



1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL DIVISION**  
3

4 **INDICTMENT NO: 94-95 of 2023**  
5  
6  
7

8 **R**  
9

10 **V.**  
11

12 **PALINDA DISSANAYAKE**  
13

14 **Appearances:** **Mr. Alexander Barbour, Crown Counsel, Office of the Director**  
15 **of Public Prosecutions for the Prosecution**

16 **Mr. Keith Myers for the Defendant**  
17

18 **Before:** **The Hon. Justice Cheryll Richards KC**

19 **Submissions Heard:** **19<sup>th</sup> April 2024**  
20

21 **Sentence Judgment:** **24<sup>th</sup> April 2024**  
22  
23

24 ***Criminal Law – Indecent Assault, Victim is a child under 16 years, Sentencing, Application***  
25 ***of the Cayman Islands Sentencing Guidelines***  
26  
27  
28  
29  
30



## SENTENCE JUDGMENT

### PREAMBLE

1. Section 12 of the *Youth Justice Act* (2021 Revision) states: -

“12. (1) *In relation to any proceedings in any court, such court may direct [and this court so directs] that-*

(a) *no published report of or comment on the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any young person concerned in the proceedings, either as being the person by, against or in respect of whom the proceedings are taken, or as being a witness in the proceedings; and*

(b) *no picture shall be published as being or including a picture of any young person so concerned in the proceedings.*

(2) *Whoever publishes any matter in contravention of subsection (1) is guilty of an offence and liable on summary conviction, in respect of each such offence, to a fine of five thousand dollars or to imprisonment for six months.*

2. Section 31 of the *Criminal Procedure Code* (2021 Revision) states as follows:

“Anonymity of complainants in rape etc. cases: -

“31. (1) *After a person is accused of a rape 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.*

...

1 (5) *If any matter is published or broadcast in contravention of*  
2 *subsection (1), the following persons —*  
3 (a) *in the case of a publication in a newspaper or*  
4 *periodical, the proprietor, editor and publisher of*  
5 *the newspaper or periodical;*  
6 (b) *in the case of any other publication, the person who*  
7 *publishes it;*  
8 (c) *in the case of a broadcast, any person having*  
9 *functions, in relation to the programme in which it*  
10 *is made, corresponding to those of an editor of a*  
11 *newspaper,*  
12 *commit an offence and are each liable on summary*  
13 *conviction to a fine of one thousand dollars.”*  
14

15 3. For the avoidance of doubt: It is the Court’s view that the charges against this defendant,  
16 based on the particulars of the offence, fall within this section of the law by virtue of the  
17 use of the word “*etc.*” and therefore it is ordered that there be no identification of the  
18 victim in this case.

19  
20 4. In pursuance of the sections of the *Acts*, this Judgment has been anonymised to protect  
21 the identity of the victim.

22  
23 5. The defendant is before the Court for sentencing following his conviction after trial of  
24 one count of Indecent Assault contrary to section 132 of the *Penal Code* (2022) Revision.  
25 The particulars are that he on the 26<sup>th</sup> day of June 2023, on a public bus in Grand Cayman,  
26 Cayman Islands, indecently assaulted [x], a girl aged 15 by touching her leg.

27  
28 6. The maximum penalty is 10 years imprisonment.  
29





- 1 7. The prosecution has provided a short summary of the facts. At the material time the  
2 victim was 15 years old. She was taking a public bus for the first time. She took the bus  
3 in the vicinity of Will T Drive in Bodden Town and was to go to meet her father who was  
4 waiting for her in George Town at the end of the bus journey. Initially she was able to sit  
5 in a single seat towards the front of the bus. As more people got on the bus, she gave up  
6 her seat and moved twice until she was sitting in front of the defendant who was seated  
7 in the back row.  
8
- 9 8. She began to feel tapping on her shoulder, but thought it was because of the movement  
10 of the bus. When she turned, the defendant would smile at her, and she smiled back at  
11 him in order to be polite. He was a stranger to her.  
12
- 13 9. She moved seats again for a third time and this time she had to move to the back row of  
14 the bus. She was now seated in the same row of seats as the defendant. They were the  
15 only two persons in this row. The defendant had his bag next to him, and throughout the  
16 journey, moved his bag, and himself, closer and closer to her. She noticed that he was  
17 doing this and moved further and further away from him until there was nowhere else to  
18 go.  
19
- 20 10. The defendant then reached around his bag and began touching her leg. He touched her  
21 lower leg and rubbed his hand up to her thigh. This was repeated about three to five times.  
22 The touching stopped when she moved his hand and chucked it back at him. He got off  
23 the bus near Funky Tangs in George Town and walked in the direction of the Flow car  
24 park. She reported what had happened to the bus driver and to her father. Her father made  
25 efforts to find the defendant and reported the matter to the police.  
26
- 27 11. Closed Circuit Television (“CCTV”) footage was recovered which recorded the  
28 defendant getting off the bus and going towards the Flow parking lot. The victim  
29 identified him from a photo spread line up.



