**IN THE EASTERN CARIBBEAN SUPREME COURT**
**ANTIGUA AND BARBUDA**

**IN THE HIGH COURT OF JUSTICE**
**(CRIMINAL)**

**CASE NO: ANUHCR 2022/0010**

**BETWEEN:**

**THE KING**

**and**

**BERNARD HOPE**

**Appearances**:
Mr Sean Nelson, Counsel for the Crown
Mr Lawrence Daniels, Counsel for the Defendant

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2022: September 22nd, 23rd
October 3rd
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## JUDGMENT

[1] **WILLIAMS J.:** On Friday the 20th November, 2020 around 10:20 pm, the defendant Mr Bernard Hope, went to the Parham Police Station where he reported that while he was walking along Market Street in Parham he was attacked by the virtual complainant, Mr Val-Michael Magana. Mr Hope told the police officers that he (the Defendant) had a knife in his possession which he used to stab Mr Magana.

[2] Mr Hope was kept in police custody immediately after he made the report. Two days later, on the 22nd November, 2020 Mr Hope, was cautioned by the police and whether he wished to say anything; he then gave a statement describing what took place on Friday the 20th November, 2020.

[3] On the 24th November, 2020 Mr Hope was again cautioned by the police; he answered questions about the incident that were asked of him during an interview which lasted for an hour and 51-minutes (including a five-minute break). Later that same day, (24th November, 2020), Constable Stacey Thomas arrested and charged Mr. Hope with wounding Mr Val-Michael Magana.

## The Indictment

[4] Mr Hope was indicted by the Learned Director of Public Prosecutions on the 21st March, 2022; he faced two counts: wounding with intent and unlawful wounding. Both charges were in relation to the incident which occurred on the 20th November, 2020 in which Mr Val-Michael Magana was stabbed. The counts were in the alternative.

[5] Wounding with intent is an offence contrary to section 20 of the **Offences Against the Person Act** Cap. 300 of the Laws of Antigua and Barbuda, Revised Edition 1992.

[6] Unlawful wounding is an offence contrary to section 22 of the **Offences Against the Person Act**.

[7] The difference between the two counts was the issue of intent.

[8] In relation to wounding with intent, the Crown alleged that Mr Hope unlawfully and maliciously wounded Mr Val-Michael Magana with intent to do him grievous bodily harm. (The indictment used the pronoun 'her' in relation to the virtual complainant. No issue was made of that and it did not affect the validity of the indictment).

[9] With regard to the second count of unlawful wounding, the Crown alleged that Mr Hope acted unlawfully and maliciously, but without any intention to cause grievous bodily harm.

## Governing Act

[10] The **Offences Against the Person Act**, at section 20, addresses wounding with intent. It states that:

> "Whoever unlawfully and maliciously, by any means whatsoever, wounds, or causes any grievous bodily harm to any person … with intent, in any of the cases aforesaid, to maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person … is guilty of a felony…"

[11] Unlawful wounding is dealt with at section 22 of The **Offences Against the Person Act**. It states that:

> "Whoever unlawfully and maliciously wounds, or inflicts any grievous bodily harm to any other person, either with or without any weapon or instrument, is guilty of a misdemeanor…."

[12] The elements of the offence that the Crown was required to prove before Mr Hope could be found guilty of wounding with intent were:

a. The virtual complainant (Mr Val-Michael Magana) suffered grievous bodily harm;

b. The harm was inflicted on the virtual complainant by the defendant (Mr Bernard Hope);

c. The Defendant acted unlawfully and maliciously.

d. The Defendant at the time had the intention to inflict harm on someone.

[13] With regard to unlawful wounding, the Crown was required to prove the same elements of the offence as in wounding with intent, save and except that at the time, the Defendant had the intention to inflict harm on someone [at letter (d.) above].

**Burden and Standard of Proof**

[14] The burden of proof rested on the Crown. The Defendant had nothing to prove.

[15] The standard of proof was: so that the forum of fact is sure of the Defendant's guilt.

[16] The Crown was also required to satisfy the fact finding forum that the Defendant was not acting in self defence. The issue of self defence was raised on the Defendant's case.

**Jurisdiction**

[17] This matter proceeded as a Judge-alone trial, or a 'Bench Trial', with the Judge sitting without a jury; the Judge being both the Judge of the law and the forum of fact.

[18] The **Criminal Proceedings (Trial by Judge Alone) Act** No. 8 of 2021, (as amended) makes it mandatory for individuals charged with offences contrary to section 20 and 22 of the **Offences Against the Person Act** to be tried by a single Judge sitting alone.

**Crown's Case**

[19] Mr Hope and the virtual complainant's father, Mr Victor Magana (Victor), were friends for a number of years. The older men often socialized and consumed alcohol together.

