

IN THE SUMMARY COURT OF THE CAYMAN ISLANDS
BEFORE MAGISTRATE K. GUNN

CAUSE NO: 00861/2020

R

V

WILLIAM MCKEEVA BUSH



Appearances: Mr P. Moran for the Prosecution
Mr M. Alberga of Travis Thorpe Alberga for the Defendant

Date of Sentence: 21 December 2020

SENTENCE RULING

1. The Defendant has pleaded guilty to two counts of common assault and one count of disorderly conduct in a licensed premises. There is a third count of common assault (count 1) for which the Defendant maintains his not guilty plea.
2. It is necessary to set out some procedural background in order to put the sentencing process into context. The Crown has indicated that the pleas as tendered would be acceptable if the Defendant agrees to be sentenced on the full facts as alleged by the complainant, Miss Kwong. Mr Alberga, on behalf of the Defendant, explained that his client has no recollection of the events of that evening and by his guilty pleas is accepting those criminal acts which were captured by CCTV. He further explained that while count 1 was denied because this event was not evident from the CCTV, the Defendant could not positively say that he did not commit the acts particularized in count 1. Mr Alberga invited me to review the CCTV and, if I was satisfied that the assault took place in the manner described by the complainant, then I should proceed on that basis. In essence, he was suggesting a Newton hearing using only the CCTV. Mr Moran, quite rightly, opposed such a course as the Crown is entitled to adduce any relevant evidence speaking to the issue to be determined. In this case, Mr Moran would have wished for the complainant to give evidence. When pressed about whether a Newton Hearing was necessary, Mr Alberga accepted that the Defendant should be sentenced on the basis of facts as alleged by

the Crown, which included the particulars of count 1. The court will therefore sentence on the full facts as set out by the Crown, although count 1 is left on file.

3. On several occasions during his submissions, Mr Alberga implied that Ms Kwong unlawfully assaulted the Defendant, but he eventually withdrew that suggestion.

The Facts

4. Proceeding on the basis of full facts, they are as follows:

The Defendant is a well-known and long-serving political figure and Speaker of the House of Parliament of the Cayman Islands. He is also the father of the co-owner of Coral Beach Bar and Restaurant. On the evening of 21 February 2020, the Defendant attended Coral Beach where he consumed several alcoholic beverages. The Defendant briefly left the establishment before returning once more to Coral Beach. It is evident from the CCTV capturing the Defendant's return that he is very intoxicated as he was extremely unsteady on his feet. Using the passageway between the kitchen and the bar the Defendant sought to re-enter the bar. On his way he stumbled and fell to the ground. There is no one immediately in the vicinity and the Defendant can be seen on the CCTV footage lying on the ground for some time. At one stage a male member of staff approached him and appeared to attempt to render assistance but then left having been unsuccessful. Sometime later, the complainant, Miss Kwong, came to the scene and discovered the Defendant lying on the ground. She spent some considerable time at his side trying to get him to his feet so that he may leave. When she was unable to do so, she tried to contact Mr Parchment, a member of the management team, to apprise him of the situation and seek his assistance in removing the Defendant from the premises. At one point the Defendant managed to get to his feet. In an unprovoked attack, the Defendant proceeded to pull Miss Kwong by the hair and hit her to the head. I am satisfied that this was captured on the CCTV at 07:54:36 – 07:54:48. During that same attack, Miss Kwong's phone became dislodged from her hand and was thrown against a wall. The Defendant then staggered on his feet for a short distance before falling to the ground once more. Miss Kwong continued her efforts to assist the Defendant to no avail. Eventually the Defendant was able to right himself. The



Defendant and Miss Kwong got into a verbal altercation after which the Defendant turned and walked in the direction of the kitchen. Miss Kwong and another member of staff followed him. Miss Kwong was still trying to contact Mr Parchment by phone. The Defendant grabbed a "bus tub" container, which is a tub used by kitchen staff to carry dishes, from a trolley outside the kitchen. The Defendant threw the container in Miss Kwong's direction at head height. Miss Kwong used her right arm to deflect and prevent the container striking her head. She then shouted at the Defendant. The Defendant then grabbed a second bus tub and threw it in Miss Kwong's direction. This one missed Miss Kwong. The Defendant then entered the kitchen followed by Miss Kwong who was still using her phone to try to contact Mr Parchment. The Defendant attempted to grab the phone from Miss Kwong which Miss Kwong tried to prevent. A struggle ensued. During this violent struggle, the Defendant repeatedly pulled at Miss Kwong and her phone and at one stage he had his right arm wrapped around Miss Kwong's neck. Other members of staff intervened and pulled the Defendant off Miss Kwong. The Defendant was then escorted off the premises.

Throughout the incident the Defendant was verbally offensive, swearing at Miss Kwong.



Victim Impact

5. The complainant has prepared a number of statements in which she has detailed the impact the offences have had on her personally. Physically, Miss Kwong suffered a number of injuries including bruising, tenderness and a superficial abrasion to her right arm, bruising to her neck and bruising to both legs as well as a loss of sensation in her left leg. I have been provided with photographs which document these injuries. Miss Kwong has had to have medical treatment and has incurred medical costs for which she seeks reimbursement.
6. Miss Kwong has been psychologically affected also. In the first few days after the incident she was fearful of going out into public as she was concerned that people may seek to intimidate her into remaining silent about the events of that night. Miss Kwong's fears were escalated when she was named in the Defendant's public apology some days later and this dissuaded her from

leaving her home for the first month. Since the incident, Miss Kwong has had difficulties sleeping and experiences anxiety.

7. Miss Kwong's smartphone was damaged when it struck the wall during the initial attack.

The Defendant's Personal Mitigation

8. Mr Alberga spent considerable time outlining the Defendant's many political achievement and accolades and I accept that they are plentiful and impressive. There is no doubt that the Defendant has advanced the interests of the Cayman Islands in many ways over his lengthy political career. Having started life in humble circumstances the Defendant became the Islands' first Premier and is now Speaker of the House of Parliament.
9. The Defendant, through his counsel, has explained that his alcohol abuse was a way of coping with the grief of the untimely death of his daughter in 2011. On the day of the offence he had been to visit her grave, as well as his mother's grave which left him emotional. In his emotional state the Defendant began to consume alcohol. It is evident from his behaviour and loss of memory that the Defendant has consumed a considerable quantity of alcohol. A report from his counsellor confirms that the Defendant underwent grief counselling and is now better placed to deal with the loss of his daughter. The Defendant advises that he has ceased all alcohol consumption. The Defendant has stressed that he meant no harm to Miss Kwong but accepts that his actions were reckless and caused her injury.
10. Through his public statement and his guilty pleas the Defendant has admitted publically to his wrongdoing and has expressed remorse for his actions that day.
11. The Defendant has produced nineteen character references. It is apparent from these that the Defendant is held in the highest regard and that his behaviour on that night was entirely out of character.



General observations

12. By his own admission, which is confirmed by Miss Kwong, this is not the first time the Defendant became intoxicated, albeit it was the first time he became violent. This was a very serious case of common assault on a woman who was acting with the sole intention of helping the Defendant. As an elected Member of Parliament it is incumbent on the Defendant to act with the utmost honour and decorum, he is after all meant to set an example of what is expected of a citizen of our Islands. However, the Defendant's behaviour that night was shameful. To drink to such a degree that one becomes violent is reprehensible. The lapse in memory and his obvious unsteadiness show that the Defendant was highly intoxicated. He let his personal troubles spiral out of control and has no one but himself to blame for the sentence to be imposed.

The Purpose of Punishment

13. Section 4 of the Alternative Sentencing Law sets down the principles to be applied when punishing an offender, namely –

"(a) ...the fundamental purpose of punishment is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives-

- (i) to denounce unlawful conduct;*
- (ii) to deter the convicted person and other persons from committing offences;*
- (iii) to separate convicted persons from society, where necessary;*
- (iv) to assist in rehabilitating convicted persons;*
- (v) to provide reparations for harm done to victims or to the community; and*
- (vi) to promote a sense of responsibility in convicted persons, and acknowledgment of the harm done to victims and to the community;*





