

**IN THE HIGH COURT OF BELIZE, A.D. 2023
(CRIMINAL DIVISION)**

NORTHERN SESSIONS – ORANGE WALK DISTRICT

INDICTMENT No. 22/2021

THE KING

v

EMANUEL PECH

Charge – Attempt to Rape a Child

Before H. Lord (J)

Appearances

Ms. D. Chell for the Crown

Defendant – Unrepresented

Heard May 3, 4, 5, 9, 10

JUDGMENT

- 5 The accused stands indicted for the crime of Attempt to Rape a Child.

Particulars of Crime

That Emanuel Pech on the 30th day of April 2020, in Guinea Grass Village, in the Orange Walk District, in the Northern District of the Supreme Court attempted to Rape YP a person under the age of 16 years, to wit 12 years of age.

5 Attempt to Rape of Child, contrary to Section 47A read along with Section 18(2) of the Criminal Code, Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2011.

Elements of the offense of Attempt to Rape a Child

1. That the complainant is a person, in this case, a female person.
- 10 2. That the complainant was under the age of 16 years at the time of the incident.
3. That it was the defendant, (Emanuel Pech) who attempted to have sexual intercourse with the complainant.

Here I now note that the standard of proof of each element is proof beyond a reasonable doubt.

15 The accused when arraigned pleaded **Not Guilty** to the charge on the Indictment, a trial then proceeded before me without a jury by virtue of (Act No. 3) of 2022 which amended Section 65(A) of the Indictable Procedure Act, Chapter 96 Laws of Belize dated 22nd March 2022.

BURDEN AND STANDARD OF PROOF

20 Sitting as a judge alone, I am both the trier of fact and of the law, as such I now direct myself and keep in mind throughout my deliberation of this matter that the Prosecution has the burden of proof on this case, and that the accused has nothing to prove whatsoever, but rather it is the Prosecution that has the duty to prove each element of the offenses before the court.

5 I have further noted, and I have directed myself that the Prosecution must prove each
element of the offense by providing me with evidence of such quality that I can feel
sure of the respective elements.

And finally, if I have no doubt, then I can be certain of the guilt of the accused; and
10 may then convict him. However, if on the other hand, the Prosecution fails to make
me feel sure, and if I have any reasonable doubts of any of the elements of the
offense, then I will be obliged to acquit the accused of the charge of Attempted Rape
of a Child.

The court also here noted the Criminal Code (Amendment) (No. 2 Act) Act No. 12
15 of 2014 which amended the Criminal Code, Chapter 101 of the Laws of Belize (RE
2011)

Which stated at 47(A) –

*“Every person who rapes another person, and that person is under the age of
16 years commits an offense and is liable on conviction on indictment to
20 imprisonment.”*

And the court also noted Section 18(2) of the Criminal Code which stated as follows-

*“Every person who attempts to commit a crime shall, if the attempt be
frustrated by reason only of accident or of circumstances or events
independent of his will, be deemed guilty of an attempt in the first degree, and*

5 shall (except as in this Code otherwise expressly provided) be punishable in
the same manner as if the crime had been completed.”

The court here also noted that Act No. 3 of 2022, dated 24th March 2022 has expanded the list of offenses triable without a jury in certain criminal cases by amending Section 65(A) (2) of the Indictable Procedure Act to include Section 3(G) thereby including sexual offenses as one of the offenses now triable by a judge sitting alone.

The Prosecution’s case

Here the Prosecution called a total of seven (7) witnesses during the trial –

1. The first element – that the complainant is a person, and in this case a (Female
15 person)

The Prosecution here called the following witnesses to prove its case –

AP sworn stated – I had a daughter YP; her date of Birth is 24th June 2007. She was born at Hospital in Orange Walk. Her father is IMP. When my daughter was born I registered her birth certificate.

20 YP is my daughter, at my house I call her S but here she is Y, in school she uses Y. S and Y is one and the same person. In the birth certificate her name is YP.

PC (#954) Concepcion Marroquin sworn states – I was stationed at Domestic Violence Unit, Orange Walk Police Station. On 30th April 2020. I was working 4:00 p.m. to 6:00 a.m. the following day. On that day at 4:30 p.m., Jewel Cowo arrived

5 at the station with AP, and he daughter Y, 12 years old, date of birth –24th June 2007.

They arrived at the Domestic Violence Unit and Y made a report to me.

On the 8th of October 2020, I received Y’s Birth Certificate from Vital Statistics. We applied for it under her name Y.

10 It is noted this certificate was accepted as **(Exhibit CM2)**. The witness continued the Entry Number is 828, Name – YP, Date of Birth – 24th June 2007. Mother’s name – AP. Where the birth took place – Northern Regional Hospital and signed by Glenfield Dennison who signed for the Registrar General.

The Complainant, Y also testified and stated - I am YYP, my mother calls me Y
15 and she also calls me S. My date of birth is 24th June 2007. I live at Guinea Grass. I live with my mother. At the moment I am not going to school.

Now the court having seen and observed the virtual complainant and the court having noted and examined the birth certificate (#828) in the name of (YYP), date of birth
20 - 24th June 2007 noted the sex of the child there on is stated as a female.

Additionally, the medical doctor (Dr. Octavio Mesh) stated that on 30th April 2020, he was on duty at Northern Regional when he was requested by PC Marroquin to examine a patient (YYP). She was 12 years old. Present was the mother and PC Marroquin. I found the Mount of Venus is well developed. The vagina itself is well-

5 formed. During the examination, I saw the hymen was intact. The doctor's testimony proved the patient was a female person.

Therefore, after review of the above evidence and having seen/observed the virtual complainant when she gave evidence in trial, the court can here reasonably conclude
10 that indeed the complainant is a person (a female person). Therefore, it is accepted that the Prosecution has proven this element to the court.

2. **The second element – That the complainant was under the age of 16 years at the time of the incident (30th April 2020)**

The Prosecution here called the following witnesses in an endeavour to prove this
15 element to the court.

AP who stated as follows – YP is her daughter, born on the 24th of June 2007. She was born at Hospital in Orange Walk. I registered her on 3rd July 2007. I received a Birth Certificate. She also identified the Birth Certificate bearing the name YYP dated of birth 24th June 2007, and her name AP nee T as the mother and IMP as the
20 father both of Guinea Grass Village, Orange Walk District, and parents of the said child.

