

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

3 INDICTMENT NO: 39/11

4
5 THE QUEEN

6
7 V

8
9 KERRYANN DEBORAH JACKSON



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11
12 **Appearances:**

Ms. Marilyn Brandt on behalf of the
DPP for the Crown

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14
15 Ms. Fiona Robertson of Samson and
16 McGrath for the Defendant

17
18 **Before:**

Justice Carol Beswick (Actg.)

19 **Heard:**

20 Trial: 20th – 22nd August 2012
21 Sentence submissions: 22nd August
22 2012
23

24 **SENTENCE RULING**
25

26 1. The Defendant, Ms. Kerry Ann Jackson, is before the Court to be sentenced
27 on her guilty plea to Unlawful Wounding. The offence arises from an
28 altercation in which she bit off the top joint of the right pinky finger of the
29 Complainant, Ms. Debra Bush-Jefferson.

30 2. Ms. Jackson was charged on an indictment for wounding with intent to do
31 grievous bodily harm to Ms. Bush-Jefferson contrary to section 203 of the
32 Penal Code (2010 Revision). The trial before a jury commenced on the 20th
33 August 2012 and the Defendant pleaded not guilty to that offence. On the
34 22nd August 2012, the Defendant admitted her guilt to the lesser offence of
35 unlawful wounding and the jury returned a formal verdict of Not Guilty to

1 the original charge. The Defendant gave as the basis of the guilty plea the
2 fact that she did not intend to do harm to anyone but that by being in a fight
3 she was reckless. I now give reasons for the sentence which is to be imposed.

4 *THE FACTS*

5 3. On the 10th October 2010 both the Defendant and the Complainant, along
6 with 2 or 3 other friends, went to a club in George Town, Grand Cayman.
7 They all had drinks together. When that club closed its doors, the group
8 decided to go to eat at another place but the concern of the group members
9 was that the Defendant was too inebriated to drive safely. The Defendant was
10 persuaded to allow herself to be driven in her car by one of her friends.

11 4. However, having arrived at the eatery, the Defendant had a change of mind
12 and became determined to leave immediately and to drive herself.

13 5. The Defendant's very good friend was exasperated and sought to dissuade
14 her from doing that. Pleas to refrain from driving fell on the deaf ears of the
15 Defendant. Her friend removed her personal items from the Defendant's car
16 and continued to chastise her for insisting on driving in that unsafe condition.
17 The Defendant did not wish to be deterred and shook her head, honking on
18 the horn whilst her friends sought to discourage her from driving by retaining
19 the car keys and by reasoning with her.

20 6. Words became heated and eventually the exchange became physical between
21 the two friends with the first actual contact being the friend's fingers coming
22 in contact with the Defendant's cheek. It is not agreed as to the exact
23 circumstances in which this occurred.

1 7. At this stage the Complainant and another friend tried to intervene to prevent
2 the two ladies from fighting. The Complainant concentrated on trying to stop
3 the Defendant.

4 8. In the ensuing mêlée, the Complainant felt a stinging sensation to her finger
5 and noticed that the top joint of her right pinky finger had gone. She shouted
6 in alarm to the Defendant that she had bitten off her finger. The Defendant's
7 response was to contort her face and then spit the piece of finger from her
8 mouth onto the ground.

9 9. Ms. Bush-Jefferson, the Complainant, was rushed to the hospital and
10 received medical assistance there. The skin of the remaining portion of the
11 finger was grafted. The tip itself could not be saved. The healing process
12 appears to have been satisfactory in the circumstances.

13

14

FACTORS CONSIDERED IN SENTENCING

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16 10. In determining the appropriate sentence I have considered several factors
17 which I now detail.

18

19 11. The Defendant is of previous good character, having no other conviction
20 recorded against her. This enures to her benefit in the determination of
21 sentence.

21

22 12. Also, in wounding the Complainant the Defendant used a single bite. There
 was no repeated or sustained attack.

1 13. Further, as a result of the Defendant's own action she has now also suffered
2 several far-reaching and long-term losses or has the real probability of
3 suffering those losses.

4 She has lost or is likely to lose the age-old friendship of some of the persons
5 involved in this incident. The unchallenged evidence is that the persons
6 involved, some of whom were being called as prosecution witnesses,
7 regularly went out together on weekends and had been doing so for many
8 years. The group shared camaraderie and obviously enjoyed socialising
9 together. Indeed it may well be thought that this incident had its genesis in
10 the desire of the Defendant's friends to protect her from herself. The
11 evidence is that her friends considered that she often fell victim to excessive
12 consumption of alcohol.

