

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
3

4 IND. NO: 0099/2017
5

6
7 THE QUEEN

8
9 v.

10
11 CLAYBURN WILLIE EBANKS
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14
15 **Appearances:**

Ms. Toyin Salako for the Crown

16
17 Mr. Crister Brady of BRADY Attorneys for
18 the Defendant
19

20 **Before:**

Justice Roger Chapple (Actg.)

21 **Heard:**

22 5th October 2018
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26 **HEADNOTE**

27 *Criminal Law – Wounding with intent and wounding, in the alternative – s.203 and*
28 *s.204 of the Penal Code – Trial by Judge Alone.*
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VERDICT JUDGMENT

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1. The defendant, Clayburn Willie Ebanks, faces an indictment containing 2 counts:
 - a. Count 1: Wounding with intent, contrary to s.203 of the Penal Code (2017 Revision);
 - b. Count 2: Wounding, contrary to s.204 of the Penal Code (2017 Revision)
- Count 2 is an alternative to count 1.
2. The Defendant has elected trial by judge alone.
3. I heard the evidence in this case on Monday 1st October 2018.
4. A submission of no case to answer was made on the following day, but was unsuccessful.
5. The Defendant chose not to give evidence. No other evidence was placed before me on his behalf.
6. I then heard closing submissions from both prosecution and defence and adjourned in order to deliberate and arrive at my conclusions.
7. Given that this is a trial by judge alone, I have borne in mind and followed the legal analysis helpfully provided by Quin, J in *R v George Dexter Evans*¹ I keep in mind that I must advise myself on the applicable principles of law, give myself the appropriate warnings as necessary and state clearly my reasons for acting as I do, so that my reasoning is clear.



¹ Indictment No 18 of 2011 paragraphs 67 to 71

1 8. I also bear in mind the guidance given by Rowe, J in *K. Richards v R*², as follows:

2 *"When a trial judge sitting alone has advised himself to the applicable principles*
3 *of law and given himself any necessary warning, he must indicate clearly in his*
4 *judgement his reasons for acting as he did, in order to demonstrate that he has*
5 *acted with the requisite degree of caution in mind and has therefore heeded his*
6 *own warning. No specific form of words is necessary for this demonstration, what*
7 *is necessary is that the judge's mind upon the matter should be clearly revealed."*

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9 9. I further note and apply the guidelines set out by the Court of Appeal in *R v Dave*
10 *Kennedy Whittaker*³ and in *Randy Martin v R*⁴. In *Whittaker*, the Court adopted the
11 words of Lord Lowry LCJ in *R v Thompson*⁵ where he said at page 83:

12 *"While on the subject I might say a word on the duty of the judge when giving*
13 *judgement in a trial under the 1973 act. He has no jury to charge and therefore*
14 *will not err if he does not state every legal proposition and review every fact and*
15 *argument on either side. His duty is not as in a jury trial to instruct laymen as to*
16 *every relevant aspect of the law or to give a full and balanced picture of the facts*
17 *for decision by others. His task is to reach conclusions and to give reasons to*
18 *support his view and, preferably, to notice any difficult or unusual points of law in*
19 *order that if there is an appeal, it may be seen how his view of the law informed his*
20 *approach to the facts."*

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22 10. In the *Martin* case the Court adopted the reasoning of Lowry LCJ in *R v Thain*⁶, where
23 he said:

24 *"From these cases the following guideline may be discerned. The judge sitting in a*
25 *criminal case without a jury, in rendering his decision and giving his reasons for*
26 *so concluding, is not required to review every fact and to detail each argument on*
27 *which the prosecution and defence rely as if he were summing up to a jury. The*
28 *judge must set out the conclusion reached and make clear the reasons for arriving*
29 *at that conclusion. He is required to have regard to any difficult or unusual points*
30 *of law and to show how those points of law have in any way impacted the*
31 *conclusion that he has reached."*

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² 2001 CILR 496

³ Cr App R No 14 of 2006

⁴ Cr App R No 2 of 2010

⁵ 1977 NI 74

⁶ 1985 NI 457 at page 478



1 11. In essence, my task is to reach conclusions and to give reasons in support of those
2 findings. I am not required to review every fact in the case or to detail every argument
3 as if I were summing up to a jury. I'm only required to state my conclusions and give
4 my clear reasons for those conclusions.

