



1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL DIVISION**
3

4 **INDICTMENT NO: 16 of 2023**
5
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7
8 **R**
9

10 **V.**
11

12 **ELADIO CHESLEY BROWN**
13
14

15 **Appearances:** **Mr. Alexander Barbour, Crown Counsel of the Office of the**
16 **Director of Public Prosecutions for the Prosecution**

17 **Mr. John Furniss for the Defendant**
18

19 **Before:** **The Hon. Justice Cheryll Richards KC**

20 **Submissions Heard:** **28th July 2023**
21

22 **Sentence Judgment:** **11th August 2023**
23
24

25 **HEADNOTE**
26

27 *Criminal Law—Wounding with Intent contrary to s.203 of the Penal Code (2022*
28 *Revision)—Principles on Sentencing, Cayman Islands Sentencing Guidelines-Whether*
29 *injury serious in the context of the offence.*
30



SENTENCE JUDGMENT

- 1
2
3 1. The defendant is before the Court for sentencing following his conviction after a jury trial
4 for the offence of Wounding with Intent contrary to section 203 of the *Penal Code* (2022
5 Revision). The particulars are that he on the 26th day of January 2023 in the vicinity of
6 No. 23 Caribbean Lane, West Bay, Grand Cayman, Cayman Islands, unlawfully and
7 maliciously wounded Damion Orlando Tajah, with intent to cause him grievous bodily
8 harm.
- 9
10 2. The maximum sentence is life imprisonment.
- 11
12 3. The facts in summary are these. The defendant is the uncle of the victim. The defendant's
13 daughter's is Felicia Brown, and she is also the cousin of the victim.
- 14
15 4. At approximately 2:00am on the 26th January 2023, an incident occurred at the
16 defendant's residence situated in West Bay. Both parties and the defendant's daughter,
17 had been out drinking at various bars earlier that evening, after which they went to the
18 defendant's residence.
- 19
20 5. When they arrived, there was an argument between the defendant and his daughter. The
21 defendant was shouting at her and then became violent towards her and dragged her by
22 her hair and shirt into the house.
- 23
24 6. The victim, being concerned for his cousin's welfare and according to him, being aware
25 of the defendant's violent nature, armed himself with a machete, with the intention of
26 preventing the defendant from committing further acts of violence towards his cousin.
27 The victim while armed with the machete, banged on the door of the house. The
28 defendant then opened the door, and the victim could see that the defendant was armed
29 with a machete.
- 30



1 7. The defendant swung the machete at the victim causing a deep laceration to his shoulder.
2 He then used the machete to strike the victim to his head causing another deep laceration
3 to his forehead. The victim fell to the floor and the defendant then struck him with the
4 machete two more times. One of these blows caused a laceration to the right side of the
5 victim's jaw, running from his ear to his chin.
6

7 8. The victim, after being injured, was able to flee from the residence and to make a report
8 to the West Bay police station. He was taken to the George Town Hospital where he was
9 treated for his injuries.
10

11 9. The defendant was arrested by the police at approximately 7:00 pm outside the residence
12 of the victim. When he was arrested the officers did not observe any signs of injuries to
13 him.
14

15 10. The defendant was interviewed under caution. He admitted that he was involved in a
16 violent incident with the victim but asserted as he did at trial that he was attacked by the
17 victim, who was armed with a machete, and that at all times he was acting in self defence.
18

19 **THE MEDICAL EVIDENCE**

20

21 11. Dr. Peter Soltau has provided a medical report. He examined the victim on the 26th
22 January 2023 at 1:58 pm. He found that the victim had multiple machete wounds to his
23 jaw, right forehead and left shoulder. He listed them as being lacerations to the right
24 lower jaw, left anterior shoulder, right anterior chest, and right forehead. The victim was
25 admitted to surgery. The Doctor gave his opinion that the injuries were not serious, were
26 consistent with trauma and were not likely to be permanent.
27
28
29



1 **VICTIM IMPACT REPORT**

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3 12. The Department of Community Rehabilitation (“DCR”) has provided a Victim Impact
4 Report (“VIR”) dated 30th May 2023. The victim is thirty-three years old. He reported
5 that the offence impacted him emotionally and physically on a significant level. He was
6 hospitalised and in severe pain. He required surgery to his jaw and has substantial and
7 permanent scarring on several areas of his face, shoulder and chest.

