



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

3 **IND NO: 92 of 2022**

4  
5  
6 **THE KING**

7  
8 **V.**

9  
10 **RW**  
11  
12  
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15

16 **Appearances:** **Mrs. Nicole Petit, Senior Crown Counsel, Office of the Director of**  
17 **Public Prosecutions for the Prosecution**

18  
19 **Mr. Crister Brady of Brady Law for the Defence**  
20

21  
22 **Before:** **Justice Cheryll Richards KC**  
23

24 **Judge Alone Trial:** **17<sup>th</sup> July to 20<sup>th</sup> July 2023**  
25

26 **Verdict Judgment:** **19<sup>th</sup> April 2024**  
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30 *Criminal Law - Trial by Judge Alone, Section 132A, 134A and 228J of the Penal Code (2019 Revision),*  
31 *Assault by Penetration, Gross Indecency and Engaging in Sexual Activity in the Presence of a Child,*  
32 *Credibility of Witness.*  
33  
34



## VERDICT JUDGMENT

### PREAMBLE

1. Pursuant to s.12 of the *Youth Justice Act* (2021 Revision) and s.31 of the *Criminal Procedure Code* (2021 Revision), this judgment has been anonymised to protect the identity of the complainant. It is ordered that there be no reporting which would lead to the identification of the complainant in this case.

### THE INDICTMENT

2. The defendant is charged on an Amended Indictment with three counts as follows: -

**Count One charges him with Assault by Penetration**, contrary to section 132A of the *Penal Code* (2019 Revision) (Specimen Charge). The particulars are that he on a date between the 1<sup>st</sup> day of January 2018 and the 2<sup>nd</sup> day of July, 2021, ..., in the jurisdiction of the Cayman Islands, for the purpose of obtaining sexual gratification, intentionally penetrated the vagina of VM, a child under the age of 16 years, with his finger.

**Count Two charges him with Gross Indecency**, contrary to section 134A of the *Penal Code* (2019 Revision) (Specimen Charge). The particulars are that he on a date between the 1<sup>st</sup> day of January 2018 and the 2<sup>nd</sup> day of July, 2021, at ..., in the jurisdiction of the Cayman Islands, committed an act of gross indecency with or towards VM, a child under the age of 16 years, by licking VM's vagina with his tongue.

**Count Three charges him with Engaging in Sexual Activity in the Presence of a Child**, contrary to section 228J of the *Penal Code* (2019 Revision) The particulars are that he on a date between the 1<sup>st</sup> day of January 2018 and the 2<sup>nd</sup> day of July, 2021, at ..., in the jurisdiction of the Cayman Islands, for the purpose of obtaining sexual gratification, intentionally engaged in an activity that was sexual in nature, namely masturbating his penis and ejaculating on to VM's slippers while in the presence of VM, a child under the age of 16 years.

- 1           3.     The defendant was first arraigned on the 25<sup>th</sup> November 2022 and entered pleas of not guilty. He  
2           elected trial by judge alone pursuant to s.129 of the *Criminal Procedure Code* (2021 Revision).  
3           He was re-arraigned on the amended Indictment on 17<sup>th</sup> July 2023 and entered pleas of not guilty.  
4

5     **APPLICABLE PRINCIPLES- JUDGE ALONE TRIALS**  
6

- 7           4.     In approaching this case the Court is guided by the Court of Appeal judgement in the case of **K.**  
8           **Richards v. R.**<sup>1</sup> in which the Appellate Court stated: -  
9

10                   “When a trial judge sitting alone has advised himself of the applicable principles of law  
11                   and given himself any necessary warning, he must indicate clearly in his judgment his  
12                   reasons for acting as he did, in order to demonstrate that he has acted with the requisite  
13                   degree of caution in mind and has therefore heeded his own warning. No specific form of  
14                   words is necessary for this demonstration. “What is necessary is that the judge’s mind upon  
15                   the matter be clearly revealed”: see *R. v. Simpson* (15) ([1993] 3 LRC at 641, per Downer,  
16                   J.A.)”  
17

- 18           5.     Additionally in the case of **R. v. Dave Kennedy Whittaker**,<sup>2</sup> the Appellate Court referred with  
19           approval to the decision of the Court of Appeal in Northern Ireland, an appeal from a decision of  
20           a judge sitting alone, and stated: -  
21

22                   “50    In *R. v. Thompson* (11), Lowry, L.C.J., giving the judgment ... said ([1977] N.I.  
23                   at 83):

24                   “While on the subject I might say a word on the duty of the judge when giving  
25                   judgment in a trial under the 1973 Act. He has no jury to charge and therefore will not  
26                   err if he does not state every relevant legal proposition and review every fact and  
27                   argument on either side. His duty is not as in a jury trial to instruct laymen as to every  
28                   relevant aspect of the law or to give (perhaps at the end of a long trial) a full and  
29                   balanced picture of the facts for decision by others. His task is to reach conclusions  
30                   and give reasons to support his view and, preferably, to notice any difficult or unusual

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<sup>1</sup> 2001 CILR 496, paragraph 32

<sup>2</sup> [2010] (1) CILR 29



1 points of law in order that if there is an appeal, it may be seen how his view of the law  
2 informed his approach to the facts.””

- 3
- 4 6. This case is approached and considered with these principles in mind. My task is to make  
5 findings, to give reasons in support of those findings and to address any areas of law which apply.  
6 It is not necessary to detail every fact in the case or all the arguments as would be the case in a  
7 jury trial.



8

9 **PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF**

- 10
- 11 7. The presumption of innocence is enshrined in s.7 of the *Cayman Islands Constitution* 2009.  
12 This provides in part that everyone has the right to a fair and public hearing in the determination  
13 of his or her legal rights and obligations by an independent and impartial court within a reasonable  
14 time. Everyone charged with a criminal offence has the right to be presumed innocent until  
15 proved guilty according to law.

- 16
- 17 8. In criminal trials the applicable rule is that the burden of proof is on the prosecution to prove its  
18 case to the required standard, which is so that the judge or jury is sure of a defendants' guilt  
19 before there can be a conviction. That burden remains on the prosecution from the beginning and  
20 throughout a case and does not shift. There is no burden on the defendant to prove his innocence.

- 21
- 22 9. I bore these considerations firmly in mind throughout this case, as I listened to the evidence for  
23 the prosecution and the defence and as I considered the verdict.

24

25 **ELEMENTS OF THE OFFENCES**

26

27 **Count One - Assault by Penetration**

- 28
- 29 10. Section 132 A of the *Penal Code* states that:

30 “(1) Subject to subsection (2), a person, (A) who, for the purpose of obtaining sexual gratification  
31 intentionally and without consent, penetrates (whether orally, vaginally or anally) another person  
32 (B), with an object or with any part of A's body, commits an offence ...”

33 (2) A child under the age of sixteen cannot consent to a penetration under this section.”



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11. The prosecution must prove the following elements: -
- (i) Penetration of the vagina of the complainant with a part of the defendant’s body.
  - (ii) The defendant intended to penetrate the vagina of the complainant.
  - (iii) The penetration was sexual in character meaning that a reasonable person would consider it to be sexual because of the nature of it.
12. No issue of consent arises in respect of a child under the age of sixteen years.

**Count Two - Gross Indecency**

13. Section 134A (1) of the *Penal Code* states that:
- “A person who commits an act of gross indecency with or towards a child under the age of sixteen or who incites a child under that age to do such an act with that person or another person commits an offence.”
14. The prosecution must prove that: -
- (i) The defendant did an act with or towards the complainant.
  - (ii) The complainant is a child under the age of sixteen years.
  - (iii) The defendant did the act intentionally.
  - (iv) The defendant did the act for his sexual satisfaction.
  - (v) A right minded person would, having regard to the context and circumstances consider the act done to be grossly indecent, meaning that it was a marked departure from decent conduct.

**Count Three - Engaging in Sexual Activity in the Presence of a Child**

15. Section 228 J of the *Penal Code* states that: -
- “Where a person, being eighteen years or older, who, for the purpose of obtaining sexual gratification, intentionally engages in an activity that is sexual in nature in the presence of

1 a child under the age of sixteen years or knowingly engages in such activity believing that  
2 a child is aware or should be aware, that that person is engaging in such activity commits  
3 an offence.”



4  
5 16. The prosecution must prove that the defendant: -

6 (i) is 18 years or older.

7 (ii) intentionally engaged in sexual activity with a person other than the child.

8 (iii) did so in the presence of or under observation of the child.

9 (iv) did so for the purpose of obtaining sexual gratification from the presence or observation of  
10 the child.

11 (v) knew or believed that the child was aware of the activity or intended that the child should  
12 be aware of the activity.