13 She has lost the opportunity to readily obtain employment because the
14 criminal record which she now has will, of necessity, limit the jobs in which
15 she can be employed.

16 She has lost the opportunity to travel abroad freely, in particular to the
17 United States of America, because of the criminal record which she now has
18 and which will automatically disqualify her from entering several countries.

19 14. At the same time, as I seek to determine the appropriate sentence in this
20 matter, I consider also the loss and suffering of the Complainant and any
21 further redress available to her.

1 provided the loan for its purchase, there is no evidence of the existence of
2 such a lien.

3 *THE LAW*

4 20. Section 33 of the Penal Code allows for the imposition of further sentencing
5 in addition to the compensation order. I now consider if a further sentence is
6 appropriate and I consider as helpful the authorities submitted by both
7 Counsel in this regard.

8 21. The Cayman Islands Court of Appeal has stated that the United Kingdom
9 Sentencing Council Guidelines apply in the Cayman Islands. This offence in
10 my view falls into the middle category of grievous bodily harm/wounding
11 offences considered in the Guidelines because the injury was serious but had
12 not been planned. The starting point in this category is eighteen (18) months
13 imprisonment.

14 22. I have also considered the authorities submitted by both Counsel.

15 23. In *R v. Morace Wilmot* (unreported) Indictment Number 0021 of 2008 in the
16 Grand Court, the Defendant pleaded guilty to unlawful wounding for an
17 injury caused by hitting the Complainant's face with a conch shell. The
18 sentence imposed by the Grand Court in 2008 was 18 months imprisonment
19 suspended for 12 months, in addition to a compensation order.

20 24. In *R v. Owen Smith* (unreported) Indictment Number 0035 of 2010, the
21 Grand Court imposed a sentence of one year's imprisonment suspended for
22 one year with conditions including payment of the complainant's hospital

1 bills. There the Defendant was found guilty of causing grievous bodily harm
2 where he fractured the jaw of the Complainant.

3 25. In *R v. Lawrence Nelson* (unreported), and reported in the Caymanian
4 Compass on the 11th October 2010, the Defendant was found guilty of
5 causing grievous bodily harm to a fellow officer by breaking both bones of
6 his leg and he received a sentence of a 2 month term of imprisonment
7 suspended for 2 years.

8 26. In 2005, the Grand Court imposed on Mr. *Mark McLean* a sentence of 18
9 months probation with a condition to stay inside his residence from 7pm to
10 5a.m., along with a compensation order. The Defendant had pleaded guilty
11 to causing actual bodily harm by punching the Complainant to the floor after
12 which the Complainant was injured by other persons who kicked him.

13 27. On the application of Defence Counsel, the Court made an indication of
14 sentence pursuant to *R v. Goodyear* [2005] 2 Cr.App.R.20 and therein
15 indicated that in the event of a guilty plea, the maximum sentence would be
16 non-custodial – a suspended sentence. The Crown did not oppose that
17 approach.

18 *THE SENTENCE*

19

20 28. In the circumstances of this case an appropriate sentence for a guilty verdict
21 at the end of a trial would have included eighteen (18) months imprisonment
22 suspended for two (2) years.

1 29. The Defendant has entered a plea of guilt and, by law this reduces any
2 sentence which might have been imposed.

3 30. In this instance, bearing in mind the factors I have outlined and the
4 Sentencing guidelines, the sentence I regard as being appropriate is that of a
5 suspended sentence and a compensation order.

6 31. The **suspended sentence** is for twelve months imprisonment suspended for
7 twelve months, that is, the imprisonment will not take effect unless within
8 twelve months of today, the Defendant commits, within the Cayman Islands,
9 another offence punishable with imprisonment.

10 32. The **compensation order** is for the Defendant to pay to the Cayman Islands
11 Health Services Authority the amount representing the medical bills of Ms
12 Debra Bush-Jefferson arising from this incident being the sum of \$1,205.09.
13 This amount is to be paid within fourteen (14) days of today, failing which
14 the Defendant is to be imprisoned for 2 months.

15 33. I also add two (2) conditions to the suspended sentence: (1) that the
16 Defendant is to remain at her place of residence on Fridays, Saturdays and
17 Sundays between the hours of 9 p.m. and 6 a.m. for the period of twelve (12)
18 months and (2) that the Defendant is not to consume any alcoholic beverage
19 in any public place for the twelve (12) month period of this sentence.

20 **Dated this the 28th August 2012**

21 

23 **Madam Justice Carol Beswick (Actg.)**
24 **Judge of the Grand Court**

