

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

5 INDICTMENT NO: 77 of 2019

6
7 THE QUEEN
8

9 v.
10

11 JONATHAN ALEXANDER WOODHOUSE
12
13
14



15 **Appearances:**

Ms. Kerri-Ann Gillies for the Crown

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

18 **Before:**

Justice Cheryll Richards Q.C.

19 **Submissions on Sentencing:**
20

1st April 2020

21 **Sentence Judgment:**
22
23

6th May 2020

24 **HEADNOTE**

25 *Criminal Law – Unlawful Wounding – Principles on Sentencing - United Kingdom Sentencing*
26 *Guidelines - Whether injury serious in the context of the offence - Higher maximum term in the*
27 *Cayman Islands - Whether adjustment to starting point is necessary.*
28
29
30
31

32 **SENTENCE JUDGMENT**
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1. The Defendant is before the Court for sentencing following his guilty plea to Unlawful Wounding contrary to s.204 of the *Penal Code* (2019 Revision). He was indicted on the captioned indictment for the offence of Wounding with Intent and the plea to the lesser offence of Unlawful Wounding is acceptable to the Crown. The particulars are that he on the 29th July 2019 at Vic's Bar located at North Sound Road in George Town, Grand Cayman unlawfully wounded the Complainant Javaka Kellier.

2. The indictment was filed on the 7th August 2019. The plea was entered upon arraignment on the 20th September 2019. It is agreed between the parties that this plea was entered at the first reasonable opportunity and that the Defendant should be given full credit in accordance with paragraph 10 of the *Cayman Islands Sentencing Guidelines*.

3. The facts are that the Complainant and the Defendant are known to each other. Prior to the incident the Complainant had been in a relationship with the Defendant's sister. Sometime after midnight on the 29th July 2019, the Complainant was at the said Bar in the company of friends. A female, Shenica Ebanks was among them. While outside the Bar, the Complainant intervened as another man, whom he knows only as 'Elion' attempted to speak with Ms. Ebanks. The Complainant pulled Ms. Ebanks away. He said that he did so as it appeared to him that Elion had been bothering her. Elion went inside the Bar and returned with the Defendant who had a bottle in his hand. The Complainant and the Defendant had an exchange of words in which the Defendant said to the Complainant: "*Javaka, I don't like you from long time... from when you try talk to my sister*". The Complainant responded, "*so what.*"



1 4. The Defendant threw the bottle at the Complainant. It did not connect with his body. The
2 Complainant then threw a bottle at the Defendant. The Defendant ran up to the
3 Complainant with a knife in his hand and began to stab him with the knife. Both men
4 fell to the ground and wrestled together. The Complainant began bleeding heavily from
5 wounds received and appeared to lose his strength. An eye witness who knew both
6 parties, pulled the Defendant away from the Complainant and then transported the
7 Complainant to the George Town Hospital. A second eye witness called 911 and
8 reported the matter.

9

10 5. The Defendant left the scene in a motor vehicle and was shortly thereafter involved in a
11 motor vehicle accident along Frank Sound Road. He was taken to the George Town
12 Hospital by ambulance as a result of the accident. He was arrested for this offence while
13 he was at the Hospital and placed under Police guard. On the 31st July 2019, he was
14 released from Hospital. He was interviewed by the Police on the 1st August 2019. In
15 the course of the interview, he exercised his legal rights but read from a prepared
16 statement in which he said that he did not recall what happened on the night of the
17 incident as he had been extremely intoxicated.

18

19 6. There is medical evidence from Dr. Andre Ramoon of the George Town Hospital. He
20 states that the Complainant was seen and examined at approximately 2am on the 29th
21 July 2019. On examination, the Complainant had multiple penetrating injuries to his
22 abdomen, left flank and left chest. He was found to have left pneumothorax which was
23 assisted with an insertion. On further examination it was seen that the contents of the
24 abdominal cavity were exposed. He was taken to the operating room. No intestinal or

1 solid organ injuries were found. The exposed omentum was excised and the abdominal
2 wall was repaired. He had eight injuries as follows:

- 3 i) Three left thoracic wounds with hemopneumo thorax
- 4 ii) Three left flank wounds
- 5 iii) One left abdominal wound
- 6 iv) One left facial wound

7 His condition was described as serious, consistent with infliction by a sharp object but
8 not likely to be permanent. The Complainant was admitted to Hospital where he
9 remained until the 2nd August 2019.

- 10 7. At the time of the incident the Defendant was disqualified from driving and was on a
11 Probation Order which had been imposed by the Summary Court on the 4th December
12 2019 for 12 months for the offence of Driving Without Insurance.



13
14 **Social Inquiry Report (SIR)**

- 15 8. The Department of Community Rehabilitation (DCR) has submitted a Social Inquiry
16 Report dated 10th February 2020. This provides details of the Defendant's personal
17 circumstances.

- 18
19 9. The Defendant is 25 years old with a date of birth of the 19th December 1994. He is the
20 father of two children, ages five years old and one year old and assists with their care as
21 a stay-at-home father during periods when he is unemployed. He has been intermittently
22 employed over a three-year period.



1 10. The Defendant advised the Probation Officer that on the night of the incident he had
2 consumed at least seven beers and two shots and was heavily intoxicated. He stated that
3 this was the first occasion on which he had been so drunk that he could not remember
4 what had happened. He said that following the incident he sustained injuries as a result
5 of his car accident which included one broken and two fractured ribs, a bruised lung and
6 kidney and problems with his lower back.