PC (#954) Concepcion Marroquin also sworn stated that during the investigation of this matter, she received on the 8th of October 2020 the birth certificate of YP from

5 the Vital Statistics Office and she described it as containing the name YP and its number as #828. It contained the name of the mother as AP, born at the Northern Regional Hospital, and signed by Glenfield Dennison for the Registrar General. The court notes the certificate was accepted without objection as **(Exhibit CM2)**

10 YP (Complainant) also gave evidence stating her date of birth is the 24th June 2007, and she lives with her mother at Guinea Grass Village, Orange Walk District.

The court here noted the above evidence produced by the Prosecution witnesses before this court, and concluded and accepted the evidence of her birth (YP) as being 15 24th June 2007, therefore, on the date of the incident that being on the Indictment as occurring on 30th of April 2020, then the complainant YP was only 12 years old. Therefore, she was under the age of 16 years old at the time of the said incident.

The court, therefore, accepts that this element has also been proven by the 20 Prosecution beyond a reasonable doubt to the satisfaction of the court.

3. **The third element – That it was the defendant (Emanuel Pech) who attempted to have sexual intercourse with the complainant**

The Prosecution here called the following persons in an endeavour to prove this element to the court.

5 **YP who stated** – I recall 30th of April 2020 at around 11:00 a.m., I was in the room of my brother J. At home at that time was only myself, and my brother Manuel (Emanuel), and my mother who was washing clothes in the kitchen. Emanuel (Manuel) Pech’s full name I do not know. He is my brother; I grew up with him. I was studying in Jerry’s room on the bed of my brother J, and I had my belly down.

10 Only Manuel was in the room of J with me. He started to lay me on the bed, and he started saying **“hola mi amor” or my love**. He start kissing me, he start caressing me. He kissed me on my chest, he did not do nothing to me, then he brought down his pants, and he laid me down on the bed, he heard my mother, he opened the window, and look through the window that my mother is coming, he put up his

15 boxers/his pants, then he went to the living room to see. I was sitting in the bed of my brother Jerry, then my mother looked at me, and I looked at my mother, I went to the bathroom. When I finish in the bathroom, he was looking in the hall, so I told my mother, Manuel started kissing me, he kissed my chest. When she heard that he had done these things to me, her pressure went up. She didn’t like what I told her,

20 that he was kissing me. She went to throw away the water of the chicken, then my brother N got up, he heard that there was noise there, then Manuel said that that was not him and he will ask forgiveness from our mother.

5 When Manuel brought down his pants, I saw his penis. He laid me down on the bed,
start kissing me, before he brought down his pants he kissed me on my neck. He put
up my dress and my underwear and my boxers. He took it off to give me kiss. When
he put me to lay down on the bed, he had already taken off my clothes (yes).
He start kissing my mouth and I didn't want, I was able to see Manuel. I look at him
10 ugly. He was in the bed, the same bed I was lying on (yes).
He put up his boxers and his pants, he saw that my mother was coming and he
quickly went to sit in the living room.

When he was kissing me on my neck, I was able to see his face. The lighting and
15 the window was open and the sun was clear/fair.

The incident lasted about one time. No, I can't recall how long.

I was crying, I was frightened. Then he put up his pants and his boxers and he went
to the living room to see. He was looking at things of God on YouTube. He sat on
the bed then I went out of the room, and I went to the bathroom.

20 My brother N got up and heard the noise there. He heard Manuel come out and tell
his mother – “Mother forgive me.” He heard N said, “How can you do that to your
sister, your little sister?”

The court noted here a request for the witness to be allowed to see (**Exhibit OV3**)
photograph of Interior of House.

5 The witness here stated – this is the bed of my brother where I was lying down, the window was open, this is the same bed Emanuel Pech was with me on.

When both of us were on the bed after he removed my clothing he continued to kiss me on my mouth. He kissed me my mouth, neck and my breast. He was on top of me while he was kissing me, that all he did to me.

10

My mother took me to the clinic and Mr. Cowo come, the Police come. While Emanuel and me were on the bed nothing obstructed my view of him. The window was opened (N.B. witness identifies the window of the building in Exhibit OV1) to the court.

15 No questions cross-examination by defendant (Emanuel Pech)

The court here notes very carefully that in dealing with the identification evidence of the virtual complainant I here remind myself in accordance with the case of **R v Turnbull [1977] 1 QB 224** of the very special need for caution before convincing the accused in reliance of the evidence of the virtual complainant (e.g. YP) of the
20 identification or recognition she made on the 30th April, 2020. Therefore, I must consider that a witness who is convinced in his/her own mind may as a result be a convincing witness but may nevertheless be mistaken.

5 Therefore, I note that mistakes can be made in recognition of someone known to a witness or even a close friend or relative, and I note here that a number of such witnesses can also be mistaken too.

Therefore, as the jury in this case I warn myself that I should therefore examine very
10 carefully the circumstances in which the identification was made of the accused
(Emanuel Pech).

Therefore, I bear in mind the following questions as I recall the deposition/evidence of YP as to her identification/recognition of the accused on 30th April, 2020.

15 1. **How long did she have the person she says was the accused under observation?**

It is noted the virtual complainant did not give a time when the incident began or lasted. However, she stated on 30th April, 2020 around 11:00 a.m. I was in the room of my brother Jerry. At home at the time was only myself and my brother Manuel
20 (Emanuel) and my mother was washing clothes in the kitchen. I was studying in J's room on the bed of my brother J. Only Manuel was in the room of J with me. He started to lay me on the bed, and he start kissing me. He kissed me on my chest. Then he brought down his pants, and he laid me down on the bed. He heard my mother. He opened the window and look through the window that my mother is

5 coming. He put up his boxers, his pants. He went to the living room to see. It is noted that here the time was around 11:00 a.m., and the window was opened.

2. **In what light did YP see the accused?**

The virtual complainant stated the window was opened. Nothing obstructed my view of him. So, this incident lasted for some time and it can be inferred from the time
10 11:00 a.m. it was daylight.

