



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

3 **INDICTMENT NO: 23 OF 2022**

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5
6 **R**

7
8 **V.**

9
10 **SEKOU LEMUMBA LITCHMORE**

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12
13 **Appearances:** **Mr. Scott Wainwright for the Prosecution**

14 **Mr. Crister Brady for the Defence**

15 **Before:** **Hon. Justice Cheryll Richards K.C.**

16 **Hearing Dates:** **30th June 2022, 12th August 2022**

17 **Verdict Judgment:** **23rd September 2022**

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23 ***HEADNOTE***

24 *Criminal Law, Trial by Judge Alone, Section 203 of the Penal Code (2019 Revision), Wounding with*
25 *Intent*



VERDICT JUDGMENT

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3 1. The defendant is before the Court on an Indictment which charges him with a single offence of
4 Wounding with Intent contrary to s.203 of the *Penal Code* (2019 Revision). The particulars are
5 that he on the 2nd day of January 2022 at Everglo Bar, Seymour Drive, George Town, Grand
6 Cayman, unlawfully and maliciously wounded Omar Patrick Plummer with intent to do him
7 grievous bodily harm.

8
9 2. The defendant was arraigned on the 22nd April 2022 and pleaded not guilty to the offence. He
10 elected trial by judge alone pursuant to s.129 of the *Criminal Procedure Code* (2021
11 Revision).

13 TRIAL BY JUDGE ALONE

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15 3. As a judge sitting alone, I am required to direct myself both as to the law and the approach. I
16 must advise myself on the applicable legal principles, give the necessary warnings and provide
17 clear reasons for any findings which I make. There is guidance from the dicta of the Cayman
18 Islands Court of Appeal in the cases as follows. In *Kenneth Richards v. R.*¹ the Appellate Court
19 stated:-

20 *“When a trial judge sitting alone has advised himself of the applicable principles*
21 *of law and given himself any necessary warning, he must indicate clearly in his*
22 *judgment his reasons for acting as he did, in order to demonstrate that he has acted*
23 *with the requisite degree of caution in mind and has therefore heeded his own*
24 *warning. No specific form of words is necessary for this demonstration. “What is*
25 *necessary is that the judge’s mind upon the matter be clearly revealed”*: see *R. v.*
26 *Simpson (15) ([1993] 3 LRC at 641, per Downer, J.A.).”*

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¹ 2001 CILR 496, paragraph 32



1 4. In the case of *R. v. Dave Kennedy Whittaker*,² the Appellate Court referred with approval to
2 the judgment of the Court of Appeal in Northern Ireland in an appeal from a decision of a judge
3 sitting alone, and stated:-
4

5 “50 *In R. v. Thompson*³ (11), Lowry, L.C.J., giving the judgment:-

6 “While on the subject I might say a word on the duty of the judge when giving
7 judgment in a trial under the 1973 Act. He has no jury to charge and therefore will
8 not err if he does not state every relevant legal proposition and review every fact
9 and argument on either side. His duty is not as in a jury trial to instruct laymen as
10 to every relevant aspect of the law or to give (perhaps at the end of a long trial) a
11 full and balanced picture of the facts for decision by others. His task is to reach
12 conclusions and give reasons to support his view and, preferably, to notice any
13 difficult or unusual points of law in order that if there is an appeal, it may be seen
14 how his view of the law informed his approach to the facts.”
15

16 **BURDEN AND STANDARD OF PROOF**

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18 5. The presumption of innocence is enshrined in s.7 of the Cayman Islands Constitution 2009.
19 This provides:-

20 “7. (1) *Everyone has the right to a fair and public hearing in the determination of his*
21 *or her legal rights and obligations by an independent and impartial court within*
22 *a reasonable time.*

23 (2) *Everyone charged with a criminal offence has the following minimum rights -*
24 (a) *to be presumed innocent until proved guilty according to law.”*
25

26 6. In criminal trials the applicable rule is that the burden of proof is on the prosecution to prove
27 its case to the required standard, which is so that the judge or jury feels sure of a defendants’

² [2010 (1) CILR 29]

³ ([1977] N.I. at 83);



1 guilt before there can be a conviction. That burden remains on the prosecution from the
2 beginning and throughout a case and does not shift. There is no burden on the defendant to
3 prove his innocence.

4
5 7. I bore these considerations firmly in mind throughout this case, as I listened to the evidence for
6 the prosecution and the defence and as I considered the verdict.

7
8 **CASE SUMMARY**

9 8. The defendant is a part time Disc Jockey (“DJ”) who plays music for the entertainment of
10 patrons at the Everglo Bar. His DJ name is Mario Gunz. On the night of the 2nd of January
11 2022 he was so engaged and was being assisted by another person, Ricardo Mendez who goes
12 by the name of DJ Scoop. DJ Scoop was on the microphone while the defendant was selecting
13 the songs to be played.

14
15 9. Both were in an area which is referred to as the music room or DJ Booth. It is a small room of
16 about 6 feet by 10 feet. In the room there are speakers, a mixer and other equipment for playing
17 music. With the equipment in the room, it is described by the defendant as being so small that
18 it is uncomfortable for two persons to stand in it.

19
20 10. On the same evening, the complainant, Omar Plummer, his wife and other family members
21 went out to celebrate the birthday of a family member. The complainant went to two other local
22 bars before going to the Everglo Bar.

23
24 11. Mr. Plummer says that he too is a part time DJ. He says that sometime after his arrival at the
25 Everglo Bar he went into the DJ booth and asked whether he could be allowed to play two
26 songs. He says that the defendant responded to his request by turning around and stabbing him.
27 He received four stab wounds to his sternum, abdomen and umbilical area.

28
29 12. The defendant raises self defence. On his case the complainant asked for a song to be played.
30 The defendant played this song. The complainant then continued to speak to him outside the
31 music room and his response was to say that he was working and could not deal with the
32 complainant at that time. Instead of desisting, the complainant then entered the music room and
33 punched the defendant to the back of his head. The defendant turned to face the complainant



1 and the complainant punched him in his eye. The defendant says that the room was dark. He
2 could not see whether or not the complainant had anything with him and did not know what
3 was going to happen next. He was in fear of his life and in order to defend himself he picked
4 up a knife either from the ledge in the room or from his pocket. This was a ratchet knife which
5 he had earlier used to fix one of the base wires in the music equipment. Both engaged in a tussle
6 in the course of which the complainant received his injuries.

7
8 **THE AGREED EVIDENCE**

9 13. By Admissions under s.34 of the *Evidence Act*, (2021 Revision) it was agreed between the
10 prosecution and the defence that:-

11 *“At approximately 11.25pm on the 2nd of January 2022, Omar Patrick Plummer*
12 *was examined by Dr. Samantha McHayle at the George Town Hospital. He was*
13 *found to have sustained the following injuries:-*

14 *A wound approximately 1.5cm in length in the region of the sternum;*

15 *A wound approximately 1.5cm in length in the left upper quadrant of the*
16 *abdomen;*

17 *Two (2) wounds each 1cm in length to the umbilical area on the left side.*

18 *The injuries were said to be serious but not likely to be permanent. They*
19 *were consistent with infliction by sharp force trauma.*

20 *Mr. Plummer was admitted into surgical care.”*

21 **ISSUES IN THE CASE**

22 14. The central issue in the case is therefore one of self defence. It is whether the Prosecution has
23 proved to the required standard that the defendant was not acting in self defence. The
24 credibility and reliability of the complainant, the defendant and other witnesses in this case are
25 also important matters for consideration.



1 **WOUNDING WITH INTENT - ELEMENTS OF THE OFFENCE**

2 15. The defendant is charged with unlawfully and maliciously wounding the complainant with
3 intent to do grievous bodily harm to him. Section 203 of the *Penal Code* provides in part that:-

4 *“A person who, unlawfully and maliciously, by any means, wounds or causes*
5 *grievous bodily harm to a person with intent to do grievous bodily harm to any*
6 *person, commits an offence.”*

7
8 On this charge the word maliciously adds nothing because of the specific intent required
9 to be proved. The prosecution must prove to the required standard the following elements:-

- 10
11 (i) The act of the defendant was unlawful meaning that it was without
12 lawful excuse, in this case that he was not acting in self defence.
13 (ii) The defendant stabbed the complainant deliberately. It was not by
14 accident.
15 (iii) The defendant intended to cause grievous bodily harm at the time
16 he stabbed the complainant. The prosecution does not have to
17 prove that the defendant formed the intention in advance.
18 (iv) The complainant sustained a wound.

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20
21 16. Grievous bodily harm means really serious injury. The harm need not be life threatening and it
22 need not be permanent. There is no dispute in this case that grievous bodily harm was in fact
23 caused. Part of the agreed evidence is that of Dr. McHayle that the complainant suffered
24 wounds to the sternum and that the doctor considered the injuries to be serious.

