

1 THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE

3 INDICTMENT NO. 78 of 2020

4
5 THE QUEEN
6 V.
7 DERRIN KENNEDY EBANKS



8
9
10 **Appearances:** Mr. Scott Wainwright for the Prosecution
11 Mrs. Lee Halliday-Davis of Brady Attorneys
12 for the Defence
13 **Before:** Justice Cheryll Richards Q.C.
14
15 **Sentence Hearing:** 4th November 2021
16 **Further Written Submissions:** 9th and 11th November 2021
17 **Sentence Judgment:** 2nd December 2021
18
19
20

21 **HEADNOTE**

22 *Criminal Law – Assault Causing Actual Bodily Harm, Wounding,*
23 *Damaging Property, Wrongful Confinement, Theft – Sentencing following trial –*
24 *Principles on Sentencing.*

25
26 **SENTENCE JUDGMENT**



- 1 1. The Defendant is before the Court for sentencing in respect of nine offences involving
2 four victims. Eight of the offences are on an Indictment before the Grand Court. One
3 offence is a Summary Court charge. All the offences were committed on the afternoon
4 and evening of Sunday the 6th day of September 2020 in the district of West Bay.
- 5
- 6 2. The Defendant was convicted by a jury after trial of eight offences on a 13-count
7 Indictment in the Grand Court. These are offences committed against three women,
8 Lucia Mannarino, Shallyn McDonald and Kimberly Woomer. The jury returned verdicts
9 of not guilty in respect of four offences. No verdict was returned on count 4 of the
10 Indictment it being an alternative to count 3.
- 11
- 12 3. The Defendant pleaded guilty in the Summary Court to the offence of Assault
13 Occasioning Actual Bodily Harm against Eric Carmona Jimenez. As the offences are all
14 part of a series, Counsel on both sides have invited this Court to also pass sentence in
15 respect of the offence to which the Defendant pleaded guilty in the Summary Court.
- 16
- 17 4. In respect of the jurisdiction of the Grand Court to also pass sentence in respect of the
18 Summary Court offence, Counsel have referred the Court to the judgment of Dame
19 Dobbs J. (Ag) in the case of *R v Perez- Ruiz and others*¹. Dame Dobbs. J reviewed s.11
20 of the *Grand Court Act* (2015 Revision) and s.19 of the *Courts Act*² 1981 of the United
21 Kingdom. The learned Judge concluded that the Grand Court has the power to exercise
22 the powers of a Magistrate of the Summary Court. The rationale is that it would be in
23 the interests of justice in respect of cases which relate to the same subject matter and

¹ Grand Court Unreported 29th March 2019

² Originally named the *Supreme Court Act* 1981

1 would reduce delay, save public funds and also ensure that there is consistency of
2 sentence. The Court stated:

3 *“The relevant provisions in the UK can be found in s.19 of the **Courts Act***
4 ***1981** which sets out the general jurisdiction exercisable by the High Court,*
5 *and s.66 the **Courts Act 2003** which gives a judge of the high court the*
6 *powers of a justice of the peace who is a district judge (magistrates’*
7 *court/Cayman Summary Court) in relation to criminal causes and matters.*

8
9 *Section 11 of the **Grand Court Law (2015)** Revision states that the Grand*
10 *court shall be a superior court of record and in addition to any jurisdiction*
11 *exercised by the court or conferred by that and any other law in force in the*
12 *Cayman Islands it has the like jurisdiction which is vested in or capable of*
13 *being exercised in England by the High Court as constituted by the **Senior***
14 ***Courts Act 1981** and any other Act of Parliament of the United Kingdom*
15 *amending or replacing that Act.”*
16

17 5. In the instant case, both Counsel are in agreement with this interpretation and have urged
18 a conjoined approach to sentencing.



19
20 **THE OFFENCES**

21
22 6. The Defendant falls to be sentenced in relation to the following offences. In relation to
23 victim Lucia Mannarino (LM):

24
25 **Count 2 – ASSAULT CAUSING ACTUAL BODILY HARM** contrary to s.216 of the
26 **Penal Code** (2019 Revision). The particulars are that he, on the day in question, at
27 Town Hall Road, West Bay, Grand Cayman assaulted her thereby causing her actual
28 bodily harm.
29

1 **Count 3 - WOUNDING** contrary to s.204 of the *Penal Code* (2019 Revision). The
2 particulars are that he, on the said day, and at the said place, unlawfully and
3 maliciously wounded Lucia Mannarino.

4
5 **Count 5 – DAMAGE TO PROPERTY** contrary to s.267(1)(a) of the *Penal Code* (2019
6 Revision). The particulars are that he, on the said day and at the said place,
7 damaged an Apple iPhone, the property of Lucia Mannarino, intending to
8 damage such property or being reckless as to whether such property would be
9 damaged.



10
11 7. In relation to Shallyn McDonald (SM):
12

13 **Count 7 - ASSAULT CAUSING ACTUAL BODILY HARM** contrary to s. 216 of the
14 *Penal Code* (2019 Revision). The particulars are that he, on the day in question at
15 Town Hall Road, West Bay Grand Cayman assaulted her thereby causing her actual
16 bodily harm.

17
18 **Count 8 - THEFT**, contrary to s.241(a) of the *Penal Code* (2019 Revision). The
19 particulars are that he, on the said date and at the said place stole a Samsung
20 Galaxy 58 mobile phone, the property of Shallyn McDonald.

21
22 8. In relation to Kimberly Woomer (KW):
23

24 **Count 10 - ASSAULT CAUSING ACTUAL BODILY HARM**, contrary to s.216 of the
25 *Penal Code* (2019 Revision). The particulars are that he, on the said day at

1 Genevieve Bodden Drive, West Bay, Grand Cayman, Cayman Islands, assaulted
2 Kimberly Woomer by grabbing her breast and thereby causing her actual bodily
3 harm.

