

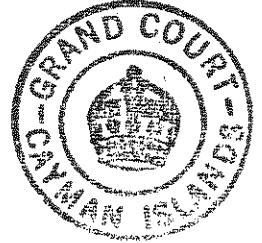
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL SIDE**

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5 **INDICTMENT NO: 0036/12**  
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8 **THE QUEEN**

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10 **V**

11 **JOHN NICAL WEBSTER**  
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15 **Appearances:**

**Ms. Toyin Salako for the Crown**

16  
17 **Ms. Lucy Organ of Samson &**  
18 **McGrath for the Defendant**  
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20 **Before:**

**The Hon. Mr. Justice Charles Quin**

21 **Submissions heard:**

**5<sup>th</sup> December 2013**

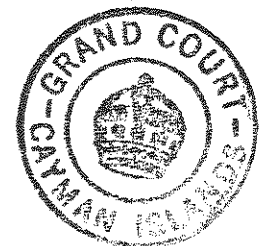
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23 **SENTENCE RULING**  
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25 **Important Notice**

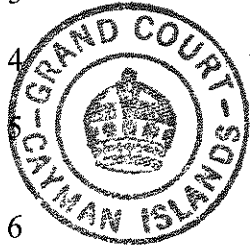
26 *This Ruling is distributed on the strict understanding that, in any report of it, the*  
27 *anonymity of the Complainant, who is under the age of 18 years, and is therefore*  
28 *deemed by the Court to be a Young Person, must be preserved.*

- 1           1.       On the 21<sup>st</sup> August 2013 the Defendant was found guilty after trial by Jury of  
2                   one Count of Indecent Assault on a Female contrary to s.132 of the Penal  
3                   Code (2010 Revision).
- 4           2.       The particulars of the offence are that the Defendant, on the 10<sup>th</sup> day of June  
5                   2011, at 25 Sara Lane Close, West Bay, Grand Cayman, Cayman Islands,  
6                   indecently assaulted a girl under the age of sixteen years.
- 7           3.       At the time of the offence the victim, who is the niece of the Defendant's  
8                   wife, was 15 years old going on 16 years of age. The victim was staying  
9                   overnight with the Defendant's daughter who was, not only a cousin of the  
10                  victim but a good school friend.
- 11          4.       The Crown's case is that on the night in question the Defendant encouraged  
12                  the victim to stay the Thursday night, the 9<sup>th</sup> June 2011, going into the  
13                  morning of the 10<sup>th</sup> June 2011. The Crown's case is that the Defendant did  
14                  that because he wanted to commit the indecent assault.
- 15          5.       The Crown submits that there are four stages of the indecent assault. The  
16                  evidence the Crown submits is that the Defendant went into his daughter's  
17                  bedroom. He knew that his daughter was there and that the Complainant was  
18                  staying the night with his daughter. The Defendant:

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- i. Rubbed her thighs
- ii. Moved his hands up to her breasts and touched both breasts
- iii. His hands then moved down towards the Complainant's waist. He undid the buttons and the zipper of the shorts worn by the Complainant;
- iv. Having undone the buttons and the zip, put his hand inside the Complainant's knickers and rubbed her vagina.

6. It is the Crown's case that he did this deliberately, with the full knowledge that the person he was touching was the Complainant, and he did it in a sexual manner to obtain sexual gratification.

7. The Crown submits that the Complainant saw him in Anastasia's bedroom in which she was sleeping, in his boxer shorts. The Complainant went to the bathroom but said she felt uncomfortable about the Defendant being there in his boxer shorts.

8. During the early hours of the morning the Complainant felt a rubbing on her left thigh and then a touching on her breast and then touching on her vagina. The Crown says the Complainant was afraid and froze throughout the stages of the assault. The Crown also relies on the fact that the evidence suggests that the Defendant remained silent during the whole incident because he knew it was the Complainant and not his wife. The Complainant opened her eyes and realised it was the Defendant. She told the Defendant to get out and leave her alone. The Defendant said nothing and immediately got up from the bed and left the bedroom.

1 9. The Complainant said that the next morning the Defendant told her not to tell  
2 anyone about what had happened. However, the Complainant immediately  
3 told the Defendant's daughter and her mother about the incident.

4 10. The Prosecution has accepted that there was no evidence of any penetration  
5 of the Complainant's vagina nor was there any ejaculation.

