

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

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

Claim Number: **NEVHCR2018/0004**

Between **Director of Public Prosecutors** Claimant
and
Jared Griffin Defendants

Before: His Lordship Justice Ermin Moise (A.g)

Appearances:

Mr. Vaughan Henderson with Ms. Lanein Blanchette of counsel for the crown
Mr. Chesley Hamilton of counsel for the defendant

**2019: May, 10th
June, 18th**

JUDGMENT on Sentencing

[1] **MOISE, J (A.g):** on 11th April, 2019, this defendant was found guilty of wounding with intent to cause grievous bodily harm. A Social Inquiry Report was ordered prior to sentencing and was presented to the court in due course. On 10th May, 2019 the court heard submissions on sentencing and is now in a position to declare the appropriate sentence to be imposed on the defendant.

The Facts

[2] On 29th August, 2016 at approximately 11:00am the defendant was engaged in an altercation with the complainant. The defendant is the operator of a passenger bus. On that morning he was driving his bus along the Oualie Beach area. He was heading to Charlestown and the complainant's then girlfriend was seated in the front passenger seat of the defendant's bus. At the Oualie Beach area the complainant stood in the middle of the road. The bus stopped and an

altercation ensued; during which time the complainant attempted to get his girlfriend off of the bus. The complainant produced a knife during this altercation. The defendant states that he was threatened by the complainant and therefore made a report to the police station.

[3] On that evening, at approximately, 7:00pm, the complainant drove to the X-Petrol Gas Station at Camps. He was accompanied by his girlfriend who got out of the vehicle and went into the shop at the gas station. The defendant's motor vehicle was parked at the pumps. The evidence is that he got out of his vehicle carrying a cutlass, went towards the complainant, who was sitting in his car and chopped him on his right knee with the cutlass. After inflicting this injury, the defendant then told the complainant something to the effect of "don't f**k with me! I'm a bad man." The defendant then got into his bus and drove away from the scene. He was later arrested and charged for the offence of wounding with intent to cause grievous bodily harm.

[4] The complainant was taken to the hospital on that evening and remained hospitalized for approximately one week. His injuries were described in the medical evidence as being a laceration around 10 centimeters in length and 5 centimeters wide and deep on the right leg. The complainant underwent surgery as a result of what was described as a severing of the patellar tendon. He also required a period of physiotherapy in order to facilitate weight bearing.

The Law

[5] The maximum penalty for wounding with intent in the Federation of Saint Christopher and Nevis is 20 years imprisonment. One must always consider the principles of retribution, deterrence, prevention and rehabilitation in determining what an appropriate sentence ought to be. In coming to that conclusion it is important to give consideration to the issues raised in the social inquiry report presented to the court.

Social Inquiry Report

[6] The defendant was 32 years old at the time of the offence. He is the only child of his mother but the 7th of his father's children. He grew up with his mother and generally maintains a good relationship with his family. He is the father of three children ages 12, 10 and 2. He has no prior involvement

with the social services department and no previous convictions. He is employed as a minibus operator and, as I understand it, owns 3 passenger busses. The report states that the defendant expressed his remorse and wishes that he had not acted in this manner. He states that when he thinks about his children and how his actions have affected their lives he feels very bad. After the incident some persons were no longer willing to travel on his passenger bus. He has lost passengers as a result.

- [7] During the inquiry the social case worker spoke with a number of persons from the defendant's community who described him as good and helpful. These included the General Manager of the MontPelier Hotel where the defendant worked for some time, as well as an elderly lady who to whom the defendant provides some physical assistance. However, the assistant school principal described the defendant as a confronter and stated that he was not necessarily a fighter but was one to stand up for his rights. He also described him as "mouthy." The records reflected that by the last year of school the defendant showed little interest and his behavior and performance deteriorated. He dropped out of school before completing his final year at that institution. The social case worker recommended anger management classes for the defendant as part of his rehabilitation. There is reason to suggest that he has had a difficulty in controlling his anger in the past.

