

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CRIMINAL SIDE  
3

4 INDICTMENT NO: 40 of 2019  
5  
6  
7

8 THE QUEEN  
9

10 v.  
11

12 JAMES FILANCHIE ELLIS  
13  
14  
15  
16



17 **Appearances:**

Ms. Darlene Oko, Senior Crown Counsel for the  
Crown

18  
19  
20 Mr. Jonathon Hughes, Counsel for the Defendant

21 **Before:**

Justice Marlene I. Carter (Actg.)

22 **Judge Alone Trial:**

2-3, 7<sup>th</sup> and 9<sup>th</sup> of July 2020

23  
24 **Delivery of Decision:**

25 25<sup>th</sup> August 2020  
26  
27

28 **HEADNOTE**

29 *Attempted Rape- Assault by Penetration*  
30 *- Trial by Judge Alone -*  
31

32  
33  
34 **VERDICT JUDGMENT**  
35  
36  
37  
38  
39  
40  
41  
42

1 PREAMBLE  
2

3 1. Section 31 of the *Criminal Procedure Code* (CPC) (2019 Revision) states as follows:

4 “Anonymity of complainants in rape etc. cases:

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

11 (2) *In this section —*  
12 *“rape offence” means rape, attempted rape, conspiracy to*  
13 *commit rape, aiding, abetting, counselling or procuring*  
14 *rape or attempted rape, and incitement to rape.*

15 (3) *For the purpose of this section, a person is accused of a*  
16 *rape offence if—*

- 17 (a) *a charge is laid alleging that he has committed a*  
18 *rape offence;*  
19 (b) *he appears before a court charged with a rape*  
20 *offence;*  
21 (c) *a court before which he is appearing commits him*  
22 *for trial on a new charge alleging a rape offence;*  
23 *or*  
24 (d) *a bill of indictment charging him with a rape*  
25 *offence is preferred before a court in which he may*  
26 *lawfully be indicted for the offence.*

27 (4) ...

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

- 30 (a) *in the case of a publication in a newspaper or*  
31 *periodical, the proprietor, editor and publisher of*  
32 *the newspaper or periodical;*  
33 (b) *in the case of any other publication, the person*  
34 *who publishes it;*  
35 (c) *in the case of a broadcast, any person having*  
36 *functions, in relation to the programme in which it*  
37 *is made, corresponding to those of an editor of a*  
38 *newspaper,*  
39 *commit an offence and are each liable on summary*  
40 *conviction to a fine of one thousand dollars.”*  
41

42 2. In pursuance of the Section, this Judgment has been anonymized to protect the identity  
43 of the complainant.

1     **INDICTMENT**  
2

3     3.     The five-count indictment, filed in the Grand Court on the 14<sup>th</sup> May 2019 charged the defendant  
4           as follows: Count 1 - Attempted Rape; Counts 2 and 3 - Assault by Penetration; Count 4 –  
5           Burglary; and Count 5 – Assault Causing Actual Bodily Harm.

6  
7     4.     On the first day of trial Counsel for the Prosecution informed the court that the Crown would not  
8           offer any evidence on count 5 of the Indictment. The defendant was discharged on Count 5.

9  
10    5.     The trial proceeded on Counts 1- 4 of the Indictment which read as follows:

11  
12           i.     Count 1: Attempted Rape, contrary to s.129 of the *Penal Code* (2019 Revision).  
13           The Particulars of the offence being that the defendant, on the 6<sup>th</sup> day of May  
14           2019, at [--], attempted to have unlawful sexual intercourse with N, without her  
15           consent.

16           ii.    Count 2: Assault by penetration, contrary to s.132A of the *Penal Code* (2019  
17           Revision). The Particulars of the offence being that the defendant, on the 6<sup>th</sup> day  
18           of May 2019, at [--], intentionally, and for the purposes of obtaining sexual  
19           gratification, penetrated the mouth of N with his penis, without her consent.

20           iii.   Count 3: Assault by penetration, contrary to s.132A of the *Penal Code* (2019  
21           Revision). The Particulars of the offence being that the defendant, on the 6<sup>th</sup> day  
22           of May 2019, at [--], intentionally, and for the purposes of obtaining sexual  
23           gratification, penetrated the mouth of N with his fingers, without her consent.

24           iv.    Count 4: Burglary, contrary to s.243 of the *Penal Code* (2019 Revision). The  
25           Particulars of the offence being that the defendant, on the 6<sup>th</sup> day of May 2019,  
26           entered a building, namely, a residence at [--] as a trespasser with intent to commit  
27           the offence of rape.  
28



1 6. The defendant elected trial by Judge alone pursuant to s.129 of *the Criminal Procedure Code*.

2  
3 **THE LAW ON JUDGE ALONE TRIALS**



4  
5  
6 7. The Cayman Islands Court of Appeal (CICA) has given some guidance on the  
7 duties of a Judge in a Judge Alone trial. In *K. Richards v R*<sup>1</sup> Rowe JA, stated:

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

16 8. In *Randy Martin v R*<sup>2</sup>, Mottley JA stated as follows:

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

25  
26 9. As in all criminal trials the burden is on the Crown to prove beyond a reasonable doubt that the  
27 Defendant committed the offences for which he is on trial.

28  
29 10. There is no burden on the Defendant to prove that he is innocent. There is no onus on the  
30 Defendant to prove anything at all. The Defendant has no obligation to prove that he is not guilty,  
31 or to explain the evidence offered by the Prosecution.  
32

---

<sup>1</sup> 2001 CILR 496

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

1 11. During the course of this judgment I will not review every single detail of the evidence. I will  
2 address my mind to the important or prominent aspects of the evidence in deciding the critical  
3 issues in this case. I will not decide every single point that has been raised – only such matters  
4 that will enable me to determine whether the charges on the indictment have been proved.

5  
6 12. I remind myself that I am not to speculate about things or matters that are not covered by the  
7 evidence. I must have regard to the whole of the evidence that has been presented at trial and form  
8 my own judgment about that evidence and determine the questions of fact at issue on this trial.

9  
10 13. If after considering all the evidence in this case, I have any reasonable doubt as to whether the  
11 Defendant is guilty or not, I must resolve that doubt in favour of the Defendant and find him not  
12 guilty of the offences for which he is charged.

13  
14 14. On the other hand, if having considered the evidence I am satisfied so that there is no reasonable  
15 doubt in my mind, and I am sure of the guilt of the Defendant, then it will be equally my duty in  
16 law to find him guilty as charged of the offences on the indictment.

17  
18 **THE PROSECUTION CASE**

19  
20 15. The Statement of Admitted Facts reads: *“Pursuant to section 34 of the Evidence Law (2019*  
21 *Revision) , the following facts are hereby admitted by the defence as conclusive proof of the fact*  
22 *so admitted such that no further proof of the fact by the prosecution is thereby required:*

- 23           i.       *The identity of the defendant, James Filanchie Ellis.*
- 24           ii.       *The photographs taken of the complainant by SOCO B. Parchment on May 6<sup>th</sup>,*  
25 *2019 at approximately 11:40 a.m. (photographs 1-80 in the photograph bundle*  
26 *and exhibited as BP1) accurately depict the scene of the alleged offence [at the*  
27 *subject location] as of that date.*



