

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3 **INDICTMENT NO: 107 of 2019**

4
5 **THE QUEEN**

6
7 **v.**



8
9 **VICTOR ANTONIO WALKER**

10
11
12 **Appearances:**

Mr. Greg Walcolm for the Crown

13 **Mr. Alex Davies of McGrath Tonner for the Defendant**

14
15
16 **Before:**

Justice Cheryll Richards Q.C.

17 **Submissions:**

4th December 2020

18 **Sentence Judgment:**

14th January 2021

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20
21
22 **HEADNOTE**

23 ***Criminal Law - Indecent Assault on a female contrary to***
24 ***s.132 of the Penal Code (2019 Revision) - Making Threats to Kill contrary to***
25 ***s.88(c) of the Penal Code (2019 Revision)***
26

27
28
29 **SENTENCE JUDGMENT**



1 PREAMBLE

2
3 1. Section 31 of the *Criminal Procedure Code* (CPC) (2019 Revision) states as follows:

4 “Anonymity of complainants in rape etc. cases:

5 “31. (1) *After a person is accused of a rape offence, no matter likely*
6 *to lead members of the public to identify a woman as the*
7 *woman against whom the offence is alleged to have been*
8 *committed shall be published in a written publication*
9 *available to the public or be broadcast, except as*
10 *authorised by a direction of the court.*

11 (2) ...

12 (3)

13 (4) ...

14 (5) *If any matter is published or broadcast in contravention of*
15 *subsection (1), the following persons —*

16 (a) *in the case of a publication in a newspaper or*
17 *periodical, the proprietor, editor and publisher of*
18 *the newspaper or periodical;*

19 (b) *in the case of any other publication, the person*
20 *who publishes it;*

21 (c) *in the case of a broadcast, any person having*
22 *functions, in relation to the programme in which it*
23 *is made, corresponding to those of an editor of a*
24 *newspaper,*

25 *commit an offence and are each liable on summary*
26 *conviction to a fine of one thousand dollars.”*

27
28 2. For the avoidance of doubt: It is the Court’s view that the Indecent Assault charge against
29 this Defendant, falls within this section of the law by virtue of the use of the word “etc.”
30 and therefore I order that there be no identification of the Complainant in this case.
31



- 1 3. In pursuance of the section, this Judgment has been anonymized to protect the identity
2 of the Complainant.
- 3
- 4 4. The Defendant is before the Court for sentencing following convictions after trial in
5 respect of the offences of Indecent Assault on a female contrary to s.132 of the *Penal*
6 *Code* (2019 Revision) and Making Threats to Kill contrary to s.88(c) of the *Penal Code*
7 (2019 Revision).
- 8
- 9 5. The facts are that on the evening of the 4th September 2019 the victim, SD was offered
10 a ride by the Defendant. To her, the Defendant appeared to be a respectable older man
11 and he was also the holder of her work permit. She had not yet commenced employment
12 and was meeting him for the first time. She accepted the ride because she had determined
13 to leave the home of her gentleman friend with whom she had been staying but had had
14 an argument. The Defendant told her initially that he would take her to his sister's house
15 to stay. Instead he took her to his apartment off Java Lane in East End.
- 16
- 17 6. While there, at around 2'o clock in the early hours of the morning, after he had left and
18 returned to the apartment, he touched her naked breast and when she remonstrated with
19 him, he threatened to kill her and kill himself and pointed to a knife which was on a
20 small table by the side of the bed. He spoke about his access to guns and threatened to
21 have her work permit revoked.
- 22
- 23 7. She managed by a ruse to get him outside of the house and, by distracting him, to secure
24 an opportunity to flee from the premises. She hid under a nearby school building and
25 called the Police. The Defendant was arrested and charged. At trial his defence was a
26 denial.

1
2 8. The *Penal Code* prescribes maximum penalties of 10 years' imprisonment in respect of
3 each offence.



4
5 **ANTECEDENT HISTORY**

6
7 9. The Defendant is 56 years old and has no previous convictions.
8

9 **SOCIAL INQUIRY REPORT**

10
11 10. A Social Inquiry Report (SIR) is provided by the Department of Community
12 Rehabilitation (DCR) dated the 12th October 2020. In it, the Probation Officer notes that
13 the Defendant's ex-wife advised of his serious drinking issues during their marriage and
14 that they are now engaged in an effort at reconciliation.

