



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

3 **INDICTMENT No. 68 of 2022**

6 **R**

8 **V.**

10 **NICHOLAS RAMEISH NUGENT**

13 **Appearances:** **Ms. Sarah Lewis, Crown Counsel, Office of the Director of**
14 **Public Prosecutions for the Prosecution**

16 **Mr. Crister Brady of Brady Attorneys-at-Law for the Defence**

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

20 **Trial Heard:** **4th January to 6th January 2023**

22 **Verdict Judgment:** **28th April 2023**

26 **HEADNOTE**

28 ***Criminal Law -Indecent Assault contrary to Section 132 of the Penal Code (2019 Revision), Burglary***
29 ***contrary to Section 243 of the Penal Code (2019 Revision), Trial by Judge Alone***



VERDICT JUDGMENT

PREAMBLE

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

“Anonymity of complainants in rape etc. cases:

“31. (1) After a person is accused of a rape offence, no matter likely to lead members of the public to identify a woman as the woman against whom the offence is alleged to have been committed shall be published in a written publication available to the public or be broadcast, except as authorised by a direction of the court.

(2) ...

(3)

(4) ...

(5) If any matter is published or broadcast in contravention of subsection (1), the following persons —

(a) *in the case of a publication in a newspaper or periodical, the proprietor, editor and publisher of the newspaper or periodical;*

(b) *in the case of any other publication, the person who publishes it;*

(c) *in the case of a broadcast, any person having functions, in relation to the programme in which it is made, corresponding to those of an editor of a newspaper,*

commit an offence and are each liable on summary conviction to a fine of one thousand dollars.”

2. For the avoidance of doubt: It is the Court’s view that the charges against this defendant, based on the particulars of the offence, fall within this section of the law by virtue of the use of the word “etc.” and therefore I order that there be no identification of the complainant in this case.



1 3. In pursuance of the section, this Judgment has been anonymized to protect the identity of the
2 complainant.

3
4 **THE INDICTMENT**

5
6 4. The defendant, Nicholas Rameish Nugent is charged on Indictment 68/2022 with two offences.
7 Count 1 charges him with the offence of Indecent Assault contrary to s.132 (1) of the *Penal Code*
8 (2019 Revision). The particulars are that he on the 31st day of October 2021 at an address in
9 West Bay, Grand Cayman indecently assaulted [X], a woman over the age of sixteen by pulling
10 off her underwear and licking her vagina.

11
12 5. Count 2 charges him with the offence of Burglary contrary to s.243 (1) (b) of the *Penal Code*
13 2019 Revision. The particulars are that he on the 1st day of November 2021 entered the premises
14 of [X], namely the said address, as a trespasser and having entered the premises as a trespasser
15 inflicted on [X], grievous bodily harm.

16
17 6. The defendant first appeared before the Grand Court on the 16th September 2022. He was
18 arraigned on the 30th September 2022. He pleaded not guilty to the Indictment. He elected trial
19 by judge alone in accordance with s.129 of the *Criminal Procedure Code* (2021 Revision). The
20 trial took place over three days between the 4th and 6th January 2023.

21
22 **APPLICABLE PRINCIPLES- JUDGE ALONE TRIALS**

23
24 7. In approaching this case this Court is guided by the Court of Appeal judgment in the case of *K.*
25 *Richards v. R*¹. in which the Appellate Court stated:-

26
27 *“When a trial judge sitting alone has advised himself of the applicable principles of law*
28 *and given himself any necessary warning, he must indicate clearly in his judgment his*

¹ 2001 CILR 496, paragraph 32



1 *reasons for acting as he did, in order to demonstrate that he has acted with the requisite*
2 *degree of caution in mind and has therefore heeded his own warning. No specific form of*
3 *words is necessary for this demonstration. “What is necessary is that the judge’s mind*
4 *upon the matter be clearly revealed”*: see *R. v. Simpson (15)* ([1993] 3 LRC at 641, per
5 *Downer, J.A.).”*
6

7 8. The Appellate Court indicated its adoption of the principles of law as stated in the cited cases and
8 considered that a judge sitting alone is required to provide a reasoned judgment in the case and
9 to demonstrate in so doing an understanding of the following:-
10

11 i) The importance of fully articulating the legal principles which apply to the
12 particular case before the Court;

13 ii) The importance of warning himself in relation to any special category evidence;

14 iii) The necessity to set out the evidence on which he intended to rely for his decisions;

15 iv) Specifically, and specially determining ultimate facts from that evidence and
16 drawing inferences therefrom; and
17

18 v) coming to a conclusion and judgment based on his ultimate findings of fact and
19 the applicable rules of law.
20

21 9. Additionally in the case of *R. v. Dave Kennedy Whittaker*², the Appellate Court referred with
22 approval to the decision of the Court of Appeal in Northern Ireland from a decision of a judge
23 sitting alone, and stated: -
24

25 “50 In *R. v. Thompson*³ (11), Lowry, L.C.J., giving the judgment
26
27
28

² [2010] (1) CILR 29

³ ([1977] N.I. at 83);



1 “While on the subject I might say a word on the duty of the judge when giving judgment
2 in a trial under the 1973 Act. He has no jury to charge and therefore will not err if he
3 does not state every relevant legal proposition and review every fact and argument on
4 either side. His duty is not as in a jury trial to instruct laymen as to every relevant
5 aspect of the law or to give (perhaps at the end of a long trial) a full and balanced
6 picture of the facts for decision by others. His task is to reach conclusions and give
7 reasons to support his view and, preferably, to notice any difficult or unusual points of
8 law in order that if there is an appeal, it may be seen how his view of the law informed
9 his approach to the facts.””

- 10
- 11 10. This case is approached and considered with these principles in mind. The Court’s task is to make
12 findings, to give reasons in support of those findings and to address any areas of law which apply.
13 It is not necessary to detail every fact in the case or all the arguments as would be the case in a
14 jury trial.

