# IN THE CAYMAN ISLANDS COURT OF APPEAL

Criminal Appeal No. 36 of 1998
Indictment No.30 of 1997

**BETWEEN:**

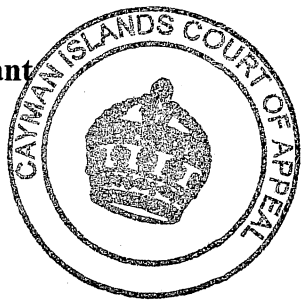
**HER MAJESTY THE QUEEN**

**Respondent**

**- and -**

**LLOYD NEWMAN JONES**

**Appellant**




BEFORE: The Rt. Honourable Mr. Justice Edward Zacca, President
The Rt. Honourable Mr. Justice Telford Georges, Justice of Appeal
The Honourable Mr. Justice Ira Rowe, Justice of Appeal

Mr. George Soutar instructed by Collins Broadhurst & Furniss for the Appellant.
Miss Cheryll Richards for the Respondent Crown.

August 10th 1999

## REASONS FOR JUDGMENT

**ROWE, J.A.**

On August 10th 1999, after considering the submissions of Counsel in the above styled matter, we dismissed the appeal against conviction and dismissed the appeal against sentence on the second and third counts of the Indictment. We varied the sentence on the fourth count and ordered that it should run concurrently with the sentences imposed on the other two counts and we now provide our written reasons for the decision.

The Appellant was convicted by Douglas J. on June 22nd 1998 in the Grand Court, Grand Cayman on three counts of a four count Indictment. On the second and third counts of the Indictment in each of which he was charged with defilement of a girl under the age of 12 years, the Appellant was sentenced to a term of imprisonment of 11 years and the sentences were ordered to run concurrently. The sentence imposed on the fourth count of the Indictment, which charged indecent assault, was 18 months imprisonment and was ordered to run consecutively with the sentences imposed on the second and third counts. All three offences were committed in relation to the same girl and there did not appear to us to be any reasonable explanation why the sentences on the more grave offences were ordered to run concurrently and the sentence for indecent assault was made to run consecutively. The sentence of 11 years imprisonment, although a long one, was not excessive in the circumstances of the case. At the completion of his sentence the Appellant faces certain deportation. Although not a determinant factor, it was urged upon us that this was a factor to be taken into account against lengthening the overall sentence of the Appellant by a further 18 months.

The offence of indecent assault is alleged to have been committed on February 16th 1997 and was some minutes prior to the act of defilement which occurred on the same day and formed a part of the same transaction. Consistent with the trial judge's decision to make two of the sentences concurrent, this court ordered that the sentence of 18 months for indecent assault should run concurrently with the other two sentences. The total sentence of 11 years properly reflects the seriousness with which the Court viewed these offences.

The parents of the child victim, (hereinafter "the victim") although married, were separated at the time of the offences which occurred between January and February 1997. The victim, along with other siblings and an adult aunt lived in the house with the victim's mother.

The evidence from the victim was that the Appellant first worked for her parents as a gardener. Later, after the separation of husband and wife, the Appellant became a confidant and intimate friend of the victim's mother. He would visit the victim's home from time to time. She had known the Appellant for three years. The victim had visited the Appellant's apartment in the ordinary course of social contact between the victim, her mother and the Appellant. Then came a day in about January 1997. The victim's mother was in Jamaica. The Appellant took the victim from a bus stop to his home, on the allegation that he had been requested to do so, and because rain was falling, the victim was enticed into the Appellant's apartment. The Appellant had sexual intercourse with the victim in his apartment and then took her home.

Evidence from the victim was that the Appellant had sexual intercourse with her at her home on a Sunday when her aunt had gone to Church and her mother was not at home. On that occasion the Appellant is alleged to have fondled the victim in an indecent manner, then he introduced a second man into the room with the victim. That man also indecently assaulted the victim and then it was that the Appellant is alleged to have committed the second act of defilement of the victim. Graphic evidence of the discharge of a "white substance" from the exposed penis of the Appellant was given by the victim.

The victim's aunt appears to have been suspicious of the movements of the Appellant on the Sunday of February 16th 1997. It further appears from the evidence that the victim made a report to

the aunt on the following day. This led to a conference between the Appellant and the victim's mother and father at the victim's home. Evidence was received from the victim's father that the Appellant admitted to him during the family conference that he had taken the victim's "virginity" and he pleaded with both mother and father for a chance. The victim's parents reported the matter to the Police. On the following day the Appellant in the company of the second man who had indecently assaulted the victim on the previous Sunday was arrested at the George Town International Airport in their attempt to leave Grand Cayman.

Medical evidence was tendered by the Crown which supported the fact that the victim had a torn hymen. The Appellant gave evidence in which he denied the allegations made against him. He stated that the victim's father gave perjured evidence out of jealousy because of his relationship with the victim's mother and that the victim's mother and the victim's aunt had malice against him. The trial judge gave reasons for his ruling and decision. He found the Appellant not guilty on the first count of the Indictment which had charged a defilement of the victim in 1995 when she was only 10 years old. The trial judge stated that he placed reliance on the medical evidence.

