IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

INDICTMENT NO: 76 of 2018

THE QUEEN

v.

RAINER NAOMI BLACKWOOD

Appearances:	**Ms. Scott Wainwright for the Crown**
	Mr. Crister Brady of Brady Attorneys-at- Law for the Defendant
Before:	**Justice Cheryll Richards Q.C.**
Submissions on Sentencing:	**30th April 2020**
Sentence Judgment:	**8th May 2020**

HEADNOTE

Criminal Law – Unlawful Wounding *– Principles on Sentencing, United Kingdom Sentencing Guidelines – Category of Offence - Use of Knife.*

SENTENCE JUDGMENT

1. The Defendant is before the Court for sentencing following her guilty plea to the offence of Unlawful Wounding on the 15th April 2019.

2. By Indictment 76/18 the Defendant faced two counts. Count one, the Attempted Murder of Rohan Kenroy Francis and Count 2 the alternative count of Wounding with Intent to cause him Grievous Bodily Harm. The Defendant first appeared in the Grand Court on the 14th November 2018 when the matter was mentioned without her being arraigned. On the 16th November 2018, she was arraigned and entered pleas of not guilty to both counts of the indictment. The trial was then set for the 15th April 2019.

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3. Before the commencement of the trial the Complainant, Rohan Francis indicated that he no longer wished to give evidence in the matter. He provided a witness statement dated 18th December 2018 setting out his reasons for coming to this decision.

4. On the morning of trial, the Defendant was re-arraigned at her request and entered the plea to the lesser offence of Unlawful Wounding as aforesaid. The particulars are that the Defendant on the 23rd day of October 2018, in the jurisdiction of the Cayman Islands unlawfully wounded Rohan Francis. The Crown indicated its acceptance of this plea and referenced the Complainant's position on the matter. At the time, the presiding Judge, Wood J. (Actg.) upon the application of Defence Counsel agreed that the Defendant would be given a full discount at sentencing.

5. The facts are these. The Defendant and the Complainant began a relationship in 2015. They are both Jamaican nationals who resided in Cayman Brac at the material time. Mr. Francis had been resident there for some 12 years. There were difficulties in the

relationship and the parties separated from time to time. There have been previous minor incidents between them.

6. At about 1 a.m. on the 23rd of October 2018, the Complainant and the Defendant were together in the bedroom of the Complainant at his address on Cayman Brac. They were engaging in sexual activity. The Complainant was laying on his back and the defendant got on top of him. She made several attempts to place a towel over his face. As he pulled the towel away he felt a sharp pain in his neck. He looked and saw her with a knife in her hand. A struggle ensued between them during which he attempted to take the knife away from her. In doing so he received lacerations to his hands. He called out to his housemate in the adjoining room. The housemate heard the commotion and entered the room. He states:-

> *"After the second knock on the door, I also heard Rohan shouted out very loudly my alias which is Brown Man. He then said "Kick off the door and come in she a go kill me in yah. ……I grabbed the lock and turn it and pushed in the door and rushed in. I then saw Rohan holding to both hands of the said girl that always visit him and was bracing her to the wall. I saw a knife in her right hand and she was resisting Rohan and shouting "Rohan wha mek you a run mi" several times. I also saw blood on the floor and Rohan's stomach covered with blood, I rush to them and went behind the girl and grabbed both her hands. I then used my left elbow and bounced off Rohan and told him to get out of the room. He was coming back towards her and I shift her around from him and bounced off Rohan again and told him to get out of the room. He went outside."*

7. The Defendant locked herself in the bathroom for a short while and then left the scene. The Police and ambulance were called.

8. The Complainant was taken to the Faith Hospital on Cayman Brac where he was hospitalized for three days. He was found by Dr. Dominic Akalonu to have sustained the following injuries:

i) A 3.5cm stab wound/laceration to the anterior triangle of the neck over the cricoid cartilage extending to the deep fascia.

ii) A 2cm deep laceration to the lateral aspect of the right index finger.

iii) A 1cm laceration to the left index finger.

iv) A 1cm superficial laceration of the abdominal wall.

