

IN THE EASTERN CARIBBEAN SUPREME COURT  
TERRITORY OF ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE  
(CRIMINAL)

CASE NO. ANUHCR 2020/0073

BETWEEN:

THE QUEEN

and

LINFORD TOMLINSON

**Appearances:**

Mr. Sean Nelson, Counsel for the Crown

Mr. Pete Semaj McKnight, Counsel for the Defendant

**Before:** The Honourable Mr Justice Colin Williams

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2021: November 24<sup>th</sup>, 25<sup>th</sup>  
December 15<sup>th</sup>  
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**JUDGMENT**

- [1] **WILLIAMS J.:** The defendant, Mr. Linford Tomlinson, was indicted for inflicting grievous bodily harm on Mr. Javid Jacobs, contrary to section 22 of the **Offences Against the Person Act** Cap. 300 of the Laws of Antigua and Barbuda, Revised Edition 1992.
- [2] The Crown alleges that the incident occurred on the 1<sup>st</sup> May, 2019 at Michael's Mount, in the Parish of Saint John, Antigua and Barbuda.

**Jurisdiction**

- [3] On the 28<sup>th</sup> September, 2021 a 'Certificate of Confirmation of Consent to be Tried by Judge Alone' was filed at the High Court on behalf of the defendant, Mr. Tomlinson.
- [4] The **Criminal Proceedings (Trial by Judge Alone) Act** No. 8 of 2021, at section 5, entitles a Defendant who is charged with an offence not falling within the mandatory provision of Section 4 of **the Act**, to consent to a Judge-alone trial.

- [5] In a Judge-alone trial, or a 'Bench Trial', a Judge sits without a jury. The Judge is both the Judge of the law and the forum of fact. The burden of proof and the standard of proof remain the same as they were and are in every other criminal case. It is the Crown that has the responsibility of satisfying the forum of fact that it was the Defendant who committed the offence as alleged; and the Crown can only do so by making the forum of fact feel sure of the Defendant's guilt.

### **Procedural History**

- [6] Mr. Tomlinson, was arrested and charged by Police Corporal Number 446 Semour Robin on the 3<sup>rd</sup> May, 2019 with inflicting grievous bodily harm to Mr. Javid Jacobs.
- [7] On the 30<sup>th</sup> January, 2020 District Magistrate Mr. C. Conliffe Clarke, committed the Defendant to stand trial for the offence as charged.
- [8] The Defendant was indicted by the Learned Director of Public Prosecutions, Mr. Anthony Armstrong on the 16<sup>th</sup> June, 2020.
- [9] Mr. Tomlinson was arraigned at the High Court on the 30<sup>th</sup> June, 2020. Mr. Tomlinson pleaded not guilty.

### **Crown's Case**

- [10] The Virtual Complainant, Mr. Javid Jacobs, is a police officer. On the 1<sup>st</sup> May, 2019 he was off duty. Around 3:00 p.m. that day, Mr. Jacobs was in a vehicle being driven by his mother along the Michael's Mount Public Road. Traffic came to a standstill. He observed an obstruction about three vehicles ahead. Mr. Jacobs exited the vehicle he was in and proceeded to speak with the driver of a silver in colour Suzuki Vitara jeep who, in Mr. Jacobs's opinion, was committing the offence of obstructing the free flow of traffic.
- [11] The driver was standing outside of the Suzuki vehicle. Mr. Jacobs spoke with the driver; he identified himself as a police officer dressed in civilian clothing. Mr. Jacobs identified himself to the driver and told the driver that he was committing an offence.
- [12] The driver said he was not moving and went back into the vehicle.
- [13] Mr. Jacobs called the police station for back up. Mr. Jacobs said to the driver that he being arrested for obstruction of traffic.
- [14] Mr. Jacobs stood in front of the vehicle. The driver reversed a short distance then proceeded to drive off and the vehicle struck the Virtual Complainant's arm, causing injury.

### **Defendant's Case**

- [15] Mr. Tomlinson pleaded not guilty. He said that he did not commit the offence as charged. His case is a straight denial.
- [16] The Defendant's agrees that on the day in question, he was driving down Michael's Mount Hill and turned right. However another person driving a Toyota Corolla traveling in the opposite direction came up on the wrong side of the road and was therefore in front of him. Both vehicles came to a stop. He was signaling the driver of the other vehicle to pull back on that driver's side of the road. Someone in civilian clothes approached, saying: "Police! Police! Move the vehicle out of the road." There was an exchange of words between himself and the person, then the person said: "I am going to lock you up for obstructing the traffic. Me ah go lock you up." The person was at the left hand side of the Defendant's vehicle. He saw the person go to a vehicle that was behind him and he saw when someone inside of that vehicle handed the person a cellular phone. The person then headed back towards Mr. Tomlinson's vehicle. Around that time the driver of the Corolla moved to the side. The Defendant said he was now able to pass, but the left wheel of his vehicle was down in a hole. He "gave the vehicle extra gas" and drove off. He parked his vehicle next to a building nearby and he left the scene. He did not hit the Virtual Complainant.

