

IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CASE NO. ANUHCR 2023/0035

BETWEEN:

THE KING
and
JENNIFER GEORGE-JOHN

Appearances:

Ms. Rilys Adams, Counsel for the Crown
Mr. Wendel Alexander, Counsel for the Defendant

2023: October 9th, 11th, 12th, 13th, 16th;
November 6th, 10th

Headnotes: Judge Alone Trial, self defence, inconsistencies and warnings to self.

DECISION

Background

- [1] **SMITH, J.:** Trial commenced on 9th October, 2023 and concluded on 16th October, 2023. This trial was conducted as a Judge Alone Trial by virtue of the **Criminal Proceedings (Trial by Judge Alone) Act**, No.8 of 2021, 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 28th May 2021 and provides for cases to be tried by a Judge sitting Alone without a Jury. The offence on the indictment is one such matter which can be tried by Judge Alone pursuant to the legislation.

General Directions/Reminders

- [2] It is entirely for the Court to decide what evidence it accepts as reliable and what it rejects as unreliable.

- [3] When a defendant has given and/or called evidence, the Judge as the sole arbiter of the facts and the law must apply the same fair and impartial standards when weighing up the evidence of the witnesses for the Crown and the defence.
- [4] The Judge as the sole arbiter of the facts, does not have to resolve every issue that has arisen, only those that are necessary for me to reach my verdict. I am reminded of the following: -
- i. I am permitted to draw sensible conclusions from the evidence that I accept as reliable, but I must not engage in speculation or guesswork about matters which have not been covered by the evidence.
 - ii. I am allowed to draw inferences, but these inferences must be grounded in the evidence that has been led.
 - iii. It is important that my verdict is based only on my own independent view of the evidence. No emotional reaction to the case and/or any sympathy for anyone involved in the case and/or by any fixed ideas/ preconceptions/ prejudices that I may have had can be used to colour my verdict.

Brief Facts

- [5] The parties were involved in an intimate partner relationship. On 18th December 2020 while out they were involved in an altercation which turned violent. The parties arrived at the complainant's home where the quarrel continued resulting in the defendant ramming the complainant's vehicle and smashing her windscreen with a brick. The defendant said she was acting in self-defense, and that the complainant had come towards her with a knife. The complainant and her witnesses disputed this allegation. The witness Salem Khouly called the police, the defendant left the scene, and she was later arrested and charged with malicious damage. The complainant was also arrested but those charges are the subject of a separate case.

Indictment

- [6] There is one count on the indictment and the particulars are that the defendant on 18th December, 2020 at Crosbies in the parish of Saint John in Antigua and Barbuda, unlawfully and maliciously caused damage to certain property belonging to the complainant.
- [7] The Crown had the duty to marshal evidence to prove the elements of the offence namely;
- 1) The defendant damaged the property stated in the indictment.
 - 2) The defendant damaged the property unlawfully and intentionally.
 - 3) The property belonged to the complainant.

The Crown's Case

- [8] The complainant Ebony Nicholas testified that she currently lives in Belmont. She told this Court that she knows the defendant and that they once shared an intimate relationship for 2-3 years. She

said that on 18th December 2020 they were trying to reconcile their relationship as they had separated. It was her evidence that on that date they both decided to see each other, and they had agreed to go out with a friend named Osmarlin de Rosario. She had asked the defendant if she wanted to join them for dinner and she declined saying she was feeling unwell.

- [9] In the afternoon, the complainant asked the defendant to go for drinks with her in the evening and they went to a bar called Jay's Bar. The defendant and the complainant were both drinking. She told this Court that she had one drink, and the defendant had several. They stayed there for 1 ½ hours. Her testimony was that she was supposed to meet Osmarlin at the restaurant as they had reservations in place. The plan was for the defendant to take them to her home so she could get her vehicle. Her vehicle was in Crosbies where she lived at the time.
- [10] The complainant testified that she owned a white Mazda CX3 registration number A7918. They left the bar, after Osmarlin came to meet them there. The defendant wanted to go out for a drink, but she and her friend just wanted to proceed to the restaurant where they had reservations. On the way to Crosbies it was the complainant's evidence that an argument erupted around whether they would all go out to eat or just go for drinks.
- [11] The complainant said the defendant was cursing her and started to call her names saying, *"you just want to go out and do whatever you want"*, *"you want to go out with other men"* and *"you are a whore"*. As they were approaching Friars Hill Road, the defendant stopped her vehicle and demanded that the two get out.
- [12] The complainant said she refused to do so and requested that the defendant take her home. She told the Court that the atmosphere in the vehicle was very hostile. Upon arriving home, the complainant said she jumped into her vehicle as by that time she had missed her reservation to go elsewhere. She turned on her vehicle, she was about to reverse when she saw the defendant's vehicle blocking her driveway. She said she alighted from her vehicle and asked the defendant to remove from the driveway. The complainant told this Court that the defendant refused to move because she insisted *"you just want to go look for man"*. The complainant then said she cursed her and again asked her to move her vehicle.
- [13] It was the complainant's testimony that the argument was getting louder and louder and so she went to the backyard as she was afraid the neighbours would hear the commotion as the argument continued. Then the complainant said she thought the defendant was leaving as she saw her enter her vehicle and start it; however, the defendant didn't leave, she straightened her vehicle so that none of the vehicles could leave the premises. The complainant came out from the side door by the courtyard and told this Court that the defendant approached her and asked her to give her the pair of sneakers she had ordered for her. The complainant responded that she could get the sneakers once she had paid her back for them. She said that the defendant got upset and started to insult her. It was the complainant's testimony that the defendant said, *"everything for you is about money, I am not going to give you anything, give me my fucking shoes, you fucking whore"*. The complainant responded that she told the defendant to *"fuck off and leave, you are not getting*

anything". At this point the defendant punched her in her face and the complainant slapped the defendant and they began to fight.