[20] Some days prior to the incident, there was a house party at the Magana's residence. The virtual complainant felt that Mr. Hope was misbehaving and sent the defendant away from the premises.

[21] On the 16th November, 2020 when Victor was leaving the supermarket, he saw Mr Hope. The Defendant asked for and received some of Victor's coke that he was drinking. Mr Hope told Victor "me ah go kill yo pickney." Victor did not take the comment seriously; he did not report it at the time. On the evening of Friday the 20th November, 2020 sometime prior to the incident, Mr Hope was at Victor's home where they drank brandy together.

[22] The Virtual Complainant and some friends were under a tree in Parham drinking, smoking and talking. They needed to replenish the drinks and Mr Warka Brently (Warka) - a friend of the virtual complainant – gave the virtual complainant some money to go and buy the beers.

[23] Mr Hope then came through an alley on the southern side, approached the area where the virtual complainant was and said: "Me go kill yo. As God above me go kill yo." The Virtual Complainant asked Mr. Hope who he was speaking to. Mr Hope pushed the virtual complainant, who pushed him back. Mr Hope then stabbed Val-Michael in his chest.

[24] According to Warkar he gave the Virtual Complainant $10.00 to go and buy the drinks. He then had his head down paying attention to his phone.

> "I hear little talking. I hear Michael say 'what?' I look up, I see Missy [the defendant is known as Missy] run up and jam Michael. Missy had food and beer in his hand. He just rush up and jam Michael. I didn't see Michael with anything in his hand. Michael turned [and] was walking towards us and he fall. I rush towards him. He had his hand on his chest. I move his hand. I see a cut. I took off my shirt and just put it on Michael wound… Missy run go between the alley after he jab Michael."

**Evidence of Injury**

[25] The Emergency Medical Service was summoned. They arrived at the scene in Parham shortly before 10:00 pm. According to the Emergency Medical Technician, Ms Alysha Mannix, she saw a male person "on the floor". She was able to speak to the person, who answered her. The person:

> "…was alert and oriented. I treated a wound on the right side. It was a puncture wound. No active bleeding. He had a cloth to the wound saturated with blood. The wound was dressed. Oxygen administered. Did vitals and transported him to Mount Saint John Hospital."

[26] Dr Samora Goodwin, Consultant Medical Surgeon at the Sir Lester Bird Medical Centre (Mount Saint John Hospital) testified that he attended to Mr. Magana on the 20th November, 2020. Mr Magana had an:

> "Obvious chest wall injury, to the upper chest, approximately 6 cm x 3 cm. Trajectory from, medial to lateral. Active bleeding. Obvious sectional damage in the deeper regions of the wound. Breath sounds were decreased. Chest x-ray done: showed signs of pneumothorax – collapsed lung. That required urgent medical attention. Could have ended up with a fatal outcome – could have led to suffocation and death. Had to perform a surgical procedure. Had to insert a tube to drain air and blood to allow them to escape."

[27] In cross examination Dr Goodwin said that the injury he saw was to the anterior right chest wall. He agreed that he had seen more severe cases than Mr. Magana's in his career. Dr Goodwin could not speak to the degree of external bleeding and said that would have been difficult for him to ascertain. He however drained 700 ml of blood. Dr Goodwin said that generally wounds to the stomach, chest and head could be fatal and that the chances of survival would be better if medical care was received in a timely manner. The doctor agreed with defence counsel that the chances of survival can depend on a patient's conduct and behaviour. There was no loss of consciousness on the part of Mr Magana.

The doctor acknowledged that the virtual complainant was belligerent and questioned instructions while being treated.

[28] Mr Magana testified that he spent two weeks in the hospital because "my lung collapsed" and he had to have surgery. Dr Goodwin said that his records indicated that Mr Magana was discharged on the 26th November, 2020. Mr Magana said that while at the hospital "they wanted to put me to sleep, but I didn't want to because I was afraid."

**Defendant's Case**

[29] When the Defendant visited the Parham Police Station at about 10:00 pm on the 20th November, 2020, he told the officers – Corporal 337 Brendon Sutherland and Constable 598 Stacey Thomas - that he was attacked by the virtual complainant 20-minutes earlier while walking on Market Street and that he used a knife that he had in his possession to defend himself. He informed the officers that in the process of defending himself he stabbed Mr Magana.

[30] Mr Hope's caution statement was admitted into evidence without any objection from him. In it, he said:

> "Michael attacked me. Whatever he had, I know he always carry a knife with him and he attacked me just so. He make attempt to damage me. There is where I defend myself. I get myself home and then ran to the station."

[31] During the police interview, Mr Hope described how the virtual complainant continually interfered with him. According to the Defendant, the Virtual Complainant on a previous occasion pelted stones at him causing injury to the Defendant's back. The Defendant said that the virtual complainant used derogatory terms towards him.

