

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

3  
4 **INDICTMENT NO: 19/11**

5  
6 **THE QUEEN**

7  
8 **V**

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10 **RUDY KENDAL SOLOMON**



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14 **Appearances:**

**Ms. Elisabeth Lees for the Crown**

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16 **Ms. Fiona Robertson of Samson and**  
17 **McGrath for the Defendant**

18  
19 **Before:**

**The Hon. Mr. Justice Charles Quin**

20 **Sentencing Submissions Heard:**

**4<sup>th</sup> October 2012**

21  
22 **SENTENCE RULING**  
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- 24 1. On the 2<sup>nd</sup> April 2012 the Defendant pleaded guilty to Count 2 on the Indictment,  
25 namely, Wounding, contrary to s.204 of the Penal Code. The particulars of the  
26 offence are that the Defendant, on the 5<sup>th</sup> day of February 2011, at John McLean  
27 Drive, East End, Grand Cayman, unlawfully wounded Jeff Naldy Welcome.
- 28 2. On the 2<sup>nd</sup> April 2012, after taking the guilty plea to wounding simpliciter, the  
29 Court ordered a Social Inquiry Report (SIR) and a medical psychiatric report in  
30 relation to the Defendant.



1 *THE FACTS*

2 3. The Complainant and the Defendant are second cousins and live in close proximity  
3 to each other in East End on John McLean Drive. The Defendant states that Jeff  
4 lived “*in front of*” his residence.

5 4. Shortly before February 2011 the Complainant and the Defendant had begun to  
6 have acrimonious issues between themselves. On the 5<sup>th</sup> February there was some  
7 verbal abuse between them, and it is difficult to know who actually started this  
8 latest exchange of words.

9 5. *On one account in the Crown’s summary of facts:* The Defendant, on the 5<sup>th</sup>  
10 February 2011, around 10:00 p.m., was riding his bicycle towards his house when,  
11 on passing the Complainant’s yard, he, the Defendant, cursed at the Complainant,  
12 who was standing outside in the yard using a telephone.

13 In response, the Complainant asked the Defendant if he had a problem and, in  
14 response to the Complainant, the Defendant laughed and continued on towards his  
15 house.

16 The Complainant followed the Defendant.

17 It is reported that the Defendant subsequently alighted from his bicycle and, whilst  
18 walking towards the Complainant, asked the Complainant if he wanted “*to deal*  
19 *with this.*”

20 The Complainant then pushed the Defendant away.

21 The Complainant then reportedly saw the Defendant searching for something on the  
22 ground, at which point, the Complainant threw the bicycle at the Defendant.

1 The Defendant then reached into his waist for an object – the knife he used for his  
2 arts and crafts work – which he then put up to the Complainant’s face. When the  
3 Complainant put up his hand to block the Defendant from reaching his face, he, the  
4 Complainant, felt a burning sensation and realised that he had received a cut on the  
5 wrist.

6 The Complainant then tried to hit the Defendant with his right hand but slipped and  
7 caught, instead, the side of the Defendant’s face.

8 The Complainant then saw blood on his own legs. The Defendant ran away.

9 6. *On a second account of the events on the night in question:* It was the  
10 Complainant who – on seeing the Defendant ride by his house on the night in  
11 question – first shouted to the Defendant,

12 *“Hey pussy hole, why you looking after me for,”*

13 to which the Defendant continued riding his bicycle and said in reply,

14 *“Fuck you.”*

15 According to his account, the Complainant kept on cursing, but the Defendant  
16 continued riding his bicycle up to his own house and alighted from the bicycle. It  
17 was at this time that the Complainant approached the Defendant and the  
18 Complainant said,

19 *“You want me to deal with this?”*

20 Alongside these words the Complainant reportedly slapped the Defendant in the  
21 face, picked up the bicycle, ran after the Defendant and tried to hit him in the face

1 with the bicycle. In trying to escape from the Complainant, the bicycle hit the  
2 Defendant on his leg.

3 As the Complainant continued in his pursuit of the Defendant, the Defendant then  
4 took the knife from his pocket.

5 The Defendant continued to try to evade the Complainant but, after a while, decided  
6 to face the Complainant. The Defendant said,

7 *“After a while I didn’t try to get into the house.”*

8 When the Complainant tried to strike after the Defendant, the Defendant cut the  
9 Complainant with the knife.

10 7. The Complainant was transported by ambulance to hospital, where he was found to  
11 have received a 6cm laceration to his wrist from the Defendant’s knife, which  
12 required hospital treatment and seventeen (17) stitches.

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1 ANALYSIS

2 *Self Defence*

3 8. Though these accounts of the incident differ in some respects, they are the same in  
4 important areas. One common area is the Complainant's tossing the bicycle at the  
5 Defendant, and the Complainant's persistent aggressive approaches, verbally and  
6 physically, towards the Defendant.

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8 9. The Crown and the Defence accept that there was a significant degree of  
9 provocation and, in some respects, the Defendant acted in self defence.

10 10. One ground for this view is that on the night of the incident the police arrested the  
11 Defendant at his residence and a knife was recovered from his jeans pocket. The  
12 Defendant said,

13 *"That is what I use to cut him because he wanted to harm me in my yard."*

14 The extent of the provocation and the Defendant's conviction that he stood to be  
15 seriously harmed is viewed in the context of those words from the Defendant.