4
5 **Count 12 - WRONGFUL CONFINEMENT**, contrary to s.222 of the *Penal Code* (2019
6 Revision). The particulars are that he, on the said date and at the said place,
7 Genevieve Bodden Drive, West Bay, Grand Cayman, Cayman Islands,
8 wrongfully confined Kimberly Woomer.

9
10 **Count 13 - DAMAGING PROPERTY**, contrary to s.267(1)(a) of the *Penal Code* (2019
11 Revision). The particulars are that he on the said date and at the said place,
12 Genevieve Bodden Drive damaged a pair of spectacles, the property of Kimberly
13 Woomer, intending to damage such property or being reckless as to whether such
14 property would be damaged.

15
16 9. In relation to Eric Carmona Jimenez:



17
18 **C #02196/2020 - ASSAULT CAUSING ACTUAL BODILY HARM**, contrary to
19 s.216 of the *Penal Code* (2019 Revision). The particulars are that he on the said
20 date at Coral Beach Restaurant, Grand Cayman unlawfully assaulted Eric
21 Carmona Jimenez thereby causing him actual bodily harm.



1 **THE FACTS**

2
3 10. The brief facts are these. The victim Lucia Mannarino had been in a relationship with
4 the Defendant in the past. They have a two-year-old son together. At the material time,
5 they resided at separate locations in the district of West Bay.

6
7 11. On Sunday 6th September 2020, Ms. Mannarino and her friend Shallyn McDonald had
8 been out at brunch at Coral Beach Club. When they were leaving the Club, in the late
9 afternoon the Defendant was seen in the parking lot. The women greeted him. From
10 his conversation and manner he appeared to them to have been drinking. Both ladies
11 went to the home of Ms. Mannarino. This is a two-story apartment. While Ms.
12 Mannarino was in a bedroom upstairs putting the two-year-old child to bed, she sent
13 a message to the Defendant inviting him to visit his son. Sometime later, about after
14 9pm while she was downstairs in the living room area with Ms. McDonald, the
15 Defendant arrived at the apartment. He had a container of food in his hand. He took
16 utensils from the kitchen area which adjoins the living room, sat down and began to
17 eat. After he sat down Ms. Mannarino asked how his day was and he responded saying
18 that he had '*F'ed some girl in the parking lot and beat the S out of some guy, it was a*
19 *good day*'.

20
21 12. Ms. Mannarino became upset because of his response and asked him to leave. Ms.
22 McDonald also asked him to leave and told him he was drunk. The Defendant became
23 angry and threw the plate of food at Ms. Mannarino. He picked her up and slammed
24 her against the glass coffee table. The coffee table shattered and Ms. Mannarino
25 received a wound to the back of her right arm. When she was down on the ground,



1 the Defendant stomped on her head with his foot. He was wearing dress shoes. He
2 took up her phone and smashed it on the tiled floor causing damage to it.

3
4 13. Shallyn McDonald tried to intervene to stop him from hitting Ms. Mannarino. The
5 Defendant kicked and punched her multiple times to her head causing fractures to her
6 nose. The punches also aggravated a previous injury which she had to her head. When
7 Ms. McDonald attempted to call 911 from her phone, the Defendant took it from her
8 and placed it in his pocket. Later he left the apartment with it. Despite returning to the
9 apartment a second time, he discarded the phone in the bushes in an area of West Bay.
10 Following his arrest he took the police to that area. They retrieved the phone which
11 was not then in working condition.

12
13 14. With respect to the victim Kimberley Woomer, the Prosecution's case at trial was that
14 following the Defendant's departure from the home of Ms. Mannarino he went to
15 another part of West Bay to the home of Kimberley Woomer. He had been in a
16 relationship with Ms. Woomer for a period of time. He pushed his way into her
17 apartment when she opened the door, kicked her dog who ran to greet him and threw
18 Ms. Woomer against the wall of the apartment. When she tried to get him off her he
19 pushed her to the ground. He grabbed her spectacles and threw them across the room
20 so that they shattered. She is not able to see without them. He threw her on the ground,
21 punched her on the head and started strangling her. When she tried to get away, he
22 pulled her by the ear and threw her on the bed where she was forced to remain. He
23 grabbed her by her breast and her nipple causing bruising to that area. Through
24 physical confinement and fear, she remained where he placed her until the early hours

1 of the morning. She was unable to see and was unable to call for help as he also took
2 her phone.

3
4 15. With respect to the victim, Eric Carmona, the offence to which the Defendant pleaded
5 guilty, the Prosecution's case is that Mr. Carmona, the Defendant and other friends
6 had been socializing as a group at Coral Beach Restaurant at about 6pm on the day in
7 question. There was an exchange of conversation. The Defendant grabbed the victim
8 by his neck, was strangling him and punched him to the left side of his face. Persons
9 intervened and stopped the assault. In the course of this trial, the Defendant said that
10 Mr. Carmona had said something about his sister. Mr. Carmona sustained bruising to
11 his neck and face.



12
13 **VICTIM IMPACT REPORTS**

14
15 16. The DCR has provided a Victim Impact Report ("VIR") dated 21st October 2021 in
16 respect of Lucia Mannarino. Under Assessment/Evaluation it states:

17
18 *"Based on all of the information garnered, it would appear that Ms. Mannarino has*
19 *been grievously impacted physically, financially, emotionally and psychologically*
20 *as a result of Mr. Ebanks' actions. Ms. Mannarino continues to experience*
21 *significant harm despite the offences occurring over one year ago, including but not*
22 *limited to, her Post-Traumatic Stress Disorder (PTSD), constant feelings of stress,*
23 *and nightmares. Ms. Mannarino was also put at a significant financial loss as a*
24 *result of her injuries, loss of work hours and damage to her cell phone. It is of*
25 *further concern that Ms. Mannarino is intensely fearful for her safety and that of her*
26 *young son, and hence expressed her desire for Mr. Ebanks to be incarcerated. Ms.*
27 *Mannarino spoke to her re-victimization during the trial as she felt that Mr. Ebanks*
28 *and his family members intimidated her. In order to overcome the overwhelming*



