



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

3
4 **INDICTMENT NO: 26/22**
5
6

7
8
9 **THE KING**

10
11 **v.**

12
13 **RENATO ROLANDO HARRIS**
14
15

16
17
18 **Appearances:** **Ms. Sarah Lewis for the Crown**
19 **Mr. Keith Myers and Mr. Richard Barton, for the Defendant**

20 **Before:** **Justice Marlene I. Carter (Actg.)**

21 **Judge Alone Trial:** **5th, 9th -23rd September 2022**
22

23 **Closing submissions:** **4th November 2022**
24

25 **Verdict:** **9th December 2022**
26

27
28 **HEADNOTE**

29 ***Criminal Law - Trial by Judge Alone – Rape- Intoxication and consent***
30
31
32

33 **VERDICT JUDGMENT**
34
35
36
37
38
39
40
41



1 **ANONYMITY OF COMPLAINANTS**

2
3 1. Section 31 of the *Criminal Procedure Code (CPC)* (2021 Revision) deals with the “*Anonymity of*
4 *complainants in rape etc. cases and states:*

5
6 “31. (1) *After a person is accused of a rape [etc.] offence, no matter likely to lead*
7 *members of the public to identify a woman as the woman against whom*
8 *the offence is alleged to have been committed shall be published in a*
9 *written publication available to the public or be broadcast, except as*
10 *authorised by a direction of the court.*

11 (2) ...

12 (3) ...

13 (4) ...

14 (5) *If any matter is published or broadcast in contravention of subsection (1),*
15 *the following persons-*

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

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

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

24 *i. commits an offence and are each liable on summary*
25 *conviction to a fine of one thousand dollars.”*

26
27 2. Pursuant to s.31 of the CPC, and for the avoidance of doubt: it is herein ordered that *no* matter
28 likely to lead members of the public to identify the complainant in this case shall be published in
29 any written publication available to the public or be broadcast. Anyone acting in contravention of
30 this order commits an offence.

31
32 **INDICTMENT**

33
34 3. The defendant was charged on an indictment containing two counts of rape contrary to section
35 127 of the Penal Code (2019 Revision). The particulars of each count were as follows:

36
37 1. *on or about the 14th day of July 2018 at #28 Heather Lane, George Town,*
38 *Grand Cayman, Cayman Islands, had unlawful sexual intercourse with[the*
39 *Complainant] without her consent.*



1 2. *on or about the 14th day of July 2018 at #28 Heather Lane, George Town,*
2 *Grand Cayman, Cayman Islands, had unlawful sexual intercourse with ... [the*
3 *Complainant] without her consent, on an occasion other than the occasion in*
4 *count one.*

5
6 4. The defendant elected trial by Judge alone pursuant to Section 129 of the Criminal Procedure Code.

7
8 **THE LAW ON JUDGE ALONE TRIALS**

9
10
11 5. The Cayman Islands Court of Appeal (CICA) has given some guidance on the duties of a Judge in
12 a Judge Alone trial. In *K. Richards v R*¹ Rowe JA, stated:

13
14 *“When a trial judge sitting alone has advised himself to the applicable principles*
15 *of law, and given himself any necessary warning, he must indicate clearly in his*
16 *judgment his reasons for acting as he did in order to demonstrate that he has*
17 *acted with the requisite degree of caution in mind and has therefore heeded his*
18 *own warning. No specific form of words is necessary for this demonstration,*
19 *what is necessary is that the Judge’s mind upon the matter should be clearly*
20 *revealed.”*

21
22 6. In *Randy Martin v R*², Mottley JA stated as follows:

23
24 *“A judge sitting in a criminal case without a jury, in rendering his decision and*
25 *giving his reasons for so concluding is not required to review every fact and to*
26 *detail each argument on which the prosecution and defence rely as if he were*
27 *summing up to a jury. The judge must set out the conclusion reached and make*
28 *clear the reasons for arriving at that conclusion. He is required to have regard*
29 *to any difficult or unusual points of law and to show how those points of law*
30 *has in any way impacted the conclusion that he has reached.”*

31
32 7. In the case of *Dioncicio Salazar v The Queen*³ the Caribbean Court of Justice (CCJ) quoted with
33 approval from the judgment of the Court of Appeal in Northern Ireland in *R v Thompson*⁴ in which
34 it was said of the duty of a judge sitting alone in a bench trial:

35 *“He has no jury to charge and therefore will not err if he does not state every*
36 *relevant legal proposition and review every fact and argument on either side.*
37 *His duty is not as in a jury trial to instruct laymen as to every relevant legal*
38 *aspect of the law or to give (perhaps at the end of a long trial) a full and*
39

¹ 2001 CILR 496

² CICA Crim. Appeal No. 2/2010 (Ind. 27/2009)

³ [2019] CCJ 15

⁴ [1977] NI 74



1 *balanced picture of the facts for decision by others. His task is to reach*
2 *conclusions and give reasons to support his view and, preferably, to notice any*
3 *difficult or unusual points of law in order that if there is an appeal it can be*
4 *seen how his view of the law informs his approach to the law."*
5

6 8. The CCJ continued:

7 *"Equally, a judge sitting alone and without a jury is under no duty to "instruct",*
8 *"direct" or "remind" him or herself concerning every legal principle or the*
9 *handling of evidence. This is in fact language that belongs to a jury trial (with*
10 *lay jurors) and not to a bench trial before a professional judge where the*
11 *procedural dynamics are quite different (although certainly not similar to those*
12 *of an inquisitorial or continental bench trial)."*
13

14 9. As in all criminal trials the burden is on the Crown to prove beyond a reasonable doubt that the
15 defendant committed the offences for which he is on trial.