- [14] The complainant said she did not have a weapon and that the wrestling lasted a short time and culminated with the defendant pushing her to the ground. It was the complainant's testimony that the defendant began to kick her and as she was kicking her, she tried to hold back from her, and the defendant tripped over her falling to the ground. The friend Osmalin helped them both up off the ground. Before the fight he was sitting in the vehicle and then he alighted, standing and watching.
- [15] After the fight had subsided, they were both looking for their belongings, the complainant said she was looking for her phone and keys and the defendant said she was looking for her phone. The complainant said that she found her keys but not the phone. The defendant did not find her phone and was very upset. She, the defendant said "*you have my phone.... get me my phone*". She told the Court that defendant found a brick on the yard and held it up and said, "*get me my fucking phone*" and she observed the defendant standing next to her car.
- [16] It was her testimony that she observed the defendant start to smash the window part and went to the windshield and smashed it twice. The complainant said she was crying and asked her to stop. The complainant told this Court the defendant then entered her vehicle, aligned it to the back of the complainant's vehicle and started to smash it over and over and over. It was the complainant's testimony that the defendant rammed the rear of her vehicle using the front part of her vehicle. Her testimony was that she called her friend Salem for help. She went into her vehicle and dialed the police using the Bluetooth feature.
- [17] The complainant told this Court that she observed the defendant leaving the scene, circling back and doing the same thing again hitting her vehicle over and over again using her Hummer. Her friend Salem came downstairs while the defendant was still ramming her vehicle into the CRX. The complainant indicated that she saw the witness Salem Khouly approaching the defendant and he asked her to stop. The defendant alighted her vehicle and attempted to hit her and Salem intervened. She then punched Salem in the face.
- [18] The complainant said that Salem told the defendant that she could not leave the scene. It was her evidence that she replied that "*she owns the police, this is her government, and she can do what she wants*". The complainant then told the defendant that it was she who should have died in the place of her father, which further enraged the defendant. She told the Court that after that, Salem called the police, and the defendant left the house. Christopher Khouly, who is Salem's son, arrived at the house and was helping to locate the missing items and keys. The phone was found, and they also eventually found her keys.
- [19] The complainant told this Court that the police arrived, and they proceeded to assess the damage and interrogated all persons. Salem gave the police the defendant's phone. Then, 30 mins later the defendant came back blowing the horn and shouting profanities.

- [20] Under cross examination by Mr. Alexander the complainant indicated that she had been living at the home of Salem Khouly for 4 to 5 years but that she was not currently in a relationship with him. She indicated that at the time of the incident there were no cameras installed on the property.
- [21] The complainant responded to questions answering that the police took photographs of the scene. The defendant was driving in her own vehicle. She denied that while in the vehicle that she was distracting the defendant but agreed that they both had an exchange of words and that the words were aggressive.
- [22] She agreed with the suggestion that the relationship has spanned a few years but disagreed with the suggestion that there were incidents where she beat the defendant. She disagreed that in the past she had attacked the defendant and burst her head but said that the defendant had hit her, and she had defended herself. The complainant acknowledged that she knew the defendant had surgery after the incident. The complainant denied that the defendant was a person who she used for money and denied that she wanted the defendant to pay for the dinner that night. She disagreed with the suggestion that she was the dominant person in the relationship. She said she did not pick up the phone nor did she give it to Salem. The other passenger was Osmarlin, and she agreed that the vehicle was in her name alone.
- [23] She agreed that the police arrived about 20 mins after being called. It was her testimony that Salem did not witness the fight just the vehicle part of the altercation. She denied that she told the defendant that she would kill her. She denied that she came at the defendant with a knife. She testified that she defended herself when the defendant was beating her, and she could not recall how many times she had been in a fight with the defendant. However, she said they would "make up" after fights. She said that she did not make a report to the police as a result of those fights. She said she could not recall if the defendant slept over the night before. She told the Court that she didn't know how long the fight lasted. It was put to her that she never told the police *that "the defendant had said she owned the police, it's her government and she can do what she wants"*. She agreed that this detail was not contained in her statement.
- [24] Under cross examination the complainant admitted that the defendant had accused her of taking her phone and up to this day she is not sure if the defendant got back her items. It was put to her that the defendant flung a brick when she the complainant was advancing upon her with a knife, and this was denied. The complainant said she had one drink that night- she had one vodka and soda. The complainant agreed that the defendant accused her of wanting to go look for men. She said that she works for Salem Khouly the owner of an insurance company, and that the defendant would sleep over by her often. It was put to her that Salem made attempts to have this matter discontinued and she indicated that she was not aware of that. She said she and her friend Osmarli had no drinks together that evening. It was put to her that she beat the defendant while driving and she denied this. She also said the beating which she denied did not result in a *"black and blue"* bruise on the defendant.

- [25] She agreed that the defendant stopped the vehicle and told complainants to get out, but this was not due to the constant pounding, and she indicated that she was employed as an accounts assistant then became an insurance underwriter. She disagreed that Salem was her landlord. It was put to her that she was previously in a relationship with Salem, and she agreed. It was put to her that the reversing by the defendant of her vehicle was to try to get away from her, but the complainant denied this. She testified that she saw the defendant hit Salem and that Salem did not restrain her. It was her evidence under cross examination that the friend Osmarlin was in the garage and did come out and assist. She said He helped them both to get up and look for the items. She said that he did not assist at the beginning of the fight. He kept back as there was a lot going on. It was put to the complainant that she was the aggressor that night and she denied this being so.
- [26] The next witness called by the Crown was Salem Khouly. He testified that he lives in Crosbies and that he knows the defendant and has known her for about 15-20 years. He also has known Ebony Nicholas for about 11 years. On 18th December he was in his room, and he received a phone call from the complainant. As a result, he got out of his bed and went downstairs. He told the Court that when he got downstairs, he went into the garage and noticed the complainant's vehicle was parked at an angle in the garage and he noticed a black jeep basically connected to the back of the complainant's vehicle. The witness testified that he then went to the vehicles to get a closer look and he noticed the complainant's vehicle was being lifted. He noticed the back jeep was hitting the back of the complainant's car. The witness told the Court he saw the defendant come out of the black vehicle and she was arguing with the complainant and asking for keys and phone. Her demeanor looked aggressive and angry.
- [27] The witness testified that he was trying to find out what was going on. He asked the complainant if she had the defendant's phone and keys, and the complainant responded in the negative, saying she that could not even find her own phone. The defendant got into her vehicle, reversed out of the driveway then she parked it, blocked the driveway, and came out. He said he observed that she proceeded in an aggressive manner to enter the property and asked the complainant for her phone.
- [28] The witness indicated to the Court that he stood in front of the defendant to prevent any further conflict and the defendant punched him on the left side of his face. Salem said, "*why did you that ?*" and he said the defendant replied, "*I don't give a shit*". The witness then told this Court that he saw the defendant leave from in front and return to her vehicle and he told her she could not leave. However, her response was "*I don't care, I own the police, I own the government-I don't give a fuck*".
- [29] During the commotion his son came to his home and after the defendant left, they searched for the phones and found both as well as a trinket for Miss John. The complainant was given back her phone, and his son gave him the defendant's phone. The police arrived and he handed over the phone and jewelry.

