

25/11/09

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

**Criminal Appeal No. 21 of 2009
(Indictment
No. 44/08)**

C#516/08

Between:

HER MAJESTY THE QUEEN

Appellant

- and -

IZAZA ROBINSON

Respondent

NOTIFICATION TO AUTHORITIES OF RESULT OF APPEAL

To: The Attorney General

This is to give you notice that IZAZA ROBINSON having sought leave to appeal against *her* SENTENCE passed upon *her* by the Grand Court on the 14th day of August 2009 as set out below:

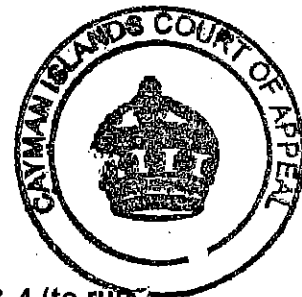
Indictment 44/2008

**Attempted Murder- Count 1
Count 1 - Left on file on 14th August 2009**

**Wounding with Intent- Count 2
Probation for 2 years with conditions on Counts 2 & 4 (to run
concurrently)**

**Attempted Murder- Count 3
Count 3 - Left on file on 14th August 2009**


**Wounding with Intent- Count 4
Pleaded not Guilty to Wounding with Intent but GUILTY to a lesser
included offence - **WOUNDING** Simpliciter
Sentence: Same as Count 2**

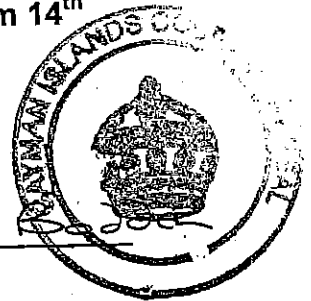


The Court of Appeal has finally determined the said appeals, and has this 25th day of November, 2009 given judgment therein to the effect following:

1. Legal Aid extended to the Appeal and granted to Samson & McGrath (Mr. Tonner)
2. Appeal allowed (Crown's)
3. Sentence quashed.
4. Sentence substituted of a Probation Order for 3 years from 14th August, 2009 (attached).
5. Oral transcript of ruling to be released.

Dated this 4th day of January, 2010.


Registrar



THE COURT OF APPEAL OF THE CAYMAN ISLANDS
IN AT GEORGE TOWN, GRAND CAYMAN

Criminal Appeal No. 21 of 2009
(Indictment No. 44/08)
C#516/08

PROBATION ORDER
LAW SECTION (3)

On the 14th day of August, 2009, Izaza Robinson (herein called the Offender) was brought before the Grand Court for the Offence (s) of:

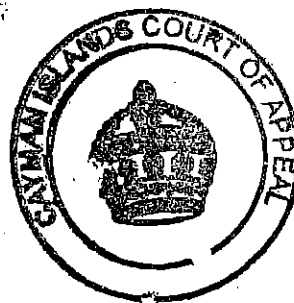
Indictment 44/2008

Attempted Murder- Count 1
Count 1 - Left on file on 14th August 2009

Wounding with Intent- Count 2
Probation for 2 years with conditions on Counts 2 & 4 (to run concurrently)

Attempted Murder- Count 3
Count 3 - Left on file on 14th August 2009

Wounding with Intent- Count 4
Pled not Guilty to Wounding with Intent but GUILTY to a lesser included offence - WOUNDING Simpliciter
Sentence: Same as Count 2



The Court of Appeal has finally determined the said appeals, and has this 25th day of November, 2009 given judgment therein to the effect following:

1. Appeal allowed (Crown's)
2. Sentence quashed.
3. Sentence substituted of a Probation Order for 3 years from 14th August, 2009 in the following terms:

IT IS HEREBY ORDERED THAT the Offender be placed upon probation as below:

- A. During the period of probation she shall be under the supervision of the probation officer of the district in which she lives and shall observe the following conditions:
 1. She shall receive at the place where she resides visits from the probation officer at such times as the probation officer may think fit;

2. she shall report to the probation officer, or at such other place as the probation officer shall direct, the times fixed by the probation officer;
3. she shall answer truthfully all questions put to her by the probation officer with regard to her conduct, associates, employment or residence; and she shall report immediately to the probation officer any change of her residence or place of employment.
4. During this period the offender is to lead an honest and useful life.

B. The further conditions that are imposed are:

1. She shall reside at her place of residence for a period of **two** years from 14th August, 2009;
2. She may be absent from her place of residence during the period of her employment outside that place, and for a period of one hour before and after that period of employment for the purpose of travelling to and from her employment;
3. And she may also be absent from her place of residence for a period of four hours on a Sunday, in order to go to church.