16
17 10. There is no burden on the defendant to prove that he is innocent. There is no onus on the defendant
18 to prove anything at all. The defendant has no obligation to prove that he is not guilty, or to explain
19 the evidence offered by the Prosecution.

20
21 11. The burden of proof is on the Crown, to prove beyond a reasonable doubt that the defendant is
22 guilty of the offences for which he is charged on the Indictment.

23
24 12. I will address my mind to the important or prominent aspects of the evidence in deciding the critical
25 issues in this case. I will not decide every single point that has been raised, only such matters that
26 will enable me to determine whether the charges on the indictment have been proved.

27
28 13. I will have regard to the whole of the evidence that has been presented at trial and form my own
29 judgment about that evidence. The questions of fact at issue on this trial are for me to determine.

30
31 14. If, having considered all the evidence, I have a reasonable doubt as to whether the defendant is
32 guilty or not, I must resolve that doubt in favour of the defendant and find him not guilty of the
33 offences for which he is charged.

34
35 15. On the other hand, if having considered the evidence I am satisfied so that there is no reasonable
36 doubt in my mind, and I am sure of the guilt of the defendant, then it will be equally my duty to
37 find him guilty as charged.
38



1
2 **THE LAW**
3

4 16. Section 127 of the Penal Code (2018 Revision) states:
5

- 6 “(1) *A man who rapes a woman or another man commits an offence.*
7
8 (2) *A man commits rape if–*
9
10 (a) *he has unlawful sexual intercourse (whether vaginal or anal) with*
11 *another person who at the time of intercourse did not consent to it;*
12 *and*
13
14 (b) *at the time he knows that the other person does not consent to the*
15 *intercourse or he is reckless as to whether the other person*
16 *consents to it.*
17
18 (3) *A man also commits rape if he induces a married woman to have sexual*
19 *intercourse with him by impersonating her husband.*
20
21 (4) *If, at a trial for a rape offence, the jury has to consider whether a man*
22 *believed that the person was consenting to sexual intercourse, the presence*
23 *or the absence of reasonable grounds for such belief is a matter to which*
24 *the jury is to have regard in conjunction with any other relevant matters in*
25 *considering whether he so believed.*
26
27 (5) *In subsection (4) –*
28
29 *“rape offence” means a rape or attempted rape, or aiding, abetting,*
30 *counselling or procuring rape or attempted rape, or incitement to rape.*
31
32 (6) *For the purposes of this section, a person is deemed not to have consented*
33 *to sexual intercourse if that person’s acquiescence is obtained–*
34
35 (a) *by threat of force or use of force;*
36 (b) *by means of threats or intimidation of any kind;*
37 (c) *by fear of bodily harm;*
38 (d) *by means of false representations as to the nature of the act; or,*
39 (e) *in the case of a married woman, by personating her husband.*
40
41 (7) *On a trial for rape, the jury may find the accused guilty of–*
42
43 (a) *sexual intercourse with a girl under the age of twelve years;*
44 (b) *sexual intercourse with a girl under the age of sixteen years;*
45 (c) *indecent assault on a person;*
46 (d) *administering drugs to obtain or facilitate intercourse; or*
47 (e) *common assault.*
48



1 (8) *The use in this Law of the word “man” without the addition of the word*
2 *“boy” or vice versa shall not prevent the provision applying to any person*
3 *to whom it would have applied if both words had been used and similarly*
4 *with the words “woman” and “girl”.*
5
6

7 17. The prosecution is not required to prove as an element of the offence of rape that the defendant did
8 not reasonably believe that the complainant was consenting. However, the issue will arise where
9 the defendant alleges that he believed that the complainant was consenting. The prosecution would
10 then have to show the absence of reasonable grounds for such belief and that the defendant did not
11 hold such reasonable belief that the complainant was consenting.
12

13
14 **THE PROSECUTION CASE**
15

16 *The evidence of the Complainant*

17 18. The complainant’s evidence in chief that she had gone out with 4 friends on the evening of the 13th
18 of July 2018. They were partying and drinking and towards the end of the evening they went to
19 the OBAR on Seven Mile Beach Road. She lost track of her friends as she entered the Bar but saw
20 the defendant there. They were acquaintances. She says it was never a friendship, but they had
21 exchanged numbers. She knew the defendant was a DJ.
22

23 19. She texted one of her friends and realized that they had gone home and were not in the bar. She
24 stated that she did not want to go home yet. *“I just wanted to like stay out and have fun”*. She felt
25 comfortable enough with the defendant and they were hanging out in the club. She stated that the
26 defendant bought her 2 drinks. She realized she was getting drunk. She asked the defendant to go
27 and get food and they left the club together. They went to Burger Shack. He told her that they
28 should go to Hell in West Bay.
29

