

EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)

Criminal Case No. 24 of 2022

BETWEEN:

THE KING

And

ESWORT BARNWELL

Prisoner

Appearances: Ms. Andrea Johnson, Senior Crown Counsel for the Crown
Ms. Ruthilia Maximea, Counsel for the Prisoner

2025: March 25th

SENTENCING

[1] **TEELUCKSINGH J.: *A family fractured physically and psychologically by acts of domestic violence, seldom heals.*** This case is about a man who in a drunken state, slashed his step daughter's face and repeatedly struck his wife with a machete.

[2] On an Indictment filed by the learned Director of Public Prosecutions of the British Virgin Islands on 10th November, 2022, the prisoner was indicted on two counts, namely:

- (i) Causing Grievous Bodily Harm, contrary to section 163 of the Criminal Code, 1997 (as amended) of the Laws of the Virgin Islands.
- (ii) Assault Causing Actual Bodily Harm, contrary to section 184(b) of the Criminal Code, 1997 (as amended) of the Laws of the Virgin Islands.

- [3] There are two victims in this matter. The first count on the Indictment relates to Victim No. 1, the step daughter of the Prisoner, Ms. Shakayla Martin. The second count, Victim No. 2, is Sharon Barnwell, wife of the Prisoner.
- [4] On 19th January, 2023, the Prisoner was arraigned and he pled not guilty to both counts on the Indictment. The trial had been fixed to commence on 16th September, 2024.
- [5] On 16th September, 2024, the Prisoner was re-arraigned and he pled guilty to both Counts on the Indictment. This Court ordered the agreed facts to be prepared and filed, same was done.
- [6] Defence Counsel requested a Social Inquiry Report, and same was prepared and filed on 29th January, 2025.
- [7] On 6th March, 2025, Crown counsel, Ms. Johnson appeared. Ms. Maximea appeared for the Prisoner. Under Oath, the Prisoner indicated he was remorseful. Defence Counsel relied on written submissions and made further oral submissions. Crown Counsel relied on filed submissions.
- [8] On 21st March, 2025, Crown Counsel Ms. Andrea Johnson appeared. Defence Counsel Ms. Mundelle Bardouille holding for Ms. Maximea appeared for the Prisoner. The Prisoner appeared. Based on an indication by Defence, Counsel was granted an opportunity to file any submissions as to the credit for the guilty plea to be given to the prisoner. The agreed facts were read into the record in open court which the prisoner accepted as true and correct. The Prisoner indicated that he understood the consequences of his plea and confirmed that his plea was voluntary. The matter was adjourned to 25th March, 2025 for sentencing and for the Court to hear any further submissions.
- [9] On 25th March, 2025, Crown Counsel Ms. Johnson appeared. Ms. Bardouille appeared and held for Ms. Maximea and indicated that Defence Counsel has agreed that the credit for the guilty plea should be twenty percent.

Summary of Agreed facts

- [10] On 19th September, 2022, the Prisoner, his wife Sharona Barnwell (Victim No.2) and the family held a barbecue at their home in Diamond Estate, Tortola. After eating, the Prisoner and Mrs. Barnwell remained in the yard chatting. The Prisoner was drinking vodka.
- [11] Mrs. Barnwell told the Prisoner that it was time to stop drinking as she observed that he had drunk half of the bottle of vodka. Mrs. Barnwell then received a phone call from her boss and had a short conversation with him. After the phone call ended, she continued messaging her boss in relation to an issue with the staff. Mrs. Barnwell then left the Prisoner outside and entered the house.
- [12] Mrs. Barnwell then went into the bedroom of her daughter, Shakayla Martin, (Victim No.1) where she sat down and remained on the phone. The Prisoner subsequently entered the house and stuck his head in the doorway of the bedroom and told Victim No. 2 that he wanted to speak with her and he left.
- [13] A short while after, the Prisoner returned and again spoke to his wife telling her that he wanted to speak with her **"you see how I call you and you ain't come?"** He became agitated. She informed him once more that she was having a conversation with her boss and she will go to him when she was finished. The Prisoner became increasingly upset and started pointing in the direction of both victims saying **"you see you, you see you."**
- [14] Victim No. 1 told the Prisoner to keep her out of his argument. They then got into a heated exchange. Victim No. 1 observed her mother with her phone in her hand saying to the Prisoner - **"I am going to record you so you can see yourself drunk when you sober."** Victim No. 1 also told him that she did not want him apologizing to her when he became sober. Victim No. 2 was videotaping the Prisoner with the intention of showing him his drunken conduct the following day when he was sober.

