

1. This trial was conducted before me, at the election of the defendant, as a judge sitting without a jury between 31st October and 11th November 2011.

2. It commenced on an indictment containing eleven Counts.

3. The Counts include allegations of rape, assault causing actual bodily harm, abduction and use of an ICT Network to abuse and harass; all as alleged by the complainant Mrs. X. At the commencement of the trial the defendant pleaded guilty to Count 11 – that involving the use of the ICT Network to abuse and harass – and so the trial proceeded on the other ten Counts.

JUDGMENT

CHARGES: 1. Assault Causing Actual Bodily Harm
 2. Rape
 3. Abduction
 4. Use of ICT Network to abuse and harass

APPEARANCES: Mr. Kenneth Ferguson for the Crown
 Mr. Ben Tomner of Samson and McGrath for the Defence

IN OPEN COURT
 THE 31ST OCTOBER 2011 TO 11TH NOVEMBER 2011;
 BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE

PHILLIP TURNER ROSE

V

REGINA



IN THE GRAND COURT OF THE CAYMAN ISLANDS
 IND. NO. 38 OF 2011

19/02/11

The complainant described in her detailed testimony given over the course of three days, a sexual relationship with the defendant Phillip Rose which began on a consensual basis but which transformed, upon her seeking to end it, into a campaign of harassment, assault and sexual abuse over the course of some two and a half years, until her unannounced departure from the Islands on 1st July 2008. Her departure, described by her as deliberately kept secret from the defendant, was, as she alleged, her escape from her ordeal.

Apart from Count 11 to which the defendant has pleaded guilty (use of an ICT Network to abuse and harass), he denies the allegations in the indictment. In respect of three specific counts of rape allegedly committed on 7th October 2006; between 1st and 31st December 2006 and on 10th April 2008; the defendant denies that those incidents ever took place, asserting that there was no physical abuse or sexual intercourse consensual or otherwise on those occasions. A fourth allegation of assault and rape on 17th May 2008 is also denied by the defendant although he acknowledges that there was contact of a non-sexual nature with the complainant on that occasion.

As it is a component of those specific allegations that on each occasion violence or force was used against the complainant to compel her submission, it is a central issue for me to determine, not only whether the incidents occurred but also whether, as alleged, the sexual contact that occurred was without the complainant's consent.

The allegations of the complainant when juxtaposed with the counter-allegations of the defendant, bring into stark focus the central peculiarity of this case: for while it is the defendant's case that the relationship remained throughout, until the departure of the complainant from the Islands, a consensual sexual relationship; on the occasions

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when the complainant alleges that she did not consent but was forcibly compelled, the

defendant's response is not that there was consent, but that the incidents simply did

not happen.

8. I intend therefore to proceed to assess the evidence of the complainant both from the

point of view of whether the alleged incidents did take place and whether if they did,

the sexual contact that occurred took place with or without her consent.

9. Proof to the requisite standard of the absence of consent is, of course, essential to the

proof of each allegation of rape:

10. Consistent with the burden of proof resting on the prosecution throughout, I must be

satisfied beyond reasonable doubt – so that I am sure – about each of the elements of

the respective offences in the indictment, before I might convict the defendant on any

related count.

11. There is still the further peculiarity to be noted, and this is, that as the defendant

denies that the specific allegations of sexual encounter (those now related to four

specific counts of rape) ever took place, there is no claim by him of a belief (mistaken

or otherwise) that the complainant had consented during those encounters.

12. In respect of those encounters the real issues for me will nonetheless remain first, did

they take place and if so, were they without the consent of the complainant as she

alleges? Only if I am satisfied about those issues will I need to consider the further

question of whether (despite his denial of the respective incidents) the defendant

could have reasonably believed on any of those occasions, that the complainant was

consenting at the time of intercourse.

13. I may convict the defendant in respect of those or any of those alleged encounters, only if I am satisfied so that I am sure that the respective encounters occurred as described by the complainant and that she neither consented nor could the defendant have reasonably believed that she consented.
- The offence of rape**
14. Section 127 of the Penal Code (2010 Revision) proscribes and defines the offence of rape in the following relevant terms:
- “(1) A man who rapes a woman (or another man) is guilty of an offence.
- (2) A man commits rape if –
- (a) he has unlawful sexual intercourse (whether vaginal or anal) with another person who at the time of intercourse did not consent to it; and
- (b) at the time he knows that the other person does not consent to the intercourse or he is reckless as to whether the other person consents to it.
- (3)....
- (4) If, at a trial of a rape offence, the jury has to consider whether a man believed that the person was consenting to sexual intercourse, the presence or the absence of reasonable grounds for such belief is a matter to which the jury is to have regard in conjunction with any other relevant matters in considering whether he so believed.
- (5)
- (6) For the purposes of this section, a person is deemed not to have consented to sexual intercourse if the person’s acquiescence is obtained –

18. The directions given by Pill J to the jury in R v Mohammed Zafar June 18 1993 EWCA (as approved by the Court of Appeal) (No. 92/2962/W2, unreported) have been commended (see the Crown Court Bench Book 2010 Ed.) as a model where allegations of rape arise as between partners to a longstanding domestic relationship. They explain that in such circumstances, the fact that a woman's consent is given reluctantly or out of a sense of duty to her partner makes it nonetheless consent in the eyes of the law. However, a woman is entitled to say "no" and to refuse to consent even to her husband or long-term domestic partner. The law recognises that

17. This case gives rise to circumstances in which, as the tribunal of fact, I must determine whether the allegations of rape are true while distinguishing between the complainant's reluctant but free exercise of choice on some occasions and her unwilling submission due to fear and even violence, on other occasions.

enthusiastic agreement to reluctant acquiescence.

16. Consent is shown by the case law to cover a range of behaviour, from whole-hearted choice.

15. It must be implied from section 127 (6), that a person can be deemed to have consented only if she agrees by choice and has the freedom and capacity to make that

- (a) by threat of force or use of force;
- (b) by means of threats or intimidation of any kind;
- (c) by fear of bodily harm;
- (d) ...
- (e) ..."

there is a dividing line between real consent on the one hand and lack of consent or

mere submission on the other.

19. It goes without saying that a woman's entitlement to say "no" will be even more readily recognised by the law in circumstances where a relationship which was formerly intimate no longer exists on those terms and where she has made it known to her former partner that she no longer wishes to be involved in that relationship.

20. It is therefore for me, as the tribunal of fact, to decide whether the absence of consent is proved in this case, applying, of course, (and as advised in R v Mohammed Zaphar (above) a combination of good sense, experience and knowledge of human nature and modern behaviour to all the relevant facts of the case.

21. I remind myself that what is required by section 127 (2) of the Penal Code is knowledge by the defendant of the lack of consent or recklessness on his part as to whether there was consent, judged on the subjective basis of this particular accused man. As the question is one of an accused's state of mind, the prosecution must prove to the requisite standard, that he could not have reasonably believed that the complainant was consenting to sexual intercourse at the time of penetration, alleged in respect of each particular incident.

22. In this regard, section 127(6) of the Penal Code is instructive and, depending on the proven circumstances, potentially conclusive. If any of the circumstances categorised in section 127(6) is proven, in this case in relation to any of the allegations of rape, then the complainant will be deemed not to have consented unless, on the evidence adduced in the case, an issue arises as to whether the defendant reasonably believed that she consented.

23. Again, as in this case the specific acts of intercourse are denied by the defendant as having occurred at all, such an issue of belief on his part can arise only as a matter of inference from the surrounding circumstances, if the acts are proven to have occurred.
24. The words used in section 127(6) for defining the circumstances under which a complainant will be deemed not to have consented are not categorically exhaustive.
25. While, for instance, section 127 (6)(b) speaks of "threats" or "intimidation of any kind", it does not seek to categorize what may amount to a threat or intimidation for these purposes.
26. Thus, it remains for the tribunal of fact to decide whether the degree of coercion, threat or intimidation exercised upon the complainant's mind was such that she did not agree by choice to consent, having the complete freedom to make that choice.
27. It may well be, for example, that the threat to expose a complainant's illicit and clandestine sexual relationship if she refused to submit, in circumstances where exposure would endanger her career, her immigration status or even an already unstable marriage, could operate to negate her consent. See, for example *Sharif 2004 EWCA Crim. 3386* and *Blackstone's Criminal Practice 2011 Ed. para B.3.21*.
28. Such questions arise for my consideration as the tribunal of fact in this case.
29. In summary then, I must be satisfied so that I am sure of three things before I might convict for the offence of rape:
- (i) that the act of penetration took place;
 - (ii) that the complainant did not consent to that act; and

(iii) that the defendant did not believe that the complainant was consenting, or that

any belief on the defendant's part that she was consenting, was not a

reasonable belief.

The offences of Assault Causing Actual Bodily Harm

30. The two Counts on the indictment alleging the offence of assault causing actual

bodily harm – (Counts 2 and 8) – are related to two of the occasions of alleged rape.

If proven, they also go to the question of whether there was coercion, fear or

intimidation which may be deemed to have negated the complainant's consent.

31. Proof of this offence must involve an assault or battery which occasioned the

complainant's actual bodily harm and there is no need for proof of a further specific

intent to inflict harm. Even minor cuts or bruises may satisfy this test, much more so

the punches to the face and savage beatings alleged by the complainant to have been

inflicted upon her during those alleged incidents.

Abduction

32. The offence of abduction is proscribed by sections 219 and 220 of the Penal Code

(2010 Revision). Section 220 which also prescribes the penalty, uses the word

“kidnap” or “abduct” seemingly interchangeably to define the offence. For that reason

the common law treatment of the offence of kidnapping will inform the Court's

approach to this statutory offence of abduction. The offence consists of the taking or

carrying away of one person by another by force or fraud without the consent of that

person and without lawful excuse. It is an essential element of the offence that the

person is deprived of his or her liberty. (D [1984] AC 778; Hendy-Fregard [2008]

Q.B. 57).

33. The person need not be carried far (Willard [1978] 3 All E.R. 161).

34. The abduction must be committed without the valid consent of the victim but consent or compliance procured by force or fear is not true consent. (Greenhalgh [2011] *EWCA Crim.* 1367). The offence is one of basic intent [Hutchins [1988] *Crim. LR* 379] and therefore the offence is capable of being committed if the abductor was reckless as to whether the victim consented as well as if he positively intended to take her away against her will.

Separate treatment of each count

35. I must consider the case against and for the defendant on each count of the indictment separately. The evidence, although in the main coming from the same witness, the complainant, is different in respect of the different Counts and therefore the verdict need not be the same.

36. This obligation to consider each count separately on its merits of course does not mean that I should ignore all the general evidence of background circumstances. That is evidence which will assist in reaching a verdict. Indeed, in a case such as this involving a number of alleged incidents against the background of a dispute over whether or not the consensual relationship had been ended, my decision on the facts on one count of the indictment could well assist in coming to a conclusion on another or the other counts.

37. In keeping with the guidance provided in R v Makani [1995] 2 Cr. App. R. 469 and subsequent cases which have addressed similar issues, I have considered whether

it is appropriate in this case for me to warn myself to exercise special caution before acting upon the unsupported evidence of the complainant, in respect of any count on the indictment, where no such support may be forthcoming.

38. Having closely observed the complainant as she testified, having carefully examined her evidence, as well as all the other evidence in the case and having regard to all its circumstances, I am unable to conclude that it would be appropriate to adopt such a warning here. Indeed, the question only arises because of the sexual nature of the allegations in this case. But in light of the statutory abrogation of the requirement for a "corroboration direction" in respect of the evidence of a complainant of a sexual offence, it would be wrong to adopt the cautionary warning simply because a witness falls into that category (See *R v Makantoula* itself, at p. 473 B).

39. While there are aspects of the complainant's evidence about her behaviour over the course of her alleged ordeal which may be said to invite skepticism and which must be examined with care, I have not found that there is any evidential basis for suggesting that her evidence as a whole is inherently unreliable, basis that is, apart from suggestion by defence counsel during cross-examination. In particular in this case, there is no rational basis for thinking that the complainant has "lied or fantasized about her allegations for unascertainable reasons or no reason at all" (per Lord Taylor CJ in *Makantoula* (above) at p471 B-C. The question raised by the defendant – which is whether she raised these allegations out of jealousy and a sense of rejection – will have to be addressed specifically.

Recent complaints and recent fabrication

40. In this case the evidence is that a number of reports or complaints were made to the police by the complainant. Reports were also made to other witnesses who testified – one such is Mr. Marcus Montana, the property manager of the Laguna Del Mar condominium complex located on the Seven Mile Beach, where the complainant resided at certain times covered by the indictment. Another in particular is Ms. Shannon Seymour, a clinical psychologist who was consulted by the complainant and in whom she confided about the alleged ongoing harassment, stalking, assault and sexual abuse. Still another witness, of particular relevance in this context, is Dr. Enoke Richens.

41. All of this evidence must be carefully considered in the respective contexts but here I must record my views as to the relevance and admissibility.

