

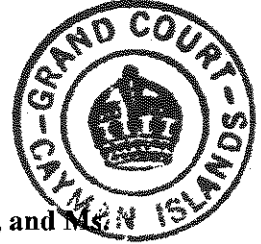
1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CRIMINAL SIDE  
3  
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5 INDICTMENT NO: 0077/2013  
6

7  
8 THE QUEEN  
9

10 V

11 ELSY PATRICIA CALDERON DE ORTEGA BARRALAGA  
12



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15 **Appearances:**

Ms. Cheryll Richards Q.C., DPP, and Ms.  
Toyin Salako, Crown Counsel

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18 Ms Maura McGowan Q.C. instructed by  
19 Ms. Prathna Bodden of Samson & McGrath  
20 for the Defendant  
21

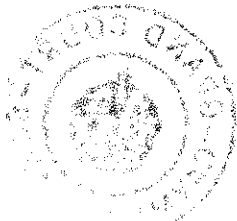
22 **Before:**

The Hon. Mr. Justice Charles Quin

23 **Submissions heard:**

31<sup>st</sup> March & 2<sup>nd</sup> April 2014  
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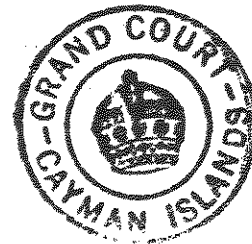
25 **SENTENCE RULING**  
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*INTRODUCTION*

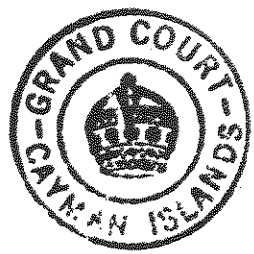
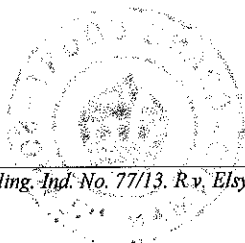
1. On the 31<sup>st</sup> March 2014 the Defendant pleaded guilty to manslaughter contrary to s.180(1) of the Penal Code, in that, the Defendant, by an unlawful act caused the death of Perry Stephen McLaughlin on or about the 2<sup>nd</sup> November 2013 at 255 Gazebo Lane, Little Cayman.

*SUMMARY OF FACTS*

2. At the beginning of September 2013, the Defendant moved into the home of the deceased at 255 Gazebo Lane, Little Cayman. They appeared to have a good relationship and, except for one phone message on the 4<sup>th</sup> October 2013, there was no indication of any arguments or difficulties between them.

3. On the night of Friday 1<sup>st</sup> November 2013, they went out for a social evening to some restaurants and bars in Little Cayman.

4. The Defendant was wearing a white dress and white shoes and the Defendant and the deceased first went to the Southern Cross Club. On leaving the Southern Cross Club the Defendant and the deceased went to Little Cayman Beach Resort (LCBR) where a karaoke night was taking place. The Defendant was drinking beer and the deceased was drinking VX rum. The Defendant sang a couple of songs at the karaoke while the deceased sat at a table in the corner. Witnesses stated that the Defendant sang two songs and the Defendant and the deceased both appeared to be relaxed and on good terms with each other.



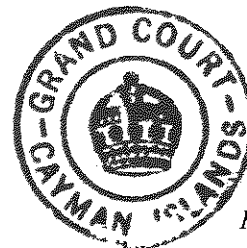
1 5. The Defendant and the deceased left LCBR at approximately 10 p.m. and went on  
2 to McCoy's. The Defendant had a drink called a B52 and the deceased had a club  
3 soda. The witnesses said they remained there for about 20 minutes, during which  
4 time they appeared to be talking and joking with each other and they left after the  
5 deceased paid their bill. The witnesses said there was no trouble or arguments  
6 between them.

7 6. A number of the Crown's witnesses reside at 218 Gazebo Lane – which is the  
8 residence beside 255 Gazebo Lane. In the early hours of the 2<sup>nd</sup> November 2013 the  
9 Defendant came to these premises in a distressed stated. She was wearing a white  
10 dress which had blood on the back. The Defendant told the witnesses that Mr. Perry  
11 (the deceased) tried to kill her. The witnesses asked her why he would try to kill her  
12 and she replied that they had spent a little time at the Beach Resort and she said she  
13 wanted to go home but he, the deceased, said he wanted to go to McCoy's, so she  
14 went in her car and went home. She said as soon as she got there he came in behind  
15 her, grabbed her by the hair and hit on the side of her head with something. One  
16 witness heard the Defendant say:

17  
18 *“That man tried to kill me and he came at me with two big knives”.*

19 The Defendant said the deceased swung after her and there was water on the floor  
20 which caused her to slip and that was how he missed her. She said she then ran into  
21 the laundry room.

22 She told the witnesses that she hid in the laundry room and then escaped through  
23 the window.



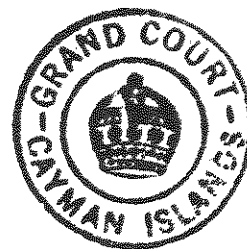
1       7.       The witnesses said the Defendant was in a distressed state and not talking straight.  
2               They said she appeared to be traumatized and was crying a lot. The witnesses said  
3               that she had injuries to sides of both her feet and her toe close to the little toe on the  
4               right foot was cut. The Defendant told the witnesses that she had left the deceased  
5               at home. When the Defendant asked to use the bathroom one of the witnesses heard  
6               her vomit. The Defendant returned to the room in the neighbour's house and fell  
7               asleep on the couch.

8       8.       The witnesses were asked why had they not called the police and they said they did  
9               not suspect that anything serious had happened. The Defendant had told the  
10              witnesses that she and the deceased had had an argument and that the deceased  
11              “*was crazy and wanted to kill her*”. The witnesses said that they never suspected  
12              that Mr. Perry had been either seriously injured or killed.

13      9.       At 6:30 a.m. on Saturday the 2<sup>nd</sup> November 2013, the witness, Mr. Kirk  
14              Cunningham, went to the house of the deceased. On opening the front door, which  
15              was locked with both locks, he entered the house and saw a lot of knives scattered  
16              on the floor and a broken pepper bottle. The deceased was lying on the floor with  
17              chest, hands and legs bloody. He was not moving.

18      10.      When the witness told the Defendant that Mr. Perry was dead, the Defendant's  
19              response was that when she left him he was okay.

20      11.      The Defendant telephoned the deceased's housekeeper and told her that something  
21              horrible had happened. The Defendant said,

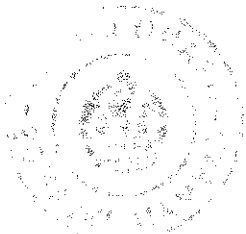
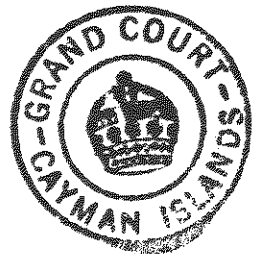


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*"We had a fight last night when we got home. He got aggressive and he grabbed something so I grabbed something. He tried to kill me, Paola, and I ran out through the window and left him there and now he is dead."*

Asked: "How is he dead?" the Defendant replied,

*"I don't know. He had a knife and I had a knife and I had a knife because he was trying to kill me. I have never seen him like this. I know I cut him in the arm and somehow I escaped through the window and I went to look for help and I asked Kirk to go check. I swear to God he was alive when I left...I didn't kill him I swear."*



*INJURIES TO THE DECEASED*

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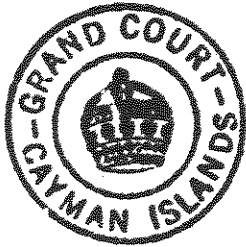
12. At the scene at 255 Gazebo Lane, Little Cayman, the deceased was examined by Dr. Harper-Smith who found that the deceased had multiple wounds including a laceration to the left upper arm, 6 cm-long smaller wounds to the chest, one to the left of the midline of the pubic area and two on the right inner thigh. He had a left raccoon eye with hemorrhage to the lateral aspect. There was no sign of life.