- [15] The Prisoner then exited the bedroom shouting aggressively. Victim No. 1 got off her bed and continued shouting at the Prisoner. A few seconds later, the Prisoner reappeared and re-entered the bedroom of Victim No. 1 and shoved her hand in her chest and shoulders with his hands. Victim No. 1 pushed him back and the Prisoner punched her with his fist to the left side of her head.
- [16] The Prisoner continued punching Victim No. 1 in her head and she started to retaliate. She observed her mother behind the Prisoner. Victim No. 2 rushed towards the onslaught of her daughter and the Prisoner turned towards her and punched her in the face, in her right eye. This blow knocked Victim No. 2 to the ground.
- [17] On seeing the Prisoner hit her mother blows about the body and seeing Victim No. 2 cry, Victim No. 1 rushed to the kitchen where she picked up a knife and approached the Prisoner. Victim No. 2 then stepped between the prisoner and Victim No. 1 and contacted the police. The Prisoner then left the house saying that he was going to the police station. Victim No. 2 then rushed to close the doors locking the Prisoner outside.
- [18] A neighbour arrived at the house and Victim No. 2 opened the door and allowed him to enter. He assisted her by speaking to the police and giving them directions to her house. Shortly after, Victim No. 2 observed the Prisoner returned to the house with a machete in his hand. The machete was about 20 inches long with a brown wooden handle.
- [19] The Prisoner entered the house with the cutlass and entered the living room area. Victim No. 2 jumped onto the chair in the living room and the Prisoner approached her with the machete and hit her about the body. The two small children were in the living room watching as the Prisoner hit Victim No. 2 with the machete.
- [20] Victim No. 2 kept pleading with the Prisoner to stop hitting her and she cried for help. She managed to get to the porch and Victim No. 1 heard her mother shouting, "he come back with a cutlass" which caused her to exit her bedroom. She observed the Prisoner with a machete in his hand and he was hitting her mother. The Prisoner struck Victim No. 2 with the machete a few times about her upper

body, using the flat side of the cutlass. Victim No. 1 screamed and this caused the Prisoner to turn and look in her direction and rushed towards her with the machete.

[21] Victim No. 1 was able to run inside her bedroom. She attempted to close the door but the Prisoner overpowered her. She ran towards a wall in the bedroom where the Prisoner cornered her against the wall. She begged the Prisoner to stop, she was fearful and she started apologizing to him. She repeatedly begged him not to kill her as she was fearful for her life at this time.

[22] As she apologized to the Prisoner, he responded to the Victim No. 1 by saying "**you sorry.**" She then slid down the wall in a seated position and she observed the Prisoner raised his hand with the machete over his head. She felt the Prisoner struck her with the cutlass on the right side of her face which started bleeding.

[23] Victim No. 2 observed the Prisoner in Victim No. 1's room standing over her daughter as she laid on the floor. Victim No. 2 rushed into her bedroom and grabbed a heavy iron. She hit the Prisoner on his back and he turned to chase his wife but she ran towards her bedroom.

[24] As the Prisoner walked away from Victim No. 1, she crawled to the bedroom and tried to lock it. The Prisoner observed she was attempting to lock the door. He turned around and tried to prevent her from doing same by pushing against the door. Victim No. 1 managed to lock the door as the Prisoner gave up and moved away.

[25] As Victim No. 1 laid on the ground, she took her cellphone and recorded a video of her face. She observed her face was '**slicedopen.**' and remained on the ground holding her face.

[26] As the Prisoner left Victim No. 1's room, he approached Victim No. 2 armed with the machete. Victim No. 2 then ran inside the bedroom she shared with the Prisoner. She attempted to close the door to keep him out but he overpowered her and entered the bedroom. He held the machete in his hand and she begged him not to hit her.

- [27] The Prisoner then proceeded to tell Victim No. 2 that he loved her. She informed him that the police was ringing her cellphone and that they were on their way. The Prisoner exited the bedroom and left the house with the machete in his hand. Victim No. 2 locked the door to ensure their safety.
- [28] Mrs. Barnwell knocked on the door and identified herself to Victim No. 1 her daughter. Victim No. 1 then opened the door and she entered. She observed Victim No. 1 holding her face with a napkin. On removing the napkin, Victim No. 1's face "flopped over," The ambulance was contacted and the police arrived.
- [29] Officers of the Royal Virgin Island Police Force responded to the report made and proceeded to the location. PC Bronstroph arrived in Diamond Estate and observed the Prisoner was walking. He stopped the vehicle, informed the Prisoner of the report and cautioned him to which the Prisoner responded "**officer yuh think me go make them kill me.**" The Prisoner was subsequently arrested and taken back to the residence. The Officer identified himself to Victim No. 1 and observed that she had what appeared to be a serious injury to the right side of her face. He observed that she was holding her face and that there was blood all over the bedroom floor.
- [30] Victim No. 1 was medically treated at the hospital where she underwent emergency surgery to close the wound on her face. She was then warded at the hospital. Victim No. 2 was also taken to the hospital for medical attention.
- [31] Scenes of Crime Officer Shanika Jennings attended the residence that day and observed Victim No. 2 had injuries to her face, particularly there was bruising within the region of the right side of her nose, her right eye was in a closed position and appeared to be swollen. Ms. Jennings entered the bedroom of Victim No. 1 and observed blood spatter on the tiled floor. She conducted a forensic examination of the house and took photographs of the injuries of Victim No. 2 and of the residence. Photographs were also taken of the green Kia Soul later that night. She revisited the scene the next day and took some photographs during the day.