15
16 11. The Defendant told the Police as it relates to alcohol that he drank heavily in the past -
17 highlighting that he would drink to the point of intoxication and would not recall his
18 behaviour. He informed that his heavy consumption of alcohol began as a result of his
19 marital issues and that he used it as a coping mechanism. He also told the Officer that
20 he would often be told by his friends that he became loud, aggressive and argumentative
21 whenever he was intoxicated.

22
23 12. He noted that this was not the lifestyle he wanted to continue and that he has made an
24 effort to reduce his intake of alcohol. He told the Officer that for over a year his
25 consumption of alcohol has been drastically reduced and stated that he now consumes
26 only about two beers usually on the weekends.
27

1 13. Members of the community have expressed the view that these offences are entirely out
2 of character for the Defendant and they describe him as a respectable, honest and reliable
3 individual. His Pastor reported that he had not been attending church and that there was
4 a period that the Defendant turned to alcohol in order to cope with his marital difficulties.
5 He has recently re-started attendance at church and has re-committed himself to his faith.

6
7 14. The Defendant denied being intoxicated at the time of the offence.

8
9 15. Under assessment and evaluation, the Probation Officer expressed the view that this act
10 may have been motivated by some element of power and control, given that the
11 Defendant was the holder of the victim's work permit.

12
13 16. While the Defendant indicated a willingness to engage in intervention, he does not
14 acknowledge himself as being a sex offender and that acknowledgment is required for
15 effective treatment because it goes towards acceptance of responsibility.

16
17 17. The Officer concludes that the Defendant's overall risk of re-offending is assessed at a
18 medium level. This assessment level results from the fact that the components of
19 education/employment and leisure/recreation are calculated to be areas of his life which
20 place him at a high risk of re-offending, whilst all other components of the defendant's
21 life place him at a medium to very low risk of reoffending. It is noted that the defendant's
22 present unemployed status places the defendant at a higher risk of re-offending.



1 18. The Defendant was also assessed using the Risk Matrix 2000 Assessment (Sex Offender)
2 Tool. This tool assesses the long term risk of sexually re-offending. He was assessed as
3 falling into the low-risk category as a result of his age, the fact that he has no previous
4 convictions of a similar nature and has been in a committed relationship for over the
5 minimum period of two years.

6
7 19. Defence Counsel has produced letters to the Court from his ex-wife which refer to the
8 efforts of reconciliation and from four other persons in the community who attest to his
9 good character.



10
11 **VICTIM IMPACT REPORT**

12
13 20. A Victim Impact Report (“VIR”) dated 13th October 2020 has been provided by the
14 DCR. The victim SD is 44 years old. In relation to the impact of the offence on her, she
15 stated that she felt stressed and nervous. She stated further:

16 *“While I was in his house I was afraid because I did not know what he would do.*
17 *When I initially saw him I trusted him because he was a big man. I went with him*
18 *because I needed a shoulder to lean on as a result of what was happening with my*
19 *boyfriend.”*

20
21 21. It is her desire in regard to sentencing that the Defendant should be sentenced to a term
22 of imprisonment in order to *“teach him a lesson”*.

23
24 22. The Probation Officer concludes that based on the available information, it appears that
25 the victim was most significantly impacted at the emotional and psychological level. She
26 did not sustain any physical injury but felt violated from being touched inappropriately,
27 that the Defendant took advantage of her emotional vulnerability and that her having to

1 go through a trial and give evidence would have only served to intensify the thoughts
2 and emotions that are associated with this incident. The continued emotional and
3 psychological impact on her, says the Officer, is quite profound and is reflected in her
4 apprehension to talk about this incident.

5
6 23. The Officer also states that at the time of the incident, the Defendant's actions put her
7 safety at risk. He took the victim to a geographical area which was unfamiliar and in a
8 less populated area of the Island. This made her feel isolated. It was at night, making it
9 more difficult for her to get assistance, had she not called/had the means to call 911.
10 Further he invoked in her, by his comments, extreme fear and intimidated her verbally
11 by the mention of a knife. He used threats and coercion to try to force her to participate
12 in sexual acts.

13
14 24. The Officer recommends that the following conditions be imposed in respect of any
15 sentence. That the Defendant:

- 16
17 i. be ordered not to make contact with the victim directly or indirectly, whether
18 verbal, written or through the use of any other media;
19
20 ii. be bound over to be of good behavior towards her; and
21
22 iii. participate in any intervention programmes recommended by the assigned
23 probation officer, whether in the community or in custody, and that the court
24 should also consider imposing a Sexual Harm Prevention Order (SHPO).





