

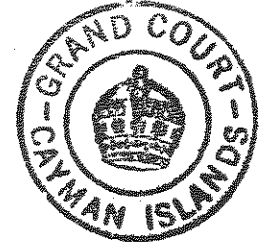
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL SIDE**

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4 **INDICTMENT NO: 0064/2014**

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7 **THE QUEEN**

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9 **V**

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11 **KENROY LEONARD ROWE**



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15 **Appearances:**

**Ms. Toyin Salako for the Crown**

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17 **Mr. John Furniss for the Defendant**

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19 **Before:**

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

20 **Submissions heard:**

**9<sup>th</sup> April 2015**

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22 **SENTENCE RULING**  
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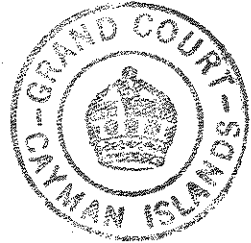
- 24 1. On 24 July 2014 the Director of Public Prosecutions (DPP) laid an indictment  
25 against this Defendant. The first count was Wounding with Intent contrary to  
26 section 203 of the Penal Code (2013 Revision). The particulars of the offence are  
27 that the Defendant on Friday, the 21<sup>st</sup> March 2014 at the Energy Bar & Lounge,  
28 Shedden Road, Georgetown, Grand Cayman, unlawfully and maliciously wounded  
29 Jose Sanchez with intent to cause grievous bodily harm. The Defendant was also  
30 charged with an alternative count, namely wounding, contrary to section 204 of the  
31 Penal Code (2015 Revision). On the 15<sup>th</sup> August 2014 the Defendant was arraigned  
32 and pleaded not guilty to both counts on the indictment. On the 18<sup>th</sup> March 2015,  
33 the third day of trial, the jury returned and rendered a unanimous verdict of guilty to  
34 Count 1.

**SUMMARY OF FACTS**

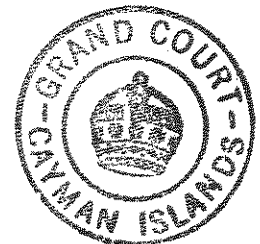
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2. The Complainant and his friend had been out drinking. The Complainant's friend was worse for wear and had drunk more than the Complainant. The Complainant's friend went into the nightclub area of the Energy Bar & Lounge. One can see from the CCTV footage that the Complainant went up to Defendant, who was the security guard on duty and had the job to search patrons of the establishment before they entered the nightclub. One can see that the Complainant voluntarily agreed to be searched. Initially there was no trouble until the Defendant attempted to search the Complainant around his groin area. The Complainant objected and he wasn't permitted to enter the nightclub. The Complainant then started to leave. The Complainant's friend then came out of the nightclub and intervened. The CCTV shows the Complainant's friend and the Defendant entering into what appears to be a heated conversation. The Complainant actually tries to get his friend to leave the premises but his friend and the Defendant continue arguing.

3. The CCTV coverage shows the Defendant pushing the Complainant's friend away, then the Complainant's friend bumps into the Complainant, who throws a punch at the Defendant. It is then that the Defendant takes the flick knife he had confiscated from a patron out of his pocket and charges at the Complainant, who by then had fallen backwards on to the ground. The CCTV shows the Defendant stabbing the Complainant whilst he was on the ground. The Complainant was stabbed under the heart.