1 *effects of the offences, Ms. Mannarino and her son may require long-term*
2 *intervention and support.”*

3
4 17. Attached to the report is a 14-page statement from Ms. Mannarino. It details the
5 impact of the offence upon her and resulting emotional and psychological trauma. She
6 has also suffered economic loss to include the cost for replacing her phone, medical
7 treatment and loss of work hours. The total is \$7,200.00. She states in part:

8 *“I am scared of Derrin. I am terrified that he will come back to hurt me again.*
9 *I do not believe that this will be the last time that Derrin hurts me as this is a*
10 *purposeful pattern of behavior and he now has been convicted of a crime. I am*
11 *scared that while Derrin is out on bail and waiting for sentencing he (sic) hurt*
12 *me. If I see Derrin in public, I immediately leave. I bought a new car and*
13 *moved homes so that Derrin doesn’t know what I drive or where I live. I am*
14 *terrified that Derrin will physically hurt “M.”. I am scared of Derrin’s family*
15 *as his dad often showed up unannounced and he had his brother (and other*
16 *family members) intimidate me both in and outside the Court room during trial.*

17
18 *During this assault I received numerous injuries. I had bruises, cuts and*
19 *swelling all over my head. The entire left side of my face, jaw and head was*
20 *extremely swollen and bruised. I had a black eye and a foot print bruise on the*
21 *temple area of my face. The bruising and swelling lasted for 3 weeks. I had*
22 *deep cuts in my ears. The frenulum in my upper lip had completely ripped. My*
23 *jaw was in extreme pain and felt like it was broken. I was unable to speak,*
24 *smile, close my mouth or chew food properly for weeks. I had painful areas*
25 *and bruises all over my body. As a result of the head and facial injuries from*
26 *the assault, I developed headaches behind my eyes, had blurred vision and*
27 *issues with convergence. An optometrist prescribed eyeglasses in an attempt to*
28 *assist with these issues. I had injuries to my fingers on my right hand that were*
29 *so painful I was unable to use my dominant hand properly or over two months*
30 *and had issues at work resulting from being slammed into the coffee table and*



1 *now have permanent scars. I have lasting injuries to my neck, back and rotator*
2 *cuff. I was treated at the hospital and have had numerous various doctor*
3 *appointments afterwards.*

4
5 *My performance at work has been affected due to memory loss, issues with*
6 *concentration, immobility of my fingers, and the amount of time I had to take*
7 *off to recover, to seek medical attention and to attend legal proceedings.*

8
9 *The emotional and psychological trauma far outweighs the physical trauma of this*
10 *assault. It has had a devastating impact on my mental and emotional health. I suffer*
11 *from post-traumatic stress disorder (PTSD), sleeping problems, nightmares,*
12 *depression, anxiety, shame and anger. I am always on edge and stressed out. I have*
13 *trouble concentrating and zone out quite often. I wake up to any little sound I hear*
14 *or any car doors closing. I sleep fully dressed as I am afraid that something will*
15 *happen to me in the night and I don't want to be found undressed. ...”.*

- 16
17 18. Ms. McDonald has provided a victim impact statement dated 6th October 2021,
18 consisting of 5 pages. She states in part:

19
20 *“At the time of the assault, I was still recovering from a concussion sustained*
21 *on 7 August 2020 which I sustained while wakeboarding along Seven Miles*
22 *Beach. I was almost fully recovered by the time of the assault on 6 September*
23 *2020 and was not experiencing any physical symptoms aside from the*
24 *occasional headache. I was almost completely back to my normal activity level.*
25 *During the assault on 6 September 2020 I suffered repeated head trauma from*
26 *the Defendant repeatedly punching me all over my head. For much of the attack*
27 *I was pinned on the ground by the Defendant and he would repeatedly punch*
28 *me in the head, causing the opposite side of my head to repeatedly hit the hard,*
29 *tile floor. I specifically recall my head bouncing off that tile floor with each*
30 *blow and thinking to myself that the Defendant was going to kill me. This*
31 *repeated head trauma resulted in a far more significant MTBI than my first*

1 *concussion and left me with significant physical deficits and symptoms for*
2 *many, many months. I still have not fully recovered and I am told by my*
3 *physician that I may continue to suffer these symptoms for the rest of my life. I*
4 *initially suffered with pain, headaches, blurry vision and difficulty with*
5 *memory, difficulty seeing, dizziness, neck pain, nausea, feeling woozy or in a*
6 *fog, difficulty concentrating, difficulty with memory, difficulty reading and with*
7 *general comprehension, fatigue, lethargy, and anxiousness. As this MTBI*
8 *occurred only one month after the first concussion, I was at significant risk of*
9 *suffering permanent brain damage should I sustain another head injury during*
10 *my lifetime. I am extremely lucky the Defendant did not turn me into a vegetable*
11 *that evening. Part of my recovery from the MTBI involved not being able to do*
12 *much of anything – I was advised I couldn't watch TV, I couldn't read a book,*
13 *I couldn't have too much screen time (either on a work computer, my own*
14 *computer, or my phone, any screen), anything that would tax my cognitive*
15 *functioning at all was off-limits, etc. The advice from my doctors at that time*
16 *was to simply rest and/or sleep as much as possible – this would give me the*
17 *best possible chance of recovery from the MTBI. I was also advised by my*
18 *doctors that I was not allowed to take part in any activity that would raise my*
19 *heart rate even a little, as anything that raised my intracranial pressure even*
20 *slightly could potentially kill me. Exercise is primarily how I manage my own*
21 *personal stress generally and not being able to exercise at all after this*
22 *traumatic event caused me great distress and depression. I was under the*
23 *weekly or biweekly care of a head injury specialist ... for the MTBI for several*
24 *months following the attack, in addition to my GP”.*

- 25
26 19. In addition to significant lost wages of close to \$7,000.00 there was also the cost of a
27 replacement phone and medical costs.





