

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

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

CASE NO: ANUHCR2023/0049

BETWEEN:

THE KING

and

GLENROY FARREL

Appearances:

Mr. Cedric Dyer, Counsel for the Crown

Mr. Lawrence Daniels, Counsel for the Defendant

2024: December 6th

SENTENCING

Brief Facts

- [1] **SMITH, J.:** The facts as presented by the Crown are that on 19th of March, 2022 at Dre's Bar on Kentish Street, there was a skirmish between the complainant, Mr. Feviere who said that he was struck by the defendant who was conducting security duties at the gate of Dre's Bar.
- [2] His evidence was that he approached the entrance and was denied entry and that the defendant came from around the back of the bar, said threatening words to him and hit him to the left forearm.
- [3] He also testified to leaving the scene and telephoned his sister to come and pick him up. When she came he said he entered the back seat and drove past the establishment and took pictures of the defendant who was at the entrance of the establishment.
- [4] The next day he went to work but was unable to carry out his work due to pain. He went to the hospital where he was seen and thereafter he made a report to the police. The defendant was arrested and charged for unlawfully and maliciously inflicting grievous bodily harm to the complainant.

- [5] The defence on the other hand put forward a case whereby they submitted that the complainant was not wearing a mask when he tried to gain entry to the establishment, he tried to push past the other patrons who were being searched and he was being belligerent. The defendant denied hitting the complainant.

Jurisdiction

- [6] This case was heard as a Bench Trial or a judge alone matter as per the schedule contained in the **Criminal Proceedings (Trial by Judge Alone) Act, No.7 of 2024**, the charges on the indictment in this matter are mandated to be tried by a single Judge. The **Criminal Proceedings (Trial by Judge Alone) Act**, was signed by the Governor-General on the 21st May, 2024 and provides for cases to be tried by a Judge sitting alone without a jury.
- [7] As with Bench trials the judge is the tribunal of the facts and the law. Many of the directions a judge would give to a Jury are also employed by the Judge to herself.

The Law and Elements of the Offence

- [8] Section 22 of the Offences Against The Persons Act Cap 300 of the Laws of Antigua and Barbuda, Revised Edition 1992 provides that:
- “Whosoever unlawfully and maliciously wounds, or inflicts any grievous bodily harm upon any other person, either with or without any weapon or instrument, is guilty of a misdemeanor....”
- [9] In order for the Crown to prove the charge on the Indictment, which has the mens rea of malice and or intention to inflict grievous bodily harm coupled with the actus reus of actually inflicting the wound, the Crown must provide evidence, so that the tribunal of fact is sure. The tribunal of fact must be sure of the following:-
- a. The complainant, Mr. Feviere was wounded or suffered grievous bodily harm.
 - b. The defendant, Mr. Farrell, was the one who wounded or caused the grievous bodily harm to the complainant.
 - c. The defendant at the time of inflicting the wound or grievous bodily harm, had a specific intent to do so.
 - d. The defendant had no lawful excuse for acting as he did meaning he was not acting in self defence nor was he defending any other person.

The Medical Evidence

[10] The police medical form was submitted and tendered as SB#1 and the medical report prepared by Dr. Marc Samuels was submitted and tendered as MS#1. The medical evidence was that there was:-

- swelling and mild deformity to the left forearm complainant
- pain upon palpation to the left forearm
- decreased range of motion of supination and pronation of same
- radial poise present and normal
- the x-ray showed left ulnar distal with a displaced ulnar fraction

[11] The doctor who attended to the complainant at the hospital said the complainant told him he was hit with a metal pipe. The doctor who filled out the police medical report indicated that upon examination he saw “noticeable swelling to the left forearm of the complainant”. There is no doubt in the Court’s mind that the complainant had suffered the requisite injury to bring him within the ambit of the law. The next issue for the Crown to prove is whether it was indeed the defendant who inflicted this wound.

Credibility

[12] Fundamental to this case is the question of credibility. Could one believe the evidence of the complainant which was diametrically opposed to that of the defendant? Or that of the witness Watley who supported in part the testimony of the defendant.

[13] On the other hand, should the evidence of the defendant be considered reliable and therefore preferred?

