

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CASE NO. ANUHCR2023/0040

BETWEEN:

THE KING

-and-

WINSTON TITTLE

Appearances:

Mr. Daniel Lattery for the Crown
The Defendant in Person

2023: October 16th
October 30th

JUDGMENT

- [1] **BAKRE, J.:** In May 2021 the defendant Winston Tittle was arrested by police following a complaint made by his longtime partner Francia Brann that he attacked and beat her about her body on two occasions. On 8th May 2023 the Learned Director of Public Prosecutions indicted Mr. Tittle for two offenses contrary to the **Offenses against the Person Act, Cap 300 of the Laws of Antigua and Barbuda, Revised Edition 1992.**
- [2] The First Count was for **Causing Grievous Bodily Harm with Intent contrary to Section 20 of the Offences against the Person, Cap 300 of the Revised Edition (1992) of the Laws of Antigua and Barbuda.** The allegation was that Mr. Tittle between the 20th day of May and the 23rd day of May 2021, at Green Bay, in the Parish of Saint John in Antigua and Barbuda, unlawfully and maliciously caused grievous bodily harm to Francia Brann with intent to do her grievous bodily harm.

[3] The Second Count was for **Inflicting Grievous Bodily Harm Contrary to Section 22 of the Offences against the Person Act, Cap 300 of the Revised Edition (1992) of the Laws of Antigua and Barbuda**. The allegation was that Mr. Tittle between the 20th day of May and the 23rd day of May 2021, at Green Bay, in the Parish of Saint John in Antigua and Barbuda, unlawfully and maliciously inflicted grievous bodily harm on Francia Brann.

[4] Mr. Tittle pled not guilty to both counts on the indictment.

Jurisdiction of the Court

[5] Trial was held on 16th October 2023.

[6] **The Criminal Proceedings (Trial by Judge Alone) Act No. 8 of 2021, (as amended by Act No. 7 of 2022)**, at section 4, makes it mandatory for offences contrary to sections 20 and 22 of the **Offences Against the Person Act** to be tried by a Judge, sitting alone without a jury. The Judge therefore is the forum of both the law and of fact.

[7] As in any criminal case, the burden of proof rests squarely upon the Crown. The Crown must also prove its case beyond reasonable doubt.

[8] The defendant is under no obligation to prove his innocence.

The Offenses

[9] The fundamental difference between the two counts for which Mr. Tittle was indicted relates to the *mens rea*. In the case of causing grievous bodily harm with intent, the Crown must prove that there was a specific intent at the time the offence was committed. In the case of inflicting grievous bodily harm, the allegation is that the grievous bodily harm was done unlawfully and maliciously but without an intent to cause bodily harm.

[10] As held in **The King v Marlon Joseph ANUHCR2019/0068** in order to prove Count One, the Crown must establish the following elements:

[11] That:-

- a. The virtual complainant, Ms. Brann, suffered grievous bodily harm. See **DPP v Smith [1961] AC 290** where the court stated that “the expression “grievous bodily harm” should bear its ordinary and natural meaning of “really serious” harm.”

- b. The defendant, Mr. Tittle, was the one who wounded or caused the grievous bodily harm to the virtual complainant.
- c. The defendant at the time of inflicting the grievous bodily harm, had a specific intent to do so.
- d. The defendant had no lawful excuse for acting as he did.

[12] The court wishes to note that section 22 of the **Offences against the Persons Act** provides that the offense of Inflicting Grievous Bodily Harm may be considered as an alternative to the offense of Causing Grievous Bodily Harm with Intent.

[13] Section 22 of the Act provides, *inter alia*, that if a defendant charged on indictment with the felony offense of causing grievous bodily harm with intent is not found guilty, he may nonetheless be found guilty of the misdemeanor offense of inflicting grievous bodily harm. As a result, if the defendant is found to be guilty on Count One there will be no need to consider Count Two and in the case of an acquittal on Count One the defendant may be found guilty of Count Two of the Indictment.

Facts

[14] The defendant and Ms. Brann were involved in an intimate relationship which lasted about 10 years. They lived together at their home in Green Bay, Antigua.