5 12. This case arises from an incident on 28th November 2017 at about 8 p.m. in the vicinity
6 of premises at 7 Martin Drive, George Town, Grand Cayman. It is from that address
7 that the Defendant's older brother, Mr. Alvarado Rohelio Wright, operates a car-wash
8 business. He is the owner of that business. He is now 57 years of age and the
9 Defendant is 46. The relationship between the two brothers is, there is no dispute, an
10 acrimonious one. An argument developed between them that evening, primarily
11 concerned, it would seem, with the care of their elderly mother. That argument
12 escalated and ended in violence. Exactly what happened between the two brothers,
13 particularly in the road immediately outside the premises, is the subject matter of this
14 trial.

15 13. At the end of the incident, the Defendant was left with welt marks over his left
16 shoulder and upper arm (photographs of that injury are exhibited in this case – exhibit
17 3) and Mr. Wright with wounds to his chin, and to the left and right sides of his chest.
18 Mr. Wright was taken to George Town hospital where an operation was performed to
19 stem what was thought to be arterial bleeding. It is agreed evidence that these wounds
20 were consistent with them having been inflicted by a sharp object – and, in this regard,
21 the statements of two of the doctors concerned with Mr. Wright's treatment were read
22 to the court by agreement.



1 14. In addition to that agreed evidence, I heard oral evidence from Mr. Wright and from
2 Detective Constable Reid, the officer in the case.

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4 15. DC Reid dealt, amongst other things, with the interview he conducted with the
5 Defendant following his arrest.

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7 16. The video recording of that interview was played in court, and I have a transcript of it.
8 Additionally, there is CCTV footage of the incident. I have now watched that footage a
9 number of times, both in open court and in the course of my deliberations. The footage
10 captures the entire incident outside the car wash; it is of high-quality and has been of
11 considerable assistance.

12 17. The Defendant chose not to give evidence at his trial, nor did he call any other
13 evidence.

14 18. The prosecution bring these charges against the defendant. The prosecution must prove
15 a charge so that I feel sure about it, if there is to be a conviction. It is not for this
16 defendant to prove his innocence. If I am unsure of the defendant's guilt upon a charge
17 I must find him not guilty of it.

18 19. The defence in this case is self defence. The defence does not dispute that Mr. Ebanks
19 caused the injuries sustained by Mr. Wright. Once the defence of self-defence is raised,
20 which it clearly has been by what Mr. Ebanks said in interview, it is for the prosecution
21 to prove, so that I feel sure about it, that he was not acting in self defence.

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1 20. Section 14 of the Penal Code imports the English law of self defence into this
2 jurisdiction. There are two crucial limbs to the defence of self defence which involve
3 me, as the tribunal of fact, asking myself two questions:

4 a. Did the defendant believe, or may have believed, that it was necessary for him to
5 use force to defend himself because he was under attack or are in imminent danger
6 of attack?

7 b. If so, was the amount of force he used reasonable in the circumstances, including
8 the dangers as the defendant honestly believed them to be?

9 21. If the defendant may have acted in the heat of the moment, when fine judgements are
10 difficult, doing no more than he genuinely believed was necessary, this would be
11 strong evidence that what he did was reasonable. It is only if I am sure that, allowing
12 for the difficulty faced in the heat of the moment, he used more than reasonable force,
13 does the defence of self defence fails. The force used would be unreasonable if it were
14 out of all proportion to the nature of the attack upon him as he believed it to be.

15 22. As I have said, the Defendant in this case has chosen not to give evidence. In answer
16 to my questions asked in order to comply s.149(2) of the Police Law (2014 Revision),
17 Mr. Brady on behalf the Defendant confirmed that the Defendant was aware of the
18 possible consequences of not giving evidence. He has, of course, a right not to give
19 evidence, but that failure means:

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1 a. There is no sworn evidence from Mr. Ebanks to contradict, undermine or explain
2 the evidence given by his brother, the officer in the case or what can be seen on the
3 CCTV footage. I do have the account he gave in the course of his police interview
4 which I have considered as a whole, but of course that was not given on oath and it
5 has not been tested in cross-examination

6 b. Pursuant to s.149(3) of the Police Law, the court may draw such inferences as
7 appear proper from a Defendant's failure to give evidence. The inference here,
8 most obviously being that Mr. Ebanks did not feel that he had an answer to the
9 prosecution case or not one that would stand up to cross-examination. I should
10 only draw that inference if I am sure about it and that the prosecution case is of
11 such strength that it calls for an answer.

12 23. Whilst in these circumstances I can, and do, regard Mr. Ebanks' failure to give
13 evidence as providing support for the prosecution case, I should not convict him
14 wholly or mainly because of that failure.