[32] On 20th September, 2022, PC Lythcott and WOE Hobson met the Prisoner and informed him of the report. He was cautioned and informed of the intention to conduct an audio visual interview to which he consented. In that interview the Prisoner indicated inter alia that on the day in question, there was a family barbecue where he drank half a bottle of Tito's vodka. He admitted he did not have a good relationship with Victim No. 1. The relationship with his wife was 'toxic.' That day he went into Shakayla's s room. He left home, drove away in his green Kia Soul. On the way he saw Victim No. 2's older son who was on his motor bike heading in the direction of their residence. They collided and he continued towards the residence. He then armed himself with a machete and entered the house. According to the Prisoner, Victim No. 1 rushed him with a knife, threatening to kill him. He then swung the cutlass 'sideways' with the blade part pointing at her. She then turned around and that was when **"the machete connect."** ***I never know where the machete connect Yeah she tum..."*** He then left but did not see if she was injured. He denied assaulting his wife and when shown a picture of her swollen eye, he was of the view it may have occurred at that stage where **"onlyinside the bedroom when Shakayla was coming I fire, I pushed her. I used one hand and pushed her off. I used the hand with the machete,"** and she said **"watch what you do meh eye."** He stated he loved his wife and family and felt **"...me lose them over stupidity. Because me done leave the house and me could have just go. Me leave the house already because of argument so me should've just done that the same way."**

[33] On 21st September, 2022, Scenes of Crime Officer Kimba Smith proceeded to the hospital where she met Victim No. 1 and observed her lying on the hospital's bed with her face bandaged. She took photographs of same. The officer was also shown photographs of the said victim. The next day, on 22nd September, 2022, Officer Kimba Smith proceeded to the residence at Diamond Estate where she photographed the rusty machete lying in the grass.

[34] WOE Hobson received video footage of the incident from Victim No. 2. The Prisoner was subsequently charged for the offences before the Court.

Exhibits

1. Medical Certificate of Shakayla Martin • CE1
2. Medical certificate of Sharona Barnwell • CE2
3. Album containing photographs taken by Scenes of Crime Officer Jennings - CE3
4. Album containing photographs taken by Scenes of Crime Officer Jennings Jennings • CE4
5. CD Containing photographs taken by Scenes of Crime Officer Smith • CES
6. DVD containing video and images received by WDC Hobson • CE6
7. DVD containing interview of the Prisoner • CE7

Submissions re Count 1

- [35] This Court has given due consideration to the written and oral submissions of both Crown and Defence Attorneys, the contents of the Social Inquiry Report, the Report from His Majesty's Prison, the testimony of the Prisoner and the cases relied on by the Attorneys.
- [36] In considering the Sentencing Guidelines of the Eastern Caribbean, in particular, the First Step both Defence and Crown Attorneys submitted in assessing the severity of the physical and psychological harm, that such harm should be assessed as a **Consequence Category 1- Highest**. Reliance was placed on the victim impact statement and the medical evidence.
- [37] In considering the Second stage - Seriousness, both attorneys agreed that as the offence was committed using a machete, this level was determined to be a **Seriousness • Level A High**. Crown Counsel further contended that there was a high level of premeditation as based on the agreed facts, the prisoner left the matrimonial home as he drove away and subsequently returned with a machete which he then used to inflict injuries on Victim No. 1. There was also a prolonged and a sustained attack by the Prisoner who commenced the attack using his fists, he then left home and subsequently returned with a machete to continue the attack. This Court agrees with Crown Counsel that these are additional factors.

[38] In considering the Fourth stage {Step1) - Crown and Defence agreed that the following were aggravating factors of the offence- namely prevalence of offence, offence was committed under the influence of alcohol, domestic violence was involved, the offence was committed in the presence of children, and there were attempts to conceal the evidence in that the machete was never recovered, This Court however felt it would be double counting of factors when Crown submitted as additional aggravating factors, namely, seriousness, that the attack was unprovoked and the victim was traumatized (already considered in First and Second Stage of Step 1). Both Crown and Defence agreed that there are no mitigating factors of the offence.

[39] This Court will not consider the submission of Crown that an aggravating factor of the offender is there is a great age disparity between the Prisoner and Victim No. 1 at the time of the offence. In considering the mitigating factors of the offender, Crown and Defence agreed that remorse was such a factor, good prospect for rehabilitation, for example, as per the programmes that the Prisoner was involved in the prison while on remand, and also the Prisoner has no previous convictions.

Submissions re Count 2

[40] Both Crown and Defence attorneys agreed that the category of the offence determined is Category 1 - Highest where there was severe psychological harm as evidenced by the victim impact statement of Victim No. 2 The second stage - Seriousness, both attorneys agreed that the level to be determined was a **Level A •High** in this case as there was a prolonged or sustained attack on Victim No. 2, there was also the use of a weapon to inflict the injuries and there is a level of premeditation.