[15] Ms. Brann said that on the night of 21st May 2021 she went home to the house that she and the defendant shared. She said that upon arriving home she decided to do some washing and asked the defendant to give her the sheet on the bed which he was resting on at the time. He refused and asked her to leave the house, she refused. An argument ensued and the defendant armed himself with a hammer and began to beat Ms. Brann on her head, back, hands and feet.

[16] Ms. Brann said she went to the Gray's Farm Police Station on the night of the 21st of May 2021 to make a report, but she could not as the police station was closed.

[17] On the morning of the following day, 22nd May 2021, Ms. Brann was at the West Bus Station when the defendant picked up a stick and began beating her again in full view of several bystanders. This time the defendant beat Ms. Brann on her back, hands and feet.

[18] The defendant denied that he ever beat Ms. Brann and said that they both slept together in the house on the 21st of May 2021.

Evidence at Trial

[19] Ms. Brann's evidence is that Mr. Tittle beat her on the night of 21st May, 2021 and on the morning of 22nd May, 2021.

[20] On both occasions the beatings were unprovoked and done with the use of weapons, which she said was a hammer and a stick. She suffered injury on both occasions and had to seek medical attention after the second beating.

[21] She explained that at the time she and the defendant were involved in an intimate relationship for about 10 years and that they shared a room together in Green Bay, this is where the first beating took place on 21st May 2021 in the night. After being beaten Ms. Brann tried to seek help at the Gray's Farm Police Station but was unable to get assistance as the police station was closed. After this she returned to her home in Green Bay and found that the defendant was no longer in the house, she said she went to bed and that she was feeling pain in the areas she got struck, namely, her head, back, hands and feet.

[22] Ms. Brann said that on the next morning, 22nd May 2021, she was at the West Bus Station when the defendant saw her and started beating her with a stick. She said she received blows to her hand, back and foot. After this she reported the incidents to a Corporal Tonge who issued her with a police medical form. She then went to the hospital for treatment.

[23] At the hospital Ms. Brann said that her hands were put in casts and that she was given medication for pain.

[24] She said that she later found the hammer that the defendant used to beat her by an abandoned house in the yard she lived in and that she handed the hammer over to Corporal Tonge.

[25] On cross examination the defendant challenged Ms. Brann's recounting of the incidents to which she reiterated quite forcefully that he beat her. In the face of his challenge, she indicated that at the time of the second beating a bystander tried to intervene by telling Mr. Tittle not to take advantage of her, she also indicated that since the beatings one of her fingers became bent and remained that way up until trial about three years later.

[26] The Crown's second witness was Jeron Wyre. He sells video films by the Perry Bay Supermarket. His evidence was that on the night of 21st May 2021 he saw Ms. Brann. He said that at the time he was playing a movie from a flat screen television that he set up for the purpose of entertaining vagrants that were in the area and that Ms. Brann was among them watching the movie. He said that he packed up his equipment and left the area at about 10:30pm and at that time he did not observe any cuts or bruises on Ms. Brann.

[27] Ms. Brann's daughter Natosia King also gave evidence regarding the abusive relationship which existed between her mother and Mr. Tittle. She narrated that when she was living with the couple in 2016, she observed Mr. Tittle beating her

mother constantly. Ms. King said that on one occasion when Mr. Tittle was beating her mother she intervened and that she was injured when he hit her on the hand with an object.

[28] As it relates to the case at hand Ms. King said that on 21st May 2021, she received a phone call and went to the hospital afterwards. At the hospital she met her mother and observed that her two hands were swollen. She said that later in the day when she saw her mother again both of her hands were in casts.

[29] Police Corporal Genevieve Tonge told this court that on the morning of 22nd May 2021 Ms. Brann came to the West Bus Station Police Post and reported that she was beaten about her body by Winston Tittle with a hammer and a piece of stick. She said that Ms. Brann showed her both of her hands and that her right and left hand appeared to be swollen; the Corporal said that she also saw a bleeding wound on Ms. Brann's thigh.

[30] On the 25th May 2021 Corporal Tonge saw Mr. Tittle at the West Bus Station Police Post. She identified herself to him and told him that she was carrying out investigations into a report that he beat Francia Brann with a hammer and a stick, she cautioned him, and he replied, "I never beat Francia".

[31] Corporal Tonge then interviewed Mr. Tittle and took his statement, this was done in the presence of another Police Constable named Constable Baron.

