COMMONWEALTH OF THE BAHAMAS **V.B.I.No.64/3/2025**

IN THE SUPREME COURT

Criminal Division

BETWEEN:

THE KING

v.

CHARLES SEALY III

Appearances: Mrs. Shanika Carey and Mrs. Betty Wilson

Counsel for the Defendant: Ms. Christina Galanos and Ms. Christina Saunders

Hearing dates: 17th, 20th, 21st, 24th, 25th August 2026, and 21st September 2026

JUDGE ALONE TRIAL

INDECENT ASSAULT DECISION

Overview/Introduction

[1] Charles Sealy III (hereinafter referred to as "The Defendant") was charged for the offence of Indecent Assault contrary to **Section 17 (1) (a) of the Sexual Offences Act, Chapter 99.**

[2] The Defendant at his arraignment pleaded not guilty to the single count and elected for a trial by Judge alone before this court.

[3] The sole charge on the indictment as alleged by the Crown is that on the Thursday, 30th day of January 2025 while at New Providence he did indecently assault S.W., a female aged 29 years.

[4] The Crown called witnesses who gave viva voce evidence, namely, Sgt 2421 Ernest Pratt, W/D4754 Tiffany Fernander, the Virtual Complainant S.W., her live-in boyfriend M.S., and P/C 4687 Benjamin Johnson. The Crown also relied on the agreed evidence of D/C 4600 Carridice and thereafter closed its case without calling some four (4) witnesses listed on the back of the indictment.

[5] At the close of the Prosecution's case the Defendant exercised his constitutional right and elected to remain silent and did not call any witnesses. At the conclusion of the trial both sides made closing addresses which have also been considered by this court in arriving at its decision. The statute providing for trial by Judge alone was only recently enacted in this jurisdiction and came into force on 31st March 2025, namely the Supreme Court **Trial by Judge Alone (Misc. Provisions) Act 2024**.

[6] The Court found guidance offered to judges sitting alone in criminal trials by the Lord Chief Justice of Northern Ireland, Lord Lowry, in **R v Thompson [1977] NI 74** at p. 83, where he stated the following:

> " *I might say a word on the duty of the judge when giving judgment in a trial under the 1973 Act. He has no jury to charge and therefore will not err if he does not state every legal proposition and review every fact and argument on either side. His duty is not as in a jury trial to instruct laymen as to every relevant aspect of the law or to give a full and balanced picture of the facts or decision by others, His task is to reach conclusions and to give reasons to support his view and preferably, to notice any difficult or unusual points of law in order that if there is an Appeal, it may be seen how his view of the law informed his approach to the facts*."

[7] The Court has also had regard to Chapter 25 (Judge Alone Trial) of the Criminal Bench Book of the Judiciary of the Commonwealth of The Bahamas.

[8] As stated previously, the Defendant is charged with the Offence of Indecent Assault, contrary to **Section 17 (1) (a) of the Sexual Offences Act Chapter 99** which states that:

1) "Any person who – (a) indecently assaults any other person is guilty of an offence and liable to imprisonment for a certain term". The Law provides that Indecent Assault is an assault which is indecent meaning an intentional touching of another person in a sexual manner without that person's consent.

a. The Prosecution must establish that there was an assault namely there was intentional physical contact;
b. The contact was sexual or indecent by nature;
c. That the other person did not agree to it.

[9] The Prosecution therefore has to prove beyond reasonable doubt:

a. That it was the defendant that committed the assault
b. That the assault occurred
c. That it was indecent
d. The test being what a right-minded person would consider indecent
e. That the complainant did not consent to the touching

[10] The Sexual Offences Act does not itself define consent. By section 2 of that Act, the expression bears the meaning assigned to it under section 4 of the **Penal Code, Chapter 84**, which in turn refers to section 15 of the Code. Section 15 (1) provides, among other things, that a consent is void if the person giving it is, by reason of any permanent or temporary incapacity, whether from intoxication or any other cause, unable to understand the nature or consequences of the act to which he consents.

[11] Where, as here, the Crown's case is that the complainant was asleep at the material time, the first question for the Court is whether the Crown has made it sure that she lacked the capacity to consent when the touching occurred. Only if she had that capacity does the Court go on to consider whether she in fact consented: **R v *Kamki* [2013] EWCA Crim 2335 at [17]–[18]**. A person who is asleep or unconscious cannot consent; but where a complainant retains her capacity, a consent given by her remains a consent, even where she has been drinking: **R v *Bree* [2007] EWCA Crim 804**. The burden of proving incapacity, or the absence of consent, rests on the Crown throughout.

General Directions

[12] The first and paramount direction that this court must bear in mind is that the Defendant is presumed innocent and has absolutely nothing to prove and that it is the prosecution who has the burden of proof to satisfy the court so that it is sure of the guilt of the Defendant beyond reasonable doubt. The Court reminds itself that the burden resting on the prosecution does so from the beginning of these proceedings right up until the Court returns its verdict. That burden never shifts.

[13] This is the "golden thread" of the criminal law described by Viscount Sankey LC in **Woolmington v Director of Public Prosecutions [1935] AC 462 at 481–482**: it is the duty of the prosecution to prove the guilt of the accused, and if, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the accused, the prosecution has not made out its case and the accused is entitled to an acquittal.

[14] The court must consider the evidence in its entirety with the intention of arriving at a fair and dispassionate assessment of that evidence and have no sympathy or prejudice for the virtual complainant or the defendant.

[15] In an effort to assess the reliability and credibility of the evidence it must examine the evidence of witnesses for any discrepancies and inconsistencies and if there are any the court must look at them to determine what weight if any should be attached and if they go to the root of the issues and are material or otherwise. If the discrepancies and or any inconsistencies are unresolved it is open to the court to reject that bit of evidence or all of the evidence given by the witness.