- [30] Under cross examination he told this Court that he is not aware that the parties were in a relationship but that he was aware that the defendant would visit and sleep over. The witness also told the Court that he was aware that the defendant would sleep over but not where she slept but that he surmised she would either sleep in the complainant's room or the guestroom. The witness told the Court that he did not have any cameras installed at that time and that he only installed them after the incident. The witness, when asked, admitted that he and the complainant had once had a relationship and that it was at the same time that the defendant would visit.
- [31] It was put to the witness that he pushed the defendant and he denied this. He admitted that the defendant punched him in his face. He agreed that he asked around for her phone and keys but the remote for the vehicle was not found. He told the Court that he didn't go to the doctor as he is a tough person. It was put to him that the complainant was armed with a knife, and he denied this being so. He agreed with the suggestion that he was aware that the parties would engage in fights, but he was not aware that the complainant burst the defendant's head nor was he aware that the defendant underwent surgeries as a result of this incident, and he did not see her limping when she left the property.
- [32] The witness admitted that he spoke to the defendant's brother and told him to *"get the thing sorted out"*. He testified that he had never seen the complainant drunk and that he himself does not drink. It was put to him that the defendant never said the word *"fuck the police, I own the police, this is my government"* and he disagreed saying that she said the words on several occasions that night. The complainant's Mazda car is a 2019 model insured by his company. He agreed that the complainant was an underwriting clerk at his company and that they both had been in a relationship previously.
- [33] The next witness the Crown called to the stand was Osmarlin de Rosario. He told this court that he knows both parties. Before the incident he had known the complainant for about 3 years and that he had met the defendant once and that was on 18th December 2020. He said on that day they were about to go to dinner, and they met in a place, but he could not remember the name. He said he and the complainant were to go for dinner, they met outside the building, but they were late and couldn't reach the restaurant on time. Both parties picked him up in the defendant's vehicle and the defendant was driving. He said the complainant was in the front passenger seat. He said that because it was late the complainant wanted to get to her home and pick up her vehicle and then go to dinner. The complainant wanted Jennifer to take them. At the complainant's home, he testified that the defendant didn't want them to leave without her and they got into an argument. He said he was inside the complainant vehicle and the two women were outside. He told this Court that an altercation commenced. He said the defendant parked outside in the driveway and the complainant entered the complainant's vehicle (which was already parked in the driveway). He said he then observed the defendant reversing and *"mash up the bumper"* of the complainant's vehicle.
- [34] He said that when they got into the fight he was inside the complainant's vehicle. He said that he got out and tried to pull them apart. He said under oath *"that's when Jennifer dropped. I tried to*

help her up but she never want me to help her up. She got up went to her vehicle ...she take a rock and threw it into Nicole's vehicle". He said the complainant was inside the vehicle at the time. The complainant called Salem Khouly via the Bluetooth device. He told this Court that *"that's when Jennifer went into her vehicle reversed again and mash up the gate"*. He testified that Salem came down from upstairs and began to argue with the defendant who became further enraged and punched Salem in his face.

- [35] Under cross examination by Counsel Alexander he said that he did not have a drink that night and that he was not at the bar, they met outside. When it was put to him that his friend the complainant was upset, he said she was not. He first saw her outside the restaurant, but he can't recall the name of the place. He said that the complainant was not upset, and that the argument did not start in the vehicle. An inconsistency was put to him in relation to his police statement where he told them that the argument did in fact start in the defendant's vehicle. He acknowledged that he and the complainant are friends/and are still friends. He and the defendant are not friends and have never been friends. He said he could not recall what they were arguing about.
- [36] At the house he said they were fighting, and Jennifer *"dropped"* (fell). He said that the complainant did not fall on top of the defendant and that she, the complainant did not fall. He denied that the complainant got on top of defendant and beat her, and he denied that the complainant had a knife when this was put to him. He said the complainant did not have a knife and she did not approach the defendant. The fight lasted 1 hour, and a half and he was trying to make things calm. He said it was a long fight and he did not see the defendant limping when she got up. He said he and the complainant had been friends prior to the incident and that he was not aware of the relationship between the complainant and the defendant.
- [37] The next witness Officer Thomas said he was based at Coolidge police station. In December 2020 he held the same rank. Under cross examination by the defence Counsel he said he was present when the defendant was interviewed, and he was also present when the complainant was interviewed under caution. He said he did not visit the home of Salem Khouly. When he saw the defendant, she had a cast on her foot, and she was walking with a crutch. He did not see the photos of the injuries. He was present when she gave a witness statement and an interview. He did not read the statement, but he was present and heard what she was saying.
- [38] He said he can't recall if she said she was beaten up by the complainant. He said he can't recall her saying that the complainant *"beat and thump"* her up. He is not the investigating officer, he assisted in the investigation. He did consider it to be one of the serious matters and he had seen her walking with a crutch. The statement was recorded at her home in Coolidge due to her inability to walk. The police were informed by the complainant that a phone was handed to the defendant at some point. He knows that it is important to get independent witnesses and he agreed that he did not visit the scene. He got involved in the matter in 2021 and he went to the home of Salem Khouly. He said does not know if neighbours were interviewed. He assisted the investigating officer in taking the interview. He asked maybe one or two questions, and he made a statement 6 months after the incident took place.

