



1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL DIVISION**  
3

4 **INDICTMENT NO: 4 of 2019**  
5 **Charges 02595/2018 - (1) to (3)**  
6 **Charges 01670/2018 - (1) to (4)**  
7 **Charges 01673/2018 - (1) to (2)**  
8 **Charge 00155/2019**  
9

10 **R**

11  
12 **V.**

13  
14 **JEFFREY WILLIAM POWERY**  
15

16 **Appearances:** **Mr. Alexander Barbour, Crown Counsel, Office of the Director of**  
17 **Public Prosecutions for the Prosecution**

18 **Mr. Oliver Grimwood of Samson Law for the Defendant**  
19

20 **Before:** **The Hon. Justice Cheryll Richards KC**

21 **Submissions Heard:** **4<sup>th</sup> August 2023**  
22

23 **Sentence Judgment:** **6<sup>th</sup> October 2023**  
24  
25

26 **HEADNOTE**

27 ***Criminal Law - Causing Grievous Bodily Harm with Intent contrary to s.203 of the Penal Code***  
28 ***(2018 Revision) and other offences- Sentencing following guilty pleas – Mental Health of Offender***  
29 ***at time of Offending, Level of Culpability, Principles on Sentencing.***  
30  
31  
32  
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36



## SENTENCE JUDGMENT

1  
2  
3 1. The defendant is before the Court for sentencing following his guilty pleas to one Indictable  
4 offence and seven Summary only offences. He also has convictions after trial for three offences  
5 in the Summary Court. Both Counsel are agreed that following the guidance in the case of **R. v.**  
6 **Lobo and Others**<sup>1</sup> this Court may pass sentence in respect of all the offences. The defendant  
7 therefore falls to be sentenced for eleven offences.

8  
9 2. In respect of four offences, the victim is his mother Jolene Powery: -

10  
11 1. Indictment 4 of 2019 – Causing Grievous Harm with Intent contrary to s.203 of the **Penal**  
12 **Code** (2018 Revision) committed between the 12<sup>th</sup> and 13<sup>th</sup> day of December 2018.

13  
14 2. Charge 02595/2018 – (1) Assault Occasioning Actual Bodily Harm contrary to s.216 of  
15 the **Penal Code** (2018 Revision) committed on the 8<sup>th</sup> November 2018.

16  
17 3. Charge 02595/2018 – (2) Causing Fear/ Provocation of Violence contrary to s.88 of the  
18 **Penal Code** (2018 Revision) committed on the 24<sup>th</sup> November 2018.

19  
20 4. Charge 02595/2018 – (3) Common Assault contrary to s.215 of the **Penal Code** (2018  
21 Revision) committed on the 24<sup>th</sup> November 2018

22  
23 3. The other seven offences are: -

24  
25 5. Charge 1670/2018 – (1) - Taking and Driving away a Conveyance without the Owner's  
26 Consent contrary to s.90(1) of the **Traffic Act** 2011.

27  
28 6. Charge 1670/2018 – (2) - Taking and Driving away a Conveyance without the Owner's  
29 Consent contrary to s.90(1) of the **Traffic Act** 2011.

30  
31 7. Charge 1670/2018 - (3) - Driving Without Insurance contrary to s.3(2) of the **Vehicle**  
32 **Insurance (Third Party Risks) Act** (2012 Revision) as read with s.3(1).

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<sup>1</sup> Grand Court Ind. 100 /2017 and 12 &19/2018- Unreported Judgment dated 29<sup>th</sup> March 2019



1  
2 8. Charge 1670/2018 - (4) - Driving Without Insurance contrary to s.3(2) of the **Vehicle**  
3 **Insurance (Third Party Risks) Act** (2012 Revision) as read with s.3(1).

4  
5 9. Charge 01673/2018 - (1) - Theft contrary to s.241 of the **Penal Code** (2018 Revision)  
6 committed on the 31<sup>st</sup> July 2018.

7  
8 10. Charge 01673/2018 - (2) - Theft contrary to s.241 of the **Penal Code** (2018 Revision)  
9 committed on the 31<sup>st</sup> July 2018.

10  
11 11. Charge 00155/2019 - Theft contrary to s.241 of the **Penal Code** (2018 Revision) committed  
12 on the 31<sup>st</sup> July 2018.

13  
14 **CASE HISTORY**

15  
16 4. Indictment 4 of 2019 charged the defendant with the offence of Attempted Murder. On the 31<sup>st</sup>  
17 May 2019 the defendant entered a plea to the lesser offence of Causing Grievous Bodily Harm  
18 with Intent contrary to s.203 of the **Penal Code** (2018 Revision).

19  
20 5. This case has had a long history as set out in the detailed chronology provided by the prosecution.  
21 The primary reason for the delay between the date of the plea to this Indictment and the sentence  
22 hearing is the obtaining of full and detailed psychiatric reports including a final report from a  
23 private consultant psychiatrist in respect of the defendant's mental state.

24  
25 6. On the 24<sup>th</sup> November 2018, the offence charged in 0295/18, the Assault Causing Actual Bodily  
26 Harm of Jolene Powery was committed. On the 10<sup>th</sup> December 2018 the defendant was bailed  
27 for that offence. As a condition of his bail, he was not to attend the victim's residence and not to  
28 have any contact, direct or indirect, with her.

29  
30 7. On the 13<sup>th</sup> December 2018 the offence on Indictment 4/2019 was committed and the defendant  
31 was remanded in custody.

32  
33 8. On the 17<sup>th</sup> December 2018, a psychological report from Dr. Clement Von Kirchenheim was  
34 provided. The case was first mentioned before the Grand Court on the 25<sup>th</sup> January 2019.



- 1
- 2 9. On the 14<sup>th</sup> February 2019, the defence made written representation to the prosecution offering
- 3 the plea to the lesser offence of Causing Grievous Bodily Harm with Intent.
- 4
- 5 10. On the 11<sup>th</sup> March 2019 a psychiatric report was provided by Dr. Arline McGill.
- 6
- 7 11. On the 22<sup>nd</sup> March 2019 the defendant was arraigned on the Indictment. He pleaded not guilty to
- 8 Attempted Murder but guilty with an explanation to Wounding with Intent. The prosecution
- 9 declined to accept this plea.
- 10
- 11 12. On the 31<sup>st</sup> May 2019, the defendant was re-arraigned on an amended Indictment to which was
- 12 added the lesser offence to which he pleaded.
- 13
- 14 13. On the 11<sup>th</sup> February 2020, a medical report was obtained from Dr. Omotayo Bernard.
- 15
- 16 14. On the 9<sup>th</sup> July 2020, the defendant was convicted in the Summary Court following a trial of
- 17 charge 02595/2018.
- 18
- 19 15. On the 7<sup>th</sup> September 2020, an updated psychiatric report was provided by Dr. McGill.
- 20
- 21 16. On the 30<sup>th</sup> October 2020, the Grand Court ordered an updated psychiatric report. Between
- 22 January to March 2021, there was a change of attorneys and consideration as to whether an
- 23 application to vacate the guilty plea would be made.
- 24
- 25 17. On the 28<sup>th</sup> April 2021, the Grand Court expressed concern as to the history of the case and the
- 26 fact that the psychiatric reports received did not specifically address certain issues. The Court
- 27 ordered a new psychiatric report from a private psychiatrist to address the following: -
- 28
- 29 i. Diagnosis.
- 30 ii. Culpability for the offence or likely culpability.
- 31 iii. Dangerousness.
- 32 iv. Treatment availability in this jurisdiction.
- 33
- 34



1 **THE PARTICULARS AND FACTS**

2  
3 18. The prosecution has provided summaries of facts in respect of each offence. These are not  
4 disputed by the defence.

