

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**CRIMINAL DIVISION**

**Indictment No. 220/2019**

**BETWEEN:**

**THE QUEEN**

**Prosecution**

**AND**

**JEVERE JAMARIO BRATHWAITE**

**Accused**

*Before: The Honourable Carlisle Greaves, Judge of the High Court*

**Date of Hearing: 2020 June 19, 26**

**Date of Judgment: 2020 July 24**

**Appearances:**

**Mr. Rudolph Burnett for the Prosecution**

**Mr. Arthur Holder for the Accused**

**DECISION**

*Guilty plea - unlawful wounding, provocation, compensation \$5,000.00, mitigating factors - low risk of offending*

**CARLISLE GREAVES J:**

**INTRODUCTION**

[1] The accused was charged on Indictment No. 220/2019, that he on the 4<sup>th</sup> March 2016 unlawfully wounded Javon Skeete with intent contrary to **section 16** of *The Offences Against the Person Act, Cap 141.*

- [2] On 28<sup>th</sup> February 2020 he pleaded not guilty to that offence but guilty to unlawful wounding contrary to **section 17** of the said act. The prosecution accepted that plea and the accused was allowed to remain on bail whilst a presentencing report was prepared.
- [3] The sentencing has been delayed largely due to the close down of the nation consequent to the Corona 19 pandemic.

### **THE FACTS**

- [4] The facts as outlined by the prosecution are that on 4<sup>th</sup> March 2016 the accused was a passenger in a packed Route Taxi travelling in the parish of Christ Church when he became involved in an argument with a female passenger who wanted to get off but was unable to because the driver refused to stop. At some point the complainant also got onto the Route Taxi and an argument ensued between him and the accused.
- [5] The Route Taxi eventually stopped and the female passenger disembarked at an area in Sayers Court known as “The Egg”. At the same time at the request of the driver both the complainant and the accused got off the Route Taxi as well. The argument continued between the two men on the outside and the accused re-entered the Route Taxi.
- [6] Thereafter, the complainant opened the Route Taxi door and delivered a slap or two cuffs to the face of the defendant. The defendant retaliated by drawing

a knife, described by him as his work knife, from his bag with which he delivered several incisions to the complainant.

- [7] A struggle ensued between the accused and the female passenger who struck him in his head with her hand bag which contained a bottle and wrested the knife away from him. Thereafter the accused fled. She then assisted the complainant who later collapsed.
- [8] A passing police officer rendered assistance to the complainant, retrieved the knife from the female passenger and the complainant was transported to the Queen Elizabeth Hospital by ambulance where he received surgery for his injuries. He remained therein for approximately two weeks.
- [9] His injuries were recorded as a 5cm incision to the left peritoneal region, a 5 cm incision to the left lateral chest, 7 small incisions to the left lateral neck and both biceps. The force used was described as moderate.
- [10] The defendant, in the company of his mother, surrendered to the Oistins police station and gave an account of what occurred. He said he only did what he did because the complainant attacked him first by reopening the door of the route taxi and cuffing him twice in his face after he had let out the female passenger and re-closed the door.
- [11] On the 21<sup>st</sup> February 2020, the defendant presented himself to this court accompanied by his father and requested that his indictment be put to him,

expressing his desire to face the consequences and have the matter completed. He pleaded guilty to the more serious offence. Upon the advice of this court he sought counsel. On the 28<sup>th</sup> February 2020 he appeared with counsel, vacated his guilty plea and plead guilty to the lesser offence accepted by the prosecution.

### **THE SUBMISSIONS**

- [12] The prosecution submits and defence counsel agrees, that this is a case in which a non-custodial sentence should be imposed.
- [13] The aggravating circumstances, as submitted by the prosecution, include, the stabbing of the complainant continuously in a struggle, travelling with an offensive weapon, to wit, a knife, concerns as identified by the probation report relating to his anger management and use of marijuana.
- [14] The mitigating factors submitted by the prosecution, include, his early guilty plea and non-wastage of precious court time, that he turned himself into police at an early time, his early admission to the police and his cooperation with the investigations and his very favourable probation report.
- [15] In addition, submits the prosecutor, there appears to be no animosity held by the complainant against the accused nor by the accused against the complainant as accordingly expressed in the probation report.

- [16] The prosecution submitted this to be a case in which the mitigating factors outweigh the aggravating factors and submits that this is an appropriate case for a Compensation Order as he and Defence Counsel agrees pursuant to the court's discretion.
- [17] Finally, the prosecution submits as follows:

*“The now convicted man is a second year student at the Samuel Jackman Prescod Institute, studying auto mechanics. This is a three year course. It is humbly suggested My Lord that the now convicted man be allowed to complete his studies. This should enable him to make something of his life and in so doing make a meaningful contribution to society.”*

## **THE LAW**

- [18] **Section 17** and **44(a)** of *The Offences Against the Person Act, Cap. 141*, establishes a penalty of 10 years imprisonment or a fine or both for the offence of unlawful wounding. It is silent about the quantum of the fine or about any other penalty.
- [19] The sentencing range for the offence of unlawful wounding is wide. It can range from a period of imprisonment, usually up to three or five years, to no imprisonment at all. It may run the gamut of sentencing options; including, to name a few, compensation orders, probation orders, suspended sentences, cautions, conditional and absolute discharges. See for example the UK Sentencing Council Guidelines.

