IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: 39 OF 2022

BETWEEN:

THE KING

and

KENROY LANZA

Accused

Appearances:

Mr. Joseph Perez and Ms. Maria Nembhard Santana, Counsels for the King

Ms. Abibi Moguel, Counsel for the Accused

2025: November 24; 25; 26

December 18

JUDGMENT

RAPE OF A CHILD- JUDGE ALONE TRIAL-DECISION

Overview/Introduction

[1] **NANTON, J:** Kenroy Lanza (hereinafter referred to as "the Accused") was indicted for the offence of Rape contrary to **Section 47A of the Criminal Code Chapter 101 of the Laws of Belize[1],** (hereinafter "the Code").

[2] The trial by Judge Alone began before this Court on 24th November 2025, with the re- arraignment of the Accused pursuant to **Section 65 A (2)(g) of the Indictable Procedure Act Chapter 96 of the Laws of Belize [2].** Upon his arraignment the Accused pleaded not guilty to the single count on the indictment.

[3] The single count on the indictment is a specimen count filed pursuant to **Section 4 of Indictable Procedure (Amendment) Act No 3 of 2022**. That section states:

> *(1A) Notwithstanding sub-rule (1), more than one incident of the commission of the offence may be included in a count if those incidents taken together amount to a course of conduct having regard to the time, place or purpose of commission or the victim of the offence."*

[4] The Crown alleges that on three occasions between the 14th February 2020 and 6th April 2020 at Burrell Boom Village, the Accused raped KT, then 11 years of age.

[5] The Crown called three live witnesses to give viva voce evidence: KT, the Virtual Complainant, his mother DL, and his brother BA. The Crown also relied on the agreed evidence of PC Shannen Pook, Investigator PC Shannon Swift, and CST Robert Henry Jr along with photographs. The Birth Certificate of the Virtual Complainant and Medico-Legal Report were admitted into evidence as **SS 1** and **SP 1** respectively pursuant to **Section 37 and 36 of the Evidence Act** respectively.

[6] At the close of the case for the Crown, the Accused opted to remain silent and he did not call any witnesses.

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[1] Chapter 101 Criminal Code of the Laws of Belize Revised Edition 2020
[2] Chapter 96 Indictable Procedure Act of the Laws of Belize Revised Edition 2020

[7] At the end of the trial, the Parties provided closing addresses in writing which have been considered by the Court in arriving at its verdict.

Summary of Evidence for the Crown

KT

[8] The VC gave sworn testimony at the age of 17 years old.

[9] In February 2020, he lived in Burrel Boom with his mother and siblings. He was 11 years old at the time.

[10] On an unknown date in February 2020, he and his brother BA went to swim at the pond at the back of their house. After swimming they returned to their house to change clothes. After a while the Accused came across to their house and grabbed him and his brother. BA managed to escape and ran into the bathroom and locked the bathroom door. KT said that the Accused pulled him into his mother's room by holding KT's two hands behind his back with one of the Accused's hands. The Accused then pulled down his pants with his other hand. The Accused opened his foot and inserted his hard penis into KT's anus. The Accused did not wear a condom. KT said that it hurt, and he told him to stop but that the Accused did not stop. He called out for his brother BA, but his brother never came to help. KT did not tell anyone because he was afraid and the Accused had threatened to kill him and his brother if they talked.

[11] The following day, KT said that he and his brother BA went to the Accused's house to cook noodles because they had no gas at home. BA went back to their house to get a plate when they realized the Accused did not have any at his home. When KT and the Accused were alone, the Accused pulled down his pants and then inserted

his penis into KT's anus. During that time BA came back to the Accused's home and knocked on the door. The door was locked. KT said that he pulled up his pants when his brother returned. The Accused then opened the door while attempting to pull up his pants. BA then grabbed the pants from the Accused and dropped it at the side of the mango tree at the side of the house. KT said he did not tell anyone about what happened because the Accused threatened him.

[12] On 5th April 2020 KT, BA and the Accused went to swim in a sandpit in Boom, Hattieville. They were playing catch and BA swam away. The Accused carried KT into the deep where he couldn't touch the bottom. The Accused then inserted his penis into KT's anus again. KT said that he kicked the Accused and told him to stop. While this was happening BA came and saw what happened. The Accused let him go. KT could not swim away before, because the Accused held on to him. When they were on their way home the police stopped them because they were outside during curfew. KT said he didn't tell the police what happened because he was afraid.

[13] KT eventually admitted what had happened to his mother, but only after BA first told her. His mother DL called the police and they made a report. KT subsequently went to KHMH where he was medically examined.

[14] Under cross examination, the Virtual Complainant denied that he had told the police that the Accused had never touched or been sexual with him before February 2020 even though he accepted it was in his statement. He also disputed that he had told the police that the Accused would care for him when his mother was not around.

[15] There were several questions relative to the dates of the incident; however, KT could not recall the exact dates that he gave the statements nor the exact dates of the

incidents as he said he did not check the dates. He maintained that the first two incidents occurred in February although he could not be certain if they occurred after Valentine's Day, but he accepted that is what was recorded in his statement.

[16] It was suggested to the witness that he could not be sure that the Accused had inserted his penis inside his anus since his back was to him on each occasion. The witness said he could not see but he knew that it was a penis that penetrated him, because they were skin to skin and the motion of the movement.