28



- 1           iii.    *The statement of SOCO Brittney Parchment dated April 23, 2020 will be read*  
2                   *into the record and admitted by consent.*
- 3  
4           iv.    *Continuity of all exhibits collected by SOCO Brittney Parchment and submitted*  
5                   *and received by the forensic DNA laboratory is admitted and will not in issue.*
- 6  
7           v.    *The photographs taken of the complainant by SOCO Sarah Hough on May 6<sup>th</sup> at*  
8                   *1:23 p.m. (photos 84-93) and of the defendant on May 7, 2019 (photos 81-83)*  
9                   *accurately depict the condition of the complainant and defendant at that time.*
- 10  
11          vi.    *The interview of the defendant was audio and video recorded and taken by D/C*  
12                   *Lexine Welcome and DC Reid on May 7, 2019 in the presence of [his] attorney*  
13                   *(Exhibit JW/JE1) and is admitted by consent.*
- 14  
15          vii.   *The redacted transcripts of the ABE interview of the complainant is an accurate*  
16                   *transcription of the ABE interview and will be admitted as an aid to the respective*  
17                   *recording by consent.*
- 18  
19          viii.   *A buccal swab from, the boyfriend of the complainant, was taken on May 10, 2019*  
20                   *for the purposes of the subsequent DNA analysis.*
- 21  
22          ix.    *The statement of PC Camile Haughton dated May 13, 2019 (trial bundle page*  
23                   *12) will be read into the record and admitted by consent.*
- 24  
25          x.    *The statement of Auxiliary Constable Balford Pennicooke dated May 8, 2019*  
26                   *(trial bundle page 14) will be read into the record and admitted by consent.*
- 27  
28          xi.    *The complainant was examined at the GT hospital on May 6, 2019 at 7:51 a.m.*  
29                   *by Doctor Samantha McHayle who documented the following:*  
30

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



- a) *Hoarseness*
- b) *Mild tenderness to anterior neck over the hyoid bone and tracheal cartilages.*
- c) *multiple bruises and superficial abrasions to the upper chest bilaterally with mild tenderness*
- d) *bruises to the upper outer quadrant of the left breast*
- e) *1.5 x 1.5 cm area of swelling, erythema and tenderness to the right cheek/zygomatic region.*

xii. *The complainant was further examined at 13:12 p.m. on May 6<sup>th</sup>, 2019 by Dr. Gyamendra Jhe who documented the following:*

- a) *She allegedly was assaulted and strangulated. She complained of voice hoarseness. On examination of throat, larynx nothing abnormal was found. She was advised if symptoms continue to see me in clinic after 2 weeks.*

xiii. *Angela Tanzillo-Swartz, a duly qualified forensic DNA specialist whose expertise is admitted, prepared 2 forensic test reports dated July 10, 2019 and June 12, 2020 as to the results of the forensic testing of the exhibits collected in the course of the investigation by SOCO B. Parchman. The reports of Angela Tanzillo-Swartz are an accurate reporting of the forensic analysis undertaken on all samples received and is admitted by consent.*

1                   xiv.    *The 911 recording of May 6, 2019 is an accurate recording of the 911 call placed*  
2   *to emergency services and the CD with transcript in aid is admitted by consent.*

3  
4                   xv.    *The defendant has no antecedent history in the Cayman Islands.”*

5  
6  
7 16.    Pursuant to the agreed Statement of Admitted facts the Statements of the following officers were  
8        read into evidence by the prosecution:

- 9                   i.        Scenes of Crime Officer (SOCO) Brittney Parchment dated 23 April 2020’  
10                  ii.       Police Constable Camille Houghton dated 13 May 2019; and  
11                  iii.       Auxillary Constable Balford Pennicooke.

12        The salient aspects of the evidence of these officers are set out below.



13  
14 **EVIDENCE OF SOCO BRITTNEY PARCHMENT**

15  
16 17.    She attended the scene on the 6<sup>th</sup> May 2019 at 8:42 am. She noticed a pink dress on the couch in  
17        the living room of the premises and her attention was drawn to areas where suspected blood was  
18        seen in the living room and kitchen/dining area. She noted that the point of entry was a rear  
19        bedroom window where she observed the window screen for the said window on the ground  
20        nearby.

21  
22 18.    She took photographs of the scene both interior and exterior. She also collected swabs of  
23        suspected blood at the scene and noted faint apparent footprint impressions in the suspected blood  
24        in the living/dining floor area. She took photographs of all of these impressions and later exhibited  
25        these photographs. Parchment submitted the pink dress as well as the swab of suspected blood  
26        taken from the bedroom window, a sexual assault kit, buccal swabs from the complainant, the  
27        defendant and the complainant’s boyfriend to the Cayman Islands Forensic Science Laboratory  
28        for DNA analysis.

1 **EVIDENCE OF CONSTABLE CAMILLE HAUGHTON**

2

3 19. She attended at the scene at 6:21 am on the morning of the 6<sup>th</sup> of May 2019. She spoke to the  
4 complainant and noted that the complainant was “crying hysterically”. She observed that the  
5 white sleeveless blouse which the complainant was wearing had what appeared to be several blood  
6 stains. She also noticed what appeared to be blood on the floor inside the living room area and  
7 sections of a passageway in the house.

8

9 20. Haughton stated that the complainant kept saying: “*him a go kill me, him a go kill me*”. Her  
10 evidence was: [The Complainant] began to explain that her ex-boyfriend Mr. James Filance Ellis  
11 had entered her bedroom through a rear window that was left open about 4 am the same morning.  
12 He demanded and attempted to have sexual intercourse with her against her will. She said she  
13 tried to run outside but Mr. Ellis caught her, lift her up and drop her on the ground. [The  
14 Complainant] said Mr. Ellis informed her that if he could not get her, no one else could and is  
15 either she is going to die or him.”

16

17 **EVIDENCE OF AUXILIARY OFFICER PENNICOOKE**

18

19 21. This Officer’s evidence went only to the fact that he formally charged the defendant for the  
20 offences of Attempted Rape, Assault by Penetration, Burglary and Assault Occasioning Actual  
21 Bodily Harm on the 8<sup>th</sup> May 2019.

22

23 22. Pursuant to the Statement of Admitted facts the following items/reports were admitted into  
24 evidence:

25

i. Photographs taken by Officer Parchment, numbering 1-80;

26

ii. Photographs taken by SOCO Sarah Hough, numbering 81 -93;

27

28

iii. The audio and video recorded interview of the defendant dated 7<sup>th</sup> May 2019;

29

30



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

- iv. The redacted transcripts of the ABE interview of the complainant dated 6<sup>th</sup> May 2019;
- v. 2 forensic tests (DNA) reports dated July 10, 2019 and June 12, 2020 prepared by DNA specialist Angela Tanzillo-Swarts;
- vi. 911 audio recording and transcript of that recording dated May 6<sup>th</sup> 2019.
- vii. DNA Reports

23. The most salient findings from the DNA reports are as follows:

- i. Swabs taken from the right areola and nipple of the complainant were positive for saliva. DNA analysis revealed that there was multiple-source DNA recovered from these swabs that it was determined originated from two individuals and a major component was separated from that mixture. The result was as follows: “The major component consists of a complete, single-source DNA profile matching that of James Ellis. Assuming one contributor and based on the Black population, it is estimated to be 23 quadrillion times more likely to observe this major component if James Ellis is the contributor than if an unknown, unrelated individual is the contributor.” The Complainant’s boyfriend was excluded as a possible contributor to this multiple-source DNA profile.
- ii. With regard to the pink dress: “The presence of human blood was confirmed on the pink dress BP2. Screening tests for the presence of saliva on the pink dress were positive.” DNA analysis revealed: “A partial DNA profile was obtained from the apparent saliva stain. The complainant, the complainant’s boyfriend and the defendant were excluded as possible contributors to that sample. “The



1 complete single-source DNA profile obtained from the bloodstain matches that  
2 of James. Ellis. Assuming one contributor and based on the Black population, it  
3 is estimated to be 23 quadrillion times more likely to observe this DNA profile if  
4 James Ellis is the contributor than if an unknown, unrelated individual is the  
5 contributor.” The Complainant and her boyfriend were excluded as possible  
6 contributors to this DNA profile.

