

20-09-12

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

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3  
4 INDICTMENT NO: 0022/2011

5  
6 THE QUEEN

7  
8 V

9  
10 TYRONE ROSWELL EBANKS



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12  
13 **Appearances:**

Ms. Elisabeth Lees on behalf of the DPP for  
the Crown

14  
15  
16 Mr. Ben Tonner of Samson and McGrath  
17 for the Defendant

18  
19 **Before:**

Justice Michael Mettyear (Actg.)

20 **Heard:**

21 10<sup>th</sup> -13<sup>th</sup> September 2012  
22

23 **Preamble**

24 *This Judgment is distributed with the strict understanding that, in any report of it, the*  
25 *anonymity of the Complainant, who is also the victim, must be strictly preserved, that is, the*  
26 *victim may not be identified by name or location or by her family members.*

27 **JUDGMENT**  
28

29 ***INTRODUCTION***

- 30 1. The Defendant stood trial on two counts that arose out of the same incident.
- 31 2. On Count 1, the Defendant is charged with Rape contrary to s.127 of the Penal  
32 Code Law (2010 Revision). The particulars of the offence are that Tyrone Roswell  
33 Ebanks, on the 27<sup>th</sup> day of December 2010, at 17b Powell Smith Road, West Bay,  
34 Grand Cayman had unlawful sexual intercourse with Paris Ebanks without her  
35 consent.

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3. On Count 2, the Defendant is charged with Defilement, contrary to s.134 of the Penal Code Law (2010 Revision). The particulars of the offence are that Tyrone Roswell Ebanks, on the 27<sup>th</sup> day of December 2010, at 17b Powell Smith Road, West Bay, Grand Cayman had unlawful and carnal knowledge of Paris Ebanks, a girl between the age of twelve and sixteen years.

4. The counts are alternatives.

5. I have considered the legal definitions of both counts. It is unnecessary in this judgment to set out those definitions, as it is common ground that the resolution of the case depends on findings of fact on the disputed issues rather than on any legal analysis.

6. The Complainant, Paris Ebanks – hereinafter referred to as Paris, or, the Complainant – who is not related to the Defendant, was born on the 1<sup>st</sup> December 1996. She was therefore 14 years old at the date of the alleged incident.

7. If it is proved that the Defendant had sexual intercourse with Paris on the 27<sup>th</sup> December 2010 then he must be guilty of one or other of these counts. He would be guilty on Count 1 if it is proved that Paris Ebanks did not consent to sexual intercourse. He would be guilty to count 2 if that is not proved.

8. This is a judge alone trial. In conducting it and composing this judgment I have gratefully followed the legal analysis of Quin J. in *R v. George Dexter Evans* Indictment No 18 of 2011 paragraphs 67 to 71.

1 “The Defendant elected to be tried by a Judge Alone, rather than a Judge and  
2 Jury, pursuant to s.129 of the Criminal Procedure Code of the Cayman Islands.  
3 Our Court of Appeal first dealt with the duties of a Judge in Judge Alone trials  
4 in its judgment in **K. Richards v. R** 2001 CILR 496 when Justice Rowe stated:  
5

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

13 In **R. v. Dave Kennedy Whittaker** Cr. App. R. No. 14 of 2006, the Court of  
14 Appeal gave some guidelines regarding the duties of a Judge in Judge Alone  
15 trials. In the Judgment of Mottley J.A. he adopted the Judgment of the former  
16 Lord Chief Justice of Northern Ireland Lord Lowry in **R v. Thompson** [1977]  
17 NI 74 in which he stated at page 83:

18 “While on the subject I might say a word on the duty of the judge when  
19 giving judgment in a trial under the 1973 Act. He has no jury to charge  
20 and therefore will not err if he does not state every legal proposition  
21 and review every fact and argument on either side. His duty is not as in  
22 a jury trial to instruct laymen as to every relevant aspect of the law or  
23 to give a full and balanced picture of the facts for decision by others.  
24 His task is to reach conclusions and to give reasons to support his view  
25 and, preferably, to notice any difficult or unusual points of law in order  
26 that if there is an Appeal, it may be seen how his view of the law  
27 informed his approach to the facts.”

