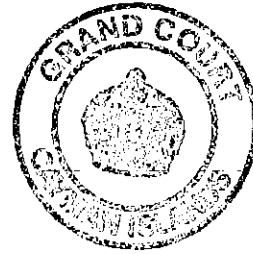


Sam  
1/26/96

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN



IND. 53/95

BETWEEN : REGINA APPLICANT  
AND : MELVIN K. WILSON DEFENDANT

For the Crown - Mr. Sam Bulgin  
For the Defense - Mr. Lloyd Samson

DOUGLAS J

JUDGMENT

The defendant is charged with the offence of indecent assault on a Female, contrary to Section 130 (1) of the Penal Code (1995 Revised).

This section provides that whoever unlawfully and indecently assaults any woman or girl is guilty of an offence. The onus is on the crown to make this court sure of the guilt of the defendant. They must prove beyond a reasonable doubt that he assaulted Maggie Ebanks, that the assault or circumstances were of such a nature that would be capable of being considered by a right minded person as being

indecent, and that the defendant really intended to commit the offence. The evidence, as presented by the crown is that on 15th August 1995 the complainant, a ten year old girl and her eight year old brother went to a neighbours house to look at some rabbits. Soon thereafter the defendant appeared and invited the children into the house to look for the key to the rabbit hutch. He eventually locked himself and the girl in a bedroom of the house and while the girl lay across the bed searching for the key in the bed head, he is alleged to have held her, kissed her on the lips and stomach, pulled her shorts and underclothing down to her hips and thereafter touched her on her vagina through her clothing. This evidence is disputed by the defendant. He denies inviting the children into the house.

The defendant also denies kissing the young girl in the room as alleged or pulling down her clothes or touching her. Here as in all sexual offences, the axiom applies, that experience has shown that people who say that a sexual offence has been committed against them sometimes, and for a variety of reasons, tell lies. Such false allegations are easy to make and frequently very difficult to challenge, even by an entirely innocent person. So it is dangerous to convict on the evidence of the complainant alone unless it is corroborated, that is independently confirmed by other evidence. In this case the complainant testified that she told the helper what had occurred soon after returning to the house. What she said to the helper cannot as a matter of law be treated as evidence that the indecent assault took place, or as to how it happened. The only relevance of what Maggie said to the helper, accepting that she said

it, is that it may show that her conduct after the alleged assault was consistent with the evidence about it. It cannot be corroboration. The fact is that the offence is alleged to have taken place behind closed doors where there was, naturally, no eye witness. The most profound corroboration comes from the brother Joshua who said he was outside the door and heard Maggie say No, No, No. The defendant's explanation of this is that the girl was speaking to her brother who was at that time knocking at the door. If this explanation is accepted there is little unequivocal corroboration to the girls testimony. It is the duty of the crown to prove the guilt of the defendant beyond reasonable doubt. In this instant the Crown's case rests on the veracity of the children.

It is an accepted principle of law that the evidence of children must be looked at with care. I have carefully listened to each witness, observed their demeanor and weighed their evidence. I was particularly impressed by the demeanor of the complainant, who, although a girl of tender years, was never shaken by cross examination and gave her testimony with much candor. Her younger brother Joshua, though less articulate and of shorter memory testified as one would expect of one his age. Against this we have the testimony of the defendant, a greatly embellished version <sup>of</sup> ~~from~~ that which he gave to the police when the facts would have been fresher in his mind. As submitted by learned Crown Counsel the defendant's memory seemed to have improved with the passage of time. Most important of all is the corroborative evidence of Joshua who testified that he heard Maggie saying No, No, No while she was in the room alone with the defendant.

Wilson now attempts to explain this by telling the court that the complainant was saying no to her brother , not to him. I flatly reject this explanation and find that the boy's testimony does corroborate that of the complainant in a very material and important respect. There is also evidence of her distress, the helper gave a very graphic description of the child's appearance immediately after her return from next door. Finally the defendant attempted to support his story by adducing evidence of telephone calls he alleges that he made that morning. The witnesses called were unable to state a time which in any way supported his testimony.

It has been submitted that variations in the estimation of time in this matter were frequent and ought to be weighed in the light as the defendant's three to five minutes on the phone, and the five to ten minutes estimate given by his witness. I do not accept this. The defendant clearly attempted to illustrate the very short period of time he spent in the room with the young girl. He alleges that during that time he made three calls which he estimated took 3 - 4 minutes. After hearing the evidence I am convinced that no calls were made by the defendant while the children were in that room.

Apart from the credence which I attach to the children testimonies, and the corroborative evidence before the court, I find no credible reason for Maggie to have concocted this story, nor could both children have synchronized their evidence in the short period of time in which it would have had to be done.

I find beyond any doubt - (1) That the child was assaulted as she described. (2) That the assault falls squarely within the legal definition of an indecent assault upon a young girl. (3) That the defendant lured the girl into the room for the sole purpose of perpetuating the assault.

I have no doubt in my mind that this defendant indecently assaulted this young girl as charged.

Accordingly, I find him Guilty.



*[Handwritten Signature]*  
K. Douglas

Acting Judge

28 August 1996

N.B on 3.4.97 the Court of Appeal dismissed the appeal against conviction but allow the appeal against sentence substituting a sentence of 15 months instead of the three years.  
(Sentence reduced from three years to 15 months).

Stan Bullock  
3/4/97.