7  
8 iii. Human Blood was also confirmed on the suspected blood inside the point of entry  
9 at the complainant’s bedroom window. The DNA report: “The complete, single-  
10 source DNA profile obtained from the bloodstain matches that of James Ellis.  
11 Assuming one contributor and based on the Black population, it is estimated to  
12 be 23 quadrillion times more likely to observe this DNA profile if James Ellis is  
13 the contributor than if an unknown, unrelated individual is the contributor.” The  
14 Complainant and her boyfriend were excluded as possible contributors to this  
15 DNA profile.



16  
17 24. The DNA evidence is consistent with the Crown’s version of the incident.

18  
19 25. The defendant does not deny that he entered through the complainant’s bedroom window, he does  
20 not deny that he was bleeding and that it could have been his blood on the pink dress nor does he  
21 deny that he put his mouth to the complainant’s breasts. While the DNA is therefore supportive  
22 of the Crown’s evidence, its probative value with regard to the issues in this case is limited.

23  
24 **THE EVIDENCE OF THE COMPLAINANT**

25  
26 26. The ABE interview of the complainant was entered into evidence together with a transcript of that  
27 interview.

1 27. The complainant and the defendant were previously in a relationship for approximately six years.  
2 The relationship ended a few months before this incident. The defendant wanted the relationship  
3 to resume, however the complainant related that she felt that it could not work between them.

4  
5 28. The transcript records that the complainant was sleeping in her bedroom when she heard someone  
6 at her bedroom window at approximately 3 or 4 am on the morning of the 6<sup>th</sup> of May. She heard  
7 her name being called. It was the defendant calling her by name. She did not answer hoping that  
8 he would leave.

9  
10 29. She saw a light coming from the window area and two to three minutes later she heard the screen  
11 covering the window being removed. She called out to the defendant asking why he was trying  
12 to break in and he answered her saying that he was calling her by phone but she was not answering  
13 the phone. When she saw the defendant entering the bedroom through the window she got off her  
14 bed and picked up her phone but the defendant, who had entered the room by this time, grabbed  
15 the phone from her.



16  
17 30. She tried to get the phone from him and he pushed her unto the bed and was holding her by her  
18 throat and asking her why she did not want to talk to him.

19  
20  
21 31. When the complainant said to the defendant that their relationship was over, the defendant stated:  
22 "*No it's not over because me and you not left*". He started to kiss her. The defendant said to her  
23 that he wanted to have sex with her. The complainant's response was: "*No, I don't want to have*  
24 *no sex with you.*" She told him "*it cannot work like that*". It was at this point that the complainant  
25 related: "*...he start to now try to kiss me up and suck up my body, ...me try to a resist whenever*  
26 *time I resist now he try to hold on to my neck now, squeeze it ...*". The complainant explained that  
27 she was wearing a white marina only, without underwear at the time. She described that the  
28 defendant was sucking on her face, all the while holding her on the bed.



1 32. She described that the defendant appeared to calm down and that he sat down in the bedroom and  
2 started to cry. The complainant moved to the sofa in the living room, trying to get away from him  
3 at this point, as she stated she wanted to go towards the door to the premises. But the defendant  
4 grabbed her again and pushed her on to the sofa. The complainant described:

5 *“[he] say, “why you want call the Police pon me, you want to call the Police pon me: and  
6 he started to carry on again and grab on my throat and pretend like every time me try to  
7 resist he try like if he want squeeze.”*

9  
10 33. She described further:

11  
12 *“...he just go on like he just get crazy and he want some sex and he want it and he let me  
13 go now to try and go between me leg and then he try and he try and he can't stand up to  
14 get to sex me so he try to push his hand in when it can't work he shove his fingers in me  
15 vagina and start to like dig it, dig it, dig it and just keep kinda of just want some sex.”*

16  
17 34. The complainant related that the defendant had stripped himself once he had entered the bedroom.  
18 In answer to a question posed by the Investigating Officer (IO) she stated: (I have used IO for  
19 Investigating Officer instead of the Officer's initials as that is an easier reference at this stage. For  
20 the complainant I have used 'N' – in line with what was used in the indictment (see page 1) and  
21 also to assist with anonymizing)

22 *“IO: Alright so you say you were in the sofa and you say you bit him while you were in  
23 the sofa*

24 *N: Yes*

25 *IO: At any time his penis enter your vagina?*

26 *IO: I wouldn't say go into it but he was just like that at the mouth, but he, he dead so  
27 he couldn't like enter. So all like him trying to let it enter, it cannot enter because  
28 he is not just a stand up. So he tried to put him mouth on me.”*

29  
30 35. The complainant described that she was able to get away from the defendant when he insisted he  
31 wanted to have sex with her and she told him she would not have sex with him without a condom.

1 When he went in search of the condom she ran out of the house. She ran to the back of the house  
2 to ask the neighbour for assistance. The defendant followed her and lifted her up to bring her back  
3 into the house. She resisted him and fell in the yard trying to get away from him. She related that  
4 she tried to get him to leave telling him that the Police were coming and that she would not say  
5 anything to them. The defendant left the premises before the Police arrived.

6

7 36. When questioned further the complainant clarified:

8

9 *IO: So you have the bruise on your face and some other marks that you show me.*

10 *N: Ya*

11 *IO: Was any of these inflicted physically hitting you, or anything like that apart from*  
12 *squeezing your throat*

13 *N: No strangling me is [just] that was like the physical abuse.*

14 *IO: Ok*

15 *N: But by these scars I feel that it is wrestling. Here it seem like he want to bite me*  
16 *at the face, but true I scream out and say you are going to bite me like he just suck*  
17 *it and dry it you know like squeeze me hard*

18 ....

19 *N: ... he never lick me or box me or anything but all his mind was just to sex me.*

20 *IO: Ok*

21 *N: He just want to sex me or want me to go back to him."*

22

23 **CROSS -EXAMINATION**

24

25 37. The complainant stated that after she and the defendant broke off their relationship they continued  
26 to speak on the phone or at the gate to the premises. She stated that he always wanted to come  
27 into the premises. She maintained that she and the defendant had never had sex since they broke  
28 up. She related that after they broke up there was one occasion when she was asleep in her  
29 bedroom and the defendant came in. She related: *"I told him to stop [coming to the house] because*  
30 *I had a relationship not to come around the house but he never get it."*



1 38. The complainant accepted that she was charged previously for assaulting the defendant. She  
2 testified that during the time that that case was before the Summary Court she was restrained from  
3 going within 100ft of the defendant. She described that she had reacted after the defendant had  
4 “boxed” her but he was not charged. She denied that she had made a report of the allegations in  
5 this case because of what had happened.

6  
7 39. The complainant testified that on the night of the 5<sup>th</sup> of May 2019, her boyfriend, had come over  
8 to see her. She stated that she did not remember if she had sex with her boyfriend that evening,  
9 then denied that they had had sex at all. When it was suggested to the complainant that she told  
10 the defendant that she did have sex earlier in the evening her response was: *“I told him that I had  
11 sex so I didn’t want him to have any so he put his finger up in me to prove if it was true. When he  
12 want sex and I said I had sex and had a discharge he put his finger to see if it is true. I did not  
13 want him to want it. I wanted to get him away.”*

14  
15 40. It was suggested to the complainant that in her interview she never described this sequence of  
16 events to the police and that she told the Police that he only inserted his finger into her vagina for  
17 examination or to ascertain whether she had inserted a contraceptive. She replied that the  
18 defendant was putting his fingers into her vagina not just to check whether she had sex but also  
19 for his gratification. *“He was doing it also to let his penis stand up, so it’s the same thing.”*

20  
21 41. The complainant testified that she did not want the defendant to come into her bedroom. She said  
22 that when she saw him entering she moved off the bed to get to her phone and that he grabbed the  
23 phone from her and pushed her on to the bed. It was at this point that he was trying to have sex  
24 with her and was squeezing her throat.