42. I find that some of the evidence of Dr. Richens is admissible on the basis of the common law doctrine of recent complaint.

43. If a complainant, in a case of rape or some other sexual offence, made a voluntary complaint shortly after the alleged offence, the person to whom the complaint was made may give evidence on behalf of the prosecution of the particulars of the complaint, not as evidence of the facts complained of, but to show the consistency of the conduct of the complainant with the complainant's evidence and, in cases where consent is the issue, as tending to negative consent (see generally *Lillivman* [1896] 2 *Q.B.* 167).

44. This evidence may possibly help me to decide whether the complainant has told the truth. It cannot be independent confirmation of her evidence since it does not come from a source independent of her (*Wright* (1987) 90 *Cr. App. R.* 91 per Ognall J. and

Islam [1999] 1 Cr. App. R. 22 – all as discussed in *Blackstones' Criminal Practice*

2002 Ed. at para F 6.14.

45. It follows that I may treat evidence of complaints insofar as they suggest lack of consent on the part of the complainant, not as itself tending to negative consent, but merely as evidence of consistency with the complainant's evidence as to lack of consent.

46. The following further summary of the principles is taken from *Blackstones'* (op. cit., *ibid*). In order to be admissible, a complaint must be made at the first opportunity after the offence which reasonably offers itself (op. cit. *ibid* and *Osbourne* [1905] 1 *KB* 551). This is a matter to be determined by the court in each case (*Cummings* [1948] 1 *All E. R.* 551).

47. Thus, although complaints have been excluded if made after a day (*Rush* (1896) 60 *JP* 777) or three days (*Ingriv* (1900) 64 *JP* 106), a complaint made after a week has been admitted (*Hedges* (1909) 3 *Cr. App. R.* 262). Much turns on the circumstances of the case. Account should be taken of the fact that victims, both male and female, often need time before they can bring themselves to tell what has been done to them. And a complaint will not be inadmissible merely because there has been an earlier complaint: *Lee* (1912) 7 *Cr. App. R.* 31 and *Wilbourne* (1917) 12 *Cr. App. R.* 280.

48. In certain circumstances, in a trial of a sexual offence in which a previous statement (or statements) amount to a complaint, the statement may be admissible to rebut an allegation of recent fabrication notwithstanding that it is inadmissible as a recent complaint because not made at the first reasonably practical opportunity (*Tyndale* [1999] *Crim. L. R.* 320 and *Blackstones* op. cit. at para 6.16).

49. From the circumstances of the Tyndale case, it appears that the English Court of

Appeal accepted that the allegation of recent fabrication need not be expressly made by a defendant but that the evidence of an early previous consistent statement may become admissible to rebut an allegation of recent fabrication that is implicit in the

defence.

50. The *locus classicus* is Ovesku (1971) 56 Cr. App. R. 240 in which Karminski LJ, giving the judgment of the English Court of Appeal (at p 245) approved the following statement of Dixon CJ in Nominal Defendant v Clements (1960) 104 CLR 476, at pp

479-80:

"If the credit of a witness is impugned as to some material fact to which he deposes upon the ground that his account is a late invention or has been lately devised or reconstructed, even though not with conscious dishonesty, that makes admissible a statement to the same effect as the account he gave as a witness if it was made by the witness contemporaneously with the event or at a time sufficiently early to be inconsistent with the suggestion that his account is a late invention or reconstruction. But, inasmuch as the rule forms a definite exception to the general principle excluding statements made out of court and admits a possibly self-serving statement made by the witness, great care is called for in applying it. The judge at the trial must determine for himself upon the conduct of the trial before him whether a case for applying this rule of evidence has arisen and, from the nature of the matter, if there be an appeal, great weight should be given to his

52. The defendant also explained the fact that during their relationship until she left the Island in July 2008, he had never – but for a single occasion when the police was called to intervene at Laguna Del Mar where the complainant then resided – been approached by the police, thus laying the basis for the suggestion which came, that

jealous and she wanted to be vindictive to me.”

51. It is implicit in the defendant’s response to the allegations in this indictment that the complainant has concocted the allegations against him at some time well after the dates of the incidents alleged in the indictment. His defence is to the effect that they continued in a consensual sexual relationship right up until the time of her departure from the Island in July 2008. Her departure was moreover, according to him, with his knowledge as *“she told me she wasn’t coming back, because of my womanizing and because of her job.”* While their relationship had been marred by arguments because of her jealousy over his many other women, the defendant, as he testified, insisted *“I don’t have a clue why she would go to the police. My understanding is that she was*

which it was made it rationally tends to answer the attack.”

opinion by the appellate court. It is evident however that the judge at the trial must exercise care in assuring himself not only that the account given by the witness in his testimony is attacked on the ground of recent invention or reconstruction or that a foundation for such an attack has been laid by the party but also that the contents of the statement are in fact to the like effect as his account given in his evidence and that having regard to the time and circumstances in

her decision later to press charges against him was for reasons which she later

contrived.

53. I will need to consider therefore, whether in the context of the evidence, it is appropriate to regard the earlier complaints which had been made by the complainant to the police, to her clinical psychologist and to others, as previous statements which are consistent with the evidence now given by the complainant, as going to rebut the suggestion of recent fabrication of her complaints. If so, this would of course go only to support her credibility as a witness, not as to the truth of her previous statements themselves.

Defendant's character

54. Finally, in respect of the aspects of the law upon which I must direct myself before turning to the treatment of the evidence, I note that the defendant who has no previous convictions, having given evidence, is entitled to have his good character taken into account as a factor that supports his credibility as a witness. And while it will ultimately be a matter for me to decide what weight should be ascribed in this case, the fact that he is of good character may mean that he is less likely than otherwise might be the case to commit these alleged offences. Among the factors to be considered will be his already admitted commission of the related offence charged in Count 11 of the indictment.

The Complainant's evidence

Having extensively reviewed all the evidence in the case (by reference to the verbatim transcripts), it is neither necessary nor practicable to record all the details of the complainant's evidence here.

55. Instead, I will summarize and, where necessary, augment my summary by excerpts from the verbatim transcript. The same approach will be taken to all the other testimony given in the case, including that of the defendant.

56. The complainant Mrs. X describes herself as a married woman and a Swiss national employed as the regional human resources business manager of Bank Y (formerly Y Bank of Switzerland).

57. She was transferred to the Cayman Islands from Switzerland in July 2005 by Bank Y. Although they were having "marital problems", her husband relocated to Cayman with her and he was hired as golf pro at the local Ritz Carlton Hotel. They took up residence at the Sunset Resort Condominium complex, a short drive away from her work place at Bank Y in George Town. She said that her husband was often away for business and this added to the feeling of estrangement between them.

58. She first met the defendant Phillip Rose on the 1st or 2nd February 2006 while on an evening out with a girlfriend, at a restaurant at that time called "DJs". There was live music so she danced with the defendant and they exchanged telephone numbers. This led to them meeting about a week later and they subsequently developed what the complainant refers to as a "mainly sexual relationship". She said that they had both confided to each other the fact of their subsisting but estranged marriages, with the defendant explaining that his wife lived in Miami.

59. The following excerpt from the verbatim transcripts set the context for her complaint:

Crown Counsel:

"Q: Now you are here today to give evidence in this matter. Why are you here to give evidence?"

The witness then explained that it was during that time away from each other that she "had found out that he (the defendant) had many other women (and) so confronted him with that information." She said she was very upset at her discovery of the defendant's many other relationships. She later explained that her upset was not out of jealousy but rather because "after I found out what he was all about I was always disgusted when he was with me, so I didn't want to be there." And still later in cross-examination when it was suggested to her by Mr. Tomner that "on occasion you threatened (the defendant) that if he was unfaithful to you, you would...hire somebody to hurt him"; she responded, "Never, not once I said that. Oh, my God...why would I do that? I knew that was just him. I didn't want to be part of that life that he had. I said, you do...if you need that, if that is your life...and I told him over and over...if you need that, some people need more than one person to be happy. And I said this is

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actually went to Trinidad for a week."

three weeks and when I came back to the Island Phillip then in September I was away for business for about two or thought, and I felt good meeting with him during that time. But ...and that was in 2006. I was kind of...getting to know him, I

September.

A: We had been seeing each other from February through end of

Q: Okay. Can you tell the Court ma'am, when the abuse started?

very aggressive, very violent.

relationship, or the relationship that we had, and he turned

A: I...I have been abused by Phillip. I tried to end our sexual

your decision. But I do not want to be part of that. I never threatened him with

anything like that. That is a lie."

61. She also explained that she had come to realise the risk of infection by STD's because of the defendant's profligate sexuality, a risk that she was not willing to take.

62. Against that background the following narrative is given of the actual break up between herself and the defendant which she described as having occurred while they were on the beach on Saturday morning, the on 30th September 2006 at the Royal Palms:

"The Court: You say that was the 30th September?"

The Witness: That was Saturday, yeah. And because of what I found

out about him, I then broke up with him.

The Court: Can you tell us what you said to him by way of breaking

up with him?

The Witness: I was... I guess I was making a scene because of what I

found out and I was asking him all these questions and

I guess at one point he just had enough of hearing it

and he grabbed me and pushed me down in the sand

and I just... I just said I don't want to see you no more,

leave me alone, and I... I actually kicked him as well to

get away from him, and I then ran up towards West Bay

(along the beach) and he followed me a few steps and

then he just screamed after me that he would not leave

me alone.

63. From her description of the events that followed after that Tuesday evening of 3rd October 2006, emerges a continuing pattern of stalking by the defendant, such that he was able to intercept her movements as she went from home to work and back or as she attempted to engage in social outings with other people. In her words, "I saw him constantly. I saw him all the time. He was always outside the office, he was outside my house. He was following me everywhere – to the hairdresser, to the supermarket, everywhere I went he was always just ten steps away, everywhere." And later in her

he stayed outside."

And I drove home, but he followed me with his car to my house, nothing to say to you no more, leave me alone. He then left. Y's property. He said he needed to talk. I said I don't have should leave or I would call the police, he should leave Bank the evening (as she was leaving work). "I told him that he showed up at Bank Y in the parking lot – this was about 7:30 in Tuesday after that Saturday (that is: 3rd October 2006) he was not taking any of his calls when that happened. But on bothering me at work and I just really didn't take his calls – I number and it would be just constant calls, calls, he was He would call my cell number and he would call my office

....

texts.

Q: Did he leave you alone?

A: No, he did not. He was calling me constantly. He sent me

examination-in-chief: "Phillip was controlling my life. He controlled every move I

made. And I was - I was scared. I was scared that he could actually do - I know he

was very aggressive, he could be aggressive - I did not doubt for a minute that he

could hurt me or kill someone, or kill me or anyone that is close to me. I never

doubted that that could happen."

64. These events of the early stages of what, from the complainant's point of view, is said

to have been the termination of the consensual relationship, are significant.

Transcripts of recordings, and the actual recordings themselves, of voice messages left

by the defendant on her office phone are instructive as to his reaction to the breakup

and as to his mindset thereafter. While the complainant testified that there had been

very many more calls in addition to the several that she did manage to record and

which were presented to the Court, those presented contained such vehemence and

profanity as in and of themselves to suggest violent and obsessive behaviour on the

part of the defendant of the kind described by the complainant. Indeed, the recordings

are in stark contrast to the demeanor displayed by the defendant in court.

65. The transcripts speak for themselves but excerpts from some of the very earliest calls

made only a week or so after the "breakup", are especially revealing:

"Message recorded at 12:40 pm on October 7th [2006]:

Caller: Why you don't answer your phone fucking bitch? I gah give

you a taste of your own medicine. You don't know who you're

fucking with, you stupid bitch. Now I been nice, now I ain't

going be nice no more, bitch. I going have

Immigration...your...fucking ass, bitch. I going have you off

out of you bitch. You better...you better pray to God, bitch. Anyways, if you're on the road, bitch, I'm gonna beat the shit to escape from his assault)].

the break up took place and when she kicked at the defendant a reference to the incident on the beach at Royal Palms when dick hurting still, bitch [(this the complainant acknowledges is rock, hit me in my...hit me in between my legs? My fucking did me last Saturday morning, hit me in my fucking back with a You fucking bitch, you better go into hiding. You see what you

minutes after the first, was in these terms:

68. The second recorded message of 7th October 2006, received at 12:44 pm, only four messages.

67. It thus became an issue for me to resolve whether that could be a plausible and acceptable explanation for the escalating violent and threatening nature of the "...saying what she wanted to say" but hanging up before he could say his piece.