30 20. However, the defendant did not turn toward West Bay in the direction of Hell. He headed to
31 George Town instead and told the complainant when she questioned him something about his son.
32 He had to check on his son. The complaint says that she could feel herself start to get drunk. At
33 the defendant’s house she initially stayed in the car. The defendant went into his apartment and
34 came back and was *“trying to tell me oh, something like let’s forget about West Bay, let’s go in –*
35 *come inside.”*
36

- 1 21. She did go inside the house with the defendant. *“Because at that point I don’t have any*
2 *recollection, I guess that[‘s] the point where I blacked out because I don’t remember anything up*
3 *until the next morning.”* She related that when she woke up later in the morning she was in the
4 defendant’s bed. She was naked and so was the defendant. She felt something wet between her
5 legs. She stated. *“My 1st initial reaction was to freak out – cus it like all these thoughts was*
6 *running through my mind but I just freaked out and I told him just take me home.”*
7
- 8 22. She related that the defendant was trying to get her to calm down saying *“why are you like having*
9 *all of this reaction and I was like just take me home...”*
10
- 11 23. The defendant then pushed her back on the bed and got on top of her. She remembers crying and
12 screaming for him to get off her to no avail. He penetrated her with his penis. She was flailing
13 under him and crying. She related that the defendant eventually stopped, and she rolled over on
14 the bed crying. The defendant was speaking to her and asking her *“why are you doing things to*
15 *make me feel like a monster.”*
16
- 17 24. She related that she told the defendant to take her to the pharmacy and then he could just drop her
18 home. She did not know where she was. The defendant did take her to the pharmacy to get the
19 plan B, birth control prescription. The defendant then dropped her off at the residence and she
20 immediately took the Plan B pill.
21
- 22 25. The complainant remembers calling two friends. She stated that she was feeling numb and in
23 shock. She related that she also told an ex-boyfriend about what had happened the next day. The
24 complainant also told a school counsellor about what had happened. She related that she took a
25 pregnancy test the week after the incident and discovered she was pregnant. She had blocked the
26 defendant’s number on her phone. However, she unblocked the number and called the defendant
27 to tell him that she was pregnant. *“I sent him a text first and then he called me. ...he was just*
28 *saying like what do you mean you are pregnant, didn’t you take the Plan B, what we going to do*
29 *and all that kinda of stuff and I was getting so angry I just hang up the phone on him. And then*
30 *he texted me just the whole texting back and forth with him. I told him to stay away from me and*
31 *you are not going to have anything to do with the outcome of this pregnancy so just stay away from*
32 *me and blocked his number.”*
33
- 34 26. The complainant eventually terminated the pregnancy.



1
2 27. The complainant elaborated on aspects of her evidence. She stated that she had 2-3 shots of tequilla
3 and maybe another drink while out with her friends earlier in the evening. She did not feel drunk
4 at that time. She had two further drinks at OBAR. She related that after she had had the further
5 drinks at OBAR she was at the point where she was about to throw up.
6

7 28. The complainant stated that she and the defendant “made out” in his car after he had taken her to
8 Burgar Shack. It was just kissing. She does not remember the defendant getting a phone call about
9 his son and needing to go home. She does remember when they went to the defendant’s home and
10 looking up the stairs, but she could not remember walking up the stairs. *“That’s kinda where my
11 memory like black out.”*

12
13 29. The complainant stated that she was advised by her friends to go to the police station, but she did
14 not: *“I was just like I just want to forget about it.”* She related that she did not come forward until
15 months later because what had been done could not be undone but she was concerned that she had
16 had to make many sacrifices because of what had happened.
17

18 *Cross-Examination*

19 30. When the complainant was cross-examined by counsel for the defendant, she maintained her
20 account of what had happened between herself and the defendant early on the morning of the 14th
21 of July 2018. She was adamant that when the defendant had sexual intercourse with her that
22 morning and that she did not consent to it.
23

24 31. The complainant denied that she made the complaint because the defendant had suggested that he
25 may not be the father of the child when she told him she was pregnant. She also denied that she
26 had asked the defendant for money to go back to Canada. The complainant denied that she had
27 deliberately deleted messages between herself and the defendant so as not to have the entire
28 communication between them exposed. She stated that she had blocked him and deleted all
29 messages because of what he had done to her, she wanted nothing to do with him. She stated that
30 she only messaged the defendant after she discovered that she was pregnant as her friends kept
31 asking her whether she was going to tell him about it.
32
33
34

1 *The evidence of Suzanne Johnson*

2 32. Suzanne Johnson was one of the complainant’s professors. She had not much contact with the
3 complainant before the 25th July 2020, when she was supervising one of the complainant’s exams.
4 The complainant was unable to complete the exam. Johnson observed that the complainant
5 appeared agitated, anxious and tearful. The complainant was unable to complete the exam even
6 after Johnson had given her time to pull herself together. Johnson questioned the complainant and
7 asked her what was behind this. *“She proceeded to tell me of the events of the 13th into 14th of*
8 *July”*. She related to Johnson about being at OBAR with the defendant and leaving with him to
9 get something to eat.