The Doctor was of the opinion that the injuries were serious but not likely to be permanent and were consistent with infliction by a knife.

9. The Defendant was arrested and interviewed under caution. At the point of arrest she stated that the Complainant had held a knife to her throat as she refused to have sexual intercourse with him. She stated that a struggle developed between the two of them. They were struggling over a knife. She was unable to account for the injuries sustained by the Complainant.

Victim Impact Report (VIR)

10. A Victim Impact Report ("VIR") dated 19th June 2019 has been provided by the Department of Community Rehabilitation (DCR).

11. The VIR records that the Complainant explained that he and the Defendant had been together for some three (3) years. He said that the relationship changed from its initial happy state when he realized that she was seeing someone else. Over time they had verbal arguments. He said that as a result of the injuries he received, he had to stay home from work for three (3) weeks after he was released from hospital. He has made a full physical recovery from the wounds and has no physical disability as a result. He has total hospital bills of $2,329.17.

12. He described the emotional impact as being knocked off his feet, stressed out and traumatized. He said that he still feels the trauma and stress because he is scared and has trust issues with meeting new women. He is also worried given the size of the Island of Cayman Brac that no one will want to be with him because of this incident. He said that for weeks after the incident, he had difficulty sleeping and relived the incident over and over again.

13. With regard to sentencing he stated that he does not want the Defendant to receive a conviction, and that he is not seeking any money from her to help him pay his hospital bills; this despite the fact that his health insurance company has refused to cover the expenses because of the nature of the incident during which he sustained the injuries. He said that he does not want the Defendant to feel as if he is dependent on her and that she is paying for his bill. He said that he wishes to have no more contact with her ever. He further stated:

> *"I also would like the Court to inform the Jamaican Police that I do not want her to come in contact with me. If she is convicted, it will hang over me. I do not have the heart to see her go to jail. It is not because I love her or want to be with her again, I just don't have the heart to be the person that says she should go to prison. She has a young daughter. I hope the judge will understand how I feel."*
>
> *Out of the goodness of my heart because I am a caring person, I don't want her to be sentenced because I am already scarred, scarred for life, and her getting a sentence will only hurt me more."*

14. The DCR Officer concluded that there is a lasting impact on the victim resulting from the incident and that he is distraught, emotional and displays genuine symptoms of having been a victim who suffered substantial physical and psychological damage. The Officer provides suggestions for conditions of any supervision based sentence. Three of these five relate to non-contact with, and good behaviour towards, the Complainant.

Psychiatry Report

15. The VIR also recommended that the Defendant undergo psychiatric and psychological assessments. A Psychiatry Report dated 20th March 2020 has been provided by Dr. A. McGill of the Health Services Authority. Dr. McGill records that the Defendant was referred by the Court in order to determine her fitness to plead and whether there is evidence of a major psychiatric disorder, history of bizarre behavior and risk of recidivism. Upon mental status examination, Dr. McGill found the Defendant to be oriented in person, place and time. It was concluded that she did not display any evidence of a major psychiatric disorder and that there was no suggestion of unusual behavior or suicidal or self-harming behaviours. The evaluation found her fit to plead but suggested a psychological evaluation to determine any underlying personality problems, cognitive impairments as well as her risk of recidivism.

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Absence of Psychological Report

16. The sentence hearing was delayed to await the psychological report. On the date of this hearing it was still not available despite the Defendant having been interviewed by the Psychologist in January 2020. Defence Counsel indicated that in the light of the extensive delay in the matter and the personal circumstances of the Defendant, in particular, the fact that she is now some eight months pregnant, the Defendant was requesting that the sentence hearing proceed.

Social Inquiry Report (SIR)

17. The DCR has provided a Social Inquiry Report ("the SIR") which is dated 1st May 2020. This gives details of the Defendant's background and personal history.