66. The complainant's evidence is that although she was shaken and frightened by these threats, she tried to ignore this, like all the other calls of the defendant. The defendant's explanation of the calls is that he made them and while they do sound angry and threatening, "they were all just idle threats." He made them because the complainant had gotten into the habit of taunting him by texting or calling him

man." this fucking Island, you stupid fucking bitch. I hate you, fucking nasty bitch. I going fuck you...you bitch, you and your

2006, is as follows:

71. Her verbatim description of what happened on the evening of Saturday the 7th October

do his bidding.

back to underground connections he had made while living in Miami, would readily other occasions as well, as being his "eyes and ears" on the Island and who, going criminal associates he mentioned in his voice messages, henchmen he described on against her, but against her husband as well. She believed that the defendant had the she remained in fear of him and believed that he would carry out his threats, not only earlier by these voice messages thus became for her a terrible reality and from then on intercourse with him, occurred that night of the 7th October 2006. His threats made consequential submission shortly afterwards at the defendant's home to sexual 70. It is the complainant's evidence that the first of many assaults upon her, and her

Incident of 7th October 2006

him up, both."

I'm going beat your ass, you stupid bitch....Going fuck you and

you and your husband. They going beat his fucking ass and

Me and mi boys going out tonight, bitch. We going look for "Caller:

threatening terms but including this specific threat:

69. One minute later, at 12:45 pm, a third call is made on 7th October 2006, in similarly

killed, you fucking bitch...."

ass. If your husband get in the way, I'll fucking have his ass

the road, bitch, I going drag you out the car, I going beat your

You didn't need to fucking call me bitch. Anyways, if you're on

"And then on that Saturday, I believe it was...must have been
 October 7th, I...I frequently worked over the weekend because
 our office is very busy, my job is very busy. So I went to the
 office on Saturday. And he must have seen my car there
 because he...he circled the office building...I could see him
 from our kitchen window, from the cafeteria at Bank Y's
 building, sometimes circling...I believe it was a white car...I
 think it was a Toyota...So he saw that I was at the office, so he
 called the office number and I didn't pick up because I know it
 must be him calling...So I know he knew that I was at the
 office, so I expected him to wait somewhere for me. And when
 I went downstairs to my car and I left the parking lot, he was
 actually parked outside...right around the corner outside the
 Bank Y building...He said we needed to talk. I said I didn't
 want to talk to him. I said I don't want to talk to you. So I got
 in my car and I drove towards Hurley's [the supermarket at the
 Grand Harbour Mall] and he followed me. He was close
 behind me, so I drove to Hurley's parking lot and I parked my
 car there and he drove next to me. And he jumped in my car
 [an open sided Jeep]. We talked and we were "fighting" and I
 said look, I don't want to be with someone who is with so
 many women. He denied it. And I said "well, show me your
 phone." So he scrolled down his phone and I saw all these

and I didn't want to be a part of that life." was just disgusted because I knew how many women he had he gave me. I said, please let me go. I don't want to be here. I my head was hurting, I remember, from the heavy punch that front door, so he did that. He pulled me into the house. And him. In George Town.... He always had to unlock and lock his He was living at July Street #87;...the only address I know for pulled me out of the car...

So when we...when we were at his house he grabbed me and then he shouted out the window, "Don't do anything stupid!"; close behind me. I tried once to turn in another direction, but leave the parking lot and told me to drive to his house. He was to seriously hurt you. And so he actually waited for me to now. I said I don't want to. He said, you better or I'm going you know, you going to follow (me) ...you going to follow me Punched me in my face.... I was really scared; then he said,

Q: Punched you where?

he punched me." laughing at me. So I tried to push him out of the car, but then want anything to do with that. Leave my car." And he was women's names on the phone, and I said look, I just don't

72. She said that there was no one else present at that time at the defendant's place,

although she was aware that the defendant had a couple who shared the apartment with

him.

73. She continued:

"So he pulled me inside his room; he grabbed me by the arm

and pulled me into his room. He undressed himself quickly.

He had long dreads [(dreadlocks which the defendant admitted

in cross-examination extended down to his knees)] at the time,

so he fixed his dreads and turned on the radio to the highest

volume...He always had porno showing on his TV at that time.

And...and he ripped my clothes off and I remember that my

face was really really hurting at that time...I told him to leave

me alone...I just was disgusted...he would never use a condom

and I was scared of getting sick. And so I told him to please

leave me alone, that I didn't want anything to do with him, but

he said you're mine. No other man is touching you, you're my

property. And he raped me then."

(She then at the direction of Crown Counsel described the details of the actual

act) and continued:

Q: And did you say anything to him whilst he was, to use your word,

raping you?

A: I was always telling him to leave me alone, that I did not want to be

there.

Q: Did he stop?

A: No, he never stopped.

He was just laughing at me. (She said further that when the defendant was finished, he pushed her away and told her to get dressed).

74. The complainant was next asked whether she reported this incident to anyone at all.

Her response was that she did report this incident to the police, and specifically to the Family Support Unit of the RCIPS ("FSU") on the following Tuesday 10th October 2006, three days after the incident. The bruises she sustained from the punch to the face were still then visible and she complained about the assault to the police officer. She explained however, that she did not then press for charges to be brought but asked that the police intervened to make sure that the defendant left her alone.

75. Similar reasons were given for having failed to press charges against the defendant on any of the subsequent occasions until in August 2008; after what she described as the most brutal attack and sexual abuse in May 2008. It was when that final incident occurred, as she explained, that she realised that the defendant "*could end up killing me*" and determined that she had to get away from the Islands. As she also testified, it was then also that she recognised that she had to confide in her employer – her boss at Bank Y – to obtain a transfer so as not to lose her job and career.

76. The details of the complainant's first report on 10th October 2006 to the police have not been provided by officers of the FSU who testified. This is notwithstanding the acknowledgement of those officers that reports and complaints were made. This omission, I am obliged to note, has not been satisfactorily explained by the prosecution.

77. It follows that there is no independent evidence from the police officers of those complaints which could be relied upon as evidence of recent complaints, and so as to meet the requirements of the law for treating them as evidence of the complainant's consistency in her allegations.
78. But it nonetheless remains important that I consider whether the complainant did make complaints to the police as she said she did, because that issue goes to her credibility as a witness when she explained why she hesitated to press for charges in the first place; and why, although she made further complaints to the police, she did not press charges until after the assault of 17th May 2008 which she describes as the most brutal. And in the same vein as to why later, from the sanctuary of her relocation by her employer in Toronto, Canada, she finally decided in August 2008, to press for charges to be brought against the defendant.
79. This is all to be considered in the context of her responses to suggestions in cross-examination, to the effect that her failure earlier on to press for charges against the defendant and to report to the police; was because those incidents did not happen and that whenever there actually was sexual intercourse with the defendant, it was by her consent on each and every occasion.
80. This aspect of this case has required of especially careful consideration. It involves having to assess the credibility of a witness whose response to alleged battery and sexual assaults upon her person may be regarded as unusual but which she urges the court to understand nonetheless, as having been evinced by the particularly embarrassing and acutely vulnerable circumstances in which she found herself.

81. So far as the police records are available, they reveal that her very first complaint was

made not to the FSU but to the general Police via 911 at noon on 10th October 2006. In this regard an extract from the Police Incident Logging System was adduced in evidence. It records a report from the complainant of threats to kill her received from the accused but the report records that she simply wished for that complaint to be logged. The report is recorded as taken by one Latoya Nixon, but Ms. Nixon was not called as a witness by the prosecution. However, the evidence of the telephone messages left on 7th October 2006 do reveal that threats had indeed been made.

82. As to the report that the complainant said she also made to the FSU on the 10th October 2006 about the alleged incident of rape on 7th October 2006, her evidence was

as follows:

“Q: Now, Mrs. X, did you report this incident to anyone.

A: Yes, I did.

...

I did go to the Family Support Unit on Tuesday but I...I was very embarrassed and I was scared, because he...he told me, he said, you know, if you ever go to the police don't think you're safe. My associates will come after you. You know, you're never going to be safe even if I'm ending up in jail. He always said that. So I was at FSU and they asked me what is it that you want from us, and I said, well, I want you to tell him to leave me alone. They say are you prepared to go to Court and I said no, I wasn't. I didn't want...I didn't want this to affect

believes on the 11th or 12th October) and were printed off by the complainant herself. at her work place during the week following the incident on the 7th October 2006 (she comprised Exhibits 2A, B and C. They were taken by a colleague of the complainant suffered, as she said, from the punch inflicted by the defendant. Those photographs presented in the form of photographs taken by the complainant of the injury to her face A further piece of evidence relevant to the allegations of 7th October 2006 was

considered in the appropriate context of the particular counts on the indictment below. The further reports or complaints made to the police and to other witnesses will be arrest and charge of the defendant.

charges and her further reports to the police did not – until August 2008 – result in the Court. Out of fear especially of losing her job and career, she was not willing to press unless she pressed charges against the defendant and was prepared to testify in She thus came to form the belief that she would receive no support from the police

84. *I changed it"*
always found out everything" (including my) new cell number within a few weeks after
to the trouble of changing her cell phone numbers but, as she said: "somehow he spoke to the defendant on that occasion because he continued to contact her. She went She explained further that she did not believe that the police or anyone from the FSU

83. *But I said...I wasn't prepared to go to court."*
thought that that might help. And I don't think they ever did.
you please go and talk to him and tell him to leave me alone. I
my professional life. I was very embarrassed, and I said could
my career in a negative way, or my life or my private life and

They do show distinct discoloration which is consistent with bruising which the complainant described as having resulted from the "punch that I got at Hurleys" from Phillip."

87. Among the recordings of threatening phone calls played in court, a number of them were left by the defendant (he admitted to leaving all the messages) during the week or so following the alleged incident of the 7th October 2006, up to 15th October 2006.

88. One aspect that these messages have in common is the anger displayed by the defendant over having learnt that the complainant had been "discussing him with people" and refusing to take his calls when he called her. He threatened that she had "better keep my fucking name out of your mouth...Don't make me have to come to your fucking house 'cause I will drag your ass out. Do what the fuck I tell you."

89. This escalation of threats from the defendant, despite her reports to the police seeking their intervention, is described by the complainant as having heightened her sense of vulnerability and as helping to explain why it took as long as it did before she finally mustered the courage and resolve to break away from the defendant's control.

90. A message left on her work phone at 9:18 pm (one of two recorded on 11th October 2006) is typical of those left at this time:

Caller: "Bitch, you fucking whore, I'm gonna make your life a misery

in fucking Cayman, you fucking bitch. You gonna wish you

never knew me, you f...bitch. I going fix your ass, you fu...

bitch. You gonna tell me who talking shit about me, you fu...

whore. I gonna fucking fix your ass for you. you stupid bitch.

You wish you ain't going never know me, you bitch. I going to

94. She did not report these specific incidents of stalking to the police because again, as she explained "...it was always the same, I tried to protect my career, I didn't want
be there in his car and followed her to work.

93. She explained that when he would follow her home from work he would park his car
there, or sometimes, even in the morning when she got out to drive to work, he would
outside Laguna Del Mar across the road at the Triple Crown"...

92. While unable to recall the exact date (she did not give a detailed statement to the
assault by the defendant on a Sunday afternoon "in around mid-December" 2006. By
then (and indeed even before the incident of 7th October 2006) she had moved from the
Sunset Retreat to Laguna Del Mar without telling the defendant about it. However, in
her words "he found out right away because he followed me from work to home almost
every day. He was angry because I didn't tell him that I was moving and he was
saying, 'did you think I wouldn't find out' but he knew right away...he often parked
92. While unable to recall the exact date (she did not give a detailed statement to the
police until 20 months later in August 2008), the complainant testified about another
assault by the defendant on a Sunday afternoon "in around mid-December" 2006. By
then (and indeed even before the incident of 7th October 2006) she had moved from the
Sunset Retreat to Laguna Del Mar without telling the defendant about it. However, in
her words "he found out right away because he followed me from work to home almost
every day. He was angry because I didn't tell him that I was moving and he was
saying, 'did you think I wouldn't find out' but he knew right away...he often parked

Incident in December 2006

91. It is the complainant's case that in the many months to follow, the defendant very
much fulfilled his threats issued in that and the many other unanswered messages
which he left on her phone. As the foregoing message expressly states, the threatened
modus operandi would include stalking, abduction and, depending on the
interpretation, even sexual abuse.

*keep you under surveillance, bitch, and when I ready to grab
your ass I going do some fucking some fucking talkin', you
stupid bitch";*

this embarrassing situation to be out there. The Island is so small and I ... I just didn't

...didn't want that to become public."

95. There were, however, as will be explained from the evidence of Mr. Marcus Montana below, other reports made by the complainant while at Laguna Del Mar about the stalking and threatening conduct of the defendant, including an incident when the police were summoned – and which the defendant acknowledged and sought to explain. As to the specific incident complained of in Counts 4 and 6, this is how the complainant described it:

"So once on a Sunday afternoon, I ... around lunch time on a Sunday in

December, I had to go to work. So I drove out of the parking lot and I took a

right towards Kirk's (that is: the Supermarket) and saw Phillip standing there

in his ... I mean his car was there. I saw his car right there. And when I

looked in the rear-view mirror I saw him following me and he was leaning out

the window and he said 'we need to talk'. And I just drove on and he came

'close close' to my car... Behind my car, very close, almost caused us to have

an accident. And so I... I stopped at Kirk's supermarket. The supermarket

was closed on Sundays so the parking lot was pretty empty. And he then

parked next to me... I went there to shop a lot, so this is a place I knew. So I

parked there.... And he drove right next to me and parked his car and he

jumped out of the car and he opened my door and – he grabbed me and pulled

me out of the car and he said "where are you going?" and I said I'm on my

way to work....

