

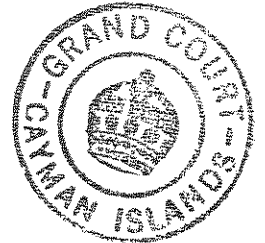
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

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4 **INDICTMENT NO: 0007/2014**

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7 **THE QUEEN**

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9 **V**

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11 **HANDEL DALE BODDEN**



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14 **Appearances:**

Ms. Candia James for the Crown

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

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18 **Before:**

The Hon. Mr. Justice Charles Quin

19 **Submissions heard:**

30th October 2014

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21 **SENTENCE RULING**
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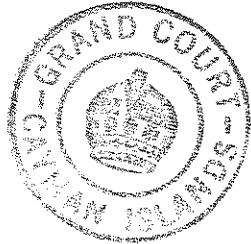
INTRODUCTION

1. On the 20th June 2014 the Defendant pleaded guilty to the second count on this 2-count Indictment – unlawful wounding — contrary to s.204 of the Penal Code (2013 Revision). The particulars of the offence are that the Defendant, on the 12th day of January 2014, at 20C Eastland Drive, East End, Grand Cayman, unlawfully and maliciously wounded James Hurley Chisholm.

2. On the 30th June 2014 the Defence and the Crown entered into an agreed Basis of Plea which reads as follows:
 - i. The Defendant was armed with a knife when he went to the residence of the Complainant;

 - ii. The Defendant became enraged by the Complainant’s answers to his queries and attacked him;

 - iii. After he was a attacked by the Defendant the Complainant reached for a machete which the Defendant grabbed, thereby injuring himself.





SUMMARY OF FACTS

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3. In the early hours of the morning of 12th January, 2014, the Complainant, James Chisholm, who had returned home from a night of drinking, was in the kitchen at his home when he heard a loud knock at the door. This was immediately followed by the Defendant, who was known to him, rushing into the room. The defendant appeared to be in a rage and was shouting repeatedly, *“I told you to stay away from my yard.”*

The Complainant kept telling the Defendant that he had not been to his yard. The Defendant was at that point making a stabbing motion with his right hand toward the complainant. Suddenly, the Complainant felt a sharp pain to his stomach area. He raised his hands in the air in a position of surrender and continued to say that he had not been to the Defendant’s yard.

4. The Complainant’s wife came to his rescue and tried to prevent any further injury to the Complainant. However, as the Complainant was backing away and trying to escape from the Defendant he was stabbed in his left shoulder blade.

5. The Complainant then grabbed a machete which the Defendant grabbed and thereby injured himself. The Defendant eventually ran from the room and left the scene.

6. The Complainant was taken to the George Town Hospital where he received medical treatment. He was found to have stab wounds to the upper back and chest.

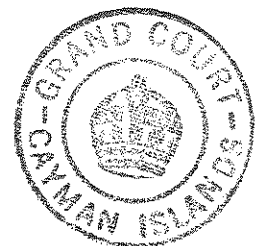
1 7. The Defendant was arrested later on the morning of the 12th January 2014. The
2 arresting officer observed that the Defendant had what appeared to be a puncture
3 wound on his left arm and cuts on three fingers on his left arm. He was also taken to
4 the George Town Hospital and treated for his injuries before being taken into
5 custody at the George Town Police Station.

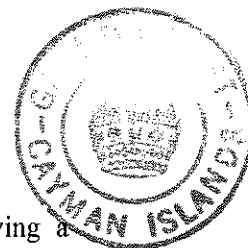
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7 8. The Defendant was subsequently interviewed under caution and told the police that
8 he had seen the Complainant coming around his property on previous occasions and
9 that he was fed up with it. He decided that morning to confront him and tell him
10 not to come around. He claimed that he carried his fishing knife for his own
11 protection. He stated that he had never had any previous argument or fights with
12 the Complainant and that the Complainant had never threatened him.

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14 9. The Complainant is requesting compensation in the sum of \$182.41 for outstanding
15 medical bills and \$56.00 for wages lost due to attending at the office of the DPP for
16 a pre-trial interview for a total sum of \$238.41.

17 10. The Defendant has two previous convictions for violence, namely, Attempted
18 Robbery on the 23rd June 2000, for which he received a prison sentence of six (6)
19 months and, Assault Causing Actual Bodily Harm, on the 18th June 2003 for which
20 the penalty imposed was a fine of CI\$750.00. Other offences relate to minor
21 offences going back to 2005 – aside from the offences of Taking Conch and
22 Lobster from the Replenishment zone in November 2012.

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DEFENCE SUBMISSIONS

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11. Counsel for the Defendant accepts that the aggravating factors are carrying a weapon before going to the Complainant's home, which reflects a higher degree of culpability. Furthermore the Complainant received a stab wound to his upper back and chest.