1 20. Ms. Woomer in her victim impact statement dated 21st October 2021 consisting of 4
2 pages, describes the traumatic impact of the attack on herself and her dog. She states:

3
4 *“In the days following the abuse, I began to detach completely from my reality.*
5 *To this day, I have not returned to my normal self. Coping with what happened*
6 *has become unbearable. For the past year, I hear myself screaming, “somebody*
7 *help me” when I am driving down the road or trying to sleep at night. My voice*
8 *was hoarse and almost nonexistent for a week from the strangulation. My*
9 *breast remained bruised for weeks and my nose was swollen, but nothing hurt*
10 *more than the emotional and spiritual pain and my lack of ability to come to*
11 *terms with what had just happened. I took my dog to the vet and myself to the*
12 *doctor, and we were told we would be okay. This must have meant physically*
13 *because both of our mental states have suffered. My dog eventually returned to*
14 *a less anxious dog, but I never recovered. I have this constant feeling that I*
15 *cannot breathe and that I am gasping for air as if I am drowning. My doctor*
16 *prescribed me Clonazepam for panic attacks and PTSD episodes, but this did*
17 *not help with the painful tightness in my chest that has consumed me for over a*
18 *year. I have mourned myself multiple times with no hope of returning to who I*
19 *once was. Derrin has taken a piece of me that I fear will never come back. My*
20 *soul has died. I am consumed with fear and have hidden in my home for over a*
21 *year. My ability to hold conversations at my job with people about their health*
22 *has fallen flat, and I was so scared of men my boss and coworkers would have*
23 *to help them when they came into the store. My lack of safety pushed me to*
24 *leave the Island in fear that he would not be sentenced long enough to let the*
25 *women and men he has hurt live their lives freely. Unfortunately, the trauma,*
26 *hypervigilance and fear stuck with me even when I moved back to ... Trauma*
27 *does not disappear just because your location changed. Escaping the pain from*
28 *trauma is nonexistent. It is always with you. In April 2021, I moved my dog off*
29 *Island in order to keep her safe. After a month, I spent the money to come back*
30 *to Cayman to testify in court. After quarantining for two weeks, I was told that*

1 *they were postponing the trial. At this point, I sold my car and left permanently*
2 *with no plan on coming back until Derrin is sentenced”.*

3
4 21. Mr. Eric Carmona Jimenez in his victim impact statement describes the impact upon
5 him of the assault. He says that he had been good friends with the Defendant from
6 2014 to 2020. He and the Defendant used to attend the same gym. He states:

7
8 *“I started to suffer from headaches, anxiety, trouble sleeping and nightmares after*
9 *this assault and going to the police. When I found out Derrin was no longer on 24*
10 *hour house arrest only after a few weeks after the assault, I was extremely*
11 *disappointed with the judicial system and also scared for my safety. I decided it was*
12 *safest for me to take a break from the Island. I resigned from my job and moved*
13 *back to ..., until I feel safe enough to return. This has affected my mental health and*
14 *I was living in a state of fear. I have been going to therapy to help me with my*
15 *anxiety. This has also affected me financially because I resigned from my job as*
16 *..... and move countries.”*

17
18 **ANTECEDENT HISTORY**



19
20 22. The Defendant has no previous criminal record. He has a record of seven traffic
21 offences including one for Driving under the Influence.

22
23 **SOCIAL INQUIRY REPORT**

24
25 23. The Department of Community Rehabilitation (DCR) has provided a Social Inquiry
26 Report (SIR) dated 21st October 2021 in respect of the Defendant. This provides
27 information as to his background and circumstances.



- 1 24. He is 32 years old and is self-employed in the tourism industry. He has two young
2 children, both sons. The eldest is 6 years old and is resident with his mother in Canada.
3 The second is 2 years of age, the son of the victim Mannarino mentioned above.
- 4
5 25. The Defendant was raised in a stable home. It is said that one of his parents was a
6 stern disciplinarian which led to his being exposed to an authoritarian style along with
7 opposing parental views. As a result of this the Defendant sometimes lived outside
8 the home. The conclusion of the Probation Officer is that there was early exposure to
9 aggression and violence which may have had serious implications for his adult life.
10 He graduated high school and started but did not complete various tertiary education
11 courses. He was gainfully employed at various jobs before starting his own tour boat
12 business in 2017.
- 13
14 26. The Officer assessed him as not being at a point where he is contemplating change
15 and not a suitable candidate for the men's nonviolence programme.
- 16
17 27. He was also assessed using the LS/CMI/Risk Need Assessment tool. His overall risk
18 of re-offending was assessed as high. Of the 8 criminogenic factors used in the
19 assessment, he scored in the very high category for pro-criminal attitude and
20 orientation and in the high category, for anti-social patterns.
- 21
22 28. With respect to the first, the Officer says that he displayed no remorse, denied or
23 minimized the offences and justified his behaviour towards the victims. The Officer
24 concludes that he appears to have underlying issues that may be contributing to his
25 lack of victim empathy.



1 29. The Officer also states:

2
3 *“During the interviews, it was observed that Mr. Ebanks displayed detachment and*
4 *a nonchalant attitude towards the offences for which he was charged. He minimized,*
5 *denied and blamed when addressing every count for which he was found guilty. He*
6 *initially denied being part of any violence outside of the offence until his second*
7 *interview when the Summary of Facts was read and community collateral*
8 *information was obtained.*

9
10 *Based on the screening done for the Men’s Non-Violence Programme (MNVP), he*
11 *denied using intimidation, isolation, coercion and threats as well as physical and*
12 *emotional abuse. It had to be pointed out to him to consider the offences for which*
13 *he was found guilty. Consequently, no remorse was observed. From this*
14 *assessment, it was also gathered that he does not consider alcohol an issue in his*
15 *offending behavior. In reference to the incident related to Miss Mannarino and her*
16 *friend, he purported that it (alcohol) only “delayed” him from escaping his attackers*
17 *sooner”.*

18
19 30. With respect to the second element, anti-social patterns, the Officer says that there are
20 possibly unaddressed behavioural concerns from childhood which have presented in
21 adulthood but that specialized assessments for anti-social patterns would need to be
22 conducted. These are needed in order to ensure that the Defendant understands what
23 is taking place.

