

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)

CASE NO.: ANUHCR2023/0078

BETWEEN:

THE KING

-and-

LIVINGSTON PURCELL

Appearances:

Mr. Daniel Lattery for the Crown

Mr. Wendell Alexander for the Defendant

2025: May 7

JUDGMENT

[1] **BAKRE, J.:** The defendant was charged with a three count indictment of:-

- a. ***“Wounding with intent contrary to section 20 of the Offences against the Person Act CAP 300 of the revised edition (1992) of the Laws of Antigua and Barbuda.”***
- b. ***“Unlawful wounding, contrary to Section 22 of the Offences against the Person Act CAP 300 of the revised edition (1992) of the Laws of Antigua and Barbuda.”***

c. *“Making Use of a firearm, Contrary to Section 13 (1) of the Firearms Act Cap 171 of the revised edition (1992) of the Laws of Antigua and Barbuda.*

- [2] The matter was tried by a judge (alone) based on the provisions of Section 4 of The ANTIGUA AND BARBUDA CRIMINAL PROCEEDINGS (TRIAL BY JUDGE ALONE) ACT No. 8 of 2021.
- [3] The prosecution called six witnesses tendered some exhibits and closed the case. Upon being called to defend, counsel to the Defendant made a halfway application that the prosecution did not make out a case to warrant the defendant to be called to open a defense. This application was heard and refused partially. The third count (Making Use of a firearm) was dismissed and the accused was discharged and acquitted of it. He was however called to enter a defense in respect of counts one and two.
- [4] In Summary the case of the prosecution is that the accused alleged that the virtual complainant had come into his yard and stolen his weed (marijuana) tree. He was alleged to have subsequently wounded the virtual complainant unlawfully or maliciously with intent to cause grievous bodily harm based on this allegation.
- [5] The first prosecution witnesses is Chester Joseph who gave evidence that the accused, who lives close to him came out to his house and told him someone had come to his house and stole his weed trees.
- [6] He said he joined the accused to look round the bush in the neighborhood to see if they will see anyone but they did not. He said when he got back to his house, his friend, Quienel Joseph, the virtual complainant was there and he had two buckets with him. One had clothes but he did not know what was in the other bucket.

- [7] Shortly after this, the accused came and asked if anyone was with him in his yard and he said his friend was there. He said the accused came into his house and went for the complainant. The witness stated that the accused pulled a gun out and started to beat Quienel with it. He accused the complainant of taking his weed tree but the complainant denied the allegation and the accused continued to beat him until the chip of the gun fell off.
- [8] He said despite his intervention, the accused continued to beat the VC and he had to tell them to go out of his yard. The witness stated that after some time, the accused friend said he had found the missing weed tree. He said the accused beat the VC several times.
- [9] The evidence of the virtual complainant was also along this line and that he was beating with the butt of the gun that busted the left side of his face. He said he does not know how the missing weed was found eventually and that the accused threatened to kill him.
- [10] Ms. Jehenelle Joseph, an ex-girlfriend of the accused also gave evidence that while she was in the house of the accused, someone wearing a green T-shirt and covering his face with a black T-shirt came into the yard and stole the weed tree belonging to the accused. She said she eventually saw the accused with the person she had seen earlier and that the person now had blood running down his face. She denied seeing the accused with a gun.
- [11] Some police officers also gave evidence about their investigation. They said it was the accused that initially made a report of someone who came to steal his marijuana trees from his house. They denied finding any gun in the course of the investigation. They tendered the statement and interview the police had with the accused.
- [12] The Doctor also gave evidence and said the report that was given to the hospital was that the VC was injured on the face with the butt of a gun. She however stated

in her report and under cross examination that the injury could have been caused with any other hard object and not necessarily a gun.