Victim Impact

- [8] The complainant states that he experienced a lot of pain as a result of this injury. He received injections in the area of the cut and underwent surgery. He had 16 stitches on the inside and 8 on the outside. He now has to live with 2 screws in his leg as well as the need for constant pain medication. Whilst in the hospital he was airlifted to Antigua in order to have an MRI done. The pain is worse during the evening and he has difficulty bending his knee. He discontinued the therapy which he underwent at the hospital as it was too painful. He resorts to swimming instead. He states that he gets very emotional when he sees the scar and experiences the pain caused by the injury. He states that the injury initially affected his relationship with his daughter who was afraid to come close to him for some time. He can no longer dance, ride a bike or stand still for long periods as a result of his injury.

[9] The complainant states that he spent a total of \$11,000.00EC on medical treatment at the hospital and a further \$2,000.00US for the MRI which was done in Antigua. Despite all this, the complainant states that he does not wish for the defendant to be imprisoned. He would rather be compensated for his injuries.

[10] The defendant, through his counsel, expressed a willingness to compensate the claimant for this loss as well as for his pain and suffering based on the amounts highlighted in the social inquiry report.

Aggravating and Mitigating Factors

[11] After considering the facts and submissions of both sides I find the aggravating factors in this case to be as follows:

- (a) That the offence resulted in serious injury to the complainant;
- (b) That a weapon was used in the commission of this offence;
- (c) That there appeared to be some premeditation on the part of the defendant, given the altercation which had taken place earlier in the day; and
- (d) This offence was committed in the presence of witnesses with no regard for the public outrage which would have ensued.

[12] I find the mitigating factors to be as follows:

- (a) The defendant has expressed remorse as a result of his actions and a willingness to compensate the complainant for his injuries;
- (b) The defendant has no previous convictions and has been of good character prior to the incident;
- (c) He is gainfully employed and is a productive member of society;

- (d) The complainant himself has expressed a desire that the defendant not be imprisoned but rather seeks compensation for the injuries which he has suffered.

The Appropriate Sentence

[13] The crown has submitted that only a custodial sentence would suffice in this case. The court was referred to the sentencing guidelines in the UK and it was submitted that this case falls within category 1 of these guidelines. The starting point in that jurisdiction would therefore be a term of imprisonment for 12 years with a sentencing range of 9 to 16 years in prison. The crown recommends a starting point of 10 years in prison and further adjustments made to address the aggravating and mitigating factors in this case.

[14] The crown also referred to a number of authorities from Saint Christopher and Nevis in which a custodial sentence was imposed. One such case was that of **DPP v. Kenneth Cardwell**¹ where the defendant was sentenced to 6 years in prison after a guilty plea. I note however, that the facts of that case are distinguishable. The defendant in that case inflicted multiple stab wounds to the victim. I am not of the view that this case is of assistance in the present circumstances.

[15] Reference was also made to the case of **DPP v. Adminston Lewis**². In that case the defendant chased down the victim and chopped him on multiple parts of his body. He was sentenced to 7 years and 1 month after conviction for wounding with intent. I am again of the view that the facts of this case are distinguishable from the present where there was only one injury inflicted.

[16] Counsel for the defendant, on the other hand, concedes that the injuries were serious and recommends a sentence of 3 years imprisonment. However, counsel goes on to plead with the court that this sentence be suspended given the favourable content of the Social Inquiry Report. He also refers to the complainant's own declaration that he does not wish to see a custodial sentence imposed on the defendant.

¹ SKBHCRA2012/0018

² SKBHCR2018/0007

[17] Section 6 of the **Alternative Sentencing Powers Act**³ makes provision for the imposition of a suspended sentence. The section states as follows:

“6. Suspended Sentences

(1) A court which passes a sentence of imprisonment on an offender for a term of not exceeding three years for an offence may suspend the sentence by ordering that the sentence shall not take effect unless

(a) during a period specified in the order, being of not less than 12 months and not more than 3 years from the date of the order, in this Act referred to as the operational period, the offender commits in the Federation another offence punishable with imprisonment for a period exceeding 6 months hereafter referred to as a “subsequent offence”; and

(b) thereafter a court having power to do so order pursuant to section 7 that the original sentence shall take effect.

....

