

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CRIMINAL SIDE  
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4 INDICTMENT NO: 0048/2015  
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6  
7 THE QUEEN  
8

9 V

10 DAVID ANDREW BODDEN  
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14 **Appearances:**

Ms. Elisabeth Lees for the Crown

Ms. Amelia Fosuhene for the Defendant

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18 **Before:**

The Hon. Mr. Justice Charles Quin Q.C.

19 **Jury Trial:**

29<sup>th</sup> February 2016 to 9<sup>th</sup> March 2016

20 **Sentencing Hearing:**

14<sup>th</sup> September 2016

21 **Delivery of Decision:**

29<sup>th</sup> September 2016  
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23 **HEADNOTE**  
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25 *Criminal Law – Unlawful Wounding – Jury acquitted on charges of Attempted*  
26 *Murder and Causing Grievous Bodily Harm – Jury convicted on Unlawful*  
27 *Wounding. – Prolonged chase ending in reckless violence – Defence: significant*  
28 *provocation, no premeditation, and assisting police when offence committed. –*  
29 *Serious injury, previous convictions, offence committed whilst on bail. – Category*  
30 *2 offence – Greater harm, lower culpability.*  
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**SENTENCE JUDGMENT**

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*INTRODUCTION*

4 1. On the 9<sup>th</sup> March 2016 a jury found the Defendant not guilty of Attempted Murder and  
5 not guilty of Causing Grievous Bodily Harm/Wounding with Intent, but, instead, found  
6 him guilty of Unlawful Wounding of Blake Burrell on the 16<sup>th</sup> June 2015 in George  
7 Town, Grand Cayman.

8 2. In summary, it is accepted by the Crown that the Defendant had been subject to  
9 significant and serious provocation and to a greater degree than normally expected.

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*SUMMARY OF FACTS*

11 3. On the 8<sup>th</sup> June 2015 the victim Blake Burrell and Jose Sanchez had gone to look for  
12 the Defendant, David Boddens, at Cruz Lane, Banana Walk. There is evidence before  
13 the Court that Jose Sanchez actually fired some shots and, as a result of that evidence,  
14 Jose Sanchez has been charged with Unlawful Possession of an Unlicensed Firearm on  
15 Indictment #0003/2016.

16 4. On the 10<sup>th</sup> June 2015 Jose Sanchez and the victim, Blake Burrell, attended the  
17 Defendant's workplace and threats were again made to the Defendant by Sanchez and  
18 Burrell, which resulted in the victim, Blake Burrell, being charged with Threatening to  
19 Kill.



1           5.       Following these events the Defendant had been asking the police for protection and  
2                   had also been assisting the police with their investigations. In fact, the Defendant had  
3                   taken the police to Cruz Lane, Banana Walk, and showed the police the spent shells  
4                   from the firearm allegedly used by Jose Sanchez on the 8<sup>th</sup> June 2015 – which the  
5                   Scenes of Crime officers found could be linked to another crime which had occurred at  
6                   a different location, at a different time.

7           6.       On the 16<sup>th</sup> June 2015 prior to the incident for which the Defendant falls now to be  
8                   sentenced, the Defendant went to the George Town Police Station. The police have  
9                   provided evidence that when the Defendant arrived at the police station he was in a  
10                  frightened and distraught state. Following discussions the Defendant agreed to take the  
11                  police to interview some witnesses who were willing to assist the police with their  
12                  investigations. The Defendant drove away from GT police station in his own car  
13                  followed by Det. Sergeant Charmaine Huntley and Detective Constable Junior Durrant  
14                  driving a marked police car.

15          7.       On the way to meeting the potential witnesses the victim, Blake Burrell, passed the  
16                  Defendant's car travelling on the opposite side of the road in George Town. The  
17                  Defendant stated that as Blake Burrell passed his car, he, Blake Burrell, pointed his  
18                  finger like a gun at David Boddens. The Defendant then turned his car around to chase  
19                  Mr. Burrell's car.

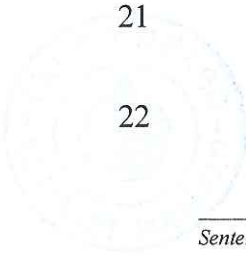
20                  Mr. Burrell's car was on Fort Street when the Defendant rammed it from behind and  
21                  the victim's car veered off the road where it stopped. As the victim tried to move his  
22                  car away, the Defendant rammed the victim's car again, and, at that point both cars  
23                  ended up on the side of the Admiral Building.