7
8 11. His antecedent record CRO10719 includes convictions for five offences. These are for
9 Failing to Surrender to Custody in 2015 for which he was fined; Damage to Property
10 and Theft for which he was sentenced to 12 months' probation in 2016 and Consumption
11 of Ganja and Possession of Ganja in 2017 for which he was fined. He also has
12 convictions between 2013 and 2018 for a number of traffic offences for which sentences
13 included fines and Probation and Community Service Orders. The most recent sentence
14 was in respect of the conviction on the 4th December 2018 for Driving Without Insurance
15 which is mentioned above, for which he was placed on probation for 12 months together
16 with a Community Service Order (CSO) and was disqualified from driving.

17
18 12. The Probation Officer indicates that the Defendant has a history of poor compliance with
19 supervision, failure to complete his CSO hours in the past and continued use of Ganja
20 when in the Drug Rehabilitation Court. He did however complete the required ninety
21 (90) hours of community service in respect of his most recent traffic offence.

22
23 13. The Officer notes that the instant offence does not form a pattern of offending behaviour
24 for the Defendant and that this is the first violent offence for which he has been
25 convicted.

26

1 14. The SIR records expressions of concern from family members of the Defendant, one
2 dating back to 2016 and from the community as to his continued misuse of alcohol and
3 the effects of drinking on his behaviour.

4
5 15. With respect to his attitude towards this offence, the Officer records the Defendant as
6 saying that he knew the victim and had some animosity towards him because in the past,
7 the victim had made derogatory remarks about his younger sister and had behaved
8 violently to one of his friends. He denied that his actions were premeditated. He
9 explained to the Officer that the reason for taking a knife with him while out socializing
10 was “if he had used it for work or for his own protection” but that he could not remember
11 having a knife in his possession on the night in question or stabbing the victim. He also
12 told the Officer that when he approached the victim outside, he dropped the bottle that
13 was in his hand and the victim threw his which hit his friend. He said that he saw the
14 victim put his hands by his waist and his life flashed before his eyes as he considered
15 that the victim may have a gun. He then does not recall anything further other than the
16 victim being on top of him and leaving the scene in a car.

17
18 16. The Officer gives her view that there is an element of denial of culpability in his account,
19 given that he places the blame for his actions on alcohol misuse and adds that the
20 Defendant’s assertion that he suffered a bout of amnesia when he stabbed the victim
21 means that he does not have to accept full responsibility for his behaviour. The Officer
22 states:-



“Mr. Woodhouse was unable to express any victim empathy as he believes that the victim is deserving because of his character. There appeared to be a lack of remorse for his actions but only regret that he got himself into more problems as a result of his choices.



Whilst he was likely disinhibited by alcohol misuse, Mr. Woodhouse's behaviour was seemingly impulsive, reckless and risk taking and it is fortunate that the incident did not result in a fatality

Moreover, the Case Status Report (CSR) submitted by Victim Services indicates that the victim suffered a punctured lung and damage to the lining of his intestines. The CSR further highlights the serious psychological and emotional harm caused to the victim and the indirect victim namely his mother.”

17. The SIR records that the Defendant was assessed using the LS/CMI Risk/Need Assessment tool. His overall risk of re-offending was assessed as “High” due to criminogenic factors such as companions, alcohol/drug problem, anti-social pattern, leisure/recreation and pro-criminal attitudes and orientation. Under the family/marital heading, he was assessed as medium risk and it was noted that there are concerns as to recent problems relating to domestic abusive behaviours in the relationship. Under specific risk /need factors the Officer references concerns as to an ongoing feud between the Defendant and the victim and concerns relating to problem-solving/self-management skills and anger-management skills deficits.

18. The Probation Officer provides a range of custodial and non-custodial options for the consideration of the Court.

24 Post Incident Events - Threats

19. The Defence produced two pages containing five sets of messages of a threatening nature sent by the Complainant to the Defendant after the incident. The messages are undated and are said to begin in September 2019 and end in March 2020. The second page has a single message as follows:-



1 *"You a bitch brudda try know that. How you a stab a drunk man 9 time and still get*
2 *knock out in the process of all that. Brudda look ya you time short you a dead soon*
3 *so gwan walk with my name in yo mout bout you a do it again. You couldn't trying*
4 *it to me sober & yet drunk you still couldn't finish the job.*

5
6 *I going kill you anywhere I see you.... Try know that & you na hard find ya dumb*
7 *bitch."*
8

9 20. The Crown in response submitted that there is no record of any threat made by the
10 Complainant to the Defendant prior to or at the time the Defendant inflicted the wounds
11 on the Complainant. Secondly the Crown submitted that the messages and threats appear
12 to have been made in both directions and that these are the subject of a separate
13 investigation and are not relevant considerations in this sentencing exercise. In respect
14 of this second submission, the Defendant denies sending any such messages and the
15 Crown has conceded that other than the content of the last message above there is no
16 evidence to substantiate this claim.