- [39] The Crown called Christopher Khouly to the stand. He said he lives in Crosbies, and he is a student. He said that he knew Salem Khouly and that he is his father. He said he also knows the complainant and the defendant. He knows the defendant by seeing her around for a couple of years. He told the Court that on the night in question he was at his cousin's house, and he received a call from the neighbours. As a result of the call, he called his dad who didn't answer, and he drove back to his home. Upon arrival he saw a black SUV parked in the driveway and he heard shouting. He said that when he got out of his car, he said he saw the defendant swing her right hand and hit his father on the left side of the face. She was facing him outside of the gate. She was face to face with his father. He said that they were arguing. He testified that his father asked him to get his phone so he could call the police and he said he heard the defendant say, *"I don't give a fuck I own the police"*. The witness said he went for the phone and the defendant drove off in the black jeep. While waiting for the police he said he witnessed the front windshield and back of the complainant's car were damaged as well as the front gate. He said he walked around and found a phone by the small gate, and he picked it up, it was a white iPhone. He told the defendant do not to cross the gate line and the black jeep was parked diagonally.
- [40] Under cross examination the witness said he received a phone call from neighbors. He told the Court that his mother was not there at the time, and he agreed that the complainant was once the nanny at the home. He said was aged 20 when he saw the complainant around by the house. In relation to the neighbor, he said there were 4 near his home. At the time of the altercation, he told this Court that He was by his cousins at Crosbies when he received the call. He indicated that his mother stopped living there at home in 2016. When it was put to him that the complainant fought and assaulted his mother on several occasions, he denied this to be true. He also denied when it was put to him that the complainant was the cause of the confusion in the home. He also denied that the divorce between his parents was a result of confusion caused by the complainant. He testified that the complainant was a family friend but not his friend, but he had interacted with her in the past.
- [41] The witness told the Court that he had never seen the complainant and defendant in fights and arguments. He agreed that the defendant would sleep over at times but that he did not know where she would sleep. He also said that father did not push the defendant when this was put to him. When questioned about the premises having cameras, he said he can't recall how many cameras there were, adding that he can't recall if cameras were on the outside at the time. He said he can't recall what the complainant was doing when he arrived, nor could recall if she was cursing at the time. He said when he arrived there were 4 people there- the complainant, the defendant, his father and another guy and he did not ask what was going on.
- [42] Jaleel Jenkins was the next witness called by the Crown. He testified that on 18th December 2020 he was on duty when he received a call from Salem Khouly and as a result of the report he had a conversation with Corporal Samuel, and they left for the residence. On arrival he saw the complainant, Salem and others in the driveway. Corporal Samuel identified herself and she was pointed to a white motor jeep with damage to the right side and the windscreen. He observed the

white vehicle had a damaged front windshield, left front window and damage to rear of the vehicle. He also observed the electrical gate had a motor making noise and it too appeared to have suffered damage. The complainant later that night attended Longford Police Station she handed over a brick. She was invited to place name and initials on the brick. He said he tried to call the defendant by telephone but was unsuccessful.

- [43] On a later date he saw the defendant at the station when she came with Corporal Samuel. The Corporal informed her of the report, and she made a reply saying Ebony broke her foot. She was wearing sneakers, and he observed a swollen ankle. Corporal Samuel gave her a medical form and gave her certain directives. He took a report from Miss John, and she left thereafter. Under cross examination he indicated that he went to the scene and Corporal Samuel took notes. While on the scene the brick was not located at the scene. He said he looked for it, but it was not retrieved. On a later date the complainant brought the brick to the police station. He agreed that he did not initial the brick. He said the complainant did not tell him where the brick was found but told him it was the brick that was used to damage the windshield.
- [44] At the scene he said he didn't observe other bricks in the yard and the yard is a very big yard with a lot of grass, driveway and pavement and he did not recall seeing flowers. He said he can't recall if that night if a photographer was invited to attend the scene. He agreed that the damaged vehicle was a police exhibit at the time but that the car was not taken to the police station. He said he wasn't present when the photographer took photos. He also told this court that the defendant came to the station and said, "*Nicole broke my foot*". He indicated that the Corporal issued her with a medical form, and she said that she was in pain. He was made aware that There was a fight between 2 women. He said that Both had to seek medical attention, he did consider detaining but agreed that that contemplation is absent from his statement. He saw on the scene the complainant, Salem Khouly, Christopher Khouly and several other people but he did not seek any other independent witnesses that night. He agreed that no police officer went to speak to the neighbours. The phone was retrieved by Corporal Samuel, most likely on the scene. He said that he did not gather there was a relationship between the parties.
- [45] He told the Court that he was able to get the genesis of the problem that night- information was obtained from the complainant and from the defendant later that night. He told the Court that No information about the relationship came up. He did enquire from the defendant about her injuries, and she was given a medical form. When told of the report the defendant said the complainant broke her foot. He had a pocketbook that night but didn't take it out and he made no notes in it. He said he saw the defendant was limping and to his knowledge the remote key was not located.
- [46] Corporal Donetta Samuel testified that she knows the complainant and the defendant. On 18/12/20 she was on duty at the Coolidge Police station when Salem called and made a report. As a result, she and Jenkins left for Crosbie's. On arrival at Crosbies she met Salem and the complainant in the driveway. She identified herself to them and the complainant made a report. As a result, she observed a white Mazda CX79798 parked in the driveway with glass windscreen and front passenger glass damaged. She observed the electrical gate was also damaged, Salem handed

over to him a cell phone and a bracelet, and she had a conversation with the complainant and invited her to the police station. There she handed over a piece of brick and she invited the complainant to place her initials on it.