1 8. Mr. Burrell got out of his car and ran off – running around the Admiral Building. The  
2 Defendant got out of his car with a scalpel in his hand and chased the victim around the  
3 Admiral Building. Eventually the Defendant caught the victim at the entrance to the  
4 Appleby building and he wounded the victim with the scalpel. It is accepted that the  
5 Defendant inflicted very serious wounds to the victim.

6 9. The police officers, had followed the Defendant when they left George Town police  
7 station and were close behind the Defendant and the victim during the car chase and  
8 whilst the Defendant chased the victim on foot. They immediately stopped and got out  
9 of the police car. Detective Constable Junior Durrant acted very quickly and managed  
10 to pull the Defendant away from Mr Burrell and restrain him.

11 10. It was obvious that Mr Burrell had suffered serious injuries. Det. Sergeant Charmaine  
12 Huntley immediately attended to the victim and transported him to George Town  
13 Hospital where he received emergency medical treatment. Indeed had it not been for  
14 the quick thinking and quick actions of Det. Sergeant Charmaine Huntley and the  
15 expertise of Dr. Jha and Dr. Windhaber at George Town Hospital, Mr Burrell would  
16 not be alive today.



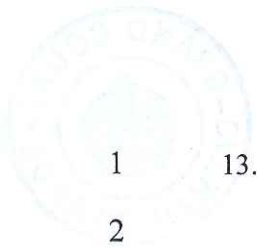


*THE INJURIES*

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11. Senior Crown Counsel Ms Lees presented the evidence in relation to the injuries and the medical treatment administered which is agreed. When Mr Burrell arrived at accident and emergency, there was an approximately 20 cm gaping laceration extending from the upper anterior side of the neck, extending across the trachea and down to the upper anterior right chest. Blake Burrell was breathing via the open wound and through the nostril. Blake Burrell was resuscitated by the emergency physicians. Surgeons Dr. Jha, consultant, and Dr. Windhaber, consultant general surgeon on call, operated on Blake Burrell. Dr. Windhaber was able to identify the divided ends of the anterior jugular veins (veins at the front of the neck) and place ligaclips on these to reduce the amount of active bleeding. Dr. Jha inserted a trachea through the open wound.

12. Mr. Burrell had two wounds in total – the first being a laceration to the neck, extending from right to the left. He also had an extension of the neck wound to the left side of his chest. The combined length of the wounds measured approximately 7-8 inches. The laceration was of a V shape which would be consistent with either 2 connecting linear lacerations or a single laceration with change of direction. The laceration to the throat/neck area was of sufficient depth to sever the sternocleidomastoid muscle on the left side and also at the sternal attachment and cut the trachea at the cricoid cartilage and cricothyroid membrane of the larynx. The laceration to the chest area was of a significant depth to expose the muscle in that region. The laceration to the throat/neck area caused major veins to bleed. Due to the laceration to the larynx Mr. Burrell's airway was compromised. His trachea was cut anteriorly and without sitting forward, blood was running directly into his airway and soiling his lungs.



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13. In conjunction with swelling to the upper airway he was at significant risk of losing his airway and dying as a result. Based upon his haemoglobin drop in the first 24 hours it was estimated that Blake Burrell lost approximately 25% of his circulating blood volume despite prompt treatment and surgery.

14. The injury involved a complete division of both anterior jugular veins and without surgical treatment it was anticipated that he would have continued to bleed – which would probably result in death by exsanguination (bleeding).

15. Swelling to Blake Burrell’s face, neck and chest area was as a result of air leaking into the tissue plains. This can also be critical and cause damage to the patient. The tracheostomy was in place until the 25<sup>th</sup> June. Blake Burrell stayed in hospital until the 27<sup>th</sup> June 2015.

*VICTIM IMPACT STATEMENT*

16. .The Victim Impact Statement reflects the serious nature of the injuries. The victim in his letter dated the 27<sup>th</sup> April 2016, states that he still has a problem turning his head from side to side and adds that, in most instances, he has to turn his upper torso in either direction to assist his head movement. He wears high-neck t-shirts to conceal the scars on his neck. The victim states that he suffers from intermittent pains in his back as a result of the Defendant ramming his car into the back of his car.



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*THE SOCIAL INQUIRY REPORT (SIR)*

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17. A Social Inquiry Report (SIR) dated the 4<sup>th</sup> August 2016 has been prepared by Herbert Tomlinson and is not favourable to the Defendant. The SIR acknowledges that the Defendant had his life and the lives of his children threatened and, therefore, the Defendant said he “had to do something” and that’s why he did what he did. The report discloses that the Defendant is antipolice and complains that the police did not protect him as he ought to have been protected. The Defendant is still adamant that he protected himself and he expresses no remorse. The Defendant’s view is that he did what he was entitled to do.