[16] The court must also direct itself to the credibility of a witness if a witness has given false testimony as with inconsistencies and discrepancies it is for the court to determine if it will disregard that witnesses' evidence in its entirety or so much of it as it finds untruthful. This will no doubt be decided by the view taken by the court on how material to the issue the lie or inconsistency may be and the reason for it.

[17] As previously stated, whilst the Court has and is duty bound to consider all the evidence, it is not obligated to state its findings on every bit of the evidence tendered nor every argument raised by the respective attorneys, but the court will address the essential issues in this case. The Court has directed itself that the Defendant is presumed innocent and has absolutely nothing to prove and that the obligation as has previously stated rests on the

Prosecution to satisfy the Court so that it is sure of the guilt of the Defendant and if there is any reasonable doubt, the Court is duty bound to acquit him.

[18] It will seek to analyze the evidence clinically, objectively and fairly within the confines of the law with the aid of common sense and life experience. In considering the evidence the Court will analyze that of the Prosecution and if the evidence has so satisfied the court that it is strong enough to consider a conviction it must then consider the case for the Defendant.

Corroboration

[19] Corroboration evidence is not required to find or to reach a verdict in a sexual matter. However, it may increase the reliability of the evidence before the Court. The court is mindful that corroboration must come from an independent source separate from the evidence it supports. It must not be derived from the same witness or the same source; it should stand as its own piece of evidence that aligns or confirms what the material witness, such as the Virtual Complainant, has given.

[20] There has been no evidence led in this trial capable of amounting to corroboration evidence. The Court can however, act on the evidence of the

Virtual Complainant alone, if the Court believes her testimony and finds her to be reliable beyond a reasonable doubt.

[21] Although not essential in law, it is looked for in sexual cases. The Court must warn itself of the danger of convicting without it on the evidence of the virtual complainant alone as experience has shown that complainants for a variety of reasons tell false stories. Having given full weight to this warning, and having found that the complainant is telling the truth, the Court would be entitled to convict although there is no independent confirmation of the complainant's evidence.

[22] The Prosecution case simply put was that whilst the massage was taking place the virtual complainant was asleep and did not consent. The Defendant's case on the other hand is that she did consent and was not asleep at the material time.

[23] I now turn to a summary of the evidence provided by each of the witnesses.

1. Detective Sergeant 2421 Ernest Pratt

[24] Sergeant Pratt was the first Prosecution witness to be called, he said he worked in the CID technical section, which dealt with downloading footage and other technical material.

[25] On the 3rd February 2025, he received information from ASP Bowles concerning the investigation. He went to the main CID hub and accessed the WhatsApp account on the front-desk computer. He checked that the computer and WhatsApp were operating properly and found several messages associated with a telephone number and the name of the V.C., S.W.

[26] He said he downloaded material from the WhatsApp chat to a USB drive. He then took the USB drive to his desktop computer and copied the material onto a CD. He prepared a copy for the investigator and retained another in the technical vault. Information received from ASP Bowles, together with the V.C.'s name, was placed on the CD's surface.

[27] The court admitted the CD into evidence as **Exhibit A**. Sgt. Pratt clarified that it contained a number of video files. Under cross-examination, Sgt. Pratt accepted that there was no examination of the original recording source, he did not obtain the videos directly from the original recording device. The files had already passed through WhatsApp before he saw them. He did not examine the original recording device. He did not forensically examine or extract the phone from which the videos had been sent. His knowledge

therefore began with the material available on the police WhatsApp account, not with the original surveillance footage.

[28] Sgt. Pratt accepted that he could not say from personal knowledge whether the files had previously been downloaded, saved or forwarded. Nor was he able to establish whether any editing had occurred before transmission to CID. His answer was that he could speak only to what he extracted.

[29] Sgt. Pratt said the sender information came from what was displayed on WhatsApp. Sgt. Pratt also stated that he had not independently verified who physically possessed the sending device when the files were transmitted. Furthermore, Sgt. Pratt accepted that he did not generate a forensic hash value when accessing the files, nor for the USB material, he did not isolate or forensically preserve the CID computer before accessing it and that he used a computer accessible to other officers. Sgt. Pratt described the USB drive as "sterile", meaning that it contained no other files, and he accepted that transferring the files from the USB to a blank CD was another copying operation.

[30] Sgt. Pratt could not confirm that the videos sent to police represented everything recorded by the original device. He said: "*I can only say what*

was sent." Sgt. Pratt accepted that he had not subsequently examined the recording system and could not say whether the videos had been altered.

[31] Finally, Sgt. Pratt did not testify that alteration had occurred. He testified that his work did not independently establish the files' complete history, completeness or absence of alteration.

2. Woman Detective Constable 4754 Tiffany Fernander

[32] WDC Fernander said that on 3 February 2025, she received requests from Sgt. Valcin and WDC Taylor with respect to the interview and confrontation recordings. As a result of the same she downloaded the requested recordings, placed them on discs bearing her signature and police number, supplied material to the investigator and retained material for safekeeping. She noted that the interview was too long for one disc and was divided into Part One and Part Two. The items were entered into evidence as Exhibits B1 and B2 respectively and Exhibit C which represented the recording of the confrontation.

3. The Virtual Complainant ("V.C.") S.W.

[33] The Virtual Complainant was the 3rd witness to give evidence in this matter, and her cross-examination took place over the course of a number of days.

