

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

3
4 **INDICTMENT NO: 0031/2021**

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7 **R**



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9 **V**

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15 **Appearances:**

Mr. Kenneth Ferguson for the Crown

16
17 **Ms. Amelia Fosuhene of Brady Attorneys-at-**
18 **Law for the Defendant**
19

20 **Before:**

Mr. Justice Michael Wood (Actg.)

21 **Judge Alone Trial heard:**

4th – 13th April, 26th April, 3rd May 2023

22 **Delivery of Verdict Judgment:**

11th May 2023

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24 **HEADNOTE**

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26 *Criminal Law – Indecent assault on a female – s.132(1) of the Penal Code (2019*
27 *Revision) – Gross indecency – s.134A(1) of the Penal Code (2019 Revision)*

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30 **VERDICT JUDGMENT**



1. Section 12 of the *Youth Justice Act* (2019 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.

For the avoidance of doubt: An order pursuant to s.12(1)(a) and (b) above is herein made – with the consequences set out in s.12(2) to follow should there be a breach of this Order.

2. Section 31 of the *Criminal Procedure Code (CPC)* (2019 Revision) deals with the “Anonymity of complainants in rape etc. cases and states:

“31. (1) After a person is accused of a rape [etc.] 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.”

For the avoidance of doubt: It is the Court’s view that the charges of Indecent Assault and Gross Indecency fall within this section of the *Act* by virtue of the use of the word “etc.” and therefore I herein make an order in the terms of the wording of s.31(1) of the *CPC* as above.

1 Also, for the avoidance of doubt, the names of all participants in this case will be
2 anonymized. It is also herein ordered that the name of the Defendant is also
3 anonymized for this judgment in order to protect the identity of the complainant.

4 **THE ABSENCE OF A GROUND RULES HEARING**

5 3. This is a case where the Complainant described sexual assaults or sexual instances
6 alleged to have taken place when she was between the ages of 7 and 11 years of age.
7 She is now aged 12.

8 4. If I may say so, it was a case crying out for a Ground Rules Hearing (GRH). None
9 took place.

10 5. Although the Complainant gave her evidence by way of a tape-recorded interview,
11 there was no pre-recorded cross-examination - obviously stemming from the fact that
12 there was no GRH. That was, to say the least, unfortunate. Not being rude, but that
13 omission delayed the start of this trial.

14 6. I ruled that a large number of the questions which the defence had proposed to ask
15 were inappropriate. They went towards trying to show that the Complainant and her
16 family were sexually promiscuous. Even if I had allowed some of those questions to
17 be put, there could be no application in respect of the Complainant's sexual behaviour.
18 Even if there had been such an application, my ruling would have been the same – i.e.
19 “inappropriate”. I fail to see how any of the questions alleging the promiscuity of a
20 child can possibly be relevant to charges of indecent assault and gross indecency
21 towards a child between the ages of seven (7) and eleven (11) years of age. I will say
22 more about that in due course.

23 7. Going back to the lack of a GRH.



1 8. I appreciate all too well that there is a limited number of judges who sit in the Grand
2 Court. However, in the future, this type of case must, and I emphasize that word,
3 “must”, be given priority, and a trial judge must be identified early for the case. And,
4 even if that trial judge is overseas, he or she can deal with the GRH remotely via video
5 link, and the pre-recorded cross-examination can take place before the trial.

6 9. I do emphasise: Those are my preliminary views. Though they don't bind anyone, I do
7 hope the foregoing paragraph makes sense to those reading this judgment and that such
8 a system can be put in place for cases of this kind in the future.

9 **TRIAL BY JUDGE ALONE**

10 10. The Defendant was charged with six (6) counts of Indecent Assault, and one (1) count
11 of Gross Indecency.

12 11. He chose, as is his right, to be tried by a Judge Alone.

13 12. It then fell for me to direct myself about the appropriate law and also, to decide which
14 facts I accepted or what evidence I accepted, what I rejected, what I am sure of, and
15 some general comments about the reliability and credibility of the witnesses called.

16 13. I then put together my directions about the law relating to the facts as I found them to
17 be. These are facts which enabled me to come to my verdict, which I have just
18 announced in open court – namely, that I am sure that this Defendant is guilty of all
19 seven counts on the indictment.

20 14. I set out briefly the points of law on which I directed myself. These include the burden
21 of proof and the standard of proof.



