

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CRIMINAL DIVISION**



**Neutral Citation Number: [2025] CIGC (Crim) 47**

**Case Number: IND. 68 of 2025**

**THE KING**

**V**

**FRANCIS ALEXANDER CAMPBELL**

**Appearances:**           **Mr. Martin Mulgrew, Counsel for the Prosecution**  
                                  **Mr. Crister Brady, Counsel for the Defence**

**Before:**                   **Hon. Justice Emma Peters**

**Heard:**                   **15-17 October 2025**

**VERDICT RULING**

1. Between the 15<sup>th</sup> and the 17<sup>th</sup> October 2025, sitting alone, I heard the trial of Francis Alexander Campbell. Having had the opportunity to carefully consider the case, I hereby return my verdict which is that I find the defendant not guilty of count one (Attempted Murder) but guilty of count two (Wounding with Intent). Let me give my reasons that have led to those verdicts.

**The Indictment**

2. The indictment in this case contains two counts which are in the alternative.
3. Count one alleges Attempted Murder contrary to section 194 of the Penal Code. In the alternative, count two alleges Wounding with Intent to cause Grievous Bodily Harm contrary to section 203



of the Penal Code. The charges allege that on the 16<sup>th</sup> April 2023 Francis Alexander Campbell (FAC) is alleged to have stabbed Kurtney Johnson (KSJ) either intending to murder him (count one) or to cause him Grievous Bodily Harm (count two). It was clear during the trial that the date on the indictment may be one day out but since dates are not a material averment, no issue was taken.

### **The Defendant's Election**

4. The Defendant elected trial by Judge alone pursuant to Section 129 of the Criminal Procedure Code and I satisfied myself at the outset of the trial that the defendant had been advised about his options and had chosen to elect a Judge only trial. I was handed a copy of that election form signed by the defendant and Mr. Brady who confirmed that the defendant had been advised as to his rights in that regard.

### **The Law in relation to Judge only trials**

5. The Cayman Islands Court of Appeal (CICA) has given some guidance on the duties of a Judge in a Judge Alone trial. In *Richards v R* 2001 CILR 496 Rowe JA stated:

*“When a trial judge sitting alone has advised himself to the applicable principles of law, and given himself any necessary warning, he must indicate clearly in his judgment his reasons for acting as he did in order to demonstrate that he has acted with the requisite degree of caution in mind and has therefore heeded his own warning. No specific form of words is necessary for this demonstration, what is necessary is that the Judge’s mind upon the matter should be clearly revealed.”*

6. In *Randy Martin v R* CICA Crim. Appeal No. 2/2010 (Ind. 27/2009), Mottley JA stated as follows:

*“A judge sitting in a criminal case without a jury, in rendering his decision and giving his reasons for so concluding is not required to review every fact and to detail each argument on which the prosecution and defence rely as if he were summing up to a jury. The judge must set out the conclusion reached and make clear the reasons for arriving at that conclusion. He is required to have regard to any difficult or unusual points*



*of law and to show how those points of law has in any way impacted the conclusion that he has reached.”*

.....

*“Where the trial is conducted and the factual conclusions are reached by the same person, one need not expect every step in the reasoning to be spelled out expressly, nor is the reasoning carried out in sealed compartments with no inter-communication or overlapping, even if the need to arrange a judgment in a logical order may give that impression. It can safely be inferred that, when deliberating on a question of fact with many aspects, even more certainly than when tackling a series of connected legal points, a judge who is himself the tribunal of fact will (a) recognise the issues and (b) view in its entirety a case where one issue is interwoven with another.”*

7. In the case of *Dioncicio Salazar v The Queen* [2019] CCJ 15 the Caribbean Court of Justice (CCJ) also quoted, with approval, from the judgment of the Court of Appeal in Northern Ireland in *R v Thompson* [1977] NI 74 in which it was said of the duty of a judge sitting alone in a bench trial:

*“He has no jury to charge and therefore will not err if he does not state every relevant legal proposition and review every fact and argument on either side. His duty is not as in a jury trial to instruct laymen as to every relevant legal aspect of the law or to give (perhaps at the end of a long trial) a full and balanced picture of the facts for decision by others. His task is to reach conclusions and give reasons to support his view and, preferably, to notice any difficult or unusual points of law in order that if there is an appeal it can be seen how his view of the law informs his approach to the law.”*

8. The CCJ continued:

*“Equally, a judge sitting alone and without a jury is under no duty to “instruct”, “direct” or “remind” him or herself concerning every legal principle or the handling of evidence. This is in fact language that belongs to a jury trial (with lay jurors) and not to a bench trial before a professional judge where the procedural dynamics are quite different (although certainly not similar to those of an inquisitorial or continental bench trial).”*