28 More recently our Court of Appeal in **Randy Martin v. R** Crim. App. R. 2 of 2010  
29 delivered their reasons for dismissing the Appeal on the 7<sup>th</sup> December 2010.  
30 Mottley J.A. again adopting **R v. Thompson** [1977] NI 24 also adopted **R v. Thain**  
31 [1985] NI 457 where Lowry LCJ said at page 478:

32 “Where the trial is conducted and the factual conclusions are reached  
33 by the same person, one need not expect every step in the reasoning to  
34 be spelled out expressly, nor is the reasoning carried out in sealed  
35 compartments with no inter-communication or overlapping, even if the  
36 need to arrange a judgment in a logical order may give that  
37 impression. It can safely be inferred that, when deliberating on a  
38 question of fact with many aspects, even more certainly than when  
39 tackling a series of connected legal points, a judge who is himself the  
40 tribunal of fact will (a) recognize the issues and (b) view in its entirety  
41 a case where one issue is interwoven with another.”

42 Following Lowry LCJ in **R v. Thompson** and **R v. Thain**, Mottley J.A. said in  
43 **Randy Martin v. R** at paragraph 31:

44

1                    *“From these cases the following guidance may be discerned. A judge sitting in*  
2                    *a criminal case without a jury, in rendering his decision and giving his reasons*  
3                    *for so concluding, is not required to review every fact and to detail each*  
4                    *argument on which the prosecution and defence rely as if he were summing up*  
5                    *to a jury. The judge must set out the conclusion reached and make clear the*  
6                    *reasons for arriving at that conclusion. He is required to have regard to any*  
7                    *difficult or unusual points of law and to show how those points of law have in*  
8                    *anyway impacted the conclusion that he has reached.”*

9  
10                    ***THE COMPLAINANT’S EVIDENCE***

11            9.            The prosecution case primarily relies on the evidence of the Complainant.

12  
13            10.          I exercised my discretion to allow her to give evidence behind screens. The  
14                    application to allow her to give evidence in that way was not opposed by the  
15                    Defendant.

16  
17            11.          I remind myself that she is allowed to give evidence in that way so that she is at her  
18                    ease in giving evidence. The fact that she gave evidence behind screens is not to be  
19                    held against the Defendant. It neither enhances nor detracts from the evidence she  
20                    gave.

21  
22            12.          The Complainant’s evidence was that on the 27<sup>th</sup> December 2010 she was at the  
23                    home she was living in at 25 John Bush Road. Her grandmother with whom she  
24                    resides is Katherine Blackburn. The Complainant left the house to visit her great  
25                    grandmother, Grace Ebanks, who lived on Powell Smith Drive. The Complainant  
26                    was unsure of timings, but indicated that this was happening late afternoon.

27  
28            13.          After spending a short time at Grace Ebanks’s, the Complainant got on her bicycle  
29                    intending to go back home. She later indicated to police the route she took and this  
30                    is marked on exhibit 2.

1           14.     She came to a point where she saw the Defendant outside his home. His address  
2                    was 17b Powell Smith Drive, West Bay. She knew him because her mother had in  
3                    the past rented the property from him. The Complainant said that she had not seen  
4                    the Defendant for a couple of months. I take her account of the vital part of her  
5                    evidence from my note of what she said. It is not, of course, verbatim.