1 **VICTIM IMPACT REPORT**

2  
3 12. With the assistance of the Department of Children and Family Services, (“DCFS”) the  
4 Department of Community Rehabilitation (“DCR”) has provided a Victim Impact Report  
5 (“VIR”) dated 16<sup>th</sup> April 2024.  
6

7 13. The victim describes feelings of shock and surprise at the incident which is one which  
8 she had never experienced before. She stated that she makes an effort to avoid thinking  
9 about it and only talks about it with other people who have gone through similar  
10 experiences. She has not taken the bus since the incident and says that she does not feel  
11 comfortable doing so in the future. She states that she has experienced anxiety around  
12 people ever since the incident and especially in unfamiliar places.  
13

14 14. The Social Worker’s assessment or evaluation is that the victim is still going through the  
15 healing process. The Worker inquired of her whether she would like to be referred to  
16 counselling but she declined this, stating that she has a strong support system currently  
17 in place.  
18

19 **ANTECEDENT HISTORY**

20  
21 15. The defendant has no previous convictions in this jurisdiction and self-reports having no  
22 previous convictions in his home country Sri Lanka and in Maldives and Dubai where he  
23 previously worked as a chef.  
24

25 **SOCIAL INQUIRY REPORT**

26  
27 16. The DCR has provided a Social Inquiry Report (“SIR”) dated 10<sup>th</sup> April 2024. The Court  
28 has read this report in its entirety and takes into account everything said therein in favour  
29 of the defendant. He is 36 years old. He is married with one child. Both are resident

1 overseas. He has resided in the Cayman Islands for the past seven years and worked as a  
2 chef. A previous employer with whom he worked for four years describes him as having  
3 an excellent work ethic. He is also described as industrious, honest, reliable, efficient  
4 and committed to his job. Another person who has known and worked with him for ten  
5 years describes him as a good person and as someone with good moral character and  
6 values.

7  
8 17. The Probation Officer's assessment is that the defendant appeared to have had a stable  
9 upbringing and had the opportunity to acquire advanced education in the culinary field.  
10 He was a productive member of society and was gainfully employed outside of his home  
11 country. Since being on remand, he has been productively occupied on the Prison Farm.  
12 The Officer states that the defendant's failure to hold himself responsible and accountable  
13 for the offence could indicate that he has a minimal appreciation for the feelings of the  
14 victim.

15  
16 18. The defendant was assessed as being at low risk for sexual and general re-offending. With  
17 respect to general re-offending the defendant had only one of the eight criminogenic  
18 factors in the very high category. This is pro-criminal attitude/ orientation. The Officer  
19 states that based on interviews with him, his minimisation, lack of accountability, and  
20 lack of remorse or empathy suggests that there seems to be a lack of awareness as it  
21 relates to the offence. In order to mitigate against reoffending this is an area which may  
22 need assessment to determine effective intervention. The Officer also cautions that the  
23 results of the tests should be placed in a contextualised frame of reference because of the  
24 inability to verify information given by the defendant and the absence of  
25 psychological/psychiatric assessments which may have clarified whether there is any  
26 correlation between sexual deviancy and the current offence.





