

IN THE SUPREME COURT OF BELIZE, A.D. 2022

(CRIMINAL DIVISION)

NORTHERN DISTRICT (ORANGE WALK)

INDICTMENT NO. N9/2020

THE KING

v

MARLON MEIGHAN

Charge: (1) Incest

(2) Sexual Assault

Heard on October 24, 25, 27, November 8, 2022

Before H. Lord (J)

Appearances

Ms. J. Willoughby }
Ms. D. Chell } for the Crown

Defendant – Unrepresented

(Defendant informed court he will not get any Lawyer)

5

JUDGMENT

The accused stands indicted for the crimes of Incest and (2) Sexual Assault, and it is alleged that:

(1) Marlon Meighan on the 13th day of February 2018, at Ranchito Village, in the Corozal District, in the Northern District of the Supreme Court, carnally knew

5 Melany Meighan, who is, to his knowledge his daughter; **Incest**, contrary to Section 62(1) of the Criminal Code, Chapter 101 of the Substantive Laws of Belize, Revised Edition 2011, as amended by the Criminal Code (Amendment) (No. 2) Act No. 12 of 2014.

(2) That Marlon Meighan on the 28th day of May 2018; at Ranchito Village, in the
10 Corozal District, in the Northern District of the Supreme Court, intentionally touched the vagina of Melany Meighan, that touching being sexual in nature, and without her consent.

Sexual Assault, contrary to Section 45A(1) of the Substantive Laws of Belize, Revised Edition 2011, as amended by the Criminal Code (Amendment) (No. 2), Act
15 No. 12 of 2014.

The accused was arraigned on the 10th March 2022 and pleaded Not Guilty to both charges; later a trial then proceeded before me sitting without a jury, by virtue of Act No. 30 of 2002 which Amended Section 65(A) of the Indictable Procedure Act, Chapter 96 Laws of Belize dated 22nd March, 2022.

20

BURDEN AND STANDARD OF PROOF

Sitting as a judge alone, I am both the trier of fact, and of the law, as such I now direct myself and I keep in mind throughout my deliberations of this matter that the Prosecution has the burden of proof in this case, and that the accused stands before
25 me as an innocent person. Therefore, (he) the accused has nothing to prove

5 whatsoever, but rather it is the Prosecution that has the duty to prove each element
of the offence of (1) Incest and (2) Sexual Assault.

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

And finally, if I have no doubt, then I can be certain of the guilt of the accused and
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
15 offence, then I will be obliged to acquit the accused of the charge of Incest and or
also that of sexual assault the second charge before the court on the Indictment.

The Court also noted that Act No. 12 of 2014 amended Chapter 101 of the
Substantive Laws of Belize, Revised Edition 2000 – 2003, and that Section 62(1)
20 (Incest) now states –

***“Any person who carnally knows another person who is to that person’s
knowledge, that person’s child commits an offence and shall on conviction
be liable to imprisonment.”***

It is further noted that Section 73 of the said Criminal Code, Chapter 101 of the Laws
25 of Belize also further states –

5 *“whenever upon the trial for any crime punishable under the code, it is
necessary to prove carnal knowledge, it shall be deemed complete upon
proof of any, or the least degree of penetration only.”*

It is also noted by the court that Act No. 3 of 2022, dated 24th March 2022 has
10 expanded the list of offences for trial without a jury in certain criminal cases by
amending Section 65(A)(2) of the Indictable Procedure Act to include Section 3(G)
sexual offences as one of the offence now triable by judge alone.

1. Elements of the offence of Incest

- (1) That Marlon Meighan carnally knew Melany Meighan;
- 15 (2) That at the moment Marlon Meighan carnally knew Melany Meighan, he had
knowledge that she is his daughter.

2. Elements of the offence of Sexual Assault

- (1) That Marlon Meighan intentionally touched the vagina of Melany Meighan.
- (2) That Melany Meighan was under the age of sixteen (16) years at the time she
20 was touched by Marlon Meighan.
- (3) That the touching was sexual in nature and without her consent.

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

5 **The Prosecution's case**

The Prosecution called a total of six (6) witnesses during trial.

On the charge of Incest

(1) The first element – that Marlon Meighan carnally knew Melany Meighan.

The evidence brought by the Crown to prove this element came from the following

10 persons:

(1) Martita Cano who gave evidence on oath and stated – that she is the mother of Melany Abileny Meighan who is now 17 years old. She stated that Melany's date of birth was the 18th July 2005, she was born at the Orange Walk Regional Hospital.

15 She continued – that her (Melany's) father Marlon Meighan was with me. His name is Marlon Marvin Meighan. After she was born I went to register her in October 2005 here in Orange Walk; me and her father Marlon Meighan registered her.

In February 2018 Marlon Meighan was my common-law for seventeen (17) years,
20 we lived together for that time.

She continued – In February 2018 Melany was twelve (12) years old and also in May 2018 Melany was twelve (12) years old. I recall 28th May 2018 at 7:00 a.m., I remember I was in the kitchen and I watch at the house and I saw my common-law

5 was watching at the window. So I walked to the door, and I see my daughter crying
(Melany Meighan).

So I asked her why she was crying, she no tell nothing, so I insisted that why she
told me her father Marlon Meighan just touch her. The same time I get mad and I
10 slap him. He insisted to me it was not true.

She continued - So my daughter then told me, mom, it was not the first time, that in
13th February 2018, when I went to have baby he had abuse of her.

The house is like a 'L', a cement house, not painted. The inside of the room I entered,
15 it has two (2) beds.

Next, I went mad and I dash him (Marlon) on the ground and I start to beat him up.
He insisted to me it was not true, and then he said he will call the police. He said he
had nothing to lose because it was a lie. After that he called the police and I called
20 my mother-in-law. Fifteen (15) minutes later the police arrived and they took me,
my daughter and Marlon Meighan to the Corozal Police Station.

5 She continued – I met PC Gomez, we told her what happened and they gave me a paper to sign and they asked for my daughter’s birth paper. They took us to the hospital about 11:00 a.m. (morning), Ms. Gomez took me and my daughter Melany, when we finish from there we went back to the station. Present when the doctor checked her was me, Melany and Ms. Gomez. At the station they took our
10 testimony. Ms. Gomez took my one and Melany testimony.

When we arrived home there was someone waiting for us to take picture. Then they asked permission to go in the house, me and Melany was there, they ask Melany to show where it happened.

15

They just take the pictures and they gone (Ms. Gomez) and the lady taking the pictures. I don’t know her name.

The witness stated further – In 2005 my name was Martha Hall, my mother’s name
20 was Martha Cano, and when she registered me she put it as Martita Cano.

The witness identified the birth certificate of Melany Meighan as the one she gave to the police and she stated – I recognize this document, it has my daughter name on

5 it. It has her name (Melany Abileny Meighan). It is her birth paper. Date of birth being 18th July, 2005, where she is born – Northern Regional Hospital in Orange Walk.

It has the father name – Marlon Meighan

Address: 7th Avenue, Corozal Town.

10 It has my name Martha Hall. Address – 7th Avenue, Corozal Town.

It is my daughter's birth paper, I saw it last the day I gave Ms. Gomez. I originally got the birth paper when she was registered. It is noted this document was accepted as **Exhibit (MC 1)** without objection of Defence.

15 She continued – I have known Marlon Meighan in May 2018 for seventeen (17) years. In those seventeen (17) years, I saw him every day. I saw him at home. The lighting conditions was good when I saw him. The light from outside allowed me to see him. It is here noted the witness identified the defendant as the person she knew as Marlon Meighan.

