

THE QUEEN

V

MAURICE DAVID JACKSON



Appearances:

Ms. Nicole Petit for the Crown

Ms. Prathna Bodden for the Defendant

Before:

The Hon. Mr. Justice Timothy Owen Q.C.

Submissions heard:

26th July 2016



SENTENCE RULING

1. Maurice David Jackson, you have pleaded guilty to count 3 on the amended Indictment which is a charge of inflicting grievous bodily harm contrary to s.204 of the Penal Code (2013 Revision). The offence occurred on 20th April 2016 in an incident that took place at 121 Lariat Road, North Side and the victim of your violence was a man called Fernando Thompson.
2. You were originally charged on count 1 with the attempted murder of Mr Thompson and, in the alternative, with causing grievous bodily harm with intent to him. But in view of your willingness to plead guilty to Count 3, the Crown elected to offer no evidence on those more serious allegations – plainly influenced by the potential difficulty in proving intent to the necessary standard in light of the evidence of your intoxication.

You therefore fall to be sentenced on the basis that your conduct at the time lacked the relevant specific intent to do grievous bodily harm which would have constituted the offence contrary to s.203 of the Penal Code.

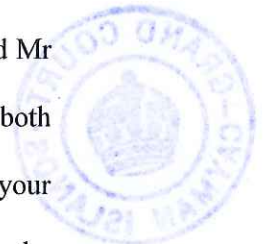
3. Upon arraignment on the original Indictment on 23rd June 2016, you entered pleas of not guilty to both counts and, accordingly, the case was listed for trial before me on 25th July 2016.
4. In an initial, very brief, statement following your arrest on 5th May, you stated that you had acted in self-defence and had nothing further to say. However you indicated in the course of last week via your solicitor that you would plead guilty to a lesser charge of inflicting grievous bodily harm and, in view of that indication, together with the speed with which this case has come to trial, and the fact that the prosecution only agreed to accept that plea yesterday morning having revisited its initial assessment, I accept that it is right and proper that you be given a full one-third discount on what would otherwise have been the sentence imposed.
5. I asked Ms. Bodden whether she wished the Court to adjourn in order to obtain a Social Inquiry Report but she made clear that she did not seek a report – preferring instead to proceed immediately to sentencing. I therefore do not have a detailed account of your life to date, but it has not been suggested to me by either Counsel that such is necessary in order fairly to determine the proper sentence. Both Counsel, to whom I am grateful, have assisted the Court with clear submissions on the issue of sentence and Ms. Petit's very helpful Sentencing Note has identified the relevant sentencing guidelines.

PREVIOUS CONVICTIONS

6. The Antecedents Form reveals that you have a total of eight (8) previous convictions for theft, failing to surrender to custody, numerous drug offences (ganja and hash oil) together with a conviction for common assault and one for damage to property. For all these offences you received a sentence of community service. It is clear therefore that although you are far from being a person of good character, your appearance before the Court today is the first occasion on which you have been convicted of an offence of serious violence. That is a matter I will of course take into account in determining sentence.

THE PROPER FACTUAL BASIS FOR SENTENCE

7. The available evidence may be summarized as follows. On the 20th April 2016, you and Fernando Thompson were in a yard at 121 Lariat Road, North Side together with a number of other persons. You were playing dominoes and both you and Mr Thompson had been drinking, probably for many hours. I find that you were both drunk at the relevant time – you especially so, in view of the description of your physical state contained in the statement of Ms. Janelle Johnson. At about 4pm, the domino game ended and a witness called Eatton Brown describes you as being angry at that point and throwing insults. Mr Brown also describes hearing an argument involving you and Mr Thompson which culminated in you threatening Mr Thompson armed with a glass bottle in each hand. On that occasion however, you were disarmed by Mr Brown's brother, a man called Lorenzo Wright, and it seems that you and Mr Thompson went your separate ways for a while before both of you were together again in the Lariat Rd yard at about 7 p.m.



8. How the incident that ended with grievous injuries being inflicted upon Mr Thompson actually began is not clear from the eye witness accounts the police were able to gather.