6

7           15.     The Complainant said:

8

9                    *"I saw Tyrone. He was on my right. I knew where he lived. He was near his*  
10                    *house – about 15 feet from it. We were about 15 feet apart.... ... he said 'come*  
11                    *here' ... I said 'no'.*

12

13                    *I keep riding. He grabbed me by my collar. I was wearing a pink polo shirt and*  
14                    *short jeans. He grabbed me off the bicycle – it fell. I started to fight him off*  
15                    *[and] started punching him. He just kept holding on to my collar. I punched his*  
16                    *chest and face but I didn't make contact. I couldn't handle him.*

17

18                    *He was dragging me towards his house. He was still holding my collar."*

19

20           She said:

21

22                    *"He got me to his house. He pushed me inside. When we got in he locked the*  
23                    *door. ....He pushed me through the next door to a bedroom. I said 'leave me*  
24                    *alone.' He said nothing. ... I felt bad. ... I was upset. I started fighting him to get*  
25                    *to the door. He blocked me. ....He pushed me into the room and pushed me onto*  
26                    *the bed. I got up and he pushed me again. I was on my back. He slide off my*

1                   *pants... He pulled off my jeans and underwear. I tried to pull them back up but I*  
2                   *couldn't. He pushed me back."*

3

4                   The Complainant said that by this time her pants were "*completely off.*"

5                   She said:

6                   *"I told him to leave me alone. He said nothing. He held me down by my arms*  
7                   *and used his other hand to unbuckle his jeans. He took off his jeans and boxers.*  
8                   *He came over on top of me. I was on my back. He inserted his private part into*  
9                   *my vagina..... his penis. It felt nasty. I tried to fight him off and I cried."*

10

11                  The Complainant said the Defendant said "*something*" and, "*not to tell anyone.*"

12

13                  The Complainant continued:

14

15                  *"He was inside me for about half hour with his penis. He was moving up and*  
16                  *down. Then he came out of me. He picked up a knife from the side of the bed on*  
17                  *the floor..... a blue handled knife with a blade of six inches or so. He held it to*  
18                  *my throat and said I mustn't say anything to anyone. I was scared."*

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20                  She said the Defendant did not wear a condom.

21                  She said the Defendant went to the bathroom after he got up off her and it was then  
22                  that she tried to leave.

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*“I took my chance. I put on his blue sports shorts from the ground and I grabbed my stuff. It was quicker to put his shorts on than to get mine on. I got on my bike and rode home crying. I had to unlock the bedroom to get out. I had to unlock the front door as well. I picked up my bike from the side of the road.”*

Paris described the sheets on the bed as white with a floral pattern.

16. The Complainant said that when she reached home:

*“I flung down my bike and went in crying. Natalia came in and asked what had happened and I said ‘Tyrone raped me’. She told my mum. Grandma came in and asked me....I went with her to the police.”*

17. In cross examination the Complainant said that the jeans she was wearing came about 2 inches below her knee. The exhibited jeans seem much longer. In hindsight it is unfortunate that the exhibited jeans were not shown to Paris to see if she identified them.

18. In the absence of an identification there is force in the submission of Mr. Tonner that there is a question mark over whether these were in fact what she was wearing.

19. She said on a number of occasions that she could only recall the Defendant holding and dragging her to the house by the collar.

This was contrary to what she said in her first statement to the police and was not said in any subsequent statement.



1 Natalia Ebanks went on to say that about 18:25 she saw Paris again - at Katherine  
2 Blackburn's house - riding the same bicycle with

3  
4 *"...her Jeans pants that she had on in her hand, then she had blue football  
5 shorts on..."*

6  
7 Natalia Ebanks spoke of Paris storming into the house. The witness followed Paris  
8 and found her at the kitchen sink crying. When asked what had happened Paris had  
9 said:

10 *"Tyrone raped me".*

11  
12 Natalia Ebanks gave further details saying the Paris told that she was

13  
14 *"... riding pass and he jock (pulled) me off the bicycle dragged me in his house  
15 had sex with me".*

16  
17 The witness said that's when she asked the Complainant where she got the blue  
18 football shorts from, and Paris told her she had to

19  
20 *"...grab the blue football shorts, put it on and ran out".*

21  
22 26. In cross-examination Natalia Ebanks was asked a number of questions about her  
23 timings. For reasons that will become apparent later in this judgment she cannot  
24 have been accurate on those timings.

