

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C42 of 2023

BETWEEN:

THE KING

and

MB¹

Defendant

Appearances:

Mr Robert Lord, Crown Counsel for the King

Ms. Sherigne Rodriguez for the Defence Counsel for the Defendant

2024: July 29; 30

August 2; 28

JUDGMENT

**RAPE OF A CHILD; ASSAULT OF A CHILD BY PENETRATION- JUDGE ALONE
TRIAL-DECISION**

¹ Names have been anonymized for the protection of the VC, a minor.

Introduction

- [1] **NANTON, J.:** on 17th April, 2023 MB (hereinafter referred to as “the Accused”) was indicted for the following offences:
- Count 1** - Sexual assault contrary to Section 45A of the Criminal Code²
 - Count 2** - Rape of a child contrary to Section 47A of the Criminal Code
 - Count 3** - Assault of a child under 16 by penetration contrary to Section 47 B of the Criminal Code
 - Count 4** - Rape of a child contrary to Section 47 A of the Criminal Code.
- [2] He first appeared before this Court as constituted on the 3rd November, 2023.
- [3] The Accused had changed attorneys on more than one occasion in this matter and as a result, during the Case Management period he had made requests for adjournments to regularise his representation. The Court granted the Accused time during the period March 2024 to May 2024 to settle on his representation.
- [4] On 2nd May, the Accused indicated that he was represented by another attorney although that attorney never appeared before this Court. The initially set trial date of 2nd July was vacated and a new trial date was set for 29th July, 2024 to afford the Accused time to consult with his new attorney. The Accused was provided with fresh disclosure as he had indicated that his last attorney never returned his papers.
- [5] When the matter was called on the 29th July, 2024 the Accused appeared before this Court and indicated that he no longer had an attorney, and that he would be representing himself in his trial. The Court reluctant to commence the Accused’s trial with him unrepresented sought the assistance of Ms. Rodriguez of Legal Aid to assist the Accused in his legal representation. The Court stood down the matter until

² Chapter 101 of the Substantive Laws of Belize Revised Edition 2020

the afternoon sitting to allow Ms. Rodriguez time to meet with the Accused and obtain instructions.

- [6] When the matter was recalled Ms. Rodriguez indicated that she had obtained those instructions from the Accused and that she was ready to proceed.
- [7] This trial by Judge Alone therefore commenced on 29th July 2024 pursuant to **Section 65 A (2)(g) of the Indictable Procedure Act³**. The Accused was re-arraigned and pleaded Not Guilty to all four counts on the indictment.
- [8] The Crown relied on the oral evidence of live witnesses, photographs and documentary evidence.
- [9] At the close of the case for the Crown, Defence Counsel made an application to advance evidence of an alibi. The Court considered the application and with no objection from the Crown granted the Accused's request for leave to rely on an alibi although the required notice of alibi had not been given. The matter was stood down to allow the Accused to provide particulars of his alibi to the Crown.
- [10] The Court advised the Accused of the three options available to him i.e. to remain silent, to give a statement from the dock, or to give sworn evidence and that he could call witnesses if he so wished. The Accused opted to give sworn evidence on his own behalf and called two witnesses in support of his alibi.
- [11] Counsel on both sides made closing addresses, which the Court carefully considered.
- [12] The Court having considered the evidence in this case now gives its verdict and written reasons.

³ Chapter 96 Indictable Procedure Act of the Laws of Belize Revised Edition 2020

Count 1: Sexual Assault

[13] Section 45A of the Criminal Code

45A.-(1) Every person who intentionally touches another person, that touching being sexual in nature, without that person's consent or a reasonable belief that that person consents, and where the touching involved–

(a) that person's vagina, penis, anus, breast or any other part of that person's body; or

(b) that person being made to touch the person's vagina, penis, anus or breast or any other part of the person's body, commits an offence and is liable –

(ii) where that person was under sixteen years at the time the offence was committed, on summary conviction to a term of imprisonment for a term of seven years or on conviction on indictment to a term of imprisonment for twelve years.

(2) Whether a belief is reasonable is to be determined having regards to all the circumstances, including the steps the person has taken to ascertain whether the other person consents.

[14] The Crown must therefore prove to the satisfaction of the Court so that it is sure that:

- i. The Accused intentionally touched the VC's vagina.
- ii. That touching was sexual in nature.
- iii. That touching was done without her consent.

Count 2 and 4: Rape of a Child

[15] Section 47A states:

Every person who rapes another person and that person is under the age of sixteen years commits an offence and is liable on conviction on indictment to–

(b) imprisonment for not less than fifteen years, but may extend to life, where that other person was under the age of fourteen years at the time the offence was committed

[16] **Section 71** defines rape as follows:

71. (1) *Rape is the penetration of a person's mouth, vagina or anus, with a penis, without that person's consent.*

(2) *It is hereby declared that if at a trial for rape the jury has to consider whether a man believed that a person was consenting to the penetration by his penis, the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction any other relevant matters, in considering whether he so believed*

[17] **Section 73** is also instructive:

Whenever, upon the trial for any crime punishable under this Code, it is necessary to prove carnal knowledge, the carnal knowledge shall be deemed complete upon proof of any or the least degree of penetration only.

[18] **Section 53A (5)**

For the purposes of this Part- "penetration includes the continuing act from entry to withdrawal of the penis into the anus..."

[19] The Crown must therefore prove to the satisfaction of the Court so that it is sure that:

- i. The Accused inserted his penis into the anus of the VC.
- ii. That penetration was done without the consent of the VC.
- iii. That at the time of the penetration the VC was under the age of sixteen years.

Count 3: Assault of a Child by Penetration Contrary to Section 47 B of the Criminal Code

[20] **Section 47B of the Criminal Code** states:

Every person who intentionally penetrates the mouth, vagina or anus of another person who is under the age of sixteen years with a part of his body other than his penis or anything else and that penetration is sexual in

nature, commits the offence of assault on that person and is liable on conviction on indictment to imprisonment for not less than twelve years but may extend to imprisonment for life.

[21] The Crown must therefore prove to the satisfaction of the Court so that it is sure that:

- i. The Accused intentionally penetrated the VC's vagina with a part of his body other than his penis i.e. his finger.
- ii. That the penetration was sexual in nature.
- iii. That the VC was at the time of that penetration under the age of sixteen years.