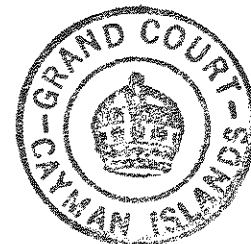
6 11. The Crown highlights one aggravating factor, in that the offence occurred  
7 whilst the Complainant was sleeping over at the home of her Aunt – thus  
8 being in the safety and sanctity of her Aunt's home. The Complainant was  
9 sleeping in the same bedroom where her cousin was sleeping.

10 *DEFENCE SUBMISSIONS*

11 12. The Defence states that the Defendant has stated that he was "high" and  
12 drinking on the night in question. Additionally, when he had left the house  
13 that night, prior to the incident, his wife was in their bedroom and when he  
14 returned his wife was not in their bedroom and he assumed that his wife was  
15 in their daughter's room and that is where he went to find his wife.

16 13. Stating that the victim has similar physical features to his wife the Defendant  
17 admitted that he did touch the victim inappropriately but it was because he  
18 thought it was his wife he was touching. In support of this the Defendant  
19 submits that as soon as he realised it was not his wife he was touching he  
20 stopped and returned to his own bedroom.

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1        14.     The Defence submits:

2                    (a) This was a very short lived incident;

3                    (b) The Defendant did not threaten the complainant;

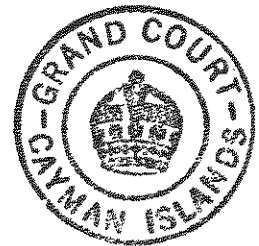
4                    (c) There was no abduction or threat of abduction;

5                    (d) As soon as the Defendant realised his mistake and that the  
6                    Complainant was forcibly objecting he departed the room.

7        15.     The Defence accepts that there was a breach of trust but it was not a gross  
8                    breach of trust. Further, the Complainant was not physically harmed in any  
9                    way and there is no evidence of any lasting injury.

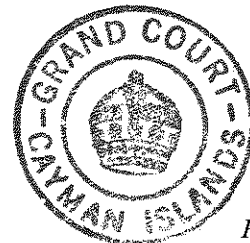
10       16.     The Defence submits that, in light of the fact that the Complainant did not  
11                    wish to provide a Victim Impact Report the Defence submits that it is not the  
12                    most serious of cases.

13       17.     In his interview with the police on the 26<sup>th</sup> September 2011 the Defendant  
14                    said his daughter was in the bed and a white person next to his daughter  
15                    appeared to be his wife. When he went to “touch her up” he thought it was  
16                    his wife. The Defendant said he was drunk and when the person he was  
17                    touching said “stop” he recognised the voice was not his wife and that was  
18                    when he left the room.



1 18. The Defendant is a Caymanian of 57 years of age. He has three sons, four  
2 daughters and grandchildren. The Defendant worked as a carpenter for many  
3 years with Arch & Godfrey, McAlpine and Ranga Construction. The  
4 Defendant then worked for himself for ten years but, regrettably, just over a  
5 year ago the Defendant was working on a roof when he fell and he fell off  
6 roof having been knocked off by a loader. The Defendant broke his ankle and  
7 suffered other significant injuries due to the fall and has been unable to work  
8 in the construction field thereafter. However, the Defendant has been active  
9 as a stay-at-home father – getting the children ready for school and to school,  
10 doing household chores and cooking, and being at home upon the children’s  
11 return from school. The Court notes this very admirable behaviour as parent.  
12 The SIR reports that the Defendant is very close to his children and his  
13 grandchildren, many of whom still live with him. The Defendant’s wife  
14 describes him as a caring and helpful person who plays a significant role in  
15 the lives of his children and his grandchildren and she confirms his role in  
16 ensuring that they get to school on time – either by walking with them or  
17 driving them to school. She also confirms that he tidies the house and cooks  
18 the food so that the children have food to eat upon their return from school.  
19 She states that his accident on the job was a very serious accident and he is  
20 lucky to be alive.

21 19. The Defendant has no previous convictions for the past 10 years and his last  
22 convictions were for the consumption and possession of ganja. The  
23 Defendant has no previous convictions for offences of a sexual nature.  
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1       20.    The Rev. Stanrick Myles prepared a letter of reference dated the 11<sup>th</sup>  
2            September 2013. Reverend Myles has known the Defendant and his family  
3            for the past 22 years. Reverend Myles describes the Defendant as an  
4            industrious man who works hard to support his family and this is borne out  
5            by the SIR.