5  
6 **CHARGES 02595/2018 - ASSAULT ABH, COMMON ASSAULT, FEAR/PROVOCATION OF VIOLENCE**

7  
8 19. The statements and particulars of these offences are as follows:

9  
10 i) **Charge 02595/2028 – (1)** Assault Occasioning Actual Bodily Harm contrary to  
11 s.216 of the *Penal Code* (2018 Revision).

12  
13 The particulars of the offence of Assault Occasioning Actual Bodily Harm are that  
14 he on the 8<sup>th</sup> November 2018 at #234 North West Point Road, West Bay, Grand  
15 Cayman, Cayman Islands unlawfully assaulted Jolene Powery thereby causing her  
16 actual bodily harm.

17  
18 ii) **Charge 02595/2028 – (2)** - Causing Fear, Provocation of Violence contrary to s.88  
19 of the *Penal Code* (2018 Revision)

20  
21 The particulars of the offence of Causing Fear, Provocation of Violence are that  
22 he on or between 8<sup>th</sup> November 2018 and 24<sup>th</sup> November 2018, at #234 North West  
23 Point Road, West Bay, Grand Cayman, Cayman Islands, used towards Jolene  
24 Powery threatening, abusive or insulting words or behaviour with intent to cause  
25 Jolene Powery to believe that immediate unlawful violence would be used against  
26 her.

27  
28 iii) **Charge 02595/2028 – (3)** Common Assault, contrary to s.215 of the *Penal Code*  
29 (2018 Revision).

30  
31 The particulars of the offence of Common Assault are that he on the 24<sup>th</sup> November  
32 2018, at #234 North West Point Road, West Bay, Grand Cayman, Cayman Islands,  
33 unlawfully assaulted Jolene Powery.



1 **CHARGES 02595/2018 – (1) TO (3)**  
2

3 20. At the time of the offences in November 2018, Ms. Powery was 57 years old. She owned a two  
4 bedroom house at North West Point Road in West Bay. She became ill with cancer and as a  
5 result she added the defendant's name to the title of the property.  
6

7 21. The house was divided internally to create a bedroom rental unit. It was rented to a couple. On  
8 the 24<sup>th</sup> November 2018, the police were called to the house in respect of a report of an assault.  
9

10 22. Upon attending the house, the defendant was present and appeared agitated. He complained  
11 about rental payments and that he wanted the tenants removed from the property as they had  
12 refused to sign a lease agreement.  
13

14 23. Ms. Powery told the police that she had received the rent money from the tenants and had used  
15 it to pay the mortgage. When she said this, the defendant became aggressive towards her and  
16 said, "*you take this for a joke*". Ms. Powery said nothing. While speaking with the tenants, one  
17 of them reported that the defendant had assaulted his mother in the past and had assaulted her  
18 that morning. It was then that the police noted that Ms. Powery had a large scratch running down  
19 the left side of her face. She refused to answer the police question as to how she received the  
20 scratch. A short time later she told the officers silently that she was afraid of the defendant.  
21

22 24. When she left the house to attend the grocery store, the police attended the store and spoke to  
23 her. She was tearful and shaking as she expressed concerns about the defendant. She confirmed  
24 that the scratch to her face had been caused by the defendant that morning. This is the factual  
25 basis for the charge of **Common Assault**.  
26

27 25. She also reported that about a month before, the defendant had punched her in the eye, causing  
28 it to become black and blue. This is the factual basis for the charge of **Assault Occasioning**  
29 **Actual Bodily Harm**. She said that she did not report the matter to the police at the time as she  
30 was afraid of her son. She provided a statement to the police on the 25<sup>th</sup> November 2018, in which  
31 she confirmed the details of the assault upon her which had taken place earlier that morning and  
32 stated: -  
33

1                    *“At the moment I am living in agony and tremendous fear for my life because of my son*  
2                    *Jeffrey who always mentally and physically abuses me. I am in need of help for my safety*  
3                    *because when I am at home, I am unable to sleep comfortably because my room does not*  
4                    *have a lock to the door and I am not sure what he will do to me.*



5  
6                    *Jeffrey has a bad temper and because of that I am fearful for my life.*

7  
8                    *I am now living in fear of his constant physical abuse towards me. I don't want to go to*  
9                    *court because I am fearful for my life. I am however asking for you to help me and to keep*  
10                    *him in prison.”*

11  
12                    26.        The defendant was arrested and interviewed under caution. He denied assaulting his mother and  
13                    denied speaking to her in a disrespectful or aggressive manner. On his account she was  
14                    conspiring against him and the injury to her face was self-inflicted.

15  
16                    27.        The defendant pleaded not guilty to all the charges.

17  
18                    28.        At the trial in the Summary Court, one of the tenants gave evidence that he had seen the injury  
19                    and he corroborated the victim's account. The statement of the victim was admitted under s.33  
20                    of the *Evidence Act* on the basis that the victim was then medically incapable of giving evidence  
21                    as a result of the further injuries caused to her during the incident giving rise to Indictment 4/2019.

22  
23                    **INDICTMENT 4 OF 2019 - CAUSING GRIEVOUS BODILY HARM WITH INTENT**

24  
25                    29.        The particulars of the offence of **Causing Grievous Bodily Harm with Intent** are that he  
26                    between the 12<sup>th</sup> and 13<sup>th</sup> day of December 2018 in the jurisdiction of the Cayman Islands caused  
27                    grievous bodily harm to Jolene Powery with intent to do her grievous bodily harm. The maximum  
28                    penalty is life imprisonment.

29  
30                    30.        The evidence in respect of this offending comes primarily from a tenant of the victim (JS).

31  
32                    31.        JS stated on the 11<sup>th</sup> December 2018, the day before the offence, the defendant took the same bus  
33                    with her into George Town. He told her that he was on the mortgage to the residence and that



1 she should pay him the rent. She responded that she had signed a contract with his mother and  
2 that she would have to speak to her about it.

3  
4 32. Later that evening whilst all three of them were at the house, the victim told her in a clandestine  
5 manner that she was to pay the rent to her. The tenant paid \$313.00 to the victim.

6  
7 33. On the evening of the 12<sup>th</sup> December 2018, JS heard the defendant arrive home at 9:00pm. She  
8 had a conversation with him outside the residence. She describes him as talking nonsense but  
9 calm. He went inside the house at around 11:30pm. At about midnight, JS heard arguing coming  
10 from the part of the house occupied by the defendant and the victim.

11  
12 34. She heard the defendant yelling at the victim to sit down and the victim saying: -

13  
14 *“Jeffrey no, Jeffrey no, please I don’t want you to go to prison”.*

15  
16 35. JS became concerned that the defendant was hurting the victim. As a result, she sent a message  
17 to a friend asking her to call the police as she did not have a phone.

18  
19 36. In the message she said: -

20  
21 *“Jeffrey is threatening/abusing the mum. He has been ordering her to stand up, accusing*  
22 *her of taking something from her. She is pleading, god Jeffrey, please...I hear tumult like*  
23 *he is pushing her in the ground. I feel sorry for her. I can hear what he says to her, he is*  
24 *a demon very abusive.*

25  
26 *Earlier he came sat down with me when I had a cigarette n start talking about how he is a*  
27 *robot, half human, he has been to the moon n mars etc. he is a lunatic.*

28  
29 *Sharon, he has been beating her. I went out to their house to see if she is ok. He has red*  
30 *bruise[s] on his body. He is screaming to me about money. Call police.”*

31  
32 37. Her friend did not receive the message and so the police were not called.