- (b) that a punishment must be proportionate to the gravity of the offence and the degree of responsibility of the convicted person;*
- (c) that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the convicted person, and, without limiting the generality of the foregoing, the following shall be considered to be aggravating circumstances-*
 - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor;*
 - (ii) evidence that the offence was committed against a child, an elderly or an otherwise vulnerable person;*
 - (iii) evidence that the offence committed is a prevalent offence in the society;*
 - (iv) evidence that the offence forms part of a series of offences committed by the offender;*
 - (v) evidence that the offender is a repeat offender;*
 - (vi) evidence that the convicted person, in committing the offence, abused the convicted person's spouse or common-law partner or child;*
 - (vii) evidence that the convicted person, in committing the offence, abused a position of trust or authority in relation to the victim;*
 - (viii) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organisation; or*
 - (ix) evidence that the offence was a terrorism offence;*
- (d) a sentence should be similar or proportionate to sentences imposed on similar convicted persons for similar offences committed in similar circumstances;*
- (e) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;*
- (f) a convicted person should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances; and*

(g) all available sanctions other than imprisonment that are reasonable in the circumstances of each case should be considered for all convicted persons.

The Guidelines

14. The maximum sentence which can be imposed for the offence of common assault is twelve months imprisonment. There are no local guidelines on sentencing of offences of assault. However, the court is permitted to consider the England and Wales sentencing guidelines. This being a summary only offence in England and Wales, one would review the Magistrates' Court Sentencing Guidelines, which I provided to counsel during submissions. The guidelines provide for three categories of common assault

Category 1	Greater harm (injury or fear of injury must normally be present) and higher culpability
Category 2	Greater harm (injury or fear of injury must normally be present) and lower culpability; or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability



15. Of the factors indicating greater harm, I find that there are two present in this case, namely that the injuries suffered by the complainant are serious in the context of the offence and that this was a sustained/repeated assault. Of the factors indicating higher culpability, I find that there is one also, namely the use of a weapon, in the form of the bus tub containers which the Defendant threw at Miss Kwong. While the lack of premeditation usually indicates lower culpability, in this instance that factor is outweighed by the use of weapons. For those reasons this case before me falls into the highest category of the guidelines.

16. Next I turn to the starting points and ranges of appropriate sentence. I am mindful that the offence of common assault carries a higher maximum sentence in the Cayman Islands than it does in England and Wales and I must therefore make adjustments to the bands to reflect this. It is also important to note that the courts in this jurisdiction do not have the option of imposing

a fine for this offence¹. Making allowances for these differences, the starting point for a category 1 offence in the Cayman Islands would be seven months imprisonment with a range of three to twelve months' imprisonment².

17. Having established the starting point and range of sentence I must proceed to consider whether there are any other aggravating and mitigating features which may increase or decrease the appropriate sentence. For this I look at not just the English guidelines but our own sentencing factors set out in the Cayman guidelines. I find that there are additional features which further aggravate the offence, namely the on-going effect of the offence on the complainant and the commission of the offence under the influence of alcohol. There are also factors reducing seriousness of the offence or reflecting personal mitigation, namely, that the Defendant

- (i) has pleaded guilty to the offences;
- (ii) has no previous conviction,
- (iii) has expressed remorse,
- (iv) is of exemplary character otherwise; and
- (v) has taken steps to address his offending behaviour.



18. In this instance the mitigating features outweigh the aggravating features and, consequently, the starting point is adjusted down to four months imprisonment. The defendant must be given credit for his guilty plea. As the plea was late in the proceedings he is only afforded a 25% credit reducing the sentence down further to three months imprisonment. The custody threshold has therefore been passed.

19. Paragraph 3.3 of the Cayman Islands "*Sentencing Guidelines: General Principles*" reminds tribunals that passing the custody threshold does not mean that a custodial sentence should be deemed inevitable; custody can be avoided in the light of personal mitigation or where there is a suitable intervention in the community which provides sufficient restriction while addressing the rehabilitation of the offender to prevent future crime. I note that while Mr Alberga has

¹ Unlike elsewhere in the Penal Code, reference to the imposition of fines is omitted in relation to all offences involving assault on a person.

² The starting point for a category 2 offence would be three months imprisonment with a range of Probation to six months' imprisonment. The starting point for a category 3 offence would be a probation or community service order with a range of discharge to two months' imprisonment.

indicated that his client is willing to submit to a Probation Order, his submissions are that the Defendant has already been sufficiently rehabilitated.

No Conviction being recorded

20. Mr Alberga has invited me to impose a sentence which would prevent a conviction being recorded. He drew my attention to section 75 of the Criminal Procedure Code (2019 Revision) which provides that -

(2) ... the Court may, if it is of the opinion that it is not expedient to inflict any punishment notwithstanding that it finds the charge against the accused is proved, make an order discharging the accused absolutely or conditionally ..."