...he looked at me and he grabbed me... actually by the throat and he said...

"oh, in your T-shirt and your sweat pants you look like a whore. You're

96. The complainant then described how, despite her protestations about leaving her car unsecured with her work materials and her purse in it and her not wanting to go with him, the defendant drove her to his apartment. That he forcefully pulled her from his car and into his apartment where, against her will and despite her pleading with him to let her alone, he raped her.

A: So he...he pushed me back into my car and he said you need to follow me, and I said "No, I have to go to work." But then he grabbed my key out of the engine and...and he said "you come with me now". So he...he grabbed me and he put me into his car."

Q: Yes, continue please

...

maybe 1:00 or so.

A: It was...it was sometime after lunch time. Must have been around

Q: This was what time, can you say?

A: No. I mean, there were...the parking lot was almost empty.

Q: Were there any persons around at that time?

my throat.

alone. I almost couldn't talk though because he had his hand around

A: I told him, I said I want...I need to go to work and he should leave me

Q: Did you say anything to him then, Mrs. X?

see another man."

...why are you dressing like a whore going to work? I'm sure you going to

97. Afterwards he ordered her to "go to the bathroom and clean up". He then drove her back to her car and, as she said, "we didn't talk; I just went straight home. I couldn't go to work no more then." She explained that the defendant had given the car key back to her and she drove herself home: "But he followed me, he followed me home, and he parked his car again across at the Triple Crown parking lot in front of Laguna Del Mar where I lived... I didn't leave the house the rest of the day".
98. She did not report this incident of December 2006 to the police, she said for the same reasons as before: "I was still trying to protect my career and I was determined not to let him destroy that...and I didn't want this to become public."
99. Relevant only as part of her narrative of events revealing of her state of mind, is the complainant's evidence that she did, however, tell her husband "about Phillip" in January 2007.
100. She did not, however, disclose the defendant's identity because "I didn't tell (who Phillip was) to actually protect him from Phillip, because Phillip always said 'if your husband ever approaches me I'm going to kill him. I know that my husband would...would probably want to confront Phillip, but I didn't want to let it get to that."
101. She later testified that her husband left the Islands in April 2007. He has not been called to testify and otherwise does not figure in the case, apart from, if the complainant is to be believed, as one of the causes of her concern not to have earlier allowed her allegations of rape to become public.
102. The complainant continued to live at Laguna Del Mar after the alleged abduction and rape in mid-December 2006 and certain events which occurred involving the

embarrassed. I just was scared too because he always threatened me not to go to the

107. Again, in this context she said she failed to go to the police because "I was relevant issue although some events were not represented as counts on the indictment.

her response to the alleged abuses of the defendant. That remains throughout a narrative especially relates to her account of the manner in which the events affected

106. I am therefore left to consider only the complainant's narrative of those events as her to have been then present.

Not were any of the other persons, including acquaintances, said by the complainant 105. Although I was told that KL gave a witness statement, she was not called to testify.

being her flat-mate at Laguna Del Mar at that time.

described by the complainant as a friend and former co-worker at Bank Y and as defendant) there were, she insisted, other eye-witnesses. These included a Ms. KL,

the Aqua Beach bar when she was again angrily and publicly assaulted by the 104. As to this and another incident (described by the complainant as having taken place at

of rape the defendant was therefore discharged and so not called upon to answer.

the sexual offence, was not marshaled by oversight of Crown Counsel. On that count seems, was because the evidence of actual penetration required for technical proof of

defendant's apartment where she was again raped, did not come up to proof. This, it allegation of abduction on 9th June 2007 from the Calico Jack bar and grill to the

103. One such incident, about which the complainant testified and which involved another incidents reveal about the conduct of the defendant.

related to any count on the indictment. The relevance arises from what those defendant while she lived there, are relevant to the case although not specifically

house and try to find a spot where I could sleep in peace.”

intercourse would take place. At other times “I would go on the other side of the that her neighbours or flat mates would hear him. On those occasions sexual

112. Sometimes she would relent and let the defendant in out of fear for embarrassment

and knock for hours and hours at a time.”

after night at Laguna Del Mar and “knock for hours and call ‘let me in’ and knock

111. She said that the defendant would present himself outside her bedroom window night

constantly stalking and harassing me, there were many times”.

the end of September 2006. In her words: “With the way he was constantly,

110. She admitted to having been with the defendant “many times” after the break up at

in to the relentless entreaties of the defendant.

particular, when, for the sake of her sanity – “to get peace of mind” – she would give

109. She described a number of such occasions while she lived at Laguna Del Mar in

defendant.

frame of the indictment, she submitted to having sexual intercourse with the

alleged – that she admits that on a number of occasions, including during the time

goes to the credibility of the complainant as a victim of rape in the circumstances

108. It is, as I have already noted, a stark peculiarity of this case – one which very much

not going to be safe...he would say that on a frequent basis....”

safe...I have my connections. I have my associates. Even if I end up in jail you are

smarter than them...if you go to the police just know that you are still not going to be

you go to the police don't think you are safe, they not gonna help you. I'm much

police. He knew that I was thinking about going to the police...So he always said...if

113. This happened despite her having alerted the manager Mr. Marcus Montana and through him, the security personnel at Laguna Del Mar to be on the watch for the defendant. She said her reason for moving from Laguna Del Mar to yet another apartment at Walkers South, was the failure of the security officers there to protect her from the intrusions of the defendant.

114. The defendant, for his part, points to those occasions at Laguna Del Mar (and others when he said he enjoyed the willing company of the complainant) as indicative of the truth of his defence of an ongoing consensual social and sexual relationship with the complainant. These are therefore aspects of the case which are of crucial importance and requiring of my very careful assessment and resolution.

115. In this regard, the evidence of the manager, Mr. Marcus Montana, about events at Laguna Del Mar, is relevant and helpful.

116. He testified that when he arrived as manager, Mrs. X was already living there at apartment #7, a ground floor beach frontage apartment. Her husband was then in occupation with her but shortly afterwards he left the Island, as the witness understood it, having been transferred to a Ritz Carlton property overseas for work.

117. The witness testified that about six months after his arrival at Laguna Del Mar (that is: about March 2007) he became aware that there were some security issues concerning Mrs. X while she was living there. He said:

"Approximately six months after I was employed there, she called me and said that she was having problems with a gentleman that she had been seeing and that she tried to end the relationship and there was...he was making it difficult, continually calling and showing up or

119. The witness explained that although he had himself called the police on the first occasion he did not then actually see the intruder, he had called on the complaint of the complainant.

...The police warned him (the witness said in his presence) that if he was on the property again that he was going to be arrested. And ...if I recall correctly, this might have been the second time that the police were called out."

Well, this specific time there was an incident and I was called by Mrs. X. And I called the Police. And when I got there the gentleman was sitting on the steps. She...actually must have called the police also, because they were (already) there.

...The police warned him (the witness said in his presence) that if he was on the property again that he was going to be arrested. And ...if I recall correctly, this might have been the second time that the police were called out."

Well, this specific time there was an incident and I was called by Mrs. X. And I called the Police. And when I got there the gentleman was sitting on the steps. She...actually must have called the police also, because they were (already) there.

...The police warned him (the witness said in his presence) that if he was on the property again that he was going to be arrested. And ...if I recall correctly, this might have been the second time that the police were called out."

118. The witness said he came, about a month later, to see this person to whom she was referring. He said:

"I had calls of concern. That was just the initial call, but there were other times where she would call and say 'I've seen him walking in front of the property or...because we have beach access, her unit was right on the beach...or that he might be outside the property, parked outside the property..."

calling her work place or being seen around the property. And she kind of gave me a warning that if he was on the property to not approach him directly but to either call the police or get my security guards involved."

120. While the witness described the intruder only by appearance that fit the defendant as he appeared at that time, there is no issue that the defendant was the "intruder" dealt with by the police and of whom the witness spoke.
121. The defendant's response however, is that he only ever went to Laguna Del Mar at the complainant's invitation. On the night when the police were called and accosted him in the presence of this witness Mr. Montana, he had decided to insist on being let into the apartment through the front door instead of through the bedroom window, as the complainant had habitually required him to enter. That she called the police only because of her own fear of embarrassment at her flat-mate's discovery of his presence at the front door – a risk of discovery that was not present as long as he entered through the window.
122. This account will of course have to be tested against not only the denial of the complainant, but also as against the apparent implausibility of the police being called by her while she wished – as the defendant asserts – to keep his presence a secret from her flat-mate or anyone else who would be concerned at the presence of the police.
123. The witness Mr. Montana also testified that there were many other incidents of reports by the complainant of the uninvited and unwelcomed intrusion by the same man. He recalled one such occasion which involved a "busted shower door and broken glass everywhere and she looked like she had been crying...her clothing was all ruffled up and her hair was messed up." And although she at first said it had only been an accident, she later confided in him that the man was involved.

124. The witness said he recalled "talking to her directly and saying that, you know, she

needed to get out of the situation because she was obviously terrified whenever he saw her... "I recall very vividly that she looked really upset and really scared and, you know, so I took that...personally as it was a valid threat...just in seeing her during the circumstances."

125. He concluded his testimony with these answers to the Court:

"The witness: There were several occasions.

The Court: that you saw her in that condition?

The witness: Yes, I mean she was always very well dressed, very well

kept and on these occasions it was obvious that she

was, I wouldn't say traumatized, but under stress."

126. The complainant relocated from Laguna Del Mar to Walkers South condominiums on

Walkers Road as she explained, to get away from the defendant's harassment which the security system at Laguna Del Mar seemed impotent to prevent. Walkers South, she said, was a two-storey structure and so with the bedroom on the upper floor, she felt she would at least be able to sleep in peace at nights.

Incident of 10th April 2008

127. Her narrative of events as marshalled by Crown Counsel and in keeping with the

indictment next referred to April 2008, after she had moved to Walker's South. She described a Bank Y office event, a reception at the Grand Old House restaurant in South Sound District, to bid farewell to a colleague who was leaving the Islands.

128. She said that this was on 10th April 2008 and she attended at the event from around 5 pm until 6:30 to 7:00 pm. She recalled that on leaving the Grand Old House for her

short drive home, that it was still daylight about which her recollection was aided by

the fact that she was still wearing her sunglasses.

129. On arriving home, she parked her car and walked over to her house door when, in her

words:

"Phillip jumped out of the bushes and came towards me in an

aggressive manner and said "where have you been?" and I said "I

was at a Bank Y reception" and he said "I don't believe you. You left

your office long ago, where have you been?" And I said I was at an

office event.

He then said that he was sure I was with another man and I told him I

was not with another man, and he said open the door. I said I am not

going to open the door. And then he said let me get inside and I said

no, so he tried to grab...or he grabbed my purse and I was holding

onto my purse, and he said give me the key, and I said no, I don't want

you to have the key. And I remember I was getting loud because I was

hoping that maybe one of the neighbours would hear me. It was still

daylight outside, so I thought maybe someone can see or hear us. I

was still holding onto my purse and he said, you know, give me the

key, but then he pushed me down in front of my house door and he

actually put one of his knees on my shoulder to press me down. This is

how he could get my purse. And he took out the key and opened the

door. And he pulled me inside by my arm and he locked the door and

then he ripped off all my clothes. He broke my sunglasses, he broke

"I was very embarrassed. I just couldn't believe what was happening to me. He got more and more aggressive every time. And I was at a point where I just was thinking about I just need to leave this Island, I need to get away from here. I had at that point - a couple of times

133. When asked why she did not then immediately report that incident to anyone she said:

"you to leave and he just smiled and left."

"I felt very insulted. I felt angry because I saw all my clothes laying there ripped apart. And he came out of the bathroom and I said I want

132. When asked how she felt after this assault and invasion of her person she responded:

Court, was able to overpower her, a rather slightly built person.

robustly built individual then some twenty pounds or so heavier than he appeared in

131. She, on more than one occasion during her testimony described how the defendant, a

against her resistance and protestations.

her description of being once more forcefully raped by him, against her will and

130. The complainant completed her account of this assault upon her by the defendant by

care. I mean he just didn't listen."

my house, I didn't want to be with him. And he just didn't

A: *Yea I...I constantly had told him to leave me alone, get out of*

Q: *Did you say anything to him during this?*

curtains.

pushed me on the sofa. He then got undressed himself and closed the

my blouse, he broke my shorts. He ripped all my clothes off and he

gone to the police before when I had incidents happening to me. But
at one point the police lost the report."