13  
14 **CASE SUMMARY**

15  
16 17. The prosecution's case is that in late June 2021, the mother of the complainant expressed her  
17 concern to Ms. SA, the Deputy Principal of the School, which the complainant attended about  
18 the complainants' withdrawn behaviour. SA spoke to the complainant on Friday 2<sup>nd</sup> July 2021.  
19 The complainant disclosed to SA, discomfort at being at home with the defendant who is her  
20 stepfather and said that he had touched her on several occasions on her private parts. The  
21 complainant was referred to the School Counsellor who received her report and referred the  
22 matter to the police.

23  
24 18. The complainant alleges that on multiple occasions while her mother was away from home the  
25 defendant touched her inappropriately.

26  
27 19. The defence case is a denial. It is that the complainant has made up these allegations against him  
28 for her own personal reasons including that she did not like living in the Cayman Islands and  
29 wanted to return to her home country to her friends and grandparents.



1 **THE ISSUE IN THE CASE**

- 2
- 3 20. The primary issue in this case is one of the credibility and reliability of the complainant VM.
- 4 There is no evidence to support her account.
- 5

6 **EVIDENCE AT TRIAL - THE AGREED FACTS**

- 7
- 8 21. By Admissions which were received in evidence as Exhibit 9, the following facts were agreed
- 9 between the prosecution and the defence pursuant to s. 34 of the *Evidence Act* (2022 Revision):

10 -

- 11 1. The complainant VM was born in March 2006 and at the time that the alleged offences
- 12 were reported on 2<sup>nd</sup> July 2021 she was 15 years of age.
- 13
- 14 2. The defendant RW was a man over the age of 18 years at the time that the alleged
- 15 offences were reported.
- 16
- 17 3. The defendant was married to VMs' mother and at the time that the alleged offences
- 18 were reported, VM referred to the defendant as her stepfather.
- 19

- 20 22. Admissions 4 to 15 produced Achieving Best Evidence ("ABE") Interviews of the complainant
- 21 and other witnesses, transcripts of these interviews, a diagram marked by the complainant,
- 22 drawings, photographs and the Counsellor's Report as Exhibits 1 to 7.
- 23

- 24 23. By Admission 16, the recording and transcript of the defendant's interview of the 28<sup>th</sup> July 2021
- 25 conducted by PC Burke was produced as Exhibits 8 and 8 A.
- 26

- 27 24. Admission 17 is that on the 2<sup>nd</sup> July 2021, PC McDonald arrested the defendant at his home at
- 28 4:12 pm and cautioned him.
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1 **EVIDENCE AT TRIAL - THE CASE FOR THE PROSECUTION**

2  
3 *Evidence of the Complainant*

4  
5 25. The complainant gave evidence in part by two ABE Interviews.

6  
7 26. In her first ABE interview dated the 2<sup>nd</sup> July 2021 she gave her date of birth as March 2006. She  
8 was thus between 12 and 14 years old at the material time.

9  
10 27. She stated that two weeks before the 2<sup>nd</sup> July 2021, nobody was home in the house because it was  
11 time for school. She had on her school uniform and then someone knocked on the door. It was  
12 not her sister. It was her stepfather. He started to take off her pants and then after that he touched  
13 her private parts. She started to lock up in her room, but her mother thought it was because she  
14 was avoiding her and then her mother told Ms. SA.

15  
16 28. She said that Ms. SA asked her this morning why she was acting like this. She told her it was a  
17 family problem and then Ms. SA started to ask her, is it your mom and she said, no, it is her  
18 stepfather. Ms. SA asked, is he talking to you like harsh or anything? She told Ms. SA, no. Ms.  
19 SA asked, is he touching you or anything? and she told her, yes, and then Ms. SA said, no this  
20 can't be happening and then told her that she has to report it.

21  
22 29. The complainant said that it was not the first time, but she did not tell anybody. It was last year  
23 or so. She was in the kitchen washing dishes and her mother was not there and then he came  
24 behind her. She moved away then he started smiling. She did not take it as anything and then it  
25 started happening after that when her mother was not there, or nobody was there. She did not  
26 have a room for herself at that time but now she has a room. She said that she did not know how  
27 many times all of this happened to her, but it is a lot of times.

28  
29 30. She marked on a drawing where she was touched by the defendant and said that he did not touch  
30 her anywhere else on her body only that area. He used his hand to touch her. The drawing was  
31 received in evidence as Exhibit 1B.

1 31. She said that when the defendant entered her room he was always smiling. He took off her pants,  
2 but she still had on her shorts because she was ready to go out the door to go to school, so he  
3 could not take off her pants fully. He took off her shorts and underwear.

4  
5 32. VM said that each time that is the only area he touched. He put his hand in it. He did it over and  
6 over again. She was moving away. He stopped because of the time.



7  
8 ***Evidence of Second ABE***  
9

10 33. The complainant's second ABE interview was done on the 21<sup>st</sup> July 2021. She stated that the first  
11 time the defendant touched her inappropriately was when she started going to school in Year 8.  
12 Before she had a room for herself, she had to sleep with her sister, but they were at work. Then  
13 he came into the room because she had not locked the door, because she did not feel  
14 uncomfortable with him.

15  
16 34. He came in and she was on the bed watching television on her sister's tablet. She asked him,  
17 "What is it?" He told her to take off her panties and she asked what for, and he wouldn't say  
18 anything. He was just looking at her. She was scared so she did what he asked, and he started  
19 to touch her. She started to move back but she did not know what else to do. Nobody else was at  
20 home. They were either at work or elsewhere. It was in the evening after she came from school.

21  
22 35. VM said that first, it was on her breast then her private part. She was totally naked. He squeezed  
23 them and they hurt. The complainant demonstrated what he did to her with her hands. She said  
24 that she was smaller then than she is now. She told him to stop but he just kept on doing it. He  
25 did not say anything while he was doing it. He used his finger inside her vagina. It hurt. This  
26 lasted probably a few minutes. She moved away at first, but nobody was there. She was scared.  
27 She did not know what to do because nobody was there to help her.

28  
29 36. She said that this made her feel uncomfortable. He was doing something bad. She said that she  
30 knew that because in her home country people always got sexually assaulted in different places  
31 when she watched the news, so she knew it was bad. People had spoken to her about good touch  
32 and bad touch, so she knew that what he was doing at that time was wrong. When he finished



1 touching her, he just came out of the room. She did not tell anyone about it because she was  
2 embarrassed.

3  
4 37. She said that it just kept happening from Year 8 to Year 10. She said he doesn't do it for the  
5 whole week or so. He stops like he knows when her period is and afterward, he continues. It  
6 happened frequently.

7  
8 38. She said that she did not have any relationship with him. She would just say good morning or so  
9 and if he had to carry her to the shop or something.

10  
11 39. VM said that she did not know her mother that well because she used to live with her grandparents  
12 in her home country and her mother would send money.

13  
14 40. Before he started touching her, she felt uncomfortable around him. She would always beg her  
15 mother to go out by themselves without him, but her mother said it would be disrespectful. VM  
16 said that the defendant did what he did and then he would act so innocent around her mother. It  
17 was right after she came that it started.

18  
19 41. She said that she liked school here but missed home because there were more opportunities like  
20 sports. She played netball here. It was good at first but then she became stressed and quit. She  
21 said that she wants to go back home permanently because she could not take being around him  
22 anymore and she missed her grandparents.

23  
24 42. She said that in addition to touching her, he had put his mouth on her private part. He was licking  
25 her belly and then he went down on her private part and then he used his finger and opened it and  
26 then he put his mouth. Nobody was there. This was always in the evening time because her  
27 mother is home at night. He usually comes home from work before her mother does.

28  
29 43. She said that she usually comes home from school after 2:45pm. She gets home by the bus but  
30 sometimes she stays behind and comes home at 3:00pm. The incident with his mouth started after  
31 her other sister "T" came to live there. She had her own room at the time but there was no lock  
32 on the door. He came in the room. She backed away but he just kept coming toward her. He  
33 asked her to take off her clothes again. She told him that she did not like it and then she took off  
34 all her clothes. He started licking her belly and all that and using his hand and grabbing her breast.



1 Then he went down on his knees and used his hand and opened everything up and then he used  
2 his mouth and started licking it. She was sitting on her bed. She pushed him away. It lasted a  
3 few minutes. She did not know what to do or anything. She went straight to the bathroom  
4 afterward and locked the door, and tried to wash off everything because she did not like him  
5 touching her. He would do this about twice a week.

6  
7 44. She said that she had seen his private parts and described his penis as being with hair around it  
8 and having a lot of veins on it. She saw it when he took off his pants. He grabbed her hand for  
9 her to touch it, but she pulled back. He started to rub it back and forth and afterwards something  
10 came out and it went on her slippers and then she ran out and started to vomit, and she went to  
11 wash out her slippers at the back of the house. What she saw came out was white and thick. It  
12 was on the bed sheet. It was not dripping like water would drip. The name for it is sperm. She  
13 said that she felt grossed out because it was just nasty. This happened in her room when she was  
14 at home after school and was going to her mom's workplace. She had bathed and put on her  
15 slippers. She said that she still did not tell her mom or anyone about it.

