

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

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

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7 **REX**

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9 **V**

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11 **OMAR BADOU ROBINSON**

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14 **Appearances:**

**Mr. Kenneth Ferguson for the Crown**

15  
16 **Mrs. Prathna Bodden of Samson Law for**  
17 **the Defendant**

18  
19 **Before:**

**Justice Dale Palmer (Actg.)**

20 **MFS submissions Heard:**

**18<sup>th</sup> August 2023**

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23  
24 **HEADNOTE**

25 *Criminal Law – Wounding with intent contrary to s.203 of the Penal Code –*  
26 *Guilty plea to the lesser offence of Unlawful Wounding contrary to s.204 of the*  
27 *Penal Code not accepted by the Prosecution – Prosecution proceeding to trial on*  
28 *the s.203 offence – Trial by Judge Alone – Defendant found guilty of Wounding*  
29 *with Intent – Case Law – Aggravating and Mitigating factors – Antecedent*  
30 *history.*  
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35 **SENTENCE JUDGMENT**  
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1     **THE INDICTMENT**

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1.     On October 14, 2022, the Defendant, Omar Badou Robinson, pleaded not guilty to the offence of Wounding with Intent contrary to s.203 of the *Penal Code*. The Defendant opted for a trial by judge alone – having signed the Election for Judge Alone Trial form on the 12<sup>th</sup> October 2022.

2.     After the commencement of the trial, the Defendant sought to enter a plea of guilty to the lesser offence (Wounding) pursuant to s.204 of the *Penal Code*. The prosecution rejected the plea to the lesser offence and chose to proceed to trial against the Defendant in relation to the more serious (s.203) offence.

3.     Central to whether or not the Defendant was guilty of the more serious offence under s.203, was a determination of the issue of the Defendant’s intent when he wounded the Complainant, Jossue Miller.

4.     In summary, the Defendant and Mr. Miller encountered each other at the Brown’s On-The-Run Esso Service Station late at night on 18 July 2020, where they had both attended to get food. What began as a misunderstanding, escalated to a physical encounter between the men as they exchanged heated barbs.

5.     After hearing the evidence of the witnesses and viewing the footage captured from the gas station cameras, the Defendant was found guilty of Wounding with Intent.

6.     In particular I accepted the evidence of the Complainant, Jossue Miller, that the Defendant had a blade of some sort in his hand that he used to slash him. Support for this contention was found in the recovered video footage, which revealed a silver shiny object in the Defendant’s hand while he slashed at Mr. Miller’s neck. The item in the Defendant’s hand was also seen on video footage after he fought off a third party who intervened to separate them.



1           7.       The Defendant has maintained, since he was first taken into custody, that he had no  
2           blade and that the injuries received by Mr. Miller were likely to have been from a  
3           ring he was wearing.

4  
5           8.       Seeing the blade in his hand in the video footage aided the Court on the issue of  
6           intent.

7  
8           9.       Even after outlining in my verdict judgment that the blade was seen in the video  
9           footage, the Defendant repeated this assertion in the interview with the Department  
10          of Community Rehabilitation (DCR); that no blade was present, and that the injuries  
11          were caused by a ring.

12  
13          10.       In the glaring light of the video recording recovered from the gas station – showing  
14          that, not only was he not wearing any rings, but that he had a shiny blade in his hand  
15          which he used to slash at Mr. Miller – it begs the question as to the *bona fides* of his  
16          claims of contrition and remorse as he now faces sentencing.

17  
18          11.       Fortunately, Mr. Jossue Miller did not have to be admitted to hospital. However, the  
19          injuries included a slash to his throat which required some twenty-four stitches and  
20          was among the factors that demonstrated the intention to cause grievous bodily harm  
21          to him.

22  
23          12.       A verdict of guilty was returned on October 25, 2022, for the offence Wounding with  
24          Intent to cause grievous bodily harm contrary to s.203 of the *Penal Code*.  
25          Unfortunately, after his conviction, the sentencing process was delayed due to the  
26          issue of his legal representation not being settled for some time.

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28       **SOCIAL INQUIRY REPORT**

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30          13.       At the order of the Court, the DCR prepared a Social Inquiry Report (SIR) for the  
31          Defendant, which was quite helpful.

1 14. The Defendant was in his mid-30s at the time of the incident and is now 38 years of  
2 age, which excludes him from the category of offenders that would be considered  
3 young for these purposes.