C. The other conditions imposed by the probation order originally passed are to remain, as follows:

1. She is not to consume any alcohol or drugs;
2. She is not to be found with any weapon, including a knife, in her possession;
3. She is not to come within 100 feet of any nightclub or bar;
4. She is to have no contact, directly or indirectly, with Terri McLaughlin and Lauri Barnes; and she is to continue to pay compensation as ordered on the 14th of August 2009.

On Breach of any of the conditions of this Order or on the conviction of the Offender of any offence while this Probation Order is in Force, the Offender will be brought before the Court to be sentenced.

Dated at George Town in the Island of Grand Cayman on 25th day of November 2009


Registrar
Cayman Islands Court of Appeal



I have read and discussed the terms of my Probation with the Probation Officer and I further understand the consequences if I break any of the conditions of my Probation.

SIGNATURE OF PROBATIONER

25/11/09

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

APPEAL NO. 21 OF 2009
IND. NO. 44 OF 2008
C# 0516/2008

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

IZAZA NATALIA ROBINSON

Respondent

BEFORE: THE RT. HON. SIR JOHN CHADWICK P.
THE HON. MR. JUSTICE FORTE J.A.
THE HON. MR. JUSTICE MOTTLEY J.A.

Reasons for Judgment delivered orally on 25 November 2009

JUDGMENT RELEASED JANUARY 2010



Reasons for Judgment (Chadwick, P.)

JUDGMENT

1

2

3 Chadwick, President (Orally):

4 On the 4th May 2009 Ms. Izaza Robinson
5 pleaded guilty to a count of wounding with
6 intent, and also pleaded guilty on a further
7 count to the lesser offence of wounding
8 simpliciter. The counts related to offences
9 committed on the 20th October 2007 at the
10 Matrix Nightclub.

11 The circumstances of the offence are set
12 out in the reasons for sentence delivered by
13 Henderson J. when he came to sentence Ms.
14 Robinson on the 14th August 2009.

15 Put shortly, the offences were committed
16 after an altercation between Ms. Robinson and
17 two other women, Ms. Terri McLaughlin and Ms.
18 Lori Barnes.

19 What is said is that Ms. Robinson attended
20 the nightclub with a friend. In the course of
21 the evening the other two, with others,
22 approached her. It is said that one of that
23 group stubbed a lighted cigarette on Ms.
24 Robinson causing a burn. A fracas developed.
25 The parties were separated by the security

Reasons for Judgment (Chadwick, P.)

1 officers at the nightclub. Ms. Robinson left
2 by a back entrance. The other women got into
3 their car, came around to the car park and got
4 out of the car.

5 Ms. Robinson was provided with a knife by
6 somebody purporting to be a friend of hers.
7 There was a scuffle, in the course of which
8 both Ms. Barnes and Ms. McLaughlin were
9 wounded. The papers before us show pictures of
10 those wounds. They were serious and, in one
11 case at least, have left permanent damage.

12 As I have said, on the 4th May 2009, Ms.
13 Robinson pleaded guilty to the two offences to
14 which I have referred. Charges of attempted
15 murder in relation to both victims were left on
16 the file.

17 The judge had indicated on the 4th May
18 that he had in mind a custodial sentence for
19 these offences. Indeed, he said that a
20 custodial offence was, really, inevitable.
21 Taking that view, he revoked bail during the
22 period for the preparation of a psychiatric
23 report that he had ordered. So Ms. Robinson
24 spent a period of some two months in prison
25 between her plea of guilty and her sentence on

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1 the 14th August 2009. During that period she
2 must have expected that she was going to
3 receive an immediate custodial sentence; the
4 judge had told her to expect that when she was
5 before him in May 2009.

6 When the judge came to sentence, he had
7 the benefit of a psychiatric report and a
8 social inquiry report. In the event, he did
9 not find much assistance in the psychiatric
10 report; but plainly he was influenced by the
11 social inquiry report which was prepared by Mr.
12 Tomlinson and dated 19th June 2009. He
13 described that as a positive report.

14 In the course of his sentencing remarks
15 the judge said this:

16 "This was a serious act of
17 violence which would ordinarily
18 call for a substantial period of
19 incarceration. However, there
20 are a number of mitigating
21 factors. Ms. Robinson has
22 pleaded guilty. She has, as I
23 have said, obtained a positive
24 social inquiry report. She has
25 no previous criminal history,

Reasons for Judgment (Chadwick, P.)