20 **Questions by the defendant (Marlon Meighan)**

Q. On 13th February 2018, there was two (2) sponge mattress we had in the room on the floor.

A. We had the sponge yes, but when they can fit we use another sponge, yes.

Q. We usually used the two (2) sponge on the front piece/section of the house.

5 A. Well, we put it anywhere we have space, but I don't remember good.

Q. Prior to the so called incident of Melany Meighan, did she never report to you of an injury happened to her private part or vagina bleeding a lot.

A. Yes sir.

Q. Both of us were there, do you recall the date?

10 A. I don't recall the date, but it was a day she was coming from school.

QUESTIONS BY THE COURT FOR CLARIFICATION

Q. This incident you spoke of was before or after the police coming to your house?

A. This incident was when she was about 10 or 11 years old. This happened then.

15 The Prosecution also called Melany Meighan who stated on oath as follows –I am seventeen (17) years old. My date of birth is 18th July 2005. I live at Ranchito Village in the Corozal District. My mom is Martha Linett Cano. In February 2018, I was twelve (12) years old and I lived at Ranchito Village, Corozal District.

20 In February 2018 I lived with my mom, my dad, my sisters, and brothers. My dad is Marlon Meighan. The house we live in has two (2) parts. One is a room and the other is a dining room part.

5 I remember 13th February 2018, my father came home at about 8 o'clock in the night. We were, myself and my siblings and Grandmother Martha Cano. He brought food for us. He left again.

When he left I gave my siblings to eat, thereafter when they finish eat they went to
10 sleep. David, Briana, Henry, Paulita, Sari went to sleep. They slept in a bed on the floor. I and my brother went outside with my Grandmother.

At about 10 o'clock at night my father came back, my Grandmother left, and my brother and I went into the house. When my dad arrive I observed he appeared to
15 be drinking. He smelt of the smell of alcohol. We entered in the room that we sleep. We went in the room, but my father sent my brother Marlon to sleep. My brother went to sleep. I out off the music, we had on. I went and closed the door. The inside of the room has two (2) beds, one (1) wardrobe, one (1) shelf, and a bed on the floor and a bedframe.

20

The distance between the beds was ten (10) feet. Next, I was going to sleep, my father called me that I go and massage his foot as it was hurting. My father was lying on the bed that has the bedframe. I was able to see this as there was two (2) candle lights and the light from outside that came through the window, and the light

5 from the radio was on. The window was one (1) foot away from the bed where my
father was. One (1) candle was between the two (2) beds and the next was by the
door.

She continued – I was going to lay down, when my father asked me to massage his
10 foot. I went and I was massaging it. I went to the bed where my father was, I
massaged his foot like ten (10) minutes. I saw by the clarity that came through the
window, the two (2) candles and the light from the radio. When I finish I was going
to lie down.

15 I was turning and then my father pulled me. When he pulled me, he threw me on
the bed. Then he went on top of me, he took off my clothes and he took off his,
when he took off his clothes he again went on top of me, then he put in his penis in
my vagina. He start moving on top of me. Thereafter he stayed like three (3) minutes
on top of me. Then he came off me and he went running to the bathroom. I did
20 nothing I just stayed in the bed because I was in shock and I couldn't move. I stayed
on the bed for like five (5) minutes. I was crying in silence. I got up from the bed
and I went to the bathroom.

5 He took off my pants and undies when he came on top of me. My father took off his pants and underwear (boxers). I was able to see him by the clarity that goes in from the window, from the two (2) candles and the light of the radio. I bathed for about Ten (10) minutes, when I went out my father was by the dining hall. He went out, I saw him and I went to the room. I was going to lie down and my father went
10 inside the room again.

Thereafter, my father, talked with me. He said (sorry) and I must not say anything to my mother. He was giving me two dollars (\$2.00) but I did not take it. I just turned around and I went to lie down behind my brother (Marlon Meighan Jr.).
15 Marlon was asleep because he was lying down and he was snoring. I lie down and I went to sleep.

When my father was on top of me, my siblings were sleeping because my brother (Marlon) was snoring and my siblings were already sleeping on the bed on the floor.
20

The witness further stated that after the incident of 28th May 2018, the police arrived and then we went to the Police Station, Corozal Police Station, myself, my mother

5 and my father. There we were attended to by one Ms. Gomez who took care of us
and we were giving our declaration.

Thereafter, we were taken to the hospital. At the hospital the doctor checked me,
we returned to the police station and continued with our declaration.

10

The witness continued - in the afternoon the lady arrived, me and my mom was
present. I was showing her where everything took place and she was taking photos,
where my father had abused me. The virtual complainant further stated I have
known my father all my life, I see Marlon Meighan in this courtroom.

15

It is here noted the witness identifies the defendant as Marlon Meighan, the person
she knows as her father.

QUESTIONS BY THE DEFENDANT (MARLON MEIGHAN)

Q. The room where you say you sleep and your brother (Marlon Jr.) is located in
20 the same room?

A. Yes.

Q. When we went to sleep all of us including me, your younger brother and older
brother were in the room?

A. Yes, in the same room.

5 Q. So, he (Marlon) did not hear the incident?

A. No, because I did not make any noise.

Q. I recall there were two (2) mattresses and a bed in the room on 13 February 2018, is that true?

A. Yes.

10 Q. Did you tell your mother of an incident happening to you, where you was bleeding?

A. Yes.

Q. So you recall the article/item that the incident occurred which led to the bleeding?

15 A. Yes, I was riding bicycle and the seat was not well and I was running race with some friends and the seat fall, and I got hurt.

Q. On 13th February 2018, did I in a way intentionally touch you – having sexual intercourse?

A. Yes.

20 The Crown also called PC (#2228) Aziala Gomez who gave sworn evidence and stated – I remember 28th May 2018, I was working 7:00 a.m. to 4:00 p.m., I was at the police station when Cpl. Garcia informed me of a Domestic Report and he brought three (3) persons, one (1) male, two (2) females. Cpl. Garcia introduced one (1) female to me as Martita Cano, and the other as Martita Cano's daughter.

5 I escorted Ms. Cano and her daughter to the Domestic Violence Unit Office. I asked Ms. Cano for her particulars and her daughter's where I learned her name to be Melany Meighan.

She continued – there the minor Melany made a report against her father. I request
10 the assistance of the Social Worker and Evalo Castaneda arrived at my office and interviewed the minor in my presence. Thereafter, I explained the procedures in dealing with this type of report. Ms. Cano later signed the form giving authorization for a medical exam to be conducted on Melany, I escorted Ms. Cano, her daughter and the social worker to the Corozal Community Hospital. At the clinic I met Dr.
15 Samos and I informed him of the reason of my visit. I handed over a consent form for sexual offences in the name of Melany Meighan.

Dr. Samos conducted the medical exam on Melany. Dr. Samos filled out necessary information on the Medico Legal Form and thereafter handed it over to me.

I escorted Ms. Cano, Melany Meighan, and Social Worker to the Corozal Police
20 Station. I recorded a statement from Melany in the presence of her mother and Social Worker. I also recorded from Martita Cano, I also requested assistance of Leidiana Cantun, Scenes of Crime to photograph residence of Ms. Cano at Ranchito Village.

5 We went to Ranchito Village at the residence of Ms. Cano. There we went in front of an unpainted cement house. The Scenes of Crime also arrived at the residence and took pictures of outside and thereafter the inside of the house where Melany took us.