134. This impression she had of the lackadaisicalness of the police was one which, I am obliged to note, came to be justified in the proceedings when the Court was told that the records of her complaints could not be found by the Police. But more about this below.

135. She described a further incident when she said she had gone at the defendant's invitation to the defendant's father's premises on Eastern Avenue. The defendant was doing some kind of construction work there and had invited her to see what he had done. While there, an altercation developed between them, as it was explained in cross-examination; not because, as suggested, she was jealous about his other women, but because she refused to go from Eastern Avenue to the defendant's apartment with him.

136. She said she was, on that occasion, able to escape his assault and attempts to push her into his car. She jumped into her car and drove straight to the police station and filed a report with the duty policeman.

137. She regarded the nonplussed attitude then shown by the duty policeman to be very insulting but she made her report nonetheless (again seeking police intervention). She said that the next day "Phillip called like nothing happened so I went back to the police and I asked for my report and why they didn't do anything with Phillip (but) they couldn't find my report any more that I had filed the night before. This was on 3rd or 4th December 2007."

138. She said she did not let the matter rest there but went back to the Family Support Unit the next day and told them about the matter. She thought the name of the officer was McFarlane. She told that officer that she had reported the incident at the police station the night before but Officer McFarlane could not find the report. She made a further report to Officer McFarlane. After that, as still nothing happened to protect her from the defendant, she was, as she said, "*really not encouraged to go anymore to the police at all.*" As they had even lost her report, she felt that the only option she had left was to leave the Island.

Incident of 17th May 2008

139. The complainant was next led by Crown Counsel to her narrative of the incident complained of in Counts 8 and 9 of the indictment. It allegedly occurred on the night of the 17th May 2008 and regarded by her as the most aggressive and severe of all the assaults.

140. She said that it was a Saturday and she was at home alone. She had not seen or heard from the defendant for about a week and thought maybe finally, he would let her alone, leave her alone if she went out. So she went out at around 9 pm to the Rackham's Pub, a bar along the West Bay Road. As she arrived she saw a few of her husband's former working colleagues sitting at the bar. They seemed happy to see her, so she joined their company. They were all male and the conversation turned to sports – there was a big soccer game going on and they were talking about it. She recalls being there until about 11:30 p.m. to midnight when she offered one of the guys in the group a ride home. This she did because he appeared too intoxicated to drive. He told her he lived at Red Bay.

"I said what is going on? And he said you were going to sleep with this guy, you know you were going to take this guy home, ... and I said NO, I just gave the guy a ride, you know, this is all I did. And he said No, this is someone that, you know, that you wanted to be with. And I said that is not true. I just wanted to give him a ride home. But he... I couldn't really say much; he was so aggressive... he threw me around and I hit my head really bad on a car that was parked next to mine. So I fell on the ground. And he continued to

her arm and threw her around. The verbatim transcript of her narrative follows:
space, the defendant came directly to her car, pulled her out of the car by her hair and as he commanded and he followed her with his truck. As she parked in her parking defendant then commanded her to drive back to her house and park her car. She did was happening and just walked off into the dark and left because of the threat. The 143. She said that the guy, who still seemed to be intoxicated, appeared shocked at what

passenger seat and he told him to get out of the car and take a walk or I kill you."
out of the truck, he opened the door (of her Jeep) where the guy was sitting, her was in his father's truck...because I had seen the truck once before. So he jumped stopped as well and then she realized, in her words: "it was Phillip and I believe he that she felt compelled to pull aside to let it pass. So she stopped her car. The truck 142. But then as she explained, the truck got closer and closer to her Jeep, so close in fact

appeared to be a big truck and not his small car, she thought it was not him.
thought was that that must have been the defendant following her but as the vehicle passed her house, she suddenly saw a bright light in her rear-view mirror. Her first 141. This involved her driving along Walker's Road past the area where she lived. As she

he went into the bathroom and he took a wet rag and he came and he don't believe you. You were going to try to be with that guy. And then told him I don't know him. All I did was giving him a ride. He said I you know, let me go. And he always talked about this other guy and I me upstairs and he threw me on the bed. And I said, you know, just, couldn't do much. He was just so much stronger. And he just pulled I told him to leave me alone, please don't hurt me. And I... I really

Q: Did you say anything to him while he was pulling you?

upstairs to the bedroom.

and he tore off all my clothes until I was naked and he pulled me killing me, and I thought this is it. And he... he then put the knife aside thinking maybe one day he gets to that point where he is actually

A: Well, I was very, very scared I thought this is it now... I was kind of

Q: How did you feel at that time...

said...

held it towards my throat and he said I'm going to kill you and he he was dragging me inside. And then he took a kitchen knife and he He opened the house door.... I was like always half on the ground, so and he was so aggressive, he was really beating me...

A: I was constantly telling him please leave me alone, no don't do this.

Q: So were you saying anything to him or doing...

keys and he opened the door.

pull me by my arm and by my hair towards my house. And... he grabbed my

Q: That's the 19th?
 This was that Sunday morning and the Monday was a public holiday.
 face and that I should not blow my nose.
 He, Phillip, told me that his brother said that I should put ice on my
 there on the bed when he was talking to his brother...

A: No, that was the next morning...So he told Phillip...(he was sitting

Q: The conversation took place that night?
 what to do.
 had beat this woman and she's bleeding out of her nose. I don't know
 brother who I believe is a doctor in the States, and he said, you know, I
 from that incident the night before. And he then...he then called his
 apparently at night. And my head was hurting; everything was hurting
 had blood on my pillow and on my sheets and my nose was bleeding
 "...he stayed in my bed. I was feeling scared. And the next morning I

144. The witness then described the act of penetration and ejaculation. She continued:

why she was felling that way).
 Enoka Richens that she had suffered a concussion which explained
 out...blacking out. (She explained that she later learned from Dr.
 and...and it was all just I felt... I felt like I...I fainted. I was in and
 was hurting because I had hit my head so heavily on this...this car
 haven't been with anyone. And he took his clothes off...and my body
 said, you know, I don't want nothing of this guy on me and I said I
 opened my legs and he cleaned my vagina as if I was dirty, and he

Exhibits 1A and 1B.

The complainant also explained that she had managed during the weekend, "behind Phillip's back in the bathroom" to take some photographs of the injury received to her head and face, by her image in the bathroom mirror the next morning after the incident. A second photograph she also managed to take was of the sheets on her bed showing the blood stains from the bleeding from her nose the night before. These photographs were kept by her in anticipation of their evidential use and eventually handed over by her to the police when she returned to the Island in August 2008 to file her formal complaint pressing for charges. They were tendered in evidence as Exhibits 1A and 1B.

145.

her what happened."

And then I went to see Dr. Richens on (Thursday) the 22nd and I told appointment...

And by Tuesday when I was back at work I.. I had made the decision to leave the Island. I knew I had to get away now if I wanted to stay alive. So I first on Tuesday called my doctor to see if I could get an appointment... again during the weekend.

And that whole weekend he was there with me. He locked me into my apartment. I couldn't go to the doctor... He was there with me the whole weekend. He didn't let me go anywhere. So I couldn't go to the doctor, he didn't take me to doctor, and he even forced himself on me

A: 17th, 18th and 19th. Yeah.

Incident in March 2008 involving Mr. Tony M

146. There had been an earlier incident in March 2008 which, although not charged in the indictment, because the evidence of it was adduced during the cross-examination of the complainant, I consider to be relevant to the issues for determination by me now.
147. The issues involve not only the complainant's allegations of stalking and abuse by the defendant but also, as became clear upon her cross-examination and from the defendant's evidence; counter-allegations of jealousy, harassment and stalking of the defendant by the complainant.
148. Where the truth lies as between those allegations and counter-allegations is therefore an important matter and this incident of March 2008 helps, to my mind, to show the way to the truth, when taken with all the rest of evidence in the case.
149. In cross-examination, the complainant acknowledged that in March 2008 a male acquaintance of hers, a Mr. Tony M, came at her invitation to the Island for the long week-end. He arrived from the United States and stayed with her; she was then living at Walker's South. But their time together was rudely interrupted by the defendant. The point of Mr. Tonner's cross-examination of the complainant about this incident, was to establish the fact that although the police was called by Mr. M, came and enquired about the identity of the intruder; the complainant declined to give the defendant's name. Proof, says the defendant, that they continued throughout in a consensual relationship.
150. However, the fact that the incident occurred, and leading further to the police having to be called because of the behaviour of the defendant, leading to a formal complaint being lodged with the police by Mr. M, is in and of itself objectively probative in the

case and I must consider the complainant's explanation. In her own words taken

from the verbatim transcript:

"Phillip Rose came... I had a guest coming. Phillip and I don't have a relationship. He was just stalking, harassing me. And I had a guest coming, a guest over the week end. Tony M who arrived on Thursday, and we were supposed to spend the week-end together, and Phillip, because he is always after me, he saw that I had... I had... that was the first time I had the guts to invite because this was... this was a man that I thought, you know, I can... he would leave us alone.

Maybe he would leave us alone because this was... this was a man that came and visited me. But when he [(Phillip)] saw through the glass window I had somebody in the apartment, he flipped totally out and he was screaming and threatening. He said he was going to kill us both, and this is when... when Tony M went upstairs into the guest room and he called 911. And he, I believe, did a report with the police and he might have given a statement. He was scared. He has two children. He's divorced and he was scared for his life."

151. In cross-examination, the complainant's explanation for failing to name the defendant

to the police officers who arrived in response to the call that night, was proposed as a matter that goes to her credibility. But she explained that having already made three or four complaints to the police about the defendant, she was incredulous and angry when they professed not to know his name. She had had no support from the Police and felt there was nothing to be gained from making a complaint herself. Witness she

said, the fact that the report filed by 911 of the incident (as produced in Court) still referred to the intruder as her "boyfriend". This treatment of her predicament was a cause of her feeling of helplessness and frustration and the indifference of the Police had continued despite her numerous complaints and her meetings with Officer Jane McFarlane of the FSU whom she had "told everything about what was going on."

152. It is against that background that the completion of her narrative about the final incident of 17th May 2008 must, in my view, be taken.

153. In answer to Crown Counsel, the complainant said that she did not report this last incident of 17th May 2008 to the police because by then she had made up her mind to leave the Islands.

154. Despite her fears of losing her job by the situation becoming known to her employer, she felt she had no choice but to confide in her immediate boss. So she confided in the Bank Y branch manager for the Cayman Islands, told him the situation she was in with the defendant and that she was scared for her life. He was (to her great relief), supportive and arranged for her transfer from Cayman to the Toronto Office which, because it was within the same time zone, allowed for her continued oversight of the HR requirements of the Cayman office. She left to take up her position in Toronto on 1st July 2008.

155. She was asked whether she conveyed to Phillip Rose her decision to leave Cayman. This was an issue that became of importance on the defendant's account, as he maintained that the consensual relationship continued right up until then and that, in proof of this, she did tell him in advance of her plans to leave. Following is the narrative of her response:

And then I started to make checks on where he was and when I knew that he was out in, maybe Lower Valley or whatever, I would go to the apartment and start packing things. I had IMP, the international packing organization arranged for just two hours one day. I prepared everything well beforehand so that I told them that they had only two hours to clear my apartment so they brought five guys in. And that was a Monday, it was the last day of June and I then told Phillip,

I had to ... I had to put together a good plan and I actually...I tried to play with him a little bit over the last few weeks. I tried to play the nice...nice little wife, if you want, with him. [This she later explained in this way: "I checked on him...after I made the decision to leave the Island I contacted him more. I tried to be friendly just to have more control to know where he was so I could do my thing"].

knowing that you were leaving the Island?

Q: Now, how did you arrange to leave the Island without Mr. Rose

who knew about me leaving the Islands.
situation, my working colleague [(a reference to KL)]
London, and my colleague who also knew about the
branch manager of Bank X, my boss who was located in
was leaving, so I kept that as a secret. It was only the
I was very scared how he could react if he knew that I

Q: Is there any reason why you did not ma'am?

A: "Oh no, I did not do that. I kept that a secret.

Suggestion by Mr. Tomner:

examination by Mr. Tomner in the following terms:

157. The question of the defendant's knowledge of her departure was canvassed in cross-

And that was it, so I was out of here".

I had my suitcases there and she dropped me off.

then drove me to the airport. I was hiding in the backseat of the car.

me. I didn't say anything. He didn't know I was leaving. My friend

was sometime after lunch time. He called me at 11 o'clock to check on

"And then I went to the office and I worked that morning. My flight

2008. She said:

been taken to her office the day before in preparation for her departure on 1st July

156. She continued her narrative of her departure from the Islands; her suitcases having

my period so those times he would not touch me."]

The defendant stayed in her hotel room but, as she said, "luckily I had

room that last Monday night, when to avoid a scene, she let him in.