25
26 17. In order to decide what the intention of the defendant was, at the time he caused the
27 complainant’s injuries, consideration is to be given to what the defendant said and did before,
28 at the time of or after the incident and then conclusions drawn from any findings made.



1 **EVIDENCE AT TRIAL - THE CASE FOR THE PROSECUTION**

2 **EVIDENCE OF THE COMPLAINANT OMAR PLUMMER**

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18. Mr. Plummer gave evidence by way of a video recorded interview which was agreed to be played into the record. On oath he confirmed the truthfulness of what he had said in that interview on the 4th January 2022. He stated that on the 2nd January 2022, he went out with his wife to a family birthday party. He had not been out with his wife in a long time and wanted to go out with her. They left from their home and went to three bars, Power Supply Bar, Station Bar and lastly to the Everglo Bar. He said that he went up to the DJ at the Everglo Bar ‘just to ask him to play couple music’ and when he asked him that, the DJ turned around and started stabbing him “out of the blue”. He said that he asked him politely, “can I play two music please”. He did not feel anything until he looked down while outside the room and saw blood. He looked when his friend asked him what had happened. After he was stabbed, he felt as if he wanted to faint. His wife’s sister took him to the hospital in her car.

19. He said that he did not “trouble anybody” for somebody to just do that to him. The DJ must have taken it as if he was threatening him or something and that is when he ended up stabbing him. The DJ did not say anything when he asked, he just turned around and started stabbing him while he was at the door.

20. There were only two people in the music room at the time. When he went inside the room the DJ was playing and the other one was on the microphone as the emcee. The one on the microphone did not say anything to him. He was paying attention to the crowd.

21. Mr. Plummer said that he could not remember how long he had been at Everglo Bar before he asked to play music. It was sometime after he went there.

22. He said that he did not know the name of the DJ but that this was not the first time that the DJ had seen him. The DJ would see him when he goes out which is once a week on a Friday. Mr. Plummer said that he goes to several places to play music. He plays by the front of Vics (Bar) and the DJ sees all of them. He has talked with the DJ and usually greets him. He has never had any fuss, altercation or any quarrel with the DJ. Both are DJs and play music. They do not play together. He is not aware of any competition between the two of them.



- 1 23. Mr. Plummer said that he did not have anything in his hands at the time. He had not been
2 drinking and did not have a beer. He was going to buy one. He said that he was not fighting
3 back when he was being stabbed. He did not throw any punches or anything. The only injury
4 which he felt is the one to his chest. He said that when he felt that one, he pushed the DJ or
5 tried to get the DJ off him. He does not recall whether the DJ was saying anything when he
6 was stabbing him. The DJ was stabbing him and pushing him through the door. They were
7 facing each other. Mr. Plummer's back was to the door. The light was off in the area, and he
8 could not see what was being used to stab him. He could not see anything. After he was stabbed,
9 he does not know where the DJ went.
- 10
- 11 24. He said that he did not do anything at all to provoke the DJ. He walked outside, walked back
12 inside and that is when it happened.
- 13
- 14 25. Mr. Plummer was asked additional questions in examination in chief. He said that he cannot
15 remember what time he arrived at the Power Supply Bar. He had two drinks of Hennessey
16 while he was there. He had a drink at the Station Bar but cannot remember what he had. When
17 he went to the Everglo Bar he was sober.
- 18
- 19 26. Closed Circuit Television CCTV) footage from the Bar on the 2nd January 2022 was produced
20 as Exhibit 1⁴ and shown to the witness. He said that the DJ booth is on a ledge with the
21 microphone. The gentleman with the microphone was the emcee. If you enter the booth from
22 that angle, you have to go through where the emcee is standing to get to the DJ booth.
- 23
- 24 27. He said that the footage showed himself with a pool cue after he had been stabbed. He had the
25 pool cue intending to seek revenge but could not do anything as he was weak. He said the guy
26 in the blue shirt is Akeem Peart, a cousin of his wife's family. He lifted up his shirt and showed
27 his injury to Akeem Peart and they left through a door. They went to the back door of the Bar
28 but had to return to the inside of the Bar because the back door was locked so he could not get
29 out. They had to carry him through the front to his sister-in-law's car.
- 30

⁴ CCTV – EXHIBIT1 – starts at 11:08 pm, ends at 11:26 pm



1 28. He identified himself coming out of the DJ booth. He was waving his arms and saying why did
2 your friend stab me? He said this to the man with the microphone. He said that the man did
3 not know. He identified himself leaving the Bar. He said that he was still agitated at that point
4 on his way out.

5
6 29. He also identified himself on the footage showing the outside of the premises. He was then on
7 his way to a vehicle to go to the George Town Hospital. He pointed out the man in the footage
8 in the white striped shirt as the person who stabbed him in the incident. He said that after he
9 left in the vehicle, he did not see the man again that night.

10

11 **CROSS-EXAMINATION OF OMAR PLUMMER**

12 30. In cross-examination, he said that the night of 2nd January 2022 was the day after New Year's
13 Day. He agreed that he was out celebrating with his wife and family and had visited several
14 bars that night. He said that he could not remember how long he had spent at these bars because
15 he had not been watching the time. At Power Supply Bar he had at least two drinks. He did
16 not have anything to drink at Station Bar, then they left and went to Everglo Bar. He was outside
17 that Bar and did not have anything to drink at Everglo.

18

19 31. He said that he is sure that Akeem Peart did not give him a drink at Everglo Bar. He also said
20 that he does not remember Mr. Peart giving him a drink while he was there. He said that he
21 gave his answer about not drinking anything because he cannot remember drinking anything.

22

23 32. He had been at Everglo Bar for some time before the incident, he cannot remember how long.
24 He was not watching the time. He was too busy having a good time.

25

26 33. It was suggested to him that he had drinks at all the bars that he went to that night including
27 Everglo Bar and that at the time he went to the DJ booth, he was drunk. He replied that, yes,
28 he had been drinking but that he could handle his liquor and knew what was going on. He said
29 that he did not curse the DJ or "chuck him or nothing".

30

31 34. He agreed that the booth was dark, there was no light in it. He did not know that the booth is
32 in an area where patrons are not supposed to go. He plays music himself. He agreed that when



1 he is playing music he is in an area where he would not want anybody else to be. He said that
2 he is always there with friends, and he asks the DJs to play, and they let him. No one has ever
3 rejected his request to play. He said that he asked the DJ, and the DJ stabbed him. He said that
4 the DJ never told him no or tried to get him to leave.

5
6 35. It was suggested to him that he came into the booth in the dark, approached the defendant
7 because he did not like what he was playing. He disagreed and said it was not that he wanted
8 the defendant to play other music. The defendant did not tell him that he was drunk and to stay
9 outside of booth. The defendant did not turn his back and he punched the defendant to the back
10 of his head.

11
12 36. To the suggestion that even when the defendant tried to push him out, he punched him again,
13 he said that he did not remember that. He did not remember the DJ trying to push him through
14 the door and he turned around and started punching the DJ.

15
16 37. Mr. Plummer said that he was upset that he was pushed but he did not hit the DJ. He said that
17 he was still trying to get back into the booth when he was stabbed. His hands were weak. He
18 said that he was not there when the DJ said over the microphone, “when you are drunk you
19 must control your liquor”.

20
21 38. The defence case was suggested to him that he went into the booth to make demands of the DJ
22 when he the complainant was drunk, that the DJ told him no, told him to leave, turned his back
23 on him and he punched the DJ in the back of his head. The DJ turned around and tried to push
24 him through the door and that is when he started to punch the DJ. He said no he did not put his
25 hand on the DJ. The DJ just stabbed him. The complainant also replied that he did not remember
26 the DJ trying to push him through the door. He said that the DJ could have told him no and he
27 would have left. He said that he did not know what the defendant’s pushing him meant and he
28 cannot remember hitting the DJ to the back of his head.

29
30 39. At this point the complainant asked for break to be allowed to go outside of the Court room to
31 cry.

32
33 40. When he returned, in further cross-examination he agreed that when they discovered that the
34 back way was locked, they tried to take him out through the front. He said that he cannot



1 remember that at that point he was still trying to get to the defendant. He said that he recalls
2 that “Officer Bobby”, referring to Officer Michael Peart came to see him at the hospital. He
3 does not remember telling the Officer that “he must kill that bwoy” referring to the defendant.

4
5 41. It was suggested to him that his version is not true, that the defendant did not just start stabbing
6 him for no reason. He disagreed and denied punching or attacking the defendant.

7

8 **EVIDENCE OF RICARDO MENDEZ**

9 42. Ricardo Mendez testified that he works for a refurbishing and tiling company. On the evening
10 of 2nd January 2022 at about 11pm, he was with his friend, Mr. Litchmore, the defendant at
11 Everglo Bar.

12

13 43. Normally he goes to that Bar for a drink on Sunday nights and he knows that his friend plays
14 there so he goes with him. That night he was drinking in the music room and he had a
15 microphone in his hand. He was talking and playing music with Mr. Litchmore. He was shown
16 the CCTV footage Exhibit 1 and he said that he recognizes it. He identified himself on the
17 footage as the person to the left of it. He was standing and talking to the patrons in the Bar.