- 1 15. The burden of proof is on the prosecution, and the standard required of the prosecution
2 is that they prove the case against the Defendant “beyond reasonable doubt.” It goes
3 without saying that if I had not been sure of his guilt on the evidence, I would have
4 found him not guilty.
- 5 16. I reminded myself that a case of this kind, involving allegations of sexual impropriety
6 by a man towards a girl (between 7 and 11 years of age) who, in all respects, he treated
7 as his daughter, can engender feelings of hostility. However, I reminded myself to put
8 anything, but for the evidence, out of my mind when judging this case. I reminded
9 myself that when I came to the evidence, to judge the evidence solely on the evidence
10 put before me.
- 11 17. As there were seven (7) counts on the indictment, there were, in effect, seven (7)
12 separate trials. The verdicts need not have been the same, but they could have been,
13 and in fact, were, the same.
- 14 18. All seven counts stemmed from allegations by one Complainant. As such, there was no
15 question of cross admissibility. I did not go down the cross-admissibility route, but I
16 was entitled so to do, as I did when considering the alleged similarities between the
17 offences. I identified the ingredients of the offence which I will come to in a moment.
- 18 19. The age of the Complainant was important. Being between the ages of seven (7) and
19 eleven (11), consent could not be an issue.
- 20 20. As far as the complaints (relating to the separate Counts) are concerned, they cannot be
21 corroborated, but they did, if anything, go towards the consistency of her allegations.



1 21. I reminded myself of the stereotypes which exist – warning myself not to make
2 assumptions about anyone’s behaviour as they gave evidence – in chief, or under cross
3 examination. I will come back to all these matters in further detail in due course.

4 22. This Defendant failed to answer questions in the interview. He had, however, made a
5 prepared statement, and I ruled and indicated in open court, that his failure to mention
6 other matters didn't arise because he covered everything in his prepared statement.

7 23. The Defendant at the time of this trial was 42 years of age. He was a man of good
8 character, so I directed myself as to both limbs of the good character direction, namely,
9 credibility, as he gave evidence, and, propensity, that is, whether it was likely that a
10 man of his years, of good character, would commit these offences or any of them.

11 24. What I intend to do is to go through, in further detail, the principles of law and the
12 directions in law that I gave to myself and then summarize the facts which inevitably
13 led me to be sure of the Defendant's guilt on all seven counts. It goes without saying
14 that if I had not been sure of his guilt on the evidence, I would have found him not
15 guilty.

16 25. As far as the functions are concerned, I have already identified what my functions are.

17 26. A Judge Alone trial may be somewhat difficult for a Judge who has not dealt with one
18 previously. But this is not my first. Trials by Judge Alone can be difficult cases which
19 require careful consideration. In this case before me I have done so. Judge Alone cases
20 are not cases which can be rushed, and I have taken a number of days to review the
21 evidence and the law and to write this judgment.

22



1 27. As far as the legal directions are concerned, as I said, I took the view that there were
2 seven separate trials going on and I considered the evidence for and against the
3 Defendant on each count separately. To some extent, the evidence was the same, but
4 there were aspects which were different in respect of each count.

5 28. As I have already remarked, I directed myself that I could find the Defendant guilty on
6 some counts, not guilty on others, not guilty on all counts or guilty on all counts. My
7 verdicts did not have to be the same but, in my judgement, they were.

8 **INDECENT ASSAULT**

9 29. The defendant was charged with this offence in relation to counts 1,3, 4, 5, 6 and 7.
10 The ingredients of the offence were these: That he, within the jurisdiction of the
11 Cayman Islands, indecently assaulted the Complainant by touching her, in Count 1, on
12 the vagina. The occasions on which each indecent assault occurred were specified in
13 each Count, whether as particular instance or as specimen counts.

14 30. In so far as indecent assaults are concerned, I direct myself that the person was guilty
15 of this offence if I were to be sure that he intentionally indecently touched another
16 person, in this case, the Complainant. There was no requirement of force or violence.
17 A touch, kiss or even a caress would be sufficient, providing that touching was sexual.
18 Touching is sexual, if a reasonable person such as me, would consider it was, because
19 of its very nature, sexual. Again, I note that the question of consent does not arise.





1 **GROSS INDECENCY**

2 31. The Defendant was charged with Gross Indecency at Count 2. Allegations are that,
3 within the jurisdiction of the Cayman Islands, the defendant committed an act of Gross
4 Indecency towards a child under the age of 16. The allegation is that he rubbed
5 himself against the Complainant.

6 32. Nobody seriously argued or suggested that if that were proved that that did not amount
7 to gross indecency. I agree. And it doesn't seem to me that the allegation of gross
8 indecency needs to be particularized in any further detail.

9 **FURTHER DIRECTIONS**

10 33. As far as the danger of assumptions is concerned: I said to myself or directed myself,
11 not to make any assumptions about how I would expect people to react when being
12 interviewed or questioned in Court. Whether that be by way of displays of anger, being
13 upset or remaining calm. I reminded myself that it would be quite wrong to assume
14 that the manner in which a witness gave evidence, either when being interviewed, or
15 questioned in court, is an indication as to whether the witness is or is not telling the
16 truth. Why is that so? Experience has shown that people react to situations and cope
17 with them in many different ways; that is regardless of sex or age.