16  
17 45. She said that around her mother, he would laugh and act like everything is okay. He used to say  
18 things that were not true. He would complain to her mom about how she was being bad. He was  
19 lying on her to make her mom hate her. She was also scared that he would hurt them. She  
20 thought so because he looked scary.

21  
22 46. The first time she saw him; she thought he was nice. This was in her home country when he  
23 came to visit after he and her mom got married. He gave her a gift. It was after she moved here  
24 that she started feeling uncomfortable around him. This was because when she came here, he  
25 started looking at her in a weird way. He would stare at her and keep staring. When she looked  
26 at him, he would not turn away.

27  
28 47. She said that when he did the things to her, he never says anything. It was the first and last time  
29 with his penis because he did not do it again.

30  
31 48. She said that the last incident that she can remember happened was after a Sunday. It was after  
32 Father's Day or Mother's Day. It happened on a Monday. It was when she was going to school  
33 in the morning and her mother did not come home that night because of work. She thought that



1 her sister was with her boyfriend and her other sister was at home asleep, but she had to go to  
2 work and the defendant dropped her off. But then he came back. He knocked on her door and  
3 she thought it was her sister coming home from her boyfriend or something, that is, "S". She  
4 opened the door and saw him but there is only one door to get in and out of her room and so she  
5 was scared. He could not take off her pants because she had on her school shoes already to go to  
6 school. He took it off halfway and then her panties and then used his finger and put it into her  
7 vagina. He went to the point that it hurt, and he did it over and over again. She said that she did  
8 not tell him to stop because she had already told him so many times before and he didn't listen  
9 so to her there was no point because he still would have done it anyway.

10  
11 49. Afterwards he looked at his phone and said that he was going to take her to school because the  
12 bus left her, so she had to go with him. She thinks this was at about 7:45am that the bus passed.

13  
14 50. This happened two weeks before she spoke to her school counsellor. It was after Father's Day  
15 or Mother's Day that it happened and then she reported it because he did not do it afterwards.

16  
17 51. She reported it because her mother asked Ms. SA to speak to her. Her verbatim account of her  
18 conversation with Ms. SA is as follows: -

19  
20 "... she (Ms. SA) came to me and said she wanted to speak to me and we went into the  
21 library and she started to ask what happened, I am not usually like this even in her class I  
22 am behaving differently than how I behave and then she started to say, and I started to say  
23 that its family problem and she started to ask me what kind of problems and then she started  
24 to name all of my family members and then I said its my stepfather and then she ask what  
25 is he being rude to you or anything and I said he, he touched me and then she started saying  
26 no that can't happen and all that and then she reported it to the Cops ma'am."

27  
28 52. The complainant said that after she told Ms. SA, she felt some stress relief because she had been  
29 holding that for so long, she felt better. In class she had stopped talking a lot. She started to stay  
30 quiet to herself and to separate herself from her friends. She did not want to say anything to her  
31 mother. She felt it was going to go on forever. She couldn't say anything. She wanted to kill  
32 herself and took a lot of pills. She does not remember when, but it was after she came home from

1 school, she had pills for pain inflammation of the cartilage. She took eleven of them. She felt  
2 sleepy and went to sleep.

3  
4 53. She only told her best friend AS what was happening. She told her that she had family problems.  
5 She did not tell her exactly what type of problems and she told AS that she tried to kill herself.

6  
7 54. VM said that there is a bolt on her room door now. The two sisters decided to do this for privacy.  
8 She still preferred to sleep with her sister sometimes because of what was happening. After school  
9 she would bathe and go around to her mother's workplace. She felt safe at her mom's work place  
10 because her mom is always there so he couldn't do anything.

11  
12 ***Further Examination in Chief***



13  
14 55. The complainant identified photographs of her family home, her room and various areas inside  
15 the home.

16  
17 ***Cross Examination of Complainant***

18  
19 56. The complainant testified in cross-examination that she resided with her grandparents in her  
20 home country up until she came to the Cayman Islands in 2017 or 2018. She had a loving  
21 relationship with them. Her grandparents looked after her and her mother used to send money to  
22 them to look after her. She said that she enjoyed school and had friends at school there. She did  
23 not have lots of friends here. All the friends she had were at home.

24  
25 57. She said that about once or twice a year or so her mother would visit her when she was living  
26 with her grandparents. She was not told of her mother's wedding. She had a desktop at home and  
27 saw the picture of them on it. It was not on Facebook. She would not describe the relationship  
28 between herself and her mother as close at that time. She said that she was not upset that her  
29 mother had gotten married. She just felt hurt that her mother did not tell her about it.

30  
31 58. She said that she did not recall talking with her sisters "S" and "T" about their mom getting  
32 married or telling "S" or other family members that she didn't think the defendant was suited for  
33 her mother. There was not any discussion about her mother getting married.

- 1 59. She said that herself and “S” are close like she could count on her and so on. She could go to “S”  
2 and ask for advice and “S” helped her out with school. She could talk to her about some problems.  
3
- 4 60. She said that when she came to Cayman to reside with her mother it was not the first time that  
5 she had met the defendant. She first met him on one occasion in her home country. She said that  
6 it is not correct that from the first time she met him she did not like him. From the first time she  
7 met him he gave her gifts. She was happy about that. When she came to Cayman and started  
8 living with her mother, she felt uncomfortable around him. It was not immediately when she  
9 arrived because she spent most of the time with her mother until afterwards.  
10
- 11 61. When she started living with her mother, she got to know her more. She would not describe her  
12 relationship with her mother as close, not as the one with her sister “S” but it was close. When  
13 she first arrived, she slept in the same room with “S”. Her other sister “T” was not there at the  
14 time as yet. At some point “T” came to Cayman as well. She felt comfortable around her.  
15
- 16 62. When “T” came, VM still slept in the same room. She does not remember but thinks “T” got a  
17 blow up bed and slept in the same room with herself and “S”. She would describe the relationship  
18 between them as close.  
19
- 20 63. VM said that she would see the defendant every day, mainly in the evenings because he goes to  
21 work. She said that she does not remember what time he would go to work in the mornings. She  
22 had to leave for school at 7:30am and wait for the bus at 7:45 am. He would leave first in the  
23 mornings. He did not always work at the school where she attended. When she got here, at first,  
24 he was not working at the school, but he had bush tools like a machete. She would leave before  
25 him only when he was around the back watering the plants. That was during the school days  
26 sometimes.  
27
- 28 64. She eventually made three or four friends at school. There was not really a close relationship  
29 because they did not exchange messages when she reached home from school. She only talked  
30 to them at school. There were one or two girls, “A” and “M”, that she would share secrets with.  
31 They talked with each other about their family, schoolwork and about boys and sports.  
32





- 1 65. VM said that she recalled having arguments with her mother about schoolwork and the use of  
2 her phone. Her mother sometimes punished her by taking away her phone. When her grades were  
3 dropping her mother said that she should focus more on schoolwork and not on electronics.  
4
- 5 66. VM said that she did not recall her mother punishing her about things the defendant had reported  
6 to her. Mother did not punish her because when she spoke to her mother, her mother understood.  
7 VM agreed that RW would report things to her mother that her mother talked to her about. VM  
8 said that she felt upset about it because the things he said about her were not true. RW said that  
9 she was being disrespectful that she did not say good morning and so on.  
10
- 11 67. VM said that her mother did threaten to send her back to her home country if she did not keep up  
12 her grades. VM said that after the incidents she wanted to go back home. She did tell her mother  
13 that she wanted to go back because it was boring and she could not get to go out. That was not  
14 the real reason why she wanted to go back.  
15
- 16 68. VM agreed that she told police that she was being molested while she was in year 8. It was a few  
17 months after she started school that the molestation began. It was about two or three months. She  
18 agreed that she had not been doing well when she first started school. She said that this was not  
19 because she was spending too much time on the phone rather than with her books. She said that  
20 it was the surroundings, and she did not have any friends in year 8 so she was nervous and could  
21 not focus in class. It was somewhere in the middle of year 9 that she started doing well and started  
22 to fully understand the subjects.  
23
- 24 69. VM said that when Ms. SA came to speak with her, Ms. SA asked what is wrong and what is  
25 happening with her. No, Ms. SA did not ask her if he was molesting her, she asked what he did.  
26 VM said that it was not as a result of Ms. SA asking her, that she said that the defendant molested  
27 her. VM said that she was the one that told Ms. SA that he was molesting her. She told Ms. SA  
28 it was a problem with her stepfather. Ms. SA asked if he was hitting her, not if he was molesting  
29 her. She answered no and then told her that he was molesting her.  
30
- 31 70. VM said that this was not the first time that she had ever mentioned it to anybody. She had told  
32 her sister "S" before about the defendant molesting her. It was in her bedroom that she told her.  
33 She does not remember when that was. She told "S" not to tell her mother or anybody. Her sister