18

19 44. He said that at about 11pm there was an altercation between Mr. Litchmore and another male.
20 He did not see how it came about. He was paying attention to the party. He thinks that they had
21 a little altercation in the music room. He did not see the other male when that male first entered
22 the music room. He thinks that when he first saw the other male, the male was talking to Mr.
23 Litchmore. They were talking to each other, not facing each other. The male was either behind
24 or beside Mr. Litchmore.

25

26 45. Mr. Litchmore was paying attention to the computer. He was looking for a song. Then he asked
27 the guy to leave the music room because he knows that he was not supposed to be allowed in
28 there. Only two persons are supposed to be there. The guy did not leave. Mr. Mendez said that
29 he stopped the music and asked the guy to leave. When he asked him, he did not leave. He was
30 still there. Mr. Litchmore also was trying to get him out of the music room.

31

32 46. Mr. Mendez said that the guy was putting up a little fight or something. When Mr. Mendez
33 looked up the guy was like – witness demonstrates – raising hands in the air. Mr. Litchmore



1 was trying to force him out of the DJ room. Then he got out, then someone came back into the
2 Bar and said the guy had been stabbed.

3
4 47. Mr. Mendez said that he did not see how the guy was stabbed and has no idea how this
5 happened.

6
7 48. Other than trying to force the guy out of the music room, he saw Mr. Litchmore push him away
8 because he was coming up to Mr. Litchmore. Other than pushing the guy away, Mr. Mendez
9 said that he did not see anything else. He described Mr. Litchmore as using his open palms and
10 pushing him away. He did not see anything in Mr. Litchmore's hands when he was doing that.
11 When Mr. Mendez realised that the man had been stabbed, he left the music room and went
12 home because people started throwing stuff after Mr. Litchmore

13
14 49. Mr. Mendez said he recalled saying on the microphone before the man was stabbed about
15 people being drunk. He said that in patois, "why people drink when they can't control their
16 liquor. If you can't control your liquor you must not drink".

17
18 50. He had seen the man who got stabbed before in his yard where he lives. He used to do car
19 washing and used to go to that yard to buy water from a man who lives there.

20

21 **CROSS-EXAMINATION**

22 51. In cross-examination Mr. Mendez said that the evening of the 2nd January was not the first time
23 that he was playing music with Mr. Litchmore. He had played music with him before, probably
24 about one time.

25
26 52. He recalls that a guy was trying to talk to Mr. Litchmore and get his attention and Mr.
27 Litchmore was ignoring him. He cannot recall that he came in front of Mr. Litchmore. Mr.
28 Litchmore pushed him and went back to the computer to find songs. The other guy was still
29 standing at the door. He went up to Mr. Litchmore like he was trying to talk to him.

30
31 53. At some point there was a physical altercation between Mr. Litchmore and the other man. This
32 was right at the door of the music room. He said that he did not recall that both appeared to be
33 punching at each other. He recalls Mr. Litchmore pushing the man out of the room. The man



1 was putting up a fight like he was not getting out of the music room. He was there in the music
2 room for about five minutes. During that time he was trying to speak to Mr. Litchmore and Mr.
3 Litchmore was trying to get him out. Mr. Litchmore was ignoring him. Mr. Mendez felt the
4 need to stop the music to tell the gentleman to leave the room because he knows that he is not
5 supposed to be there. The man was kind of drunk and he smelled.

6
7 54. He said that he felt the need to make an announcement about being drunk on the microphone,
8 because he did not want any altercation in the music room. He did not see any physical
9 altercation. He saw Mr. Litchmore trying to put him outside, that is all. The man was putting
10 up a resistance.

11
12 55. He said that he got to the Bar, maybe about 9pm or a little later that evening. He cannot recall
13 whether he or Mr. Litchmore got there first.

14
15 56. Inside the music room is dark. It would not be possible for him to see what either man had in
16 their hands. He could not see anything in anybody's hand because the room was dark.

17
18 57. In response to questions from the Court he said that an Apple computer is used to play the
19 music. The door was behind them with the computer and mixing board in front. The room is
20 quite small, and he demonstrated distances with his hands. These were estimated by Counsel
21 to be 5-6 feet in width and 6-10 feet in length. He said that the light in the room is from the
22 mixing board and the computers by which they can see the keyboards for both. From the light
23 which these machines give he is not able to see persons or see the faces of persons or the hands
24 of persons. He said that he is not sure if there is a light in that room because he had never turned
25 it on before. He demonstrated with his hands what he meant by saying that the other man was
26 putting up a resistance.

27
28 58. In response to further questions from Counsel, he said that he was able to see the altercation
29 because he was looking around at the time to talk to Mr. Litchmore about the next song that he
30 was going to play so that is when he knew that they were in an altercation at that time. When
31 he turned, he could see that.



1 59. He demonstrated what he says he saw, how both men had their hands positioned. The other
2 gentleman had his hands raised while Mr. Litchmore was pushing him out. He said he could
3 see both their hands. Neither man had anything in their hands.
4

5 **EVIDENCE OF AKEEM ANDREW PEART**

6 60. Akeem Andrew Peart testified that the complainant is a member of his family. Mr. Peart is
7 married to a cousin of the complainant’s wife. On the evening of the 2nd January 2022, Mr.
8 Peart and his wife and about six or seven family members were at the Everglo Bar in George
9 Town. It was his wife’s cousin’s birthday.
10

11 61. They arrived at the Bar at about 11pm. Mr. Peart said that he was not drinking. He was the
12 driver. At some stage he became aware of an altercation involving Mr. Plummer. He did not
13 see what happened or where it took place. He was alerted to it by his wife. He looked towards
14 the DJ booth and saw Mr. Plummer in the pool area. He went and spoke to him. He noticed
15 that he was injured. He could see blood running down Mr. Plummer’s shirt. Mr. Plummer was
16 shouting out “*the bwoy stab me*”.

17
18 62. Mr. Plummer was holding a pool stick in his hand and waving it. Mr. Peart said that he held
19 Mr. Plummer’s hand and rushed with him through the back door. The gate was closed. He had
20 to come back through the main entrance to get to his car. Patrice Knight, a family member took
21 Mr. Plummer to the hospital. On the way to the car, Mr. Plummer fainted so Mr. Peart had to
22 lift him up and put him in the back seat.
23

24 63. Mr. Peart said that after this he rushed back into the Bar and asked what happened. He asked
25 the DJ. The response was that the guy came in and said that he wanted to play “two music and
26 he start to thump him up”. There were two DJs, one mixing and one talking on the microphone.
27 One was saying “man need to control them liquor when they drinking”. The DJ told him that
28 Mr. Plummer had “punched him out”.

29
30 64. The CCTV footage Exhibit 1 was shown to the witness. He identified himself in the white t-
31 shirt and blue jeans and said that Mr. Plummer was in the black t-shirt, just emerged from the
32 DJ booth. It was at that stage that he noticed blood on Mr. Plummer. Mr. Plummer lifted his



1 shirt and showed him an injury. He identified himself escorting Mr. Plummer off the premises
2 and going back into the pool room to ask the DJ what had happened.

3
4 65. He said that before that night he knew Mr. Litchmore as Mario, because of his playing of music.
5 Mr. Litchmore did not tell him that he stabbed Omar Plummer. Mr. Peart said that he said to
6 Mario you did not need to stab him so many times. There was no reaction from Mario when
7 he said that to him.

8
9 **CROSS -EXAMINATION**

10 66. In cross-examination Mr. Peart said that this was not the first bar that they had all visited that
11 night. They went to Power Supply Bar and were there for two hours. He cannot say how much
12 Omar Plummer had to drink at that Bar. They did not go to the Station Bar. They were not all
13 travelling together. He would not be able to say whether Omar Plummer went to any bars other
14 than the Power Supply Bar before going to the Everglo Bar.

15
16 67. Mr. Peart said that he had just started drinking at the Everglo Bar. The first and last drink he
17 had was a Guinness and red bull. While there he did not buy a drink for Omar Plummer. He
18 mixed the same drink that he had and that is what he gave to him. At the time Mr. Plummer
19 was not drinking. He was all over the place, so Mr. Peart called him. Mr. Peart said that Mr.
20 Plummer could have had other drinks. He does not know. He has to talk about what he saw.

21
22 68. When he first became aware that Mr. Plummer had been stabbed, he, Mr. Peart was standing
23 directly facing the DJ booth which is three steps from the bar. He was not standing with Mr.
24 Plummer. When he first saw Mr. Plummer after he had been stabbed, Mr. Plummer was very
25 upset and in a rage. Mr. Plummer used the pool stick to hit the side of the pool table and he
26 thinks that the stick broke. Mr. Peart said that he was trying to get Mr. Plummer outside in
27 order to get help. Mr. Plummer was resisting. Mr. Plummer was still in a rage up to when he
28 was outside. He was trying to get back inside the bar and DJ booth.