10 I returned to Corozal Town Police Station. There I requested assistance to bring back Ms. Cano and her daughter. I recorded a further statement from Ms. Cano and I obtained an original birth certificate given to me by Ms. Cano.

The court notes this document was accepted as *Exhibit MCI* and identified by the present witness as the document she got from Ms. Cano on 23rd May 2018 at the Corozal Police Station, Corozal Town.

She continued – I visited the cell block of the Corozal Police Station and I escorted Mr. Meighan to the Domestic Violence Unit and there I informed Mr. Meighan of the reason for his detention. I cautioned him and I informed him of his Constitutional Rights. I had the person in my presence for about five (5) minutes when I escorted him to the Domestic Violence Unit. He was in my view for 15 to 20 minutes. The lights in the Unit is bright, nothing obstructed my view. If I see him in the court I

5 can identify him. The court notes the witness (PC Gomez) identified the defendant Marlon Meighan as the person she spoke to on 28th May 2018, and she points to the defendant in the dock today as the said person.

The witness continued – On 8th July 2018, I obtained sixteen (16) photographs and
10 a report from Scenes of Crime Technician Leidiana Cantun. The court notes that the *Exhibits LC1 to LC4* were identified by the witness as the house in Ranchito Village and the areas pointed out to them by Melany Meighan where the incidents occurred.

The Prosecution also called Leidiana Cantun who gave evidence as follows on
15 having been accepted as an expert in the field of Crime Technology.

She stated – that on 28th May 2018, I proceeded to the location at a residence in Ranchito Village, Corozal District.

On my arrival I met PC Gomez, a minor and her mother. I observed there an
20 unpainted concrete building with zinc roof. It had two (2) sections; there PC Gomez and the minor pointed out a section of the building and there after I used a digital camera to photograph exterior section pointed out to me.

Thereafter, PC Gomez and the minor showed to me the interior of the section, where
I saw a wooden bed, and a mattress covered with a pink blanket on the floor. I used
25 a digital camera to photograph the interior of the building.

5 I photographed the area in particular. I took four (4) photographs at Ranchito
Village. I later printed four (4) copies of each for a total of sixteen (16) photographs
which I dated and sign at the back of each photograph. I did this on 8th June 2018.
Only myself have access to the photographs. After labelling and signing the
photographs I hand over to PC Gomez with a report. These photographs were
10 accepted into evidence as *Exhibit LC1 to LC4*.

Cpl. (#168) Rodel Garcia also sworn stated as follows – I remember 28th May 2018,
at 7:30 a.m. I received an information of a domestic dispute at Ranchito Village. As
a result a Police Constable and myself went to check the report at Ranchito Village.
15 There I observed an alley, at the end I saw a female person and a young female
standing at the end of the alley and three (3) yards away was a male person seen
standing beside a yard; inside the yard was a house ‘L’ shaped at the front they had
a coconut tree. When I came out of the motor vehicle the female introduced herself
as Martita and her daughter as Melany Meighan. She gave me a report whilst
20 pointing to the male person. She pointed at the male person and said he was
behaving aggressive toward her and her daughter. I told them it’s better to go to the
station and give the report. The day was clear, the sun was bright, and nothing
obstructed my view. He was standing about three (3) feet from me on my right. He
was in front of me for about ten (10) minutes. Since both were talking I told them
25 to go to the station to give a report and both of them agreed.

5 I then escorted them to the Corozal Police Station. When I arrived I came out the vehicle and I took them inside by the Diarist desk. There I met PC Azalia Gomez who is in-charge of the Domestic Branch. There I gave her a report, there I introduce Ms. Cano and her daughter to the domestic officer, later Azalia Gomez gave me a report and told me to detain Marlon Meighan.

10

The Prosecution also called **Dr. Jose Samos** who sworn stated – I remember 28th May, 2018 a female child, twelve (12) years, was taken to the clinic at Corozal Hospital with PC Gomez and mother, Martita Cano and Social Officer (child Melany). I conducted a medical examination after an alleged sexual assault.

15

I did an inner genital examination. I found there was a practical absence of hymen tissue. In my expert opinion this occurs when the patient is carnally known. She was sexually abused by penetration by a penis or any other object.

CROSS EXAMINATION BY DEFENDANT (MARLON MEIGHAN)

20 Q. So the loss of tissue, it can be penetration by a penis or any other object.

A. Yes.

Q. So it does not have to be a penis (right).

A. Yes, not necessarily.

5 The court here noted that the incident as stated in the evidence of the virtual complainant (Melany Meighan) occurred on the 13th February 2018. However, the incident of the carnal knowledge was not reported to the mother (Martita Cano) and the police until 28th May 2018, this being quite sometime later. The Court here notes this does not amount to a recent complaint.

10

The court here notes the case of Criminal Appeal No. 24 of 2004 that of Albino Garcia Jr v The Queen where Carey (JA) at para (9) stated:

15 *“Despite the appreciable delay in reporting the matter to the police (KM) was nonetheless, medically examined and the doctor’s certificate was tendered in evidence. – It had no value”*

Here the doctor was called and gave evidence of his findings. However, bearing in mind the time of delay in reporting the matter this court will also treat his findings as having no value in the present case before the court. The court here notes this has
20 some impact on her credit, but it does not destroy her credibility here on.

The court here also notes that in defence on cross-examination the defendant brought up the matter of an injury to the complainant of her bleeding from the vaginal area a lot when she was about 10 or 11 years old due to an accident.

25 The Defendant asked questions as follows to the complainant Melany Meighan.

5 **QUESTIONS BY DEFENDANT (MARLON MEIGHAN)**

Q. Did you tell your mother of an incident happening to you where you was bleeding?

A. Yes.

10 Q. Do you recall the article/item that the incident occurred which led to the bleeding?

A. Yes, I was riding bicycle and the seat was not well put, and I was running race with some friends, and the seat fall off and I got hurt.

The Defendant also questioned the mother Martita Cano as follows:

QUESTIONS BY DEFENDANT (MARLON MEIGHAN)

15 Q. Prior to the so called incident of Melany Meighan, did she never report to you of an injury happened to her, and to her private part or vagina bleeding a lot?

A. Yes, sir.

Q. Both of us were there, do you recall the date?

A. I don't recall the date, but it was a day she was coming from school.

20 **QUESTIONS BY THE COURT FOR CLARIFICATION**

Q. The incident you spoke of was before or after the police coming to your house.

A. This incident was when she was about ten (10) or eleven (11). This happened then.

The court here noted the defendant did not peruse this matter or line of questioning
25 any further.

5 The court cannot speculate as to the impact of the injury raised by the defendant in cross-examination or its effect or of any injury if received, it was not brought to light during cross or during trial. The court makes no ruling further on this matter raised and not perused or concluded before the court in trial.

10 Here dealing with the identification evidence I remind myself in accordance with the case of R V Turnbull [1977] 1 QB 224 – of the very special need for caution before convicting the accused in reliance of the evidence of the virtual complainant (i.e. Melany Meighan) of the identification or recognition she have made on 13th February 2018.

15

Therefore, I must here consider that a witness who is convinced in his/her own mind may as a result, may be a convincing witness, but may nevertheless be mistaken.

20 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.

25 Therefore, as the jury in this case I warn myself that I should therefore examine very carefully the circumstances in which the identification was made in this case presently before this court of the identification of the accused Marlon Meighan.

5 Therefore, I bear in mind the following questions as I recall the deposition of Melany Meighan as to her identification (recognition) of the accused on the 13th February, 2018.