18 34. Some people who have experienced an instance of the complaint of the kind
19 complained of here, show obvious signs of distress or emotion, whereas others have
20 blocked it out and, for that reason, or for other reasons, show no emotion at all, or little
21 emotion. So, I reminded myself that it follows that the presence or absence of a show
22 of emotion when giving evidence or being questioned is not a reliable pointer as to the
23 truthfulness or untruthfulness of what a person is saying.

1 35. I reminded myself to put aside any assumption I had about sexual offences, that is,
2 what type of person can be the victim of a sexual assault, and what kind or sort of
3 person can commit a sexual assault.

4 36. Also, I reminded myself that people may/or may not say different things after an
5 incident. So, I put out of my mind any preconceived ideas I might have had.

6 37. I know, as do many or all other judges who have tried this type of case know, that there
7 is no typical sexual offence. There is no typical victim and no typical Defendant.

8 38. Sexual assaults can take place in any circumstances. They can happen between
9 different types of people. Sexual assaults can happen between friends, between
10 members of the family, or complete strangers. I have said, people who are victims of a
11 sexual assault of any kind, can react in a variety of different ways. Therefore, I
12 reminded myself to put aside any assumptions I may have had about sexual assaults. I
13 reminded myself that I must make my judgement based only on the evidence from the
14 witnesses from whom I heard in court, and on the law, as I've just set out.

15 39. The next matter I dealt with was the question of complaints.

16 40. There is no dispute that after years of these incidents, the Complainant complained,
17 first of all, to the defendant's daughter, (with whom she had a close relationship) about
18 these incidents. She then complained thereafter to other people. She told those other
19 people what she said had happened. As I said, this is not corroboration. I stress this is
20 not because it does not come from an independent source but from the Complainant
21 herself. If anything, it might help as to her consistency.

22





1 **THE EVIDENCE**

2 **Evidence of the Complainant**

3 41. I now turn to the evidence, and I start, obviously, with the Complainant¹.

4 42. My general view, having watched her over some three hours of Achieving Best
5 Evidence (ABE) interviews, and observing her firmly, fairly and entirely properly
6 cross examined for some time, was that she was an impressive witness despite her
7 young age. Her account was and remained balanced. She did not, in my view,
8 overembellish or exaggerate the matters about which she was giving evidence.

9 43. The ABE interviews took place, first of all, on the 11th of November 2020, then on the
10 14th of January 2021. Then there was a third interview, which doesn't add much or
11 didn't add anything at all.

12 44. As I said, I had the opportunity of observing her and her cross-examination. She was
13 adamant that these incidents had taken place. The only real emotion she showed was
14 when it was put to her that what she alleges had not taken place. It was only then that
15 she raised her voice when it was put to her on one or two occasions. On those
16 occasions (and this is my choice of words) she stridently said, "*It did! They did!*".

17 45. I do not intend to set out the interviews in full, otherwise it will be that my judgment
18 may not be finished today. However, I quote various passages² of her evidence.

19 46. It began:

¹ I have omitted from this document the two sentences which, in my oral delivery of this Judgment, followed this introductory sentence, as they speak directly to identifying the Complainant and her relatives. Nothing turns on the absence of these sentences from this document.

² In relation to the references for these passages I note that there are two (2) numbers on each page of the interview. I will be referring to the red numbering.

1 *“I'm here because of my neighbor that touches me”.*

2 *“I'm not really sure when it started, but remember I was like 7. He would take me*
3 *into the shower and he would shower me and he wouldn't really shower me like my*
4 *mom showered me. He would touch me. He would dry me off with a towel and*
5 *would touch me.”*

6 47. What she remembers was that she was small and then confirmed that she was small,
7 like about 7 years of age. Later on, she said:

8 *“He would shower me. He would like, touch my bottom, like that with his hand. He*
9 *like, rubbed in a sexual way.”*³

10 *“He would tickle me with two fingers”*⁴.