- 1 38. After sending the message JS could hear arguing between the defendant and the victim over  
2 money. Thereafter JS heard banging noises and severe thumps. It was then quiet. This was about  
3 30-40 minutes after the argument had begun.
- 4
- 5 39. JS tried to find out what was going on. She went outside to try to hear more clearly and looked  
6 in the window, but it was dark. As she was returning inside to her own part of the house the  
7 defendant opened the back door of the house and asked if she was playing cat and mouse. JS  
8 describes his tone of voice as vicious and aggressive. She asked him what all the noise was about  
9 and what was going on. He did not reply. She asked him if his mother was okay. He did not  
10 reply. He asked her if she had given his mother any money earlier in the day and kept on asking  
11 whether she had paid his mother \$500.00. He reminded her that on the bus the day before, he  
12 had told her that the rent was to be paid to him. JS tried to change the subject. She went to the  
13 door of the residence and began to call out for the victim, but she received no answer.
- 14
- 15 40. The defendant's father stated that at about 11:00am on the 13<sup>th</sup> December 2018, the defendant  
16 called him to ask what time he was coming to town. At 2:30pm that day the defendant went to  
17 his father's house, got into his father's van and ate some food. He told his father that he wanted  
18 to get his finances and mortgage in order and had been looking for a job. At his request his father  
19 drove him to the Credit Union, a Bank at Grand Harbour and to the George Town Library so that  
20 he could use a computer to update his resume. His father left him at the Library shortly after  
21 5:00pm. His father states that he appeared "fine and normal."
- 22
- 23 41. At 6:04pm, JS contacted his father about her concerns as to the defendant causing harm to the  
24 victim the night before. This led his father to call IE to do a welfare check on the victim. IE  
25 contacted the police.
- 26
- 27 42. The police arrived at the premises at 7:00pm that day. The house was in darkness and there was  
28 no answer at the door. When the police entered, they found the victim lying face down on the  
29 bed in a pool of blood. Some of the blood had dried indicating that she had been in the position  
30 for some time. She was unconscious and wearing only a bra. There was blood oozing from the  
31 back of her head and mouth and bruising to the eyes, face, upper back, hair and right forearm.
- 32
- 33 43. She had last been seen at 7:50pm on the 12<sup>th</sup> December 2018 when she had been dropped at the  
34 West Bay Beach by JS and a friend.



- 1
- 2 44. IE gave a statement to the police in which she stated that the victim had been with her on the
- 3 evening of 12<sup>th</sup> December 2018 and left her home. She later called the victim's home to speak to
- 4 the victim. The defendant answered the phone and told her that the victim was not at home. Upon
- 5 her request, the defendant agreed to pass on a message asking that the victim contact IE. When
- 6 IE did not receive a call from the victim by 10:00am the following morning, IE attempted to call
- 7 the victim a second time. She again spoke to the defendant who said that the victim had arrived
- 8 home very late last night and that he did not speak to her. He again promised to deliver a message
- 9 to the victim to call IE.
- 10
- 11 45. The house and the scene were forensically processed. There was evidence of attempts to clean
- 12 up the blood and an indication that the victim had likely been moved onto the bed. There was
- 13 blood in various areas of the bed and in the room.
- 14
- 15 46. A pair of men's shorts was recovered which when forensically examined had the DNA of the
- 16 defendant and DNA from the blood of the victim on the front of the shorts.
- 17
- 18 47. The defendant was arrested and interviewed under caution in the presence of his attorney. He
- 19 exercised his legal right in response to all questions asked of him save that he denied taking drugs
- 20 and said that he was not on any medication for his mental health and was mentally sound.
- 21
- 22 48. A subsequent investigation conducted by the police provided evidence that at 8:22pm on the 13<sup>th</sup>
- 23 December 2018, the defendant went to the house of a friend and asked if he could stay there. He
- 24 told the friend he had been "locked up for a while" and was bailed and one of the conditions was
- 25 that he had to stay with a friend in Prospect and not at his mother's house. He said that his mother
- 26 had called the police on him and reported that he had injured her, but he did not know how she
- 27 had been injured. He told the friend the police had come to the residence, and he ran because he
- 28 was not supposed to be there. The friend refused to let him stay and the defendant left.
- 29
- 30 49. The Police took a statement from a cousin of the victim. He reported that the victim had confided
- 31 in him that the defendant "gets up in the night and tears off all of her clothes looking for money
- 32 and starts slapping her up". The victim had told him that if she collects the rent money it is a
- 33 problem, and the defendant beats her for it. She did not want to report the assaults to the police
- 34 because he is her only son, she loved him and did not want him to get into any trouble. The

1 cousin also reported witnessing an incident with the defendant and the victim in the victim's  
2 residence shortly before 13<sup>th</sup> December when he saw the defendant grab the victim by the front  
3 of her blouse and "box her in her face". He intervened and hit the defendant who immediately  
4 fled.



## 6 INJURIES OF THE VICTIM

7  
8 50. After being found by the Police on the 13<sup>th</sup> December 2018, the victim was transported to the  
9 George Town Hospital. On arrival, she was unresponsive and in a critical condition. This  
10 condition is summarised by the prosecution as follows: -

11  
12 *"20. Contusions were noted to both eyes and her right eye was swollen shut. She had*  
13 *several bone fractures in her face including a broken nose and fractures around her eyes.*  
14 *She was diagnosed with a traumatic brain injury and skull fracture that included a large*  
15 *left frontal lobe haemorrhage and contusion with midline shift in her brain as well as a*  
16 *subarachnoid haemorrhage in the right and left frontal region and left temporal region.*

17  
18 *21. She was intubated and underwent immediate emergency surgery to relieve the areas of*  
19 *bleeding and pressure on the brain. This included removal of parts of her brain in a*  
20 *procedure that included a left frontal craniotomy and partial frontal lobectomy as well as*  
21 *the evacuation of a left frontal subdural hematoma and placement of a pressure monitor.*  
22 *The victim was admitted to the critical care unit following surgery where she remained in*  
23 *a coma for several days. She underwent a number of subsequent surgeries to address the*  
24 *significant injuries to her brain.*

25  
26 *22. In the medial records obtained by the police, her injuries were described as "life*  
27 *threatening". For a period of time it was unclear if she would survive."*

28  
29 51. The attending physician, Dr James Akinwunmi provided a statement dated 3<sup>rd</sup> November 2019.  
30 He states that at the time of her admission the victim was in a coma and required emergency  
31 surgery to treat the traumatic brain injury sustained. This consisted of cerebral (brain) contusion,  
32 a subdural hematoma (blood clot) and cerebral swelling. She was transferred to Miami, Florida  
33 for neurological rehabilitation. He is of the view that she has permanent brain damage with  
34 resultant secondary spastic weakness on her right side. She is not likely to recover fully and is



1 likely not to live an independent existence. He also said that her short-term progress was good  
2 in that she is not likely to die from this injury in the short term. Both her long and short term  
3 memory are affected and this is likely to be permanent, particularly her short term memory. He  
4 described the injuries as serious and consistent with infliction by trauma.