[14] The witness for the defence impressed the Court as a witness of truth. His testimony was clear, consistent and compelling. He answered questions appropriately and in terms of his demeanor, he exuded honesty. Mr. Watley gave cogent testimony and showed that he was here in Court to tell the Court exactly what had occurred with no embellishments. It was his testimony that blows were being fired from the complainant’s side and from behind him which is where the defendant was standing.

[15] On the other hand, the defendant’s narrative as to what transpired seemed in parts illogical, untrue, unbelievable and at times concocted and contradictory. The Court is of the view that the defendant’s testimony that he did not strike the complainant did not ring true. It is clear from all of the evidence that the complainant was “acting up” at the entrance of the club. He wanted to go inside and he was without a mask. A scuffle ensued at the entrance and the defendant did what he said he would do; that is “leave him there, let me fuck him up”. The complainant’s testimony was that he wanted to go

inside but he didn't have a mask. He took umbrage to being denied entry and indicated that he saw other patrons inside without masks on their faces.

- [16] The complainant did not waver under the rigorous cross examination of Mr. Daniels and maintained that he was hit by the defendant even though he did not see when the blow actually connected because in his words he "put up his hand and closed his eyes".
- [17] The Court is of the view that even though the complainant's testimony had discrepancies the Court finds that the elements of the offence have been proved. I am reminded that the tribunal of fact may believe a part of a witness's testimony and discard another part. I am of the view that the defendant did indeed hit the complainant and acted upon his words which were to "fuck him up".
- [18] The Court therefore finds the defendant guilty of the charge on the indictment.
- [19] He will be remanded into custody until sentencing.
- [20] This is the verdict of the Court.

Sentence

- [21] The matter was adjourned for sentencing on 6th December, 2024. All Parties were present including Counsel Alexander who indicated that he had a watching brief for the complainant and that he would be taking the matter to the civil court for damages.

The Law

- [22] The offence of inflicting grievous bodily harm carries a maximum sentence not exceeding five years imprisonment.

Application of the Sentencing Guidelines

- [23] A case concerning inflicting violence to cause really serious harm requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequence, by the harm caused.
- [24] Under the sentencing guidelines, the Court first considered the consequence by assessing the harm caused by the offence. By the facts of this case, this offence fell into category 2, as the complainant suffered a fractured left arm as a result of the prisoner's unlawful actions.
- [25] The Court then considered the seriousness of the offence by assessing the culpability of the offender. The prisoner used a weapon to inflict the injuries to the complainant. As a result, the facts of this case fell within seriousness Level A.

[26] Having determined the consequence and level of seriousness, the Court then sought to now find the starting point of an appropriate sentence. Under the sentencing guidelines, the starting point for the imposition of a sentence on the defendant would be 60% of 60 months¹, with the court having the discretion to impose a sentence of 45% to 75% of 60 months².

[27] Having determined the starting point, the Court considered the aggravating and mitigating factors and would adjust upwards or downwards if required.

Offence

Aggravating Factors of the Offence

[28] The defendant used a hard instrument to break the complainant's left arm.

Mitigating Factors of the Offence

[29] Lack of premeditation.

Offender

[30] Aggravating factors of the Offender: -

- a. Relevant convictions for other offences
- b. The defendant has not shown remorse to date³

Mitigating Factors of the Offender

[31] There are no mitigating factors

[32] The defendant was in custody as he awaited the determination of this matter.

[33] As the defendant elected to proceed to trial, he's not entitled to a 1/3 reduction to any sentence that may be imposed upon him.

¹36 months

²27 months – 45 months

³ Remorse shown on the day of sentencing, in open court.

Mitigation by Counsel

- [34] Counsel for the prisoner indicated that his client was remorseful for his actions and wanted to offer an apology to the complainant which he did in open court. He indicated that his client was 55 years old and the father of 7 children. He disclosed that the prisoner worked in security industry and that he did have a previous conviction for an offence of violence.
- [35] The Court is of the view that further incarceration is not necessary and notes the submission of Counsel that they would be pursuing civil recourse on behalf of the complainant.
- [36] In the circumstances, the Court will impose a fine of \$2,000 to be paid no later than 31st January, 2025 in default 6 months in prison.

Ann-Marie Smith
High Court Judge



By the Court

Registrar