

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

3
4 INDICTMENT NO: 0083/2017

5
6 THE QUEEN

7
8 v.

9
10 SETH O'NEIL WATLER



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14 **Appearances:**

Ms. Candia James for the Crown

15
16 Mr. Jonathon Hughes for the Defendant

17 **Before:**

Justice Marlene Carter (Actg.)

18 **Sentence Hearing:**

8th December 2017

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20 **Delivery of Decision:**

13th December 2017

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23 **HEADNOTE**

24 *Criminal Law – Inflicting GBH – Sentence – Offence committed against a*
25 *serving police officer acting in the proper execution of his duty – Starting point –*
26 *Aggravating and Mitigating Factors.*
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SENTENCE JUDGMENT

3 1. The Defendant has entered a plea of Guilty to the offence of Inflicting Grievous
4 Bodily Harm contrary to s.204 of the Penal Code. The facts which form the basis of the
5 defendant's plea to the offence are agreed as follows.

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THE FACTS

7 2. On the evening of Saturday, 14th October 2017, at about 9:30 p.m., Detective
8 Superintendent Lansdowne was in full uniform in an unmarked police vehicle when he
9 came across a one-vehicle collision at the Island Heritage roundabout on the Esterley
10 Tibbetts Highway. The officer identified himself to the Defendant, who was the driver
11 of the vehicle. The Defendant said to the officer "*What's this got to do with you, red*
12 *stripe?*" and walked away. Superintendent Lansdowne said to the Defendant that he
13 could smell liquor on the Defendant and explained that he would have to provide a
14 specimen of breath as he had been driving and was involved in a collision. The
15 Defendant told the officer to "*F--- off*" and continued walking away.

16 3. The defendant's friend, Jason Woods, intervened and threatened to shoot the officer
17 and burn his house down. Fearing for his safety, the officer called 911 and requested
18 assistance.

19 4. Other officers soon arrived on the scene. PC Harris managed to calm the situation
20 down and began explaining the roadside breath test procedure to the Defendant.
21 Without warning, the Defendant said: "*You know what, I can't take this shit anymore,*"
22 and ran towards Superintendent Lansdowne and punched him in the face. The officer
23 fell to the ground and lost consciousness. He was bleeding from the back of his head
24 and mouth. The defendant was immediately arrested and detained.

SUBMISSIONS

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2 10. At the mitigation hearing, the sentencing hearing, Crown counsel referred to the UK
3 Sentencing Council Guidelines, the Definitive Guidelines for Assault, GBH,
4 Wounding and for Inflicting grievous bodily harm. Counsel for the prosecution and the
5 defense agree that the court should find these guidelines helpful as there is, at present,
6 no local tariff guidelines for offences of this type. In the UK, the maximum sentence
7 for inflicting grievous bodily harm is five years, whereas in the Cayman Islands the
8 maximum sentence is seven years.

9 11. Crown counsel submitted to this court that the Court should view this offence as a
10 Category 2 offence on those guidelines of greater harm and lower culpability, with a
11 starting point of one year and six months' custody for a defendant who pleads guilty
12 and has no previous convictions. Crown counsel invited the court to find that the injury
13 which the Complainant suffered was serious in the context of the offence. She accepted
14 that a lack of premeditation indicated lower culpability. For these reasons, the Crown
15 submitted that the starting point for this offence was one year and six months' custody
16 with a custody range of one to three years.

17 12. Counsel for the accused disagreed with the categorization suggested by the Crown and
18 instead, submitted that the offence should fall within Category 3 of lesser harm and
19 lesser culpability.



1 13. Defense counsel referred the court to the case of *R. v. Smith*¹, which was concerned
2 with the court's categorization of an offence of wounding with intent. In that case, the
3 Court noted that the words "*which is serious*" in the context of the offence were set out
4 in the guidelines in order to distinguish between, on the one hand, the level of violence
5 which is inherent or on par in a standard s.18 offence and, on the other hand, that
6 which would go beyond what may be viewed as par for the course.

7 *ANALYSIS AND CONCLUSION*

8 14. Of course, the Court is mindful that it is not a s.18 offence, but actually an offence
9 under s.204 of our Penal Code. However, it is my view that the principles are
10 applicable. Where the injuries that have been noted are not so much directly connected
11 with the level of violence, as the effects of the Complainant having fallen and hit his
12 head from the single blow delivered by the Defendant, I find that it should be classified
13 as constituting lesser harm.

14 15. I note as well the case of *R. v. Alexander Chesley Brown*², one of the authorities
15 submitted by the Crown, where the Appellant had thrown a bottle and struck the
16 complainant to the back of his head causing lacerations. The Defendant then proceeded
17 to pick up a rock or brick and hit the complainant more than once in the face, causing
18 multiple serious facial fractures to the upper dural nasal bone and eye socket, and then
19 he also cut the complainant with a machete. The injuries to the complainant's face in
20 that case necessitated 27 stitches, however, the Cayman Islands Court of Appeal
21 (CICA) did not interfere with the trial judge's finding that these constituted lesser
22 harm.

