

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

3
4 INDICTMENT NO: 0028/2018



REGINA

v

COREY ROBERT DODGE

14 **Appearances:**

Mr. Greg Walcolm holding for Ms. Ellie Fargin for the
Crown

17 Mr. Keith Myers and Mr. James Stenning Attorneys for
18 Defendant

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20 **Before:**

Hon. Justice Marlene Carter (Actg.)

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22 **Sentence Hearing:**

10 April 2019

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24 **Sentence Delivered:**

29 April, 2019

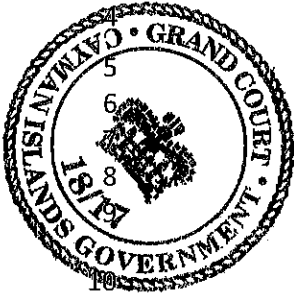
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26 **HEADNOTE**

27 *Criminal Law - Indecent Assault - Severe Psychological Harm - Need for psychiatric report-*
28 *Victim impact statement*

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31 **SENTENCE JUDGMENT**
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1 **Preamble**

2 1. Section 31 of the *Criminal Procedure Code (2014 Revision)* deals with the “Anonymity of
3 complainants in rape etc. cases and states:



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

11 For the avoidance of doubt: It is the Court’s view that the indecent assault charges against this
12 Defendant fall within this section of the law by virtue of the use of the word “*etc.*” and therefore I
13 order that there be no identification of the Complainant in this case.

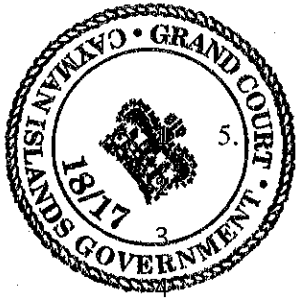
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15 **Facts**

16 2. On the 17th June 2017, the Complainant went to a friend’s house where they shared a couple of
17 glasses of wine. Later in the evening the two went to Calico Jacks Bar on West Bay Road. Whilst
18 there she saw R, someone she had been dating, who had abruptly stopped communicating with her.
19 The Complainant had a discussion with R at the bar about their relationship, and she decided to go
20 back to his house in South Sound with him and some other females. They arrived at his house in
21 the early hours of the morning on the 18th June 2017.

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23 3. At some stage whilst at this address, they all went out onto the beach where they chatted and drank
24 and were in and out of the residence to get drinks and to use the facilities. Present were R, two
25 females, the Complainant, R’s roommate D, and the Defendant. The Defendant lived in the house
26 next door to R and D and he was invited out to join the others. During the course of the evening
27 as the Complainant was in the kitchen, the Defendant made a comment to her about her appearance
28 and she “*shrugged it off*”. The Complainant knew who the Defendant was but was not well
29 acquainted with him.

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31 4. Later in the evening, the Complainant became tired and asked R if she could “*crash*” in his room,
32 as he was not ready to take her home at that time. He agreed, and she went inside the house, leaving
33 the others outside.

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5. The Complainant fell asleep and woke up sometime before sunrise. She became aware that someone was in the bed with her. She had gone to bed with a sports bra and top on, and swim / bikini bottoms and shorts. When she woke, she did not have shorts or the swim bottoms on. The Defendant was on the bed with her. She put the shorts on after the Defendant and his dog had left, after she had made it clear she was awake and was not happy with the situation.

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6. Once the Defendant had gone and the Complainant had dressed herself, she then ran outside to try and find the others who she had left at the beach, but they were not there as they had left the premises. She went back inside and locked the doors and hid in a closet. She sent messages to several persons expressing her concern and making complaints of the assault which were exhibited at trial. A while later she went to D's room and woke him up and he found her very distressed. The Police were called, and they seized the swim bottoms which had not been put back on. The Complainant was taken to the hospital and was examined.

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7. The Defendant was later arrested and charged, and after trial by jury was found guilty on Count 1 of the Indictment for Indecent Assault.

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The Law

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8. Indecent assault, section 132 of the *Penal Code (2017 Revision)* has a maximum sentence of 10 years imprisonment.

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9. The *Sentencing Guidelines of the Cayman Islands* issued in October 2015, do not provide guidance for sexual offences. Any assistance from the *UK Sentencing Guidelines* is tempered by the fact that comparable provisions have now been superseded by changes in the specified offences of the *Sexual Offences Act 2003*. The most similar offence is one of sexual assault.

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10. For the Crown it is suggested that the Court could look at the *Sentencing Guideline from England and Wales on Sexual Offences* for assistance. The Crown submitted that should the Court wish to use the *UK Sentencing Guideline* for assistance, the Crown's submission was that the level of harm should be set in Category 1 to reflect that severe psychological harm has resulted for the victim.

