IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

INDICTMENT NO: 16/2019

THE QUEEN

v.

LEANDRO THEODORE SOLOMON

Appearances:	**Ms. Kerri-Ann Gillies for the Crown**
	Mr. Rupert Wheeler of Samson Law for the Defendant
Before:	**Justice Cheryll Richards Q.C.**
Jury Trial:	**26th – 29th August 2019**
Submissions on Sentencing:	**21st November 2019**
Sentence Judgment:	**20th December 2019**

HEADNOTE

Criminal Law – Indecent Assault *– Principles on Sentencing, Whether a Sexual Harm Prevention Order is necessary*

SENTENCE JUDGMENT

1. Section 31 of the ***Criminal Procedure Code*** (CPC) (2019 Revision) deals with the "*Anonymity of complainants in rape etc. cases and states*:

> *"31. (1) After a person is accused of a rape [etc.] offence, no matter likely to lead members of the public to identify a woman as the woman against whom the offence is alleged to have been committed shall be published in a written publication available to the public or be broadcast, except as authorised by a direction of the court."*

For the avoidance of doubt: It is the Court's view that the charges against this Defendant fall within this section of the law by virtue of the use of the word "*etc.*" and therefore it is ordered that there be no identification of the Complainant in this case.

2. The Defendant is before the Court for sentencing following a trial which commenced on the 26th August 2019. On the 29th August 2019, he was convicted on one count of Indecent Assault by the unanimous verdict of the jury. Following upon his conviction, he entered a plea of guilty in this Court to the scheduled summary-only offence of Indecent Exposure contrary to s.3(l)(k) of the ***Town and Communities Law*** (1995 Revision). By virtue of s.149A(1) of the ***Criminal Procedure Code*** (2019 Revision), following his guilty plea, the Defendant is also to be sentenced by this Court in respect of this second offence.

3. The brief facts are these. At about 12:30am in the early morning hours of the 15th day of October 2018, the female Complainant, MC was walking to her home *en route* from a local restaurant. She was new to the Island - having been here for about a month prior to that evening. She was walking alone along South Church Street in George Town. On reaching the vicinity of Eden Rock Diving Center, she was approached by the Defendant who engaged her in conversation before asking her for a cigarette. She responded by giving a cigarette to him. He continued to speak to her and in the course of doing so,

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offered to pay her rent. She declined his offer and continued walking. He began following her. She crossed the street to the other side, away from him, and he also crossed the street following behind her. She told him to go away but he persisted. She began to record the incident on her phone. He said to her "*What if I show you my ...?*" - referring colloquially to his private person. She continued walking way. The Defendant approached her from behind and grabbed her bottom and lower back. She did not give him permission to do so. She shouted for him to get away from her and also called out for help. No one was nearby. No one responded to her calls. The Defendant removed his person from his pants and began masturbating in front of her. The Complainant in an effort to get help knocked on the doors of a nearby apartment building and again called out for help. The Defendant kept going towards her until he finally left. The Complainant recorded a part of the incident on her phone. PC Darado Thompson later identified the Defendant from the recording, having known him since High School. The Complainant identified him from his Facebook picture and a photographic identification parade.

4. Following the receipt of pre-sentence Reports, sentencing submissions were made on the 21st November 2019.

5. The maximum penalties for these offences are set out firstly in s.132 of the ***Penal Code*** (2019 Revision). This provides that a person who commits an offence of Indecent Assault is liable on conviction on indictment to a maximum sentence of imprisonment of ten years. Section 3(1)(k) of the ***Town and Communities Law*** provides that every person who in any thoroughfare or public place, indecently exposes his or her person is guilty of an offence and liable on conviction to a fine of one thousand dollars or to imprisonment for six months.