[17] The witness was also questioned as to why he willingly went to the Accused's house after he had been raped the day before. The witness stated that he was "just a pickney" and didn't know better. He was also asked why he went to swim with the Accused after the two incidents of rape. He said that he wanted to fit in, so he went.

[18] When asked why he did not tell the police what had happened by the pond, he said that he was scared, so he did not say anything.

[19] In reexamination, the witness said that he was afraid of name calling and getting bullied for being sexually assaulted.

BA

[20] BA was 19 years old at the time of his sworn testimony. He testified that in February 2020 he was 13 years old and lived at Boom Road, Hattieville with his mother and siblings. The Virtual Complainant KT is his younger brother, and the Accused was his neighbour whom he had known since he was a baby.

[21] BA said that he saw his younger brother KT molested about three times in different places. He said one incident happened at home.

[22] He described an incident that occurred in February 2020 when he and his brother went to the Accused's home to cook noodles. They had decided to cook at the Accused's house because they did not have gas in their stove at the time. While there, the witness left the Accused and his brother KT to go to his house for plates. When he returned to the Accused's house, he noticed that the door was locked. He tried to knock the door open but could not.

[23] He climbed on the edge of the side of the building and peeped into the house and saw the Accused and his brother "deh di action." When asked to describe what he meant by that, he said that the two of them were having sex on the mattress on the floor. He clarified that by sex he meant that the Accused "tek dih young man ass". They were both on their side with the Accused lying to the back of KT and that the Accused held him from "back way".

[24] BA said that he was about 10 feet away from them and could see clearly. He said that he heard his little brother holler for him. When he saw this, he then came back to the door and kicked it in. The Accused came to him with what looked like sperm and tried to put it on him. He then took the Accused's pants, which he had in his hand and threw it by a mango tree.

[25] He said the other incident he did not know much about.

[26] He then recounted an incident which he said happened after "Corona" when he, the Accused and KT had gone to swim at the pond. He said that there was a big hill that they would jump off and when he went to the hill to jump, he saw the two of them

"deh inna action again". Again, he explained that he meant that the Accused and KT were having sex. He said that he dove off the hill and when he dove, he swam straight towards them. When he was swimming towards them, he saw that they were having sex. The Accused was to the back of KT and he was "jamming him". He explained that he meant the Accused's penis was inside KT's rectum. He swam away from them. After the three of them left the pond, they were picked up by police because they were outside during curfew hours.

[27] He stated that the Accused told him that if he told anyone he would punch him in his mouth. He said it was because of that he never told anyone about what he had seen.

[28] He later told his mother what had happened after he and his brother had an argument. His mother called the police that same night.

[29] He could not recall any other incidents. Despite being refreshed from his statement to the police, the witness maintained that no incident happened at their house; although, he made vague reference to an incident happening at the pond at the back of their house.

[30] Under cross-examination the witness agreed that he and his brother went to the Accused's house willingly.

[31] It was suggested to the witness that he had previously told the police that they did not have a stove and that that was the reason they went to the Accused's house. The witness maintained that the reason they went to the Accused's house was

because they did not have gas for the stove; even though, he accepted that they had a Fireheart at their house.

[32] BA accepted that he had a back view of the Accused and KT when he had climbed up the side of the house. He agreed that he could not see how the penetration occurred.

[33] He was questioned as to why he and KT continued to hang out with the Accused if they were in fear of him.

[34] The witness was challenged on never having told the police that he saw the two of them having sex when he dove off a hill, but rather that he told the police that he observed them after they were playing catch and he had went a distance away from them. He agreed that that was what he had told the police. He maintained that he was underwater; although, he accepted that a specific reference to being underwater was not in his statement. He accepted that what he told the police was that "the water was shaking, and he had my brother batty towards his penis in the water". BA disagreed with the suggestion that he could not see anything underwater. He said once he began to swim, he could see. He stated that he swam to the side of them and was able to see what they were doing.

[35] The witness was also shown his statement that he had told the police that they rode home from the pond but in his testimony, he stated that they walked home until the police came. The witness maintained that his present testimony was correct that they walked home.

[36] The witness stated that the incident happened a long time ago and that he has been trying to move on, and that what happened in the past should stay in the past. He said he could not recall what was said in the statement. He denied the suggestion that he was fabricating these incidents.

DL

[37] The mother of the Virtual Complainant testified that on October 25th, 2008, she gave birth to KT at the Karl Heusner Memorial Hospital. She lived at Burrel Boom Hattieville Road with her children, including KT and BA. She knew the Accused for many years as he lived in a building about 150-200 yards from her house. During the month of May 2020, her two sons KT and BA had a fight at home which she tried to stop. When she hit her son BA, he made a comment *"that's why Kenroy take yuh batty"*. She asked KT whether that was true and he said that it was. She spoke to the mother of the Accused and then reported the matter to a police officer. Sometime later, the police took them to the hospital, but she stated that she did not stay in the room to witness the medical examination of KT.

Agreed Evidence

Shannon Swift

[38] Woman Police Corporal Shannon Swift received a report of alleged rape and investigated the matter. She requested the assistance of Cpl. Shannen Pook to witness a medical examination which was performed by Dr Luis Chulin on 3rd July 2020. She later recorded statements from KT, DL and BA. She accompanied CST Robert Henry to the scene where he took photographs. On 6th August 2020, Sonia Teck handed over the Accused to her. She informed him of the allegations of rape made against him by KT and informed him of his constitutional rights and privileges, and the Accused requested a phone call. Officer Swift later charged the Accused

for three counts of sexual assault, cautioned him and he remained silent. She subsequently obtained a birth certificate from the Vital Statistics Unit in the name of KT.