### **The Charge**

- [17] Section 22 of the **Offences Against the Person Act**, states:
- "Whoever unlawfully and maliciously wounds, or inflicts any grievous bodily harm upon any other persons, either with or without any weapon or instrument, is guilty of a misdemeanor...."
- [18] The Crown is therefore required to prove:
- a. There was grievous bodily harm;
  - b. The harm was inflicted on the Virtual Complainant by the Defendant;
  - c. The Defendant acted unlawfully and maliciously.
- [19] The term 'grievous bodily harm' according to **DPP vs Smith** [1961] AC 260; [1961] 44 Cr App R 261 (HL), should be given its ordinary and natural meaning of really serious bodily harm; it was undesirable to attempt any further definition. It is not necessary for the harm to be permanent or dangerous.

### **Complainant's Testimony**

- [20] Mr. Jacobs said that while traveling along Michael's Mount, on reaching the vicinity of Home and Garden Centre, he observed a silver-coloured Suzuki jeep, Registration number A-20198 facing west, towards Bike Plus blocking the road. He approached the driver of the vehicle who at that time was standing outside of the Suzuki jeep. Mr. Jacobs said at the time he was dressed in civilian clothing: a short brown khaki pants and a short sleeved t-shirt. Mr. Jacobs said that he approached the driver that he identified himself by showing his police identification.
- [21] According to the Virtual Complainant, the driver said: "Me nah move. Call the police."
- [22] The driver was still standing outside of his vehicle. Mr. Jacobs said that he informed the driver of the offence of obstructing traffic. The driver walked off and went into the vehicle. Mr. Jacobs then called police headquarters for back up. He spoke with Constable Richards.
- [23] Mr. Jacobs saw that the driver started the Suzuki Vitara. The Officer then said to the driver: "Sir, I am arresting you for obstruction of traffic." The driver responded: "Whey yo ah go do me?"
- [24] Officer Jacobs said that he went and stood in front of the vehicle. The driver reversed for about 10 meters and then drove forward in a very fast manner. The Virtual Complainant said that he came out of the path of the vehicle, but the front bumper on the left side of the vehicle hit him on his right hand. The witness demonstrated how he turned sideways to the left. He also pointed the area by his elbow that he was injured.
- [25] Officer Jacobs said that the person drove through the road towards Billigins. He gave chase on foot. He saw a white Toyota Corolla approaching and he shouted: "Police. Block the road." He did not want the driver of the Suzuki to get away.
- [26] The driver then parked the Suzuki vehicle next to Billigins, close to a cook shop and exited the vehicle. Officer Jacobs again said: "Sir, you are under arrest." The driver ignored Mr. Jacobs. The driver left the area.
- [27] Mr. Jacobs stood by the vehicle waiting for the driver to return, but the driver did not. Mr. Jacobs saw the person walking towards Bike Plus and called out to him. But the person started to run. Officer Jacobs gave chase. The person ran south on to Independence Drive, then right, to a road that leads to G and E Auto. He then saw the person turn left and run behind a green and white apartment building. Mr. Jacobs gave up the chase at that stage.
- [28] Mr. Jacobs returned to where the man had earlier parked the vehicle. He met Constable Richards and another police officer there. The three of them then left in a marked police vehicle for the area of the green and white apartment building, but the driver was not found.
- [29] The police officers then returned to where the Suzuki Vitara was parked. A tow company was called to take the vehicle to the police headquarters.

- [30] The Virtual Complainant did not realise that anything happened to his hand until his mother said something to him. He then went to the CID and made a report. He was issued with a police report of injury form and he went to the then Mount Saint John Medical Centre where he was attended to. Mr. Jacobs was attended to by a Dr. Blackburn and also had an x-ray done. He “was in pain” up to the point that he saw Dr. Blackburn.
- [31] Mr. Jacobs described the driver as being in a rage. The Virtual Complainant said that when he was in his mother’s vehicle, which was three vehicles behind the Suzuki Vitara, he was able to hear the driver: “he was speaking to a guy in a white Corolla. They were transferring words. They were cursing,”
- [32] The Virtual Complainant said that the incident took place around 3:40 p.m. on the 1<sup>st</sup> May, 2019. He left CID after making a report about 8:15 p.m. He got to the hospital about 9:00 p.m. He was issued with sick leave for about 2-3 weeks and he returned the medical form to the CID after leaving the hospital. He eventually left CID for home after 11:00 p.m.