3. **At what distance did she see the accused?**

The virtual complainant stated when both of us were on the bed he removed my clothing, he continued to kiss me on my mouth, neck and breast. He was on top of
15 me while he was kissing me. It is noted the inference that can be drawn here is that the accused from the above evidence was extremely close to the virtual complainant (e.g.) that close to kiss her mouth, her neck and breast, directly close (e.g.) on top of her while he was kissing her. So the inference that can be drawn is he was extremely close to the virtual complainant.

20 4. **Did anything interfere with the observation of the person?**

The complainant here stated nothing obstructed my view of him.

5. **Had the witness ever seen the person she said she knew before?**

The virtual complainant stated he was her brother, I grew up with him.

6. **If so, how often?**

5 She said in one week she saw him 1 time, 2 times. She grew up with him.

Here then, after a very careful reading of the evidence and following **the Turnbull**
guidelines in this case, I have accepted that YP had more than enough/sufficient
opportunities and time in the narrated circumstances of the events before the court
on 30th April, 2020 to observe and recognized the person she said she saw and
10 recognized before, during and after the incident at her home at Guinea Grass Village
on 30th April, 2020 and whom she named as Emanuel (Manuel) Pech her brother.

Here also I further noted the **case of Fremantle** in which Their Lordships of the
Privy Council stated –

15 *“An examination of the circumstances of which the quality of the evidence of
their visual identification of the defendant reveals that the quality of the
evidence was exceptionally good (e.g.) First the identification was by way of
recognition by eyewitness who knew and had previously seen the defendant.”*

20 So, here I note from the evidence of YP she knew the defendant, and had grown up
in his company at her home in Guinea Grass Village and she knew the defendant as
her older brother Emanuel (Manuel) Pech.

5 The court also further noted and considered the evidence of the complainant and
therefore after very careful consideration by looking carefully at the evidence of
identification before this court, I here now accept that this witness YP had ample and
sufficient time to see, and recognized the person whom she described as knowing as
her brother (i.e. the accused) on the 30th April, 2020 at her home (in Jerry's room) in
10 Guinea Grass Village, Orange Walk District.

Therefore, I am satisfied this part of the element has been proven by the Prosecution
to the court to the requisite standard.

15 The Prosecution here called AP, who stated – I live at Guinea Grass Village, Orange
Walk District. I live with my children. In April 2020 Emanuel Pech lived in the
house of his brother Ismael Pech. His house is located in the same yard.

The witness continued – I had a daughter YP, she was born at hospital in Orange
Walk. Her father is IMP. When my daughter was born, I registered her on 3rd July,
20 2007. I received her birth certificate (N.B. witness identified document shown to
her as birth certificate of her daughter YP). In April 2020 I lived in Guinea Grass
Village I alone with my children.

5 I recall 30th April, 2020 I was in my house doing my work, cleaning, washing. I was
out there, that was at my house, only me and my daughter YP. Only her brother
Emanuel Pech was there, I sent him to buy chicken and ideal. He came back home.
When he returned to the house, he went back home and was looking at the TV at my
house. YP was at home in her room doing her chores, my son N was there also, but
10 in the other house, the house of his sister (A) located in my own yard. Because as a
mother I trusted my son Emanuel, so they were in my house. No-one else was there.
I did laundry outside of my house; from where I do laundry I cannot see inside of
my house. When I finish I went to clean the chicken, so I can cut it at my kitchen
next to the house where we stay. I went to the kitchen by the door to enter the house.
15 The window lead to my room and son J. YP slept with myself in April 2020, and
that room is my room as well.

When I went in, I saw a difference in my daughter, I saw her frightened, crying (YP)
my daughter. I went outside to throw away the water, I washed the chicken, and she
20 followed me. She was frightened, and told me that her brother wanted to hold her
(Manuel Pech).

I went to him and I asked if it is true, he said no, sorry mom, I did not do that to my
little sister. She told me, I don't remember exactly, but she indicated he wanted to

5 abuse her parts. I said you wanted to do something with your sister? He said, no
mom, no mom.

When I entered the house and I saw YP crying, Emanuel was inside the house. I was
very frightened, in shock for a while. I decided not to do the cooking and I went to
10 the clinic in Guinea Grass. I told the nurse, she said she couldn't do anything she
will call the Social (Cowo). Cowo arrived at the clinic and spoke with my daughter.
Cowo went to the Police Station. He brought YP and myself to Orange Walk. He
took us to the Hospital.

15 Then the doctor came at the one here. The Government Hospital. Present at the
hospital was the Social, me, and the doctor and my daughter. The girl brought us
here (Marroquin). This Police was present at the hospital with us. The doctor check
YP.

20 When YP make the complaint she was frightened, trembling. I embraced her and I
want to know if anything more serious had happened to her. When I saw YP crying,
only two of them were inside the house. The distance from where I was to where
the house was, is approximately 40 feet away.

5 **CROSS-EXAMINATION BY THE DEFENDANT (EMANUEL PECH)**

Q. When she was doing the laundry was there any obstruction for her to see where I was sitting down?

A. No, I was not able to see him.

10 The Prosecution also called PC#954 Concepcion Marroquin who stated – In April 2020, I was stationed at Domestic Violence Unit, Orange Walk Police Station. On the 30th April, 2020 about 4:30 p.m. Jewel Cowo arrived at the station with AP and her daughter YP, 12 years old. Date of Birth – 24th June, 2007. YP made a report to me and based on her report I informed Ms. AP a medical examination would be done
15 on her daughter. I filled out a consent form in the name of YP and signed by the mother and Social Worker. I escorted both to the Northern Regional Hospital. There Dr. Octavio Mesh conducted a medical examination on YP. Present, her mother Aureliana and I was present. On conclusion of the medical examination he wrote his findings which he signed and gave back to me. I observed some bruises on the
20 body of YP and on her chest.

After receiving the form, I escorted Aureliana and YP to the office, and there I recorded a statement from YP in the presence of her mother.

5 Later, I went to the cell block and I asked for Emanuel Pech and he identified himself to me. I informed him of the reason of his detention for the crime of Sexual Assault and Attempt to Rape of a Child. I cautioned him and I told him his constitutional rights. I got an identification and his name was Emanuel Pech. I gave him a copy of his acknowledgment form after he signed it.