29
30 69. Mr. Peart said that Mr. Litchmore explained that Mr. Plummer had come into the booth and
31 was punching him and that is when Mr. Litchmore said that he had to stab him.

32



1 **EVIDENCE OF MIKHAIL TAYLOR**

2
3 70. Mikhail Taylor testified that he knows Mr. Litchmore as Gunz for about two to three months.
4 He came to know him as they see each other on the road. In January 2022 he took Mr. Gunz to
5 the George Town Police Station. He said that he received a phone call from Mr. Gunz who
6 asked him if he was on the road. He said yes and Mr. Gunz asked him if he could pick him up.
7 He picked up Mr. Gunz at the Blue Marlin restaurant. Having refreshed his memory from his
8 statement given when the incident was fresher in his mind, he said that it was 12:17am when
9 he received a call from Mr. Gunz.

10
11 71. He said that after picking up Mr. Gunz, there was no conversation in the car. Later he found
12 out the reason that he was taking Mr. Gunz to the police station. Mr. Gunz said that he had
13 been in an altercation with someone.

14
15 72. Mr. Taylor said that he had the opportunity to read his witness statement outside Court to
16 himself. In the car Mr. Gunz gave him a ratchet knife. A knife was shown to him in Court, and
17 he said that this looks like the ratchet knife. The knife was received in evidence as - **EXHIBIT**
18 **3.**

19
20 73. Mr. Taylor said that he did not know whether Mr. Gunz had done anything with this knife. Mr.
21 Gunz did not tell him in the car whether he had done anything with it. When he arrived at the
22 police station the Officer came and took the knife. He had put it on the left-hand side of the
23 steering wheel of the vehicle. When Mr. Gunz gave him the knife, he did not say anything as
24 to the reason that he was doing so.

25
26 74. At the time he picked him up Mr. Gunz seemed normal. He knows him as a jovial person. Mr.
27 Taylor also said that once he is with a male, he does not look at them.

28
29 **CROSS- EXAMINATION**

30 75. In Cross-Examination of Mr. Taylor, he said that he had looked at his statement. His
31 recollection now is not as good as it was then. He said that he did not recall telling the police
32 that Mr. Gunz looked frightened when he came into the car. Then he said that he recalls telling



1 the police that when he came into the car, he looked frightened. He agreed that he had said
2 earlier that he is normally a jovial person. He said that he would agree that when he saw him,
3 he was not the jovial person that he is. Mr. Gunz did not tell him to dispose of the knife.
4

5 76. Mr. Taylor was asked by the Court, you have said three things, you did not look at him because
6 you do not look at men, that he was his normal self and that he appeared to be frightened, which
7 is correct? He answered that on that night there was a different feel about Mr. Gunz. Mr. Taylor
8 also said that he had placed the knife inside a compartment to the left of the steering wheel in
9 the car because it was the closest area at that time.
10

11 **INTERVIEW OF DEFENDANT**

12 77. The defendant was interviewed under caution in the presence of his attorney on Monday the
13 3rd January 2022. He said that he is a DJ and also works doing merchandising or customer
14 service. He confirmed that his DJ name is Mario Gunz.
15

16 78. In the Cayman Islands he has worked at Everglo, Lillie's, Lions Centre, and Wellys. He started
17 working here professionally as a DJ in 2020. He thinks that it was in June of 2020 that he
18 started working as a DJ at the Everglo Bar. It was around the time that the country came out of
19 the lock down (from the Covid-19 Pandemic). He is not aware of rules and regulations as it
20 relates to having a weapon in liquor license premises.
21

22 79. On Sunday 2nd January 2022 he started working at the Everglo Bar around 8:30 or 8:45 in the
23 evening. He finished working that day when the incident happened. They were supposed to go
24 until 12 midnight. It was the incident which caused the Bar to close.
25

26 80. He described the general lay out of the Everglo Bar in the course of which he said that you
27 enter the DJ room or booth through the pool hall. The booth is made for two persons. It is small
28 and uncomfortable if more than two persons are in it. Once another person enters, they start to
29 'brush up on you and in your back'.
30



- 1 81. That night there were two of them in the booth. In addition to himself there was DJ Scoop who
2 is his emcee. He said that he was playing music as normal, enjoying himself and there was
3 regular normal party vibes.
- 4
5 82. He was trying to communicate with whoever came and requested songs. While he was playing
6 music there was this particular person who was talking to him right through his set and he was
7 trying to communicate with the person but then he realised that the person was not stopping.
8 He told the person that he was not hearing him. He was saying to the person “*stop I am working*
9 *I cannot listen to what you are saying because I am working*”.
- 10
11 83. The defendant said that the person was trying to talk to him many times from outside of the DJ
12 booth and he the defendant was not listening. He was trying to tell the person to stop, that he
13 did not want to hear what the person was saying because right then he was doing his work. The
14 man was still trying to talk to him. At one point he felt someone in his back in the DJ booth.
15 When he turned it was that patron from the front who had been trying to talk to him and he was
16 trying to tell him that he was working and could not talk to him right now. He was trying not
17 to be rude, to just work through the situation. But while he was there working, he felt a hit to
18 the back of his head, so he turned around and looked and he still saw that one individual. He
19 turned to him and said, “*yow exit the music room because I feel like you drunk*”.
- 20
21 84. When he was telling the man this, the man punched him in his face, in his eye. At the same
22 time, they got into an altercation.
- 23
24 85. The defendant said that he had a knife. He does not remember if he had the knife in his pocket
25 or if it was on the ledge. He had the knife because prior to the altercation the sound system
26 had a little fault, and he was using the knife to fix the base wire.
- 27
28 86. He said that he felt threatened and abused when he received the punch over his eye and he had
29 just received a hit to his head. He just reacted to the situation. He does not know how the man
30 got stabbed because they had ‘a little shuffling’ so it is not clear to him how the man eventually
31 got stabbed. That is what he remembers so far.
- 32
33 87. The defendant said that he did pay the man attention at first until he realised that it was not one
34 song that the man wanted to request to be played. So, he said stop that he is working. After



1 that, the man came into the DJ booth, and he was trying to tell him the same thing. From the
2 time that he told the man to come out of the DJ room the man punched him to his eye. He just
3 reacted when he got the punch over his eye. He was frightened and shocked. He tried to defend
4 himself at that point because he did not know the person and he was hit twice for nothing at
5 all.

6
7 88. He said that he was not sure whether the hit to his head was with a bottle or board because his
8 hair is in locks. He just felt an impact to the back of his head. It was the person in the DJ booth
9 the same person who got stabbed.

10
11 89. The defendant said that when he was hit, DJ Scoop was in the DJ booth, to the left of him
12 almost on the counter because he was on the microphone talking.

13
14 90. This was the first time he was seeing the person who got stabbed.

15
16 91. In answer to the question what happened immediately after the man punched him over his eye,
17 the defendant said that the immediate effect was that he pushed the man off. He (the defendant)
18 just knew that he had the knife and the altercation occurred.

19
20 92. He said that he was shocked and did not know what else to do. It is correct to say that he picked
21 up the knife to defend himself. He said that he does not remember how he defended himself. It
22 happened so fast that he does not remember how it happened because they were "tussling".
23 Everything just happened inside the DJ booth when he got the punch in his face. It is just a
24 puzzle after that.

25
26 93. After the man got stabbed, the man left the DJ booth. The defendant said that he was in the DJ
27 booth with DJ Scoop because he did not know that the man had been stabbed. He kept the knife
28 until the security came and told them to turn off the music.

29
30 94. From the time the man who punched him entered the booth to when he left the booth, he (the
31 defendant) did not lose possession of the knife at any time. DJ Scoop could not have used the
32 knife to stab the man. The man did not stab himself because at no time did the man take the
33 knife from him.



1 95. It is correct to say that at some point during the altercation he stabbed the man in defence of
2 his life because the man was attacking him.

3
4 96. The knife which was used to cause injury to Mr. Plummer who is the person he had the
5 altercation with, was a ratchet knife which is usually kept with his keys. His keys are normally
6 in his DJ bag, in a black box where he keeps scissors, wires and other items. He uses this knife
7 when the wires have issues. The ratchet knife is stronger than the sheet rock knife. It is easier
8 to carry around and is handier for doing that type of work than a kitchen knife. The blades of
9 the sheetrock knife would sometimes break. The base wires are thick, and you have to cut
10 around the thick wires to get inside the surface.

11
12 97. After the altercation and the man left the room, the security guard said, “turn off the music’. At
13 that time, he was standing in the DJ booth packing up his computer. A girl threw a bottle and
14 it hit him in his head. He threw a bottle back at her. He went out of the music room to go
15 towards her and at the same time all the guys held on to him and carried him around to the back
16 of the venue. After that someone took the knife, his phone, and other items from him. The only
17 thing which was returned to him was his phone. He went home and changed his shirt. He went
18 back to the Bar to try to retrieve his belongings and he did not want the people that were hostile
19 toward him (to see him).