1 she is still a relatively young
2 person, and she has a two year
3 old for whose care she is
4 responsible. She has been in
5 custody for some two months now
6 and has had an adequate
7 opportunity to reflect on the
8 consequences of her violent
9 actions. All of these factors
10 suggest to me that it would be
11 appropriate to take a chance
12 with this defendant at this time
13 and impose a non-custodial
14 sentence. There will have to be
15 a period of house arrest."

16 On the basis of those remarks, the judge
17 made a probation order for two years.

18 So far as material, the probation order
19 contained conditions which required her to
20 remain within her place of residence for a
21 period of one year, except for the purpose of
22 travelling to and from her employment and
23 attending church on Sundays. She was not to
24 consume alcohol; she was not to be found with
25 any weapon; and she was not to go near any

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1 nightclub or bar. She was to have no contact,
2 directly or indirectly, with the complainants,
3 Ms. McLaughlin and Ms. Barnes. In addition,
4 she was to pay compensation in the sum of
5 \$3,000 each to the complainants; and she was to
6 do that at the rate of \$750 a quarter, the
7 first payment to be made on the 14th November.

8 He concluded his remarks with this
9 sentence:

10 "If there is any breach of the
11 terms, then I will revoke the
12 probation order and send you to
13 prison for a term which will
14 likely be in the range which I
15 mentioned during my Goodyear
16 indication."

17 That was a reference to an indication
18 which the judge had given at an earlier stage
19 of the proceedings, in advance of the guilty
20 plea, that he had in mind a maximum term of
21 imprisonment of some four and a half years. It
22 was on the basis of that indication that the
23 defendant entered a guilty plea.

24 The appeal before us is an appeal by the
25 Crown under s.30 of the Court of Appeal Law

Reasons for Judgment (Chadwick, P.)

1 (2000 Revision). Section 30 is in these terms:

2 "(1) If it appears to the
3 Attorney-General-

4 "(a) that the sentencing of a
5 person in a proceeding in the
6 Grand Court has been unduly
7 lenient or is wrong in law; and

8 "(b) that the case is a case in
9 which sentence is passed on a
10 person for an offence triable on
11 indictment,

12 "he may, with the leave of the
13 Court, refer the case to it to
14 review the sentencing of that
15 person; and on any such
16 reference the Court may-

17 "(c) quash any sentence passed
18 on the person in the proceeding;
19 and

20 "(d) in place of it pass such
21 sentence as they think
22 appropriate for the case and
23 that the court below had power
24 to pass when dealing with the
25 accused."

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1 An appeal under s.30 of the Court of
2 Appeal Law raises two questions: first, whether
3 the sentence passed on the 14th August was
4 unduly lenient in the circumstances; and second
5 -- and this is a distinct question -- what
6 sentence should the Court of Appeal now pass in
7 the circumstances as they now are, taking
8 account of what has happened since the 14th
9 August 2009. Section 30 does not require the
10 Court simply to pass the sentence which it
11 might think the judge ought to have passed at
12 the time of the original sentencing exercise.

13 In our view, although there were pending
14 mitigating circumstances in this case, which
15 the judge identified in the course of the
16 sentencing remarks to which I have referred,
17 they were not of sufficient weight -- either
18 individually or taken together -- to lead
19 properly to the conclusion that this was a case
20 in which a non-custodial sentence could be
21 appropriate.

22 This was a bad case of wounding with a
23 knife. It is certainly the case that the
24 defendant did not take the knife to the
25 nightclub, nor did she go there with the

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1 intention of inflicting harm on anyone. But it
2 is clear from the material which the judge took
3 into account that once the knife had been
4 passed to her, she was determined to use it and
5 made considerable efforts to do so,
6 notwithstanding the restraint sought to be
7 imposed by the security guard. She obviously
8 lost her temper and lashed out with the knife,
9 inflicting serious injuries which could have
10 been -- but fortunately were not -- life
11 threatening.

12 Even on a guilty plea, a minimum sentence
13 of four years' imprisonment would not have been
14 excessive. The sentence which the judge had in
15 mind at the time when he revoked bail was a
16 sentence which he could properly have passed in
17 this case. And there should be no doubt in the
18 minds of those contemplating using knives to
19 inflict wounds that the consequence of a
20 conviction will be a sentence of imprisonment.

21 For those reasons, we are satisfied that
22 the sentence passed by the judge was unduly
23 lenient in the circumstances.