15 24. I have considered the evidence of Mr. Wright with care. Overall, I found him to be an
16 honest witness, but I do not find myself able to accept everything he says. He concedes
17 that he had armed himself with a weapon – a fan belt. He told me in evidence that he
18 so armed himself because he had seen that his brother had a knife in his hand. The fan
19 belt was what he told the police, in the course of his witness statement, had been taken
20 from him whilst he was still in hospital. However, he also said that, on this particular
21 evening, effectively, emotions had boiled over. He said in evidence:



1 *“It was like a volcano – the situation between me and him has been going on for*
2 *many years. It just erupted that night..... I’d just had enough that night and*
3 *what happened, happened.”*

4 25. I am unable to dismiss the possibility of at least that Mr. Wright was the initial
5 aggressor and that the argument with his brother on this particular evening was
6 effectively the ‘last straw.’ The CCTV footage supports that theory.

7 26. I think it is more probable than not that Mr. Wright was the initial aggressor, that he
8 armed himself with the fan belt and went after the defendant who, it seems was
9 continuing the argument verbally on the street but, at that stage, offering no physical
10 violence. The initial blow was dealt by Mr. Wright. Thereafter a fight developed, all of
11 it captured on high-quality CCTV footage. At the end of it all, as I have already said,
12 Mr. Wright had sustained three wounds, all caused, it is agreed evidence, with a sharp
13 object. What object was that?

14 27. Throughout his police interview, the Defendant, Mr. Ebanks, consistently denied that
15 he had a knife, although prior to that interview, when spoken to by Detective Constable
16 Reid very soon after the incident, the following exchange took place:

17 a. DC Reid: *“What have you done now?”*

18 b. Mr Ebanks: *“The man attacked me and I defended myself and he got cut.”*



1 28. The significance of that exchange of course is the Defendant's use of the word 'cut',
2 which implies the use of the knife. Mr. Ebanks ventured the thought in interview that
3 he may have picked up some sharp object from road surface in the course of the
4 altercation to defend himself, but the CCTV footage, which, as I said, captures the
5 whole incident, gives the lie to that possibility. Close examination of the CCTV
6 footage shows Mr. Ebanks taking something from his right-hand pocket at the start of
7 the incident - it glints momentarily as it catches a light source.

8 29. Whilst I do not decide the case on that evidence, it provides additional support for the
9 proposition that Mr. Ebanks was armed with a knife at an early stage of the incident.
10 The Complainant described on several occasions seeing his brother holding a knife.
11 Whilst I think Mr. Wright is wrong about seeing it (the knife) *before* arming himself
12 with the fan belt, I am sure that he saw Mr. Ebanks with a knife during the incident.

13 30. All that leads me to conclude, so that I feel sure about it, that Mr. Eubanks was armed
14 with a knife and that he used it to cause the three wounds – which it is agreed were
15 sustained.

16 31. I then look at the two questions I must ask myself when considering the defence of
17 self-defence and I conclude that Mr. Ebanks did or may have believed that it was
18 necessary for him to use some force to defend himself that evening, but I am sure that
19 the force he used was unreasonable.

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1 32. To use a knife in the circumstances was out of all proportion to the nature of the attack
2 that presented itself to him. The CCTV footage shows several occasions upon which
3 Mr. Ebanks chased after his brother; there are three separate wounds. I accept what Mr.
4 Wright says about the how the most serious of his injuries (to the left side of the chest)
5 was caused by the Defendant – describing a ripping action and a pulling of the knife
6 sharply forwards after it had penetrated the skin.

7 33. It follows that I am sure that the essential ingredients of count 2 are satisfied, that is to
8 say that:

- 9 a. Mr. Wright sustained wounds – all the layers of the skin were broken;
- 10 b. Mr. Ebanks, the Defendant, caused those wounds;
- 11 c. Since I am sure self defence does not apply in this case, that Mr. Ebanks was
12 acting unlawfully;
- 13 d. The Defendant intended or foresaw that some harm would result from his actions.

14 34. I then go on to consider the additional ingredient necessary to establish guilt upon
15 count 1 - an offence contrary to s.203 of the Penal Code. Here, the prosecution must
16 prove, so that I feel sure of it, that when the Defendant caused the wounds to his
17 brother, he intended to cause grievous bodily harm, that is to say, really serious harm.

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1 35. The prosecution submit that if one uses a knife in the course of violence towards
2 another, what, realistically, could one intend other than serious harm. That is a
3 powerful argument, but in all the circumstances of this case, I find that I am unable to
4 conclude that I am sure that Mr. Ebanks intended to cause his brother really serious
5 harm.

6 36. Accordingly, I find Mr. Ebanks:

7 a. Not guilty of Count 1;

8 b. Guilty of count 2.

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11 **Dated this the 16th day of October 2018**

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15 **Justice Roger Chapple**
16 **Acting Judge of the Grand Court**