10
11 *“In the car he told her that he needed to go back to his apartment in George*
12 *Town. He asked her to come in while he did what he had to do which she did.*
13 *She does not remember anything until she woke up the next morning, from when*
14 *she entered the premises until the next morning. The following morning, she*
15 *realized that she was naked in bed with discomfort and moisture there.... She*
16 *stated that she knew that she had been raped. She was intoxicated. She had a*
17 *blackout. She was horrified and wanted to go home. She asked him to drive*
18 *her home and he refused. He raped her again. She tried to fend him off and*
19 *begged him to stop and he overpowered her. ...he drove her home and kept*
20 *asking her why she was so upset.*

21
22 *The evidence of Jennifer Peters*

23 33. Peters is a close friend of the complainant who at the time of the incident was living in Grenada.
24 She thought that she had spoken to the complainant by phone maybe two days after the incident.
25 She related what the complainant told her: she had known and trusted the person who had raped
26 her; he had offered to take her home and she had agreed to let him take her home in his car; he
27 ended up taking her back to his place instead; when she got there, she was really tired, and she fell
28 asleep; she got up the next morning and realized she was naked; She was shocked and did not
29 remember taking her clothes off; The defendant was also naked and she started to ask him
30 questions; He then began to force himself on top of her and he penetrated her. She was crying
31 and asking him to stop but he continued. She was shocked and saddened.

32
33 34. Peters was aware that the complaint became pregnant and had an abortion. She believed that the
34 complainant had said to her she had been drinking and she was drunk.

1 35. When Peters was cross-examined, she agreed that she gave her statement to the police 18 months
2 after the incident. She had continued in contact with the complainant after July 2018. She had
3 spoken to the complainant during the period July 2018 and the time of giving her statement in
4 2020. Peters agreed that she spoke to complainant a lot about the incident. It was suggested to Peters
5 that the statement is compromised because of her various conversations with the complainant.
6 Peters agreed that she could not be sure of exactly what was said in the first conversation with the
7 complainant after the incident.

8

9 36. There was also the evidence of three police officers in the case. Officer Elizabeth Owens' evidence
10 was of becoming aware of the complaint while she was based at the Family Support Unit on the
11 26 of October 2018. She met with the complainant and obtained a report. The complainant
12 provided her with copies of documents which all form part of the court's case and have been
13 tendered as exhibits at trial. She referred the matter to the Criminal Investigation Department since
14 it was not suitable for investigation by the Family Support Unit.

15

16 37. Former Police Officer Kendal Bryan was the officer who first investigated the complaint at The
17 Criminal Investigation Department in November 2018. He arranged for the complainant to give an
18 ABE interview which she did on the 16 November 2018. He also interviewed the defendant under
19 caution in December 2018.

20

21 38. Officer Stephen Graham became involved in the investigation when the Officer Bryan left the
22 RCIPS. His involvement was largely limited to collecting further statements and ensuring the
23 submission of the file for ruling.

24

25 39. That was the extent of the evidence relied on by the prosecution to prove its case against the
26 Defendant.

27

28 **THE DEFENCE CASE**

29

30 40. The defendant elected to give evidence under caution. I remind myself that if I do not accept the
31 evidence of the defendant, I must still return to the Crown's case to look for evidence that the
32 crown has proved its case to the requisite standard before I can find the defendant guilty, there
33 being no onus on the defendant to prove that his is innocent. If the Crown's evidence does not
34 make me sure of the Defendant's guilt then my verdict must be not guilty.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

The evidence of the defendant

41. The defendant did not deny that sexual intercourse took place between himself and the complainant. He was adamant that sexual intercourse was consensual. The defendant denied both counts of rape.

42. The defendant's evidence did not differ significantly from the complainant as to their initial interactions before the date of the incident. The date of the alleged incident would have been the third occasion on which the two met.

43. The defendant testified that he arrived at OBAR sometime after one am on the 14 July 2018. The defendant stated that as he was leaving the bar, after being there about half an hour to 45 minutes, two of his friends stopped him on the steps leading down from the bar. While speaking to his friends the complainant grabbed his hand and pulled him back into the bar. He related that they each had two drinks at the club. The defendant stated that during the time that they were in the club he and the complainant were dancing. He related that at this point the complainant was "*quite fine.*" He described the complainant as being steady and easy after having the two drinks. "*What I mean "steady" was the person being okay, not drunk.*" He explained: "*when I said "easy" she is okay dancing, she is quite fine.*"

44. The defendant stated that while dancing with the complainant in the club the complainant said that she wanted to get some food and they left the club together. They did not remain for longer than an hour together in the bar. They went downstairs to his car. They began to kiss in the car. The defendant described it as an intimate kiss. They were hugging and kissing. He stated that they were kissing for about 5 minutes in the car.

45. They then went to Burger Shack where he bought a burger for the complainant. He stated that the complainant stated to him then that she wanted to hang out she wanted to stay out longer.

46. The defendant's evidence is that he invited the complainant back to his house and that the complainant "*was okay with it, ...she said okay.*" He drove to his apartment. He related what happened when they arrived at the property: he and the complainant were kissing in the car in the parking lot. This went on for about 5-10 minutes. After the kissing stopped, they both got out of the car at the same time as he invited her inside. They both went up the stairs in the apartment to

1 his bedroom. Nothing was said as they entered the house and went up the stairs. The complainant
2 went up the stairs unaided. When they got into the defendant's bedroom they were kissing. The
3 defendant stated: "*We were kissing and caressing and undressing each other.*" The complainant
4 did not react in any way as they undressed. The defendant stated that he and the complainant had
5 sexual intercourse and afterwards they went to sleep.