17 **Case Status Report on Victim**

18 21. There is no Victim Impact Report. There is a Case Status Report from the Victim
19 Services Unit (VSCSR) of the Department of Community Rehabilitation dated 18th
20 November 2019 on which the Crown seeks to rely. This indicates that the Probation
21 Officer assigned to that aspect of the case was unable to make contact with the victim
22 but made contact with his mother on the said date. Mother advised that the victim was
23 in witness protection, was being kept off Island and no direct contact is permitted with
24 him. Mother explained to the Officer that he was placed in witness protection as a result
25 of him receiving threatening messages from the Defendant following the incident.
26 Mother also reported to the Probation Officer as to her visit to the Hospital upon hearing
27 of the incident, the wait while her son was in surgery and the changes in her son's
28 behaviour after his release from Hospital. She stated that her son lived in ongoing fear,

1 would lock himself away in the house and would tell her how he kept replaying the
2 incident in his mind and that he was not sleeping at night. The Officer states:

3 *"After the lengthy conversation with Ms. .. it is very apparent that she is an indirect*
4 *victim of this offence. Ms. very emotionally shared how she received a call at*
5 *approximately 1:30am the morning of the incident... .. Upon reaching the hospital*
6 *she was able to see her son for a few minutes and he kept telling her "mummy I*
7 *can't breathe" at the same time the doctors were attempting to place a tube into*
8 *her son's lungs..... Ms. ..further shared that her son was taken into the surgery*
9 *theatre at around 2am (hour) and did not come out to the surgical ward until after*
10 *9am. She stated that during those long hours all she could think about was her son*
11 *"not making it" after being informed of how many stab wounds he had suffered. She*
12 *shared that until her son was finally placed under witness protection she had not*
13 *been able to "sleep and lived in constant fear" for her son's life."*
14
15
16

17 22. The Defence submitted that caution should be exercised in seeking to rely on this Report.
18 Counsel points out that the Complainant's mother makes a number of statements which
19 can be demonstrated to be incorrect. These include her statement to the Probation Officer
20 that her son does not know why the incident occurred. This is in contrast to the interview
21 of the Complainant in which he gave a full background as to the animosity between
22 himself and the Defendant. Secondly, that Mother stated that one of the stab wounds
23 damaged the lining of his intestines but that this is not borne out by the medical evidence.
24 Thirdly the Defence point to the mother's report as to the effect on her son and say that
25 the report of him being in constant fear is contradicted by the messages. The submission
26 of the Defence is that the Crown cannot seek to rely on this Report in proof of significant
27 psychological harm in the face of messages which are not only vulgar but threatening in
28 the extreme and which show an ongoing campaign of threats which are not suggestive
29 of someone living in ongoing fear, who has locked himself away.



1 **United Kingdom Sentencing Council Definitive Guidelines**

2 23. In the absence of specific guidelines in the Cayman Islands for the offence of Unlawful
3 Wounding, both Counsel referred to the United Kingdom Sentencing Council Definitive
4 Guidelines. In the United Kingdom the equivalent offence is contrary to s.20 of the
5 *Offences Against the Person Act* 1861 and attracts a maximum sentence of five years.
6 By s.204 of the *Penal Code*, the maximum penalty for the offence in the Cayman Islands
7 is imprisonment for seven years.

8
9 24. There is disagreement between the parties as to the Guideline category in which the
10 instant offence falls. The Crown submits that the matter falls within Category 1, greater
11 harm and higher culpability which would attract a sentence range of 30 months'
12 imprisonment to 48 months' imprisonment with a starting point of 36 months'
13 imprisonment. The Defence submit that the matter falls within Category 2 as it is
14 properly a case of lesser harm and higher culpability which would attract a sentence
15 range of 12 months' to 36 months' custody with a starting point of 18 months' custody.
16 The further and important submission of Defence Counsel is that if the Court finds that
17 this is a Category 2 case, sentencing options which do not necessitate immediate custody
18 will still be available. Counsel stated that if the Court finds that this is a Category 1 case,
19 then it would be much more difficult for an argument to be made that immediate custody
20 would not be appropriate.

21
22 25. The relevant Guideline states:

23 *"The court should determine the offender's culpability and the harm caused, or*
24 *intended, by reference only to the factors below (as demonstrated by the presence of*
25 *one or more). These factors comprise the principal factual elements of the offence*
26 *and should determine the category."*



- 1 26. The factors indicating greater harm are:
- 2 i) Injury which is serious in the context of the offence which should normally be
- 3 present.
- 4 ii) Victim is particularly vulnerable because of personal circumstances.
- 5 iii) Sustained or repeated assault on the same victim.
- 6
- 7 27. Under the heading “factors indicating lesser harm” is injury which is less serious in the
- 8 context of the offence.
- 9
- 10 28. The factors indicating higher culpability include, in addition to statutory aggravating
- 11 factors, other factors such as:
- 12 i) The use of a weapon or weapon equivalent.
- 13 ii) Intention to commit more serious harm than actually resulted from the offence.
- 14 iii) Deliberately causes more harm than is necessary for the commission of the
- 15 offence.

16 **Injury which is Serious in the Context of the Offence.**

- 17 29. The Crown’s submission is that there is injury which is serious in the context of the
- 18 offence given that the victim sustained some eight wounds. The wounds included a
- 19 collapsed lung with air and blood therein and an exposed abdominal cavity, both of
- 20 which required surgery. The Crown also refers to the report from the Complainant’s
- 21 mother as to the impact on her son and on her as recorded in the VSCSR referenced
- 22 above.
- 23



1 30. Secondly the Crown submits that the assault on the victim was of a sustained nature in
2 that the victim was stabbed multiple times. By way of aggravating factors indicative of
3 higher culpability the Crown points to the use of a knife by the Defendant to inflict the
4 injuries.