- 1       4.     The Defendant and the Complainant's friend continued fighting. After the  
2           Complainant's friend gets off the premises the CCTV shows the Defendant  
3           returning the flick knife to its owner and then the Defendant leaves the premises  
4           before the police arrive.
- 5       5.     The Complainant's wound was serious and he began to lose a lot of blood. The  
6           police officers who arrived realised that the Complainant was beginning to lose  
7           consciousness and consequently they immediately took him to the hospital. The  
8           Complainant was examined by the doctors in the A&E department. He had a 3 cm  
9           wound on the right side of his chest over the 5<sup>th</sup> intercostal space medial to mid  
10          clavicular line. Upon further investigation Complainant was found to have a large  
11          pneumothorax on the right side of his chest and it was necessary to insert a tube  
12          into the right side of his chest in order to clear the blood. The doctors concluded  
13          that the Complainant's injuries were serious and consistent with infliction with a  
14          sharp instrument. The Complainant was detained as an in-patient for further  
15          treatment.
- 16       6.     Sometime later that morning Defendant arrived at hospital complaining of pain to  
17           the lower jaw. No obvious injuries or bruises were noted. The Defendant's injuries  
18           were consistent with infliction by blunt trauma and his condition was considered  
19           not to be serious and he was released.



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*AGGRAVATING FACTORS*

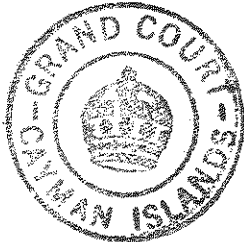
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7. The use of the flick knife to commit this offence is the most serious aggravating factor in this case. From the review of the CCTV footage the Defendant was far too quick to use the knife which was in his pocket. The Defendant took the flick knife out of his pocket, pressed the release button, went after Complainant and stabbed the Complainant, causing serious injury.

8. Crown counsel highlights the fact Defendant should have been keeping the patrons safe in his role as a security guard but, instead of protecting customers, he proceeded to attack the Complainant. It was an abuse of his position as the security guard. It is the Crown’s case that the Defendant deliberately caused more harm than was necessary for the commission of the offence.

9. Very shortly after the assault the Defendant disposed of the flick knife by returning it to its owner. Furthermore the Defendant quickly left the scene instead of waiting for the police to arrive to tell them what had taken place.

10. Crown counsel questions whether the Defendant feels any remorse and she highlights the fact that in the Defendant’s Social Inquiry Report (SIR) he states that he feels that he did not get a fair trial. Further, Crown counsel states that despite the fact that the CCTV footage clearly shows the attack, the Defendant still maintains that he did not go to the Complainant to hurt him.



*DEFENCE CASE*

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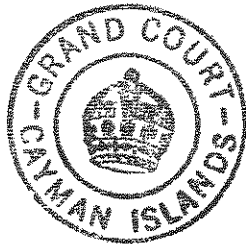
11. Defence counsel highlights the fact that the Defendant claimed self-defence although he accepts that the jury rejected that defence or, alternatively, found the Defendant went completely over the top in attacking the Complainant.

12. Defence counsel submits that it was really the Complainant's friend who provoked this serious altercation. The Complainant was trying to leave the scene but the Complainant's friend went on arguing with the Defendant which resulted in the outbreak of the fight in which the Defendant was stabbed. Defence counsel submits that whilst this does not excuse the Defendant's behaviour, there was significant provocation caused by the third party.

13. Defence counsel highlights the fact that the Defendant has no previous convictions.

14. The Defence asks the Court to accept that this was a single stabbing, although it is accepted that it caused a wound that required urgent and immediate medical treatment.

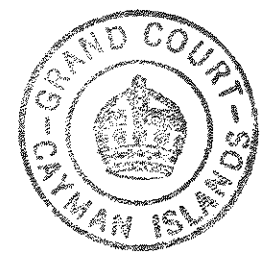
15. Defence counsel also highlights the fact Defendant had received no training in relation to how to handle a physical altercation in the course of his duties as security guard. Furthermore, as seen from the CC TV footage, the Defendant's senior colleague was present at the scene, yet he had done nothing to assist the Defendant who had gone too far in responding to what the defence submits was significant provocation.



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16. The Defendant is a man good character with no criminal history. He is the father of children in Jamaica. Defence counsel submits that the Defendant is in fact remorseful and he recognises that he will have to pay a high price for an incident lasted no more than thirty (30) seconds.