The Crown's Case

[22] The Crown's case is that on the 14th December 2021 and 20th day of December 2021 the Accused penetrated the anus of the Virtual Complainant (hereinafter the VC) without her consent the VC being at the time under the age of sixteen years old. The Crown also alleged that on 14th December 2021 the Accused touched the VC's vagina without her consent that touching being sexual in nature and on the 20th December 2021 the Accused intentionally penetrated the vagina of the VC with his finger, the VC at the time being under the age of sixteen years old.

[23] The Crown relied on the oral evidence of the following witnesses whom they called in the order shown below:

- 1) SG- Mother of the VC.
- 2) VC –Virtual Complainant.
- 3) #1558 Woman Police Corporal Marleny Zuniga- Investigator.
- 4) Wenceslado Teul- Crime Scene Technician.
- 5) #1024 Cpl Dykes Rodriguez- Arresting officer.

[24] The following items of documentary evidence were admitted:

- 1) **MZ 1**- Medical report.

- 2) **MZ 2**-Birth Certificate of the VC.
- 3) **WT 1-4**- Photographs of the scene.

[25] The evidence of Justice of the Peace Andrew Godfrey was read as agreed evidence pursuant to **Section 106 of the Evidence Act**⁴.

The VC

[26] The VC was 14 years old at the time of her testimony and gave sworn evidence.

[27] The Court employed special measures in this case upon the request of the Prosecution and in the absence of objection by the Defence. The special measure employed was that the VC was permitted to give evidence in the presence of Investigator Woman Corporal Marleny Zuniga who was allowed to stand at the side of the VC during her sworn testimony. The investigator was not allowed to speak at all during the VC's testimony.

[28] Pursuant to the Court's inherent jurisdiction- see **R (On the application of S) v Waltham Forest Youth Court and others**⁵. The Court in the exercise of its discretion to permit special measures considered the age of the VC and the fact that the special measure requested would not have affected the Accused's right to confront his Accuser. As such the Court found that if permitted it would strike a fair balance between protecting the interest of the VC, a minor, without prejudicing the right of the Accused to a fair trial.

[29] The VC testified that she was born on 6th October, 2009. In December 2021 she lived with her parents and her siblings in a house located in a family yard. Other relatives also lived in that family yard including her cousin CG who lived in one of the houses with her boyfriend, the Accused.

⁴ Chapter 95 Evidence Act of the Laws of Belize Revised Edition 2020

⁵ [2004] EWHC 715 para 30

- [30] The VC said that on the 14th December between 5:30 p.m. and 6:00 p.m. she had been playing with her cousins and the Accused. She later saw the Accused at his house when she looked into the window of his room. She called out her sister's name. When she went by the door to the room she said that the Accused "*haul*" her in the room. He started touching her private part and turned her around and put his penis into her "*batty*" (which she later demonstrated was her anus by pointing out the area using the physical drawing of a female body on the medical report **MZ 1**). The VC said that the Accused had his penis in her anus for about 5 minutes and he stopped when someone threw something onto the house.
- [31] She said that she could see him clearly, because the place was not yet dark and there was lighting coming from the light-pole which shone through the window. She could see his entire body and he was close enough to her that they were touching. She said that although he was in the back of her when he penetrated her anus, she saw his face before he turned her around, and then again before she left the room.
- [32] She knew the Accused for about a month or a year prior from being in her aunty's yard. She would see him sometimes three times per week from a distance of about 10 feet and she would see his entire body.
- [33] The witness further testified that on the 20th December 2021 between 5:30 p.m. and 6:00 p.m. she was playing across the street by her house with her cousin. When they had finished playing she could not find her slippers and went in search of it. She went into the Accused's room and saw the Accused on the floor. She asked him if he had seen her slippers and he did not answer. She was leaving the room after looking for the slippers when the Accused pulled her back inside and locked the door. She opened the door again but he pulled her back in and shut the door. He started to touch her private part with his finger. He then turned her around and started putting his penis in what she again described as her "*batty*". She said that

he had his penis in her bottom for about 5 minutes. She said that it hurt when he put his penis into her anus.

- [34] The VC said that she told him that she would tell her ma, and then she ran outside where she met her father who asked her where she had come from. She said that she did not answer her father. She saw her sister and her mother having dinner and she joined them and then went to bed.
- [35] On this occasion she said that she could see the Accused's face because the lamp post was near and the window was open. She could see his whole body.
- [36] The witness pointed out her house, the Accused's house and the room in which the incidents took place in photographs **WT 1-4**.
- [37] The witness identified the Accused in the dock as the person she had referred to in her testimony as having placed his penis in her anus.
- [38] On the 21st December the VC stated that she was at home when her mother found her underwear on the ground with something resembling blood on it. Her mother asked her if she had gotten her "monthly", but she did not know what that was so she went to her sister and told her what happened. She and her mother later went to the police and then to see a doctor who examined her.
- [39] Under cross examination the witness accepted that there was no light or window shown in any of the photographs tendered, but maintained that there was a window to the left side of the room which was not captured in the photograph. The witness rejected the suggestion that it was too dark for her to see who had sexually assaulted her, or that she was mistaken in her identification of the Accused.

SG

- [40] SG is the biological mother of the VC. She gave birth to the VC on the 6th October 2009.
- [41] On 21st December, 2021 she was at home when she went into the bathroom and saw the VC's "*panty*" on the ground. She said that she knew it was the VC's panty because she buys all the underwear for her children, so she knew which belonged to whom. She noticed that there was something that resembled blood on the underwear. She called the VC and asked her a question but the VC did not answer and instead ran to her sister and told her something.
- [42] SG and the VC then proceeded to the police station where Investigator Marleny Zuniga questioned the VC who gave her a report.
- [43] On the 22nd December 2021 SG was present at the clinic when the doctor examined the VC.
- [44] The witness identified her house in photos **WT 1-4**.
- [45] She said that the Accused lived with her niece CG for about 1 or 2 years prior to the 21st December 2021, and that she would see him every day. She said that she would describe the Accused as nice and that he was always with the children.
- [46] Under cross examination the witness stated that she was certain that the underwear she found with the apparent blood was the VC's as she was the one who had bought it.

