

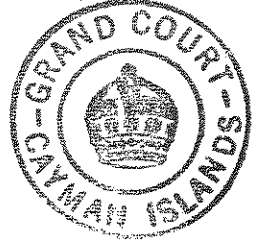
1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE

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4 INDICTMENT NOs: 0012/2014
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6
7 THE QUEEN

8
9 v.

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11 SHAQUILLE DEMARIO BUSH
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14 **Appearances:**

Marilyn Brandt for the Crown

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16 Prathna Boddan of Samson & McGrath for
17 the Defendant
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19 **Before:**

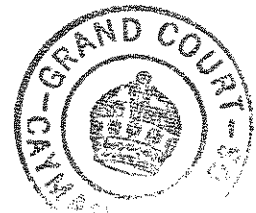
The Hon. Mr. Justice Charles Quin

20 **Submissions heard:**

25th November 2014

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22 **SENTENCE RULING**
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- 24 1. On the 19th August 2014 the Defendant pleaded guilty to Count 2 on this 2-Count
25 Indictment – Unlawful Wounding – contrary to s.204 of the Penal Code (2010
26 Revision). The particulars of the offence are that the Defendant, on the 1st day of
27 September 2013, at Miss Daisy Lane, West Bay, Grand Cayman, unlawfully and
28 maliciously wounded Roy Ashley Ebanks.



SUMMARY OF FACTS

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2. Sometime between 5 p.m. and 6 p.m. on the 1st September 2013, the Complainant was on his way to visit someone at Miss Daisy Lane, West Bay. As he reached the intersection of Miss Daisy Lane he saw the Defendant walking in his direction. As the Defendant was approaching him the Defendant was shouting to him "Leave." The Complainant noticed that the Defendant picked up what appeared to be a glass bottle from the side of the road and, as he continued to make his way towards the Complainant, while continuing to shout to him "Leave." The Complainant responded by telling the Defendant that it was not a problem and, as he turned away from the Defendant he felt a slap to the left side of his face. As he turned in the direction of the Defendant, he was hit by the Defendant with a glass bottle over his right eye. The Complainant immediately reported the incident to the police and he was transported to the hospital where the diagnosis was a penetrating injury to the right eye. The injury was considered serious and likely to be permanent. Surgery was recommended, which could only be performed abroad.

3. Dr. Rajesh Prathigadapa prepared a medical report dated the 10th January 2014 in which he recorded that Mr. Ashley Roy Ebanks was presented to the Emergency Room having been assaulted by a bottle on the face and on examination he found the Complainant's injuries to be serious, said that the injuries were likely to be permanent and described them as follows:

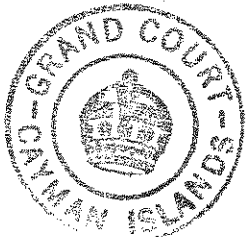


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- (i) A 5 cm laceration on the right eye;
- (ii) A small puncture wound in the 3 o'clock position on the conjunctiva of the right eye;
- (iii) Blood in the anterior chamber of the right eye.

4. The Complainant was referred to a consultant for surgery – Dr. Richard Gregson – who did a repair under general anaesthetic on the 2nd October 2013. The 1 cm laceration was found and sutured. After the surgery, the victim was able to count fingers using the right eye, but there was a substantial amount of blood within the eye and, therefore, the Complainant was referred for further surgery in Miami.

5. Dr. Gregson is of the view that the Complainant’s vision is not likely to return to normal, even if the surgery in Miami went perfectly well. Dr. Gregson was also of the view that the condition is serious and the injuries are likely to be permanent.



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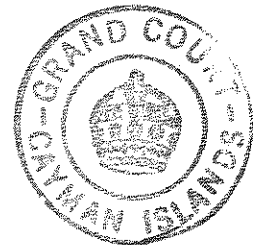
CROWN'S SUBMISSIONS ON SENTENCE

6. Crown counsel referred to the UK Sentencing Council Guidelines, the Definitive Guideline for Assault, GBH/Wounding. In England the maximum sentence for Unlawful Wounding is five (5) years, whereas in the Cayman Islands the maximum sentence is seven (7) years.

7. Crown Counsel submits that this is a Category 2 Offence, with a starting point of one year and 6 months' custody for a Defendant who pleads not guilty and has no previous convictions. Crown counsel submits that this offence positions itself in the higher end of Category 2 because of the serious injury and harm inflicted on the Complainant.

DEFENCE CASE

8. Counsel for the Defendant highlights the fact that the Defendant has pleaded guilty, he apologises to the Court and he has expressed genuine remorse. Counsel submits that the Court can also take into consideration that there was a lack of premeditation. In addition counsel for the Defendant asked the Court to take into account that he is a product of a very unfortunate environment.



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THE LAW

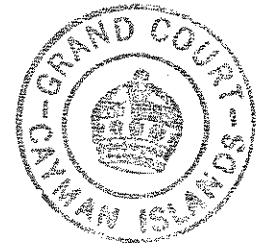
9. In England where the maximum for this offence is 5 years imprisonment, the sentencing range provided for by the UK Guidelines is somewhere between 1 and 3 years' custody.

10. I am grateful to both counsel for their helpful review of the authorities. In *R v. Andrew Graham Jones*¹, the Court of Appeal upheld a sentence of two years' imprisonment for a person convicted of Unlawful Wounding of another man by striking him in the face with a broken beer glass. In that case the Defendant became involved in a struggle outside a public house in the course of which he hit the victim on the side of the head with the glass which broke, and then he pushed the edge of the glass into the victim's face, causing grave injury, including the probable loss of sight in one eye. The Sentence of 2 years' imprisonment imposed by the High Court was upheld by the Court of Appeal.

11. In *R v. Koksal Keles*² the Appellant was involved in an incident in the course of which a meat skewer which he was holding penetrated the cheek and eyelid of the victim, touching the eyeball and causing the eventual loss of sight in the eye. The Appellant was acquitted of causing Grievous Bodily Harm with Intent, convicted of Inflicting Grievous Bodily Harm and sentenced to 2 years' imprisonment. The Court of Appeal reduced that Sentence to 18 months' imprisonment.

¹ (1984) 6 Cr. App. R. (S.) 55

² (1988) 10 Cr. App. R. (S.) 78



1 12. In *R v. John Charles Fleet*³, the Appellant was convicted of Unlawful Wounding.
2 The Appellant was involved in an incident at a party in a private house and man
3 suffered serious facial injuries from the use of a glass. The victim claimed the
4 Appellant attacked him deliberately and the Appellant claimed that the injuries
5 were caused accidentally. The Court of Appeal reduced the sentence of 3 years to
6 one of 2 years and stated:

7 *“Offences involving the use of a glass, even if used impetuously and without*
8 *any real premeditation are serious and almost invariably result imprisonment.*
9 *The Court was bound to give effect to the jury’s verdict.”*

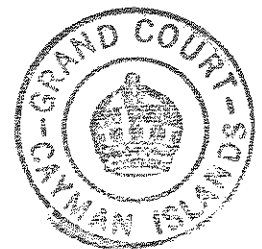
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11 13. In *R v. Singleton (John Paul)*⁴ the Appellant was convicted of unlawful wounding
12 and sentenced to three (3) years imprisonment. The Defendant was at a wine bar
13 with his sister and girlfriend when a man approached his sister and spoke to her in
14 an objectionable manner. As the man walked away from the bar the Appellant
15 struck him on the face with a beer glass. The victim suffered serious injuries to the
16 face and the eye, which required surgery and remains at risk of visual loss or
17 possible blindness. Despite the serious injuries inflicted on the victim the Court of
18 Appeal held that the Sentence of 3 years’ imprisonment was excessive and reduced
19 it 2 years.

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³ (1985) 7 Cr. App. R. (S.) 245

⁴ [1998] 1 Cr. App. R. (S.) 199

1 14. The Victim Impact Report (VIR) dated the 6th October 2014 records that the victim
2 was heading to the Logwood area – going to collect limes from a friend for sale. He
3 noticed Mr. Bush and others in a group some distance away. The victim said Mr.
4 Bush began to yell repeatedly “*you must get out of here!*” However, because there
5 were other persons around the victim, he did not know Mr. Bush was speaking to
6 him. The next thing was that the Defendant came up to the victim, saying “Get out
7 of here” and slapped him on the left side of his cheek with his hand. The Defendant
8 then picked up a glass bottle from the ground and, as the victim turned around to
9 leave Mr. Bush hit him over his right eye with the bottle and it shattered.

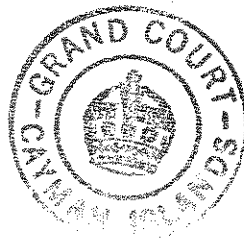
10 15. The VIR records that, as a result of this unlawful wounding, the victim is
11 completely blind in his right eye and the doctor states that these injuries are likely
12 to be permanent.