### **Burden and Standard of Proof**

9. As in all criminal trials, the burden is on the Crown to prove beyond a reasonable doubt that the Defendant committed the offence for which he is on trial. Unless I am satisfied so that I am sure of his guilt on a particular charge, I must find the defendant not guilty.
10. There is no burden on the Defendant to prove that he is innocent or to explain the evidence offered by the prosecution.
11. I will address my mind to the important or prominent aspects of the evidence in deciding the critical issues in this case. I will not decide every single point that has been raised, only such matters that will enable me to determine whether the charges on the indictment have been proved.
12. I will have regard to the whole of the evidence that has been presented at trial and form my own judgment about that evidence. The questions of fact at issue in this trial are for me to determine.
13. If having considered all the evidence, I have a reasonable doubt or, otherwise expressed, if I am not sure as to whether the Defendant is guilty or not of the charge I am considering, I must resolve that doubt in favour of the Defendant and find him not guilty of the offence for which he is charged.
14. On the other hand, if, having considered the evidence, I am satisfied so that I am sure of the guilt of the Defendant, then it will be equally my duty to find him guilty as charged.

### **The Relevant Law**

15. Section 194 of the Penal Code states as follows:

A person who —

- (a) attempts unlawfully to cause the death of another; or



- (b) with intent unlawfully to cause the death of another does any act or omits to do any act which it is that person's duty to do, such act or omission being of such a nature as to be likely to endanger human life,

commits an offence and is liable to imprisonment for life

16. Section 203 of the Penal Code states:

A person who, unlawfully and maliciously, by any means, wounds or causes grievous bodily harm to a person with intent to do grievous bodily harm to any person or with intent to resist or prevent the lawful apprehension or detainer of any person, commits an offence and is liable on conviction to imprisonment for life.

### **Elements of the Charges**

17. The Crown must satisfy me so that I am sure of the following:

- (i) The Defendant wounded Mr. Johnson (KSJ) by stabbing him
- (ii) The Defendant did so unlawfully
- (iii) The Defendant did so with the intention of killing him (count one) or causing him grievous bodily harm (count two)

18. There are agreed to be two issues in this case. The first is whether, on the evidence called at trial, I can be sure that it was this defendant who stabbed KSJ. If I am not sure that he did stab him then I must find the defendant not guilty on both counts.

19. If I am sure that it was the defendant who caused his wounds, then I must consider the issue of intention. First, whether I can be sure that when he wounded him, FAC intended to kill him? If I am sure that he did, then I should convict on count one. If I am not sure of that then I must find him not guilty of count one and go on to consider whether I can be sure that he intended to cause



him GBH? If I am sure of that, then I should find him guilty of count two. If I am not sure of that then I must acquit him of count two.

20. I note that there is no dispute that KSJ was in fact wounded that day. I have seen photographs of his injuries and heard agreed medical evidence as to the extent of them.
21. There was no evidence heard at trial whatsoever to suggest that this may have been an altercation where the defendant was required to use force in his own defence. Mr. Brady confirmed that I need not consider the issue of self-defence at all since there is no evidence at all that makes that issue relevant.
22. The central issue in this case is therefore whether I can be sure that FAC is the man who stabbed KSJ. If I am sure that he did then the other central issue would be the issue of intention.

### **Kurtney Johnson's Evidence**

23. Over the course of the three days or so after being stabbed KSJ spoke to the police twice informally and then once by way of an Achieving Best Evidence (ABE) interview. Over the course of those interactions with the police, KSJ explained that his attacker was Alex, known as Cotton, a man he lived next door to and knew well as they had been in prison together. I shall return to the evidence before the court as to Alex / Cotton being FAC later.
24. However, a few months after the incident, KSJ told the police that he was no longer interested in pursuing matters concerning this incident against FAC. Then on the 15<sup>th</sup> July 2025 KSJ gave a witness statement to the police saying "I do not want to attend court in this matter. Alex is family to me, he is my cousin, I don't wish for him to get in any trouble".
25. The Prosecution applied for and were granted a Witness Summons that was served on KSJ at HMP Northward (he by then being a serving prisoner) on the 2<sup>nd</sup> October 2025. Following his refusal to come to court in accordance with the summons, an arrest warrant was issued, and he



was brought from HMP Northward to court under compulsion of that warrant. He then gave evidence over the course of the afternoon of Wednesday 15<sup>th</sup> October and the morning of Thursday 16<sup>th</sup> October.