[She then described how the defendant "invited" himself to her hotel

he. he had no clue that I was leaving the Tuesday.

doesn't see that it is empty, and he bought it. He didn't know. And so

making sure he wouldn't go to my house in case, you know, so he

and that until that was dry I would just stay a night at Sunshine Suites

painting my house. I said that I couldn't take the smell of the paint

that I booked a hotel room at Sunshine Suites because they were

because I knew he was following me any way after work, so I told him

right up to her vehicle and jumped out of the truck, grabbed her door and ordered her was being driven by the defendant until after she had stopped. The defendant drove violent man. To this she responded by insisting that she did not realise the vehicle behaviour consistent with someone who is receiving unwanted attention from a choosing to stop when she saw the lights of the truck approach from behind, was not About the incident of 17th May 2008, it was suggested to the complainant that her responses are to be conveniently mentioned here.

159. The complainant was cross-examined about a number of other matters and her escape from the defendant.

158. A further suggestion put to the complainant that the defendant was aware of her imminent departure because her work permit was set to expire, was answered by the complainant pointing out that her work permit had at least another full year to run. She was adamant that her reason for her departure in July 2008 was her need to

sure did not know I was leaving."

knew I was leaving the Island that specific day...and Phillip for manager of Bank Y, my boss in London and it was KL that were only two, three people that knew. One was the branch back, he had no clue, no clue I was leaving that day. There without him knowing. Everything was planned behind his away from me...that's one thing I did, I got off this Island I never, not once told him and I won't let anyone take that

leaving?

My suggestion is that you told him in advance that you were

out of her car. She feared for her life, he was very angry and very aggressive. Her male companion whom she was driving home became scared as well and at the command of the defendant, walked off into the night. She felt she had no choice but to do the defendant's bidding and drive directly to her apartment. Then the defendant's case about the actual incident of 17th May 2008 was put to her and her response was in these terms.

Mr. Tonner: Q: So I make the position absolutely clear, Mrs. X, there

was no rape that night?

A: Yes, there was. It was a brutal...it was the most brutal

attack from all the attacks and it was that incident that made me decide to leave the Island finally and to go to my employer and talk about it. It was very brutal and he locked me in all weekend...with my injuries...

Q: Again, to make the position clear I'm not disputing that

Mr. Rose spent time at your house that night and over the weekend but what I am suggesting to you is that only consensual sex took place?

A: This is not true. It is so not true. He raped me and he

was beating me. He held his knife to my throat. I was waking up (during the night) with a bloody nose. I was in bad shape.

Q: Earlier in the evening you had been drinking alcohol?

164. Having regard to the nature of the defence in this case, it is instructive to set out at this juncture, the defendant's version of events of the night of 17th May 2008. It comes from the defendant's examination-in-chief by Mr. Tonner.

she also denied.

163. It was suggested to the complainant that her account of having been assaulted, raped and kept captive in her apartment for the week-end of 17th May 2008 was false. In fact, that although the defendant stayed at her apartment that week-end they had only consensual sex and that he left to go to his apartment and returned. That she therefore had opportunity to leave her apartment or to complain to the police but did not. This

163. It was suggested to the complainant that her account of having been assaulted, raped and kept captive in her apartment for the week-end of 17th May 2008 was false. In fact, that although the defendant stayed at her apartment that week-end they had only consensual sex and that he left to go to his apartment and returned. That she therefore had opportunity to leave her apartment or to complain to the police but did not. This

visit.

162. She then explained that although she had not taken photographs of those other injuries, she did visit her doctor the following Thursday and the doctor (who turned out to be Dr. Enoka Richens) saw those injuries and had made a written record of her

dragged along the ground and floor of the apartment by the defendant.

161. It was then suggested to the witness that the injury to her head and face sustained that night was the result of her falling (presumably partially at least out of drunkenness) and hitting her face on the opened car door. She adamantly denied this, insisting instead that the defendant threw her, causing her to strike her face and causing her injury shown in photographs Exhibit I and the bleeding on her pillow. She then also explained that she sustained other injuries as well – bruises over her body from being

have one drink and that's it, of alcohol."

A: I had one beer that night. Whenever I drive a car, I

Q: Mr. Rose, may I stop you there? Mrs. X said you were driving a vehicle which she did not recognize. Do you recall a truck?
someone else in the Jeep.

I saw Mrs. X cross in her Jeep...I followed her home. She parked her Jeep in the ...where she normally park it, on the end of her driveway which is asphalt. I got out. I saw she had Road Texaco...

A: Yes... I went back home at about minutes to one, maybe 12:45 somewhere around there I went home...I stopped at Walkers'

Q: So, this was by prior arrangement with Mrs. X?
there.

A: Well most of the time it was her home. She tell me to meet her meet." Who decided that you were supposed to meet?

Q: May I just pause you Mr. Rose. You say "we were supposed to there. She wasn't there. I went back home.

A: May 17th 2008 we were supposed to meet at her home. I went by you?...What do you have to say about that allegation?

Q: And thereafter she was assaulted and in her own home raped
A: Yes, Sir.

at the side of the road?
an evening out at Rackham's when she was forced to pull over

Q: The next allegation which Mrs. X has made against you is an allegation that on 17th May 2008...she was driving home from

blow her nose).

(The defendant then explained that his brother then in training in the States as a medical doctor advised that she should not called my brother Jerol Rose.

hospital. She refused to go to the hospital. During that time I can't remember. So I asked her, I say do you want to go to the hurting. I think it was her nose might have been bleeding. I inside, went upstairs and she said the left side of her face was looking for the keys. We got the keys, went to her house, went wrong with her. She was in pain. I went back continued the Jeep door. She screamed out. I went to see what was Jeep door was open. She tripped and fell and hit her face on

again slapped me in my face. She ran towards her Jeep. Her walked up, slapped me in my face. I got up. I pushed her. She her keys. She walked up because we were arguing. She the guy left. She threw her keys at me. I bent down looking for home, get a ride home. The parking lot was very dark. I guess lost, catch a ride home, however he could find to get his way you are stopping at home? They both got out. I told him to get met at the bar. So I asked her...a ride home to Red Bay and A: Yes...I asked her who is this and she said it was someone she

Q: Yes. You saw there was another person with her?

A: Yes. I was driving my father's truck.

(i) **Text messages.** A transcript of text messages prepared by the defendant and allegedly received by the defendant on his cell phone from the complainant was put to her. While she did not recall sending any of those messages and did not accept that she sent any, three in particular were represented on the transcript as having been received from a phone with her cell phone number. Oddly enough, none of the other 14 messages had a telephone number ascribed to them. Moreover, they all had different call center numbers from the three which related to her number. One message in particular recorded on the transcript as having been received on December 25 2007 and related to her number but which the complainant denied sending reads as follows:

167. The complainant was cross-examined about the following further specific issues:
and the defendant met that night.

166. The last answer in particular must be contrasted with the clear suggestion put twice to the complainant by Mr. Tonner to the effect that there was consensual sex between herself and the defendant that night. These were suggestions put despite the admittedly confrontational nature of the circumstances under which the complainant

A: No Sir. We didn't have any sex that night. I'm not an animal."

Q: Did sex take place at all?

this woman? She was in pain.

A: Sir, the woman was in pain why would I have business to rape

injury to her nose that you raped her?

Q: ...She has alleged that that same night after she sustained the

165. Then followed these questions and answers:

complainant did eventually acknowledge that, given their contents, they could
While neither remembering nor accepting that she sent these messages, the

Sender: 13455266033

approaches me, I'm glad 2 share info w/him. It's up to u.

"M will tear ur asses apart w/he sees da material I have on u 2. If he

And the third:

Sender: 13455266033

All I eva suspected is true @ more. UR A PIG!

respected me. So meks no difference. I know all bout u now.

M. Dats going 2 b fun! I've got proof 4 everything. U neva

"He arrived 27 early a'noon. Yes, please introduce me 2 H &

13455266033 is in these terms:

The second text message ascribed as coming from her cell number

to the defendant "I love u".

herself. She was especially insistent that she would never have said or texted

insisted that the vernacular of the message was not the way she expressed

messages on the transcript, was her cell phone number; the complainant

While acknowledging that this number, like that ascribed to the two other text

Sender: 13455266033

pain will go away soon. Bye.

dis year u would be da man I'm spending Xmas with. I hope

caused. I love u. I remeda last year @ Xmas I was praying dat

"Merry Xmas 2u and ur family. Tell dem I'm sorry 4 drama

have come from her. It must also be recognised, however, that she was invited to respond to the questions about them on the basis that her cell phone number was properly to be ascribed to them.

On that basis, she acknowledged that the reference to "H & M" in the second of these three could have been a reference to Hilda and Mark. Hilda being a woman whom she discovered, through the use of a private investigator Mr. Claude Myles, that the defendant was having a relationship with and Mark, being Hilda's husband.

She explained that Mr. Myles had been engaged by her for the purpose of getting information about his other women "to prove to Phillip that she knew about them so that he would leave me alone. Phillip always denied these other affairs and said that if I could prove them he would leave me alone."

She said that despite confronting him with this information, the defendant never left her alone. She denied that her real reason for hiring a private investigator was that she was jealous and wanted to prevent the defendant from having other women.

Assuming that these text messages were sent by the complainant they must of course speak for themselves and will be assessed in the context of the rest of the evidence below. The provenance of all of the 17 text messages presented by the defendant as having been sent by the complainant is a matter which must be considered in the context of all the evidence about the issue of continued contact between them. It is to be noted here, however, that according to the defendant, after these messages were transcribed by him and

verified by Mr. Louis M. Ebanks, Justice of the Peace as seen by him on the defendant's cell phone, the cell phone was lost. The defendant's cell phone therefore was not available to the Court for inspection to confirm the provenance of the messages, an issue to which Mr. Louis M. Ebanks himself could not speak.

(ii) It was also put to the complainant by Mr. Tomer, that as further proof that the consensual relationship with the defendant subsisted, she continue to buy him gifts and give him money until she left the Island. In his evidence, although not put to the complainant in cross-examination, he said an example of this was that she paid for the cost of eye treatment he had received from Dr. Eugene Foley. While accepting that before 30th September 2006 she did buy him occasional gifts and did occasionally but seldom give him money, she denied continuing to do so after the 30th September 2006. Dr. Eugene Foley was called as a witness on the Crown's case and did confirm that he treated not only the complainant but also separately the defendant. He was, however, not asked about this issue of payment and so in this regard the Court is left to make what it might of the unsupported assertion by the defendant that the complainant continued to provide significant sums of money or monetary benefit to the defendant after 30th September 2006. This, as well as the further assertion that they continued to go out together, was generally denied by the complainant; even while acknowledging that she may have gone out on occasion with him after September 2006 (which she does not recall) "...because he was constantly, constantly, ten metres from you, watching you,

Not yet having decided to leave the Island, she felt she had to find a way of "fighting back" against the defendant and felt that getting information about police because she had gone to the police but had gotten no help from them. She explained that she resorted to retaining Mr. Myles rather than going to the

him for him to leave me alone."

him with the proof that he was constantly telling me about that I had to bring felt would give her, as she said: "a perfect opportunity - to prove...to provide all. This led to her receiving the identity of Hilda from Mr. Myles which she him and so wanted to confront him with proof of his philandering once and for going to spend time with his mother in Cayman Brac, that she did not believe who she was. She accepted that the defendant had told her that he would be wanted to know whether he was seeing another woman at that time and if so from their relationship in December 2007 and because out of jealousy she investigator only after the defendant had told her that he was taking a break was specifically suggested to the complainant that she decided to retain an

(iii) As regards her employment of Mr. Claude Myles the private investigator, it

him always you know, surprising me from...from whatever angle he could."

more comfortable knowing I could see him and know what he is doing than jump me again? I got to a place where...I say sometimes you know, it was having him next to me than not knowing where he is again and is he going to this...in this fear, in this stalking mode. It got to a point where I felt more safe gone out with him just to get some peace of mind, just to not be always in harassing you, always not letting you alone...at one point I might even have

In this same vein the complainant was asked about an incident on the beach around that same time – Christmas 2007, when she saw the defendant with

that I can have some information too.”
that it is not always you having control, and
give something back, and you know, show you
position where I thought finally I can, I can
I... I mentioned that name. I was just in a
that..that that would may be even scare him if
is funny relationships going on. And I know
lady's name to him. And, I found out that there
was getting very upset when I mentioned that
thought that I would find out or whatever. He
know something that he would have never
once, you know, kind of get back at him and
felt in a stronger position where I could for
position where I had some information and I
The Witness: I, for once in this whole relationship felt in a

The Court: Can you tell us why you did that?

the Court asked her this question and got the following answer::

As this behaviour seemed capable of being construed as motivated by jealousy

Hilda's partner, about the defendant's relationship with Hilda.

"back" she admitted to texting the defendant threatening to inform Mark,

his other affairs might enable her to do so. As an example of how she "fought

another woman and approached them – a woman the defendant came to describe in his evidence as “Ximena Posada – a girlfriend from Columbia”.

In light of the defendant’s assertion that the complainant acted out of jealousy, it is worth noting her responses about this encounter in full:

Mr. Tonner Q: You were upset?