[32] Mr Hope said that he had a good relationship with the virtual complainant's father and that they were "drinking friends" and would even go to the Magana's home to cook.

[33] In answering questions about the evening in question, Mr Hope said that "he attack me from the back." He described the area as being dark and said that he was frightened. Mr Hope said the Virtual Complainant "either have a knife or a scissors." He went on to say:

> "When I recognize somebody behind of me I observed the face is Michael, with his action whatever. I already saw his hands in the air. Me myself I tried to defend myself. That is how he get stab or he would a stab me."

[34] At trial, the Defendant elected to give a statement from the dock. He said that sometime between 9:35 pm and 10:00 pm on the date in question he was heading home from a restaurant with his food. He also had a knife. While walking in a dark area he "feel ah energy behind me." He looked back, felt "scared at that moment… I saw the young man face very, very close at the back." Mr. Hope said

he had the knife so he used it. He continued on his way home, but even passed his house because he was so frightened.

[35] According to Mr Hope he then left to go to the police station to make a report. When he got there, he placed the knife between some blocks and went into the station.

[36] The Defendant did not call any witnesses on his behalf.

**Weighing the Evidence**

[37] In evaluating the evidence, the testimony regarding what transpired at Parham on the night in question came from the sworn testimony of the virtual complainant and the witness Warka Brently on the one hand, and the out of court statements and the unsworn dock statement of the Defendant on the other. The narratives from the Crown and that of the defendant differ in one major respect: how the stab came to be inflicted.

[38] There was not much variation in the Defendant's out of court statement and his dock statement. However, his narrative as to how things unfolded that evening is rejected. Despite the appearance of consistency, Mr Hope's version sounded consistently untrue. The Defendant's assertion for example that the area where the incident occurred was dark, was thoroughly contradicted by all the other witnesses who were in that area, including Ms Mannix - the EMT who went on the scene and met Mr Magana lying down.

[39] The Virtual Complainant and Warka were subjected to cross examination. They never wavered. They were solid, credible witnesses. Their testimony reflected the parts of the evening's events that they experienced or observed. Their narrative was reasonable, logical and believable.

**Evaluating the Elements**

[40] Has the Crown provided proof so that the forum of fact is sure that Mr Hope committed one or the other of the offences he has been charged with? The elements ought to be reviewed seriatim:

[41] Did Mr Val-Michael Magana suffer grievous bodily harm? It is settled law that the term 'grievous bodily harm' 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. The testimony of Dr Goodwin is relied upon in concluding that the life-threatening penetrating stab injury to the anterior chest suffered by Mr. Magana is indeed grievous bodily harm.

[42] Was the harm inflicted on the virtual complainant caused by the defendant, Mr Bernard Hope? The Virtual Complainant said that it was the defendant who inflicted the injury. The affirmative answer to the question as to who inflicted the injury comes from the Defendant himself. He reported to the police at the Parham Police Station that it was he who stabbed the Virtual Complainant; he repeated that he did the stabbing on several occasions after that, including his dock statement. There is no question of identification.

[43] Was the action of the defendant unlawful and malicious? Although mar Hope mentioned to the police that he was under attack from the Virtual Complainant when the stab was inflicted, the testimony of the Crown's witnesses is believed in that regard. It is apparent that Mr Hope wrongfully stabbed Mr Magana and that he was not acting in lawful self defence.

[44] Did the Defendant at the time that he inflicted the injury have the intention to inflict harm? Intention has to be inferred from the surrounding facts and circumstances and of things said and done before, during and after an incident. Without resorting to the evidence led by the Crown about any "bad blood" between the Parties following the incident at the Magana's residence or relying on what was allegedly said to the Virtual Complainant's father, the issue of intent could still be resolved. Mr. Hope is going home from a restaurant with his food; he has a knife with him. Mr Hope plunges the knife into the Virtual Complainant's chest, runs away and he hides the knife. That series of actions lead to the inescapable conclusion that it is the conduct of a guilty mind.

## Conclusion

[45] Mr Bernard Hope is guilty as charged of the offence of wounding Mr Val-Michael Magana with intent on the 20th November, 2020 at Market Street in Parham Town in the Parish of Saint Peters in Antigua and Barbuda, when he unlawfully and maliciously wounded the Virtual Complainant with intent to do so.

[46] There is no need to address the Second Count on the indictment which charges Mr Hope with unlawfully wounding Mr Val-Michael Magana in the same incident. The guilty verdict on the count of wounding with intent means that there is no need to consider the alternative count.

[47] On Friday the 23rd September, 2022 the Defendant was convicted at the end of a two-day trial. On that occasion he was told that the written decision will be delivered. Accordingly, this decision detailing the reasons for conviction is provided.

**Colin Williams**
High Court Judge

**By the Court**

**Registrar**