



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

3 **INDICTMENT No. 68 of 2022**

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5  
6 **R**

7 **V.**

8  
9 **NICHOLAS RAMEISH NUGENT**  
10

11  
12 **Appearances:** **Ms. Shauna-Kaye James of the Office of the Director of**  
13 **Public Prosecutions for the Prosecution**

14  
15 **Mr. Crister Brady of Brady Attorneys-at-Law for the Defence**  
16

17  
18 **Before:** **The Hon. Justice Cheryl Richards KC**  
19

20 **Submissions for Sentencing:** **30<sup>th</sup> June 2023**  
21

22 **Further Submissions:** **11<sup>th</sup> July 2023**  
23

24 **Sentence Judgment:** **11<sup>th</sup> July 2023**  
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26  
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28

29 **HEADNOTE**  
30

31 *Criminal Law – Burglary contrary to s.243 of the **Penal Code** (2019 Revision) - Application of Cayman Islands*  
32 *Sentencing Guidelines where offence committed on premises is Inflicting Grievous Bodily Harm*  
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34  
35



## SENTENCE JUDGMENT

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2  
3 1. The defendant is before the Court for sentencing following his conviction after trial for one count  
4 of Burglary contrary to section 243 of the *Penal Code* (2019 Revision). The particulars are that  
5 he on the 1<sup>st</sup> day of November 2021 entered the premises of SL, namely an address in West Bay  
6 as a trespasser and having entered the premises as a trespasser inflicted on SL grievous bodily  
7 harm. The maximum sentence is fourteen years imprisonment.

8  
9 2. The facts are set out in detail in the verdict judgment dated the 28<sup>th</sup> April 2023 and were  
10 summarised therein as follows: -

11  
12 *“On the following day, the 1<sup>st</sup> November 2021 they had arranged that he would take her to*  
13 *the doctor at about 1pm. On the prosecution’s case, he began calling her from about 10am.*  
14 *There were multiple missed calls. She answered one of those calls and he said that he*  
15 *wanted to come over to finish what he had started. She said no and blocked his calls*  
16 *thereafter. She was upstairs in her apartment when something was thrown at her window.*  
17 *She came downstairs, leaned over the sink and opened the kitchen window. She saw him*  
18 *standing outside in the rain. She asked him to leave, or she would call the police. He asked*  
19 *who was in there with her and kept on asking this.*

20  
21 *He removed the mesh from the window and leaned in through the window, half his body*  
22 *was inside and he grabbed her. She took up a knife with her left hand to defend herself. He*  
23 *was trying to get the knife out of her hand. He grabbed her dress and tore it. They were*  
24 *wrestling. She was trying to push him out of the apartment. Three of the fingers of her left*  
25 *hand were cut.”*

26  
27 3. The Court found that the defendant was reckless in that he must have been aware that if he tried  
28 to take the knife away from the victim, there was a risk of injury to her, however slight. This was  
29 not a risk that was reasonable for him to take in the circumstances that existed. There was agreed  
30 evidence from Dr. Matthias Herzig who examined the victim on Monday the 1<sup>st</sup> November 2021.  
31 He found that she had sustained severe injuries with complete/subtotal lacerations of the left  
32 flexor and profundus tendons of the middle, ring and little fingers of her left hand. These were



1 consistent with being caused by a sharp blade like instrument. He also stated that following his  
2 initial assessment, later the same evening, the victim underwent six (6) hours of surgery under  
3 his care, in order to repair all six (6) tendons. She was then kept in for observation and discharged  
4 the following day.

- 5
- 6 4. After being discharged, she required revision surgery on the 15<sup>th</sup> of February 2022 due to  
7 adhesions occurring after the first surgery. This consisted of adhesiolysis of the Flexor Digitorum  
8 Superficialis and Flexor Digitorum Profundus tendons of the left ring finger and the left little  
9 finger. Following her discharge, she was to attend physiotherapy and clinical follow-up  
10 appointments over a period of time into September 2022. The doctor gives his opinion that  
11 considering the extent of her hand/finger injuries (in total six lacerated flexor tendons), surgical  
12 treatment and physiotherapy has led to a good outcome, however she is still dealing with  
13 weakness and lack of grip strength in her left hand. She is left-handed. He also states that there  
14 is a possibility that she will not regain full grip strength in her left hand as she used to have prior  
15 to her injuries. In relation to her left middle finger, as at the date of his statement which was 6<sup>th</sup>  
16 December 2022, he said that although she has by now achieved an almost unrestricted active and  
17 passive range of motion in the DIPJ (distal interphalangeal joint), the PIPJ (proximal  
18 interphalangeal joint) and the MCPJ (metacarpophalangeal joint), the range of active and passive  
19 motion in the equivalent joints of the left ring and little finger are still restricted. He states that if  
20 physiotherapy is not successful further revision surgery in the form of adhesiolysis will be  
21 required.