13. The police took the body to Cayman Brac by boat, where it was delivered to the Faith Hospital Morgue.

14. On Sunday 3<sup>rd</sup> November 2013, Forensic Pathologist of the Miami Dade County Medical Examiner's Department, Dr. Mark Shuman, conducted an autopsy on the body of the deceased at the Cayman Islands Hospital and certified that the cause of death to be stab wounds to the chest. He found seven wounds as follows:

i. Stab wound to the right upper chest, above the right nipple, passing through the right third intercostal space and into the lower lobe of the right lung. Doctor Shuman described this as a very serious wound but one which was survivable with rapid EMS response and good trauma care.

ii. There was a second stab wound to the right lower chest into the subcutaneous tissue.



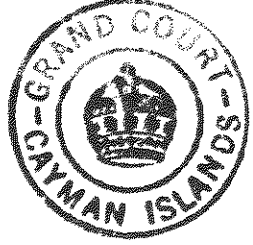
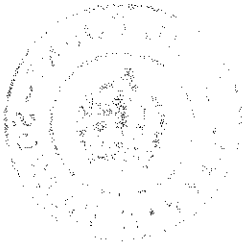
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iii. There was a third stab wound to left lower chest, passing through the left seventh costal cartilage near the sternum, through the pericardium anteriorly, through the right ventricle, septum, posterior aspect of the pericardium and into the lower lobe of the left lung. **In the Doctor's opinion this wound is the most rapidly lethal and is not survivable. Loss of consciousness would occur within approximately one minute or less after receiving this stab wound and death would occur shortly thereafter.**

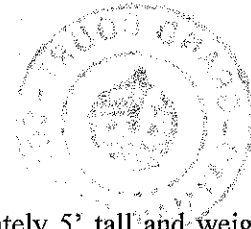
iv. The deceased suffered four additional stab wounds: One to the left pubic region: One to the left shoulder and two to the right thigh.

v. In addition the deceased sustained 21 minor injuries to the forehead, eyes, nose, lips, abdomen, arms, legs and hands.

15. The deceased was described by Dr. Shuman as a well-developed, well-nourished, 54-year old man. He was 5' 10" tall and weighed 178 lbs. The Court notes that witnesses who have known the deceased for many years all say that the deceased had difficulty walking and ascending staircases as he had trouble with his balance and had been known to use a cane.



*THE INJURIES TO THE DEFENDANT*



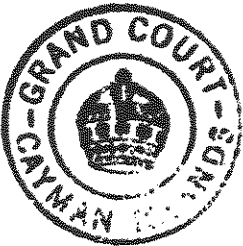
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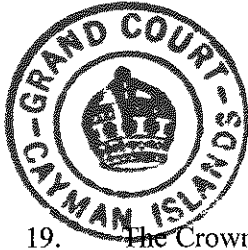
16. The Defendant is a 29 year old woman who is approximately 5' tall and weighs approximately 119 lbs. or 8 ½ stone. The Defendant was examined at the Little Cayman Health Centre where Nurse Charmaine Coore found that the Defendant had a small haematoma to the left parietal region, small superficial abrasions to the left inner thigh, small wound to the left lateral foot and hematoma to the right lateral foot.

17. On the 2<sup>nd</sup> November 2013 the Defendant was examined by Dr. Harper-Smith who found that the Defendant suffered multiple soft tissue injuries to her scalp; multiple 1-2cm red bruises to the scalp; frontotemporoparietal, bilate, left foot, right ankle, right thigh and left arm as well as spasm of the right cervical paraspinal muscles.

18. The Defendant reported that she had been held her by her hair, thrown on the ground and punched in the head several times. The Defendant complained of neck pain on the right side – especially with movement, nausea and general weakness. She also had pain in her feet and thigh. Dr Harper-Smith saw:

- i. Swelling and discoloration 5x5 cm to lateral aspect of right ankle-tender;
- ii. Swelling to lateral aspect of left foot - 2x 3cm with small laceration;
- iii. 6 cm long subcutaneous bruising on left arm;
- iv. Swelling to right side of neck in region of C6-T1 with muscle spasm.





*THE CRIME SCENE*

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19. The Crown's expert witnesses conclude that the blood spatters at 255 Gazebo Lane and in particular in the laundry room were consistent with someone who was severely injured in the laundry room area in front of the West exit door. The chest of the victim must have been, at one point, in front of the door, because there are signs of the force of blood impacting the floor there.

20. The expert's evidence is that the blood spatters are consistent with the deceased being stabbed while facing out of the laundry room and moving out of the area back into the house.

21. The Crown's case that there was some sort of altercation between the two. This is evidenced by the disarray primarily in the kitchen of the premises and the fact that the Defendant had a number of bruises to her head and swelling on her neck and both ankles. There was a break in the altercation when the deceased removed much of his clothing.

22. Further the blood in the laundry room is undisturbed by feet. There are contact marks in blood which are consistent with the Deceased trying to keep his balance against the laundry room doors in front of washing machine. They are also consistent with him being stabbed while facing out of the laundry room and moving out of the area back into the house. The windows in this area are locked. There is no evidence of anyone going out through the laundry room window. There is no evidence that the deceased chased the Defendant out of the house. The only indication in the blood stains of movement from the house is a set of the defendant's prints from the kitchen through the front east door and down the steps.

1       23.    The Defendant's dress has stains consistent with projected blood therefore she was  
2            present when the Deceased received wounds other than a cut to his arm in particular  
3            she must have been present at the time he received the fatal wound. In addition,  
4            there is no evidence that the Defendant left 255 Gazebo Lane through any window  
5            and, therefore, her first account must *not* have been true. Additionally the level of  
6            bloodletting on her clothing must have made it clear to her that the deceased was  
7            seriously injured.

8        24.    From this evidence it is the Crown's case that:

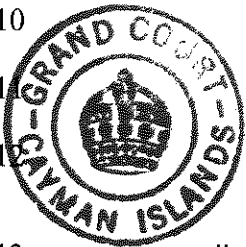
9            i.    There was some sort of altercation between the two. This is gleaned from the  
10            disarray primarily in the kitchen of the premises and the fact that the defendant  
11            had a number of bruises to her head, swelling on her neck and both ankles. The  
12            Deceased had a number of bruises.

13           ii.   There was a break in the altercation when the deceased removed much of his  
14            clothing, the television was on, and there was some limited blood upstairs.

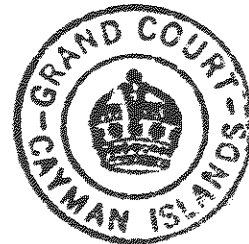
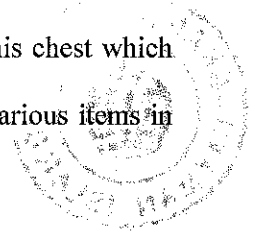
15           iii.  The incident which led to the letting of blood occurred firstly in the passage  
16            area given the cast off blood in the area, but no serious bloodletting or life  
17            threatening injury occurred there.

18           iv.  The blood in the kitchen is dripped blood indicative of someone injured and  
19            bleeding.

20           v.   The lack of blood between the kitchen and laundry is also indicative that no life  
21            threatening or serious injury occurred between kitchen and laundry.



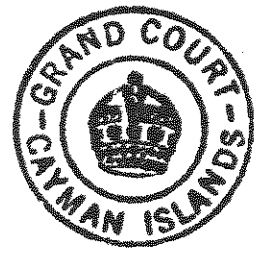
- 1 vi. At some point in time after receiving an injury, the Deceased went to the  
2 laundry room area. The Defendant also went to that area.
- 3 vii. At the time the Deceased received the injury in the laundry area, he was not  
4 armed. Exhibit SH48, is a red handled knife which was found in the laundry  
5 room. Exhibit SH48 did not have any apparent bloodstaining and a presumptive  
6 test for blood on it was negative. The Defendant had no defensive injuries  
7 indicative of defence from a knife attack.
- 8 viii. The space in the laundry area is about 3 feet wide. The deceased was positioned  
9 with his back to the exit door facing into the house.
- 10 ix. It was at this point that the defendant struck the fatal blow to his chest which  
11 lead to projected blood coming from his body and landing on various items in  
12 the area and on her dress.
- 13 x. Death would have occurred in the Deceased in approximately a minute.
- 14 xi. Deceased moved forward holding on to the side of the washer/dryer doors. He  
15 landed on his left side, before falling on to his back. A pool of blood settled on  
16 and around him.
- 17 xii. There is no evidence of a person moving through this blood.
- 18 xiii. The defendant must therefore have been facing Mr. Perry McLaughlin and  
19 moving back after she struck the fatal blows.
- 20 xiv. From her footprints the defendant left the premises through the passage to the  
21 south east door.



