

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



[2025] CIGC (Crim) 14

GCR 3 of 2024

THE KING

V

BENO RAYVON MCKENZIE

Appearances: **Mrs. Angelique McLoughlin, Crown Counsel for the Prosecution**
 Mr. Crister Brady for the Defendant

Before: **Hon. Justice Emma Peters**

Sentence: **14th March 2025**

SENTENCE JUDGMENT

Background

1. The defendant is charged with Causing Grievous Bodily Harm (GBH), contrary to section 204 of the Penal Code (2022 Revision) and alternatively, with Assault Causing Actual Bodily Harm (ABH), contrary to section 216 of the Penal Code (2022 Revision). He initially pleaded guilty to the alternative offence (ABH) but thereafter pleaded guilty to the GBH charge (when the Crown indicated that the ABH plea was no longer acceptable) and thus comes to be sentenced for the section 204 charge today.

2. The incident giving rise to these charges occurred on 29th January 2024. The defendant first appeared in the Summary Court in July 2024 and the matter was adjourned to 8th August 2024 when disclosure was served on the defence. On 27th August 2024 the defendant entered a not guilty plea to the section 204 charge and a guilty plea to the section 216 charge. A Victim Impact Report (VIR), and Social Inquiry Report (SIR) were ordered and the matter fixed for the prosecution to review the plea and for sentencing on 23rd October 2024.
3. Initially the prosecution indicated that they would accept the guilty plea to the section 216 charge however, thereafter, a medical report from the University of Miami Hospital was received which evidenced that the complainant is now blind in his right eye and is not seeing well in his left eye. That led to the prosecution reviewing their position.
4. On 20th November 2024, upon hearing of further medical examinations that were being carried out and upon being made aware that the prosecution were no longer prepared to accept a plea to section 216, the matter was adjourned for a further week. It was at that stage that the defendant entered a guilty plea to the section 204 Causing Grievous Bodily Harm charge. The case was thereafter committed to the Grand Court as the Chief Magistrate concluded that the sentencing powers of the Summary Court had been exceeded.



The facts giving rise to the indictment

5. Samuel Ritch, the complainant in this case, was a maintenance worker working at the Aura Apartment Complex on South Sound Road, in George Town. The defendant was employed with NCB Construction Company as a labourer at the same work site.
6. On Monday 29th January 2024 at about 07.30am Mr Ritch was mopping the floor by the elevator at the complex when the defendant and a female walked on an area that Mr Ritch had just mopped. The complainant took issue with them doing so and the CCTV shows that the defendant immediately walked back towards the complainant and they appear to argue.
7. The complainant is said to have taken a photograph of the defendant and an argument ensued about that. The defendant demanded that the complainant delete the photographs from his mobile

phone and put the phone away, or he - the defendant - would hurt him. The complainant told him that he already sent the photographs to his office.

8. At this point the defendant went to his car and returned with a bottle containing a pink liquid. He threw the contents of the bottle at the complainant, hitting him in his face, eyes and chest. The liquid turned out to be H-7 Degreaser (a heavy-duty cleaner). Some of that part of the assault was caught on CCTV and thereafter a different camera angle shows the defendant continuing the assault by repeatedly punching and kicking the complainant whilst he was on the ground. After the attack, the complainant managed to call for an ambulance to come to his aid and he was taken to hospital.

9. The complainant told the police that this was not the first time the defendant had walked in the area that he had previously mopped. On those earlier occasions he had reported the defendant to his manager who had spoken to the defendant about his conduct.

The victim's injuries and the impact of those injuries



10. The medical report of Dr. Bernard, the emergency physician who first attended the complainant, outlines his findings as follows:

- a) Chemical burns to his right shoulder involving 2% of his total body surface area;
- b) Swelling of the surface of the eye, and
- c) Redness on the face around the eyes.

The Doctor opined that the injuries were serious, consistent with infliction by chemical burns (alkali) and were likely to be permanent.

11. The complainant was then referred to an Ophthalmologist who saw him that same day and found significant right eye and moderate left eye chemical injury secondary to a chemical liquid poured onto the complainant's face and right side of chest.

12. The complainant has since been seen by The University of Miami Bascom Palmer Eye Institute and reports indicate that he sustained chemical injury to his cornea, unspecified laterality,

resulting in hyperemia, epithelial defect; corneal epithelial defect - small paracentral inferior defect. The medical reports show that he was authorised to be accompanied to that examination given that he could not travel alone due to his injuries.

