

**IN THE SENIOUR COURTS OF BELIZE**  
**CENTRAL SESSION – CITY OF BELMOPAN, CAYO DISTRICT**  
**IN THE HIGH COURTS OF JUSTICE**

**Indictment No.** C116 of 2020

**Between:**

**The King**

and

**[1] Orlando Hyde**

**Defendant**

**Appearances:**

Ms. Natasha Mohamed, counsel for the King

Mr. Simeon Sampson S.C., counsel for the Accused

**Dates:** -----

Trial Dates:	2023:	June 22
		July 4, 5, 10, 14
		September 19
		October 12
		November 9, 17
Judgment Date:		November 30
		December 14
	2024:	February 3, 8
		March 7
		April 18
		May 29
Sentencing Date:	2024:	June 12

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## DECISION

- [1] **MR. FRANCIS M CUMBERBATCH; J:** Orlando Hyde, the Accused indicted by the Director of Public Prosecutions in an indictment dated the 5 October 2020, for four counts of Carnal Knowledge of a female child contrary to section 47(1) of the **Criminal Code** Chapter 101 of the Laws of Belize (Revised Edition) 2020 for that he on dates unknown between the dates 22 to the 25 December 2010; on dates unknown between the 31 December 2010 and the 1 February 2011; between the 1 February 2011 and the 15 December 2011; and on dates unknown between the 31 October 2013 and the 1 December 2013 at Cotton Tree Village, in the Cayo District in the Central District of the Supreme Court carnally knew the virtual complainant, Gwen Smith (“**VC**”) a female child under the age of 13 years.
- [2] The Accused was also indicted on two counts of Unlawful Sexual Intercourse contrary to section 47(2) of the **Criminal Code** Chapter 101 of the Substantive Laws of Belize (Revised Edition) as amended by the Criminal Code (Amendment) (No.2) Act No.12 of 2014, for that he on a date unknown between the 30 June 2014 and the 8 August 2014; and the 30 June 2014 and 1 August 2014 had sexual intercourse with the **VC** a person above the age of 14 years but under the age of 16 years.
- [3] The Accused entered pleas of not guilty to the counts aforesaid hence a judge alone trial was held pursuant to the provisions of section 65A of the **Indictable Procedure Act** as amended.

## THE FACTS

- [4] I will for ease of reference summarise the evidence adduced at this trial by the witnesses for the Crown and the Defence. However, in arriving at my verdict I will do so after having considered all of the admissible evidence in this trial.
- [5] The **VC** stated that during the month of December 2010 she resided at Cotton Tree Village with her mother, siblings, and other relatives one of whom was the Accused who is her uncle. In 2010 she said she attended St. Joseph's RC School and was in Standard IV. She lived in a yellow wooden house which contained all amenities such as bedrooms, living room, a bathroom, and an outdoor bar attached to the house.
- [6] The witness recalls that around 23 – 24 December 2010, there was a post birthday celebration at the house and family members were present. The Accused asked her if she wanted to accompany him to the shop which she agreed to do. They bought chips and junk food and returned to the house on his bicycle and the Accused took her to the back of the house where there was a cement attachment. She said she wasn't sure why he had taken her there, so she asked him why. He smiled and reassured her that everything was ok but did not answer. She however continued asking him the same question and the Accused seemed to be getting annoyed and asked her if she'd rather him doing it to her f...ing brother. He then led her to a cement attachment, pulled down her underwear and he removed his pants and boxers and made her sit on his crotch. He attempted unsuccessfully to place his penis in her vagina after which he took a clear plastic bag from his pants pocket, placed his hands in it and lubricated his penis. Having done so the witness stated that his penis entered her vagina and she felt excruciating pain. He had sex

with her for about 8 minutes. Afterwards she went to her room and processed what had happened to her. She did not tell anyone what had happened because she was afraid of the Accused who she knew to be a very violent person and because she did not believe her family members would support her.

[7] The **VC** testified in that in January 2011 she recalls being in her room whilst the family members were in the bar she heard the Accused calling her. She didn't answer but he continued calling her and she sensed aggravation in his voice, so she answered. He again took her to the cement attachment unbuttoned her school uniform and removed her underwear and made her lie on the floor. He took off his pants and boxers and had sex with her which lasted for a few minutes. She went on to say that the Accused used to have sex with her every 2 to 3 weeks in the same attachment when he was high because she could smell the alcohol on him.

[8] The **VC** said in December 2011 her mother moved from her grandmother's house and they got their own house about 5 minutes from her grandmother's house, and she felt happy because she didn't think it would happen anymore. However, about a month after they moved her mother, and siblings went to her grandmother's house. She did not want to be around the Accused, so she remained at home.