A number of grounds were filed and argued by Mr. Soutar. At no point during the trial did the victim specifically identify the Appellant as the person who had harassed and defiled her. A no case submission was made on behalf of the Appellant on the basis that he had not been identified by the victim. This submission was summarily rejected by the learned trial judge. The victim had referred to the Appellant throughout her evidence as "Lloyd Jones". As the evidence unfolded there was no issue that the man on trial was other than the man about whom the victim was testifying. This was not an identification or recognition case relating to someone who had not been known by the victim before or whose acquaintance with the victim was a temporary or fleeting

one. The man accused was in contact with the victim for a period of three years. He had driven the victim in his car on occasions. He had visited the victim's home on numerous occasions. He had been gardener and then he had entered the house and cooked meals for the household. He had visited the house on numerous occasions to visit with the victim's mother and aunt. The evidence was abundant and credible that the Appellant was the Lloyd Jones of whom the victim was testifying. No suggestion was made in the cross-examination of the victim that she did not know the Appellant or that she was talking about some other Lloyd Jones.

In Ellis Jones, (1973) 2 All E.R. 893, a situation arose where a statement was received in evidence pursuant to a statutory provision in which in which it was stated that the author knew the man "Clive Jones" who had made a declaration for the purpose of obtaining sickness benefit under the National Insurance Act of England and Wales. The author of the statement was not called and the defence submitted that there was no evidence to connect and identify the man in Court with the Clive Jones referred to in the statement. In giving the judgment on appeal, Lord Widgery, C.J. said:

> "The effect of the evidence in the statement is the same as though the witness had stood in the witness box and given it orally ... In the absence of any sort of suggestion that the Clive Jones who answered to his name and stood in the dock was different from the Clive Jones referred to by Mr. Hayden Davis, I should have thought that it was perfectly clear that the justices could approach the matter only on the footing that the same person was being referred to."

We find the reasons given by Lord Widgery, C.J. above to accord with our views and we therefore adopt them.

A procedure had been adopted for the trial whereby a screen had been erected so that the Appellant could not see the witness while she was giving evidence. It appears from the record that

the Crown had approached the trial judge prior to the commencement of the case and requested that a screen be erected in the witness box to shield the victim from the Appellant. While defence Counsel was present in Court, Crown Counsel repeated his request for the erection of the shield and the trial judge consented thereto. There is no explicit statement on the record as to why Crown Counsel thought it necessary for the erection of the shield. However, Counsel for the Crown argued before us that this procedure is necessary in cases in which a minor child victim in sex cases may be intimidated by the defendant and thus be impeded in testifying before the Court. As long ago as 1920, the Court of Criminal Appeal approved of such a procedure. In R. v. George Smellie, (1920) Cr. App. R. 128, a father was charged with neglecting his 11 year old daughter in a manner likely to cause her unnecessary suffering or injury. The Court ordered the defendant to sit on the stairs leading out of the dock out of sight of his daughter. It was argued on appeal that the defendant is entitled at common law to be within sight and hearing of all witnesses. Lord Coleridge said that if the judge considers that the presence of the prisoner will intimidate a witness there is nothing to prevent him from securing the ends of justice by removing the defendant from the presence of the witness.

In our view the trial judge properly exercised his discretion to erect the screen which could give some little protection to the victim who had been severely abused by the defendant. There is no merit in the first ground of appeal.

Ground 2 of the Appeal challenged the finding of the learned trial judge that the evidence of the victim was consistent with the evidence of her aunt to whom she had made a report about the circumstances which led to the conviction on the second count of the indictment. In our view the learned trial judge exhaustively considered the alleged discrepancies between the evidence of the

victim and that of her aunt and properly directed himself as to the approach to be made to those alleged discrepancies. In our view, there were no material discrepancies between the evidence of these two witnesses in relation to the second count and the appeal on that ground fails.

Ground 3 challenged in a general way the manner in which the learned trial judge approached the matter of discrepancies and how he resolved them. The Judge in his findings of fact and ruling on the applicable law stated that the defence had pointed out to him all the alleged discrepancies in the case and that he had considered them, but that for them to have an effect upon the quality of the prosecution evidence they must go to the root of the case. Clearly none of the discrepancies were of any material factor and the trial judge properly rejected the submissions. We found no merit in this ground of challenge.

At page 410 of the record, the trial judge said:

> "Because when you come down to it, I believe the girl, but I wanted something a bit more on which to go. I wanted to be safe before I could say yes, he's guilty, and the doctor provided that missing link, that this torn hymen is about three weeks old".

That statement gave rise to ground 4 of the Appellant's Grounds of Appeal. The trial judge had identified the fact that corroboration is not a necessary ingredient for the proof of a sexual offence. He had evidence which he accepted as true from the victim's father for at page 412 of the record, the trial judge said: "and I do believe Mr. Webb when he said this man confessed I took her virginity".

The trial judge's reliance on the reference to the doctor's finding that the victim had a torn hymen, which could have occurred at about the same period of time that the victim said the Appellant

defiled her, cannot be viewed in isolation. He said he believed the girl. He said he believed her father. He was making a connection that what the Appellant confessed that he had done and what the girl said he had done were consistent with the old theory of corroboration. The victim's mother also gave positive evidence of the penitence of the Appellant when he asked the parents not to report his acts towards the victim to the Police. There is therefore no merit whatsoever in this ground of appeal.

Zacca, P.

Georges, J.A.

Rowe, J.A.