1 agreed to do that. She had a very close relationship with “S”. She did not tell any of her friends  
2 at school that he was molesting her. She did not tell her brother “J” with whom she spoke  
3 frequently on the phone. She did not tell her grandparents or anybody.  
4

5 71. VM agreed that in her first ABE interview with the police she had not mentioned that the  
6 defendant had touched her anywhere else other than her vagina or had done anything else to her  
7 or about seeing his penis. She had not mentioned anything about vomiting or taking a shower.  
8 To the suggestion that the reason why she did not tell the police as much on the first occasion as  
9 she did on the second occasion is because she went and made it up, her answer was no that is not  
10 true.  
11

12 72. She said that it is not correct that she was saying that she did not think RW was suited for her  
13 mother before she met him. She said that she did not know him before she met him so she could  
14 not really say anything about him.  
15

16 73. She agreed that one reason that she wanted to go back to her home country is because she missed  
17 her grandparents. It is not right that she had a lot more freedom there. Her grandparents were  
18 strict because she could not go out certain hours or have certain friends. She said that it is not the  
19 real reason that she wanted to go back there because it was boring and she could not go out. It  
20 was because of the defendant why she wanted to go back.  
21

22 74. She maintained that the defendant had done all the things to her that she had previously said. To  
23 the suggestion that it was Ms. A who asked her whether or not the defendant was molesting her,  
24 her answer was, that is not true.  
25

26 75. She said that it was not true that she did not like the defendant before she even met him and  
27 thought that he was not good enough for her mother. It is not true that she was telling several  
28 persons that her mother was too good for him and that when she came to Cayman, she did not  
29 like him anymore than before. She said that she always had respect for him until the abuse started  
30 happening and that it is not true that she believed the punishment meted out to her by her mother  
31 was because of the defendant telling on her. That is not the reason why she made up allegations  
32 to get rid of him.  
33





1 ***Re-examination of Complainant***  
2

3 76. In re-examination the complainant said that it is not true that in her first ABE interview, she did  
4 not mention all the other things because they did not happen. She said that she mentioned what  
5 had recently happened. That was the last incident a few weeks before.  
6

7 77. She said that she did not tell the police about telling “S” because she was scared that something  
8 would happen to her, that “S” would get punished for not speaking out. She was scared because  
9 “S” knew and she did not tell anybody. She said that she knew that “S” did not tell anybody and  
10 “S” had told her that she would not tell anybody. VM said that she only knew that “S” came to  
11 her school and picked her up and took her to the police station.  
12

13 78. When she spoke to her, “S” said not to worry about, it she would try to encourage their mom to  
14 send her back to her home country. “S” did not take any measures after that to help her to stay  
15 away from him. Most of the time after that VM slept in her sister’s room. “S” was in and out of  
16 the house. “S” was staying at her boyfriend’s place.  
17

18 ***Evidence of AS***  
19

20 79. AS is a friend of the complainant VM. AS gave an ABE interview dated 22<sup>nd</sup> July 2021 which  
21 was read into evidence by the agreement of Counsel. AS was 15 years old at the time.  
22

23 80. AS described VM as a good trustworthy friend and said that they are like sisters. VM is in her  
24 home room as well and they had been best friends ever since VM came to the school. She thinks  
25 that VM started school in year 8 when she came here.  
26

27 81. AS described VM as an outgoing person, really open and open minded as well. AS said that VM  
28 had told her a couple times about her stepfather, that she does not really have a bond with him  
29 and does not really want to have a bond with him. VM said she feels uncomfortable with him.  
30 VM has mentioned that he gave her \$25.00. VM did not tell her the reason why she was  
31 uncomfortable around him. When VM spoke about him she looked down, so AS tried to divert  
32 the conversation. AS said that she did not want to ask VM any questions because she did not  
33 want to seem noseey.

1 82. VM has told her that he has made her uncomfortable about four to six times, because VM barely  
2 brought it up. It is only this year that VM has gotten more comfortable talking to AS.

3  
4 83. Sometimes VM said that she feels like cutting herself and then another time she mentioned that  
5 she took some pills. This was some time this year, maybe last month or two months ago, between  
6 May and June. VM had gone to a private doctor for pain in her rib area. He had prescribed her  
7 medications. VM said that she was suicidal because of arguments between her mom and herself.  
8 VM's behavior was kind of distant. VM was sad. A couple times AS asked her if she was okay.  
9 AS said that she noticed this for a long period of time. One morning in home room VM was  
10 crying a lot. That was the last part of the school year. VM said that she does not trust her stepfather  
11 but did not say why.  
12

13 ***Evidence of ME***

14  
15 84. ME is a friend of the complainant. ME gave an ABE interview dated 11<sup>th</sup> December 2021 which  
16 was read into evidence by the agreement of Counsel. ME was 15 years old at the time.  
17

18 85. ME describes VM as a relaxed laid back person. VM was also very funny and caring. VM was  
19 kind of like the class clown. She was very popular. ME says that VM could have done better in  
20 school but ME thinks that VM prioritised having fun in class more. ME does not think that VM  
21 took her education too seriously. VM cared more about her friends than her grades.  
22

23 86. ME said that VM told her a very long time ago about her stepdad attempting to rape one of her  
24 cousins. She told ME she did not really like him. It was around the year 2019. When VM shared  
25 this with her, VM looked really sad so ME asked her are you okay and VM just told her no she  
26 did not really like her stepdad. That is when VM said what he had done to the cousin who was  
27 here in Cayman. VM did not mention who the cousin was.  
28

29 87. ME said that VM would get into trouble at school for not doing her homework. VM shared with  
30 her when she was leaving Cayman that she did not want to leave, it is not her choice. She said  
31 that she liked going to school here. She said it was her mom's decision.  
32





1 88. ME said that VM shared that while here that her mom was being kind of mean to her. ME said  
2 that she thought that one-time VM's mom had taken her phone away from her. VM was mainly  
3 a happy go lucky person and kind of shy as well.  
4

5 ***Reading of Statements***  
6

7 ***Evidence of DS by statement dated 16<sup>th</sup> October 2021***  
8

9 89. DS is a teacher who has known VM since she started at the school in year 7. DS had the  
10 opportunity to work directly with her from September 2018 to July 2021. In the beginning DS  
11 found VM to be a quiet, hardworking student who had a passion to do well in the subject area  
12 and to excel in her general studies at the school which VM did.  
13

14 90. This changed in about late 2020 to early 2021. DS noticed that VM's demeanor began to change.  
15 The passion that was there seemed to be waning and VM started turning up with incomplete  
16 homework. When VM was asked about it she was cavalier in her attitude which was not normally  
17 the case. Prior to this she would regularly have her homework completed or have a good reason  
18 for not doing it.  
19

20 91. DS states that VM was already a quiet girl and during this period she would say even less. Another  
21 noticeable change in VM's behaviour was that she started displaying a bit of aggression towards  
22 her peers and even her teacher.  
23

24 ***Evidence of SA by statement dated 8<sup>th</sup> July 2021***  
25

26 92. SA is the Deputy Principal of the school. She states that VM had been at the school since year 7  
27 and in June 2021 was now in year 10. On Sunday 27<sup>th</sup> June 2021 VM's mother spoke to her about  
28 her concern that VM had become uncommunicative in the household and was not attending her  
29 usual extracurricular activities.  
30

31 93. As a result, SA spoke to teachers and spoke to VM directly on Friday the 2<sup>nd</sup> July 2021. VM  
32 disclosed to her that she was not comfortable at home, especially being around her stepfather.

1 VM said that he had touched her on several occasions on her private parts. SA reported the matter  
2 to the School Counsellor who is also the child protection officer.



3  
4 ***Evidence of DP by statement dated 8<sup>th</sup> July 2021***  
5

6 94. DP is the School Counsellor who received the report from VM and contacted the Police. VM  
7 reported that the most recent incident happened on Monday 21<sup>st</sup> May 2021 in her bedroom before  
8 going to school and that it had been happening since she was in year 8 in 2019. The formal report  
9 was produced as Exhibit 7.  
10

11 ***Interview of Defendant***  
12

13 95. The defendant was interviewed under caution on the 28<sup>th</sup> July 2021 in the presence of his attorney.  
14 He said that he is 48 years old. He is not guilty of these offences. He said that he had been  
15 working at a school since September 2020 and before that he had been working as a landscaper.  
16 He has been living in the Cayman Islands for 14 years.  
17

18 96. He said that “S”, “T” and “V” are his stepdaughters. He has a good relationship with them. He  
19 would “more have “S” special as a friend more than the rest of them”, but they still move close.  
20 If anything happens in the house, “S” is the one that he would call and ask her to come and assist  
21 him.  
22

23 97. He said that he and his wife have a good relationship. They do have “little ups and downs” now  
24 and then. They have been married five or six years and have been together eleven years now.  
25 They met here in the Cayman Islands. They were married before he met her children. “S” came  
26 here first. “V” came here between 2017 and 2018. He has two children of his own, a boy and a  
27 girl, ages 21 and 17. “V” is the youngest of them all.  
28

29 98. He said that he does not know what to say about how “V” usually interacts with others because  
30 she does not talk a lot. She will be in the house and not talk to anyone. She has always been like  
31 that. Sometimes he would ask her mother why she is like that. She is not the kind of child to be  
32 disrespectful or rude. His wife disciplines her sometimes by taking her phone away from her.