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Antecedent History

6. The Defendant is 29 years old. His date of birth is 20th July 1990. He has an antecedent history on CRO No. 9092 of nine previous convictions for the offences of Theft, Carrying an Offensive Weapon (in 2009) and failing to surrender to custody (five charges) in respect of which he has received various Community Service Orders and probation. He has a number of previous convictions for traffic offences including driving without insurance, driving whilst disqualified and driving under the influence of alcohol. None of his previous offences are relevant offences for the purposes of this hearing. He was on remand for the offences before the Court from October 2018 through to February 2019.

The Social Inquiry Report (SIR)

7. The SIR in respect of this matter is dated 11th October 2019. It is recorded therein that the Defendant reported being treated at the Mental Health Unit of the George Town Hospital for use of illicit substances in 2015 which resulted in his being admitted to that facility and to his being diagnosed as displaying symptoms of schizophrenia. He was prescribed medication at that time and has continued taking this medication on a nightly basis.

8. The Defendant also reported that he began consuming alcohol at the age of 16 and that over time his consumption increased. He began consuming ganja at age 14 and cocaine in 2015.

9. At a recent Summary Court appearance on 21st August 2019, he tested positive for ganja use and during his interview with the Probation Officer, on 24th September 2019 he said that he would not stop smoking ganja.

10. His mother describes the current matters before the Court as out for character for the Defendant and states that both parents were off Island at the time of the offences and that they are not able to confirm whether he was taking his medication at the time. She also reported concern as to his level of alcohol use.

11. The Defendant also reported being unable to express remorse for his actions and that he could not take responsibility for what the police said that he had done. He denied drinking earlier in the night or consuming illicit substances. He stated that he was not sure but may not have been taking his oral medication as required. He sought to justify his drug and alcohol use stating that they are coping mechanisms as a result of his lengthy court involvement.

12. Of the eight criminogenic factors considered in assessing his level of risk and need, he is assessed by the Probation Officer as at very high risk of re-offending due to his alcohol/drug problem, lack of supportive positive companions and pro-criminal attitude/orientation. His overall risk of re-offending was assessed as high.

13. By way of assessment/evaluation, the Probation Officer notes inter alia:

> *"Given Clients' mental health issues, when not following the proper treatment regime there is an increased likelihood for a lack of consequential thinking that can lead to further offending. Moreover, his demonstration of denial and minimization for this offence is indicative of his lack of remorse...."*

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14. In order to assess the risk of re-offending of a sexual nature, the Probation Officer used the risk assessment tool, Risk Matrix 2000 (RM 2000). This is designed to predict sexual and non-sexual violent reconviction among men who have been convicted of a sexual offence. The conclusion arrived at, is that the Defendant has been assessed as high risk of reconviction for a sexual crime. It is explained that this means that he has many of the characteristics that are associated with a raised risk of sexual reconviction in sexual offenders. He has also been assessed as high risk for reconviction for a non-sexual violent crime which means that he has many of the characteristics that are associated with raised risk of violent reconviction in sexual offenders[1].

15. Under sentencing options, the Officer suggests that while his current offences appear to be an aberration from his general pattern of offending, they also appear to be increasing in seriousness which raises concern for public safety if his issues are not properly addressed. Thus it is suggested that the Court considers a sexual harm prevention order or alternatively await an assessment for residential treatment.

The Victim Impact Report (VIR)

16. The VIR dated 30th September 2019 records no physical or financial impact on the Complainant. The greatest impact on her has been emotional. Under this heading the report states:

> *" After running into her apartment she felt like she "was in shock, shaking and rethinking if moving to Cayman was the right decision" She stated I felt like quitting my job and moving back home. After this happened I could not go to work for almost*

[1] Page 11 and 12 of report dated 11th October 2019

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a week." ... MC referenced that it was "as if he had dulled my sparkle because I was this happy confident, always thinking positive person and after he did this I lost that." I became paranoid and started having anxiety to the point I had to go to a doctor." MC shared that she is happy to share that my sparkle is back."

17. In a further unfortunate occurrence, it is noted in the report that the video was circulated on the internet without the consent of the Complainant and that various unpleasant comments were made as to the wisdom of the Complainant walking alone at night which caused additional pain and trauma for the Complainant.