21. Section 41(1) of the Penal Code (2019 Revision) is drafted in similar terms and provides that -



"Where, in a trial, a court thinks that the charge is proved, but is of the opinion that, having regard to the character, antecedents, age, health or mental condition of the accused, or the trivial nature of the offence or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict punishment, the court may, without proceeding to conviction make an order either

(a) discharging the accused absolutely; or

(b) if the court thinks fit, discharge the accused subject to the condition that he commits no offence during such period not exceeding three years from the date of the order, as may be specified in the order.

22. The Defendant prays in aid of his long and exemplary record as law maker and representative of the people of the Cayman Islands in his bid not to have a conviction recorded. Mr Alberga has also stressed that a conviction would cause undue hardship to the Defendant as he is sometimes required to travel overseas, whether on business or escorting his wife for medical treatment, and that obtaining a visa for such travel would be more cumbersome with a conviction, albeit not impossible. Mr Alberga also implied that because other public figures did not have convictions recorded for their "mishaps" (his description) it provided precedence for such a

disposal in this case. I must remind counsel that not having a conviction recorded is an exceptional disposal and is case and offender specific; one cannot simply draw parallels based on the offenders' status in the community or employment. In any event, this Defendant's offences cannot be described as a mere "mishap" as they are very serious in the context of the offence.

23. The Defendant's visa plight is not unique. Most offenders who are convicted by this court would have similar visa difficulties and, therefore, it should be considered a natural consequence of offending; it does not warrant not recording a conviction. While the Defendant's record as a politician and public figure is impressive, and it is generally recognized that he has advanced the interests of the Cayman Islands over many years, his status and exemplary character is not sufficient to warrant no conviction being recorded. The offence is simply too serious. Not recording a conviction would be disproportionate and send out entirely the wrong message as to how serious such matters are considered by the courts and the public at large and would likely undermine public confidence in the criminal justice system.



Conclusion

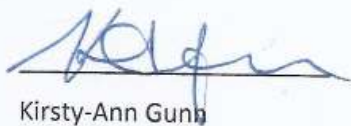
24. Returning to the guidelines; as I have already determined, these offences cross the custody threshold. Section 4 (f) and (g) of the Alternative Sentencing Law require me to consider whether less restrictive sanctions may be appropriate. I find that the matter is so serious that a custodial sentence is warranted but the Defendant's previous exemplary character is such that that immediate custody is not necessary. Instead, a suspended sentence together with a curfew order will adequately act as a punishment and denunciation for the offence and acknowledge the harm done to Miss Kwong. Consequently, for the offences of common assault I impose a sentence of 60 days' imprisonment on each count concurrent suspended for 2 years and a curfew order for 60 days with a curfew from 6 pm to 6 am Monday through Sunday. Exception is made for such days when Parliament is sitting beyond 5 pm, in which case the Defendant must be in his place of residence no more than one hour after the House has adjourned for the day. The curfew order is subject to a doorstep condition. What this means is that the Defendant will serve a third of his sentence under part-time house arrest and the remaining

two-thirds will be held in abeyance as long as he does not commit any new offences over the next 2 years.

25. For the offence of disorderly conduct at a licensed premises the maximum penalty is \$1,000 fine or imprisonment for 12 months. Given the Defendant's guilty plea, good character and other mitigating circumstances previously addressed, the Defendant is sentenced to a fine of CI\$700 to be paid by 1 April 2021. In default of payment the Defendant will have to serve a term of 30 days' imprisonment.

Compensation

26. Miss Kwong suffered both physical, emotional and financial loss as a result of the Defendant's offending. A compensation order is warranted in the circumstance and is made in the amount of \$4,279 consisting of \$1,979 for medical expenses, \$800 to replace the damaged mobile phone and \$1,500 for general pain and suffering. No award is made in respect of Miss Kwong's legal expenses as these were voluntarily incurred and not necessary for the purpose of the investigation and prosecution of the offences. The compensation order shall be paid in full by 1 April 2021. Failure to do so will result in the Defendant serving 90 days imprisonment. Payment is to be made through the Court Funds Office.



Kirsty-Ann Gunn

Magistrate of the Summary Court



This 21st day of December 2020