SS 1

[39] Birth Certificate of KT shows the Virtual Complainant's date of birth as 25th October, 2008.

Robert Henry Jr.

[40] On Monday 20th July, 2020, Crime Scene Technician Robert Henry accompanied investigator Woman Police Corporal Shannon Swift to the locations where these incidents are alleged to have taken place and took photographs.

RJ 1-9

[41] The photos taken by Robert Henry Jr. show the various locations where the incidents are alleged to have taken place.

Shannen Pook

[42] Woman Police Constable Shannen Pook was attached to the Burrel Boom Police Station when she received a phone call from Cpl. Shannon Swift concerning a complaint of alleged rape. On 3rd July 2020, she went to KHMH where she met KT and his mother DL. In her presence, Dr Luis Chulin performed a medical examination on KT and later handed over a medico legal form to her which she handed over to investigator Cpl. Shanon Swift.

SP 1- Medical Report

[43] Dr. Luis Chulin performed a genital examination on KT. There were no signs of trauma, blood, discharge or bruising at the time of the examination. Dr. Chulin observed dilation of the anus between 15-20 mm and laxity. Dr. Chulin formed the conclusion that KT was carnally known and classified his injuries as harm.

Summary of Evidence for the Defence

[44] At the close of the case for the Crown, the Accused was put to his election and opted to remain silent as is his constitutional right to so do. He also chose not to call any witnesses.

Law

[45] The Crown must prove the following with respect to the charge of Rape of a child contrary to **Section 47(A)**. The definition of that offence in the Code, where relevant, is:

> *"47A. Every person who rapes another person and that person is under the age of sixteen years commits an offence…*
> *…*
> *71.-(1) Rape is the penetration of a person's…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.*
> *…*
> *53A(5) For the purposes of this Part–… "penetration" includes the continuing act from entry to withdrawal of the penis into the…anus…*
> *…*
> *73. 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."*

[46] In relation to the requirement of the absence of belief by the Defendant that KT was consenting as set out in **Section 71(2) of the Code**, the Court of Appeal in **Oscar Escalante et al v R**[3] opined about that section, then section 68(2):

> *"We wish also to observe that in our view section 68(2) of the Criminal Code applies whenever an accused person is charged with rape, irrespective of the age of the person alleged to have been raped."*

[47] The Court of Appeal in **FW v R**[4] considered the issue of proof of the element of the absence of consent, per Sosa P:

> *"[26] As regards the relevant law, the majority accepts the submission…that there is a valid legal distinction between mere submission to sexual intercourse and consent thereto. Support for that submission is found in Olugboja, 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:*
> *'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.'*
> *Consistent with that view is the statement in the judgment in Malone, where Roch LJ speaking for the same Court, gave examples of possible factual situations in cases involving rape charges and went on to say, 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.'*
> *…*
> *… the above-cited statements in these authorities…accurately [represent] the current state of the law in Belize…" (emphasis added)*

[48] The Crown has to establish for this offence:

(i) That the Accused penetrated KT's anus with his penis on three occasions.

(ii) That penetration on each occasion was without KT's consent and that the Defendant knew or did not believe KT was consenting; and

(iii) That KT was under the age of 16 at the time of the penetration.

[3] Criminal Appeals Nos. 1 and 2 of 1991 at p 7.
[4] Criminal Appeal No. 18 of 2011.

Issues

[49] It is not in dispute that KT was under the age of sixteen years at the time these offences are alleged to have been committed. The birth certificate of KT, admitted by agreement, establishes his date of birth as 25th October 2008, which makes him 11 years at the time of the alleged incidents. The evidence of DL also supports the birth certificate as she testified that she gave birth to KT on 25th October 2008 at the Karl Heusner Memorial Hospital.

[50] It is also not disputed that the Accused and KT were neighbours and well known to each other. There was seemingly some suggestion in cross examination that the Accused had already moved out of the area at some point in 2020; however, the suggestion was denied by the Crown's witnesses and there was no further evidence led in relation to that issue.

[51] The ability of KT to see his assailant was also not in dispute and sufficient evidence was raised by the Crown as to the conditions of KT and BA's observations on each occasion. Unsurprisingly, in the Defence's closing arguments Counsel also stated that there was no dispute as to identification and accepted that the Accused and KT were neighbours and well known to each other.

[52] As gleaned from cross examination, the main thrust of the Defence was that KT and his brother BA fabricated these incidents.

[53] The Court considers that the main and decisive issues therefore are:

i. Whether the Accused penetrated KT's anus with his penis on the three occasions alleged by the Crown.

ii. Whether KT consented to such penetration and if not whether the Accused knew or did not believe that KT was consenting.

[54] In this case, the determination of these issues rests primarily on the credibility of KT and his brother BA who was an eyewitness to at least two of the three alleged incidents.

[55] The Court must decide having considered all the evidence whether the nature and quality of the Prosecution's case is such as to make the Court sure of the guilt of the Accused.

[56] These are the issues that attracted the Court's focus in its analysis.

Analysis

General Directions

[57] 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.