Woman Corporal Marleny Zuniga

- [47] On 21st December 2021 Officer Zuniga was a Corporal of Police stationed at the CIB Precinct 2. At about 5:30 pm she met SG, who had visited the station along with her then 12 year old daughter, the VC. They made a report to her and she interviewed the VC in the presence of her mother.
- [48] Officer Zuniga contacted the Human Services Department and spoke with Ms. Kenisha Cole, who later interviewed the VC and her mother.
- [49] On 22nd December Officer Zuniga took the VC and her mother to the Coral Grove Medical and Paediatric Center. In her presence, SG signed a consent form granting permission for the doctor to examine her daughter, the VC, a minor.
- [50] Officer Zuniga filled out a medico legal form in the name of the VC, which she handed over to Dr Chulin. Dr Chulin conducted a medical examination on the VC in her presence. At the conclusion of the examination, Dr Chulin wrote his findings on the medico legal form and handed over same to the Officer Zuniga.
- [51] That medical report was tendered into evidence as **MZ 1**, without objections.
- [52] Officer Zuniga also retrieved a birth certificate in the name of the VC from the Vital Statistics Unit. That birth certificate was tendered into evidence as **MZ 2** without objections.
- [53] Officer Zuniga later contacted CST Wenceslado Teul and they proceeded to the scene of the incident where the CST took photographs.
- [54] On 27th December 2021 she met the Accused at Precinct 2 cell block where she identified herself to him as a police officer and informed him of the reason for his detention and cautioned him. He chose to remain silent. She informed him of his

constitutional rights, and he chose not to exercise any. She also requested that he participate in an interview.

- [55] She later conducted an interview with the Accused in the presence of Justice of the Peace Andrew Godfrey. After the first question was asked, the Accused stated that he did not want to participate in the interview and the interview was concluded. The Accused chose not to sign the interview note.
- [56] Officer Zuniga later charged the Accused for offences arising out of the report.
- [57] Under cross examination the witness stated that she did not think it necessary to conduct an identification parade with the Accused, because the VC had stated that she knew the Accused for about three years, and that she would see him every day. She accepted that one of the instances had occurred at night; however, she did not hold an identification parade, because the VC had stated that they were the only two persons inside and there was a lamp post, which was lit near a window which was open and that due to that, the light should shine directly inside the building.

MZ 1

- [58] The medical report, which was completed by Dr Luis E. Chulin on the same date of the examination i.e. 22nd December, 2021, was tendered into evidence pursuant to **Section 36 of the Evidence Act**. The findings of Dr Chulin upon a genital examination was that the hymen of the VC was intact and that there were no scars or bleeding. Upon an anal examination of the VC, Dr Chullin observed that there was a tearing in the lining of her anus noted by a laceration of approximately 1 cm by 0.5 cm in diameter at the 12 o' clock position. This injury he classified as harm.

MZ 2

- [59] The birth certificate of the VC, which was tendered into evidence states that the VC was born on 6th October, 2009.

CST Wenceslado Teul

- [60] Wenceslado Teul took photographs of the family home and the room in which the incidents are alleged to have taken place. These photographs were admitted into evidence as **WT 1-4**.

- [61] This witness was not cross examined.

Corporal Dykes Rodriguez

- [62] On 26th December 2021 Cpl Rodriguez arrested the Accused and informed him of the reason for his detention. He informed him of his constitutional rights and cautioned him. The Accused chose to remain silent.

- [63] This witness was not cross examined.

JP Andrew Godfrey – Agreed Evidence

- [64] On 27th December, 2021 Officer Zuniga introduced Justice of the Peace Andrew Godfrey to the Accused, who had been detained at the CIB Precinct II pending investigations of rape of a child. He spoke to the Accused privately and made enquiries of him relative to any complaints of beatings etc. The Accused did not make any complaints to him. Officer Zuniga returned to the room and commenced the interview by reminding the Accused of his constitutional rights and cautioning him. After Officer Zuniga asked the first question, the Accused stated that he refused to participate in the interview. Cpl Zuniga then stopped the interview and printed out

what she had recorded. Officer Zuniga invited the Accused to sign the note, but the Accused refused. JP Godfrey made a note on the interview note that the Accused refused to sign, and he and Officer Zuniga signed same.

Analysis

- [65] The Court has directed itself that the Accused is presumed innocent and has absolutely nothing to prove. The Court has directed itself that the obligation is on the Crown to satisfy the Court, so that it is sure of the guilt of the Accused and if there is any reasonable doubt the Court is duty bound to acquit him.
- [66] The Court begins firstly with analyzing the evidence on the Crown's case, and if the evidence is strong enough to consider a conviction it would consider the case for the Crown, as is the required reasoning process noted by our Apex Court, the Caribbean Court of Justice (hereinafter "the CCJ"), in Dioncicio Salazar v R⁶.
- [67] The Court, in assessing credit and reliability, must examine inconsistencies, discrepancies, and any implausibility in the evidence of witnesses. The Court notes; however, on the authority of the Belizean CCJ decision of August and Anor. v R⁷ that it need not comb the record for inconsistencies or contradictions. The Court directs itself that if there are inconsistencies and discrepancies, the Court must look to see if they are material and if they can be resolved on the evidence. The Court must consider whether inconsistencies or discrepancies arose for innocent reasons, for example through faulty memory or lack of interest in what is transpiring, or if it is because the witness is lying and trying to deceive the Court. Unresolved inconsistencies or discrepancies would lead the Court to reject that bit of evidence or all of the witness's evidence entirely. The Court must also consider the cumulative effect of those inconsistencies or discrepancies on a witness's credit and reliability.

⁶ [2019] CCJ 15 (AJ)

⁷ [2018] 3 LRC 552 at para. 60

If the Court finds the evidence of a witness implausible it will reject either that witness's evidence entirely or that bit.

[68] The Court also directs itself that the credibility of a witness is not a seamless robe where one lie, or even several, strips the witness of all believability. The Court in this regard relies upon the decision of the English Court of Appeal of **R v Fanning and Ors.**⁸ The Court notes that if a witness has lied about some bit of evidence, the evidence must be properly evaluated, taking into account the fact that the witness told the untruth and the reason for the lie, and may still convict if the Court is sure that the material parts of that evidence to be true. The Court in this regard relies upon the CCJ decision of **James Fields v The State**⁹ at paragraphs 33-35:

“[33] The role of the jury is to evaluate the testimony of the witnesses and to determine what weight and reliability to assign to their statements. This role is crucial in the fact-finding process. In determining credibility, the jurors may have regard to the demeanour, consistency, bias or motive, prior inconsistent statements, corroborating evidence, and all the various factors a person will use in their daily life in order to assess and distinguish between truth and falsity. The fact that a witness has provided false information on one point under oath can impact the credibility of that witness and the weight given to their testimony. But once the case has been given over to the jury, it is the jury and the jury alone that has the responsibility to carefully consider the implications of the untruthfulness and evaluate how it affects the overall credibility of the witness’ testimony on the essential question(s) in issue.