[34] The Virtual Complainant's evidence in examination-in-chief was that on the day in question she was at her place of employ when the Defendant whom she had known since 2012 having met him through his cousin Robin came to the bar and she told him that she needed to speak with him and that after finishing up her immediate chores she went and sat with him at the bar and they spoke. She stated that the Defendant asked her for a ride home, she agreed and she said she told M.S. her boyfriend and work partner who responded *"okay"*.

[35] She stated that on the drive he asked her to stop at Kirky's Liquor store where she went inside with him and they purchased beers and fireball shots. She said whilst at the liquor store, she called Robin to say that she was dropping the Defendant home. She further stated that she began feeling strange, tired and unwell while driving and stopped at Goodman's Bay to get fresh air.

[36] She said she remained on her side of the car and the Defendant on the passenger's side. She said she did not feel able to complete the drive to take the Defendant home and return home alone safely she therefore proposed taking the Defendant to her home some 2 minutes away where he could

arrange another ride to which he agreed telling her someone would collect him in 20 minutes.

[37] She directed him to enter through the back door because M.S. understood she was taking him to his own home. She and M.S. had argued the previous day, and she did not want another confrontation. The front door had a Ring camera. She said she regarded the Defendant as a longstanding friend and did not anticipate being harmed, particularly with the nanny and children in the house.

[38] She said she entered, opened the rear door for the Defendant, and checked on the children. After returning downstairs, she found the Defendant preparing an illegal substance, she asked him not to do that on the counter because she prepared her child's bottles on the counter. She supplied him with a plate to get the material off the counter. She later expressly denied willingly participating in the illegal substance use by the Defendant that evening.

[39] The V.C. said she lay on the smaller couch near the front door and covered herself with a blanket. She asked the Defendant to wake her when his ride arrived. She could not say precisely how long after arriving she fell asleep

or how long she slept. She said she did not remember the subsequent events until waking with her underwear off and her bra unclasped.

[40] She described the indoor nanny cameras and an outside Ring camera at the residence. That both she and M.S. had access to them. She said the indoor system responded to sound and movement and could change between colour and black-and-white depending on lighting. It recorded in clips rather than allowing her to download one continuous file.

[41] She said she skimmed footage that night, sent footage to Robin the following morning and later sent it to police through WhatsApp as requested. She said she downloaded the clips in order. The V.C. identified herself, the Defendant, the nanny and her children in the recordings. She described the living room, dining area, half-bathroom, kitchen, couch and camera position.

[42] During video playback at trial, the V.C. sought to identify a number of video clips from Exhibit A. Her descriptions in the playback included describing the Defendant placing bottles behind a couch cushion, identifying a bottle as olive oil from the kitchen, the Defendant having his trousers off and then putting them back on.

[43] The V.C. repeatedly described herself as sleeping during the contact and denied assisting the Defendant. She described the Defendant moving her shoulders, her beginning to wake, his getting off her back, and her trying to pull her dress down and push away from the footage. She expressly denied giving him permission to touch or massage her.

[44] The V.C. said that when she became fully awake, she realized her underwear was missing and her bra was undone. She looked through the camera footage on her phone to work out what happened. She said the Defendant did not know there were indoor cameras, and she tried not to reveal what she was viewing. She questioned him about her clothing, asked where his ride was and told him he needed to leave. She also said she asked the nanny not to leave and to stay with the children.

[45] She said she reported the matter on 1 February, after considering whether and when to do so. She said she attended a confrontation on 3 February, with the Defendant, lawyers and a police officer present. She said that when consent was raised, she denied consenting and the Defendant challenged her denial. She reaffirmed that neither the massage nor touching was consensual.

[46] Under cross-examination, the V.C. confirmed that she lived with M.S. and the two children, that M.S. operated the pub, that they both knew the

Defendant, and that she voluntarily agreed to give the Defendant a ride and was not threatened or coerced.

[47] In cross-examination, Ms. Galanos thereafter put to her the 3 February statement, in which she said she intended to pick the Defendant up from the road to avoid issues with M.S. and subsequently collected him near Sharkeez.

[48] She accepted having made that statement but maintained M.S. knew she was taking him home. She explained that she and M.S. had disagreed the night before after she remained at the bar and had a friend bring her home. She said she wanted to avoid another argument.

[49] She also said the Defendant had already left the bar when she spoke with M.S., and Junior Junkanoo traffic affected the route. She estimated leaving work around 6:30–6:45 p.m**.**, while emphasizing that she could not recall the exact time.

[50] She initially estimated staying five to ten minutes at Goodman's Bay but later accepted uncertainty. She accepted that the clip at 8:13 showed her first arrival home. She said she entered through the front door, then unlocked the back door from inside to admit the Defendant.

[51] Ms. Galanos questioned why, if the V.C. was so tired, she did not take the most direct route to the Defendant's home or stop immediately at her own home. The V.C. in response, said she used the route most familiar to her and stopped when she no longer felt safe continuing. She denied that the beach stop was a planned opportunity to spend time with him. The V.C. accepted, when shown footage, that she had done a number of normal household chores before lying down. She ultimately accepted that she was awake enough to function. She agreed that she carried out activities for approximately 20 minutes before lying down.

[52] Ms. Galanos suggested that the V.C. switched off the light and closed the blinds to create an intimate setting. She accepted closing the blinds but denied switching off the living-room light. She said it was already off, with light from the kitchen and Christmas tree, and that camera movement and night vision explained changes in brightness. She denied sending her daughter upstairs, tidying the couch or lying down as preparations for intimacy.

[53] The V.C. further accepted that she chose to bring the Defendant to her home, that she directed him through the back door, that M.S. would not see that entry on the front camera, that she did not tell M.S. that evening about the

stops or the Defendant's presence, that she did not want M.S. to know he was there, and she denied a secret date or wanting more than friendship.