11 48. As she said the following words she indicated, looking embarrassed, and she was
12 struggling to find the right word. She had been given plenty of time to give her
13 indications before she gave her oral answer:

14 *“He would touch my He would touch me in my vagina.”.*

15 49. She confirmed that she was touched on the vagina, and she said this:

16 *“He used to shower me but sometimes I would shower myself because I didn't like,*
17 *I didn't like it when he was like, touching me there.”*⁵

18 50. Moving on, she said that she would be watching television in the living room, and he
19 would come in and lift her up like a baby. She said:

³ Page 20

⁴ Page 23

⁵ Page 25



1 *“He would lift me up, take me to the room. The bedroom. His bedroom. And he*
2 *would like pressure me to take off my pants. He would try and take them off. He*
3 *would take his pants off as well, and then he would get on top of me. I would*
4 *scream, [the name of one of the Defendant’s daughters]. She would come in and*
5 *he would stop, or he would stop before she came in, that is [the Defendant’s*
6 *daughter] came in.”*

7 51. I find the following to be important. Later on, she was asked how far her pants were
8 taken down and she indicated and said⁶:

9 *“Like probably like right to my ankle. He took off his pants and then reached*
10 *somewhere and took off his pants and he would like to swinging on top of you.”*

11 52. She was asked to describe what that meant, and she answered:

12 *“He would make me lie on the bed like straight and then he would go on top of me*
13 *and he would go backwards and forwards. Ok, like on top. It was like lying down*
14 *and he would try and take off my pants.”*

15 53. And next, when she was asked to describe what the swinging meant, she said this:

16 *“It was like he was doing push-ups.”*

17 54. This, to me, was highly important - bearing in mind that she said she was lying on the
18 bed and the Defendant was on top of her, and “*swinging*” “*like he was doing pushups.*”
19 These words provide a graphic of what was going on.

20 55. She carried on, saying,



⁶ Page 42



1 *“It was like push-ups...he was going down, ... like going forwards and backwards.”*

2 56. That piece of evidence carries a lot of weight with me because they are words
3 indicating graphically what the Defendant was doing to her. She said she'd try to get
4 off the bed, but he would push her back, back onto the bed.

5 57. Moving on – even though I will return to the 5th of November later, because that's an
6 important date in this case. Her further evidence is that she had known the Defendant
7 since she was a baby⁷. She said the following – and, this again, to my mind, carries a
8 considerable amount of weight:

9 *“I used to call him ...I had started calling him “Dad” because he was like ... I*
10 *never used to see my Dad much, so I started like, I don't know how when, but I just*
11 *started calling him, [the Defendant], “Daddy”. Then because he treated me like a*
12 *Dad, like he treated me like a daughter. And I don't know like when I was seven*
13 *(7), he started touching me...”*

14 58. She was asked this question. “Okay, you still called him daddy even when he started
15 touching you up at the age of seven (7)?”. Her response was:

16 *“Yes, Ma'am.”* Thereafter, she repeated some of the earlier allegations.

17 59. I said the 5th of November was important. That was [a special day for one of the parties
18 to this case]⁸ and a party had been arranged at a restaurant called [--]⁹. The
19 Complainant said that prior to going there, acts – i.e. Counts 1 and 2 – took place. She
20 said they began in the Defendant's home and then, when she went to her house, not far
21 away, in order to get changed or shower, he then rubbed himself against her.

⁷ Page 83

⁸ Used to maintain the anonymity of all parties in this case.

⁹ Name read in the delivery of the oral judgment but removed from this document.



1 60. The first person she said she told was the Defendant’s eldest daughter¹⁰. The
2 Complainant had told the Defendant’s eldest daughter in these terms:

3 *“I got to tell you something, but you can't tell anyone. You can't tell your mom or*
4 *your dad.”*

5 61. She said the Defendant’s eldest daughter replied to her “okay”.

6 62. The Complainant said she told the Defendant’s daughter:

7 *“...your dad touched me. He touches my...”*

8 63. In providing this evidence the Complainant said:

9 *“I never said vagina [when I was speaking to her] I said lulu, because that is what*
10 *we normally call it ...”.*

11 64. The Defendant’s daughter made it clear that she didn't at that stage believe her at all.

12 65. Her father, the Defendant, came to know about this.

13 66. The Complainant said the Defendant said why did you tell [--]¹¹ that I was touching
14 you and the Complainant said she gave him an explanation.

15 67. I mention the following at this point even though these are matters relevant only to the
16 sentencing exercise: I note that there is no dispute that the Complainant made this
17 allegation directly to the Defendant. Yet, even after that allegation had been made to
18 the Defendant, everything carried on as normal, that is, the Complainant calling the
19 Defendant, Daddy, and the incidents of indecency. That all continued as though that

¹⁰ Name provided in oral delivery omitted from this document to maintain the anonymity of all parties.

¹¹ Using his daughter’s name



1 sort of behaviour by a man at that age, towards a girl he viewed as his daughter, (aged
2 between seven 7 and eleven 11) had, in effect, become normal and had been
3 normalized. This, again, is concerning, to my mind.

4 68. In her second ABE, she largely repeated matters, referring again, (a) to the push-ups
5 and (b) to the Defendant rubbing two fingers on her vagina when showering. She
6 repeated this evidence often. She said this, “*like rub his two fingers on my vagina*”
7 when he dried her off. She said:

8 “*He was just like wipe my bottom and my vagina weirdly and he was different to*
9 *how my mom did it. It was more, rough.*”

10 69. She said the showering took place often – that is, both in the evening after school and
11 sometimes when her mum dropped her off very early before going to school.