[9] The **VC** stated, however, that later she heard knocking on the door and believing that it was her mother and siblings returning home she opened the door and saw it was the Accused. She said he came into the house and asked her if she had ever sucked a penis and she said no. He removed his penis from his pants and boxers and held her on her shoulders and pushed her down and placed his penis in her mouth moving his body backwards and forwards. He stopped when the neighbour's

daughter came to buy from her mother's shop so she went into the shop to serve the girl and remained in the shop as the door and windows were open and anyone could see what was going on in the shop. She said when the Accused realised that she was not going back to the house he left. The court is aware and was reminded by Crown Counsel in her closing address that there is no count in the indictment aforesaid in respect of this allegation against the Accused therefore I will disabuse my mind of this allegation and will say no more thereon.

[10] The **VC** testified that in the month of November 2013 she arrived home from school around 4:00 p.m. At that time, they lived in a yellow house in the front street about 3 to 5 minutes from her grandmother's house. The Accused and her older brother were at the house, and they called her to play wrestling with them. Her mother and other siblings were at her grandmother's house. She agreed and after a time her brother became tired and went to another room. She said that after the Accused realised that her brother was not paying attention to what was going on he pulled her underwear to one side and pushed his penis into her vagina and whilst doing do he made grunts and noises as if they were wrestling. When he was finished, he went into the living room TV as if nothing had happened.

[11] This witness stated that she recalls one day in the month of June 2014 when she came home from school, and no one was at home. At this time, she was living in Cotton Tree Village at the back of her grandmother's house. When they returned to their grandmother's house her mother built 2 additional rooms one for herself and one for the **VC** and her siblings. They were attached to her grandmother's house. Her mother also built her own living space and kitchen area. So, on that day when no one was at home as her mother was at work and her grandmother was attending

a funeral. She said she saw her cousin Ginelle in the yard by a wooden structure they were trying to build. She remained there speaking with her cousin and after about 20 to 30 minutes the Accused opened the back door and looked out 2 or 3 times before calling her to go to the shop. She said she remained where she was because that is where she felt safe. Ginelle's mother called her, and it was getting dark. So, she said she went into the house to the front verandah to wait for someone to come home and because she felt that the Accused had left. However, she said she realised that the Accused was still at the house when she heard him walk and heard the floor creak. He saw her on the verandah, and she said she became anxious and scared. She said he led her into the bathroom and locked the door. She was still wearing her uniform skirt which the Accused unbuttoned and pulled down along with her underwear. He removed his boxers and engaged in sexual intercourse with her on the bathroom when he pushed his penis into her vagina in and out for about 5 minutes before she heard a car at the front door. The Accused got up off her and put on his boxers and pants. She said she could see him clearly as the bathroom was lit by a bulb.

[12] The **VC** testified that she recalls during the month of July 2014 late one night when everyone was at home except her mother and brother. This was at her grandmother's house. She was asleep and felt someone touch her tights. She saw it was the Accused though the lights were off she could recognize him by the lights from the church nearby. She said the Accused led her into his mother's living room area and made her sit on the sofa. That's when he removed her underwear, took off his boxers and pants and attempted to push his penis into her vagina but it did not go in. She said he asked her to put it in herself which she reluctantly did. He

then got cooking oil and lubricated his penis. After that he put his penis into her vagina going back and forth for about 5 minutes at which time her grandmother awoke and opened her room door. The Accused waited until his grandmother went back into her room then he went to his sister's part of the house. She said she put on her underwear and went into the bathroom and washed herself off and went back to bed.

[13] The **VC** stated that for a very long time she did not talk to anyone about what was happening. However, when she graduated from High School, she got a job and moved out of the house. As she was working for her own money, she started seeing a therapist and within 3 months of seeing the therapist she decided to tell her family about it. Though she told them in 2018 no one supported her, and they kept making excuses for the Accused. She said she told her entire family. She said the church near the home was about 30 feet away and it contained bright lights on the outside and numerous lights along the roof.

[14] In the year 2010, the **VC** said she knew the Accused all her life. He is her grandmother's son and grew up together with him at her grandmother's house. She would see him every day and when he had sexual intercourse with her the first time he was living at her grandmother's house.

[15] **UNDER CROSS-EXAMINATION** The **VC** said that she was living in the USA during her childhood in 2008 and she returned to Belize in 2010, around the month of May. She said she was in good health when she returned and is unaware that she had any illness at that time. She said Juanita Hyde is her grandmother. She said she did say that she reported what occurred to her and to her family. The first persons

were Andrea Hyde and Elston Hyde. After reporting to them she then told her mother and through her mother the whole family found out.

[16] The **VC** said that in the year 2018 she had a boyfriend, one Carlos Garcia. She denied that the first person she complained to was Garcia and not a member of her family. She denied that a fight occurred between her boyfriend and the Accused. She stated that Carlos was outside of the bus and the Accused was inside the bus and they did not get into a physical fight. She also denied that the Accused gave her boyfriend a good beating and that she did not threaten the Accused by saying that he would pay for that.