6
7 47. There was no conversation between them about having sex, "*it just happened.*" The defendant
8 stated that he ejaculated inside the complainant. He recalled that sometime after 8 on the morning
9 of the 14th of July, he woke up and the complainant was already up. He related that the complainant
10 asked him if he had ejaculated inside of her last night when they had sex. He stated: "*She became*
11 *a bit worried because she told me that she wasn't on any form of birth control.*" She asked where
12 she could get plan B the birth control morning after pill. He told her he would take her to the
13 pharmacy to get the pill, however the pharmacy would not have been open at that time. They
14 started kissing again, they had sexual intercourse again. He ejaculated in his hand this time to
15 show her that I did not ejaculate in her the second time. The complainant participated fully. They
16 were kissing before they had sexual intercourse. The complainant he described was "*quite fine.*"
17 When asked to explain he stated: "*She was okay, she was calm, wasn't upset, she was okay.*"

18
19 48. He related that he took the complainant to the pharmacy. They both went into the pharmacy and
20 the defendant paid for the birth control. He then dropped her back to her residence.

21
22 49. His next interaction with the complainant was when she contacted him via WhatsApp about a week
23 or two later. The complainant informed him that she was pregnant. He was surprised by her being
24 pregnant. He called the complainant, and they had a conversation. "*I called her, and we had a*
25 *conversation on the phone as me saying how could you be pregnant what happened to the morning*
26 *after tablet. Then we got into an argument on the phone. She hanged up. Then we were back and*
27 *forth texting. She wanted me to give her money to go to Canada to throw it away...abort the*
28 *baby.*"

29
30 50. He says that things started to turn ugly when he raised the question of why she had not shown him
31 the pregnancy test, that the complainant became *really angry* then.

32
33 51. The defendant stated that he may not have given a full account when he was interviewed as he did
34 in court because he was still in shock at being arrested for the offence of rape. He was nervous

1 and there as a lot of things that he did not mention especially about his father being in the house
2 while he was there with the complainant and the complainant asking him for cash.

3
4 *Cross-Examination*

5 52. In cross examination the defendant denied that he was a ladies' man. He denied that when he said
6 the complainant looked like someone who wanted to have fun that he meant that she was drunk or
7 tipsy. He denied that he had expectations of the night after drinking and dancing with the
8 complainant; that he expected to have the evening culminate with sex. He denied that the drinks
9 that he bought for the complainant were unusually large. He stated that they were in regular cups.
10 The defendant stated that the complainant appeared to be sober, that "*she never seem like anybody*
11 *that was drunk when she pulled me back in the club.*" He denied that the complainant was very
12 drunk by the time she was at Burger Shack. He stated that he would actually notice if somebody
13 was drunk or not.

14
15 53. He denied that he had ever suggested to the complainant that they should visit Hell or that there
16 was any conversation about that. He maintained his evidence that the complainant had agreed to
17 go to his house, that she was not incapacitated. He agreed that the complainant did not ask him to
18 use a condom. He denied that this was because she was too drunk to have had that conversation
19 with him.

20
21 54. He stated that the reason that he had ejaculated in his hand was not to mock the complainant: "*the*
22 *reason for that happening [was] because we had sex again in the morning and that was to prove*
23 *to show okay because we had a conversation before about getting the morning after tablet so we*
24 *had sex the second time hence the reason...to show her I did not ejaculate inside her because we*
25 *were heading to the pharmacy after this.*"

26
27 55. It was suggested to the defendant that he had given two different accounts of what had happened
28 that evening. He admitted that he had not said in interview that he had ejaculated into his hand
29 after the 2nd instance of sexual intercourse. The defendant stated that he was not changing his
30 story. He admitted he did have legal advice at the interview.

31
32 56. The defendant was cross examined about the WhatsApp messages with the complainant, Court
33 Exhibit 1. He stated that as far as he was concerned when the complainant said that she hoped that

1 he would never bring this much pain to another woman that she was referring to the fact that she
2 was pregnant and because he had raised the issue of whether it was his.

3
4 57. He was asked to explain what he meant when he replied: *“we was both drinking”*: *“I was trying*
5 *to say comforting words because I was being attacked, to say, we both know we had sex so why*
6 *place the blame on me alone that what it meant.”*

7
8 58. The defendant stated that CE1 does not reflect the full interaction between the parties on the date
9 in question, that there were also calls on WhatsApp and texts between them.

10
11 59. He admitted that he did not mention in interview about the complainant seeking money for an
12 abortion. He admitted that he did not mention in interview that his father was at home at the time
13 that he and the complainant came back to the house. He again stated that it was the seriousness of
14 the allegation against him that caused him not to mention these facts.