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xv. She was carrying a dripping object, the most reasonable inference is that this is Exhibit SH2, the knife which had the blood of the deceased on the blade and handle which she then dropped outside the premises.

xvi. None of the other knives on the floor appeared to have been used to stab anyone. Exhibit SH30 has contact blood.



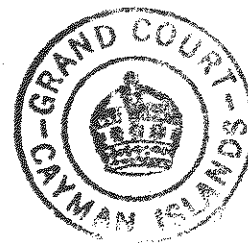
1 **EXHIBITS**

2 25. The Crown produced a sketch map of the interior of 255 Gazebo Lane as Exhibit  
3 #1. The sketch map shows the laundry area with the knife found behind the laundry  
4 as Exhibit SH48. There is the diagram of the deceased lying just at the edge of the  
5 laundry area. The sketch map also shows the other knives scattered around the  
6 kitchen and the footprints of the Defendant's feet through the south side of the  
7 house and out towards the southwest door. The sketch map shows the knife, SH2,  
8 which the Defendant used to stab the deceased.

9 26. Exhibit 2 is the message recorded on the Defendant's phone from the deceased  
10 dated the 4<sup>th</sup> October 2013 which reads:

11 *"Elsy I don't know what I did to you. I don't know why you keep calling me a*  
12 *fucking liar, shit, I don't know why, if you don't want me you don't want me but*  
13 *stop it, you have to stop it, please stop it, I love you and I fucked other women,*  
14 *yes, I did, I am not perfect, but this lie thing has to stop because the people who*  
15 *are telling you this are far worse than me, that's why they are telling you that,*  
16 *because they ain't no fucking good. If they were any good they would not have*  
17 *told you that. Think about that, make that go to your brain before it comes out*  
18 *of your mouth."*

19 27. On the 1<sup>st</sup> November 2013 there were other SMS/BBM messages between the  
20 Defendant and the deceased which were perfectly amicable and revealed no  
21 evidence of any disharmony between the couple.





*RECORD OF INTERVIEWS WITH THE DEFENDANT*

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29. At 7:07 a.m. on Saturday the 2<sup>nd</sup> November 2013 PC Anderson arrived and cordoned off the scene. On entry into #255 Gazebo Lane he noticed that items were strewn across the floor and the body of the deceased was lying there in dried blood.

30. Upon hearing movement in the house he enquired who was there and the Defendant responded. The Defendant identified herself as the girlfriend of the deceased. PC Anderson noted that the Defendant had minor injuries to her left foot near the instep and the left side of her head appeared to be swollen.

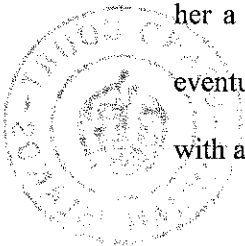
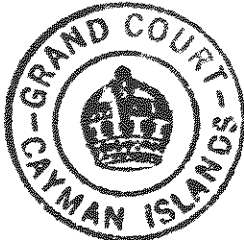
31. PC Anderson asked the Defendant what happened and she replied:

*“We had a fight.”*

PC Anderson cautioned her and she continued:

*“We came out and I came back home and he started cursing me and I slapped him and he punched me with his closed fist five times and he came at me with something in his hands and I defended myself.”*

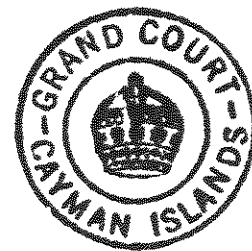
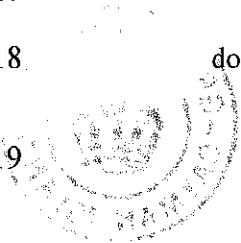
32. On the 4<sup>th</sup> November 2013 the Defendant provided a prepared statement in which she said that she and the deceased had gone out for the evening and the deceased was drinking heavily. She said that as they were driving home there was an argument between them. She said the deceased was acting jealously and swearing at her a lot and when they got home he locked her out of the house. She said that eventually she went in to get some clothes and she told him she was going to stay with a friend. Following that she said:



1           *"He got very angry and would not let me get my clothes. We were both in the*  
2           *kitchen. He threw all the things on the counter on the floor and told me I was*  
3           *not going anywhere. He grabbed my hand hard, it is bruised and swollen. He*  
4           *then pushed me to the floor. I twisted my ankle. He then punched me in my head*  
5           *over and over, he would not stop. He just kept screaming at me and calling me*  
6           *a bitch. I thought I was going to die. He had something in his hand. I then*  
7           *grabbed a knife from the floor and hit his arm so that he would let me go. He*  
8           *let go and I ran across the glass on the floor. He chased me. I then hid for a*  
9           *short while and managed to get out. He chased me out and was screaming*  
10          *behind me, "bitch come back!"*

11          *"I then went to my neighbour's house. They helped me. I honestly believed that*  
12          *he was going to kill me, all I wanted to do is get away. I did not mean to kill*  
13          *him. I was acting in self defence."*

14          33.    In response to questions from the RCIPS the Defendant said that she does not  
15          remember what the deceased had in his hand and the reason why a knife was on the  
16          floor was because he pushed everything from the counter to the floor. The  
17          Defendant said that she and the deceased had a loving caring relationship and she  
18          does not know what happened for *"it all to go wrong on Friday night."*



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*THE BASIS OF PLEA*

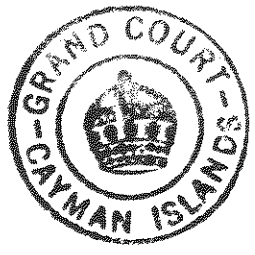
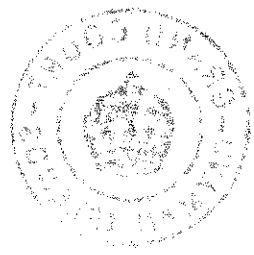
34. The Defendant admits causing the fatal injuries to the deceased.

35. On the return to 255 Gazebo Lane on the night of the 1<sup>st</sup> November 2013 or the morning of the 2<sup>nd</sup> November 2013 an argument occurred between the deceased and the Defendant. The argument became physical and the deceased and the Defendant struck each other with both sustaining injuries.

36. The Defendant struck the deceased with a knife.

37. Having received some but not all of his injuries (in the course of the Defendant acting) in lawful self defence, the deceased ceased to use or threaten violence.

38. The evidence is that the Defendant was so provoked by the actions of the deceased towards her that night that she inflicted several further blows on him with a knife. She did so, having lost her reasonable self-control. It is agreed between the Crown and the Defence that at the time of inflicting the several stab wounds on the deceased in laundry room, the Defendant was not acting in self defence.



1

*DEFENCE CASE*

2

*EARLY GUILTY PLEA*

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39. Leading counsel, Ms. McGowan, Q.C., submits that the Defendant's actions since coming to Court should be rewarded with a substantial reduction in light of her early guilty plea.

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40. On the 7<sup>th</sup> November 2013 the Defendant's case was transmitted from the Summary Court to the Grand Court.

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41. On the 15<sup>th</sup> November 2013 the Defendant pleaded not guilty to a single count of murder on the Indictment.

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42. On the 9<sup>th</sup> December 2013 the trial was set down to begin on the 31<sup>st</sup> March 2014 and, in addition, the PDH was set for the 28<sup>th</sup> February 2014.