26. I shall return in due course to examine his evidence in more detail but, by way of a summary, the witness was declared hostile and over the course of the cross-examination that followed from both the Crown and the defence, he was taken through the transcript of his ABE interview and then shown the ABE recording itself. He agreed that it was him in that interview giving that evidence but said that he was under the influence of hard and soft drugs and alcohol at the time when he was stabbed and then was still under the influence of those illicit drugs and then the medication he was put on in hospital when he spoke to the police. He said he had no memory of that interview and that he did not recall who stabbed him but it was not FAC.
27. For the purposes of my verdict, I have therefore had to consider two very different versions of Mr. Johnson's account.

#### **A Summary of my note of KSJ's evidence at court**

*The photo at page 53 is me in hospital after surgery for injuries. I can't remember how I received them....I am not going to be a witness against my cousin over there. I can't remember how I received those injuries... I was under the influence of drugs...I don't remember what happened... I don't remember what I told the police...I have no interest in wasting court time and I have no desire to be here and I just want to return to my cell and finish doing my prison sentence.*

*I don't want to be here. I don't want to answer. I am fed up with the whole process. If the courts want to go after that man for whatever reason I just don't want to be part of it.*

*I don't really know who stabbed me that night. Earlier that evening I had been drinking very heavily. I probably took a little more drugs than I should have. Cocaine and marijuana and alcohol. I don't recall most of that night at all. I don't know who stabbed me.*

*Right up to when I was sent to prison I was living with Alex, his mum and my mum were very close, me and him have always been close. When I went home I remember speaking to him. He asked me how I was doing and I said not so bad.*



*I continued to live there because I know these people all my life. I didn't have any problems with the defendant during the year we lived together. The discussion of me being stabbed never came up apart from him being concerned about whether I was alright. He did not stab me that night that I can recall.*

*(Having been shown the ABE) No, I do not doubt the authenticity of the tape and I was there but I do doubt the validity of the truth of the statement. Me and him never had any arguments. (On the ABE) I keep yawning – I must have been under drugs too. I don't have any memory of the incident in which I was stabbed.*

*I agree that was me on the video. I don't remember what I was saying and I don't remember why I say it for. I wanted my Hennessy and coming off drugs and I don't know what happened and I waked up in hospital, pumped up with more drugs and in and out of sleep. I don't think that was a good time to check me. Maybe if they had waited longer I could have given them a better statement.*

*I can't give any truthful statements. You can't twist it 20 million ways. I do not know if what I said in that statement was true and I don't remember what I said in that statement so matter what you ask me I cannot swear on the bible that man stabbed me coz I don't know that. Me and him never had any arguments so what he have stabbed me for so it's a madness thing.*

*Me and him had no argument and no problem and all of a sudden he is trying to kill me? I can't get up and honestly say for sure and truthful that man stabbed me and or that I remember that man stabbed me and I don't even remember if that man was in the room.*

*I honestly can't get up and say that I know I was being truthful when I said that – I don't know why. This is messing with my head – the man had done no prior thing*

*I informed the detective and he contacted me and I had the same problems and I told him as much and he said he understand. (The police) came to the prison and I said I don't remember the incident and he said he understood totally and he said he wouldn't want me to be a false witness against someone.*

*I can't authenticate what I said was true or if that what happened or when it happened. I don't remember the name Steve Brown. I didn't give that name. I do not recall telling police that Steve Brown was one of the men who assaulted me.*

*I understand that I must have said things I don't know I said and I am not sure what happened but I would hate to see the wrong person or someone innocent and I know Alex for a long time and I know him. It's impossible that me and him are close so I don't know what going on with me that night or what happened but I couldn't have been in my right sense and it don't make no sense to me.*



28. That account at court is in stark contrast to what the witness said when he was spoken to by the police. They first spoke to him on the Monday morning (so probably about 36 hours after the incident, that having happened at about 5:30pm on the Saturday) and after he had had surgery and whilst he was still in the Critical Care Unit. On that Monday KSJ told DS These that “Alex” had come over, and they were having a beer, and he was stabbed by Alex and he didn’t know why.
29. DC Berry spoke to him (also that day) and was told that it was “Alex, they call him Cotton” who had injured him and that he lives at the top of his (KSJ’s) road, and he had known him for years. He said that the incident had happened in his (KSJ’s) room.
30. He was then interviewed by way of ABE recording on the Tuesday afternoon for 45 minutes. His account in that interview was taken on video whilst he was in his hospital bed. He seemed tired at first and the police officers said that they would come back another time when he was less tired but he was absolutely insistent that he wanted to tell them immediately about what had happened.
31. Over the course of the next 45 minutes, he gave what I can only describe (having watched that ABE) as an impressively coherent, lucid, clear and detailed account of what had happened. He explained how he knew Alex Cotton and that he lived beside him and that Alex had visited him (together with a white boy called Steve) in his room that afternoon and that had sat and smoked together. He said that he was sitting at the bureau when out of the blue Alex had taken a knife and stabbed him with it, initially in the chest and then in the throat. He gave a detailed description of the knife. He said that the incident was completely out of nowhere and that there had been no lead up to it nor any conflict between the men.
32. Having stabbed him, he said that Alex had run out and that KSJ had chased him but had stopped due to loss of blood at a neighbour’s house and they had phoned for an ambulance prior to putting him in the car and taking him to hospital.
33. There was absolutely no ambiguity in that statement as to the clarity with which he recalled the incident nor the clarity in his mind as to the fact that it had been Alex who had stabbed him while



