

1 **IN THE GRAND COURT OF THE CAYMANISLANDS**
2 **CRIMINAL SIDE**

3
4 **INDICTMENT NO: 38 of 2019**
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6
7 **THE QUEEN**

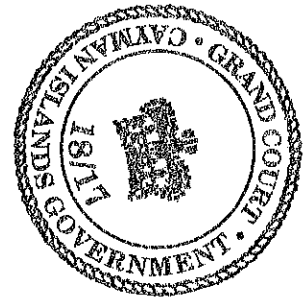
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9 **V**

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11 **ARTHURLYN DIANNE EBANKS**
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16 **Appearances:** **Mrs. Nicole Petit, Senior Crown Counsel, Office Director of Public**
17 **Prosecution for the Crown**
18 **Ms. Amelia Fosuhene of Brady Attorneys for the Defendant**

19
20 **Before:** **Justice Marlene I. Carter (Actg.)**

21
22 **Sentence Hearing:** **9 January 2020**
23



24 **HEADNOTE**

25 ***Criminal Law – Sentencing – Unlawful Wounding***

26
27 **SENTENCE JUDGMENT**
28

29 1. The facts are as follows: On the 4th May 2019 at approximately 1:45 am the complainant was at a
30 takeout restaurant in the vicinity of Birch Tree Hill in West Bay. She was in the company of her
31 brother in law and her father in law at that time. After the complainant had placed her order for a
32 meal the three were talking together as they waited for her meal. At this point a gentleman known
33 to the complainant as Barbash approached them and brushed her brother in law's shoulder as he
34 passed. The two entered into an argument. During the course of the argument there was some
35 pushing and shoving between Barbash and the complainant's brother in law. At one point the

1 brother in law pushed Barbash to the ground. The complainant attempted to part the two of them
2 and Barbash pushed the complainant who in turn pushed him on his shoulder and he fell to the
3 ground.

4
5 2. The defendant, also known to the complainant, intervened. An argument then developed between
6 the complainant and the defendant. During the course of the argument the two of them were cursing
7 and threw drinks on each other. The complaint states that she collected her meal and went to her
8 car. She then saw the defendant searching in her handbag. The defendant approached her and she
9 realized that the defendant had an object in her hand. The defendant swung at the complainant's
10 face with the object in her hand and the complainant put up her left hand to block her. The complaint
11 was cut in her palm and was bleeding profusely from the wound. The Police were called and the
12 defendant was point out by the complainant and arrested.

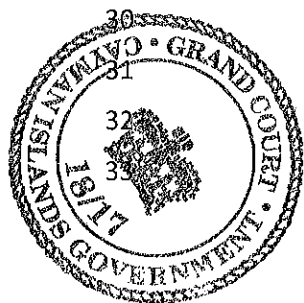
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14 3. The complainant's injury was treated at the George Town Hospital. The complainant suffered a
15 4cm laceration to the ulnar side of her left hand just proximate to the crease of her little finger and
16 extending to the palmar aspect of the hand. At the hospital the doctor recorded that the wound was
17 serious and noted that there was no sensation on the ulna border of the little finger. The wound
18 was treated and she was referred to an orthopedic surgeon.

19
20 4. The defendant was indicted for one count of Wounding with Intent contrary to section 203 of the
21 *Penal Code*. The Defendant pleaded guilty to the lesser count offence of Unlawful Wounding
22 contrary to section 204 of the *Penal Code*. This plea to the lesser offence was accepted by the
23 Crown.

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25
26 5. The basis of plea:

27 1. *The defendant had no intention of wounding the complainant, with a sharp*
28 *instrument in her hand, which she picked up from the table, but she was reckless*
29 *in doing so.*

30 2. *The defendant accepts that she caused the injury to the complainant however she*
31 *did so in her misguided efforts to defend what she perceived to be an assault on*
32 *another. The defendant perceived that the third party was being assaulted by*
33



1 *someone in the company of the complainant, but the defendant accepts that it was*
2 *not the complainant who committed the assault on the third party.*

3
4 **Cayman Islands Sentencing Guidelines**

5 6. The *Cayman Islands Sentencing Guidelines* do not as yet provide guidelines for Offences against
6 the person such as Unlawful Wounding. However, they are instructive to the extent that they
7 provide guidance on the approach to sentencing, which is similar in its approach to the UK
8 Sentencing Guidelines.