[54] She also denied defence suggestions of prior flirtation, exposing her breasts or asking to see the Defendant's penis. The V.C. accepted giving the Defendant a plate and not removing him from the house when she saw the substance. At approximately 8:38 p.m**.**, the V.C. accepted that she was awake, holding her phone and looking at it. She said a notification woke her.

[55] At approximately 8:39 p.m**.**, she accepted that the Defendant handed her his phone and she appeared to be typing something. She could not reliably identify what she entered; her suggestions included a location or Wi-Fi information. At approximately 8:40–8:41 p.m**.**, she accepted that she had not yet fallen asleep and was still interacting with him. She denied discussing a massage or telling him where the olive oil was. When shown a clip around 8:41–8:42 p.m**.**, the V.C. initially accepted that the Defendant nudged her foot, she moved it for him to sit down next to her.

[56] The V.C. identified entering information into the phone of the Defendant as the last event that she independently remembered before the period in dispute. When questioned as to when her memory returned, she initially referred to viewing the footage. She then clarified that watching it did not

restore a contemporaneous memory. It gave her knowledge of what had occurred. She said she became awake enough to realize her clothing was disturbed and then used the camera footage to piece evidence together.

[57] She accepted she did not move away when her face was touched by the Defendant but maintained she was asleep. She said she did not feel or remember the Defendant opening her legs, pressing her feet, rubbing her back, sitting on her or repositioning her.

[58] Counsel for the Defence pointed to finger movements at approximately 9:24 p.m. as signs of awareness. She initially disputed seeing them. On further playback, she accepted finger movement after he lifted or moved her but denied the defence interpretation that independent movement before that established conscious interaction.

[59] Ms. Galanos put the defence case that the V.C. objected only when the Defendant attempted to remove her dress, and that he respected the boundary and helped pull it down. The V.C. disputed that interpretation. After replay, she accepted an attempted lifting or removal but said she was trying to pull it down while he still held it up. She said some awareness returned briefly during this episode. She consciously pulled her dress down because her

clothing should not have been disturbed. She denied enjoying or consenting to the preceding massage and said she subsequently fell asleep again.

[60] The defence relied on clips at approximately 9:26–9:29 p.m**.** showing raised hands, head movement, apparent speech and handing over an item. The V.C. accepted some visible movements but said she did not remember the interactions and was not fully awake. At approximately 9:36 p.m**.**, the V.C. accepted that the footage showed her daughter approaching the Defendant and going with him towards the kitchen. She said she did not remember or appreciate that happening at the time.

[61] She did not agree with the defence suggestion that she instructed him to help her daughter. She maintained she would have helped the child herself if able and denied that the episode demonstrated conscious comfort with the Defendant after the contact. Furthermore, she accepted that by approximately 9:50 p.m., she was sitting up, awake and reviewing footage on her phone.

[62] She maintained she was angry, frightened and deliberately composed. She said taking him away was intended to protect the children and remove him without escalation.

[63] She accepted that she did not scream or call for help and did not immediately call police or M.S. She said she told the nanny something was wrong but did not give details, mentioning that English was not the nanny's first language. She said she reported the incident on 1 February, approximately two days later. She accepted however, that Baha Mar was close to a police station and open around the clock.

[64] Her explanation for not going immediately was fear of judgment and blame. She said speaking with her father helped her overcome the fear, and reporting had been in her mind from the evening itself. She denied that the delay meant nothing happened or that the encounter was consensual.

[65] She acknowledged learning of communications between lawyers and that something was sent concerning settlement. She said she understood the approach came from the Defendant's side. She did not confirm the proposed $100,000 amount, saying she could not recall it.

[66] She denied telling police she wanted to withdraw and denied that the prosecution resulted from non-payment or an attempt to save face with M.S. On Re-examination she denied instructing her lawyer to ask the Defendant for money.

4. M.S.

[67] M.S. stated that he was the V.C.'s partner and father of their children. M. S. said he lived with the V.C. and their children in Grove West at the relevant time. He was then owner/operator of the Crew Pub, described as a downtown bar and restaurant, although unemployed by trial.

[68] He stated he knew the Defendant through mutual acquaintances for approximately ten or eleven years. He initially described the relationship as cordial. He stated the Defendant asked the V.C. for a ride and she agreed. He placed departure from the pub at approximately 7:15 p.m., after the V.C. asked whether it was okay to give the Defendant a ride and he agreed. He stated he had no issue because the Defendant often lacked transport. He said the V.C. woke him the following morning, approximately 8 a.m**.**, with a hypothetical about an assaulted friend. He advised contacting police.

[69] After a call on 1 February from the V.C., he went to Central Police Station. M.S. said he received a message he believed came from the Defendant, based on the contents and handle "CE Sealy 3". He said he gave it to police, who printed it, and he signed the copy. The document was marked **Item A for identification**. He read the message as including: "I heard you were looking for me. I am coming to see you on Monday. I fucked up. *"Was on*

so much drugs, but I am very sorry using this as an opportunity to come clean, but I will come see you."

[70] He said he became aware of the matter through viewing nanny-camera footage. He described motion-responsive recording, remote access and shared access with the V.C. He explained that stationary activity could result in recording stopping until movement resumed. M.S. accepted that he had told police he and the Defendant recently became friends. He ultimately accepted they were friends before the incident, notwithstanding his earlier description of acquaintanceship.

[71] M.S. maintained that the Defendant asked for a ride in his presence, the V.C. asked his approval and he approved. He said he saw them leave the pub together but did not see them enter the vehicle. Once they left, he could not say what occurred outside. He rejected the suggestion that he did not know about the proposed ride.