1   **THE SUBMISSIONS**

- 2
- 3   19.   Both Counsel referred the Court to the *Cayman Islands Sentencing Guidelines* for the
- 4         offence of Indecent Assault. For this offence the *Guidelines* provide for three categories
- 5         of Harm. The prosecution submits that this offending falls into Category 2 Harm because
- 6         two of the listed factors are present, namely, some psychological or physical harm and
- 7         the victim is particularly vulnerable due to the personal circumstances of her age. Counsel
- 8         submits that while the psychological harm may not be described as severe, based on the
- 9         VIR, the victim has changed her behaviours as a result of the incident and the harm
- 10        caused to her. As she is a child there is far greater harm than if she had been an adult.
- 11        Counsel also raised the possibility of a third factor, that being whether this was a
- 12        sustained incident and submits that the defendant persisted in his approach to the victim.
- 13
- 14   20.   As to culpability, it is submitted that none of the Culpability A factors are present and
- 15         thus that this is a Culpability B offence. The starting point for a Category 2 Harm,
- 16         Culpability B offence is 4 years custody with a range of sentence of 3 to 7 years custody.
- 17
- 18   21.   Defence Counsel indicated agreement with the categorisation of Harm on the basis that
- 19         the victim was vulnerable because of her age. Counsel submitted that this is a low
- 20         Category 2 B or high Category 3 B offence.
- 21
- 22   22.   Counsel for the prosecution submits that there are possibly five aggravating factors.
- 23         Firstly, that if not taken into account at the Harm stage, there was deliberate targeting of
- 24         a particularly vulnerable victim. The victim was visibly a child. She was alone on the bus
- 25         and the defendant “cornered her until she could not move away”. Secondly, that there
- 26         were others present on the bus at the time of the assault. The other factors suggested are
- 27         an absence of remorse and the defendant’s conduct as described by the other two
- 28         complainants. The defendant was tried and acquitted in respect of allegations made by
- 29         two other women on public buses. Counsel submits that while the evidence was not

1 deemed sufficient to convict him, this offence cannot be said to be an isolated incident  
2 particularly so where the defendant made admissions to fleeting touches of one of the  
3 women on the bus. Finally, Counsel produces an excerpt from the defendant's phone  
4 records. These are from his phone which was seized at the time of his arrest. There are  
5 messages which appear to be the making of arrangements for payment for sexual  
6 interactions. Counsel notes that the dates in the messages predate and postdate the time  
7 of this offending. Counsel submitted that this could reflect an unhealthy attitude toward  
8 sexual gratification which may have contributed to the commission of this offence. This  
9 may indicate a need for testing for any sexual deviancy.

- 10  
11 23. Defence Counsel submitted that while remorse is a mitigating factor, the absence of it  
12 ought not to be treated as an aggravating factor. Counsel submitted further that this is  
13 not a case where pictures of young girls were found on the defendant's phone and that  
14 the Court should be careful not to reach a conclusion that the defendant is a predator of  
15 some sort. Counsel submits that the messages on the defendant's phone should not be  
16 treated as an aggravating factor.

17  
18 **SUBMISSIONS IN MITIGATION**



- 19  
20 24. In mitigation, defence Counsel submitted that the defendant is at low risk of re-offending.  
21 He is of good character and the father of a child. As he is non-Caymanian he will be  
22 removed from the country and it is unlikely that there will be the opportunity for him to  
23 be in contact with the victim in the future.

- 24  
25 25. With respect to the VIR, Counsel submitted that it is of note that the victim declined the  
26 offer of counselling and that when the Officer describes the effect upon the victim she  
27 referred to the manner in which the victim answered questions which may well be normal  
28 for the victim and not as a result of the impact of the incident.

1 26. Counsel asked that allowance be made for the time which the defendant spent on an  
2 electronically monitored curfew and undertook to provide the details for the Court's  
3 review.

4  
5 27. Counsel asks that the Court be as lenient as is possible while recognising that given the  
6 nationality of the defendant this may well not be a suitable case for a community  
7 sentence.



8  
9 **THE SENTENCE**

10  
11 28. It is accepted that this is a case of Category 2 Harm because of the victim's young age.  
12 The SIR also indicates that there is some psychological harm. It is one of lower  
13 culpability. The starting point is 4 years custody.

14  
15 29. To avoid double counting the specific targeting of a vulnerable victim is not treated as a  
16 separate aggravating factor. It is the defendant's right to put the prosecution to proof and  
17 to maintain his innocence. The fact that he continues to deny responsibility and there is  
18 an absence of remorse is not treated as an aggravating factor. While the defendant  
19 admitted touching one of the women on the bus, his evidence was that he was flirting  
20 with her and in effect that he believed that this was consensual. The suggestion that the  
21 conduct was not an isolated incident is not treated as an aggravating factor neither is the  
22 fact of the messages on his phone which refer to certain arrangements. It is not known  
23 whether these refer to arrangements with children or whether they indicate psychological  
24 or other issues such as sexual deviancy. In summary the defendant is given the benefit of  
25 the doubt, and these are not treated as aggravating factors.