- [13] These basically are the facts that emanated from the prosecution's case. The accused opted to give sworn testimony. His own version of the story is slightly different. He narrated how he got a call from his girlfriend who alerted him that someone was trying to gain access into his yard.
- [14] The accused said he turned back to the house and saw that his marijuana weed had been uprooted. According to him, on reaching his home, his girl-friend said the person ran into the bushes behind the house. He said with the help of his guard dog, he found the virtual complainant at the back of his yard where he was dodging in the bushes with the weed plants beside him. He stated further that he also saw the green shirt and the black shirt with the virtual complainant.
- [15] According to the accused, it was while he was trying to apprehend the virtual complainant that he punched him several times in the face with the three layer big gold ring that he had on his finger and dragged him up to take him to his porch in the front of his house. He said they had wrestled before he could apprehend him. He said he tried to call the police but there was no response and later went down to report the incident.
- [16] The accused stated further that the virtual complainant begged him not to report to the police because he already had a police record. He said he let the virtual complainant go thereafter but still went to report the incident to the police and took the two plants of marijuana to the police.
- [17] Under cross examination, the accused insisted that the virtual complainant was found in his yard at the back. He admitted that his statement to the police had said the virtual complainant was found outside his yard but stated that the part the virtual

complainant was found is a part of his compound. He admitted that the virtual complainant had blood on his face as a result of the punch.

[18] The accused said he was acting in defense of his property when he acted in this regard.

[19] As earlier stated this is a case of wounding and wounding with intent. The case for use of firearm having been discharged, the court is left with the other two counts.

[20] The main ingredients of the offence in the first two counts are as follows:-

1. The virtual complainant was wounded.
2. The wounding was caused by the accused.
3. The accused acted intentionally or maliciously while wounding the virtual complainant and without lawful justification.

[21] These basically are the points that the prosecution has to prove to the satisfaction of this court in order to be successful. It is trite that the defendant has nothing to prove.

[22] The facts as presented by the parties are as stated above and in the consideration of the issues; the court is enjoined to see whether the prosecution has successfully proved the ingredients either of the offences.

[23] The offence of wounding includes clear evidence in the breaking of the skin of the complainant whether internally or externally. The prosecution in this instance presented the evidence of Dr. Keiza Gardner-Vaswani who saw the virtual complainant subsequent to the incident on the 19th day of March 2019. The doctor gave evidence that the virtual complainant had a longitudinal laceration of 2cm deep to the left temporal side of the face and also a laceration to the arm.

[24] A wound is a break in the whole continuity, which is, all of the layers of the skin. See **Moriarty v Brooks (1834) 6 C&P 684**. In **C (A Minor) v Eisenhower [1984] QB**

331 it was stated that it is insufficient that there is bruising or internal rupture if the skin is unbroken. In this instance, there was a laceration.

[25] The accused as a matter of fact never disputed that he actually wounded the virtual complainant. He stated to the police and also in his testimony in the court that he wounded the virtual complainant.

[26] In the statement of the accused to the police, he said he punched the virtual complainant. Also in the police interview, he said he punched the virtual complainant and he noticed he had a cut to his face and also to the back of his head afterwards.

[27] The evidence that the virtual complainant was actually wounded by the accused is thus not in dispute and was clearly proved by the prosecution.

[28] In my view, the issue in this case is whether the accused intentionally wounded the virtual complainant to cause grievous bodily harm or that he had any lawful justification for the wound inflicted.

Grievous bodily harm is defined as 'very serious harm' and given its ordinary meaning. **See R v Brown and Stratton [1997] EWCA Crim 2255; R v Metharam [1961] 3 All ER 200.** Whether harm is sufficiently serious is a question of fact.

[29] The accused has invariably raised two specific defenses to this action; the first is that he was acting in the course of a citizen's power of arrest while the other is that he acted in self-defense.

[30] By section 3 of the Criminal Procedure Act, CAP 117 Laws of Antigua and Barbuda a citizen can effect an arrest. The Section states:-

“any person, found committing an offence punishable either upon indictment or upon summary conviction, may be immediately apprehended by any constable, or peace officer, without a warrant, or by the owner of the property on or with respect to which the offence is being committed, or by his servant, or any other person authorized

by such owner, and shall be forthwith taken before a Magistrate to be dealt with according to law”

- [31] I have set out the above provision to show that clearly, a citizen under certain circumstances can actually apprehend a fellow citizen found committing an offence especially where the offence as alleged in this case is in respect of his property.
- [32] This notwithstanding, it is trite that in the exercise of that duty, the arresting person whether a police officer or a private citizen shall not use excessive force in the cause of the arrest.
- [33] Under the 1967 Police (Discipline) Regulations of Antigua and Barbuda, a police officer may be disciplined if he or she exercises authority in an unlawful or excessive manner, such as by using "any unnecessary violence to any prisoner or other person with whom he may be brought into contact during the execution of his duty". This without any doubt also binds any private citizen enforcing an arrest.
- [34] In the circumstance of this case, it is important to consider the fact to determine whether there was use of excessive force. In the police interview, the accused was asked:-

Question – What did you do after finding Quaniel laying at the ground with the marijuana plants?