[72] M.S. accepted that he did not know that evening that the V.C. and the Defendant would stop at Kirky's, that they would stop at Goodman's Bay, the Defendant would go to the family home, and that he would enter through the back door. He said he learned fuller details at the police station approximately two days later.

[73] M.S. described confusion about the stops but said he understood the V.C.'s explanation of fatigue. He acknowledged anger, hurt and confusion, but said his anger was directed towards the Defendant rather than the V.C. He said the issue concerned the entire situation and the Defendant's subsequent conduct, not simply the V.C.'s decision to return home. He denied feeling deceived by her and denied that the back-door entry itself caused him anger towards the V.C.

[74] He accepted that he was not present during the massage and did not witness it first-hand, and that his knowledge came from the V.C. and the recordings. He clarified that she informed him by phone before he viewed the footage at Central Police Station.

[75] M.S. said he learned that the V.C. drove the Defendant to Tuga and Baha Mar. He did not regard this as inconsistent with her allegation. He understood it as removing a person she believed had harmed her from the home and children. He acknowledged there were other available options but did not regard her chosen response as suspicious. M.S. accepted that the Ring camera sent notifications and that he received notification activity that evening. M.S. stated that he could not remember how many alerts he received and denied they caused him to discover unusual activity or review

the nanny footage before the V.C. told him. He rejected the defence suggestion that he first found out the Defendant was in the home through camera alerts, confronted the V.C., and she then claimed non-consent.

[76] He accepted that consensual intimate contact between his partner and the Defendant would create serious relationship issues. He rejected the suggestion that supporting her account avoided those issues, saying he believed the footage showed non-consensual contact and sleep. He acknowledged he did not analyze footage professionally.

[77] He said he interpreted the clips as showing the V.C. asleep, confused and shocked when she viewed her phone. Ms. Galanos suggested she was merely relaxed during a massage. He maintained that the visual context supported her account. He accepted no dramatic confrontation was visible in the form suggested by counsel but said a confrontation need not be physical. On video camera footage played to M.S. he accepted that, the V.C. moved her feet to make room for the Defendant, she appeared momentarily to interact with the Defendant and their daughter. The V.C. later sat upright using her phone, and the Defendant rubbed her shoulders. He said the V.C. had not specifically told him every such detail. He nonetheless maintained that the

recordings did not establish consent and that the apparent shoulder contact was brief.

[78] M.S. said he viewed the WhatsApp message as an admission of wrongdoing, not merely an apology. Ms. Galanos suggested *"I fucked up"* could mean betrayal of friendship by intimate contact with his girlfriend, whether consensual or not. He rejected that interpretation in the context of what he knew and had seen.

[79] M.S. accepted the pub closed down but denied financial strain caused closure or that revenue pressure was unusual. He acknowledged that the V.C. had retained a lawyer, whom he described as an associate. He said their lawyer approached them about settlement. He accepted the Defendant's lawyers did not personally approach him. M.S. confirmed he watched the footage after meeting the V.C. at Central Police Station, not before the relevant conversation there. He denied telling a lawyer or anyone else to seek a proposal from the Defendant.

5. Police Constable Benjamin Johnson

[80] The fifth witness was P/C Benjamin Johnson. He stated that on the 3rd February 2025, he was attached to the sexual offences unit of the Royal

Bahamas Police Force and that on reporting for duty he received instructions from his supervisor with respect to an indecent assault matter as a result of which he updated himself with the file and interviewed the defendant in the presence of his attorney, he stated that when the charge of indecent assault was put to the defendant he denied the same and read over and signed the completed record of interview, which was entered into evidence as **Exhibit D**. He further stated that on Tuesday the 4th of February 2025, he recorded a statement from M.S. the boyfriend of the VC along with a text message that he downloaded, that text message was also entered into evidence as **Exhibit E** and read into the record.

[81] On cross-examination, he accepted that the formal parts of the record of interview were read to the Defendant before he took his statement and the Defendant did not invoke his right to silence and he remained engaged throughout the interview, he described in the ROI where he went and who he went with, he agreed that he was drinking alcohol on the evening in question and at no point did he try to conceal his involvement in the matter, but described the exchange between him and the VC as mutual and consensual.

[82] When asked he accepted that the Defendant never told him that the V.C. had resisted and when the allegation of indecent assault was put to him, he denied it, he further agreed that when it was suggested to the Defendant that during the exchange the V.C. was asleep, he disagreed that she was asleep and told him that she was in a relaxed state.

[83] He agreed that the Defendant was not shown the complete video footage, it did not show them entering or leaving the premises and that the Defendant was only showed limited sections of the footage, he however went on to say he was not the one who decided what portions of the video should be put to the defendant, as that decision was made by Sgt. Pratt. He admitted that he did not take a statement from the V.C. however, he was aware that she told the Defendant that he should enter from the back door to avoid being seen on the camera by M.S. He stated that the copy of the text message he was provided with by M.S constituted an admission, when asked why, he said when taking the statement from M.S. he became aware that they were friends and that it was a strange and curious position for the Defendant even if the massage was consensual, it goes against the friends' code. In concluding, he did accept that the message did not point to a lack of consent on the V.C.'s part.

6. DC 4600 Paul Carridice

[84] The evidence of this witness was stipulated and he confirmed that he arrested the Defendant on the Charge of Indecent Assault as a result of the information received.

Closing Arguments

[85] Ms. Galanos addressed the Court first on behalf of the Defendant, and Ms. Carey thereafter addressed the Court on behalf of the Crown. The Court sets out below a summary of those submissions. The summary is not exhaustive. The Court has considered the submissions in full, together with the whole of the evidence, and the fact that any particular point is not repeated here does not mean that it has been overlooked. The Court reminds itself that the submissions of counsel are not evidence, and that it is the Court's own assessment of the evidence, including the recordings, which governs its findings.