...
*[35] In all the circumstances, a proper direction to the jury in relation to intentional lies may proceed along the following lines:
As judges of the facts, you alone determine the truthfulness and accuracy of the testimony of each witness. You must decide whether a witness told the truth and was accurate, or instead, testified falsely or was mistaken. You must also decide what importance to give to the testimony you accept as truthful and accurate. If you find that any witness has intentionally testified falsely as to any material fact, you may disregard that witness’ entire testimony. Or, you may disregard so much of it as you find was untruthful, and accept so much of it as you find to have been truthful and accurate. How you decide on this may depend on your view of how material to the issue is the lie. Where there are different or conflicting accounts in the evidence about a particular matter, you must weigh up the reliability of*

⁸ [2016] 2 Cr. App. R. 19 at para. 27

⁹ [2023] CCJ 13 (AJ)

the witnesses who have given evidence about the matter, taking into account how far in your view their evidence is honest and accurate. When doing this you must apply the same fair standards to all witnesses, whether they were called for the prosecution or for the defence. It is entirely for you to decide what evidence you accept as reliable and what you reject as unreliable.”

[69] The Court is assisted in the legal parameters of its fact-finding function by a recent decision of the Jamaican Court of Appeal in **Vassell Douglas v R**¹⁰, per Fraser JA (Ag.) “*We have distilled from the foregoing authorities that in any trial, more so a bench trial, the judge is not required to identify all the inconsistencies or discrepancies that arise during the trial unless it is considered damaging to the Crown’s case.*”

[70] The evidence, which has been led by the Crown to make out the elements of the offence of Sexual Assault (Count 1) is as follows:

- i. **The Accused intentionally touched the VC’s vagina** - the evidence of the VC was that the Accused touched her vagina on the 14th December, 2021.
- ii. **That touching was sexual in nature** - the evidence of his finger on her vagina in the circumstances can be only be reasonably inferred to have been sexual.
- iii. **That touching was done without her consent** –the VC said that the Accused hauled her in the room suggesting force.

[71] The evidence which has been led by the Crown to make out the elements of the offences of Rape (Counts 2 and 4) is as follows:

- i. **The Accused inserted his penis into the anus of the VC** - the evidence of the VC was that the Accused penetrated her anus with his penis on two occasions, on the 14th and 20th December, 2021. There is also medical evidence that there was a laceration/tear in the lining of the anus of the VC.

¹⁰ [2024] JMCA Crim 10.

- ii. **That penetration was done without the consent of the VC** – the VC indicated that on the occasion of the 14th the Accused had “haul” her into the room and put his penis into her vagina, and on the second occasion on the 20th he prevented her from leaving by locking the door and penetrated her anus even though she told him that she would tell her mother.
- iii. **That at the time of the penetration the VC was under the age of sixteen years-** the un-contradicted and combined evidence of witness SG and **MZ 2** is that the VC was born on 6th October 2009 and thus was 12 years old at the time of both incidents.

[72] With regards to Count 3 on the indictment, the Court finds that there has been no evidence, which has been led by the Crown to make out the offence of Count 3 i.e. Sexual Assault of a child by penetration. The VC's evidence is that the Accused touched her vagina with his finger on the 20th December, 2021. There was; however, no evidence led that the Accused inserted his finger into her vagina. Touching is not synonymous with insertion. The Crown has therefore failed to provide evidence of an essential element of this offence i.e. digital penetration. The Court would wish to state; however, that this omission or lacuna in the evidence is more readily explained by a failure on the part of Crown Counsel to lead this evidence from the VC with more particularity rather than evidence of inconsistency by the VC herself. The VC in her manner of speaking stated that the Accused touched her vagina with his finger, the onus was on the Crown to seek clarification from the witness as to what she meant by that statement. It is unfortunate that a further question had not been asked. The failure to so do means that an integral element of the offence has not been proven and as such the Court must find the Accused not guilty on Count 3.

[73] The Court is of the view that while it has considered the case for the Crown as a whole, the central issue for determination in analysing the Crown's case is the Court's finding as to the credibility and reliability of the VC's account. The Court will

thus first consider whether the Court accepts the testimony of the VC as honest and reliable, and if it does so accept whether the circumstances of the VC's identification of the Accused as the person who committed these acts on her on both alleged occasions is reliable. It is only if the Court is satisfied to the standard that the Court is sure that the VC is an honest and reliable witness that the Court will then consider the circumstances of the identification.

Whether the VC is an Honest and Credible Witness

- [74] The Court notes firstly that the VC gave evidence as a child- at the age of 14 years- and was testifying to two incidents, which occurred when she had shortly attained the age of 12 years. The Court directs itself that the fact that a witness is young does not mean that her word is any more or less reliable than that of an adult, and that it should assess the VC's evidence in the same fair way as it assesses any other evidence in the case.
- [75] The Court; however, does bear in mind that a child does not have the same experiences of life, or to the same degree of understanding as that of an adult. The level of a child's understanding and ability to communicate is also affected by the child's level of education. For example, the VC in this case had difficulty formulating her sentences in formal English, but spoke primarily using Creole. The Court enquired whether she spoke formal English to her teachers at school, and she indicated that she did not and that she would speak in Creole. Her ability to express herself was clearly limited by her ability to speak formal English, and the Court found that her, sometimes, short answers were more due to limited vocabulary rather than to untruthfulness or an attempt to deceive.
- [76] Often as a matter of common sense, when a child is asked questions, she may find the questions difficult to understand, may not fully understand what it is she is being asked to describe, and may not have the words accurately or precisely to describe

things. Another example where the VC displayed limited vocabulary and some embarrassment was when she was asked to name the part of her body that the person who assaulted her had touched- the witness had difficulty saying the word vagina, but had no difficulty pointing out the body part she was describing on the image contained in **MZ 1**. Notwithstanding, her challenges in communication the VC's manner and demeanour struck the Court as honest and forthright, and her evidence was consistent and plausible.

[77] A child's perception of the passage of time is likely to be very different to that of an adult. A child's memory can fade, even in a short time, when trying to describe events, even after a fairly short period, and a child's memory of when and in what order events occurred may not be accurate. The Court observed that when the VC was asked how long she knew the Accused before December 2021, she gave the somewhat confusing answer that she knew him for about a month or a year prior to the incident of the 14th December, and then when asked about the incident of the 20th December she stated she knew him for about 1 to 2 years from him living with her cousin. This evidence can be compared with the evidence of SG, who stated that the Accused had lived in that family yard for about a year or two years. The Court accepted the testimony of SG in this regard (which the Accused readily accepted in his own testimony) and rejected the VC's assessment of time in that respect as unreliable not because she was being untruthful, but rather because of the loose manner in which children usually assess time.

