

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

SAINT LUCIA

CRIMINAL CASE NO. SLUCRD 2012/1220

BETWEEN:

THE QUEEN

Claimant

AND

PETERSON MARSHALL

Defendant

Appearances:

**Mr. Cyprian Lansiquot Counsel for the Defendant
Mr. Stephen Brette Crown Counsel for the Crown**

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2012: June 6
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JUDGMENT ON SENTENCING

[1]. **CUMBERBATCH, J. :** On the 1st February 2012 the defendant was indicted by the Director of Public Prosecution for the offence of intentionally causing a wound to Synthese Marshall (the virtual complainant) on the 28th September 2010 at Bexon in the Quarter of Castries. On the 8th March 2012 at his arraignment the defendant pleaded guilty as indicted.

[2] **FACTS**

The virtual complainant is the uncle and neighbor of the defendant. On the day in question the virtual complainant returned home and observed the defendant's brother engaged in a tree trimming exercise in respect of trees overhanging his premises. An argument ensued between them. During the argument the defendant intervened and having armed himself with a cutlass chopped the virtual complainant. He was hospitalized and treated for his injuries which were listed by the attending physician Dr. David as follows:

Medical Practitioner Report
Patient's Details

**MEDICAL CONDITION
ON EXAMINATION**

Blood stained wound dressing right wrist joint

**NATURE AND EXTENT
OF INJURIES**

1. Punctured 12 – 14 cm "V" shaped laceration dorsum of right wrist joint
2. Unable to extend his right wrist joint, index, middle, ring and little fingers

**PROBABLE EFFECTS
OF INJURIES**

1. Unable to effectively use his right hand for about 3 – 4 months

**NATURE OF TRAUMA
WHICH CAUSED INJURY**

1. Sharp penetrating trauma

**OPINION ON INSTRUMENT
IF ANY WHICH CAUSED INJURY**

Cutlass

**OPINION OF DEFENCE
OF FORCE USED**

Moderate

**OTHER SIGNIFICANT
ASPECTS OF INJURY**

Scars at surgery site and injured site

TREATMENT/PROGNOSIS

Surgery
Good Prognosis

[3] THE HEARING

Mr. Lansiquot for the defendant urged the court to impose a non-custodial sentence on his client. He contends that the defendant is a first offender and has entered a guilty plea at the earliest possible opportunity. Counsel further contended that his client is regarded by members of his community as a person of good character and that he is remorseful about this entire incident. Counsel submits that the offence committed by his client is not serious enough to warrant a custodial sentence.

[4] The defence called the virtual complainant as a witness in mitigation. He testified that he is the uncle of the defendant. He said he has forgiven the defendant for what has happened and that he is asking the court to be merciful to his nephew.

[5] Mr. Brette for the crown took issue with the defendant's assertions that the offence was not serious enough to warrant a custodial sentence. He referred the court to the medical report and findings of Dr. David aforesaid and submitted that the seriousness of the offence could be gleaned from the seriousness of the injuries found on the virtual complainant.

[6] Counsel went on to contend that two cutlass blows were intentionally inflicted on the virtual complainant by the defendant without any justification and that the court should not accept defence counsel's submission that the injuries were not intentionally caused.

[7] The pre-sentence report revealed that the defendant is regarded by members of his community and family members to be a young man of good character. The following excerpt from the pre-sentence report adequately sums up the community's views and perceptions of the defendant:

"The community investigation elicited a generally pleasant disposition on the defendant. Community persons basically noted that he was a young person who displayed the conventional behaviours of persons his age, as it related to assembling and talking amongst themselves. They also noted that he would greet them and extend the basic courtesies of salutations and communal conduct to them. Residents also noted that Mr. Marshall did not have a violent or cantankerous history in the area, emphasizing that this incident was the first instance. Writer spoke with the wife of the Virtual Complainant, who similarly described him as a good community person, who is generally trouble free and respectful toward her. She noted that there was no difficulty prior to the incident and the trouble was limited to that one incident. Young persons within the community informed writer that the Defendant spends a lot of time with them and he has a very calm demeanor even when in their presence. The young men spoken with said that the defendant would not even be noticed because of his very silent disposition and infrequent talking".

