

16.8.96

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
IND. #6/95

IN COURT

THE QUEEN

VERSUS

DAVID LARSTON WEBSTER

Appearances: Mr. Ivor Archie for the Crown  
Mr. Keith Collins for the Accused

REASONS FOR JUDGMENT

I delivered oral judgment in this matter on 12th July, 1996 when I handed down a verdict in which I found the defendant guilty on Count 1 of attempting to defile Rebecca Wood and sentenced him to 2 years imprisonment. I ordered that Count 2 on the indictment be kept on file. I now set out my reasons herein.

The matter came up before me for trial on 8th July, 1996 when the defendant pleaded not guilty and elected to be tried by judge alone.

The accused was charged on an indictment containing two counts. The first count alleges defilement of a girl under the age of 16 years contrary to Section 123 of the Penal Code. The second count for indecent assault contrary to Section 120 (1) of the Penal Code, and it is alleged that these offences were committed against one Rebecca Wood a girl of 12 years old at the time of the alleged incident which occurred on 27th October,

1994.

Rebecca lived with her mother and father at the manager's residence which is across the road from the Turtle Farm. Her father at the relevant time was managing director of the Turtle Farm and both her mother and father were employed at the Turtle Farm. Her mother's name is Fern Wood and her father's name is James Wood. James Wood has a Phd. in Zoology.

On the 27th October, 1994 Rebecca was at home alone on that day because she was on school break. Rebecca was born on 29th September, 1982.

The accused worked at the Turtle Farm as a gardener and handy man and was so employed on 27th October, 1994, up to that date he had work there for a period of just over a year.

Dr. Wood and his wife left home on the morning of 27th October, 1994, at about 7:45 a.m. for work at the Turtle Farm leaving Rebecca at home. Dr. Wood returned to the residence to get a key at about 9:55 a.m. He attempted to enter the house via the car porch by a door in that area as he usually does but discovered that the door was locked. He found this unusual as he normally leaves this door open. Not only was the door locked by the normal lock but the dead bolt lock was also in place. He used his key to open both locks and entered the house.

On entering the house he noticed that Rebecca's room door was closed. He tried it and found it was locked; he then proceeded to enter Rebecca's room via another door and while in the hall-way going towards her room he saw the accused coming out

of Rebecca's room completely naked with his clothes in his hand; and according to Dr. Wood the accused said to him "sorry Mr. Jim I don't want any problems about this."

Rebecca then came out of the same room behind the accused with her clothes on. The accused went into the bathroom and Dr. Wood grabbed Rebecca by the arm and said, "lets go see your mother".

Dr. Wood said he told the accused to get out, he was going to call the police. That the accused eventually caught up with him and told him he didn't want any trouble over this. Dr. Wood said he told the accused "get away from me". At that time the accused had on a pair of short pants and a T shirt.

The police was contacted by telephone, the police came and eventually the accused was taken into custody by the police.

The accused at his trial exercised his right not to give evidence and he relied on his caution statement and his question and answer interview with the police.

He said that he did not have sexual intercourse with Rebecca, that he was by the fence of the Turtle Farm when Rebecca came there while he was looking at some football forms, that Rebecca pulled him by the arm and said "David please come over to my house with me". That she jerked one of the forms from him and he started to follow her. He stood by the door in the car porch and asked Rebecca for the form. She handed it back to him and he stepped forward into the house.

Accused then went over to the organ in Rebecca's bedroom and

they started to talk. According to him Rebecca said "David what do you want to do with me now", he responded that he didn't want to do anything. That Rebecca came over and pulled his pants down. That he began to get weak and tempted but he got hold of himself and picked up his pants and started to walk out of the room.

At this time he heard a knock on the door, Rebecca opened the door and he saw M. Jim in front of him. That Mr. Jim told him to leave and he did so; he tried to explain to him that nothing had taken place but he would not listen.

I do not believe that Rebecca invited the accused into the house. I believe she took the form from him in a playful manner and went towards the house. That he followed her and she returned the form to him at the door way by the car porch. The accused should have then taken the form and leave the premises but he did not do so because in my view he saw an opportunity which he wanted to take advantage of. Nor do I believe that Rebecca said to him "David what do you want to do with me now". I do not believe that she pulled his trousers down.



According to the evidence of Dr. Wood the accused is not supposed to be on those premises much less entering the house. The duties of the accused ~~does~~ not extend to the premises of his residence. I accept this evidence.

The accused in his question and answer changed his story and said Rebecca was pulling on his pants while he was by the door and that he saw her father coming and so he went inside to pull

his pants back up. He also tried to make out that Rebecca pulled him into the room. this is not a believable story and I totally reject it.

