

REPUBLIC

V

Myko Olsson

Date of Hearing: 18, and 19 February 2016

Date of Judgement: 2<sup>nd</sup> March 2016

*Mr. Filimoni Lacanivalu for the Republic*  
*Mr. Sevualoni Valenitabua of Legal Aid Office for the*  
*defendant.*

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Ruling on No Case to answer submission

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#### INTRODUCTION

1. The defendant is charged with 1 count of unlawful wounding contrary to section 323(1) of the Criminal Code 1899. The offence is alleged to have been committed by the defendant on the 17 August 2015. The defendant pleaded not guilty and this matter proceeded to trial.

#### AGREED FACTS

2. The defendant had asked the complainant why she did not answer his calls made to her the night before. The complainant had told him that she is tired of their relationship because of the fights most of the time. The complainant at that time was lying on the bed with her son. She looked and saw that it was the defendant who asked her "iga wa garowangen" which means "you think you got away". The defendant then pulled his shirt up and the complainant saw a chopping knife tucked in the front of his pants. The chopping knife has a stainless steel blade and handle. The defendant pulled the chopping knife from his pants and swung it. The complainant noticed an open wound on her right hand and blood flowing heavily. The cause of the wound on the complainant's right hand was from the chopping knife that the defendant was holding. Due to the movement Mark woke up and started crying. The complainant told the defendant to leave but he said "if I leave now I will die". The complainant's uncle Hamilton barged into the room. The complainant left the room. The

defendant then later collided with an oncoming white truck while he was driving away on the motor bike. The complainant was taken to the RON Hospital where she was medically examined.

#### **THE MEDICAL REPORT**

3. The relevant part of the extract of the medical report of the complainant is as follows

*"17/08/2015 2.55PM*

*Presentation at the Emergency Department of Republic of Nauru Hospital.*

*Initial assessment*

- Cut left eye brow*
- Cut right hand*

*Seen by Dr. Often (Surgeon). Pt. sutured by Dr. Elvira. Discharged with medication.*

*25/08/2015*

*Reviewed by Dr Samuela Korovou*

*History of Trauma. Attended to by locum officer. Reviewed today.*

*2.5cm and 2 cm laceration above left eye brow with 2 sutures.*

*9 cm laceration on right hand closed with 9 stitches.*

*Wound granulating well*

*Stitches insitu*

*Assessment: laceration"<sup>1</sup>*

4. The medical report says nothing about how the injuries have been inflicted or could have been inflicted.

#### **PROSECUTION CASE**

5. The complainant gave evidence. Her evidence is that on the afternoon of the 17 August 2015, in the afternoon she was at home. The defendant had telephoned her and that they had spoken and argued over the phone swearing at each other. The complainant hanged up the phone. A short time later the defendant arrived at the complainant's family home. At that time the complainant was in the room and she was trying to put her son Mark to sleep. When the defendant entered the room the complainant was on the bed with her son Mark and the bed was placed against the wall. When the defendant lifted up his shirt the complainant saw that a chopping knife was tucked into his pants. The defendant then took out the chopping knife and

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<sup>1</sup> Medical Report Extract prepared by Dr. Samuela Korovou in the bundle of documents submitted to the court

held it in his hands. The complainant was afraid and she tried to cover up herself and her son. And as she turned away covering herself, she felt something hit right her hand. She did not know what hit her hand. A few moments later the defendant asked her what happened to her hand and when she looked at her hand, she saw the wound and saw blood coming out from the wound. She then turned to the defendant and the defendant dropped the chopper on the bed, approached her, held her kissed her and asked her to forgive him.

6. During cross-examination the complainant agreed that she had the phone with her that day and that she did spoke to the defendant using that phone and that they did argue over the phone swearing at each other. The complainant during cross-examination gave evidence that it was the defendant who gave her the phone and that after the incident on the afternoon of the 17 August 2015; the police took the phone away and that when she got the phone back from the police it was in half. Not in two pieces. It was damaged and that something hit it. The complainant agreed during cross-examination that the phone was not in that condition when she was speaking to the defendant with it earlier before the incident.
7. Also during cross-examination the complainant gave evidence that she did not see the chopper coming down and that she was lying on the bed with her back to the wall. Her son Mark was on her left arm and that the defendant was standing on the floor at the edge of the bed and her head was in the direction of the defendant's right hand. She gave evidence that she did not know where her phone was at that time and further that she did not know whether the defendant aimed the chopper at her. The complainant was not able to say anything about the defendant chopping her phone. The complainant gave evidence that she did not know what caused the wound. Both in evidence and chief and during cross-examination she confirmed that the defendant did ask what happened to her hand and she then picked up the chopper and went outside.
8. The next witness called by the prosecution is Mr. Hamilton Eoaeo the uncle of the complainant. He gave evidence that he was in his room at the relevant time. He was then approached by his niece who asked him to go and take the complainant out from her room. He then went to the complainant's room and when he arrived there he saw the defendant on the bed smiling and holding Mark and

that the complainant was crying. He gave evidence that he tried to take the child away from the defendant because the baby was shouting crying and scared. He further gave evidence that his granddaughter told him that the defendant had a knife and that when he entered the room he saw the complainant was struggling with the defendant and trying to take the knife away from the defendant. He then choked the defendant.

#### **DEFENCE SUBMISSION NO CASE TO ANSWER.**

9. Following the close of the prosecution case the Mr. Valenitabua submitted that the court makes a finding that the defendant has no case to answer, stop the trial and acquit the defendant.