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*PREVIOUS CONVICTIONS*

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18. The Defendant has previous convictions albeit, sometime ago: Two for assault causing ABH, one for carrying an offensive weapon and one for common assault. In addition, the Defendant recently pleaded guilty to disorderly conduct and damage to property in the Summary Court but has not yet been sentenced.

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19. On the day of the offence the Defendant was on Summary Court bail for three offences, and on Grand Court bail for one offence. On Indictment #0036/2015 the Defendant faces three counts which relate to the wounding of Rachelyn Bush on the 26<sup>th</sup> March 2015, assault causing actual bodily harm on Rachelyn Bush on the 29<sup>th</sup> March 2015 and making threats to kill Rachelyn Bush on the 29<sup>th</sup> March 2015. The Defendant awaits trial on these offences.

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*DEFENCE CASE*

20. Ms. Fosuhene on behalf of the Defendant makes the following submissions:

i. The Defendant had his life threatened by Jose Sanchez who came looking for him with Blake Burrell, and the evidence is that Jose Sanchez fired shots in the Banana Walk, Cruz Lane area on the 8<sup>th</sup> June 2015.

ii. On the 10<sup>th</sup> June 2015 the victim, Blake Burrell, along with Jose Sanchez, came looking for the Defendant and the victim threatened to kill the Defendant.

iii. The Defendant took these threats seriously.

iv. Consequently the Defendant was in a poor state of mind and very distraught on the date in question.

v. The Defendant had tried to find Blake Burrell and Jose Sanchez after the threats to kill. He had taken the police to Cruz Lane in Banana Walk where the police recovered the spent shells – the find of which has assisted the police in relation to other investigations.

vi. The Defendant felt that he had done everything he could and he was at his wits end. Counsel for the Defendant described him as being in a distraught state and terrified.

vii. On the issue of remorse Defence counsel submits with some force that it is hard to feel remorse for someone who wants to see you dead.

viii. Defence counsel submits that there is lower culpability because of the significant provocation.

1 ix. Defence counsel submits further that, in light of the provocation and the  
2 defendant's distraught state, the attack was not premeditated as:

3 (a) The Defendant never expected to run into Blake Burrell on the day in  
4 question;

5 (b) On the day in question the Defendant was in the course of assisting the  
6 police with their investigations by taking them to other witnesses;

7 During the course of the trial it was submitted that the Defendant only had the  
8 scalpel on him because it was an item he used on his job.



1 *THE LAW*

2 21. Under s.29 of the **UK Crime and Disorder Act 1998** the maximum sentence for  
3 Unlawful Wounding is 5 years' imprisonment. In the Cayman Islands, pursuant to  
4 s.204 of the Penal Code, the maximum sentence for Unlawful Wounding is 7 years'  
5 imprisonment. Had the jury found the Defendant guilty of Unlawful Wounding with  
6 Intent pursuant to s.203 of the Penal Code, the maximum sentence would have been  
7 imprisonment for life.

8 22. Both counsel have referred to Cayman Islands and the United Kingdom Sentencing  
9 Guidelines. The Crown and Defence agree that this is a category II offence but the  
10 Crown submits that it is in the upper end whilst the Defence submits that it is in the  
11 lower end of Category II of the UK Sentencing Guidelines for Unlawful Wounding.

12 23. I agree with both counsel that this is a Category II offence with greater harm and  
13 lower culpability. In this case we have very serious injuries inflicted constituting  
14 greater harm. However in light of the extremely serious threats made against the  
15 Defendant there is also lower culpability.

16 24. In the UK, where there is a maximum sentence of 5 years' imprisonment, the starting  
17 point for all offenders, irrespective of plea is 18 months, with a sentencing range of 12  
18 months to 3 years imprisonment. With the higher maximum sentence for this offence  
19 in the Cayman Islands it would be reasonable and proportionate to suggest that the  
20 starting point should be two years irrespective of plea, with a sentencing range of 15  
21 months to 3 ½ to 4 years' imprisonment for a Category 2 offence.



1       25.    The Crown referred to the Cayman Islands' case of *R v. Brown*<sup>1</sup> in which the  
2            Defendant pleaded not guilty and was found guilty of throwing a conch shell at his  
3            victim – knocking the victim unconscious and resulting in the victim suffering a  
4            seizure. This was considered a serious injury. Although the Court noted that the attack  
5            was not premeditated, using the UK Guidelines, the Court identified it as a Category II  
6            offence and imposed a sentence of 2 years and 4 months' imprisonment.