9
10 7. Taking the United Kingdom's sentencing guidelines into account, the offending behavior is
11 considered in terms of which category they may fall into it falls. These categories are as follows:

- 12 • Category 1: Greater harm (serious injury must normally be present) and higher
13 culpability;
- 14 • Category 2: Greater harm (serious injury must normally be present) and lower
15 culpability; or lesser harm and higher culpability;
- 16 • Category 3: Lesser harm and lower culpability

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18 8. The Crown has suggested that the correct category is that of a **Category 2 offence**, comprising one
19 of higher culpability and lesser harm in the context of the offence.

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21 9. Defence counsel does not take issue with this categorisation.

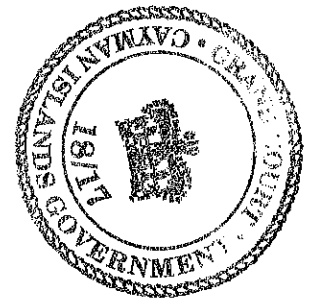
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23 **Aggravating Factors**

24 10. The aggravating factor present in this case:

- 25 i. Use of a weapon. The complainant was struck with a sharp object

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27 **Mitigating Factors**

28 11. Mitigating factors:



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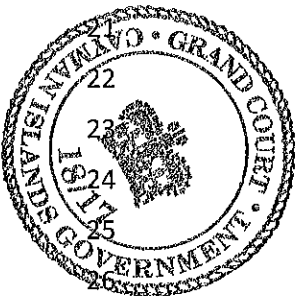
- i. The defendant believed that she was acting in defence of another, the young man who she sought to aid had learning difficulties and had been pushed to the ground by someone in company with the complainant.
- ii. The complainant was dealt a single blow.
- iii. The defendant has expressed significant remorse signified by her guilty plea and has stated that she would like the opportunity to apologize to the complainant for her actions.
- iv. Lack of pre-meditation;

The Social Inquiry Report (SIR)

12. The very detailed SIR records that the defendant had a relatively strict upbringing. She completed high school and worked for many years as a housekeeper and cook at various hotels and culinary establishments in Grand Cayman. She has three adult children and there is some history of the use of drugs when the defendant was much younger. The defendant does have an antecedent history for minor drug use and disorderly conduct. However there is no history of assault or other relevant behaviour.

13. The defendant’s attitude toward the offence was noted as follows:

“The Client expressed remorse and stated that the complainant was her friend. She, however, explained that she felt hurt by the comment she made because it was rumoured in the community that her second child did not “belong to his father”. She elaborated that she found the public declaration made by the complainant as being embarrassing. She acknowledged that her violent response was excessive and inappropriate. She said that the victim did not deserve to be cut. She stated that she has no ongoing animosity with the victim, who greeted her at Court; however, she did not respond based on legal advice.



Victim Impact Report (“VIR”)

14. The VIR was also before the Court for its consideration. The complainant related the immediate effects of the injury:

1 “Ms. McLean shared that when she initially went to the hospital her hand was
2 stitched. She divulged that she had a severed muscle, had nerve and tissue
3 damage. ‘The ring and pinky finger were still dead even after the anesthesia wore
4 off. After about 28 hours after initially being sutured I had to do surgery on my
5 fingers to correct the nerve damage to the pinky and ring finger. Initial stitches
6 were taken out and after the surgery I had to be re-stitched. My hand was in a cast
7 for about ten weeks. The wound kept getting infected and opening back up so it
8 took a while to heal, about nine weeks. I also had to do physiotherapy.’

9
10 Speaking to the continued impact Ms. McLean said, ‘I am left with a scar to the
11 middle of my palm going across to the left side of my hand and along to the pinky
12 finger. My knuckle feels tender as if it is broken. I had to be taking antibiotics for
13 the infection that my hand went through. I am still taking pain killers.’