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

10 There is nothing in the statement which states the total amount of time she saw the accused on 13th February, 2018. However, in her statement she answered this question by stating in her evidence as follows – *At about 10:00 that night my father came back. When my dad arrived I observed he appeared to be drinking. He smelt of the smell of alcohol. We entered in the room that we sleep. We went in the room*
15 *but my father sent my brother Marlon to sleep. My brother went to sleep. I out off the music we had on. I went and closed the door. The inside of the room has two (2) beds, one wardrobe, one shelf (a bed on the floor and a bedframe.*
The distance between the beds was 10 feet. Next, I was going to sleep, my father called me that I go and massage his foot as it was hurting. My father was lying on
20 *the bed that has the bedframe. I was going to lay down when my father asked me to massage his foot. I went and I massage his foot like ten (10) minutes when I finish I was going to lie down. I was turning away and then my father pulled me. He threw me on the bed. Then he went on top of me. He took off my clothes and he took off his clothes. He again went on top of me. Then he put his penis in my vagina. He*
25 *started moving on top of me.*

5 Thereafter, he stayed like three (3) minutes on top of me. Then he came off me and he went running to the bathroom.

2. In what light did Melany Meighan see the accused?

Melany Meighan stated as follows –

10 I was able to see this as there was two (2) candle lights and the clearance of the light from outside that came through the window. The light from the radio was on. The window was one (1) foot away from the bed where my father was. One candle was between the two (2) beds and the next was by the door.

Here the court notes the complainant pointed to an estimated distance of three (3) feet to where the candle was, and five (5) feet away was the other candle.

I saw by the clarity that came through the window, the two (2) candles and the light from the radio.

QUESTION BY CROWN COUNSEL

20 Q. This clarity you said entered the room on 13th February 2018, where was it coming from?

A. The moon light and a light that my uncle had at his house.

Q. Can you describe the light?

A. It was a long one.

25 Q. How far away was the light?

5 A. Like 100 feet.

3. At what distance did she see the accused?

The witness stated – I was going to lay down when my father asked me to massage his feet. I went to the bed where my father was, I massaged his foot like ten (10) minutes. When I finish I was going to lie down. I was turning and then my father pulled me, he threw me on the bed. Then he went on top of me. He took off my clothes and he took off his. When he took his clothes he again went on top of me. Then he put his penis in my vagina. He start moving on top of me. He stayed like three (3) minutes on top of me. Then he came off me and he went running to the bathroom.

It is noted the inference that may be drawn here is that the accused was extremely close (e.g.) on top of her being (e.g.) directly in her face as the distance she is speaking of in her testimony to the court.

20

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

The complainant here did not state if anything obstructed her view, but following the evidence the inference is both persons were face to face for at least three (3) minutes. The further inference is nothing is stated as obstructing her view of him from her testimony to the court during this incident on 13th February 2018.

25

5 (5) Had the witness ever seen the person she knew before?

Melany Meighan stated in her evidence as follows – I have known my father Marlon Meighan all my life. I saw my father every day.

(6) If so how often?

Melany Meighan stated – I saw my father every day.

10 Here however as the judge and jury, I note in her evidence that there were certain weaknesses observed (1) the witness did not say how long she had seen Marlon Meighan that night of 13th February, 2018 in total time (e.g.) from he returned home from Corozal, until the incident occurred and ended.

I therefore note this weakness observed and I bear it in mind during my deliberation
15 of the evidence before this court.

Therefore, after observation of the above noted weakness observed/mentioned, and after a careful reading of the evidence, and following the Turnbull guidelines in this case, I here accept that Melany Meighan had more than enough (e.g.) sufficient
20 opportunity and time in her narrated situation/circumstances of the events of 13th February, 2018 in this case to observe and recognize the person she saw and recognized before; during; and after the incident of the night of 13th February, 2018 at her home in Ranchito Village, Corozal District.

25 Here then I note the case of Fremantle in which Their Lordships stated –

5 *“An examination of the circumstances of which the quality of the evidence of the visual identification of the defendant reveals that the quality of the evidence was exceptionally good.*

Firstly, the identification was by way of recognition by the eyewitness who knew and had previously seen the defendant.”

10

So I here note Melany Meighan in her evidence stated she knew the defendant all her life, she saw him every day, and she knew him as her father (Marlon Meighan).

So, here after very careful consideration and also looking carefully at the evidence
15 of identification before this court, I now accept that this witness (Melany Meighan) had ample/sufficient time to see and recognize the person whom she described as knowing all her life and whom she interacted with every day (i.e. the accused).

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

20

2. The second element that at the moment Marlon Meighan carnally knew Melany Meighan he had knowledge that she is his daughter.

The Crown called Martita Cano who stated as follows –

5 She is the mother of Melany Abileny Meighan who is now seventeen (17) years old, and that Melany Meighan is her daughter, born on the 18th July, 2005 at the Orange Walk Regional Hospital.

She stated Melany's father Marlon Meighan was with me. After she was born, I went to register her in October 2005 her in Orange Walk, me and her father Marlon
10 Meighan registered her.

The witness also provided a birth certificate in evidence for Melany Abileny Meighan which was accepted as an Exhibit in this case as **Exhibit MC1** (birth certificate of Melany Meighan) which stated date of birth 18th July, 2005, date of
15 registration 26th October, 2005, Sex – Female, Father's Information – Marlon Meighan, 7th Avenue, Corozal Town, Corozal District.

It is noted this birth certificate was not disputed by the defendant (Marlon Meighan). The witness continued – I have known Marlon Meighan in May of 2018 for
20 seventeen (17) years. In those seventeen (17) years I saw him at home. The lighting conditions was good when I saw him. The witness here identified the defendant (Marlon Meighan) as the person she knew for seventeen (17) years and the father of Melany Meighan whom she spoke of.

The Crown also called Melany Meighan who stated – I am seventeen (17) years old,
25 my date of Birth is July 18th, 2005. I live at Ranchito Village in the Corozal District.

5 My mom is Martita Linett Cano. In February 2018 I live with my mom, my dad, my sisters and brothers. My dad is Marlon Meighan.

I remember 13th February, 2018 my father came home at about 8:00 in the night. He brought some food for us and he left again.

10 At about 10:00 at night my father came back. My grandmother left, and my brother and I went into the house. We entered in the room that we sleep, but my father sent my brother Marlon to sleep. My brother went to sleep. I out off the music we had on, I went and closed the door, next I was going to sleep, my father called me that I go and massage his foot as it was hurting. I was going to lie down when my father
15 asked me to massage his foot. I went and I was massaging it. When I finish I was going to lie down. I was turning and then my father pulled me, when he pulled me, he threw me on the bed. Then he went on top of me. He took off my clothes and he took off his. When he took off his clothes he again went on top of me. Then he put in his penis in my vagina.

20

Looking at the above evidence of the virtual complainant, it is noted that the complainant is stating it was her father who had carnal knowledge (sexual intercourse) with her on the 13th February, 2018.

The court notes that when this purported encounter occurred on 13th February, 2018
25 that the defendant (Marlon Meighan) should have had knowledge that Melany

5 Meighan was his daughter. From the evidence before the court, he and the mother (Martita Cano) had both together on the 26th October, 2005 gone to the Registry Office and registered the child Melany Abileny Meighan as their child (His daughter) at Orange Walk Town.

The evidence of the Prosecution reveals that the complainant had stated she lived
10 with her mom and her dad (Marlon Meighan) and her sisters and brothers. The inference here is that she is the daughter of Marlon Meighan and therefore it is imputed knowledge that Marlon Meighan had to have known that Melany Meighan was his daughter on 13th February, 2018.