13. The complainant has been further assessed both in Miami and here in Grand Cayman. According to the last follow up with Dr Foley in December 2024, the diagnosis was right eye corneal scar and epithelial disorder. It was also recommended that the complainant consider a fresh amniotic membrane. Little improvement was found in the most recent assessment. This blindness is permanent and the defence accept that is so.
14. The victim in his Victim Impact report dated October 2024 observes that all aspects of his life have been changed more than he can ever explain. He can no longer drive or walk alone and he can no longer work to provide for his family. His life has been turned upside down and he and his family are severely affected by the injuries caused to him by the defendant.

The defendant's actions thereafter

15. Following his arrest the defendant was interviewed in the presence of duty counsel. During interview, he accepted that he caused grievous bodily harm to Mr Ritch, but asserted that his conduct stemmed from the complainant's previous provocation, and that he felt the complainant was acting out of a grudge, and to tarnish his character.

Social Inquiry Report

16. The SIR shows that the defendant is 30 years old and is of previous good character. He is a divorced man who is from Jamaica and is in Grand Cayman on a work permit awaiting renewal. He has family who live locally.
17. He was brought up in a good family albeit he suffered the loss of his father when he was just a year old. The family appears to have been a tight and supportive one who set great store in education. The defendant acknowledges that he was well brought up and raised with Christian values in a home free from abuse and violence.





18. Mr. Mackenzie relocated to the Cayman Islands in 2013 at the age of 18 for work. He has lived between this island, Jamaica and Australia since and has worked in construction and the hospitality industry.
19. He explained that he was suffering stress at the time of this offence due to difficulties receiving wages from his employers. As at the date of the SIR he was still employed by the same company despite this offence taking place against a fellow employee in the workplace.
20. The defendant is said to be pro social – he has friends and family on the island and has a partner here and a son in the USA. His only health issues are said to be stress related to these proceedings. His brother speaks highly of him and confirms the stress that the defendant was under at the time of this offence due to not receiving his wages correctly. That same view was expressed by his work supervisor to whom probation also spoke in preparation of the SIR. The nonpayment of his hard-earned wages does appear to have been a particular stress factor for the defendant on the day of this offence.
21. The defendant told probation that his frustration with the complainant had grown over a few months, starting over the sharing of cigarettes. The defendant said to probation that he thought that the two months leading up to this offence was a period of tension building where he believed the complainant was trying to provoke him so that he would retaliate and lose his employment.

The alleged provocation

22. Having viewed the CCTV in this case, I can see no provocation on the part of the complainant. He justifiably takes issue with the defendant when Mr McKenzie walks over his freshly mopped floor, and it is the defendant who walks back and argues with the complainant. The defendant then walks off and goes to his car to obtain the liquid that he thereafter uses as a weapon. There is nothing I have seen in the behaviour of the complainant in that footage that can be said to have been provocative to the defendant. The complainant at all stages sought to back away from the defendant and avoid physical confrontation with him.
23. Mr. Brady accepts that the complainant sought to get away from the defendant and at no stage offered any violence to his client. He nevertheless asserts that the incident was provoked. Whilst

I accept that there may have been some tensions between these two men over the previous few months, I have seen no evidence as to events either before or on that day which can in any sense be said in law to amount to provocation such as to mitigate the sentence in this case.

24. Mr. McKenzie told probation that he felt embarrassed at being threatened by the complainant and so told him “If you make me do something I’m going to have to do you something”. Mr. McKenzie claims that he went to his car and got the bottle of chemicals to use to “intimidate the complainant”. He claims that once he returned, they continued to argue, and the victim left some spittle on the defendant’s lip at which time he “lost it” and used the liquid. That account does not fit with what I saw on CCTV and the timings there.



Prosecution submissions on sentence

25. The prosecution correctly draws my attention to the Cayman Islands Sentencing Guidelines for Violent Offences which came into force in June 2021. They submit that the harm caused to the victim is greater harm in that the injury caused is serious in the context of the offence. The prosecution says that the harm caused to the complainant has gone beyond the level that would be regarded as normal but rather, as evidenced by the medical reports, is serious and permanent.
26. They further submit that this is a higher culpability case given the use of the liquid as a weapon equivalent that appears to have been obtained from the car for that purpose in a revenge attack upon the victim whilst at this place of work. They submit that there was no provocation.
27. If they are correct, then that brings with it a starting point of 5 years’ custody with a category range of 3 to 6 years.