25



1           32.     To the Crown the most significant parts of her evidence were the conclusions that  
2                     the hymen was not intact, that a milky discharge was noted in the vagina, and, the  
3                     detail of the swab and smear-taking exercise in which she was engaged.

4  
5           33.     So far as the milky substance was concerned, the doctor agreed in cross-  
6                     examination that this did not necessarily indicate semen and it might be explained  
7                     by normal vaginal discharge.

8  
9           34.     Dr. Alexander gave detailed evidence concerning the procedure she followed in  
10                    obtaining vaginal swabs. She used an appropriate evidence kit. The vaginal swabs  
11                    were taken from the high vagina, the proximal end, through the speculum that she  
12                    was using to view the inside of the vagina. She did this to avoid any risk of  
13                    contamination from material that might have been external to the vagina or at the  
14                    lower end. She made it clear that she was aware of the risk of contamination if the  
15                    procedure was not properly performed and that she acted accordingly.

16  
17          35.     In cross-examination she said she was satisfied that there was no risk of the swab  
18                    having touched the lower area of the vagina.

19  
20          36.     Having taken the high vaginal swabs she produced a smear. The swabs and smear  
21                    were placed in an exhibit envelope, sealed and sent for examination via the police.  
22                    No issue on transmission arises. These were collectively identified as G.A.1.

23  
24          37.     The items obtained were examined by the next expert in the case, Tiffany Roy, and  
25                    her colleagues at DNA Labs International in Florida, U.S.A. Tiffany Roy is an  
26                    expert in the collection and examination of D.N.A. Her curriculum vitae were  
27                    placed before me.

28

1 38. Besides the items referred to above, Tiffany Roy was sent other exhibits which  
2 were not examined or which produced no positive results. She was also sent  
3 samples of blood from the Defendant and from the Complainant. These were to be  
4 analysed to obtain their DNA profiles. She confirmed that their profiles were  
5 obtained.

6  
7 39. The vaginal smear within G.A.1 was examined and spermatozoa were observed.

8  
9 40. Vaginal swabs given the unique number 11-02115.01.03, within G.A.1 were  
10 examined and seminal fluid was indicated.

11  
12 41. The laboratory, as best it could, separated sperm cells from other cellular material  
13 and the sperm cells were examined. The foreign male DNA profile obtained  
14 matched the DNA profile obtained from the Defendant.

15  
16  
17 42. Tiffany Roy used the F.B.I. database to formulate her statistical comment. Having  
18 taken into consideration the special circumstances of the mix of population in the  
19 Cayman Islands, she concluded that

20  
21 *"The chance that an unrelated person, chosen at random from the general*  
22 *population, matches this DNA profile is approximately 1 in every 600 million*  
23 *individuals".*

24  
25 That, she said, was the most conservative estimate.

26  
27 43. In cross-examination Mr. Tonner asked about the Defendant's blue shorts:

28

1 Question: *“If there was seminal fluid on the shorts and Miss Ebanks put*  
2 *the shorts on with no underwear, it is possible that the DNA*  
3 *from the fluid could have transferred onto her body?”*

4 Answer: *“Onto her body, that’s possible.*

5 Question: *“If there was seminal fluid in the crotch area of those shorts, it*  
6 *is possible that that fluid may have transferred to her vaginal*  
7 *area? In other words it’s....”*

8 Answer: *“That’s correct.”*

9  
10 The emphasis on the word fluid has been added by me.

11

12 44. With respect to Mr. Tonner, such general questioning is unhelpful. There is no  
13 evidence that the shorts had any seminal fluid on them. The Defendant said that he  
14 had no reason to think that there was any fresh semen on the shorts on the 27<sup>th</sup>  
15 December 2010. The furthest he went was to state that there was a possibility that  
16 semen was deposited on the shorts the day before. If that were the case, then one  
17 imagines that it would have dried onto the shorts by the 27<sup>th</sup>.

18

19 45. The full particulars of the case to be advanced by the Defendant should have been  
20 put to Ms. Roy and her comments on those particulars sought.