15

16 **PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF**

- 17
- 18 11. The presumption of innocence is enshrined in s. 7 of the *Cayman Islands Constitution 2009*.
19 This provides: -

20

21 “7. - (1) Everyone has the right to a fair and public hearing in the determination of his
22 or her legal rights and obligations by an independent and impartial court within
23 a reasonable time.

24 (2) Everyone charged with a criminal offence has the following minimum rights -
25 (a) to be presumed innocent until proved guilty according to law.”

- 26
- 27 12. In criminal trials the applicable rule is that the burden of proof is on the prosecution to prove its
28 case to the required standard, which is so that the judge or jury feels sure of a defendants’ guilt
29 before there can be a conviction. That burden remains on the prosecution from the beginning and
30 throughout a case and does not shift. There is no burden on the defendant to prove his innocence.



1 13. I bore these considerations firmly in mind throughout this case, as I listened to the evidence for
2 the prosecution and the defence and as I considered the verdict.

3
4 **ELEMENTS OF THE OFFENCES**

5
6 14. Section 132 (1) of the *Penal Code* provides that it is an offence for a person to make an indecent
7 assault on a woman.

8
9 15. The prosecution must prove that: -

10
11 i) The defendant intentionally assaulted the complainant;

12
13 - In this case, assault simply means an act by which a person intentionally
14 applies unlawful force to another person, however slight.

15
16 - Intentionally meaning that the touching was deliberate, the
17 defendant intended to and did touch the complainant.

18
19 ii) That the assault or the assault and the circumstances accompanying it, are
20 capable of being considered by right minded persons as indecent.

21
22 iii) That the defendant intended to commit such an assault, i.e. one that is
23 indecent.

24
25 iv) The defendant did not believe that the complainant was consenting to the
26 touching.



1 16. Section 243. (1) of the *Penal Code* provides that: -

2
3 (1) A person who — (a) enters any building or part of a building as a
4 trespasser and with intent to commit any such offence as is mentioned in
5 subsection (2) commits the offence of *Burglary*.

6
7 17. The offences mentioned in subsection (2) include inflicting or attempting to inflict on any person
8 therein any grievous bodily harm.

9
10 18. The prosecution must prove the following elements: -

11
12 i) The defendant entered a building or part of a building. Entry may be of a part of
13 his body. See the case of *Brown*⁴.

14
15 ii) The defendant entered as a trespasser, meaning that he either knew that he did
16 not have permission to enter or was being reckless as to whether he did.

17
18 iii) Having entered the defendant committed the offence of Inflicting Grievous
19 Bodily Harm.

20
21 19. For the offence of Inflicting Grievous Bodily Harm, the prosecution must prove that: -

22
23 i) The defendant used some unlawful force on the complainant;

24 ii) When the defendant did so the defendant was acting ‘maliciously’. meaning
25 either that the defendant: -

26 (a) intended to cause the complainant some injury, however slight; or

27 (b) was aware of a risk that he might cause the complainant some injury,
28 however slight; but took that risk; and

⁴ [1985] Crim L. R. 212



1 iii) In the event the defendant caused the complainant to suffer a
2 wound/grievous bodily harm (which means ‘really serious injury’).

3
4 **SUMMARY OF THE CASE**

5
6 20. The defendant and the complainant met for the first time about three weeks before the alleged
7 incidents. Over the period of time, they developed a friendship. The defendant visited the
8 complainant at her home where they would sit and talk in his car. They went out on one dinner
9 date together. On the prosecution’s case, during the night of the 31st October 2021, he asked
10 whether he could visit her to say good night. She agreed. When she came home from an outing
11 sometime after 10:00pm, he came to her home. They were speaking to each other just outside the
12 front door of that home. The defendant asked for sexual activity. The complainant said no. The
13 defendant persisted and pushed her into the apartment and on to the couch. He removed her
14 clothing and licked her vagina. She pushed him off and said that she was going to bed.

15
16 21. On the defence case, the complainant sent him a message inviting him to her home for sexual
17 activity. He went to her home, and they proceeded consensually until the tenant at the home
18 opened his door. The complainant said that they had to stop and that she would see him the
19 following day.

20
21 22. With respect to Count 2, on the following day, the 1st November 2021, they had arranged that he
22 would take her to the doctor at about 1:00pm. On the prosecution’s case, he began calling her
23 from about 10:00am that day. There were multiple missed calls. She answered one of those calls
24 and he said that he wanted to come over to finish what he had started. She said no and blocked
25 his calls thereafter. She was upstairs in her apartment when something was thrown at her window.
26 She came downstairs, leaned over the sink, and opened the kitchen window. She saw the
27 defendant standing outside in the rain. She asked him to leave, or she would call the police. He
28 asked who was in there with her and kept on asking this.



1 23. He removed the mesh from the window, leaned in through the window, half his body was inside,
2 and he grabbed her. She took up a knife with her left hand to defend herself. He was trying to get
3 the knife out of her hand. He grabbed her dress and tore it. They were wrestling. She was trying
4 to push him out of the apartment. Three of the fingers of her left hand received cuts.

5
6 24. On the defence case the defendant was calling her out of concern because of the situation which
7 she faced with her housemate. He stopped by her home and there was no answer. After he threw
8 slippers at her window, she came downstairs and was upset and angry. She told him to go home
9 because they had said 1:00pm. She got upset, pulled out a knife and threatened to call the police
10 if he did not leave. He was asking her if someone else was there. He was there talking to her, and
11 she got really upset. He was trying to calm her down and she pulled the knife and stabbed him.
12 He held her shirt to try to use one hand to get the knife but was not successful in getting it from
13 her. He left because he could not get it from her. He did not deliberately tear her dress or burst
14 her necklace. He did not push his body halfway through the window and he was not aware that
15 she had received injuries.

16
17 **EVIDENCE AT TRIAL - THE CASE FOR THE PROSECUTION**

18
19 ***EVIDENCE OF THE COMPLAINANT***

20
21 25. The complainant gave evidence that she first met the defendant in early October 2021 in the car
22 park of the Foster's supermarket in West Bay. She had bought some groceries and had trouble
23 with lifting the water which she had bought. She has Carpal Tunnel Syndrome which led to her
24 having an operation on her right hand. A second operation was needed on her left hand. She saw
25 the defendant passing and asked him to help her. He was not known to her at the time. He assisted
26 her and they exchanged numbers because he also offered to help her unpack the groceries when
27 she got home. She called him back afterwards and told him that she already had help when she
28 arrived home.