1 "V" likes to watch movies and dancing on her phone. Other than that, she is not the type to give  
2 trouble.

3  
4 99. He said that he does not know "V" to be a truthful child because he remembers one time, she was  
5 pretending to be asleep and she was really not. He does not think of her as being a dishonest child  
6 because of that one incident. In general, he does not think of her as a dishonest child.

7  
8 100. He said that he does not have a close bond with "V". He is not close to her. She is not the type to  
9 have a father daughter relationship. He has not made any effort to have that relationship with her.  
10 She had never made any effort to be close to him.

11  
12 101. He said that his work hours are from 7am to 3pm. He leaves home at 6:30am. He sometimes has  
13 after-hours jobs taking care of properties and his boss calls him to do construction work. He never  
14 stops at his home before going to do these after-hour jobs, not even to change. He has his own  
15 car to get to and from work. "V" goes to school between 7:45am and 8am through to 2:45 pm.  
16 She takes the school bus to and from school.

17  
18 102. When he leaves for work in the mornings he leaves his wife at home. She works from 2pm to  
19 7am every day except holidays and some Sundays. He and the children would sometimes sleep  
20 at his wife's workplace. She was a caretaker for an elderly person, Mr. B. After Mr. B died earlier  
21 in the year, they all slept at their own home.

22  
23 103. He said that when he is leaving for work the girls are in their room because their room is always  
24 locked. It is locked with the key. No one could just go and open the door. "V's" room does not  
25 have a lock, just a bolt. He installed the bolt many years ago.

26  
27 104. In relation to the allegations made against him, he said that he did not know that "V" would make  
28 up such a lie because she had never really said anything before him where he said that she was  
29 dishonest.

30  
31 105. He said that he had never touched "V" from he knew her. He had never gotten that close to her.  
32 He denied sexually assaulting her, having oral sex with her and masturbating in front of her. He  
33 said that she is lying on him. He did not do anything like that. She has never had any problems  
34 with him.

1 106. He was asked for what reason would “V” make up these allegations. He said that there was an  
2 incident in 2019 that he had a physical altercation with her mother and perhaps “V” did not want  
3 him to return to his home country to live with her mother as they had planned to do. After that  
4 incident “V” would go to her room and not talk to him for some time.

5  
6 107. He denied doing anything wrong and said he did not have any sexual interest in children. He said  
7 that he had never been alone with “V”, not even a day. He said that after finishing work he leaves  
8 and goes to other places where he works until 6pm. He goes home at that time. No one is there  
9 because his wife has gone to work at 2pm. When “V” comes home from school she goes to her  
10 mother and in the mornings, they come back to the house.



11  
12 **EVIDENCE AT TRIAL - THE CASE FOR THE DEFENCE**

13  
14 108. The defendant gave evidence on oath and the statement of three witnesses were read by  
15 agreement. I approach the defence witnesses applying the same fair standards as I do to all  
16 witnesses.

17  
18 109. The defendant is of good character. I remind myself that this is not a defence to the charges but  
19 it is relevant in two ways. Firstly, he gave an account in interview and gave evidence, and his  
20 good character is a positive feature which I take into account in his favour when considering  
21 whether I accept what he said. Secondly, the fact that he has not offended in the past may make  
22 it less likely that he acted as the prosecution alleges in this case. The importance which I attach  
23 to his good character and the extent to which it assists on the facts of this particular case are for  
24 me, as the tribunal of fact, to decide. In making that assessment I may take account of everything  
25 that I have heard about him.

26  
27 ***Evidence of the Defendant***

28  
29 110. The p testified that he first came to the Cayman Islands in 2007 and has been here for 16 years.  
30 He said that he is an active member of his church. He is an usher and sings in the choir. He met  
31 his wife, the complainant’s mother in 2011, and they got married in 2015. At the time they got  
32 married he was aware that she had children but had not met them at the time. None of her children  
33 were at the wedding.



1 111. Maybe a year after the wedding he met the children when he and his wife traveled for a holiday.  
2 He does not remember what the first meeting with VM was like. He thinks that she came to live  
3 here with them in 2017. The house at the time had 2 bedrooms. He and his wife had one room  
4 and “V” shared a room with her sister “S”. “S” is in her 20s. He does not quite know her age.  
5

6 112. When “V” came to live in the house, they did not have a close relationship, because she was  
7 always with her mother. Her mother had her everywhere she went. He did not speak to her that  
8 often, maybe twice a day. He would see her in the morning and ask her if she is all right and she  
9 would hardly want to answer him.

10  
11 113. At the time “V” came to live at the house he was doing landscaping and gardening. His hours of  
12 work were from 7am in the morning or sometimes when his car is down, his boss would pick him  
13 up about 6:30am. He would finish work at 3pm, so from 7am to 3pm. When he finished work at  
14 3pm, his boss would pick him up. When he has his car, he would go to work at another job from  
15 about 3:15pm to 6pm. Later he started working at the school, his boss had a contract at the school  
16 and assigned him to work there. His work hours at the school were from 7am to 3pm. At 3pm  
17 he would go to other work. His boss had some properties that he takes care of, so he had to go  
18 there every other evening and take care of them.

19  
20 114. “V”’s school began at 8am until 2:45pm. The bus comes at 7:45 in the morning, pass their gate.  
21 He did not know the exact time that she goes to school because he leaves before her. When she  
22 leaves school at 2:45pm she goes by her mom because her mom works very close to where they  
23 live. The houses are so close that he can stay by his house and shout her name, and she hears.  
24

25 115. When “V” was living with him he considered her to be his stepdaughter. He said that he did not  
26 feel good about the way she did not want to answer him, and he even questioned his wife as to  
27 why she was behaving like that.  
28

29 116. He said that he stands by the interview that he gave to police. It is not true that he inserted his  
30 finger in VM’s vagina. He did not lick her vagina and her belly with his tongue. It never happened  
31 that he masturbated and ejaculated in her presence. He said that when he heard the allegations,  
32 he felt so bad in himself because he knew that he did not do anything like that to her.  
33

1 117. He said that he has a good relationship with “S”. This is because whatever he cannot get done,  
2 he will call “S” to help him, and she would help him. If his wife would not help him, “S” would.  
3 Sometimes “S” would help him with completing applications for Immigration permits and if a  
4 pipe needed to be fixed around the house.

5  
6 118. He said that the relationship between VM and “S” was a very good relationship as far as he was  
7 concerned and with their mother. Mother was responsible for disciplining “V”. He had reason to  
8 speak to his wife about “V’s behaviour. This was on occasion when she would not say morning  
9 to him. Then he recognised that the problem is because her mother did the same thing to him,  
10 when she would come in and not say morning to him.

11  
12 119. He said that he really did not know “T” well. He understood that she was adopted by his wife.  
13 He spoke with “T”, but they did not have a close relationship.

14  
15 120. He said that he would sleep at his wife’s work place every night unless there was a disagreement  
16 with his wife. The children would also stay there including “V”. In the mornings he would leave  
17 at 6:30am to go to his home before leaving for work.

18  
19 121. He said that he knows that he did not do anything to “V” and he does not really feel good inside  
20 about it.

21  
22 ***Cross-Examination***



23  
24 122. In cross-examination the defendant said that he worked every day from 7am to 3pm Monday to  
25 Friday and had no days off except for weekends. He also sometimes did a second job from 3pm  
26 which would be up to 6pm. In addition, he looked after about four properties. He does not do this  
27 every day. The schedule gave him a little flexibility. It would take him about three hours to rake  
28 and trim the gardens at the properties. Sometimes he would just sit there and relax at the  
29 properties.

30  
31 123. He described his daily routine of work at the school as doing initial chores such as sweeping the  
32 corridors, checking the bathrooms and pumphouse and raising the flag. He tries to get this done  
33 before the children arrive. Thereafter he works on the grounds until 12 noon when he goes home

1 for lunch. Then he goes back to the school for 1pm, cleans up after the children and then finishes  
2 at 3pm. Then he goes to his second job or by one of the properties.

3  
4 124. He agreed with Counsel’s suggestion that he did have the opportunity to go home after leaving  
5 school at 3pm and before going to the properties or to his second job.

6  
7 125. He said that he was in shock when he was arrested by the police. He said that he has reason to  
8 believe that the complainant is jealous of him because many times she would push the door and  
9 come in when he was in the room with her mother, and there were many times when she and her  
10 mother were lying down on the bed. He believes that there was jealousy although he did not say  
11 it.

12  
13 126. He said that he did not know of VM wanting to go back to her home country.

