right-hand drive vehicle.
19 There was a mention of his mother in his interview, but no other person was seen
20 entering or exiting the vehicle and, it was sometimes locked, as the two walked
21 around. The defendant exited the vehicle with his female companion, and they
22 appeared to walk off to the left of the Gas Station as one faces the building from the
23 parking lot.

24
25 56. The complainant and his friends arrived at the Gas Station at 2:26 a.m. When they
26 exit the vehicle, the defendant and his companion are not on screen. The defendant's
27 account that he drove into the Gas Station and saw the complainant and his friends,
28 is not accurate.

29

1 57. A minute later, the three females, who arrived with the complainant, walked into the
2 Gas Station store, leaving the complainant and Michael Robinson outside. At 2:27
3 a.m. the defendant and complainant first encounter each other. And as the defendant
4 walks past the complainant, there appears to be a verbal exchange between them.
5 The complainant walks off and enters the Gas Station store - an event that he referred
6 to in examination-in-chief when shown the footage that he did not recall.

7
8 58. The defendant walked off-screen to the right of the building and returned to his
9 vehicle at 2:28 a.m. and opened the trunk door of his vehicle. He cannot be seen at
10 this point, but he closes the trunk door at 2:29 a.m.

11
12 59. The defendant and the complainant begin to speak again, and Michael Robinson
13 joins them, but it is clear at this point that the exchange was quite heated as the “gun
14 fingers” referred to by the prosecution were produced at this point. The defendant
15 pointed with these “gun fingers” at the head of the complainant as the exchange
16 continued. At first, the complainant’s back was to the defendant as he did this but
17 then he turned to face the defendant, and they continued to have their exchange. The
18 defendant then began to walk up to the complainant, who walked off, and the
19 defendant’s female companion appeared to walk to him and turn him away from
20 walking after the complainant. The defendant walks off-screen, and the complainant
21 returns to where the car they arrived in was parked - beside Michael Robinson.
22 Michael Robinson and the complainant continued to talk to each other as the
23 complainant pointed in the direction in which the defendant had walked.

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1 60. At 2:31 a.m. the complainant, and Michael Robinson, walk off towards the Gas
2 Station store and the defendant is seen once again to walk after him as they continue
3 their exchange, to the point that Michael Robinson stood between the defendant and
4 the complainant as the complainant turned to face the defendant. The defendant
5 returned to the right of the building and Michael Robinson walked towards him, off
6 screen. The defendant returned shortly afterwards. Michael Robinson and the
7 complainant then walked into the Gas Station store together. It is evident at this point
8 that as they walked into the store, the complainant was looking behind him and
9 speaking. Seconds afterwards, the defendant walked quickly towards the door while
10 gesticulating with his hands and opened the Gas Station store door. His female
11 companion appears to speak to him again while he had the door open, and the
12 defendant released the door and walked away. The defendant and his companion
13 then walk off-screen to the right of the building.

14
15 61. At 2:33 a.m. the defendant entered the Gas Station store with his female companion
16 and at 2:37 a.m., the complainant and Michael Robinson exit the store. At about 2:43
17 a.m. the defendant exited the store with his companion, and they walked together to
18 his car; each with a drink in hand. The defendant had a drink in his left hand and his
19 right hand was, at first, to his right side. The defendant then looked in the direction
20 that the complainant and Michael Robinson had earlier walked - which was to the
21 right of the building and the cameras. In his interview, he said that, when he exited
22 the Gas Station store after the complainant, he looked towards the benches and saw
23 them there. The defendant began to look around and then looked again in their
24 direction. He appears to unlock the car remotely, and his companion entered the front
25 left seat of the car that they arrived in. He however remained outside and continued
26 to look in the direction in which the complainant had earlier walked off screen.



1 62. The defendant raised his cup and pointed with it in the direction off-screen in which
2 he had been looking and, appears to be speaking to someone. At this point the
3 defendant's left hand contained a blue cup and his right hand was still in his right
4 pocket. He walked to the car and placed the cup on top of the car, took his right hand
5 from his right pocket and placed his left hand in his left pocket.

6 63. At no stage up to this point was the defendant seen wearing rings of any sort on any
7 of his fingers. His left hand was clearly seen when he pointed with his left hand with
8 cup in hand and when he removed his right hand from his pocket, the fingers on that
9 hand were seen.

10 64. All that has been so-far described, was observed between cameras 2 and 8. Camera
11 5 is the furthest to the right of the building; closer to where the complainant said he
12 was and on the bottom left quarter of the composite clip.