15 Further it is noted by the court from the evidence of Melany that after the incident (the carnal knowledge) that Marlon Meighan in the dining hall of the home (her father Marlon Meighan) talked to her (Melany) and from the evidence he also apologized to her and said (sorry) and she must not say anything to her mother. She continued - He was giving me two dollars (\$2.00), but I did not take it. I just turned
20 around and I went to lie down.

Looking carefully at this evidence which was not challenged in cross-examination of the complainant by the defendant; the court draws the inference he was aware that Melany was his daughter and as such his expression of sorry and request not to say

5 anything to her mother reflected his knowledge of the person (Melany Meighan) as
his daughter.

Therefore, from the above evidence from which the above inferences could and was
drawn, the court is satisfied that the Prosecution has also proven this element to the
10 court, also beyond a reasonable doubt.

THE DEFENCE

I now turn to the defence's case and evidence, and I note as the trier of fact that I
have the duty of accurately, honestly and legally to consider the defence presented
15 to the court in this case.

In the instant case the accused Marlon Meighan having been told of his constitutional
and legal right, he chose to give sworn evidence to the court.

20 Therefore, I have directed myself to note that the testimony given in court on oath
(sworn testimony) I 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.

25

5 I now therefore note that the accused/defendant has stated on oath as follows –

“On 13th February, 2018 I was in the morning travelling from Ranchito Village, Corozal District 7:00 a.m. to Orange Walk Town Northern Regional Hospital with Martita Linett Cano. We proceeded to the hospital. She was to deliver birth of my 8th kid (Casandra Meighan). I was here until night, leaving
10 Orange Walk at 8:00 p.m. night of 13th February, 2018. Before leaving in the bus I purchased food. They came about one (1) hour or change reaching at Ranchito Village at my house about 9:00 to 9:30 p.m. Then I proceeded to leave the food at the house and I went to Corozal, purchased some other stuff for the house and food for me.

15 In that time the food takes (15 to 20) minutes. I get a taxi and I went to Ranchito Village where I used to live.

On that night arriving after being at Corozal Town five (5) of my kids were already sleeping. Marlon Jr. and Melany Meighan were still awake. I proceeded to ask them to take a rest as it was already late, because the next
20 day I had to come to Orange Walk Town Hospital. That is on 14th February, 2018 which in they complied, entered the home, close the door and Melany I asked her to please massage my foot, and Marlon Jr. was still awoken.

When she finish seven (7) of my kids were all inside on the two (2) mattress. The two (2) mattress were put together which all of us including me, my seven
25 kids and me were inches apart. So after, Melany Meighan and Marlon Jr.

5 *Meighan go together with the cell phone and I asked them again to please go to sleep. They complied. At that time Salace Meighan was the baby she slept beside me and I was taking care of her. After that everybody was sleeping. I set my alarm for 6:00 a.m. and I went to sleep.*

10 *The next morning 14th February, 2018 I woke up, wake up the elder kids to help me find their mother's stuff, so I can proceed to Orange Walk.*

At 7:00 a.m. (morning) I headed outside the main road at Ranchito to catch the bus. At 7:15 the bus was coming, I proceeded and I reach the Orange Walk Hospital about 8:30 same morning.”

QUESTIONS BY THE CROWN

15 Q. You remember Melany said you come home smell of rum?

A. I recall she said that.

Q. How come you never tell her she is lying when she said that?

A. I was not aware of a lot of things I could ask when she was speaking.

Q. I recall the judge tell you how to ask questions and he guided you well. You
20 remember he told you I will help you to ask the question- you remember that?

A. Yes.

Q. At no point you said to the judge, I want to tell Melany she was lying when
she said I was drinking – you tell the judge that?

A. No.

25 Q. I am putting it to you, you did not do it because you were drinking that night.

5 A. No.

Here the court noted the defendant denied he had been drinking on 13th February, 2018 and he never advanced this as part of his defence at any time. The court therefore did not peruse/or consider it any further thereafter also as there was no
10 evidence which showed or led to any assumption that liquor or drugs played any role in the defendant's actions on 13th February, 2018.

The defence called one witness on its behalf, that of Marlon Meighan Jr. who stated as follows-

15 *I am 18 years old, my date of birth is 26th November, 2003. The defendant is my father. I live at Ranchito Village.*

On the 13th February, 2018 the defendant (my father) left home at 7 o'clock in the morning to go to leave my mother at hospital."

QUESTIONS BY DEFENDANT TO WITNESS

20 Q. From that day you see anything unusual?

A. No.

Q. When I was in Orange Walk with your mother, can you recall the time I arrived home?

A. Around 9 - 9:30 night.

25 Q. When I went to Corozal from Ranchito?

5 A. You took 20 – 30 minutes and you come back.

Q. Is that approximate time or you see the time?

A. Approximate time.

Q. What I ask you and your sister to do?

A. You tell Melany to massage your foot for a while.

10 Q. When she finish massage, did I ever ask again to go to sleep?

A. Yes, because the next day you needed to go to the hospital again. So we went to sleep.

Q. That night you see anything unusual in the house or anything?

A. No, everything was normal.

15 Q. Did you hear voices, noise inside the house?

A. No, everything was normal.

Q. In that room, can you remember what we used to put to go to sleep – what we sleep on?

A. On a bed on the floor.

20 Q. All of us including me, when we go to sleep, we go to sleep what is the distance between us?

A. Five (5) of us sleep in one bed, my mom and father in the next bed.

QUESTIONS BY THE CROWN

Q. On 13th February, 2018 you slept throughout the entire night?

25 A. I never wake up. I slept the entire night.

5 Q. So you fell asleep you did not hear anything throughout the night?

A. I did not hear anything.

Q. Because you were asleep is it not so?

A. Yes.

Q. Are you aware if anything happened to Melany Meighan?

10 A. I was asleep, I noh hear anything.

The court here notes the evidence of the defendant and that of his witness and considers this evidence very carefully here in.

15 It is noted that (the defendant Marlon Meighan) has stated that on the night of 13th February, 2018 his feet was massaged by his daughter (Melany Meighan) and thereafter, he went to sleep until the following morning 14th February, 2018 when he awoke, got ready and went to Orange Walk Town to get his wife (Martita Cano) and his new born child and sent them to Ranchito, Corozal District.

20

Therefore, the court notes the defence is rejecting the story given in the evidence of the daughter (Melany) as he stated in his evidence as follows-

“When she finish seven (7) of my kids were all inside on the two (2) mattress.

The two (2) mattress were put together which all of us including me, my seven

25 *kids and me were inches apart. At that time Sance Meighan was the baby she*

5 *slept beside me and I was taking care of her. After that everybody was
 sleeping. I set my alarm for 6:00 a.m. and I went to sleep.”*

So the inference (he) defendant is asking the court to draw is that nothing happened
that night of 13th February, 2018. Nothing could not have happened because he and
all his children were on the two mattress inches apart and he was taking care of his
10 youngest daughter who was the baby.

So, the defendant is saying nothing happened, the evidence of Melany Meighan is a
fabrication. He went to sleep, woke up the next day 14th February, 2018 and went
to Orange walk to await the release of his common-law wife and their new born
15 child.

The court therefore, carefully looked at this evidence and particularly the questions
the defendant asked his witness (Marlon Meighan Jr.) concerning where he slept on
the night of 13th February, 2018 in the room that night.