15 16 **COURT’S REASONING AND CONCLUSIONS**

17
18 60. During the course of the closing speeches, both counsel were agreed that the court’s verdict was
19 to be determined on whose evidence the court accepted as being true, the complainant or the
20 defendant. There was no other evidence that went conclusively to the determination of whether
21 sexual intercourse between the complainant and the defendant was consensual or not. This is a
22 case which rests entirely on consent.

23
24 61. The defendant does not deny that he had sexual intercourse with the complainant. However, he
25 asserts that the complainant did consent to each act of intercourse in respect of each of the count
26 of the indictment.

27
28 62. At the outset, I have in mind the following, directed at juries but also relevant in this case where I
29 am the finder of fact: *“The experience of judges who try sexual offences is that an image of*
30 *stereotypical behaviour and demeanour by a victim or the perpetrator of a non-consensual offence*
31 *such as rape held by some members of the public can be misleading and capable of leading to*
32 *injustice. That experience has been gained by judges, expert in the field, presiding over many such*
33 *trials during which guilt has been established but in which the behaviour and demeanour of*
34 *complainants and defendants, both during the incident giving rise to the charge and in evidence,*

1 *has been widely variable. Judges have, as a result of their experience, in recent years adopted the*
2 *course of cautioning juries against applying stereotypical images of how an alleged victim or an*
3 *alleged perpetrator of a sexual offence ought to have behaved at the time ought to appear while*
4 *giving evidence, and to judge the evidence on its intrinsic merits. This is not to invite juries to*
5 *suspend their own judgement but to approach the evidence without prejudice.”⁵*
6

7 *Count 1*

8 63. The issue of consent centers on whether the complainant had the freedom and capacity to give
9 consent at the relevant time in relation to the first of the offences charged, that is, ostensible consent
10 at the time of penetration.

11
12 64. This court must consider whether the complainant had the capacity to make a choice about whether
13 to take part in the sexual activity at the time in question. The complainant’s evidence regarding
14 the first of the allegations of rape was that she was not conscious when sexual intercourse took
15 place because she was drunk and had blacked out. The question for the court is whether the
16 complainant’s evidence in the circumstances of this case showed a lack of consent. Incapacitation
17 through drink may result in a lack of consent.

18
19 65. The complainant’s evidence was that after she and the defendant arrived at his apartment, he had
20 first gone into the house. While he was in the house, the complainant says that she could feel
21 herself start to get drunk. She initially stayed in the car. The defendant went into his home, but he
22 came back and was *“trying to tell me oh, something like let’s forget about West Bay, let’s go in –*
23 *come inside.”*

24
25 66. She did go inside the house with the defendant.

26
27 *“Because at that point I don’t have any recollection, I guess that’s the point*
28 *where I blacked out because I don’t remember anything up until the next*
29 *morning. She related that she woke up in the morning in the defendant’s bed.*
30 *She was naked and so was the defendant.*

31
32 67. She felt something wet between her legs. She stated:
33

⁵ See *Miller v R* [2010] EWCA Crim 1578, per Leveson L.J. referring to the Judicial Studies Benchbook

1 “my 1st initial reaction was to freak out – cus it like all these thoughts was
2 running through my mind but I just freaked out and I told him just take me
3 home.”

4

5 “I don’t remember what words were saying or the attraction that led me to
6 eventually like get inside the house. Because at that point I don’t have any
7 recollection. I guess that’s the point where I blacked out because I don’t
8 remember anything until the next morning.

9

10 I don’t remember anything until waking up and I was in his bed.

11
12 68. Later in her evidence the complainant related that she remembered when they went to the
13 defendant’s home and looking up the stairs, but she could not remember walking up the stairs.

14 *“That’s kind [of] where my memory like blackout”*

15
16 69. The evidence of the complainant was that she was drinking with friends before going to OBAR.
17 The complainant descried that she had 2-3 shots of tequilla and maybe another drink, cranberry
18 and vodka while out with her friends. She did not feel drunk at that time. She had two further
19 drinks at OBAR. She related that after she had had the further drinks at OBAR she was at the
20 point where she was about to throw up. In answer to questions which sought to clarify this evidence
21 in the ABE interview the complaint stated that on a scale of 1-10 she was at a 7 for drunkenness
22 when she was out with her friends but while at OBAR with the defendant she was at 10 on that
23 scale for drunkenness.

24
25 70. The following from *R v Khamki* [2013] EWCA 2335 is relevant:

- 26
27 “a. A person consents if he or she agrees by choice and has the freedom and
28 capacity to make that choice,
29 b. When a person is unconscious, there is no such freedom or capacity to
30 choose,
31 c. ...
32 d. A person can still have the capacity to make a choice and have sex even when
33 they have had a lot to drink (thereby consenting to the act),
34 e. Alcohol can make people less inhibited than when they are sober and
35 everybody has the choice whether or not to have sex,
36 f. If through drink a woman has temporarily lost the capacity to choose to have
37 sexual intercourse, she would not be consenting,
38 g. ...
39 h. In this particular case, the jury would have to consider the evidence of M to
40 determine what her state of consciousness or unconsciousness was and to
41 determine what effect this would have on her capacity to consent,

- 1 i. *If it is determined that the complainant did have the capacity to make a choice,*
2 *it would then have to be considered whether she did or may have consented to*
3 *sexual intercourse".*
4

5 *Count 2*

6 71. The complainant's evidence regarding the second incidence of non-consensual sexual intercourse
7 was that after she awakened on the morning of the 14th July and found herself naked in bed with
8 the defendant, she questioned the defendant about whether he had ejaculated inside her. The
9 defendant confirmed that he had. The complainant began to "freak out" and the defendant was
10 trying to calm her down. She described however that he was coming on to her again, that he got
11 up on top of her and that he penetrated her vagina with his penis.