10

On 1st May, 2020 I informed Emanuel Pech of the procedure of an interview and requested the assistance of Justice of the Peace (JP) Ruben Vargas. When the JP arrived I introduced the JP to Mr. Pech. I exited the office which is downstairs of the Police Station. About 15 minutes later I returned to the office and the JP told me he had spoken to Emanuel Pech. I commenced the Notes of Interview at 1:00 p.m. I started in the English language as that was the language Mr. Emanuel Pech was speaking in to me. I told him the reason for his detention, I cautioned him. I told him his constitutional rights. I then proceeded to ask him eleven (11) questions which is not numbered. At the end of the interview I read it over to Emanuel Pech. I asked him if he wanted to change anything, he said no. I asked him to sign when he did. I asked the JP to sign which he did and stamped on the two (2) pages. I also signed the document, while I asked him the questions, I was writing down the questions, and when he answered, I wrote down the answer.

5 On the 8th October, 2020 I received YP's birth certificate from Vital Statistics, we applied for it under her name YP. Date of Birth – 24th June 2007, Mother's name – AP, Born at Northern Regional Hospital. It has Mr. Glenfield Dennison who signed for Registrar General. This was accepted as **Exhibit CM2**.

10 The Prosecution also called Dr. Octavio Mesh who stated as follows – after being accepted as an expert Gynecologist/Obstetrician in medicine. “I remember the 30th April, 2020 at 6:00 p.m. I was called by doctor at Emergency of a patient on request of PC Marroquin to investigate an Attempt Rape. The patient was YYP, and she was 12 years old. Present, I saw PC Marroquin and the mother of the patient AP. I
15 examined the patient and I observed equimosis (a violent bruise) on the chest of the patient and the arm of the patient and it was on the left breast of the patient also.

On the examination of the genital parts of the patient I found the genital was normal at that time. The vagina itself is well form, no bruises were seen at that moment.

20 This is the outside of the vagina. I examined the inside of the vagina, during the examination I saw the hymen was intact, no signs of penetration, laceration or secretion.

5 I found two (2) equimosis on the upper part of the left breast (bruises). In my opinion I could say it was like a person sucking in the area that cause these bruises. I filled out the form. I handed it to the PC and Social Worker.

Defendant – no questions.

10 The prosecution also called Francisco Camera who stated – In April 2020 I was stationed at Guinea Grass Sub Station, Orange Walk District for one year. I recall 30th April, 2020. I was conducting duties when Mr. Cowo of Human Services Department arrived at the Substation seeking assistance to detain one Emanuel Pech who was known to me. I proceeded along with Mr. Cowo to Emanuel Pech’s
15 residence, whilst at the residence of Emanuel Pech I saw him standing outside of his house. I approached and I identified myself, and I informed him of the report made against him. I then warned him of his constitutional rights, cautioned him, detained him and escorted him to Guinea Grass Police Substation. I placed him in the holding cell and I called for assistance from Orange Walk Police Station.

20

About one (1) hour to one hour and a half (1½) hours the police mobile arrived, I handed over the prisoner to the Orange walk Police (Emanuel Pech).

5 The Prosecution also called Oscar Valladarez, Senior Crime Scene Technician who stated – I remember 6th October, 2020 a request was made by Police Department to assist by way of photography at Guinea Grass Village by PC Concepcion Marroquin (#954).

I made my way to Guinea Grass Village and arrived at 2:50 p.m. I met PC Marroquin
10 who gave me a short briefing. Thereafter, I did a visual inspection, I saw a wooden with zinc building residence of Ms. Pech. On gaining access to the building I took note of a make ship partition separating the kitchen area from the bedroom. There was a wooden wardrobe and there is this length of cloth, the cloth is used as the entrance door of sorts, and the wardrobe is part of the wall of the partition. The other
15 side is made of Celotex chest height. Inside I saw a wooden bedframe and a standard size mattress. I took two (2) photographs from inside the building and one of the mattress seen inside the building (both midrange) I step outside and I took an overall photograph from the building. I then made my way back to Orange Walk Police Station at the Scenes of Crime Office, I printed the three (3) photographs and three
20 (3) copies of each. I generated a report of one page and I handed over the report and pictures to PC Marroquin on 6th October, 2020. It is noted these pictures were accepted without objection and accepted as **Exhibit OV1 to OV3.**

5 The Prosecution also called Ruben Vargas who stated as follows – I am a Justice of
the Peace (JP). I am a retired Teacher. I have been a JP for about twenty (20) years.
I remember 1st May, 2020 at 1:00 p.m. I received a call from PC Marroquin to help
her with Notes of Interview. I came to the station and met PC Marroquin. I was
escorted to the Domestic Violence Unit Office insider the station. There she
10 introduced me to Emanuel Pech and she told him of the purpose of my being there.

When I entered the Domestic Office nobody else was there except Mr. Pech. Then
she told me she will give us time so I can speak to Emanuel Pech alone. She went
out of the office and left us. Then I spoke to him, we spoke about the reason he was
15 there, the charge of attempted raping of a child, whether his rights were upheld, if
he was maltreated. No complaints were made to me, none whatsoever. This lasted
about 15 minutes, then PC Marroquin knocked on the door and she entered the
office. She started speaking to Emanuel Pech, she told him the reason for his arrest,
for the attempted Rape. The she told him about his rights. Then she cautioned him,
20 she read the caption of the caution. She began the Interview; and the questions and
aske wrote down the answers. Once the questions were finished, she proceeded to
read all the questions and his answers to him. She asked him if he wanted to make
any corrections and Emanuel Pech said it was okay. Then Emanuel Pech signed all

5 the captions and at the end of the two (2) pages of the Interview and I also signed
and I stamped it (e.g.) on the two pages at the bottom.

No-one else was not in the office during the interview. Non-one threatened or
promise Emanuel Pech anything. It is noted this document was accepted as **Exhibit**
10 **CM1**.

THE DEFENCE

The defendant after being told of his constitutional rights choose to give sworn
evidence. Therefore, here I now direct myself to note that the testimony given in
15 court on oath is sworn evidence/testimony.

I here therefore note that I am obliged to consider it, and I must give it the same
weight and cogency that I would give to the Prosecution's witnesses, especially
when considering whether or not the Prosecution have made out their case against
the accused person.