14  
15 127. He said that he is strict and does not want certain things in the house. He wants Christian  
16 behaviour in the house. “T” played music from “Vibes Kartel” in the house. He has complained  
17 to “S” about “T” dancing in the house and about the way she dresses. It was in the night that he  
18 saw “T” dancing. He went outside and looked through the window. The three of them (“S”, “T”  
19 and “VM”) were locked up in the bedroom. He was knocking and they refused to answer him.  
20 So it was in the morning that he got to speak to “S”.

21  
22 128. The defendant said that he has not complained to “S” about V’s behaviour. He has never talked  
23 to “S” about “V’s” dancing.

24  
25 129. He said that since the allegations “S” is the only person in the house and her boyfriend. He has  
26 lost contact with “T” and was never close with her. He continues to share a very close  
27 relationship with “S”.

28  
29 130. He said that it is not true that he had plenty opportunity to be at home based on his work schedule.  
30 He said that he does not know if “V” had a reason to make up a story against him and denied the  
31 allegations made against him.





1 *Evidence of SB by statement dated 2<sup>nd</sup> July 2021*

2  
3 131. The statement of SB was read by agreement. SB or “S” as previously referred to above is the  
4 older sister of VM. SB states that she is eleven years older than her sister VM. They lived together  
5 before migrating to the Cayman Islands and had a close friendship. She would advise VM from  
6 time to time. The only arguments which they would have is when SB disagreed with what VM  
7 said or wanted.

8  
9 132. SB stated that her mother and the defendant got married without telling her children. SB saw  
10 news of the marriage on Facebook and was upset. She showed everyone including “V”. “V”  
11 responded badly and did not want to talk to their mother because she thought that the defendant  
12 did not suit her mother. “V” told her this and everyone who would listen. SB said that she did not  
13 have a close father daughter relationship with the defendant. After she moved to live here with  
14 them, she saw that her mother was happy, and her opinion of the defendant changed. She talked  
15 with him, but they did not develop a father daughter relationship.

16  
17 133. She said that “V” is never alone with the defendant unless she got home from school before “T”  
18 comes from work. When “V” left school at the end of the day she would go to her mother’s  
19 workplace and stay with her.

20  
21 134. Between April 2021 and June 2021 when their mother no longer worked from 2pm to 7pm,  
22 mother was always home when the defendant left for work and “V” left for school.

23  
24 135. She said that “V” only comes to her about things that are serious. “V” is not a talkative person.  
25 She would go to her room and spend most of her time there.

26  
27 136. SB said that at no time has “V” ever told her that the defendant has ever made any sexual advances  
28 towards her or touched her in any way. She has told “V” that if anyone touches her “V” should  
29 tell her about it. SB said that “V” does not want anyone to touch her, not even to comb her hair.

30  
31 137. She said that the defendant has never displayed any behaviour towards her that she would  
32 consider to be inappropriate not even to “T” or “V”.



1 *Evidence of LC by statement dated 13<sup>th</sup> July 2021*

2  
3 138. LC is the mother of VM. She gives the date of birth of VM as March 2006. LC was married to  
4 the defendant in 2015. VM and the other children visited them in the Cayman Islands in the  
5 summer of 2016 and again in 2017. VM began living with them in 2017. She observed VM to  
6 have a quiet and isolated personality. VM and the defendant did not do more than basic  
7 communication. SB and the defendant had a closer interaction and would watch television and  
8 do things together around the house.

9  
10 139. In her first year in school in 2017, VM started saying that she wanted to go back home because  
11 here is boring and she cannot get to go out. Mother enlisted the aid of her son to speak to VM  
12 and they encouraged her to join the netball team and cadet corps. She said that thereafter V  
13 quieted down for a while.

14  
15 140. LC said that in 2019, VM left school at 2:45 pm and took the school bus to her workplace. All  
16 the family would spend the night at her workplace including the defendant if he wanted to stay  
17 there. VM went to school at 7:45 am. The school bus would either pick her up at her workplace  
18 or at home. VM would get ready at her workplace and then go home either with “S” or “T” and  
19 get ready for school.

20  
21 141. LC said that she is not aware of “V” going to their house by herself or being at the house alone.  
22 “V’s” clothes would be at her workplace for her to change. LC stated: -

23  
24 “Occasionally I would see “V” come to my workplace not wearing her uniform and I  
25 would know that “S” is home or “T” and “V” would have stopped by and changed her  
26 uniform.”

27  
28 142. LC said that she lost her job when her employer died, “V” told her that it was time to go home to  
29 their home country and said this over and over again.

30  
31 143. LC said that she was not aware before the complaint that “V” was having problems with the  
32 defendant. She had never observed anything different about “V’s” behaviour or any changes in  
33 her attitude towards the defendant.

1 144. In March 2021, “V” seemed to have lost interest in going to cadets and to the netball that she  
2 used to love. She stopped going to it from year 8.

3  
4 145. LC said that because of “V’s” personality she does not know if “V” would feel comfortable  
5 telling other people something that “V” would not tell her. She said that she does not see her  
6 husband as the kind of man who would do such a thing.



7  
8 ***Evidence of TG by statement dated 11<sup>th</sup> July 2021***  
9

10 146. TG previously referred to as “T” above is the sister of VM. She is the adopted daughter of LC.  
11 TG’s statement dated 11<sup>th</sup> July 2021 was read by agreement.  
12

13 147. TG states that she remained in their home country when “V” went to live in the Cayman Islands  
14 in 2016 or 2017. She states that when “V” visited on summer break in 2018, they had a good  
15 relationship. “V” would tell her that she loves her school and loved it here. TG came to live in  
16 the Cayman Islands in July 2019 on a work permit. She said that the sisters all had a good  
17 relationship. She and “V” would play. “V” would wrestle with her and pose. She states that “V”  
18 never had a problem with anyone touching her.  
19

20 148. TG said that when she came they were all sleeping with their mother at her workplace.  
21 Sometimes “S” would stay at their house instead of coming to their mother’s workplace and that:  
22 -  
23

24 “ because we see that she was not coming to our mother’s workplace to sleep, “V” and I  
25 started to return back to our house after we follow our mother to her workplace instead of  
26 sleeping there.”  
27

28 149. TG said that in the evening “V” would go straight to their mother’s workplace after school but  
29 sometimes “V” stopped by their house and changed before going there. After cadets, “V” would  
30 go straight to their mother in her uniform without changing.  
31

32 150. Whenever they slept at mother’s workplace they would all go back to the house in the morning  
33 but by the time herself and “V” got there, the defendant would normally have left the house

1 already. “V” would leave from their house each morning to get the bus for school. TG would also  
2 leave from there for work.

3  
4 151. TG spoke of the varying schedules which they had over time and that about January 2021 she  
5 started a job where she had to get to work for 7am. She said that she does not know if the  
6 defendant stopped by the house on his way to go to his other jobs but he would have to pass their  
7 house to get to some of them.

8  
9 152. She says that “V” was more open and relaxed with “S’s” boyfriend than with their stepfather.  
10 She said that she had never seen “V” being disrespectful to their stepfather because they do not  
11 really talk.

12  
13 153. TG also states that “V” was very protective of “S” because “S” had been in an abusive  
14 relationship in the past.



15  
16 **CLOSING SUBMISSIONS**

17  
18 ***The Prosecution***

19  
20 154. In closing submissions Counsel for the prosecution referred to the evidence of the various  
21 descriptions of the complainant given by DS, AS, ME and the defendant and the references to  
22 the change in her demeanour. Counsel said the issue of opportunity which the defendant would  
23 have had to commit the offences has to be examined because VM says that it happened in the  
24 afternoons when she came home from school and only once did it happen in the morning and she  
25 was late for school. Counsel said that according to the defendant he was never at home with VM  
26 for any time but it is to be noted that the incidents described by the complainant happened in  
27 minutes. The accounts given by both mother and SB allow for occasions when VM would change  
28 her clothing before going to mother’s workplace or VM being at home alone if she got home  
29 before TG.

30  
31 155. Counsel said that the defendant had a very flexible work schedule in the afternoons and would  
32 have had the opportunity shortly after VM came home from school at 2:45pm and he finished his  
33 morning job at 3pm.