12
13 72. Her evidence as that she was crying and screaming while he did so, and she was telling him to get
14 off her, but he did not stop. He did eventually move off of her. The defendant was speaking to
15 her and asking her why are you doing things to make me feel like a monster. The complainant's
16 evidence is that she did not consent to this act of sexual intercourse and that at the time she
17 communicated this to the defendant. The complainant's evidence was that after this incident she
18 was crying and in shock. She stated that she was disoriented.

19
20 *Recent complaint*

21 73. Apart from the complainant's account the other evidence for the court's consideration was a copy
22 of a message tendered and exhibited at trial, a copy of an email addressed to an ex-boyfriend which
23 the complainant stated she wrote on her phone on the day after the incident, the night of the 15th
24 of July. The Complainant's account in that email is consistent with the account that she gave in
25 evidence in chief at trial.

26
27 74. In this email she stated: *"I don't remember what he said or how I ended up in the house. All I*
28 *remember was waking up the next morning. I was naked and he was naked, and I felt something*
29 *wet between my legs. So, I start freaking out because I knew what had happened. So, he's trying*
30 *to get me to calm down. So, I tell him just to take me to the pharmacy so I can get a plan b and let*
31 *me go home. He starts pushing up on me again and I start telling him to leave me alone and let*
32 *me leave. And then he pushed me down on the bed and then starts again while I'm under him*
33 *crying and telling him to stop. He finishes, then he starts getting mad at me saying I'm making*
34 *him seem like a monster and a rapist. He finally decides to take me to get the morning after pill*
35 *and then he dropped me home."*

1
2 75. In assessing whether this evidence lends support to the consistency of the complainant's account I
3 bear in mind that there is no independent confirmation of when this message was in fact sent by
4 the complainant on the date identified. The recipient of the message did not give evidence at trial.
5 The message was copied into an email to Officer Owens in November 2018.

6
7 76. I do not accept that the evidence of Jennifer Peters can be viewed as evidence of recent
8 complainant. Although the complainant spoke to her soon after the incident, the witness was
9 unclear as to what may have been said. It was highlighted in cross-examination of this witness
10 that the statement to the police given some eighteen (18) months after the incident was one that
11 was given at a point where she and the complainant had discussed the matter a number of times
12 and she could not be sure what the complainant had in fact said to her immediately after the
13 incident and what parts of that statement was assimilated by her from her various conversations
14 with the complainant between the time of the incident and the time of giving her witness statement.

15
16 77. On the 25th of July 2018 the complainant made a report to one of her professors Dr. Suzanne
17 Johnson. She was unable to take an exam because she was upset and anxious. The complainant's
18 account to Suzanne Johnson is as she stated in her evidence in chief and lends support to the
19 consistency of her account of the incident.

20
21 *Further communications between the parties*

22 78. In the WhatsApp communication, Court Exhibit 1, the complainant accepts that this evidence is
23 but part of the communication between herself and the defendant in the weeks after the incident.
24 The complainant informs the defendant that she is pregnant, and the defendant responds "WTF".
25 There is a lapse in time between messages. Both parties have testified that they were speaking and
26 texting each other during that interval. The WhatsApp message shows the complainant saying to
27 the defendant: "*No matter what I do with this child I just want to let you know you'll never be a*
28 *part of its life or mine. I hope you never bring this much pain to another woman as you have to*
29 *me. Have a good life.*"

30
31 79. I have considered this bit of evidence carefully. It was submitted that the tone of the messages
32 suggests the nature of the relationship between the defendant and the complainant that it was like
33 talking to a girlfriend. Counsel asked the court to consider whether it as realistic, it seemed to
34 suggest that the man who raped you would be part of your life. It was submitted that the message
35 reflects the defendant's shock at being told of the pregnancy and that the court should view it as

1 being reflective of the conversation between consenting adults, that the word rape was never used
2 by the complainant in the message.

3
4 80. The complainant's account was questioned in cross-examination as to: "Why were you even in
5 dialogue on the telephone call with a man on your account that forcibly horrendously held you
6 down and raped you? Her response was that she was advised by her friend to do so at the time.
7 She stated further: "... *the reason why I called him was to show the consequences of what he did*
8 *to me without my consent upon the emotional and psychological damages and the physical*
9 *consequence of what he did."* When she was asked directly why she did not mention anything
10 about being raped in the message she agreed that she did not mention it explicitly. She stated that
11 when she wrote about *bringing this much pain to another woman*, she was referring to sexual
12 assault.

13
14 81. Both parties testified that apart from Court Exhibit 1 there was further communication between
15 them after the complainant informed the defendant that she was pregnant. Both parties have given
16 evidence of what transpired, and their accounts are not entirely dissimilar except as regard the
17 complainant asking the defendant for money and whether the defendant has inquired whether the
18 complainant was sure that the child was his. I am satisfied that despite not having these texts or a
19 transcript of telephone calls, there is sufficient evidence before me regarding the issues that I must
20 determine for me to arrive at a verdict in this case.

