

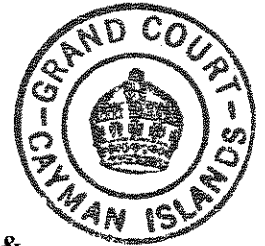
1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE

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5 INDICTMENT NO: 0017/13
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8 THE QUEEN

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10 V

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12 WAYNE BELLAFONTE Jr.



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15 Appearances:

Ms. Toyin Salako for the Crown

16
17 Ms. Fiona Robertson of Samson &
18 McGrath for the Defendant
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20 Before:

The Hon. Mr. Justice Charles Quin

21 Submissions heard:

25th November 2013

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23 SENTENCE RULING
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25 **Important Notice**

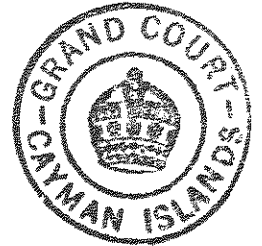
26 *This Ruling is distributed on the strict understanding that, in any report of it, the*
27 *anonymity of the Complainant, who, at the time of the incident, was under the*
28 *age of 18 years, and is therefore deemed by the Court to be a Young Person,*
29 *must be preserved.*

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INDICTMENT AND PLEAS

1. On the 15th November 2013 the Defendant pleaded guilty to the charge of Indecent Assault, contrary to s.132 of the Penal Code (2010 Revision).

2. The particulars of the offence are that the Defendant, on the 28th day of June 2012 at #28 Indian Summer Drive, Frank Hall Homes, George Town, Grand Cayman, did unlawfully and indecently assault a female who, at the time of the incident, was under the age of 15 years of age.



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THE CROWN'S SUMMARY OF FACTS

3. The Defendant is a maternal cousin to the Complainant – although their families do not share a close relationship.

4. On the 28th June 2012 the Defendant went to the Complainant's residence in Spotts Newlands sometime in the afternoon. He was in the company of the father of the Complainant's brother.

5. When the Defendant was in the house he asked to use the bathroom and was permitted to use it. After he came out of the bathroom he paid the Complainant some compliments about her figure and her height. The Defendant told the Complainant that he had not seen her for some time and she had turned into a pretty beautiful lady – to which the Complainant made little comment.

1 6. The Defendant left the Complainant's home with her brother and her
2 brother's father. Shortly afterwards the brother's father asked the Defendant
3 to pick up another family member, and the Defendant left with the
4 Complainant's brother's father's car.

5 7. Between 2:35 and 2:45 p.m. the Defendant returned to #28 Indian Summer
6 Drive. The Complainant was alone. The Complainant thought it was her
7 brother returning and when the Complainant saw the Defendant at the door
8 she said,

9 *"Where is my brother?"*

10 The Defendant responded that he needed to use the bathroom again.

11 8. The Complainant had no reason to mistrust the Defendant and she did not
12 have any concern about her safety, so she allowed the Defendant in to the
13 house.

14 9. When the Defendant returned from the bathroom the Complainant was in her
15 bedroom on her computer. The Defendant repeated the earlier compliments.
16 He sat on the side of the Complainant's bed and offered the Complainant
17 some vodka and she refused. The Defendant then asked for sweets – which
18 the Complainant thought meant candy. However it became clear to the
19 Complainant that the Defendant did not mean sweets or candy, but meant her
20 body.

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1 10. The Defendant then used the Complainant's *en suite* bathroom to wash his
2 hands. On returning from the bathroom he grabbed the Complainant and
3 lifted her onto the bed. The Defendant then spread the Complainant's legs
4 and put his body in between her. The Defendant then kissed the
5 Complainant's mouth, face, neck and chest and the Complainant said,

6 "*What are you doing?*"

7 The Defendant then tried to put his tongue into her mouth but she prevented
8 him. The Defendant continued to suck at the Complainant's neck and the
9 Complainant said,

10 "*No, no*"

11 repeatedly and said she did not want to do anything.