1 156. As to the VM's credibility, Counsel said that in cross-examination VM was asked questions about  
2 whether it was Ms. AS who suggested the idea of abuse to her. VM was resolute in her response  
3 that it was not. As to any possible difference in the accounts in the two interviews Counsel said  
4 that VMs first interview must be read carefully. VM did not say that it was an isolated incident.  
5

6 157. Counsel submitted that it was SB who was upset about their mother's marriage. VM was cross-  
7 examined and said that she was not upset, she was hurt that her mother had not told her about it.  
8 Counsel said that in any event the wedding happened several years before and VM's own  
9 response at meeting him was that it was pleasant and he brought her gifts. Counsel noted that the  
10 defendant spoke of that first meeting and he could not remember anything remarkable about it.  
11 Counsel said that this issue does not affect VM's credibility in any way.  
12

13 158. Counsel said that the assertion that the complainant was a jealous and protective person should  
14 be rejected. The only person that VM was protective towards was SB because SB had been in an  
15 abusive relationship. TG's statements also put this in context. As to the complainant wanting to  
16 go back to her home country, she was cross-examined about this and said that the real reason that  
17 she wanted to go back was because of the incidents of abuse which had been occurring. Counsel  
18 said that everything suggests that VM has given credible and reliable accounts of sexual abuse  
19 on the three counts of the Indictment.  
20

### 21 *The Defence*

22



23 159. Counsel for the defence submitted that the issue for the Court is who to believe and what to  
24 believe. Counsel said this is a young complainant recounting events which are alleged to have  
25 taken place some three to five years ago. The defendant is being expected to recall with sufficient  
26 accuracy events which took place some time ago.  
27

28 160. Counsel said that the defendant is a soft-spoken man and this is his first encounter with the  
29 judicial system. He insists on his innocence and finds it difficult to find a reason why the  
30 complainant made these complaints.  
31

32 161. Counsel said that there is some variance as to how the disclosure came to be made by the  
33 complainant. In her second interview when she recounts being asked by SA whether the

1 defendant was being rude to her, it may well be that the use of the word rude was meant in a  
2 sexual connotation. Counsel said that in either case it appears that in the context of SA inviting  
3 comments as to whether there had been a sexual complaint, the complainant made the allegation.  
4 Counsel said that it may be an important point. The question is whether the complaint would have  
5 been made had the subject not been raised by SA.  
6

7 162. Counsel notes that no complaint had been made by VM to her mother, brother “J”, grandparents,  
8 church or her sister TG. While VM said in evidence that she had told SB, this does not appear in  
9 her interviews and SB said that she was never told. Counsel said that one of the two is not  
10 speaking the truth. SB had been her confidante and was close to her. What would make SB refuse  
11 to help her little sister. If she was told this terrible secret, why would she shield the defendant  
12 from this terrible conduct?  
13

14 163. Counsel said that SB described VM as an activist, as choosing SB’s partners and researching  
15 them and also describes VM’s attitude towards RW since SB came to live at the house. Counsel  
16 said this allegation could just be “V’s” way of addressing the partners of those that she loves.  
17

18 164. Counsel commented that given the close relationship of the complainant with SB it is incredible  
19 that she could not have told her about the molestation. It would be more than a betrayal of trust  
20 on the part of SB, it would be downright criminal. If VM is lying about telling SB, why would  
21 she lie. Counsel submitted that if the Court finds that she is lying about telling SB then there  
22 should be doubt about the account of abuse itself.  
23

24 165. Counsel asked the Court to note the inconsistency in the interviews of “V”. “V” indicated on the  
25 diagram in the first interview where she had been touched. She said that her vagina was the only  
26 place that she had been touched and there was no indication that she had been touched on her  
27 breasts. She said that the defendant had only used his hand. In her second interview she spoke of  
28 other acts and being touched on other parts of her body.  
29

30 166. Counsel said that VM’s initial answer when asked whether she had seen his private parts was no,  
31 then she said yes and gave further details.  
32



1 167. Counsel said that not because the defendant may not have any problems with her does it mean  
2 that she may not have problems with him and his suitability for her mother. Counsel said that  
3 there is some doubt which should be resolved in favour of the defendant. Counsel asks whether  
4 the Court can rely on everything that the complainant says, including that she told SB about the  
5 abuse and her sister kept quiet. Counsel said that there should be doubt about the entire incident  
6 if she cannot be believed on this one aspect.



7  
8 **ASSESSMENT**  
9

10 168. The issue in this case is one of credibility. The defendant denies committing the offences. The  
11 burden of proof is on the prosecution to prove the case so that I am sure of guilt before there can  
12 be a conviction for any offence. In coming to a decision, I have reviewed all of the evidence and  
13 taken it into account together with all the submissions made.

14  
15 169. Defence Counsel is correct that it is one person's word against the other. I am mindful that where  
16 other witnesses speak of the complaints made by the complainant, this is not evidence  
17 independent of the complainant. The prosecution urges me to accept the evidence of the  
18 complainant. The defence submits that her evidence should not be accepted for a number of  
19 reasons including inconsistencies in the evidence.

20  
21 170. I remind myself not to make assumptions about cases of sexual assault and of the relevant  
22 directions. There is no typical sexual assault, typical assaulter or typical person that is sexually  
23 assaulted. There is no typical response to sexual assault. Sexual assault can take place in almost  
24 any circumstance. It can happen between all different kinds of people, quite often when the  
25 people involved are known to each other or may be related. People can react in many different  
26 ways to being sexually assaulted.

27  
28 171. I also remind myself of the directions with respect to delayed reporting of sexual assault. I must  
29 not assume that because there was delay in reporting it is untrue. The fact that a complaint is  
30 made late does not make the allegation untrue and a complaint is not necessarily true just because  
31 it was made immediately. VM in this case said that she was embarrassed to tell anyone about it.  
32 The only person she confided in was her sister SB. Consideration must be given to all the  
33 circumstances.

1 172. I have considered firstly the evidence of the complainant. She was about fourteen years old at the  
2 material time. Having observed her, I did not find that she could be described as mature for her  
3 age. I had the opportunity to see her as she gave her first account in her ABE interview, the  
4 second interview and through to her cross-examination. I am mindful that demeanour and  
5 appearance are not necessarily a sound indication of veracity and I am cautious about it. The  
6 complainant was at times in tears in her ABE interviews. I am also mindful that I should not  
7 assume that the way VM gave evidence is an indication of whether or not the allegation is true.  
8 Witnesses may react to giving evidence about allegations of sexual assault in different ways. The  
9 presence or absence of emotion or distress when giving evidence is not a good indication of  
10 whether the person is telling the truth or not.

11  
12 173. However, it was noted that there was no evidence of sophistication or smooth contrivance about  
13 the complainant. What there was particularly in the first ABE interview was an overwhelming  
14 impression of despondency and despair. This is different from tears or a show of emotion. The  
15 presentation of the complainant was not inconsistent with: -

- 16 - Her account of the events going on endlessly without stopping.
- 17 - The reports of self harm.
- 18 - Disinterest in extracurricular activities.
- 19 - The observation of her teacher as to the nature of the change in her personality.
- 20 - The description of her as becoming more withdrawn.



21  
22  
23 174. Mother's evidence was that during her first year in the Cayman Islands after VM joined the  
24 netball team and the cadet corps she settled down. VM's initial dislike of being here appears to  
25 be in the natural course of adjusting to a new home and country, meeting new friends rather than  
26 having anything to do with animosity towards the defendant.

27  
28 175. VM's teacher, DS who knew VM from 2017 and had the opportunity to work closely with her  
29 from 2018 to July 2021 described VM as interested in her schoolwork, doing her homework and  
30 having a passion to do well. DS says that VM would spend her break and lunch times with friends  
31 and peers in her classroom doing some form of homework, working on projects or playing chess.

32  
33 176. The weight of the evidence points to something significant occurring to change that position.  
34



1 177. According to DS, VM’s demeanour changed in late 2020, early 2021. DS stated: -

2  
3 “One day I had a conversation with her about this new (lackluster) behaviour. I told her I  
4 was concerned about her and asked her if she ws okay she said she was fine but broke  
5 down before the conversation was over.

6  
7 She was already a very quiet girl and during this period she would say even less. On one  
8 break /lunch a friend of hers openly said to me that “V” was going back to ... and I asked  
9 her why and she said something of the nature that she “didn’t like living at her home  
10 anymore. ...”

11  
12 178. Mother became so concerned about the change in VM that she spoke to Ms. SA.

13  
14 179. Ms. SA’s evidence is that mother expressed concern at the change in the complainant which led  
15 her to make inquiries.

16  
17 180. It is noteworthy that all of this noticeable change was at a time *before* VM had made any  
18 complaint about the defendant. It is thus difficult to regard the change in VM as feigned behaviour  
19 in support of a scheme to make false allegations against the defendant in order to get to return to  
20 her home country.

21  
22 181. I considered whether as defence Counsel suggested all of this was because VM disliked the  
23 defendant starting from not having been told about the wedding to her mother and her feelings  
24 about him at that time. This is inconsistent with what the complainant described. He brought her  
25 gifts and there was initial liking of him. I do not believe that VM is making up the simple childlike  
26 response that she liked him because he brought her gifts. According to VM this changed when  
27 she came here, and he began looking at her and making her feel uncomfortable. She found that  
28 he would stare at her and keep on staring.