7        26.    The Crown also relied upon the English Court of Appeal case of *R v. Morgan*<sup>2</sup> in  
8            which the Appellant pleaded guilty to Inflicting Grievous Bodily Harm. Again, there  
9            was an element of provocation – the Appellant struck a single blow to the victim,  
10           resulting in a fracture to the victim's skull, injury to the socket of the victim's left eye  
11           and some hearing loss. The English Court of Appeal's view was that this offence fell  
12           within the Category II Guidelines. This Appellant had a record of over 40 previous  
13           convictions and the Court held that the starting point should be 3 years and 9 months'  
14           imprisonment, but upheld the Sentence of 2 ½ years' imprisonment.



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<sup>1</sup> (2014) CILR Note 5

<sup>2</sup> [2015] EWCA Crim. 1199

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*CONCLUSION*

27. I have taken into account the helpful submissions of both counsel, the SIR, the VIR as well as the cited authorities and guidelines.

28. I have taken considerable time to consider the appropriate sentence in this unusual case. On the one hand, the Defendant was actually accompanying the police to potential witnesses in order to assist the RCIPS with their investigations when he committed this offence. On the other hand, the Defendant should never have had the scalpel in his hand and he should never have acted and used the scalpel in the way that he did. The police were travelling close behind him and, therefore, there was no need to chase after Mr. Burrell with the scalpel. The Defendant should have left the RCIPS officers to apprehend Mr Burrell. I also take into account the fact that the unlawful wounding took place in broad daylight – at a time when office workers were coming and going in the lunch hour. This was a prolonged chase of a victim by the Defendant, which ended in reckless violence. The Defendant let his anger get the better of him and he inflicted very serious injuries on the victim by chasing the victim and attacking him.

29. I note that the Defendant has previous convictions and that he committed this offence whilst on bail.

30. I accept the Defendant's evidence that he was threatened on more than one occasion in a very serious way. But the Defendant cannot take the law into his own hands. Should everyone begin acting in like manner it would lead to a state of violent lawlessness and anarchy.



1 31. Accordingly, taking all circumstances into account, I impose a sentence of 3 years'  
2 imprisonment.

3 32. I note that, in the course of her submissions Snr. Crown counsel, Ms. Lees, submitted  
4 that, along with any time spent in custody, time spent on the electronically monitored  
5 (EMDT) curfew should be deducted from the sentence imposed. Defence counsel, of  
6 course, agreed, adding that, in the UK, every EMDT curfew over 9 hours counts for ½  
7 day in custody to be deducted from a sentence imposed. The Crown has confirmed that  
8 this is the Prosecution's submission and, therefore, as at the 14<sup>th</sup> September 2016, the  
9 Defendant had spent 226 days on an EMDT curfew and, therefore, half of that time –  
10 113 days – would be deducted from the sentence imposed.

11 33. Today, both counsel updated the foregoing information and confirmed that, as at  
12 today's date, the Defendant has spent 121 days on the EMDT curfew.

13 34. Accordingly, the sentence herein imposed for the charge of Unlawful Wounding is 3  
14 years' imprisonment, with time spent in custody to be deducted, as well as time spent  
15 on the EMDT curfew, which is 121 days, also to be deducted.

16 35. The Court notes the recommendation made by Department of Community  
17 Rehabilitation (DCR) Officer, Mr. Herbert Tomlinson, for the Defendant to undergo  
18 psychological assessment based on what Mr. Tomlinson describes as:

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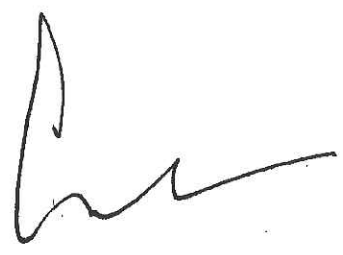


1                   “continued acts of violent behaviour [which] could suggest that [the Defendant] is  
2                   unable to appropriately modify his behaviour [and] it might therefore be  
3                   instructive for [the Defendant] to have an up-to-date assessment to determine what  
4                   specific personality style might be present. [The Defendant] is assessed as being a  
5                   very high risk in the Anti-Social Pattern category.”

6           36.     I therefore so order.

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9     **Dated this the 29<sup>th</sup> September 2016**



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11     **Honourable Mr. Justice Charles Quin Q.C.**  
12     **Judge of the Grand Court**