22

23 **VICTIM IMPACT REPORT**

- 24
- 25 5. The Department of Community Rehabilitation (DCR) has provided a victim impact report dated  
26 the 23<sup>rd</sup> June 2023. The victim is 34 years old. She spent two days in the hospital where she  
27 underwent the surgery noted above. Her left hand was in a cast for two months. In addition to  
28 physiotherapy, she has had to have two further surgeries to her hand. The injuries received  
29 impacted her livelihood as she was unable to work for about four months and initially lost her  
30 job as a result. She was re-employed but in a position which pays a lower salary. She was unable  
31 to complete day-to-day tasks such as caring for her daughter and herself. Her medical expenses,  
32 some of which were not covered by health insurance, have been high. During the period of time



1 that she was unemployed her savings were depleted. The Probation Officer concludes that the  
2 victim was impacted most significantly at the physical and emotional level and that she was  
3 seriously injured which affected her livelihood and overall quality of life.

4  
5 **ANTECEDENT HISTORY**

6  
7 6. The defendant has no previous convictions in the Cayman Islands and self-reports that he has no  
8 previous convictions in his home country, Jamaica.

9  
10 **SOCIAL INQUIRY REPORT**

11  
12 7. The DCR has provided a Social Inquiry Report (“SIR”) dated 1<sup>st</sup> June 2023 in respect of the  
13 defendant. The Court has read and takes into account everything said therein in favour of the  
14 defendant. He is 34 years old. He was born and raised in Jamaica. He migrated to the Cayman  
15 Islands in November of 2019 in order to work as a security officer. As a result of this offending,  
16 he is presently unemployed and no further work permits have been obtained for him pending the  
17 outcome of this case. All his family members are in Jamaica. He reports that his mother, to  
18 whom he is very close, recently suffered a major illness. There are no childhood issues reported  
19 and according to the Probation Officer, from all indications he had a good childhood in a single  
20 parent home. He expressed remorse to the Officer that the victim received serious injuries and  
21 expressed “no unjust feelings towards the police or the criminal justice system”. He was assessed  
22 as being at low risk of re-offending. His specific risk, need factors which require to be addressed,  
23 in order to reduce the probability of re-offending include his problem-solving skills and the fact  
24 that he is said to engage in minimization and/or denial. Under the heading Sentencing Options,  
25 the Officer records that a community-based sentence cannot be recommended due to the  
26 defendant’s lack of immigration status on the Island.

27  
28 **THE SUBMISSIONS**

29  
30 8. Both Counsel initially referred the Court to the *Cayman Islands Sentencing Guidelines* for the  
31 offence of Burglary. The prosecution submits that the offending falls into Category B Culpability  
32 as the defendant’s action appeared impulsive and there was limited intrusion into the property.



1 By reference to the medical evidence and the victim impact report, it was submitted that the level  
2 of Harm is at Category 1 as there is trauma to the victim beyond the normal inevitable  
3 consequence of intrusion and theft. An offence at the level of Culpability B and Category 1 Harm  
4 has a starting point of 5 years custody with a range of sentence of 3 to 7 years custody.  
5

6 9. Defence Counsel submitted that the *Guidelines* for Burglary are intended to provide guidance in  
7 typical burglary matters and that this is not a typical burglary case and is distinguishable from  
8 others. Counsel submitted that at its worst, this would be a Category B Culpability with limited  
9 intrusion and no planning and Category 2 Harm.  
10

11 10. Counsel submitted further that the defendant was driven by motives other than to gain property  
12 dishonestly. The defendant was motivated by jealousy at a time when he would have felt a sense  
13 of betrayal by the victim. Counsel submitted that the harm caused was not intentional, it was at  
14 most reckless and that the Court should be careful not to treat the harm in the usual manner  
15 contemplated by the *Guidelines*. Counsel submitted that in these circumstances the sentence  
16 range should be one of a community-based sentence to 3 years imprisonment.  
17