(3) A court shall not give a suspended sentence unless the case appears to the court to be one in respect of which a sentence of imprisonment would have been appropriate in the absence of power to suspend such a sentence by an order under subsection (1).”

[18] The legislation itself does not prescribe the circumstances under which a suspended sentence ought to be imposed. It appears to have left this issue entirely within the discretion of the judge. However, in my view, the court must be careful not to view its powers to suspend a sentence as an alternative to the imposition of a harsher form of punishment. I agree with the sentiment expressed by Ramdhani J (ag) where he states that a ***“suspended sentence therefore cannot be seen as a soft alternative, and simply to be imposed even when a custodial sentence was not appropriate.”***⁴ The court must first determine whether a custodial sentence is appropriate given the circumstances of the case.

[19] I am in agreement with the submissions of both counsel for the crown and defence that such a sentence is warranted in the circumstances of this case. This was an attack against the complainant while he was sitting in his car. A weapon was used and there was, in my view, some

³ CAP3.20 of the Laws of Saint Christopher and Nevis

⁴ DPP v. Kimo Liburd, SKBHCR 2013/0025

premeditation in committing this offence. Such offences are all too prevalent in this society. The aggravating factors, when balanced against the mitigating factors, are such that a custodial sentence is warranted. However, I do not agree with the crown where it is argued that a starting point of 10 years is warranted. That would be a starting point which is disproportionate to the offence; notwithstanding the aggravating factors. I would consider a 5 year sentence of imprisonment and would discount this to 3 years after giving consideration to the mitigating factors which I have mentioned earlier.

[20] Ramdhani J also went on to consider the issue of suspended sentences in more detail in the case of **DPP v. Richardson**⁵ where he assesses the English position which requires that there be exceptional circumstances before a suspended sentence is deemed to be appropriate. This does not exist in Saint Christopher and Nevis. In Ramdhani J's view therefore a suspended sentence is not necessarily an opportunity to revisit the mitigating factors in the case after imposing a custodial sentence. However, as he puts it ***"a suspended sentence might be suitable in cases where a custodial sentence is appropriate but where such a sentence might have the effect of derailing the stability and future prospects of a man of good character in a case of strong mitigating factors."*** I agree with that sentiment. There may be circumstances where a custodial sentence is certainly warranted but the court may consider the mitigating factors to be so strong so as to invoke its powers to suspend the sentence. That is not the same as saying that the circumstances are exceptional. The factors to consider may be that the defendant is of previous good character and an immediate sentence of imprisonment may risk him losing his employment and undermine his future prospects as a positive contributor to the society. This must obviously be balanced against the nature of the offence itself. The more serious the offence, the less likely such factors may lead to a suspending of the sentence of imprisonment.

[21] I am conscious of the fact that the case in which Ramdhani J considered these issues was that of death by dangerous driving. These are perhaps offences of a different type than one in which an individual willfully and grudgingly attacks another in public with a cutlass. However, I note that the defendant has received a rather favourable report from the social case worker; with whom he appeared to have cooperated fully. He has since been recommended to be enrolled in anger

⁵ SKBHCR 2013/0030

management classes and is a productive member of the society. The circumstances are not exceptional but this is not what is required under the legislation in the Federation. Whilst I do not generally consider the fact of one being a parent as a mitigating factor, I would also consider the effect this sentence would have on the defendant's children in coming to my conclusion.

[22] In all of the circumstances I would sentence the defendant to 3 years in prison and would suspend that sentence for a period of 18 months. In the event that the defendant commits another offence within that period then he must serve the sentence in accordance with this judgment. I also make the following orders:

- (a) The defendant is to complete a course of anger management with the department of social services as recommended;
- (b) The defendant is also to compensate the virtual complainant in the sum of \$31,420.00EC representing \$16,420.00 for medical expenses and \$15,000.00 for the pain and suffering which the complainant has had to endure.
- (c) The defendant is to pay the sum of \$15,000.00EC of the awarded sum no later than 30th September, 2019 and the balance to be paid no later than 31st January, 2020.

**Ermin Moise
High Court Judge**

By the Court

Registrar