[58] The Court has considered all the evidence with the intention of reaching a fair and dispassionate assessment of that evidence. The Court notes that in assessing credit and reliability it must examine inconsistencies, discrepancies, and any implausibility in the evidence of witnesses. The Court notes 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. 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. If the Court finds the evidence of a witness implausible, it will reject either that witness's evidence entirely or that particular bit.

[59] The Court also directs itself that the credibility of a witness is not a seamless robe where one lie, or even several, automatically strips the witness of all believability. However, the telling of lies on oath is not a trifling thing. If the Court finds that any witness has intentionally testified falsely as to any material fact, it may disregard that witness's entire testimony or, may disregard so much of it as it finds to be untruthful, and accept so much of it as it finds to have been truthful and accurate. How the Court decides on this may depend on its view of how material to the issue the lie is, and the reason, if any, for it. This is the Court's understanding of the CCJ decision of **James Fields v The State**[5] in relation to evaluating testimony involving intentional lies.

[60] The Court has considered all the evidence. However, the Court will note that it is not obliged to state its findings on every bit of evidence, nor every argument raised, but will address the essential issues in this case.[6] It will attempt to analyse the evidence clinically, fairly, within the boundaries of the law and with the aid of its human experience and common sense[7] while avoiding myths and stereotypes.

[61] 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 Accused, as is the required reasoning process noted by our apex court, **The Caribbean Court of Justice** (hereinafter "the CCJ"), in **Dioncicio Salazar v R**[8].

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[5] [2024] 2 LRC 176 at paras 33-38.
[6] *Salazar* at paras 27-29; **Andy Forbes et al v R**, Criminal Appeals 20, 21 and 24 of 2018 (BZ) at para 40; and **Nevis Betancourt v R** [2024] CCJ 6 (AJ) BZ at paras 22 and 38.
[7] *Kruk* at paras 151-156.
[8] [2019] CCJ 15 (AJ)

Analysis of Crown's Case

[62] In examining the Crown's case, the Court accepts that the Crown has advanced evidence capable of supporting a conviction of unlawful sexual intercourse based on the following portions of the VC's account:

i. **Sexual Intercourse-** Evidence of sexual intercourse comes from the account given by the KT in which he stated that the Accused penetrated his anus with his penis on three separate occasions.

There is also corroboration of KT's account from the evidence of his brother BA who testified to witnessing the Accused penetrating KT's anus with his penis on two occasions.

There is supportive evidence from the medico-legal report. Dr. Chulin's opinion was that KT was carnally known. His opinion stems from his observations that KT's anus was dilated between 15-20 mm and that he observed laxity in that area. It must be emphasized that the medical evidence, even if accepted, does not corroborate KT's account that it was the Accused who had sexual intercourse with him. The doctor's opinion merely provides some support to his account that KT was engaged in sexual intercourse of the anus at some point prior to examination.

ii. **Absence of consent**- this evidence mainly comes from KT's account that on the first occasion the Accused forcibly grabbed him, pushed him into his mother's room and penetrated KT's anus with his penis and that KT asked him to stop, but he did not and that he had cried out for his brother to help him. On the second occasion, KT said that the Accused pulled down his pants and forcibly inserted his penis into his anus and that he had cried out for his brother, that it was only when his brother returned that the Accused stopped. On the third occasion, KT said that the Accused pulled him into the deep end of the pond where he could not touch the ground and forcibly put his

penis into his anus, that he tried kicking him but the Accused never stopped. He said he had called out to his brother for help.

There is some support for this element from the evidence of BA who says that on the last occasion when they were in the pond he heard his brother call out for him.

iii. **KT was below the age of sixteen years-** Evidence of the KT's age comes from the combined evidence of DL who testified that she gave birth to KT on 25th October 2008 and **SS 1**- the Birth Certificate of KT, which also recorded the VC's date of birth as 25th October 2008. The Virtual Complainant was 11 years old at the time of each incident.

[63] The Crown's case against the Accused is based on the credibility and reliability of the evidence of KT and his brother BA. The Court must therefore carefully assess their testimony to determine whether it is satisfied beyond a reasonable doubt of the credibility and reliability of their accounts.

[64] In assessing the evidence, the Court must analyse the evidence dispassionately, clinically, fairly and within the boundaries of the law and with the aid of its human experiences and common sense while avoiding myths and stereotypes.[9]

[65] KT testified at the age of 17 years and was therefore still a minor at the time of testifying; although, he is now closer to adulthood. In assessing his evidence, the Court was careful to remember that he was testifying about events that allegedly occurred when he was 11 years of age and at the time he gave the report to the police he was also 11 years old. The mere fact of his age does not automatically mean that his word is any more or less reliable than that of an adult, but it is a factor

[9] Kruk at paras 151-156

that may be considered in the Court's analysis. As matters of common sense and human experience[10] the Court has considered the following:

a) A child does not have the same experience of life or the same degree of maturity, logic, perception or understanding as an adult. So, 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.

b) A child may be tempted to agree with questions asked by an adult, whom the child may well see as being in authority, particularly in a setting such as this. Also, if a child feels that what she is asked to describe is bad or naughty in some way, this may itself lead to the child being embarrassed and reluctant to say anything about it or to be afraid that she may get into trouble.

c) A child may not fully understand the significance of some things that have happened, which may be sexual, at the time they happened, and this may be reflected in the way she remembers or describes them in later life.

d) 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.

e) A child may not be able to explain the context in which events occurred and may have particular difficulty when answering questions about how she felt at the time or why she did not take a particular course of action.

f) All these things go to a child's level of understanding rather than to her credibility and so the Court should be cautious about judging a

[10] **The Crown Court Compendium, Part I, Jury and Trial Management and Summing Up**, (Eng.) June 2022, para 10-28.

child by the same standards as an adult. None of these things mean that this witness is or is not reliable: that is a matter for the Court's judgment on all of the evidence.