18. She is 31 years of age with a date of birth of 5th January 1989. She has a 9 year old daughter who resides in Jamaica with a relative. She has been in the Cayman Islands for about five years to date. She lived and worked in Cayman Brac for some 4 years and while there was employed as a baby sitter. Following the offence she relocated to Grand Cayman and since May 2019 has been in a new relationship with another male who is the father of her unborn child. She has no history of offending behaviour. This is her first involvement in any offence.

19. The Probation Officer records having concerns as to the Defendant's mental health status during the interview with her. It was observed that the Defendant presented with a flat affect. She disclosed information without any emotion and often minimized the severity of details provided. She also significantly minimized the details of her relationship with the Complainant and the impact of the violent circumstances surrounding the offence and the aftermath. These concerns lead to the recommendation for psychiatric and psychological assessments. The Officer states that these concerns remain given the recommendation for a psychological assessment which is still outstanding.

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20. The Defendant was assessed using the LS/CMI/Risk/Need Assessment Tool. Her overall risk of re-offending was assessed as "Low". There is no evidence of any pattern of antisocial behaviours or belief systems although a psychological assessment would identify if personality features support underlying antisocial beliefs. She completed her secondary education and has had stable employment since entering the work force. She denied any history of use of illicit substances and reports infrequent use of alcohol. Under specific risk/need factors and client issues are listed immigration and parenting concerns.

21. The Officer states that the Defendant spent five months in custody following the offence and after release she was disallowed from returning to stable employment in the Brac and from living with her mother who has been residing in the Cayman Islands for an extended period. In the interim she has also been involved in a severe car accident on 6th July 2019 that resulted in a dislocated jaw, bruised chest and two days of hospitalization. She continues to experience symptoms from the accident to both her jaw and chest.

22. The Officer recommends that the Defendant receive a period of custody, suspension of that sentence, with supervision and specific conditions.

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United Kingdom Sentencing Counsel Definitive Guidelines

23. Both parties are agreed that in the absence of local guidelines which are specific to the offence of Unlawful Wounding, the United Kingdom Sentencing Counsel Guidelines may be of assistance. In the United Kingdom, the equivalent offence is contrary to s.20 of the ***Offences Against the Person Act*** 1861 and attracts a maximum sentence of five years. By s.204 of the ***Penal Code***, the maximum penalty for the offence in the Cayman Islands is imprisonment for seven years.

24. The relevant Guideline states:

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

25. The factors indicating greater harm are:

i) Injury which is serious in the context of the offence which should normally be present.

ii) Victim is particularly vulnerable because of personal circumstances.

iii) Sustained or repeated assault on the same victim.

26. Under the heading of factors indicating lesser harm is injury which is less serious in the context of the offence.

27. The factors indicating higher culpability include, in addition to statutory aggravating factors, other factors such as:

i) The use of a weapon or weapon equivalent.

ii) Intention to commit more serious harm than actually resulted from the offence.

iii) Deliberately causes more harm than is necessary for the commission of the offence.

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28. There is agreement between the parties that the harm was of a lesser nature given the nature of the injuries sustained by the Complainant. In addition to the Doctor's evidence, the Complainant described them to the Probation Officer in the following way:

> *"My neck was sliced, my finger was sliced from holding the knife and I had two stabs here (pointing towards his mid and lower abdomen)."*

29. While the injuries as described are serious, and have had significant traumatic and financial impact on the Complainant, there is no evidence that they were life threatening or of permanent effect. There was no element of incapacitation. This is clear from the evidence of the housemate. The Court concludes that these are not injuries which are

serious in the context of the offence. Additionally there is no reliable evidence that this was a sustained and repeated assault against the Complainant. The wounds to the hands resulted from the Complainant, holding on to the knife. The Defence submission is that additional injuries were incurred as a result of the struggle between them. The only clear evidence is of a single stab wound inflicted by the Defendant to the neck of the Complainant, at the start of the incident.

30. The Court concludes that these injuries are at the level of lesser harm.

31. There is disagreement between the parties as to the level of culpability. The Crown submits that with reference to the United Kingdom Sentencing Guidelines, this offence falls into Category 2 on the basis that this is an offence of lesser harm and *greater* culpability. The submission as to greater culpability is based on the fact that a weapon, a knife, was used.