6        21.    I have also read the Psychological Report prepared by Dr. Clement von  
7            Kirchenheim dated the 27<sup>th</sup> November 2013. Dr. von Kirchenheim is of the  
8            view that the Defendant suffers from depression, anxiety and some  
9            interpersonal distrust and conflict. Dr. von Kirchenheim adds that there is  
10           also evidence of very specific impairment in the area of verbal reasoning and  
11           problem-solving and, most importantly, the area of the brain that is primarily  
12           involved with these functions is the most susceptible to severe alcohol abuse.  
13           Dr. von Kirchenheim therefore advises that this Defendant should either  
14           avoid alcohol altogether or minimize his intake of it.

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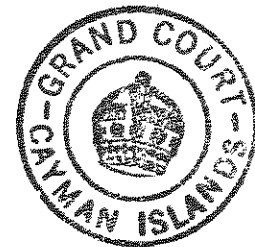
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*THE LAW*

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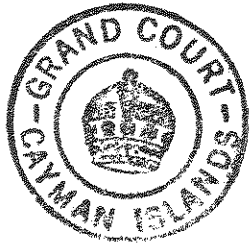
22. It is notable that s.132 of the Penal Code under which the Defendant is charged for Indecent Assault carries a maximum sentence of 10 years, which is the exact equivalent of the legislation in England.

23. The UK Sentencing Guidelines have been accepted by the Court of Appeal and the Grand Court and apply in this case. The Guidelines state that the effects of sexual offending may be physical and or psychological. The physical effects – injury, pregnancy or sexually transmitted infections – may be very serious. The psychological effects may be equally or even more serious but much less obvious at the time of sentencing.

24. The Court commends the Complainant for having the courage to come forward and also for giving her evidence in Court in such a straightforward manner.

25. Fortunately, as soon as the Complainant protested during the incident the Defendant stopped and left the room. Moreover, the Court notes that, despite being given every opportunity, the Complainant has chosen not to provide a Victim Impact statement.

26. The Court has to examine the exact nature of the sexual activity in assessing the seriousness of the sexual assault, and this should be used as a starting point from which to begin the process of assessing the overall seriousness of the offending behaviour.

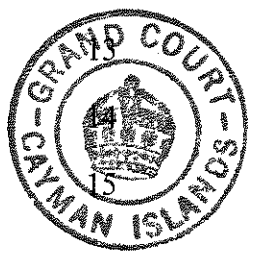


1 27. Indecent Assault covers many various actions ranging from serious indecent  
2 assault (such as where there is the use of force, resulting in serious injury  
3 etc.) to much less serious assaults, such as heavy petting.

4 28. In this case it is correct that the Defendant touched the Complainant on her  
5 breast and on her vagina, but no further sexual activity took place.

6 29. There is an absence of aggravating factors such as forcing oneself on the  
7 Complainant or causing any physical harm. Both counsel accept that there  
8 was contact with the Complainant's breast and vagina without any  
9 penetration and the penis was at no time exposed or involved in any way in  
10 the offence.

11 30. The starting point for a victim under 13 years is two years' custody – with a  
12 range of 1 to 4 years' custody. The starting point for a victim who is 13 years  
of age or over is 12 months' custody with a range of 26 weeks to 2 years'  
custody. At the time of the incident the Complainant was 15 going on 16  
years of age.



16 31. I am satisfied that the Defendant now shows remorse for this inappropriate  
17 action. What is significant is that as soon as the Complainant protested he  
18 immediately desisted and left the room.

19 32. The Defendant comes before the Court with no convictions that are in any  
20 way relevant to this offence. I take into account that the professional  
21 probation officers deem that it is highly unlikely that he will commit this type  
22 of offence again. I also take into account that the Defendant is clearly a  
23 hands-on and caring father and grandfather

1        33.        Accordingly I impose a sentence of 12 months' imprisonment with time  
2                    spent in custody to be deducted.

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6        **Dated this the 23<sup>rd</sup> day of December 2013**

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A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by a series of loops and a long horizontal stroke extending to the right.

11        **Honourable Mr. Justice Charles Quin**  
12        **Judge of the Grand Court**