14
15 15. Apart from these, there is the financial consequence to the complainant of this offence. The
16 complainant related that although she had the benefit of full medical insurance, she lost income
17 from a second job during the 6 month period when she was incapacitated due to the injury. She
18 has requested compensation for her losses.

19
20 **Court’s conclusions and sentence**

21 16. The court has been referred to a number of authorities for its consideration. In the matter of *R v*
22 *Carla Davis* (IND 56 of 2013) basis upon which a guilty plea was accepted was that the defendant
23 acted recklessly in pushing a glass into the complainant’s face. Davis had no previous convictions,
24 the action resulting in injury was found to be an isolated incident and the defendant had expressed
25 remorse backed up with an offer of compensation. The sentence of the court was 9 months’
26 imprisonment suspended for two years. In the case of *R v Kenneth Green* (IND 84 of 2013) the
27 basis of the guilty plea was that the defendant’s actions were not as a result of a deliberate wound
28 (injury caused with a glass) but was rather a spontaneous reaction to assist a friend who was being
29 overcome by a larger man). Green was sentenced to 1 year’s imprisonment suspended for 2 years.

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31 17. In all the circumstances, I find that this is a Category 2 offence – one of lesser harm and higher
32 culpability.
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1 18. Applying the above, the starting point is 1 year and 6 months' custody, with a sentencing range or
2 1-3 years' custody. I adopt a starting point of 1 year and 6 months custody. Taking the aggravating
3 and mitigating factors into account and bearing in mind that the defendant has signified through
4 her counsel that she remains unemployed and therefore unable to offer any monies by way of
5 compensation, I find that the appropriate sentence is 16 months custody. I will accord the defendant
6 25% discount for her guilty plea which will result in a sentence of 12 months' imprisonment.

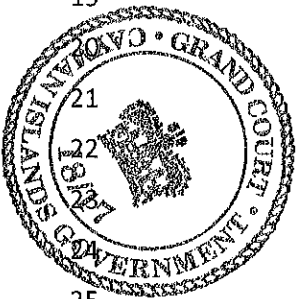
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9 19. The SIR set out a number of sentencing options for the Court's consideration.

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11 *"Ms. Arthurlyn Ebanks is assessed as being at a Medium risk of reoffending. ...*

12 *.....*

13 *It is based on the foregoing information that it is recommended that Ms. Ebanks*
14 *be made the subject of a Suspended Sentence with Supervision with the following*
15 *conditions attached:*

- 16 (i) *To submit to random drug testing, as viewed necessary by the Probation*
17 *Officer;*
18 (ii) *To attend at The Counselling Centre and follow through with*
19 *recommendation;*
20 (iii) *To attend, participate and complete the Anger Management Programme;*
21 (iv) *To observe a period of curfew;*
22 (v) *To Participate in the Female Empowerment Programme;*
23 (vi) *To perform Community Service Hours, as recommended by the Court;*
24 (vii) *To refrain from carrying a weapon outside of work, on person or in*
25 *belongings.*
26 (viii) *To participate in any other intervention as recommended by the Probation*
27 *Officer."*



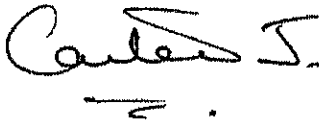
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29 20. A suspended sentence supervision order is appropriate in the circumstances of this case in
30 consideration of the many mitigating factors present.

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32 21. The sentence of the court is as follows: 12 months' imprisonment suspended for 1 year. I also
33 make a Suspended Sentence Supervision Order for 1 year from today date. The Defendant is to
34 obey all instructions of the assigned Department of Community Rehabilitation Officer which shall

1 include the following: to submit to random drug testing; to attend, participate and complete the
2 Anger Management Program; to refrain from carrying a weapon outside of work, on her person or
3 in her belongings; to participate in the Female Empowerment Program and to participate in any
4 other intervention as recommended by the Probation Officer.

5
6 22. The defendant is advised that should she fail to abide by the instructions of the Probation Officer
7 or to attend or participate in any of the programs above she may be liable to serve the custodial
8 sentence.

9
10 Dated this 9th day of January 2020.

11 

12 Justice Marlene I. Carter
13 Judge of the Grand Court (Actg.)