20

I now therefore note that the accused/defendant has stated on oath as follows – I am
34 years old, date of birth – 27th October, 1988. I am a farmer. On 30th April, 2020
I didn't have a fixed job for the reason of an accident I had. I used to go to the
Village of Shipyard and the Mennonites took compassion on me to chop only with

5 my right hand. So, I went to Shipyard with a Mennonite who gave me job. I returned to Guinea Grass Village on my bicycle. At 11:00 a.m. (morning) I reach the house of my mother as she always help me with a plate of food when I am hungry. That was a sunny day, the day was bright.

10 When I arrived at my mother's house she was washing. She (my mother) told me she was warm if I could do her the favour to buy some ideal. I went to buy the ideal. When I returned with the ideals she gave one to me. I said mommy could I see TV while I suck the ideal. She told me that is no problem. From where she was washing she could have seen me clearly where I was sitting about 15 feet. She called my
15 little sister who was studying in Jerry's room and give her an ideal. She had her tablet with her, and it did not have no game; while I was looking for discovery channel my mother had her cell charging in top of a wardrobe. YP took the cellular to play a game, my mother told her to leave the cellular where she had put it, because she had just put it to charge. YP put it once more because she is my younger sister.
20 She went into the room. A next time with the tablet. A short while she returned again and took the cellular again. She entered into a game not far from where I was and put it on high volume. I told her YP put that cellular where mother has it loading she told me don't tell me shit.

5 Then I told her leave it or I would put it to charge because I can't listen to two things
at the same time. She told me take it away from me if you can. Like how she is my
little sister I told her respect your brother don't talk to him like that. Then I stood
up, on my right hand side I have 100% strength, not in the left hand. She made it all
possible I cannot get the cellular as she held it with her two hands. I had to struggle
10 to take it away from her, and I took it away from her. I put it to charge again. She
with her vex face, she went into the room again and didn't return.

In a little moment when my mother came back. Because she was not far from where
I was seated, I don't know if YP pinched herself while in the room, concerning some
15 red bruises she said she had. When my mother entered the kitchen area to prepare
food so we eat YP came out crying from the room telling my mother that I abuse of
her, and that there was penetration and that her vagina was hurting.

My mother felt bad and told me why did you do that to your little sister? I took out
20 my tears promising her that I have not done that to her. My mother told me I will
take her to the doctor to make sure that what she is saying is true. My mother put
her into the room and examined her, but she still said that her vagina was hurting.
My mother then told me I feel it, but I have to take her to the doctor now.

5 That day N, my younger brother he has a job at the Call Center but the reason of the
Pandemic he had to work in the same yard by online in the house of my little sister
J. The house is a bit high and it had about 20 feet from where I seated, the front
door. The front of J's house was open, I could see N and N could see me.

10 I was frightened I wanted to fix the problem of what she is accusing me. I walked
to Nelson, I said to him, little brother come here quick and he did it. He asked my
little sister YYP I don't believe Manuel have raped you, say the truth because this is
something serious. She did not want to say the truth. She said yes. Then YP and
my mother started walking towards the clinic in Guinea Grass. She YP turned to me
15 and smiled.

When we arrived at the clinic there was an amount of people, we were waiting there
for a long while. I returned home, I did not try to escape. Little while the Guinea
Grass Police (Francisco Camera) went where I was waiting. He took out his club
and said if you run I will treat hard with you. I never did run. He went to lock me
20 up in the cell in Guinea Grass. A little while after the Orange Walk Mobile arrived
and they took me here. They never hurt me. When they made my case, they sent
me to Hattieville. When they brought me from Hattieville three (3) months later I
had a bail. For that reason I am out here with lot of respect. That is all I have to say.

5 **CROSS-EXAMINATION OF EMANUEL PECH BY MS. CHELL**

Q. You recall your mother said she couldn't see you on 30th April, 2020?

A. Sure she could see me.

Q. I am suggesting she couldn't see you.

A. Yes, she could see me, but she said she couldn't see me.

10 Q. When YP said you can't tell her shit, how it made you feel?

A. Very bad.

Q. You said thereafter there was a struggle.

A. Yes.

Q. Describe the struggle.

15 A. Front and front., she held the cellular hard in front.

Q. Describe the struggle.

A. When I stood she stood in front, she held the cellular very hard without yelling.

20 Q. If she is an attentive mother, would she have gone into the house because of the struggle?

A. Maybe she couldn't have heard because of the washing machine noise.

Q. You agree can attentive mother seeing two of her children struggling would intervene.

A. Yes.

5 Q. Your mother did not intervene?

A. No.

Q I am suggesting she did not intervene because the struggle did not take place.

A. Yes, it did occur.

10 Q. I am suggesting you took off your underwear and you also took off YP pants
and tights.

A. No.

Q. You got on top of YP and started to kiss her?

A. No.

15 Q. You kissed her on her mouth, neck and breast causing the marks stated in this
trial?

A. No.

Q. The only reason you stopped is because you heard your mother coming from
the laundry room?

A. No, I never did that.

20

The defense called one witness on its behalf, NP who stated – I am 29 years old. I live at Guinea Grass Village. On 30th April, 2020 on a Thursday at 11:00 in the morning I was in the other house working, after that I heard my mother speaking

5 loud. I came out running, and I asked what happening. My mother mentioned that my little sister told her that my brother had raped her.

This moment I told my mother to check the child, in the room. My mother touched my sister and saw no harm. I asked my younger sister did he touch you. And she
10 crying, said no. I asked her why you say Manuel raped you. I mad, frustrated, I told my mother check her again. Then she my mother confirmed to me there was no damage on the child's body and said I will go to the nurse to check her better.

At that moment I asked my brother again to supplicate and I asked if he touched the
15 child – he said no.

I asked my younger sister why you say what you say. She replied I don't know, I am just frightened.

I told my sister what you say will put my brother and family in a great problem. Then my mother left and here we are today.

20 **CROSS-EXAMINATION OF NP BY MS. CHELL**

Q. Can you see inside your mother's house?

A. From J's back door, yes, I can see inside my mother's house. I can see the kitchen.

Q. Who did you see?

5 A. I could see my mother in the kitchen.

Q. You did not see anything unusual?

A. No, because my brother Emanuel was outside under a mango tree. Whatever happened or did not happen I was not in the house, so I don't know.