18. The Probation Officer concludes in the report by way of assessment and evaluation that the Complainant was significantly impacted at the psychological and emotional level as a result of this incident. The Complainant expresses concern for her safety from harm from the Defendant. Under Victim needs and protection issues, it is suggested that noncontact with the Complainant, participation in a sex offender programme and a sexual harm prevention order be considered.

Submissions on Sentencing

19. There is agreement between the Crown and the Defence that in the absence of local sentencing guidelines, the United Kingdom Sentencing Council Definitive Guidelines in particular with respect to the offence of Sexual Assault under section 3 of the Sexual Offences Act 2003 is of assistance. The maximum sentence for that offence is ten (10) years which is equivalent to the maximum penalty on indictment in the Cayman Islands.

There is however disagreement as to the categories of Harm and Culpability which apply to the instant case.

20. Category 2 harm involves conduct including, touching of naked genitalia or naked breasts, prolonged detention /sustained incident, additional degradation/ humiliation or where the victim is particularly vulnerable due to personal circumstances. Category 3 involves conduct where factors in categories 1 and 2 are not present.

21. The Crown submits that the offence falls into category 2 of Harm due to the sustained nature of the incident. On the evidence of the Complainant this lasted approximately 20 to 25 minutes. Category 2 Harm and culpability B would attract a starting point of one year's custody with a range from High level Community Order to two years custody.

22. The Defence submit that this is a Category 3 harm with culpability B. It is argued by the Defence that whilst the following of the Complainant was undoubtedly unpleasant, the Indecent Assault was not sustained or prolonged. It is accepted that these circumstances would generally aggravate the offending but urged that they would not be sufficient to place it into Category 2. The starting point for Category 3 Harm, culpability B is a high level community order with range of medium level community order to 26 weeks custody.

23. Both Counsel accept that the following aggravating factors are present:

i. The offence was committed at a time when the Defendant was on bail for the offence of Possession of a Controlled Drug, Cocaine and Failing to Provide a Specimen of Urine, allegedly committed on the 15th June 2017, some fifteen months earlier.

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ii. The offence was committed in public.

iii. The timing of the offence was at night.

iv. The offence was committed while the Defendant was under the influence of alcohol.

24. To these four the Crown submits there should be added his lack of remorse.

25. By way of mitigating factors, the Defence submit that there are no relevant or recent convictions, that the Defendant has no previous convictions of a similar nature. Further that he is suffering from a mental disorder to wit a personality disorder, which while not rendering him unfit to plead or raised as an issue with respect to his ability to commit the offences, should be taken into account in mitigation.

26. Counsel for the Defence urges that against the background that the Defendant was on remand for several months and on an electronic tag and curfew from 7pm to 6am between the months of February 2019 and August 2019, and 9p to 6am thereafter, any sentence passed by this Court should be limited to a short sentence of imprisonment which is the equivalent of time served. Counsel submits that it is not necessary for there to be any sentence involving rehabilitation programmes as the Defendant has not used cocaine since 2017 and it would be a disproportionate use of resources for him to be taken to Caribbean Haven, a residential treatment facility and to undergo a residential treatment program simply for occasional ganja use and the odd drinking in the evening. Additionally it is said that a suspended sentence with supervision order as recommended by the Probation Officer would be disproportionate and amount to double punishment as the Defendant has already served the equivalent of a custodial sentence.