5  
6 52. On the 28<sup>th</sup> January 2020, Dr. Eryka Simmonds, Clinical Head of Department provided a report  
7 in which she stated that Ms. Powery has traumatic brain injury (TBI) resulting from an attack on  
8 December 13<sup>th</sup>, 2018. Since then, she has had multiple surgeries and had been transferred for  
9 rehabilitation overseas from April 3<sup>rd</sup> - July 2<sup>nd</sup>, 2019. She has been bedridden since that time  
10 and is totally dependent for activities of daily living. Ms. Powery had been discharged from  
11 Physiotherapy Services due to the permanent nature of her condition.

12  
13 53. Dr. Imilla Sedano-Barredo, of the Health Services Authority provided updates as to the victim's  
14 condition on 12<sup>th</sup> November 2020 and 10<sup>th</sup> May 2023. The essence of these updates is the same.  
15 There is no change to the victim's condition since the report in January 2020. The victim  
16 continues to be bedridden requiring physical assistance to perform all activities of daily living  
17 such as bathing and grooming, toileting, feeding, dressing and undressing, continence and  
18 transfer. Ms. Powery is totally dependent in all assessed activities of daily living. She is able to  
19 communicate and follows a very basic conversation with delayed verbal responses and  
20 concentration. She is disorientated in time, but she is able to state her location.

21  
22 54. In summary, the medical evidence indicates that the victim will require 24-hour nursing care for  
23 the rest of her life and will never be able to live an independent existence.

24  
25 **CHARGES 1670/2018 - TAKING AND DRIVING AWAY A CONVEYANCE/DRIVING WITHOUT INSURANCE**

26  
27 55. On the 9<sup>th</sup> August 2018, the defendant entered pleas of guilty to four charges (1670/2018 (1) to  
28 (4) in the Summary Court. There are two offences of Taking and Driving Away a Conveyance  
29 without the Owner's Consent contrary to s.90(1) of the *Traffic Act* 2011.

30  
31 56. The particulars of Charge 1670/2018 – (1) are that he on the 29<sup>th</sup> July 2018 in Grand Cayman did  
32 take and drive away a Toyota Corolla motor vehicle registration number 109 536, the property  
33 of Marshall's Rent A Car without having the consent of the said owner or other lawful authority.



1 57. The particulars of Charge 1670/2018 – (2) are that he on the 30<sup>th</sup> day of July 2018, in Grand  
2 Cayman did take and drive away a Honda Fit motor vehicle registration number 169 808, the  
3 property of Andre Gooden without having the consent of the said owner or other lawful authority.  
4

5 58. The maximum sentence for this offence is a fine of \$2,500.00 or to imprisonment for six months  
6 or both.  
7

8 59. There are two corresponding charges of Driving Without Insurance contrary to s.3(2) of the  
9 ***Vehicle Insurance (Third Party Risks) Act*** (2012 Revision) as read with s.3(1).  
10

11 60. The particulars of Charge 01670/2028 – 3, are that he on the 29<sup>th</sup> day of July 2018 did unlawfully  
12 drive Toyota Corolla motor vehicle registration number 109 536, in Grand Cayman, without there  
13 being in force in relation to the use of the vehicle by Jeffrey Powery, a policy of insurance or  
14 such security in respect of third-party risks as complies with the requirements of the law  
15 hereinbefore cited.  
16

17 61. The particulars of Charge 01670/2028 – 4, are that he on the 30<sup>th</sup> July 2018, did unlawfully drive  
18 Honda Fit motor vehicle registration number 169 808, in Grand Cayman, without there being in  
19 force in relation to the use of the vehicle by Jeffrey Powery, a policy of insurance or such security  
20 in respect of third-party risks as complies with the requirements of the law hereinbefore cited.  
21

22 62. The maximum sentence is a fine of \$2,000.00 and imprisonment for three months.  
23 Disqualification for one year or more is mandatory unless the Court considers that there are  
24 special reasons not to do so.  
25

26 63. The facts as summarised by the prosecution are that:  
27

28 “On 29<sup>th</sup> July 2018 Kevin Ebanks arrived home in a rental car provided by his insurance  
29 company after his own vehicle had been involved in an accident. When he arrived home,  
30 he saw the defendant in his yard. Mr. Ebanks had known Mr. Powery for about 5 years.  
31 The complainant got out the car and asked him to wait while he went inside to collect his  
32 son. He left the keys in the ignition. When he returned, the car was gone. He saw Mr.  
33 Powery driving the car the following day. Mr. Powery did not have permission to take and  
34 drive the vehicle and was not insured to do so.



1  
2 On 30<sup>th</sup> July 2018 Andre Gooden arrived home at 4:30pm driving her silver Honda Fit.  
3 She parked it in her yard and left the key in the vehicle. She left the following morning at  
4 7:00am and the car was still there. By the time she returned at 5:30pm, it was gone. She  
5 checked CCTV and saw the defendant (who was known to her) entering her yard at 7:15am.  
6 He stayed there for around an hour, smoking wandering around and at one stage walking  
7 onto the porch. He drove off in the vehicle at 8:15am. Mr. Powery did not have permission  
8 to take and drive the vehicle and was not insured to do so.”  
9

#### 10 **CHARGES 1673/2018 –1 AND 2 AND 155/2019 - THEFT**

11  
12 64. The particulars of the Theft Charge **1673/2018 – (1)** are that he on the 31<sup>st</sup> day of July 2018, in  
13 the Anchors store, 164 Yacht Drive, Grand Cayman, Cayman Islands, stole a bottle of Fantini  
14 Wine, valued at \$12.99 CI belonging to the Anchors store.  
15

16 65. The particulars of the Theft Charge **1673/2018 – (2)** are that he on the 31<sup>st</sup> day of July 2018, in  
17 the Tortuga store, North West Point Road, West Bay, Grand Cayman, Cayman Islands, stole a  
18 bottle of Appleton Jamaica Rum, valued approximately \$20.00 CI belonging to the Tortuga store.  
19

20 66. The particulars of the Theft Charge **155/2019** are that he on the 31<sup>st</sup> July 2018 at the Liquor 4  
21 Less on Hirst Road, Bodden Town, stole a six-pack of Heineken beer.  
22

23 67. In each case the facts are as stated in the particulars. The maximum penalty is seven years  
24 imprisonment.  
25

#### 26 **ANTECEDENT HISTORY**

27  
28 68. The defendant has an antecedent history of 14 previous convictions, nine of which are spent. In  
29 2016 he was convicted for the offences of damage to property, two offences of disorderly  
30 conduct, threats to kill and common assault. He was fined for these offences. The Court has been  
31 advised that the latter offences are in relation to a previous partner of his.  
32  
33  
34



1 **SOCIAL INQUIRY REPORT**

2  
3 69. A Social Inquiry Report dated 3<sup>rd</sup> September 2020 (“SIR”) was provided to the Summary Court  
4 by the Department of Community Rehabilitation. The Court has read this report in its entirety  
5 and takes into account everything said therein in favour of the defendant. The defendant was  
6 then 33 years old. He is married. He has one child of teenage years who is resident overseas.

7  
8 70. His background history shows some childhood issues with support and care from one parent more  
9 than the other. He himself described having a supportive relationship with his father.

10  
11 71. He graduated high school and was gainfully employed between 2004 and 2018 when he resigned  
12 from his last job. He said that this was due to undue stress at work.

13  
14 72. Under attitude towards the offence of assault causing actual bodily harm on the 8<sup>th</sup> November  
15 2018, he said that at the time he was frustrated, stressed and under the influence of alcohol. He  
16 stated that his mother had leased his apartment while he was on remand and had done so without  
17 a security deposit and a signed tenancy agreement. He described the conflict with his mother  
18 about it and physically assaulting her for which he expressed remorse. He reported issues with  
19 alcohol abuse over the years and that whenever he consumed alcohol, he would become  
20 aggressive.

