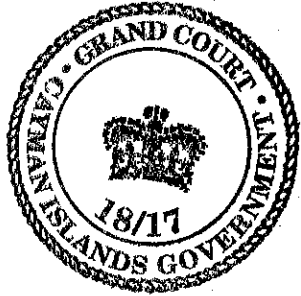


1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CRIMINAL SIDE



INDICTMENT NO: 80 of 2018

REGINA

-v-

RICHARD EDWARD NASH

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13 **Appearances:**

**Ms. Toyin Solako, Senior Crown Counsel,  
for the Crown**

**Mr. Crister Brady of Brady Law, Attorneys for  
Defendant**

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19 **Before:**

**Hon. Justice Marlene Carter (Actg.)**

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21 **Sentence Delivered:**

**6 November 2019**

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23 **HEADNOTE**

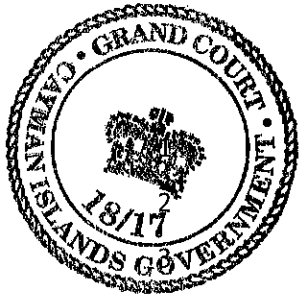
24 *Wounding; excessive self-defence*

25 **SENTENCE JUDGMENT**

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27 **Facts**

28 1. On the 29 October 2018 the Complainant received a message from the Defendant stating  
29 that he was outside Kelly's Bar and he wanted to see him. It appears that there had been  
30 a minor issue between the two men in May 2018. What happened when the complainant  
31 arrived at the Bar, the interaction between the two men, was captured on CCTV.

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33 i. The Complainant is seen to arrive in his vehicle;



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- ii. The Defendant is stood outside Kelly's Bar;
- iii. The Complainant approaches the Defendant and there appears to be a short scuffle during which the complainant appears to be the aggressor;
- iv. The Complainant is seen to run away from the Defendant;
- v. As he runs the Complainant slips, at which point the Defendant is seen to attack the Complainant;
- vi. A weapon is clearly visible in the Defendant's hand;
- vii. The Defendant is clearly seen to stab the Complainant at least once with the weapon;
- viii. The Complainant is then seen getting in his car and driving away.

2. As a result of this attack the Complainant sustained the following injuries;

- i. Penetrated wound 2 x 2 to the chest;
- ii. Penetrated wound to the left upper forearm; and
- iii. Penetrated wound 2 cm x 1 cm to the left ankle.

3. The Defendant stated that he used a screwdriver, which he had in his possession because he had been working on the morning of the incident, to defend himself. I have reviewed the medical evidence. The wounds to the upper forearm and the wound to the abdomen were all noted to be '*v-shaped lacerations*' which I accept support the Defendant's account that the weapon was a screwdriver.

4. The Defendant was arrested on the 1 November 2018 and later interviewed. During the interview he admitted that he had had an altercation with the Complainant. He further added that the Complainant had attacked him and that he was defending himself.

5. On the 25<sup>th</sup> April 2019 Richard Edward Nash pleaded guilty to wounding contrary to Section 204 of the *Penal Code 2018 Revision*. The trial in this matter was due to have commenced on the 23<sup>rd</sup> April 2019.

1 The Law

2

3 6. The maximum sentencing for the offence of Wounding is seven (7) years imprisonment.

4

5 7. The equivalent offence in the UK is Grievous Bodily Harm with Intent contrary to  
6 section 20 of the Offences Against the Person Act 1861. This offence also carries the  
7 maximum sentence of seven (7) years imprisonment.

8

9 8. The Chief Justice of the Cayman Islands issued new sentencing Guidelines in October  
10 2015. Although there is not yet any specific guidance on this offence, the Court is  
11 assisted in terms of culpability, harm and aggravating factors.

12

13 9. The Crown submitted that, based on the following factors, this offence should be viewed  
14 as a category 1/2 offence: category 1 harm and category 2 culpability. These factors are:

- 16 i. The serious injury caused to the Complainant;
- 17 ii. The use of a weapon by the Defendant to commit the offence; and
- 18 iii. The intention to cause more serious harm than actually resulted from the  
19 offence.



20

21 10. For the Defendant, counsel agreed that the harm caused is not small, however he  
22 submitted that there are factors present that should indicate lower culpability which  
23 should lead the court to consider the offence at a very low Category 2 or a Category 3.

24

25 11. With regard to culpability the Crown's submission is: *"notwithstanding any act of*  
26 *aggression on the part of the Complainant, he was running away and then tripped when*  
27 *he was stabbed. He is seen lying on his back with his hands up in a defensive gesture*  
28 *when he was stabbed."* For this reason the prosecution submits that this is a case of the  
29 use of force which was unreasonable in the circumstances.

30

31 12. Counsel for the defendant asked the court to consider that the Complainant had assaulted  
32 the Defendant first by hitting him in the face and had held him in a headlock when he

1 first approached the defendant. Counsel drew to the court's attention that the crown's  
2 trial bundle revealed several statements from witnesses who were *approached by the*  
3 *complainant demanding the whereabouts of the Defendant.* The defendant's contention  
4 is that he was expecting an attack and would have been entitled to defend himself for an  
5 impending attack.

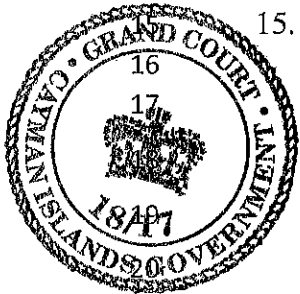
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7 13. Counsel stated that the defendant has fully accepted that he went a step too far on the  
8 date of the incident in defending himself.