10. Mr. Valenitabua has properly conceded that on the evidence the complainant's injury may have been caused by the knife which the defendant held in the complainant's bed room. Mr. Valenitabua however submits that, even if the defendant had held the chopper which caused the complainant's wound, the defendant did not have the necessary *mens rea* or *intention* to cause the injury so as to warrant guilt on his part.

11. Mr. Valenitabua has submitted that the prosecution must therefore prove beyond all reasonable doubt that the defendant intended to cut the complainant's hand and unlawfully wounded her. In addressing the issue of intention Mr. Valenitabua submits that the prosecution must establish *mens rea* (intention) beyond reasonable doubt. Further submitting that: Since *Woolmington*<sup>2</sup>, it has been firmly established that the onus is on the prosecution to establish *mens rea* beyond all reasonable doubt, whether generally or when such particular issues arise, in all cases other than insanity or where it is laid down by statute, e.g diminished responsibility in murder"<sup>3</sup>

#### **ELEMENTS OF THE OFFENCE**

12. The Chief Justice in *R v Agege*<sup>4</sup> in relation to the ingredients of the offence of wounding with intent to cause grievous harm said:

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<sup>2</sup> *Woolmington v DPP* [1935] A.C 462

<sup>3</sup> Archbold (2006), p1713, paragraph 1713, para.17-5

<sup>4</sup> [1989] NRSC 1; [1980-1989]NLR (6 June 1989) at page 3 paragraphs 2,3, and 4

"Now, as to the ingredients of the offence. There must be proved-

- (a) the wounding;
- (b) the wounding was deliberate and without justification;
- (c) that it was committed with intent to cause really serious bodily harm.

The Law is stated in Carter as to the intent required to prove the crime. It is - "to establish a charge of wounding with intent to do grievous bodily harm, there must be proof of a specific intent to inflict harm of that nature; mere recklessness or foresight of the likelihood of such harm occurring without specific intention not to inflict it is not sufficient" R v Hoskin (1974) 9 SASR 531. The test is a subjective one - not the test of a reasonable man. The question to be answered is - did the accused in his own mind intent to inflict grievous bodily harm?"<sup>5</sup>

#### **ASSESSMENT OF THE EVIDENCE**

13. It is not disputed that the wound on the right hand of the complainant is caused by or may have been caused by the knife held by the defendant. There is no evidence as to how the injury was caused or could have been caused by the defendant. So I must address my mind to the question is there sufficient evidence to show that the accused in his own mind inflicted the wound, with the specific and necessary intent to inflict the said wound on the complainant?
14. The complainant did not know what caused the wound or how she was injured. She gave evidence that she did not know whether or not the defendant pointed the knife at her. She gave evidence that it was the defendant who asked her what happened to her and then held her kissed her and asked her to forgive him. This aspect of the evidence where he hugged her kissed her and asked her to forgive him is capable of two possible conclusions that could be inferred. First that the defendant acknowledged the knife he held caused the wound. Secondly the defendant realizing that he may have caused the injury was asking for her forgiveness? On the evidence the

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<sup>5</sup> Republic v Agege <sup>5</sup> [1989] NRSC 1; [1980-1989]NLR (6 June 1989) at page 3 paragraphs 2,3, and 4

prosecution has not ruled out these two possible conclusions which are in favor of the defendant's case.

15. The complainant during cross-examination gave evidence that it was the defendant who gave her the phone and that after the incident on the afternoon of the 17 August 2015; the police took the phone away and that when she got the phone back from the police it was in half. Not in two pieces. It was damaged and that something hit it. The complainant agreed during cross-examination that the phone was not in that condition when she was speaking to the defendant with it earlier before the incident. The complainant herself did not give any explanation for how the phone was damaged. In cross-examination she was asked:

*Q: Did Myko cut it (telephone) that day?*

*A: I don't know but when they got the phone back it was in half*

*Q: When you say it was in half it was in two pieces?*

*A: It wasn't in two pieces. It was damaged something hit it.*

16. On the evidence the only explanation for the damaged phone came from the theory of the defense case put to the complainant during cross-examination that the defendant did cut the phone and that his intention was to cut the phone. The physical evidence as confirmed by the complainant herself during cross-examination is that the phone when returned was damaged and that something hit it, is consistent with being cut with a knife as suggested by the defense during cross-examination which is confirmed by the evidence of the complainant herself. Yes she did not admit to actually seeing the defendant cut the phone, when she answered "*I don't know but when they got the phone back it was in half*" and when further pressed with "*when you say it was in half it was in two pieces?*" She answered "*It wasn't in two pieces. It was just damaged something hit it*"

17. On the evidence so far what could have possibly hit the phone causing the damage? On the evidence the only thing that could have hit the phone causing it to be damaged is the knife and this is consistent with the theory of the defense case put to the complainant during cross-examination and affirmed by the answers given by the complainant during cross-examination.

18. There is no evidence to show that the defendant inflicted the wound on the complainant with the necessary

*mens rea*. At its highest the prosecution case with concession from the defense is that, the wound may have been or is caused by the knife held by the defendant. There is no evidence to show how the wound was inflicted. There is no evidence upon which this court can even draw an inference that the defendant intended to cause the wound. I find that the element of intention is not made out on the evidence. I therefore find that the defendant has no case to answer for the charge of unlawful wounding. I acquit the defendant.

Dated this 2 day of March 2016

Emma Garo  
Resident Magistrate