[41] Both Crown and Defence attorneys agreed that the following are aggravating factors of the offence: prevalence, seriousness, presence of others- particularly vulnerable children, children were traumatized by the attack on Victim No. 2, the attack was an act of domestic violence, the act was committed while the Prisoner was under the influence of alcohol and there was an attempt to conceal evidence on the part of the Prisoner. Defence Counsel was of the view that this was not an unprovoked attack as contended by the Crown. This Court however agrees with the Crown that based on the agreed facts that Victim No. 2 had initially entered the house to speak on the phone to her boss and there was no act on her part to provoke the Prisoner. This Court finds that

aggravating factor No. 3 cited by Crown Counsel, namely, that the attack was deliberate, was already considered in the second stage of the First Step - Seriousness, and so will not be considered under this Step to avoid double counting. Similarly, the victim impact statement will not be considered as a separate aggravating factor as contended by the Crown, since to do so would result in double counting as such was considered in the First Step Category 1 of the Sentencing Guidelines. Both Crown and Defence attorneys agree that there are no mitigating factors of the offence.

- [42] Both Crown and Defence attorneys agreed that the mitigating factors of the offender considered in Count 1 should also be considered in Count 2. As part of Defence's submissions, the Prisoner indicated his remorse when he testified:

"...the whole situation, I am very sorry about it. If I can take it back, I would because it makes me lose my whole family. When my lawyer send those pictures to me, I did not know my stupidity can be so bad. I am very very sorry for what I have done and I don't think I can live with this for the rest of my life." He also stated ***"... It is hard for me to cope with it."***

The Prisoner explained that the impact was **"a very bad impact"** that it had on him and explained **"I don't want my son to look at me like how other people look at me."**

The Prisoner indicated that if he had the opportunity he would say to his step daughter- ***"I would tell her I am very sorry I wasn't thinking straight at the time."*** And if given the opportunity would, ***"try to seek forgiveness and repair back my family."***

Credit for guilty plea

- [43] In considering whether the Prisoner should be awarded the full one third discount for the guilty plea, there may be circumstances where the Court may deviate from imposing this conventional discount of one third. This Court relies on the judgment of the Court of Appeal in Trinidad and Tobago in **Nadia Pooran v The State**¹ where at paragraph 21. page 9 of that judgment (supra), the Honourable Justice of Appeal Mark Mohammed stated *inter alia* that the sentencing judge has ***"a discretion whether to allow a discount at all or in ascertaining the level of such discount as he or she is in the best position to make an informed assessment in all the circumstances of the case."***

¹ Crim App. No. 32 of 2015

[44] In the judgment of **the State v Simon Peter Charles Ovid** (Trinidad and Tobago),² at page 14, lines 24-29, therein the Honourable Justice Mark Mohammed, now Justice of Appeal, quoting from the Sentencing Handbook published by the Judicial Education Institute (Trinidad and Tobago) stated as follows:

"In determining the amount of reduction of sentence, the Court may take into account the stage in the proceedings for the offence at which the offender indicates his intention to plead guilty and the circumstances in which this indication was given.,, (emphasis mine)

Additionally, in the ***Ovid*** judgment (supra), at page 18, lines 26 - 27 the Honourable Justice Mohammed directed his mind to international judgments, which he considered to be instructive in addressing the issues before him. Justice Mohammed considered the case of ***Caley and Ors. v R3*** where at paragraph 19 therein, the Honourable Court expressed that a reduction of about a quarter is to be applied in circumstances where a plea of guilty is indicated after case management hearing. Further at page 20, lines 44 - 48 in the ***Ovid*** judgment, the Honourable Judge Mohammed stated:

"I think that first reasonable opportunity in principle would be an indication of an intention to plead guilty as early as the Magistrates' Court. I think, in such a case, an offender would be entitled to the full benefit of the one third discount The second best if I may term it tha□ point in time would be when the matter comes up on a cause list and when both attorneys representing both sides of the spectrum are fully briefed. So that it the second preferable time. First time onthe cause list after the State is fully briefed and the Defence is fully briefed."

This Court also considered the UK Definitive Guideline on Reduction in Sentence for Guilty Plea provides ***"The maximum level of reduction in sentence for a guilty plea is one third."***³

"...Where a guilty plea is indicated at the first stage of the proceedings, a reduction of one third should be made (subject to the exceptions in section F) The first stage will normally be the first hearing at which a plea or an indication of plea is sought and recorded by the Court, - D2 Plea indicated after the first stage of the proceedings - maximum one quarter-sliding scale of reduction thereafter. After the first stage of the proceedings the maximum level of reduction is one quarter (subject to the exceptions in Section F). The reduction should be decreased from one quarter to a maximum of one tenth on the first day of trial having regards to the time when the guilty plea is first indicated to the Court relative to the progress of the case and the trial date (subject to the exceptions in section F). The reduction should normally be

² CR No. 59 of 2006

³ [2012] EWCA Crim 2821

decreased further, even to zero, if the guilty plea is entered during the course of the trial..."