A: No. I walked up to them and I wanted to

introduce myself to the lady ‘cause he was supposed to be in Cayman Brae with his mother.

But then he told me to stay away.

Q: Surely...surely Mrs. X, you would have been relieved

that he was with another lady instead of you.

A: I don’t care if he was or wasn’t. I don’t care

either way. But it was just funny because he

told me he was in Cayman Brae and I saw them.

I walked up and said “Hi”. But he told me to

stay away. So I turned around and left. I

laughed at him.

Q: Mrs. X, is this another example of a situation

where you are approaching Mr. Rose. Not the

other way around?

A: Twice or three times out of 150,000 times.

Q: I suggest you were upset.

A: No, I wasn’t.

The Witness: Because judge, ...because...this is just what I'm trying to say, you know. I've been stalked and harassed and abused on a daily basis. I could not once drive home from the office without him being behind me. He was constantly there always around me...and then you know that

The Court: Now, why would you have wanted to meet her if she was "the lady"?

The Witness: I was at Calico Jack bar and I saw them walking by, and I thought, like that was kind of a coincidence...coincidence that I saw them walking right there where I was standing. So I walked down and up to them and I said "Oh, that's the lady now". I thought it was Hilda. I didn't know....I thought it was the lady that he spent the holidays with. And I went up and I said okay, that's the lady then. And I put out my hand and I said my name is Mrs. X and she looked at me funny, of course. And then he told me to get lost.

The Court: Could you say how it was that you came to have seen them on the beach?

....

holiday he just said, I'm going to Cayman Brae.

But then you kind of...suddenly found myself

there not knowing anybody, not having any

friends, not having anybody, nothing.

I was just sitting there going like "what the hell

happens now?" ...It ate me up inside not

knowing what was going on now...I just walked

up and I said hi, you know...I think maybe we

might need a specialist or somebody who can

explain my behaviour because I am apparently

not able to, you know....

I was lost, totally lost in that whole situation

then. I didn't know what...what to do no more

and how to react and what was going on. It was

just unbelievable. And I cannot describe it. I

don't know where it came from, all of these

emotions and all that you know."

And further in re-examination by Crown Counsel the witness offered

this further explanation:

Q: Now, when you saw Mr. Rose with this female at Calico

Jack December 2007, why did you approach them?

A: I had always been told by Phillip that if I could

prove he was with somebody else that he would

"Phillip got a lot of texts. His phone would vibrate so I asked him who is this and he said "this is my wife" and I said "your wife" because I found that was kind of strange because he was telling me that he was getting a divorce from his wife. So I said why would she text you and I asked him to show me the text and he did and it was very sexual, so I said well that's interesting and he said well she is just like

offered this explanation:

Finally, on this score, the complainant admitted in cross-examination that she once went so far as to contact the defendant's wife in Miami. Nothing further was put to her about this but, in re-examination, she

have been the end of it then."

leave me alone, so this was the perfect opportunity for myself. I walked up to them, I introduced myself with the thinking in my head, thinking also that he finally sees it and that will be it and he would leave me alone after that, as he said he would. He always said he would leave me alone if I could prove that he was with somebody else, and this way I could make sure that he knew I was there, I saw it. This should

him to enter your apartment through the window

Crown Counsel Q: Now, Mr. Tonner put it to you, ma'am, that you allowed

excerpts from the transcripts:

when consensual sex did take place with the defendant as appears from the following

earlier account that there were occasions in 2007 while living at Laguna Del Mar

169. The witness, in response to further questions in re-examination, reconfirmed her

described as a romantic interest.

complainant continued to take the kind of interest in the defendant that could only be

168. This response is relied upon by the defendant as a further indication that the

The Witness: I think so, yes."

The Court: This was in 2007?

conversation.

on me right away so we didn't really have a

I called and she was just hanging up the phone

a divorce, but it was not a conversation...I mean

Phillip if as per his statement they were getting

she should send these types of messages to

The Witness: ...I ...actually my intention was to ask her why

The Court: Could you explain why you called her?

thinking that I would but I did.

the number and he dared me to call her not

number if you want to call. So he was giving me

that and its nothing...and you can have her

“Mrs. X attended my clinic on Thursday May 22nd 2008. She alleged a male stalker attacked her on the night of Saturday May 17th 2008. During consultation on May 22nd 2008, Mrs. X alleged that this stalker slapped her several times across her face and raped her on the night of Saturday May 17th 2008. The visit to my office was due to the

as to recent complaints or recent fabrication as already discussed. She states:

complained of by the complainant and her report must be assessed in light of the law evidence as to her findings is uncontested. She, however, also reported on what was evidence. She is therefore to be treated by the Court as a medical doctor whose

172. The statement of Dr. Enoka Richens was, by consent of the defence, read into

she then told Dr. Richens *“about the abuse and I told her that I was raped.”*

the long week end, only two days after her first opportunity to do so. She said that the incident on the 17th May 2008 but, having regard to her ordeal as described over having gone to see Dr. Enoka Richens. This was on 22 May 2008, some 5 days after

171. It is objectively significant in the evidence of the complainant; that she confirmed

otherwise she would have had no rest or peace of mind.

170. She insisted that she only let him in on those occasions when she did, because

calling and calling and texting.”

and hours many nights just knocking and knocking and

he showed up and he was just sitting there for hours

A: *No, that's is not true. No this is not true. This is where*

you were having consensual sex with Mr. Rose?

because you were embarrassed to let people know that

ongoing numbness over the left side of her face since the alleged assault. She also complained of general aches and pains as a result of the alleged assault, but said these symptoms were improving. She also had cuts to her right elbow and right wrist which she stated she sustained during the alleged assault.

....

The numbness over Mrs. X's left cheek is consistent with damage to superficial nerves to the cheek. It is my opinion that the above mentioned injury, the bruise under her left eye, and the lacerations to her left elbow and left wrist are consistent with the alleged assault...."

173. Dr. Richen's statement also reveals that Mrs. X had first consulted her on June 14th 2007. On that occasion, Mrs. X was worried that she may have contracted an STD again since she had a recurrence of left lower quadrant pain and some vaginal discharge. The doctor's report is that the complainant was reluctant to go into any more details at that time.

174. The ophthalmologist, Dr. Eugene Foley's testimony confirmed that the complainant had been seen by him on three different occasions.

175. The first and second visits were in January 2007 when she complained of having received injuries to her left eye. He did not however report as to the alleged dates of the injuries.

176. The third visit was in October 2008 (which would have been after her relocation to Toronto) when she complained of blurred vision. She said that this was due to having been assaulted the previous May; that was May 2008.

177. From his examination, he found that her vision acuity was slightly abnormal in both of her macula - a condition which he attributes to stress rather than trauma. I do not consider Dr. Foley's evidence to be instructive one way or the other.

178. The clinical psychologist Ms. Shannon Seymour also testified. She is an experienced psychotherapist who was qualified in Canada and has become certified to practice in Cayman. She now practices as the director of the Wellness Centre located in George Town. She at one time worked as a counselor with the Cayman Islands Government and was responsible for training police officers on the psychological aspects of their work. In this regard, she was particularly responsible for training the officers of the FSU. She asserted that that training imparted a mandatory arrest policy for complaints of domestic abuse but this policy was often not observed in practice. She expressed the view that this happened because victims often have conflicting feelings about pressing charges where relationships had started off on a positive footing, such as that described by the complainant to her. And so, despite the mandatory arrest policy, the Police often ask the victims what they want done, which often results in inaction.

179. The complainant had testified about consulting Ms. Seymour and Ms. Seymour reported that there were many visits and consultations with the complainant when the concern was her relationship with the defendant. Some of these took place in person at the clinic and others over the telephone over the period April 2007 to January 2009; and so even after the complainant had relocated to Toronto.

180. On the first visit, Ms. Seymour said that the complainant just came wanting some information and some support and not sure where to turn or what to do with regards

to what she described as "a very abusive and violent relationship that she was in and

trying to get out of".

181. While the clinical notes of subsequent visits or calls contained further complaints by the complainant, as they were elicited from Mrs. Seymour they did not relate in time to the specific counts on the indictment. Her evidence was instead allowed to be adduced on the basis that the question of relevance and weight would be finally determined later.

182. My determination in this regard is that while her account of subsequent visits may be irrelevant and strictly inadmissible as being out of court statements by the complainant, Mrs. Seymour's account, as rendered from her contemporaneous notes, of the first visit on 29th April 2007, is admissible and relevant to rebut the suggestion of recent fabrication that is implicit in the defence. Following is her narrative of that visit:

"She presented as a typical victim of violence – as very

distressed, anxious, fearful. She was shaking....

We met for just over an hour and she described how the

relationship started out as consensual and then had escalated

into an abusive relationship that she was trying to end. She

described stalking, that he would follow her; that he always

seemed to know where she was. She expressed being very

afraid of him. That she felt like she didn't really have anybody

to turn to for help or support. She described a lot of

harassment on the phone. She was very embarrassed. She was

afraid for her job if anybody found out given her position at her company.

She was blaming herself.

Q: Is that unusual?

A: That is not unusual. Most victims of domestic violence blame themselves. She was feeling embarrassed and ashamed. It was very difficult for her to look at me. We spent a lot of time trying to help her feel empowered, feel brave that she had come forward, that she was talking. We spent a significant amount of time reviewing a safety plan because she described a couple of instances where he had forced...he had forced himself in, and so we talked about ways in which she could keep herself safe. I encouraged her to talk to people at her employment. I encouraged her to talk to the police. Victims often don't want to speak to the police...from my professional experience...because it is embarrassing...it is shameful. As a community, we tend to blame victims for abusive relationships that they get into. We may see poor decision-making or poor judgment on their part as the reason that they are abused, and we blame them for that. And I think that we have a system (here in the Cayman Islands) that doesn't always support a victim when they decide to come forward."

183. This witness' evidence is in my view also relevant to the assessment of the

complainant's own explanation for the manner in which she responded to the alleged behaviour of the defendant.

184. Ms. Seymour's opinion and experience is that there is no stereo-typical manner in

which victims of sexual abuse may be expected to behave when they find themselves in a position of threat or crisis. That there is no standard logical or rational response to be expected of an alleged victim of sustained sexual abuse and harassment. I accept this as being obviously in keeping with common sense and experience before the Courts.

185. I approach this matter on the basis that the Court must be astute to assess the response

of a complainant having regard to what might reasonably be expected from someone in her position. In this regard, the following exchange with Crown Counsel during her examination-in-chief is telling:

Q: Before your relationship with Phillip Rose, Mrs. X, were you ever in

any physically abusive relationship?

A: I have never been physically abused by anyone, anyone else.

Q: Have you ever had an emotionally abusive relationship?

A: Never, never.

Q: Before?

A: No, never. I have never gone through something like that. This

is...this is why it probably took so long for me to wake up. I have never experienced something like that in my life."

186. The complainant's credibility as a witness must be assessed against the background of all of the evidence relating to the alleged offences as well as to her responses or lack of responses to them. Not only her failure to bring charges or her occasional consensual, if reluctant, submissions to the defendant, but also her efforts to obtain relief by the intervention of the police, by the seeking of therapeutic support, by confiding in her employer and even, as she testified, by speaking with the defendant's father. These are all relevant indicia as to the reasonableness of her response to the situation in which she testified she found herself.

187. The rest of the evidence adduced on the Crown's case involved the testimony of police officers which, for reasons already mentioned, was far less helpful to the Court than should be expected.

188. Constable Junior Durrant testified that he was one of two officers who responded to the 911 call that was made from the complainant's home on 3rd June 2008. This was the occasion when her guest, Mr. M, was confronted by the defendant.

189. This officer referred to being called out to what he described as a "domestic disturbance". That was the message that 911 had simply relayed to him – "that an argument was taking place between Mrs. X and her boyfriend."

190. He asked Mrs. X to give a statement about the matter but she refused to give the name of the person with whom she was involved in the argument. This officer did not come prepared to testify by reference to any record of what actually happened, relying instead only on his recollection.

191. The actual 911 incident report of Tony M's complaint gives a rather different picture from a mere involvement "in a domestic argument". It reads:

193. Detective Chief Inspector Claudia Brady testified. She was formerly in charge of the FSU and was so in charge in May 2007. She was, however, unable to speak to anything to do with Mrs. X's complaints to the FSU before she met Mrs. X personally in July 2008. This was when Officer Brady was formally assigned to deal with the allegations which came to form the charges in the indictment. Officer Brady in turn handed over the matter to Det. Cons. Jane McFarlane for investigation. Officer Brady was not able to say whether Mrs. X had complained to the FSU in 2007. Mrs. X's evidence was that in 2007 she had dealt with officer Jane McFarlane.