20 Q. In that room can you remember what we used to put to go to sleep, what we
 sleep on?

A. (Witness) – On a bed on the floor.

Q. All of us including me, when we go to sleep, what is the distance between us?

A. (witness) – Five (5) of us sleep in one bed, my mom and father in the next
25 bed.

5 The Court notes the witness did not answer his question, but indirectly stated they did not all sleep together. His mom and dad sleeping in the next bed.

Now looking at the evidence of Melany, she stated - inside the room has two (2) beds – a bed on the floor and a bedframe.

She continued – the distance between the beds was 10 feet.

10 She continued – next I was going to sleep, my father called me that I go and massage his foot, as it was hurting.

My father was lying on the bed that has the bedframe.

She described this as follows – I was able to see this as there was two (2) candle
15 lights and the clearance of the light from outside that came through the window and the light from the radio was on. The Court notes also that the virtual complainant when asked by the Prosecution the following questions –

Q. This clarity you said entered the room on 13th February, 2018 where was it coming from?

20 She answered – The moonlight and a light that my uncle had at this house.

So the court notes from the virtual complainant’s answer she called the moonlight including a light from her uncle’s house – the clarity or clearance from outside.

She also stated in her evidence-in-chief that the window was one foot away from the bed where my father was. One candle was between the two beds and the next was
25 by the door.

5

So having carefully studies the evidence of Melany (virtual complainant) and her father's evidence I find that the evidence of the father saying he was sleeping on the bed with his kids was not corroborated by his son and witness – who said his mom and dad sleep on the next bed.

10

I also noted Melany stated there were two beds in the room, the one on the floor, and the one her father was in which she called the bedframe.

Therefore, after comparing the three (3) evidences before the court I accept that the father's evidence has discrepancies which are not corroborated by his witness (Marlon Meighan Jr.)

Therefore, I here accept and draw the inference from the above evidence that the father was not sleeping on the bed on the floor where all the other children were sleeping. Hence, he could not be inches apart from them. I accept Melany's evidence which is corroborated by the answer given by Marlon Meighan Jr., that his mom and dad slept on the other bed – this Melany described as being 10 feet away from the bed on the floor and called it the bedframe.

5 I further noted Melany's evidence of the incident of 13th February, 2018 where she stated further – then he came off me and he went running to the bathroom. I did nothing. I just stayed in the bed because I was in shock and I couldn't move. I stayed on the bed for like five (5) minutes. I was crying in silence.

10 **QUESTIONS BY DEFENDANT OF MELANY MEIGHAN**

Q. When we went to sleep all of us including me, your younger brother and older brother were in the same room.

A. Yes, in the same room.

Q. So, he (Marlon) did not hear the incident.

15 A. No – because I did not make any noise.

Q. On 13th February, 2018 did I, in anyway intentionally touch you – having sexual intercourse?

A. Yes.

20 Looking at the above evidence carefully, the court notes this answers the questions why her brother did not hear any noise or anything unusual on the night of 13th February, 2018 and he slept through the night as his sister (Melany) stated Marlon was asleep because he was lying down and he was snoring.

5 The court notes the above and the distance of the other bed being 10 feet away from the bed Marlon and the other children were lying/sleeping on the floor of the house/room they were in.

The court also noted (Melany's) further explanation as she stated – when my father
10 was on top of me, my siblings were sleeping because my brother (Marlon) was snoring and my siblings were already sleeping on the bed on the floor.

The court further noted that Melany was not shaken in the cross-examination by the accused and also that most of the matters raised in her evidence were not further
15 perused by the accused while she (Melany) was being cross-examined by the defendant.

The court after carefully re-reading and examining the evidence of the accused and his witness has considered that it prefers the evidence of the Prosecution's witnesses
20 and has concluded that the evidence did not refute the evidence of the Prosecution and the virtual complainant (Melany Meighan) in any way.

The Prosecution has therefore proven its evidence also to the satisfaction of the court, and it is so accepted.

5 So, having considered the above noted evidences of the entire case, the court Rules that the evidence of the defence does not displace the evidence presented by the Prosecution herein.

The court therefore gives the Prosecution and particularly the evidence of the virtual complainant full weight after considering the evidence and circumstances presented
10 in this case.

CONCLUSION

Therefore, after careful consideration of all the above evidence and all the elements presented by the Prosecution. I am satisfied from the Prosecution's evidence which I have accepted, that the Prosecution has proven all the elements of the charge of
15 (Incest) to this court.

The defence raised by the defendant, and submissions made in defence are therefore not accepted and fails.

20 Accordingly after careful consideration of all the evidence before me and the court. I am satisfied to the extent I feel sure that the accused committed the act of carnal knowledge and at the time of doing so he knew that Melany Meighan was his daughter.

25 Consequently, I find the accused **guilty of the charge of incest.**

5 The second charge preferred by the Crown was that Marlon Meighan on a separate occasion (i.e.) that being the 28th May, 2018 intentionally touched the vagina of Melany Meighan, that touching being sexual in nature and without her consent.

(Sexual Assault) contrary to Section 45 A(1), Chapter 101, Laws of Belize Amended by Act No. 12 of 2014.

10 The Elements of the offense

1. That Marlon intentionally touched the vagina of Melany Meighan.

2. That Melany Meighan was under the age of 16 years at the time she was touched by Marlon Meighan.

3. That the touching was sexual in nature and without her consent.

15 Here I note that the standard of proof in respect of each element is still proof beyond a reasonable doubt.

The Prosecution's case herein is as follows – It called

1. Martita Cano who stated on oath – that on the 28th May, 2018 at 7:00 a.m., I
20 remember I was in the kitchen and I watched at the house, and I saw my common-law was watching at the window. So, I walked from the kitchen and I went to the door, and I see my daughter crying (Melany Meighan). (Emphasis mine)

5 So, I asked her why she was crying, she no tell nothing. So, I insisted, that when she told me her father (Marlon Meighan) just touch her. The same time I get mad and I slap him. He insisted to me it was not true.

She continued – So my daughter told me, mom it was not the first time. That in
10 February 13th, 2018 when I went to have baby, he had abuse of her. Next I went mad and I dash Marlon on the ground and I start to beat him up. He insisted it was not true.

She also stated that he later called the police. The police came and later they were taken to the Corozal Police Station; and that her daughter's birth papers were given
15 to the police (PC Gomez). Her daughter was examined by the Doctor. Her daughter and herself gave statements and eventually Marlon Meighan was charged for the offences now before the court at present.

Melany Meighan also gave evidence and stated as follows – In May 2018, I was 12
20 years old. I remember the 28th May, 2018 in the morning we all got up and my mother was going to cook for my dad. My father called me and asked me to get clothes for him as he was going to work. He was inside the house. Then I brought his clothes and he threw me on the bed. Thereafter he start touching me. He start touching my vagina. He was caressing me for about 10 seconds. (Emphasis mine)

5 I pushed him, when I pushed him I went by the corner and I was crying. I pushed him because I remember what he did to me the last time. I remember he abused me when my mother was not there. I saw him during the 10 seconds because it was already day and the clearness was inside the house.

10 I stayed there in the corner crying when my mother arrived. My mother saw me crying and asked why I was crying, but I did not answer her, my mother insisted; I told her what happened; my father sat by the door and I made signs to my mother that my father had touched me. My mother asked me again tell me what happened and I told her my father touched me. My mother threw herself at my father (attacked
15 him).

My father told my mother I was lying, it was not true he touched me, and then I shouted to my mother that when she was not at home, my father raped me. My mother start beating my father and said she was going to call my grandmother and
20 my father said he would call the police. I went out by the dining area.