[17] The **VC** stated that between 2010 and 2011 the Accused lived with his sister in Belmopan whilst she was living at her grandmother's house. She stated that the Accused dropped out of school between 2012 and 2014 and he was living at her grandmother. She stated that she did not take information out of a notebook when she made her report to the police. She said after the incidents of the Accused raping her she fell into depression. She admitted that her grandmother took her to the hospital every time she was sick. She stated that when she was taken to the hospital it was because every time, she got her menstrual cycle she got a lot of pain, and it had nothing to do with when she suffered from depression. At that time, she never heard her family describe her as a crazy person.

[18] **UNDER RE-EXAMINATION** The **VC** said that she would be alone in her room not speaking with anyone. When she told her family members what had happened, she also told them she had suffered from depression and had become suicidal.

[19] **LAILA BURGOS** testified that she is the Deputy Registrar Vital Statistics. She tendered into evidence a Birth Certificate for the **VC** Gwen Alma Smith.



[20] This witness was not cross-examined.

[21] **WPC 1506 CLARA MICHAEL** testified. She stated that during the month of February 2019 she was attached to the Domestic Violence Unit at the Belmopan Police Station. On the 4 February 2019, the **VC** visited the station and made a report. The **VC** at that time was 19 years old. On the following day the 5 February 2019, she escorted the **VC** to the Western Regional Hospital where she was seen and examined by Dr. Landero who issued her with a medico legal form and consent form both of which were stamped.

[22] This witness stated that on the 8 February 2019, she was part of a team of police officers who visited an orange-coloured house at Cotton Tree Village where they located the Accused. He was informed of the report made against him. He was cautioned and escorted to the Roaring Creek Police station. On that same day the witness stated that she swore to an Information and Complaint and obtained a warrant in the first instance and formally arrested and charged the Accused. He was again cautioned and told of his rights. The medico legal form was tendered into evidence.

[23] This witness was not cross-examined.

[24] That was the case for the Crown.

[25] At the close of the Crown's case, the court gave the Accused the following choices namely:

- That he may remain silent as he has nothing to prove, and his silence cannot be held against him.

- That he could make an unsworn statement from the dock in which case he cannot be cross-examined by anyone.
- He could give sworn testimony from the witness stand in which case he would be cross- examined by Crown Counsel.
- Regardless of which choice he makes he has the right to call witnesses.

[26] The Accused chose to give sworn testimony.

[27] **ACCUSED SWORN.** The Accused said he has never been convicted of any crime. Between the 22 and 25 December 2010, he was visiting his aunt who lived about 8 blocks from where he lived. He went there to spend some time with her two sons, Kenrick and Ken. Later that day when night was falling, they went to a shop to buy pop shots. They played with the pop shots until around nine o'clock that night. At around 10:30 p.m., he told his aunt he was ready to go home so his two cousins brought him home at around 10:45 p.m. Later that night his mom, sisters, and brothers were at home. He and his mother occupied one room, the next room was for his sister and brother and the last room for his sister and her three children.

[28] The Accused testified that between the 31 December 2010 and 1 February 2011, he was attending the Belmopan Baptist High school and resided with his sister Kenseisha and her husband and 2 daughters in Belmopan. Every morning before he went to school, he took his nieces to school before he headed to school. He also said that around 2:30 p.m., he would pick them up from school and take them to where his sister works. Then at around 5:15 to 5:20 p.m., they would leave the office and go home.

- [29] As regards the third count which accuses the Accused of having carnal knowledge of the **VC** between the 1 February 2011 and the 15 December 2011, the Accused denied that had happened. He said that during that time he lived with his sister in Belmopan. He would usually visit his mother every Saturday morning and return every Sunday evening.
- [30] The Accused testified that with respect to the allegations of sexual molestation of the **VC** between the 31 October 2013 and 1 December 2013, the Accused said he was still in school in second form and resided with his sister in Belmopan.
- [31] The Accused's answer to the court in respect of the allegation that between the 31 May 2014 and the 1 July 2014 was that in 2014 he was not attending High School having dropped out in 2013 so he was still staying with his sister Kenseisha taking her children to school every morning and brought them back home every evening.
- [32] On the last count alleging him of having sexual intercourse with the **VC** between the 28 June 2014 and 1 August 2014, the Accused stated that he was living with his sister and her husband and two daughters. He also said he was always around his cousins Jadon Garbutt as they grew up together and attended the same primary school and the same high school. So, they would hang out most of the time then around 3:30 p.m. to 3:45 p.m., he would pick up his nieces and come home.
- [33] The Accused went on to state, 'I have never threatened Gwen before, and never ever threatened her. What I can, however, recall is that on 5 August 2018, I was working in San Pedro Belize Express Water Taxi I was the captain driving the boat. That was a Saturday, Costa Maya weekend. I went to the bus terminal that evening when I finished working when I saw Carlos, Gwen's boyfriend. Then I approached Carlos and I hit Carlos so hard in his face he fell to the ground, and I

got over him and continued punching him in the face. Gwen was inside the bus when she saw that I was beating up Carlos she came out of the bus, and she was screaming at me to stop, and I did not stop and then she pushed me off Carlos. Gwen looked at me and told me she will get me back for what I did to Carlos. I told Gwen do what you want because your boyfriend has a big mouth. Then I stepped away from both and got into my bus and came home and as soon as I reached home, I told my mother what I did to Carlos Gwen's boyfriend and that I am expecting the police to come for me because Gwen has threatened me and told me she will get me back for what I did. I never answered her all I told her is that her boyfriend has a big mouth, that is all the misunderstanding I have with Gwen Smith that I beat up her boyfriend.

[34] **UNDER CROSS-EXAMINATION** the Accused said that he knew the VC from since she was a child. He denied living in the house at Cotton Tree in 2010. He said he stopped living in the house from the year 2000. When he lived at his sister in Belmopan he visited his mother every Saturday. He said he punched Carlos in his face because it was like one month before this happened that both Gwen and Carlos were also accusing my cousin of touching Gwen Smith and I was present, and I did not like it. I told Carlos that he needs to leave my mom's house and he was having a back and forth with me and from that date I do not like Carlos. He agreed that WPC Clara Michael testified that she received a report from the VC on the 5 February 2019 which is about 6 months after the incident he referred to with Carlos. He agreed that between the 23 and 24 December 2010, he was at his mother's residence. He went on to say that around 3:00 p.m. on the 23 and 24 December he was at his aunt's house until 10:00 p.m. to 10:45 p.m. every night

from the 20 to 27 December 2010, to play pop shots with his cousins. He said that on the 10 December 2010, he was in High School living with his sister in Belmopan and that school closed either the 14 or 15 December. He stated that on the 20 December 2010, he was at his mother's house in Cotton Tree. He went on to say that he does not spend all day there as he usually stays with his cousins from the 20 until after New Year's when they go back from three to around 10:00 p.m., when they play pop shots. He got the money from his aunt and uncle who are from the USA. He said he returned to school on the 10 January 2011.

[35] The Accused denied that he put his penis in the vagina of the **VC** in January 2011. He said that the structure at the back of his mother's house was wooden not concrete and denied that in December 2010 he placed his penis in the **VC's** vagina. The Accused stated that in November 2013, he was living in Cotton Tree. He then denied that he was living at Cotton Tree in November 2013. He said the usual time he visits his mother's house is on Saturdays and denied that he was at his mother's home playing wrestling with the **VC** and her brother because at that time he was living in Belmopan.

[36] Crown Counsel suggested to the Accused as follows:

Q. Let us talk about June 2014, one evening in June of 2014 Gwen was at your mother's house sitting on the verandah after it was dark. And I am putting it to you that when she was sitting there you went and took her by the hand, and you took her to the bathroom in the house.

A. Like I said, it is 2014, right?

Q. June 2014, 2013, I fell out of school in Belmopan. So, in 2014 I was here in Belmopan with my sister taking my nieces to school every day and bring them back home.

Q. So, you want us to believe that you were never at your mother's house in June of 2014?

A. I went there every Saturday.

Q. Okay so you were there. And when you took Gwen to the bathroom you took down her skirt and underwear and placed your penis into her vagina?

A. I never took Gwen anywhere not into no bathroom.

Q. Mr. Hyde in July 2014, also at your mother's house late at night you went where Gwen was sleeping and you tugged at her clothing and when she woke up you led her to the living room, and you placed your penis into her vagina.

A. In July 2014, yes, I was in Cotton Tree my mother has three bedrooms one for her and one for me when I was visiting. So, if I was with my mother and Gwen was sleeping, how can I get out without my mother knowing?

Q. So, you were there?

A. I was there.

Q. Where are you living now?

A. In Cotton Tree.

[37] The Accused said he now lives in Cotton tree alone.

[38] There was no re-examination.

- [39] The Accused called one witness.
- [40] **JUANITA HYDE** testified that she is the mother of the Accused and the grandmother of the **VC**, and that the **VC** lived at her home, and she was in charge of the house.
- [41] The witness went on to state that her relationship with the **VC**'s mother was close and the **VC** never complained to her that the Accused molested her. She said that in December 2010, the Accused lived in Belmopan with her daughter and was going to school. On the 28 August she got to know that the Accused was in trouble. The police took him away between the 31 December 2010 and January 2011, the Accused was at Belmopan and between the 1 February 2011 to 15 December 2011, he was still living at Belmopan. She continued that between the 21 October 2013 and the 1 December 2013 that the Accused lived in Belmopan. Between the 31 May 2014 and the 1 July 2014, he lived in Belmopan and between the 30 June 2014 to the 1 August 2014, the Accused lived in Belmopan.
- [42] The witness stated that the Accused would go home on Saturdays but sometimes she would go and visit him.
- [43] **UNDER CROSS-EXAMINATION.** The witness said that she used to have seven children one of whom is now Deceased. Stephanie Sebastian is her daughter, and her D.O.B is 22 December 1981. The Accused is her youngest child. She denied that the Accused was living with her between 31 December 2010 and 1 February 2011. She said he lived with her daughter from 1 February 2011 to 15 December 2011, the Accused did not live at her he lived in Belmopan and from the 30 June 2014 to August 2014 he lived at Belmopan. She said that sometimes he visited her on Saturdays, only Saturdays and sometimes he played basketball.

She said she did not know of the Accused getting into fights with his siblings because he was hardly at Cotton Tree. She said she loves all of her children and grandchildren. When the trial started, she came to the court to support the Accused, but she doesn't know if anyone came to support the **VC**, she said that the **VC's** mother lives at Cotton Tree and since the trial she has been living there. If they were having functions at weekends such as birthdays and Christmas, the Accused would come to Cotton Tree. She said that between 2010 and 2014 she worked in her bar. Sometimes the bar closed by 10:00 p.m. or 11:00 p.m.

[44] There was no re-examination and that was the case for the Defence.

#### **CLOSING ADDRESSES**

[45] Defence Counsel in his address to the court submitted in local vernacular that the case could be described as a she says he say case. He submitted that the court should exercise its discretion to consider the presence or absence of corroboration in the Crown's case before arriving at a verdict.

[46] Crown Counsel submitted that save and except for count 3 in the indictment the Crown has adduced evidence to satisfy the court of the guilt of the Accused in counts 1, 2, 4, 5 & 6. She stated that the elements of the counts aforesaid were established by the **VC** in her testimony.

[47] Crown Counsel further submitted that the Defence case essentially relied on the defence of alibi. The particulars thereof were not disclosed at case management or at all prior to the commencement of the trial. She contended that in the circumstances there was nothing to prevent the Accused from concocting a false alibi at the last minute.



## THE LAW

[48] The 5 counts in the indictment to be considered by the court allege that the Accused committed offences contrary to the provisions of sections 47(1) & (2) of the **Criminal Code**<sup>1</sup> CAP 101 indictment. Those sections provide thus:

*“47.- (1) Every person who, with or without consent, has sexual intercourse with a person who is under the age of fourteen years commits the offence of unlawful sexual intercourse and is liable on conviction on indictment to imprisonment for a term that is not less than twelve years but may extend to imprisonment for life.*

*(2) Every person who has unlawful sexual intercourse with a person who is above the age of fourteen years but under the age of sixteen years, commits an offence and is liable on conviction on indictment to imprisonment for a term that is not less than five years but no more than ten years, provided that with regard to sub-section (2) –*

- (i) in the case of a person who is charged with a crime under that subsection who is under the age of eighteen years, the presence of reasonable cause to believe that that other person was above the age of sixteen years shall be a valid defence on the first occasion on which such Accused person is charged with a crime under that subsection; or,*

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<sup>1</sup> Criminal Code CAP 101 section 47 (1)(2) of the Substantive Laws of Belize Revised Edition 2020

(ii) *in the case of a person who is charged with a crime under that subsection who is of or above the age of eighteen years,*

*the presence of reasonable cause to believe that the complainant was over the age of sixteen years shall be a mitigating circumstance for the purpose of sentencing on the first occasion on which such Accused person is charged with a crime under that subsection, and in any such case the mandatory minimum sentence of five years prescribed above shall not apply”.*

[49] The Crown is required to prove beyond reasonable doubt that in respect of counts 1 & 2 of the indictment that the Accused had unlawful sexual intercourse with the **VC** at which time she was under the age of 14. In respect of counts 4, 5 & 6 the Crown is required to prove beyond reasonable doubt that the **VC** was above the age of 14 years but under the age of 16 years and that the Accused had unlawful sexual intercourse with her. That is that the Accused placed his penis in her vagina without her consent whilst she was under the age of 14 and under the age of 16.

#### **ANALYSIS OF EVIDENCE**

[50] To prove its case the crown relies almost exclusively on the evidence of the **VC**. In this regard Defence Counsel in his closing submissions urged the court to exercise its discretion to apply and consider the warning on corroboration.