21

22 46. Transfer and contamination of DNA is a notoriously complicated area and very  
23 fact-specific, see for example, the comments of Lord Wolff L.C.J at paragraph 130  
24 of *R v. Hanratty* (2002) 2 Cr. App. R. 30.

25

26 47. One has no idea of what Ms. Roy would have said, had the matter been fully put to  
27 her.

1 48. Faced with such generalization and without, I presume, knowing the detail of what  
2 was going to be advanced about the shorts on the Defendant's behalf, Ms. Lees  
3 could only deal with the issue generally in re-examination. She asked,

4  
5 Question: *"We've heard from the doctor who took these swabs that these*  
6 *swabs were taken from the high vaginal area. The reason she*  
7 *was able to say this, is because a speculum was used. How*  
8 *does that affect the fact that the swabs were taken from the*  
9 *high vaginal area, your answer in relation to the possibility of*  
10 *transfer from the blue shorts?"*

11 Answer: *"I would not expect any material from the shorts to transfer to*  
12 *the interior of the vagina."*

13  
14 49. Although, as I have said already, it is not possible to know what Ms. Roy would  
15 have said had the matter been dealt with appropriately, in my judgment, one can  
16 safely assume that her answers would not have been any more beneficial to the  
17 Defendant's case than those referred to already. It might well have been that they  
18 would have been worse for him, but that is not an assumption that I will make.

19  
20 ***REMAINING EVIDENCE***

21  
22 50. The remaining evidence for the crown can be dealt with very shortly.

23  
24 51. Evidence was read from P.C. Parkinson that Katherine Blackburn and Paris arrived  
25 at West Bay police station and complained of the rape at 1800 on the 27<sup>th</sup> day of  
26 December 2010. This time fits in with timings given by other police officers as to  
27 when they were informed of the allegation. I therefore accept that this was about the

1 time that the complaint was received by the police. As a consequence it must follow  
2 that the timings given by Natalia Ebanks cannot be relied on.

3  
4 52. P.C. Parkinson noted that the Complainant was in tears. She saw no scratches or  
5 bruises on the Complainant.

6  
7 53. At 18:10 P.C.s Bogle and Bent attended at the Defendant's property at 17b Powell  
8 Smith Road. There appeared to be nobody at home, but the officers heard a washing  
9 machine running. The officers then went along the road to number 35 Powell Smith  
10 Road where they saw and arrested the Defendant. On being cautioned the  
11 Defendant said:

12  
13 *"This is a mistake I did nothing".*

14  
15 The Defendant was asked if he had any objection to his house being searched and  
16 he said

17 *"No".*

18  
19 54. At 20:20, after the Defendant had been booked in at the police station, he was taken  
20 to his home address where, after a short delay, the police went in. D.C. Turner  
21 noticed that there was hardly any bedding on the bed. He was informed by the  
22 Defendant that,

23  
24 *"...he had been washing it when Paris came round to his house".*

25  
26 Bedding was recovered from the washing machine. It has been exhibited. It is white  
27 with a floral pattern.

28

1       55.     At various stages the Defendant made unsolicited comments to one police officer or  
2             another. Prosecution counsel has invited me to note subtle differences between  
3             what was said at different times. She submits that they show inconsistencies in the  
4             Defendant's account which indicate a developing defence as the case went on,  
5             rather than a genuine recital of facts.

6  
7       56.     I have carefully considered this submission and although there clearly are  
8             differences in his story, I have concluded that it is fairer to accept the submission of  
9             Defence counsel that, in its essentials, the accounts given by the Defendant follow a  
10            broadly consistent theme and this is not the sort of Defendant where total  
11            consistency should be expected. In such circumstances it is unnecessary to engage  
12            in a detailed recital of all he said. It is sufficient to say that he vigorously denied  
13            that he had any sexual contact with the Complainant.

14  
15       57.     The Defendant was interviewed on two occasions. The first was on the 29th  
16             December 2010.