Thereafter, my mother went to look for me because the police had arrived. Then we went to the Police Station, Corozal Police Station, myself, my mother and my father.

5 There we were attended to by one Ms. Gomez, who took care of us, and we were giving our declarations.

She continued – I have known my father Marlon Meighan all my life. I saw my father every day. I see Marlon Meighan in this courtroom. The Court notes the
10 witness points to the defendant (Marlon Meighan) as the person she knows as her father.

QUESTIONS BY DEFENDANT (MARLON MEIGHAN)

Q. On 28th May, 2018 in anyway, I intentionally touched your vagina.

A. You threw me in the bed, I don't know if it was intentionally, as his hand went
15 up to my vagina and I pushed him.

The court here noted the above evidences also given in evidence by the other Prosecution witnesses pertaining to the charge of Incest and the present charge of Sexual Assault now taken as part of the Prosecution case here in this present case.

DEFENCE

20 Marlon Meighan (Defendant) sworn and stated as follows –

On 28th May, 2018 I was at Ranchito Village in the morning at 7:00 a.m., getting ready to proceed to my work, which at the time I was employed at One Mall Super Store at Ranchito Village.

5 That morning I was playing with all my kids when I asked Melany Meighan to find my clothes, which I proceed going to the bathroom. (Emphasis mine) I buck on her, which proceed in a misunderstanding, that she told her mother of me touching her vagina; which lead me to that time confront Ms. Martita Linett Cano accusations allegedly my daughter told her. At that moment she did not want to hear anything I
10 had to say; and she proceeded hitting me, and slapping and sat down in front of the door and proceeded to call at that time my belated mother; she has now passed away. Upon she arriving I had already called the police station because I told her I did not have nothing to lose as that allegation was not true. The police come and brought us to the station.

15 On arriving at the police station then I was held and told there would be an investigation, that my daughter (Melany Meighan) and Martita Cano were making reports about the two charges allegedly involved.

That's when I was detained for one week; they gave me my charge sheet and sent
20 me to Hattieville prison.

QUESTIONS BY MS. WILLOUGHBY FOR THE CROWN

Q. Where were you playing?

A. Right where the sponge was kept.

Q. How close was Melany?

25 A. All of us/them were jumping up and I playing with them.

5 Q. Where were you, and where Melany was?

A. Approximately 15 to 17 feet away.

Q. After you gave the instructions, you immediately went to the bathroom?

A. No.

10 Q. Immediately after giving your instructions, and she walked out, did you proceed to the bathroom right away?

A. Not immediately.

Q. If she is over there, you couldn't bump/buck into her?

A. No.

15 Q. If she is over there and you is over here there is no way you could buck up into each other.

A. No, because the direction she went I asked her to find my clothes in the other building and not over there.

So she was in the same building where we have to pass to go to the bathroom.

20 Q. Where in your testimony did you suggest that you and Melany was anywhere near the bathroom or locker area together.

A. I did not say it.

Q. You noh think this would be an important piece of information for us to know?

A. Yes.

25 Q. I put it to you that the only reason you said anything about that today is because you get ketch (caught) fooling around with the little girl's vagina.

5 A. The reason I clarified bumping into her is because she said that I touched her
vagina.

(N.B.) there was no witness called on behalf of the defence in this charge.

The Court has carefully noted the evidence of the Crown and the evidence of the
Defence. It is noted it is the credit of the victim that is in mainly the real issue here.

10

The court noted that the virtual complainant has stated in her evidence-in-chief that
it was when she brought the clothes to Marlon Meighan (her father) that he then
threw her on the bed, and thereafter in her words – “he start touching me. He start
touching my vagina. He was caressing me for about 10 seconds I pushed him, when

15 I pushed him I went by the corner and I was crying.”

Here the court notes the Defence saying he only bucked into her. In this statement
he is saying I never intentionally touched her, although in bucking on her I may have
mistakenly touched her. It was not intentional.

20

However, the virtual complainant continued and stated I pushed him because I
remember what he did to me the last time. I remember he abused me when my
mother was not there.

5 The court also further noted that Melany (virtual complainant) was never questioned by the defendant that he never touched her vagina, or it was untrue that he threw her on the bed when she brought his clothes to him as requested.

10 Instead, he only stated in his evidence-in-chief that simply he only bucked into her nothing else raised in trial on the matter before the court by the defendant.

Having considered the evidence-in-chief of the defendant and the answers to the questions under cross-examination; the court accepts and prefer the evidence of Melany Meighan (the virtual complainant) where she described how the incident unfolded of her being thrown on the bed, and then of the defendant touching her in her words – “he start touching my vagina. He was caressing me for about 10 ten seconds.”

20 Looking at the defence evidence his story has not satisfied the court; it is noted his evidence has several discrepancies in his evidence-in-chief, (e.g.) the defendant stated he asked Melany to find my clothes, which I proceeded going to the bathroom and later he stated I buck on her which proceed in a misunderstanding that she told her mother of me touching her vagina.

5 However, looking carefully at all the evidence before the court, this evidence suggests the defendant gave an instruction to Melany to get his clothes, and he proceeded going to the bathroom immediately thereafter. However, under cross-examination, when asked “After you gave the instruction you immediately went to the bathroom? His answer was an emphatic no.

10 Q. Immediately after giving your instructions and she walked away, did you proceed to the bathroom right away?

His answer – not immediately.

However, it is noted that Melany stated in evidence, she found the clothes and when she took them to her father (the defendant) he threw her on the bed and she continued
15 –“He start touching me. He start touching my vagina. He was caressing me for about 10 seconds.”

Therefore, having considered and carefully looked at all the evidence before the court, it is accepted that from the evidence, although under cross-examination from
20 defence, that Melany did say she does not know if (he) Marlon Meighan intentionally touched her or not as it was not more than 3 seconds.

The court having carefully considered the evidence regarding this element, now draws the inference from all the above evidence before it, that it now accepts Melany
25 was touched to her vagina on 28th May, 2018 and that the touching of her vagina was

5 intentional even in light of the defence explanation of an accidental touching, which is not here accepted.

It is further noted that the reaction was such that from the evidence the mother; when she saw Melany's father from the kitchen; and she watched at the house and she
10 stated I saw my common-law was watching at the window. So, I walked from the kitchen and I went to the door and I see my daughter crying (Melany Meighan).

The inference that can be drawn here is that when she saw her common-law watching at the window something in his manner/or otherwise cause her to walk from the
15 kitchen and go to the door immediately, and there she saw her daughter crying. She continued so I asked her why she was crying, she continued she did not answer. I insisted and she stated that when she told me her father (Marlon Meighan) just touched her.

20 Now having considered these sequences of events of 28th May, 2018 I am satisfied that indeed Melany was touched intentionally on her vagina and that from the above evidences, it was Marlon Meighan (her father) who touched her on 28th May, 2018 no-one else being stated as being there at the home in Ranchito Village except the defendant, his wife, daughter and the children (e.g.) the rest of the family.

25

5 Therefore, I am satisfied that the Prosecution has proven this element satisfactorily
beyond a reasonable doubt to the court. As I prefer and accept the evidence of the
Prosecution here in preference to that of the Defence. So here the credibility of the
Virtual Complainant is preferred to that of the Defence from the evidence before the
courts in regards to the present charge.