[78] The Court also considered that the VC did not recount the incidents with great detail –she gave very succinct evidence of what she alleged was done to her, but did not describe each event with exacting detail as perhaps an adult would have. The Court's assessment of the VC was that confidence was not natural to her. The witness was soft spoken almost to whisper, and the Court from time to time had to strain to hear her. The Court, after an assessment of the totality of the VC's evidence did not consider her to be unreliable, because of these factors that were attributable

more so to her level of understanding and her ability to express herself rather than her credibility or her reliability.

[79] The Court found the VC's manner and demeanour to be shy, reserved, and somewhat embarrassed. Her evidence while lacking in some measure of detail was logical straightforward and not at all implausible.

[80] The Court also reminds itself that the VC is testifying to alleged Sexual Assault/Rape. The Court must also be wary of making certain assumptions, which are again, matters of common sense and human experience. Experience shows that people react differently to the trauma of a serious sexual assault, that there is no one classic response. Some may complain immediately whilst others may feel shame and shock and not complain for some time; and a late complaint does not necessarily mean it is a false complaint, nor does an early complaint mean a true complaint.¹¹

[81] The incident, according to her occurred on one occasion and she did not report it. There was no explanation as to why she did not report it then; however, it is not uncommon or unusual that a young child would feel some trepidation in making such a report against a family member, who according to the evidence of SG and UG was "nice" and well loved. It is quite likely; however, that her having not reported it on that occasion emboldened the perpetrator that he could try again, which according to the VC's evidence he did on the 20th. It was after that experience, and her mother then confronting her about the soiled underwear that she reported what had happened to her older sister on the 21st December, 2021.

[82] The Court also draws the inference from the evidence of the witnesses (including the Defence witnesses) that there were many children in that family yard and that they will play from house to house and that the manner in which the families lived meant that the children would be unsupervised – thus creating the opportunity for

¹¹ **Criminal Bench Book for Barbados, Belize and Guyana**, February 2023 at p 631.

such acts to occur unnoticed. There is also evidence that the Accused himself would play with the children.

[83] Apart from the inconsistencies highlighted above the Court found that there were no other material inconsistencies which affected the credibility of the VC. There was no attempt by her to gild the lily or pad her evidence when confronted with apparent weaknesses in her evidence, such as her ability to see the face of the perpetrator. The witness readily accepted that she would only have seen the perpetrator's face before and after the act but not during

[84] The Court in its further assessment of the witness' credibility also considered the factors outlined below.

[85] **Section 96 of the Evidence Act** makes provision for sexual cases complaints and provides as follows:

96. – (1) The particulars and details of a complaint made soon after the commission of an alleged offence in the absence of an accused person by the person in respect of whom the crime is alleged to have been committed may be admitted in evidence in prosecutions for rape, indecent assault, other offences against women and boys and offences of indecency between male persons.

(2) Such particulars and details are not to be taken in proof of the facts in issue, but merely as showing the consistency of the conduct of the person complaining and supporting his credibility.

[86] In this case the VC testified that she reported the incident to her sister soon after the commission of the offence i.e. the following day. This report inferentially triggered the investigation into this matter as the VC was taken to the police station immediately after her initial report to her sister. The mother of the VC testified that the VC when questioned by her about her apparent bloody underwear- did not answer her but instead ran to her sister who SG said she told something.

- [87] The Court notes that her sister was not called as a witness, and therefore did not give evidence of what exactly was told to her by the VC. The Court is therefore unable to determine whether, and to what extent the VC's report to her sister was consistent with her sworn evidence in Court and to that extent does not support her credibility.¹²
- [88] The Court has considered the fact that the VC's reaction to her mother questioning her about her underwear was to run to her sister. The sequence of events that followed is that they went to the police immediately thereafter, where the VC made a report to Officer Zuniga, which was relatively close in time to the alleged commission of the offence (the second incident in particular). The inference that can be logically drawn is that the VC reported something to her sister and that propelled the later report of this incident to the police.
- [89] The Court also considered the evidence of her mother SG about having found her underwear with apparent blood at a time when the VC was not yet menstruating. Now, the Court notes that there was no medical/expert evidence that was admitted by the Crown to prove as a fact that what appeared on the underwear was indeed blood, so the Court does approach this evidence with some caution; however, the Court is entitled to draw common-sense conclusions from the evidence, which the Court accepts. SG's evidence that she purchased underwear for her daughters and is able to differentiate between them is logical and believable - the children are of different ages and the witness also testified that she is responsible for the washing up. It is therefore quite understandable that she would recognise the VC's underwear. The evidence of SG and corroborated by the VC was to the effect that SG thought her daughter had started her menstrual flow - that would give some indication of what the substance appeared to be. That blood- like substance which appeared on her daughter's underwear caused her to question the VC. The evidence of the VC, which is consistent with what was stated on the medical report was that the VC had not yet begun menstruation. The presence of apparent blood

¹² White (Kory) v R (1997) 53 WIR 293

on the VC's underwear; therefore, while not conclusive evidence on its own, is consistent with the VC's account that her anus had been penetrated the night before. As a matter of common sense such forcible penetration may result in bleeding.

[90] Dr Chulin's observation of a laceration/tear to the VC's anus is consistent with the VC's contention that her anus had been penetrated; however, it cannot confirm who penetrated. The Court is therefore satisfied that the medical report is consistent with the VC's allegation that someone penetrated the VC's anus.

[91] The Court also considered whether there is any discrepancy between her account of the penetration and the expert evidence of Dr. Chulin admitted through the medical report **MZ 1**, and the Court finds that there was none, in fact, the VC's account of the penetration being painful is supported by Dr Chulin's conclusion of a tear which he characterised as harm.

[92] The Court notes that the defence as deduced from cross examination of the Crown's witnesses was essentially that the VC was mistaken in terms of her identification that he was the person who sexually assaulted her, and a positive alibi that he was elsewhere when she alleged that that penetration/sexual assault took place.

[93] The Court; notwithstanding, has carefully considered the VC's evidence to resolve the critical question of whether her evidence is credible and reliable and the Court has analysed her evidence to determine whether there are any inconsistencies – admitted or otherwise. The Court finds that at this stage the VC's overall account is not inherently implausible, indeed, on the contrary it is internally consistent and convincing. The Court notes that if it is sure that the material parts of the VC's testimony are true and even without support it can convict the Accused.¹³

¹³ Supreme Court of Jamaica, Criminal Bench Book p. 120

[94] However, in that context the Court recognises that whether the VC was actually penetrated does not address the issue of identification. The Court has considered the identification evidence below and will consider the alibi evidence when it assesses the case for the Defence.