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43. Ms. McGowan submits that the first approach made by the Defence to the Crown was in November 2013 – indicating that the plea which was eventually agreed to was the subject of active consideration.

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44. In addition, at the first and only Plea and Directions Hearing (PDH) in February 2014, junior counsel for the Defendant, Ms. Bodden, made the Court aware of the fact that the Defence was considering resolution of this case without the need for a trial.

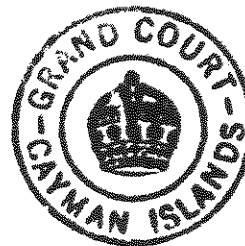
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1 45. Leading counsel for the Defence points out that she had to travel from England and,  
2 as a result of the accident of geography and the reality of economic constraints,  
3 consultation with the Defendant by leading counsel was not possible until March  
4 2014. Shortly after the Defendant and her leading counsel and her Cayman attorney  
5 met, the DPP and Defence counsel were in a position to agree the aforesaid Basis of  
6 Plea on the 28<sup>th</sup> March 2014 – three days before the trial was set to begin.

7 46. In addition, Ms. McGowan submits that aside from the early guilty plea it was clear  
8 from the interviews and the prepared statement that the Defendant admitted causing  
9 the injuries which led to the death of Perry McLaughlin.

10 47. Defence counsel also submits that no time or expense was wasted in causing the  
11 police to be engaged in an unrealistic search for another offender.

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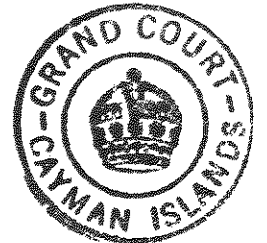
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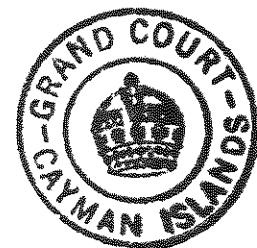
1 *THE DEFENDANT'S CONDUCT AFTER THE EVENT*

2 48. The Defence submits that the Defendant's reaction whilst speaking to the  
3 neighbours immediately after the incident was one of shock and confusion. The  
4 Defendant was rambling; "she was not talking straight." Ms. McGowan submits  
5 that we know from the Crown's evidence that the Defendant vomited.

6 49. On the following morning when it was discovered that Mr. McLaughlin was dead,  
7 the Defendant reacted in physical shock. One of the witnesses described her eyes as  
8 bulging. The Defence submits that the evidence shows that the Defendant could not  
9 believe that she had caused injuries which had proved fatal.

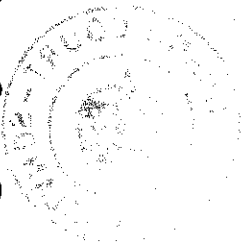
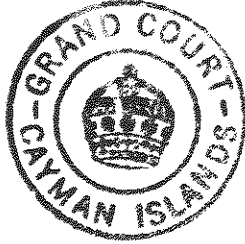
10 50. The Defence asks the Court to accept that, in part, the Defendant raised the alarm  
11 about the incident by running over to the neighbour's house. But, aside from stating  
12 that the deceased had tried to kill her, she clearly told the neighbours that there had  
13 been a serious altercation between herself and the deceased.

14 51. Even though it is accepted that neither the Defendant nor the neighbours summoned  
15 any medical assistance, we know from the injuries received that medical assistance  
16 would have been of minimal, if any, assistance at the time as the Defendant died  
17 shortly after the stab wound to the chest. The evidence of the Forensic Pathologist  
18 confirms that the deceased died within a few minutes of receiving the stab wound to  
19 the left lower chest.



1       52.     The Defence submits that the Defendant made no attempt to dispose of the knife –  
2             letting it drop as she fled from the house. Furthermore, she made no attempt to  
3             dispose of her clothing. It would have been quite simple to put the knife and or the  
4             clothing in the pond or the woodland next to the house. Furthermore, the  
5             Defendant did not try to get into the vehicle, but went directly to her neighbours. By  
6             going to the neighbours the Defendant thereby raised an alarm – at least to the  
7             extent that there had been a very serious altercation between her and Mr.  
8             McLaughlin.

9       53.     Accordingly, it is the Defence’s case that, in light of her guilty plea and her  
10            acceptance of the responsibility for the deceased’s injuries, a reduction in sentence  
11            should be afforded.



*HISTORY OF THE RELATIONSHIP*

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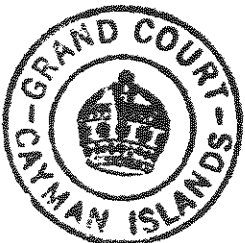
54. The Defendant is a woman of good character with no previous convictions.

55. She first came to the Cayman Islands in 2006 (with her husband) from which time she has had a series of jobs working in restaurants as a kitchen assistant and also working in shops on Grand Cayman.

56. It was whilst on one of these jobs the Defendant came to know the deceased.

57. After meeting Mr. McLaughlin, she always worked for the deceased or for friends of the deceased – working in shops or cleaning houses. Her income from her employment has been remitted to her mother in Honduras who cares for her 12-year old daughter.

58. Although the deceased was considerably older than the Defendant, it became clear to the Defendant that the deceased was smitten with her. Initially, the deceased was living with his former girlfriend and the Defendant did not wish to intervene in that relationship. However, it became clear to the Defendant that the deceased’s relationship with his former girlfriend was over. The deceased began visiting the Defendant on a regular basis – travelling over to Grand Cayman from Little Cayman. The deceased supported the Defendant financially and he secured her work permit and on the day the deceased’s former girlfriend moved out of his home in Little Cayman, the Defendant moved in.

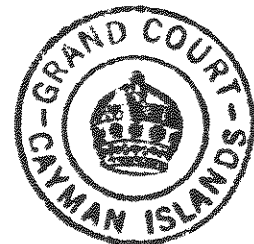
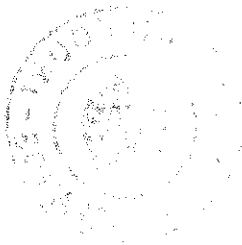


1       59.     The Defence submits that, thereafter, the relationship changed – with the deceased  
2            becoming a much more possessive man. The case for the Defence is that the  
3            deceased was a successful businessman, and, whilst the Defendant was not a stupid  
4            person, she was not highly educated and the deceased was the more powerful of the  
5            two in the relationship. Once the Defendant moved in with him the deceased made  
6            it clear that he did not want her working for anyone else and he became unhappy at  
7            the prospect of the Defendant meeting and spending any time with other people.

8       60.     The social events of the 1<sup>st</sup> November 2013 represented a regular pattern of what  
9            happened on Friday nights, which was the night they went out together. The  
10          Defence highlights that on Fridays the Defendant and the deceased enjoyed going  
11          to karaoke. She was very happy to be with the deceased and he was very happy to  
12          be with her.

13       61.     The oral altercation as reflected in the voicemail message of the 4<sup>th</sup> October 2013  
14          was because the Defendant had been told that the deceased was seeing other women  
15          and the Defendant raised this with the deceased. The deceased admitted going with  
16          other women, said he was not perfect, but she should (effectively) ignore what she  
17          has been told.

18       62.     When one examines the several text messages between the deceased and the  
19          Defendant on the 1<sup>st</sup> November 2013, it is clear that there was significant love and  
20          affection between the two of them.

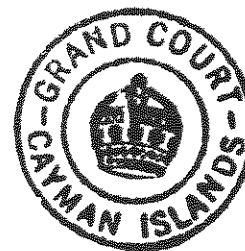


1 63. It is true that after many months, if not years, of staying away from alcohol the  
2 deceased had recommenced habitual and heavy drinking and leading counsel for the  
3 Defendant points to the fact that on the day in question the alcohol level in the  
4 deceased's blood was 134 milligrams in 100 millilitres in blood. The Defence  
5 submits that, although it is not suggesting that the deceased was terribly drunk, he  
6 was clearly intoxicated and would not have been fit to drive a motorcar.

7 64. The evidence of the witnesses is that, on the night in question, the Defendant and  
8 the Mr. McLaughlin were perfectly amicable.