12 The Complainant tried to get up but she couldn't. The Defendant pulled at
13 the Complainant's knickers with his hand and he pushed them to one side.
14 That was when the Complainant realised that the Defendant's penis was
15 exposed. The Defendant tried to put his penis into the Complainant's vagina.
16 The Complainant struggled and the Defendant was unable to insert his penis
17 into the vagina.

18 11. The Complainant said the sexual assault lasted about 2 minutes.

19 12. The Complainant sent a Text Message to her mother, which was garbled, but
20 it resulted in the Complainant's mother trying to call her. The telephone
21 activity caused the Defendant to get up from on top of the Complainant.



1 13. The Complainant then told the Defendant that her mother was returning to
2 the house straightaway and then the Defendant went back into the *en suite*
3 bathroom and washed his hands. Upon leaving he said,

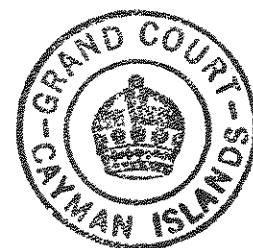
4 *“I am coming back tomorrow. I hope you are not going to be as mean as*
5 *you have been today.”*

6 The Defendant then left the Complainant’s home.

7 14. The Complainant then locked the door and called her mother and told her
8 mother what had happened, and then her mother called the police.

9 15. Later that day the Defendant was confronted with the Complainant’s
10 allegations and he denied doing anything wrong. The Defendant then left the
11 scene before the police arrived.

12 16. The Defendant was then interviewed by the police on the 6th July and on the
13 13th October 2012 and he denied ever making the second visit. After forensic
14 evidence was obtained the Defendant was again interviewed on the 6th
15 December 2012 and he asked to speak to his attorney. The Defendant was
16 then charged with the offence.



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1 *ANALYSIS*

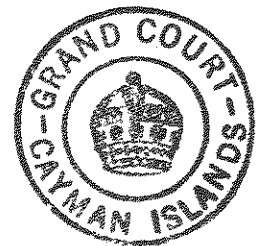
2 17. On the 23rd September 2013 the Crown accepted the Defendant's guilty plea
3 and, accordingly, the Court ordered an SIR.

4 18. On the 7th November 2013 Henderson J. struck out the Defendant's guilty
5 plea because the Defendant had clearly denied his guilt to his probation
6 officer.

7 19. However, on the 14th November 2013 the Defendant signed the Basis of Plea
8 and entered an unequivocal plea of guilty. The Defendant formally withdrew
9 the comments he had made to the DCR officer who conducted the SIR.

10 20. At the time of the offence the Defendant was 20 years of age and the
11 Complainant was 15 – turning 16 years old on the 5th July 2012.

12 21. Crown counsel has pointed out that the maximum sentence under s.132(4) of
13 the Penal Code is 10 years' imprisonment.



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DEFENCE CASE

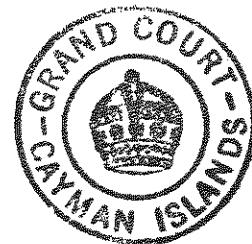
22. The Defence point to the fact that the Defendant has pleaded guilty – thus saving the Complainant any upset or embarrassment by having to undergo giving evidence in the Grand Court and be subject to cross examination.

23. The Defence describes the incident as regrettable, but, mercifully short-lived.

24. Defence counsel, Ms. Robertson, submits that although the Complainant and the Defendant were relatives, it is not a traditional breach-of-trust case, as there is only a 5-year difference in age between the Complainant and the Defendant.

25. Ms. Robertson highlights and relies upon what she describes as extremely full reports from the Probation Officer, Joseph Tatum, dated the 5th and 6th November 2013.

26. The Defence submits that the Defendant is the only son of Wayne Bellafonte Snr. and Dionne Johnson. The parents separated when the Defendant was 7 years of age. It is clear from the report that it was an extremely acrimonious divorce. It is also clear from the report that the Defendant was subject to emotional and physical abuse – which clearly had a detrimental effect on his childhood and teenage years. The Defendant lived with his father until Hurricane Ivan hit the Cayman Islands in 2004, after which the Defendant was sent to Boarding School in Colorado.