According to Mr Thompson, when he returned to the yard at 121 Lariat Road, he sat down and continued drinking with as many as 5 people when, all of a sudden, he saw you approaching him with a large knife in a sheath. He says he feared for his life and went to grab the knife you were holding which caused the sheath to come off. He says he dropped the sheath and started to run away but that you ran after him and managed to stab him 4 times before he passed out on the roadside.

It is right to say however that the other evidence tends fundamentally to contradict Mr Thompson's account, in that, Mr Brown and a man called Presley Whittaker – both of whom were present when the assault occurred according to Mr Thompson – deny witnessing the attack.

Ms. Johnson's statement contains a description of her seeing you being held in a headlock by Mr Thompson after a physical fight had broken out between the two of you and shortly before you stabbed him.

9. The fact that both you and Mr Thompson were drunk obviously means that obtaining a reliable account of what happened is now impossible and that is something I must take into account when deciding the proper factual basis for sentence. You are entitled to be sentenced on the basis most favourable to you albeit that the key factor in this case is the use of a knife on an unarmed man.



10. What is clear is that however this incident began, it ended up with Mr Thompson having sustained two very serious injuries. One was a laceration to the left thigh that was 4cm wide and 15cm deep, and, the other, a laceration to the left buttock that was approximately 4cm wide and 20cm deep. You suffered no injury whatsoever. It is also clear that at some stage, you armed yourself with a deadly weapon in the form of a knife and that you used it with force against Mr Thompson in circumstances where he was unarmed at all times. It follows that however this incident began and who could be said to have initiated the confrontation, you bear full responsibility for the fact that Mr Thompson sustained life threatening injuries and that it is only because of the exceptional skills of the medical staff that he did not die from them.

11. The most recent medical evidence is in the form of an email dated 25th July from Dr. Robin Windhaber, who is a Vascular and General Surgeon with the Cayman Islands Health Services Authority. He stated as follows:

“As you are aware from my previous statement, Mr Thompson sustained life threatening injuries on 20th April 2016. His injuries can be summarized as follows:

- a) Wound to the left thigh with no major arterial, venous or nerve injury identified.*
- b) Wound to left buttock – injuring iliac artery and vein and sciatic and Gluteal nerves.*
- c) The second wound was the life threatening injury. This led to a total transfusion of 20 units of packed blood cells. An adult male has a circulating volume of about 6l or equivalent to approximately 6 units of packed cells.*



- d) *The required 3 separate operations just to control the bleeding and the blood loss caused major organ failure. Both myself and my colleagues thought at the time he had a lower than 50% chance of survival. He has done exceptionally well.*
- e) *His long term prognosis remains unclear.*
- f) *He has mostly recovered from the organ and respiratory failure caused by the massive blood loss and transfusion. Because of the limitation on walking caused by his leg it is unclear how far he could walk before becoming short of breath.*
- g) *It is unclear if his nerve injury will recover. If this does not recover then he will be at significant risk of amputation in the future due to neuropathic ulceration of his foot (a problem caused by numbness in the foot that leads to pressure injury).*
- h) *He may never be able to walk normally. He has significant weakness in his buttock wounds and paralysis of all the muscles that control the foot and ankle. This will lead to long term foot changes of the type seen in diabetic changes with severe neuropathy.*
- i) *His iliac artery and vein remain occluded (blocked) and will almost certainly require surgery to bypass these. Bypass operations do not last forever (typically 10-20 years) and if this blocks he may well lose his leg. Bypass of this type carries an approximately 5% mortality rate.*
- j) *We will not know what recovery the nerve will make for another 6-12 months”*



MITIGATION

12. Ms. Bodden has submitted to me that you have expressed remorse and concern for Mr Thompson's health and I accept that that is genuine on your part - notwithstanding the fact that after the incident you fled the scene and did not surrender to custody for some time. Ms. Bodden makes the point that what happened on 20th April 2016 was out of character and I accept that also in light of your antecedents. There is before me a letter dated 8th June 2016 from your former employer, Dwayne Seymour, which expresses very positive views about your qualities and I accept what he has to say about the person he knew.
13. You are a young man, still only 23, you are married and you have a son aged 4. Your appearance today before this court is plainly something which will have a severe impact on your family as it is inevitable that a custodial sentence must be passed - with all the consequences that will have you for both you and them. It is obvious, even on the limited information before this Court, that you have a serious alcohol problem and that your drinking to excess was almost certainly the decisive factor behind your criminal, and potentially, deadly, attack on an unarmed man. It must be hoped that while you are in prison you will be able to reflect on the consequences of your problem with alcohol and emerge a better and stronger man.



