

THE EASTERN CARIBBEAN SUPREME COURT  
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCR2023/0100

BETWEEN:

THE KING

-AND-

SAMUEL CANNONIER

**Appearances:**

Ms. Rashida Jonas Counsel for the Crown.  
Mr. Wendel Alexander Counsel for the Defendant.

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2024: May 7<sup>th</sup>

23<sup>rd</sup>  
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**JUDGMENT**

[1] **BAKRE, J.:** The prosecution filed an indictment on the 18th of January 2014 with a single count of **Unlawful wounding contrary to Section 22 of the Offences against Persons Act Cap 300 of the Revised Edition (1992) of the Laws of Antigua and Barbuda.**

[2] Particulars of the offence reads:-

- a. ***“Samuel Cannonier on the 28th day of December, 2022 at West Bust Station in the parish of St John in Antigua and Barbuda, unlawfully and maliciously wounded Elroy Cannonier”***

[3] The prosecution called three witnesses and read into evidence, the statement of one of the investigating police officers.

[4] The prosecution in proving this case has a duty to show that the accused willfully or maliciously wounded or inflicted grievous bodily harm upon the complainant.

### **Summary of Evidence**

[5] The 1st witness is the virtual complainant and he gave his version of the evidence of what transpired between him and his nephew the accused.

[6] The case of the prosecution is that on Wednesday the 28th day of December 2022 at about 11.30pm. The virtual complainant and the accused had an altercation and the accused wounded the virtual complainant by throwing a stone which hit the virtual complainant on the left chic bone and thus wounded him unlawfully.

[7] The case presented by the virtual complainant as prosecution witness is that he was with a man called Greene who informed him that he was going to meet the accused person to request for the money owed him.

[8] The witness stated that the said Greene tapped on the accused's van and the accused in a fit of anger came out and shouted at Greene not to touch his vehicle. He said Samuel asked him (virtual complainant) to pay the money owed to Greene and he refused and the accused became more aggressive towards him and that he saw the accused picked up a stone and while he was talking with the accused's girlfriend, he took his eyes off the accused and he felt a blow on his face and subsequently fell down and found the accused standing over him with stones in his hands.

[9] He said at that time, Greene drew him away from the site and took him to his vehicle where he noticed that he was bleeding. He subsequently made a report to the police and was later referred to the hospital.

[10] He said he was shocked with all these as he never had any problem with the accused who is his nephew.

[11] The Doctor who saw the complainant also gave evidence on her medical examination of the complainant. She relied on her report and confirmed that the complainant was said to have been struck at the left side of his face with a stone.

[12] Two police officers that took the statement of the accused were listed as witnesses but the statement of one of them (Kevin Gore) was read into evidence while Michael Edwards gave evidence physically. He said he took the statement of the accused in March 2023 (over two months after the incident) with Kevin Gore. He read the statement of the accused dated 2nd March 2023 into evidence.

[13] He also read the statement of Ms. Thompson, the girlfriend of the accused into evidence under cross examination.

[14] The defendant opted to give unsworn statement from the dock. His version of what actually happened is different from that of the virtual complainant but similar to the written statement of Ms. Thompson.

[15] The statement of the accused was that he is a taxi driver and that the taxi stand, he saw a lady standing by a vehicle and he asked if she wanted a taxi and the lady was approaching him. He said at that point, he virtual complainant, his uncle who is also a taxi driver accused him of wanting to snatch his passenger. He said the lady stepped back and his uncle took her away in his taxi.

[16] When the uncle returned, he told him he, the accused was not supposed to be at the taxi stand and asked him to leave but he refused.

[17] He said there was a man who was also standing there who made a comment that he was disrespecting his uncle and that he replied that a man who would not want him to eat cannot be his uncle. He said the virtual complainant said that he was ungrateful like his father and that his led to exchange of words and that the virtual complainant then attempted to come towards him and he told him to stay off.

[18] He said at this point, the virtual complainant went to his car and took something which he kept under his shirt and was coming towards him. He said the virtual

complainant approached him and swiped a knife at him which he dodged twice and he fell while he was trying to back off from him.

[19] He said when he got up, he still saw the virtual complainant still coming towards him and he ran to look for something to defend himself. He said he ran to the rubbish pack and back into the park towards his car but the virtual complainant still pursued him all the way back to his car.

[20] He said that the virtual complainant went to the driver's side of his car and tried to remove the key from his car's ignition.