1 27. When the Defendant returned to the Cayman Islands he asked to reside with
2 his mother and he has been living his mother since that time. The Defendant
3 attended John Gray High School where he achieved 6 CXC passes and began
4 attending the University College of the Cayman Islands for 6 months. The
5 Defendant dropped out of college due to transportation issues.

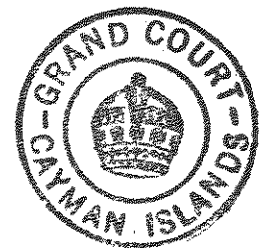
6 28. The Defendant began working with MAC Plumbing services for 3 months,
7 but left the job because he felt he was not being paid enough. The Defendant
8 then worked for CSG Construction as a mason, but was laid off and replaced.
9 The Defendant's last job was working as a kitchen assistant with the Reef
10 Resort – a position he held for over 12 months.

11 29. However, the Defendant has not been employed since 2011 and has been
12 dependent on his mother since then.

13 30. The Defence highlights the fact that the Defendant has been consuming ganja
14 since he was approximately 12 years of age and would smoke up to four or
15 five spliffs per day. This dependency on drugs worsened after he was
16 involved in a serious car accident and he relied on both ganja and alcohol to
17 alleviate the pain.

18 31. In March 2013 the Defendant's younger stepbrother shot himself – the
19 evidence being that his stepbrother was also the subject of some significant
20 abuse.

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1 32. Defence counsel submits that the Defendant has been robbed of a normal
2 childhood and has experienced some traumatic and damaging experiences –
3 from being physically and emotionally abused, to losing his younger brother
4 so tragically, and being involved in a serious car accident.

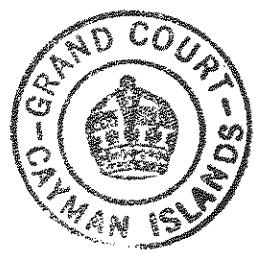
5 33. The Cayman Islands Court of Appeal (CICA) has stated that the Grand Court
6 and CICA can rely on the UK Sentencing Guidelines Council’s Definitive
7 Guidelines and I am grateful to both counsel for their helpful research of the
8 guiding case law.

9 34. This Court must examine the exact nature of the sexual activity and this
10 would be starting point in assessing the seriousness of the sexual assault.

11 Both counsel accept that there has been contact, albeit minimal, between the
12 genitalia of offender and the genitalia of the victim. The Guidelines suggest
13 that the starting point for the offence of Indecent Assault of this nature – that
14 is for someone who pleads not guilty, with no previous convictions – is 3
15 years’ custody, where the victim is 13 years or older and the sentencing
16 range is 2 to 5 years’ imprisonment.

17 35. The Court notes that this charge is not as serious as the charge of defilement
18 of a girl who is under 13 years of age, where the starting point under the
19 guidelines is 5 years’ custody and the sentencing range is 4 to 8 years’
20 imprisonment.

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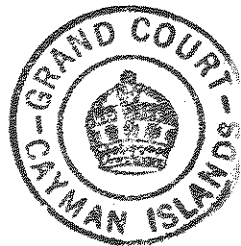


1 36. The Defence in that case also relies on the case of indecent assault *R v. Y* –
2 dated September 2008. The Defendant pleaded guilty to indecent assault on a
3 5 year old boy and Smith J. (Actg.) imposed a sentence of 2 years’
4 imprisonment.

5 37. The Defence also relies on the case of *R v. X* – where a 40 year old man was
6 sentenced to 2 years and 8 months by Swift J. (Actg.) for a sexual assault on
7 a 5-year old child. In that case the Defendant immediately admitted his guilt,
8 pleaded guilty, and, on the 26th August 2013 received a sentence of 2 years
9 and 8 months imprisonment.

10 38. The Court has also been greatly assisted by a VIR prepared by Ms. Marvalee
11 Collins. The report reveals that the Complainant was really scared and
12 wondered why this would happen to her and why the Defendant had decided
13 to do what he did. As a result the Complainant is anxious about being left
14 alone at home and, further, feels uncomfortable in male company. The
15 Complainant said she had two bruises – one on either side of the neck, which
16 resulted from the Defendant sucking on her neck. The VIR does not reveal
17 any further injuries. The Complainant says she is a little scared of the
18 Defendant as she is not sure what he will do.