- [47] On that same night she issued a medical form to the complainant. She called the defendant's residence and she spoke to Officer Jenkins and received certain information. Jenkins went back to Salem's home in Crosbies, had a conversation and then returned to Longford Police Station. She called the defendant's home and spoke to her and invited her to the station. She arrived shortly. On her arrival she was told of the report made. The defendant was sitting on a chair, and she observed her right ankle was swollen and she said the complainant broke her foot. She began to take off her shoes and she was advised not to do so. She made an official report and was given a medical form and left the station.
- [48] On 19th January 2021 Officer Thomas and her went to the home of the defendant and recorded a witness statement and she handed over two medical reports. She continued her investigation and on 24th March 2021 she saw the defendant at the police station in the presence of her attorney. She identified Thomas to her and told her she was continuing investigations into the report of malicious damage. She conducted an interview with the defendant. She read it over herself, and she made no changes. She was invited to sign, and she did so. The Corporal indicated that she continued her investigation and on 23rd April 2021 she arrested and charged the defendant, she was cautioned and made no reply. On 7th October 2021 the Corporal had a conversation with the complainant and invited her to the police station and invited her to hand over invoices and receipts.
- [49] Under cross examination this witness indicated she had been a Corporal for 8 years. She said that the brick was pointed out to her, but she didn't take it up at the time. The police were told to take the photographs the person so assigned was Corporal Darville. She indicated that she had enquired about the photographs but had never seen the photographs to this day. She did make notes in the station diary and also notes in her diary. She agreed that there was no mention of the notes in her the statement, there was no mention of the diary notes.
- [50] The witness indicated that the brick was pointed out to her in the garage area. She disagreed with the suggestion that Jenkins said they were searching for the brick and couldn't find it. She said that the yard was big, and the driveway is paved. She described the gateway on the right-hand side and that there was a lawn with plants. She also agreed that it was not proper for the complainant to bring the brick to the station.
- [51] She told the Court that Dorville and Wright were instructed to take pictures. She said she made several requests for said photographs. She said she spoke to Sgt Bascombe about the photographs and was informed that the system "was down". It was put to her by Counsel that she could have had the photographs on a jump drive and then tender the device at the magistrate's court. She replied that she did not know the system that is used. She stated that she is a police prosecutor and has been a police officer for 22-23 years.

- [52] She agreed that she had been told that the complainant had come at her with a knife. She also said that on the scene when questioned nobody said they saw any knife. The defendant told her foot was broken.
- [53] Upon arrival she testified that there were persons in the yard at Salem's, house, she did ask what happened and she indicated that she had received an anonymous call at the station. They said they heard noise and when pressed they said they did not want to get involved. When she saw the defendant, she had scratches on her body. She doesn't recall seeing her lip burst. Images extracted from cameras that Salem showed to them. When the defendant returned to the house later blowing her horn and screaming-that footage was from his phone. The witness agreed that the defendant did say she was beaten about her body, and she observed that her ankle was swollen, and she had bruises about her body. She made no note in the diary about damage to the vehicle, but She said she made a general statement in the station diary. She wrote that the defendant caused damage to the rear portion of her car as reported by the complainant. The witness combined what the complainant said and what she observed.
- [54] She agreed that there is nothing in the diary about what she observed when she went on the scene nor that she searched for the brick nor that the brick was pointed out to her.
- [55] After the Crown closed its the case the defendant was given her three options and she opted to give sworn testimony. She testified that on 18th December 2020 she was aged 40 and she is 43 now. She said that her father dead died November 2019. She said that she knows the complainant and that she knows her very well, they met in 2011 or 2012. She said the complainant was her ex-girlfriend. In the beginning they were friends from 2012 we had very good and in 2016 they became a couple. The relationship was very good in the beginning. Thereafter it began to go downhill, and she began to see side to her that was aggressive.
- [56] In May 2017 the complainant burst her eyebrow and she had to have 18 stitches. She went to the doctor, and she was treated. On 18th December 2020 she said the two of them were talking and the complainant asked her for money to go to Garden Grill for dinner and she declined. She said she was on her period. She told her to make a reservation as it gets so busy, Osmarlin wanted to go to dinner as well. He is a close friend of the complainant. She had met him three times before. She said to the complainant *"go with him and enjoy yourself"*. *"It will be nice to catch up"*. They hadn't seen him since his birthday and so she made the reservations. She asked if I wanted to get together and I asked if before or after dinner? She said she could pick up the complainant later. She picked her up at 5:45 pm, she was driving a Hummer, and they went to Drays Bar on Kentish Road, there they were having a good time at about 7:20 pm she asked for Osmarlin, and she indicated that he will be coming.
- [57] While waiting the complainant said, *"you are going to pay for my dinner later right"* and defendant said *"no"* and told the complainant that she already owed her \$4,000.00. She got upset, demeanor and energy changed and at that time she was very angry, and defendant said let's leave. They left and Osmarlin called and said he was at the bar, and she turned around and he went in. They

drove off. The complainant was cursing. She was speaking Spanish, kicking the dashboard, hitting the dashboard, pulling the steering wheel to the left, beating on right shoulder and right side of face. She said she stopped and told her to *"get out the fucking the car"*. The complainant refused to get out. It was her evidence that she continued to drive, got to the complainant's house and she and Osmarlin got out and they got into her vehicle.

- [58] The defendant told the Court that she thought to herself that this was done. She rapped on the complainant's car window. She told the complainant that she wanted all her belongings and she never wanted to see her again. At this point the complainant got out and pushed her and told her *"You can't leave me you can't fucking leave me"*. She was pushing me. She grabbed her phone and key (remote to close and opened the jeep). Walked through a courtyard in front of the house. She was begging her to stop. She turned around and punched her in her nose. She fell on her back and saw stars. She then jumped on top and straddled her and was punching her in her face, head, temple and eyes. She was punching her all over. The defendant tried to get away from her, and the complainant kicked her in her left rib, and she dropped to the ground. She said her ankle was broken. She said she heard Osmarlin say *"she is hurt Nicole please stop"*, he came to help her up, but the defendant indicated she didn't want any help from him. She told the Court that he had watched her get beat and he never said anything.
- [59] She testified that she was in pain at the time. The complainant kicked her and jumped on her ankle and remarked *"don't bother with her she always saying something is wrong"*. The defendant then said that the complainant disappeared for 5 seconds and returned with a knife, and she became scared. She said she saw the complainant coming at her with a knife. At this point she told the Court that she picked up a brick. It was her testimony that she was backing up and she pelted the brick, and it went into the windshield. The complainant was looking at the windscreen. She said she took her chance and went to her car which was on. She then testified that the complainant ran towards her car, and climbed up on the hood and said, *"knock me down and kill me"*.
- [60] The defendant then said she reversed and ended up in the back of the complainant's car. The defendant told this Court that the complainant came off the hood and then she went forwards. Salem came outside asking what's going on. She limped toward him, and she told him what had happened. Salem said to put away the knife and the complainant put the knife behind her back. She then said that Salem pushed her and told her to get off the property. The defendant then said she hit him. The defendant told the Court she kept on saying she wanted her phone to call the police. Salem said he would call the police. It was her testimony that she then left and went home. She took painkillers and told her mother what had happened.
- [61] it was the defendant's testimony that Everyone knew about the relationship and its problems. The complainant would come to family dinners, the beach house and her home and she was known to the family. She admitted that she went back to Salem's house, and she was screaming *"Salem Khouly you are there...I want my phone and I want back my keys"*. She told the Court she stayed in her jeep and later Went to report stolen phone and key.