[66] The Court must also guard against 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 or attack of a sexual nature, 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 a false complaint, nor does an early complaint mean a true complaint. A judge is entitled to have regard to the shame and embarrassment which may arise from sexual assault particularly by a close family member or relative.[11]

[67] The Court is also mindful that these incidents are alleged to have occurred more than five years ago. The passage of time is bound to affect memory. There were instances where KT and BA had apparent difficulty recalling details precisely. The Court has therefore, taken into account this factor in its assessment of their evidence. A witness' inability to recall details may be measured against this reality, although it is the Prosecution which bears the burden of proof.

[68] The Crown's case relies primarily on whether the Court believes the KT so that it is sure beyond a reasonable doubt that he had sexual intercourse with the Accused without his consent on three occasions between February and 14th February 2020 and 6th April 2020. The Crown also draws support from the evidence of BA, who supports KT's account in part and in relation to two of the three incidents recounted by KT.

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

[69] Through cross examination, the Court has gleaned that the Defence denies the alleged sexual encounters entirely.

[70] In its analysis, the Court has examined the evidence of KT and BA carefully and in doing so has tested their honesty and reliability in relation to the two issues identified above bearing in mind that the burden is on the Prosecution to prove each element of the offence of rape beyond a reasonable doubt.

Demeanour

[71] The Court found KT's testimony to be concise and direct. By way of demeanour, KT for the most part was clear and sufficiently articulate in his responses. He displayed a timid and shy deportment; although, he was generally cooperative with the process and seemingly desirous of assisting the Court.

[72] With regards to BA, generally I found him to be unwilling and at times even uncooperative, however his responses seemed candid and authentic. He was less articulate than his brother KT but was forthright in most of his responses. His responses to difficult questions seemed genuine and did not seem to be calculated or contrived, although he did seem annoyed by the entire process.

[73] In relation to both witnesses, the Court is careful not to give any undue weight to their demeanour so much so that it displaces a proper analysis of his actual evidence. The Court also warns itself that it is the experience of the courts that demeanour can often be a deceptive and arbitrary characteristic.

Inconsistencies/Discrepancies/Implausibility

[74] In assessing KT and BA's credit and reliability, the Court has examined whether any inconsistencies, discrepancies, or implausibility arises on their evidence. The Court notes 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. 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. If the Court finds the evidence of a witness implausible, it will reject either that witness's evidence entirely or that particular bit.

[75] It was suggested by the Defence that there was an inconsistency on KT's evidence with regards to the dates of the first two incidents. The Defence suggested that KT failed to clarify the dates in February 2020 when the first two incidents are alleged to have occurred. The Court found this suggestion to lack merit. The way the indictment is drafted alleges three incidents of rape occurring between February 14th and April 6th, 2020. The evidence of KT was that the first two incidents occurred a day apart in February 2020; although, KT could not be certain of the exact date. He testified that the third incident occurred sometime after. The Court does not agree that this is an inconsistency. KT was always uncertain as to the exact dates when he gave his statement to the police in July 2020. He knew that the first two incidents occurred a day apart and back in February because it happened when he had first relocated to Burrel Boom after staying with his father. He was also sure that the third incident occurred sometime thereafter. KT's evidence as to the dates of two incidents is also supported by BA's testimony. BA said that the incident at the Accused's home occurred in February 2020 and he recalled that the pond incident occurred sometime during "Corona", which this Court deduces could be anytime from March 2020. The Court reminds itself that 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. I do not find any dispute as to the dates of the three incidents which fall within the dates referred to in the indictment.

[76] The Court looked at opportunity. The Accused, through his relationship with KT and his family, is a neighbour with whom the boys regularly had contact. He had easy access to KT, who was seemingly often left unsupervised while his mother worked. The Accused may have thought that KT was someone unlikely to put up a fight if he forced himself on him, and unlikely to report it either. This may have allowed these incidents to occur repeatedly until finally, BA told on the Accused.

[77] There was also the element of threats, which is consistent in both KT and BA's accounts. They both testified that the Accused, who was older and at that time bigger than they were, had threatened to harm them if they told anyone about the incidents. There is the additional evidence from KT that he felt ashamed and that he would be bullied for being sexually assaulted if he said anything. Both children advanced the threat as the reason they kept the incidents a secret. This is a response that the Court can readily accept on the basis that, as a matter of human experience, there is no typical response to a rape, if one occurred. KT was a child and was evidently confused about how to respond to a situation like this, it may have been a scenario of self-blame and fear of judgment that he somehow was wrong for what happened to him. The Court also considered these incidents occurred within a dynamic where KT said that he wanted to fit in with the Accused who was his older neighbour and friend. These factors must have weighed on KT's mind whether to report.