Defence submissions as to sentence

28. Mr. Brady agrees that this case is properly considered to be category one within the sentencing guidelines. He accepts that the complainant at no stage offered any violence to the defendant and that the complainant sought only to walk away from the defendant.

29. He accepts that his client went to the car deliberately to get the bottle but says that he did so just to arm himself with it, not at that stage intending to use it. When it was used, Mr. Brady says the defendant only intended to throw the corrosive fluid at the victim's clothes, not his face.
30. Mr. Brady now accepts that it is wrong to characterise this assault, as he has done in his written submissions, as being a single blow. It is accepted by the defendant (as is shown on the CCTV) that, having thrown the liquid at the complainant, the defendant then punched and kicked the victim whilst the victim whilst he was on the ground.



The Court's conclusions

31. The maximum sentence for this charge is one of 7 years imprisonment.
32. I have considered the parties' submissions regarding harm. Mr Ritch was blinded in his right eye and suffered some sight loss in his left eye. It is accepted by all parties that this sight loss is permanent. A charge under section 204 of the penal code includes, by its very nature, serious harm. I am satisfied that the injuries in this case amount to injury which is serious in the context of the offence. Defence Counsel accepts that the correct categorization is category one.
33. I have, nevertheless, considered the case of R v Smith 2015 EWCA Crim 1482 where the CACD considered what was meant by "serious in the context of the offence" and they observed that a court must "distinguish between that level of violence which is inherent in a standard (s18) offence and that which will by definition go beyond what may be viewed as par for the course." It is my view that the infliction of these injuries which will now impact the victim for the rest of his life, is serious in the context of a section 204 offence and thus properly within category one harm.
34. The defendant's actions unarguably place him within higher culpability. The fact that this defendant went to his car deliberately to obtain this bottle of chemical cleaner, returned to and pursued the complainant and then used this liquid as a weapon are all factors that are properly characterised as higher culpability factors. This was a revenge attack for which the defendant deliberately armed himself against a man he knew to be unarmed.

35. I do not consider there to be any lower culpability factors - I have already said that I reject the proposition that there was any substantive or real provocation beyond the defendant feeling disrespected and embarrassed to be taken to task in front of his female colleague.
36. It is my conclusion that, on the guidelines, this is a category one offence with a start point of 5 years and a range of 3-6 years. I recognise that the range of serious harm that can be dealt with by a charge of this sort can encompass very many serious injuries. Whilst the injuries suffered may not be the worst type of injuries within the range properly described as GBH, these injuries are serious in the context of the offence. However, recognising that range, I temper matters by taking as my start point at this stage 4 years and 6 months imprisonment.
37. It is an aggravating factor that the offence was committed in the parties' workplace. However, this was an isolated incident – the defendant has never committed any other offence in his lifetime let alone an offence of violence, this attack upon his victim was entirely out of character and I accept that the defendant has exhibited remorse.
38. That being so, I further reduce my start point to one of 4 years imprisonment.



Credit

39. The defendant will receive a discount for his guilty plea. Counsel are at very different ends of the spectrum in their submissions on this point. The prosecution invite me to give the defendant "as little credit as possible" due to the offence "being serious". The defence invite me to give him a full one third despite the fact that he initially entered a not guilty plea even after disclosure of the evidence and only changed that plea about two months later.
40. I reject both of those submissions. It can never be fair or proper for a court not to recognise a guilty plea by an appropriate discount. But a full one third discount follows when a defendant has pleaded guilty at the first reasonable opportunity. Given the chronology of events over the period from 27th August 2024 until his guilty plea on the 28th November 2024 (which were tortuously explored in submissions) it seems to me to be fair to give the defendant 25% credit for his plea (as I indicated at the start of hearing submissions).

41. That being so, whilst I of course must pass the shortest sentence possible consistent with my public duty, that duty also requires me to pass a sentence that ensures that the residents of these Islands think twice before deliberately arming themselves with such a corrosive and injurious substance as was in this bottle and then using it against a man in such a way that he can no longer work or provide for his family.
42. I accept that this was a one-off offence for a man who has otherwise lived a good and useful life but the serious consequences of this deliberate attack are such that the defendant must face a sentence of immediate imprisonment. I sentence the defendant to 3 (three) years imprisonment. The defendant has been on bail throughout the proceedings.

Dated the 14th day of March 2025



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