20
21 98. During the altercation, he did not know if the complainant had a weapon in his hand. He was
22 not looking to see if the complainant had a weapon in his hand. The DJ room was dark. He did
23 not see what the complainant had, and the complainant was in black, so he does not know. He
24 could not see because of the lighting.

25
26 99. He said that he did not know that the complainant got stabbed until the security guard told him
27 and is not sure where on the complainant’s body, he stabbed him. He was shown pictures of
28 the complainant and said that he does not know him and that the picture did not show his face
29 clearly. He was shown a picture of the knife which had been recovered from the car which had
30 transported him to the police station and asked whether it is fair to say that this is the same
31 ratchet knife. His answer was that possibly it was.

32
33 100. Then there was this exchange: -

34 “Q: Did you give the knife to anyone?



1 *Ans: I don't know who took the knife from me to be honest*

2 *Q: When you call him and he picked you up did you give him anything?*

3 *Ans: When him pick me up in to be honest, Officer me nah really ...*
4 *everything happen so fast me nah memba if me did actually send him go*
5 *pick up me things dem first , me nah really remember the whole process*
6 *but I know I did not leave Everglo in that car.”*

7

8 101. The defendant said that Short Man i.e., Mikhail Taylor picked him up from Blue Marlin
9 restaurant and took him to the police station. He said that he and others were actually out
10 drinking from in the day by his friend's house because it was New Years', but he was not drunk.
11 He said that some things happened so fast he does not quite remember everything. He said that
12 when you are drinking and wake up in the morning sometimes you don't remember everything.

13

14 102. When he was picked up by Mr. Taylor, he told Mr. Taylor that he felt like he stabbed somebody.
15 When he went home, he had nothing with him. The knife was in his bag at that point, and he
16 did not know where his bag was. He was asked directly by the Officer whether he had given
17 Mr. Taylor the knife and after a long pause he said, “yes officer I gave him the knife”. He said
18 that he did not say anything when he handed it to Mr. Taylor.

19

20 103. He said that he never meant to do the stabbing, it happened so fast, and he was forced to defend
21 himself. He never intended to stab him. He was in fear of his life. He said that this man who he
22 did not know, “antagonized him from night” and came into the DJ booth, punched him in the
23 back of his head. He did not know what else he was capable of. He did not know what else he
24 was going to do. He did not know what the man had on him. He said that he did not engage the
25 man in a fist fight. This man attacked him from earlier in the night and was bothering him. He
26 said:-

27 *“Officer to make it clear, I do not remember everything in detail. Like me just*
28 *membra like the most important thing. Like nuff thing happen but me nah memba cuz*
29 *from day we a drink and we did under a vibes. So if I fi miss somethingcuz we*
30 *did a drink from day...”*



1 **EVIDENCE OF PC MICHAEL PEART**

2 104. The statement of PC Michael Peart was read by agreement. It is dated 4th January 2022. He
3 stated that he is Police Constable # 252 attached to the Neighbourhood Department of the
4 George Town Police Station.

5
6 105. On Sunday 2nd January 2022 he was on uniformed mobile Police patrol duties in George Town.
7 At about 11:20pm following receipt of a telephone call from Inspector Best he attended the
8 George Town Hospital. There he saw the complainant whom he knew before. He was lying on
9 a hospital bed in the trauma room. He had three lacerations to his chest and stomach. He was
10 conscious and breathing and repeatedly said to him, Officer Bobby “*Mi must kill the bwoy*
11 *deh*”. The Officer used his cell phone to take pictures of the complainant and of his injuries.
12 He also collected items of clothing that the complainant had been wearing together with his
13 cell phone and packaged them.
14

15 **EVIDENCE AT TRIAL - THE CASE FOR THE DEFENCE**

16 **EVIDENCE OF THE DEFENDANT**

17 106. The defendant testified that he is from St. Andrew, Jamaica. He has been living in the Cayman
18 Islands since 3rd May 2019. In addition to other work, he is also a DJ. He does this work at
19 most of the night clubs/party venues in and around the Cayman Islands. Everglo Bar is one of
20 the places that he works as a DJ. He has been the resident DJ for that location since August
21 2020.

22
23 107. He said that he stands by everything he said in his interview with the police.

24
25 108. He said that he believes that he started work at the Bar at about 8pm that evening, because it
26 was a holiday and he got to the Bar early and started playing on arrival. The knife came to be
27 in the booth because at around 9:30pm when they were playing the music, they had a major
28 issue with one of the base boxes.

29
30 109. He had a toolbox in his car with not only a knife but also a Phillips and flat head screw drivers.
31 This was like a kit that he carries in case of any issues. He got the knife from the tool bag and



- 1 cut the thick base wire and replaced the ends of it because it was ‘shorting out’. That is how he
2 ended up with the knife that night.
- 3
4 110. He said that he is familiar with the rules for entry into Everglo Bar. Weapons are not allowed
5 to be taken into the Bar. After he used the knife to work on the wires it was not taken back
6 outside because as a DJ your job is to please the patrons so once the problem is fixed, you just
7 go immediately back to playing music.
- 8
9 111. He said that he had no intention to use the knife for any purpose that night other than to fix
10 things.
- 11
12 112. He was inside the booth with the emcee. The booth is small. It is not that wide. He demonstrated
13 from the arm rest to the first white chair in the Court room which was agreed to be an estimated
14 distance of 6 by 10 feet. Inside it as one enters, one would be looking at amplifiers and sound
15 equipment. There is a monitor, base speaker and mixer, on a small shelf. Most emcees have to
16 stand up on the counter to give the DJ space inside the booth because the booth is so small.
17 There is limited standing room. If two persons are standing inside it to work, they are rubbing
18 on each other.
- 19
20 113. The room is secured by closing the door from the patrons outside. He said that he normally has
21 to close the door, because “as you know Everglo is a very troubled spot”. He always closes the
22 door but sometimes the emcee is in and out and he tends not to remember to close it.
- 23
24 114. There is no lighting inside the booth. There is a light outside in the club. When it is turned on
25 it shines on the inside. The mixer has light so you can see everything on the computer.
26 Everything he wants to touch he can see once the mixer is on.
- 27
28 115. At some point someone came into the booth. When the person entered, the person was behind
29 him to his back and the door is also behind him. If someone enters the booth behind him, he
30 immediately feels the person.
- 31
32 116. He said that when Mr. Plummer entered the booth, Mr. Plummer touched him and said
33 something which he did not hear. The defendant was saying to Mr. Plummer “please exit
34 because I cannot talk right now. I am working”. Prior to Mr. Plummer coming in, he was



1 already talking to him outside the booth. Mr. Plummer did ask him for a song, and he played
2 the song. Mr. Plummer kept on talking. The defendant said to him that he is working he cannot
3 pay attention to him. Mr. Plummer kept talking.

4
5 117. The defendant said that he was ignoring Mr. Plummer. No one else apart from Mr. Plummer
6 was trying to get his attention to play any particular music. He was not really paying Mr.
7 Plummer that much mind or looking at how he was operating. He heard what Mr. Plummer
8 said at one time. When Mr. Plummer spoke again, he stopped paying attention.

9
10 118. The man entered the booth behind him. He was trying to say something in his ears, and he (the
11 defendant) was saying “please I am working. I cannot talk to you, excuse the DJ booth” and he
12 turned back round. Next, he felt a hit to the back of his head. He turned around and said, “are
13 you drunk, please come out of the DJ booth”, and he was reaching to open the door to show
14 him out. The man just punched him like he was saying that he had disrespected him. He was
15 trying to hold the man, saying, “are you drunk?”. The man just kept on punching. He said that
16 he leant back same time and “there goes the knife”. When he took up the knife, he was still
17 trying to stop the man from punching him.

18
19 119. When he took up the knife, it was already open. He did not realise that the knife was still open
20 because it had been closed. Amid trying to stop the man from punching him, he does not
21 remember exactly how the man got stabbed. It was just like a quick reaction. He got a punch
22 in his face, felt like he was going to pass out, and he did not know this person. The place was
23 dark, he did not know what the man was going to do next. He reacted out of fear. He pushed
24 him out of the room. Next, he closed the door immediately with the lock and that is when the
25 emcee said, “when man them drunk they must control their liquor and stop come in a DJ booth
26 and cause problem”

27
28 120. They continued to play music, then the security guard came and said someone got stabbed.
29 That is when he realised that the person had been stabbed. He stopped the music and someone
30 else whose name he does not remember, came to him at the same time and told him. That
31 person was with the man that got stabbed. The security guard said “yes, it’s true”.

32



1 121. He did not directly intend to stab the man and did not know that he got stabbed. From he told
2 the man to exit the booth, that was his reaction, he just got angry and started getting
3 disrespectful.