16 From the very helpful SIR and from the Psychiatric report, the Court understands  
17 the extent to which the Defendant has suffered a history of attacks to his person  
18 and automatically feels the need to protect himself because, as the SIR states, his  
19 "*reluctance to fight back*" in the past had persons viewing him as "*simple minded.*"

20 The SIR also informs us that the Defendant said he plead guilty to Carrying An  
21 Offensive Weapon, but did not plead guilty to the Wounding with Intent charge as,  
22 in his view, he was protecting himself.

23 The Court accepts that the Defendant honestly believed he had to defend himself.

*Disproportionate Response*

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11. It is accepted that the Defendant over reacted in his use of the knife and that, by using the knife, he went beyond a response that could have been expected for someone acting in reasonable self defence. In all the circumstances, the use of a knife by the Defendant was unreasonable and disproportionate.

It is accepted that the Defendant’s knife is used every day in relation to his craft work and it was not a knife he sought to find and use against the Complainant.

The environment was known to the Defendant and there were other options open to him to escape the Complainant’s attack – such as running into the house and locking the door.

Alternatively, the Defendant was on a bicycle and the Complainant, by both accounts, was on foot and, as such, the Defendant could have ridden his bicycle quickly away from the Complainant.

*Mitigating Factors*

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12. The Court takes into account that it is clear from the SIR that, regrettably, the Defendant's problems in life began at a very early age, as he was raised by an alcoholic father who abused the Defendant's mother and the other children.

13. Moreover, the Defendant, for reasons he is unable to articulate, considers himself as "the black sheep" of the family and "looked down upon" by other family members; so much so that he states that he is rejected by his family and has very little contact with family members – with the exception of his mother.

14. Moreover, in the Defendant's late teens and early 20's – a time when most young adults are starting to find gainful employment, he began the downward slide of ganja and cocaine consumption. Consequently, instead of being able to build his self esteem and counter the ill-effects of rejection and abuse of his early childhood with gainful employment and productive activity, the Defendant relied on illicit drugs because they "covered the pain he was feeling."

15. The Court takes into account that it is clear from the Psychiatric Report produced by Dr. McGill that the Defendant has been treated for many years in relation to psychotic symptoms following the use of illegal drugs.

16. Additionally, the Probation Officer confirms that the Defendant is somewhat of a loner and has been frequently bullied, both verbally and physically. In June 2007 the Defendant was diagnosed with suffering from paranoia, schizophrenia and drug misuse.

1           However, the Defendant has been known to refrain from the use of hard drugs for  
2           sustained periods and, during these times, the Defendant records less controversial  
3           incidents with others.

4           17.    The Court receives encouragement from the fact that the Defendant is an avid  
5           craftsman, and invests the majority of his time in making and selling craft and  
6           artwork. The Court strongly urges the Defendant to continue in this admirable and  
7           worthwhile occupation.

8           18.    I agree with Defence counsel that the Defendant is somewhat of a “tragic figure”  
9           who has been more sinned against than sinning.

10          19.    I also agree with Defence counsel that, from all accounts, the Defendant was  
11          provoked, and it was the Complainant who initiated the physical aggression.

12          20.    Again, I also agree with Defence counsel that the Defendant’s retaliation was a  
13          “single blow” – and not repeated slashes with the knife.

14          21.    And, again, I also concur with Defence counsel that the Defendant has, in some  
15          way, indicated his remorse by his guilty plea. I am encouraged by the Probation  
16          Officer who reports in the SIR that the Defendant

17                    “..does not like what he [the Defendant] did and had he been able to get away  
18                    from him [the Complainant] he would have done.”

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1 *SENTENCE*

2 22. The Defendant does have previous convictions – most of which are related to drug  
3 offences or are as a result of the consumption of illegal drugs.

4 23. Having listened to submissions from both counsel, having read the SIR and the  
5 Psychiatric Report, I impose a sentence of two years' imprisonment, to reflect the  
6 seriousness of the offence.

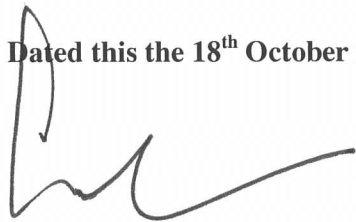
7 24. However, in light of the Defendant's guilty plea, the clear evidence of provocation,  
8 and the fact that it is accepted that, in some respects, the Defendant was acting in  
9 self defence, I suspend the sentence for two years.

10 25. I make it clear that should the Defendant commit any further offences within the  
11 next two years, he will be remanded to custody to serve this two-year sentence.

12 26. In addition, I make an Order that the Defendant pay to the Complainant, on or  
13 before four months from today's date compensation in the sum of two hundred and  
14 forty-two dollars and forty-one cents (CI\$242.41). Consequently, this compensation  
15 must be paid by the Defendant on or before the 18<sup>th</sup> February 2013.

16 27. The knife confiscated from the Defendant is to be returned to him for his use in  
17 making art and craft.

18 **Dated this the 18<sup>th</sup> October 2012**

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20  
21 **Honourable Mr. Justice Charles Quin**  
22 **Judge of the Grand Court**