Q. So you don't know if an incident occurred?

10 A. That is right.

Q. You cannot say what occurred inside your mother's house while you were not there.

A. Correct.

(N.B. Defendant declined to give any closing statement)

15

DISCUSSION

The court here notes the evidence of the defendant and his witness, and here considers that as against the Prosecution's evidence as presented.

20 It is noted the defense of the accused Emanuel Pech is that, yes, I was at home on the 30th April, 2020. I was inside having asked my mother for permission to watch TV inside the house/home. I went inside and my sister YP was there too in the same house, she was there too in the same house, she was in my brother J's room studying. She also had her tablet with her but it had no games. He stated he noticed his mother

5 had her cell charging on top of a wardrobe and YP took it to play game. She was told to leave it to charge and left it and entered the room again, this time there was talking (e.g.) argument and a struggle to get the cellular phone between himself and YP. He eventually took it away from her and she got vexed and went into her room again and didn't return.

10

So, Emanuel's defense raised is yes, we had a struggle, nothing else happened. She got vex and left. So, the defendant is saying I did not do anything to YP at all. Except struggling with her, took away the cell phone and she became vexed, nothing else happened between her and me.

15

However, when my mother came back inside, he claims she may have pinched herself while in the room, but she came outside from the room crying and told his mother that he had abused her and that there was penetration and her vagina was hurting.

20

So, his defense is what YP told his mother what she accused him of is not true. He never committed any offense or did her anything at all, so, she was lying on him he was an innocent man. He was frightened and he called his brother N who came and

5 spoke to his sister YP, who asked YP to tell the truth because this is something serious.

The accused (Emanuel) under cross-examination answered the questions of the Crown by refuting the questions concerning the said charge of Attempt Rape by
10 answering No or stating I never did that to my sister. He called his brother NP whom he claim could see him where he was seated in his mother's house while watching TV and who spoke to YP and their mother when he came over from Jessey's house. However, NP claims in his evidence and under cross-examination that his mother confirmed to him when he heard his mother speaking loud and he went running and
15 asked what's happening, his mother mentioned that my little sister told her that my brother had raped her. He stated he told his mother to check the child. This was done twice and the mother said she saw no harm. He continue I asked my younger sister, did he touch you, and she crying said no. I asked her why you saying Manuel raped you, she replied – I don't know. I am just frightened.

20

It is noted under cross-examination this witness answers as follows –

Q. Can you see inside your mother's house?

A. From J's back door, yes, I can see inside my mother's house. I can see the kitchen.

5 Q. You did not see anything unusual?

A. No, because my brother Emanuel was outside under a mango tree. Whatever happened or did not happen I was not in the house, so I don't know.

Q. You don't know if an incident occurred?

A. That is right.

10 Q. You cannot say what occurred inside your mother's house while you were not there.

A. Correct.

So, the inference to be drawn from N's evidence and replies are he did not see what occurred or know if any occurrence until he heard his mother speaking loudly, came
15 running from J's house where he was working and came over to his mother's house asked what was happening, was told and then made some suggestions which led to his mother leaving and take YP to the clinic in Guinea Grass to be examined.

Therefore NP's evidence and answers does not carry the evidence of defense any
20 further. His evidence is he cannot say what occurred inside he was not there. His answer was confirming the above statement.

So, here I rule his evidence carries the defense case no further, it does not enhance or help in anyway except for his statement that his sister told him I don't know, I am

5 just frightened and his brother's reply of no to his question if he had touched the child.

Therefore, the court will now look closer at the evidence of the virtual complainant and the evidence of the accused as made before the court in determining the question
10 of whether the accused is Guilty or Not Guilty of the **Attempted Rape of a Child.** And here the court will consider also whether on a charge of Attempted Rape if it is incumbent on the Prosecution as a matter of law to prove that the defendant physically attempted to penetrate the (woman's) child vagina with his penis?

15 In looking at the above the court notes the case of **Attorney General's Reference (No 1 of 1992) 1 WLR 1993 at 274 – [1993] 2 All ER 190** where the Court of Appeal considered the crime of Attempted Rape, Proof the offence and whether it was necessary to prove physical attempt to penetrate vagina with penis-

Lord Taylor of Gasforth (CJ) for the court noted and stated the ruling for the court
20 as follows –

Held - *“that in the opinion of the court, a prima facie case of attempted rape was sufficiently raised if there were evidence from which the intent to rape could be inferred, and acts were proved which a jury could properly regard as more than merely preparatory to the commission of the offence; and that accordingly it was not*

5 *incumbent on the Prosecution, as a matter of law, to prove that the defendant physically attempted to penetrate the woman's vagina with his penis."*

Here therefore the court now looks at the evidence of the virtual complainant and any supporting evidence of the Prosecution there in and also that of the defendants' defense evidence and of any supporting evidence of YP (the virtual complainant) here the court noted Section 18 of Chapter 101 (Criminal Code) Laws of Belize RE 2011 which stated as follows - Attempts to commit crimes

Section 8(1) - *"A person who attempts to commit a crime by any means shall not be acquitted on the ground that by reason of the imperfection or other condition of the means, or by reason of any circumstances under which they are used, or by reason of any circumstances effecting the person against whom or the thing in respect of which the crime is intended to be committed, or by reason of the absence of such person or thing, the crime could not be committed according to his intent."*

20 (2) *"Every person who attempts to commit a crime shall, if the attempt be frustrated by reason only of accident or of circumstances, or events independent of his will, be deemed guilty of an attempt in the first degree, and shall except as in this code otherwise expressly provided be punishable in the same manner as if the crime had been completed."*

5 The court now returns to the evidence before the court and it note and highlighting what YP (the virtual complainant) stated that on 30th April, 2020 at 11:00 a.m. I was in the room of my brother J. At home at the time was only myself, and my brother (Manuel) Emanuel, and my mother was washing clothes in the kitchen. Only Manuel was in the room of J with me.