(45] In the case of **Regina v. Brian Christopher Ferauson**⁴ the appellant was charged with several offences including that of counts of conspiracy to supply controlled drugs from January 2007. He pled not guilty and, at a trial in November and December 2008, the jurors were unable to return verdicts. The retrial was fixed for December 2009. On 8th December, 2009, the first day of the retrial, the appellant pled guilty to two counts of conspiracy in respect of Class B (amphetamine) and Class C (cannabis) respectively, but for the restricted period of 1st January, 2008 to 26th February, 2008. The sentencing judge indicated that he had given "some" credit for the appellant's plea, but he did not expressly indicate the credit he in fact gave.

(46] The Court found that ***"this plea, albeit on a limited basis, being made on the first day of a retrial, the appropriate credit would have been 15 per cent. That credit would reduce the sentences on each conspiracy to 10 years. In the circumstances, we do not consider that the sentences of imprisonment imposed by the Judge were manifestly excessive, or indeed in any way inappropriate."***

(47] In this matter before me, the Prisoner pled guilty after case management but on the doorstep to trial, it cannot be said to be made at the first reasonable opportunity. While considering the UK sentencing Guidelines on this issue, this Court finds that the deduction for the late plea at that stage should be 20 percent and not as low as 10 percent as the guilty pleas were made just before a jury was empanelled - and not during a trial, thus saving witnesses from having to go through the ordeal of a trial and sparing the Court expenses of a trial.

⁴ (2010) EWCA 2860

Case authorities

[48] This Court finds also instructive the following case authorities provided by Crown Counsel that dealt with these type of offences, as they demonstrate the need for deterrence from the commission of domestic violent acts and for the Court, by its sentencing, to send a strong signal that it does not condone such violence.

{i) In **Queen v Vernon Paddy**⁵ the prisoner beat his wife in her face and on her head with a hammer when she expressed a desire to end the marriage due to the persistent violent behaviour of the Prisoner. In sentencing the Prisoner, the learned trial judge commented on the seriousness of domestic violence which was described

as a **"crime of moral turpitude that causes far more pain than the visible marks of bruises and scars"** and **"it is a serious offence to cause grievous bodily harm with intent. Its gravity is reflected in the maximum penalty of life imprisonment which it carries."** The judge also stated at paragraphs 47 and 51:

"Violence against women is an appalling human rights violation. In the broadest sense, it is the violation of a woman's personhood, mental or physical integrity, or freedom of movement through individual acts and societal oppression. It is so woven into the fabric of society to such an extent that many women who are victimized feel that they are at fault. Many of those who perpetuate violence feel justified by strong societal messages that these violence against women, be it sexual harassment rape, child abuse are acceptable "

" It is now the duty of the courts to send out a strong message that domestic violence in any form will not be tolerated and that men do not have an unfettered licence to batter women. The only way the courts can effectively show this is, by the sentences that are passed which are aimed at ensuring the wrongdoer does not repeat the offence and that potential offenders get the message that society will not condone such behavior."

The Prisoner in that case was sentenced to eight years imprisonment and the Court awarded compensation to the victim in the sum of \$5,161.68 for medical expenses to be paid within 6 months; in default 12 months imprisonment which will run consecutively.

⁵ BVIHCR 2010/ 0020

- (ii) In the case of Queen v Denville Clarke⁶, the Prisoner pled guilty to assault occasioning actual bodily harm where he injured his ex-partner and was sentenced to 9 months imprisonment. Justice Floyd stated at paragraph 22 -

"This is a very serious crime. 'Male intimate partner violence against women' has been described as 'one of the most universal and widespread forms of violence against women.' The existence and seriousness of domestic violence is a profound problem in society. " ...while rehabilitation has a role in sentencing, the paramount considerations in imposing a sentence involving domestic violence must include deterrence and denunciation. The sentence is not only an instrument of deterrence generally of other persons who may consider acting in such an unacceptable fashion but also a means of deterring the offender specifically, breaking the cycle of violence and confirming society's abhorrence of such behavior.

Sentencing Principles

(49) The Court refers to locus classicus case of Desmond Baptiste⁷ in which the principles of sentencing have been set out:

- (i) Retribution- the Court must reflect society's abhorrence of particular type of crimes through punishment;
- (ii) Deterrence- specific to the offender and generally to any potential offender or persons who may be minded to commit similar crimes;
- (iii) Prevention- to protect the public from offenders who persist in continuing crimes by keeping them away from society;
- (iv) Rehabilitation- to engage offenders in activities designed to assist them in their re-integration into society.

⁶ BVI HCR 2020/0028

⁷ SVG HC Criminal Appeal 2003/0008

COUNT 1: CAUSING GRIEVOUS BODILY HARM WITH INTENT - maximum sentence is Life Imprisonment

- [50] In arriving at a sentence, this Court relies on the "Eastern Caribbean Supreme Court (Sentencing Guidelines) in particular," A Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court Re-Issue republished and issued on 6th January, 2025 - Violence offences, and this offence attracts a maximum sentence of life imprisonment.