Steve did nothing. He gave details as to where Alex lived and how they had been in prison together. He expressed his concern that Alex could have killed him and was critical of the police suggesting that they would not do anything about such a serious matter and that they should take his complaint seriously.

34. The details he gave as to who Alex was when compared with the police evidence as to where FAC lived, who his parents were, and the incident that had led to police involvement a few weeks before because of an incident with Avery Rankine lead clearly to the inescapable and overwhelming conclusion that Alex / Cotton and this defendant are one and the same.
35. That difference in account will obviously be at the heart of my deliberations. So, I shall remind myself at this stage of the law when a witness gives two such inconsistent accounts.

#### **The Law in relation to Hostile Witnesses and Previous Inconsistent Statements**

36. Almost immediately upon Mr. Johnson's entry into the witness box it became clear that he was not going to be a cooperative witness so far as the Crown were concerned. An application was made thereafter for them to be allowed to treat the witness as a Hostile witness. Mr. Brady did not oppose the application and said again in his closing submissions that it was obvious that KSJ was a hostile witness to the Crown.
37. Permitting the Crown to treat a witness as a hostile witness is within a Judge's discretion should they conclude that he is proving hostile (more than just unfavourable ) to the party calling them and that hostility can be demonstrated in a number of ways including where a witness gives evidence contrary to that which he has previously given in a witness statement or professes to have forgotten or where he is reluctant to say anything.
38. Mr. Johnson was and did all of those things. I exercised my discretion having formed my own view that he was not desirous of telling the truth to the Court so I permitted the application and gave a short ruling.



39. As a result of being declared hostile, Mr. Mulgrew cross examined KSJ as to the written transcript of his ABE and, thereafter, the witness was shown the entirety of his ABE and asked further questions by the parties.
40. So how must I approach a situation where a witness has given two entirely different and so starkly contrasting accounts?
41. Mr. Mulgrew has referred me to the case of *R v Billingham & Billingham* [2009] EWCA Crim 19. That case concerned the impact of section 119 of the Criminal Justice Act 2003 as to the use to which a previous inconsistent statement that a witness admits making can be put by a tribunal of fact. The Court observed that Section 119 reversed the previous rule that a previous statement made by a witness out of court was evidence only if the witness adopted it, i.e. accepted that it was true, when he gave evidence. I have set out both section 33B of the Evidence Act and s119 of the Criminal Justice Act 2003 below to remind myself that the two pieces of legislation are in almost precisely the same terms and thus in Cayman Legislation one can also take that same approach.

**Section 33B of the Evidence Act states:**

- (1) If in criminal proceedings a person gives oral evidence and –
- (a) that person admits making a previous inconsistent statement; or
  - (b) a previous inconsistent statement made by that person is proved to have been made by virtue of section 4,
- the statement is admissible as evidence of any matter stated of which oral evidence by that person would be admissible.

**Section 119 Criminal Justice Act 2003:**

- (1) If in criminal proceedings a person gives oral evidence and –
- (a) he admits making a previous inconsistent statement, or



(b) a previous inconsistent statement made by him is proved by virtue of section 3, 4 or 5 of the Criminal Procedure Act 1865,

the statement is admissible as evidence of any matter stated of which oral evidence by him would be admissible.

### **The rest of the Prosecution Case**

42. The Crown also called two police officers (Bradshaw and These), then read various statements with the agreement of the Defence and then read into the record the Agreed facts.

### **DS Bradshaw**

43. DS Bradshaw told the court that he carried out the ABE with KSJ on the Tuesday at the hospital. He was with DC Berry, and they went to the critical care ward. They checked with the medical staff that there were no objections to the interview and, as a result of what they told him, he carried out the interview.

44. He said that in the early part of the interview KSJ appeared to be tired, but that KSJ made it clear that he was coherent and that he wanted to carry on. He said that he continued to assess him and based on his answers he appeared fully coherent and answered all questions asked.

45. He recalled using the term “Potential offender management” which surrounded concerns as to KSJ returning to the same address and he was not aware that KSJ had returned to that same address the very next day.

