



# In The Supreme Court of Bermuda

**CRIMINAL JURISDICTION**

**2013: NO. 9**

**THE QUEEN**

**-v-**

**IRVING BUTTERFIELD**

**SENTENCING REMARKS**

(in Court)

Date of hearing: Oct. 22, 2013

Ms. Nicole Smith, Office of the DPP, for the Crown

Mr. Marc Daniels, Charter Chambers, for the Defendant

1. This case reminds me of a Shakespearean tragedy and it is for that reason that I have engaged in exchanges with counsel throughout their submissions, so that I can better understand and draw out the dynamics which I have to take into account. So many of my exchanges with counsel were not as a result of any settled position which I have taken or had taken. It was really to act in the role of devil's advocate so to speak, so that I could clearly as I said get to examine the different dynamics. So I wanted to be as strong as possible in putting forward the arguments so that in the end I would be in a better position to make an informed decision.
2. This is an unfortunate situation, because of the conduct of the three individuals, that is, the Defendant, his ex-wife and his friend the Complainant. Today we have a marriage that was struggling, with some hope perhaps of reconciliation for a family now scattered to the winds. The Defendant husband divorced his wife and she him, subsequent to these events. The Complainant suffered injuries to his hands, the

Defendant is in the dock facing imprisonment and the innocent children of the family are now left without a family.

3. This case illustrates the moral decay of our society in modern times and illustrates the challenges we are faced with and the 'fast food' attitude that we seem to have in solving our problems. Much of it has transgressed good old principles such as 'do unto thy neighbour as you would have him do unto you'. 'Covet not thy neighbour's wife or his oxen', etc. 'A man's home is his castle'. All of these are principles we used to live by. Today we are in another world. We are not able to trust even our best friends. We have to be careful about what we say and to whom we say it. Some of our counsellors and friends are not always what they appear to be. They are sometimes wolves in sheep's clothing and the irony about that is sometimes they don't even know that and might not even have intended such consequences.
4. This is a case about misunderstanding and betrayal. I find as fact that in this case, as I said earlier, the Defendant and his wife had some type of temporary separation. They were having some issues. They were both committed to their children. It appears that they were trying to some extent to resolve their issues and consequently the Defendant had access to the house. He still had his key and could use it. On that day he spent the day at the house keeping the children of the family. It would appear that the wife, having some plans of her own, required him to leave particularly since his duties of keeping the children for the day in the house had come to an end, and secondly, because he had objections to the visitor she had intended to invite over. The visitor who happened to be his best friend or rather, his friend and workmate and had some friendship with her as well. Those were circumstances in my view that made him suspicious. So, I reject the excuse that he was lurking around because he forgot his camera, I think he was there to confirm that nothing good was going to come out of this visit. This really was not about watching football at all. This was something more.
5. My view is however, he is not without fault- because one should be careful of what one seeks. You cannot dig into a cesspool expecting to find gold. If you are looking for gold you dig in a gold mine. If you are looking for that other matter you dig there and that's what he found and he responded in my opinion inappropriately. She may have felt justified in her actions and it might even have caught her off guard, but I find some difficulty in accepting her version that it was as soon as the visiting friend expressed that he was always interested in her that they started this kissing. That's why I refer to that kind of behaviour as fast food culture.
6. In any event, the response of the Defendant fits clearly into the definition of provocation. It is on that basis that the Crown must have accepted his plea of guilty of unlawful wounding and not guilty of wounding with intent which is the charge he was originally charged with. This was clearly a case of a man losing his self-control on the sudden, after enduring insult or injury by another through something said or

done. In this case, it was something done. Provocation is a defence in those circumstances to an offence of specific intent and reduces it to an offence of general intent. Hence the acceptance of the plea. In those circumstances, I am not able to accept the submission of the Crown that the Defendant was wholly responsible for this offence. This is a situation substantially contributed to by all three of the parties involved. Three persons who behaved inappropriately in the circumstances, whether intentionally so or not. Therefore the degree to which each of them contributed to the result in this case, I think is a factor I must take into account when determining what degree the sentence should be.

7. By my sentence I do not wish it to be mistaken that I am in anyway condoning the action of the Defendant. He is the one charged before me; not the wife and not the Complainant, so I must deal with him as charged. So therefore, if the sentence is not to a degree, to a level, that some would think is appropriate, if it is thought that it is below the level that some would think is appropriate, it is not because I hold any encouragement or condoning of the Defendant's behaviour. If it is above the degree to which some may think it should be, it is not because I am condoning the behaviour of the Complainant or the Defendant's ex-wife either, because as I have said before, I consider their behaviour in the circumstances not to be appropriate either. Some will say she is her own woman, she could do as she pleased and he has no right in her house. Well, that's their opinion. Some will say the Complainant was his own man and he had his right to go where he was invited. That is a matter for them but I think it is my duty as Judge to look at all the circumstances and call it as I see it without being concerned about the differing opinions of the many whom I will never be able to please all of the time.
8. I think that in the circumstances of this case the Defendant must suffer some penalty for his action and I think the appropriate sentence should not exceed twelve months imprisonment. So my sentence would be twelve months imprisonment. That is for the unlawful wounding. I consider that this is not a case given the degree of provocation and the contributions thereto by the complainant and the wife in the circumstances that the defendant should be required to go to prison on this day. I think this is an appropriate case for a suspension of that sentence.
9. I am not able to see any evidence that propels me to a conclusion that the Defendant is likely to repeat this offence. He has lived for thirty-eight years. He has no previous convictions. There is no evidence that he has ever been in any involvement with the law previously. There is no evidence that he has interfered with the complainant or his ex-wife thereafter. It is some concern that he now lives very close nearby. But this is a world in which one never knows with whom one is going to fall in love with. It seems as though his ex-wife had feelings for his best friend or his colleague, his workmate- and now he has developed feelings for their neighbour – a tangled web indeed, but I do not think that that is enough to suggest that he is a continuing threat against the Complainant or his ex-wife. It maybe that he remains close so that the

family, that is the children, can be accessed more regularly and it appears that that is exactly what is happening.

10. The Social Inquiry Report indicates that certain tests were carried out and they hold the view that there is a very low risk of any reoffending. The parties have now divorced; that is he and his wife may have gone their different ways. At no time throughout this incident did he attack her, when one would have expected he might have. He attacked the man he considered to be a traitor. The one in whom he confided about the difficulties he was having at home; the one whom he sought counsel and counselling with, who, as he said in his Social Inquiry Report, appeared to have used that information to his advantage to induce his wife. He never indicated once that his wife was anything other than a victim in this case. So I think her expression of fear has no proper basis. I think the Complainant's expression of fear has no proper basis either.
11. I may be wrong or I may be right. I do not think I am expected to be perfect, I am expected to reason this matter according to the law and the evidence before me and to call it as I see it and that is the way I see it. So in all the circumstances I will suspend that sentence for two years. Mr. Defendant, know that if you breach in any way, you are likely to be brought back to Court and your sentence may be activated and you may go to jail.
12. As for the threatening words, I see no benefit in adding anything further to that and therefore sentence for that is three months imprisonment, suspended for six months. Sentences are concurrent.

Dated this 22<sup>nd</sup> day of October, 2013 \_\_\_\_\_

GREAVES J