[78] The reluctance of BA to testify and his general demeanour while giving testimony is also consistent with the common feelings of shame that usually accompany these types of incidents. It is unsurprising that both boys would have kept these incidents to themselves for as long as they had. I do not find that to be an indictment on their

credibility; whatsoever, but rather a common reaction to victims and witnesses of child sexual abuse, especially in the context of two young males with little direction.

[79] The Court also considers that the way in which the accusation was first revealed to DL – who related the accusation in similar terms to that of KT and BA – is also reflective of the reaction of a child to incidents of sexual abuse. In anger and trying to hurt his brother with whom he was fighting; BA blurts out what had been happening to presumably shame his brother. The manner of that confession is consistent with a childlike reaction to the often-confusing reality of child sexual abuse. The Court found both KT and BA's responses and late reporting to be reflective of their age, innocence, and immaturity rather than a demonstration of deceit.

[80] The same reasoning applies to the Defence's challenge on why the boys continued to associate with the Accused after the first incident, and again after the second. I do not find that their decision to continue to associate with the Accused meant that KT could not have been sexually assaulted in the way he described. They were all friends living in what appeared to be a desolate area. It is also not lost on this Court that there was a level of playfulness between the parties, evident from the Accused's reaction when BA returned to his house. He did not appear shocked or ashamed, but rather attempted to touch BA with what appeared to be semen. BA then took off with his pants. The Court also takes notice of the Accused's age at the time who, although their senior and an adult, was still very much in his teens and displayed a level of immaturity.

[81] An issue raised by Defence concerned the reason for the boys going over to the Accused's home to cook noodles. There was some cross examination as to whether the boys had a stove at home or not. I find this issue to be immaterial to the issues to be decided in this case and it is not a matter that the Court needs to resolve.

[82] Another major issue of contention raised by the Defence under cross examination was that KT could not have known that it was the Accused's penis that penetrated his anus because at all relevant times his back was to him. I found this to be a curious position that defied logic and human experience. KT described three incidents of close proximity and skin to skin contact; whereby, the Accused penetrated his anus from the back with his penis. On the first occasion, KT described the Accused standing behind him, pulling out his penis. He said he was able to observe that the Accused did not wear a condom before he penetrated his anus with his penis. The second occasion, KT described being penetrated again from the back. On the third occasion, they were in the water, and the Accused held him again from the back and penetrated his anus with his penis. On each occasion, only the Accused and KT were in that space touching each other. The positions of the Accused and KT leave no doubt in this Court's mind that KT would be able to know and feel that it was the Accused's penis penetrating him, despite the entry point being from the back.

[83] There is a discrepancy between the evidence of KT and BA as regards the alleged first incident. On KT's account, the first incident occurred in his mother's bedroom; whereas BA's evidence is that no incident at all happened at their house. Notwithstanding his later assertion, the Court notes that at the beginning of BA's testimony he stated that there were three incidents and that one incident happened by the pond in the back of their house. He then went on to recount two incidents and never gave evidence directly on the back-pond incident to which he had earlier referred. When Counsel for the Crown attempted to refresh his memory from his statement, he maintained his position that no incident occurred at the house. His evidence is in direct conflict with KT's evidence that the first incident occurred at their house and that BA was present when the Accused grabbed them both. Interestingly, KT also mentioned that this first incident occurred after swimming in a pond at the back of their house. KT testified that he and BA were first swimming in the pond behind their house and it was when they went inside to change their clothes the Accused grabbed them and BA escaped.

[84] This is a material discrepancy. Whether there was in fact a first incident and whether it happened in the manner described by KT is important to the Crown's case. To determine the truth on this issue, I examined closely the evidence of BA and KT. BA was a reluctant witness in the sense that he was clearly unhappy to give evidence, and he was not afraid to say that to the Court. He candidly stated that he found that what happened in the past should stay there and the Prosecutor had to pull the evidence out of him when it was clear that he wanted to be done with the entire affair. That is not to say that the Court found him to be a dishonest witness. On the contrary, I found his evidence to bear the ring of truth, and the content of his evidence withstood the rigors of cross examination. My view was that he was desirous of speaking the truth, but that he was also unhappy with the exercise of giving evidence. Two things can be equally true. His initial response was that three incidents occurred, and he initially stated that one incident happened at the pond at the back of their house. It was only after he had already recounted the other two incidents that he made the curious statement that nothing happened at the house. I believe the witness was tired of giving evidence and wanted to be done with the whole affair. I find as a fact that he was not being entirely truthful when he said that nothing happened at the house, but that he was being truthful when he initially said that three incidents occurred and that one occurred at the back pond. In this regard, I accept KT's evidence on this point that the Accused penetrated his (KT's) anus in his mother's bedroom after he and BA had went swimming at the back pond.

[85] Another discrepancy from both testimonies is that KT alleged being forced to have sex whereas BA testified as to KT and the Accused being engaged in sexual intercourse without any mention of restraints. KT's description of the positioning of the parties relative to the incident at the Accused 's home differed significantly from the testimony of his brother. BA described them lying side by side on the ground while KT described being held down. In relation to the incident at the pond, BA did not mention that his brother was calling out to him whereas, KT described yelling for his brother. Then there is of course the absence of any evidence from BA as it

relates to KT's description of being forcibly pulled by the Accused into his mother's room on the first occasion while in BA's presence. I found that these discrepancies to be material as they all related directly to the issue of consent. There was no explicit explanation for the discrepancies. The Court may hazard its own explanation but declines to as to do so may be speculative. The disparity with the accounts on these points created significant doubt relative to the issue of consent. I must say that the disparity did not cause the Court to disbelieve or question KT's evidence of sexual intercourse, which I found to be credible and reliable on its own and also corroborated in part by BA's testimony, which I believe and supported in part by the medical evidence.