13 16. The victim said he was completely shocked by the Defendant’s actions. The victim
14 stated that he received what he considered to be an insincere apology about the
15 incident from the Defendant who said, “Sorry I was drunk.”

16 17. The victim has been unable to work for 6 months and he has also found it difficult
17 to readjust to his regular routine now that he is blind in one eye. Furthermore, his
18 lack of sight has caused him to fall off a step at his house and break his leg.

19 18. The outstanding medical bills for his hospital visit are CI\$5,526.67 in addition to
20 the medical bill for his broken foot which is CI\$2,165.97.

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1 19. Counsel for the Defendant stated that, on instructions, "*Compensation is not going*
2 *to happen.*"

3 20. I have read the in-depth Social Inquiry Report (SIR) dated the 17th September 2014.
4 I note that the Defendant was first employed with Captain Marvin's Watersports –
5 where he worked for just over a year but stopped because he did not think the pay
6 was good enough. He then obtained employment in East End Steel through an uncle
7 and worked there for some 8 months. Since that time the Defendant has been
8 fishing and diving for fish which he then sells.

9 21. The SIR reports that the Defendant "*feels really bad*" about what happened, but he
10 maintains that the victim came into his uncle's yard to take fruit and after he (the
11 Defendant) asked him to leave, the victim made some insulting remarks. A dispute
12 then arose and the Defendant maintains that the victim "pelted" a machete at him
13 and he in turn "pelted" a bottle at the victim.

14 22. The Court notes from the SIR that on the LS/CMI risk and need assessment tool,
15 the overall risk of the Defendant reoffending is high.

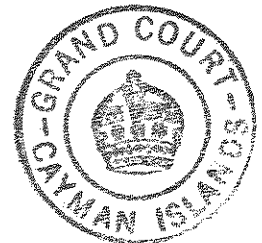
16 23. I also note that the Defendant informed the Probation Officer that he will continue
17 his usage of the illegal drugs. He stated that his family has no issue with him using
18 ganja and they accept it.

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1 *SENTENCE*

2 24. The Court notes that the maximum sentence for this offence in the United Kingdom
3 is 5 years whilst in the Cayman Islands it is 7 years. Under the UK Guidelines the
4 starting point for a Category 2 offence is 18 months – with a sentencing range of 1
5 to 3 years. In my view the starting point in this jurisdiction, bearing in mind the
6 higher maximum sentence, is 2 years, with a sentencing range of eighteen (18)
7 months to 4 years’ imprisonment.

8 25. I take into account that the Defendant is 19 years of age and will be 20 years old in
9 2 months’ time. The Defendant pleaded not guilty to this charge of wounding on the
10 7th February 2014 and then pleaded guilty on the day after his trial was set to
11 commence, namely, on the 19th August 2014.

12 26. However, as is stated in the VIR, the following factors have to be noted in regard to
13 this offence:

14 (i) The Defendant used a weapon on an elderly unarmed man and this
15 could have resulted in life-threatening injuries;

16 (ii) The victim sustained a serious injury which caused loss of sight in his
17 right eye;

18 (iii) The victim was alarmed by the Defendant’s actions so that he
19 immediately sought assistance from the police.



1 27. The Defendant told his Probation Officer that he “feels really bad” about what has
2 happened and counsel for the Defendant said that he has expressed genuine
3 remorse. The Defendant has made no payments towards the cost of the victim’s
4 medical treatment, and, furthermore, instructed his counsel to state “*Compensation*
5 *is not going to happen.*”

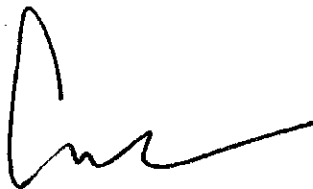
6 28. This was a malicious and violent attack which has left the victim without sight in
7 his right eye. Having struck the victim on his face with his hand, the Defendant then
8 deliberately picked up a bottle and struck the victim again, this time, on his right
9 eye. This is a serious aggravating factor which the Court must take into account.

10 29. There are few, if any, mitigating factors. In addition, the Defendant’s failure to
11 provide, or even offer, any compensation whatsoever to the victim does not convey
12 genuine remorse.

13 30. In my view, in light of the foregoing factors, the English case law and the
14 Defendant’s young age, the appropriate sentence is 2 ½ years. I will however award
15 the Defendant a discount for his delayed guilty plea and impose a sentence of 2
16 years’ imprisonment.

17 **Dated this the 9th day of December 2014**

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