12 70. She again referred to what I'm going to call “the push-ups” – referring to the 5th of
13 November. She said that she had gone home to change and have a shower. Then the
14 Defendant came knocking on the door. She let him in and he asked why she was
15 taking so long. He then lifted her up, took her to her mother's room, put her on the bed.
16 He then went on top of her and did the swaying backward and forward, (as she
17 described it, “push-ups”) up and down push-ups and forward and backward push-ups.
18 She said she tried to get up and he pushed her back on the bed.

19 71. The Defendant’s wife phoned to ask why they were taking so long. After a short while,
20 they both went back to the Defendant’s house.

21 72. She went on to describe something she hadn't mentioned in her first interview, namely,
22 that the Defendant had kissed her on a number of occasions, that is, kissed her vaginal
23 area. This led to one of the counts on the indictment.

1 73. Even after the incident, and the allegation had been made, the Defendant spoke to the
2 Complainant every day. That was normal. The Complainant said he communicated
3 with her either by a voice call or text. She said they would text every day or they would
4 talk every day.

5 74. In my judgement, looking at the Defendant's conduct over a period of years, the
6 Defendant was clearly grooming her. The incidents became more serious. He was
7 exploiting the Complainant from the age of seven (7) during her mother's working
8 hours. His position as, in effect, her father, was being grossly abused by him.

9 75. As I have already remarked: Worryingly, even after the complaints, the assaults, the
10 indecent assaults, continued as on prior occasions, as though, in the Complainant's
11 mind, this was normal behaviour.

12 76. When the Complainant was cross-examined by Miss Fosuhene, she was shown
13 photographs of the layout of the Defendant's house. She was taken through them, and
14 she agreed that the height of the faucet in the bathroom was within her reach. However,
15 she had given one of the reasons the Defendant came in as because she couldn't reach
16 the faucet it. Photographs 26 and 27 make it very clear the taps are considerably higher
17 than the actual faucet in both the showers.

18 77. The Complainant said that despite everything that happened to her, she still wanted to
19 see the Defendant's family. The daughters were her friends. She missed her "father",
20 that is, the Defendant. That is one of the great sadnesses of this case. The Complainant
21 agreed that the Defendant's household comprised very busy people coming and going
22 and staying.



1 78. It is clear that missing the Defendant's family, and the Defendant, are a measure of her
2 affection for the family as she told me that, even if her mother were to have been at
3 home, she would still like to go over to the Defendant's family. He treated her like a
4 daughter and the family treated her as one of the family. She says that when she was
5 naughty, she was sent home but was allowed to go back. She said she often would
6 sleep over.

7 79. As far as the 5th of November is concerned, the view of the defence is that it is slightly
8 odd that despite the Complainant having made these allegations of doing "pushups" on
9 top of her just prior to the 5th November event, she still wanted to sit next to the
10 Defendant at the 5th November event and made (my choice of words) "a fuss" when
11 she wasn't allowed to. And she described prior to going out, the Defendant doing the
12 press ups. She made it clear that there were two incidents - one at Defendant's house
13 and one at her house. As I have already remarked, I have found that, given her age, and
14 the time that has elapsed since these allegations, she was an impressive and credible
15 witness. This is even more so when I come to the reason, or the lack of reason, she
16 would have to make up these allegations.

17 **Evidence of the Complainant's Cousin**

18 80. The Complainant's cousin lived with the Complainant's family. The Complainant's
19 family's home and the Defendant's family's home were within close proximity¹².

20 81. The Complainant's cousin obviously had a sisterly relationship with the Complainant.



¹² The name of the street was presented in oral delivery but has been deleted from this document pursuant to the anonymity order.

1 82. The Complainant’s cousin remembers that it was about the 8th of November 2020, i.e. a
2 few days after the 5th November event, that the Complainant told her that the
3 Defendant had been touching her.

4 83. She was, even when she gave evidence about this, visibly shocked, when recounting
5 this incident. She said she was shocked at the time and shocked in remembering the
6 incident. She found it hard to conceive, knowing what the Defendant did to her and the
7 way the Defendant treated her as her daughter.



8 **Evidence of the Complainant’s Mother**

9 84. The Complainant’s mother had known the Defendant for over 20 years. She worked
10 hard. She was a single mother. The Complainant’s father had effectively abandoned
11 her, so she was bringing up the Complainant on her own. She worked shifts. First of
12 all, at [--]¹³ [on long and variable hours]¹⁴. She did that for 13 years and then she
13 worked at [two other large entities]¹⁵.