4
5 122. He said that it is correct that at some point he turned himself in to the police that night. He gave
6 his friend the knife with his DJ bag i.e., Mr. Taylor. He did not tell him to destroy or hide the
7 knife. He was not going to go into the station with the knife and did not know that his friend
8 would be waiting outside.

9
10 123. He said that it is not true that he turned around and started stabbing the man out of the blue.
11 Every Sunday they provide a guest DJ pass at Everglo. They advertise this on social media.
12 Anyone who wants to come to play music can do so. If the complainant was really a DJ, he had
13 never seen him. If the complainant wanted to play some music, he would have allowed him to
14 do so and taken a break. He does not want to have to play for the whole night.

15
16 **CROSS-EXAMINATION OF DEFENDANT**

17 124. In cross-examination the defendant said that he had been out drinking to celebrate the New
18 Year. He had been by his friend's house drinking, from about 11am that day and he started
19 work at about 8.30 pm. He was drinking Vodka and Ting steadily throughout the day up until
20 around 5pm. Then after changing he went to Everglo Bar. During the day he had not been
21 counting the number of drinks he had, maybe he had three, or four or five drinks.

22
23 125. He agreed that he did tell the police his alcohol consumption may have meant he could not
24 remember exactly what happened and that he did say that he cannot remember everything.
25 Alcohol is not the reason that he cannot remember whether the knife was in his pocket or on
26 the ledge. It is just that it happened so fast. At this moment he does not remember where he
27 placed the knife.

28
29 126. He said that it is correct that it is a ratchet knife, so you have to extend the blade. Sometimes
30 the blade is left out when used. Sometimes it is not. He agreed that he would not have put it
31 back in his pocket with the blade extended. It was suggested to him that it must therefore have
32 been on the ledge. In response he said that he is not sure it was on the ledge.



- 1 127. He also said that he had left the knife on the ledge because patrons were waiting, so from the
2 issue was fixed, they just continued working. He did not take it out to the car after fixing the
3 issue because they returned to work immediately.
4
- 5 128. In detailing the sequence of events, he said that the first thing is that he was struck on the back
6 of his head. He is not sure that this was a punch. That is the reason that he did not react in a
7 bad way, but it felt like a punch to the back of the head. He just turned and told the man to
8 leave.
9
- 10 129. He was opening the door and saying come out of the booth and the man started punching him.
11 He punched him around two or three times before. He is not sure whether the man's fist was
12 open or closed. He did not know what the man had in his hand. The DJ booth was dark. He
13 could not see anything. It felt like he was punching. It did not feel like he was being stabbed.
14 He did not react with punches to the man because he did not know what next. He just reacted
15 because he was in fear of his life. He did not intend to get into a fight with him.
16
- 17 130. He said he remembered when Mr. Mendez gave evidence and spoke about the position of the
18 hands of both of them but when most of the incident was happening Mr. Mendez was facing
19 the inside of the bar rather than the booth. He said that he does not know whether the man's
20 hands were open because he could not see his hands. This was a dark room, the man was in
21 black clothes.
22
- 23 131. When he took up the knife, he did not check whether it was open or closed. He did not intend
24 to use it. His intention was maybe that the man would see that he had the knife, and he would
25 stop punching him and leave the room. He said he accepted that he did in fact use it. He did
26 not even know the man got stabbed because of how it happened. He said maybe the
27 complainant thrust towards the knife itself because he (the complainant) was coming towards
28 him aggressively. Maybe the man came toward the knife. He did not have to go toward the
29 man. He said that he did not thrust the knife towards the complainant at any time. The
30 complainant was all over him, he was the one attacking him. He said that he does not
31 remember how he was holding the knife. He stabbed the complainant out of fear for his life,
32 not anger.
33



1 132. After the incident he still had the knife extended because as you can see on the CCTV footage,
2 people were throwing objects at him in the DJ booth. There were people coming towards him.
3 He did not know what was going on. He was just in fear of his life trying to get out of Everglo.

4
5 133. He said that he went home and changed his shirt because he was going to walk to the police
6 station because he left his car by the road. He did not want to be in the same shirt. When he left
7 Everglo Bar, he does not think that the Police had already arrived. He did not see them. It was
8 not that he walked pass the Police. He did not go straight to the police station. He went home
9 and tried to contact his Attorney because maybe he could follow him to the station.

10
11 134. In answer to questions from the Court he said that he does not remember which hand he was
12 holding the knife in. The complainant came into him. When he picked up the knife, they were
13 in front of and right on each other. The complainant was up on him punching him and he was
14 trying to 'ease him off'. The DJ booth is very small. He was trying to get the complainant out
15 of the room and to try to open the door. By the time he stepped back, the complainant came
16 towards him from the door to give him a quick punch.

17
18 **THE SUBMISSIONS**

19 135. The prosecution submits that the defendants' version of events is not plausible and ought to be
20 rejected. It is submitted that the evidence points to the deliberate stabbing of the complainant
21 by the defendant on four separate occasions. The number of occasions say the prosecution is
22 indicative of his intention to cause grievous bodily harm.

23
24 136. The prosecution submits that there is no evidence that the defendant sustained any injuries
25 despite his assertion that he was struck by the complainant. The prosecution also submits that
26 even if the Court finds that the defendant was struck by the complainant and was acting in self
27 defence in the mistaken belief that he needed to defend himself, he used excessive force and
28 self defence is therefore negatived. The prosecution also invites the Court to consider the
29 alternative offence of wounding simpliciter contrary to s.204 of the *Penal Code*.

30
31 137. The defence submits that the prosecution has not discharged its burden of proof and has not
32 negatived self defence. Counsel states that there appears to be little sense, truth or logic in the
33 account as related by the complainant. On that account the complainant was stabbed by a total



1 stranger for nothing more than a request for his choice of music to be played. There was no
2 prior conflict or malice between the parties such as to make the allegation possible or plausible.
3 The complainant's version must be rejected.
4

5 138. Counsel asks the Court to note the physical circumstances in which the incident occurred. The
6 defendant was in a closed space with nowhere to retreat, with the complainant advancing
7 repeatedly toward him, assaulting him, and blocking his only way out.

8
9 139. Counsel submits that there is no evidence that undermines the defendant's account as to the
10 way in which the complainant must have suffered his injuries. This is, that this was as a result
11 of the complainant advancing upon the knife held by the defendant rather than by the defendant
12 deliberately and maliciously thrusting the knife into his body.

13
14 140. Counsel argues that the manner in which the complainant received his injuries and the
15 multiplicity of them is explained by the complainant's own insistence in prolonging the assault
16 by refusing to leave the room without realising that he was in peril.

17
18 141. It is also argued that the defendant had no reason to attack a strange man whose intentions he
19 could not have known. The booth was cramped and dark and the complainant had entered
20 uninvited and was possibly under the influence of alcohol. Counsel said the sobriety of the
21 complainant is questionable given that he received some four injuries without immediately
22 recognizing this.

23
24 142. Counsel submits also that the complainant is taller than the average person and the fact that he
25 had his hands raised may have been either a sign of retreat or one of attack. His closed hands
26 could be interpreted as determination on his part to further attempt to punch the defendant.

27
28 143. Additionally, Counsel submits that it is important to note the conduct and movements of the
29 complainant in the aftermath of the incident as shown on the CCTV footage and as evidenced
30 by DC Peart. While the defendant went back to playing his music, the complainant in contrast
31 was still angry and agitated. He broke a pool stick and was trying to get back into the booth
32 with what must have been bad intentions.
33



1 144. At the hospital he told Officer Peart repeatedly that he must “*kill de bwoy*” referring to the
2 defendant. He was clearly angry. This says Counsel confirms that he was the aggressor and
3 may also be consistent with the defendant’s account of the aggression and violence with which
4 the complainant first approached the defendant in the booth.

5
6 145. Finally, it is submitted that the defendant had the knife in the booth for legitimate purposes. He
7 was away from patrons and it cannot be said that he took the knife there against the usual
8 prohibition on having weapons in liquor license premises. The defendant acted responsibly in
9 turning himself in to the police and did not seek to hide or evade or to conceal evidence. All of
10 this says Counsel is consistent with the defendant acting in lawful self defence.

11
12 **ANALYSIS**

13
14 146. I have considered all the evidence in this case for the prosecution and for the defence. There is
15 no burden on the defendant. He chose to give evidence. I have considered his evidence applying
16 the same fair standards as I do to all witnesses. I also bear in mind in the defendant’s favour
17 the added burden of being a defendant in the case.

18
19 147. There was no direct evidence as to the good character of the defendant. I do treat him as a
20 person of good character and remind myself of the appropriate directions. Good character is
21 not a defence to the charge, but it is relevant in two ways. First, the defendant has given
22 evidence and an interview to the police. His good character is a positive feature which I take
23 into account in his favour when considering whether I accept what he said. Secondly, the fact
24 that he has not offended in the past may make it less likely that he acted as the prosecution
25 alleges in this case. What importance I attach to his good character and the extent to which it
26 assists on the facts of this particular case are for me to decide. In making that assessment I may
27 take account of everything I have heard about the defendant.