5
6 31. The Defence submit that this is a case of lesser harm and higher culpability on the basis
7 that the only factor present is indicative of lesser harm and no factors indicating greater
8 harm are present. The primary submission is that this is a case in which the injury is less
9 serious in the context of the offence. The Defence point to the absence of internal or
10 solid organ injuries or of any indication of permanent effects and submit that the injuries
11 sustained do not go beyond *“what may be viewed as par for the course.”* In oral
12 submissions Counsel submitted that in this case *“we have wounds that bled which is par*
13 *for the course in a wounding case”*. Wounding necessitates those kinds of injuries which
14 are often inflicted with a sharp object. Counsel points to what is said to be an
15 inconsistency in the Crown’s argument that the Complainant was lucky not to have
16 suffered more serious injury while at the same time arguing that the injuries sustained
17 are serious in the context of the offence. In summary it is urged by the Defence that the
18 present case although serious, is not serious enough in the context of section 204 cases
19 so as to warrant an uplift to the very top of the category and sentencing range. Counsel
20 sought to distinguish this case from other cases in which there are broken bones,
21 fractures, organ damage and more life threatening injury has been caused.



1 32. In support of this submission, the Defence rely on the cases of *R v Smith (Grant*
2 *Christopher)*¹, and *R v Thompson*².

3
4 33. The case of *R v Smith* was concerned with an appeal which focused on the approach
5 adopted by the trial Judge in sentencing for an offence of Wounding with Intent. In the
6 course of an altercation, the victim received a final blow to the back of the head which
7 required three stitches. In his Sentencing remarks the learned Judge concluded that this
8 fell into the category of greater harm and greater culpability. This was on the basis that
9 the injury which was caused needed hospital treatment, stitching and had considerable
10 lasting effect on him. The Appellate Court considered what is meant by the term “*serious*
11 *in the context of the offence*” and stated:-



12 “First, with regard to the injury, the question is whether the injury was
13 serious “*in the context of the offence*”. It is axiomatic that all violence
14 within the context of a section 18 offence is serious, but some violence is
15 more serious than others. The purpose behind the words “*which is serious*
16 *in the context of the offence*” in the guidelines is to distinguish between that
17 level of violence which is inherent or par in a standard section 18 offence
18 and that which will, by definition, go beyond what may be viewed as par for
19 the course. In our view, given that there is such a marked disparity in the
20 starting point between categories 1 and 2, the sorts of harm and violence
21 which will justify placing a case within category 1 must be significantly
22 above the serious level of harm which is normal for the purpose of section
23 18.³
24

25 34. In considering the matter, the Court noted that while the blow to the back of the head
26 was inflicted when the victim was prone and defenceless and necessitated three stitches,
27 the victim was able, following the blow, to rise from the bed and pursue the Appellant
28 out of the house. The Court concluded that given the great disparity in the sentence of

¹ [2015 EWCA Crim 1482

² [2015] EWCA Crim 1575

³ Paragraph 14

1 six years between Categories 2 and 1, although it was a bad injury, standing alone, it was
2 not a Category 1 offence.

3
4 35. The Court also expressed the view that the concept of *sustained or repeated* imports
5 some degree of persistent repetition. An assault may be sustained because it continued
6 over a significant period of time or be repeated because it involved multiple blows over
7 a short period of time.

8
9 36. The Court concluded that the case was a borderline one which was either at the top end
10 of Category 2 or at the borderline with Category 1 and 2. Among the aggravating factors
11 in the case were the location of the offence and the manner of the Appellant's entry,
12 namely breaking into the victim's home as well as the timing of the offence, given that
13 it was committed in the middle of the night. Taking into account all the factors, the
14 sentence of 12 years' imprisonment was reduced to 9 years.

15
16 37. Counsel for the Defence also submitted that in the Cayman Islands Court of Appeal case
17 of *R v Seth O'Neil Watler*⁴, the Appellate Court stated that the concentration should be
18 on the level of injury rather than on the degree of violence.

19
20 38. In the cited case of *R v Thompson*, the Appellant appealed a sentence imposed for three
21 offences including Wounding with Intent. In the course of an altercation, the Appellant
22 who was intoxicated at the time ran at the victim, knocked him to the ground and bit off
23 a portion of flesh from his right eyebrow. The Appellant appealed on the basis that the
24 learned trial Judge had mis-characterised the offence as involving injury which was
25 serious in the context of the offence.

⁴ CICA 34/2017, judgment dated 25th April 2018





1 39. While noting that the persistent psychological consequences on the victim were to be
2 taken into account together with the physical injury, the Court held that within the scale
3 of grievous bodily harm, the case fell short of being injury which was serious in the
4 context of the offence. However the additional finding was that the learned trial Judge
5 had also mis-characterised the case as not involving a weapon or weapon equivalent.
6

7 40. The aggravating factors which had been correctly identified by the learned trial Judge
8 included the presence of a large number of persons when the attack was made - some of
9 whom were children - and a breach of a Community Service Order for offences of battery
10 and disorder. The Court concluded that, albeit by a different route than the trial judge,
11 the sentence imposed in the case was not excessive.
12

13 41. In response to these submissions, Counsel for the Crown sought to distinguish the cases
14 of *Smith* and *Thompson* from the present circumstances by noting that they dealt with
15 the more serious offence of Grievous Bodily Harm contrary to s.18 of the *Offences*
16 *Against the Person Act* 1861. Counsel argued that the number and extent of the injuries
17 in this case go far beyond what is inherent in the offence of Unlawful Wounding.
18