9 65. It appears that a row developed between the Defendant and the deceased after they  
10 left LCBR. The Defendant wanted to go home and the deceased wanted to go to  
11 McCoy's and they eventually went to McCoy's. After leaving McCoy's the  
12 argument developed on the way home. At the time, there seems to have been  
13 nothing physical about it, and the Defendant has frankly admitted that the deceased  
14 had never struck her before that night.

15 66. The Defence places some store on the lack of balance in the relationship between  
16 the Defendant and the deceased, and the fact that the deceased was concerned if  
17 other men looked at the Defendant, and, according to Defence counsel, it seems as  
18 if everything came to a head that night after the deceased had been drinking.  
19 Apparently, someone offered to buy the Defendant a drink and the deceased had  
20 become angry and said that he did not need anybody else to buy his woman a drink.  
21 The argument became so bad that the Defendant said that she would stay with  
22 Dacia Paola Matute otherwise known as Paola.



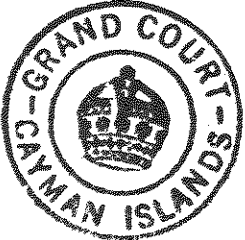
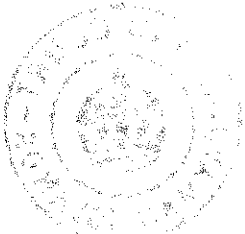
*EVENTS LEADING UP TO THE DEATH OF MR. PERRY MCLAUGHLIN*

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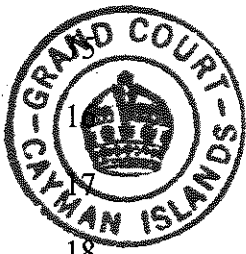
67. When they got home the deceased went into the house and the Defendant stayed in the car to allow for a little cooling off time for both of them. After she got into the house the argument started again in earnest and that was when she said she was going to take some clothes and go home. The deceased then said that he bought her everything and she must stay, and he accused her of wanting to see someone else.

68. The Defence points out that the argument was fuelled by alcohol and at this time the deceased swept everything off the central kitchen surface – sending to the floor several glass jars which contained peppers, tomato sauce and other sauces and a knife block which contained seven (7) kitchen knives of varying sizes with red handles, all with the same pattern.

69. The Defendant’s case is that everything moved very quickly thereafter. The deceased grabbed the Defendant by the hair from behind and he was calling her a variety of abusive names. The deceased grabbed hold of her and was pushing her down and punching her on the top of her head. In the struggle, the Defendant twisted her ankle as the deceased was pushing her to the ground. In response the deceased grabbed one of the knives which were already on the floor and struck out over her shoulder and behind her. It is the Defence’s case that this action caused the wound to the deceased’s upper arm. The Defendant continued striking with the knife in her self defence – which caused wounds to the deceased’s thigh and the pubic area.



1       70.    The Defence's case is that the deceased continued to punch the Defendant and  
2            therefore the blood from his injuries went to the back of her dress. The Defence  
3            acknowledges that the Defendant caused the wounds to the deceased's left pubic  
4            region, left shoulder, right thigh and the two wounds to the right thigh. The  
5            deceased let the Defendant go but they continued shouting at each other. The  
6            Defendant ran towards the laundry area where she tried to leave the house by the  
7            Northwest corner. It is the Defendant's case that, at that point, the deceased had  
8            something in his hand which she thought was a knife. The Defendant recalls the  
9            deceased saying "You are not going to leave me, I will kill you rather than let you  
10           leave me." It is the Defence's case that the deceased grabbed her by the hair again  
11           near the washing machine. There he punched her again in the head and, at that  
12           stage, the Defendant recalls stabbing the deceased twice in the chest – which is  
13           consistent with the stab wounds to the deceased's right upper chest, right lower  
14           chest and left lower chest. According to the expert medical evidence the wound to  
15           left lower chest would have meant that the deceased would have died within one  
16           minute or less. From a review of the medical evidence, and of the pictures showing  
17           the blood down the legs of the deceased it is reasonable to assume that the deceased  
18           stood for some time before collapsing. The Defendant said that they both had  
19           knives in the washroom area. It was clear that another red handled knife, and not  
20           one used by the Defendant, was found in the laundry room and behind the washing  
21           machine. She said he continued to shout at her and she, in her panic, simply ran  
22           through the broken glass on the kitchen floor, causing her feet to be cut and leave  
23           bloody footprints through the house to southeast door, where she eventually ran to  
24           the neighbour's house – leaving the knife that she used to stab the deceased on the  
25           ground outside 255 Gazebo Lane.



*REMORSE*

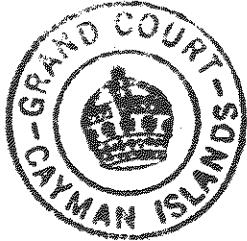
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71. It is accepted that the Defendant did not call for any medical help – although she must have known that the deceased was injured, even if she did not realise that the stab wound to his seventh costal cartilage near the sternum would be fatal. This expert evidence is consistent with the Defendant’s account, and there are contact marks and blood which are consistent with the deceased trying to keep his balance against the laundry room doors in front of the washing machine. These marks were also consistent with the deceased being stabbed whilst facing out of the laundry room and moving out of the area back into the house.

72. The Defence accepts that the Defendant did not call the police but suggests that the Defendant thought the deceased would call the police.

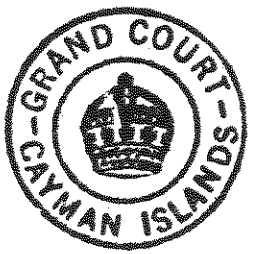
73. The Defence submits that the Defendant was clearly in a distressed state when she went to the neighbours. Aside from saying that she had been attacked and that he tried to kill her, the Defendant was so distressed that she vomited. She also had a significant amount of blood on her dress. On the next day when the Defendant was told that he was dead, her eyes bulged, and, she sat right up from a slumped position in the chair.

74. Defence counsel also refers to the letter the Defendant has written to the Court. In this letter, the Defendant states that she had to defend herself. She realizes that she had made dreadful mistake. She had never had a fight like this with anyone before.



1 75. Ms. McGowan Q.C. has produced a report from Dr. Elma Augustine, the resident  
2 psychologist at HMPS Northward. Dr. Augustine confirms that the Defendant is  
3 extremely remorseful about the incident which ended in the death of her boyfriend  
4 and the Defendant continues to struggle with hurt and regret and the fact that she is  
5 responsible for the death of her boyfriend. The Defendant states that she has never  
6 done anything so wrong. The Defendant reported that her boyfriend was drunk and  
7 she felt that she could be killed. The Defendant told Dr. Augustine that the  
8 deceased was a nice person until she began to live with him and that was when he  
9 began to display a bad temper and he became aggressive and controlling and had  
10 almost a second personality.

11 76. The Defence submits that the Defendant has shown obvious remorse, regret, and  
12 guilt in a moral sense.



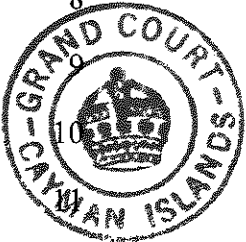
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*SUBMISSIONS ON SENTENCE*

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77. Ms. McGowan submits that the Crown is wrong to describe the provocation in this case as being at a low level. Ms. McGowan argues that when you apply the considerations, it simply cannot be low and, accordingly, the Defence submits that it is high, bordering on substantial, but nonetheless high.

78. The Defence submits that the victim's conduct could be described as extreme conduct. The Defence's case is that this was a serious physical assault on the Defendant, not murderous, not life-threatening, but one of serious physical harm. The Defence submits that the Defendant was overpowered by a stronger man and she grabbed a knife and he had a knife as well. The Defendant's initial acts are accepted by the Crown to have been in self defence up to some point, then there is a disagreement as to when the self defence ended and the Defendant continued to assault the deceased, eventually causing his death.