46. He did not recall developing Steve Brown as a potential suspect. He recalled a white boy called Steve being mentioned who was said to have been with Cotton at the time of the incident.



## DS These

47. DC These told the court that he was made aware on the 16<sup>th</sup> April of reports of a stabbing and attended the hospital that morning but was told that KSJ was not lucid enough at that stage to be spoken to.
48. He got some information from the medics as to KSJ's injuries and then went to Christina Close where the SOCO was in attendance and he followed the trail of blood through the house. He explained where that trail led by going through the SOCO photos.
49. He spoke that morning to the defendant at about 10:46am whilst he was still at Christina Close. The defendant was shirtless and had no visible injuries. The defendant told him that he lived at that location. FAC indicated that he didn't know what had happened and that he had been out with a male named Matthew last name possibly Berry. DC These said that was the only day that he worked on the investigation and that that information was put onto the RMS, but he did not know if it had been followed up. He accepted that the information amounted to a possible alibi.
50. Then he returned to George Town hospital and at about 11:20am had a brief conversation with KSJ who was in and out of consciousness and only saying a few words. When he asked KSJ who was involved, he gave the names Steve Brown and Alex.
51. Then at 2:25pm he spoke to KSJ again, but he was still in and out of consciousness. At 4:20pm he returned at which time KSJ said that Alex had stabbed him, and he was not sure why it had happened and perhaps someone had paid him to do it.
52. He noted that KSJ was barely able to put a sentence together and was falling asleep as they spoke and his answers were short.
53. So far as the Matthew evidence was concerned, he agreed that he did not know if anything had been done in the year that followed this day until the defendant was arrested to enquire into that



potential alibi. He remembered the surname given was possibly Berry but that it was not Whittaker. Others at the scene had not wanted to get involved.

### **Other Evidence**

54. The 911 call was played by agreement and the Crown noted that it was helpful not so much for its contents but for the confirmation (for consistency purposes) with the complainant's ABE account that he had gone to a neighbouring house for help, they had called 911 and then someone had taken the complainant to hospital in a car rather than waiting for an ambulance.
55. Terry Ann Brown's statement was read showing the various periods of time when both the defendant and the complainant have been in HMP Northward together.
56. Jodi Ann Powery's statement was read by agreement as to the defendant also being known as Alex or Cotton.
57. The medical evidence from the Doctor at George Town Hospital was read by agreement that confirmed that the injuries were a stab wound to the right side of the neck and a stab wound to the right upper chest.
58. DC Berry's statements were read by agreement to the effect that when he first spoke to the complainant, he said that he had been stabbed by Alex/Cotton who lived at the top of the road where the complainant lived and that he had known him for years.
59. He had investigated what he had been told about the person who had committed the offence being connected to the Rankine's and to have been involved in the Avery Rankine incident mentioned by KSJ in his ABE and that had established FAC to be the suspect.
60. He had spoken to FAC about an interview in November 2024 and been told that FAC did not want to be interviewed.



61. Finally, the agreed facts were read that related, inter alia, to the photographs of KSJ, and the other exhibits.

### **The Defence Case**

62. The defendant had refused to be interviewed by the police. I do not know what he might have said had he agreed to that interview but there is nothing that I take from his refusal. I expressly direct myself that his refusal to be interviewed is nothing that I should hold against him in any way.
63. At trial the defendant chose not to give evidence. That is his right, but it can have consequences. It means that he has not given evidence in the trial to contradict or undermine the evidence given by the complainant when he was spoken to by the police in his ABE in hospital.
64. When Mr. Brady indicated that his client had decided not to give evidence, I asked Mr. Brady whether Mr. Campbell understood that if he failed to do so, then I would be entitled to draw inferences from that failure; in other words that I would be entitled to conclude that Mr. Campbell did not feel that he had an answer to the prosecution case that would stand up to cross-examination. Mr. Brady confirmed that he did understand that.
65. I must therefore decide whether or not the defendant's failure to give evidence should count against him.
66. Before I can hold that decision against him, I must be sure that the prosecution case is so strong that it calls for an answer. I must also be sure that the true reason for not giving evidence is that Mr. Campbell did not have an answer or at least did not have an answer that he believed would stand up to questioning.
67. And of course, across all of this I must remember the fundamental point that it is for the prosecution to prove the guilt of the defendant and, whilst Mr. Campbell's decision not to give



evidence can provide some support for the prosecution case, I cannot convict the defendant either wholly or even mainly because of that failure.