21  
22 73. He was assessed using the LS/CMI Risk/Need assessment tool. His overall risk of re-offending  
23 was assessed as very high.

24  
25 **PSYCHOLOGICAL REPORT**

26  
27 74. Dr. Clement Von Kirchenheim provided a psychological report dated the 17<sup>th</sup> December 2018.  
28 The doctor noted that recurrent periods of alcohol abuse appear to be a major problem for the  
29 defendant. His moody and impulsive behaviour becomes intensified when he is drinking heavily.  
30 Chronic levels of anger and irritability likely become aggravated and then lead to brutality  
31 towards others. Doctor stated: -

32  
33 *“Although he may subsequently express genuine feelings of guilt and contrition, the*  
34 *destructive and injurious effects of his behaviour are likely to persist”.*



1  
2 75. The conclusion was that the major complaints and behaviours parallel clinical syndrome  
3 diagnoses listed in delusional disorder and alcohol use disorder. There were also indications of  
4 narcissistic personality disorder and paranoid personality disorder.  
5

## 6 **PSYCHIATRIC REPORTS**

7

8 76. Dr. Arline McGill provided a report dated 11<sup>th</sup> March 2019. The doctor noted that the defendant  
9 has a family history of affective and schizoaffective disorders. The doctor stated that screening  
10 for psychiatric illness did not suggest any anxiety mood disorder or tendencies to obsessive  
11 compulsive disorder. There was no indication of psychosis or attention deficit disorder. The  
12 defendant was stated to have an extremely high estimation of self. The conclusion was that in her  
13 professional impression the defendant did not suffer from any major psychiatric disorder.  
14 However, there was suggestion of significant personality disorder and possibly a neuro  
15 developmental or other brain disorder.  
16

17 77. Dr. Omotayo Bernard provided a psychiatric report dated 11<sup>th</sup> February 2020. The doctor stated  
18 that the defendant has been treated at the prison since 15<sup>th</sup> May 2019. His diagnosis includes  
19 delusional and antisocial personality disorders. The symptoms include paranoid and grandiose  
20 delusions which influence his behaviour and result in him having impaired judgment.  
21

22 78. Dr. McGill provided a further psychiatric report dated 7<sup>th</sup> September 2020. The doctor repeated  
23 the findings on screening as before and added that the defendant's score on screening for self-  
24 esteem indicated that he had an extremely high estimation of self which is typical of the  
25 narcissistic personality disorder. At that time the defendant was monitored on medication and  
26 was psychologically stable.  
27

28 79. The doctor's conclusion or impression is that he suffers from a moderate to severe narcissistic  
29 personality disorder and severe basic mistrust leading to paranoid thoughts and behaviours which  
30 border on delusions. The doctor also stated that this disorder led to short periods of psychosis and  
31 a grandiose sense of self, mimicking manic episodes, tendencies to rage and jealousy and  
32 unrealistic expectations of himself. Her opinion is that he would require long term  
33 psychotherapy.  
34

1 80. Dr. Susanne Neita of Behavioral Health Associates Cayman, a private entity has provided a  
2 psychiatric report dated 12<sup>th</sup> April 2023. On the overall risk index, the global estimate of  
3 recidivism, the defendant presented a relatively low risk. His overall risk of violence was rated  
4 as moderate to high and a more detailed risk assessment was recommended.  
5

6 81. The diagnostic impression included disorders from the use of alcohol, opioid, cannabis and  
7 sedatives. The main finding is that he meets the diagnostic criteria for schizoaffective disorder,  
8 bipolar type, which is a serious and persistent mental illness. The doctor's opinion is that this was  
9 present in him but not diagnosed at the time of the offending in 2018. He had no other psychiatric  
10 diagnosis at the time.

11  
12 82. The disorder is described as follows:-  
13



14 *“a chronic psychotic and mood disorder in which the symptoms of schizophrenia co-occur*  
15 *with symptoms of bipolar disorder which involves episodes of manic delusions,*  
16 *hallucinations, diminished emotional expression, disorganized speech and disorganized*  
17 *behavior. Similar to schizophrenia, hostility and aggression can be associated with*  
18 *schizoaffective disorder although spontaneous assault is uncommon.”*  
19

20 83. Dr. Neita stated that his symptoms are likely to have started five to ten years before and increased  
21 in severity as it remained untreated and was made worse by contributing stressors of alcohol,  
22 opioid, and dependence on other substances.  
23

24 84. The doctor's opinion is that he experienced a depressive episode in May 2018 when he resigned  
25 abruptly from his long-term job. There was further financial stress. By June 2018 his mood  
26 cycled into a manic episode and the offences of theft and taking motor vehicles. Doctor states  
27 that the statement of the tenant JS describing the details of what occurred on the 12<sup>th</sup> December  
28 2018 provides clear evidence of grossly delusional thoughts of a grandiose and bizarre nature  
29 which is consistent with a florid case of schizoaffective disorder, bipolar type manic episode. The  
30 defendant was also on his own account under the influence of alcohol and other substances which  
31 would have had a disinhibiting effect.  
32



1 85. The doctor's opinion is that the defendant was suffering from an abnormality of mental  
2 functioning caused by the disorder which explains his acts or omissions in the offences. Doctor  
3 states: -

4  
5 *"It is my clinical opinion, with a reasonable degree of medical certainty, that Mr. Jeffrey*  
6 *Powery was suffering from an abnormality of mental functioning caused by Schizoaffective*  
7 *Disorder – Bipolar Type, which provides an explanation for the defendant's acts or*  
8 *omission in the offences, which may have substantially impaired his ability to form a*  
9 *rational judgment, exercise rational judgment, and understand the nature and*  
10 *consequences of his conduct at the time of the offences. Schizoaffective disorder caused*  
11 *him to behave in a disinhibited way and this was compounded by disinhibition due to*  
12 *substance abuse at the time of the offences."*

13  
14 86. According to the doctor, the defendant's mental status and global functions have improved  
15 significantly while he has been in custody and on treatment. Her opinion is that he can be  
16 managed in prison. At the end of any custodial sentence, he can be managed in the community  
17 under an Assisted Outpatient Treatment Order. Presently there is no forensic treatment facility in  
18 the Cayman Islands.

19  
20 87. Under risk of harm in the future, the doctor notes that he lacks insight and motivation to continue  
21 treatment which is an essential factor which increases his risk to the community. His risk will  
22 increase if he resumes substance abuse. The disorder will reoccur if he ceases treatment, and he  
23 is at moderate to high risk of future violence if he relapses.

24  
25 88. Based upon the interview with him, doctor's view is that he does not truly believe that he has a  
26 mental illness, and he indicated that he did not need to continue treatment indefinitely. The doctor  
27 concludes that he will need close monitoring and team management for the foreseeable future.

28  
29 **THE CAYMAN ISLANDS SENTENCING GUIDELINES**

30  
31 89. Both Counsel referred the Court to the *Cayman Islands Sentencing Guidelines* in particular for  
32 the offence of Causing Grievous Bodily Harm with Intent. The prosecution and the defence  
33 accept that the offending in respect of the most serious offence, that being Indictment 4 of 2019  
34 is at the level of Greater Harm. This is on the basis that the injuries which were caused to the



1 victim are serious in the context of the offence. It is accepted that the victim sustained a traumatic  
2 brain injury which is permanent and life changing.