Circumstances of the Identification

[95] On each of the two occasions, the VC gave evidence that although it was getting dark both incidents are said to have occurred close to 6:00 p.m., light shone through the window from a nearby lamppost.

[96] On the 14th December, she first saw the Accused when she looked in through the window, and again when he grabbed her into the room and then after he finished penetrating her.

[97] The Accused, she said was in touching distance of her and that nothing blocked her view of him at those times. She could not see his face when he put his penis into her anus, but she could see his face clearly before he turned her around and after.

[98] On the 20th December, the VC said that she had first seen the Accused on the floor when she went in search of her slippers. She would have had a proper opportunity to see him then and then again when he closed the door and when she was allowed to leave.

[99] The Accused was someone with whom she lived in cross proximity having known him from living with her cousin.

[100] The Court notes that even honest witnesses can be mistaken and even when identifying persons known to them. However, in this case the Court accepts that the

VC's opportunities for observation on each occasion were sufficiently strong to dispel the possibility of mistake.

- [101] There was some cross examination of the Investigator on the issue of holding an identification parade; however, in the circumstances of this case where the issue of familiarity between the Accused and the VC was not in contention, the Court finds that an identification parade would have served no useful purpose in testing the correctness of the VC's identification.

Absence of Consent

- [102] The Court notes that the Prosecution did not lead direct evidence of the VC saying the word no; however, the Court found that there was evidence of the absence of consent. The VC's evidence was that the Accused "hailed" her into the room on the first occasion turned her around and started to touch her vagina and then put his penis into her anus. On the second occasion, the VC said that the Accused shut the door when she was about to leave the room and then when she reopened it he shut it again and thereafter touched her vagina and placed his penis into her anus. She told him that she will tell her "ma". The Court finds that notwithstanding the absence of the vocalisation of the word "no" that the Prosecution has proved to the standard that the Court feels sure that the VC was not consenting to either act of penetration of her anus on the 14th and the 20th and that the VC did not consent to the Accused touching her vagina.

- [103] This Court follows the reasoning of the Court of Appeal in **R v FW**¹⁴ that there is a valid legal distinction between mere submission to sexual intercourse and consent thereto. Support for that submission was found in **Olugboja**¹⁵, where Dunne LJ, speaking for the England and Wales Court of Appeal (Criminal Division) on the topic of proper directions to a jury, said, at page 8:

¹⁴ Criminal Appeal 18 of 2011

¹⁵ [1981] EWCA Crim 2 (17 June 1981)

'They should be directed that consent, or the absence of it, is to be given its ordinary meaning and if need be, by way of example, that there is a difference between consent and submission; every consent involves a submission, but it by no means follows that a mere submission involves a consent.'

[104] The Court refers to the case of **R v Malone**¹⁶, where Roch LJ stated at para 7:

'[These examples] suffice to demonstrate that it is not the law that the prosecution in order to obtain a conviction for rape have to show that the complainant was either incapable of saying no or putting up some physical resistance or did say no or put up some physical resistance.'

Defence Case

The Accused

[105] The Accused opted to give sworn testimony. In summary, his evidence was that in December 2021 he had been working at Bowen and Bowen for about 3 years and 6 months. On 14th December, he left work at 5:34 p.m. and walked to his home. He arrived at home some minutes to 6:00 p.m. He went to his mother in law's home, which was upstairs and sat there for about 10-15 minutes and then returned downstairs. His mother in law then asked him to buy somethings for her and he left to do so. When he returned he dropped off the items for her and met with the VC's father with whom he had some drinks. He later went to bed with his girlfriend around 8:00 p.m. He had seen the VC on this occasion, but did not have any communication with her.

[106] On 20th December, 2021 he left work between 5:00 p.m. and 6:00 p.m. and walked home. When he arrived at home he took off his clothes relaxed for about 20 minutes and then took a shower. He went upstairs to his mother in law's house while all the children were playing, and he and his girlfriend watched TV. After that they returned downstairs and went to bed. He never saw the VC on this date.

¹⁶ (1998) Crim LR 83

- [107] He said that the people in the yard had a problem with him, and that his girlfriend's stepfather was accused of sexual assault by one of SG's other children. He said that they are accusing him of something he did not do.
- [108] Under cross examination, he accepted that he played with all the children in the yard and socialized with everyone. He accepted that on the 14th he did play with the children for a while when he had returned home from work and that he went from the yard to his room. He; however, denied that he pulled the VC into that room or did the things alleged.
- [109] The Accused also accepted that on the 20th December he got home before 6:00 p.m. and that he did go to his room to relax, listen to music, and change his clothes. He; however, denied that the VC came to that room looking for slippers, or that he pushed her into the room and did the things alleged by the VC.

Kimberly Almendarez

- [110] Kimberly Almendarez is an administrator at Bowen and Bowen located at Slaughterhouse Road. She stated that she knows the Accused, whom she identified in Court, as an employee at Bowen and Bowen for the 4 years that he has been employed. She stated that the Accused had requested her to provide his employee's stamp card for two specific dates. She said in order to access this information she logged on to the CHRONUS system which is where the fingerprint of each employee is registered along with a record of when they come to work and when they log out of work each day. She filtered the system by searching for the dates 13th December 2021 to 21st December 2021. Through her search she was able to obtain a record of the Accused's employee time stamps for those dates. She took a screen shot of that document on her computer using her mobile phone and sent the screen shot to the Accused. The printed screenshot was tendered into evidence as a computer

record pursuant to The Electronic Evidence Act 2021 and without objection, as
KA 1.

[111] In cross examination, the witness clarified that the CHRONUS system works using the fingerprint of each employee- to record the time of their arrival and departure. She said that they do not alter the information on the system, but that it can be altered. She said that only three persons have access to the system and that is herself, her Representative, and the HR Manager. She accepted that she could not say what the Accused did after he logged out of work.

KA 1

[112] The document in summary demonstrates that on the 14th December 2021 the Accused logged into work at 7:02 a.m. and clocked out at 5:34 p.m. On the 20th December clocked in at 7:09 a.m. and clocked out at 5:27 p.m.

UG

[113] UG is the mother of the girlfriend of the Accused. In December 2021, she said that the Accused lived with her daughter Carly. On the 14th December 2021, she said that she got home from work and was on her verandah relaxing until it was time to start her business. She said that the Accused got home around 10 minutes to 6:00 p.m. She asked him to buy some items for her and he said that he would, but he wanted to sit for a bit first. After he did so, he left to buy the peppers and onions for her at the shop. He came back and brought with him a drink of *rum popo* and was sitting on the step with her and her daughters. She said that she had seen the VC coming in from the street behind and nudged her daughter to make her aware. She said at that time the Accused was with her on the step.