- [62] Officer Samuel said she didn't have the car remote in her possession that night. She indicated that the defendant told the police the complainant had broken her ankle, and she was given a blue medical form. She went to the Medical Surgical Clinic where Dr. Joey John dealt with her. She told the Court that she was examined on 20th December and stayed until 23rd December when she underwent surgery on her ankle. She testified that she was on crutches for 7 months, in pain was prescribed 3 different pain killers, and said it was the second worst thing to happen in her life (the first being the death of her father). Her mother took care of her during this time. She reiterated that the complainant was charging towards her as if she would stab her in her neck. She said she the complainant had a key knife, about 3 inches.
- [63] In relation to the injury, she went back to the doctor every 2 weeks and her mom took her to a clinic in Minnesota where she underwent a second surgery 6 months later and had a steel placed in her ankle. She told the Court that during the time the complainant was beating her the witness Osmarlin was 8-10 feet away watching but did not render assistance. She said that on the 23rd June 2020, on the complainant's birthday Osmarlin was present. She indicated that she took both of them out when it was his birthday.
- [64] When asked about the relationship between Christopher and the complainant the defendant told the Court that when he used to visit, he would sit in the gazebo and Salem would tell her not to come out of the house. She disclosed that she knew the house very well, would spend weeks there and sometimes even months and that she would sleep in Nicole's room. The defendant said Salem was like a father to her and a caretaker. The defendant also said that at the time of the incident Christopher was living with his mother at McKinnons.
- [65] When asked by her Counsel why she threw the brick she said told the Court she threw the brick to save her life and *"thank God she threw the brick"*. She said she reversed into the complainant's vehicle because she had no other option; if she had driven forward, she would have run the complainant over. She refuted that she caused the damage to Salem's electric gate,
- [66] Under cross examination the defendant said Osmarlin went into the car, the window came down, the attack occurred when the complainant came out of her car with the complainant pushing the defendant. She agreed that she hit Salem and she said he had pushed her. When the complainant hit her while driving, she said she didn't hit her back. She agreed to the suggestion that Salem was not taller than the complainant and she said Salem was bigger in weight than the complainant.
- [67] The defendant said the complainant was angry because she Jennifer had refused to pay for her dinner. She had 1 ½ drinks to 2, and she wanted to get out of the bar and away from the situation. She said that the complainant had a terrible temper, and she could demolish this court room if given the chance. She told the Court that on the way home the complainant would turn the wheel in order to kill them all.
- [68] When it was put to her by the Counsel for the Crown, she denied that she was irritated or frustrated. Her vehicle at the time started with the remote and it was parked horizontally at the house in Crosbies. There was an option of not moving her vehicle at all, but she agreed with the

suggestion that. She made a conscious decision to reverse instead of going forward. She told the Court that the brick tendered was not the brick she used, it was bigger than the one presented. She said the brick was near her hand at the time. Her evidence was that the complainant was charging, and she was 12-15 feet from her car.

- [69] She said to the Court Her ankle was broken and the pain scale was 8-9. She recalled that she was in unbearable pain, and she could not put her full weight on it. She testified that the complainant swung the vehicle, so it went off the road. At the house in Crosbies the defendant told the Court that the defendant had the knife before, she Jennifer damaged the CRX.
- [70] They were involved in many fights, but the defendant denied being controlling. It was the defendant's testimony that the complainant used her for money. She said she helped the complainant a lot, she contributed a lot and would pay for everything. However, she did not think she was the more powerful one. She told the court that She drove off and used her left foot to accelerate, and she went back to Crosbies. She agreed that she made noise and that she was shouting loudly outside at the house. The defendant told the court she thought to herself "*oh my God she is coming to kill me*". She told this Court that in her view it was a matter of life and death. She denied that she was irritated and annoyed with the complainant at the time when this suggestion was put to her. She denied further that she was annoyed when she asked the complainant to get out of her vehicle on Friars Hill Road.
- [71] She denied hoping or thinking this case would just fizzle out when this was put to her by Counsel. She did not think this case would fizzle out. The pictures taken by the police were shown to the defendant and she agreed that her car was further back than in the picture. She was in front of the car when the complainant attacked her. She said When the complainant was charging, she was in line of vision. After she pelted the brick, she reversed. She said she hit Salem because he pushed her causing the pain to shoot up, she said she was not resting her full body weight on her ankle.
- [72] The defendant went on to tell the Court that after the fight she was limping on one foot. She stated further that she did expect consequences for her actions, and she was upset because she felt that the complainant wanted to be with other men. She denied calling the complainant a Spanish whore. In relation to Osmarlin she said she could not recall him offering her help. Counsel suggested to the defendant that she was never acting in self defence, and she denied this being so. It was put to her that the complainant was never on the hood of her vehicle, and she denied that being so but said that she chose not to run her over.
- [73] She said the distance between the two cars was 5 feet at the time. While she agreed that she rammed the complainant's vehicle she said she didn't go back fast, and she rammed it once. Finally, she denied saying the words "*I own the police, I own the government*".