3  
4 90. The prosecution submits and this Court accepts that it is difficult to conceive of a more serious  
5 injury falling short of death. The relevant authorities are *R. v. Smith, (Grant Christopher)*<sup>2</sup>, *R.*  
6 *v. Christopher John Duff*<sup>3</sup> and *R. v. Xue*<sup>4</sup>.

7  
8 91. In the Court's view applying the guidance from the cited cases, the harm in this case was  
9 significantly above the serious level of harm which is normal or par for such an offence.

10  
11 92. The prosecution submits that this is a case of Higher Culpability because the victim was  
12 particularly vulnerable due to age and personal characteristics or circumstances and that this was  
13 a prolonged or repeated assault. The defence accept the latter basis but disagree that the victim  
14 was particularly vulnerable due to age or other circumstances.

15  
16 93. The Court accepts that this was a prolonged or repeated assault. This is evident from the statement  
17 of the tenant and the nature of the injuries sustained by the victim. As to vulnerability, no specific  
18 vulnerabilities have been identified and her age, 57 years old, without more does not clearly fall  
19 into the category of vulnerability.

20  
21 94. The conclusion is that there being one of two factors identified in the category of High  
22 Culpability, this is a case of Greater Harm and Higher Culpability. The starting point under the  
23 *Guidelines* is 12 years custody with a range of sentence of 9 to 16 years custody.

24  
25 95. The prosecution submits that there are significant aggravating factors in this case and puts  
26 forward nine such factors. These are: -

- 27  
28 i. Previous violence or threats to the same victim as occurred in respect of Charge #2595/201.  
29  
30 ii. Attempts to dispose of or conceal evidence;  
31

---

<sup>2</sup> [2015] EWCA Crim 1482

<sup>3</sup> [2016] EWCA Crim 1404

<sup>4</sup> [2020] EWCA Crim 587



1           iii.    Failure to comply with current court orders as the offence was committed on bail, and in  
2                    breach of two bail conditions specifically designed to protect the victim;

3  
4           iv.    The presence of others, namely the tenant who heard the argument and suspected that the  
5                    victim was being harmed.

6  
7    96.    The prosecution submits that there are additional aggravating factors not set out in the specific  
8            guideline which apply to this case: -

9  
10           v.    Previous convictions (domestic violence case involving previous partner);

11  
12           vi.   This offence was committed in the domestic context (noting the guidance that applies in  
13                    the Cayman Islands);

14  
15           vii.   The defendant showed a callous disregard for the welfare of the victim, leaving her face-  
16                   down on the bed whilst he changed/removed clothes and cleaned.

17  
18           viii.   The defendant failed to seek medical attention. He frustrated attempts by the victim's  
19                   friend at welfare checks by lying to her.

20  
21           ix.    He left the victim unattended for a significant period during which time he, among other  
22                   things, ate lunch and updated his resume at the library. According to his father, he appeared  
23                   "fine and normal". He showed a casual indifference as to whether his mother lived or died.

24  
25    97.    Counsel submits that the harm in this case warrants a starting point at the top of the Category 1  
26            range and that the aggravating factors warrants a sentence before mitigation which is above that  
27            bracket.

28  
29    98.    Reliance is placed on the case of *Attorney General's Reference (R. v. Fleming)*<sup>5</sup> . In that case  
30            the Solicitor General sought leave to appeal a sentence as unduly lenient. The defendant had

---

<sup>5</sup> [ 2022] EWCA Crim 250



1           been sentenced to 14 years imprisonment with an extended license period of 4 years following  
2           his guilty plea to the offence of Causing Grievous Bodily Harm with Intent.

3  
4           99.     The defendant and the victim had been in a relationship together. She suffered from borderline  
5           personality disorder, learning difficulties and physical disabilities. She was extremely vulnerable  
6           and was cared for by a social worker. There was a history of physical abuse on her. There was  
7           evidence from the social worker of the victim crying out for pain two days before the defendant  
8           called to say that something was wrong with the victim. The injuries sustained by her in the  
9           course of the commission of the offence were as a result of repeated blunt trauma from forceful  
10          blows. They included severe brain damage with internal bleeding, multiple fractures to her face  
11          and other areas of her body and blindness to the left eye. Following extensive therapy five months  
12          after the injuries she was initially wholly dependent on others and needed full nursing care. She  
13          was able after some months to feed herself and to have limited communication with others. She  
14          remained doubly incontinent and in the long term would not be able to look after herself or walk.

15  
16          100.    The defendant had previous convictions for assault and for some minor offences. A pre-sentence  
17          report indicated that he was at a very high risk of serious harm to the victim and any other partner  
18          he might have in the future. There was no psychiatric report but there was a suggestion that he  
19          had been diagnosed with a personality disorder. The sentencing Judge concluded that it was a  
20          Category 1A case given the vulnerability of the victim and the prolonged nature of the assault.

21  
22          101.    The English Court of Appeal granted leave to appeal and held that the sentence was unduly  
23          lenient. The Court stated that the combination and nature of the culpability factors and the  
24          extreme nature of the harm suffered by the victim required the judge to move to the top of the  
25          category range before any consideration of aggravating factors. It would not be reasonable to do  
26          otherwise. Additionally, those factors were substantial. The proper sentence was one which was  
27          significantly outside the category range. The starting point identified was one of 19 years and 6  
28          months. The Court said that the *United Kingdom Sentencing Council Guidelines* contemplated  
29          a sentence outside the category range after consideration of factors increasing seriousness. It  
30          specifically referred to the list of factors as being non-exhaustive and stated that in some cases it  
31          may be appropriate to move outside the category range. The Court said: -

32  
33                    *“We agree that there were factors increasing seriousness as identified on behalf of the*  
34                    *Solicitor General. The fact that the offence occurred in a domestic context brings into play*



1            *the guideline issued in 2018, namely Overarching principles: domestic abuse. Paragraph*  
2            *7 of that guideline is as follows: "The domestic context of the offending behaviour makes*  
3            *the offending more serious because it represents a violation of the trust and security that*  
4            *normally exists between people in an intimate or family relationship. Additionally, there*  
5            *may be a continuing threat to the victim's safety, and in the worst cases a threat to their*  
6            *life or the lives of others around them." The violation of trust in this instance was*  
7            *particularly gross.*

8  
9            *We are satisfied that the combination and nature of the culpability factors and the extreme*  
10           *nature of the harm suffered by Ms Webber required the judge to move to the top of the*  
11           *category range before any consideration of factors increasing seriousness. It would not*  
12           *have been reasonable to do otherwise. That approach would not involve any departure*  
13           *from the guideline. Having reached that point the judge was obliged to give proper weight*  
14           *to the factors increasing seriousness and any mitigating factors."*

15  
16        102.    The Court noted that while this position was reached by applying the relevant **Guideline**, there  
17        will be cases where it is not in the interest of justice to remain within Guideline ranges.

18  
19           *"Cases in which injuries of the kind sustained by Ms Webber are sustained will be rare.*  
20           *The brutality of the attack required to inflict them is unusual. There will be cases where it*  
21           *is not in the interests of justice to remain within the relevant sentencing range as defined*  
22           *by a guideline. Were that not the case Section 59 would be redundant. There must be rare*  
23           *cases where (a) the interests of justice require departure from the guideline and (b) a*  
24           *failure to do so will lead to an unduly lenient sentence. Given the approach taken by the*  
25           *Solicitor General and in view of the outcome of a conventional application of the guideline,*  
26           *it is unnecessary for us to determine whether this is one of those cases. Had we been*  
27           *required to decide the issue, our preliminary view is that, irrespective of any other*  
28           *application of the guideline, this is one of those rare cases."*

29  
30        103.    Counsel for the prosecution notes the similarities with the instant case, the history of abuse, the  
31        domestic setting of the assault, the attempt to avoid discovery, and the traumatic brain injury.