[51] Section 92(3) of the **Evidence Act CAP<sup>2</sup> 95** provides thus:

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<sup>2</sup> CAP 95 Evidence Act section 92(3) of the Substantive Laws of Belize Revised Edition 2020

**(3) Where at a trial on indictment–**

**(a) a person is prosecuted for rape, attempted rape, carnal knowledge or any other sexual offence, and the only evidence for the prosecution is that of the person upon whom the offence is alleged to have been committed or attempted; or**

**(b) an alleged accomplice of the Accused gives evidence for the prosecution, the judge shall, where he considers it appropriate to do so, warn the jury of the special need for caution before acting on the evidence of such person and he shall also explain the reasons for the need for such caution”.**

[52] It is common ground that the alleged incidents of unlawful sexual intercourse occurred between the years 2010 and 2014. WPC Michael in her testimony states that a report was made to the police in the month of February 2019. Thus, in the circumstances because of the effluxion of time between the alleged occurrence of the alleged unlawful sexual intercourse the court will exercise due care and caution in its consideration the evidence adduced by the Crown before arriving at a verdict.

[53] The Crown tendered into evidence without objection a certified copy of the birth certificate of the **VC** which discloses that her date of birth is the 16 December 1999.

[54] The evidence from the **VC** on count 1 is that on or around the 23 or 24 December 2010, the Accused had sexual intercourse with her without her consent by placing his penis in her vagina. On that date she was 11 years old. The **VC** further

testified that on that day there were post birthday celebrations at the house and the Accused and family members were present.

[55] The **VC** went on to testify in respect of count 2 that sometime in January 2011, whilst family members were at the bar, and she was in her room she heard the Accused calling her and because she sensed aggravation in his voice when she did not answer she decided to answer. She stated that he again took her to an attachment at the house where he sexual intercourse with her. She further said that this happened every 2 to 3 weeks when he was high because she smelt alcohol on him.

[56] The evidence from the **VC** on count 4 is that in November 2013, she arrived home from school one day at around 4:00 p.m. when the Accused and her brother were at her home playing wrestling and they called her to play which she did. She said, however, her brother got tired and went into another room. The **VC** continued that when the Accused realised this, he pulled her underwear to one side and pushed his penis in her vagina and whilst he did, so he continued making grunting noises as if they were still wrestling. At this time the **VC** was 13 years old. She had also stated that they lived in the front street about 3 to 5 minutes from her grandmother's house.

[57] As regards count 5 on the indictment the **VC** testified that she came home from school one day in the month of June 2014. At that time, they were living in Cotton Tree at the back of her grandmother's house where her mother had built two additional rooms, one for herself and the other for the **VC** and her siblings. Her mother also built her own living space and kitchen area. On that day she said her mother was at work and her grandmother was attending a funeral. She said she

was speaking with her cousin Giselle in yard and after about 20 to 30 minutes the Accused called her to go to the shop. She said she remained where she was because she felt safe. However, Giselle's mother called her, and it was getting dark. She said she went to the front verandah of the house to wait for someone to come home she said the Accused turned up and took her to the bathroom locked the door and pushed his penis in her vagina and had sexual intercourse with her. This lasted for about 5 minutes when she heard a car at the front door. She said she was able to see him clearly by the light in the bathroom which was on at the time.

[58] With respect to the allegations against the Accused in count 6 of the indictment the **VC** stated that on a night in July 2014, everyone was at home except her mother and brother, and they were at her grandmother's house. Whilst asleep she said she felt someone touch her thighs. She stated that she saw the Accused by the lights from the church nearby. She said the Accused led her into his mother's living room and put her to sit on the sofa. After he removed her underwear and his pants and boxers, he attempted to push his penis in her vagina, but it did not enter. He eventually got some cooking oil and lubricated his penis after which he was able to push his penis into her vagina going back and forth for about 5 minutes at which time her grandmother awoke and opened the room door. She said the Accused waited until her grandmother went back into her room and went to his sister's part of the house. She then washed herself off and went back to bed.

[59] The **VC** further testified that for a very long time she did not tell anyone what was happening. She had previously stated that she was afraid of the Accused. She said she had grown up with him and knew him to be a violent person in that he

would punch the walls kick the door and get into fights with her brother and his brother. She also said she didn't think the family would believe her or support her.

[60] The **VC** was cross-examined by Defence Counsel and no discrepancies and/ or inconsistencies arose therefrom. Indeed, the thrust of Defence Counsel's case was that the **VC** was considered to be a mad person who had to be taken to the hospital by her grandmother on 3 occasions. The **VC** stated, however, that she was taken to the hospital because of problems that arose during her menstrual cycle and had nothing to do with when she suffered from depression. She denied hearing her family members describe her as crazy.

#### **IDENTIFICATION**

[61] The issue of identification did not arise at any time during this trial. It is common ground that the **VC** and the Accused knew each other for many years and were closely related to each other. I find that during the **VC**'s testimony she gave clear evidence as to how she knew it was the Accused who had sexual intercourse with her.