Application for Sexual Harm Prevention Order

27. The Crown applies for a Sexual Harm Prevention Order pursuant to Section of 45 A of the Penal Code (2019 Revision). This provides as follows:

> *"45A. (1) The Director of Public Prosecutions, after consultation with the Royal Cayman Islands Police Service or any other relevant agency may apply to a court for a sexual harm prevention order.*
>
> *(2) Where a person, including a young person, of or over the age of seventeen is dealt with by the court for any offence of a sexual or indecent nature and the court is satisfied on a balance of probabilities that it is necessary for the purpose of –*
>
> *a) protecting the public or a particular member of the public from sexual harm from that person; or*
>
> *b) protecting children or vulnerable persons or a particular child or vulnerable person from sexual harm from that person,*
>
> *the court, upon an application pursuant to subsection (1), may instead of or in addition to any sentence, make a sexual harm prevention order.*
>
> *(3) A sexual harm prevention order shall prohibit a person from doing anything described in the order and may include such conditions as the court considers necessary including a prohibition on travel both within and outside the Islands and shall be for a fixed period of at least five years.*
>
> *(4) Before making a sexual harm prevention order the court shall explain to the convicted person -*
>
> *c) the purpose and effect of the order;*
>
> *d) the consequences which may follow under section 45C if the person fails to comply with any of its requirements; and*
>
> *that the court has the power to review or vary the order on the application either of the person or the Director of Public Prosecutions.*
>
> *45E. For the purpose of sections 45A and 45B, "sexual harm" from a person means physical or psychological harm caused by a person committing a sexual offence.*
>
> *45F. The Rules Committee established under section 19 of the Grand Court Law"*

28. Defence Counsel objects to the making of such an order on the basis that this incident was a one off event which occurred because the Defendant was not taking his medication and is unlikely to occur again. It is said that it would constitute an unnecessary restriction on the liberty of the Defendant and there is no evidence that an order is necessary in the circumstances of this case. It is said by Defence Counsel that the order is being sought,

"just in case" rather than because there is evidence that the Defenenat poses a risk. It is further said that there is no evidence that the Defendant poses a risk given that no further incidents have occurred since 2018. The Crown on the other hand point to the two reports from the Probation Office and the fact that the Defendant has been on bail with restrictions including a curfew and electronic monitoring which may have assisted to prevent a reoccurrence.

29. Additionally Defence Counsel urges that the terms of the draft order before the Court are either unnecessary, unworkable or disproportionately prohibitive. Counsel drew the Courts attention to a number of cases dealing with Sexual Harm Prevention Orders.

30. In ***R v Steven Smith and Others***[2], the English Court of Appeal provided general guidance on the making of sexual harm prevention orders including that such an order must meet the twin tests of necessity and clarity, which brought with it the subtest of proportionality. Such an order may be necessary if the sentence was a determinate term or an extended term. The Court identified three questions which must be addressed:

> *"We respectfully repeat the useful succession of questions identified by this Court in Mortimer [2010] EWCA Crim 1303 and which must be addressed when the making of a SOPO is under consideration. They derive from the earlier judgment of Rose L.J. in Collard [2004] EWCA Crim 1664; [2005] 1 Cr. App. R. (S.) 34 (p.155)*
> .
>
> *i) Is the making of an order necessary to protect from serious sexual harm through the commission of scheduled offences?*
> *ii) If some order is necessary, are the terms proposed nevertheless oppressive?*
> *iii) Overall are the terms proportionate?"*

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[2] [2011] EWCA Crim 1772

31. In the case of ***R. v. Franklin (Phillip)***[3], the English Court of Appeal considered the circumstances under which such an order would be imposed and noted that a restriction on a person's liberty of such a nature ought not to be imposed "just in case". The Court stated that it is only where a restriction is necessary that it can and should be imposed and that the requirement of necessity is different from the requirement of proportionality which also applies. In that case, the Court accepted the submission that there was no evidence before the court that the appellant had ever posed or would pose a risk to boys as well as to girls and that the restriction in the order went beyond what was supported by the evidence.