32  
33        104.    Defence Counsel submits that the case of **Fleming** is distinguishable in that it refers to an  
34        approach which is not present in the **Cayman Islands Sentencing Guidelines**. There is explicit

1 contemplation in the *United Kingdom Guidelines* of the possibility of going outside the sentence  
2 range in the *Guidelines*. Those *Guidelines* refer to the extreme nature of high culpability factors  
3 or extreme impact caused by a combination of high culpability factors as the basis for doing so.  
4 This is not a basis which is included in the *Cayman Islands Sentencing Guidelines*. Counsel  
5 also submits that even if the local *Guidelines* permit such an approach, there are factual  
6 differences between the cases which would make such an approach inapplicable. These are that:-  
7

- 8 1. None of the vulnerability factors of the victim in that case apply to the victim in the instant  
9 case. There is no evidence of extreme vulnerability in the instant case.
- 10 2. There is no history of coercive conduct in the instant case.
- 11 3. There is no history of violent injuries in the past.
- 12 4. The guilty plea in *Fleming* was entered on the day of trial.
- 13 5. In *Fleming* there was no formal psychiatric evidence as to the defendant's mental state.  
14 In this case the psychiatric condition of the defendant would reduce the impact of these  
15 matters.



#### 17 SUBMISSIONS IN MITIGATION

- 18
- 19 105. In mitigation, defence Counsel submitted that the most cogent factor is that the defendant was  
20 and continues to suffer from mental issues. Counsel's submission is that this is not only powerful  
21 mitigation but also significantly reduces his culpability for his actions and that this case may be  
22 described as nothing other than a tragedy. Counsel said that there is no reason to doubt the  
23 psychological and psychiatric reports and that these reports confirm that his behaviour leading  
24 up to the primary offence was symptomatic of worsening mental health.  
25
  - 26 106. The defendant is said to express genuine remorse and his sentiments are said to be that he still  
27 loves his mother. Counsel said that he is a very unwell man. Counsel also said that the report of  
28 Dr. Neita may provide the most assistance to the Court and submits that the application of the  
29 sentencing *Guidelines* should be viewed through the prism of the reports. Counsel noted that the  
30 pattern of escalating offending fits with the view of Dr. Neita that the defendant's symptoms were  
31 getting worse. Leaving his job, which he had for many years, is symptomatic of impulsive  
32 behaviour through to self-medicating with alcohol, the first set of offences. Counsel detailed  
33 aspects of the reports including the defendant's lack of insight into his condition.  
34

1 107. Counsel submitted that care must be taken to avoid double counting and that there may be overlap  
2 with respect to a number of the aggravating factors urged by the Prosecution. The domestic  
3 setting context also speaks to the defendant being on bail at the material time. Defence Counsel  
4 disagrees that the presence of others amounts to an aggravating factor. Counsel submitted that  
5 the tenants were in a separate part of the house and were not in fact present. Counsel said that  
6 the failure to seek medical attention would carry greater force if the defendant was not suffering  
7 from serious mental health issues.

8  
9 108. With respect to the delay, Counsel submitted that there has been significant delay while the  
10 defendant awaited the reports which has added stress.



11  
12 **MENTAL HEALTH**

13  
14 109. The *United Kingdom Sentencing Guidelines on the Sentencing of offenders with Mental*  
15 *Disorders*, provides that these guidelines apply when sentencing an offender or offenders who,  
16 at the time of the offence or at the time of sentencing, have a mental disorder or impairment such  
17 as those listed in Annex A. Culpability may be reduced if an offender was at the time of the  
18 offence suffering from an impairment or disorder or combination of both, such as those listed  
19 therein. Disorders listed in Annex A include schizophrenia and bipolar disorders. Schizoaffective  
20 illness is noted as a hybrid of schizophrenia and bipolar disorder.

21  
22 110. Under assessing culpability, the *Guidelines* further provide that the Sentencer should make an  
23 initial assessment of culpability in accordance with any relevant offence-specific guideline and,  
24 thereafter, consider whether culpability was reduced by reason of the impairment or disorder.  
25 Culpability will only be reduced if there is sufficient connection between the offender's  
26 impairment or disorder and the offending behaviour.

27  
28 111. In respect of the starting point for consideration, the *Guidelines* provide at paragraph 15, that the  
29 Courts may find that the following questions are useful but not exhaustive: -

30  
31 At the time of the offence did the offender's impairment or disorder impair his ability to  
32 exercise appropriate judgement, to make rational choices or to understand the nature and  
33 consequences of his actions?  
34



1 Did the offender's impairment or disorder cause him to behave in a disinhibited way?

2  
3 Are there other factors related to his impairment or disorder which reduce culpability?

4  
5 112. It states further that the Court will need to consider where there was self-medication which made  
6 the condition worse, whether the offender was aware that this would be the effect. There is  
7 guidance as to determining the sentence, the treatment possibilities, and the possible effects of a  
8 custodial sentence on the offender.

9  
10 113. In this case the Court has considered all the mental health reports and is satisfied that at the time  
11 of the offending the defendant's disorder impaired his ability to exercise appropriate judgement  
12 and make rational choices. The Court is also satisfied that the defendant was not aware of the  
13 effect that self-medication would have on his condition. It appears from the reports that he had  
14 no awareness of his condition.

15  
16 **THE SENTENCE**

17  
18 114. The *Cayman Islands Sentencing Guidelines* under paragraph 9 of the general guidelines places  
19 mental health under the heading of Mitigating Factors. The *Guidelines* refer to s.4 of the  
20 *Alternative Sentencing Act* 2008 and states: -

21  
22 *"Mitigating factors are those factors which reduce the seriousness of the offence or the*  
23 *culpability of the offender. They relate either to the offence itself or to the offender."*

24  
25 *Mental illness or disability of the offender is listed as a mitigating factor which may*  
26 *indicate significantly lower culpability."*

27  
28 115. In this case the United Kingdom approach would likely have considered a reduction in the level  
29 of culpability after the stage of the starting point. Were the offence to be treated as one of Lesser  
30 Culpability because of mental health, this would have resulted in a starting point of 6 years  
31 imprisonment rather than 12 years. It is proposed to follow the *Cayman Islands Guidelines* and  
32 to consider mental illness at the stage of mitigation while allowing for the same level of reduction  
33 of 6 years.



1 116. Counsel for the defence argues that in considering the aggravating factors the range of sentences  
2 set out in the *Guidelines* cannot be exceeded. There are three things of note. One is that it is  
3 understood that in the United Kingdom there is a statutory provision as to the primacy of the  
4 *Guidelines*. There is provision within those *Guidelines* for exceeding the sentence ranges in  
5 particular circumstances. The statutory position is different in the Cayman Islands. The *Cayman*  
6 *Sentencing Guidelines* are meant to provide a framework for the proper exercise of judicial  
7 discretion in order to promote and ensure a consistency of approach to sentencing. They also  
8 reflect and acknowledge the fact that cases will vary and that there will be differences between  
9 cases.