12. The Court is greatly assisted by an in-depth Social Inquiry Report (SIR) dated the 14th October 2014 from the Probation Officer, Mr. Herbert Tomlinson, of the Department of Community Rehabilitation (DCR). It would appear that the Complainant had, on occasions, made sexual passes to the Defendant's wife. Mr. Tomlinson confirms from his investigations that the Defendant had had a few drinks that evening. At the party the Defendant was teased by others that Complainant was taking away his wife. As a result the Defendant and his wife left the party. Moreover, the Defendant's wife complained about the Complainant's behaviour – which only succeeded in making the Defendant extremely jealous.

13. The Defendant had told the Complainant that his only intention in going to the Complainant's house was to talk to him about leaving his wife alone.

14. The Defendant had had four beers and was slightly intoxicated. A fight ensued and both the Defendant and the Complainant were injured.

15. The Defendant accepts that he started the fight and he fully accepted his responsibility. To some extent counsel for the Defendant has said that the Defendant was protecting his wife's reputation and honour, but he accepts that "things got out of hand."

1 16. Mr. Tomlinson notes in his report that the Defendant has struggled academically
2 and had to attend a Special Needs institution.

3 17. In addition, Mrs. Marjorie Quinland, who worked for 17 years as the Principal of
4 the Lighthouse School, gave evidence in the support of the Defendant. Mrs.
5 Quinland said that she has known the Defendant since he was a young boy and was
6 put into Foster Care. She describes the Defendant's current problem with the law as
7 "very regrettable" because it is out of character.

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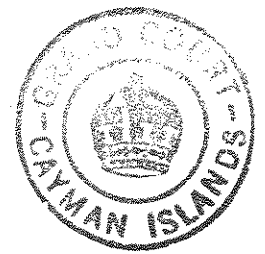
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SENTENCE

18. The maximum sentence for unlawful wounding is seven (7) years in the Cayman Islands and five years in the United Kingdom. Both counsel have helpfully referred me to the UK Sentencing Guidelines for the offence of Assault. The Crown submits that this offence is more akin to a Category 1 offence which has a starting point of three (3) years' custody for a Defendant who pleads not guilty after a trial, with a sentencing range of 2 years and 6 months to four years.

19. Counsel for the Defendant submits that it is a Category 2 offence, with a starting point of 18 months' in custody for a Defendant who pleads not guilty after a trial and who has no previous convictions – with an accompanying sentencing range of 1 to 3 years.

20. The use of the weapon is the most aggravating feature, but I do accept that there was a degree of provocation, because the Defendant was subjected to insulting and inappropriate remarks about his young wife. I also note that the Defendant has suffered from a learning disability which, when considered alongside the circumstances surrounding the attack, constitutes lower culpability.

21. I find that this is an offence for which a sentence of imprisonment is warranted. I find that when I consider all the circumstance of this case, that the appropriate sentence for this offence is 12 months' imprisonment.

22. However, I note that the Defendant managed to avoid committing any offences against a person for over 11 years. I also take into account that the Defendant has stated in his letter dated the 12th September 2014:

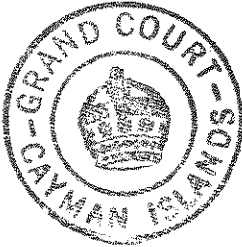
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“I wish to express my regret for what has happened. If given a second chance I promise not to reoffend and try to sort out situations that will enable me to make positive changes in my life so that I can support my family.”

23. Having considered the mitigating factors as set out by counsel for the Defendant, and the fact the Defendant is mentally challenged, as outlined by Mrs. Marjorie Quinland, I am prepared to suspend the sentence of twelve (12) months’ imprisonment for two (2) years. Mr. Bodden must understand that, should he commit any offences within the next two (2) years, he will serve the sentence of twelve (12) months’ imprisonment for this offence.

24. I also order the Defendant to pay the sum of CI\$182.41 in relation to medical bills. In addition, the Defendant is to reimburse the Complainant the sum of \$56.00 in relation to the Complainant’s loss of wages – making a total sum of CI\$238.41 in compensation. I will give the Defendant 6 months from today’s date in which to pay this compensation – thirty (30) days in default.

25. I agree with Mr. Tomlinson’s recommendation that there should be some form of Community Service Order and, accordingly, I order the Defendant to serve 240 hours of Community Service as directed by Mr. Tomlinson. The Community Service hours could be Public Works or the Ministry of Agriculture or the National Trust or whichever placement the DCR directs.

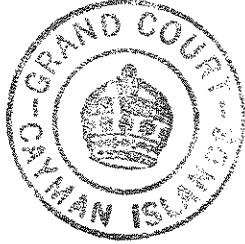


1 26. If the Defendant performs well in relation to the community service ordered, it is
2 more than likely that it will increase his chances of obtaining worthwhile and
3 gainful employment.

4 27. I understand that the Defendant has an outstanding charge of Possession of an
5 Offensive Weapon in the Summary Court in relation to this incident. No good
6 purpose can be served by pursuing that outstanding charge which is effectively
7 subsumed by the guilty plea to the charge of Unlawful Wounding which is the
8 subject of this Ruling. Accordingly, the sentence imposed herein subsumes the
9 charge of Possession of an Offensive Weapon on Summary Court Case Number
10 #00434/2014.

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Dated this the 6th day of November 2014



A handwritten signature in black ink, appearing to be "C. Quin".

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