9  
10 14. As a Category 1 / 2 offence, the starting point is between 1 year 6 months custody to 3  
11 years custody with a sentencing range of 1 – 4 years imprisonment. The range for a  
12 category 3 offence is a high level community order to 51 weeks custody.

13  
14 **Aggravating factors:**

15. I find the following to be the aggravating factors present:

- a. The use of a weapon to commit the offence;
- b. That the attack on the complainant took place whilst the complainant was on the ground, after the initial scuffle.



21 **Mitigating Factors:**

22 16. I find the following to be the relevant mitigating factors:

- a. The degree of provocation;
- b. The offence resulted from excessive self-defence;
- c. The defendant's relatively young age – the defendant is now 23 years old;
- d. The defendant's good character, the defendant has no previous convictions;
- e. The defendant has accepted responsibility for his actions and entered an early guilty plea, thereby obviating the need for a trial.

1     **The Social Inquiry Report (“SIR”)**



2     17.     The defendant grew up on Jamaica. He related to the probation officer that he had a  
3     happy childhood. He moved to the Cayman Islands in 2017 as his brother and father are  
4     both working here. He has worked as a sales associate and a gardener. He is married  
5     although he and his wife do not reside together and he has another partner.

6     The defendant stated to the probation officer that he had no intention to hurt or injure the  
7     complainant prior to the incident. His attitude is noteworthy: *“After trying to tell him to  
8     stay away from me what are your going to do?...you can’t take a chance with such a man  
9     as where are you going to hide?”* The defendant maintained that he acted in self-defence  
10    in stabbing the complainant, but it was because the complainant had said to him he was  
11    going to his car to get his gun. The Probation officer assessed the defendant as having a  
12    “high” overall risk of re-offending.  
13

14

15    **The Victim Impact Report (“VIR”)**

16    19.     The complainant is a 39 year old man who worked as a truck driver at the time of the  
17    incident. The VIR noted the complainant’s version of what had occurred.

18           *“When I got there I got out of the car. We started fighting. I had him in a  
19           choke hold and then I felt a stab in my right side. I eased off and started  
20           running. He chased me and stabbed me on my left arm. I tripped and fell  
21           and started using my foot to kick, he stabbed me on my left ankle.”*

22    20.     The VIR related the impact that this offence has had on the complainant:

23           *“I was admitted to hospital for a total of 5 days. I underwent a total of 3  
24           surgeries. The doctors said that I was lucky to be alive. For weeks after  
25           the incident my body was full of blood clots. I have several scars from the  
26           stab wounds which I received.”*

27           .....



*“Can’t really be on my foot that long; it still hurts me. I can’t do much with it (leg), can’t run or stoop down like how I used to.”*

3 21. Apart from these matters the complainant, through the probation officer, produced  
4 medical bills that amount to CI\$25,257.02.

5

6 **Mitigation**

7

8 22. On behalf of the defendant, counsel submits that the defendant has had time to reflect on  
9 the incident. He regrets it entirely and wishes he had gone to the police or taken more  
10 extreme steps to avoid the complainant. Defence counsel asks the Court to consider  
11 whether in all the circumstances this court should impose a suspended sentence.

12

13 **Court’s Conclusions**

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15 23. The defendant is a young man. He is twenty three years old. Both he and the  
16 complainant were known to each other before this incident. They appeared to be friendly  
17 acquaintances. The issue between them arose out of an incident in May 2018. It is  
18 unfortunate that what may have been a misunderstanding has resulted in this matter now  
19 before the Court. Both parties could have exercised better judgment.

20

21 24. In any event, they did not, and the result is that the complainant has been seriously  
22 injured and the defendant now faces a sentence for injuring him.

23

24 25. I find that this offence is at Category 1 harm, Category 2 culpability offence. It is at the  
25 lower end of Category 2 for culpability, reflecting the actions of the complainant in  
26 initiating the scuffle and because it is accepted that this is a case of excessive self-  
27 defence. The sentence range is 1-4 years imprisonment with a starting point of 18  
28 months custody. I take as my starting point a sentence of 18 months custody.

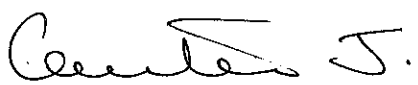
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30 26. I note that the defendant has no means by which to assist with the complainant’s  
31 considerable medical bills. I will therefore make no order for compensation.

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27. I discount this starting point by 3 months to reflect the mitigating factors identified above. The mitigating factors outweigh the aggravating factors here. I will further discount the sentence by 30 percent to reflect the defendant's guilty plea. The guilty plea was not made at the first opportunity. It was entered after the first trial date had already passed.

28. The appropriate sentence of the court is 10 ½ months imprisonment. I have gone on to consider whether in the circumstances of this case a suspended sentence should be imposed. I have noted the defendant's age, his good character and lack of previous convictions. The fact that the evidence supports the defendant having used a screwdriver, a work tool, and not a knife or bladed weapon to defend himself, is a relevant consideration as are the actions of the complainant and his contribution to this incident. Taking all of these matters into account, I am satisfied that a suspended sentence is appropriate. The sentence of the court 10 ½ months imprisonment, such term to be suspended for a period of two years. The defendant's immigration status is unclear. I therefore decline to make supervised suspended sentence order.

  
Justice Marlene Carter  
Acting Judge of the Grand Court