1 26. From this meeting, they started having conversations and exchanging text messages. During the
2 month they would see each other because he lived in the same district. He would ask if he could
3 visit her and say hi. He had been to her house and knew where she lived. He took her on a date
4 to dinner. The relationship between them was at the stage of getting to know each other. The
5 complainant said that she was not ready for certain things. She would say it was a friendship.
6 Nothing had happened physically between the two of them.

7
8 27. On the 31st October 2021 about three weeks after they met, the complainant went out for drinks
9 with her sister and the defendant kept sending messages asking her if she was home. He asked if
10 he could visit and said that he just wanted to see her to say good night. He told her that he was a
11 security guard and that he was at work at the time when he asked. She said that at first, she was
12 hesitant when he asked to come over, but he insisted, and she agreed and said fine if it is just
13 good night. She got home sometime after 10:00pm that night and he arrived there shortly after
14 that. When he arrived, he hugged her, and they were talking at the door to her apartment. They
15 were not talking for long when she said that she was going to bed. She did not invite him in. He
16 asked her if he could have oral sex before he left. She said no. She was surprised at his question
17 and kind of angry inside. She had not done that with him before. He kept on asking and eventually
18 came inside the house. She had a couch there. He pushed her down on the couch and pulled
19 down her underwear. She said that she pushed him off and said good night that she is going to
20 bed and would talk to him tomorrow. He started licking her vagina and she pushed him off at the
21 same time and said that she was going to bed. She said that she felt bad when this was happening,
22 because she was not ready for that. The defendant did not respond in any way. He left and she
23 then went to bed.

24
25 28. She said that the next day she saw missed calls from the defendant. At about 10:00am she
26 answered a call from him, and he asked if she was home and she said yes. He asked if he could
27 finish what he started. She said that she started cursing and said no. She started cursing because
28 she was not ready for that, and she was still upset from the night before. After she cursed at him
29 on the phone he kept on calling. She blocked the number. Then she saw an unknown number
30 calling. She did not answer the call.



1 29. She saw something thrown at her window. She rushed downstairs and saw the defendant by the
2 kitchen window outside standing in the rain. He was wearing a hooded shirt. The window was
3 locked at the time. She felt afraid when she saw him. She opened the window slightly and asked
4 what he was doing there. She told him that if he did not leave, she was going to call the police,
5 but he kept on asking who was in there with her. She said that she was going to call the police.
6 He pulled out the mesh out of the window and pushed up the window more. He was trying to
7 come through it.

8
9 30. She said that the window is a sash window. The sink is in front of the window and she was
10 standing in front of the kitchen sink. He grabbed her when he was halfway through the window
11 and she took up a knife with her left hand. The knife was in a drainer at the side of the sink. She
12 picked up the knife to try to defend herself because he seemed angry and kept on forcing himself
13 through the window. She had not given him permission to come through the window into her
14 property.

15
16 31. She said that the defendant was trying to get the knife out of her hands. He grabbed her night
17 dress at the top part and tore it. He held onto her two necklaces that she was wearing around her
18 neck and pulled them off. They were broken. There was tussling between them for about three to
19 four minutes. She is not quite sure whether he was also holding her. She tried grabbing his face
20 and also tried pushing him. Her intention was to get him back out through the window. She does
21 not know what happened to the knife. She just saw blood spraying from her left hand and saw
22 three of her fingers fall back. She is not able to say how the knife cut her hand. At the time she
23 thought that her fingers were broken. The defendant ran and then she got hold of her phone and
24 called the police. Police officers attended shortly thereafter. She was taken to the hospital where
25 she had surgery to repair the tendons in her fingers and further surgery on 15th February 2022.
26 She has had issues with her hand since then. Her fingers are still not straight. They are still
27 swollen, and she is in pain.

28
29 32. She identified photographs showing the blood from her cuts on the floor in the kitchen, the
30 kitchen area, the window through which the defendant had come and her two broken necklaces



1 on the floor⁵. Photographs taken by her of the injuries to her hand were received in evidence as
2 Exhibit 1.

3
4 **CROSS-EXAMINATION**

5
6 33. In cross-examination, the 911 recording of the call that was made by her was played. On that
7 call, she could be heard saying that someone had just broken her finger and a male could be heard
8 saying that help was needed now.⁶

9
10 34. The complainant said that she made the 911 call first and then someone assisted her. This was
11 not her housemate. She agreed that she had given the statement three weeks after the incident.

12
13 35. Defence Counsel produced a recording of a lengthy conversation between the witness and the
14 defendant.

15
16 36. The witness was heard saying in part: -

- 17 - *“The finger was not broken.*
18 - *X ray them say is a knife cut it, three fingers a small cut on them did a great deal of*
19 *damage.”*

20
21 37. The defendant was heard saying:

- 22 - *“Man- you tell me you single and you don’t single.*
23 - *nothing won’t stop me from come see you.”*

24
25 - *you know you stab me.*

26 Ans - *No*

- 27 - *All now I don’t know what happened I get call to the station Monday pertaining to*
28 *the incident.”*

