

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

IN THE HIGH COURT OF JUSTICE

Criminal No. BVIHCR 2017/0012

BETWEEN:

THE QUEEN

Applicant

-AND-

MARIANO FARRINGTON

Defendant

Appearances: Ms. Annjel Flax Solomon, Crown Counsel for the Crown
Mr. Patrick Thompson and Ms. Reynela Rawlins, Counsel for the Defendant

2018: May 18th, July 20th, October 23rd
November 12th

JUDGMENT ON SENTENCING

Brief Facts

- [1] **Smith J:** On 5th December 2016, Ms. Yajaira Calcano herein after referred to as “the Complainant”, received a number of calls from Mariano Farrington hereinafter referred to as “the Defendant”, including ones that she missed whilst she was asleep. This occurred at around 6:30a.m. As way of background the complainant and the defendant had previously been involved in a relationship which the complainant had ended.
- [2] Later on in the day the complainant received a number of text messages from a private number to which she did not respond. The complainant in her statement to the police indicated that she saw one message from the defendant, in which he stated that he was going to kill her.

- [3] The complainant recalled how afraid she was of the defendant and of the prospect of him carrying out the threat.
- [4] The complainant also indicated that the defendant called her later that morning and indicated that he was coming to her place of abode. She had told him that he was not welcome there and that she would call the Police if he showed up.
- [5] The defendant presented himself at the apartment of the complainant, forcibly broke the lock off the front door and entered the apartment.
- [6] The defendant armed himself with a broom and attempted to hit the complainant. As a result, the complainant's brother rushed out and the defendant fled the scene. A report was made to the police and investigations continued.
- [7] While the complainant was giving her statement to the Police, the defendant called her from an unknown number and proceeded to use profanity to her also threatening to kill her many times. The complainant placed her cell phone on speaker mode and the outburst was heard by the Police. On 10th December 2016, the defendant was arrested and charged for the said offence.

The Law

- [8] Section 155 of the Criminal Code 1997 (as amended) provides that *"Any person who maliciously sends, delivers or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter, writing or other document threatening to kill or murder any person, commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding ten years."*

The Court's Findings

- [9] In looking at the totality of the case, the Court is of the view that this offence falls in the medium serious range. I am of the view that an appropriate starting point in this matter would be a non-custodial one.

[10] Having said that the Court found the following Aggravating and Mitigating Factors of the offence:

Aggravating Factors

- Harm (emotional) caused to the complainant
- Previous convictions for similar offences as recent as 2017
- The defendant attempted to hit the complainant with a broom

Mitigating Factors

- Early guilty plea
- Remorse
- Alcohol dependency

[11] As already stated the defendant pled guilty at the earliest opportunity and to his credit he indicated his intention to do so as early as in the Magistrates' Court. The defendant has been in custody since 12th December, 2016 a total of twenty-three (23) months and this will be reflected in the sentence.

[12] The Court is empowered to order compensation in matters of this nature and it may be imposed in addition to any other punishment as per **Section 27 of the Criminal Code**.

[13] This Court is of the view that this case is one where a payment of compensation to the complainant is appropriate.

[14] The defendant is therefore sentenced to time served being twenty-three (23) months.

[15] He will pay the complainant compensation in the sum of \$1,000.00 to be paid in full on or before 31st December 2018. In default of said payment he will spend six (6) months in prison.

**Ann-Marie Smith
High Court Judge**

By the Court

Registrar