1 SUBMISSIONS – COUNT 1

2
3 ***Prosecution***

4
5 25. The Prosecution submits that the Defendant’s offending should fall into Category 2
6 Harm of the ***Cayman Islands Sentencing Guidelines*** because of the touching of the
7 naked breast of the victim as well as her particular vulnerability given that she had been
8 told that she had determined that she had to leave the home where she resided with her
9 friend.

10
11 26. It was also submitted that this matter falls into the category of Culpability A, on the basis
12 of the factor of abuse of trust. Category 2 Harm and Culpability A, has a starting point
13 of 6 years’ imprisonment with a sentencing range of 5-9 years’ imprisonment.

14
15 27. It was further submitted that while the threats may constitute an aggravating feature
16 which may increase the starting point, the threats were made after the indecent assault
17 took place, and there is a separate charge for Making Threats to Kill. Prosecuting
18 Counsel does not therefore urge that these threats ought to be treated as a separate
19 aggravating factor in respect of the sentence category for the offence of Indecent Assault.

20
21 ***Defence***

22
23 28. Defence Counsel responded by accepting that this matter properly falls into Category 2
24 Harm and that the Prosecution’s submissions in relation to violence or threat of violence
25 for Category 1 Harm are endorsed and agreed given that there is separate charge of
26 Making Threats to Kill.

1 29. In relation to Culpability A, Defence Counsel submits that the phrase, ‘a position of
2 trust’ is usually used in relation to offences against children, for example, offences
3 relating to those in whose care children are placed including teachers, doctors, and social
4 workers. Other examples of breaches of trust include offences committed by family
5 members, family friends or someone with a close relationship to the victim. Defence
6 Counsel submits that the present situation is not similar to these circumstances nor is it
7 necessarily analogous to a true employer/employee situation as the victim had not
8 commenced employment with the Defendant.

9
10 30. Reliance is placed on the case of the *R v Jabines*¹, in which the Grand Court considered
11 an indecent assault upon a young complainant in the bathroom of a hotel by an
12 acquaintance with whom he played football. The Court, in that case, considered that the
13 nexus between the two was incidental to the offence and did not find that abuse of trust
14 was an aggravating feature on the facts of that case. The learned Judge noted that a
15 relationship akin to coach and student might amount to an abuse of trust as an
16 aggravating feature.

17
18 31. The Defence therefore submits that in the present case, the Court should consider
19 whether the relationship between the parties meets the high threshold, sufficient to
20 aggravate the offence to the level suggested in the *Guidelines*. It is further submitted that
21 even if this is considered to be an aggravating factor, it is one which lies towards the
22 lower end of the spectrum.



¹ Unreported judgment, Ind. 24 of 2019, dated 3rd October 2019

1 32. On the general circumstances, the Defence submit that the following facts are of import
2 to the Court’s assessment:

3 i. *“The evidence of the victim was that the Defendant was assisting her and
4 there had been no behaviour of concern until after the Defendant had left
5 the apartment and returned;*

6
7
8 ii. *There is no evidence that this offence was premeditated and the Defendant’s
9 actions are inconsistent with a planned attack;*

10 iii. *The evidence described a marked change of behaviour and attitude
11 following the return of the Defendant to the apartment;*

12
13 iv. *While a threat was made towards the victim which put her in fear, no
14 violence was in fact used and the weapon, the knife was not brandished;*

15
16 v. *The incident which, while no doubt was unpleasant and serious, appears to
17 have been short in duration and the victim effected her escape very shortly
18 thereafter; and*

19
20 vi. *The Prosecution’s case may be considered to be consistent with an
21 unplanned opportunistic and clumsy attempt to seduce the victim followed
22 by an unpleasant indecent assault and indignand and sinister threats upon
23 rejection.”*



1 33. Defence Counsel invited the Court to consider that this is a first-time offender of good
2 character and that the sentence which is suggested by the Prosecution would be a marked
3 departure from the case authorities and *United Kingdom Sentencing Guidelines* for
4 sexual assault. Counsel submits further that while there may be justification for such an
5 increase, the Court is asked to consider that it would be exceptional, when compared to
6 those *Guidelines*, for the maximum sentence to be imposed for an offence of this nature
7 on a first-time offender.