14 65. The defendant marched towards the right of the building in the direction that the
15 complainant and his friends were, and briefly went out of view of the cameras. None
16 of the men can be seen on any of the cameras but the defendant's female companion
17 is seen at 2:44 a.m. to exit the vehicle hastily and run towards where the defendant
18 went. She appeared to be calling out to someone off screen. Camera 5 showed that
19 the complainant walked over the parking block to the right of the defendant, who by
20 then had his left hand out of his pocket. The complainant swung his left arm hitting
21 the defendant after it seems the defendant encountered him. The men had some
22 contact before the punch, which cannot be clearly seen, but right after being hit, the
23 defendant and the complainant both paused and looked in each other's direction. The
24 defendant then lunged at the complainant with his left hand in attacking motion. His
25 left hand was raised, and a shine object was seen in his palm. His hand was not
26 formed into fist, but, was in a cutting motion. So far as could be seen on the footage,
27 the defendant slashed twice at the complainant before the defendant was dragged off
28

1 by an unidentified man. The defendant fought off this man, pushing him in the face
2 and, while flailing his arms and, once again, momentarily exposing the silver shiny
3 item still in his left hand.

4
5 66. The defendant then entered his car and drove away while the complainant used a
6 scarf to tie around his bleeding neck. He entered Michael Robinson’s car, and they
7 left the premises, while their female companions entered a white vehicle, and the
8 footage ends.



9
10 Detective Constable Santo

11 67. The statement of the investigating officer Detective Constable Santo was tendered
12 and admitted into evidence. He outlined the various steps taken in his investigation
13 and that after viewing the video footage, he received information about the
14 defendant’s identity and searched for him since July 2020. He was taken into custody
15 in November 2021 and eventually charged after being interviewed by the police.
16 Nothing much turns on the evidence of the investigating officer.

17
18 **PROSECUTION’S RIGHT OF ADDRESS TO THE COURT**

19
20 68. After hearing the submissions of both Counsel, a submission was sent via email from
21 Counsel for the defendant. That submission referred to s.73 of the **Criminal**
22 **Procedure Code** 2021, which reads:

23 “(1) Subject to subsection (2), the prosecutor shall be entitled to address the
24 court at the commencement of the prosecutor’s case, and the accused
25 person or the accused person’s counsel shall be entitled to address the
26 court at the commencement and in conclusion of the accused person’s
27 case.

28
29 (2) If the accused person, or any one of several accused persons adduces
30 any evidence, the prosecutor shall be entitled to address the court again,
31 prior to the closing address, if any, of the accused person or persons or
32 their counsel.”
33
34

1 69. It was submitted that where the defendant opts not to give evidence, the prosecution
2 has no right to address the Court. Accordingly, it was argued that the Court should
3 disregard the submissions of the prosecution made during the closing addresses.
4 There was no response from the learned Counsel for the prosecution to this belated
5 submission. The provision falls within a section of the *Code*, which relates to the
6 trial procedure in the Summary Court and does not, in my view, apply to trials in the
7 Grand Court. The appropriate provision for trials in the Grand Court is s.141 which
8 allows, where the defendant gives no evidence, for both sides to address the Court
9 at close of the case. No authority was provided for this contention, and I therefore
10 rule that the Court is entitled to consider the submissions of both sides if they are
11 useful in its determination in a trial in the Grand Court, by Judge Alone.

12
13 **DISCUSSION AND FINDINGS**



14
15 70. There are two counts on the indictment. On Count One Wounding with Intent is
16 charged under s.203 of the *Penal Code* and Count Two, the lesser offence is charged,
17 in the alternative, under s.204. For the offence of Wounding with Intent under s.203
18 of the *Penal Code* the prosecution must prove the following:

- 19 i. that Omar Robinson used some unlawful force on Jossue Miller,
20 which means that he was not acting in self-defence or defence of
21 another.
22 ii. that when Omar Robinson did so, he was acting ‘maliciously’.

23 I note that the word ‘maliciously’ has a particular legal meaning
24 which is that Omar Robinson either:

- 25 a. intended to cause Mr. Miller some injury, however
26 slight; or
27 b. was aware of a risk that he might cause Mr. Miller some
28 injury, however slight; but took that risk; and

1 iii. that in that event Omar Robinson caused Jossue Miller to suffer a
2 wound with the intent to cause him grievous bodily harm (or
3 ‘really serious injury’)

4
5 71. There is every indication that the wounding was not planned far in advance as the
6 men did not know each other prior to that morning. It is sufficient if the defendant
7 had the required intention at the time that he wounded the complainant. Although
8 the prosecution must prove that the defendant intended the resulting injury, it does
9 not have to prove that he had any particular motive or desire to bring about that
10 result.