24
25 31. Under the criminogenic factor, family/marital, for which the assessment was medium
26 risk of re-offending, the Officer states that there is a background history of fights at
27 school and issues in the home and in relationships which suggest that the offences for
28 which he is before the Court show some escalation.

1 32. His specific risk-need factors include self-management skills and anger management
2 deficits.

3
4 33. Under sentencing options, the Officer says that extensive intervention is needed to
5 address the concerns raised in the Report. Such an intervention is currently not
6 provided by the Department. Based on his lack of insight and failure to accept
7 responsibility, the Officer states that he is not a candidate for the psycho-educational
8 intervention programs which are the ones provided by the DCR.

9
10 **SENTENCING GUIDELINES**

11
12 34. The *Cayman Islands Sentencing Guidelines* provide general principles for
13 sentencing and specific guidelines for these offences.



14
15 **ASSAULT ABH - LUCIA MANNARINO (LM)**

16
17 35. The maximum sentence for Assault ABH is 5 years' imprisonment. The Prosecution
18 submits that under the *Cayman Islands Sentencing Guidelines* this offence falls
19 somewhere between category 1 and category 2.

20
21 36. The Prosecution submits that it would be difficult to argue that the level of injury, i.e.,
22 the bruising to Ms. Mannarino's face, where the imprint of the Defendant's shoe can
23 be clearly seen, is serious in the context of the offence and is thus one of higher Harm.
24 However the Prosecution submits further that there are a number of additional
25 aggravating factors which may move the offence into the higher category. These
26 include:

*Sentence Judgment. R v. Ebanks (Derrin Kennedy). Ind. 78/2020. Coram Justice Cheryll Richards Q.C.
Date: 2nd December 2021.*



- 1 i. The presence of the young child who may have witnessed at least a part
2 of the incident and from the photographs taken of him thereafter was
3 clearly distressed by it;
- 4 ii. Abuse of a position of trust in that the Defendant is the father of the
5 child;
- 6 iii. The timing of the offence. It took place late at night;
- 7 iv. The location of the offence. It occurred in the victim's own home.
- 8
- 9 37. As to Culpability the Prosecution submits that this offence is one of higher Culpability
10 on the basis of the use of a weapon equivalent, that being, a shod foot.
- 11
- 12 38. The Defence submit in response that this is a category 2 offence and that there are no
13 features which would cause the offence to fall into a higher category. It is argued that
14 the offence occurred in a domestic setting where the defendant was invited into the
15 home by the message earlier sent. He did not use force to enter the home. The Defence
16 also point out that the evidence of Ms. McDonald was that the child slept through the
17 incident and was awakened thereafter.
- 18
- 19 39. As to culpability the Defence submit that it is accepted that the victims stated that they
20 were kicked by the Defendant. It is argued however that the injuries are bruises which
21 are not consistent with sustained kicking.
- 22
- 23 40. In the Court's view, this is an offence of lower Harm. The bruising injury to Ms.
24 Mannarino cannot be said to be serious in the context of this offence.



1 41. As to Culpability, this is at the level of higher Culpability because of the use of a
2 weapon equivalent.

3
4 42. It is thus a category two (2) offence. The starting point is 12 months' custody with a
5 range of sentencing of 6 to 18 months' custody.

6
7 43. As to the aggravating factors submitted by the Prosecution:

8
9 a. The presence of the young child: The evidence of the two witnesses as to
10 whether the child witnessed any part of the incident was different. One witness
11 said that from the position in which she was, in the course of the incident, she
12 looked up and saw the child standing at the top of the stairs. The child was also
13 visibly distressed after the incident. It is the view of this Court that the presence
14 of the young child constitutes an aggravating factor in this case.

15
16 b. The location of the offence: This was the home of the victim Mannarino. This
17 is the very place where she should feel safe and protected. The Defendant had
18 been invited to the home to visit his child. However, having been asked to leave,
19 because of his behaviour, the Defendant did not do so, and instead he launched
20 an attack upon her in her own home. This Court finds that the location of the
21 offence is an additional aggravating factor.

22
23 c. The timing of the offence: This was sometime after 9 pm. It was after hours.
24 This is also an aggravating factor although, in the Court's view, it is of less
25 weight than the other factors.

1 d. Abuse of position of trust: The Defence submitted that abuse of trust is usually
2 engaged when a person is employed in a profession or is given responsibility
3 that allows special access to the victim and that there are no elements of this
4 type in this offence. The submissions of the Defence are in part accepted on this
5 aspect by this Court as “Abuse of Trust” is directly connected to the presence
6 of the child, which is already accounted for as an aggravating factor, and the
7 Court must be careful to avoid double counting.

8
9 44. From the starting point of 12 months on the Assault ABH of Ms. Mannarino the
10 sentence is increased to 15 months’ imprisonment because of the three aggravating
11 factor (a, b and c immediately above).



12
13 **WOUNDING – LUCIA MANNARINO (LM)**

14
15 45. The maximum sentence for the offence of Wounding is 7 years’ imprisonment. The
16 Prosecution submits that this offence falls somewhere between category 2 and 3.

17
18 46. It is conceded that it is one of lesser Harm because of the nature of the injury and one
19 of lower Culpability because there are no higher culpability factors which are present.
20 However it is submitted that the four aggravating factors referenced above apply
21 equally to this offence and move it in the direction of category 2.

22
23 47. The Defence submit that it is properly a category 3 offence and that there are no
24 aggravating factors which would serve to move this offence into a higher category.
25 Counsel submitted that the injury is a small puncture wound which did not require

1 hospitalization and there is no mention of any treatment being given concerning this
2 injury.

3
4 48. It is the view of this Court that for the reasons conceded by the Prosecution, this is an
5 offence of lesser Harm and lower Culpability. It is a category 3 offence with a starting
6 point of 12 months' custody and a sentencing range of Community Service Order to
7 3 years' custody.