25  
26 42. She denied that they were just talking for three hours. She stated that she struggled with him from  
27 the bedroom to the living room and then outside. *“I was trying to fight back and escape over the  
28 three hours. At one point in time when he started crying, I think he would calm and I would talk*



1           to him and try to get him out of the house but every time it's like he would build up another force.”

2           She explained why she bit the defendant: “I bit him because he was pushing his tongue in my  
3           mouth. I don't know about this being the rough way we had sex in the past”

4  
5   43.       When it was suggested to her that the defendant did not put his penis into her vagina, she said: “...  
6           he was at the mouth [of my vagina] trying to force it. He wanted to have sex with me. I know it  
7           is serious, I never said he try to rape me. I said he was trying to have sex with me.” “He wanted  
8           to have sex and tried to eat up my body and force his dead penis into my vagina. He is lying if he  
9           said he never tried to do that.” She denied that she had taken \$100.00 from the complainant to  
10          have sex with him.

11  
12   44.       In Re-Examination the complainant related another incident approximately one month prior to the  
13          incident before the court when the defendant had come to the house, had jumped the fence to come  
14          in saying he wanted them to get back together. She described that he entered the house and was  
15          standing over her. She did not call the police on that occasion. She reiterated that she did not give  
16          the defendant permission on the 6<sup>th</sup> of May 2019 to access her bedroom window.

17  
18   **THE EVIDENCE OF DR. GILLIAN EVANS-BELFONTE**

19  
20   45.       Dr. Gillian Evans-Belfonte examined the complainant on the date of the incident at the George  
21          Town Hospital. The Crown applied for the Doctor's evidence to be received as expert testimony.  
22          Dr. Belfonte stated that she was had training and experience both as a medical doctor and  
23          gynaecologist. She is a graduate of the Faculty of Medicine at the University of the West Indies  
24          and completed postgraduate training in the United Kingdom. She has been a member of The  
25          Royal College of Obstetricians and Gynaecologists since 2000 and is also a fellow of the Royal  
26          College of Obstetricians and Gynaecologists. Dr. Belafonte related that in 2018 she undertook a  
27          specialist course in Forensic Sexual Assault Examination and that this training included the  
28          assessment of certain injuries to victims of sexual assault.



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

46. She testified that she was qualified to offer an opinion with respect to an allegation that an individual or a victim has been strangled, that is, as to whether in fact the injuries support such an allegation. The Court deemed the doctor a specialist, medical doctor especially in terms of gynaecology but I do say that that doesn't preclude her from being able to give an opinion with regard to whether the injuries that she observed might have been consistent with strangulation.

47. Dr. Belfonte testified that she noted the following when she examined the complainant on the 6<sup>th</sup> of May 2019:

- i. the complainant appeared upset;
- ii. she was speaking in a very loud hoarse whisper which Dr. described as not her normal voice;
- iii. a number of injuries were noted, a swollen reddish purple bruise on the right side of her face, 30mlx23 ml.;
- iv. Prominent blood vessels seen on the white portion of her left eye;
- v. tenderness under her chin and around her neck but there was no bruising seen;
- vi. a bruise on her right upper inner arm above her elbow that approximately 31 by 3-millimeters;
- vii. a linear abrasion 1 x 1 millimeter, a small abrasion over her right elbow.
- viii. a linear abrasion 1 cm long, over the medial on her left ring finger with a bruise, 4 x 4 mm and associated swelling and tenderness;
- ix. On her chest wall, the sternum, a 12 x 18-millimeter bruise.
- x. On her right breast, the upper part of the breast, a 7 x 12-millimeter bruise.
- xi. On her left breast there were two bruises, one measured 23 x 4 millimeters and the other measured 40 bx 4-millimeters.



- 1 48. The doctor also noted:  
2 i. on Examination of her external genitalia, a horizontal abrasion on the right lip,  
3 the right labia majora.  
4 ii. Close to the posterior opening of the vagina she noted secretions or a discharge,  
5 coming from inside the introitus, the opening to the vagina.  
6 iii. a small area of redness around the opening of the cervix.  
7

8 49. The doctor testified that she referred the complainant to an Ear/Nose and Throat specialist  
9 because of the injuries she noted to the complainant's neck. She related that she was concerned  
10 because there could be internal damage that she would not be able to see upon that physical  
11 examination and hence the referral to ENT.  
12

13 50. The Doctor testified that she came to the following conclusions:

14  
15 *"That they [the injuries] were consistent to having been obtained recently and so*  
16 *could possibly have been obtained during the time of the alleged assault. The*  
17 *abrasion on her wrist, because of the nature of it being a linear abrasion, could*  
18 *have been caused possibly by a fingernail. On her right elbow that abrasion was*  
19 *consistent with recent trauma but I was not able to say what caused it. The*  
20 *prominence of vessels in her left eye may be related to strangulation, taking into*  
21 *account as well her effect of speech and pain in her neck it was highly probably*  
22 *that she had experienced a degree of strangulation. The abrasion on her labia, the*  
23 *genital area could possibly have been caused by a fingernail. The genital, the*  
24 *internal -- examination within the vagina, within the cervix was difficult to say if*  
25 *there was any evidence of-- if it could have been --findings could have been caused*  
26 *by sexual assault because she had had recent sexual activity and it is normal to*  
27 *find similar changes in someone who is recently sexually active."*  
28



1 51. She went on:

2  
3

4  
5

*“On examination of her vagina... because the findings may also be consistent with consensual sexual activity...with the evidence of blunt trauma on the labia -- um - - suggest some form of attempted sexual assault.”*

6  
7

**CROSS EXAMINATION**

8  
9

52. Dr. Belfonte agreed that the injury noted to the labia, was an abrasion, a superficial injury and could be caused by consensual sexual intercourse. She stated that the complainant had related to her that she had had recent sexual activity on the evening prior to the incident *“at about 22:00 hours on the night before, on the 5<sup>th</sup> and a condom was used.”*

10  
11  
12

13  
14

53. The Doctor agreed that where someone sucks on skin and causes blood to come to the surface and leave a mark that the bruise caused would not be any different to a blunt trauma bruise in terms of how it would appear? With regard to the complainant’s bruises, *“If there were teeth marks that I could see then I would think about biting but it was just discolored skin, a bruise”*

15  
16  
17

18  
19

54. When questioned about her conclusion that the complainant had been strangled given that she did not notice any marks or bruising on the complainant’s neck and the ENT specialist had not noted any abnormalities to her larynx, Dr. Belfonte confirmed that that conclusion was reached when coupled with other factors noted, specifically, hoarseness in the voice, tenderness to the touch and the account given by the complainant. The doctor maintained that because she spent approx. 3-4 hours with the complainant during her examination she would not say that these last three factors were faked but she did agree that her conclusions could not be put higher than she had described with regard to the cause of the complainant’s injuries.