19 42. This Court has considered in detail the submissions made by both Counsel in respect of
20 the injuries sustained by the Complainant. The submission of the Defence that there is
21 no evidence of permanent impact on him is accepted.
22

23 43. The Court has been asked to review whether there is reliable evidence of psychological
24 impact. The submission of the Defence is that the threatening messages sent by the
25 victim after the incident are inconsistent with someone in fear. In the view of this Court,
26 this is a submission which has to be approached with some caution. The evidence of the

1 victim being in fear and of the impact upon him comes from his mother as reported by
2 her to the Probation Officer. The behaviour described by the mother to the Probation
3 Officer, of the victim locking himself away in the house and the expressions of fear may
4 not necessarily be inconsistent with the threatening anger which is evident in the
5 messages. Human experience shows that a person may well be in extreme fear but yet
6 purport to show bravado from a safe distance. Nevertheless in the absence of direct
7 evidence from the victim to include any explanations for the sending of these messages,
8 it is difficult to make an assessment of the position with the required degree of care. In
9 these circumstances, no reliance is placed on the mother's report as it relates to possible
10 psychological impact upon the victim. There is however clear evidence from the VSCSR
11 of the impact of the offence on the mother of the victim.
12

13 44. The Court has given consideration to whether the injuries can be considered serious in
14 the context of the offence in the absence of permanent physical or proven psychological
15 injury.

16 45. This Court is guided by the position taken by the Appellate Court in the case of *R v*
17 *Vandross Zion Williams*⁵. Consequently, the Court does not consider that evidence of
18 some permanent injury or effect is required in order for there to be a finding of greater
19 harm. This is because the Guidelines provide that the factor of “*ongoing effect on the*
20 *victim*” is one which is listed in step two under other aggravating factors, rather than in
21 step one, factors indicating greater or lesser harm. It is thus not listed as a defining factor
22 for determining the category of harm. In the cited case the Appellate Court stated:
23
24

⁵ [2018] EWCA Crim 740



1 *"It would be counter-intuitive for a case where the victim is left at death's door*
2 *but is saved by skilful medical intervention to be categorised as falling within*
3 *anything other than greater harm. Although ongoing effects may have a part to*
4 *play in assessing the gravity of an injury, they are not a precondition to a finding*
5 *of greater harm."*
6
7

8 46. It is noted that there is no evidence that the offence was pre-meditated which would
9 increase the level of seriousness. From the evidence, the infliction of injury appeared to
10 be an impulsive response to an occurring event. However the words exchanged make
11 clear that the lingering and underlying animosity between the parties may have added
12 fuel to the impulse.

13
14 47. In the Court's view, it is of significance that one of the injuries, the punctured lung,
15 affected the victim's ability to breathe and was so serious as to require immediate
16 surgical intervention. A second injury, the open abdominal wall also required surgical
17 intervention. When the wounds as they are detailed by the Doctor are considered,
18 together with the Report from the victim's mother and the evidence of the eye witnesses,
19 it is difficult to accept the submission of the Defence that these are no more than wounds
20 which bled and which may be viewed as par for the course. In assessing seriousness, it
21 is not inappropriate to take note of the effect of a wound or the nature of the injury
22 sustained. Offences of unlawful wounding will range from minor cuts which do no more
23 than open the surface of the skin to those which have far more impact. There may in
24 some cases be no incapacitation of a victim and others where blood flow is either
25 minimal or if heavy, easily stopped by a tourniquet or other such non-surgical
26 application.



1 48. Having considered all the circumstances and the submissions made, in the Court's view
2 in the context of an offence of Unlawful Wounding, (rather than Grievous Bodily Harm),
3 a punctured lung which impacted the victim's ability to breathe taken together with an
4 exposed abdominal wall, both of which required immediate surgical intervention, which
5 injuries rendered the victim physically incapable as he was seen by witnesses "*to lose*
6 *his strength*", is closer to the top of the range. It is serious in the context of this offence.

7
8
9 49. A second factor which would serve to place the circumstances of the instant case into
10 the category of greater harm is the sustained or repeated nature of the assault. In the case
11 of *Smith* the Court held that a degree of persistent repetition is required to satisfy this
12 element. In this case the multiplicity of injuries received by the victim evidences
13 persistent repetition. The Court has considered but does not accept the submission of
14 the Defence that the apparently short time within which this occurred would preclude
15 such a finding. This was a sustained or repeated assault on the same victim.

16
17 50. There are thus two factors indicating greater harm in the instant case.

18
19 51. The case of *R v Smith* was considered in the case of *R v Ashley James Sowter*.⁶ This
20 was an appeal against a sentence of 9 years imprisonment imposed following a plea of
21 guilty to Wounding with Intent. The Court described the act of the Appellant as a
22 frenzied attack upon the victim with a knife. The Appellant had attempted to strike the
23 victim at least ten times with a knife before pursuing him into another room and further
24 assaulting him. The wounds received were said not to have been as serious as they could
25 have been. There were two stab wounds to the victim's left arm, one which penetrated

⁶ [2018] EWCA Crim 1332

1 the underlying muscle, small cuts to parts of his body and swelling, abrasions and dents
2 to the back of his head. The Appellate Court agreed with the sentencing Judge that this
3 was clearly a sustained attack falling within Category 1 harm. The Court further stated
4 that it was aggravated in that it was committed within a home at night and there was
5 ongoing effect upon both victims. The Court stated:-