192. Just whether that reference to the defendant (who admits he was involved) as "the boyfriend" is to be attributed to Tony M because of the behaviour of the defendant himself; or to anything said to Mr. M by the complainant or to the police's interpretation of the relationship, is explained neither in the 911 Report nor in the testimony of this Officer. For her part, the complainant insists that this ready and continual misconception by the police of the nature of the relationship between herself and the defendant, betrays the reason why they failed to intervene in any meaningful way, despite her complaints.

"Complainant Tony M stated that he is from America visiting a friend Mrs. X. Whilst there with Mrs. X, her boyfriend showed up and an argument started. The boyfriend stated he was going to return with an AK-45... Tony M stated he locked himself upstairs and Mrs. X is downstairs with the boyfriend. He did not know that Mrs. X had a boyfriend."

194. One would then expect at least, that Officer McFarlane, when she came to testify,

would be in a position to account for her dealings with Mrs. X at the FSU in 2007.

That, however, turned out not to be the case. Instead, Officer McFarlane, while not

denying that she may have dealt with Mrs. X in 2007, simply had no recollection.

Nor was she able to refresh her memory from the records of the FSU as, according to

what she had been told (no longer being a member of the Force), the entire computer

database of her dealings while at the FSU and into which she would have logged her

reports, had been lost. And, although she had prepared a formal statement for court

purposes, that too seems to have been lost. This witness' evidence was therefore

confined to only her dealings with Mrs. X after July 2008, which dealings she had

been able to reconstruct only from the case file compiled since that date.

195. To the extent therefore that any of Mrs. X's earlier complaints to the police might

have qualified for the purposes of the law as "recent complaints", the records were,

unfortunately not available to the Court.

The Defence

196. My approach to the assessment of the defendant's evidence must, of course, be on the

basis that he assumed no burden to prove his innocence or to disprove the

prosecution's case, by electing to give evidence. The burden rested upon the

prosecution throughout, to prove his guilt. I must therefore assess his evidence by the

same objective approach as I would take to the assessment of the other evidence in

the case.

201. While admitting to having made the many phone calls and left the many threatening messages which were recorded and later played in Court, the defendant insists that it was he who was the real victim of harassment and jealous, controlling behaviour, on

October 2006, when she then struck her face against the furniture.
him, he says she had told him was the result of another fall in her apartment in face in the photographs, said by her to have been the result of a punch inflicted by fall when she struck her face against the car. Likewise, the other injury shown to her her. The injury that she sustained to her face was therefore the result of the drunken apartment, there was no sexual contact between them and certainly no assault upon May 2008 – his version is that while he spent those days at the complainant's simply did not happen. As to the single exception – that over the week-end of 17th of the encounters alleged in the indictment. Essentially, his account is that the events continuous consensual sexual relationship between them, the defendant denied each The defence is a complex one. As already mentioned, while insisting that there was a to his defence.

199. I will therefore now emphasise those aspects of his evidence which are most germane foregoing narrative of the evidence of the case.

198. The salient aspects of the complainant's cross-examination and the gist of the defendant's own evidence in support of his case, have already been addressed in the him were not, however, put to her in cross-examination.

197. Much of what the defendant would say in evidence was foreshadowed by the cross-examination of the complainant by Mr. Tonner on his behalf. Some issues raised by

the part of the complainant. To the point he said, of having been hospitalized for

anxiety attacks which he got from the stress of dealing with the complainant.

202. The matter of the defendant's health was the subject of admissions made in the trial

in the following terms:

"It is admitted between the parties that:

On 21st November 2007 Phillip Rose was seen at the George Town Hospital, as an outpatient, by Dr. Hasnukh Shah (mental health practitioner). Mr. Rose complained of suffering from panic attacks and episodes of anxiety. Mr. Rose stated that the panic attacks were characterised by extreme fear, palpitations, fear of losing control and a wish to run away. Mr. Rose reported that these episodes had been occurring for 4 months. Mr. Rose reported that he had resumed exercise and this seemed to be helping. Mr. Rose offered to Dr. Shah what Mr. Rose considered to be the potential cause of these episodes. Dr. Shah formed the impression that Mr. Rose was suffering from panic attacks and specific phobia, namely claustrophobia.

Phillip Rose was under the professional care (as an outpatient) of Dr. Clement Von Kirchenheim (Ph.D., Chartered and Licensed Psychologist and Assistant Director of Psychiatry and Behavioral Health, Cayman Islands Health Authority) from 2006-2008 in relation to Mr. Rose's anxiety disorder, panic attacks and claustrophobia.

[Read by Mr. Tomner at 12:45 pm on 10th November 2011]

203. It is to be noted that nowhere in those admitted accounts of the defendant's "anxiety

attacks" is there any reference to the cause having anything to do with his relationship

with the complainant. Rather, the diagnosis seems to attribute the cause to

claustrophobia, a condition from which I am told the defendant still suffers.

204. As a prime example of the complainant's jealous and controlling behaviour, the

defendant cites the incident on the beach when Ximena Posada, his lady friend from

Columbia, was visiting. He describes the complainant's behaviour then as starkly

was confirmed in the evidence.

206. He therefore could offer no explanation how it came about that the complainant would have gone directly to make the complaint to the police, the record of which

Jeep and I held her there until she calmed down and then she left."

was reversed, that the complainant "basically attacked me...we were standing by her me about some woman again." He denied assaulting her then, insisting that that role Avenue on 3rd December 2007 when "she came in a crazy mood (and) start accusing "Always a woman issue". This was why she had gone to his father's place on Eastern

205. The defendant said that the complainant's obsessive behaviour towards him was

car....And I got in the car and we left."

didn't stop. I told her to leave....Then I told Ximena to get in the (demonstrating from behind) and told her I would call the police if she looked like she wanted to attack Ximena, so I grabbed her by her arms the police. She was shouting and screaming and going on...She attack Ximena. I grabbed her. I told her if you don't leave, I'll call thing I knew Mrs. X comes running up behind us and she wanted to beach. So I hurried not to make her suspicious of anything. Next "I saw Mrs. X at Calico Jacks'. My girlfriend was with me on the

to Calico Jacks' he saw Mrs. X. His narrative then picks up from the transcript: that he was walking along the Public Beach with Miss Posada and as they were going complainant that he wanted to take a break from the relationship. His version was different from her own account. He says that this happened after he told the

210. Thus, on the version of events given by the defendant, the Court is invited to find that the defendant it was who was the victim of jealous harassment by the complainant, the innocent participant in a relationship that became embittered only because he refused to treat the complainant as the sole object of his affections. In other words, an appeal to the storied sentiment that *"hell hath no fury like a woman scorned"*.

209. A further explanation for his threatening messages he gave in these terms:
"Well, largely I was just calling her and I think she wasn't answering the phone. She had a habit of calling me saying what she had to say and hang up, and then when I would try to call her, she would play her games and not answer the phone. So I was annoyed and that's why I left...these messages on the phone to her."

208. The defendant sought to explain away the very many threatening and abusive phone calls and messages to the complainant as a "scare tactic" which he employed just to "get back at her". This need for retribution, he says, arose from the nasty rumours she was apparently spreading about him and her incessant attempts to interfere with his private affairs. He refers to a message which he left on her work phone at 8:59 am on 15th October 2007. That message has him recorded as accusing her of "discussing (him) with somebody again" and asking "what you want about my supervisor for...If you know what is good for, keep my mother f..... name out of your mouth....I getting sick and tired of your f.king discussing me...."

207. He cited as another example of the complainant's controlling behaviour, the occasion when she telephoned his wife in Miami, *"harassing my wife"* according to him.

Disposition

211. The messages left by the defendant on the complainant's phone were by any measure, far removed from anything one might expect in the context of a subsisting consensual relationship. Rather, as earlier observed, they reveal the state of mind of an obsessive, prideful and controlling man who refuses to accept that he has been rejected. A sense of arrogant entitlement to do as he pleased regardless of the complainant's wishes. This was an arrogance that the defendant continued to display even after the complainant had moved away to Toronto, as appears from the following text messages, taken from amongst the scores of similar texts put into evidence as part of the agreed statement of Det. Cons. Ronald Boxwell:

Received 04/08/2008. 11:25:16 am

"...its mine when u here. When you not here ur man can claim it. I run da show here an he run it over der. I'm da owner of dat pussz here."

Received 04/08/2008. 4:2:26 pm

"U jus bring ur ass here quic wit my pussz. No fool up dar is gonna keep u from me. Show him dis text. I will do whatever I have 2 do. Dats my pussz.

Received 80/08/2008. 7:59:39 pm

"When I'm ready 2 do you da same don't have an attitude. D more u ignore me da more I'm persistent. I always get what I want by whatever means necessary. I only stop when I don't want. Dat pussz you got I will never leave u alone."

215. Not only were his threats aimed at unsettling her personal sense of physical security, it is clear from his messages that he aimed at unsettling her sense of job security as well, threatening in that wise to get immigration to kick her off the Island. The defendant's messages also threatened to do harm to her husband and, estranged

consensual.

214. I am satisfied so that I am sure from the evidence of the complainant and from the defendant changed on the 30th September 2006 to one which was no longer vehement nature of the messages in particular, that her relationship with the

that event was a turning point in their relationship.

213. It is an irresistible feature of this case that the hostility of the defendant towards the complainant, as is apparent from the voice messages then recorded, started in October 2006. While he says that this was because she had kicked him in the groin and struck him with a stone on 30th September 2006, it is nonetheless common between them that that incident on 30th September 2006 was one from which they parted with ill feelings. His messages then recorded by the complainant certainly betray the fact that

No more talk!

Don't care now. I won't stop till I do what is necessary.

gvin other people numb 4 police. Dat shit won't happen no more.

"A motherfucker doin dirt and runnin 2 police 2 cover der shit and

Received 9/08/2008 7:21:33 pm

involved:

212. And after it must have finally become clear to the defendant in August 2008 that the complainant would be pressing her complaints and that the police were fully

though her marriage had become, it was a reasonable response on her part to have

been concerned that he could indeed be harmed.

216. I accept that the defendant's aggression displayed when he confronted Mr. M at the complainant's home and when he confronted the complainant's male passenger on the night of the 17th May 2008, are indications which support that the defendant was relentless in his pursuit of the complainant. I accept that that later confrontation took place as she described, as did the subsequent assault at her apartment.

217. I do not accept his account of the injuries which the complainant sustained on the 7th October 2006 and 17th May 2008. I accept her account that on the 7th October 2006, he had punched her to the face and on the 17th May 2007, that she hit her head when thrown against a parked car by the defendant. She also sustained the other injuries described when assaulted by the defendant on that occasion. I accept her account of having been forcibly taken from the car in mid-December 2006 by the defendant and driven by him to his house at #87 July Street without her consent, as alleged in Count 6 of the indictment which charges the offence of abduction.

218. I regard her account given to Dr. Enoka Richens on the 22nd May 2008 as a recent complaint – one made in the circumstances then confronting her at the earliest opportunity that reasonably offered itself – and which is consistent with her lack of consent to the sexual intercourse that I find did take place on the night of 17th May 2008.

219. I find that the complainant's account given to her therapist Ms. Shannon Seymour, serves to negate the implicit assertion of the defendant that the complaints were recently fabricated out of jealousy or because of rejection by him.

220. I find the complainant to be a witness of truth. Her disinclination to have earlier

pressed for charges against the defendant, I accept, was the result of the several and complex factors she cited, including especially her fear of the defendant and her fear of losing her job and her career. I accept her evidence that she submitted to the entreaties or demands of the defendant on those occasions after the 30th September 2006 when she did so by consent, for the reasons that she explained.

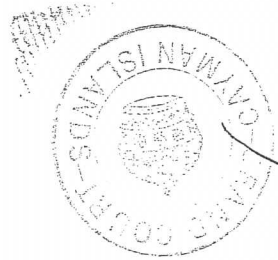
221. I am satisfied so that I am sure that sexual intercourse did take place between herself and the defendant as alleged in Counts 3, 5, 7 and 9 of the indictment and that it took place without her consent. I am satisfied so that I am sure that on those occasions her consent was negated by force and fear and that by forcing himself upon her, the defendant could not have reasonably believed and so did not believe, that she was consenting.

222. I am satisfied so that I am sure that the defendant assaulted the complainant as alleged in Counts 2, 4 and 8 of the indictment and abducted her as alleged in Count 4. The assaults proven in respect of Counts 2 and 8, I also accept, involved the infliction of bodily harm as alleged.

223. On the basis of these findings, I find the defendant guilty of the offences of rape on Counts 3, 5, 7 and 9. I also find him guilty of the offences of assault causing actual bodily harm on Counts 2 and 8 and of the offence of abduction on Count 4.

224. No evidence having been marshalled from the complainant on Counts 1 and 10 and in respect of the requisite act of penetration on Count 6, the defendant was discharged on those Counts at the close of the Crown's case.

225. On his plea of guilty, the defendant was convicted of the Offence on Count 1.



~~Hon. Anthony S. ...~~
Chief Justice
December 19 2011.

A handwritten signature in black ink, appearing to be "Anthony S. ...", written over the printed name and title.