11
12 72. Under the ***Evidence Act*** - s.27:

13 *“A court or jury in determining whether a person has committed an offence shall*
14 *not be bound to infer that the person intended or foresaw a result of the person’s*
15 *actions by reason only of its being a natural and probable consequence of those*
16 *actions. It shall instead decide whether the person did intend or foresee that*
17 *result by reference to all the evidence, drawing such inferences from the*
18 *evidence or lack of evidence or failure to give evidence as appear proper in the*
19 *circumstances.”*

20
21
22
23 73. While counsel for the defendant contended that the only disputed issue is as to his
24 intent, I must address the issue of what was likely used to inflict the wound to Mr.
25 Miller, a factor that impacts the issue of intent. According to his interview with the
26 police, the defendant repeatedly denied that he had a blade or knife. He insisted that
27 the injuries could only be caused by a nugget ring on his finger, which is not seen on
28 the footage. At no time did he agree that he had any item, to include the alleged
29 nugget ring, in his palm. When confronted with the CCTV footage of the object in
30 his hand at the interview, he continued to deny that he had anything sharp in his hand
31 and insisted that it was the nugget ring on his finger. While the complainant did not
32 say so in his written statement, he stated that what caused him to attempt to run in



1 the direction of the defendant to get to the cameras, was seeing the tip of the blade
2 in the hand of the defendant, an important omission.

3
4 74. Upon viewing the CCTV footage, hearing the evidence of Mr. Miller and reviewing
5 the account given by the defendant, Omar Robinson, I can make certain findings on
6 the issue of what caused the injury.

7
8 75. Firstly, the wounds of Mr. Miller were inflicted while he faced the defendant. Mr.
9 Miller, while being unsure when he received the wounds to his neck, said that he had
10 only been slashed to his abdomen at the time when he punched Omar Robinson.
11 Even on the defendant's account at the interview, while he does not admit to the
12 wound to the abdomen, he said that it was not until the punch that he turned on Jossue
13 Miller. The footage shows what happens just before the punch when there is some
14 contact that cannot be clearly seen. The defendant was punched and rocked back and
15 stared at Jossue Miller momentarily before he lunged at Jossue Miller with his hand
16 slashing twice at him. The wounds shown to the complainant's neck in the
17 photographs were by a sharp object that lacerated his neck. Therefore, unless a
18 nugget ring were somehow sharpened for use in that fashion, and held in the palm,
19 it is an inescapable conclusion that what caused these wounds was this silver shiny
20 object inside the defendant's left hand as seen in the footage.

21
22 76. Upon several viewings of the footage there is no sign of a nugget or other ring or
23 jewellery on the fingers of Omar Robinson and, I am satisfied so that I am sure, that
24 there was no ring present on his fingers as he stated. I find that I am satisfied, beyond
25 a reasonable doubt, that what inflicted the wounds to the complainant's neck and
26 abdomen was the silver shiny object in the left hand of Omar Robinson as shown in
27 the footage and as stated by the complainant in evidence. Despite the omission in his

1 statement about seeing the tip of an object, I find the complainant to be a witness of
2 truth on this point of seeing the tip of a sharp object.

3
4 77. To the issue of intent, while the parties did not know each other prior to the incident,
5 there is every indication that the defendant formed his intention to wound Jossue
6 Miller with the intent of causing grievous bodily harm to him from, at very least, the
7 time just before Jossue Miller and Michael Robinson entered the Gas Station store
8 the final time. After what seemed to be a heated exchange, he appeared to storm
9 towards the door of the Gas Station and is talked down by this female companion;
10 one of the several times she tried to restrain his fury that early morning. He was
11 clearly incensed by whatever Jossue Miller said and when he walked to the car he
12 was still visibly upset. He stood seething on the sidewalk in front of the building and
13 then looked in the direction that Jossue Miller and his friends went. His lady
14 companion was not at this point close enough to talk him down and he placed his
15 cup on the roof of his car rather than to enter it and leave with his companion, having
16 disarmed the vehicle and unlocked it. He then placed his hand in his left pocket and,
17 while there is no video footage to show that he retrieved the silver sharp object from
18 that pocket when he placed the item on the car top, there was nothing else in his hand
19 after he left the cup. The inference is that he retrieved the silver shiny object from
20 his left pocket. Seconds later he was engaged in a tussle with the complainant and
21 had this silver item in his hand swinging in a cutting motion at the complainant.