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As to culpability the Crown suggested that there was some planning for this matter as the Defendant clearly only went into the bedroom after others had left or gone to bed. He made the decision to go in once the Complainant was asleep.

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5 12. Counsel for the Defendant also submitted that this Court should look to follow the UK Sentencing
6 Council Guidelines. He submitted that there was no evidence before the Court to establish the
7 severe psychological harm necessary to put the offending within Category 1 level of harm. Counsel
8 for the Defendant urged that the Court should find that it was a Category 2 level of harm only.
9 Counsel for the Defendant accepted that the evidence at trial was of direct touching of the
10 Complainant's breasts and therefore that the culpability should be at category B.

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12 **The Social Inquiry Report ("SIR")**

13 13. The defendant was interviewed and a SIR was prepared for the Court's benefit. The defendant has
14 been working on the island for a number of years and there have been no previous criminal incident
15 in which the defendant was involved. The Probation Officer notes in the SIR that the defendant

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17 *"... feels extremely remorseful that the victim feels that she was violated and sad*
18 *for her as he never had any intentions of hurting her. He is adamant that he only*
19 *kissed her and touched her breast, over the clothing that she was wearing and in*
20 *a situation that he thought was consensual."*

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22 14. The Probation Officer's assessment of the defendant was:

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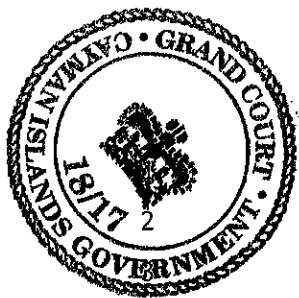
24 *"There are no indicators, during interviews or assessments that indicate that the*
25 *Client is a sexual predator. The crime committed appears to have been*
26 *opportunistic in nature and it is quite possible that alcohol was a major factor."*

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28 15. The Officer reiterated that when she assessed sentencing option that:

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30 *"... there is no evidence at this time that Mr. Dodge is a sexual predator however,*
31 *it does appear that this offence was opportunistic. It is of concern that he continues*
32 *to deny having indecently assaulted the victim following a verdict of guilty by this*



Honourable Court and claims that it was consensual. It is to his benefit though that he expressed victim empathy and is willing to adjust his definition of consent.”

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The Victim Impact Report (“VIR”)

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The VIR set out the impact of this offence on the complainant. The complainant stated to the Officer that she had become very depressed after the incident:

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“I have been in counselling for nine months. I have been prescribed Xanax to help cope. My therapist has suggested anti-depressants...”

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...it has still manifested in fits of tears and general social anxiety especially when approached by men. I have problems sleeping. I have lost friends over this. I felt socially alienated, I feel like a girl who everyone thinks is a problem.”

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“Things were bad after the incident. ...when I was assaulted, I told them that something had happened and I couldn’t come in; I had shifts removed as punishment and told I was irresponsible. The police would just show up at my job, this affected me psychologically and had the persons at work wondering what was going on.”

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“I had bad anxiety and panic attacks which feel like seizures. I had to spend money going to doctors, to do blood work to diagnose what was going on with me when I first started having the panic attacks. The first time it happened I had to pull over because I thought it was a seizure. The doctor said it is really panic attacks due to PTSD (Post Traumatic Stress Disorder).

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The Complainant also recorded that she suffered “*loss of self-identity*”. As the Complainant described;

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“..I lost confidence. I felt stripped as a woman. Loss my sense of self. In regards to sexuality it is so hard to be intimate or feel pretty because all I ever felt is gross.”

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33 18.

The Social Worker’s Assessment of the complainant was that she was significantly impacted at the psychological and emotional level and that she felt that the complainant had experienced a loss of

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self-worth, embarrassment and shame as well as self-blame and an inability to get back to her level of functioning as prior to the offence.

Court's conclusions

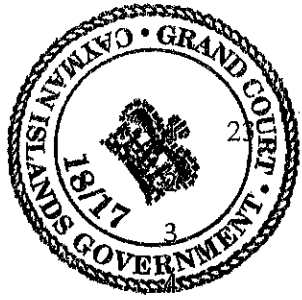
5 19. I find that the level of harm should be at Category 2 to reflect the touching of the Complainant's
6 naked breasts during the assault. I am not satisfied from the evidence before me that severe
7 psychological harm resulted to the Complainant. I have considered the Victim Impact Report
8 submitted by the Crown. The Complainant set out in detail the many ways that this incident has
9 affected her. From this Report there is evidence of substantial psychological harm which I do
10 consider to be a significant aggravating factor that I will address further below.