14 85. On the 8th of November 2020, when the Complainant’s mother had just returned from
15 overseas¹⁶ following a family bereavement, she was told by the Complainant what had
16 happened. The Complainant’s mother asked her why she hadn't said this before. The
17 mother said that the Complainant said this:

18 *“I didn't want the [him] to go to prison. I didn't want to see the [--]¹⁷ family*
19 *disintegrate.”*

¹³ The mother’s workplace/employers, which were stated in oral delivery of this judgment, has/have been deleted to preserve anonymity as ordered.

¹⁴ Description of her work schedule slightly changed from the version in oral delivery in order to preserve anonymity as ordered.

¹⁵ Entities were named in the oral ruling but deleted from this judgment to preserve anonymity as ordered.

¹⁶ Country named in oral delivery but edited from the document to preserve anonymity as ordered.

¹⁷ Surname of the family omitted as required for anonymity.

1 86. The mother said her daughter described the oral sex. She said he would suck on her
2 vagina.

3 87. Her mother, very sensibly, did not try to extract all the information from the
4 Complainant in one go. She said she did not ask her to “blurt it all out.” She said she
5 only asked her daughter to tell her what had happened when she felt comfortable. Little
6 by little, her mother said she kept opening up.

7 88. She confirmed the closeness of the relationship between the Complainant and the
8 Defendant’s family – conceding that even when she (the mother) was at home, the
9 Complainant would prefer going over to the Defendant’s family.

10 **Evidence of Mr. Cabana**

11 89. This witness examined the Complainant’s phone. There was nothing relevant and
12 certainly nothing pornographic in nature at all. Even if finding such material were to be
13 relevant, there was nothing of that nature on her phone.

14 **Evidence of DC Carty**

15 90. Detective Constable Carty was the police officer who arrested the Defendant.

16 91. Initially, the Defendant was happy to be interviewed without a lawyer, but then
17 changed his mind and once represented, he made a prepared statement¹⁸.

18 92. In his Statement, the Defendant was in complete denial.

19 93. He agreed that he would treat the Complainant like another daughter. His Statement
20 recorded:



¹⁸ Page 216 in the bundle of exhibits

1 *“I have never touched [the Complainant] inappropriately or sexually. I have a wife*
2 *and four children at home and to my recollection, I have never been alone with*
3 *[the Complainant] in our house. Without knowing more¹⁹, I cannot say why [the*
4 *Complainant] may have made this allegation. Sometimes my daughters and [the*
5 *Complainant] argue, and my daughters will say things to [the Complainant],*
6 *along the lines of ‘he’s my Dad, and not yours’. The Complainant’s father is not in*
7 *the picture, so she takes such comments personally.*

8 *There was a conversation in these terms last week and [the Complainant] was*
9 *unhappy about it. But other than that, I don’t recall [the Complainant] being upset*
10 *or unhappy last week. I would never hurt [the Complainant] and I have never*
11 *touched her vagina. I have never touched her indecently or improperly.”*

12 94. So, as far as the Defendant was concerned – based on his prepared Statement – there
13 was no issue that really sprung to mind as to why the Complainant would suddenly
14 make these allegations. Having made that prepared statement, he was asked a number
15 of questions by the police officers.

16 95. As I have already indicated above, in my view, the Defendant’s failure to mention any
17 matters in interviews should not be held against him - taking into account the
18 circumstances of this case, his prepared statement, and, the lack of detail about the
19 allegations at the time of his interview, as well as other matters related to the
20 defendant, namely, that he was represented by this stage. Therefore, I do not think it
21 fair or proper to draw any adverse inference against the Defendant for failing to answer
22 those questions, and I do not do so. He was perfectly entitled to, having made his
23 prepared statement, make no further comment.



¹⁹ Referring to the nature of the allegations



1 *The Defendant's Viva Voce evidence*

2 96. I now turn to the Defendant and his evidence.

3 97. He is now 42 years of age. He has four (4) children; three (3) are with his current wife
4 and, his eldest child was with a former partner.

5 98. The Defendant was soft-spoken throughout his evidence.

6 99. I have previously remarked that he is of good character and that that goes, firstly, to
7 credibility and secondly, to propensity, that is, the likelihood that he would have
8 committed offences as alleged.

9 100. He first worked for a number of years in one field. For the past 12 years he has worked
10 in another.

11 101. He also worked long hours, 12-hour shifts. In respect of his work, there had been no
12 complaint at all.

13 102. It is somewhat surprising, in my view, that, even when pressed, the Defendant could
14 not remember one way or the other whether he had ever helped the Complainant
15 shower in any bathroom in his house. Even when “the age of 7 onwards” was
16 referenced, he could not recall ever helping her shower.