26  
27 30. From a starting point of 4 years or 48 months, no additional sentence is imposed for  
28 aggravating factors.

1 31. In mitigation the Court takes into account everything said and written in favour of the  
2 defendant to include the following factors:

- 3
- 4 1. The defendant has no previous convictions and is a person of good character.
- 5 2. He is at low risk of re-offending.
- 6 3. His personal circumstances, his good work ethic and personal qualities.
- 7 4. Incarceration in the Cayman Islands will mean prolonged absence from his family  
8 who are resident in his home country. This will likely be harder for him to bear.
- 9

10 32. A total of 19 months is deducted for these circumstances combined for a sentence of 29  
11 months.

12

13 33. Consideration has been given to whether this sentence is proportionate to the gravity of  
14 the offending. The defendant targeted the young and vulnerable victim and deliberately  
15 foisted himself upon her. The victims' evidence at trial was that he started on her lower  
16 leg and he slowly went up to her thigh. His actions were repeated some three to five  
17 times and the witness demonstrated his hand movement during her evidence. She said  
18 that it made her feel uncomfortable and she started crying. Her shock and feeling of being  
19 trapped was plain to see as she gave her evidence. The impact upon her is evident from  
20 the VIR. The defendant is some 36 years old, a man of some maturity.

21

22 34. In relation to offences against a child the **Guidelines** state: -



23

24 *“... the greater the age gap between the offender and the victim, the higher the*  
25 *sentence is likely to be. However, the youth and/or immaturity of the offender will*  
26 *also need to be taken into account.”*

27

28 35. There is no question of youth or immaturity of the offender in this case. The offending is  
29 serious and in the Court's view clearly passes the custody threshold.

30



1 36. Is a sentence of immediate custody unavoidable? The defendant is at low risk of  
2 reoffending and is of good character but there is otherwise nothing in his personal  
3 circumstances which suggests that the sentence should not be one of immediate custody.  
4 In particular there is nothing that suggests an openness to community rehabilitation given  
5 his attitude towards the offending.

6  
7 37. Having considered all the circumstances, the Court concludes that the proposed sentence  
8 of 29 months immediate custody is proportionate to the gravity of the offending.

9  
10 38. The defendant was on an electronic monitor for 163 days between the 8<sup>th</sup> August 2023  
11 and the 18<sup>th</sup> January 2024. His curfew hours were 11:30pm to 8:00am. These were  
12 largely during the night hours and would not have restricted his daily movement to a  
13 significant extent. Applying the discretionary principles outlined in the *Guidelines* credit  
14 is given of 50% for a total of 81.5 days.

15  
16 39. The total sentence is therefore 29 months. Time served is to be taken into account and  
17 credit is given of 81.5 days. While the defendant is in custody he is to be assessed and a  
18 determination made as to whether any specific rehabilitative treatment is required.

19  
20 **SEXUAL HARM PREVENTION ORDER**

21  
22 40. Counsel for the Prosecution applies for a Sexual Harm Prevention Order (“SHPO”) for  
23 5 years following the defendant’s release from Prison. Counsel submits that in case the  
24 defendant remains or returns to the Cayman Islands, such an order is necessary for the  
25 protection of children. Counsel argues that there needs to be safety net which will allow  
26 for the police to be notified.

27  
28 41. Defence Counsel submits that the proposed SHPO as drafted is unworkable as it relates  
29 to notification for the taking of public transportation.

1 42. This Court is satisfied that a SHPO is necessary for the protection of the victim and  
2 children. The question of whether or not the defendant will be permitted to remain in the  
3 Cayman Islands is not one for this Court. Should he remain or visit, then there must be  
4 protection from him.  
5

6 43. With respect to the concern of defence Counsel the order at paragraph 10 of the draft is  
7 varied to read that he should notify the police as to his general mode of transport and  
8 except in the case of an emergency or other unforeseen event shall not use public  
9 transportation without the prior written approval of the Police or the Court.  
10

11 44. Having advised the defendant of the nature of the proposed order and the possible  
12 consequences of any breach, a SHPO is made in terms of the draft as amended for a  
13 period of five years following the defendant's release from Prison.  
14

15 **Dated this the 24<sup>th</sup> day of April 2024**

A handwritten signature in blue ink, appearing to be 'Cheryll Richards', written in a cursive style.

16  
17 **The Hon. Justice Cheryll Richards KC**  
18 **Judge of the Grand Court**