Submissions on behalf of the Defendant

[86] Ms. Galanos's central submission was that the prosecution has not proved that the encounter was non-consensual. She invited the Court to view the evening not as an assault upon a sleeping woman, but as an interaction which

became progressively more intimate between two longstanding friends. She relied on the circumstances which preceded the touching: the arrangements made for collecting the Defendant; the time the two continued to spend together; the Defendant entering the house through the back door so as to avoid the Ring camera; and the Complainant permitting him to remain while she sent her child upstairs, closed the blinds and lay down on the couch. Counsel accepted that agreeing to socialise does not of itself amount to consent to being touched, but submitted that those circumstances provide important context against which the Court should assess what followed.

[87] On consent, Ms. Galanos laid emphasis on what she said was the Complainant's apparent awareness, and her ability to act, both before and during the interaction. She referred to the evidence of the Complainant using her own phone, typing into the Defendant's phone, and moving her foot to make room for him. She disputed that the Complainant's tiredness establishes that she was asleep, pointing to the Complainant's activities at Goodman's Bay and around the house. The defence relied also on the incident concerning the Complainant's dress. Counsel's submission was that on that occasion the Complainant communicated an objection and the Defendant stopped, demonstrating both the Complainant's ability to set a boundary and the Defendant's willingness to respect it. Ms. Galanos

accepted that physical contact is admitted but maintained that the Crown must nonetheless prove the absence of consent.

[88] Ms. Galanos separately challenged proof of indecency and of an indecent purpose. Relying on the authorities she cited, including ***R v Court*** **[1989] AC 28**, she submitted that a massage of the legs and back is not inherently indecent, and that the associated touching must be assessed in its context. Where conduct is capable of an innocent explanation, she submitted, the Crown must establish an indecent purpose. She further submitted that, even if the footage were found to depict masturbation, sexual arousal does not by itself establish an intention to commit a non-consensual indecent assault, the Defendant's position having consistently been that the interaction was consensual.

[89] A substantial part of the defence's closing was directed to the reliability of the Complainant's account and to the limitations of the recordings. Counsel submitted that the Complainant was reconstructing events from the footage rather than describing an independent memory, and that the footage cannot independently corroborate an account derived from that same footage. She highlighted what she said were changes in the Complainant's descriptions: as to her sleep; as to her awareness; as to her discovery that her underwear

had been removed; and as to whether she concealed her viewing of the recordings or confronted the Defendant. Counsel also questioned the completeness and continuity of the video evidence, relying on the police evidence, on the difficulties with disclosure, and on the Complainant's answers concerning the clips she supplied. Ms. Galanos expressly stopped short of alleging deliberate alteration of the recordings. Her submission was rather that the evidential foundation they provide is insufficiently secure.

[90] Counsel advanced the defence theory that the allegation of unawareness enabled the Complainant to explain the encounter to her partner, M.S., without admitting to consensual intimacy. She submitted that M.S. is not an independent source of corroboration, since he did not witness the encounter and relied upon the Complainant's explanations and upon his own interpretation of the recordings. She further submitted that the evidence concerning settlement raises a legitimate, though not decisive, question as to motive and reliability. The Defendant's message of apology to M.S. was characterised as an apology for betraying a friend by becoming involved with his partner, and not as an admission that an assault had occurred.

[91] Finally, Ms. Galanos invited the Court to consider the Complainant's subsequent conduct as part of the overall sequence, while making it clear

that she did not suggest that every complainant must react in a prescribed way. She relied on the absence of any apparent confrontation on the footage, the time the Complainant continued to spend with the Defendant, his departure through the back door, and the Complainant driving him to two destinations. She submitted that these matters, taken together with the disputed recollection and recording evidence, leave the Crown unable to prove the necessary ingredients of the offence, and she invited the Court to return a verdict of not guilty.

Submissions on behalf of the Crown

[92] Ms. Carey's central submission was that the Defendant took advantage of a sleeping woman, and that the recordings demonstrate the absence of consent. She accepted that the burden of proof remains on the Crown throughout, and that the touching itself is not in dispute. The Crown's case was that the Complainant had agreed to assist a longstanding friend with transport, became tired, returned home and subsequently fell asleep on the couch. Counsel submitted that the Complainant's earlier social interaction with the Defendant, and her decision to allow him into the house, did not authorise the sexual touching which came later.

[93] Addressing intention first, Ms. Carey submitted that the Defendant's handling of the olive oil demonstrates preparation rather than an innocent or spontaneous massage. Her submission was that he obtained the oil from the kitchen, concealed it behind a cushion while the Complainant's back was turned, and retrieved it later when the opportunity arose. She rejected the defence's challenge to the recordings, maintaining that the Complainant supplied all of the videos available to her, and that the Defendant, in his interview with the police, identified himself and acknowledged the acts depicted. The Crown accordingly invited the Court to treat the footage as direct evidence of the events.

[94] On indecency, Ms. Carey accepted that an ordinary massage is not necessarily indecent, but submitted that this encounter cannot reasonably be viewed in that way. She relied on the evidence of the Defendant exposing and manipulating his penis beside the Complainant before touching her, followed by his lifting her dress, removing her underwear, unclasping her bra, touching her buttocks and striking her bottom. In the Crown's submission, the sexual conduct which preceded the massage removes any innocent explanation for the touching, and the acts and the circumstances in which they were done satisfy the requirement of indecency.