24 That brings us to the second question.
25 What sentence should we now pass?

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1 The critical question is whether it is
2 necessary or appropriate to send this offender
3 back to prison. I use the phrase "back to
4 prison" because I have in mind that she has
5 already spent two months in prison. In our
6 view, it is not necessary to send her back to
7 prison in the circumstances of this case, but
8 it is necessary to mark the seriousness of the
9 offence by revisiting the terms of the
10 probation order.

11 The appropriate order is one which, in
12 effect, imposes restrictions upon her for a
13 period which is comparable to that which would
14 have applied had she been serving a sentence of
15 some four years, account being taken, of
16 course, of the two months that she did in fact
17 serve.

18 In those circumstances, we propose to
19 quash the sentence that was passed, and to
20 substitute for that sentence an order that she
21 be placed upon probation for a period of three
22 years upon the terms set out in the existing
23 probation order. That is that during the
24 period of probation, she shall be under the
25 supervision of the probation officer of the

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1 district in which she lives and shall observe
2 the following conditions:

3 (a) she shall receive at the place where
4 she resides visits from the probation officer
5 at such times as the probation officer may
6 think fit;

7 (b) she shall report to the office of the
8 probation officer, or at such other place as
9 the probation officer shall direct, the times
10 fixed by the probation officer;

11 (c) she shall answer truthfully all
12 questions put to her by the probation officer
13 with regard to her conduct, associates,
14 employment or residence; and

15 (d) she shall report immediately to the
16 probation officer any change of her residence
17 or place of employment.

18 That order shall persist for a period of
19 three years from the date of the original
20 sentence, that is 14th August 2009, and during
21 that period the offender is to lead an honest
22 and useful life.

23 The further conditions that we impose are
24 these:

25 She shall reside at her place of residence

Reasons for Judgment (Chadwick, P.)

1 for a period of two years from 14th August
2 2009;

3 She may be absent from her place of
4 residence during the period of her employment
5 outside that place, and for a period of one
6 hour before and after that period of
7 employment, for the purpose of travelling to
8 and from her employment; and

9 She may also be absent from her place of
10 residence for a period of four hours on a
11 Sunday in order to go to church.

12 The other conditions imposed by the
13 probation order originally passed are to
14 remain. That is to say:

15 3) she is not to consume alcohol or drug;

16 4) She is not to be found with any
17 weapon, including a knife, in her possession;

18 5) She is not to come within 100 feet of
19 any nightclub or bar;

20 6) She is to have no contact, directly or
21 indirectly, with Terri McLaughlin and Lori
22 Barnes; and

23 7) She is to continue to pay compensation
24 as ordered on the 14th August 2009.

25 Ms. Robinson, you should stand up. You

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1 will have heard the judgment of the Court. You
2 are not being sent back to prison. You can
3 regard yourself as fortunate -- indeed, very
4 fortunate -- that Mr. Justice Henderson took
5 the view that he did in August 2009. And you
6 will bear in mind his closing remark that if
7 you betray the trust that he placed in you, you
8 can expect to go to prison for a period of some
9 four years or thereabouts.

10 THE RESPONDENT: Yes, sir.

11 THE COURT: But he thought it worth taking
12 a chance, and you have been given that chance,
13 and we have not thought it right to deny it to
14 you.

15 In reaching that conclusion, we take
16 account of the fact that you have, so far as we
17 know, complied with all conditions --

18 THE RESPONDENT: All of them, sir.

19 CHADWICK, P.: -- of the probation so far
20 and have made the compensation payment you were
21 required to make on the 14th November --

22 THE RESPONDENT: Yes.

23 CHADWICK, P.: -- of this year. But to
24 mark the fact that the correct sentence, in our
25 view, for offence of this kind is that you

Reasons for Judgment (Chadwick, P.)

1 should be deprived of your liberty for a prison
2 term equivalent to four years, we have
3 increased the length of what the judge
4 described as house arrest from one year to two.
5 So you are now under the restrictions of your
6 house arrest for two years from August 2009.
7 But to avoid any doubt, we have varied those so
8 as to enable you to go to work outside the
9 house, if you resume employment on the 15th
10 December, as we were told. Do you understand
11 that?

12 THE RESPONDENT: Yes, sir.

13 CHADWICK, P.: Thank you. You may stand
14 down.

15
16
17 COURT REPORTER'S CERTIFICATE

18
19 Certified correct to the best of my skill and ability,
20 dated the 7th day of December 2009.

21
22
23 _____
24 Kerri Francella
25