21
22 82. I bear in mind that experience shows that people react differently to the trauma of a serious sexual
23 assault, that there is no one classic response, and this extends to responses or reactions during the
24 incident itself. While some complainants may complain immediately others feel shame and shock
25 and do not complain for some time; and that a late complaint does not necessarily mean it is a false
26 complaint.

27
28 83. I have considered all the evidence presented at this trial, particularly that of the complainant and
29 the defendant. I have considered the defendant's account of the incident. The first count centered
30 on the issue whether the complainant was so drunk that she had blacked out and therefore did not
31 consent to sexual intercourse. The defendant's evidence of the complainant level of intoxication
32 was particularly interesting. He was adamant that the complainant was not drunk. Even when
33 being examined by his counsel he was quick to state without being asked that the complainant was
34 not drunk. He stated that she was steady and easy.

1 84. In cross-examination the defendant was asked whether he thought the complainant was sober when
2 he first encountered her that evening. He stated that she was sober, that “*she never seem like*
3 *anybody that was drunk*” when she pulled him into the club. By this time, on the complainant’s
4 account, she had been drinking and was at a 7 on a scale of 1-10 yet the defendant says that to him
5 she was sober. It was suggested to the complainant that she had exaggerated the extent of her
6 drinking before she went to the OBAR. She strenuously denied this. I believe that the complainant
7 was drinking and had drunk to the extent that she testified before going to OBAR.

8
9 85. The defendant was adamant that even when they left OBAR and went to Burgar Shack that the
10 complainant was not drunk. He would not accept that the effects of alcohol on her were evident by
11 that time. I do not believe the defendant. He appeared to be trying to distance himself from the
12 complainant and drinking and the likely effects of that drinking because he was aware of the
13 implications of him having sexual intercourse with her in such a state of drunkenness.

14
15 86. The defendant has admitted that he did not mention in interview about the complainant seeking
16 money for an abortion from him. To this court’s mind this was something that he had only recently
17 fabricated in an attempt to give a reason for the complainant making this report against him. As
18 the prosecution submitted he may not have realized that the complainant could have accessed these
19 services without cost in her country of origin.

20
21 87. The defendant admitted that he did not mention in interview that his father was at home at the time
22 that he and the complainant came back to his home that morning. He stated that it was the
23 seriousness of the allegation against him that caused him not to mention this fact. The
24 complainant’s father was not called as a witness in this matter. The defendant’s evidence is that
25 his father was at home at a time when the complainant stated that she was crying and screaming
26 during intercourse at around 8:00 am on the morning of 14th July 2018.

27
28 88. The defendant suggested that the complainant’s motive for making false allegations against him
29 was due to him suggesting that he may not have been the father of the child or that she had asked
30 him for money for an abortion that he did not give. The complainant has denied that she asked the
31 defendant for money for an abortion. The complainant was able to easily access an abortion. The
32 complainant as appears by the conversation in CE1 wanted nothing more to do with the defendant
33 and never contacted him after that interaction. Neither of these explanations offered by the
34 defendant are to this court’s mind motivators for the complaint to testify falsely against the

1 defendant. Neither of these cause this court to doubt the complainant's evidence of what transpired
2 on the morning of the 14 July 2018.

3
4 89. I remind myself that I cannot convict the defendant simply because I do not believe his testimony
5 of what happened that morning. I must go back to consider the prosecution's case.

6
7 90. On each of the counts of the indictment the prosecution must prove that the defendant had sexual
8 intercourse with the complainant without her consent and that at the time the defendant knew that
9 the complainant was not consenting or was reckless as to whether she was consenting or not. On
10 the evidence presented by the prosecution the complainant was clear in her words and actions that
11 she did not consent to sexual intercourse with the defendant. I believe her evidence. She gave a
12 very detailed account of what transpired. She maintained her account under cross-examination
13 and the evidence Suzanne Johnson bolsters her evidence by supporting the consistency of her
14 account of what transpired that evening.

15
16 91. I believe that the complainant was drunk as she has said in evidence at the time that the defendant
17 had sexual intercourse with her in the early hours of the 14th of July. I find that in that state she
18 was unable to consent to sexual intercourse with the defendant. I believe her account of what
19 transpired later at some time around 8:00 am that morning. I believe that the defendant again had
20 sexual intercourse without her consent although at that point she clearly expressed by her words
21 and actions that she did not consent to such intercourse.

22
23 92. I find that the prosecution's evidence has satisfied me so that I am sure that the defendant had
24 sexual intercourse with the complainant on two occasions on the 14th of July 2018 without her
25 consent. I am satisfied so that I am sure that the defendant knew that the complainant was not
26 consenting or that he was reckless as to whether she was consenting or not.

27
28 93. **I am satisfied so that I feel sure that the defendant is guilty of the two counts of rape as set**
29 **out on the indictment.**

30
31 Dated this 9th day of December 2022.

32 
33 **Madam Justice Marlene I. Carter**
34 **Judge of the Grand Court (Ag.)**