⁵ Exhibit bundle pages 46 to 51

⁶ Exhibit 8 – 911 Transcript



- 1 38. There was a discussion about money for surgery and seeing the doctor.
2
- 3 39. The witness agreed that the conversation took place sometime after the incident and that this was
4 before she gave the statement to the police. She said that in the conversation she was frustrated
5 that she could not talk with the defendant after the incident. She said that they were not enemies,
6 so they talked. They were good friends. The defendant was probably her closest friend. She
7 agreed that they had several conversations, video calls and messages before and after the 1st of
8 November 2021.
9
- 10 40. She was shown pictures of a number of messages which they had exchanged. She agreed that
11 some calls had been initiated by her.
12
- 13 41. She agreed that there were a number of conversations between them and identified pictures of
14 them. These included conversations about her daughter and requests from her for him to help her
15 work on her fingers as the doctor suggested. She said that she asked him because her sister was
16 afraid to touch them. She said that she stopped asking him because he did not help. There were
17 pictures of him with her daughter and of him giving her flowers before and after the incident and
18 of the night in October that they went out on a date. Image 28 was a video of her opening a gift
19 and the defendant saying that he hoped she liked it. This was on the 17th November 2021 after
20 the allegations and before she gave her statement to the police. She agreed that they had sexual
21 intercourse on that day.
22
- 23 42. She said that she did not recall sending the defendant a message on the 31st October 2021 in
24 which she said that she had said to him that she felt like having sexual activity.
25
- 26 43. She denied that a discussion which they had had on the 14th December 2021 in which consensual
27 sexual activity was discussed related to the incident on the 31st October 2021 about which she
28 had complained. She said that the defendant had been arguing with her about her house mate and
29 that she was asking him to help her with physiotherapy and her medical bills. She had said in a
30 message that she did not intend to send him to prison.



- 1 44. She accepted that before she gave the statement to the police and after the incident they were in
2 a sexual relationship. She agreed that in her witness statement to the police she had said that she
3 was not and had never been in a relationship with him. It was suggested to her that this was
4 clearly not true. She said that for her this was not a relationship. Sexual intercourse only
5 happened once.
6
- 7 45. She said that before the 1st November 2021 they had made arrangements for him to take her to
8 the doctor at about 1:00pm that day. She said that she blocked his number after the phone call in
9 which he said that he wanted to finish what he started. She told him not to bother, she would go
10 to the doctor by herself.
11
- 12 46. She denied that she had previously discussed with him that her sister would throw stones at her
13 window and that she had told him to do that. She said that she was not happy to see him and had
14 not invited him to the house.
15
- 16 47. She said that she opened the kitchen window by lifting it up in order to speak to him. The blind
17 was already up. She did not agree that if she did not want to speak to him, she could have left
18 the window closed.
19
- 20 48. It was suggested to her that his presence at her home at that time was inconvenient. She replied
21 that it was. She did not invite him there, but she did not have anyone with her in the house.
22
- 23 49. She said that she was not interested in what he wanted to come to do that morning, so she ignored
24 the calls.
25
- 26 50. She said that there is no counter between the window and the sink. The window is partially over
27 the sink and counter. The estimated height is about 2 ½ to 3 feet. The defendant was the one who
28 pushed out the mesh. He took it out and was halfway through the window. She said that she does
29 not know how the defendant got cut. They were wrestling. He tried to take the knife out of her
30 left hand. She said it was a fight. She was not crazy to cut herself on the hand which she was to



1 do surgery on. She did not recall that at some point her left hand hit the wall or if it was possible
2 that it did.

3
4 51. She disagreed with the suggestion that at no point did the defendant try to come through the
5 window and he was always standing outside. She maintained that he was halfway through the
6 window trying to get inside. He did not ask her if she was upset, he kept on asking if someone
7 was there with her. She kept on asking him to leave her house. She said that they had been good
8 friends up to that point.

9
10 52. She did not agree that she was the instigator of the encounter. She said Counsel had sent him to
11 her because it did not look good for him. She said that the defendant should pay because if he did
12 not come to her house unannounced, tear off her clothes, “pop off her necklace”, she would not
13 take up a knife to defend herself. She said that she did not want his money. She has her own
14 things.

15
16 53. She said that on her way to the hospital the last message he sent to her was not to send him to
17 prison because he is the breadwinner for his family. She did not agree that when she picked up
18 the knife, he was telling her to calm down and that he tried to take the knife from her.

19
20 54. She said that she continued to speak to him after this because he caused her family to convince
21 her to drop the case against him. She said that she was taking medication at the time which caused
22 memory problems and that she has stated what she remembers.

23
24 55. In re-examination she said that her family is very forgiving. They told her to drop the case because
25 he was sorry, and he seemed sincere to them. Her sister wrote a letter to the police to say that the
26 complaint was going to be dropped. She said before the sexual relationship she was trying to
27 forgive him and every time she asked for help with physiotherapy, he said that he was bringing
28 money to her. She was not aware that the conversation which was played in Court was being
29 recorded.

30



1 56. In answer to a question from the Court, she said that she did not remember how she got from the
2 door to the couch on the 31st October 2021.

3

4 ***EVIDENCE OF PC DAVID PEDDIE***

5

6 57. PC David Peddie testified that he was on duty at the West Bay Police Station on the 31st October
7 2021. He received a report and together with PC 124 Ramsend he attended the home of the
8 complainant at 10:52am. He saw and spoke with her and noticed that her left hand, which
9 appeared to be injured was wrapped in cloth and there was blood all over the apartment on the
10 floor of the kitchen and the hallway. He took photographs of the location. These were produced
11 as Exhibit 3⁷.

12

13 58. He said that her clothing, a night gown, appeared to be disheveled as if she was in a physical
14 altercation. He contacted the defendant who attended the station at 11:53am. When the defendant
15 was cautioned, he replied “please sir just give me a chance”. He was transported to the detention
16 centre where he was interviewed. The recording of the interview was produced as Exhibit 4 and
17 the transcript as Exhibit 4a.

18

19 59. In cross-examination PC Peddie said that he remembered that in the interview he asked the
20 defendant to speak up because he was soft spoken. When cautioned, the defendant did say please
21 sir can you give me a chance. It is not possible that he said please give me a chance to explain.
22 He made a record of what the defendant said in the Police Record Management System (RMS)
23 about two hours thereafter.

24

25 60. PC Peddie said that he took photographs of the inside of the complainant’s kitchen window. He
26 did not take photographs of the outside. He was shown one of the photographs which he had
27 taken, DP7, and said that he is not able to say whether the photograph is exactly the same as when

⁷ Page 46 to 51 of the bundle



1 the incident occurred. He agreed that the lower window was halfway closed. He said that he did
2 not move the window up or down while he was there. He did not recall seeing blood anywhere
3 on the counter. He agreed that it is fair to say that if there was blood on the counter, he would
4 have taken pictures of it. He estimated the distance from the edge of window to the edge of the
5 counter as approximately three feet. The distance from the surface of the counter up to where
6 the windowpane meets the base is two rows of tiles so about fifteen inches. He said that the
7 information from 911 was that there was a domestic disturbance at the location and that a female
8 was injured. He said that at no point was a suggestion of a burglary made to him.

9
10 61. He was told by the complainant that the defendant had removed the mesh from the window. He
11 does not know if in fact any mesh was removed or was on the outside.

12
13 62. In re-examination he said that the defendant was bailed not to contact the complainant directly
14 or indirectly, also to stay fifty yards from her address. From the RMS record the 911 call was
15 made at 10:42 am and he arrived there at 10:52 am.

16
17 ***EVIDENCE OF DR. MATTHIAS HERZIG***

18
19 63. By agreement the statement of Dr. Matthias Herzig dated 6th December 2022 was read into
20 evidence pursuant to the ***Evidence Act***. Five photographs taken by him of the complainant's hand
21 were received in evidence as Exhibit 5.

22
23 64. Dr. Herzig states that he was working at the George Town Hospital on Monday the 1st November
24 2021. He examined the complainant and found that she had sustained injuries to her hand. He
25 states: -

26
27 *"I found that she had sustained severe injuries with complete / subtotal lacerations of the*
28 *left flexor digitorum superficialis and profundus tendons of the middle finger, ring finger*
29 *and little finger with postoperative occurrence of flexion contractures of the left ring and*
30 *left little finger.*



1 *In my professional opinion, the injuries sustained by Ms. Lewis are consistent with being*
2 *caused by a sharp blade-like instrument.*

3
4 *Following my initial assessment, Ms. Lewis underwent six (6) hours of surgery under my*
5 *care later the same evening to repair all six (6) tendons. She was then kept in for*
6 *observation and discharged the following day.*

7
8 *During the aforementioned operation, I took six (6) coloured photographs of Ms. Lewis's*
9 *left hand that I now produce as **Exhibits: MFH/1, MFH/2, MFH/3, MFH/4, MFH/5 and***
10 ***MFH/6.***

11
12 *Due to adhesions occurring after the first surgery, on the 15th of February 2022, Ms. Lewis*
13 *underwent revision surgery under my care consisting of adhesiolysis of the FDS (Flexor*
14 *Digitorum Superficialis) and FDP (Flexor Digitorum Profundus) tendons of the left ring*
15 *finger and the left little finger. After surgery, the patient received multiple wound dressing*
16 *changes, physiotherapy (ongoing, but hampered by financial constraints / limited*
17 *insurance coverage).*

18
19 *Following her discharge later the same day, Ms. Lewis was to attend clinical follow-*
20 *appointments on the following dates: 9th April 2022, 19th May 2022, 21st May 2022, 14th*
21 *June 022, 30th July 2022 and 22nd September 2022. She also scheduled for a further follow-*
22 *up appointment in mid-December 2022.*

23
24 *Considering the extent of her hand/finger injuries (in total six lacerated flexor tendons),*
25 *surgical treatment and physiotherapy have led to a very good outcome. However, Ms.*
26 *Lewis is still dealing with weakness and lack of grip of strength in her left hand. It is of*
27 *relevance that she is left-handed/left hand dominant individual. There is a possibility that*
28 *her left hand will not regain full grip strength as she used to have prior to her injuries.*

1 *Also of relevance: Although her left middle finger has by now achieved an almost*
2 *unrestricted active and passive range of motion in the DIPJ (distal interphalangeal joint),*
3 *the PIPJ (proximal interphalangeal joint) and the MCPJ (metacarpophalangeal joint), the*
4 *range of active and passive motion in the equivalent joints of the left ring and little finger*
5 *are still restricted. This constitutes an ongoing requirement for further conservative*
6 *treatment by physiotherapy, however, if unsuccessful, it may require further revision*
7 *surgery in the form of adhesiolysis.”*

8
9 ***INTERVIEW OF DEFENDANT***

10
11 65. The defendant was interviewed under caution at 12:23pm on the 1st November 2021. He was told
12 of his rights and elected to be interviewed in the absence of an attorney.

13
14 66. He stated that he knew that the complainant had taken the day off to go to the doctor so he was
15 calling her to find out if she was okay. She was not answering her phone. He called her via
16 WhatsApp, and she did not answer and started to decline his video calls. He drove to her home
17 and did not get an answer to his knock on the front door. He threw a slipper at her bedroom
18 window upstairs until she came downstairs where he was at the kitchen window at the back.

19
20 67. She asked him why he had come around there and told him that he was getting annoying. He
21 asked who was there with her why she was not answering her phone. She opened the window
22 and pushed him. He was standing talking to her and he then went up to the window. She pulled
23 a knife from the sink. He was trying to grab her so that she did not stab him. Eventually the knife
24 moved and stabbed his hand. He then pulled away and told her that she had stabbed him. She
25 said to him, go away and that she is going to call the police. He then tried to grab the knife for
26 her to put it down. The knife caught him to his right eye. She started to cry, and he told her he
27 was sorry and that he would leave because she had somebody there. He told her it was unfair for
28 her to tell him that he was the only person that she was communicating with and that he had
29 wanted to spend time with her on her day off and she refused and someone else was there.



1 68. He said that he had known her a month and a half and that she was his current partner who he
2 was seeing.

3
4 69. He said that he would not say that he assaulted her, they were having a little brawl. She opened
5 the window from inside. He did hold on to her nightgown. She was pulling out of it because he
6 was trying to take the knife out of her hand, but she pulled out of it and the night gown was torn.

7
8 70. He said that she received the injury because when she was stabbing at him with the knife her
9 hand hit on the window.

10
11 71. He said that the night before was the first time that he had a sexual encounter with her. While he
12 was at work he left and went to her house. He was there for about ten minutes, and she said
13 tomorrow we continue because she had taken her pills which were “kicking in”.