10 She continued – He started to lay me on the bed, and her start saying “Hola mi amor” or my love. He start kissing me. He start caressing me. He kissed me on my chest. He brought down his pants and he laid me down on the bed. When Manuel brought down his pants and boxers I saw his penis. He laid me down on the bed, start kissing me, before he brought down his pants he kissed me on my neck. He put up my dress, 15 and my underwear and my boxers and undies. He took it off to give me kiss. When he put me to lay down on the bed, he had already taken off my clothes (yes). He start kissing my mouth, and I didn’t want. He was in the bed the same bed I was lying on (yes).

When both of us were on the bed, after he removed my clothing he continued to kiss 20 me on my mouth; he kissed me on my mouth, neck and my breast. He was on top of me while he was kissing me. That all he did.

She also stated – he heard my mother, he opened the window and look through the window that my mother is coming. He put up his boxers, his pants, then he went to

5 the living room to see. I was sitting in the bed of my brother J, then my mother looked at me, and I looked at my mother, I went to the bathroom.

The court here noted the accused/defendant is saying in his testimony. No, what happened was I there at home inside the house but I did nothing of the sorts to my sister.

10 He stated – I said mommy, could I see the TV while I suck the ideal, she told me that is no problem. From where she was washing she could have seen me. The court here notes, in the mother (AP) evidence she stated she could not see (Emanuel) the defendant from where she was washing. However, under cross-examination the defendant insisted (yes) she could see me, even when it was pointed out to him what
15 his mother had stated, he continued insisting she could see him.

He continued – She (YP) had a tablet with her and it did not have no game; while I was looking for Discovery Channel my mother had her cell charging on top of a wardrobe and YP took the cellular to play game, my mother told her to leave the cellular where she had out it. He continued – she put it back, went into the room,
20 and a short while she returned again and took the cellular and entered into a game and put it on high volume.

From his evidence this led to a confrontation where (defendant) he told her to leave it and eventually he continued and stated – then I stood up on my right hand side, I have 100% strength, not in the left hand, she made it all possible I cannot get the

5 cellular as she held it with her two hands. I had to strength to take it away from her,
and I took it away from her, I put it to charge again. She with her vex face, she went
into the room again and didn't return.

In a little moment when my mother came back, because she was not far from where
10 I was seated, I don't know if YP pinched herself while in the room concerning some
red bruises she said she had.

When my mother entered the kitchen area to prepare food so we eat YP came out
crying from the room telling my mother that I abuse of her, and that there was
15 penetration and that her vagina was hurting.

Here the court noted also the defendant stated his brother NP who was in the other
house could see him where he was. However, NP in his evidence and under cross-
examination stated –

20 Q. You did not see anything unusual?

A. No, because my brother Emanuel was outside under a mango tree. Whatever
happened or did not I was not in the house, so I don't know.

Q. You don't know if an incident occurred?

A. That's correct.

5 Therefore the court notes N's testimony and answers under cross-examination did not help the accused/defendant in any way concerning the incident of 30th April, 2020.

Here the court now looked again at the evidence of the virtual complainant (YP) and it is noted the matter was reported to the police and the mother, YP and the Police
10 subsequently went to the Northern Regional Hospital where doctor Octavio Mesh performed an examination on YP in the presence of her mother and PC Marroquin. He stated on 30th April, 2020 at 6:00 p.m. I was called on request of PC Marroquin to investigate an Attempt Rape. The patient was YP, she was 12 years old. I examined the patient and I observed equimosis (a violent bruise) on the chest of the
15 patient, and the arm of the patient and it was on the left breast of the patient also. On examination of the genital of the patient, I found the genital was normal at the time. I saw the hymen was intact. I found two (2) equimosis on the upper part of the left breast (bruises). In my opinion I could say it was like a person sucking in the area that caused these bruises.

20

The court here looking carefully at the evidence before it note in comparison of YP's evidence of her encounter on the 30th April, 2020 and the doctor's examination and findings, that Dr. Mesh's findings was comparable to the areas she pointed out and stated she was kissed on at about 11:00 a.m. from her evidence. This evidence

5 therefore backup, corroborate that indeed the areas of her body had been as the doctor described them (e.g.) in my opinion I could say it was like a person sucking in the area that caused these bruises.

Looking further from the Defense's evidence, there was only a struggle between himself and his sister YP. Therefore the court notes from the evidence of the Defense
10 these types of bruises found on the body of YP (virtual complainant) could/would not have occurred in the struggle described by the defendant for the cell phone.

However, looking at the evidence of the (virtual complainant) YP as confirmed by Dr. Mesh the type of bruises found on her body could be caused by a person sucking at the areas described causing equimosis or bruises on the 30th April, 2020.

15

Looking further the court after careful comparison of the evidence of the Prosecution (e.g.) the virtual complainant and that of the Defense it is further noted that PC Marroquin who was present and accompanied YP and her mother on the 20th April, 2020 at the doctor for examination of YP, also stated – Dr. Octavio Mesh conducted
20 a medical examination on YP, present - her mother AP and I was present. I observed some bruises on the body of YP and on her chest. The court notes this further corroborates the virtual complainant's story of what purportedly occurred during the encounter, she described occurred about 11:00 a.m. on 30th April, 2020 at her home in Guinea Grass Village.

5 Looking at the Defense evidence this was not corroborated even in a material particular, both the mother and the brother (N) stated emphatically they could not see Emanuel when he was in the house that day and did not know what occurred in the home. However, in comparing both the virtual complainant and defendant's evidence, after again careful consideration and noting the corroboration by the
10 doctor and PC Marroquin of the bruises described as found on the body of YP and noting her evidence of what occurred where she was kissed as she called and described it after her clothes was removed, the court here accepts her evidence, (the Prosecution's evidence) in preference to that of the defendant which as noted leaves a lot to be desired here.

15 Now having accepted (the story) the evidence of the Prosecution the court return to whether an attempt to rape YP occurred on 30th April, 2020.

The court therefore here notes that an attempt to commit a crime is itself a crime. However, before the accused can be convicted of this offence it must be proved.

- (a) that he had the intention to commit the full offence, and that in order to carry
20 out that intention, he
- (b) did an act or acts which is/are step(s) towards the commission of the specific crime, which
- (c) is/are directly or immediately and not merely remotely connected with the commission of it , and

5 (d) that doing of which cannot be reasonably regarded as having any other purpose than the commission of the specific crime.