[8] The court did however note with concern that the defendant has admitted to being a user of significant amounts of cannabis. The defendant has expressed remorse about this incident to the probation officer and in open court to his uncle the virtual complainant.

[9] **SENTENCE**

The court has noted in the pre-sentencing report that the defendant has been morally supported by his relatives whilst on remand at the Bordelais Correctional Facility and that he maintains good composure there. At his sentencing hearing there has always been a number of family members present in support of his cause. I do not accept defence counsel's submission that this offence is not serious enough to warrant a custodial sentence. In so concluding I have considered the injuries sustained by the virtual complainant as outlined in the findings of Dr. David aforesaid. I have also taken into account the undisputed fact that the defendant found it fit to use a weapon as dangerous as a cutlass on the virtual complainant who at that time was unarmed. I find that this incident arose as no more than a family squabble over a matter as simple as trimming of overhanging branches to which the defendant reacted in an unwarranted and unlawful manner. I further find that save for the special circumstances of this case a custodial penalty would be appropriate.

[10] The defendant's academic background is quite limited as stated in the pre-sentence report and his reading and writing skills are very weak. Notwithstanding this however the defendant has managed to keep his nose clean and this offence is the first 'blot on his copybook' so to speak.

[11] This is a squabble between family members which got out of hand however; it is clear to me that the family members who live in close proximity to each other are in the pursuit of healing and reconciliation and wish to put this horrible incident behind them. Indeed in this regard the virtual complainant has stated in the pre-sentence report as follows:

"He added that he did not have any prior issues with the defendant, neither was the initial confrontation with him on that day. He said that he has recovered very well

and he has put the fact that they are family and have resolved it at that level instead. He noted that he does not harbour any feelings of ill will, anger or revenge toward the defendant. Essentially he indicated that the post impact of the injury has been minimal and he has moved on with his wife, and is of the view that the defendant has learned his lesson. He further asked writer to indicate these sentiments of the Court as he was unable to do so at the last sitting. He also prayed for leniency on the young man".

[12] The court has considered the statement of the virtual complainant aforesaid and his plea on behalf of his nephew for leniency. The court has also noted that the defendant who has a clean criminal record prior to the commission of this offence has expressed unreserved remorse for this incident and that his public apology has been accepted by the virtual complainant. I find the foregoing to be special circumstances and compelling reasons why this court should not impose a custodial sentence on the defendant herein.

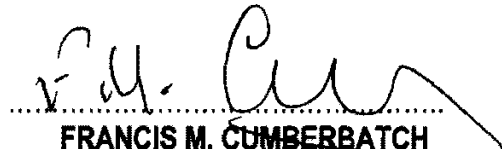
[13] The court is concerned however about the defendant's resort to violence and to his ready use of a dangerous weapon in the settlement of a dispute. The court is not impressed by the Defendant's assertions that though he's a user of significant amounts of cannabis he's not addicted to it and can stop at any time.

[14] There is nothing before me to indicate that the defendant would be averse to rehabilitation and as such I am satisfied that his rehabilitation does not necessitate a custodial sentence.

Accordingly the court makes the following orders:

1. The defendant is fined in the sum of \$5000.00 or one (1) year imprisonment. The fine shall be paid on or before the 31st day of December 2012;

2. The defendant is placed on a bond on his own recognizance to keep the peace and be of good behavior for a period of 3 years. In the event of a breach of this bond the defendant is liable to be re-sentenced by the High Court;
3. The defendant shall attend counseling for anger management, dispute resolution and drug abuse for as long as is required under the supervision of the Director of the Family Court.
4. The defendant's failure to attend counseling sessions as directed by the Director of the Family Court shall constitute a breach of his bond.


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FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE