



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

4 **INDICTMENT NO: 32 OF 2022**
5
6
7

8
9 **REX**

10
11 **V.**
12

13 **BRADLEY DILBERT MCLAUGHLIN**
14
15

16 **Appearances:** **Ms. Hema Soondarsingh for the Prosecution**

17 **Mr. Gregory Burke for the Defence**

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

19 **Submissions Heard:** **24th March 2023**

20
21 **Sentence Judgment:** **6th April 2023**
22
23

24 **HEADNOTE**
25

26 ***Criminal Law – Indecent Assault– Section 132 of the Penal Code (2019 Revision)***
27 ***Cayman Islands Sentencing Guidelines– Principles on Sentencing – Custody Threshold.***
28
29
30
31



1 For the avoidance of doubt: It is the Court's view that the charge of Indecent Assault falls
2 within this section of the law by virtue of the use of the word "etc." and therefore an order is
3 herein made in the terms of the wording of s.31(1) of the *CPC* as above.
4

5 3. The defendant is before the Court for sentencing in respect of one count of Indecent Assault
6 contrary to s.132 of the *Penal Code* (2019 Revision). This is count 2 of the Indictment. The
7 particulars are that he on the 9th day of July 2021, in the jurisdiction of the Cayman Islands
8 indecently assault a female [X].
9

10 4. The defendant first appeared before the Grand Court on the 13th May 2022 and on the 5th August
11 2022, he entered a plea of guilty to the offence. He has provided a written basis of plea which is
12 in the following terms: -
13

14 *"I Bradley McLaughlin plead guilty to Count Two, Indecent Assault on the following basis.*

15 *On the 9 July 2021. I was working with [X] at a function in George Town, where [X]*
16 *became drunk.*

17 *I was not responsible for this. I accept I took [X] home to my address and indecently*
18 *assaulted [X] in my bedroom. I did so by placing my fingers in her vagina on two*
19 *occasions.*

20 *I accept [X] was drunk, and partially awake at the time of doing so. In order to do so, I*
21 *removed her trousers and underwear.*

22 *During this incident I removed my penis and masturbated to ejaculation. I did not seek to*
23 *enter her vagina with my penis.*

24 *I ejaculated over [X]'s pubic area. In doing so my penis may have touched the area of*
25 *[X]'s vagina.*

26 *I enter this plea of my own free will."*

27 5. The plea on the basis offered is acceptable to the prosecution. No evidence is offered with respect
28 to the first count of Attempted Rape. A formal verdict of not guilty is entered on this count.
29

30 6. The maximum sentence for the offence of Indecent Assault is ten years imprisonment.
31



1 **THE FACTS**

2
3 7. The prosecution has provided a summary of facts which is not disputed. It is set out below. The
4 victim is now seventeen years old. There is a family connection between the defendant and the
5 victim. He is a cousin through her biological father and is also the cousin of her stepfather. They
6 met through her stepfather about two years prior to the incident. They developed a friendship
7 through their shared love of cooking. The defendant visited her home often and lived there during
8 the COVID-19 pandemic lockdown period while his mother was overseas.

9
10 8. On Friday the 9th July 2021, at around lunchtime the victim assisted the defendant to prepare
11 food. They took the prepared food in the defendant's vehicle to a location in George Town. The
12 victim describes this as an upstairs building close to the Victoria Secret Store. She remained
13 there until about 10:00pm assisting with the serving of the food. In the course of the evening the
14 victim had two drinks which were given to her by the defendant. She said that the first one was
15 pink with lime in it and tasted "off" like alcohol. By the time she was leaving the event the victim
16 describes herself as finding it difficult to do anything. She could not walk on her own. She says
17 that she knew that she was drunk because she could not walk straight and was constantly falling.
18 The defendant drove her away from the event. She asked him to get food and to take her to her
19 home, instead he drove her to his house.

20
21 9. He carried her from the car and into the house where she fell on the sofa in the living room. He
22 told her to go into his room. She got up but fell on the floor. When he tried to pick her up, she
23 told him to leave her alone. He tried to do so a second time and she was able to get up and onto
24 the bed. There she vomited before rolling over and falling asleep. She awoke to the defendant
25 taking off her pants and underwear. He pushed his fingers inside her vagina. She saw him rubbing
26 his penis with his hand. He put her legs around his back and inserted his fingers in her vagina.
27 She tried pushing him off. He put her underwear back on and left the room. When he did so and
28 before he returned, she sent a phone message to her mother saying, "Mommy help me". After the
29 defendant returned, the defendant's aunt came into the room, helped her to put on her outer
30 clothing and said that the defendant would take her home. He did so. When she arrived home,
31 she told her mother what had occurred, and she was taken to the hospital.

32
33 10. Dr. [Y] examined the victim and took vaginal swabs and a DNA sample from her. On
34 examination the victim was found to have a 3mm linear superficial midline laceration on the
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1 opening of the vagina. This may have been caused by a blunt or sharp trauma. The Doctor
2 explains that such trauma occurs due to friction or contact between the skin and a surface with
3 sufficient force to cause trauma in the epidermis but not through it.
4

5 11. The defendant was arrested on the 10th July 2021 and was interviewed on the same day in the
6 presence of his attorney. He told the police that he drove the victim to the house because he was
7 concerned about the fact that she was intoxicated. He said that she got out of his car and went
8 into his room and lay on the ground. He later entered the room, masturbated on his bed, and then
9 proceeded to put her in the bed. At the time her pants were off. He then left the room, and his
10 cousin assisted the victim to put on her clothing after which he dropped her home.

11
12 12. A DNA sample was taken from him. The Forensic Examination report found that semen was
13 present on the sample taken from the vulva of the victim. From a DNA comparison with the
14 buccal sample taken from the defendant. It was 16 quadrillion times more likely that this semen
15 originated from the defendant than from an unknown person.
16

17 13. In a further interview on the 3rd December 2021, the defendant suggested to the officers that his
18 DNA may have been found on the victim because she moved around on his bed.
19

20 14. For the purpose of this sentence hearing the following items were received as exhibits:

- 21
22 (i) Transcript of interview of 10th July 2021 - Exhibit 1.
23 (ii) Transcript of interview of 3rd December 2021 - Exhibit 2.
24 (iii) Forensic Report of Christian Taylor - Exhibit 3.
25 (iv) Medical Report of Dr. Belafonte - Exhibit 4.
26

27 **VICTIM IMPACT REPORT**

28
29 15. The Department of Community Rehabilitation (“DCR”) has provided a victim impact report
30 dated 6th October 2022, (“VIR”).
31

32 16. The VIR provides information that during the onset of the pandemic the defendant stayed at the
33 victim’s home at the invitation of her stepfather. They shared similar interests in hospitality and
34 cooking and would cook together. The mother of the victim advised that on the evening in



1 question they all attended an event. Mother needed to leave at around 9:00pm and was assured
2 by the defendant that he would give the victim a ride home after the event was finished.

3
4 17. The victim reported that the incident occurred when she was finishing up her exams. As a result
5 of the incident, she did not have the desire to do anything including study. She said that she is
6 now a little more cautious around men but that the incident did not necessarily affect how she
7 interacted with them. For the most part, the victim was uncommunicative with the Probation
8 Officer and much of the information came from her mother. Mother's account is that after the
9 incident, the victim scored lower than expected in her examinations. The victim appeared to
10 retreat into her shell but has now improved. She is not as withdrawn and appears more focused
11 on achieving her goals.

12
13 18. Under assessment/evaluation. the Officer's view is that the victim was most affected at an
14 emotional level. She appeared to downplay the impact of it, but this could be a defence
15 mechanism to protect herself.

16 17 **ANTECEDENT HISTORY**

18
19 19. The defendant has no previous convictions.

20 21 **THE SOCIAL INQUIRY REPORT**

22
23 20. The DCR provided a Social Inquiry Report ("SIR") with respect to the defendant which is dated
24 21st October 2022.

25
26 21. Upon receipt of the SIR and noting the recommendation therein, defence Counsel applied for
27 sentencing to be delayed so that a psychological report could be obtained. The Court granted the
28 application and the report which was subsequently received is dealt with below.

29
30 22. The Court has read the SIR in its entirety and takes into account everything said therein in the
31 defendant's favour.

32
33 23. The defendant is twenty-one years old. He was nineteen years old at the time of the offending.
34 His parents separated when he was young, and he was raised by a single mother. His childhood

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1 was emotionally traumatic. He was exposed to alcohol abuse and to venues and behaviour which
2 were inappropriate for a child. Despite this, in his early school years he was an honour roll
3 student. There was a change during high school where he went through a period of getting into
4 fights and disruptive behaviour. He was using ganja at that time. He was assisted by counsellors
5 and was able to change. He was diagnosed with attention deficit disorder and was prescribed
6 medication. He took this only for a very short time. In his later school years, he discovered a love
7 for the culinary arts and has won several culinary competitions both local and international. He
8 is pursuing an associate degree while working in this industry.

9
10 24. Under community functioning, the Probation Officer records that he is described by those who
11 know him well as a bright young man who is focused on his passion for the culinary arts. He is
12 said to be kind and gentle and to have been affected by the absence of a father figure. The
13 offending is out of character for him. He is said to be genuinely remorseful.

14
15 25. He admitted the offence to the Probation Officer and gave a detailed account of what occurred.
16 He said that the victim was drunk and made no sign that she may have known what was
17 happening. He said that he regarded her as a little sister and does not know why he did what he
18 did. He denied being drunk himself but said that he was “tipsy” and that is the only thing that he
19 can think of that could have attributed to doing what he did. He said that he does not wish for
20 that to be used as an excuse because he has been taught better and knows better. He apologised
21 to the victim and her family and said that he is genuinely sorry.

22
23 26. The Officer’s assessment is that the defendant may have had an emotional relapse to a previous
24 period of dysregulation which he had experienced in his teen years.¹ The details of this are not
25 set out herein but are of concern and suggest the need for him to have treatment for relapse
26 prevention. His overall risk of general re-offending is assessed as low. His risk of sexual re-
27 offending is assessed as medium.

28
29 **PSYCHOLOGICAL REPORT**

30
31 27. Dr. Dominic Basson has provided a psychological report dated 17th February 2023 in respect of
32 the defendant. Doctor Basson reports that the defendant described to him a number of aversive

¹ As detailed on page 13, paragraph 3 of the SIR
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1 events in his life which are often associated with a diagnosis of a personality disorder. Test
2 results indicate that the defendant fits the personality disorder classifications of paranoid
3 personality disorder with narcissistic personality type, schizoid personality type and schizotypal
4 personality style. A detailed exposition of the defendant’s characteristics is provided by the
5 Doctor². There is no indication of cognitive impairment with the overall results of the test
6 indicating performance in the average range. The defendant is assessed at low risk of recidivism
7 considering that the risk of acting in a disinhibited way is reduced if he is not drinking alcohol
8 and that he has a number of protective factors. These include several positive relationships in his
9 life and positive and healthy coping strategies which he has employed in the past. In addition, the
10 Doctor states:-

11
12 *“In terms of static risk factors, aspects of his personality, such as his willingness to ignore*
13 *rules and social norms, and generally feeling indifferent to threats of punitive action, may*
14 *be considered factors that increase risk of recidivism. He did not speak to me of sexual*
15 *preoccupations, sexualized violence and he did not indicate a sexual preference for*
16 *children. The cognitive testing did not reveal a difficulty with resolving problems and*
17 *therefore this is not a risk factor for him. His attitude about the offence he committed is*
18 *that he views it to be a “I don’t understand why I did it, it was a stupid mistake.”*

20 THE SUBMISSIONS

21
22 28. Counsel for the prosecution submits that on the basis of the dicta of the Court in the case of **R. v.**
23 **Razvan-Dumitru Oprea**³, it is accepted that the offending in this case is not an abuse of trust for
24 the purpose of the *Cayman Islands Sentencing Guidelines*.

25
26 29. The English Court of Appeal in that case applied the dicta in the case of **R. v. Forbes**⁴. It was
27 stated in **R. v. Forbes** that the phrase “abuse of trust” connotes something more than trust in a
28 family member or relative. The Court said that the mere fact of association or the fact that one
29 sibling is older than the other does not necessarily amount to a breach of trust in this context. A
30 close examination of the facts of the relationship is required in each case. Abuse of trust may

² Page 2 of the Report

³ [2021] EWCA Crim 1695

⁴ [2016] EWCA Crim 1388



1 include, a teacher and student relationship, a scoutmaster and children in his charge as well as a
2 parental or quasi-parental relationship existing or arising from an ad hoc situation.

3
4 30. The Appellate Court also referred to the case of *R. v. AO*⁵ in which applying the principles in
5 *Forbes* it was said that where the circumstances may not amount to a breach of trust, they would
6 nonetheless amount to a significant aggravating factor.

7
8 31. The prosecution submits that under the *Cayman Islands Sentencing Guidelines* for the offence
9 of Indecent Assault, the Harm in this case would be at the level of category 2 because there was
10 touching of the naked genitalia and the victim has suffered negatively. The offending affected
11 both her studies and her social life.

12
13 32. Counsel refers to the cases of *R. v. Bellafonte Jr.*⁶ and *R. v. Victor Antonio Walker*⁷.

14
15 33. In the case of *Bellafonte*, the defendant aged twenty years old was sentenced to 22 months
16 imprisonment following his guilty plea to Indecent Assault. Quin J. applied the *United Kingdom*
17 *Sentencing Guidelines*. The victim was just under fifteen years old at the time of the incident.
18 The defendant was a maternal cousin to the victim. The defendant had no previous convictions.
19 He had what the learned Judge described as an unhappy upbringing during which he suffered
20 abuse. There was also the tragic suicide of a sibling which affected him.

21
22 34. Counsel for the prosecution submitted that the aggravating factors in the instant case include the
23 betrayal of the family relationships, and that the victim was noticeably drunk at the time which
24 made her vulnerable. The defendant took advantage of her vulnerability.

25
26 35. Counsel for the defence agreed that in this case there is some psychological harm and helpfully
27 drew the Court's attention to the case of *R. v. Chall*⁸. This case provides guidance from the
28 English Court of Appeal that a sentencing judge may assess the harm caused based on the
29 evidence of the victim whether by observation or from the content of a personal statement. The
30 assessment is a factual one and does not necessarily require expert evidence.

⁵ [2016] EWCA Crim B4

⁶ Grand Court Ind 17/2023, Unreported Judgment dated 12th December 2013

⁷ Grand Court Ind 107 of 2019, Unreported Judgment dated 4th January 2021

⁸ [2019] EWCA 865

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1 36. Defence Counsel submits that under the *Cayman Islands Sentencing Guidelines* this offence is
2 at the level of category 2 B with a starting point of four years and a range of sentence of two to
3 seven years.

4
5 37. In mitigation Counsel submitted that the defendant has no previous convictions and there is
6 genuine remorse. He is a man of good character. He had a difficult and isolated childhood with
7 rejection from his absent father. Counsel said that he has made tremendous strides individually
8 and as part of the community.

9
10 38. Counsel produced several articles and news reports on the defendant's success in the culinary
11 field. Counsel also read into the record three character references. All three persons have known
12 the defendant over a period of many years, two from his birth. They all say that the offence is out
13 of character for him. Mr. James Myles⁹ has been a mentor to the defendant for the past seven
14 years. He describes the defendant's work on his career path and states that the defendant almost
15 graduated at the top of his class and earned several awards. He is said to be a rising star on the
16 culinary scene in the Islands. He is also described as a determined, focused, and ambitious young
17 man who is thoughtful, kind and caring¹⁰. He is said to be patient and diligent in his focus on his
18 career and to be an honest and upstanding citizen who conducts himself with integrity and
19 decency¹¹. A letter of apology written by the defendant to the victim and her family was also
20 produced to the Court.

21
22 39. Counsel said that the defendant has taken responsibility for his actions. The incident appears to
23 be an isolated one which will not be repeated. Counsel urged the Court to balance matters and to
24 keep any sentence as short as is possible and no longer than is necessary.

25
26 **THE SENTENCE**

27
28 40. The Court accepts the submissions of both Counsel. Under the *Cayman Islands Sentencing*
29 *Guidelines* this is an offence at the level of Category 2 Harm. There is some psychological harm
30 and touching of the naked genitalia. The victim was vulnerable due to her condition. The
31 culpability is at level B as none of the factors in Category A are present.

⁹ Dated 23rd March 2023

¹⁰ Petula Twin dated 23rd March 2023

¹¹ Jennifer Ebanks dated 11th March 2023



- 1 41. The starting point for a category 2 B offence is four (4) years or forty-eight (48) months custody.
2
- 3 42. It is a serious aggravating factor that the defendant abused the hospitality that had been extended
4 to him by the victim's family. This will serve to increase the sentence from the starting point by
5 four (4) months imprisonment to fifty-two (52) months imprisonment.
6
- 7 43. In mitigation, the Court takes into account everything that has been written and said in favour of
8 the defendant. He has no previous convictions and is of good character. His age and level of
9 maturity is a significant factor in mitigation. He is young, twenty-one years old. He is genuinely
10 remorseful. He has accepted responsibility for his actions and has written an apology to the
11 victim and her family. His risk of general re-offending is low, and risk of sexual re-offending is
12 not at a high level. This offence is said to be unusual for him. He has been focused on his chosen
13 career path and has worked hard at it to achieve excellence. He had a difficult childhood and has
14 personality disorders as detailed by Dr. Basson. He may have lost the opportunity to further his
15 studies in the country of his choice due to this conviction.
16
- 17 44. All these factors serve to reduce the sentence by eighteen (18) months to thirty-four (34) months
18 imprisonment. He is afforded full credit of one third for his guilty plea which further reduces his
19 sentence to twenty-two (22) months imprisonment.
20
- 21 45. This is a serious offence in which harm has been caused to the victim and to family relationships.
22 This defendant took advantage of the victim in circumstances where she was clearly unable to
23 function. Despite seeing her condition, he chose not to take her home to her parents and did not
24 leave her alone. He recognizes that his actions were wrong. It would not be unreasonable to use
25 the word reprehensible to describe his actions. It is a betrayal of the open door and friendship
26 which had been extended to him by the victim and her family. He should have been seeking to
27 protect her in the state that she was in rather than to harm her. The custody threshold is firmly
28 passed in this case.
29
- 30 46. The Court has given consideration to whether an immediate custodial sentence is unavoidable.
31 In the Court's view the nature and circumstances of the offending, the age of the victim and the
32 aggravating factor all suggest that it is unavoidable. There is nothing in his personal
33 circumstances which suggests that an immediate custodial sentence can be completely avoided.

1 There are personality disorders and issues but nothing which rises to a high level. The aims of
2 sentencing in this case are punishment, deterrence, and rehabilitation.

3
4 47. Due to his age, lack of maturity and other circumstances, the sentence will be partially suspended.
5 The sentence of twenty-two (22) months is to be served in the following way. Fifteen months is
6 to be served immediately and seven months will be suspended for two years following his release
7 from prison. Any time served is to be deducted.

8
9 48. While in prison as recommended by the Probation Officer, the Authorities should recognize his
10 need for college class participation and to complete examinations online and are asked to permit
11 him to have computer access to be able to do this. He should also complete the Sex Offender
12 Treatment Program. This is with a group focused on addressing emotional regulation,
13 relationships and sexual issues linked to offending and relapse prevention. It will also target
14 offending behaviours and seek to restructure cognitive distortions, in addition to offering
15 individual counselling sessions with a Forensic Psychologist.

16
17 **SEXUAL HARM PREVENTION ORDER**

18
19 49. The prosecution applies for a sexual harm prevention order pursuant to s.45A of the *Penal Code*
20 (2019) Revision). The defence does not object to the application and there has been agreement
21 as to the form of order.

22
23 50. The Court is satisfied to the required standard of on a balance of probabilities that such an order
24 is necessary for the purpose of protecting the victim from sexual harm from the defendant.

25
26 51. The order is therefore made in the terms agreed.

27
28 **Dated this 6th day of April 2023**

29 

30 **The Hon. Justice Cheryll Richards KC**
31 **Judge of the Grand Court**

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