18 11. In mitigation Counsel submitted that the offending is out of character for the defendant to those  
19 who know him well. He is remorseful and good relations were re-established with the victim  
20 after the offending. The impact of the conviction upon him will have serious implications for his  
21 future. He faces possible deportation and a criminal record which would be disproportionate to  
22 the circumstances under which he has been found guilty. Counsel invites the Court not to  
23 consider a custodial sentence but to consider one that will allow the defendant to remain on the  
24 Island. Counsel submits that should the Court not record a conviction; the defendant would be  
25 able to work and make compensation to the victim if a compensation order is made. He presently  
26 has no funds to pay compensation. His previous employers are said to be willing to complete the  
27 process of applying for his work permit. The defendant is described as worried, anxious and  
28 unsure about his future.  
29  
30  
31  
32



1 **THE SENTENCE**

2  
3 12. During the course of the hearing the Court raised with Counsel the issue that none of the factors  
4 under the Burglary sentencing *Guidelines* for Harm appear to fit comfortably with the  
5 circumstances of this offending. They are clearly directed to Burglary cases in the usual sense.  
6 Following the initial hearing the Court drew the attention of Counsel to the English Court of  
7 Appeal Case of *R. v. Lewis George Shallcross*<sup>1</sup> which appears to provide some guidance.

8  
9 13. This was an appeal on a reference by the Attorney General in respect of a sentence imposed  
10 following convictions for three offences. One was a conviction for burglary in which there had  
11 been an attempt to inflict grievous bodily harm. The sentence was four years and six months  
12 imprisonment. An issue on the appeal was which guideline was appropriate. The Court referred  
13 to the statutory position in the United Kingdom, s.125 of the *Coroners and Justice Act 2009*  
14 which requires a Court in sentencing an offender to follow any sentencing guidelines which are  
15 relevant to an offender's case. There is no corresponding statutory position in the Cayman  
16 Islands.

17  
18 14. The Court said this: -

19  
20 *"It was common ground, in the court below, that the category in the domestic burglary*  
21 *guideline which most resembles Lewis Shallcross' case is category 1. However, that*  
22 *guideline seems clearly to have been drafted with a focus on the more familiar type of*  
23 *offence, in which the burglar steals or intends to steal. The factors relevant to the*  
24 *assessment of harm and culpability are almost all directly related [to] that type of offence.*  
25 *Although the factors identified as indicating greater harm include "violence used or*  
26 *threatened against a victim", that seems to relate primarily to an offence of burglary and*  
27 *theft, in the course of which violence is used or threatened against the householder. The*  
28 *same may be said of one of the factors indicating higher culpability: "knife or other weapon*  
29 *carried (where not charged separately)".*

30  

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<sup>1</sup> [2017] EWCA 2060 (Crim)



1            *Moreover, the levels of sentencing which the guidelines establishes do not appear to have*  
2            *been intended to take into account the inflicting of or attempt to inflict grievous bodily*  
3            *harm.”*

4  
5        15.        The Appellate Court said that there may be cases in which conduct properly charged as burglary  
6            could also be charged as actual or attempted wounding with intent or causing grievous bodily  
7            harm. In those cases, the element of burglary would be a serious aggravating factor.

8  
9        16.        The Court said further that it would be contrary to the interests of justice for a burglar who inflicts,  
10           attempts or intends grievous bodily harm to be sentenced less severely than an offender whose  
11           violence does not involve trespass in a home. This meant that there will be cases in which the  
12           guideline for offences of violence may also be relevant to the case of an offender charged with  
13           burglary.