Reliability

[86] The Court is well aware of the dangers of visual identification. It can very easily be mistaken, even by honest witnesses, and may lead to miscarriages of justice. This may also be so in cases of purported recognition by close friends or relatives. Also, there may be several purported identifications by different persons which could all be wrong. In this case however, I do not find any issues which affect or impede KT and BA's ability to recognize the Accused as the person who penetrated KT's anus.

[87] It is not in dispute that KT and BA knew the Accused for several years. The Accused also did not dispute that he knew the VC. This evidence being unchallenged and consistent, the Court accepted that the VC and the Accused were well known to each other.

[88] KT also had ample opportunity to view the person with whom he had sexual intercourse- each incident occurred during daytime. The Accused and KT were close enough, the person was in his view before, during, and after each act of penetration.

[89] On a totality of the evidence in the Court's view, as a matter of inference KT would have had at several points a clear, close, and sufficiently illuminated view of the Accused over many minutes which would have given him a sufficient view of the Accused. The Court is thus satisfied so that it is sure that KT was not mistaken in his recognition of the Accused as the person with whom he had sexual intercourse on three occasions.

[90] The Defence mounted a challenge as to whether BA would have been able to observe the Accused's penis entering KT's anus on the two occasions he described. The Court accepts as a fact that BA did not witness the initial entry, but on the occasion at the Accused's house he saw the Accused "jamming" his brother and at the pond when he swam next to them, he saw the Accused's penis in his brother's rectum. I find that the fact that BA did not witness the entry of the Accused's penis in KT's anus does not mean that he could not corroborate KT's evidence. His evidence, which this Court accepts, that he saw the Accused and KT engaging in the act of sexual intercourse is sufficient to corroborate KT's account. The Court formed the view that BA also had a sufficient opportunity for observation of the Accused and KT on both occasions to have seen that they were in the act of sexual intercourse. On the occasion at the Accused's house, he was watching them from above and would have been able to see their entire bodies from a proximate distance. The occasion at the pond, which was not as good of a vantage point, but he indicated that he first observed them at the top of the hill and then dove into the water and swam closer to them. It is when he was closer to them that he observed the Accused's penis in his brother's rectum. I accept his evidence that on each occasion, and find as a fact, that he was able to observe and form the conclusion that the Accused and KT were engaged in anal sex.

Medical Evidence

[91] The Court is satisfied beyond a reasonable doubt that Dr. Chulin performed a medical examination on KT. In any event, the Defence had agreed to **SP 1** which is

the medico-legal report. The combined effect of these pieces of evidence makes the Court feel sure that a medical examination was in fact conducted on KT on the 3rd July 2020, and **SP 1** provides the conclusions of Dr. Chulin following said examination.

[92] In assessing the weight to be attached to Dr. Chuilin's expert's evidence, the Court reminds itself that it is not bound to accept the opinion of the expert witness and is free to accept or reject the evidence of the expert in coming to any conclusions on the evidence. The Court has considered whether Dr. Chulin's opinion is based on established facts or assumptions.

[93] In this case, the Court found that Dr. Chulin's opinion was sound and based solely on the observations he himself made during his examination of KT. His opinion that KT was carnally known is consistent and supported by his observations that KT had laxity in his anus, which was dilated between 15-20 mm.

[94] The medical evidence however cannot answer the ultimate question, which is whether the Accused had sexual intercourse with KT and whether he did so without KT's consent. Rather, the medical evidence can only go to the issue of whether there was penetration of the anus as alleged by KT and witnessed by BA. Dr. Chulin's opinion that KT was carnally known, if accepted, merely supports the VC's account of penetration.

Absence of Corroboration re the First Incident

[95] Although corroboration is certainly desirable, there is no requirement in law that there should be independent evidence to support KT's evidence. This is certainly borne out of a realisation that sexual offences often take place in private with only the two parties able to speak to what, if anything, happened. In this case, there is no corroboration of the first incident at KT's house.

[96] Notwithstanding, that corroboration is not strictly required I have directed myself in relation to this first incident that it is uncorroborated. I have considered that it is dangerous to convict the Accused without corroboration, and that this danger arises from the fact that sexual allegations are easy to make and hard to disprove and in a number of cases innocent persons had been convicted on uncorroborated evidence of complainants in sexual cases. With this consideration in mind, I have applied the necessary caution in approaching KT's evidence on this first incident.

Issue: Whether the Accused Penetrated KT's Anus with his Penis on the Three Occasions Alleged by the Crown

[97] The Court found that looked at individually and cumulatively, the discrepancies, inconsistencies and omissions identified above did not reduce the quality of KT's evidence or affect matters of his credibility as it relates to the issue of whether the Accused had sexual intercourse with him on the three occasions mentioned. On the contrary the Court found KT's account on this issue to be truthful, reliable and inherently plausible as it relates to whether sexual intercourse occurred on each occasion described. I find that KT's evidence is corroborated, in part, by the evidence of his brother BA, who on two of the three occasions witnessed said penetration of KT by the Accused. I accept the evidence of BA in this respect. I also accept the uncorroborated evidence of KT that sexual intercourse occurred between him and the Accused on a third occasion at KT's house. I find myself satisfied so that I am sure that the Accused had sexual intercourse with KT by inserting his penis into KT's anus on three occasions between 14th February and 06th April 2020.