6 *"Quite separately, this was undoubtedly a sustained assault on the same victim*
7 *which was one of the factors indicating greater harm; indeed the rubric we have just*
8 *quoted suggests the presence of only one factor may demonstrate the required harm.*
9 *Whilst recognising the need for what has been described in subsequent cases as the*
10 *"nuanced" approach in Smith, we have to look at the harm factors as a whole."*
11

12 52. This Court's view with respect to the instant case is that the harm factors considered as
13 a whole place this matter into Category 1 harm.
14

15 **Factors Indicating Higher Culpability**

16 53. There is agreement between the parties that this is a case of higher culpability because
17 of the use of a weapon, the knife.
18

19 54. The Crown submits that there is an additional factor of an intention to commit more
20 serious harm than actually resulted from the offence. This they say may be inferred from
21 the multiplicity, and locations, of the stab wounds.
22

23 55. The Defence submit that it is entirely wrong for the Crown to make this submission in
24 circumstances where the Defendant was originally charged with a s.203 offence of
25 Wounding with Intent and the Crown accepted a plea to Wounding simpliciter. The
26 Defence say that acceptance of the plea means that the Crown cannot seek to suggest
27 any degree of intention on the part of the Defendant and that it is inappropriate for the



1 Crown to speculate that the Defendant had certain intentions which went over and above
2 the harm that he caused.

3
4 56. The Court accepts the submission of the Defence that the Crown's submission on this
5 aspect does not sit comfortably with the position that the Crown has taken on the matter.
6 A decision was taken to accept the plea and not to proceed to trial to seek to prove the
7 very issue on which the Crown now seek to rely. In these circumstances the Court does
8 not propose to consider this as an additional factor.



9
10 **Factors Increasing Seriousness/ Aggravating Factors**

11
12 57. It is accepted by the Defence that two aggravating features in this case are that the
13 offence was committed whilst under the influence of alcohol and while subject to a
14 Probation Order, albeit for traffic offences. With respect to the latter, Defence Counsel
15 asks the Court to note that the only breach of the Order was the commission of an offence
16 and that there were no other conditions that were breached in tandem. The Court notes
17 as urged by the Defence that the Probation Order was not made in respect of offences of
18 a similar nature. Nevertheless this was an Order of the Court and there would have been
19 the express or implied term that the Defendant be of good behavior and not commit any
20 further offences during the term of the Order.

21
22 58. The Crown submits that the additional aggravating factors are location and timing, in
23 that, the offence occurred in a public place, being liquor licensed premises, minutes after
24 midnight, in the presence of other persons, indicative, the Crown says, of the potential
25 for harm to others.

1 59. The Defence in reply drew the Court's attention to Part 8 of the *Cayman Islands*
2 *Sentencing Guidelines*. This lists aggravating factors from the *Alternative Sentencing*
3 *Law* and includes location of the offence but provides the example of an isolated place.

4
5 60. On timing, the Defence submission is that this particular factor has very little weight
6 when it comes to a sentencing decision. Counsel asks the Court to consider whether a
7 wounding of this nature is more serious because it took place at midnight than if it had
8 taken place earlier. Counsel submits that it is not.

9
10 61. On the question of the location of the offence, it may be readily apparent that a location
11 which is deserted or isolated may exacerbate an offence not least because such a location
12 would be likely to increase the fear felt by a victim and make it more difficult for a victim
13 to secure assistance. This is not to say that a location which is not isolated may not also
14 be an aggravating factor. The example provided in the Guidelines is not said to be
15 exhaustive. The Crown refers to the presence of other persons at the location and the
16 possible impact on them. The Court notes that not only was this a public location, it was
17 a liquor licensed establishment with the potential for catalysts to disorder.

18
19 62. In conclusion on this aspect, the Court does consider that the location could be an
20 aggravating factor in the circumstances of this case. However it is proposed to give this
21 factor very limited weight. Care should be taken not to double count. The fact that the
22 premises is used for the consumption of alcohol while qualifying as a separate factor
23 may not add very much more to the factor already taken into account of the commission
24 of the offence while under the influence of alcohol.

25
26



1 63. The offence was committed sometime after midnight. In the case of *R v Smith* the Court
2 considered this to be an aggravating factor in circumstances of entry into the home of
3 the victim. The timing of the offence is an aggravating factor in this case. It is part of
4 the attendant circumstances to the commission of the offence.

5 **Mitigating Factors**

6 64. The mitigating factors submitted by Defence Counsel include that the Defendant is the
7 primary career of dependent relatives, that he has no relevant convictions for violence
8 and had been engaging positively in respect of his probation order until the point when
9 this offence took place. It is also submitted that the Defendant has voluntarily ceased
10 consumption of alcohol for the last eight months and has been in no further trouble. The
11 Court is also asked to take into account the fact that there has been delay in sentencing
12 him following his plea because of the drafting of reports.

13
14 65. Counsel urged that given the current exceptional circumstances with the ongoing
15 pandemic in the community generally and in the Prison, the Court could consider a
16 curfew order. Counsel pointed out that the Defendant has been on bail for some 8 months
17 and has not breached any conditions of his bail. It is said that a curfew order would
18 curtail his liberty satisfying the penal aspect of sentencing but would allow him to
19 continue to care for his children and would also allow him to continue his construction
20 job from 7am to 5pm daily.