- [114] On the 20th December 2021, she said that the Accused had come home late – closer to 6:00 p.m., because during Christmas time he would usually get home late. She said that on that date he sat on the steps with her as they usually do.
- [115] In cross examination, she accepted that she loved her daughter and the Accused, but stated that she also loved her niece, the VC, and her sister SG so that this was hard for her.
- [116] She accepted that she was not with the Accused all night.
- [117] She accepted that she had never given a statement to the police, and explained that she felt caught up in the middle of everything and did not want to take a side but she felt as though she had to do the right thing so that someone would not go to jail innocently. She insisted that although she did not write down the dates or give a statement that she remembered every detail. She accepted that she did not recall details such as the clothing that the Accused wore, but she remembered the basics. She denied all suggestions that she was fabricating her testimony.
- [118] On the 14th December, she does not recall the Accused playing with the children, but she recalled him being on the step. On the 20th December, he did not go to his room before he sat down to talk with her for about an hour. On both dates, she accepted that the Accused had got home before 6:00 p.m.
- [119] In re-examination, the witness stated that the police had never requested a statement from her, and that she did not attempt or ask them to give one, because she did not want to do that to her sister who means everything to her also.

Analysis

- [120] The Court reminds itself that the Accused bears no burden in this matter to call witnesses or to prove anything on his defence, nor do his witnesses bear any burden of speaking to or making arrangements to give statements to the police. The Court

wishes to emphasise that throughout his trial, the Accused was never under any onus to prove his defence as such there was no obligation on him to call any evidence on his own behalf.

[121] The Court has further directed itself that the Accused is presumed innocent and has absolutely nothing to prove. The Court has directed itself that the obligation is on the Crown to satisfy the Court so that it is sure of the guilt of the Accused and if there is any reasonable doubt the Court is duty bound to acquit him. It is only if the Court rejects the Defendant's case that it returns to the Crown's case and considers the totality of the evidence and determines whether to convict.

[122] The Accused has not previously offended against the laws of Belize with the exception of a minor traffic charge to which this Court places no consideration. He is therefore a man of good character. Although, good character is not a defence to the charge the Court considers the Accused's good character as relevant in two ways. First, the Accused has given sworn evidence and the Court has taken his good character into account in his favour in its consideration of his evidence, and its determination of whether he has told the truth. Secondly, the fact that he has not offended in the past may make it less likely that he acted in the manner that the Prosecution alleges in this case.

[123] The Court has considered the Accused's evidence with the intention of reaching a fair and dispassionate assessment of that evidence. The Court notes that in assessing his credit and reliability, it must examine inconsistencies, discrepancies, and any implausibility in his evidence.

Silence of the Defendant at Interview

[124] It is a clear principle of law that a person is entitled to refrain from answering any question put to him for the purpose of discovering whether, he has committed a criminal offence. The Accused was cautioned and invited to participate in an interview, which he initially agreed to; however, when asked the initial question by

the Investigator he exercised his right to silence and chose not to participate. The Accused was under no obligation to comment, and therefore this Court has drawn no adverse inference from his silence/refusal to participate in the interview.

Defence Case

- [125] The Defence case in summary is that of denial. The VC is either mistaken or lying in her identification of the Accused as the person who placed his penis into her anus, and touched her vagina on two occasions dated 14th and 20th December 2021. The Defence asserts that the Accused could not have committed the acts in question upon the VC as during the period these offences are alleged to have occurred; he was at his job site and thereafter he was in the company of his mother in law UG and had no interaction with the VC apart from seeing her at a distance of about 20 feet on one occasion. The Defence further contended that the lighting conditions as described were insufficient for a proper identification to have been made by the VC.
- [126] With respect to the issue of identification, the Court has already accepted in its consideration of the Crown's case that the lighting and other circumstances of the incident were sufficient for the VC to have made a proper identification of the person, whom she alleged had penetrated her anus and touched her vagina. The Court; therefore, rejects the Defence's suggestion that the VC could have been mistaken in her identification of the perpetrator due to improper lighting and/or opportunity.
- [127] Regarding the issue of alibi- the Court accepts as true the Accused's account as supported by Defence witness Kimberly Almendarez that the Accused left work at 5:40 p.m. on the 14th December and at 5:34 p.m. on the 20th December. However, the acceptance of this evidence as true does not mean that the Accused could not have committed the offences as alleged. The VC, who it must be remembered was a young child, gave an estimate of the time that these offences occurred. She stated that on both occasions it was between 5:30 p.m. to 6:00 p.m. when she had been playing in the yard, and it was after playing that she said the Accused assaulted her. She testified that the streetlight had already come on and that was what provided light through the window. That description of events would take the time

closer to or beyond 6:00 p.m. It would be unrealistic to expect an exact time stamp to be recorded, because she would not have been recording time in the manner such as Bowen and Bowen. It is more likely and reasonable that hers was a loose estimate as it was not a computer generated record made with fingerprint specification. In any event the account of the Accused and his witness Ms. UG was that he was already at home and at the family yard before 6:00 p.m. on both the 14th and the 20th December.

[128] The evidence coming from the Defence case as to the time that the Accused arrived at home is therefore, not inconsistent with the evidence of the VC.

[129] The second part of the Accused's alibi is more contentious. The Accused asserted that on the 14th December 2021 he arrived home before 6:00 p.m., went to his room then was called out by UG to purchase items for her. He later left for the items and returned home where he sat and had drinks with RA, the VC's father. This evidence differs from the account of UG in that UG stated that when the Accused returned home from buying the items he sat on the step with her and her daughters. She never spoke of RA at all in her evidence, nor did she mention that the Accused went to his room at all.

[130] The Court considers this to be a material discrepancy between the two witnesses as it relates specifically to what the Accused was doing when the incident of the 14th is alleged to have taken place. No explanation was proffered for this discrepancy.

[131] Another inconsistency between the Accused's account and that of his mother in law was that the Accused had accepted in cross examination that he usually played with the children, and specifically that on the 14th he had played with the children. UG on the other hand stated, she did not see him playing with the children. It is possible that UG either did not recall or simply did not see the Accused playing with the children, an explanation which would not affect her credit. However, the critical takeaway is that the Accused's evidence in this respect is consistent with that of the VC's account that he was playing with the children on the 14th December, and that

at that time UG was not in his presence contrary to her assertion that she was with him that evening.