20  
21  
22



23  
24

25  
26

27  
28

55. I accept the Doctor’s evidence.

29

1 **THE COMPLAINANT’S BOYFRIEND ‘MR. X’**

2  
3 56. Mr. X was the complainant’s boyfriend on the 5<sup>th</sup> of May 2019. He testified that they had been  
4 in a relationship since January 2019. He was at her home on the night of the 5<sup>th</sup> of May 2019  
5 and left there at some time after 10:00 pm. He recalled that he did not plan to return there the  
6 next morning as it was a Monday and this would have been a work day for him. He remembered  
7 that when he left that evening he locked the front door to the premises and also turned the lock  
8 on the gate to the premises and that he always closed it at night. He became aware of an  
9 incident on the 6<sup>th</sup> of May when the complainant’s friend sent him a photograph of the  
10 complainant by phone.

11  
12 57. When Mr. X was cross-examined, he stated that over the course of the evening, during his visit  
13 on the 5<sup>th</sup> of May 2019 he and the complainant did not have sex. When confronted with his  
14 previous statement that he had given to the police in which it was stated that they did have  
15 sexual intercourse that evening, Mr. X stated: “*I can’t remember if we had sex. I would not lie*  
16 *to the Police. I did not have sex. I don’t think that I did.*” He suggested that the officer taking  
17 the statement may not have heard what he said but accepted that he did read over the statement  
18 before he signed it and did not ask for the contents to be changed.

19  
20 58. I do not believe Mr. X when he testified that he had not had sex with the complainant earlier  
21 on the night of the incident. He could not give an explanation for the inconsistency between  
22 his evidence in court and his signed witness statement on this issue. I remind myself that I can  
23 accept some of a witness’ evidence and reject other parts of that witness’s evidence. I believe  
24 the other relevant aspects of his evidence with regard to his having secured the premises when  
25 he left on the evening of the 5<sup>th</sup> of May.



1     **FRIEND OF THE COMPLAINANT – ‘MS. B’,**

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

**NEIGHBOUR – ‘MS. F’**

26

27

28

59. Ms. B is a friend of the complainant who lived in the same vicinity as the complainant. She related in evidence that on the 6<sup>th</sup> of May 2019, she was on her way to work when someone said something to her. As a result, she called the complainant by phone. The complainant answered and was crying. Ms. B related that this caused her to turn around to go to the complainant’s home. She went to where the complainant lived. The Police were there. When she saw the complainant, the complainant was dressed in a T-shirt which Ms. B described as being “full of blood”. Ms. B related that she took a photograph of the complainant before she left in the ambulance soon thereafter and also photos of spots on the tiles in the living area. The complainant asked her to take the photographs.

60. Ms. B recalled an incident prior to the 6<sup>th</sup> of May 2018 when she went to see the complainant where she lived. The defendant was at the premises. She knew they had broken up. The complainant indicated to her that the defendant was to the back of the premises. She said the complainant “*kinda look frighten*”. She went around the back of the premises and saw the defendant sitting at the complainant’s bedroom window. She described that the defendant was holding his head and crying. When she said to him then that he was not supposed to be there at the premises he said: “*I love [saying the complainant’s name], I love [saying the complainant’s name]. I don’t think I can live with this.*”

61. I found Ms. B to be a truthful witness. I found no reason to doubt what she related in her evidence before the court.

**NEIGHBOUR – ‘MS. F’**

62. Ms. F testified that at the time of the incident she lived behind the premises where the complainant lived and worked but there was no prior personal relationship between them. She

1 related that between 6 -7am on the 6<sup>th</sup> of May she was on her way out when she heard someone  
2 cry out. She related that she heard someone say: *“Somebody help me please.”* It was stated  
3 several times. She realized that the cry came from the back of the property. She went there and  
4 she saw the complainant.

5  
6 63. The complainant asked her to call the Police and said to her that her ex-boyfriend was beating  
7 her up. She related that as she started to dial the Police the complainant asked her to move  
8 away from the fence so that her ex-boyfriend could not see her calling. She stated that she left  
9 the area of the fence and called the Police. She related that when she first saw the complainant:

10 *“She looked distressed. She was actually in her underwear and a white top, with stains on it”.*  
11 She explained *“When I say distressed, I mean if she could have come through the fence she*  
12 *would have to get away from whatever it was.”*

13  
14 64. In cross-examination she stated that the complainant was not wearing any pants or a skirt, but  
15 she was unsure if she was wearing any underwear at the time that she saw her.

16  
17 65. I found Ms. F to be a truthful witness. I found no reason to doubt what she related in her  
18 evidence before the court. On the issue of whether she could say with certainty whether the  
19 complainant was wearing underwear at the time that she saw her on the morning of the 6<sup>th</sup> of  
20 May, the witness was obviously unsure. This does not cause me the find that I cannot rely on  
21 her evidence of the complainant’s demeanour on that morning.

22  
23 **LEXINE WELCOME – INVESTIGATING OFFICER**

24  
25 66. Officer Welcome took a report from the complainant on the day of the incident. She noted that  
26 the complainant appeared frightened and nervous and that her voice was very hoarse. She  
27 collected samples taken by Dr. Belfonte from the complainant during examination and later  
28 that day recorded the complainant’s interview. She also conducted the interview of the

1 defendant the following day. This interviews were audio and video recorded. The Officer  
2 confirmed complainant's evidence that on the 16<sup>th</sup> of May 2019 she received items of clothing  
3 from the complainant, taken from a couch in the living room of the residence  
4

5 67. When she was cross-examined by Defence counsel she related that as part of her investigation  
6 she took a statement from the complainant's boyfriend. That statement was typed and read  
7 over by the witness and signed. She recalled that the complainant's boyfriend did not take  
8 issue with anything in the statement at that time. The Officer confirmed that when she recorded  
9 in the statement from the complainant's boyfriend he told her at the time, that he had had sexual  
10 intercourse with the complainant on the 5<sup>th</sup> of May 2019.

11  
12 68. I accept Officer Welcome's evidence.

13  
14 69. That was the extent of the evidence relied on by the prosecution to prove its case against the  
15 Defendant on Counts 1 to 4 of the indictment.

16  
17 **THE DEFENCE CASE**

18  
19 70. The defendant elected at the close of the prosecution case to give evidence in his defence. I  
20 remind myself that I must assess the evidence of the defendant in the same objective and  
21 dispassionate manner as I would any witness for the prosecution.

22  
23 71. The defendant has no antecedent history in the Cayman Islands. It has not been suggested to  
24 me that there is any other previous conduct to be considered. I remind myself that his good  
25 character is not a defence to the charges before this court but because the defendant has given  
26 evidence his good character is a positive feature which I should take into account in his favour  
27 when considering whether I accept his account of the incident. I also remind myself that the  
28 fact that the defendant has not offended in the past may make it less likely that the defendant



1 acted as the prosecution alleges in this case. I bear these in mind as I consider the defendant's  
2 account and also the prosecution's case against the defendant.

3  
4 **EVIDENCE OF THE DEFENDANT**

5  
6 72. The defendant described his relationship with the complainant and also described the incident  
7 which led to the complainant being charged with assault before the summary court. The  
8 defendant maintained that *that* incident had only "*interrupted*" the relationship between himself  
9 and the complainant. His evidence was that their relationship was still ongoing even after the  
10 court matter was concluded except that he did not live with the complainant anymore. He  
11 testified that between the time that he moved out in December 2018 and the incident in May  
12 2019, he was visiting the premises on a weekly basis. The defendant stated that he and the  
13 complainant continued to have sex during this time. There is no issue that he and the  
14 complainant had previously lived together for approximately 6 years.