[32] On 26th May 2021 Corporal Tonge applied for a search warrant and executed same on the premises of Winston Tittle in search of the hammer used to beat Ms. Brann but the hammer was not found. She then arrested and charged Mr. Tittle for inflicting grievous bodily harm on Ms. Brann. Mr. Tittle was taken before the Magistrates Court and released on bail.

[33] On the 22nd day of May 2022, exactly a year after the investigation was first initiated, Corporal Tonge was on duty at the West Bus Station Police Post when Ms. Brann brought a hammer and reported that it was the same hammer that Mr. Tittle used to beat her.

[34] A Medical Examination Form was issued to Ms. Brann and prepared on 22nd May 2021 by Dr. Sean Blackburn. In the report Dr. Blackburn notes that Ms. Brann's injuries consisted of severe swelling to both hands and the left leg along with fractures to both hands.

[35] The Radiology Report prepared by Dr. P. Goodwin M.D. indicates that Ms. Brann was examined on 22nd May 2021 and states that an X-Ray was performed on both of Ms. Brann's hands and her left femur. The findings of the X-Ray were that Ms. Brann suffered a fracture involving the right 3rd proximal phalanx and the left 5th proximal phalanx with surrounding soft tissue swelling.

- [36] Dr. Christine Persaud gave evidence as an expert witness at the trial of this matter. Dr. Persaud said that on 22nd May 2021 she examined Ms. Brann who was in mild painful distress with swelling to both hands. The Medical Report prepared by Dr. Persaud indicates that “the 3rd digit of the right hand was deformed with decreased range of motion and tenderness over the 3rd and 4th digits....On the left hand there was a 2 cm wound over the 5th metacarpal region with decreased range of motion of the 4th and 5th digits and tenderness over the 5th proximal phalanx...The wound on the left hand was cleaned and sutured and a below elbow stab was then plated. Check x-rays were done and the patient was discharged from the emergency room with cast care instructions, a prescription of Voltaren, Paracetamol and Augmentin was made and she was asked to return to the hospital for review.”
- [37] When asked whether the injuries to Ms. Brann’s hands could have been caused by a hammer Dr. Persaud confirmed that they could have been, as the fingers have small bones. *(this piece of evidence is disregarded as it is at best a leading question)*
- [38] In addition to the foregoing Ms. Brann stated that on the night of the first attack she went to bed and that she felt pain in her foot, hands, head and back.
- [39] At the close of the Crown’s case Mr. Tittle opted to give evidence from the witness box. When given the opportunity to explain what occurred between him and Ms. Brann at the times he is alleged to have beaten her he simply stated that “nothing happened”.
- [40] In all of this, the evidence of the Defendant is that he did not beat Ms. Brann and that they slept together on the night of 21st May 2021 in their house.
- [41] Under cross examination, the prosecution counsel expressly asked the defendant whether Ms. Brann gave him permission to beat her to which he answered “No”.

ANALYSIS OF FACTS

- [42] At the start I wish to note that the court will not give weight to bad character evidence of the Defendant when coming to a decision on this matter because generally, evidence of character of an accused is irrelevant, except in the situations created under Section 6 (4) of the Evidence Act. Section 6(4) of the **Evidence (Special Provisions) Act, No. 5 of 2009** states as follows:

“(4) If a person charged in criminal proceedings, whether personally or by his advocate, has—

- (a) Asked questions of a witness for the prosecution with a view to establishing that person’s own good character;*
- (b) Given evidence of his good character;*
- (c) Conducted his defence in such a manner as to denigrate the character of—*
 - (i) The prosecutor;*

(ii) *A witness for the prosecution;...*

The prosecution may adduce evidence to show that the person has committed, been convicted of, or been charged with any offence other than that with which he has been charged in the proceedings."

[43] The prosecution through their witness Natosia King introduced evidence of the Defendant's previous bad character in that the witness spoke to the Defendant's history of domestic violence targeted at herself and the virtual complainant, Ms. Brann. The court having read the provisions of the Evidence (Special Provisions) Act is of the view that this evidence is inadmissible and cannot be considered as the defendant never tried to establish that he was of good character, nor did he attempt to denigrate the character of the prosecutor or prosecution witnesses.