14  
15       17.        The Court concluded that the sentencer is required to follow the burglary guideline but in doing  
16           so to consider whether the interests of justice required a departure from the sentencing range and  
17           to consider the relevant features of the guidelines for offences of assault. The Court stated: -

18  
19                    *“The conclusion we draw is that in a case of burglary, in which the offender inflicts or*  
20                    *attempts to inflict or intends to inflict grievous bodily harm, the sentencer is required to*  
21                    *follow the burglary guideline. But in doing so, and in particular in considering whether*  
22                    *the interests of justice require a departure from the sentencing range, the sentencer is*  
23                    *entitled to consider relevant features of the guideline for offences of assault. In doing so*  
24                    *the sentencer must keep very much in mind the differing maximum sentences for the*  
25                    *different offences. The sentencer must also take particular care to ensure that the offender*  
26                    *is not sentenced as if convicted of a more serious offence, which could have been but was*  
27                    *not charged.”*



- 1 18. Counsel have been afforded the opportunity to make further submissions upon reviewing this  
2 case.  
3
- 4 19. Counsel for the prosecution submitted that in considering the Assault *Guidelines* in the Cayman  
5 Islands in particular that for Inflicting Grievous Bodily Harm, this offending would fall in  
6 Category 3. Counsel concedes that the injury caused to the victim was not serious in the context  
7 of the offence and that this offending is one of Lesser Harm and Lower Culpability with a starting  
8 point of 12 months custody and a range of sentence of a community order to 2 years custody.  
9
- 10 20. With respect to the Burglary *Guidelines*, Counsel revisits the earlier submissions made and now  
11 states that this case would fall into Category 2, being one of Lesser Culpability and Lesser Harm  
12 with a starting point of 1 year's custody and a category range of a community based sentence to  
13 3 years custody.  
14
- 15 21. Counsel for the defence highlighted the principles enunciated in the case of *R. v. Shallcross* and  
16 asked the Court to consider the interest of justice and where they would lie in this case. Counsel  
17 submits that under the *Cayman Islands Sentencing Guidelines* for the offence of Wounding or  
18 Inflicting Grievous Bodily Harm, at its highest the circumstances in this case would not be  
19 beyond the level of Category 2 with starting point of 3 years custody with a range of sentence of  
20 2 to 4 years. Implicit in this submission is the acceptance by Counsel that the injuries in this case  
21 may fall into the category of greater harm, being serious injury in the context of the offence.  
22
- 23 22. Counsel maintains that under the *Guidelines* for the offence of Burglary however, this case would  
24 fall into Category 2, Lesser Harm and Lower Culpability with a starting point of 1 year's custody  
25 with a range of sentence of a community-based sentence to 3 years custody.  
26
- 27 23. Counsel for the defence points out that in this case there was no intent to inflict harm, that the  
28 application of the Assault *Guidelines* has to be looked at carefully, and that these are  
29 circumstances in which the evidence suggests that the defendant may well not have appreciated  
30 that his conduct may have amounted to burglary.  
31



1 24. This Court is minded to follow the guidance set out in the case of **R. v. Shallcross** noting that the  
2 significant aspect of the offending in this case was the infliction of serious harm on the victim.  
3 The Court considers that this is a case where the interests of justice requires that regard be had to  
4 the **Guidelines** for the offence of Inflicting Grievous Bodily Harm contrary to section 204 of the  
5 **Penal Code**. The maximum term of imprisonment for that offence is 7 years. Under those  
6 **Guidelines**, the offending in this case in the Court's view, would be one of Greater Harm because  
7 there is injury which is serious in the context of the offence. In doing so the Court has given  
8 consideration to the case of **R. v Smith (Grant Christopher)**<sup>2</sup> in which the English Court of  
9 Appeal provided guidance on what is meant by injury which is serious in the context of the  
10 offence. The Court said this: -

11  
12 *“First, with regard to the injury, the question is whether the injury was serious “in the*  
13 *context of the offence”. It is axiomatic that all violence within the context of a section 18*  
14 *offence is serious, but some violence is more serious than others. The purpose behind the*  
15 *words “which is serious in the context of the offence” in the guidelines is to distinguish*  
16 *between that level of violence which is inherent or par in a standard section 18 offence and*  
17 *that which will, by definition, go beyond what may be viewed as par for the course. In our*  
18 *view, given that there is such a marked disparity in the starting point between categories*  
19 *1 and 2, the sorts of harm and violence which will justify placing a case within category 1*  
20 *must be significantly above the serious level of harm which is normal for the purpose of*  
21 *section 18*<sup>3</sup>.

22  
23 25. The injury in this case has led to harm of ongoing and possibly permanent effect.