I wish to consider the Steps in order to arrive at a sentence.

Step One

- [51] **The First Stage of Step 1** is to assess the evidence in order to establish the category of the offence by reference to the harm caused by the offence.

I consider that the facts of this case places it in **Consequence Category 1** - evidence of severe physical harm to the Victim No. 1.

- (i) In her **Victim Impact Statement**, dated 15th October, 2024, on being chopped that day by the Prisoner with the machete, Victim No. 1 stated "***I felt my face get warm immediately but didn't realize I had been cut Seconds felt like hours and the excruciating pain made my body feel numb ...***".

She described her face "***hanging down like a banana peer*** and that she "***held her face together.***"

Victim No. 1 also stated "... ***the pain was unbearable so I tried calling for help with the little I could get my mouth to move but it hurt too much..***".

She also stated "... ***the longer I sat there wondering what to do I felt the blood drip down my arm and onto my leg. My long sleeve shirt was soaked so badly that it was dripping down my elbow while I was holding my face together...***"

"... ***My recovery has been long, hard and tiresome and is still ongoing to this day... I will never get back normal as I have nerve damage on the right side of my face. As of today, I still have pain and the swelling is still obvious and my scars are a constant reminder of the night I wish I could forget...***"

(ii) Medical Report of Shakayla Martin -laceration to the right cheek

(iii) CD with 7 photographs of Shakayla Martin's Injury (CE5)

Evidence of severe psychological injury

(i) Victim Impact Statement "... ***stares from everyone are what are what Mr. Barnwell left me with.***" ***I have a son now and I often wonder if he would see me as a monster when he gets older. How do I explain why my face looks that way to him, will his friends tease me about his mother's looks? These are things I have to find answers to in the coming years. Mr. Barnwell took away my confidence and my beauty. I used to love taking photos and going out and just be the beautiful flawless me I saw myself as, but since then I feel people are always staring at me so I stopped taking as much photos and I hide with makeup and hair and I never go anywhere. I hated going to work, even to the store or to church I have anxiety afraid the dreaded question of "what happened to your face" will come up. My social life as a 22 yr old then 24 yr old now has been cut short because of this.***¹¹

She spoke of "***the lifetime I am losing locked away in the comfort of my home.***"

[52] In **The Second Stage of Step 1** is to assess the seriousness of the offence reference to the following factor(s) to establish the culpability of the offender. This case I consider it to be a category of **Seriousness - Level A (High)**. The following factors are applicable:

(i) Use of a weapon - a machete

(ii) **Level of planning and premeditation** - the prisoner left the marital home, drove away and subsequently returned armed with a machete

{iii) **Prolonged and sustained attack - with multiple blows on the same victim** - in the bedroom, the Prisoner initially shoved the victim her in the chest and shoulders, she pushed him back and then he punched her to the left side of her face. He continued punching her in the head until she started to fight back and picked up a knife in the process. The Prisoner later left the house and returned with a machete. He rushed at her with it cornered her and struck her with the cuflass on the right side of her face.

[53] **The Third Stage of Step 1**

In determining the category and level of seriousness, to calculate the starting point it will be 75 percent of 30 years, which is 22.5 years.

[54] **The Fourth Stage of Step 1**

Having determined the starting point this Court will then consider the following list of aggravating factors of the offence and adjust upwards or downwards as required. I will conduct a similar exercise with respect to any mitigating factors.

[55] **The Aggravating Factors of this Offence** are:

- (i) **Prevalence** (deduct 1 year)
- (ii) **Presence of others including relatives** - 2 young children were present. Both children were under the age of 12 years, the prisoner's son was 5 years old at the time of the incident (deduct 6 months)
- (iii) **Domestic violence** - the Prisoner was stepfather to Victim No. 1 {deduct 1 year}
- {iv} **Children were traumatized by the attack** - children were crying and screaming during the ordeal {deduct 6 months}
- {v} **Commission of the offence under the influence of alcohol** - admission of the Prisoner that he drank half a bottle of Tito's vodka {deduct 6 months}
- {vi} **Attempts to conceal evidence** - the machete was never recovered and Prisoner pointed the police to another machete not the one used in the attack {deduct 6 months}

In the circumstances, in light of the aggravating factors of the offence, the Court considers that an upward adjustment of 4 years should be made so that will thus far, I will calculate the sentence as 26.5 years.

[56] **The Mitigating Factors of this Offence**

The Court considers that there are no mitigating factors of this offence.

[57] I next turn to the **Step 2** of sentencing, where there is an appropriate upward or downward adjustment of the starting point {or dependent on the circumstances, and if there is in effect, a cancelling out, no adjustment at all}, which takes into account the aggravating and mitigating factors relative to the offender; these are the subjective circumstances of the offender which in turn inform the degree of the culpability of the particular offender.