### **Other Legal Principles engaged during the Trial**

#### **Character**

68. I heard evidence about the fact that the defendant and the complainant had met each other over the years in Prison. The very fact of that evidence indicates some issues in relation to bad character in respect of both men.
69. For the purposes of this case, bad character is not suggested in any way to be relevant and therefore I have put out of my mind any such issues. Although there is no good character direction to which I must have regard as a result, there is nothing whatsoever that I have heard that I should in any way hold against the defendant when considering this case and I expressly make it clear that I have been careful not to do so.

#### **Intention to Kill or to Cause Grievous Bodily Harm (GBH)**

70. Count one alleges that FAC attempted to kill KSJ. Count two (in the alternative) alleges that he wounded him with the intention of causing him grievous bodily harm.
71. I have already outlined the medical evidence relating to the injuries and I also saw the photographs of the injuries taken by the police when they arrived at hospital.
72. There is no dispute in this case that KSJ suffered those injuries. There is no dispute that they are wounds, and it is clear to me that at the very least they amount to GBH.
73. Before I could convict FAC of count one I would have to be sure that at the time those wounds



74. were inflicted that FAC intended to kill KSJ. If I am not sure of that and then turn to count two, I would have to be sure that at the time he inflicted those wounds that FAC intended to cause GBH. I do not have to be sure that FAC formed either of those intentions in advance, but I do have to be sure that he had that intention when he inflicted the wounds.
75. In order to decide what FAC's intention was, I must consider what he did and said before, at the time of and after the incident, and then draw conclusions from my findings about these things.
76. On KSJ's ABE account, FAC was in the room with KSJ whilst KSJ sat at the bureau. He was within an arm's length of him. He had a knife, although KSJ did not see that knife until after the first blow was struck. Apparently out of nowhere and without there being any prior conflict, FAC stabbed him with the knife with sufficient force, as KSJ put it:
- “He stabbed me with so much force that he punctured my breast plate and punctured my lungs and that took a lot of force. To fly through the breast plate and into the lungs takes a significant amount of force.”*
77. KSJ explained that FAC stabbed him in the chest and then in the throat and then ran out. There were no words that were said to have accompanied those stabs.
78. Mr. Mulgrew for the Crown agreed that, save for the stab wounds themselves and the nature of them, there is nothing else that I heard in evidence that can assist me with the issue of intention.

### **Identification**

79. Agreed evidence was read as to the time that the parties have been in prison together. It is clear that they lived close to each other. The complainant's evidence, on both accounts that he gave, was that he knew the defendant.
80. I must still nonetheless consider whether the complainant has or may have made a mistake in identifying the defendant as his attacker.



81. I am mindful of the directions in *R v Turnbull* [1977] QB 224 regarding disputed identification evidence including the need for caution when relying on such evidence.
82. In every case a tribunal of fact must be cautious when considering identification evidence because experience has shown that any witness who has identified a person can be mistaken, even when the witness is honest and sure that they are right. Such a witness may seem convincing but may be wrong. This is true, even where a witness knows a person well and says that they have recognised that person. The witness could still be mistaken.
83. I therefore remind myself that I can only rely on the identification evidence if I am sure that it is accurate. I need to consider carefully all the circumstances in which KSJ identified and recognised FAC thus leading to this identification.
84. I have considered the facts as I find them to be and am satisfied so that I am sure that:
- (i) FAC and KSJ have spent several periods in prison together
  - (ii) They lived close to each other
  - (iii) On each account I heard from the complainant, he appeared to know FAC well
  - (iv) At Court and previously he has referred to him as family
  - (v) In his ABE account he said that the room was lit by a candle, it was 5:30 in the afternoon and I saw the photographs of the sheet put up at the window which did not block out all of the daylight
  - (vi) In his ABE account KSJ said that FAC was standing a short distance away from him as he sat at the bureau when he was stabbed. There was only one other person in the room (“Steve”) was standing elsewhere
  - (vii) The evidence I heard was of an identification resulting from a recognition of a man he knew well standing right next to him in an uncrowded room. That man was close enough to stab him twice.
85. I have considered whether there are any weaknesses in the identification evidence, or if there is any evidence which, if I were to accept it, might undermine the identification evidence. I



recognise that it is likely that someone being stabbed may have their attention impacted by the pain being inflicted upon them. I take into account the fact that the complainant said in court that he had been taking drugs and consuming alcohol that day but I am satisfied that the nature and extent of the interactions between the two men that afternoon in the complainant's bedroom is such that there was more than ample opportunity prior to the attack beginning for KSJ to form his clear view as to the fact that he was interacting with FAC, a man on any account he knew well.