Assessment

32. In considering this matter, the Court is guided by the Cayman Islands Sentencing Guidelines and the general principles set out therein. The Court is required to balance the competing interests in this case and to tailor any punishment to the individual characteristics of the Defendant whilst ensuring that any punishment imposed is commensurate with the seriousness of the offence. By paragraph 2 of the general principles, the seriousness of an offence will require consideration of the Defendant's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused. In relation to harm, paragraph 2.2 states:

> *"The types of harm caused or risked by different types of criminal activity are diverse and victims may suffer physical injury, sexual violation, financial loss, damage to health or psychological distress. There are gradations of harm within all these categories.*
> *The nature of the harm will depend on personal characteristics and circumstances of the victim and the courts assessment of harm will be an effective and important way of taking into consideration the impact of a particular crime on the victim.*

[3] 2018 WL 02337101

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The court may consider any victim impact statement in assessing the actual harm in each case."

33. In addition to considering this guidance, the Court has taken into account and considered all the submissions of both Counsel and reviewed the facts and circumstances of this case.

34. The Crown argues that this was a sustained incident of some twenty minutes. The Defence say that there was only one act of touching in the course of the twenty minutes. A short analogy may assist with resolving this issue. Had this incident occurred indoors in an enclosed area, the conclusion would be inescapable that the entirety of the incident including preparatory steps, lewd overtures and masturbation were part and parcel of the incident. In this case, where the Defendant approached the Complainant, made lewd and suggestive remarks and gestures, proceeded to follow her despite her attempts to get away from him and then assaulted her, the entirety of the period falls to be considered. However, while I accept the submissions of the Crown as to the twenty minute period, it is not immediately clear that the length of this period fits properly within the category of *"prolonged detention/sustained incident."* It is understood that the word sustained refers to continuation over a *significant* period of time or involves some degree of persistent repetition. It is concluded that this case falls within category 3, harm, and culpability B with a starting point of high level community order.

35. There are agreed to be four aggravating factors. These are all of a serious nature. Firstly, the Defendant was on bail from the Summary Court for drug offences with the implied term that he should not commit further offences whilst on bail. On his own account given to the police in the course of his interview of the 16th October 2018, he had been

consuming alcohol at various establishments throughout the evening prior to the incident. The incident occurred in a public place but at a time when the streets were deserted of people. Both the video which was exhibited in the course of the trial and the victim impact report record the terrifying ordeal to which the Complainant was subjected. The timing of the incident, occurring as it did at night, while the Complainant was alone, must have added to the terror which was felt. The Defendant persisted in his verbal approaches despite being rebuffed. Verbal approaches were followed by physical approaches which must have been menacing to the Complainant as he followed her from one side of the lonely road to the other. The recording of the incident did not stop him. The verbal and physical approaches culminated in the indecent assault and the ultimate indignity of him exposing his person in a public place and masturbating in front of a screaming Complainant.

36. It is the view of this Court that the multiplicity and combination of the aggravating factors are such that the custody threshold has been passed and that the nature of the conduct would merit a sentence at the higher end of the scale. The Court has given consideration to whether any such sentence is unavoidable or can be suspended. Given the circumstances of this case as outlined, a custodial sentence is considered appropriate. Defence Counsel has made an earnest request that any such sentence not be suspended. This, it is said, would amount to possible double punishment given the time already served on remand. This is a submission which is accepted by the Court. As to treatment and monitoring options, the reluctance of the Defendant to engage in such options, maintaining as he does that he does not need help is noted. The Probation Officer comments that there is concern as to his level of insight and motivation towards rehabilitation and that he has not fully committed himself to the treatment process.

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Counsel has also argued against such an option as being unnecessary. On the assessment of the Probation Officers, such treatment is plainly necessary but given the lack of support from the Defendant, this is not an option which is likely to be of practical benefit.

37. Having considered all options and taking into account the circumstances of the Defendant as urged by Counsel, the Court will impose a sentence for the shortest term which is in line with the seriousness of the offence. In the absence of mitigating factors and taking into account the aggravating factors, the appropriate sentence would be six months imprisonment.