8
9 13. The Probation Officer states that the incident continues to have significant, physical and
10 emotional impact on the victim. There is ongoing emotional distress and resulting
11 inability to trust others. The victim was particularly impacted because the defendant is a
12 close family member.

13
14 **ANTECEDENT HISTORY**

15
16 14. The defendant has an antecedent history of more than one hundred previous convictions
17 between 1988 and 2006. All of these are spent but it is noted that there are multiple
18 convictions for woundings, assaults, threatening violence and offensive weapons.

19
20 **SOCIAL INQUIRY REPORT**

21
22 15. The DCR has provided a Social Inquiry Report (“SIR”) dated 3rd May 2023. The Court
23 has read this Report in its entirety and takes into account everything said therein in favour
24 of the defendant.

25
26 16. The defendant is fifty-four years old. He has three children, the youngest of whom is
27 sixteen years old and a student. The defendant grew up in a dysfunctional household
28 where he and his six siblings lacked supervision in the home. Over the years the use of



1 alcohol has been identified as problematic for him and as fueling his anger and
2 contributing to other behaviours.

3
4 17. The Probation Officer states that his antecedent record indicates a serious pattern of
5 offending. He has had a number of community disposals and has failed to comply with
6 some of them. He has reoffended while being bound by Court orders. The Officer states
7 that he generally has difficulty complying with Court dispositions. He is gainfully
8 employed at the Prison as a cleaner and has had no adjudications during the period of his
9 incarceration on remand.

10
11 18. The Officer concludes that based on his account of the offending his insight appears to
12 be limited and he engaged in victim blaming. He was assessed as being at a very high
13 risk of re-offending with seven of the eight criminogenic factors in the very high or high
14 categories. The Officer's view is that he shows no insight into his substance misuse and
15 that despite many opportunities to become a productive citizen he continues to reoffend.
16 It is said that he shows a blatant disregard for social norms. He showed early and adverse
17 antisocial behaviour and has a history of conflict with other family members. The Officer
18 recommended a psychological assessment given the defendant's behaviour patterns. The
19 sentencing was adjourned for this to be obtained.

20
21 **PSYCHOLOGICAL REPORT**

22
23 19. Dr. Dominic Basson provided a report dated 6th July 2023. Following the Doctor's'
24 examination he concluded that the defendant did not meet the threshold for a mental
25 disorder but has certain traits associated with personality disorders. There are also
26 cognitive issues. Doctor states:-

27
28 *"The MCMI-IV profile of this man suggests an inflated sense of self-importance*
29 *combined with an intense mistrust of others. He exhibits an edgy defensiveness, an*



1 *inclination to misinterpret the actions of others, and a tendency to project malicious*
2 *motives onto presumed accusers. His pride in self-reliance, lack of sentimentality,*
3 *and competitive values hide a deep insecurity about his self-worth and may be used*
4 *to counteract past humiliation and rejection. Fearful of domination, he may*
5 *carefully guard against external influences to ensure that no one undermines his*
6 *self-determination and autonomy. He may view others as hostile and belligerent,*
7 *thus justifying his own defensive aggressiveness.*

8
9 *He maintains a hypersensitive wariness in order to ward off anticipated deception*
10 *and malice from others, leading him to resist all sources of external influence.*
11 *Whether faced with danger or not, he maintains a fixed level of preparedness, an*
12 *alert vigilance against the possibility of attack and derogation. He exhibits an edgy*
13 *tension, abrasive irritability, and ever-present defensive stance from which he can*
14 *spring into action. He has suspiciousness regarding the motives of others and a*
15 *tendency to misconstrue innocuous events as signifying proof of duplicity or*
16 *conspiratorial intent. His learned feelings and attitudes have produced a pervasive*
17 *mistrust of others. He is notoriously hypersensitive and disposed to detect signs of*
18 *trickery and deception everywhere. He is preoccupied with these thoughts. Actively*
19 *picking up minute cues, then magnifying and distorting them to confirm his worst*
20 *expectations. To further complicate matters, events that fail to confirm his*
21 *suspicious are viewed as evidence of just how deceitful and clever others can be.”*