17. Defence counsel also highlights the fact the SIR classifies the Defendant's risk of reoffending as low to very low.



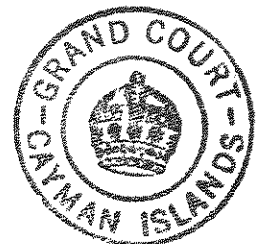
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*CONCLUSION*

18. Although the Court accepts that the Defendant was provoked by a third party his use of the confiscated knife was a serious error of judgement. I do take into account that the Defendant had received no formal training. Furthermore the establishment should have had a policy that as soon as knives or any other offensive weapons are confiscated they should be put in a secure safe and not left in the hands of security officers as in this case, who then may be tempted to use them in fights of this nature.

19. In light of the Defendant's unemployment following this charge against him and his remand into custody following the jury's verdict, the Crown is not seeking compensation for the Complainant's medical bills. The Court notes the Crown's position: There is no realistic prospect of recovering the money paid by the Complainant for his medical expenses, and case law provides that a Defendant in such circumstances should not be punished twice, that is, with the imposition of a compensation Order with which he will not be able to comply.

20. I understand that the Complainant's insurance company is not paying his medical bills. It is clear from a review of the facts of this case that the Complainant's injuries were not of his making. In fact, it is clear from the evidence that the Complainant was trying to leave the scene and was even trying to remove the third party from the scene. The Court hopes that if these facts are made known to the insurance company, it might reconsider its decision not to cover the Complainant's medical bills, incurred as a result of this serious assault on him.



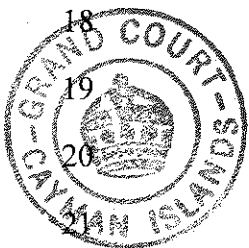
1 21. I do take into account that the Defendant comes before the Court with no previous  
2 convictions. He has always maintained full-time employment and it is extremely  
3 regrettable that the knife he confiscated was not secured in a safe place but  
4 remained in his pocket. It is stating the obvious that if a proper system of  
5 confiscation and safekeeping had been introduced for confiscated items such  
6 knives, this stabbing might well have not taken place.

7 22. I have listened to and taken account of the submissions of both counsel and I have  
8 read the helpful SIR and VIR.

9 23. I find that there was an absence of pre-meditation in this assault which is a  
10 mitigating factor.

11 24. Having reviewed the Defendant's interview with the police and listened to the  
12 Defendant's evidence at trial, to some extent, I accept that this was a case of  
13 excessive self defence. The Defendant clearly lost his temper as a result of the  
14 provocation of the third party and, as Mr. Furniss said, the Defendant "went over  
15 the top".

16 25. Both counsel refer the Court to the UK Sentencing Guidelines for the offence of  
17 Causing Grievous Bodily Harm with Intent to Cause Grievous Bodily Harm. Crown  
18 counsel submits this offence is a Category 1 offence, whilst defence counsel  
19 submits that it is a Category 2 offence. Having taken all the factors into  
20 consideration including the injury sustained by Complainant it is my view that this  
21 is a Category 2 offence. For this, the Guidelines recommend a starting point of six  
22 (6) years' imprisonment for a person with no previous convictions and after a plea  
23 of not guilty. Accordingly I accept the Guidelines and impose a sentence of six (6)  
24 years' imprisonment.



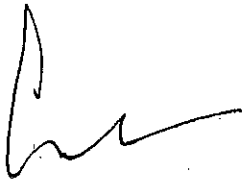
1       26.    I would just add that licensed premises such as bars and nightclubs which employ  
2            security guards must ensure that the confiscated weapons are put into safekeeping  
3            upon confiscation.  Furthermore security guards should be given some form of  
4            training to deal with altercations.

5       27.    Finally I commend the police officers who arrived at the scene.  Their quick action  
6            in attending to the Complainant, assessing the seriousness of his injury and then  
7            transporting him directly to the hospital may well have saved the Complainant's  
8            life.

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11   **Dated this the 16<sup>th</sup> April 2015**

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