[44] It is trite law that in criminal trial, the prosecution has the entire burden of proof, and the standard of proof must be beyond reasonable doubt. This notwithstanding, the court may determine the case based on circumstantial evidence. As stated in **Fitzroy Jarvis vs. The Queen Criminal Appeal No. 6 of 2000 Eastern Caribbean Court of Appeal**, to rely on circumstantial evidence *"the evidence must be closely and narrowly examined and that the circumstances must be such that they point conclusively to the guilt of the appellant."* (In this case the defendant).

[45] I stated earlier in this judgment that in order to prove the case against the Defendant in relation to Count One, the prosecution has the responsibility to prove the four elements stated above. I have considered the case put forward by the prosecution.

[46] Based on the evidence before the court it is clear that Ms. Brann was badly injured at the time she made the report to the West Bus Station Police Post. Thus the virtual complainant, Ms. Brann, clearly suffered grievous bodily harm.

[47] Having regard to the evidence of both Ms. Brann and Mr. Tittle they agree that they were both together on the night of 21st May, 2021. The court must decide whose evidence to prefer as this will determine the outcome of this case.

[48] This court will have to take into account all the circumstances surrounding the facts as stated above. The evidence as given by both parties is that they were alone together later that night. It was the evidence of Jeron Wyre that Ms. Brann was seen earlier in the night, and she was in good shape until about 10:30pm when he left Perry Bay Supermarket.

[49] She was in the company of the defendant at home later in the night and for the remaining part of the night and the next day she was at the police station to report that she was beaten, and this was confirmed by the medical report. Thus the defendant, Mr. Tittle, was shown to be the only one who could have caused the grievous bodily harm to Ms. Brann.

[50] This court finds it difficult to determine with any certainty whether the hammer produced by Ms. Brann is the same hammer that was used to beat her as an entire year passed between the date she first went to the police and the date she gave the

hammer to Corporal Tonge. It is also noted that Corporal Tonge had carried out a search on the premises subsequent to the event without finding the said hammer. Additionally, the hammer was not produced as exhibit before this court as according to Corporal Tonge the Criminal Record Office misplaced it after it was taken there for safe keeping.

[51] When there is an iota of doubt on the mind of the court in a criminal trial with respect to a particular issue it should be resolved in favor of the defendant who is presumed innocent. I am not persuaded that the prosecution proved the intention of the Defendant in this regard beyond reasonable doubt I thus believe that the intention of the Defendant to cause grievous harm to Ms. Brann was not proved. This notwithstanding I cannot however see the lawfulness or a justification for the actions of the Defendant in causing the Complainant such an injury.

[52] Ms. Brann impressed as a witness of truth. Her testimony was clear, and she remained steadfast in her recounting of the beatings when directly challenged by the defendant. Mr. Tittle on the other hand offered very little in the way of evidence opting only to deny the allegations made against him. All that comes to mind with the totality of the defendant's case is a blanket denial saying "**it wasn't me**". In the circumstances the court does not perceive Mr. Tittle's narrative as credible.

CONCLUSION

[53] In all, three of the elements of the offence was sufficiently proved in my view by the prosecution:-

- a. The virtual complainant, Ms. Brann, clearly suffered grievous bodily harm.
- b. The defendant, Mr. Tittle, was shown to be the one who caused the grievous bodily harm to Ms. Brann.
- c. He had no lawful excuse for acting as he did.

[54] Having regard to the evidence this court has no difficulty in finding that Ms. Brann suffered grievous bodily harm at the hands of the defendant. The court is further satisfied that at the time of the attacks Mr. Tittle had no justification whatsoever in carrying out such an act.

[55] As a result of the foregoing the court could not find the defendant guilty of the offense of Causing Grievous Bodily Harm with Intent contrary to Section 20 of the Offences against the Person, Cap 300 of the Revised Edition (1992) of the Laws of Antigua and Barbuda. However, the court relies on Section 22 Offences against the Person, Cap 300 of the Revised Edition (1992) of the Laws of Antigua and Barbuda under which the second count was brought and finds the Defendant guilty under count two of the indictment.

[56] The Defendant Wilson Tittle of Green Bay is found guilty and convicted under Section 22 of Offences against the Person, Cap 300 of the Revised Edition (1992) of the Laws of Antigua and Barbuda.

Tunde A. Bakre
High Court Judge

By the Court

Registrar