38. The guidelines require that in sentencing an offender, the Court should take into account mitigating factors which are relevant to both the offence itself and the offender. The Court takes account of the two matters urged on his behalf in mitigation. The Defendant has no previous convictions of a similar nature. This is a positive feature to which the Court has regard. Secondly, Counsel has produced a psychiatric report dated 21st January 2019 which states that the Defendant has "*a personality disorder, substance use disorder and schizoaffective disorder who remains stable once he is consistently taking medications.*" The Defendant's own report to the Probation Officer indicates that this disorder may have been initially triggered by his drug use. The fact that there is uncertainty as to whether or not he took his medication on the night of the incident is noted. His mental disorder together with the medication issue is a second factor which the Court takes into account. The proposed sentence is reduced by one month in respect of each of these factors and thus to four months imprisonment. The Defendant has not shown any significant contrition or remorse such that the proposed sentence should be further reduced.

Electronically Monitored Curfew

39. The Court also takes into account the fact that the Defendant has been on an electronic monitor since being placed on bail in February of this year together with a curfew. While there is no statutory regime similar to that in England and Wales for the calculation of a deduction, the Court bears in mind those statutory provisions. Paragraph 12 of the ***Cayman Islands Sentencing Guidelines*** provides as follows:

> *"12.1 When passing a determinate custodial sentence the court should consider whether credit should be given for time spent on bail where conditions have been imposed which curtail the liberty of the defendant. This is most likely to be relevant where a defendant ah been subject to a curfew, especially where compliance with that curfew can be verified through electronic monitoring.*
>
> *12.2 In deciding what of any, credit should be given for time spent on curfew, the court will consider the following factors:*
>
> - *The total length of time the defendant has been subjected to a curfew.*
> - *The number of hours each day that curfew was imposed during the curfew period.*
> - *Whether the curfew included daytime hours or was solely a night time curfew (recognizing that being indoors at night during for example, normal sleeping hours may be of less of a curtailment of liberty than being indoors during the day).*
> - *Any breach of the conditions of the curfew."*

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40. It is appropriate in the circumstances of this case that credit be given for a portion of the time that the Defendant was subject to a curfew. Counsel has advised that he was released from custody on the 20th February 2019 and subject to a twelve hour curfew through to the 29th August 2019 (7pm to 6am). Since then he has been on a ten hour curfew (9pm to 6am) through to date. In considering the extent of the credit which should be given, it is noted that the curfew imposed in this case was during the night hours which would have been less restrictive than in the daylight hours. This would have

resulted in less impairment of his liberty and freedom of movement. For this reason, the Court does not consider that there should be full credit given. The Court would in the exercise of its discretion, conclude that he should receive credit for four hours of each day for the earlier period and two hours of each day for the latter period leading to a total of credit of 41 days.[4]

41. The final sentence is four months imprisonment. Time served on remand is to be deducted from this sentence and he is to receive a further credit of 41 days for time spent on electronic monitoring and curfew. It is therefore anticipated that the Defendant would be released today.

42. For the offence of Indecent Exposure, a financial penalty is not appropriate given the serious circumstances of this case. A sentence of 30 days imprisonment is imposed. As this offence arises out of the same set of circumstances, this sentence is to run concurrently with the sentence for the offence of Indecent Assault.

Sexual Harm Prevention Order

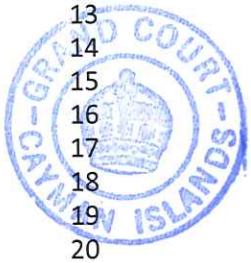
43. The Court has considered with care the submissions of both Counsel relative to the application for a Sexual Harm Prevention Order. Counsel has urged on behalf of the Defendant that this is a one off incident which has not since been repeated and that it may well have been due to the Defendant not taking his medication. Thus it is said that a Sexual Harm Prevention Order is not necessary.

[4] 189 days x 4 hours of each day, a total of 756 hours and 113 days x 2 hours a day, a total of 225 hours, 982 hours or a total of 41 days.