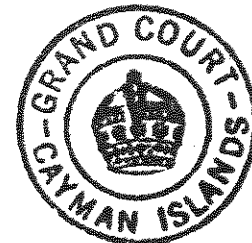
79. Although the defence cannot say that this is a battered-wife case and accepts that the Defendant was not subjected to physical abuse from the deceased, the Defence does say that it was a relationship of unequal power, and possibly could be defined in its widest sense as abusive.

80. The Defence accepts that the Defendant lost her self-control. It was a sudden, temporary loss of control which produced an instantaneous response – leading to the death of the deceased. Ms. McGowan suggests: The shorter the duration of the incident and the closer in time from the provocation to the killing, the more spontaneous and instantaneous the Defendant's reaction. Defence counsel submits that this supports the case for the Defence that the provocation is on the high side.

1       81.     The Defence states that in cases of this sort of an assault it is common for the  
2             attacked woman to use a weapon such as a knife in self defence. However, Ms.  
3             McGowan highlights the fact that the Defendant did not carry the knife to the scene,  
4             nor was it even the question of taking a knife out of a kitchen drawer.

5       82.     Leading counsel on behalf of the Defendant stresses the need to assess the degree of  
6             provocation – submitting that when the retaliation to the provocation is sudden,  
7             there is less culpability. Defence submits that the Court must look at the  
8             Defendant’s behaviour after the incident – and highlights the Defendant’s distress,  
9             confusion and physical shock, particularly after she learned of the death.

10      83.     In conclusion, the Defence submits that the Defendant has shown genuine remorse.  
11             The Defendant has lost her good character and her right to reside in the Cayman  
12             Islands. Most importantly, the defence submits that the Defendant has lost the man  
13             she had loved.

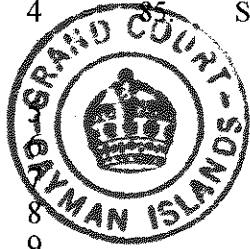


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1 *ANALYSIS AND CONCLUSION*

2 84. I am grateful to the DPP, Ms. Cheryll Richards Q.C. and Ms. McGowan Q.C. for  
3 their helpful review of the relevant authorities.

4 Section 182 and 183 and of the Penal Code read:



8 "182. Any person convicted of murder shall be sentenced to imprisonment for  
9 life.  
183. A person who commits the offence of manslaughter is liable to  
imprisonment for life"

10 86. This leaves the Court with the fullest discretion to impose, on the on hand, life  
11 imprisonment for the most serious offence of manslaughter, and, on the other hand,  
12 a non-custodial sentence for the least serious offence of manslaughter.

13 87. In *R v. Darren Anthony Suratan*<sup>1</sup> the English Court of Appeal considered the  
14 question of manslaughter and the defence of provocation. Lord Justice Mantell  
15 giving the judgment of the Court stated at paragraph 32:

16 "The balancing exercise in manslaughter cases...involves weighing the act of  
17 homicide against the recognition of the implications of the accepted defence of  
18 provocation, presents extraordinary difficulties for sentencing judges..."

19  
20 I must say that I have experienced considerable difficulty when wrestling with the  
21 differing submissions of both counsel in relation to what the former LCJ, Lord  
22 Judge, described in the English Court of Appeal case of *R v. James William  
23 Thornley*<sup>2</sup>, as the:

24 "...difficult problem of sentencing in cases of homicide manslaughter by  
25 provocation."

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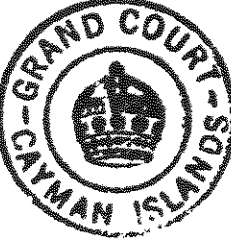
<sup>1</sup> Attorney General's Reference 74/2002 [2002] EWCA Crim. 2982

<sup>2</sup> [2011] EWCA Crim. 153, [2011] 2 Cr App R (S) 62

1 88. In *R v. Duffy*<sup>3</sup> the then Lord Chief Justice, Lord Goddard, set out what has often  
2 been described as the “classic direction” of provocation when he said:

3 *“Provocation is some act, or series of acts, done by the dead man to the*  
4 *accused, which would cause in any reasonable person, and actually causes in*  
5 *the accused, a sudden and temporary loss of self-control, rendering the accused*  
6 *so subject to passion as to make him or her for the moment not master of his*  
7 *mind.”*

8  
9 89. The common law had been modified by s.186 of our Penal Code which mirrors the  
10 language used in s.3 of the UK Homicide Act (1957) and reads:

11  *“Where on a charge of murder there is evidence from which the jury can find*  
12 *that the person charged was provoked (whether by things done or things said*  
13 *or by both together) to lose his self-control, the question of whether the*  
14 *provocation was enough to make a reasonable man do as he did, should be left*  
15 *to be determined by the jury; and in determining that question the jury shall*  
16 *take into account everything both done and said according to the effect which*  
17 *in their opinion it would have on a reasonable man.”*

18  
19 90. In this case the Defendant has pleaded not guilty to murder but guilty to causing the  
20 death of Mr. Perry McLaughlin by the unlawful act of stabbing him with a knife.

21 91. It is accepted by both parties that the initial wounds that the Defendant inflicted on  
22 the deceased with the kitchen knife were in lawful self defence. It is also accepted  
23 that the Defendant was so provoked by the things done and the things said by the  
24 deceased that she lost her reasonable self-control and inflicted further blows on him  
25 with the knife. The evidence is that the deceased screamed abusive words at the  
26 Defendant, dragged her to the floor and punched her repeatedly in the head. In self  
27 defence the Defendant picked up the knife which was already lying on the floor and  
28 stabbed behind her, striking the deceased in his arms, legs and groin area.

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<sup>3</sup> [1949] 1 All E R 932

1 92. When the deceased let the Defendant go she then tried to get out of the house by the  
2 door near the laundry area. The Defence submits that the deceased picked up  
3 another of the kitchen knives which, it is believed, is the one which was later found  
4 by the side of the washing machine. In the laundry area the Defendant stabbed the  
5 deceased twice and possibly three times, with one of the stab wounds causing the  
6 fatal injury. The Court has been told that at the time of inflicting these later stab  
7 wounds, the deceased was not armed and the Defendant was no longer acting in self  
8 defence.

9 93. In *Suratan* the English Court of Appeal considered the question of manslaughter  
10 and the defence of provocation. Lord Justice Mantell giving the judgment of the  
11 Court referred to three reasons which were advanced by the Crown for increasing  
12 the tariff for sentencing in cases of manslaughter by reason of provocation which  
13 were:

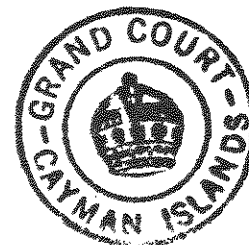
- 14 “(1) That, as society advances, possessiveness and jealousy are no longer  
15 acceptable reasons for loss of self-control leading to homicide,  
16 (2) That the manner in which juries are to be directed following the  
17 decision of the House of Lords in *R v. Smith (Morgan)* [2001] 1 A.C. 146 has  
18 increased the availability of the defence and,  
19 (3) That the present level of sentencing does not stand comparison with  
20 levels adopted for certain other serious cases.”  
21

22 94. The English Court of Appeal referred to the dicta of Viscount Simon L.C. in  
23 *Holmes v. DPP*<sup>4</sup> where Viscount Simon stated:

24 “...as society advances, it ought to call for a higher measure of self-control in  
25 all cases.”  
26

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<sup>4</sup> [1946] A.C. 588 at 601



1 and the dicta of Lord Hoffman in the House of Lords case of *R v. Smith (Morgan)*<sup>5</sup>  
2 where Lord Hoffman expressed the view at page 169 F/G:

3 “Male possessiveness and jealousy should not today be an acceptable reason  
4 for loss of control leading to homicide.”

5 95. Lord Justice Mantell on behalf of the English Court of Appeal in *Suratan* stated:

6 “23. In our view, it is important to remember that the provisions of s.3 of the  
7 Homicide Act 1957<sup>6</sup> as interpreted by authority, including the House of Lords  
8 in *R v. Smith* mean that when sentencing an offender who is not guilty of  
9 murder but guilty of manslaughter by reason of provocation, the judge must  
10 make certain assumptions in the offender’s favour.