4  
5 15. From all indications, as a child, he had a fairly normal upbringing. Even though his  
6 mother was often at work and his father lived overseas, his childhood was absent of  
7 abuse, and it was one in which he had a close relationship with his siblings. He had  
8 access to education. And though he did not advance in his studies beyond high  
9 school, it does not appear that he exhibited any behavioural issues in his early life.

10  
11 16. He is currently gainfully employed and has usually been employed from time to time  
12 in the construction and electrical industry.

13  
14 17. He is married and has no children, but his wife is dependent on him for financial  
15 support. The Defendant says that his relationship with his wife is a good one. Though  
16 the Defendant did not opt to call any witnesses at his trial, his wife (who was in  
17 attendance throughout the trial) mentioned in the SIR that she was present at the  
18 scene and that the Defendant's actions were unintentional. She attested that he is not  
19 the type of man who has an issue controlling his temper and that he did not pick the  
20 issue with Mr. Jossue Miller.

21  
22 18. The Defendant says that he does not abuse drugs and that whilst he may drink  
23 alcohol, he does not drink to get drunk. He asserts that he has never gotten into  
24 trouble while drunk, however, the SIR suggests that his several infringements with  
25 the law – ranging from minor traffic infringements to assault and wounding – are  
26 linked to the influence of alcohol.



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1 19. The Defendant has a number of relatively minor convictions for which he received  
2 community service or fines. However, only of his convictions for Assault in 2005  
3 and for Wounding with intent in 2006 will I treat as relevant for the purpose of this  
4 sentencing exercise.

5  
6 20. It is noted that the events that resulted in the 2006 conviction occurred at the same  
7 location as in the case now at bar, though the harm to that victim was more serious.

8  
9 21. For this offence, the Defendant insists that he was acting in self-defence. The  
10 Defendant does not accept that Mr. Miller suffered any trauma from his actions and  
11 in his view, the injury was not serious. The Defendant says Mr. Miller is a  
12 troublemaker, but he is prepared to compensate him for his medical expenses. He  
13 pleads for a community-based sentence as he does not wish to, again, go down the  
14 road of imprisonment.



15  
16 **CHARACTER EVIDENCE**

17 22. The Defendant did not call witnesses at trial and neither did he seek to rely on  
18 witnesses at the sentencing hearing. However, at the request of his Counsel, there  
19 being no objection by the Crown, letters, which he wishes to have the Court consider  
20 at sentencing, were handed up on behalf of the Defendant. Given the very serious  
21 nature of the offence, I thought it prudent to consider the letters.

22  
23 23. In a letter from the Bodden Town East Constituency Office, the Hon. Dwayne S.  
24 Seymour, JP, MP, Minister for Border Control and Labour, says that the Defendant  
25 is a caring and friendly person whom he has known for 30 years. He described the  
26 Defendant as well-respected in the community and with a desire to be good citizen.  
27 He also said that the Defendant expressed remorse for the damage and inconvenience  
28 he has caused.

1 24. The Defendant and his wife have also written letters to the Court asking for lenience  
2 – noting that he is a good provider and hard worker. Mr. Robinson offered a formal  
3 apology for his actions on the night, which he now acknowledges were unacceptable.  
4 He says he is deeply remorseful. He says does not go looking for trouble but admits  
5 in his letter that he has a difficulty controlling his temper. He has indicated his desire  
6 to seek counselling to help him to control his emotions more effectively. The  
7 Defendant indicates that he is not a monster but a skilled young Caymanian in the  
8 electrical field, who is now making strides in his career.

9

10 **SENTENCE GUIDELINES/ CASE LAW**



11

12 25. Section 203 of the *Penal Code* (2019 Revision) prescribes a period of life  
13 imprisonment for a person convicted of Wounding with Intent.

14

15 26. The seriousness of an offence is a factor that determines the type of sentence that is  
16 suitable. What is a 'serious offence' for this purpose, is determined both by the Harm  
17 caused (or likely to be caused) as well as the Culpability of the offender when  
18 weighed in the light of the offence-specific mitigating and aggravating factors.

19

20 27. What is 'serious' in the in the context of this offence is affected by whether the type  
21 of Harm or violence caused is significantly above that which is the norm for this type  
22 of offence. I refer to the medical certificate and photographs of the injuries that were  
23 admitted into evidence in this case. The medical evidence is that Mr. Miller's  
24 condition was not considered to be serious, and his injuries are not likely to be  
25 permanent, even though he received 24 stitches for these slashes.