14
15 **ADMISSIONS**

16
17 72. There was one admission which is that the defendant is of good character.

18
19 **EVIDENCE AT TRIAL - THE CASE FOR THE DEFENCE**

20
21 ***EVIDENCE OF THE DEFENDANT***

22
23 73. The defendant gave evidence that in November 2021 he was working as a security guard.

24
25 74. He said that what he said in his interview with the police is the truth. He said that before the
26 incident he had been to the complainant’s home on six occasions and had gone inside. He said
27 the sexual activity of the 31st October 2021 happened but with the consent of the complainant.
28 He said that he had been at work and the complainant sent him various messages. One of these
29 was a request for sexual activity. He went to the home at her request, and they were engaged in
30 this activity when the tenant’s bedroom door opened. The complainant pushed him off and said



1 that she had to stop because she did not know why the tenant was watching her. He left the home
2 five minutes thereafter.

3
4 75. He said that the WhatsApp message of November was a reference to that incident on the 31st
5 October 2021 and not to sexual activity in November. He said that it is correct that prior to the
6 31st October they had not yet had sexual relations but that each time they had met at different
7 places there had been kissing and hugging. He detailed various places where they had been
8 together and outings which they had.

9
10 76. He said that on the 17th November 2021, he had made a recording of him giving her a gift. That
11 day they had sexual intercourse.

12
13 77. In 2021 he met with her more than five times including taking lunch to her at work and picking
14 up dinner from her house. He said that she asked him for cash even before the recording. She
15 asked him to help her with money for groceries in October. She told him that she had to do
16 surgery on her right hand and that was the surgery that she wanted money for.

17
18 78. He said that on the 1st November 2021, he was calling her because they had made plans earlier
19 that morning for him to take her to see the doctor. He was calling out of concern. He was afraid
20 that something was wrong with her and knowing the situation that she faced at home with her
21 house mate, so he stopped by. He got no answer. He threw something to get her attention. When
22 she came down, she was so upset and angry. She spoke to him in a soft tone, “go home we said
23 1:00pm”. She got upset, opened the window, and pulled out a knife which she had in her left
24 hand and threatened him that she was going to call the police if he did not leave. He was asking
25 her if someone else was there. He said that he was there talking, and she got upset. He was trying
26 to calm her down and she pulled the knife and stabbed him. She bent over and stabbed him. He
27 did not know that he had been stabbed. He said that he was cut on the outer aspect of his right
28 arm and has a scar. He pointed to an area of his arm just below the elbow joint.

29



- 1 79. He was shown photograph DP7 which shows the window half-way up and said that this is how
2 he recalls the window being when he was there. He said that it is not true that half his body had
3 come through the window. He was telling her to relax because she was so upset.
4
- 5 80. He said that he held her shirt to try to use one hand to get the knife from her. He said that her
6 chain burst and her t-shirt was torn. She was positioned over the sink when he was holding her
7 shirt. He said that he got cut before he held on to the shirt. He was not successful in getting the
8 knife from her. He said that he realised that he could not get the knife and she said she was going
9 to call the police, so he left, went home and picked up clothes to go to the laundry. While there
10 he received a call from the police, and he left and went to the police station.
11
- 12 81. He said that he did not grab the chains deliberately and break them off. He was not aware that
13 her chains had been broken when he held her. Neither was he aware that she had received a cut
14 while he was there. He did not see any blood on her when he was there. He only became aware
15 on the day after, when he spoke to her mother and sister.
16
- 17 82. He said that after he was interviewed by the police, he received a text message from the
18 complainant that her hand was broken. He said that he no longer has the messages because he
19 had been using a fake WhatsApp programme which was shut down sometime in 2022.
20
- 21 83. He said that he recorded the phone calls between them. They had many calls after the incident.
22 The last time was the 7th December 2022. He said that he chose to record the calls based on
23 something that her sister told him. He decided to try to keep as much evidence as possible. He
24 said that he has given her money to buy groceries.
25
- 26 84. He said that after the incident he was following the strict rules of his bail bond and did not
27 communicate with her until the 14th November 2021 when he heard from another person that she
28 had complained that he had not contacted her since the incident.
29



- 1 85. He denied sexually assaulting her on 31st October 2021 and he denied unlawfully entering her
2 premises on the 1st November 2021. He said that each time he entered he had permission.
3
- 4 86. In cross-examination he said that it is fair to say that he liked and was interested in the
5 complainant. He said that on the 31st October he left work because of the invitation that he had
6 from the complainant to come to her home for sexual activity. He had lost this message. He
7 denied that he was not speaking the truth about this message and said that he had never expected
8 that he would lose all the messages on his phone. He said that he was not disappointed to have
9 been told that the evening was cut short. It stopped because her flat mate came by, and they could
10 not go into the bedroom with a five-year-old there.
11
- 12 87. His interview in which he had said that the activity stopped because of the impact of the pills
13 being taken by the complainant was put to him. He agreed that in the interview he had not
14 mentioned the tenant. He said that both statements are true.
15
- 16 88. He said that the complainant did not push him off. She asked him to stop. He said that she told
17 him that she had already taken her medication and they would see each other tomorrow. He was
18 not annoyed despite having travelled all the way from South Sound to West Bay.
19
- 20 89. He said that he went to her home on the 1st November. It was not raining at the time. He accepted
21 that she asked him to leave and told him that it was not yet 1:00 o'clock. He accepted that he was
22 ignoring her wishes. He agreed that at no time did she come outside and that at no time did she
23 say that he could come inside.
24
- 25 90. He said that she leaned over the sink two and half feet because the counter is small. He disagreed
26 that she would not be able to get her hand out. He accepted that all he had to take was one step
27 back and he would have been out of harm's way.
28
- 29 91. He said that he thought that she was in the house with another man. He disagreed that she got cut
30 when he was trying to disarm her. He said that he did not get hold of the knife.