### **Mr. Mulgrew's Closing Submissions**

86. The Crown submits that when considering the two starkly contrasting and competing accounts given by KSJ, there is good reason to be sure of the ABE account. They say that he had no motive to falsely implicate the defendant given that they were on good terms and apparently good friends.
87. They submit that his early accounts to the police were consistent and that having watched the ABE I can be sure of its contents. His account at that stage was lucid and coherent and detailed and is furthermore supported by other evidence which they say includes the photographs of the scene, the 911 call and the photographs of his injuries. KSJ's suggestion that he was unfit to be ABE'd does not accord with the evidence of the police who confirmed his fitness for interview with the medical staff.
88. KSJ knew FAC well and was well able reliably to identify him as his attacker. That identification was supported by the other agreed evidence. When one adds to that the adverse inference that I am entitled to draw from the defendant's decision not to give evidence at trial, the Crown submit that there is overwhelming evidence to confirm that FAC was the attacker and thereafter I can use the injuries to determine what intent I can be sure of.

### **Mr. Brady's Closing Submissions**

89. The fact that KSJ was so unwilling to give evidence is and should be a crucial factor in my deliberations. He was determined at court to be hostile and combative and not intent on assisting



the prosecution and therefore, says Mr. Brady, that must cast doubt on all of his evidence and on the accuracy of his ABE. Especially, say the defence, since KSJ casts doubt on his own ABE.

90. The fact of the alcohol and drugs that KSJ told the court he had consumed in the lead up to being stabbed makes any account he gave thereafter entirely unreliable.
91. Whilst Mr. Brady agreed that the effect of section 33B of the Evidence Act was that if I was sure of the previous inconsistent statement (the ABE) that I was entitled to rely on that evidence for the truth of it, how could I be sure that account was true in the circumstances?
92. I should resist the temptation to conclude that his bedside account was true when taking account of the medication, the drugs and alcohol that he had consumed prior to it. There is no evidence that the complainant's change in account is in any way attributable to the defendant and it is clear from the police evidence that KSJ had made a relatively early decision to make clear that he would not be cooperative with the police. When one considers his unwillingness and his hostility, that makes all of his testimony unreliable and therefore to rely on any of it would be to reach an unsafe verdict.
93. The complainant himself repeatedly said to the court that he is not sure who attacked him. That is what he said in the witness box at court and that is the only account he has given when I can be sure that he was not under the influence of alcohol and drugs.
94. No one properly pursued the alibi he put forward that day and, given the unreliability of the complainant's identification, that fact is important.
95. In summary, how can I be sure of either account KSJ gives especially when the only line of enquiry put forward by the defendant that day was never pursued.



## **Court's Reasoning and Conclusions**

### **Am I sure that FAC inflicted the Two Stab Wounds?**

96. In deciding on this question, I take into account all of the evidence that I have heard.
97. The central question upon this issue is what conclusions I reach with regard to the two starkly opposing accounts given by Mr. Johnson.
98. KSJ's evidence was that he accepted that it was him in that hospital bed being interviewed by the police and he accepted that it was him giving that account. I find that I am sure that he admitted giving that previous account.
99. He did not, however, accept the truth of what he was saying there and gave his reasons for not adopting the account. Given that Mr. Johnson has given two such starkly different accounts I must treat the entirety of his evidence with a great deal of care and caution. I must consider what he said about why he gave such different accounts and of course must approach with caution the undoubted fact that he was on at least some drugs (at the very least those that would have been administered by the hospital) when he spoke to the police. I must consider most carefully the vehemence with which he expressed himself in telling the court that what was said in that interview is untrue and unreliable. I must consider all of the reasons he gave for the significant change in his account.
100. Then I must decide whether I am sure of the account that the witness gave in his ABE interview. It is not simply a question of deciding which account I prefer. If I decide that I am sure of what he said to the police in his ABE then I am entitled to act on it, but only if I am sure of it. If I think that what he told the court from the witness box is or even may be true then I would have to reject what he said in his ABE. But if I am not sure which, if either version is true, then I should ignore his evidence entirely.



101. I am satisfied so that I am sure that when he gave that ABE account from his hospital bed, he was fit and able to do so and he knew what he was saying. The medical staff had cleared him to speak to the police, but it is also entirely clear to me from watching the ABE as to the clarity with which he was expressing himself.
102. I accept that he would have been in pain and that he would have been medicated but the coherence of his account in the manner in which he expressed himself was compelling. He was adamant that he was fit and coherent and wanted to give his account. There was no hint, after he had demanded that the police hear what he had to say, of any confusion or lack of lucidity.
103. I am sure that he was telling the truth in that account as to what had happened and who had stabbed him. I am sure that the reason for the change in his account thereafter is that, after he was released from hospital, he thought better of getting his friend, FAC, in trouble and decided to resile from that truthful account. He has been consistent ever since in saying that he did not want to cooperate or give evidence against FAC but that does not make what he said originally untrue or unreliable.
104. Notably, he did not say when he gave his witness statement to the police in July 2025 that what he had said to them previously was not true – he simply said that he did not want to get FAC in trouble.
105. The men are old friends. KSJ says they are in fact family. I am satisfied that the reason for such a stark change in account is through misguided loyalty, he has chosen for his own reasons to forgive FAC for his actions and not to cooperate with the prosecution of FAC for those events. I am clear that what he said to the police in the few days that followed the events that led to him being wounded was true. I am satisfied so that I am sure that he does remember those events but has actively chosen not to cooperate with the prosecution of his friend / family member for what FAC did.