26

27 28. Given the background to the incident, it is also relevant to consider whether, and to  
28 what degree, provocation factored into the commission of this offence.

29



1           29.     I agree with Counsel for the Crown and the Defence in their respective submissions  
2                   that the circumstances of this case fall into the categories of lesser Harm but high  
3                   Culpability. Lesser Harm, because the injuries did not require surgery or admission  
4                   to hospital, despite the intention to do greater harm. Regarding the high degree of  
5                   Culpability, the factors that influenced my finding are as follows:

6  
7                   i.     Despite the Defendant's repeated denials, my finding of fact is that the  
8                   Defendant had a blade that he concealed in his left palm and used to  
9                   slash Mr. Miller's neck.

10  
11                  ii.    It was evident to me that more serious harm was intended than actually  
12                  resulted, when one considers the concealed sharp implement, repeated  
13                  slashes to the throat and neck and that he had to be pulled off of the  
14                  Complainant. In fact, but for the intervention of an apparent stranger,  
15                  whom the Defendant also fought off, more serious harm would have  
16                  been caused.

17  
18                  iii.   The provocation present was nothing that a man of the age and  
19                  experience of the Defendant ought to have had an issue ignoring. While  
20                  I consider the provocation factor in the Defendant's favour, it was not  
21                  of a greater degree than normally expected. The victim was a young man  
22                  in his 20s while the Defendant was about 36 at the time.

23  
24                  iv.   Though there was not a significant degree of planning - as the parties  
25                  did not know each other previously – on a review of the footage, it is  
26                  clear that there was some degree of premeditation. The Defendant  
27                  repeatedly charged at the Complainant or in his direction and was  
28                  stopped by his wife or Mr. Miller's friend. Though the video does not

1 reveal when he chose to arm himself, he was seen to be scanning his  
2 surroundings before the final attack, even though he had already gotten  
3 his food. When he was rocked by the Complainant's defensive blow, he  
4 already had the blade in hand and the glint of it is seen when he raised  
5 his left hand to slash at him.

6  
7 v. The psychological impact of the incident on the Complainant, who said  
8 he was traumatized by the incident, is to be considered. He opted not to  
9 give a victim impact statement, but this is a factor relevant to the degree  
10 of culpability.

11  
12 30. The Guidelines designate that this offence, under its distinct circumstances, falls  
13 within category range 2, with a starting point of 6 years' and imprisonment of  
14 between 5 and 9 years. In addition, it was submitted that the Court should give  
15 consideration for the fact that the Defendant had offered a plea to the lesser offence  
16 at an early stage of the trial.

17  
18 31. In *R v Robinson (O.A.)*<sup>1</sup>, the Appellant pleaded guilty in the Grand Court to  
19 wounding with intent contrary to s.203 of the *Penal Code*. The degree of Harm and  
20 Culpability were far greater than in the case at bar as the Appellant launched a  
21 sustained attack on his former partner in her apartment with a number of weapons  
22 which included his feet and hands. The attack was premeditated. The victim was left  
23 with serious injuries which required surgical intervention. The Defendant pleaded  
24 guilty and was sentenced to imprisonment for 7 years.



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<sup>1</sup> [2011] (2) CILR Note 1]

1 32. On appeal, applying the dicta of Waller, LJ in *R v Kluk*<sup>2</sup>, the Court found that the  
2 only criticism was that the trial judge omitted to state that he had considered the fact  
3 of the guilty plea. In the context of the guilty plea the Appellate Court found that in  
4 view of his good character and all the mitigating and aggravating factors, 7 years  
5 was not manifestly excessive. But having failed to expressly take account of the plea,  
6 the sentence was quashed and replaced with one of 6 years. The Appellate Court  
7 noted that had the matter proceeded to a contested trial, (which occurred in the case  
8 at bar), a more appropriate sentence would have been 10 years.

9  
10 33. The Crown in the instant case has submitted that a period of imprisonment is  
11 appropriate for at least 6 years. In *Robinson* the Appellant had pleaded guilty, the  
12 attack was premeditated, prolonged and violent, and the injuries were far more  
13 severe when compared to the instant case.