17  
18             From the start he indicated to the police that he wanted a legal representative to be  
19             present, that none was present and that he had been advised not to answer questions  
20             until one was. He was asked a number of questions, but throughout he declined to  
21             give answers.

22  
23       58.     The second interview was held the following day. Again he made it clear that as no  
24             legal representative was present he did not intend to answer questions. He said that  
25             in taking that stance he was following legal advice. He did, nevertheless, as the  
26             interview progressed, give answers and made assertions about the allegation.

27

1 59. Insofar as the Defendant did not give an account of matters which he has later relied  
2 on in Court, the Crown has declined to invite me to draw any adverse inference. In  
3 the circumstances, I entirely agree with their stance and will not draw any such  
4 inference.

5  
6 60. So far as the detail of what the Defendant said is concerned, it is unnecessary to set  
7 it out. Again I accept the submission of defence counsel that it broadly reflects what  
8 he said in Court and I will set that out in its essential detail a little later.

9  
10 61. The rest of the Crown's evidence consisted of admissions, a plan, a drawing by the  
11 Complainant and some photographs. I was also shown defence photographs,  
12 Exhibit D.1, of the Defendant's house, drive and garden. I have considered all these  
13 items.

14  
15 62. The Defendant gave evidence. I set out a summary of the relevant parts from my  
16 note book. Again it is not verbatim.

17  
18 63. The Defendant said:

19  
20 *"I did not have sex with Paris on the 27<sup>th</sup> December 2010...After 5 p.m. I was at*  
21 *home at 17b Powell Smith Drive. I was cooking and cleaning. I was cleaning*  
22 *work clothes and bedding. I don't smoke inside, so I went out to the edge of the*  
23 *road to smoke. ...It is 118 feet from my home to the road."*

24

25 The Defendant explained that the windows of his house were:

26 *"...not boarded up."*

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28 Paris said that the rear window was boarded.

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He said:

*“I saw Paris Ebanks ride up on a bicycle. She asked if she could use my cell phone. I had it in my hand. I said, go ahead, but don’t kill my credit. .... I knew her.”*

The Defendant said he had once given the Complainant’s mother and her boyfriend his home at 17b Powell Smith Drive to use. He said,

*“They were there a year. They left seven months before the incident.... Paris lived with them. After they left I saw Paris every two or three days on Powell Smith Drive.”*

Concerning the day in question the Defendant said:

*“I gave her the phone and she spoke for three to five minutes. I took the phone back. She walked to my home to give it to me. I did a credit check; it was a pay as you go. This is the same phone I mentioned to the police. At my front door she asked me for water.”*

The Defendant described the surface of the road as

*“...chip and spray”*

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He said:

*“I gave her a bottle of water from the fridge. She was by my front door – on the threshold. She said, let me use the bathroom, and I said go ahead. The bathroom is through the living and bedroom. She went into the bathroom. I was at the stove cooking chicken.”*

The Defendant then said:

*“She returned and had my shorts on – they are blue with gray inside. I think she had black tights on when she went in, with a polo top. I said, why my shorts on and she replied that she had messed herself up and she was wet or cold and she had wet tights so she asked me for a bag to put item in. I am not sure exactly what she said.”*

The Defendant said:

*“The shorts were in the bathroom. I’d just used them the day before.”*

The Defendant said he then turned off the stove and the Complainant said she was going to get something to eat at Subway.

64. The Defendant said that before the Complainant left his home on the day in question she asked for money and:

*“I gave her some – not sure how much, maybe 15 dollars. She then left. I stayed at home for another 20 minutes.”*

1           65.     The Defendant, referring to the Complainant said:

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3

*“I never dragged her off her bike. I had no sexual contact. I locked no doors –  
all were open. I didn’t threaten her with a knife.”*

5  
6

66.     Asked again about the bedding the Defendant said:

7

8

*“When she came to the house I was cooking and cleaning. The bedding was on  
the couch or on the floor by the front door. The shorts were in the bathroom  
somewhere.”*

9

10

11

12          67.     Towards the end of his evidence in chief the Defendant was invited to say whether

13

he knew of any reason why Paris might make up such an allegation against him.