Discrepancies

- [74] The Court was urged to consider the discrepancies pointed out in the witness statements of some of the Crown witnesses compared to their oral testimonies in Court and it seems apposite to repeat once again what has been stated in another jurisdiction in that respect. Mainga, J (as he then was) in the oft quoted case of **Aloysius Jaar** from Namibia said that: *“A court of law should be careful in discrediting a witness because his evidence in chief slightly departs from the statement a witness should have told the police, especially in this country where it is a notorious fact that the majority of the police officers who are tasked with the duties to take statements from the prospective witnesses and accused persons are hardly conversant in the English language and more so that police officers who take down statements are never called and confronted with the contradictions that an accused or a witness may have raised in cross-examination. It has been said more than once in this court that a statement made by an accused or witness to a police officer is of skeletal nature and in evidence in chief a witness may elaborate on the statement.”*
- [75] I must consider what we call inconsistencies and or discrepancies in the evidence of the witnesses. And I will now direct myself as to what these terms mean. I will look at the issue of inconsistency first.
- [76] In most trials it is possible to find inconsistencies in the evidence of witnesses, especially when the facts about which they speak are not of recent occurrences. So, I am going to bear in mind when I assess the testimony of the witnesses that the incident took place in December of 2020, and the witnesses are giving evidence before me in October 2023. So, the Court understands the span of time that would have passed, so I bear that in mind also.
- [77] Now these inconsistencies may be slight or serious, material, or immaterial. If I find that these inconsistencies are slight or immaterial, I may think they do not really affect the credit of the witness, or the witnesses concerned. On the other hand, if I think that these inconsistencies are serious or material, I may say that because of them it would not be safe to believe the witness or witnesses on that point or any point at all. It is a matter for the Court to say in examining the evidence whether there are any such inconsistencies, and if so, whether they are slight or serious, and bear in mind how the Court shall direct itself. And in examining these inconsistencies the Court should consider the witnesses level of intelligence and his or her ability to put accurately into words what he or she has seen, their powers of observation and any defects that the witness might have.
- [78] The Court is reminded that the previous statement does not constitute evidence on which I can act unless the witness has admitted that what was said on the previous occasion is the truth. However, if what was said previously conflicts with the witness' sworn evidence before me, I am entitled to take that inconsistency into account, having regard to any explanation the witness may offer for the inconsistency for the purpose of deciding whether the evidence of the witness ought to be regarded unreliable, either generally or on the particular point.

- How many times was the CRX rammed? Defendant said once, complainant said constantly - more than once.
- The witness Osmarlin said *"He said that he got out and when they got into the fight, he tried to pull them apart"*. The defendant said he did nothing during the fight, *"he stood and watched her get beat up"*, the complainant said he stayed away in the beginning of the melee but later he came and assisted them both to their feet and he was rebuffed by the defendant.
- Osmarlin said the fight did not begin in the car however the defendant's evidence is that they fought while in the car with the complainant hitting her.
- The defendant said Salem pushed her, complainant said she punched Salem without being pushed and Salem disputed pushing the defendant and his son also said he saw the defendant hit his father without being pushed.
- The defendant said the complainant approached her with a knife while none of the witnesses said the complainant had a knife, in fact Salem Khoully vehemently denied seeing the complainant with a knife.
- Did the property have cameras at the time? Salem said the house did not have cameras and that he installed cameras after this incident. The defendant said there were cameras. Salem said no cameras and Christopher said no cameras and then he was not sure if there were cameras there or not.
- Witnesses said the defendant said on more than one occasion that *"she could buy the police; she owned the police and that she owned the government"*. The defendant denied uttering these words.

[79] The Court has considered all of these discrepancies and does not find that any of them go to the crux of the Crowns case...they are neither material nor substantial. I do not believe either that they shake the credibility of the witnesses, or I am reminded that this incident took place three years ago.

Demeanor

[80] Lord Bingham described demeanor as the sum of a witness's *'conduct, manner, bearing, behaviour, delivery, inflexion'*. In short, *'anything which characterizes his mode of giving evidence but does not appear in a transcript of what he actually said'*¹. So, demeanor is about the language of the body rather than words – emotion about lying that is translated into visible or audible signs. Although Lord Bingham and some other distinguished judges have cautioned against too great a dependence on demeanour in reaching assessments of credibility, most judicial decision-makers accept that it is an important element in the finding of facts and, of course, part of the point of having witnesses giving evidence orally.

¹ Onassis vs. Verottis (1968) 2 Lloyd's Reports, pg 5

- [81] The Court has observed the demeanour of all of the witnesses. The Crown witnesses have come across as honest and forthright and I have had no difficulty in believing their testimonies. The witnesses Christopher Khouly and Osmalin Del Rosario were obviously uncomfortable in recounting the events, particularly Christopher. However, this is understandable as under cross examination Counsel delved into his parents' marriage and divorces making his discomfort obvious. However, the Court still found their testimony to be credible and believable. They all stood up under the vigorous cross examination by defence especially the complainant.
- [82] In relation to the defendant when asked certain questions she appeared evasive, reticent and on occasion aggressive and resorted to arguing with Crown Counsel. She had to be cautioned on more than one occasion.
- [83] The complainant also had to be cautioned and reminded that she was in court to answer questions not to ask the Prosecutor questions.
- [84] Two /three witnesses testified that when the defendant was informed that the police were to be called, she retorted "*call dah police, I own the police, I own this government*" or words to that effect. These utterances accord with the defendant's demeanor in this courtroom, she argued with the prosecutor instead of answering the question put to her by Counsel exhibiting an air of entitlement and privilege. This Court has no difficulty in believing the testimony of the witnesses in this regard as it accords with the attitude of the defendant and underscores her demeanor observed during the trial.

Good Character Direction

- [85] The defendant has no previous convictions. I have reminded myself that the defendant is a woman in her forties who is self-employed. I have reminded myself that good character is not a defence to the charges, but it is relevant to my consideration of the case in two ways. First, the defendant has given evidence. Her good character is a positive feature of the defendant which I should take into account when considering whether I accept what she told this court. Secondly, the fact that the defendant has not offended in the past may make it less likely that she acted as is now alleged against her.
- [86] However, what weight should be given to the defendant's good character and the extent to which it assists on the facts of this particular case are for the Court to decide, being the tribunal of fact. In making that assessment the Court will take account of everything I have heard about her during this case. The parties in this case had a fight, tempers were flaring, there was a loss of self-control and damage was caused. And then the utterances of the defendant which three persons said they heardso all three persons are lying? I do believe behaviour that night shows the level of rage that the defendant was experiencing. The account given by the defendant where she paints herself as the victim is not believable.

