

**IN THE CAYMAN ISLANDS COURT OF APPEAL**

**CACR005/2015  
IND 63/14  
#03536/2014**

**BETWEEN:**

**Duane Bodden**

**APPELLANT**

**and**

**HER MAJESTY THE QUEEN**

**RESPONDENT**

**BEFORE:**

**The Rt Hon Sir Bernard Rix, Justice of Appeal  
The Hon Sir Richard Field, Justice of Appeal  
The Rt Hon Sir Alan Moses, Justice of Appeal**

**Appearances:** Crister Brady of Brady Law for the Appellant and Candia James for the Director of Public Prosecutions.

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**JUDGMENT**

**Revised from transcript of oral judgment 16 November 2015 and Approved  
Released 13 January 2017**

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MOSES, JA (Orally)

1. This is an appeal against a total sentence of four years and four months in respect of two offences to which the appellant pleaded guilty on the 27th of January 2015. The first offence was one of wounding, for which he was sentenced by the trial judge to three years' imprisonment, and the second offence was a threat to kill directed against a police officer. So for that he received 16 months' sentence, and it is that consecutive sentence of 16 months on which the appeal is mainly focused.
2. The appellant was in the vicinity of Bodden Road and Cruz Lane in George Town in the early hours of the 10th of July 2014 when he launched an unprovoked attack on a totally innocent man, a Mr. Connolly, after approaching to ask for money or cigarettes. The appellant was drunk. He then punched Mr. Connolly on the left side of his mouth. There was a struggle during which the victim was cut on his wrist. The appellant then cornered him, said this is my island, punched him again in the right eye and said he was going to kill him. He had a knife in his right hand and held it in a terrifying manner against the left side of the victim's neck where he stabbed him. He was swearing and threatening Mr. Connolly so that Mr. Connolly was in great fear for his life.

3. We find it strange and merciful that this man was not charged with wounding with intent. Indeed we were somewhat surprised that the lesser offence was proceeded with. But we don't know the explanation for that because we didn't ask.
4. By good chance and fortune a police car arrived and two police officers on mobile patrol were able to approach while this appellant was still shouting at his victim. The victim was understandably frightened, and as the police approached, the appellant threw a black handled ratchet knife to the ground.
5. It was then when he was being detained that the second offence took place. The appellant suddenly became aggressive to one of the police officers, PC Borden, saying, "You fucking pan head Jamaican, go suck out your mother. I go kill you and your family." He was very drunk.
6. The victim was taken off to hospital after they had managed to restrain this appellant and had four wounds on his right forearm, left eyebrow, left neck and to his left wrist.
7. This appellant was subsequently interviewed. He is a man with a bad record, with very large number of offences, some 20 in all, that include robbery, assault occasioning actual bodily harm, and he has received sentences of two years in the past and one year, as well as lesser sentences. The longest sentence he has received is one of two and a half years.
8. In our judgment, there was nothing wrong with the sentence of three years, and we have already commented on the fact that it might have been a much more serious offence that this appellant faced. The real question is whether 16 months was an appropriate consecutive sentence.
9. The sentence was based by the judge on a case called *R v Zaheer Akbar Choudhury 1997* 2 Cr. App. R. (S.), in the United Kingdom, that is at p. 300. In that case, the sentence for threatening to kill a police officer was reduced from three years to two years. The threat against the police officers in that case was in similar terms to the threat in this case, but it is of significance that it appears to have been the culmination of a dispute between the officer and the appellant Choudhury because they had known each other. They both came from the same ethnic background, and the language spoken by the appellant in that case was calculated to be understood by that particular police officer and that particular police officer alone since it was in Punjabi. In our judgment, that was, therefore, not a case of a similar drunken outburst against the police but rather a focused threat deriving from, in part at least, the previous history between that appellant and the policeman.
10. We desire to underline that this was a serious offence in addition to the offence of wounding that amply merited a further period of consecutive imprisonment. Moreover, underlying it was plainly a threat to that particular police officer and expressed the unlawful racial dislike of this appellant focused on that particular police officer. Nonetheless, we accept it was a drunken outburst part and parcel of the wholly unjustified violent attack on the innocent victim.

11. Police officers in this island, as elsewhere, are entitled to go about their difficult responsibilities, disarming in this case the wrestling a violent drunken man armed with a knife, for which they deserve the highest praise and in respect of which they deserve protection from this sort of behaviour, insult and threats. The behaviour did justify a substantial prison sentence. However, we have to look at the totality of the sentence, and in our judgment the totality of four years four months, having regard to this drunken outburst, was too high and manifestly excessive. We think that the behaviour of this appellant towards that police officer could be properly met by a consecutive sentence of imprisonment reduced from 16 months to nine months, making a total of three years nine months in all. To that limited extent, this appeal is allowed.
  
12. RIX, JA: Thank you. The appeal is allowed to the extent of reducing the total sentence to one of three years nine months. The three-year sentence for wounding remains as it is before but the consecutive sentence of 16 months for threats to kill a police officer is reduced to a consecutive sentence of nine months, making a total of three years and nine months.

Field JA

Moses JA