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12 20. Counsel for the Defendant referred this Court to *R v Gousul Islam* 2013 EWCA Crim 2355 during
13 his submissions on the level of harm. In *Islam*, The trial judge did not have before him any
14 psychiatric report or victim impact statement but he was able on the evidence before him to find
15 that there was substantial psychiatric harm, based on his own assessment of the Complainants, to
16 justify the sentence of imprisonment that he imposed. The Court of Appeal did not interfere with
17 the sentence that was imposed by the trial judge.

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19 21. That part of the appeal which was not allowed was with regard to the compensation order assessed
20 by the trial judge. The court of appeal found that the issue of compensation required that there be
21 evidence to justify the court making an order for a particular amount. There was no rejection of
22 the finding by the trial judge that there was significant psychological harm, however the trial judge
23 had in his remarks indicated that the harm was caused "*in part*" by the actions of the appellant. It
24 was unclear to the Court of Appeal how he was then able to made an assessment of the extent of
25 the harm that was attributable to the appellant so as to be able to make an appropriate order for
26 compensation.

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28 22. This case is therefore no authority for the proposition that a finding of significant or severe
29 psychological harm could not be made without there being available to the court a psychiatric
30 report or a victim impact statement. In any event in the instant case this court has had the benefit
31 of a Victim impact report and the views of the probation officer who interviewed the complainant
32 for its consideration on this issue.

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4 The impact of this offence on the complainant has been made clear by the matters referred to in the
5 Victim Impact Report. This Court is not unmindful that the Complainant had been the unfortunate
6 victim of a previous sexual assault. However, the effects of the instant assault cannot be diminished
7 in the manner suggested by counsel for the Defendant in his submissions to this Court solely as a
8 result of that previous assault. The Defendant must take the Complainant as he finds her. I am
9 satisfied that the substantial effects that the Complainant details were caused as a result of the
10 actions of this Defendant.

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12 24. The culpability of the Defendant is at Category B. I do not agree with the submissions of the Crown
13 that there was a significant degree of planning evidenced from the facts of this case. There is no
14 evidence that the Defendant knew the Complainant before the date of the incident or that he in any
15 way influenced her friends to leave her at the house asleep that night. It appears to this Court that
16 this crime was more opportunistic in nature.

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18 25. Per the *UK Sentencing Guidelines*, the starting point for sentence is therefore 1 year's custody with
19 a range of a high level community order to 2 years' custody.

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21 26. I am mindful of the limitation of the *UK Sentencing Guidelines* in that in the Cayman Islands
22 sentencing for offences involving sexual abuse can be of a significantly higher level than for
23 equivalent offences in the UK due to the prevalence of this type of offending.¹ I therefore take a
24 sentence of 2 years imprisonment as the starting point with a sentencing range of 1-4 years custody.

25 Aggravating Features

26 27. The aggravating factors:

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28 (i) The vulnerability of the victim through her having consumed alcohol and being asleep;
29 (ii) the fact the offender was under the influence of alcohol.
30 (iii) the psychological effect upon the victim is substantial in this case.

31 Mitigating Factors

32 28. The mitigating factors:

¹ R v Khan, Indictment no 0097 & 0098 of 2016, 17th November 2016

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(i) The defendant has no previous convictions.


29. Counsel for the Defendant, during oral submissions to this Court, stated that this Defendant was remorseful, that he was ashamed to be before the Court and that he has great sympathy for the Complainant. I have noted the findings in the Social Inquiry Report wherein the social worker describes the Defendant's attitude as not so much one of remorse, he continues to deny the offence, as one of having some victim empathy. It appears to this Court that this does not rise to the level of contrition that is implicit when a Court considers remorse as a mitigating factor and I do not count it as a mitigating factor in this case.

30. The aggravating factors outweigh the mitigating factors in this case.

31. I have also considered whether this is a case in which the custody threshold has been reached. There are no factors that cause me to find that a custodial sentence should not be imposed in all the circumstances.

32. On the facts of this case, while a breach of trust has not been established in the sense in which it is usually used to denote the existence of a particular relationship, this Complainant believed when she went to rest in her former boyfriend's bedroom that she was safe there and she had the right to that expectation. The Defendant entered the bedroom while she was asleep and took advantage of her obviously disoriented state. The Defendant committed this offence against his neighbour's guest in his neighbour's residence where he too was a guest.

33. Sexual crimes against women must be denounced and deterred and this Court seeks to send a clear message that for such crimes an offender can expect an appropriately severe sentence. Taking all of the above into account I find that the appropriate sentence is one of 3 years and 3 months custody. Any time that the defendant has spent in custody is to be deducted from this sentence.


Justice Marlene Carter (Actg.)
Acting Judge of the Grand Court