21
22 66. Defence Counsel also asks that the Court consider other options from the range set out
23 in the SIR such as a suspended sentence with supervision order which would have the
24 benefit of ordering the Defendant to refrain from alcohol and drug use, to subject himself
25 to drug and alcohol testing, to be excluded from liquor licensed premises and to attend

1 a counselling center anger management group. Counsel submits that these measures all
2 taken together would have a much greater rehabilitative effect than a period of
3 immediate custody.

4
5 67. In closing Counsel submitted with some candor that he knows that what he is asking for
6 is perhaps not usual for these types of offences but that “*consideration must be given to*
7 *the circumstances that we find ourselves in*”. Counsel stated:

8 “What we have here is a really reprehensible occurrence where there was
9 some personal animosity between two individuals going back some time.
10 The injection of alcohol caused that animosity to turn violent and what we
11 have is a person who has received a bad injury but not the kind of injury
12 which could have resulted and both parties are very lucky for that.”
13

14 Sentence Range in the Cayman Islands

15 68. The Crown submits that the range of sentence for Unlawful Wounding should be
16 adjusted mathematically to reflect the fact of the higher sentence in the Cayman Islands.
17 By the calculation submitted the starting point of 36 months would be higher and the
18 range would be adjusted from 42 months at the lower end to 67 months at the higher
19 end.

	UK	Calculation	CI	Calculation
Maximum Penalty	60 mos.	-----	84 mos.	(84÷60) x 100 = 140% (equivalent to 1.4)
Lower Range	30 mos.	1.4 x 30 mos.	42 mos./ 3yrs. & 6 mos.	
Upper Range	48 mos.	1.4 x 48 mos.	67 mos./ 5yrs. & 7 mos.	
Starting point	36 mos.	1.4 x 36 mos.	50.4 mos./4 yrs.	



1 69. In response to these calculations the Defence rely on the local case of *R v Brown*⁷. In
2 that case the defendant was convicted after trial of the lesser offence of Unlawful
3 Wounding. He was sentenced in accordance with the said Guidelines to a sentence of 2
4 years and 4 months' after a trial. The Defence point to the fact that the Court in that case
5 did not apply an uplift despite the different sentencing levels.

6
7 70. In the case of *R v Brown*, the Complainant had been hit in the head with a conch shell.
8 The blow knocked him unconscious. He suffered a seizure and required surgery. There
9 was a continuing risk of seizure although there had been no such occurrence by the time
10 of the trial. The Court found that as the attack resulted in serious injury, involved the use
11 of a weapon and a single blow and appeared to be an isolated event it was a Category 2
12 offence which carried a starting point of 18 months' imprisonment.

13
14 71. Defence Counsel submitted further that while there are many examples in which this
15 Court has applied uplifts when considering England and Wales' guidelines and higher
16 maximum sentences in the Cayman Islands, his research had not identified any such
17 cases dealing with offences under s.204 of the *Penal Code*. Counsel asked that the Court
18 "*not be overly mathematical*" but instead consider whether or not, given the
19 circumstances of the instant case, there is justification for moving beyond or outside the
20 limits and category range as set down in the Guidelines.



⁷ [2014] (2) CILR Note 5.



Assessment and Conclusions

72. The *Cayman Islands Sentencing Guidelines* provides general guidance as to the aims of sentencing, assessing the seriousness of an offence, the custody threshold and the principle of proportionality. The Court reminds itself of this guidance including that in sentencing an offender, the Court has to balance a number of competing interests and objectives and to tailor the punishment to the individual circumstances of the offender while ensuring that it is in line with the seriousness of the offence. The Court should consider which of the aims which govern the sentencing process will be best served by the sentence to be passed. The aims which are set out in the *Alternative Sentencing Law 2008* include deterrence, punishment, rehabilitation and restitution. The Guidelines also provide that a custodial sentence should not be passed unless the offence is so serious that no other sentence can be justified for the offence. Custody should be reserved for the most serious offences. Even where the custody threshold is passed, custody can still be avoided in light of personal mitigation or if there is a suitable community intervention which would meet the aims of punishment and rehabilitation.

73. In the instant case it is concluded that, given the presence of two factors indicating greater harm, and one factor indicating higher culpability, this is a case which falls into Category 1 of the applicable United Kingdom Sentencing Guidelines. The starting point is 3 years' custody.

74. In the cited case of *R. v Watler* the Respondent was sentenced to a suspended term of imprisonment after pleading guilty to the s.204 offence of Inflicting Grievous Bodily Harm. The Sentencing Court applied the said Guidelines, and found that it was a Category 3 offence. The Appellate Court stated that it was appropriate for the Judge to

1 apply the Guidelines, making adjustments for the higher maximum sentence in the
2 Cayman Islands. The Court stated:



3 *"In England and Wales, that would mean a starting point of a high-level*
4 *community service order, with a range of a low level order up to 51 weeks*
5 *in custody. As we have said, some adjustment to the available range was*
6 *necessary to reflect the higher maximum sentence in the Cayman Islands.*
7 *We can understand how, in the Cayman Islands context, the judge took, as*
8 *a starting point, a sentence in the order of 12 months imprisonment, with a*
9 *range in the order of 9 months to 2 years custody. However as we emphasize*
10 *these can only be broad figures, we are not seeking to lay down an*
11 *invariable approach to be applied in every case."*⁸
12
13

14 75. Following the approach in that case, the starting point in a Category 1 case should be
15 slightly higher in the Cayman Islands to reflect the higher maximum sentence. By taking
16 a broad calculation, it is proposed to use a starting point of 48 months rather than 36
17 months.

