

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CRIMINAL SIDE  
3  
4

5 IND. NO: 0027/2017  
6

7 THE QUEEN  
8

9 v.  
10

11 CARLO MALIK WEBSTER  
12  
13  
14



15 **Appearances:**

Mr. Kenneth Ferguson for the Crown

16  
17 Mr. Jonathon Hughes of Samson Law for  
18 the Defendant  
19

20 **Before:**

Justice Roger Chapple (Actg.)

21 **Heard:**

22 21<sup>st</sup> November 2018  
23  
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26 **HEADNOTE**

27 *Criminal Law – Wounding with Intent – s.203 of the Penal Code – Carrying a*  
28 *restricted weapon at night – Guilty plea entered after first trial date set – United*  
29 *Kingdom (UK) Sentencing Guidelines – Starting point and sentencing range –*  
30 *Aggravating and mitigating circumstances..*  
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33 **SENTENCE JUDGMENT**  
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- 1 5. A Victim Impact Report (VIR) is available, dated 26<sup>th</sup> September 2017. Mr Coe  
2 wrote at some length to the author of the report, explaining the effect his injury has  
3 had upon him. I have read that and bear it well in mind.
- 4  
5 6. Mr. Coe sustained a 5 x 2-centimetre stab wound to the right lower abdomen; his  
6 bowel was visible within the abdominal cavity. He was taken to George Town  
7 Hospital where he underwent emergency surgery. His injury was described as life-  
8 threatening. He was initially an in-patient for a week. He was discharged but  
9 subsequently re-admitted to undergo further surgery after suffering extreme pain.  
10 He has suffered financial loss, as a result of his injuries, medical bills not covered by  
11 insurance, loss of wages and associated expenses – amounting to in excess of  
12 \$12,000. An order for compensation is sought.
- 13  
14 7. The Defendant is now 23 years of age; he was 21 at the date of these offences. I  
15 have the benefit of a number of reports about him, particularly:
- 16  
17 a. a Social Inquiry Report (SIR) dated 22<sup>nd</sup> November 2017;  
18 b. a psychological report from Dr Clement von Kirchenheim dated 25<sup>th</sup> May 2018;  
19 and  
20 c. a psychiatric report from Dr Arline McGill dated 26<sup>th</sup> October 2018.
- 21  
22 8. I also have before me three letters written by the Defendant – one was intended  
23 (although never sent) for Mr Coe and two are addressed to the Court.
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25 9. All three reports referenced at paragraph 7 above make detailed reference to the  
26 defendant’s difficult background and upbringing.
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1       10.     The Defendant's childhood was unstable; he spent time in USA, in Jamaica and then  
2             returning to the Cayman Islands, where he lived with his father until, tragically, he  
3             was shot dead. The Defendant was sent to Bonaventure Boys' Home when he was  
4             14. The experts conclude that the defendant is not suffering from any disability. I  
5             make such allowances as I can for that sad and difficult history.

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7       11.     I bear firmly in mind that the defendant was only 21 years old at the time of these  
8             offences. He first appeared before the courts in July 2012. Since then, he has been  
9             dealt with for 15 offences.

10

11       12.     The offences with which I now have to deal were committed during the currency of  
12             two suspended sentences, imposed on 24<sup>th</sup> August and 12<sup>th</sup> November 2015 for a  
13             variety of offences, including two offences of violence (assaulting a police officer  
14             and assault occasioning actual bodily harm).

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16       13.     In this jurisdiction, there are no sentencing guidelines dealing specifically with  
17             offences of violence. Accordingly, as both prosecution and defence agree, my  
18             starting point when deciding upon the right sentence for count 2 (overwhelmingly  
19             the more serious of the two offences), is the *England and Wales Sentencing*  
20             *Council's Definitive Guideline for Offences of Assault.*

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22       14.     Mr Ferguson, on behalf of the prosecution, argues that this is a category 1 offence -  
23             an offence of greater harm and higher culpability. Mr Hughes, on behalf of the  
24             defence, submits that this is a category 2 offence, accepting that it is an offence of  
25             higher culpability, given the use of a weapon, but denying that it is a case of greater  
26             harm – since the injury cannot be said to be “serious in the context of the offence.”

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- 1           15.     Section 203 of the Penal Code deals with wounding and causing grievous bodily  
2                     harm, with intent to cause grievous bodily harm, that is to say, really serious harm.  
3                     I have particularly considered the case of *R v Smith*<sup>1</sup>, to which Mr Hughes drew my  
4                     attention. Sadly, one has seen all too often the utterly devastating injuries that can  
5                     result from criminal assaults. Serious though Mr Coe's injuries undoubtedly were,  
6                     I cannot properly conclude that they were serious within the context of s.203  
7                     offences generally.  
8
- 9           16.     I conclude that this is a category 2 offence. The starting point suggested by the  
10                    Sentencing Council is then a sentence of 6 years' imprisonment, with a range of  
11                    between 5 and 9 years.  
12
- 13          17.     This attack was, it seems to me, entirely unprovoked. There was no reason for the  
14                    defendant to have become involved at all. Having become involved once, he then  
15                    returned to the victim a second time, and stabbed him. The offence took place in full  
16                    view of the public, in a busy bar. It is clear from Mr Coe's letter that he still bears  
17                    the scars of this attack, both physical and mental; the effect upon him is ongoing.  
18
- 19          18.     The offences took place whilst the defendant was subject to 2 suspended sentences,  
20                    for a number of offences, including offences of violence. His progress with the  
21                    community orders attached to the suspended sentences has not been impressive; the  
22                    SIR report notes "*several verbal and written warnings were issued.... for non-*  
23                    *compliance with the conditions of the order [although] a formal breach report was*  
24                    *not entered.*" At the time of these offences, the defendant was, according to one of  
25                    the letters he wrote "drunk out of my mind." All these are aggravating factors in this  
26                    case and propel me towards a higher starting point.  
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<sup>1</sup> [2106] 1 Cr App Rep (S) 8