### **Dock Identification Denied**

- [33] Officer Jacobs was not allowed to identify the Defendant as the person whom he encountered on the 1<sup>st</sup> May, 2019.
- [34] The Virtual Complainant did not know the driver whom he encountered on the day in question. He had never seen the person before. He did testify as to how long he had the driver under observation for. Although he did say at one time that the driver was standing outside of the vehicle and at another time he chased after the driver, he did not say what parts of the driver he saw. While an inference can be made that given the time of day, that the quality of the sunlight was good, Mr. Jacobs did not say whether or not there was anything impeding his observation of the driver. He did testify that at one time the driver was about 10 feet away from him. He did not give the police any description at all of the driver – not even in generic terms; he therefore did not point to any distinguishing features with regard to the driver. He did not attend any identification parade at which he may have pointed out who the driver was. He did not see the driver on any occasion subsequent to the 1<sup>st</sup> May, 2020.

### **Cross Examination of the Virtual Complainant**

- [35] Counsel Mr. Pete Semaj McKnight on behalf of the Defendant sought to elicit a number of things from the Virtual Complainant. These included:
- The hospital is located on the same main road that Virtual Complainant was traveling on the day in question.
  - There are schools and business in relative proximity to where the incident took place. At the time of day the incident occurred the area is a busy thoroughfare.

- There is a gutter before entering the by road that leads to Bike Plus and the restaurant Billigins. That by road at the time had many pot holes.
- The white Toyota Corolla and the Suzuki Vitara were traveling in opposite directions.
- At no time did Officer Jacobs touch and confine the driver's body.

[36] The Virtual Complaint denied the assertion that he never showed his police identification to the driver. The officer agreed that nothing was mentioned in the statement that he gave to the police on the same day of the incident that he showed his police identification to the driver.

[37] Officer Jacobs said that when the Suzuki Vitara was taken to Police Headquarters, it was the guard on desk duty who made an entry with regard to the vehicle. Although Officer Jacobs saw the guard writing he did not tell the officer that it was the door of the vehicle that struck him; he knew it was the bumper. All he told the guard was that the vehicle was there for investigative purposes.

[38] Officer Jacobs said he got sick leave following his visit to the Mount Saint John Medical Centre on the night of the 1<sup>st</sup> May, 2019. He could not recall if he worked on the 4<sup>th</sup> May, 2019. Officer Jacobs agreed that the extract from the log book had an entry signed by the Duty Sergeant showing that he was at work, but said that should not be as he was on sick leave.

### **Clarifications**

[39] In response to clarifications sought by the Court, the Virtual Complainant said he was 5'8" to 5'9".

[40] Mr. Jacobs said that the Suzuki Vitara was not altered in any way. It had the original standard rims.

[41] The Virtual Complainant also explained the location of the bumper of the vehicle. The front bumper was below the bonnet, immediately below the lights.

### **Swollen Hand**

[42] Ms. Celia Joseph-Jacobs recalls driving her van on the afternoon of 1<sup>st</sup> May, 2019. Her son, the Virtual Complainant, was with her.

[43] Ms. Joseph-Jacobs said that as she was approaching the Antigua Home and Garden Centre:

"I saw a Suzuki jeep turned right, to East of Bike Plus, and stopped. It turned and stopped in the centre of the main road. A car traveling in the same direction stopped. I was a few vehicles behind the car, 3-4. The gentleman with the jeep came out of the jeep and start arguing with the driver of the car, saying 'I am not moving, I am not moving, call the police'."

[44] Mr. Jacobs came out of her vehicle and went towards the driver of the jeep. She drove off and went and parked her vehicle.

- [45] Ms. Joseph-Jacobs saw her son later. He was awaiting the arrival of a tow truck. She observed him holding his hand. She examined it. She observed that it was swollen.