8
9 34. Counsel asks that the Court consider the offence as an aberration on his previously good
10 character. Clemency is sought and for consideration to be given to a sentence of a length
11 that may be suspended, which would allow the Defendant to rebuild his relationship with
12 his wife and his faith, and to continue his businesses. Counsel indicates on his behalf
13 that he would comply with any and all conditions imposed upon him including an
14 electronically-monitored curfew, unpaid work or any other conditions the Court
15 considers fit to impose. Alternatively, the shortest possible sentence commensurate with
16 the offence which can be imposed is being sought.

17
18 **SUBMISSIONS – COUNT 2**



19
20 35. With respect to the offence of Making Threats to Kill, both Counsel have referred the
21 Court to the *United Kingdom Sentencing Guidelines* in the absence of local Guidelines.

22
23 36. The starting point for an offence of Higher Culpability A (visible weapon) and Category
24 2 Harm, (some distress caused to the victim) is 2 years' custody with a range of 1 - 4
25 years' custody.

1 37. The Defence submit that while the Court may be satisfied that the visible weapon is
2 sufficient to raise the Culpability to level A, there is no brandishing of the weapon or
3 holding of the victim in a threatening manner which would aggravate the offence. The
4 submission is therefore that this is towards the lower end of the scale.

5
6 38. It is agreed by both Counsel that this is part and parcel of the same course of conduct
7 and that the sentence ought to run concurrently



8
9 **DISCUSSION AND SENTENCE**

10
11 39. There is no definition of ‘breach of trust’ which is included in the Law and Guidelines.
12 Defence Counsel has referred the Court to *Archbold 2020* paragraph 20-111 for statutory
13 examples in the United Kingdom of abuse of a position of trust.

14
15 40. In this case the victim’s friend had asked the Defendant to apply for a work permit for
16 her so that she could travel to the Cayman Islands to work. The victim and the Defendant
17 were not previously known to each other. She had arrived on Island some time before
18 the day of the incident and had not made contact with the Defendant. It is clear on her
19 evidence that she regarded the Defendant, being her prospective employer in a particular
20 light, although she seems to have placed more emphasis on his age and appearance of
21 respectability than his status as her employer. The Prosecution’s Summary of Facts
22 includes the following:

23 *“While SD was packing her bags the Defendant came to the house and knocked on*
24 *the door. SD opened it and she was clearly distraught. The Defendant asked her*
25 *whether she was the person he had taken out the work permit for. The complainant*
26 *answered in the affirmative and the Defendant said, “a God send me”. He told SD*
27 *that he would take her to his sister’s house to stay.”*

1 41. At the time there was no established relationship of employer/employee between the
2 two. It is unclear whether a mere title of employer on a work permit where the
3 employment had not commenced is sufficient to establish a relationship of trust.

4
5 42. I have considered and accept the submission of the Defence that in the spectrum of
6 breach of trust, the present circumstances do lie towards the lower end. I do not consider
7 that in this case they rise to the high threshold, sufficient to aggravate the offence to the
8 level suggested by the *Guidelines*.

9
10 43. I therefore accept that in respect of this case under the *Guidelines* this matter falls into
11 Category 2 due to the touching of the naked breast and into Culpability B. The starting
12 point for Category 2, Culpability B is 4 years' custody with a range of 3 - 7 years'
13 custody.

14
15 44. Section 4 of the *Alternative Sentencing Act* (2008 Revision) sets out the principles
16 which a court should consider in imposing punishment under the law. These include the
17 following:

18 *“That the fundamental purpose of punishment is to contribute, along with*
19 *crime prevention initiatives, to respect for the law and the maintenance of a*
20 *just, peaceful and safe society by imposing just sanctions that have one or*
21 *more of the following objectives- (i) to denounce unlawful conduct; (ii) to*
22 *deter the convicted person and other persons from committing offences; (iii)*
23 *to separate convicted persons from society, where necessary; (iv) to assist*
24 *in rehabilitating convicted persons; (v) to provide reparations for harm*
25 *done to victims or to the community; and (vi) to promote a sense of*
26 *responsibility in convicted persons, and acknowledgment of the harm done*
27 *to victims and to the community;”*
28



1 45. The aims of sentencing therefore include deterrence, punishment, rehabilitation and
2 restitution.