8
9 49. From a starting point of 12 months' custody the Court takes into account the 3
10 aggravating factors identified above, which serve to increase the sentence to one of
11 15 months' imprisonment.



12
13 **ASSAULT ABH – SHALLYN McDONALD (SM)**

14
15 50. The Prosecution submits that the offence of Assault ABH against Shallyn McDonald
16 is a category 1 offence.

17
18 51. It is argued that this offence resulted in greater Harm as the victim suffered a traumatic
19 brain injury and multiple nasal fractures.

20
21 52. As to Culpability, the Prosecution point to the use of a shod foot and that on the
22 evidence of Ms. McDonald it was prolonged or repeated in that as described by her,
23 there were multiple kicks and punches.

24
25 53. The Court has considered the medical evidence in this case. It was in the form of
26 agreed admissions. Ms. McDonald was examined at the George Town Hospital at



1 23:35 hours on the 6th September 2020. She was observed to be alert, cooperative and
2 not in painful distress. She had minimally displaced nasal fractures along with soft
3 tissue swelling. Following her release on the 7th September 2020, she was again
4 examined on the 29th September 2020 following a referral from her general
5 practitioner. She was found to have a mild traumatic brain injury. Admissions 14 and
6 15 state:

7
8 “14. Her symptoms consisted of daily headaches, blurry vision, insomnia, neck
9 pain, dizziness, fatigue, concentration and attention loss. These symptoms
10 are all common after an individual sustains a mild traumatic brain injury.
11

12 15. Ms. McDonald was further examined at the Cayman Clinic on the 10th June
13 2021. She continued to suffer from blurry vision, lethargy, sleep issues,
14 anxiety and PTSD.”
15

16 54. Having reviewed the medical evidence, this Court accepts the submissions of the
17 Prosecution that the Harm, i.e., a brain injury which appears to have been of extended
18 effect, is serious in the context of this offence.
19

20 55. It is also accepted that the use of a shod foot is a weapon-equivalent and would place
21 the offence in the category of higher Culpability.

22 56. This is a category one offence under the guidelines with a starting point of 3 years’
23 custody with a sentencing range of 2 to 4 years’ custody.
24

25 57. The Prosecution made no arguments as to aggravating factors in respect of this
26 offence.
27



1 **ASSAULT ABH - KIMBERLY WOOMER (KW)**

2
3 58. In respect of the bruising of the breast of Ms. Woomer, the Prosecution do not suggest
4 that this is serious in the context of the offence such as to amount to greater Harm. It
5 is submitted that the injury was to an intimate part of Ms. Woomer's body which
6 should also be considered when considering the level of harm.

7
8 59. The Culpability is said to be higher because of the repeated or prolonged nature of the
9 assault. The evidence is that it took place over a number of hours and that the victim
10 was subject to more than one episode of violence. In this Court's view care must be
11 taken to distinguish between other acts of violence some of which were not accepted
12 by the jury and the act of grabbing on to the breast of the victim. It is whether this act
13 was of a prolonged or repeated nature which must be considered.

14
15 60. In the Court's view this offence is one of lesser Harm and lower Culpability. It is a
16 category 3 offence with a starting point of a Community Service Order (CSO) and a
17 sentencing range between a fine and 12 months' custody.

18
19 61. The submission of the Prosecution that there are three aggravating factors is accepted.

20 These are:

- 21
22 i. This was in the victim's own home;
- 23 ii. It was late at night into the early hours of morning; and
- 24 iii. The victim's phone was taken from her so that she was unable to report
- 25 the incident.

1 62. From the starting point, the sentence would be increased to 6 months' custody as a
2 result of the aggravating factors.

3
4 **WRONGFUL CONFINEMENT - KIMBERLY WOOMER (KW)**

5
6 63. The maximum penalty in the Cayman Islands for the offence of Wrongful
7 Confinement is 5 years' imprisonment.

8
9 64. There is no offence of wrongful confinement in England and Wales. In the absence of
10 local and English guidelines the Prosecution have referred the Court to the English
11 offence of kidnapping. In England and Wales the penalty for kidnapping is life
12 imprisonment.

13
14 65. The Prosecution cite the case of *R v Spence and Thomas*³. That case involved the
15 kidnapping of young girls for the purpose of transporting them to another place for
16 prostitution arrangements. The English Court made the distinction between the more
17 serious offences of hostage taking and ransoms which will be met with significant
18 sentences and those at the other end of the scale such as offences in a domestic setting.

19
20 66. The Court stated:



21
22 *“... At the other end of the scale are those offences which can perhaps scarcely be*
23 *classed as kidnapping at all. They very often arise as a sequel to family tiffs or*
24 *lovers' disputes, and they seldom require anything more than 18 months'*
25 *imprisonment, and sometimes a great deal less...”*
26

³ [1983] 45 CR. App. R. (S) 143.

1 67. This Court proposes to use a sentence of 18 months as a starting point. There are no
2 aggravating factors which are taken into account which would serve to increase this
3 sentence from the starting point.

4
5 **ASSAULT ABH – ERIC CARMONA JIMENEZ (ECJ)**
6

7 68. The Prosecution accepts that this is an offence of lesser Harm and lower Culpability.
8 The starting point is a CSO with a sentencing range of sentence of a fine to 12 months’
9 custody. This offence took place at the Coral Beach Restaurant where others were
10 present.



11
12 **THE SUBMISSIONS OF THE DEFENCE**
13

14 69. On behalf of the Defendant, it is submitted that he has no previous convictions in a
15 Criminal Court as distinct from the Traffic Court and should be treated as a man of
16 good character. He owns and operates his own charter company. He comes from a
17 close family, has good relations with his siblings and has long term friends from
18 primary school.

19
20 70. His life is said to have changed dramatically since the incident. He has had stringent
21 bail conditions including a curfew and monitoring and has not been permitted to enter
22 the district of West Bay except for work purposes.