29  
30 182. Is she telling lies on the defendant because she wanted to return home to her grandparents and  
31 friends? This is inconsistent with the account and observation of her given by others. Her school  
32 friend recounts that VM liked it here, liked school, enjoyed activities and wanted to stay. TG also  
33 gives an account in a similar vein. There is also VM’s behavior in class before the change. On



1 mother's evidence before the change in her VM had settled down. If VM is telling lies on the  
2 defendant for this reason, why is it that the complaint about the defendant was never made by her  
3 to other persons other than SB prior to June 2021? VM repeatedly said to her mother that it was  
4 time to return to their home country. VM's evidence which I accept as truthful is that the real  
5 reason that she wanted to return to her home country was because of what the defendant was  
6 doing to her. She wanted to get away from him.

7  
8 183. Was the complaint suggested to VM or planted in her mind by Ms. SA's questions?

9  
10 184. The complainant's first account of how she came to say what was happening was this: -

11  
12 "Ms. A, asked me this morning why I am acting like this. I told her it was a family problem  
13 and then she started to ask me, is it your mom and I said, no, it is my stepfather. She asked,  
14 is he talking to you like harsh or anything. I told her, no. She asked, is he touching you or  
15 anything and I told her, yes, and then she said, "No this can't be happening" and then she  
16 told me she has to report it."

17  
18 185. In my view there is nothing in this to suggest that the idea was planted in her head and that it was  
19 suggested to her to make up a story that was not true. VM had answered no to a series of questions  
20 before answering yes.

21  
22 186. VM gave a similar account in her second ABE interview. She was cross-examined about this and  
23 said no she did not make up the allegation against the defendant because Ms. AS suggested it to  
24 her. From my observation of VM as she gave evidence, there is every indication that VM  
25 understood the importance and purpose of this question.

26  
27 187. Defence Counsel highlights what is said to be a major inconsistency, being that VM's evidence  
28 is of having told SB that the defendant was touching her and SB in her statement does not confirm  
29 this.

30  
31 188. I remind myself of the approach to be taken with respect to inconsistencies. In identifying an  
32 inconsistency, the Court has to consider whether it is of significance or not and what explanation,  
33 if any, is given for the inconsistency. The more significant or material the inconsistency without  
34 a credible explanation, the less likely that the evidence will be accepted. It may affect in an

1 adverse way the view of the reliability of the evidence of the witness. If an inconsistency is  
2 insignificant and explainable it will not have such serious consequences.

3  
4 189. With respect to the inconsistency highlighted I do not consider this to be significant in the context  
5 of SB being much closer to the defendant than all the children. On his account SB helped him  
6 around the house and they spoke regularly. He remains close to SB.

7  
8 190. I also note that there is inconsistency in the way in which SB describes her relationship with the  
9 defendant and the way in which both mother and the defendant describe it. According to mother  
10 SB and the defendant have a closer interaction and would do things together around the house.  
11 Yet SB says that she did not develop a close father and daughter relationship with him.

12  
13 191. VM did not mention telling SB in her interviews. She gave oral evidence as to this. Her  
14 explanation is that she did not want to get SB in trouble. She was scared that SB would get  
15 punished for not speaking out. This response is consistent with TG's account and SB's own  
16 account of VM being protective of SB. Defence Counsel submitted that it would have been  
17 criminal for SB to have known and done nothing about it. This in itself would provide a powerful  
18 reason for SB to deny knowing anything about it. In summary I accept the complainant as a  
19 witness of truth on this issue.

20  
21 192. Defence Counsel also highlights the inconsistency in VM's accounts in the two interviews. The  
22 complainant was asked in the first interview whether the defendant had touched her anywhere  
23 else on her body other than the area which she had circled and she said no. There was no mention  
24 of touching her breast or of masturbation of which she spoke in her second interview.

25  
26 193. I find that it is of note that prior to recounting what happened in the first interview she said that  
27 it was not the first time, but she didn't tell anybody, it was last year or so. She said that she did  
28 not know how many times all of this happened to her, but it was a lot of times.

29  
30 194. The complainant was asked about this suggested inconsistency in cross-examination, and she  
31 said that in the first interview she was speaking of what happened recently.





1 195. This is an explanation which I readily accept as truthful against the background of the note made  
2 above. It is evident from the context of the interview that VM was relating the details of the most  
3 recent encounter and not the details of what had happened previously.

4  
5 196. The issue of the opportunity for the defendant to commit the offences is a live one. The defendant  
6 maintains that he would not have had the opportunity to be alone with VM. In my view this  
7 cannot be accurate. At the time mother worked at Mr. B's home from 2pm through to 7am the  
8 following morning. VM would leave school and go to mother's workplace. Mother's evidence is  
9 that VM would sometimes come to her workplace already changed out of her school uniform  
10 indicating that she had stopped at home to change.

11  
12 197. SB's evidence is that the defendant had a motor car and worked ten minutes away from home.  
13 He would go home for lunch at 12 noon and go back to work.

14  
15 198. The defendant said that he would leave the school at the end of the work day and go directly to  
16 his other jobs. He admitted in cross-examination that this was sometimes work on unoccupied  
17 properties where he set his own schedule and did not have a specific time to get there. He drove  
18 his car. He would have had the opportunity in between leaving the school and going to one of his  
19 other jobs to stop at home.

20  
21 199. In the mornings the children returned home from their mother's workplace and each went to  
22 different places. SB and TG worked and VM was the only one who had a school schedule. The  
23 account of TG is that their work schedules varied and there were times when they returned home  
24 from mothers' workplace from which location VM would get the bus for school. Again, there  
25 would have been the opportunity given the various schedules for the defendant to have been home  
26 alone with VM on a school morning.

27  
28 200. The defendant in effect described VM as cold towards him. I found that this was very likely  
29 exaggerated in the context of the child's personality and borne out of a desire on his part to paint  
30 a picture that the child was antagonistic toward him. I reject the defendants' account as self-  
31 serving and untruthful. Having had the opportunity to observe him as he gave evidence, I do not  
32 believe him on the disputed aspects of the case. There is no burden on him. I cannot and do not  
33 convict him because I do not believe him. I go back to the prosecution's case. It is on that case  
34 that I must be sure.

1 201. Overall, I found the complainant to be a credible and truthful witness. What was striking about  
2 her version of events is the level of detail in her account. She remembered the most recent incident  
3 as being the Monday after Mother’s Day or Father’s Day. She said that she was at home and there  
4 was nobody in the house because it was time for school. Somebody knocked on the door and she  
5 thought it was her sister. When she opened the door, it was the defendant. She said that he took  
6 off her pants, but she still had her shoes on because she was ready to go out the door to go to  
7 school. She was late for the school bus that day and he said that he would take her to school.

8  
9 202. In the course of the second interview, she said that the defendant had never used his private part  
10 on her private parts. When she was asked whether the defendant had ever shown her his private  
11 part, she held down her head before answering. She then went on to detail in a vivid way the  
12 circumstances in which he had come to do this and to describe his private area. She described  
13 him masturbating and discharging on her slippers which caused her to vomit. She went outside  
14 to wash off her slippers. She felt grossed out because this was just nasty. This is not a child  
15 making up a story because of a suggestion from a single question from a teacher or for a personal  
16 reason. In my view this is a witness of truth recounting what had happened to her.

17  
18 203. I find that I am satisfied so that I am sure that the complainant is a credible, honest and reliable  
19 witness. She is telling the truth about what the defendant did to her.

20  
21 204. There are aspects of the evidence which are not in dispute. These include the following:

- 22  
23 i. The age of the defendant. He is over eighteen years old.  
24 ii. The age of the complainant. VM was between twelve and fourteen years old at the  
25 material time.

26  
27 205. I give separate consideration to each count and the elements of the offences which require to be  
28 proved.

29  
30 206. In respect of Count One, Assault by Penetration, I am sure that the defendant intentionally  
31 penetrated her vagina with his fingers, and that the penetration was sexual in character. No issue  
32 of consent arises.



1 207. In respect of Count Two, Gross Indecency, I am sure that the defendant licked the complainant's  
2 vagina with his tongue. This was an act towards her which was done for his sexual satisfaction.  
3 She is a child under the age of sixteen years. I am also sure that having regard to the context and  
4 circumstances of it, a right-minded person would consider the act done to be grossly indecent,  
5 meaning that it was a marked departure from decent conduct.

6  
7 208. In respect of Count Three, Engaging in Sexual Activity in the Presence of a Child, I am sure that  
8 the defendant being older than eighteen years intentionally masturbated in her presence. So close  
9 was he to her that he ejaculated on to her slippers. He did so for his sexual gratification and knew  
10 or believed that she was aware of the activity or intended that she should be aware of the activity.

11  
12 209. In respect of Counts Two and Three for the avoidance of doubt I am also sure that given her  
13 response, VM did not consent to the activities and the defendant could not have and did not  
14 honestly or reasonably believe that she was consenting to the activities.

15  
16 210. I therefore find the defendant guilty as charged on all counts of the Amended Indictment.

17  
18 **Dated this the 19<sup>th</sup> April 2024**

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

19  
20 **The Hon. Justice Cheryll Richards KC**  
21 **Judge of the Grand Court**