The Police Investigation

- [87] The defendant's attorney indicated that the police failed on many fronts. They failed to look for independent witnesses, they failed to keep the damaged vehicle as a police exhibit, and they accepted a brick from the complainant. All very serious shortcomings. However, the Court is not of the view that this was a bare bones investigation like some of the many cases that come before the Court. The Court is of the view that the police shortcomings do not pierce the heart of the Crown's case.

Self Defence

- [88] The defendant has said that the complainant came at her with a knife, and she had to pelt the brick at the windscreen to prevent herself from being stabbed. The Court is aware that a person under attack may use whatever reasonable force to defend him or herself and is entitled to make preemptive strikes to ward off a threat. However, the Court is of the view that the marshaling of the evidence by Miss Adams for the Crown negatives the defence of self defence for the defendant. I am aware that the defendant has nothing to prove. However, the evidence does not support self defence. When it was put to the Crown witnesses that the complainant was in possession of a knife, they all denied this. No knife was found and handed over to the police either. The version of events as put forward by the defendant is unbelievable and far-fetched. In the Court's view it appears that she was painting a picture of the complainant as being some super crazed woman, throwing herself on the bonnet of her car shouting "*kill me now, and you can't fucking leave me*". The version beggars belief and the Court does not believe it.

Versions of Events

- [89] Miss Adams in her closing indicated that the defendant had already admitted to damaging the complainant's vehicle. I agree with this assessment. The run up to the ramming and hitting of the windscreen are all factual issues which the Court as the tribunal of fact is entitled to find. The facts as the Court finds them are that an argument and fight occurred at Salem Khoully's home having started in the defendant's vehicle. There were words said on both sides, however the attack in the vehicle is not borne out by the complainant and Osmarlin's testimony. At Salem Khoully's home the fight continued, borne out by the fact that neighbours, hearing the commotion, called Christopher Khoully who was off the premises but quickly returned. The story about the complainant approaching the defendant is a fabrication. The defendant was angry and upset because the complainant wanted to go out and possibly because the complainant asked her to pay for the dinner. In any event what transpired afterwards was an illustration of a lack of self-control and malicious intent. The complainant's vehicle was rammed, and the windscreen broken by the defendant who had the mens rea at the time. The defendant's behaviour that night shows the level of rage that the defendant was experiencing slapping a grown man in his face. The account given by the defendant where she paints herself as the victim finds no favor with this Court in fact, she was the author of her own misfortune hence the injury to her ankle.

- [90] The evidence marshalled by the Crown has satisfied me, beyond a reasonable doubt that all the elements of the offence have been proved. I find the defendant guilty.
- [91] The defendant will be remanded for sentencing on 10th November 2023.

Sentencing Hearing – 10th November 2023

Construction of the Sentence

- [92] The offence of **malicious damage** is not governed by any sentencing guidelines, but the principles of sentencing are applicable. Under Section 44 of the **Malicious Damage Act**, Cap. 258 of the Revised Edition (1992) of the Laws of Antigua and Barbuda, the maximum possible sentence for this offence is two years imprisonment.
- [93] It is, however, open to this Court to impose pecuniary sentences such as a fine, compensation or both if the Court deems it fit. In coming to its conclusion, the Court will examine the seriousness of the offence and will consider all the factors including, but not limited to, the extent of the damage to the vehicle and what was used to cause the damage, viz: a vehicle and a brick.
- [94] The Court has received evidence as it relates to the cost of the replacement parts of the vehicle, and it is open to the Court to receive *viva voce* evidence of any other expenses relating to the repair of the vehicle. Additionally, the Court is open to receiving evidence as it relates to how much, if any, of the cost was offset by insurance. The Court recognizes also that it is obliged to examine the consequences of the offence on the complainant. In this regard the Court is open to receiving *viva voce* evidence relating to any practical issues that may have arisen from the damage caused to the car. This includes, but is not limited to, whether the complainant was ever without the use of her vehicle and if alternative methods of transport had to be arranged and what, if any, expenses were incurred due to the same.
- [95] The next step is to consider the aggravating and mitigating factors as they relate to the offence. The Court finds a point of aggravation as it relates to the circumstances of this offence was the use of another vehicle to intentionally ram into the complainant's car. There are no mitigating factors as it relates to the offence. The Court also considers the aggravating factors as it relates to the offender and finds that there are none. As it relates to the mitigating factors pertaining to the offender, it must be noted that she has no previous convictions. The Court has also heard from her character witnesses and has considered what has been said about her.
- [96] The Court notes that in cases of malicious damage, the sentence of the Court is not usually custodial in nature but often takes the form of compensation and/or a fine and the Court Considers the unreported case of **R v Emerson Alexander** ANUHCR2020/0013 where the accused, upon conviction, was ordered to pay compensation in the sum of \$2,154.87 and was fined \$750.00 with

a default of three (3) months' imprisonment in circumstances where damage was caused to the virtual complainant's house. Similarly, **Victor Medina** was ordered to pay compensation in the amount of \$4,055.19 and was fined \$1,000.00 with a default of 6 months' imprisonment for damaging several of the complainant's household items and appliances. In that matter Mr. Medina entered a plea of guilty.

- [97] In the case at bar, the complainant was called to give viva voce evidence and indicated the cost of \$16,000 parts and labour to repair her vehicle. A receipt was tendered and marked **EV#1**. The complainant also indicated that She was without the use of the vehicle for 1 month and had to rent a vehicle for that time. She rented a vehicle from Biggs Rental for 45 days to the tune of \$6082 indicating that she still owed \$3,682.50 to that establishment.
- [98] Having heard from the complainant and having viewed the receipts the Court orders that Compensation in the amount of \$22,000.00 and a fine of \$2,000.00. The family of the defendant indicated through Counsel that both sums would be paid forthwith.

This is the Order of the Court.

Ann Marie Smith
High Court Judge

By the Court

Registrar