The court here referred to the case of R v Patnaik (Lexis citation 322) Court of Appeal (Criminal Division) where Auld (LJ) in dealing with an attempt rape case stated at paragraph 26 of the ruling in directing the jury on the ingredients of Attempt
10 said in summing to the jury –

*“you must be sure of two things first, it was his intention to commit the offense of rape, and secondly, with that intention in mind, he did something which was more than mere preparation for committing the offence; you have to decide first whether you are satisfied so you are sure that it was his intent to rape the
15 complainant and if you are satisfied on that, then look at what went on and you may have no difficulty in saying well that was more than preparation.”*

The court note here the above direction in the above case. Therefore following the case of Attorney General Reference (No. 1 of 1992) and its ruling quoted above. The court again here review the evidence before it in order to decide if indeed an Attempt
20 to Rape a Child did occur, or not on 30th April, 2020.

Here YP stated she was at home about 11:00 a.m. lying on her brother Jerry’s bed studying. The only other person in the home at the time was her brother Emanuel (Manuel) Pech. Her mother was outside in the kitchen at the time. She stated her

5 brother suddenly came to her in the room and said to her as described in (YP)
evidence in this judgment, that he did certain things to her there and then (e.g.) she
stated her clothes were removed by her brother, and he removed his clothing too.
The inference is both the virtual complainant and defendant were nude/naked at that
time. He began kissing her on her mouth, neck and left breast and was lying on top
10 of her at that time. She was 12 years old, she was frightened and crying (e.g.) she
stated he start kissing me, he start caressing me, he kissed me on my chest. He
brought down his pants and boxers, I saw his penis. He laid me down on the bed
start kissing me. He put up my dress, and up underwear and my boxers and undies.
He took it off to give me a kiss. When he put me to lay down he had already taken
15 off my clothes (yes). He kissed me on my mouth, neck, and my breast. He was on
top of me meanwhile, he was kissing me.

Now looking at the above statements it was found at the medical examination she
had bruises on her chest, left breast, and arm. It was noted the defendant and the
20 virtual complainant were both nude as noted before on the bed in the room with the
defendant on top pf the virtual complainant (YP).

It is here noted the doctor described the bruises as someone sucking the area. It is
here noted the defendant denied this ever happening and only accepted he was indeed
in the room and had a struggle with his sister to take away a cellular from her, nothing

5 more. He denied any responsibility or doing any act/thing to his sister. Having noted
the above statements given by the virtual complainant which the court ruled it
accepted over that of the defense. I here noted and considered that the court should
give the words of the Section on attempt its ordinary meaning and natural meaning.
So, I now note that on the evidence before the court at this stage of the case. I am
10 satisfied that (he) defendant had from the evidence which has been accepted he had
embarked upon the commission of the offence itself, but that he had not gone beyond
the stage of attempt. It is noted the only inference which can be drawn from the
accepted evidence of the virtual complainant is if as she stated he heard my mother,
he opened the window and look through the window that my mother is coming. He
15 put up his boxers, his pants then he went to the living room. The court (myself),
therefore from the evidence which was not cross-examined to, but accepted by the
defendant in silence noted that from the evidence the full completion of the crime
was frustrated at that time only by the circumstances or events independent of the
defendant's will.

20 So, the guidance given in the case Peter Augustine v The Queen by Carey JA is
noted, and are accepted as proven by the Prosecution (e.g.)

- (a) that from the evidence (a) he (defendant) had the intention to commit the full offense and that in order to carry out that intention, he (defendant)

- 5 (b) did acts which are steps towards the commission of the crime (e.g.) he removed the clothing of the virtual complainant and his clothing, and when both himself and his sister were nude he began kissing her on her mouth, neck, chest, breasts and was laying on top of her (both in the nude) and continuing to kiss her, until he heard the mother coming and was forced to
- 10 stop.
- (c) The court here also notes and rules that from the evidence before the court these acts are directly and immediately and not merely remotely connected with the commission of it (the offence of rape)
- (d) Also, the doing of which in this case from the described evidence which
- 15 remains unchallenged cannot be reasonably regarded as having any other purpose than the commission of the specific crime (e.g. rape).

The court here notes this was frustrated only as noted in the evidence of the virtual complainant by the mother coming into the house at that time. So, the court here rules there was sufficient proximity and it covered all the steps taken toward the

20 commission of the crime which (he) the defendant could believe to be necessary for the crime to be successful and also from the evidence he (defendant) had taken further steps to complete the crime (e.g.) the removal of the clothing of the virtual complainant and himself, the lying in the bed on top of the virtual complainant, (both naked in the nude).

5 **CONCLUSION**

So, having reviewed the facts I have concluded that the defendant had done acts more than merely in preparation for the commission of the offence of rape. The defendant in this case from the evidence had already embarked upon the crime proper, as also from the evidence the intent can/was inferred, I rule there is sufficient
10 evidence to regard his acts as more than preparatory from looking at the above evidence, the state of the virtual complainant clothing in evidence, the position she was in on the bed, from her evidence (in the nude) together with the defendant's acts (e.g.) removing his and her clothing, kissing the virtual complainant, calling her his love (e.g.) kissing her chest, her neck, breasts etc. It is noted this left it open to the
15 jury (the judge) to conclude that the defendant had the necessary intent and had done acts which were more than merely preparatory.

I therefore conclude that he had embarked on committing the offence itself.

So, having considered all the above evidence, questions, answers and after carefully
20 considering all of the evidence presented by the Prosecution and the Defense, this court now accepts that the Prosecution has proven all the elements of the offence of Attempted to Rape a Child beyond a reasonable doubt.

5 The Defense raised by the accused/defendant is therefore not accepted and fails.
Accordingly, after further consideration of all the evidence before me and the court,
I Rule that I am satisfied to the extent that I feel sure that the accused committed the
offence as charged before the court on 30th April, 2020.

10 Consequently, I find the accused **Emanuel Pech Guilty** as charged in the
Indictment.

Dated this **29th** day of **June, 2023**.

15

(H. R. LORD)
JUSTICE OF THE HIGH COURT
OF BELIZE