15  
16 73. The defendant testified that within the week leading up to the incident the complainant told  
17 him she would not open the door to him and that he must find his way through. He described  
18 that when he lived with the complainant that he sometimes would have to go over the fence of  
19 the premises and enter through a window because the complainant had never given him a key  
20 to the premises. He stated: "*I had gotten into the habit of using the window. I can count many*  
21 *times, many times I used the window. [the complainant] never had a problem with this.*"

22  
23 74. The defendant stated that on the 5<sup>th</sup> of May 2019 he told the complainant that he was going to  
24 come to look for her and she said no problem. He decided to go to look for her between 3 - 4  
25 am in the morning. He testified that it was not unusual for him to go to see the complainant at  
26 that time. He stated that he was going to see her to talk to her. He remembered that before  
27 going to the house he tried calling her by phone, but she did not answer the phone. He described  
28 taking his phone out when he was at the window "*to see what happen to her*". He stated: "*I*



1           *decide to go inside to see if I see her, if anything happen to her or what. I didn't think she*  
2           *would have a problem with that."*

3  
4       75.     The defendant stated that when he entered the bedroom the complainant moved to the living  
5           room area and told him to go there too. He said that the complainant asked him why he was  
6           there, and he replied: *"I said I been calling you and I never get you, so I come to see you, to*  
7           *talk to you about our relationship."* He denied throwing the complainant unto the bed in the  
8           bedroom and choking her. He admitted that he did take her phone from her *"because she is*  
9           *always calling my mother or calling the Police on me and I didn't want her to do that at the*  
10          *time."*

11  
12       76.     The defendant testified that the complainant was always threatening that she was going to lock  
13           him up. He repeated that his intention was just to talk to her. The defendant stated that when  
14           he and the complainant were in the living room on the settee, at some point he took off his  
15           clothing because *"when we were there talking each time I am around her I always take off my*  
16           *clothes, all of my clothes."*

17  
18       77.     The defendant described that he and the complainant sat and talked and then they started  
19           kissing. He testified: *"She was kissing me ...I kiss her on her forehead, cheek, chest and on*  
20           *her breasts."* He stated that the complainant *"she just like ignorant in making love"* and stated  
21           that the cut to his face was as a result of the complainant clawing him to his face with her  
22           fingers. He stated that she bit him on his finger and his cheek in the area of his lower right jaw.  
23           The defendant stated in evidence: *"She did not make any complaint about me getting*  
24           *undressed. My intention, I just wanted to know if she really like. I just want to be with her,*  
25           *talk to her, make our life normal like how it used to be before."*



1 78. The defendant stated that he never mentioned anything about sex to the complainant.  
2 However, when it was stated to him by defence counsel that the complainant said that he had,  
3 he replied as follows: *"I mention sex to her and she said she was using an insert [contraceptive]  
4 and she cannot sex so I leave it like that."*

5  
6 79. He denied that he left the sofa to go looking for a condom, saying that they did not usually use  
7 condoms when they had sex. He denied that he put his finger in the complainant's vagina. He  
8 stated that he did not touch her vagina in any way on the morning of the 6<sup>th</sup> of May. The  
9 defendant denied that he tried to put his penis in the complainant's vagina. He stated: *"At no  
10 point or any way I tried to have sex with her. I did not go there to do that. I did not have an  
11 erection."*

12  
13 80. The defendant related that everything changed between him and the complainant that morning  
14 when he mentioned an old boyfriend of hers. He stated: *"She get ignorant and start to fuss up  
15 herself and I say calm down why you getting ignorant like that. She start to cuss her bad word  
16 and get ignorant and I try to calm her down."*

17  
18 81. The defendant stated that it was at this point that the complainant ran outside. He went outside  
19 to try to persuade her to come back into the house but she was just bawling out for help saying  
20 murder, rape, murder. He stated that he did not know why she behaved like that. He also  
21 described trying to pick up the complainant to take her back into the house. He left when the  
22 complainant said to him that he must leave because the police were coming.



1           **CROSS -EXAMINATION**

2  
3           82.     In cross examination the defendant repeated that the relationship between himself and the  
4           complainant never ended even after the court case was finished. He stated that the complainant  
5           was being untruthful when she said that they did not have sex after the court case was ended.  
6           He testified that the complainant told him to hide and not let anyone see him visiting her but  
7           he still visited her at the house. The defendant related that the complainant never told him she  
8           was in another relationship and that she kept calling and telling him that she loved him and to  
9           come over to have sex.

10  
11          83.     The defendant stated that on the morning in question the complainant told him he could come  
12          over to the house. *“I call her earlier and spoke to her and tell her I am coming to her house.*  
13          *I told her I was coming and she tell me I could come.”* The defendant stated in answer to crown  
14          counsel that he did not knock at the front door nor at the back door to the house, but that he  
15          went to her bedroom window. He denied that he had cut his hand as he entered through the  
16          bedroom window and instead said that his finger was cut later in the morning when the  
17          complainant bit him and that the blood noted on the window must have got there when he went  
18          to the bedroom window to call to her after she ran outside.

19  
20          84.     When it was suggested to the defendant that the injuries found on the complainant were not  
21          consistent with what crown counsel referred as a “consensual loving environment” the  
22          defendant replied that the marks were from kissing her because her skin is light and so when  
23          he kissed her it left a mark.

24  
25          85.     When it was put to the defendant that he did not tell the Police that the complainant had invited  
26          him to the house when interviewed he stated that he had seen her on the previous evening but  
27          when he tried to call her he could not get her so her went to the house to see her.



1 86. He denied that he had gone to the house for sex. He denied trying to put his penis in her vagina.  
2 He denied that he held her throat and squeezed her. He denied that he was upset that she was  
3 in a new relationship. He denied that he had asked her for sex and had left her to go to try to  
4 find a condom saying: *"I would carry a condom with me, or I would sex her without it because*  
5 *we normally have sex without a condom."* He denied that he told the Police in interview that  
6 he had left a bag of condoms there at the house after he moved out.

7  
8 87. In the record of interview of the defendant, the defendant contradicted his evidence at trial on  
9 crucial details. With regard to discussion about sex he stated:

10  
11 *IO: So when you reach in the house and you talking to her that was when you*  
12 *take off your clothes because you already paid her – you already give her*  
13 *the \$100 for some sex.*

14  
15 *JE: Yeah but never – never had plan to rape her.*

16  
17 *IO: Alright, so what did you say to her when you take off your clothes?*

18 *JE: Me say babes what happened you give me – you give me some sex or wah?*

19  
20 *IO: And what did she say?*

21  
22 *JE: She say have – she – she ah use an insert – like she ah insert her body. Me*  
23 *say alright no problem. And we deh talk, talk, talk"*

24  
25 88. He stated in interview that there was a discussion about sex but the complainant never said to  
26 him that she would have sex with him.

27  
28 89. On the matter of the condoms his evidence in interview was as follows:

29  
30 *"Me did leave 1 bag of condom up there from...when me and her used to live and*  
31 *me asked her what she did with the condoms and she say she dashed them away".*

1 This is in contradiction to his earlier statement in the interview on this point and also to his  
2 evidence in court.

3  
4 90. The defendant's record of interview revealed some seeming incoherence when answering  
5 questions put to him by the investigating officer. While I have considered this evidence in  
6 arriving at a verdict in this case, I do not place too heavy a reliance on the inconsistencies  
7 identified between the record of interview and the defendant's evidence on oath at trial because  
8 of my observations.

9  
10 91. I found the defendant to be an uncomplicated man who clearly has strong feelings for the  
11 complainant. His evidence corroborated much of the Crown's evidence:

- 12  
13 i. that he entered the house through the complainant's bedroom window;  
14 ii. that he took his clothes off while he was within the residence;  
15 iii. that he was kissing the complainant;  
16 iv. the length of time that they remained together that morning;  
17 v. that they were talking about their relationship and what had caused it to end; and  
18 vi. that he left before the police arrived.