10  
11 117. Secondly, the Appellate Court in the case of *Fleming* contemplated that there would be rare cases  
12 where the interests of justice required a departure from the *Guidelines* where a failure to do so  
13 would lead to an unduly lenient sentence.

14  
15 118. Thirdly, in the Cayman Islands s.4 of the *Alternative Sentencing Act* (2008) specifically states  
16 that the potential aggravating factors listed are not exhaustive. The *Guidelines* state: -

17  
18 ***“Aggravating Factors***

19  
20 *In sentencing an offender, the Court should take into account aggravating factors relevant*  
21 *to both the offence itself and the offender.*

22  
23 *Section 4 of the Alternative Sentencing Law sets out a number of potential aggravating*  
24 *factors to be taken into account, where relevant, by the sentencer. However, the statutory*  
25 *provision expressly states that it does not purport to set out an exhaustive list of*  
26 *aggravating factors which by their very nature, can manifest in as many varied forms as*  
27 *there are variations in offender and modes of committing offences.*

28  
29 *The list below illustrates a number of aggravating features (including those in the law but*  
30 *also not an exhaustive list) with potential application to more than one offence or class of*  
31 *offences.”*

32  
33 119. In the Courts’ view it is equally as unjust to impose a sentence within the *Guidelines* at the lower  
34 end where an offender or offence is deserving of a lesser sentence, as it would be to impose a



1 sentence solely for the purpose of remaining within the upper end of the **Guideline** where the  
2 interest of justice requires a departure from it.

3  
4 120. The instant case is not one in the ordinary course. The seriousness of the offending means that  
5 the custody threshold is firmly passed. This was a brutal attack on the victim which has caused  
6 permanent irreversible damage to her brain. She is bedridden and totally dependent on others for  
7 support. Thus, not only is the level of harm of an extreme nature, but there are also a multiplicity  
8 of aggravating factors which increase the seriousness of the offence. These factors cannot be  
9 ignored and must be given proper weight.

10  
11 121. The starting point for a Category 1 offence of Greater Harm and Higher Culpability is 12 years.  
12 From that starting point the Court takes into account the following aggravating factors: -

- 13  
14 1. Previous violence or threats to the same victim (as reflected in case 2595/2018, (24 months).
- 15  
16 2. Attempts to dispose of or conceal evidence, (6 months).
- 17  
18 3. Failure to comply with current court orders as the offence was committed on bail, and in  
19 breach of two bail conditions specifically designed to protect the victim, (24 months).
- 20  
21 4. Previous convictions (domestic violence case involving previous partner), 12 months.
- 22  
23 5. The offence was committed in the domestic context (noting the guidance that applies in the  
24 Cayman Islands, (12 months).
- 25  
26 6. The defendant showed a callous disregard for the welfare of the victim, leaving her face-down  
27 on the bed whilst he changed/removed clothes and cleaned, (12 months).
- 28  
29 7. The defendant failed to seek medical attention for the victim, and he lied to the friend of the  
30 victim who called to check on her welfare, (12 months).
- 31  
32 8. He left the victim, his mother, unattended for a significant period during which time he, among  
33 other things, ate lunch and updated his resume at the library. According to his father, he



1 appeared “fine and normal”. The Court accepts that he showed a casual indifference as to  
2 whether his mother lived or died, (12 months).

3  
4 122. The combination of these aggravating factors serve to increase the sentence by 9 years to 21  
5 years.

6  
7 123. The submission of the defence is accepted as to the presence of others, namely the tenant. This  
8 is not treated as an aggravating factor.

9  
10 124. In mitigation the Court takes into account everything that has been said and written in the  
11 defendant’s favour. Defence Counsel submitted that the primary factor in mitigation is his mental  
12 health. This is accepted by the Court and for this factor alone there will be a reduction in the  
13 sentence of 6 years. In addition, as urged by Counsel, the Court also takes into account his  
14 remorse, personal circumstances and the fact that there has been some delay. Albeit the defendant  
15 was fully aware that a further psychiatric report was awaited, it is accepted that there would have  
16 been some stress on his part. Consequently, by reason of the totality of the additional mitigation  
17 the sentence is further reduced by one year.

18  
19 125. The total reduction is 7 years reducing the sentence to one of 14 years. The defendant is given  
20 full credit for his guilty plea of one third thus reducing the sentence to one of 9 years and 6  
21 months.

22  
23 **ASSAULT ABH, COMMON ASSAULT AND CAUSING FEAR PROVOCATION OF VIOLENCE**

24  
25 126. The prosecution submitted that the Harm for the offence of Assault ABH is likely less serious in  
26 the context of the offence and thus one of Lower Harm. It is submitted that Culpability is high  
27 on the basis that the victim was particularly vulnerable due to her age.

28  
29 127. The Court accepts the defence submission that the evidence of vulnerability due to age is not  
30 clear in this case.

31  
32 128. The conclusion is that this is a category 3 offence with a starting point of a community order and  
33 a range of sentence of a fine to 12 months custody. From this starting point the Court takes into



1 account the aggravating factors of previous convictions and the domestic violence context. These  
2 serve to increase the sentence to one of 12 months imprisonment.

3  
4 129. The mitigating factors outlined above serve to reduce this sentence to one of 8 months.

5  
6 130. For the offence of Causing Fear Provocation of Violence, the prosecution submits that the Harm  
7 is at the level of Category 1 because of the very serious distress caused to the victim and that the  
8 culpability is High due to the persistent nature of the defendant's actions. This is accepted. The  
9 victim was clearly in ongoing fear for her life. The starting point is 18 months custody with a  
10 range of sentence of 1 to 2 years.

11  
12 131. From the starting point, the aggravating factors are the domestic context and the previous  
13 convictions. The sentence is therefore increased by 6 months to 24 months. This is reduced by 4  
14 months by virtue of the mitigating factors to a sentence of 20 months.

15  
16 132. The sentence for the offence of Common Assault is one-month imprisonment.

17  
18 133. In respect of these three offences committed against the same victim on two separate occasions,  
19 it would have been proper in applying the *Guidelines* for some aspect of the sentence to run  
20 consecutively to the sentence imposed in respect of Indictment 4 of 2019. The defendant  
21 committed a similar offence of a violent nature after being arrested of the first offence. However,  
22 the Court has already considered the commission of these offences to be an aggravating factor in  
23 respect of the sentence on Indictment 4 of 2019. Care must be taken to avoid double counting  
24 and regard must be had to the principle of totality. Thus, these sentences are to run concurrently  
25 to that imposed on Indictment 4 of 2019.

26  
27 134. For the offences of Taking Motor Vehicle the sentence in each case is one month imprisonment.

28  
29 135. For the offences of Driving Without Insurance the sentence in each case is imprisonment for two  
30 weeks. The defendant is disqualified from obtaining a driver's license for two years following  
31 his release from prison.

32  
33 136. For each of the three offences of Theft the sentence is one month imprisonment. Having regard  
34 to the principle of totality and ensuring that the sentence is proportionate to the global offending,

1 all the sentences are to run concurrently to each other and to the sentence imposed on Indictment  
2 4 of 2019.

3  
4 137. The total sentence is therefore one of 9 years and 6 months. Any time served is to be deducted.  
5 While the defendant is in prison he is to continue to be treated and monitored by mental health  
6 practitioners.

7

8 **Dated this the 6<sup>th</sup> day of October 2023**

A handwritten signature in blue ink, appearing to be 'Cheryll Richards', written in a cursive style.

9

10 **The Hon. Justice Cheryll Richards KC**  
11 **Judge of the Grand Court**