14  
15 34. In the instant case, the Defendant offered a plea to the lesser offence, has prior  
16 convictions involving violence, one of which is very serious but similar in all other  
17 respects to the case at bar. He also concealed the blade or sharp implement in his  
18 palm. He had to be pulled off the unarmed Complainant, which is the main reason  
19 that the degree of harm was not greater. The Complainant said that from the very  
20 beginning of their exchange the Defendant was inviting him into the dark to attack  
21 him in an area out of the view of the cameras.

22  
23 35. In *Hewitt v. R., Mothen v R*<sup>3</sup>. the Appellants were jointly part of a violent incident  
24 at a club in which a firearm was fired twice, causing injury to the Complainant. The  
25 Court found Hewitt to have shot the victim, but both were found guilty of the joint  
26 enterprise. Like the case at bar, the determination was made that this was a category

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<sup>2</sup> [2005] EWCA Crim 1331

<sup>3</sup> [2019 (1) CILR Note 20]





1 2 case as there was lesser Harm with higher Culpability. There was a trial, and the  
2 Court determined that, given particular aggravating circumstances, it was  
3 appropriate to depart from the usual range of 5 – 9 years and impose a sentence of  
4 12 years. Hewitt had brought a firearm to a public area to shoot the victim, while the  
5 incident was instigated and encouraged by Mothen who was found to have known  
6 that Hewitt was armed. The victim was not killed but the Court found that the  
7 guidelines contemplate that a judge might move outside a category if the facts of the  
8 case required it. *Robinson* and *Hewitt and Mothen* both acknowledge that a sentence  
9 of between 10 years and 12 years' imprisonment is not considered inappropriate  
10 where the facts justify it.

11  
12 36. The Court considered in *Hewitt* the fact of possible injury to by-standers as an  
13 aggravating feature given the fact that he and his co-Defendant produced and used  
14 this firearm in a public place. That is not a factor present in this case. It is aggravating  
15 in this case that on repeated occasions the Defendant could have left as he was being  
16 held back by his wife. Mothen was a man with a significant criminal record, while  
17 the Defendant in the instant case does not have a lengthy criminal record. As I noted  
18 above, the Defendant has two convictions that involve violence, one of which he  
19 inflicted more severe injuries than those inflicted in the instant case and served time  
20 in prison.

21  
22 37. In *Hyre v R*<sup>4</sup> the Appellant pleaded guilty to wounding with intent to cause grievous  
23 bodily harm contrary to s.203 and received a sentence of imprisonment for 7 years.  
24 He had stabbed the complainant, who was a stranger, 5 times to the back in an  
25 unprovoked attack that punctured his lungs and would have killed him had he not  
26 received immediate medical attention. The Court held that the period imposed was

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<sup>4</sup> [2009 CILR Note 25]

1 not excessive though the Appellant had pleaded guilty and had no prior convictions.  
2 The injuries in *Hyre* are substantially more than those in the instant case. Despite  
3 pleading guilty, and having no criminal record, the Court took the view that the  
4 sentence was within an appropriate range. In the instant case, the Defendant's actions  
5 fall within the Category 2 with lesser Harm and higher Culpability and though the  
6 injuries are less severe than those in *Hyre*, the Defendant before this Court has prior  
7 convictions involving violence - and one in which he served a similar sentence after  
8 offering a plea of guilty. This Defendant was 10 years younger at the time of those  
9 convictions, but these offences speak to a pattern of conduct on the part of the  
10 Defendant.



11  
12 **CUSTODY THRESHOLD**

13  
14 38. The general principle is that the Court must not pass a custodial sentence unless it is  
15 of the opinion that the offence is so serious that no other sentence can be justified  
16 for the offence. This is to reserve the sentence of imprisonment for the most serious  
17 of offences.

18  
19 39. The *Penal Code* treats offences of this nature as serious and has a maximum sentence  
20 of up to life upon conviction. From the perspective of parity of sentences, individuals  
21 convicted of similar offences have received periods of moderate to substantial  
22 imprisonment for similar offences.

23  
24 40. It cannot be ignored that for lesser offences the Defendant had received sentences  
25 such as Community Service Orders which he has breached. It therefore stands to  
26 reason that a community-based sentence would not serve as sufficient deterrent. His  
27 prior custodial sentence may have had a deterrent effect for a time, but he now finds

1 himself before the Court again for the same type of offence, though he ought to be  
2 older and wiser.