11 24. First, he must assume that the offender had, at the time of the killing,  
12 lost his self-control. Mere loss of temper or jealous rage is not sufficient.

13 25. Second, he must assume that the offender was caused to lose his self-  
14 control by things said or done, normally and as in the cases with which we are  
15 concerned, by the person whom he has killed.

16 26. Third, he must assume that the defendant’s loss of control was  
17 reasonable in all the circumstances, even bearing in mind that people are  
18 expected to exercise reasonable control over their emotions, and that as society  
19 advances it ought to call for a higher measure of self-control.

20 27. Fourth, he must assume that the circumstances were such as to make  
21 the loss of self-control sufficiently excusable to reduce the gravity of the  
22 defendant’s offence from murder to manslaughter.

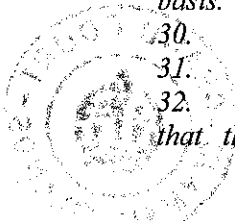
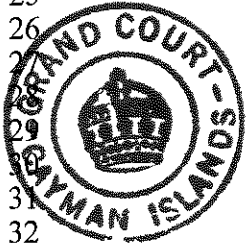
23 28. Moreover, the sentencing judge must make these assumptions whether  
24 the offender has been found not guilty of murder but guilty of manslaughter by  
25 reason of provocation by a jury after a contested trial, or the Crown has  
26 accepted a plea of not guilty of murder but guilty of manslaughter by reason of  
27 provocation.

28 29. It is not legitimate to criticise as lenient, let alone unduly lenient, a  
29 sentence which has been imposed for manslaughter by reason of provocation  
30 mounting arguments or pointing to circumstances which ignore or underplay  
31 the fact that the offender has lost his self-control at the time of the killing, and  
32 suggesting that he was, for instance, merely in a jealous rage with his victim, or  
33 that his loss of self-control was unreasonable, or that there was not a real  
34 degree of legitimate excuse for what he did. To do so is to suggest that the  
35 offender was guilty of murder rather than guilty of manslaughter by reason of  
36 provocation, and the judge cannot properly sentence the offender on such a  
37 basis.

38 30. ...

39 31. ...

40 32. So it is a case of striking a balance between a finding or acceptance  
41 that the offender acted under provocation and the residual degree of



<sup>5</sup> [2001] 1 A.C. 146

<sup>6</sup> That is, s.186 of our Penal Code

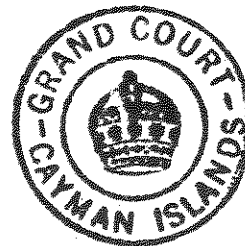
1                    *culpability. Parliament<sup>7</sup> has decided that the sentence for murder is fixed and*  
2                    *automatic, but that the sentence for manslaughter is not; and Parliament has*  
3                    *decided that a defence of provocation should be available to distinguish the two*  
4                    *offences of homicide.”*  
5

6            96.    Lord Justice Mantell quoted the dicta of Viscount Simon in *Holmes* which is  
7                    particularly apposite in this case, where Viscount Simon stated:

8                    *“In the case of lesser crimes, provocation does not alter the nature of the*  
9                    *offence at all: but it is allowed for in the sentence. In a case of felonious*  
10                    *homicide, the law has to reconcile respect for the sanctity of human life, with*  
11                    *recognition of the effect of provocation on human frailty.”*  
12

13            97.    In the Cayman Islands Court of Appeal (CICA) case of *Gordon v. Regina*<sup>8</sup>, the  
14                    Crown had accepted a plea of guilty to manslaughter by reason of provocation. The  
15                    Appellant Gordon had carried a ratchet knife to the scene which he had used to stab  
16                    the deceased several times to the front of his body. The Appellant Gordon was also  
17                    seen to stab the deceased in his back when he lay on the floor and kick him saying  
18                    “take that boy”. It was accepted that the deceased was unarmed.

19            98.    In November 2005 the UK Sentencing Guidelines Council (SGC) provided  
20                    Sentencing Guidelines for Manslaughter By Reason of Provocation. The CICA in  
21                    the case of *Gordon* set out the assumptions referred to in paragraph 94 above which  
22                    a Judge must make in favour of the offender pursuant to *Suratan*. The SGC set out  
23                    the same assumptions which our Court of Appeal has applied, and added in Part B  
24                    on page 4:



<sup>7</sup> In England/The Legislative Assembly in the Cayman Islands.

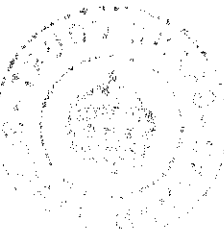
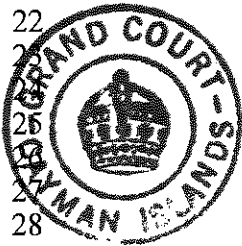
<sup>8</sup> CICA Number 7 of 2012 dated the 1<sup>st</sup> August 2012

1 *“Bearing in mind the loss of life caused by manslaughter by reason of*  
2 *provocation, the starting point for sentencing should be a custodial sentence.*  
3 *Only in a very small number of cases involving very exceptional mitigating*  
4 *factors should a Judge consider that a non-custodial sentence is justified. The*  
5 *same general sentencing principles should apply on all cases of manslaughter*  
6 *by reason of provocation irrespective of whether or not the killing takes place*  
7 *in a domestic context.”*

8  
9 99. At paragraph 15 in *Gordon* the CICA President, Sir John Chadwick, quotes from  
10 the UK SGC Guidelines and states as follows:

11 *“15 At Part C of the guideline, Factors Influencing Sentence, the Council*  
12 *listed the elements which should be considered and balanced by the sentencer.*  
13 *Foremost amongst those was the degree of provocation: “An assessment of the*  
14 *degree of the provocation as shown by its nature and duration is the critical*  
15 *factor in the sentencing decision.” It concluded that there will usually be less*  
16 *culpability when the retaliation to provocation is sudden. It observed that post-*  
17 *offence behaviour was relevant to the sentence: immediate and genuine*  
18 *remorse might be demonstrated by the summoning of medical assistance,*  
19 *remaining at the scene and cooperation with the authorities; concealment or*  
20 *attempts to dispose of evidence or dismemberment of the body might aggravate*  
21 *the offence.*

22 *16 At Part D, Sentence Ranges and Starting Points, the Council emphasized,*  
23 *again, that the key factor, relevant in every case, was the nature and duration*  
24 *of the provocation. It advised a three-stage approach to the determination of*  
25 *the appropriate sentence: first, identify the sentence range by reference to the*  
26 *degree of provocation; secondly, adjust the starting point within the range by*  
27 *reference to the length of time over which the provocation took place; and,*  
28 *thirdly, take into consideration the circumstances of the killing (e.g. the length*  
29 *of time that had elapsed between the provocation and the retaliation and the*  
30 *circumstances in which any weapon was used). On the basis of that three-stage*  
31 *approach, the Council indicated that an appropriate sentencing range in a case*  
32 *where there had been a low degree of provocation would be between 10 years*  
33 *and life, with a starting point of 12 years where the low degree of provocation*  
34 *had occurred over a short period. A sentence range of 4 to 9 years would be*  
35 *appropriate in cases where there had been a substantial degree of provocation.*  
36 *A sentencing range below 4 years was reserved for cases where the degree of*  
37 *provocation had been high. Sentences within those ranges were appropriate*  
38 *where the offender had been convicted after a trial; the sentencer should*  
39 *consider a discount from the sentence that would otherwise be passed to reflect*  
40 *cooperation and a guilty plea.”*



1 100. The CICA President reviewed the cases of *R v. Courtney Daley*<sup>9</sup>, *Thornley*, and,  
2 the *Attorney General's Reference No 8 of 2011 (Ronald Edwards)*<sup>10</sup>, and then  
3 stated at paragraph 19:

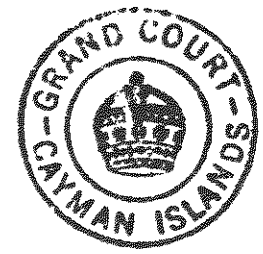
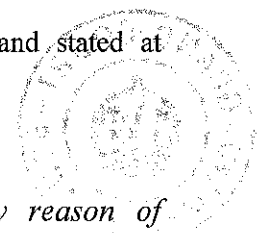
4 “The Court of Appeal referred ([2012] 1 Cr. App. R. (S.) 53, at para. 12) to  
5 “the greater recognition,” in more recent cases, that the significance of loss of  
6 life (reflected in the approach prescribed by Schedule 21 to the Criminal  
7 Justice Act 2003) should inform sentences imposed in respect of manslaughter,  
8 including cases involving lack of intent, diminished responsibility and  
9 provocation. It referred (*ibid.*, at para. 14) to the observation of Lord Judge,  
10 C.J. in *Thornley (10)* ([2011] 2 Cr. App. R. (S.) 62, at para. 15) that—

11 “it is clear to us from the developments analysed by Calvert-Smith, J.  
12 that the use of a knife, even in cases of manslaughter by provocation  
13 shall now be regarded as a more significant feature of aggravation  
14 than it was when the guideline was published. In the end everything  
15 depends upon the individual circumstances of each case: why and how  
16 the knife came to be picked up and eventually used.”

17  
18 101. In *Gordon* the CICA applied what the President described as “powerful” the  
19 analysis of the principles set out in *Suratan*, which have been endorsed by the SGC  
20 and the subsequent decisions of the English Court of Appeal, and stated at  
21 paragraph 23:

22 “We are satisfied that, in a case of manslaughter by reason of  
23 provocation involving the use of a knife, where the degree of provocation  
24 is low and has occurred only over a short period, the appropriate  
25 starting point, after a trial, in this jurisdiction also, is 12 years within a  
26 sentencing range of 10 years to life.”

27  
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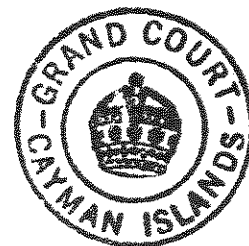
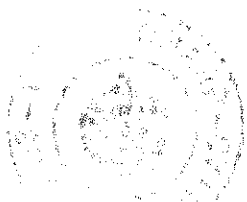
<sup>9</sup> [2008] EWCA Crim. 679, [2008] 2 Cr App R. (s) 95  
<sup>10</sup> [2011] EWCA Crim. 1461

1       102.    In *Gordon*, where the degree of provocation was held to be low, the CICA said the  
2       appropriate starting point before taking account of the guilty plea, was nearer to 11  
3       years than to 12 years. In *Gordon*, the Appellant received a discount of a little over  
4       25% and the CICA said the appropriate sentence in all the circumstances of that  
5       case was 8 years' imprisonment.

6       103.    There is a considerable difference of opinion between the DPP and leading counsel  
7       for the Defence on the appropriate starting point in this case. The Crown has  
8       submitted that there was a low degree of provocation in this case and suggests a  
9       starting point of 12 years' custody before applying any reduction for the  
10      Defendant's guilty plea. The Defence has submitted that there is a high degree of  
11      provocation and suggests a starting point of 3 years' custody.

12     104.    There is also a marked difference of opinion between the parties' respective leading  
13     counsel on the defendant's post-offence behaviour regarding evidence of remorse.  
14     Defence counsel submits that the Defendant has accepted responsibility for her  
15     actions and has shown deep remorse. On the other hand, the DPP highlights the fact  
16     that the Defendant must have known that the deceased had sustained serious  
17     injuries, and yet she did not call for either medical assistance or the police.

18     105.    We have the ingredients of a trivial argument, too much alcohol, loss of temper,  
19     oral and physical violence, knives, and loss of self-control – all leading to the death  
20     of the deceased.

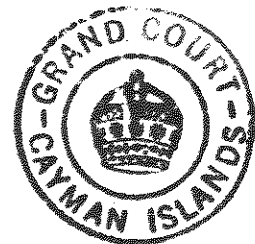
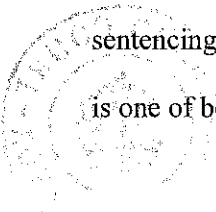


1 106. It is tragic that such a violent disagreement should erupt over such a trivial  
2 argument – as to whether to go to another bar or to go home. What is also tragic is  
3 that, if the deceased had not lost his temper and swept all the bottles, jars and, most  
4 significantly, kitchen knives on to the floor, the Defendant might never have used  
5 one of the seven kitchen knives in self defence – ultimately leading to the death of  
6 the deceased.

7 107. It is clear that the Defendant’s initial use of the knife was in lawful self defence. It  
8 is accepted by the Crown that the Defendant’s reaction to the deceased holding her  
9 by the hair and punching her head caused her to lose her self-control. The knife was  
10 close at hand and she grabbed it in order to defend herself against the deceased’s  
11 attack on her and she used it to stab him whilst he was behind her.

12 108. It is impossible to identify, with precision the exact moment in time when the  
13 Defendant stopped acting in self defence and struck the fatal blow which led to the  
14 death of the deceased. However, it is agreed that, at the time of inflicting the stab  
15 wound which led to his death, the deceased was not armed and the Defendant was  
16 not acting in self defence. The Defence accepts that when they faced each other in  
17 the laundry area, the Defendant stabbed the deceased twice. One of these stabs  
18 caused the fatal wound.

19 109. When I examine the individual circumstances and the facts relating to the degree of  
20 provocation in this case it is my view that the degree of provocation in this case is  
21 substantial. Under the SGC Guidelines, accepted by the CICA in *Gordon* the  
22 sentencing range to be adopted by the Court for a substantial degree of provocation  
23 is one of between 4 to 9 years’ imprisonment.



1       110.    The SGC Guidelines applied by our CICA recommend a starting point of eight (8)  
2            years for a case of substantial provocation for a Defendant who is found guilty after  
3            a trial and has no previous convictions. When I review the aggravating factors set  
4            out by the prosecution, and the mitigating factors highlighted by the Defence, I can  
5            find no good reason for disturbing the SGC's starting point of 8 years'  
6            imprisonment.

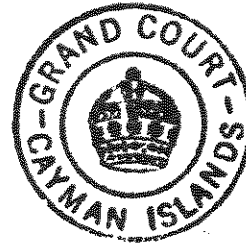
7       111.    Accordingly, when I take into account the substantial degree of provocation, as set  
8            out in the facts, and the submissions of both leading counsel, I find that the  
9            appropriate sentence for this Defendant is 8 years imprisonment. Under our law, as  
10          the Defendant has pleaded guilty, she is entitled to a discount. Although her guilty  
11          plea was not at the very earliest opportunity it was still at an early stage of the  
12          proceedings and, accordingly, she is entitled to a discount of 25%. Consequently, I  
13          impose a sentence of 6 years' imprisonment.

14       112.    On the 1<sup>st</sup> November 2013 the deceased and the Defendant had been living together  
15          for two months at 255 Gazebo Lane. Apart from one altercation on the 4<sup>th</sup> October  
16          2013, it appears from the evidence that they enjoyed a loving and happy  
17          relationship. We see from the many text messages they exchanged on the 1<sup>st</sup>  
18          November 2013 that they loved and cared for each other. On the evening of the 1<sup>st</sup>  
19          November 2013 they had been described as being happy together and, less than five  
20          hours later Mr. Perry McLaughlin is dead. This is a sad and tragic event that should  
21          never have happened.



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113. I have no doubt that this tragic event has had a traumatic effect on the family and friends of the deceased and the whole community of Little Cayman. I would therefore recommend that after the Defendant serves her time in prison, she should be deported to Honduras so that she can be reunited with her family.



Dated this the 15<sup>th</sup> day of April 2014

A handwritten signature in black ink, appearing to be "Charles Quin". The signature is fluid and cursive, with a prominent initial "C" and a long horizontal stroke at the end.

Honourable Mr. Justice Charles Quin  
Judge of the Grand Court