1 19. Mr Hughes, counsel for the Defendant, submits that the defendant is clearly  
2 remorseful, praying in aid his guilty pleas and the contents of the letters he wrote  
3 soon after the event.

4  
5 20. Mr Ferguson, on behalf of the prosecution, draws attention to the account the  
6 defendant gave of the incident to the author of the SIR, which is at odds with what  
7 can plainly be seen on the CCTV footage – leading Mr Ferguson to observe that this  
8 minimisation of his actions is not the hallmark of a truly contrite man.

9  
10 21. It is of considerable concern to me that the defendant, knowing as he did the pain  
11 and suffering Mr Coe has had to endure as a result of the injury he inflicted could  
12 observe to the author of the SIR that *“it wasn’t a stab or anything like that; it was  
13 just a little poke.”*

14  
15 22. The defendant is assessed by the Department of Community Rehabilitation (DCR)  
16 as being at very high risk of re-offending.

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18 23. The defendant is, I have no doubt, remorseful, but in my view this has rather more  
19 to do with the position in which he now finds himself than for the injury he caused.

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21 24. The defendant is entitled to credit for his guilty pleas, although they were not  
22 tendered at the first opportunity; rather, he changed his pleas to guilty a month before  
23 the date fixed for trial. Bearing particularly in mind the Cayman Islands Sentencing  
24 Guidelines, the appropriate credit for his guilty pleas in this case is twenty percent  
25 (20%).

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1 25. Seventeen (17) months have now elapsed since the defendant entered those guilty  
2 pleas. Whilst some of the delay may have been caused by his failure to keep  
3 appointments, a delay of this length remains unacceptable. To his credit, the  
4 defendant has kept out of trouble and has remained abstinent of alcohol. I was told  
5 that he had been working hard since he was released on bail, although when pressed,  
6 the details of what he had been doing was not forthcoming. I was told he had dozens  
7 of rejection letters from prospective employers, and had helped with deck-chairs on  
8 the beach and done some gardening.

9  
10 26. In his letters, the defendant expressed a wish to pay Mr Coe's medical bills, but had  
11 not saved any money towards this. As is echoed in the experts' reports, the  
12 defendant's hopes and ambitions often seem over-optimistic. He has recently  
13 married; his Austrian wife is pregnant with their child. The defendant hopes to start  
14 a new life for himself in Austria – for any number of reasons, that ambition is  
15 unlikely to be fulfilled.

16  
17 27. It is clear from the CCTV footage that the defendant removed the knife with which  
18 he inflicted the injury from his pocket and returned it to his pocket thereafter.  
19 Obviously, he went out that evening armed with a knife – and, as events  
20 demonstrated, he was prepared to use it. That further aggravates this offence. Lest  
21 it be thought that this amounts to “double counting”, any injury caused by the use of  
22 a weapon makes it a case of higher culpability. The culpability is increased further  
23 if that weapon is brought to the scene rather than the spontaneous use of a weapon  
24 found nearby or the use of an otherwise innocent item as a weapon (for example, a  
25 shod foot).

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1 28. Bearing in mind all the features of this case, in my view the correct starting point  
2 upon count 2 is a sentence of seven and a half years' imprisonment. I reduce that  
3 sentence by 20% to reflect the defendant's guilty plea, resulting in a sentence of 6  
4 years' imprisonment.

5  
6 29. Upon count 3 there will be a sentence of 12 months' imprisonment, which will run  
7 concurrently. I activate all suspended sentences – again they will run concurrently.

8  
9 30. The defendant spent 508 days whilst on bail subject to an electronically monitored  
10 curfew. It is right that this be reflected by further reducing the length of the sentence  
11 he must now serve. I reduce the sentence by 254 days on this account. Rounding  
12 down, I reduce the sentence to one of 5 years and 3 months' imprisonment.

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14 31. I further order that the 99 days the defendant spent in custody on remand before  
15 being admitted to bail shall count towards the serving of his sentence.

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17 32. I make no order for compensation, since there is no evidence that the defendant has  
18 the means to meet such an order.

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20 33. I do not know if the knife the defendant used was ever found – if it was, I order its  
21 forfeiture.

22 **Dated this the 18<sup>th</sup> day of December 2018**

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**Justice Roger Chapple**  
**Acting Judge of the Grand Court**