[62] In her testimony on count 1 the **VC** stated that she and the Accused went to the shop and after they returned the Accused took her to the cement attachment to the house where he had sexual intercourse with her. She also went on to describe the lighting conditions at the attachment. As regards count 2 the **VC** again stated that the Accused called her and took her to the attachment where he had sexual intercourse with her. With respect to count 4 the **VC** testified that it was she, her brother, and the Accused playing wrestling at the house after which the Accused had sexual intercourse with her. The issue of identification of the Accused did not arise here.

[63] As regards the count 5 the **VC** testified that the Accused was at her home alone when the Accused arrived at the house. She stated that he took her into the bathroom where he turned on the light and had sexual intercourse with her. Here again the issue of identification did not arise. She said she was able to see him from the light in the bathroom.

[64] With respect to count 6 the **VC** testified that the Accused woke her up and had sex with her. She said she was able to see him from the lights at the church nearby.

[65] At no stage did the defence contend that the **VC's** identification of the Accused was mistaken or hopelessly wrong. Indeed, the case for the defence is that the **VC** concocted this story to get even with the Accused who beat up her boyfriend. The defence also relied on the defence of alibi.

#### **ALIBI**

[66] The Crown has the burden of proving the guilt of the Accused. He does not have to prove that he was someplace else at the time when the alleged sexual assault of the **VC** occurred. On the contrary the Crown must disprove the alibi. Though I may conclude that the alibi was false that by itself does not allow the court to find that he is guilty though it is a matter to be considered. The court should also bear in mind that an alibi is sometimes invented to bolster a genuine defence.

[67] The Accused in his sworn testimony stated that at the time when the offences in the counts in the indictment were allegedly committed, he was living in Belmopan with his sister and her family. He said he was attending school in Belmopan hence his decision to reside there. He further stated that he visited Cotton Tree on Saturdays to visit his mother.

[68] The mother of the Accused also testified that the Accused was at the material times residing in Belmopan where he attended school. She too stated that he visited her on Saturdays. She also stated that he was present if they were having functions at Cotton Tree such as birthdays and Christmas.

[69] The Crown's case on count one alleges that the **VC** was sexually assaulted between the 22 and 25 December 2010. This was the Christmas season and the **VC** also testified that the family was having a post birthday celebration for her mother's birthday. The evidence of Juanita Hyde her grandmother is that the **VC's** mother's D.O.B is the 22 December 1981. The Crown's submission is that there is every likelihood that at that time the Accused was at his mother's house as it was Christmas time and there was a party for the **VC's** mother who is his sister.

[70] As regards count 2 which allegedly occurred between the 31 December 2010 and 1 February 2011 the **VC** testified that the Accused had sex with her sometime during the month of January 2011. The Crown contends that in his cross-examination the Accused testified that he was at Cotton Tree from the 29 December 2010, until after New Year's Day because he was playing pop shots with his cousins from the USA every day. He went on to say that they usually remain until the end of January.

A. No, I usually stay with my cousins from the 20 until after the New Years when they go back, I usually spend my time with my cousins from three to around ten we were always playing with pop shot.

Q. Where did you get money to buy all this pop shot?

A. My aunt and uncle are not from here they are Americans.

Q. And where are they now?



A. In the states.

Q. What date did you return to school in January 2011?

A. It was the 10.

Q. And you are telling us that your cousins left after the end of December 2010?

A. No.

Q. When?

A. They usually leave the end of January after celebrating my mom's birthday.

[71] The VC's testimony on count 4 was that after the Accused, her brother and herself stopped playing wrestling the Accused unlawfully had sexual intercourse with her.

The Crown contends that the Accused stated thus about this incident ...

MS. MOHAMED: In November of 2013.

THE ACCUSED: Just November 2013, no specific dates?

MS. MOHAMED: No, in that month.

THE ACCUSED: The usual time I visit is Saturdays and I was not playing with Gwen and Louis.

Q. I am putting it to you that during the time you were playing in the room Louis left the room and you and Gwen remained in her mother's room.

And I am putting it to you that during the time you were left alone with her that you placed your penis in her vagina.

A. I was not playing with Gwen and Louis. Louis left I was not playing with Gwen.

Q. So, Louis was there.

A. Louis was not there because I was not playing with them.

[72] The Crown is therefore asking the court to find that by virtue of the Accused contradictions aforesaid he was indeed at the scene at his mother's house when the offence in the count four was allegedly committed.

[73] Count 5 alleges that the Accused had unlawful sexual intercourse with the **VC** between 31 May 2014 and 1 July 2014. Count 6 alleges that the Accused had unlawful sexual intercourse with the **VC** between the 30 June 2014 and 1 August 2014. In this regard under cross-examination the Accused stated thus:

Q. Mr. Hyde in July 2014, also at your mother's house late at night you went where Gwen was sleeping and you tugged at her clothing and when she woke up you led her to the living room, and you placed your penis into her vagina.

A. In July 2014, yes, I was in Cotton Tree my mother has three bedrooms one for her and one for me when I was visiting. So, if I was with my mother and Gwen was sleeping, how can I get out without my mother knowing?