[20] **Section 39(1)** of the *Penal Reform Act, Cap. 139* provides that:

***“Consideration of mitigating factors***

**39.(1)** *Nothing in this Act prevents a court from mitigating an offender’s sentence by taking into account such matters as, in the opinion of the court, are relevant considerations with respect to the mitigation of a sentence, including*

- (a) the age of the offender;*
- (b) the particular circumstances of the offender such as his social or economic circumstances;*
- (c) whether the offender pleaded guilty and the point at which the guilty plea was made;*
- (d) the circumstances or facts of the offence and the degree of the offender’s involvement in the offence;*
- (e) any attempt by the offender to make reparation for the offence.”.*

[21] **Section 41(2)** stipulates:

**(2)** *In sentencing an offender, the court shall take into account such matters as, in the opinion of the court are relevant considerations with respect to the sentencing of that offender, including*

- (a) the gravity of the offence and the need to hold the offender accountable for the harm done to the victim and the community by the offence;*
- (b) any written representation made by a spouse or relative of the deceased, in respect of murder or manslaughter and in any other case any written representation from the victim;*

- (c) *ensuring that the gravity of the sentence is commensurate with the nature of the offence committed by the offender;*
- (d) *the need to deter the offender and others from committing similar offences;*
- (e) *the manner in which the offender executed the offence and the nature and duration of the relationship between the offender and the victim;*
- (f) *the degree of culpability of the offender and maximum penalty prescribed for the offence;*
- (g) *any attempt on the part of the offender to make reparation to the victim or the victim's family;*
- (h) *the need for the rehabilitation of the offender, and the need to promote a sense of responsibility on the part of the offender for the harm done to the victim;*
- (i) *the need for consistency in sentencing in respect of similar offences; and*
- (j) *the possibility of providing restitution for the harm done by the offender.”.*

[22] In addition to the mitigating factors above, defence counsel reminded the court that the knife was a work tool carried by the accused.

## **SENTENCE**

[23] In the circumstances of this case, I can find no reason to differ from the submissions of both counsel and with the exception of some slight variations I will adopt them as my own.

[24] I have had the opportunity to observe this young accused man. From the inception I was impressed by his readiness and eager to accept responsibility for his action, even to the extent of a plea to the more serious offence. I have considered the contents of his very favourable presentencing report. I am impressed that he enjoyed strong family support and moral upbringing throughout his life and, particularly from his father who has appeared with him in these courts upon each of his appearances as well as from his mother who accompanied him to the police station. They appear to be a family who do not appear to likely make the oft heard protestation of the good son whenever he has come to calamity.

[25] Regardless of that even the most erstwhile sometimes stumble and he has had some.

[26] His report indicates, that he never presented any behavioral challenges at school, his neighbours report him as a pleasant individual with good family support, a person with a positive attitude. They are reported to have expressed shock at the incident which they deemed out of character.

[27] He has expressed remorse and seem genuine in that expression and it seems he and the complainant who still suffers some discomfort from the episode has made peace.

[28] I have taken all those factors into account.

[29] In addition, I do take into account his previously clean record with no previous criminal convictions. I also take into account his robust effort to better himself since school, having left there with very limited academic qualifications. Since then, he remained gainfully employed, completed a certificate course in electrical installation at the Samuel Jackman Prescod Institution and is presently pursuing a three year course in auto mechanics at the same institution.

[30] The probation officer assessed him as having a low risk of reoffending.

[31] In the circumstances after taking all these factors into account, I am reluctant to tarnish his character with a conviction at this stage. I am inclined to make a compensation order as submitted, the complainant being willing to accept that and am otherwise inclined to discharge the accused without conviction.

[32] However I am concerned as the probation officer is by his previous marijuana use which he asserts he ceased in 2019 and the benefit he can access if he is able to address these issues through counselling.

[33] For these reasons, I am inclined to make, a probation order for a period inclusive of the following conditions:

- “1. The complainant having consented to receive \$5,000.00 compensation the accused shall by 24<sup>th</sup> July 2020 pay the complainant \$5,000.00 compensation.
2. The accuse shall enter such counselling programmes as are directed by the probation officer to address the two issues, of drug use and anger management.”

[34] Should he successfully complete these conditions, no conviction shall be recorded against him.

[35] That is my sentence.

**Carlisle Greaves**  
**Judge of the High Court**