

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **HOLDEN IN GEORGE TOWN, GRAND CAYMAN**

3 **IND. NO. 31 OF 2010**

4 **REGINA**

5 **V.**

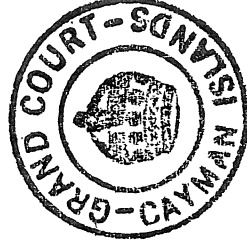
6 **GARY O'NEIL BOWLYN**

8 **Appearances: Mr. Trevor Ward of the Office of the Director or Public**
9 **Prosecutions, for the Crown**

10 **Mr. Ben Tonner of Samson & McGrath for the Defendant**

12 **Before: Hon. Justice Henderson**

14 **Heard: March 16, 2012**



17 **RULING**

18 **REASONS FOR SENTENCE**

20 1. After a trial by a judge without a jury, Gary Bowlyn has been convicted of an
21 assault in the course of defending himself.

22 2. In brief, the facts are as follows. The victim, Ricardo Robertson, was a
23 construction worker on a construction site at the relevant time. Some of his fellow

1 workers, including Mr. Bowlyn, had been in the habit of teasing him by calling
2 him a "batty man" and suggesting that his girlfriend was a lesbian. This teasing
3 had been going on for some two weeks. On the day in question, Mr. Robertson
4 lost his patience and began bumping up against Bowlyn in an aggressive manner.
5 There was some pushing and shoving. A fight broke out and Mr. Robertson got
6 the better of Mr. Bowlyn. Mr. Robertson got Mr. Bowlyn down on the ground and
7 inflicted a minor injury. The two men were parted and went off to their respective
8 jobs on the site.

9 3. About 15 minutes later, Robertson showed up at the place at which Mr. Bowlyn
10 was working, ostensibly to return a saw. In fact, Mr. Robertson was there for the
11 purpose of continuing the fight and was still angry.

12 4. Mr. Robertson was holding a piece of PVC pipe. He struck Mr. Bowlyn with it
13 several times. Mr. Bowlyn was working with a hammer at the time. He struck
14 Robertson several times with the hammer. One of those blows landed on
15 Robertson's head and inflicted a severe injury which required brain surgery and
16 has left some degree of permanent impairment. There is no evidence as to which
17 man struck the first blow on this second occasion.

18 5. I found that I had a reasonable doubt on the question of self-defence. I gave the
19 benefit of that doubt to Mr. Bowlyn and proceeded on the basis that he was acting
20 in self-defence. I also found that he used excessive force which was unreasonable
21 in the circumstances given the disparity between the weapons the two men were
22 wielding.

1 6. Counsel have referred to the United Kingdom Guidelines for sentencing in cases
2 of this nature. I agree with the submission I have heard that the facts of this case
3 would place it in category two because the result of the offence presents a “high
4 degree of seriousness” but the motivation for the offence, i.e., a desire to defend
5 oneself albeit with excessive force, presents a “low degree of culpability.” In
6 category two, the range of penalty is suggested as a term of imprisonment from
7 one to three years with a starting point of 18 months. I accept that range and that
8 starting point as appropriate in this case.

9 7. I must consider whether there are any aggravating or mitigating features. I find
10 there are both. The use of a weapon, a hammer, is an aggravating feature. I
11 consider the facts leading up to the assault, that is to say the homophobic teasing,
12 to be an aggravating feature as well. That is discriminatory.

13 8. In mitigation, Mr. Bowlyn has no previous convictions. It is fair to say that there
14 was a lack of premeditation in the sense that he did not expect or intend to strike
15 Mr. Robertson with the hammer until Mr. Robertson showed up at the location
16 where Bowlyn was working.

17 9. Mr. Bowlyn is 37 years of age. He is a Jamaican immigrant here on a work permit
18 working in the construction industry. He has formed a relationship with a lady
19 here and she is pregnant with his child.

1 10. Before I settle upon a sentence, I must consider the related question of whether or
2 not there should be a recommendation for deportation to Jamaica and if so how
3 that might affect the balance of the sentence.

4 11. In the case of *Margeson*, 1990-91 CILR 252, our Court of Appeal has addressed
5 the subject of recommendations for deportation. The court found that such a
6 recommendation constitutes a "sentence" for the purposes of the *Criminal*
7 *Procedure Code*. The accused has a right of appeal from such a recommendation.
8 It is necessary to give to the accused notice, as I have done, that such a
9 recommendation may be made so that his counsel may speak to it. Mr. Tonner has
10 done that.

11 12. The factors to be taken into account are these. The court should consider: whether
12 the offender's continued presence in the Cayman Islands would be to the country's
13 detriment; the seriousness of the offence; the length of the criminal record of the
14 offender; and the effect the order would have upon others who are not before the
15 court and who are innocent persons.

16 13. As to the first of those criteria, it is unclear whether Mr. Bowlyn's continued
17 presence in the Cayman Islands would be to the country's detriment. I consider
18 that the Immigration Board is better placed than this court to make that
19 determination.

20 14. The seriousness of the offence is in the middle range. This is more serious than
21 some of the minor offences dealt with in the Summary Court but is by no means

1 the most serious offence this court deals with on a regular basis. This offender has
2 no criminal record. I infer that a recommendation for deportation could have an
3 adverse effect on others, the mother of Mr. Bowlyn's child and his unborn child.
4 That is a factor which militates against making the recommendation.

5 15. There is a question of some importance which is not addressed in *Margeson*: if a
6 recommendation for deportation is a "sentence", as the Court of Appeal has
7 found, does it have the effect of reducing what would otherwise be the appropriate
8 term of imprisonment? After all, a sentence must be viewed holistically. One does
9 not ordinarily consider the component parts of a sentence in isolation. There is no
10 authority on this point.

11 16. Upon reflection, I am satisfied that a recommendation for deportation should not
12 have the effect of reducing what would otherwise be the appropriate term of
13 imprisonment. To hold that it does have that effect would result, inevitably, in a
14 sentencing regime where a Caymanian and a foreigner of equal culpability, who
15 have committed the same offence, are given different terms of imprisonment
16 because the foreigner is recommended for deportation. That will be perceived by
17 the public as unfair to the Caymanian defendant. If the recommendation for
18 deportation is not carried into effect, it will cause actual unfairness because part of
19 the foreigner's sentence will never be imposed upon him. For these reasons, any
20 recommendation for deportation I make will not reduce the term of imprisonment
21 I impose.

1 17. Taking everything into account, I am satisfied that the starting point is the
2 appropriate term of imprisonment in this case. I sentence Mr. Bowlyn to
3 imprisonment for 18 months.

4 18. With respect to deportation, I consider that the Immigration Board is better placed
5 to assess all of the relevant criteria. I will refrain from making such a
6 recommendation.

7 Dated this 16th day of March, 2012

8 *Henderson, J.*

9 Henderson, J.
10 Judge of the Grand Court