23 **THE SUBMISSIONS**

- 24
25 20. The prosecution submitted that this offending is between Greater Harm and Lesser Harm
26 because the harm caused is serious in the context of the offence. Counsel referred to the



1 following cases: -
2

3 (1) *R v. Smith, (Grant Christopher)*¹

4 (2) *R. v. Christopher John Duff*²

5 (3) *R. v. Xue*³
6

7 21. In *R. v. Smith*, the English Court of Appeal considered an appeal against sentence for an
8 offence of Wounding with Intent. In the course of an altercation, the victim received a
9 final blow to the back of the head which required three stitches. In his sentencing remarks
10 the learned Judge concluded that this fell into the category of greater harm and greater
11 culpability. This was on the basis that the injury which was caused required hospital
12 treatment, stitching and had considerable lasting effect on him. The Appellate Court
13 considered what is meant by the term “*serious in the context of the offence*” and stated:-
14

15 *“First, with regard to the injury, the question is whether the injury was serious “in*
16 *the context of the offence”. It is axiomatic that all violence within the context of a*
17 *section 18 offence is serious, but some violence is more serious than others. The*
18 *purpose behind the words “which is serious in the context of the offence” in the*
19 *guidelines is to distinguish between that level of violence which is inherent or par*
20 *in a standard section 18 offence and that which will, by definition, go beyond what*
21 *may be viewed as par for the course. In our view, given that there is such a marked*
22 *disparity in the starting point between categories 1 and 2, the sorts of harm and*
23 *violence which will justify placing a case within category 1 must be significantly*
24 *above the serious level of harm which is normal for the purpose of section 18⁴.*
25

26 22. The submission as to culpability is that this is an offence of Higher Culpability because
27 of the use of a weapon, a machete.

¹ [2015] EWCA Crim 1482

² [2016] EWCA Crim 1404

³ [2020] EWCA Crim 587

⁴ Paragraph 14



1 23. Defence Counsel submitted that when one looks at the doctor's psychological report, we
2 are looking at a case of Lower Culpability.

3

4 **THE SENTENCE**

5

6 24. Considering the medical evidence in this case and applying the dicta in the cited cases,
7 the injuries are not serious in the context of this offence. It is noted that the victim was
8 able to flee from the scene and to drive himself to the West Bay Police Station in order
9 to seek assistance. This is a case of Lesser Harm. It is one of Higher Culpability because
10 of the use of a weapon. The starting point for a Category 2 offence is 6 years custody.

11

12 25. There are two aggravating factors, the presence of others and the ongoing effect upon the
13 victim as detailed in the VIR. These serve to increase the sentence to one of 6 years and
14 6 months.

15

16 26. In mitigation account is taken of everything said and written in the defendant's favour.
17 He is fifty-four years old. His Counsel urges that a lengthy sentence of imprisonment will
18 have a greater effect upon him given his age. The Court also takes into account in
19 particular the findings of the Doctor in the psychological report as to his mental, cognitive
20 and other issues. There may also have been some provocation. The sentence is thereby
21 reduced to one of 5 years.

22

23 27. The serious nature of the offending means that the custody threshold is firmly passed.
24 Consideration has been given to whether the proposed sentence is proportionate to the
25 offending. This is an offence of Wounding with Intent to cause serious bodily harm. The
26 defendant used a machete to chop excessively. The victim's injuries and impact upon
27 him have been detailed above. The defendant has a long history of assaulting family
28 members. He is at very high risk of re-offending. There is nothing in his personal
29 circumstances which suggests that an immediate custodial sentence is unavoidable. The
30 defendant has been afforded significant reduction in his sentence primarily because of

1 the psychological issues identified by the Doctor but there is no basis for any further
2 reductions. The sentence is therefore one of 5 years imprisonment. Time served is to be
3 taken into account.

4

5 **Dated this the 11th day of August 2023**

A handwritten signature in blue ink, appearing to be 'Cheryll Richards', written in a cursive style.

6

7 **The Hon. Justice Cheryll Richards KC**
8 **Judge of the Grand Court**