19  
20 92. It is on the crucial aspects relating directly to the counts on the indictment in terms of intention  
21 and consent that the parties differ. In this regard, the explanations given by the defendant do  
22 not follow.

23  
24 93. I do not believe his evidence about being undressed because that is what he always did when  
25 he was in the company of the complainant. I do not believe that he would have taken away the  
26 complainant's phone as he entered the bedroom if he went there only to talk about their  
27 relationship. I do not believe his evidence on oath that there was no discussion about sex.  
28



1 94. I remind myself that if I do not accept the defendant account I must still return to the Crown's  
2 case to look for evidence that the crown has proved its case to the requisite standard before I  
3 can find the defendant guilty, there being no onus on the defendant to prove that he is innocent.  
4 If the Crown's evidence does not make me sure of the Defendant's guilt, then my verdict must  
5 be not guilty.

6  
7 **COURT'S REASONING AND CONCLUSIONS**

8  
9 95. At the end of the prosecution case Counsel for the defendant submitted that there was no case  
10 to answer against the defendant with respect to count 2 on the indictment. Counsel for the  
11 prosecution conceded that the evidence led by the prosecution did not support that count on the  
12 indictment. The defendant is formally discharged of count 2 on the Indictmen

13  
14  
15 **COUNT 1 - ATTEMPTED RAPE**

16  
17 96. Section 129 of the *Penal Code* states:

18  
19 *"A man commits rape if –*

- 20  
21 a) *he has unlawful sexual intercourse (whether vaginal or anal) with another*  
22 *person who at the time of intercourse did not consent to it; and*  
23  
24 b) *at the time he knows that the other person does not consent to the*  
25 *intercourse or he is reckless as to whether the other person consents to it."*  
26  
27  
28

29 97. The Crown alleges that the defendant attempted to have unlawful sexual intercourse with the  
30 complainant who did not consent to it and that at the time he knew she did not consent or was  
31 reckless as to whether she consented.  
32  
33





1 98. It is evident to this court from the evidence of both the complainant and the defendant that their  
2 relationship was turbulent at times. The defendant appeared unable to accept that their  
3 relationship had broken down. I accept the complainant's evidence that she had moved on  
4 from her relationship with the defendant and I accept the evidence of both the complainant and  
5 her boyfriend that they had begun a relationship in the months after the breakdown of the  
6 relationship between the defendant and the complainant. The complainant's boyfriend in his  
7 evidence related that he had never seen the defendant, had no concerns about him and had never  
8 met him. I also accept the evidence of Ms. B when she described the defendant outside the  
9 complainant's bedroom window in the weeks before the incident as further evidence of the  
10 nature of the relationship at that point and the defendant's reaction to the breakup of the  
11 relationship.

12  
13 99. I found the complainant to be a frank and truthful witness. I noted no significant inconsistencies  
14 in her evidence except what is related in paragraph 101 below. Her description of essentially  
15 trying to talk down the defendant on the morning of the 6<sup>th</sup> of May rings true. She had become  
16 frightened that if she did anything to aggravate him that he would have hurt her. I do not  
17 believe, as was suggested by counsel for the defendant, that the complainant's account was an  
18 elaborate scheme to get back at the defendant for having reported her to the police and for the  
19 subsequent summary court proceedings. The evidence before this court is that the complainant  
20 was warned by the court and on a good behavior bond with no conviction recorded against her.

21  
22 100. I also believe the complainant's evidence that when the defendant had entered the house in  
23 April 2019 as she described, that she did not call the Police because she did not want any  
24 problems or aggravation. These do not appear to be the actions of someone who was trying to  
25 "get back" at the defendant. I can find no justification to attribute that motive to her.  
26

1 101. I do find that there is one area where I do not believe the complainant's evidence. There is a  
2 discrepancy between her evidence under oath about whether she had sexual intercourse with  
3 her boyfriend on the evening of the 5<sup>th</sup> of May 2019 and what Dr. Belfonte related that the  
4 complainant stated to her when she examined her on the morning of the 6<sup>th</sup> of May 2019. Dr.  
5 Belfonte's evidence was that the complainant told her that she did have intercourse sometime  
6 around 10:00 pm that evening. I believe the Doctor's evidence on this point especially because  
7 this information was part of her written contemporaneous note and relevant to her examination  
8 of the complainant after the incident.

9  
10 102. I also do not believe the complainant's boyfriend that he did not have sexual intercourse with  
11 the complainant on the evening previous to the alleged assault. While this court does not make  
12 any finding of collusion between these Crown witnesses on this point it is significant that this  
13 is the only point on which their evidence on oath significantly departed from their earlier  
14 statements; in the case of the complainant's boyfriend, to the Police, and, in the case of the  
15 complainant, to the Doctor. I view it as a major inconsistency in the evidence between these  
16 prosecution witnesses and Dr. Belfonte.

17  
18 103. However, I do not find that this causes me to doubt the reliability or credibility of the other  
19 aspects of the complainant's evidence of what occurred between herself and the defendant in  
20 the early hours of the 6<sup>th</sup> of May.

21  
22 104. I accept the complainant's evidence of what transpired when the defendant entered her  
23 bedroom in the early hours of the 6<sup>th</sup> of May 2019. As noted above, I have taken into account  
24 the nature of their previous relationship and I have borne this in mind in considering the parties'  
25 actions at the time of the incident.  
26



1 105. I do not believe the defendant that the relationship continued between them as he described and  
2 that the complainant told him to come over to the house that morning. If she had in fact told  
3 him to come over as he testified, it does not follow that he would be calling her repeatedly as  
4 he described nor that he would have been forced to enter the premises by taking out the screen  
5 to her bedroom window.

6  
7 106. The defendant's actions as the complainant described make me sure that he was intent on  
8 having sexual intercourse with the complainant that morning. His actions in stripping himself  
9 once he entered the bedroom holding the complainant down on the bed and saying he wanted  
10 to have sex with her on the bed in her bedroom, then on the sofa when they were in the living  
11 room, choking her, and attempting to put his penis in her vagina make me sure. I believe the  
12 complainant that she told the defendant that she did not want to have sex with him. I believe  
13 the complainant that she was only able to get away from the defendant by saying that she would  
14 have sex with him if he wore a condom. The fact that he released her in order to go to look for  
15 the condom is evidence of his intention.

16  
17 107. I believe the evidence of the witness Ms. F when she described the complainant's distress  
18 minutes after she ran out of the house: "*When I say distressed, I mean if she could have come*  
19 *through the fence she would have to get away from whatever it was.*" This is compelling  
20 evidence that buttresses the complainant's evidence of her wanting to get away from the  
21 defendant and the nature of the activity within the house that morning, as is the evidence of her  
22 struggling with the defendant when he attempted to take her back into the house that morning.

23  
24 108. I have considered the fact that the complainant did not say anything about the attempted rape  
25 to Ms. F at that time and that there was nothing noted in the transcript of the 911 call between  
26 the dispatcher and the EMT attendant at the scene about a report of attempted rape to them.

27





1 109. However, the evidence of the witness Constable Haughton was as follows: “[The Complainant]  
2 began to explain that her ex-boyfriend Mr. James Filanchie Ellis had entered her bedroom  
3 through a rear window that was left open about 4 am the same morning. Demanded and  
4 attempted to have sexual intercourse with her against her will. She said she tried to run outside  
5 but Mr. Ellis caught her, lift her up and drop her on the ground. [The complainant] said Mr.  
6 Ellis informed her that if he could not get her, no one else could and is either she is going to  
7 die or him.” This account of attempted sexual intercourse is consistent with the complainant’s  
8 evidence at trial.