44. In resolving this issue, the Court is assisted by the risk analysis and conclusions contained in the Social Inquiry Report which are detailed above. A detailed assessment was carried out involving the full range of the Defendant's personal circumstances including his possible non-compliance with his treatment regime. A conclusion was reached as to the potential for general re-offending and a further assessment was done in relation to whether there is any potential for sexual re-offending. The conclusion is that the Defendant is assessed to be at high risk of sexual reoffending. The Report notes that around 67% of sexual offenders will be placed in lower risk groups than the Defendant and 7 % will be placed in a higher risk group.

45. In describing the measurement tool used, the Report states:

> *"Risk Matrix 2000 (RM2000) is a risk assessment tool designed to predict sexual and non-sexual violent reconviction among men who have been convicted of a sexual offence. RM2000 cannot predict who will or will not offend, it can tell us whether someone has similar characteristics to a group of offenders who have a higher or lower rate of known reoffending. The value of RM 2000 is that it enables broad decisions to be taken about how much treatment and supervision might be needed. However RM2000 does not take account of all the factors that can affect an individual's' offending behavior. For instance, it does not account for changes in circumstances and does not reveal what caused the offending to happen."*



46. The findings in this Report underpin the Court's assessment as to whether a Sexual Harm Prevention Order is necessary and lead to the conclusion that the legislative threshold for the making of a Sexual Harm Prevention Order is met. An order should not be made *"just in case."* That is not the applicable test. The Court is mindful of this. Given the findings in the Report, the Court is satisfied to the required standard of on a balance of probabilities that such an order is *necessary* for the purpose of protecting the Complainant and the public from sexual harm from the Defendant. In arriving at this

conclusion, the guidance in the cited case of ***R. v. Steven Smith***[5], is followed. In this regard it is of note that in the absence of supervision or treatment programmes, in respect of this offence, once the Defendant's bail restrictions are removed which they will be, when he is released from custody, there will be no other protective regimes in place.

47. It is accepted that care must be taken to ensure that the terms of the order are not disproportionate overall or oppressive in any way. Any such order must be narrow in scope focusing only on the identified risk. The Crown has now provided a revised draft following on the November hearing. This narrows the terms to non-contact with the Complainant, notifications to the Police, in order to ensure that there is information as to his residence and any changes thereto and a prohibition against loitering and entry to residential properties after certain hours without the express invitation of a resident or without having lawful business therein.

48. With respect to the first term, while it is urged that there is no evidence of any attempt to contact the Complainant in the interim period whilst on bail, the Court is mindful of the Defendant's responses in interview including when shown the video of the incident:

> ***Video:*** *…… Female: GET THE ….AWAY FROM ME, DUDE, GET AWAY. GET AWAY FROM ME, Get the … away from me. Seriously get away from me. Get away from me. Okay, I'm calling the cops.*
>
> ***Q****. Is there anything you'd like to say to DC …… after watching that video?*
>
> ***ANS****. …… I don't know the level of seriousness to you guys to what's happened here but I mean it- it just sounds like some random guy who is attracted to a girl and in all honesty my age, it might –be down to immaturity but .. she even said at certain points said, I'm not uncomfortable, she said that clearly, but hear what, you walk there, I walk here. It's like kinda weird. It sounds like two people, one's attracted to one, one may have been attracted to the other one but just not wanting that interaction, that person being in that certain mind state…*

[5] Paragraph 9

49. In the Court's view, this response is as telling as it is chilling. The non-contact condition is necessary.

50. Consideration has also been given to whether the term dealing with loitering or entry of residential premises is unduly restrictive, disproportionate or unclear as urged by Counsel. It is not considered disproportionate in light of the risk identified in the Report and the entirety of the circumstances of this case. Loitering has a clear meaning which is readily understood. It does not include passing by or standing briefly outside. This term is considered necessary as are the terms relating to notification to the Police.

51. A Sexual Harm Prevention Order for a period of five years is therefore made in terms of the revised draft.

Dated this the 20th December 2019

Honourable Justice Cheryll Richards Q.C.
Judge of the Grand Court