32. Category two offences have a starting point of 1year and 6 months' imprisonment with a sentencing range of 1 to 3 years' custody.

33. Defence Counsel submits that this offence should be classified as a Category 3 offence reflecting lesser harm and *lower* culpability. Category 3 offences have a starting point of a high level community order with a range from a low level community order to 51 weeks in custody.

34. In support of this contention, Defence Counsel submits that the use of a knife is part and parcel of the offence and thus ought not to be relied on as a separate feature of the offence. Counsel stated:

> *"It is submitted that that approach would amount to a sort of double counting since the offence of wounding itself would require the use of a weapon. The fact that the complainant was wounded with a knife is part and parcel of the offence itself and isn't some separate aggravating feature. Indeed that sort of assessment should be reserved for those other types of offences which involve coercion or force with the use of weapons whether knives or guns in circumstances where it could be said that the presence of a weapon caused extra fear or apprehension to the victim and thereby made it aggravating. This is not that sort of offence nor is it that type of case."*

35. Counsel urges that this offence should attract no more than a community service order and credit for 5 months already served in custody if the maximum of 51 weeks' custody under Category 3 is accepted. Counsel further submits that this is the type of matter which may properly have been sent to the Domestic Violence Court where counselling and rehabilitation options may have been available.

36. In response to questions from the Court as to the detail of his submission on this point, in summary, Counsel stated that the offence could not be committed otherwise than with a weapon so that there should not be a separate accounting for the use of same.

37. It is difficult to accept the submission of Defence Counsel. The Guidelines specifically list a weapon as an aggravating factor indicating higher culpability. This is not an issue of double counting. It is clearly the case that a wound may be caused by means other than a weapon or weapon equivalent.

38. The Court concludes that the use of a knife in this case is a factor indicating higher culpability.

39. This case therefore falls within Category 2 of the Guidelines - lesser harm and higher culpability.

Submissions in Mitigation

40. Defence Counsel submits that the Defendant accepts her role in causing the injuries to the Complainant but asserts that it was never her intention to cause him any injuries. It is her position that the knife was first brought into play by the Complainant, that in the struggle, she got control of it. She accepts that having taken control of the knife, she should have left the premises but remained. In the course of the struggle, the argument escalated and the Complainant was injured.

41. Counsel also submits that the Defendant has previously led an incident-free life and is of good character. She entered a plea of guilty when the option first became available and should be treated as having entered an early guilty plea.

42. Counsel also submits that there has been some delay in this matter between the date of the offence, the date of her plea and the sentencing date. The plea was entered about one year ago. Had a short custodial sentence been imposed, the Defendant would already have been eligible for early release.

43. With respect to her personal circumstances, it is submitted that the Defendant is the sole means of support for her young daughter in Jamaica. She will face the prospect of not being able to renew her work permit in the Cayman Islands and possible deportation depending on the level of sentence which is imposed.

44. The Complainant and Defendant have separated and both have moved on with their lives. Thus the risk of a repetition of the incident is low. Counsel asks that the Court consider a sentence in which the Defendant is discharged unconditionally for a period that will

not cause further disruption to her life but will nonetheless reflect the seriousness of the offence. Counsel indicated that while the Defendant would be willing to undertake a period of Community Service, her present personal circumstances would not allow her to undertake this in the near future.

Assessment and Conclusions

45. 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.

46. In considering whether the custody threshold has been passed in this case, consideration has been given to the personal circumstances of the Defendant and to whether there is suitable community intervention which would provide a sufficient restriction by way of punishment while addressing rehabilitation issues. The serious nature of the offence is

an important factor. This is a matter of domestic violence involving the use of a weapon. The injuries were relatively serious and required hospitalization for three days. The level of psychological harm and the traumatic effect upon the victim are significant factors. In the Court's view, given the nature of the offending and all the circumstances, the custody threshold is passed in this case.