[21] The accused said while the virtual complainant was trying to do this, he got a stone which he threw at him from where he was. He said the stone hit the virtual complainant and he fell, dropping both the knife and the key he was holding.

[22] The accused said he took the key, the knife and the stone and he went to the police station. He said when the police officer saw blood on his hand, they gave him (a green paper) a police medical form and told him to go to the hospital but that he did not go because the injury was not much.

[23] He said he wanted to leave the stone and the knife but the officers did not collect them from him.

[24] He said he did not hear anything about the incident again and he continued his taxi business until months later when the same officer he had reported to came to arrest him. He said the police did not do anything about the report he made until they came to arrest him a few months later.

[25] This was the statement of the accused.

### **Submissions**

[26] Upon the close of the case, counsel on both sides addressed the court. The prosecution urged the court to hold the accused guilty on the ground that, from the evidence presented, the accused actually wounded the virtual complainant unlawfully. The defense, on the other hand stated that the crown has not proved the

case beyond reasonable doubt that the accused was not acting in self-defense and was thus not guilty in the circumstance.

[27] In this case, just as in every criminal case, the burden of proof rests squarely on the prosecution. The burden is static and the accused is at liberty not to say anything in his defense. The crown has the responsibility to prove beyond reasonable doubt that the accused actually wounded the complainant and he did it maliciously.

### **Issues for Determination**

[28] The three main elements of the offence are as follows:-

1. The virtual complainant was wounded.
2. The wounding was caused by the accused.
3. The accused acted maliciously while wounding the virtual complainant.

### **Analysis**

[29] The evidence of the three witnesses of the prosecution was clear that the virtual complainant was wounded with a stone thrown at his face. The police investigator gave evidence that she gave the virtual complainant a police medical form with which he saw a doctor.

[30] Dr. Christine, who gave evidence as PW2, stated that the accused was treated and that he had laceration on his face and also fractured his left cheek bone. Wounding is regarded as the breaking of the skin. It is clear that crown proved the first element to the satisfaction of the court and beyond reasonable doubt.

[31] The second element of the offence of wounding is whether the act was actually done by the accused. This also was proved beyond reasonable doubt as the virtual complainant stated that the stone was thrown at him by the accused. Notwithstanding that this incident took place late in the night, there is no iota of doubt that it was the virtual complainant that threw the stone that wounded the virtual complainant. This is not in controversy. The police investigator tendered the statement of the accused wherein he admitted that he threw the stone at the virtual complainant.

[32] It is trite that an admitted fact need no further proof and I so hold that the wounding on the face of the virtual complainant was caused by the stone thrown at him by the virtual complainant.

[33] The last is the intention of the accused when he threw the stone.

[34] In most criminal cases, (except in strict liability offences) there must be the *mens rea*, which is the intention to act, the guilty mind or the mental element of the crime which must be proved. This involves the intention, knowledge or recklessness of the accused that led to the commission of the offence. Also the *actus reus*, which is the guilty act itself, must co habit with *mens rea* to establish the guilt of an offender.

[35] **Blackstones Criminal Practice 2017 A 1.6 and A 1.7** on Contemporaneity of ***Actus Reus*** and ***Mens Rea*** restates the general rule to be that: -

- a. ***“to be guilty of a criminal offence requiring mens rea, an accused must possess that mens rea when performing the act or omission in question, and it must relate to that particular act or omission.”***

[36] In an indictment for unlawfully wounding, the *mens rea* required by the law is that there must be malice in the conduct of the accused.

[37] The prosecution has a duty to persuade this court that the accused acted maliciously when he threw the stone at his uncle, the virtual complainant.

[38] The evidence before the court as presented by the prosecution is that there was a controversy between one Mr. Greene who had approached the accused for the repayment of an outstanding sum owed to him by the accused. The virtual complainant had interfered and asked the accused to pay what he owed and the accused had turned to the uncle to pay on his behalf. The uncle had replied that it was not his responsibility to pay for the accused drug use.

[39] This according to the virtual complainant is what transpired after which the accused picked a stone while the virtual complainant attention was drawn to the accused's girlfriend in his car who had called his attention.

[40] It was alleged that while the virtual complainant was about to talk to the girl-friend of the accused in his car, the accused threw the stone and hit the virtual complainant on his left chick bone.

[41] In his own version of the facts, the accused stated that the virtual complainant had a heated argument with him over a passenger and that it was the argument that led to the altercation. He said in the course of the altercation, the virtual complainant attacked him with a knife and that he tried to back off but the virtual complainant persisted and he had no choice than to defend himself. This according to him was when he threw the stone.