17 103. Given these allegations, I find it extremely difficult to believe that the Defendant could
18 not remember whether he had or had not showered/helped the Complainant shower at
19 any stage.

- 1 104. He denied indecently assaulting her. He denied all sex. He denied any indecency
2 towards the Complainant. In relation to the description “press ups” – he said that never
3 happened at all.
- 4 105. As far as the 5th of November 2020 incident is concerned: The plan was for them all to
5 go to [a restaurant]²⁰. In the afternoon, he had picked all the children up from school,
6 including the Complainant. At 15:49, he paid money into a bank in George Town. He
7 then went to *Priced Right* near to the airport, and he said he was home by 4:15. His
8 wife arrived home at 5 o'clock. His wife told The Complainant to go to her home and
9 get changed. Without telling his wife, he went to the Complainant’s house a few
10 moments later. She had changed but hadn't showered.
- 11 106. It is the Defendant’s evidence that the Complainant asked him to get her some panties
12 from the drawer. I find this odd.
- 13 107. The Defendant's wife then telephoned to ask “What's keeping you? Why are you taking
14 so much time?” And so they went back to the Defendant’s house. The Defendant’s
15 wife then sent the Complainant back to have a shower and the Complainant duly
16 returned, showered and changed.
- 17 108. The Defendant’s evidence is that, at the special event on that day, the Complainant was
18 cross because she couldn't sit next to him.
- 19 109. The Defendant said that the daily messages between them continued as normal and
20 carried on after the Complainant made the complaint.

21



²⁰ The name of the establishment was used in oral delivery of the judgment.

1 110. I found the Defendant to be an unimpressive witness. He failed to remember important
2 details and he remembered other matters which have never been suggested to the
3 Complainant when she gave evidence, and he continued despite my ruling, to seek to
4 introduce matters about the Complainant’s promiscuity.

5 111. The Defendant’s evidence is that he could not think, despite him searching his
6 memory, of any reason at all for the Complainant to make these allegations.

7 112. These allegations must have come to the Defendant as a hideous shock yet, his routines
8 in relation to the Complainant – including the daily messages etc. – carried on exactly
9 as they had before. I find that completely extraordinary.

10 **Evidence of Mrs. ‘M’**

11 113. She came to Cayman in 2013 and lived for one year with the Defendant’s family
12 adding to the already busy household.

13 114. She said that the Complainant would come round on a daily basis.

14 115. She described the Defendant as being very caring towards the Complainant - treating
15 her as he would any of his other children.

16 116. After Mrs. ‘M’ ceased living with the Defendant’s family, she, Mrs. ‘M’ still spent a
17 very considerable amount of time at the Defendant’s house.

18 117. She could never remember the Complainant showering at the Defendant’s house at all.
19 She said initially that the Complainant had never showered at the Defendant’s house
20 and then said: “*I can’t remember whether she did or not*”.



1 118. Given that it was in effect agreed evidence that the Complainant did in fact shower
2 frequently at the Defendant's house, Mrs. M's evidence on this point was, for me,
3 significant.

4 119. Mrs. 'M' later said that because there were times when she (Mrs. 'M') was not there at
5 the Defendant's house, she was unaware of whether the Defendant was showering the
6 Complainant. She also had no idea why the Complainant was making the allegations.

7 **Evidence of Ms. 'MM'**

8 120. This witness said she was a very frequent visitor to the Defendant's house – as she
9 would go there three times a day, that is, in the morning between 8:30 and 9:00; again
10 at 12:30 and then finally after work. The witness said the Complainant was often there.

11 121. She described the Complainant as being an intelligent child – adding that the
12 Complainant would like to control friendship²¹.

13 122. She agreed, as is obviously the case, that the Defendant treated the Complainant as his
14 daughter.

15 123. This witness said she never saw the Defendant being alone with the Complainant.

16 124. She confirmed that throughout, the Complainant always called Defendant 'Daddy' –
17 and this must be even after the allegations had been made. She said the Complainant
18 was always obviously pleased to see him.

19 125. She said she never saw the Defendant alone with the Complainant.



²¹ The witness was not asked anything further about this.

1 126. All in all, I found, I regret to say, this witness to be another unimpressive witness. This
2 is because, despite the fact, she had been friends with the Complainant's mother for
3 over twenty (20) years, this witness, Mrs. 'MM', never at any stage, told the
4 Complainant's mother of the allegations. I find this hard to reconcile in the extreme.

5 **Evidence of the Defendant's wife**

6 127. The Defendant's wife was the last witness called on behalf of the Defendant.

7 128. Again, I regret to say that at times, she was evasive. I am firmly of the view that she
8 was not trying to help the Court, but rather was seeking to further her husband's case
9 and his interests.