SENTENCING GUIDELINES AND RELEVANT AUTHORITIES

14. I take into account that the *Chief Justice's Statement on Tariffs and Guidelines for Sentencing of Certain Offences*, dated 16th January 2002, recommended an amendment to the Penal Code to create two categories of offences – with the offence of inflicting grievous bodily harm *simpliciter* attracting a maximum sentence of 5 years in line with the statutory maximum of 5 years in the UK for the offence contrary to s.20 of the Offences Against the Person Act 1861. However the statutory maximum pursuant to s.204 of the Amended Penal Code is in fact 7 years rather than 5, and this must also be borne in mind when considering the relevant Guidelines issued by the UK Sentencing Council governing offences of violence against the person.

15. Applying the approach of determining the offence category with a view to identifying the appropriate starting point and category range for the criminal conduct which has been proved, Ms. Petit has urged upon me that this is plainly a Category 1 case (greater harm and higher culpability). Ms. Bodden submits that it is properly to be described as a Category 2 case (greater harm and lower culpability) in view of the lack of premeditation – albeit she acknowledges that it must fall at the very top end of Category 2. As I observed in the course of submissions, the guidelines and the approach to categorization of an offence do not place the Court in a straitjacket and a sensible, realistic approach must be maintained while seeking to maintain the principles of fairness and consistency.



16. In my view, the overwhelmingly relevant factors in this case are the use of a long bladed knife and the exceptionally grave, indeed life threatening, injuries that were inflicted on an unarmed man – albeit that these must be approached on the basis that you lacked specific intent to cause grievous bodily harm. I therefore accept Ms. Petit’s submission that this offence of wounding must, in all the circumstances, be approached as coming right at the top in terms of any assessment of gravity. The correct starting point is therefore one of 3 years with a category range of 2 years 6 months to 4 years in custody as befits a Category 1 offence under the UK Guidelines.
17. I have considered the Cayman Islands Court of Appeal (CICA) authorities of *Alvin Brown*¹ and *Gail Ross*² together with the UK authorities of *McGhee*³ and *Kee*⁴ but, of course, these cases are all fact specific and do not provide the Court with more specific guidance than is to be found in the relevant UK sentencing guidelines. The case of *Alvin Brown* is perhaps of greatest assistance in terms of the gravity of the harm caused, albeit not involving the use of a weapon. In relation to the UK authorities, as I have already observed, the statutory maximum for the offence of unlawful wounding in England and Wales is lower than in the Cayman Islands.
18. The factors that increase seriousness in this case are the continuing impact on Mr Thompson (as described in the recent medical assessment) and the fact that you, Maurice Jackson, were heavily intoxicated by alcohol at the time of the offence.

¹ (Appeal No 30 of 2008)

² (Appeal No 24 of 2010)

³ (2008) 2 Cr App R (S) 53

⁴ (2010) 1 Cr App R (s) 45



19. The mitigating factors are your relative youth, the fact that you have no previous conviction for an offence of serious violence and that you have expressed remorse for your actions.
20. Ms. Petit has submitted that when the aggravating factors are balanced against any mitigating factors this should result in an upward adjustment from a starting point of 3 years to a sentence in the vicinity of 6 years. In my view, that is too great an increase. A more appropriate sentence for this crime is one of five and half years. Having applied the full one-third discount for your plea of guilty, the sentence is accordingly one of 3 years and 8 months (44 months) - to run from the date of conviction, with time spent in custody before conviction to be taken into account.
21. I do not consider it appropriate in the circumstances to make an order for compensation.

Dated this the 27th day of July 2016



**Honourable Mr. Justice Timothy Owen Q.C. (Actg.)
Acting Judge of the Grand Court**