19 39. The aggravating factors are that the Defendant forced himself on the
20 Complainant when he knew it was against the Complainant’s wishes. The
21 Defendant also would have known that the Complainant was alone and was
22 15 years of age. Additionally, it appears, from the evidence that the
23 Defendant went back to the Complainant’s house on that day for the sole
24 purpose of committing this offence.
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1 40. The Court must always consider the victim's views, but also the Court must
2 be wary and extremely cautious about sentencing the Defendant or any
3 Defendant on the basis of the victim's views – as these may vary from one
4 extreme to the other. However, in this case I note that the victim's mother
5 has come forward and volunteered the following statement:

6 *“The Defendant was a nice boy, he was smart, and to see him going this*
7 *way it is sad. I have kids as well, so I do not think he should be put away*
8 *for a long time, but I feel he should be punished.”*

9 41. I take into account the helpful reports from Mr. Tatum and Ms. Collins. I also
10 take into account the helpful submissions made by the Crown and the
11 Defence.

12 42. The Court notes that the Defendant was a good school child despite a rather
13 unhappy upbringing. The abuse he suffered has clearly affected his ability to
14 make friends and socialize. I do also take into account that the tragic suicide
15 of his sibling must have had a dreadful effect on him.

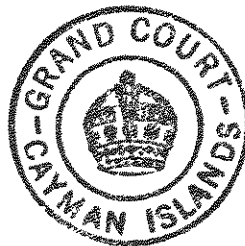
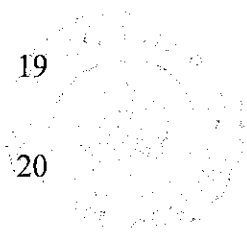
16 43. There are mitigating factors which I now take into consideration.

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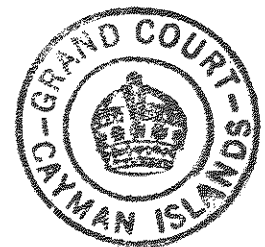
1 The Defendant has no previous convictions for offences of this nature. I also
2 note from the SIR that the Defendant complied with all the conditions on a
3 previous Probation Order. The Defendant has expressed his remorse and the
4 SIR reveals that, based on his criminal history, he has a low risk of re-
5 offending. Also, the victim's mother has expressed her wish that the
6 Defendant not be sent to prison for a long period.

7 44. Every case of a sexual assault is a cause of serious concern to this Court.
8 However, for the purposes of considering the appropriate sentence for this
9 Defendant I find his action to be less serious than the cases of *R v. X* and *R v.*
10 *Y* – where the Defendants received 2 years and 8 months and 2 years,
11 respectively, for sexual assaults on 5 year old children.

12 45. Accordingly, for the above reasons I find that the starting point for this
13 offence is two years and 6 months' imprisonment. I am of the view that the
14 Defendant should receive a 25% reduction for his guilty plea. Had the
15 Defendant pleaded guilty in April 2013, the full 33 ¹/₃ % reduction would
16 have been afforded to him.

17 46. In all the circumstances I impose a sentence of 22 months' (1 year and 10
18 months) imprisonment. Time spent in custody is to be deducted from this
19 sentence.

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1 47. Finally, I endorse Mr. Tatum's remarks in the SIR that the Defendant should
2 be encouraged to access the rehabilitative services offered by the Re-Entry
3 Team at HMPS Northward. Furthermore, the Defendant has demonstrated
4 that he has the ability to stay in gainful employment. The Court strongly
5 recommends that upon his release the Defendant stays away from drugs and
6 persons who supply drugs, and returns to the UCCI to complete his course in
7 computer sciences as soon as possible.

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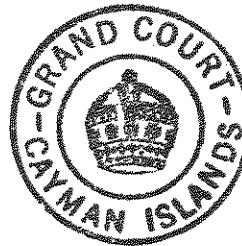
9 **Dated this the 12th day of December 2013**

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14 **Honourable Mr. Justice Charles Quin**
15 **Judge of the Grand Court**



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