At this stage, the Court next considers the **Aggravating Factors of the Offender**, this Court finds that there are none so that there is no adjustment to the sentence.

[58] **Mitigating Factors of the Offender**

The Court further considers the positive attributes of the prisoner particularly that he is hardworking man as per the contents of Social Inquiry Report. The Court also considers the submissions made by Defence Counsel and testimony of the prisoner that he is remorseful.

(i) **Remorse** - per testimony of the prisoner (deduct 1 year)

(ii) **No previous convictions** (deduct 1 year)

(iii) **Good prospect for rehabilitation-** as per the Social Inquiry Report and Prison's Report (Rehabilitation Unit) where the Prisoner completed a six weeks Anger Management programme, Skills for life programme and a two weeks Reintegration Programme on topics such as banking, holistic wellness investment, marriage and family life. The Prisoner was enrolled in the woodwork programme while in prison. He was one of the advanced students in the class who was instrumental in working along with the Prison's maintenance team at the prison on several carpentry projects. The prisoner was part of the Prison's maintenance team from December 2023 to June 2024. and worked in Prison's stores from January 2023 to June 2024. The Prisoner was described in the said Report as "respectful and courteous". The Prisoner is considered hardworking and at present is gainfully employed -(deduct 1 year).

This Court adjusts this sentence movement downwards by **3 years** - (thus far the sentence is calculated as 23.5 years)

[59] **STEP THREE - TWENTY PERCENT CREDIT FOR GUILTY PLEA:** 23.5 years minus 4.7 year = 18.8 years or 18 years 9 months 18 days

[60] **STEP FOUR** - Totality principle - applies as both offences arise out of one incident.

[61] **STEP FIVE - FULL CREDIT FOR TIME ON REMAND** - Based on the Prison Status Report - Prisoner has been in custody since his arrest on 26th September, 2022 to the date he was granted

bail on 12th June, 2024. Prison records reflect that he has spent a total of 1 year 8 months 17 days on remand - (18.8 years minus 1 year 8 months 17 days)

- [62] **STEP SIX - Ancillary Orders** - No compensation will be ordered it was indicated that the prisoner would need to be employed to be able to pay compensation so that it is not practical to award compensation. He is however to enroll in any educational and training programmes offered in Prisons.

Final sentence on Count 1: 17 years 1 month 1 day Imprisonment

COUNT 2: ASSAULT CAUSING ACTUAL BODILY HARM

- [63] In arriving at a sentence, this Court relies on the "Eastern Caribbean Supreme Court (Sentencing Guidelines) in particular, "A Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court Republished as updated dated 6th January, 2025- Violence Offences, in particular, inflicting unlawful violence without intent to cause serious harm which considers the offence of assault causing actual bodily harm.

I wish to consider the Steps in order to arrive at a sentence.

- [64] **Step One**

The first stage of Step 1 is to assess the evidence in order to establish the category of the offence by reference to the harm caused by the offence.

I consider that the facts of this case places it in **Consequence Category 1** - evidence of severe psychological harm to the Victim.

- (i) In her victim impact statement, dated 16th October, 2024, Victim No. 2 stated ***"your honour the incident on the 19th September 2022 would forever live in my head, my mind and in my heart because of the life changing events and actions of Mr. Eswort Barnwell at a place I once called home with him and my 4 children at Diamond Estate, Tortola. Not only have I not been able to forget the attack but still***

cry at times and feel a sense of helplessness thinking back on that night. I have had to seek psychological help from Dr. Torno and take prescribed medications because I was mentally and emotionally falling apart "

*"I did not sleep for months after that night and became a walking nightmare as I cried every minute of the day and always felt Mr Barnwell would come back somehow and finish me off. After being told previously he would kill me and walk in to the police station after or he knows where to get a gun or if he ever get locked up he knows how to **escape** the police station he had me paranoid and I got up all night every night just to make sure the doors were locked and turn on lights peering out the windows and doors to see if he made good on his threats on the days after. I remember the first night after the incident I arrived home at night and the sensor lights came off before I could get out the vehicle and I heard the bushes shake and I froze with fear that Mr. Barnwell was in the bushes waiting for me to exit the vehicle. I started crying while trying to call my older son in the house I couldn't reach him and I cried more now with fear, I was beyond traumatized."*

Evidence of severe physical harm

See Victim impact statement where she stated " I remember the blow I received to my face defending my older daughter stunned me as I fell to the ground blinded for a minute or 2, I ended up with a swollen face and eye that I couldn't see out for days and a pea size knot in the area of my eyebrow up to 3 months after."

" I protected my neck and my fingers and took my licks all over both sides of my arms to the point where a perfect cutlass mark was etched into my skin days later along with superficial cuts and marks and limited mobility in my arms from the blows "

(ii) Medical Report of Sharona Barnwell - tendered as CE2 "contusion of right orbit (of eye). Right wrist contusion of left arm."