18
19 76. From a starting point of 48 months, taking into account the three aggravating factors
20 detailed above, of commission of the offence while under the influence of alcohol,
21 commission of the offence while on probation and timing of the offence, this would
22 serve to increase the sentence from the starting point of 48 months to one of 54 months.

23
24 77. By way of factors reducing seriousness or reflecting personal mitigation, the Court takes
25 into account the fact that the Defendant has no relevant previous convictions. As
26 detailed above, this is his first offence involving violence. This is a significant factor in
27 mitigation. Due account is also taken of all his personal circumstances as outlined by
28 Defence Counsel and as indicated by the SIR. These include that he is a relatively young
29 man who is the primary carer for his two children who are very young. He is said to have

⁸ Paragraph 30

1 taken steps to address his alcohol consumption and the Probation Office indicates that
2 prior to this offence he was complying with the conditions of his probation. It is also of
3 note that some nine months have elapsed since this offence was committed and about
4 eight months since his plea to this offence while reports have been awaited. The delay is
5 not due to any fault of his. As to the aspect of remorse, it appears from the SIR that he
6 sought to give an account which is at variance to that given by the eyewitnesses and thus,
7 to minimize his actions. The conclusions of the Probation Officer suggest that there is
8 limited remorse to be taken into account. When all of these factors are taken
9 cumulatively as matters in his favour, the Court considers that it is appropriate that the
10 sentence be reduced by 14 months to one of 40 months.

11
12 78. Although Defence Counsel in written submissions submitted on behalf of the Defendant
13 that the threats made subsequent to the offence be considered in mitigation, in oral
14 submissions this was not urged upon the Court. No submissions were made as to any
15 impact on the Defendant from these threats or as to how, if at all, these had affected him
16 which would have informed any assessment of the issue. Counsel was asked directly
17 about this issue as follows:-

18 "THE COURT: *In terms of the threats, how do you say that the*
19 *court should treat those? You mentioned that*
20 *because the threats appear to be inconsistent*
21 *with the case status report, which is referred*
22 *to by the Crown, the court should disregard*
23 *the case status report. Is that the only way --*
24

25 MR HUGHES: *Exactly. That's the only use I put those*
26 *messages to, my lady. The Crown has sought*
27 *to suggest that the complainant in this matter*
28 *is suffering ongoing psychological harm and*
29 *we say that that's not borne out by the*
30 *independent evidence, that the court should*
31 *take it into consideration for that purpose*
32 *only."*
33





1 79. In considering whether the custody threshold has been passed, consideration has been
2 given to the personal circumstances of the Defendant and to whether there is a suitable
3 community intervention which would provide a sufficient restriction by way of
4 punishment while addressing rehabilitation issues. The Probation Officer describes this
5 offence as a significant escalation of seriousness in his offending. The SIR refers to the
6 existence of a pattern of generalised trouble and to the Defendant demonstrating an
7 attitude and behavior which is supportive of crime. The Defendant has already had the
8 benefit of a number of alternative sentencing options albeit for non-relevant offences. In
9 the view of the Court there is no personal mitigation which rises to such a level that it
10 suggests that a custodial sentence can be avoided.

11
12 80. In the Court's view, given the nature of the offending and all the circumstances, the
13 custody threshold is firmly passed in this case.

14
15 81. Careful consideration has been given to the submissions of Counsel on his behalf and to
16 whether despite the custody threshold having been passed, it is unavoidable that an
17 immediate custodial sentence should be imposed. Thus the option of a suspended
18 sentence is considered. Defence Counsel has also referred to the public health issues
19 which presently exist by way of general submission. However there is no special
20 circumstance, particular vulnerability or risk to the defendant identified over and above
21 that which is faced by most citizens in the population.

22
23 82. Standing back and looking at all the circumstances of the case, in the Court's view there
24 must be both elements of deterrence and punishment in any sentence to be passed. This
25 Defendant went to a liquor licensed establishment, where because of the consumption
26 of alcohol, the potential for loss of self-control and impulse is increased. He had with

1 him a knife. This is a weapon not of opportunity but of choice. Fueled by alcohol and
2 animosity, he inflicted multiple injuries upon the victim, two of which were serious, one
3 more so than the other. He did not stop until eyewitnesses intervened. He left the scene
4 in George Town, going as far as Frank Sound Road until halted by his vehicular accident.
5 In the Court's view the two aims of sentencing identified above would not be best served
6 by the imposition of a suspended sentence. The public must be deterred from the
7 possession, carriage and use of such weapons at such premises. This was an assault
8 which was initiated by the Defendant which impacted life-sustaining organs of the
9 victim. It is serious in nature. If a custodial sentence is imposed, this will also include an
10 opportunity for rehabilitation and participation in available programmes.

11
12 83. The Defendant is given full credit for his guilty plea thereby reducing the possible
13 sentence of 40 months by one third.

14
15 84. The Court concludes that the shortest term commensurate with the seriousness of this
16 offence is an immediate term of 26 months' imprisonment. Any time previously served
17 on remand is to be deducted.

18
19 **Dated this the 6th May 2020**

20 



21 **Honourable Justice Cheryll Richards Q.C.**
22 **Judge of the Grand Court**