23
24 71. He is said to be remorseful and sorry for all that has happened. Counsel says that he
25 recognizes that he has a lot of work to do. He has sought counselling of his own



1 volition and over the past 4 months, he has been attempting to work through his issues
2 and concerns in a therapeutic setting.

3
4 72. Counsel highlights that in relation to Ms. Mannarino, the jury in acquitting the
5 Defendant of the more serious charge clearly found that he did not intend to cause her
6 serious injury.

7
8 73. Counsel said that it is accepted that the custody threshold has been passed but asks
9 the Court to consider four matters in particular:

10 i. The Defendant had no previous criminal convictions before these
11 proceedings.

12 ii. The course of behaviour was over a relatively short period.

13 iii. It is clear from all accounts that the Defendant's reasoning must have
14 been affected by alcohol. He will require further insight into how
15 alcohol affects his behaviour which will require professional assistance.

16 iv. There have been no breaches of his very stringent bail conditions.
17

18 **DECISION**

19
20 74. In mitigation this Court takes into account all that has been said about the Defendant in the
21 various reports and by his Counsel. He is 32 years old, a man of previous good character.
22 He has no previous convictions of any kind in the criminal courts. He has two young
23 children for whom he is said to provide financial support. He has been gainfully employed
24 for his adult life. He has had childhood issues which may have affected him in adulthood.
25 There has been some delay between the incident and the trial. He is said by his Counsel to



1 be remorseful for what happened and has started counselling of his own volition. Alcohol
 2 was involved and may have affected his behaviour. The Court proposes in each case to
 3 apply a mitigation factor of 20%. The following are the sentences:

OFFENCE	VICTIM	STARTING POINT - MONTHS	+ AGGRAVATING FACTORS	SUB-TOTAL MONTHS	MINUS MITIGATING FACTORS	TOTAL MONTHS
Assault ABH	LM	12	3	15	3	12
Wounding	LM	12	3	15	3	12
Damage to Phone	LM					1
Assault ABH	SM	36	-	36	7.2	29
Theft of phone	SM					1
Assault ABH	KW	Community Service Order	6	6	1.2	5
Wrongful Confinement	KW	18	-	18	3.6	14.4
Damage of Spectacles	KW					1
Assault ABH	ECJ	Community Service Order	-			1

5
 6 **SENTENCE**

7 75. This Court has considered whether any part of these sentences may be suspended. The
 8 *Cayman Islands Sentencing Guidelines* provide general guidance as to the aims of
 9 sentencing, assessing the seriousness of an offence, the custody threshold and the principle
 10 of proportionality. The Court reminds itself of this guidance in approaching this case
 11 including that, in sentencing an offender, the Court has to balance a number of competing
 12 interests and objectives and to tailor the punishment to the individual circumstances of
 13 each offender, while ensuring that it is in line with the seriousness of the offence. The



1 Court should consider which of the aims which govern the sentencing process will be best
2 served by the sentence to be passed. The aims which are set out in the *Alternative*
3 *Sentencing Act* 2008 include deterrence, punishment, rehabilitation and restitution.

4
5 76. The *Guidelines* also provide that a custodial sentence should not be passed unless the
6 offence is so serious that no other sentence can be justified for the offence. Custody should
7 be reserved for the most serious offences. Even where the custody threshold is passed,
8 custody can still be avoided in light of personal mitigation or if there is suitable community
9 intervention which would meet the aims of punishment and rehabilitation.

10
11 77. This Court considers these offences to be serious ones. Eight of these offences were
12 committed against three women who can be described as vulnerable compared to the
13 Defendant. The evidence at trial was that he bench presses some 300 pounds, is muscular
14 and athletic. Given his size and physical strength, the impact of his assaults on the victims
15 as detailed in their own words can only be described as being akin to acts of physical horror
16 visited upon them.

17
18 78. In the first incident, there were two women and one managed to escape thus forcing an end
19 to the incident. In the second, the victim was alone and was unable to escape on her own.
20 She was subjected throughout the period of her confinement to repeated acts of violence
21 and rendered helpless by physical restraint, fear, the loss of her spectacles and the inability
22 to use her phone. The details of the resulting trauma to each victim including Mr. Carmona
23 are set out in the victim impact reports and statements referenced above.

1 79. The Defendant is said to be at high risk of re-offending. DCR programs are said to be
2 unsuitable for him because of his approach to the offences. There is nothing in his personal
3 circumstances which indicates that there is suitable community intervention available and
4 that a custodial sentence is unavoidable. The custody threshold has clearly been passed
5 and in the view of this Court a custodial sentence is unavoidable.

6
7 **TOTALITY OF SENTENCE**



8
9 80. Paragraph 6 of the *Cayman Islands Sentencing Guidelines* with respect to concurrent and
10 consecutive sentences provides as follows:

11
12 **“6.1 Concurrent Sentences**

13 *It is wrong in principle to impose sentences to run consecutively where those*
14 *offences, though distinct in law, arose out of a single act so that the overall*
15 *criminality for the offender can be represented by concurrent sentences.*

16 *Concurrent sentences will ordinarily be appropriate where:*

17 *Offences arise out of a related incident or facts.*

18 *There is a series of offences of the same or similar kind especially*
19 *when committed against the same victim.*

20 *Where concurrent sentence are passed, the sentence should reflect*
21 *the overall criminality involved. The sentence should be*
22 *appropriately aggravated by the presence of the associated offences*
23 *and thus the court may increase sentence for the principal offence*
24 *to reflect the gravity of conduct:*

25
26 **6.2 Consecutive Sentences**

27 *Consecutive sentences will ordinarily be appropriate where:*

28 *Offences arise out of unrelated facts or incidents.*

29 *Offences are of the same of similar kind but where the overall*
30 *criminality will not sufficiently be reflected by concurrent sentences*
31 *for example:*

32 *Where offences are committed against different victims.*

33 *Where sexual offences or domestic violence are committed*
34 *against the same individual.*

35 *Where the offender commits the same or similar offence*
36 *after being arrested for the original offence.”*
37

1 81. In this case the offences have been committed against different victims, at different
2 locations and on multiple occasions. While mindful of the principle of totality, this Court
3 considers that it is appropriate that some aspect of the sentence be consecutive. The
4 sentences are to run as follows:

- 5 • The sentences for offences as against Ms. Mannarino and Ms. McDonald are to run
6 concurrently but consecutive to the sentence of 14.4 months for wrongful
7 confinement of Ms. Woomer for a total of 43.4 months.