[95] On consent, the Crown's submission focused on the Complainant's lack of voluntary participation during the material period. Ms. Carey submitted that consent requires awareness, must continue throughout the interaction and may be withdrawn, and that a sleeping person cannot provide it. She referred to the evidence of the Defendant moving the Complainant's legs, twisting and lifting her body and positioning himself on her, while, she submitted, the Complainant's eyes remained closed and she did not assist his movements. Counsel relied also on the Complainant's failure to react when her phone illuminated near her face. She distinguished the Complainant's earlier ability to perform household tasks from her state during the later touching.

[96] Ms. Carey disputed the account the Defendant gave in his interview that the Complainant had assented when he asked to massage her and to remove her underwear. Although counsel differed as to the precise sound recorded at that point in the interview, the Crown submitted that such a response could be made during sleep and does not establish conscious agreement. Counsel further submitted that the footage does not show the Defendant speaking at the relevant points. The Defendant's description of a change in the Complainant's behaviour was, in the Crown's submission, the moment at which she regained awareness, sat up, pushed him away and pulled down

her dress, and not proof that she had consented beforehand. The Crown disputed the defence's suggestion that the Defendant stopped immediately.

[97] In response to the defence's reliance on the Complainant's subsequent conduct, Ms. Carey submitted that a confrontation need not be angry or violent, and that asking the Defendant why he had acted as he did could itself constitute a confrontation. She submitted that the Complainant's decision to drive him away does not undermine the allegation, and that a complainant's response is not to be judged against a prescribed pattern, particularly where recordings exist. She relied also on the three-way telephone call on the following day as showing that the matter was raised promptly. On settlement, counsel submitted that a discussion of resolution does not establish that the incident did not occur, and she asked the Court to disregard that evidence. She invited the Court to return a verdict of guilty.

[98] Having regard to the evidence one cannot dispute that the main issue for determination by the Court is whether or not the V.C. consented. The Court must therefore carefully assess the evidence and the video footage to determine whether it is satisfied beyond reasonable doubt of the credibility and reliability of the accounts.

Inconsistencies/Discrepancies of the VC

[99] Whilst this Court does not deem it necessary to point out all the discrepancies and inconsistencies, the Court deems it necessary to point out some of those which in this Court's opinion go to the very root of the elements of the offence.

[100] In a trial by judge alone in which the credibility of the complainant is the central issue, the Court must identify the material inconsistencies and discrepancies in the evidence and state how it has resolved them: **Christopher Johnson v R [2019] JMCA Crim 44**, an appeal from a conviction for indecent assault tried without a jury, in which the Court of Appeal of Jamaica upheld the conviction because the trial judge had identified and resolved the inconsistencies which arose. That accords with the approach described in **R v Thompson**, cited above.

[101] The central gap is the V.C.'s lack of independent recollection of the material touching, despite initially describing parts of the footage in definite terms. In chief, her answers included *"Sleeping, definitely"* and *"No, I did not"* when asked whether she assisted the Defendant. In cross-examination, however, she explained: *"I have no memory of the incident."*

[102] Her evidence also referred to different points at which memory or awareness returned: seeing the footage, realizing her bra was undone, and briefly during the dress incident.

[103] Furthermore, there seems to be uncertainty about when she first fell asleep. At 8:37, she described herself as *"Sleeping",* and later said, *"I woke up when my phone notification went off."* Yet she also said of the later 8:40–8:41 sequence, "*I hadn't fallen asleep yet."* In chief, she could not say how long after arrival she fell asleep.

[104] The 1 February account described being "*in and out of consciousness"* and passing out again after the panties exchange. In chief, she described remembering nothing until waking with her underwear off. In cross-examination, she confined the fluctuating state to *"Later on in the video"*, and at 9:27 accepted, *"I am in and out of consciousness, sure."* This leaves the duration and extent of any intervals of awareness during or after the massage incapable of being established.

[105] The V.C.'s explanations of the phone interaction were uncertain. In chief, she said, "*I am probably putting in the location for where I am."* In cross-examination, she suggested Wi-Fi information before stating, *"I really don't remember what was happening."* The foot movement at 9:41:56 presents a

similar distinction between observation and recollection. She initially explained, *"He nudged my foot and I moved it over ... and he sat down"*, accepting it was voluntary. However, on replay, she said, *"I don't remember moving my leg. No ... I only can see it from the video*" and explained that she *"could only assume".*

[106] Her descriptions of the dress incident differ materially. In chief, she said, *"He is either trying to pull my dress back down along with me."* In cross-examination, she said, "*I'm, clearly, trying to pull my dress down and he's still holding my dress up."* These accounts differ as to whether the Defendant assisted her or continued holding the dress up. In the video the Defendant assisted in pulling the dress down and immediately jumped back.

[107] After the incident the V.C. did not recall talking, handing over an item or her daughter approaching the Defendant. She nevertheless accepted interactions shown between approximately 9:25 and 9:54 while saying, *"I can't recall anything during that time period".*

[108] The inconsistencies continued with the different accounts of the issue with respect to the panties and it begged the question as to who first raised the missing panties, what the Defendant replied, and when the conversation occurred. The V.C.'s 1 February account recorded her question and his

explanation about a massage and olive oil. The 3 February account placed the initial question with him and said the panties should be on the couch. At trial, she attributed a different response: *"what do you mean, kind of we agree"*. The accounts also differ over whether the exchange preceded viewing the footage and whether she passed out again afterwards. Her explanation was that the first statement was given at *"A very high anxiety time"* and lacked full detail; she did not accept that the accounts conflicted.

[109] Her description of emotions changed from agreeing she was furious to saying, *"I was not furious. I was afraid*", before accepting more than one emotion. She accepted that she may not have looked *"furious, and upset, but I was."* Her evidence about telling him to leave was also imprecise. When asked whether, given what she said had occurred, she saw an issue with driving him alone to not one but two locations notwithstanding her fear, she explained that she wanted him away from her children.