10

2. That Melany Meighan was under the age of 16 years at the time she was
touched by Marlon Meighan

The Prosecution here called Martita Cano who stated on oath that she is the mother
of Melany Meighan and that her daughter was born at Orange Walk Regional
15 Hospital on the 18th July, 2005. She stated her father Marlon Meighan was with me.
She continued after she (Melany) was born I went to register her in October 2005
here in Orange Walk, me and her father Marlon Meighan registered her.

In February 2018 Melany was 12 years old. In May 2018 Melany was 12 years old.
20 She continued that on 28th May, 2018 she gave Melany Meighan birth paper
(Certificate) to Ms. Gomez at the Police Station late that evening.

It is noted this birth certificate was accepted as an **Exhibit MC1** in trial and forms
part of the Prosecution's case without objection by the defendant.

5 The Crown also called Melany Meighan who stated as follows – my date of birth is July 18th, 2005. I live at Ranchito Village in Corozal District. My mother is Martita Linett Cano. In May 2018, I was 12 years old and I live at Ranchito Village, Corozal District.

10 In May 2018, I lived with my mom, my dad, my sisters and brothers. My dad is Marlon Meighan.

The court considered the above evidence of the Prosecution witnesses and noted the birth certificate which was produced to the court is in the name of Melany Abileny Meighan – Entry No. 1333 which dated 26th October, 2005 which stated her date of
15 birth as 18th July, 2005. Father’s information – Marvin Meighan

Address – 7th Ave, Corozal Town

Mother’s information – Martha Hall

Address – 7th Ave, Corozal Town

20 The court having noted carefully the evidence of the witnesses and the Exhibit MC1 is satisfied that the Prosecution has proven beyond a reasonable doubt this element and it notes that the evidence of Melany Meighan does corroborates that of Martita Cano, also that Melany Meighan was under the age of 16 years at the time on the 28th May, 2018.

25

5 3. The third element – that the touching was sexual in nature

The Crown brought Melany Meighan who stated that on 28th May, 2018 in the morning we all got up and my mother was going to cook for my dad. My father called me and asked me to get clothes for him as he was going to work. He was inside the house. Then I brought his clothes and he threw me in the bed. Thereafter
10 he start touching me; he start touching my vagina. He was caressing me for about 10
second. I pushed him, when I pushed him I went by the corner and I was crying.
I pushed him because I remember what he did to me the last time. I remember he abused me when my mother was not there.

QUESTIONS BY DEFENDANT (MEIGHAN)

15 Q. On 28th May, 2018 in any way I intentionally touched your vagina?

A. “You threw me in the bed, I don’t know if it was intentional as his hand went
up to my vagina and I pushed him.”

Now having looked at the above evidence of the virtual complainant and the question
20 asked by the defendant, after very careful consideration of the above evidence the court is persuaded that the evidence of the complainant (Melany) is preferred to that of the defendant. Therefore, the court accepts the virtual complainant’s evidence as being truthful and believable in the given circumstances before the court.

5 And having noted that Section 10 of Act No. 12 of 2014 amends Section 53 of the
Principal Act by insertion also of Section 53 (5)(c) which states in explanation as
follows –

10 *“Sexual in nature” in relation to penetration (touching) or any other activity
is sexual if a reasonable person would consider that whatever its
circumstances, or any person’s purpose in relation to it, it is because of its
nature sexual, or because of its nature it may be sexual, and because of its
circumstances or the purpose of any person in relation to it or both it is sexual.
Section 53(5)(d) “touching” includes touching with any part of the body or
with anything else”*

15 Now having considered the evidence of Melany Meighan whose evidence it is noted
has not been challenged or reduced by cross-examination in any way; the court
having looked and considered the above definitions at (c) and (d) and having further
noted the evidence before it now accepts that this element has been proven by the
Prosecution to the court also beyond a reasonable doubt based on the evidence before
20 the court and on the above definitions which describes what is accepted as
constituting sexual assault above/or sexual in nature.

The touching was subsequent to her being thrown on the bed as her testimony reveals
(e.g.) being thrown on the bed, being caressed, and her vagina being touched also

5 during the short time. From the evidence, she did not consent to this touching which
from the evidence could be considered in the above definitions as sexual in nature.

Therefore, the court accepts that this touching was indeed sexual in nature as when
considered by a reasonable person/man having noted the above evidence he/she
10 would come to that conclusion based on the evidence before the court that in those
given circumstances indeed that the touching on 28th May, 2018 would/could be
considered as being sexual in nature, (e.g.) as the touching of a person's private parts
could only be considered in this situation as being sexual in nature indeed.

15 It is further noted from the defence evidence that the defendant stated he bucked into
her. However, the virtual complainant (Melany Meighan) stated – She found the
clothes and took it to her father. Then when she did that, he threw her on the bed,
caressed her for about 10 seconds and touched her vagina.

20 Looking at the evidence this shows that the virtual complainant is saying I never
gave my father any permission to touch me on my vagina.

The evidence from the Prosecution is showing as stated by Melany which is virtually
unchallenged that on her taking the clothes to her father – according to her he threw
25 her on the bed and touched her vagina.

From her evidence this happened sequentially. This according to the evidence caused her to push him away and she went into the corridor and began crying.

The inference being she never gave anyone (e.g.) not her father or anyone else, permission on 28th May, 2018 at age 12 years old to touch her vagina or even caress her as she has stated in evidence.

This evidence of Melany pushing her father away and then going into the corner and crying is supported to an extent by the mother's (Martita Cano) evidence where she stated – that on 28th May, 2018 at 7:00 a.m. I was in the kitchen and I watched at the house, and I saw my common-law was watching at the window. So I walked from the kitchen and I went to the door, and I see my daughter crying (Melany Meighan).

The court notes here something; exactly what was never given in her testimony; but something caused her after seeing her husband (Marlon Meighan) watching at the window to proceed immediately from her evidence to the door where she encountered and saw her daughter (Melany) crying. This prompted her to inquire and insist what was wrong with her.

5 The court notes on her daughter's reply at last, she stated she got mad and she slapped Marlon and that later other revelations were also made to her concerning her husband's behaviour.

The court here carefully looked at this evidence and therefore draws the conclusion
10 that it prefers the evidence of Melany Meighan as stated in preference to that of the defendant whose answers in cross-examination does not correlate but instead cause doubts as to his evidence-in-chief of him bucking up accidentally on Melany Meighan.

15 Therefore, as stated from the above evidence the court here accepts the evidence of Melany Meighan in regards to the evidence before the court. As it asked the unanswered question. If it was an accident of him bucking up into her, why was her demeanour/reaction so startling? (e.g.) causing her to react in such a manner that caused the virtual complainant to be crying; the mother to notice the father looking
20 in some fashion/manner which caused the reaction of her immediately going to the door of the house and discovering her daughter not only crying; but encountering the verbal and later startling revelations which caused her to react by slapping and fighting with her common-law husband there on the spot over it?

5 Therefore, looking at all the evidence before the court and drawing the inferences from the evidence before the court, I am satisfied the Prosecution has proven all the elements beyond a reasonable doubt to the court.

CONCLUSION

Therefore, after carefully considering all the evidence presented by the Prosecution
10 this court accepts that the Prosecution has proven all the elements to the court beyond a reasonable doubt.

The defence raised by the accused/defendant is therefore not accepted and fails.

Accordingly, after careful consideration of all the evidence before me, I am satisfied
15 to the extent that I feel sure that the accused committed the offences enumerated below –

(1) Incest

(2) Sexual Assault

Consequently, I find the accused Marlon Meighan **guilty of both charges on the**
20 **indictment as charged.**

Given this 19th day of **January, 2023.**

25
(H. R. LORD)
Justice of the High Court
Belize