3  
4 41. The custody threshold has been met in this case.

5  
6 42. The Defendant and his wife request a community-based sentence. They also suggest  
7 that even if a custodial sentence is imposed, it be suspended. While I acknowledge  
8 crossing the threshold does not automatically mean imprisonment, on the facts of  
9 this case, together with his past criminal record, a sentence of imprisonment is most  
10 appropriate. I am, however, duty-bound to impose an immediate sentence of the  
11 shortest term commensurate with the seriousness of the offence.

12 **SENTENCE**

13 43. The Guidelines stipulate that the usual starting point for a Category 2 offence is 6  
14 years' imprisonment, with a range of between 5 and 9 years' imprisonment. The  
15 aggravating factors that I consider are as follows:

- 16 i. A sharp implement was used as a weapon, which the Complainant could  
17 not have defended himself against, as it was concealed in the  
18 Defendant's hand.
- 19 ii. Though the condition of the victim was not considered serious, it is  
20 evident from the concealed blade – repeatedly used to slash Mr. Miller's  
21 neck, which would have been worse had the Defendant not been pulled  
22 off the victim – that the intention was to cause more serious harm.
- 23 iii. The psychological impact of the attack on the Complainant who said he  
24 was traumatised by the event.
- 25 iv. The Defendant has a previous conviction for the same offence, though  
26 the injuries were more serious in that case. The Defendant also has a  
27 previous conviction for Assault. It is noted, however, that these  
28 convictions were recorded when the defendant was in his 20s.

- 1 v. Despite the video evidence showing the concealed weapon in his palm  
2 being used to slash the Complainant, the Defendant continues to deny  
3 that he used a weapon to slash the Complainant's neck and implies that  
4 the injuries resulted from a ring that unintentionally caused the wounds.
- 5 vi. The matter proceeded to a trial (albeit that the Complainant offered a  
6 plea to the lesser offence under s.204 of the *Penal Code*.
- 7 vii. The Defendant had several opportunities to leave – even after he got his  
8 food. The video shows the several times that his wife intervened to take  
9 him away from the victim.
- 10 viii. The Defendant appears to have a problem controlling his temper.
- 11 ix. The view of the DCR is that the Defendant has a pattern of violent  
12 behaviour whilst under the influence of alcohol.
- 13 x. The report of the DCR expresses the view that, of the 8 factors that  
14 increase the risk of reoffending, Mr. Robinson was assessed to be at a  
15 high risk of reoffending for 3 of them and a medium risk for 2.

16  
17 44. There are several mitigating factors that I weigh in his favour, which are:

- 18 i. The Defendant is a hard and industrious worker who seems to get along  
19 well with his family.
- 20 ii. He is married and his family is dependent upon him for financial  
21 support.
- 22 iii. There was a moderate level of provocation prior to the incident which  
23 had an effect on a man with the temperament of the Defendant.
- 24 iv. Though a bit belated, the Defendant, (in a letter handed to the Court)  
25 says he is sorry for what occurred and that he does in fact have an anger  
26 issue.



1 v. The Defendant is capable of rehabilitation and is prepared to obtain  
2 counselling for his anger problem.

3  
4 45. Based on the authorities, had his 2006 case proceeded to trial, the sentence would  
5 have been at least on the higher end of the Category 2 range, or perhaps outside the  
6 range.

7  
8 46. There is a high degree of Culpability in the case at bar, and the attack had a degree  
9 of premeditation in his concealing the shiny blade in his palm and waiting to attack  
10 the Complainant. Let us not forget that, unlike the 2006 case, the defendant contested  
11 the Prosecution's case and went to trial.

12  
13 47. With a starting point 6 years, to that I add 5 years, which based on the number of  
14 aggravating features is, in my view, quite moderate. From the 11 years I deduct 4  
15 years for the mitigating factors for a total of 7 years. The Defendant was been on bail  
16 since his conviction and so no further deduction is required for time spent awaiting  
17 trial or sentencing.

18  
19 48. Accordingly, having also considered the aggravating and mitigating factors already  
20 outlined, an appropriate sentence for the Defendant Omar Badou Robinson for the  
21 offence of Wounding with Intent is imprisonment for 7 years.

22  
23  
24 **Dated this the 18<sup>th</sup> day of August 2023**

25  


26  
27  
28 **Justice Dale Palmer**  
29 **Acting Judge of the Grand Court**