[110] The evidence with respect to the completeness of the footage provided produces a substantial unresolved issue for this court. When initially asked, she said, *"I gave them everything that was on there",* but concerning the panties exchange said, *"I don't know where ... I didn't provide it."* She also referred to sending *"what the police needed*" and being told clips appeared

cut off. These statements leave unclear whether all available recordings were supplied and what particular material was omitted. The Court notes, importantly, that no witness identified a missing portion in the recording from the period 8:36–9:26; the Court cannot apply the same to material touching and in the circumstances the defendant should be given the benefit of the doubt as to what may or may not have transpired during that period.

[111] The recordings at Exhibit A are real evidence, and the Court, as the tribunal of fact, is entitled to view them and to draw its own conclusions from what they show: **R v *Dodson and Williams* [1984] 1 WLR 971**; **Kajala v Noble (1982) 75 Cr App R 149**. Where, however, the provenance, continuity or completeness of a recording is in issue, those matters go to the weight which the tribunal can properly attach to it: **R v *Robson and Harris* [1972] 1 WLR 651**. On the evidence of Sgt. Pratt, the files were not obtained from the original recording device, no hash values were generated, and he could not say whether the material sent represented everything that had been recorded. Taken together with the V.C.'s own uncertainty as to what she supplied, those matters limit the weight which the Court can attach to the recordings as a complete account of the material period.

[112] It is clear from the evidence of the V.C. that on numerous occasions during Examination in Chief and Cross Examination, the witness did not have an independent memory of the incident, and her evidence shifted from accounts of what she described as her memory to that of her awareness returning and of up to what she saw on the video footage. The Court notes that during her testimony the witness recalls parts that support her account of the incident, and none of the parts on which the defence seeks to rely, which fall inside the window in which she says she was unaware.

[113] The numerous discrepancies and inconsistencies with respect to the testimony of S.W. have in this Court's opinion reduced the quality of her evidence and greatly affected her credibility as it relates to the issue of consent. As such, the Crown has not satisfied the Court so that it is sure beyond reasonable doubt that when the Defendant is alleged to have indecently assaulted S.W. he did not do so with her consent.

[114] As it relates to the evidence of M.S. the partner of the V.C. his evidence is not independent, nor can it be considered evidence that corroborates that of the V.C. more importantly he did not witness the incident and therefore could not speak to the same. The Court also noted the direct conflict as it relates to his evidence and that of the V.C. in particular with respect to the

issue of departure. M.S.'s evidence was that the V.C. asked him in front of the Defendant, also he said that he watched them leave together at 7:15, the V.C.'s evidence is that the Defendant walked out ahead of her and she went looking for him at Sharkeez. In her statement of the 3rd of February, she said that she told the Defendant she would collect him from the road to avoid issues with M.S. M.S.'s timing as to when the V.C. and the Defendant left was around 7-7:15 the V.C.'s timing differs, at around 6:45. More importantly, when M.S. was asked how he learned about the incident, in chief he said he viewed the video footage; on cross-examination, he said that the video was confirmation and he learned first of it by phone. On re-examination he said that he viewed the footage after meeting the V.C. at Central Police Station, the V.C. said that she told him first on the first of February. M.S. says that he learned about it at 8 p.m. at Central approximately two days later. M.S.'s view of the footage is merely his opinion. Again, the evidence of this witness posed an issue with respect to credibility for the Court.

[115] The requirement of independence is long established. Corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime: **R v *Baskerville* [1916] 2 KB 658 at 667**. Evidence which derives from the complainant herself, whether by the

repetition of her account to another person or by another person's interpretation of material which she supplied, cannot corroborate her.

[116] Having viewed the videos and reviewed the evidence, there were a stark number of inconsistencies and discrepancies that in this Court's opinion go to the very root of the matter.

[117] The Court again reminds itself, in relation to the sole count in the indictment, that the Accused has nothing at all to prove, did not need to say anything and did not need to call any evidence. The Court reminds itself that if it accepts the Accused's case, or has doubts as to whether it is true, then it must acquit him, and it is only if it rejects the case for the Accused that it returns to the Crown's case and considers whether on all the evidence the Accused is guilty.

[118] The Accused opted to remain silent as he is entitled to, and no adverse inference has been drawn against him on the basis of his silence. There is no burden on the Accused to prove, and it is the Prosecution that must prove its case beyond a reasonable doubt.

[119] Although the Defendant did not give evidence, his record of interview (Exhibit D) was adduced by the Crown through P/C Johnson. In it he did not

conceal his involvement, but maintained that the exchange was mutual and consensual and that the V.C. was not asleep but in a relaxed state. That is a mixed statement. The Court must consider the whole of it, the exculpatory parts as well as the admissions, as evidence of the facts, bearing in mind that the exculpatory parts were not given on oath or tested in cross-examination: **R v *Sharp* [1988] 1 WLR 7 (HL)**, approving **R v *Duncan* (1981) 73 Cr App R 359**.

[120] Having considered the evidence in its entirety and in particular, the evidence of the VC and the video footage at exhibit A, The Court is satisfied beyond reasonable doubt that the massage occurred, however, the prosecution has not satisfied the Court beyond reasonable doubt, that the VC did not consent to the massage.

[121] In light of the foregoing, the Court is not satisfied that the Prosecution has proven its case beyond reasonable doubt, and finds the Defendant Not **Guilty of the Offence of Indecent Assault Contrary to S. 17(1)(a) of the Sexual Offences Act Chapter 99.**

Dated 14th day of October 2026

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The Honorable Jeanne Weech-Gomez