Q. So, you were there?

A. I was there.

[74] It is common ground that at that time the Accused had dropped out of school. He still maintained however that he still resided in Belmopan.

[75] Section 125 of the **Indictable Procedure Act**<sup>3</sup> provides thus:

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<sup>3</sup> CAP 96 Indictable Procedure Act section 125 (1) and (2) (a) of the Substantive Laws of Belize Revised Edition 2020.

*“125.– (1) On a trial on indictment, the Accused shall not without the leave of the court raise the defence of alibi or adduce evidence in support of an alibi unless, before the end of the prescribed period, he gives notice of particulars of the alibi.*

*(2) Without prejudice to the foregoing sub-section, on any such trial the Accused shall not without the leave of the court call any other person to give such evidence unless–*

*(a) the notice under that sub-section includes the name and address of the witness or, if the name or address is not known to the Accused at the time he gives the notice, any information in his possession which might be of material assistance in finding the witness”.*

[76] The court became aware that the Accused would be relying on the defence of alibi when the Accused gave his testimony which was clearly in breach of the provisions of the **Indictable Procedure Act** aforesaid. Crown Counsel contends that the alibi is contrived because it was not disclosed to the Crown pursuant to the [provisions of the IPA or at all.

### **VERDICT**

[77] I have carefully and cautiously examined the evidence of the crown in the 5 counts to be decided on. I observed the demeanour of the **VC** whilst giving her evidence both in chief and under cross-examination. She was not contradicted in her testimony nor are there any inconsistencies and/ or discrepancies therein.

[78] In respect of each count the **VC** though not stating the exact date upon which the acts of unlawful sexual intercourse allegedly occurred she nevertheless was able

to state where her immediate family resided, what part of the house the alleged incident occurred, approximately how long it occurred, the acts prior to and subsequent to the commission of the alleged offence.

[79] I have also considered the application of the good character principles. In the usual course of events the Accused who gave sworn testimony during which he stated that he has never been charged before for any other offence save and except those from the case at bar would be entitled to a good character direction. However, the Accused during his testimony under oath stated that he beat the boyfriend of the **VC** and in so doing demonstrated to the court the manner in which he cuffed and beat him. Thus, I find in the circumstances that the Accused is not entitled to a good character direction.

[80] As stated, aforesaid the court took into consideration the effluxion of time between the commission of the alleged offences and the date when the report was made to the police. I do not find the cause for her reluctance to report these matters to her family to be unreasonable in the circumstances. She expressed fear of the Accused as one of her reasons for maintaining her silence. I have observed the Accused whilst giving his testimony demonstrate an astonishing display of ferocity when he described the manner in which he cuffed and beat the **VC's** boyfriend. Moreover, I must consider her age and living conditions at the time when she said these offences were committed.

[81] I further find that the decision taken by the **VC** to seek counselling and treatment from a therapist to be appropriate against the background of her being in a state of depression and suicidal.

[82] The **VC**'s report to the police was some 6 months after the incident between the Accused and the **VC**'s boyfriend and as such I do not find that the allegations of unlawful sexual intercourse were concocted by the **VC** as an act of revenge against the Accused for the fight with her boyfriend. Moreover, there is no evidence that her boyfriend ever made a report to the police about that incident.

[83] I do not believe and accept that the Accused resided exclusively in Belmopan within the time frame of the commission of these offences. Indeed, as regards count 1, I find that he was indeed in Cotton Tree and in the vicinity of the festivities in progress on the night of the alleged commission of this offence.

I make the same finding in respect of count 2 as his cousins from the USA remained in Cotton Tree until the end of January according to his testimony under cross-examination aforesaid.

In any event the court is aware from its own knowledge that Cotton Tree village is around 30 minutes away from Belmopan whilst using public transportation. Hence, it was quite easy for the Accused to alternate between Belmopan and Cotton Tree.

[84] With respect to counts 4 the Accused contradicted himself during cross-examination when he said "I was not playing with Gwen and Louis. Louis left and I was not playing with Gwen." He could not have been in Belmopan to know that Louis left the wrestling play. I do not in the circumstances believe and accept the alibi of the Accused herein.

[85] The Accused admitted under cross-examination that in July 2014 he was at Cotton Tree. Thus, for the reasons aforesaid I believe and accept the evidence of the **VC** that the Accused had sexual intercourse with the **VC** as alleged in counts 5 and 6.

[86] Thus, accordingly the verdict is as follows:

Count 1 The Accused is found guilty.

Count 2 the Accused is found guilty.

Count 3 the Accused is found not guilty.

Count 4 the Accused is found guilty.

Count 5 the Accused is found guilty.

Count 6 the Accused is found guilty.

**Hon. Mr. F M Cumberbatch**

Justice of the High Courts