8
9 82. Time served is to be deducted.



10
11 **TIME SPENT ON CURFEW WITH MONITOR**

12
13 83. The Defendant was on bail from the Summary Court from the 11th September 2020 to
14 November 2020 which was a period of a 24-hour curfew.

15
16 84. Between November 2020 and 18th December 2020 he was on a curfew from 6pm to 6am
17 imposed by the Grand Court. This continued except for days when he had work when his
18 curfew was 10pm. On the 21st April 2021, the bail was varied by the Grand Court to a
19 curfew time of 10pm to 6am.

20
21 85. The Prosecution submits that the Defendant ought not to benefit from the time he was on
22 a monitor because of the delay caused by the Defence. Two trial dates were vacated at the
23 request of the Defence. The trial dates were vacated because the Defence were awaiting
24 phone evidence from an expert overseas witness.



1 86. The Defence submit in response that there were delays caused by the Prosecution with
2 respect to settling the Indictment in the Grand Court and there were adjourned hearings in
3 the Summary Court because papers were not served.

4
5 87. The Court notes that the phone evidence was subsequently received by the Defence and
6 was used in the course of the trial. There is every indication that the requests made were
7 for genuine reasons to do with preparation of the Defence case. Against this background
8 as well as the assertion that there may also have been delays on the part of the Prosecution,
9 it is proposed to give such credit as appears appropriate to the circumstances of the curfew.

10
11 88. The *Cayman Islands Sentencing Guidelines* at paragraph 12 deals with reduction in
12 sentence for time spent on remand subject to conditions curtailing liberty. It states that the
13 court should:

14
15 *“... consider whether credit should be given for time spent on bail where conditions*
16 *have been imposed which curtail the liberty of the defendant. This is most likely to*
17 *be relevant where a defendant has been subjected to a curfew, especially where*
18 *compliance with that curfew can be verified through electronic monitoring”.*
19

20 89. The *Guidelines* go on to list the relevant factors to be taken into account in the exercise of
21 discretion which include:

- 22
23 i. The total length of time the defendant has been subject to a curfew;
24 ii. The number of hours each day that curfew was imposed during the curfew
25 period;
26 iii. Whether the curfew included daytime hours or was solely a night time
27 curfew (recognising that being indoors at night during, for example, normal

1 sleeping hours may be less of a curtailment of liberty than being indoors
2 during the day);

3 iv. Any breach of the conditions of curfew.

4
5 90. The **Guidelines** further provide that in deciding how to exercise its discretion in the
6 absence of statutory provisions in the Cayman Islands, the Court will bear in mind the
7 statutory provisions in England and Wales as set out in s.240A of the **Criminal Justice Act**
8 **(CJA) 2003** (as amended) in relation to an electronically-monitored curfew.

9
10 91. In the case of **R v. Nicholas Tibbetts** the Grand Court stated:

11
12 “74. *I take the Cayman Islands Guidelines as a starting point. There is clearly a*
13 *discretion as to whether, and to what extent, credit should be given. To*
14 *adopt the defence submission that the practice of the Cayman Islands is to*
15 *automatically deduct half the time on curfew, would take away the*
16 *discretion clearly set out in the Guidelines. Each case has to be considered*
17 *on its own facts – for example the conditions of the curfew will vary*
18 *considerably in cases – some being more onerous than others.”*
19

20 92. In this case, the conditions of his curfew and monitoring were initially onerous. He will
21 receive credit of one half the number of days from the 11th September 2020 to the 21st
22 April 2021, or one half of 222 days for 111 days.

23
24 93. The conditions were less onerous when his curfew was revised to 10pm to 6am. This was
25 mostly during the night hours. He will also receive credit of one quarter for the days
26 between the 21st April 2021, and today, a total of 225 days, for credit of 56 days.

27
28 94. The total credit is 167 days.





1 **APPLICATION FOR A PROTECTION ORDER**

2
3 95. The Prosecution applies under the *Protection from Domestic Violence Act* (2021)
4 Revision) for a Protection Order with respect to Ms. Mannarino. The application is
5 supported by the Affidavit of DC Elizabeth Owens.

6
7 96. The response of the Defence is that such an order is not necessary as there have been
8 no incidents between the parties since the offences on this Indictment and no breaches
9 of his bail conditions. The Defence argue that such an order is not justified as there
10 has been no contact or attempt to contact the victim. Counsel indicates that the
11 Defendant understands that there should be no contact with her. He is willing to give
12 an undertaking to abide by four conditions:

- 13
14 i. Not to communicate/contact Lucia Mannarino, in any way, directly
15 or indirectly save for communication through a defined person
16 relating to the child. A defined person could be an Officer of the
17 RCIPS, Social Worker, Medical Professional, the parents of Derrin
18 Ebanks or any other person deemed suitable by the Court. Contact
19 includes all methods of contact including email, social media and
20 text.
21
22 ii. Not to approach or knowingly be within 100 yards of Lucia
23 Mannarino.
24
25 iii. Not to enter [the place of work] or attend the home of Ms.
26 Mannarino.
27
28 iv. Not to harass or threaten Ms. Mannarino.
29

1 97. Counsel submits that if the Court is minded to make a Protection Order these are the
2 conditions which should be considered.

3
4 98. Given the circumstances of this case the Court is satisfied that a Protection Order is
5 necessary in order to protect the victim. An order is thus made in terms of the amended
6 draft for a period of 3 years following the Defendant's release from Prison.

7
8
9

10 **Dated this the 2nd day of December 2021**

11



12

13 **Honourable Justice Cheryll Richards Q.C.**
14 **Judge of the Grand Court**

15