The impression that the accused a man of 39 years old at the time of the incident is trying to give is that he was led like a lamb to the slaughter by this 12 year old girl and that she was taking advantage of him. He makes no effort to prevent her from doing what he is alleging. That she is pulling his short pants down and he offers no resistance whatever. He does not try to prevent her from doing so. In cross-examination Rebecca admitted that she locked the door to the kitchen before her dad got there but it seems to me once the accused saw Rebecca do that he should have been put on his guard and get out of the house as soon as possible so as to avoid any possibility of placing himself in a compromising position. In any event he ought not even to be in the house.

Rebecca is under 16 years old and in law is therefore unable to give consent under the provision of the statute. Consent is therefore not a live issue in this case and cannot be a defence to the crime.

The deposition of Rebecca was read in evidence and so in assessing her evidence I take into consideration that I was not able to observe her demeanour nor was she subjected to cross-examination in this Court.

I am of the view that Rebecca does not have full understanding of the sexual act but there are other matters of a

straightforward nature of which she can clearly understand. She can understand the accused going on top of her while she was lying on the bed and trying to get his penis in her vagina. She can understand him wiping some substance from her stomach with toilet paper, which substance is obviously semen and which must have been put there by the accused. I accept her evidence on these points.

When one looks at the evidence in the context of this case one would have to be naive in the extreme to say that the presence of the accused in Rebecca's bedroom was for an innocent purpose. The explanation of the accused is incredulous. I do not accept his explanation, I do not find it to be credible; in many instances it is contradictory, and it does not have the ring of truth to it.

There is evidence in this case which is capable of amounting to corroboration of the complainant's story. Such is to be found in the deposition of Dr. Horgan which was read into the record by consent when she said "There was some redness and tenderness in the vulva and introitus area of the vagina" of Rebecca. In addition to that when Dr. Wood said he saw the accused coming out of Rebecca's room naked. I accept these two pieces of evidence and I find them to be corroborative of the complainant's story.

Corroboration of the evidence of the prosecution is not essential in law, it is, in practice, always looked for and it is dangerous to act upon her uncorroborated testimony. However, even in the absence of corroboration the accused may be convicted

if the testimony of the prosecutrix is believed. I do believe the evidence of the prosecutrix that she was interfered with by the accused. In addition I have referred to two pieces of evidence that I consider to be corroborative of her story; and those two pieces of evidence are very strong evidence of the accused connection with the crime.

I am well aware of the particular caution that ought to be exercised when one is considering the evidence of a child in cases of this nature. They are more susceptible to the influence of third persons and may allow their imagination to run away with them, and that their powers of perception of concentration and of understand are not like adults. I have taken all these matters into consideration in assessing the evidence of the prosecutrix in this case. I have not treated the distress condition of the complainant as amounting to corroboration as that will vary according to the circumstances of the case.

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I agree with Mr. Collins submission that the redness and tenderness of the vulva and introitus would not necessarily be caused by some sexual act. But one cannot look at that issue in isolation. If that was an isolated incident it would have to be looked at differently; but when one looks at all the circumstances of the case in particular that he was in a locked bedroom with this young girl coupled with her father coming to find the accused leaving her room in a naked condition then certain conclusions are irresistible.

I accept the evidence of Dr. Wood. He struck me as a

truthful witness and one who did not attempt to embellish his evidence.

I approach the evidence of Rebecca with some measure of caution because of her tender years but as I have indicated there are some straightforward issues that can be accepted without much difficulty.

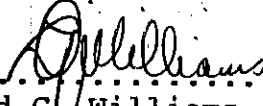
I agree with Mr. Collins that the manner in which she was questioned by her parents at the Turtle Farm and the information she then gave cannot be considered as recent complaint in terms of the requirement of the law because this was not a spontaneous act on her part.

I am not unmindful of the fact that all the specimen that were taken from the complaint and sent away for testing, that the results were negative. I am aware that the complainant said in cross-examination that Dr. Horgan had swabbed her stomach area where the white stuff was, but there is nothing in Dr. Horgan's deposition in support of that and in addition woman police officer Gail Elliott who was present at the examination of the prosecutrix by Dr. Horgan said in evidence that the complainant's stomach had not been swabbed. On this point I accept the evidence of Gail Elliott coupled with the absence of any evidence in Dr. Horgan's deposition indicating that the complainant's stomach was swabbed, and I reject the evidence of the complainant on this point.

I am satisfied that the accused did lie on top of the complainant with his clothes off having undressed Rebecca. That

he attempted to have intercourse with her but was unsuccessful in gaining entrance to her vagina, as a result there was no penetration. The evidence as to penetration is not sufficiently cogent and so I resolve that doubt in favour of the accused.

On the facts which I find and accept there is clear evidence that the accused did attempt to have intercourse with Rebecca, and I so find beyond a reasonable doubt. Hence the verdict which I arrived at and delivered on 12th July, 1996.

  
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Lloyd G. Williams, Q.C.  
Judge of the Grand Court

16<sup>th</sup> August, 1996