¹ [2015] EWCA Crim 1482; [2016] 1 Cr. App. R. (S.) 8
² CICA 13/2016



1 16. I find, therefore, that the case now before me, is a Category 3 offence of lesser harm
2 and lesser culpability.

3 17. I, therefore, take as a starting point a high-level Community Service Order (CSO) with
4 a range up to 51 weeks' custody – with a necessary uplift to reflect the difference in
5 maximum sentences between this jurisdiction and the UK. My starting point is,
6 therefore, 12 months' custody, with a range of 9 months up to two years' custody.

7 18. Having found the category range, the Court must also be mindful to identify whether
8 there are any other factual elements, or combination of those, which are also relevant
9 and which could result in an upward or downward adjustment from the starting point.
10 In this regard, there are four factors which reflect personal mitigation and can be
11 considered to reduce the seriousness.

12 19. The mitigating factors are:

- 13 i. The defendant has no previous convictions;
- 14 ii. It is accepted that it was a single blow to the complainant;
- 15 iii. The remorse shown by the Defendant; and,
- 16 iv. To a lesser extent, the good character reflected in the many character references
17 which have been presented to this court on the defendant's behalf.

18 20. I weigh against those factors the important counterbalance that this was an offence
19 which had been committed against a serving police officer acting in the service of the
20 public and in the proper execution of his duty.



1 21. In *Duane Bodden v. R*³, Rix JA observed:

2 *“Police officers in this island, as elsewhere, are entitled to go about their difficult*
3 *responsibilities, for which they deserve the highest praise, and in respect of which*
4 *they deserve protection from this sort of behaviour, insults and threats.”*

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6 22. I note, however, that the court was, in that case, concerned with threatening violence
7 against a police officer. Of course, in a case such the one before me, I do think that the
8 comments are relevant, and this court cannot agree more with those comments. The
9 Defendant's behaviour was disrespectful and unjustified and exhibited a flagrant
10 disregard for the Complainant's authority.

11 23. I have already addressed the ongoing nature of the Complainant's injuries above. It
12 does appear that, although they are serious, there is nothing to suggest that the
13 Complainant will not make a recovery in the fullness of time.

14 24. This Court has always to balance the circumstances of the offender with the
15 punishment that is to be imposed for an offence.

16 25. I have had sight of the very useful Social Inquiry Report (SIR) and, as well, the Victim
17 Impact Report (VIR) which have been submitted for the court. I have also had sight of
18 the many character references which have been proffered on behalf of the Defendant. I
19 note that they come from a wide cross-section of the society and they all attest to the
20 positive qualities and characteristics of the Defendant that these persons have
21 encountered in their interactions with him — in most instances, over many years.

³ CICA 5/15



1 26. The Defendant is a 25-year-old man of previous good character. He entered his guilty
2 plea at his first appearance in the Grand Court. I accept that he has shown genuine
3 remorse with regard to this offence.

4 27. I find, and both the Crown and the defense accept that the custody threshold has been
5 passed in this case. In circumstances where a member of the public shows such blatant
6 disregard for the authority of the police a custodial sentence should be imposed.

7 28. However, I go onto consider whether that sentence can be suspended. In the
8 circumstances of this case and this offender, I find that the sentence should be
9 suspended.

10 29. I, therefore, take as my starting point a sentence of 15 months' custody. The sentence
11 will be discounted by one third to mark the early guilty plea proffered by the
12 Defendant at his arraignment.

13 30. The sentence of this court is 10 months' imprisonment.

14 31. The sentence will be suspended for a period of two years. During this period, the
15 defendant shall attend anger management courses as directed by the Department of
16 Community Rehabilitation (DCR) and be required to undertake 100 hours of
17 community service under the supervision of the DCR.

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1 32. Mr. Seth Watler: It is to your credit that you have lived for 25 years, have never
2 appeared before this court and have never been involved in any matter which could
3 have caused much concern. The court does not usually see persons such as yourself
4 appear before the courts. I say to you this: My mother would say to me that there is
5 always one unguarded moment. This has been your unguarded moment. I hope you
6 recognise and understand that you could have been standing before me for a much
7 more serious offence and one in which I would have had no discretion as to what
8 would be your sentence. Please, take the opportunity that the court has afforded you
9 today. It has also come about as a result of what you have done so far and the persons
10 who consider that you do deserve a chance. I take your offence as a single unguarded
11 moment.

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13 **Dated this the 13th December 2017**

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16 **Mme. Justice Marlene Carter**
17 **Acting Judge of the Grand Court**