### **Evidence of Injury**

- [46] Corporal Robin was the person who issued the medical report form to the Virtual Complainant. Corporal Robin said he retrieved the form from the Mount Saint John Medical Centre.
- [47] The Virtual Complainant earlier testified that he returned the medical report form to Corporal Robin of the CID after he was examined at the hospital. He said that he signed and dated the back of the form for identification. However he could not identify the form the Crown sought to exhibit in Court since it did not bear any of his identifying marks. However, Corporal Robin, who said wrote up the form and gave it to the Complainant to take to the doctor and that he later retrieved the form, tendered it as an exhibit.
- [48] Dr. Christine Persaud is a physician attached to the Orthopedics Department of the Mount Saint John Medical Centre. She was deemed a medical expert following an application from the Crown. Counsel for the Defendant did no object.
- [49] Dr. Persaud said that on the night of 1<sup>st</sup> May, 2019 the patient, Mr. Javid Jacobs was referred to her. Upon refreshing her memory from contemporaneous notes she took on the night of the examination, she found:
- “His right elbow was mildly swollen. He was in pain by able to fully move. I looked at the x-ray and it showed he had a small chip fracture of one of the bones of his elbow. The chip fracture was towards the chest. I wouldn’t be able to give any measurement of force [that would cause that injury]. Any trauma to the area could have caused it.”
- [50] The Doctor pointed out that the injury she saw was on the inner part of the elbow, close to the chest.
- [51] Dr. Persaud said that she did not prescribe anything “too special.” Mr. Jacobs was “instructed to do cold compress for a couple of days and I prescribed ibuprofen to help with the pain and swelling as well.”
- [52] Dr. Persaud said that some common ways of sustaining an injury like what she saw on Mr. Jacobs was if someone fell and hit their elbow or if an object strikes the elbow.
- [53] Dr. Persaud was shown the medical report prepared by her colleague, Dr. Blackburn, which referred to “small chip fracture to medial ulna; trauma to right side of chest.” The Doctor said those findings were consistent with what she found.

## **Credibility**

- [54] The Virtual Complainant's misstatement with regard to signing and dating the back of the medical form was not the only occasion that the issue of his reliability came to the fore.
- [55] The Defendant agreed that in his statement to the police, he never said he showed the driver of the vehicle his police identification, neither did he say in the statement what part of the vehicle struck him. However in Court, those critical bits of information were given in evidence. No proper explanation was given for their omission from the statement. He said that the original written statement of 1<sup>st</sup> May, 2019 was later corrected and typed. He signed that typed copy on the 6<sup>th</sup> May, 2019. The changes however did not omit anything he said in the original statement.
- [56] There was also the issue as to whether or not the Virtual Complainant was on duty on the 4<sup>th</sup> May, 2019 as stated in the police records, or on sick leave as he claims.

## **Findings**

- [57] The Crown was required to prove its case so that the forum of fact is sure of the Defendant's guilt.
- [58] There is no doubt that the Virtual Complainant Mr. Javid Jacobs sustained an injury. That injury satisfies the requirement for there was grievous bodily harm.
- [59] The next step is to try and determine how, when and where was this harm inflicted.
- [60] Mr. Jacobs no doubt got injured sometime after he exited his mother's vehicle and before she pointed out the injury to him. During that time the Virtual Complainant was involved in a number of things. He tried to physically block the Defendant from driving off; he ran behind the vehicle; and he engaged in foot pursuit of the driver.
- [61] The Virtual Complainant was insistent that it was the bumper of the Suzuki Vitara that struck him. He was absolutely certain no other part of the vehicle came into contact with him. Mr. Jacobs' testimony as to how the injury was sustained raised concerns. Mr. Jacobs is at least 5'8". How did the bumper of the vehicle – which for him be roughly knee height – get to impact his elbow? He demonstrated how he was standing and turned his body as the vehicle approached. There is reason to be more than just a little doubtful as to such an event realistically occurring.
- [62] The medical evidence raises further questions. The first is that the damage is on the inside portion of the right arm, close to the chest. The second is that in addition to the chip fracture, Mr. Jacobs also had trauma to the right side of his chest. The third is that the doctor's opinion, one of the common ways the injury she saw is sustained is by falling.
- [63] When one considers the medical evidence, together with the unease regarding the reliability of the Virtual Complainant, they leave the Crown's case short of the required standard of proof of making the forum of fact feel sure of the Defendant's guilt.



## **Conclusion**

- [64] Mr. Linford Tomlinson is not guilty of inflicting grievous bodily harm on Javid Jacobs on the 1<sup>st</sup> May, 2019.
- [65] The decision finding Mr. Tomlinson not guilty of this offence was delivered on the 25<sup>th</sup> November, 2021 at the end of the trial. This written decision is produced pursuant to a request from the Prosecutor to have the decision reduced to writing and in keeping with section 8 of the **Criminal Proceedings (Trial by Judge Alone) Act** which requires that written decisions to be delivered before the expiration of fourteen days of the conclusion of a matter.

**Colin Williams**  
High Court Judge

**By the Court**

**Registrar**