9  
10 The medical evidence

11  
12 110. The evidence at paragraph 11 of the Statement of Admitted Facts regarding the injuries noted  
13 on examination of the complainant by Dr. Samantha McHayle, are noted and are consistent  
14 with the complainant’s account of a struggle with the defendant.

15  
16 111. The evidence of Dr. Belfonte with regard to the gynaecological examination of the complainant  
17 are noted, *inter alia*: “on Examination of her external genitalia, a horizontal abrasion on the  
18 right lip, the right labia majora” and “(ix) a small area of redness around the opening of the  
19 cervix”. Her conclusion was that the blunt force trauma injury to the labia suggested “some  
20 form of attempted sexual assault.”

21  
22 112. The Doctor’s opinion was that the injuries she noted including the injury to the labia, “were  
23 consistent to having been obtained recently and so could possibly have been obtained during  
24 the time of the alleged assault” and her further evidence with regard to this particular injury:  
25 “The abrasion on her labia, the genital area could possibly have been caused by a fingernail.  
26 The genital, the internal -- examination within the vagina, within the cervix was difficult to say  
27 if there was any evidence of -- if it could have been -- findings could have been caused by sexual

1 *assault because she had had recent sexual activity and it is normal to find similar changes in*  
2 *someone who is recently sexually active.”*

3  
4 113. I find that while Dr. Belfonte’s evidence was not conclusive as to the cause of the injuries to  
5 the complainant that she noted and that many of the injuries that she noted were superficial in  
6 nature, this evidence can be taken as indicative of the fact that the complainant and the  
7 defendant were involved in some physical jostling on the morning in question and therefore  
8 supports the complainant’s account to that extent.

9  
10 114. The weight of the Doctor’s evidence and conclusions on the cause of the injury to the  
11 complainant’s genital as independent evidence of attempted unlawful sexual assault is  
12 impacted by the fact of the complainant’s recent sexual activity and the discrepancy in relation  
13 to that evidence noted above. I remind myself, however, that the Crown is not required to  
14 prove evidence of corroboration and, if I am sure of the evidence of the complainant to support  
15 this count of the indictment, I can find the defendant guilty without the need for corroboration.

16  
17 115. I am satisfied that the defendant’s actions are sufficient to show his intention and I am satisfied  
18 so that I am sure that the defendant attempted to have unlawful sexual intercourse with the  
19 complainant without her consent.

20  
21 **COUNT 3 - ASSAULT BY PENETRATION**

22  
23 116. Section 132 A of the Penal Code (2019 Revision) states as follows:

24  
25 *“...a person, (A) who, for the purpose of obtaining sexual gratification*  
26 *intentionally and without consent, penetrates (whether orally, vaginally or anally)*  
27 *another person (B), with an object or with any part of A’s body, commits an offence*  
28 *...”*

29  
30  
31 117. The Crown alleges that the defendant penetrated the defendant’s vagina with his finger for the  
32 purpose of obtaining sexual gratification, intentionally and without the complainant’s consent.



1 118. The evidence of the complainant with regard to this count was as follows:

2  
3  
4  
5  
6  
7



*“...he just go on like he just get crazy and he want some sex and he want it and he let me go now to try and go between me leg and then he try and he try and he can’t stand up to get to sex me so he try to push his hand in when it can’t work he shove his fingers in me vagina and start to like dig it, dig it, dig it and just keep kinda of just want some sex.”*

8

9 119. In cross examination she stated as follows:

10  
11  
12  
13

*“I told him that I had sex so I didn’t want him to have any so he put his finger up in me to prove if it was true. When he want sex and I said I had sex and had a discharge he put his finger to see if it is true. I did not want him to want it. I wanted to get him away.”*

14

15 120. When it was suggested to the complainant that in her interview she never described this sequence of events to the police she replied that the defendant was putting his fingers into her vagina not just to check whether she had sex:

16

*“He was doing it also to let his penis stand up, so it’s the same thing.”*

17

18  
19  
20 121. The defendant denies that he penetrated the complainant’s vagina with his fingers. I believe  
21 the complainant that the defendant penetrated her vagina digitally. The offence of penetration  
22 is an offence of specific intent. The Crown must satisfy me so that I am sure that the defendant  
23 penetrated the complainant’s vagina intentionally and without her consent “for the purpose of  
24 obtaining sexual gratification.” The penetration of the complainant’s vagina digitally is sexual  
25 in nature. I consider the circumstances in which the penetration was done and the  
26 complainant’s evidence sufficient to conclude that the defendant’s purpose was for sexual  
27 gratification.



1     **COUNT 4 – BURGLARY**

2  
3     122.     Section 243 of the Penal Code states:

4  
5             “(1)     A person who –  
6                 (a)     enters any building or part of a building as a trespasser and with  
7                         intent to commit any such offence as is mentioned in subsection  
8                         (2); or  
9                 (b)     having entered any building or part of a building as a trespasser  
10                        steals or attempts to steal anything in the building or that part of  
11                        it or inflicts or attempts to inflict on any person therein any  
12                        grievous bodily harm, commits the offence of burglary and is  
13                        liable to imprisonment for fourteen years.”

14     123.     I believe the evidence of the complainant and her boyfriend that the premises were secured and  
15             locked on the evening of the 5<sup>th</sup> of May 2019 when the complainant’s boyfriend left.

16  
17     124.     I believe the evidence of the complainant that she did not invite the defendant into her home in  
18             the early morning hours of the 6<sup>th</sup> of May 2019. The defendant’s actions also support this  
19             finding, specifically his going first to the front door and when he could not access that door  
20             going to her bedroom window and removing the screen so that he could enter the bedroom  
21             while she slept, is evidence of his entering as a trespasser. The issue is whether his intention,  
22             when he entered the complainant’s bedroom, was to commit the offence of rape as is alleged  
23             on the indictment.

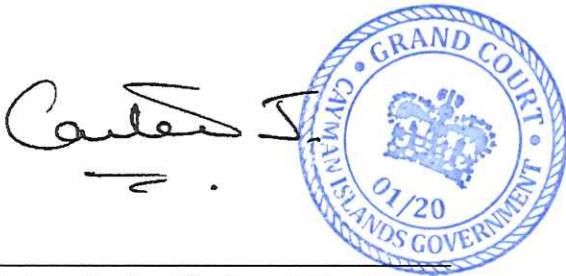
24  
25     125.     I find that I am satisfied so that I am sure that this was the defendant’s intention on the evening  
26             in question. As described above this court can find the defendant’s intention from his actions.  
27             The fact that he took away the complainant’s phone as he entered the bedroom uninvited,  
28             stripped himself, held her down on the bed and told her he wanted to have sex with her and his  
29             actions when she resisted all point to the fact that he entered the bedroom with a clear object in  
30             mind.

1        126.    Having considered all of the evidence presented in this case, I am satisfied so that I am sure  
2                    that the defendant attempted to have unlawful sexual intercourse with the complainant without  
3                    her consent, that he intentionally penetrated the vagina of the complainant digitally without her  
4                    consent and for the purpose of obtaining sexual gratification and that he entered her house  
5                    uninvited, as a trespasser with the intention of raping the complainant.

6  
7        127.    Verdict:

- 8  
9                    i.        Count 1: Attempted Unlawful Sexual Intercourse – Guilty  
10  
11                    ii.        Count 3: Assault by Penetration – Guilty  
12  
13                    iii.        Count 4: Burglary - Guilty  
14  
15

16    **Dated this 25<sup>th</sup> day of August, 2020.**

17  
18  
19  


20  
21  
22  
23    **Madam Justice Marlene I. Carter**  
24    **Judge of the Grand Court (Acting)**