28
29 148. I consider the entirety of what the defendant said in interview to the police, the incriminating
30 and exculpatory parts in order to determine where the truth lies. I must determine what weight
31 is to be given to the interview.



- 1 149. With respect to the evidence of each witness, as the tribunal of fact I have a discretion and am
2 not obliged to accept everything a particular witness says or reject everything a particular
3 witness says. I may accept a part of what a witness says and reject another part, if it is thought
4 that this a reasonable, proper and common-sense thing to do.
- 5
6 150. The defendant has admitted taking up the knife which struck the complainant but has said that
7 he was not acting unlawfully but was acting in lawful self-defence. The prosecution have to
8 prove the case, so it is for them to make the Court sure that the defendant was the aggressor
9 and was not acting in lawful self-defence.
- 10
11 151. I remind myself of the relevant directions taken from the *Crown Court Compendium*⁵, that the
12 law of self-defence is really just common sense. If someone is under attack or believes that
13 they are about to be attacked they are entitled to defend themselves so long as they use no more
14 than reasonable force.
- 15
16 152. In this case when the defendant took up the knife and struck or injured the complainant he says
17 it was because he believed that he was under attack from the complainant who had punched
18 and was continuing to punch him.
- 19
20 153. If on the evidence I am sure that the defendant was the aggressor and did not believe that he
21 was under threat from the complainant then no question of self-defence arises and, subject to
22 the other elements of the offence being proved, the verdict will be one of Guilty. If, however,
23 I consider that it was or may have been the case that the defendant was or believed he was
24 under attack or believed he was about to be attacked then I would go on to consider whether
25 his response was reasonable. If I were to consider that what the defendant did was, in the heat
26 of the moment when fine judgments are difficult, no more than what he genuinely believed was
27 necessary, that would be strong evidence that what he did was reasonable; and if I consider that
28 he did no more than was reasonable, he was acting in lawful self-defence and is not guilty of
29 any offence.
- 30
31 154. I would have to decide whether the force used was reasonable and to do so in the light of the
32 circumstances as I find the defendant believed them to be. If I am sure that even allowing for

⁵ August 2021

1 the difficulties faced in the heat of the moment, he used more than reasonable force, then he
2 was not acting in lawful self-defence and, if the other parts of the offence have been proved,
3 the defendant is guilty.

4
5 155. The credibility of the complainant is central to the prosecution's case. There is no other witness
6 who saw how the incident began.

7
8 156. The complainant says that he did not have anything to drink at the Everglo Bar. There is an
9 inconsistency between his evidence and that of the witness Akeem Peart who says that he gave
10 the complainant some of his drink. I do not consider this to be a major inconsistency and do
11 not accord much weight to it. The complainant gave evidence that he had been drinking that
12 evening but he could handle his liquor and knew what was going on. Akeem Peart describes
13 him as being all over the place that night. The complainant says that he was enjoying himself.
14 He had visited a number of bars that night. While the extent of his state is not fully known, it
15 is clear from all of the evidence that he was not in an entirely sober state. He appeared to the
16 emcee, Mr. Mendez not to have been entirely sober, hence the announcement made over the
17 microphone after the incident.

18
19 157. The critical aspect of the complainant's evidence is what he did on entry into the room and
20 whether or not he was in fact the aggressor.

21
22 158. The complainants' evidence is that he was trying to talk to the person on the microphone. He
23 said he went to the DJ room and asked him if he could "play two music". He did not curse,
24 push or punch the DJ over the head. He said the DJ turned around and started stabbing him. He
25 said the DJ did not tell him no or try to get him to leave. He said that he did not remember the
26 DJ trying to push him through the door and he turned around and started punching him. He said
27 that he did not put his hand on the DJ, the DJ just stabbed him. He said the DJ could have told
28 him no and he would have left. He said he was upset that the man pushed him, but he never hit
29 him.

30
31 159. Much is made of the complainant's aggressive behaviour after the incident. This is seen on the
32 CCTV footage. He attempted to get back into the DJ booth. He broke a pool stick. While at
33 the hospital he threatened to kill the defendant. The defendant says that this aggression was
34 displayed by the complainant upon his entry into the music room.



- 1
2 160. I have given careful consideration to this. The complainant said he behaved in that way after
3 the incident because he was angry that he had been stabbed for nothing.
4
- 5 161. On both the defendant's account and that of Mr. Mendez, there was no aggression displayed
6 by the complainant outside of the music room. He was making requests for music.
7
- 8 162. On Mr. Mendez's account when he turned and saw the complainant in the music room, the
9 complainant was being pushed and told to get out of the room. There is nothing described by
10 Mr. Mendez which suggests a level of aggression on the part of the complainant at this stage.
11 The most that Mr. Mendez says is that the complainant was resisting leaving the music room.
12
- 13 163. Having listened to and observed the complainant closely I believe that he is a truthful and
14 honest witness who is telling the truth about the way he says the incident occurred. While
15 observance of demeanor may only be of limited value in determining where the truth lies, there
16 is the added factor that the complainant's evidence appears to be partially supported by that of
17 the witness Mendez.
18
- 19 164. Mr. Mendez testified that when he first saw the complainant in the music room he was talking
20 to the defendant. They were not facing each other. The complainant was either behind or beside
21 him. The defendant was paying attention to the computer. He was looking for a song because
22 he was talking to patrons in the bar. Mr. Mendez said that he stopped the music and asked the
23 complainant to leave. The defendant was also trying to get the complainant to leave.
24
- 25 165. Mr. Mendez said that the complainant was putting up a little fight. He demonstrated this as
26 being raised hands in the air to the sides and the defendant pushing him out with open palms.
27
- 28 166. While the defendant says Mr. Mendez may not have seen everything because he was facing the
29 bar area initially, the sequence as described by Mr. Mendez makes it plain that he saw much of
30 the incident. It is of note that when he turned the defendant was occupied at the computer and
31 was not facing the complainant.
32
- 33 167. Mr. Mendez says that the guy, meaning the complainant was there for about five minutes at the
34 door of the music room trying to get Mario's attention, trying to talk to Mario and Mario was



1 ignoring him. He said Mario pushed the complainant and came back to the computer to find
2 songs. The complainant was still at the door. He came up to Mario and was trying to talk to
3 him.

4
5 168. Mr. Mendez was asked in cross-examination whether the two men appeared to be punching
6 each other and he said that he does not recall this. He recalls Mario pushing the complainant
7 out of the room and the complainant putting up a fight as if he was not getting out of the room.
8 Mr. Mendez did not see any punching by the complainant.

9
10 169. I find that the evidence of Mr. Mendez does provide some significant support for the account
11 given by the complainant.

12
13 170. On the evidence of Mr. Mendez, this was not a case where as defence Counsel put it, the
14 complainant would have been stabbed for no reason. The complainant was being persistent and
15 annoying in his requests and attempts to speak to the defendant. Ignoring the complainant did
16 not work and he would not leave the booth when asked.

17
18 171. On the defendant's own account, after playing one song requested by the complainant, he was
19 finished with him and went back to his work.

20
21 172. I accept the complainants' account as a truthful one that he did become angry after he realised
22 that he was stabbed. I find that he was making repeated requests before and at the time of
23 entering the music room. He was not being aggressive and did not assault or punch the
24 defendant.

25
26 173. The defendant's account in interview is that after he felt the hit to the back of his head he
27 turned, and the complainant punched him to his eye. He then took up the knife. He agreed that
28 it is correct that at some point during the altercation he stabbed the man in defence of his life.⁶
29 He also said that it all happened so fast that he does not know how the complainant got stabbed.

30
31 174. In evidence in chief, he said that he took up the knife and did not realise it was already open.
32 He said this was in the midst of trying to stop the complainant who was punching him. He does
33 not remember how he got stabbed. He repeated that this was because things happened so fast.

⁶ Page 22 of transcript of interview



1 175. In cross-examination he said that he could not see the hands of the complainant because the
2 room was dark. He said that the man continued to try to punch him. His intention when he
3 picked up the knife was that the complainant would see it and stop punching him and leave. He
4 said that he accepts that he did in fact use the knife.

5
6 176. The internal inconsistency in his account is plain. He repeatedly said by way of explanation
7 that he could not see the hands of the complainant because the room was dark. He did not know
8 what the complainant had or what he would do next. Yet he says he took up the knife intending
9 that the complainant would see it and desist. He seemed to be suggesting that the complainant
10 would have been able to see the knife and be restrained by the sight of it while also saying that
11 the room was so dark that he himself could not see whether there was anything in the hands of
12 the complainant. The reasonable inference from this is that the room was not as dark as he
13 claimed that it was.

14
15 177. Mr. Mendez said that he could see the hands of both men, neither man had anything in their
16 hands. Mr. Mendez demonstrated the hand positions of both men.