[42] The accused relied on the Self-Defense.

### **Self Defense**

[43] It is the Defendant's case that the evidence before the court supports self-defense. The Defendant submits that it is trite law that whenever self-defense arises in the evidence; the prosecution can only succeed when it is negated.

[44] It is the duty of this court at this stage to determine if the defense was negated.

[45] I stated earlier that the accused had no duty to prove anything and thus where as in the case, the accused decided to give an unsworn statement, his statement would not literarily be dismissed merely because it was un-sworn or that there was no opportunity for cross examination on it.

[46] The statement of the accused in my view, threw doubt on the actual facts of the incident narrated by the virtual complainant. The virtual complainant had given evidence that prior to the incident; he had a cordial relationship with his nephew and thus had no reason to be aggressive towards him. The story of the accused that he had an argument with his uncle over a passenger seem more plausible in my view than the story of the virtual complainant who stated that he was merely attacked by the accused because he interfered that the accused should pay his debt.

[47] Also comparing the version of the accused to that of the virtual complainant on when the stone was thrown. It makes more sense to me that after being attacked, the virtual complainant attempted to take the key from the ignition of the accused's car than the version that he was only by the car to talk to the accused's girl-friend.

[48] These facts were considered only to show that there seem to be an element of truth in the evidence of the accused on the circumstances of the event.

[49] At this stage, this court cannot resist the urge to comment on the very disappointing investigations of the police with respect to this case.

[50] This incident happened in December 2022, the accused went to the police to report and nothing was done, the accused continued with his duties as a taxi driver around the town but he was not invited for interview until about three months later.

[51] Both parties mentioned that there were other persons at the point of the event including the Mr. Greene whose name featured prominently in the case but none of these people was interviewed to ascertain the veracity of the facts reported.

[52] Crown Counsel, Ms. Rashida Jonas in her address urged the court to discountenance the statement of the accused's girlfriend Ms. Thompson on the ground that she had enough time (over three months) to fabricate a story. My view is that this is an error of investigation and it could only be resolved in favour of the accused.

[53] The evidence that the accused actually acted in self-defense becomes plausible in view of all the circumstances of the case.

[54] A man who has been attacked or in apprehension of being attacked would be justified to defend himself, in doing this, he would not be liable to have acted maliciously.

[55] I accept the submission of the defence that where self-defense is raised in a case the obligation is on the prosecution to negate that defense. I rely on the cases



**of Marlon Bradshaw vs. The State HAC 291/98 and Fabian LaRoche vs. The State CR APP number 52 of 2009**

[56] The defense of self- defense if properly made out is a negation of malice. In this instance, the prosecution stated that the accused acted maliciously when he threw a stone at his uncle and wounded him. This assertion was however controverted when the accused stated that he was in defense of himself after an attack with a knife and an attempt to take his key from his car ignition.

[57] This court reiterates the fact that the prosecution has a duty to negate the defense by showing that the accused was not acting in self- defense or that if he was so doing; he acted with a force not commensurate with the attack. This I cannot see in the case of the prosecution.

**Conclusion**

[58] In the circumstance, while this court is aware that the application for No case submission was refused, the court notes that the standard of proof for a No case submission is a presentation of a prima facie case. However the standard of proof for the guilt of an accused is beyond reasonable doubt.

[59] The court in **R v. Wilson (1975) NI 210 at 213**, stated in distinguishing No case submission with the main trial that :-

- a. ***“All the prosecution has to do is to establish a prima facie case that is the only test to be applied by the trial judge at this stage of the case. Thereafter whether or not the accused gives, or calls, any evidence, when all the evidence is given the judge, as the tribunal of fact in a non-jury case, must view the whole case again and weigh the evidence and consider whether or not he is satisfied that the Crown has proved the case against the accused beyond a reasonable doubt.”***

[60] Having accepted the fact that the accused acted only in self-defense, I am persuaded that the prosecution did not prove that the accused person acted maliciously when he threw a stone at the virtual complainant in this instance beyond reasonable doubt. Where there is a doubt in a criminal case, it is resolved in favor of the accused.

[61] The accused Samuel Cannonier is hereby discharged and acquitted of the offence of unlawful and malicious wounding of Elroy Cannonier.

**Tunde A Bakre**  
High Court Judge



**By the Court**

**Registrar**