3
4 46. The *Cayman Islands Sentencing Guidelines* provides general guidance as to those aims,
5 assessing the seriousness of an offence, the custody threshold and the principle of
6 proportionality. The Court reminds itself of this guidance including that in sentencing
7 an offender, the Court has to balance a number of competing interests and objectives and
8 to tailor the punishment to the individual circumstances of the offender while ensuring
9 that it is in line with the seriousness of the offence. The Court should consider which of
10 the aims which govern the sentencing process will be best served by the sentence to be
11 passed. The *Guidelines* also provide that a custodial sentence should not be passed
12 unless the offence is so serious that no other sentence can be justified for the offence.
13 Custody should be reserved for the most serious offences. Even where the custody
14 threshold is passed, custody can still be avoided in light of personal mitigation or if there
15 is suitable community intervention which would meet the aims of punishment and
16 rehabilitation.

17
18 47. These offences are serious and caused the victim much distress. The Defendant took
19 advantage of the victim's vulnerability and her misplaced trust in his respectable
20 appearance and age. In my view the custody threshold is firmly passed.

21
22 48. In considering the appropriate sentence, I apply the starting point of four (4) years'
23 custody as recommended by the *Guidelines*. There are no additional aggravating factors
24 which are highlighted by the Prosecution.



1 49. I have considered all of the matters put forward in personal mitigation of the Defendant.
2 I note his age - he is a man of 56 years old. He has no previous convictions save for
3 some traffic violations which I consider are not relevant for the purpose of this
4 sentencing. He has provided character references from a number of persons in the
5 community who all attest to the circumstances of this offending being entirely out of
6 character for him.

7
8 50. He has been gainfully employed and he has provided employment for Caymanians and
9 valuable services to businesses in this jurisdiction. He has set up what is referred to as
10 the Cayman Entrepreneur Club which provides opportunities for Caymanians and advice
11 on how to develop successful businesses.

12
13 51. Of particular note is that he appears, from the SIR, to have taken steps to turn his life
14 around and he has significantly reduced his alcohol intake. He has rejoined his church
15 and is making efforts at changing his life. He is endeavouring to reconcile with his wife
16 and to undertake marital counselling. I take these into account as a demonstration of
17 steps taken to address the offending behaviour.

18
19 52. Defence Counsel has submitted that against the background of his previous good
20 character, his age may be treated as an exceptional feature of this case. I accept this
21 submission and do give these factors significant weight.

22
23 53. Thus from a starting point of 4 years' or 48 months' custody, taking into account all the
24 mitigating factors I would reduce the sentence to one of 22 months' imprisonment.





1 54. For the offence of Making Threats to Kill, from a starting point of 2 years' custody taking
2 into account all the mitigating circumstances, the appropriate sentence would be 12
3 months' imprisonment which should run concurrently.

4
5 55. I have considered whether this sentence should be one of immediate custody. In so doing
6 I have given careful consideration to the aims of sentencing. While a sentence is required
7 which meets the aim of punishment, retribution and deterrence and takes due account of
8 the ordeal suffered by the victim, and the seriousness of this offence, in my view a
9 sentence of immediate custody is not unavoidable in this case. I accept what has been
10 said on his behalf that, on the facts, this was an opportunistic rather than planned activity.
11 I have considered whether there is a need for protection of the public such that the
12 Defendant requires to be separated from society. In this regard, I take particular note that
13 the Defendant has been assessed by the DCR as being at low risk of sexual re-offending.
14 Thus I accept what has been said on his behalf - that this conduct is an aberration for
15 him and is not likely to be repeated.

16
17 56. In all the circumstances I consider that the sentences may be suspended for a period of
18 24 months. During this time the Defendant is to be supervised by a Probation Officer. In
19 addition, and in accordance with s.42 of the *Penal Code*, he is to perform 120 hours of
20 Community Service. Such a sentence will, in my view, meet the justice of this case. It
21 will reflect the gravity of the offences and constitute a significant punishment while
22 allowing for opportunities for rehabilitation within the community with the support of
23 the Probation Office. Thus as recommended by Probation, he is to participate in any
24 intervention programmes identified by his assigned Probation Officer. He is not to make

1 any contact with the victim whether directly or indirectly and is to be of good behaviour
2 towards her.

3
4 57. The sentence is therefore:

5
6 i. *Count 1*: 22 months' imprisonment, which is suspended for 24 months with
7 a Supervision Order. In addition, he is to perform 120 hours of Community
8 Service.

9
10 ii. *Count 2*: 12 months' imprisonment which is suspended for 24 months, to
11 run concurrently.

12
13 **Dated this the 14th day of January 2021**



14
15 **Honourable Justice Cheryll Richards Q.C.**
16 **Judge of the Grand Court**

17
18