14

Defence counsel advised him to avoid speculation. The Defendant gave an account

15

of a dispute involving himself and two other men, but its connection to the

16

Complainant was tenuous in the extreme.

17

18

The only other reason he could give was that he was on bad terms with the

19

Complainant’s mother.

20

21

It is not, of course, for the Defendant to prove why a Complainant might give a

22

false account.

23

24

68.     In cross-examination the Defendant said he saw no mess on the Complainant or her

25

clothing. He denied that she had been wearing the jeans produced in Court (which

26

did not appear to be messed in any way). He said that he had no reason to think that

27

there would be fresh semen on his shorts on the 27th December, but added that he

1 had been with his girlfriend the day before. He said, without elaboration, that semen  
2 could have been deposited on them then.

3  
4 69. I should add that, at the conclusion of his evidence, the Defendant invited me to  
5 attend at the property to see it for myself. It was an invitation I refused as I  
6 concluded that there was no possibility that I would learn anything new from such a  
7 visit, particularly as evidence had been given that the house had been destroyed  
8 since the end of 2010.

9  
10 *CONCLUSION*

11  
12 70. I begin by reminding myself that the Crown must prove their case against the  
13 Defendant and that the standard of proof is to make me sure of guilt.

14  
15 71. Paris Ebanks gave an account in court of the incident on the 27th December 2010  
16 which amounts to the offence of rape being committed against her by the  
17 Defendant. Her account was given in a measured and believable way. She was not  
18 shaken from her story despite a thorough and able cross-examination by Mr.  
19 Tonner.

20  
21 72. Her evidence was criticised in a number of ways.

22  
23 73. Firstly, it was pointed out that her estimate of the distance between where she was  
24 confronted by the Defendant and his house, namely about 15 feet, was wildly  
25 wrong. This I accept, but in my judgment it has no relevance. There could be no  
26 advantage to her in deliberately misstating the distance. The fact is that on either  
27 account she was on the street with the Defendant outside his house. The distance

1 between them and the house is of no moment. The underestimation simple shows  
2 that she is one of those people who are not good at making such estimations.

3  
4 74. Secondly, she was criticised for saying, for the first time, in court that she was  
5 dragged by her collar, rather than by her arm as she had said before. I accept that  
6 this is an inconsistency. However, one cannot necessarily expect total consistency  
7 from witnesses, particularly a young witness describing traumatic events occurring  
8 nearly two years ago. Nevertheless it is appropriate for me to put this inconsistency  
9 into the balance in the Defendant's favour.

10  
11 It is also suggested that, in saying that the sexual intercourse lasted 30 minutes, she  
12 was being inconsistent with her statement of the 29<sup>th</sup> December when she said:

13  
14 *“He then inserted his private part into mines (my vagina). I was screaming and*  
15 *calling out his name saying ‘Tyrone leave me alone’ and he told me to shut up.*  
16 *He was still in me moving up and down and he pulled out of me like about five*  
17 *minutes after.”*

18 The statement is not as clear as it might be, but I accept that there is the possibility  
19 of an inconsistency. I am not, however, persuaded that, in the circumstances, it is of  
20 any great significance.

21  
22 75. The Defence submit that if the account given by Paris were true, one would expect  
23 to see some injury, or at least some mark, on her body supporting what she said. Mr  
24 Tonner refers to the photographs D1 and submits that they show that the ground  
25 over which Paris claims to have been dragged is hard and somewhat rough in parts.  
26 This, he claims, makes it more likely that some injury or mark would have been  
27 caused.

1 In fact, it is reasonably commonplace that relatively violent attacks leave  
2 surprisingly little injury and that sometimes minor attacks have devastating  
3 consequences (for instance "one-punch manslaughters"). Nevertheless, this is a  
4 perfectly proper submission to make and I accept that one would reasonably have  
5 expected to see some sign of the trauma she alleged. Again, I put this into the  
6 balance in the Defendant's favour.