106. It may well be that the truth emerged in those early 3 days because at that stage KSJ was still angry at FAC for stabbing him but, as his anger has subsided, he has thought better of cooperating and telling the truth to the police or the court. One sees such changes in account frequently in those complainants who are victims of Domestic Violence and who, when events where they have been the victims of violence are still dominating their thoughts, tell the truth about what has happened to them but they then change their minds as to cooperating with the prosecutorial authorities such that by trial they have changed sides. It is precisely that sort of case that led to the bringing into force of s119 CJA03, just as with the Cayman legislature bringing almost identical legislation into force in the form of s33B of the Evidence Act.
107. It is legislation that requires a Tribunal of Fact to act with the greatest care. It must be recognised that sometimes even in the heat of the moment just after an incident people will tell lies. That risk must always be considered by a Tribunal of Fact. But if they are sure, having considered all of the circumstances, that when those events were still dominating their thoughts and before any risk of fabrication or concoction had crept in that they were telling the whole unvarnished truth, then the fact finder is entitled to rely on that evidence.
108. I refer to the principles that govern an application for res gestae evidence. It is agreed by the parties that this case did not in the end involve such an application due to the fact that KSJ gave evidence (albeit having been compelled under summons and warrant to do so) and he admitted making that previous inconsistent statement. But nonetheless those principles are in my view helpful guiderails in determining where the truth lies in respect of considering two such inconsistent accounts.
109. I am sure that what he told the police over those 3 days is true and I am sure that what he is telling the court now is not true.
110. Furthermore, so far as the issue of identification is concerned, I have concluded that I am satisfied so that I am sure that KSJ had ample opportunity as he and FAC spoke and smoked in his bedroom that afternoon to recognise and know who it was that he was dealing with.



111. I am satisfied so that I am sure that when KSJ told the police over the course of the next 3 days that it was FAC who had stabbed him he was demonstrably telling the truth and also that he was being reliable and accurate and correct in that identification.
112. Does the failure to explore the name put forward at the scene cast doubt on my conclusions? I have considered this issue carefully because it is always the prosecution who bears the burden of proving the case. Clearly having refused to be interviewed and then having decided not to give evidence at trial, we know no more than that name as the only time this name was mentioned as a possible alibi was the next morning after the incident. It would have been preferable if the police had explored whether there was a person called Matthew Berry and, if there was, what if anything that person had to say. But nonetheless, the compelling nature of all of the other evidence as to the identity of the attacker is such that the fact that this name was not investigated further does not cast any doubt in my mind that it was indeed FAC who was the man who stabbed KSJ that afternoon.
113. Finally on this point, I note that, having reminded myself of the principles applicable to drawing an adverse inference against a defendant who decides not to give evidence at trial, that that decision lends some additional support for the conclusions that I have reached but I have been careful not to allow that failure to give evidence to do any more than lend some support to the prosecution case in accordance with the principles I have set out.

**Am I sure of an intention to kill?**

114. In short, no I am not. I accept that the nature and location of the stab wounds would entitle me to draw inferences as to what the defendant must have intended when he struck those blows but in the context of the evidence in this case given that nothing preceded the events and nothing was said by the defendant during them, I find it impossible to be sure that when he stabbed KSJ that FAC intended to kill him.

**Am I sure of an intention to cause GBH?**

115. Yes, I am sure that when the defendant stabbed the complainant twice, once in the neck and once in the chest, that he must have intended to cause really serious harm to KSJ by those actions. The nature and location of the stab wounds and the use of a knife as described by the complainant lead me firmly to the conclusion that the defendant could have intended nothing other than the serious harm, he did in fact cause in this unprovoked and motiveless attack.

**Verdicts**

116. For all the reasons set out above, I find Mr. Campbell Not Guilty of Count One Attempted Murder but Guilty of Count Two Wounding with intent (contrary to section 203 of the Penal Code).

**Dated the 23<sup>rd</sup> day of October 2025**



**The Hon. Justice Emma Peters  
Judge of the Grand Court**