(iii) photographic album re injury -

[65] In the Second Stage of Step 1 is to assess the seriousness of the offence reference to the following factor(s) to establish the culpability of the offender. This case I consider it to be a category of Seriousness - Level A (High)

(i) Use of a weapon - a machete

(ii) Level of planning and premeditation -

- (iii) **Prolonged and sustained attack- with multiple blows on the same victim-** in the bedroom, Victim No. 2 was punched in the face, in her right eye by the Prisoner, to the extent she was knocked unconscious. He also hit her about the body with the machete, on his return into the house, He struck her with the machete a few times about the upper body using the flat side.

[66) **The Third Stage of Step 1**

Having determined the consequences and level of seriousness, to calculate **the Starting point** it will be 75 percent of 7 years, which will be **5.25 years**.

[67] **The Fourth Stage of Step 1**

Having determined the starting point this Court will then consider the following list of aggravating factors of the offence and adjust upwards or downwards as required. I will conduct a similar exercise with respect to any mitigating factors.

[68) **The Aggravating factors of this Offence** are:

- (i) **Prevalence** {deduct 1 year}.
- (ii) **Presence of others including relatives** - 2 young children were present. Both children were under the age of 12 years, the Prisoner's son was 5 years old at the time of the incident (deduct 6 months).
- (iii) **Domestic violence-** the prisoner was the husband Victim No. 2 (deduct 1 year).
- (iv) **Children were traumatized by the attack-** children were crying and screaming during the ordeal {deduct 6 months}.
- (v) **Commission of the offence under the influence of alcohol** - admission of the Prisoner that he drank half a bottle of Tito's vodka (deduct 6 months).
- (vi) **Attempts to conceal evidence** - the machete was never recovered and Prisoner pointed the police to another machete not the one used in the attack (deduct 6 months).

In the circumstances, in light of the aggravating factors, the Court considers that an upward adjustment of 4 years should be made so that will calculate 9.25 years.

[69] **The Mitigating Factors of this Offence**

The Court considers that there are no mitigating factors of this offence.

[70] I next turn to the **Step 2** of sentencing, where there is an appropriate upward or downward adjustment of the starting point (or dependent on the circumstances, and if there is in effect, a cancelling out, no adjustment at all), which takes into account the aggravating and mitigating factors relative to the offender; these are the subjective circumstances of the offender which in turn inform the degree of the culpability of the particular offender.

At this stage, the Court next considers the **Aggravating factors of the Offender**, this Court finds that there are none. In the circumstances, in light of there being no aggravating factors of the offender, there is no adjustment to the sentence.

Mitigating Factors of the Offender

[71] The Court further considers the positive attributes of the Prisoner particularly that he is hardworking as per the contents of Social Inquiry Report, Prisoner Report. The Court also considers the submissions made by Defence Counsel and the testimony of the Prisoner that he is remorseful.

(i) **Remorse as per testimony of the Prisoner (deduct 1 year)**

(ii) **No previous convictions (deduct 1 year)**

{iii} **Good prospect for rehabilitation** - as per the Social Inquiry Report and Prison's Report: - (Rehabilitation Unit) where the prisoner completed a six weeks Anger Management programme, Skills for life programme and a Reintegration Programme with topics such as banking, holistic wellness investment, marriage and family life. He was one of the advanced students in the class who was instrumental in working along with

the Prison's maintenance team at the prison on several carpentry projects. The prisoner was part of the Prison's maintenance team from December 2023 to June 2024 and worked in the Prison's stores from January 2023 to June 2024. The Prisoner was described in the said Report as "respectful and courteous" Hardworking and at present is gainfully employed (deduct 1 year).

This Court adjusts this sentence downwards by 3 years-(so far the sentence is calculated as 6.25 years).

[72] **STEP THREE - twenty percent CREDIT FOR GUILTY PLEA** - 20% discount (6.25 years - 1.25 years = 5 years)

[73] **STEP FOUR - Totality principle applies** - both offences arise out of same incident.

[74] **STEP FIVE - FULL CREDIT FOR TIME ON REMAND** - Based on the Prison Status Report- Prisoner has been in custody since his arrest on 26th September, 2022 to the date he was granted bail on 12th June, 2024.

Prison records reflect that he has spent a total of 1 year 8 months 17 days on remand. (5 years minus 1 year 8 months 17 days).

(75] **STEP SIX - ANCILLARY ORDERS** - the Prisoner is to enroll in any training and educational programme in prison.

[76] **Final sentence for Count 2: 3.28 years simple imprisonment or 3 years 3 months 13 days imprisonment.**

SUMMARY OF SENTENCES

[77] **COUNT 1**-17 years 1 month 1 day Imprisonment.

COUNT 2- 3.28 years simple imprisonment or 3 years 3 months 13 days Imprisonment.

Both sentences to run concurrently from today's date. Prisoner to enroll in any training and educational programmes offered in His Majesty's Prison.

[78] I wish to commend and thank both Crown Counsel and Defence attorneys for their thorough submissions and assistance in this matter.

Angelica Teelucksingh
High Court Judge



By the Court


Registrar