7  
8 76. The evidence of recent complaint is helpful in deciding the case. Although timings  
9 are not clear, it is obvious that it was not long between Paris leaving the  
10 Defendant's property and getting home and making the first complaint. I accept that  
11 between then and the end of her evidence Paris has, subject to matters stated above,  
12 given a broadly consistent account of the rape. To have made up a false account so  
13 quickly after being with the Defendant would have required a degree of guile which  
14 she did not appear to possess.

15  
16 77. The strongest evidence against the Defendant comes from the medical and scientific  
17 experts. There is no proper basis for doubting the evidence of Dr. Alexander that  
18 she carefully and properly obtained the high vaginal swabs. There is no proper basis  
19 for doubting that the analysis of the swabs found the Defendant's DNA in semen on  
20 two of the swabs. The obvious conclusion is that the semen was deposited by  
21 ejaculation of the semen into the vagina during sexual intercourse. Despite Mr.  
22 Tonner's efforts on the Defendant's behalf when cross examining Ms. Roy, I am  
23 left in no doubt that no other sensible explanation exists.

24  
25 78. The Defendant gave his evidence in a calm and polite way, but faced with the  
26 weight of evidence against him, his account was entirely implausible. This is my

1 general conclusion, but I will deal with two specific matters as they featured  
2 prominently in counsel's submissions.

3  
4 79. Firstly, I reject the Defendant's account about the circumstances leading to Paris  
5 wearing his sports shorts.

6  
7 Having seen this girl give evidence it is to me inconceivable that she would have  
8 the wit to add to a false claim of rape a false story that, in her desperation to escape  
9 her attacker, she grabbed his looser clothing and put it on rather than struggle with  
10 her tighter garments which would have slowed her down. It was clearly a true  
11 account. His account, on the other hand, was not credible. There was no evidence  
12 that she had messed herself, even from the Defendant himself, and no reason why  
13 she would falsely claim to have done so. Even if there were his day-old semen on  
14 the shorts there is no reason for her to have known. The only sensible reason why  
15 she took them, and put them on, is the reason she gave.

16  
17 80. Secondly, I reject the Defendant's account regarding the sheets.

18  
19 I cannot accept that Paris saw the sheets in the house somewhere other than on the  
20 bed and then made up the story that they had been on the bed. Nor do I accept the  
21 assertion that coincidentally the Defendant had chosen that afternoon to wash his  
22 sheets.

23  
24 The truth in my judgment is that which the Crown allege, namely, that the  
25 Defendant, realising what he had done might have left evidence, set about  
26 destroying that evidence by washing the sheets. The point taken by Mr. Tonner that

1 if that were his motive he could have gone further by washing the under sheet does  
2 not detract from that conclusion.

3  
4 81. The result of these findings leads me to the sure conclusion that sexual intercourse  
5 took place between these two people. In truth, the evidence is overwhelming.

6  
7 82. The points against such a conclusion raised by Mr. Tonner, which I have taken into  
8 consideration in the Defendant's favour, do not cause me to doubt the conclusion I  
9 have reached.

10  
11 83. Having concluded that sexual intercourse did take place between these two, there  
12 remains the question of consent. Here the evidence is all one way.

13  
14 84. The evidence from Paris is that she verbally and physically resisted until a point  
15 came when she realised that further physical resistance was pointless.

16  
17 85. I accept Mr. Tonner's submission that it would be possible to accept the evidence of  
18 the Complainant on one point - sexual intercourse having occurred - and yet reject  
19 it on the question of consent. However there would have to be some justifiable  
20 reason for doing so. Here there is none.

21  
22 86. Without hesitation I am sure that the sexual intercourse was without her consent. In  
23 such circumstances the Defendant is guilty of the offence of rape and I so find.

24

25 **Dated this the 20<sup>th</sup> September 2012**

26

27

28 **Mr. Justice Michael Mettyear (Actg.)**  
29 **Judge of the Grand Court**