10 129. The Defendant's wife said that as far as she was aware, and bearing in mind she was
11 out of the house for considerable periods of time, the Defendant was never alone with
12 the Complainant.

13 130. On the 5th of November, unbeknownst to her, her husband had gone with the
14 Complainant over to her house to change for the party. She confirmed that she phoned
15 to enquire, "What's taking you so long?" She said that "two or three minutes later", the
16 Complainant and her husband returned.

17 131. The Defendant's wife confirmed that the Complainant was changed but not showered,
18 so she sent her back to her house and she (the Complainant), returned, having
19 showered as well.





1 132. I pause, for a minute: The Defendant’s wife did not know at first that her husband was
2 going over with the Complainant to her house. She did not know why he had gone and
3 she did not know any reason why her husband had gone. However, as far as the
4 Defendant’s wife was concerned, the motive finally emerged – that is, that the
5 Complainant’s allegations were a continuation of what had been mentioned by the
6 Defendant in his prepared statement more graphically: This is that the Defendant’s
7 daughter, a few days before the 5th November event, had told the Complainant, “*He’s*
8 *not your daddy. Find your own father*” and the Complainant was upset. So, it was only
9 then (i.e. after the 5th November event), because she, the Complainant, was upset about
10 the “not-your-daddy” incident, that the Complainant told the Defendant’s daughter
11 what he'd done.

12 133. The Defendant’s wife confirmed the times ‘MM’ was at the house.

13 134. The Defendant’s wife was naturally extremely protective towards her husband but
14 when she was pressed, i.e. about what had happened on the 5th of November, she was
15 unimpressive.

16 135. Turning back to the motive.

17 136. I appreciate that the defence do not have to identify a reason for an allegations to be
18 made or the prosecution do not have to show a motive. But it is sometimes helpful in
19 assessing the evidence as a whole and the Complainant’s evidence.

20 137. As I have already remarked, the undercurrent of sexual promiscuity kept rearing its
21 ugly head. However, this seemed to me to be extraordinarily dangerous ground for that
22 line to be pressed, as ‘consent’ was not, and could not, ever be an issue.

1 138. When the Defendant's wife gave evidence, she said this: It stemmed from a row when
2 her daughter told the Complainant to find her own daddy and that the Defendant was
3 not her daddy - i.e. not the Complainant's daddy.

4 139. The problems with that are these:

- 5 i. Firstly, the daughter never gave evidence. She would be 14 years old or so.
- 6 ii. Secondly, the mother's evidence about what the daughter said had happened is
7 hearsay.
- 8 iii. Thirdly, the Defendant didn't deal with it, and it would be inconceivable that he
9 would be unaware of the detail of what had been said. This was only mentioned in
10 passing in his prepared statement.
- 11 iv. Fourthly, this allegation (that she, the Complainant, was upset about the not-your-
12 daddy incident) was never put to the Complainant. If it really was being suggested
13 that this was the trigger, then it would have been put to the Complainant, but it
14 wasn't.



15 140. I also consider the following:

- 16 i. Why would the Complainant be making up false allegations against the Defendant,
17 which will deprive herself of the only father she has ever known. I pause and
18 reflect for a moment on the significance of that.
- 19 ii. Additionally, after this alleged "not-your daddy" incident, the Defendant's contact
20 towards the Complainant, and *vice versa*, did not change one jot. The texts, etc.
21 continued unchanged.



- 1 141. This “motive” does not, even on a cursory examination, stand up to any form of
2 scrutiny at all and to my mind, it carries absolutely no weight at all.
- 3 142. I have reviewed and considered the evidence and applied the law, as I have set out.
- 4 143. I have examined the facts, as I find them to be proved.
- 5 144. I have no doubt at all that, from the Complainant was age 7 and onwards, the
6 Defendant indecently sexually assaulted the Complainant and committed an act or acts
7 of gross indecency towards her. Touching her after showering, licking her vagina and
8 doing “press-ups” above her, while she was lying down, which were increasing in
9 seriousness.
- 10 145. All this leads to the inevitable conclusion, in my mind, as the judge of the facts, that
11 the Defendant was grooming the Complainant.
- 12 146. The underlying current of promiscuousness against the Complainant is utterly
13 irrelevant to this case, in light of her mother's account.
- 14 147. I remind myself that I should consider each count separately. I have done this.
- 15 148. As I have announced, I am quite sure that the proper verdict on each of the seven
16 counts is that of guilty.
- 17 149. I have adjourned this case now for a pre-sentence report. I have granted the Defendant
18 bail subject to the same conditions as it would be unfair if bail were not extended -
19 despite the inevitability of a significant custodial sentence for these offences. The
20 upcoming period on bail makes it easier for the Defendant to put his affairs in order
21 prior to sentencing and to engage in the process of the preparation of the pre-sentence
22 report.