22
23 78. The inescapable inference is that he decided at that point that the complainant's
24 remarks and verbal abuses could not continue to go unanswered. He would exact
25 punishment for his insolence, and he would leave him with a permanent reminder of
26 his displeasure.





1 79. I find that the complainant and his witnesses were witnesses of truth even though
2 their accounts had discrepancies between them and were in some minor respects,
3 inconsistent. The video footage filled in the aspects of the events that they could not
4 recall or which they did not see.

5 80. The following are my findings of fact on which I am satisfied so that I am sure:

6
7 iii. The defendant arrived at the Gas Station before the complainant that
8 evening. I do not believe the defendant necessarily lied about this in his
9 interview but given the time that had passed between the incident and
10 the interview, and that he may not have noticed the complainant before
11 they exchanged words. I believe he was simply mistaken on this point.

12
13 iv. I find that the two men had several heated verbal exchanges that evening
14 and they were both verbally aggressive towards each other.

15
16 v. I find that the exchange became so heated that, at several points, the
17 defendant had to be cooled down or turned away by his lady companion.

18
19 vi. I find that that defendant charged towards the Gas Station store door on
20 the second occasion that the complainant had entered the store, just after
21 the complainant had uttered some words to him.

22
23 vii. I find that by then he was armed with a silver shiny object. There is no
24 definitive indication that he retrieved it from that car when he went to it.
25 While he certainly had the opportunity there is insufficient evidence to
26 say when it was placed in his pocket. The defendant could have travelled
27 there with it in his pocket or on his person.

28
29
30



1 viii. I find that after the complainant left the store, that the defendant later
2 came out.

3
4 ix. I find that from the door of the store, one has to travel past the
5 defendant's vehicle to get to where the complainant was situated (near
6 the ice cooler) and that he walked to his car and stopped to put the cup
7 down. Rather than get in and leave, which he did immediately after the
8 incident, he walked towards the complainant with his left hand in his
9 left pocket.

10
11 x. I accept the evidence of the complainant that the defendant had earlier
12 invited him beyond the view of the cameras to harm him and that he
13 refused to go. It is not surprising then that he was looking around
14 minutes before he charged after the complainant and this action supports
15 the inference that his intent had already been formed.

16
17 xi. I find that a reasonable inference can be made that the reason that he
18 repeatedly wanted to see the footage before he gave his account, was to
19 determine whether he had been captured on the footage.

20
21 xii. I find that the complainant was being truthful when he said that the
22 defendant slashed him before he punched him. The Defendant marched
23 towards the complainant and first slashed at his abdomen and when the
24 complainant struck him to his face, the complainant was tripped by the
25 parking block.

26
27 xiii. I find the complainant to be a witness of truth that after the punch they
28 paused and looked at each other, and this is shown in the footage.
29

1 xiv. I find that it was then, when he was not under attack by anyone, that the
2 defendant lunged with the silver shiny object at the complainant, who
3 was unarmed and had retreated after the punch.

4
5 xv. I find that the complainant was truthful when he said he punched the
6 defendant after he cut him to his abdomen, and I believe him when he
7 said that he saw the tip of the object as he approached.

8
9 xvi. I find that the defendant retrieved the item that he used to slash the
10 complainant's abdomen and neck, from his left pocket, which accounts
11 for why it was in his left hand in the footage.

12
13 xvii. I find that the footage reveals that the defendant slashed at the
14 complainant at least twice and though the footage does not show when
15 the abdomen injury was received, the injury could only have occurred
16 before the punch - as the footage shows everything after the punch and
17 no strike or slash to the abdomen is seen.

18
19 xviii. I find that it is open for the Court to infer that the defendant, Omar
20 Robinson, spoke untruthfully at the interview as to what he used to slash
21 the complainant and why he did so, and refused to give sworn evidence
22 was as he has no answer for the prosecution's case as revealed in the
23 footage.

24
25 xix. I find that Omar Robinson went over to Jossue Miller and unlawfully
26 and maliciously wounded to his neck and abdomen, with the clear intent
27 to cause him grievous bodily harm.



1 81. Based on the foregoing findings, I find that I am satisfied, so that I am sure that the
2 defendant, Omar Robinson, is guilty of the offence as charged in Count one,
3 wounding with intent contrary to s.203 of the *Penal Code*. As the second count is in
4 the alternative, the prosecution having rejected the plea and proceeded with the more
5 serious offence, that count is dismissed.

6
7
8
9

Dated this the 25th day of October 2022



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14

**Justice Dale Palmer
Acting Judge of the Grand Court**