- [132] Another glaring and material discrepancy between the two accounts is that the Accused accepted that he did indeed go to his room, while UG never mentioned him going to his room at all on the 14th December. Again, the evidence from the Accused himself is consistent with the VC's that at some point in time on the evening of the 14th December, he was in his room.
- [133] The evidence coming from the Defence of the 20th December also has similar challenges. The Accused testified that he came home from work and went to his room where he changed his clothes and relaxed. The evidence of UG was that he came home and directly sat on the steps with her and did not go to his room at all. This material discrepancy was unexplained.
- [134] The Court further observed the demeanour of witness UG and did not find her to be a credible witness. The witness was assertive and confident in her attempts to persuade this Court that she was being honest and truthful and that she wanted to do what was right. However, her attempts to overcompensate for weaknesses in her evidence and faulty memory suggested something different and perhaps something more sinister.
- [135] The witness accepted that she never gave a statement to the police regarding the details of her testimony, but that she remembered every detail with sufficient clarity almost 3 years later. While she was under no obligation to contact the police regarding a statement, the fact that she never gave a statement close in time to the incident yet was able to recall with such specificity details such as time – often to the exact minute- the sequence of events etc. is somewhat surprising. While the Court neither accepts nor rejects her explanation for not giving a statement the effect is the same. How was the witness able to recall with such clarity what items the Accused went for exactly, what time he got home, where he sat, whether he first went to his room, the specific place where he took off his shoe, the clothing she and

her daughter wore etc. On two specific dates a week apart, which otherwise would have had no special importance to her. This would be less unusual, if for instance something noteworthy to her had occurred at that time, or if she had made a record; however, neither of those contentions were advanced.

[136] That coupled with the discrepancies highlighted above caused the Court to reject UG as an untruthful witness, who was attempting to bolster an alibi for her son in law. The Court therefore placed little to no reliance on her evidence.

[137] The Accused's evidence on the other hand was to an extent more forthright in some respects as he gave certain important concessions in his evidence, which were consistent with the VC's account. The first was that he was in his room on both occasions of the 14th and 20th December close in time to when he got home from work. Secondly, that he did play with the children on the 14th December when he got home from work.

Alibi

[138] The Court reminds itself that even though the Accused has advanced an alibi in respect of the four counts the burden of proving the case against the Accused remains with the Prosecution throughout this trial. The Crown must satisfy the Court, so that it feels sure that the Accused was not where he says he was and that he was at the time committing the offences in question. If the Court accepts the Accused's alibi as true or finds that it is possibly true, then that would be the end of the matter. The Crown would not have displaced its burden. However, for the reasons advanced above I reject the Accused's alibi.

[139] The Court rejects the Accused's explanation firstly, on the strength of the Prosecution's evidence, which by itself was sufficient and convincing. Secondly, on the fact that I reject the account of UG as to the Accused's whereabouts on both occasions. Thirdly, the concessions made by the Accused himself as to his

presence in his room on the 14th and the 20th December around the time period that the offences are alleged is consistent with the Crown's case, which I have accepted to the extent that the Accused himself admits that he played with the children and that he was in his room on both dates after returning home.

[140] Notwithstanding, the Court's rejection of his alibi; the Court reminds itself that such a rejection does not prove that the Accused is guilty. The Court acknowledges that false alibis may be put forward for many reasons: an Accused, for example, who has only his own truthful evidence to rely on may stupidly fabricate an alibi out of fear that his own evidence will not be enough. Further, the Accused can make genuine mistakes about dates and occasions like any other witness can.

[141] The Court finds that although it has rejected the Accused's alibi about where he was at the material time that does not prove that he was committing the offences to which the alibi relates. It is quite possible that in this case the Accused fabricated an alibi to bolster what he thought was a weak case, or that he was genuinely mistaken. The Court also notes that the fact that the times on each count were not specified makes it quite difficult for the Accused to successfully advance an alibi. The Court therefore bears this in mind in its rejection of the Accused's alibi and returns to the Crown's case.

[142] The Court finds that the weight it attaches to the strong recognition evidence in overall good conditions of the VC results in the rejection of the claim of alibi therein. In this regard the Court relies on the decision of our Court of Appeal in **Apolonio Kiow v R**¹⁷.

[143] The Court has carefully considered the sworn evidence of the Accused and the evidence of the case for Accused as a whole. The Court is satisfied beyond a reasonable doubt that the Accused has not told the truth when he says that he did not penetrate the anus of the VC on the 14th and the 20th December 2021 without

¹⁷ Crim. App. 10/20

her consent. The Court also finds that the Accused has not told the truth when he says that he did not touch the vagina of the VC on the 14th and 20th December 2021. The Court rejects the evidence for the Defence as untrue on the basis of the discrepancies, inconsistencies and implausibility advanced above, and also on the strength of the evidence on the Crown's case, which it is permitted to do on the authority of a decision of the Privy Council in the Dominican case of **Bally Sheng Balson v The State**¹⁸.

[144] In this case having rejected the Accused's account, I must return to the Crown's case. The Court now looks at the totality of the evidence to reach a final decision. The Court has examined the VC's evidence bearing in mind the standard and burden of proof of the Crown. The Court is satisfied so that it is sure, for the reasons given above, that the VC's evidence on the material issues is truthful and credible. The Court has rejected the case for the Accused, for the reasons given above. The Court is satisfied so that is sure and accepts the VC's evidence that the Accused penetrated her anus and touched her vagina.

Disposition

[145] The Court finds the Accused guilty of the following Counts on the Indictment:

- i. Count 1- Sexual Assault contrary to **Section 45 A of the Criminal Code.**
- ii. Count 2- Rape of a child contrary to **Section 47 A of the Criminal Code.**
- iii. Count 4- Rape of a child contrary to **Section 47 A of the Criminal Code.**

[146] For the reason advanced above, relating to the absence of evidence of digital penetration of the vagina of the VC by the Accused with his finger; the Court finds the Accused NOT GUILTY of count 3 on the indictment.

¹⁸ [2005] 4 LRC 147 at para 38

[147] The matter is adjourned for a separate sentencing hearing as advised by the CCJ in Linton Pompey v DPP¹⁹.

[148] The Court orders the following reports:

- i. Psychiatric Evaluation Report.
- ii. Social Enquiry Report
- iii. Victim Impact Statement
- iv. Antecedent History

Candace Nanton
High Court Judge
Senior Courts Belize
Dated 28th August 2024

¹⁹ [2020] CCJ 7 (AJ) GY at para 32