47. The applicable sentence range based on the United Kingdom Guidelines is 1 year to 3 years' custody with a starting point of 18 months' custody. This may be adjusted upwards given the higher maximum sentence in the Cayman Islands. Such adjustment was approved by the Court of Appeal in the case of ***R v Seth O'Neil Watler***.[1]

48. It is proposed that an adjusted starting point of 30 months be adopted in this case.

49. Under the Guidelines, the sentence may be increased from the starting point if there are factors present which increase seriousness. In this case, there are no factors increasing seriousness.

50. The Court has given consideration to all the submissions made and to all the Defendant's personal circumstances, including those detailed in the SIR. Under the heading factors reducing seriousness or reflecting personal mitigation the following are present in this case:

i) The Defendant has no previous convictions.

ii) The Defendant is of good character.

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[1] CICA 34/2017, judgment dated 25th April 2018

iii) There has been a significant lapse of time since the commission of the offence and following upon the plea of guilty. This is not the fault of the Defendant.

iv) The Defendant is the sole carer for her young daughter.

51. From the Report of the Probation Officer, it appears that the Defendant attempted to minimize her role in the incident. There is some remorse but it appears to be limited. Her previous good character is a significant factor in mitigation. Additionally she has already been impacted significantly by this matter having lost stable employment and has faced difficult circumstances since the offence. When all the factors are considered cumulatively in her favour, it is appropriate that the sentence be reduced from the starting point of 30 months to 15 months' custody.

52. Consideration has been given to the submissions of Counsel on behalf of the Defendant and to whether despite the custody threshold having been passed, it is unavoidable that a custodial sentence should be imposed. In the court's view there are significant circumstances in this case which suggest that a custodial sentence is avoidable. Any risk of a repetition is low. The parties have moved on with their lives. There is no pattern of offending behaviour on the part of the Defendant. The Court also takes into account the earnest plea of the Complainant made to the Probation Officer and in his withdrawal statement that the Defendant not go to Prison. In that statement he said that the Defendant helped him during the toughest point in his life and he will never forget her assistance to him. He stated:

> *"I want to give Mrs. Blackwood an opportunity with the hope that she takes this opportunity to change her life and make better decisions for her and her daughter. ...I learn to be forgiving and it is not in my heart to want a conviction against Mrs. Blackwood."*

53. The Court notes that the Defendant is about to become a mother for the second time and to take a new direction in her life. The Court considers that it is appropriate in all the circumstances of this case that any sentence of imprisonment passed upon her be suspended and that the foremost aim of any sentence which is passed, be her rehabilitation while still allowing for the other aims of sentencing of punishment and deterrence to be satisfied.

54. The Defendant is given full credit for her guilty plea, thus reducing the possible sentence from 15 months by one third.

55. Consequently, the sentence of 9 months' imprisonment is suspended for a period of two years with supervision and the conditions as recommended by the Probation Officer which are as follows:

(i) Completion of Interpersonal Relationship Enhancement Awareness Programme.

(ii) Completion of the Parenting course offered by the Family Resource Center.

(iii) Participation in the Female Empowerment session offered by the DCR.

(iv) Engagement in any intervention programmes recommended by the Psychological assessment when it is available.

(v) Completion of 60 hours of Community Service within 18 months of the date of this Order.

(vi) Adhere to all standard community supervision requirements including answering truthfully questions put to her and providing information of housing changes as well as travel plans.

(vii) Refrain from direct or indirect contact with Rohan Francis.

56. On the issue of restitution, the Complainant does not seek compensation in respect of his medical bills. While regard is given to his request, this Court would have been minded to order same in light of his difficult financial circumstances. His disposable income on a monthly basis after payment of his expenses is less than $300.00. However the Probation Officer notes that the Defendant is presently unemployed. She is dependent for financial support on her new partner and it is anticipated that she will have the care of her new born in the immediate future. There is nothing to suggest that she will have the means to make restitution. It would not be appropriate for payments of compensation to be ordered where a Defendant does not have the means to pay. (*See* ***R. v. Inwood***)[2]. Consequently the Court does not order compensation in this case.

Dated this 8th day of May 2020

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

[2] [1974] 60 Cr. App. R. 70.