17
18 178. Within the small confines of the music room, the defendant would have been even closer to the
19 complainant than Mr. Mendez was.

20
21 179. I find as a fact that the defendant would have seen and could see that the complainant was
22 unarmed.

23
24 180. Overall, through his interview, evidence in chief and cross-examination the defendant
25 maintained that he does not know or could not remember how the complainant got stabbed.
26 This assertion on his part is surprising. I have set out his evidence and interview in some detail
27 above. The defendant recalled many details of the incident. He said he could not recall because
28 things happened so fast, but it appeared to me to be a singular reluctance on his part to say how
29 he had used the knife. In each case, whether in interview or in the course of giving evidence he
30 stopped just short until pressed to say that his case is that he stabbed the complainant in self
31 defence.

32
33 181. His assertion that he could not recall from where he took the knife whether from his pocket or
34 the ledge appeared also to be surprising. He was asked in cross-examination whether he would



1 have had an open knife in his pocket and he agreed that he would not. When it was suggested
2 to him that the knife must therefore have been on the ledge he said that he is not sure. He said
3 that he did not check whether the knife was open or closed while also saying that he had picked
4 up the knife to defend himself.

5
6 182. He said that he could not remember how he was holding the knife but also said that he stabbed
7 the complainant out of fear for his own life and not anger.

8
9 183. In summary, he appeared to me to be bent on minimizing anything he did which related to the
10 knife. This resulted in internal inconsistency in his own account or implausibility. While I
11 accept that this does not of itself mean that he is not giving a truthful account, I do find it to be
12 inconsistent with someone trying his best to be truthful.

13
14 184. In cross- examination he said this: -

15 *“I didn’t even know he got stabbed because to how it happened, maybe he thrust*
16 *towards the knife itself because he was coming towards me aggressively.*

17 *Maybe he came toward the knife. I didn’t have to go toward him.*

18 *I didn’t thrust the knife towards him at any time.*

19 *He came towards me.*

20 *He was all over me, he was the one attacking me.”*

21
22 185. Thus, on his account the complainant by his persistent attacks ran into the knife which caused
23 not one but four injuries. This is implausible.

24
25 186. The fact that the complainant had been drinking does not in my view provide a reasonable
26 explanation for him being unaware that he was repeatedly running into an open knife.

27
28 187. On the defendant’s account he gave the knife in a bag of items to Mr. Taylor. The evidence of
29 Mr. Taylor is that he was handed the knife which he placed in a compartment of the car.

30



1 188. The defendant says that he was punched at least twice by the complainant which led him to
2 fear that he was being attacked and that he may be further attacked. I had the opportunity to
3 observe him carefully as he gave evidence. I did not find him to be a credible witness on
4 material aspects and in particular on this aspect I do not believe him.

5
6 189. In addition to my observation as to his demeanor, there is the fact that his account is not
7 supported by the evidence of the witness Mr. Mendez. While Mr. Mendez does not see any
8 weapon at all in anyone's hands, he also does not see any punching by the complainant. Even
9 if it could be said that Mr. Mendez did not see all of the incident, the defendant's account is
10 that multiple punches were thrown by the complainant while he was being pushed through the
11 door. The evidence of the defendant as to multiplicity of punches or attempts to punch him
12 by the complainant is not entirely consistent with what is seen by Mr. Mendez.

13
14 190. Given the small room, the defendant said when he first felt something to the back of his head,
15 he was not certain that this was a punch or hit because of the small space in the room. Yet at
16 times he sought to positively assert that he had been punched twice.

17
18 191. I reject the account given by the defendant that he was punched by the complainant.

19
20 192. Could the defendant have perceived or believed that he was under attack by this patron in this
21 small dark room where his path of access was blocked? On the defendant's account this was a
22 patron who had asked for a song which had been played and the patron was still talking. The
23 defendant said he realised that he was still talking. He said that he was ignoring him. The man
24 came into the booth and was talking in his ears.

25
26 193. In his interview he said the man was first trying to talk to him from outside. In interview the
27 defendant said this: -

28
29 *“Officer, I do not know this man. I never intended to stab him. I was in fear of my*
30 *life, this man a antagonize me from night and he come inna the DJ booth punch*
31 *me in the back a me head, punch me over me eye, me nah know what else him*
32 *capable of do...”*



- 1 194. Plainly the defendant found the complainant annoying. He was angry that the complainant
2 would not leave him alone or leave the music room.
3
- 4 195. On his account it is the two punches which lead him to pick up the knife in fear of his life not
5 knowing what else the complainant was going to do.
6
- 7 196. It is accepted by all that this was a dark room with light enough only on the equipment to be
8 able to see to operate them. The defendant says that he does not know whether the complainant
9 had anything in his hands, yet he describes a space which is so small and cramped that two
10 persons standing in the room would be rubbing against each other. Mr. Mendez says that the
11 complainant had nothing in his hands.
12
- 13 197. I find as a fact that the defendant well knew even from the proximity as well as the visibility
14 that the complainant was unarmed. I find as a fact that the defendant was not under attack and
15 did not believe he was under attack. He reacted in anger and annoyance.
16
- 17 198. I have also considered that aspect of his account when he says that he did not know what else
18 the complainant was capable of. In my view even if he had the belief that he was under threat
19 or possible attack which I do not find to be the case, his response, to stab the complainant four
20 times was excessive and disproportionate in all the circumstances.
21
- 22 199. I reject his account. I do not believe it to be a truthful one. There is no burden on him. I go
23 back to the prosecution's case and consider all of the evidence. The prosecution has made me
24 feel sure that the defendant was not acting in self defence. The stabbing of the complainant was
25 not accidental. It was deliberate.
26
- 27 200. Mr. Mendez said that he did not see a knife in the hand of the defendant when the defendant
28 says that he did have a knife in his hand as he sought to get the complainant out of the room.
29 The complainant received injuries consistent with infliction by sharp force trauma. The knife
30 was recovered by the Police. Mr. Mendez must therefore be untruthful or mistaken about the
31 defendant not having anything in his hand. I reject this part of the evidence of Mr. Mendez who
32 because of his friendship with the defendant may well be motivated to seek to protect him.
33



1 201. Wounding with Intent requires a specific intent to cause grievous bodily harm. I consider what
2 the defendant said and did, before, during and after the incident. He is described as pushing the
3 complainant out of the room. The complainant says he said nothing to him, but the defendant
4 says that he asked the complainant to exit the music room, to leave. Mr. Mendez says that the
5 complainant was asked to exit the music room and was resisting leaving. The complainant
6 sustained four stab wounds to the front part of his body. After the incident the defendant
7 continued playing music until told by the security guard that someone had been stabbed and
8 that the music was to be turned off. He left the Bar, went home and then handed himself in to
9 the police station. He did not go into the station with the knife.

10
11 202. Does the multiplicity of the injuries make me feel sure that he intended to cause really serious
12 injury. There was a clear intent to get the complainant out of the room and to be relieved of
13 his irritating requests and presence. This is not necessarily inconsistent with an intent to cause
14 him serious harm. The intention does not have to be formed in advance. It could have been
15 formed at the moment of the stabbing. I consider the defendant's' behavior after the stabbing
16 and the immediate return to playing of music after the complainant had left the room.

17
18 203. The overall sense from the evidence is that the defendant was annoyed, he wanted the
19 complainant out of the music room and for the complainant to stop bothering him while he was
20 working. For the defendant the intent was to secure the departure of an irritating patron.

21
22 204. I find that I cannot be sure against this background that the defendant intended to cause the
23 complainant really serious harm. In the heat of the moment this may well have been the case,
24 but I am not sure.

25
26 205. Pursuant to s.59 (2) of the *Criminal Procedure Code* (2021 Revision), I go on to consider the
27 lesser offence of wounding simpliciter pursuant to s.204 of the *Penal Code*. This provides in
28 part that a person who unlawfully and maliciously wounds or inflicts any grievous bodily harm
29 upon any other person, either with or without any weapon or instrument, commits an offence.

30
31 206. The prosecution must prove to the required standard the following elements:-

- 32
33 i. That the defendant used some unlawful force on the complainant.
34 ii. That when he did so the defendant was acting maliciously.

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iii. The complainant suffered a wound.

207. The word “maliciously” in this context has a particular legal meaning which is that the defendant either intended to cause the complainant some injury, however slight or was aware of a risk that he might cause the complainant some injury, however slight but took that risk and that in the event, the defendant caused the complainant to suffer a wound. In this case it is agreed that the complainant sustained four wounds.

208. I am satisfied so that I am sure that the defendant was not acting in lawful self defence, that he intended to cause the complainant some injury, however slight and that he did in fact cause the complainant injury.

209. I am satisfied so that I am sure that all the elements of the offence of wounding have been made out. I am satisfied so that I am sure that the defendant is guilty of the offence of wounding contrary to section 204 of the *Penal Code*.

Dated this the 23rd day of September 2022



**The Honourable Justice Cheryll Richards K.C.
Judge of the Grand Court**