1 92. He accepted that as at 1st November 2021 he knew that he had proof on his phone. The screenshots
2 which he produced are from his phone and were taken fairly recently in late December or early
3 December.
4

5 **SUBMISSIONS**
6

7 93. Counsel for the prosecution submitted that the evidence of the defendant about messages prior to
8 1st November which he is unable to produce should be rejected as untrue. They were not in a
9 relationship and had spent such little time together that the defendant was able to detail every
10 encounter which they had in 2021. Counsel said that on the morning after the first incident the
11 complainant was angry, and that the defendant's primary concern appeared to be whether any
12 other male was in the house with her. It is evident that he had jumped to conclusions. He refused
13 to leave and did not take no for an answer choosing instead to challenge her.
14

15 94. Defence Counsel submits that the Court cannot be sure on the facts of this case that either of the
16 two charges are made out. Counsel said that the Court cannot be sure that the complainant did
17 not consent. Counsel notes that the complainant stated in evidence that "at first, she pushed the
18 defendant away". The use of the words "at first" is open to the inference and usual implication
19 which is that something thereafter happens by consent. She did not report the incident that night.
20

21 95. Counsel invited the Court to find that the complainant was not a credible witness. Counsel noted
22 that despite having sexual intercourse on the 17th November 2021 with the defendant before she
23 gave her witness statement on the 25th November 2021, she told the police in her statement that
24 they were not in a sexual relationship. Counsel suggested that she had deliberately misled the
25 police on this fact. Counsel said that it makes no sense that the complainant would thereafter go
26 deeper into a sexual relationship with the defendant. It is either she is very forgiving or does not
27 believe in the truthfulness of her account. Counsel invited the Court to closely examine Exhibit
28 7 the video call and recorded phone calls. Counsel said that the subsequent conversations do not
29 lend credibility to the account which the complainant gave and that the behaviour of the defendant



1 in returning to the home in the face of the negative response which the complainant described
2 does not make sense.

3
4 96. As to the second Count, on the issue of recklessness, Counsel submits that it is doubtful whether
5 the defendant's conduct satisfies the legal test. The real risk would have been to the defendant
6 since it is accepted that it is the complainant who had the knife. Counsel said that the Court cannot
7 be sure how the complainant got cut. It is argued that the defendant never got control of the knife
8 and that the complainant's account of the defendant coming through the window is not logical
9 and must be rejected.

10
11 97. It is submitted that on the issue of self-defence the defendant was trying to calm the complainant
12 down so that she would not harm him but that it is not said that self-defence arises in the
13 traditional sense. The defendant's position is that after he was injured, he sought to disarm the
14 complainant of the knife.

15
16 **ANALYSIS**

17
18 98. I remind myself of the relevant directions taken from the *Crown Court Compendium 2022*. The
19 defendant has no previous convictions. Good character is not a defence to the charges, but it is
20 relevant in two ways. First, the defendant has given evidence. His good character is a positive
21 feature which I should take into account in his favour when considering whether I accept what
22 the defendant said. Secondly, the fact that he has not offended in the past may make it less likely
23 that he acted as the prosecution alleges in this case. What importance I attach to the defendant's
24 good character and the extent to which it assists on the facts of this particular case are for me to
25 decide. In making that assessment I may take account of everything that I have heard about the
26 defendant.

27
28 99. I am entitled to draw inferences from the facts as I find them to be if I consider that it is a
29 reasonable, proper and common-sense thing to do. Inferences are common sense conclusions
30 based upon the evidence which I accept. If the inference I am about to draw is adverse to the



1 defendant, I must be sure that that inference is the only correct one. If from a given set of facts,
2 more than one inference is possible, I must draw the inference which is more favourable to the
3 defendant. I am also mindful that there is a difference between a reasonable inference and
4 speculation.

5
6 100. I consider each count separately. Firstly, the offence of Indecent Assault. I remind myself to
7 avoid false assumptions or misleading stereotypes about sexual offences and not to let any such
8 assumptions affect my decision in this case. Experience has shown that there is no typical sexual
9 assault, typical sexual assaulter or typical person that is sexually assaulted. Neither is there any
10 typical response to sexual assault. Sexual assault can take place in almost any circumstances. It
11 can happen between all different kinds of people, quite often when the people involved are known
12 to each other or may be related. People can react in many different ways to being sexually
13 assaulted.

14
15 101. I am also mindful that I should not assume that because the report was not made immediately it
16 is untrue. The fact that a complaint is made late does not make the allegation untrue and a
17 complaint is not necessarily true just because it was made immediately. I take note of the defence
18 point in this case that the complainant did not make an immediate report about the sexual assault.
19 In addition there is the fact that there was some connection between the two. The complainant
20 says that they hugged on occasions and on that night. I do not assume that this gave the defendant
21 reasonable grounds for believing that the complainant consented to having sexual intercourse
22 with him. Just because the complainant invited the defendant to her home and willingly engaged
23 in hugging him, this does not mean that the complainant must have wanted to go on to have
24 sexual intercourse and must have consented to it. A person who engages in sexual activity is
25 entitled to choose how far that activity goes, and that person is also entitled to say “no” if the
26 other person tries to go further.

27
28 102. Overall, I found the complainant to be a credible witness.
29



1 103. With respect to the inconsistency between her witness statement in which she states that they
2 were not in a relationship and her acceptance that they had sexual intercourse on the 17th
3 November 2023, I note her explanation that in her mind this sexual activity was on just one
4 occasion, and she did not consider this to be a relationship. However, the paragraph of the witness
5 statement goes on to say that “*Since I have known him, he has been trying to be in a relationship*
6 *with me and I refused his advances.*” I did find this to be somewhat misleading. The picture
7 painted was of rebuffing all of his advances including that on the 31st October 2021 when she
8 knew that she had had sexual intercourse with him on the 17th November 2021.

9
10 104. The defendant’s account about an invitation by message which he knew on the 1st November was
11 exculpatory evidence, which he made no attempt to secure and lost months later is transparently
12 a contrivance. It is also significant that on the very day after, he gave one explanation for why
13 they stopped and today at trial he gave a different account. Whatever happened between them
14 afterwards it is plain that he deliberately orchestrated a continuing friendship or relationship,
15 which he recorded without her knowledge or consent for the sole purpose of securing evidence
16 which he could use at trial.