24  
25 26. The culpability would be one of Lower Culpability due to the lack of premeditation. The starting  
26 point for a Category 2 offence, Greater Harm and Lower Culpability is 3 years custody with a  
27 range of sentence of 2 to 4 years custody.  
28

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

<sup>3</sup> Paragraph 14



- 1     27.     From a starting point of 3 years, the location of the offence, being inside the home of the victim  
2             which was entered without her permission may be treated as an aggravating factor increasing the  
3             sentence to 3 years and 2 months or 38 months in total.  
4
- 5     28.     In mitigation the Court takes into account everything said in favour of the defendant by his  
6             Counsel and the SIR. These include that the defendant has no previous convictions and is of  
7             good character. The offending is said to be out of character for him. He has expressed remorse  
8             at the serious injuries caused to the victim. His overall risk of reoffending is low. His good  
9             personal circumstances as outlined in the SIR, his gainful employment and support of his elderly  
10            mother who is unwell. The offending was reckless rather than intentional. Taken together these  
11            would serve to reduce the sentence by 18 months to one of 20 months.  
12
- 13    29.     This Court has considered the request of defence Counsel that no conviction be recorded so that  
14             the defendant can continue to work. The Court feels unable to accede to this request. Though  
15             out of character for the defendant, the offending is serious. The defendant went to the home of  
16             the victim uninvited. He telephoned multiple times; the victim did not answer. He could have  
17             stopped there and not gone to the premises until the agreed time for the doctor's appointment.  
18             When he went to the premises, he had multiple opportunities to leave. He knocked, there was no  
19             answer. He called, there was no answer. He threw something at the victim's window upstairs.  
20             Instead of leaving at this juncture, he waited for her to come downstairs. She asked him to leave.  
21             He did not. What happened next was action by him, which was deliberate. There was nothing  
22             accidental about it. Clearly motivated by uncontrollable jealousy or jealousy which he was  
23             unable to control, he inserted himself through the window of the premises intending to enter and  
24             he did enter. When the victim picked up a knife to defend herself from him, his action in response  
25             was deliberate. He wrestled with the victim for the knife which she had taken up to protect herself  
26             from him. He recklessly inflicted injury which has caused and continues to cause untold harm to  
27             the victim. He has affected her work prospects and there is doubt as the Doctor has said as to  
28             whether her hand will ever return to its former state despite multiple surgeries. Counsel's  
29             submission that because of the defendant's personal circumstances and the circumstances of the  
30             offending the Court should impose a non-custodial sentence and/or one which allows him to  
31             remain in the community is considered but is not accepted.  
32



1 30. The aims of sentencing in this case must be punishment, deterrence and rehabilitation. Section  
2 4 of the *Alternative Sentencing Act* (2008 Revision) provides as follows: -

3  
4 *“A court shall, in imposing a punishment under this Law, take into account the following*  
5 *principles — (a) that the fundamental purpose of punishment is to contribute, along with*  
6 *crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful*  
7 *and safe society by imposing just sanctions that have one or more of the following*  
8 *objectives —*

- 9  
10 (i) *to denounce unlawful conduct;*  
11 (ii) *to deter the convicted person and other persons from committing*  
12 *offences;*  
13 (iii) *to separate convicted persons from society, where necessary;*  
14 (iv) *to assist in rehabilitating convicted persons;*  
15 (v) *to provide reparations for harm done to victims or to the*  
16 *community; and*  
17 (vi) *to promote a sense of responsibility in convicted persons, and*  
18 *acknowledgment of the harm done to victims and to the community.”*

19  
20 31. It is noted that should the Burglary *Guidelines* be applied, this Court’s view is that there is harm  
21 caused to the victim which is beyond the normal inevitable consequence of intrusion. The Harm  
22 is likely at the level of Category 1 which would have meant a starting point of 5 years custody  
23 and a possible sentence at a higher level. However, the Court considers that the justice of the  
24 case requires a focus on the essential offence which has occurred.

1 32. Consideration has been given to whether the proposed sentence is proportionate to the offending.  
2 This Court considers that it is, in circumstances where the defendant's actions were initially  
3 deliberate as outlined above and given the level of Harm caused. The responsibility for what  
4 occurred lies with the defendant. The sentence imposed is one of 20 months imprisonment.  
5

6 **Dated this the 11<sup>th</sup> day of July 2023**

7 

8 **The Hon. Justice Cheryll Richards KC**  
9 **Judge of the Grand Court**