Answer – I approach (sic) him held him trying to take him to the front of the yard. I punch him and he fell and I started to drag him and he eventually got up and decided to walk to the gallery.....

Also in the accused's statement he repeated exactly the same words.

- [35] The evidence of officer Drayton James who took the statement of the accused when he initially went to report at the station stated that the accused had told her as follows:-

“Officer me so bex me just start thumb he up and kick he up with my steel toe shoe me sure hand broke me kick he so much that he head bust”

- [36] The accused denied saying this to the officer but admitted that what he used to bust the face of the virtual complainant was his big gold ring. He denied that he had a steel toe shoe or a gun and that it was the ring that busted the face of the virtual complainant.
- [37] The officer observed that the virtual complainant had three bleeding wounds. One was at his back, one at his head and the other above the left eye. These wounds were admitted by the accused to have been caused by him.
- [38] Now this court is to determine whether in the bid to apprehend the alleged offender the infliction of these wounds was justifiable.
- [39] In the course of his evidence, the accused stated that he wrestled with the virtual complainant. This statement was introduced firstly in his statement as it did not form part of the statement he gave at the station or in the interview. Under cross examination, the virtual complainant also stated that he wrestled the accused for some time.
- [40] In this instance, this court takes into cognizance the whole circumstances of the virtual complainant and the demeanor under cross examination. The court notes the meaning of the word wrestled as admitted by the virtual complainant under cross examination. It is clear that the virtual complainant did not mean that he fought the accused rather that he resisted the accused when he was dragged. This is obvious from the account of the incident as narrated by the accused. The accused narrated to the police that when he found the alleged offender, he punched him three times and dragged him for a while but he later started walking by himself to go to his front porch.

- [41] It is also the defense of the accused that he acted in self defense. Self defence as a defense in this regard would mean that the accused acted in defense of his person or property.
- [42] The accused alleged that the virtual complainant had come into his compound and stole his marijuana plant. It was also stated that the virtual complainant was caught still dodging in his yard or just behind his yard.
- [43] The accused stated that he punched the complainant several times and dragged him to the front door.
- [44] Self defense in defense of property and arrest in this circumstance are of the same variants. The common factor is that both must be done moderately and a citizen is not allowed in the defense of property to use any force that is regarded as unreasonable.
- [45] As stated earlier, the determination of the degree of force used either in arrest or defense of property should be reasonable force.
- [46] The evidence before the court shows clearly that the only form of injury sustained by the accused is a soft tissue swelling of the right hand likely as a result of punching the complainant with his gold ring.
- [47] The evidence of the doctor with respect to the virtual complainant is that the accused must have been beaten in the head and hand with a hard object.
- [48] The question to be asked at this stage while considering the evidence before the court is, whether the beating of the virtual complainant in the head and hand to the extent that it led to a laceration in the face, head and body could be regarded as reasonable. In my view, the answer to this is in the negative.
- [49] Notwithstanding that defendant stated that he wrestled with the virtual complainant, it was clear that there was use of excessive force on the virtual complainant.
- [50] Without doubt, it is clear from all the evidence that the accused actually used excessive force either to effect an arrest of the virtual complainant or to defend his

property as alleged. The resultant effect of the force used is the wound inflicted on the virtual complainant.

- [51] While it is lawful for a citizen to arrest or to defend his property, it is totally out of place to use a degree of unreasonable force to achieve any of these.
- [52] In the circumstances of this case, while I may come to the conclusion that there was no intention to cause grievous bodily harm, clearly there was malicious wounding of the virtual complainant by the accused.
- [53] In my view, the accused in the heat of anger for the suspicion that the virtual complainant took his marijuana plant actually attacked the virtual complainant and wounded him in the act.
- [54] While I may not see my way through to hold that there was actually an intention to cause grievous bodily harm, I am convinced in this circumstance that the accused maliciously wounded the virtual complainant as admitted by him in the evidence.
- [55] This court thus holds that the accused Livingston Purcell is guilty of the offence of unlawful wounding contrary to section 22 of the Offences Against the Persons Act, CAP 300 Laws of Antigua and Barbuda and convicted of same.

Tunde A Bakre
High Court Judge



By The Court

Registrar