17
18 105. My assessment, having observed him, is that he was not a credible witness but someone who
19 would do or say anything to protect himself. I reject his account of what he says happened on the
20 night of the 31st October 2021, but it is on the prosecution’s account that I must be sure.

21
22 106. The complainant said she was unable to say how they got from the door to the couch. She said
23 that at first, she pushed him off. I accept Counsel’s submission as to the implications of this
24 statement. The reasonable question is whether there was an initial refusal followed by consent. I
25 also accept as Counsel suggests that the defendants’ calling the next morning is likely inconsistent
26 with being faced with a negative response the night before. Ultimately, however, it is the
27 inconsistency between what was said in the witness statement and the truth which I find to be
28 significant, the explanation given for which, is not entirely satisfactory. All of this makes me
29 question the complainant’s evidence on this issue. Any question or doubt must be resolved in



1 favour of the defendant. I find that very likely the complainant did not consent, but I cannot be
2 sure.

3
4 107. With respect to Count 2, Burglary and the commission of the offence of Inflicting Grievous
5 Bodily Harm, there is no direct evidence that the defendant committed the crime with which he
6 is charged, such as evidence from an eye-witness who saw the defendant committing it, or
7 evidence that the defendant confessed to committing it. The prosecution relies on circumstantial
8 evidence that is pieces of evidence relating to different circumstances, none of which on their
9 own directly proves that the defendant is guilty but which, say the prosecution, when taken
10 together leave no doubt that the defendant is guilty.

11
12 108. The prosecution relies on the following: -

- 13 - Blood on the floor.
- 14 - The broken necklaces.
- 15 - The window blind had come off.
- 16 - The counter is in between the window and the kitchen.
- 17 - The complainant's hand was injured.
- 18 - The distances and physical dimensions.
- 19 - The fact that the injury was to the hand holding the knife which it is said
20 denotes a struggle and the actual part played by the defendant.

21
22 109. The defence say that the Court should not accept some of these pieces of evidence. It is said that
23 there is no blood on the counter or even the edge of the counter. All the blood was on the floor.
24 This says the defence supports the defendant's assertion that he had not entered halfway through
25 the window. Additionally, Counsel points out that the opening in the window was about a foot or
26 less. This would have required careful positioning for the defendant to come through the window.
27 The defence also say that the evidence on which the prosecution relies does not in fact prove the
28 defendant's guilt at all. They say that there are too many gaps and unanswered questions.

29



1 110. It is for me to decide which, if any, of these pieces of evidence are reliable and which, if any, are
2 not. I must then decide what conclusions can fairly and reasonably be drawn from any pieces of
3 evidence that I do accept, taking these pieces of evidence together.
4

5 **SELF DEFENCE**
6

7 111. The defendant says he tried to disarm the complainant after she cut him with the knife. It is for
8 the prosecution to make me feel sure that the defendant was the aggressor and was not acting in
9 lawful self-defence. I remind myself of the relevant directions with respect to self-defence. The
10 law of self-defence is really just common sense. If someone is or believes they are under attack
11 or believes they are about to be attacked they are entitled to defend themselves. In this case the
12 defendant says that he was trying to disarm her after she had cut him. I have considered the
13 evidence and all the circumstances.
14

15 112. I do not consider that the defendant believed, or may have believed, that he was under attack or
16 about to be attacked and that he needed to defend himself. While there is no duty to retreat the
17 defendant was standing outside the apartment. He agrees that with one step back he would have
18 been out of harms' way. On his account there was no need to try to disarm her. On his account
19 he had been asked repeatedly to leave or the police would be called. I am sure that in these
20 circumstances he was the aggressor, and that self-defence does not arise.
21

22 113. On his own account the defendant was asking whether someone else was in the apartment. He
23 repeated that this was his main focus. I have considered whether the other elements of the offence
24 of Burglary are made out. Had the complainant hit her hand on the window or wall as is being
25 suggested one would have expected to see blood on the counter or sink. The fact that all of the
26 blood seen was on the floor in front of the counter suggests that the wounds occurred in that area.
27

28 114. If the complainant's hand was out the window and the defendant was not leaning in as he says,
29 the complainant would have had to be reaching across the sink and through the window with an
30 outstretched hand. It makes no sense in this instance that the defendant would reach for her neck



1 when the hand with the knife would have been closest to him. Neither does it make sense that he
2 would try to disarm her to protect himself when he was the one standing outside the apartment
3 and almost out of harm's way. The defendant's account is implausible and is rejected.

4
5 115. The position of the blood, torn night dress and broken chains is in my view consistent with the
6 account of the complainant that he it was who was halfway through the window. I accept the
7 complainant's evidence in its entirety on this aspect of the case. I accept that the defendant was
8 halfway through the window, grabbed at her, tore her clothing and broke her chains. On the
9 evidence, the multiple calls, turning up three hours earlier than agreed, not getting an answer,
10 throwing slippers at the window, repeatedly asking whether anyone was in the apartment,
11 refusing to leave even when threatened with the police, it is a reasonable inference that he was in
12 fact in a "jealous haze" as prosecuting Counsel put it.

13
14 116. Even on the phone call which he himself recorded which took place subsequently he is still
15 talking about the complainant having someone else.

16
17 117. I find as a fact that on the 1st November 2021, this was his belief and his state of mind. I find as
18 a fact that he was angry and bent on uninvited entry into the complainant's apartment no doubt
19 to prove or disprove his point that another man was in the apartment.

20
21 118. The wounds to the complainants' fingers are shown in the photographs taken by Dr. Herzig. They
22 are to the fingers which are not closest to the thumb. The blade of the knife must therefore have
23 connected with this area of the complainant's hand. I accept the evidence of the complainant that
24 he was wrestling with her and that it was in the course of this wrestling that blood began coming
25 from her hand.

26
27 119. The relevant directions with respect to recklessness are that: -

28
29 "A person acts recklessly with respect to -

30 i) a circumstance when he is aware of a risk that it exists or will exist;