Issue- Whether KT Consented to such Penetration and if not Whether the Accused Knew or did not Believe that KT was Consenting

[98] Looked at, individually and cumulatively, the discrepancies, inconsistencies, and omissions identified above between KT and BA's testimony has reduced the quality of KT's evidence and affected matters of his credibility as it relates to the issue of the absence of consent. Although, I find KT's account on whether sexual intercourse occurred to be truthful, reliable, and inherently plausible, I am left with reasonable doubt as to whether KT consented to the three incidents of sexual intercourse. As such the Crown has not satisfied me to the extent that I am sure that when the Accused had sexual intercourse with KT, he did so without KT's consent.

Alternative Offence

[99] At common law, where an offence consisted of several ingredients, the jury could convict of any offence the elements of which were included in the offence charged, subject to the rule that on an indictment for felony the jury could not convict of a misdemeanour: See **Taschereau, The Criminal Code of Canada**[12]. Thus, on a charge of murder the jury at common law could find the Accused guilty of manslaughter. On a charge of robbery, the jury could find the Accused guilty of larceny only, if the element of putting in fear was not proved.

[100] In **Blackstone's Criminal Practice 2007 at para. D17.49**, the learned authors state:

"The judge in summing up is not obliged to direct the jury about the option of finding the accused guilty of an alternative offence, even if that option is available to them as a matter of law. If, however, the possibility that the accused is guilty only of a lesser offence has been obviously raised by the evidence, then the judge should, in the interests of justice leave the alternative offence to be left to the jury."

[101] This statement of the principle is based on the decision of the House of Lords in **Coutts,** which is highly persuasive authority on how to treat with the issue of whether a direction as to a lesser alternative offence should be given. In **Coutts,** the Court approved the following dicta in **R v Fairbanks**[13].

[12] p. 819; Archbold, Criminal Pleading Evidence and Practice (1979), 40th ed. pp. 452-3
[13] [1986] 1 WLR 1202

"These cases bear out the conclusion, which we should in any event have reached, that the judge is obliged to leave the lesser alternative only if this is necessary in the interests of justice. Such interests will never be served in a situation where the lesser verdict simply does not arise on the way in which the case had been presented to the court: for example if the defence has never sought to deny that the full offence charged has been committed, but challenges that it was committed by the defendant. Again there may be instances where there was at one stage a question which would, if pursued, have left open the possibility of a lesser verdict, but which, in the light of the way the trial has developed, has simply ceased to be a live issue. In these and other situations it would only be harmful to confuse the jury by advising them of the possibility of a verdict which could make no sense."

[102] The power of the jury at common law to convict of an included offence was, in the case of certain offences, enlarged by statute. For example, in Belize the **Indictable Procedure Act Cap 96** section 126-135 expressly categorises offences for which verdicts for lesser included offences are available.

Section 130 Provides:

If upon the trial of any indictment for– (a) rape, the jury is satisfied that the accused person is guilty of a crime under section 47 or 50 of the Code, or of an indecent assault, but is not satisfied that the accused person is guilty of the crime charged in the indictment, or an attempt to commit such crime, the jury may acquit the accused person of the crime charged in the indictment and find him guilty of the crime as aforesaid, or of an indecent assault;

[103] Section136 further provides:

"*Every count of an indictment shall be deemed divisible, and if the commission of the crime charged, as is described in the enactment creating the crime, or as charged in the count, includes the commission of any other crime, the accused person may be convicted of any crime so included which is proved, although the whole crime charged is not proved, or he may be convicted of an attempt to commit any crime so included."*

[104] The counts charging the offence of Rape of a child necessary includes the offence of unlawful sexual intercourse. This Court finds that where absence of consent has not been proven beyond a reasonable doubt, but the Court finds that the Accused did in fact have sexual intercourse with the Virtual Complainant, then the Court is entitled to return a verdict for that offence, if the Court is satisfied beyond a reasonable doubt that the intent for that lesser offence has been proved and that it is in the interests of justice to leave that lesser offence available to the fact finder, in this case the Judge. It must be remembered that justice serves the interests of the public as well as those of the Accused, and if the evidence is such that he ought at least to be convicted of the lesser offence, it would be wrong for him to be acquitted altogether merely, because the jury (or fact finder) cannot be sure that he was guilty of the greater offence.

[105] Lord Bingham stated in Coutts at para. 12:

> *"In any criminal prosecution for a serious offence there is an important public interest in the outcome (see R v Fairbanks [1986] 1 WLR 1202 at 1206). The public interest is that, following a fairly conducted trial, defendants should be convicted of offences which they are proved to have committed and should not be convicted of offences which they are not proved to have committed. The interests of justice are not served if a defendant who has committed a lesser offence is either convicted of a greater offence, exposing him to greater punishment than his crime deserves, or acquitted altogether, enabling him to escape the measure of punishment which his crime deserves. The objective must be that defendants are neither over-convicted nor under-convicted, nor acquitted when they have committed a lesser offence of the type charged. The human instrument relied on to achieve this objective in cases of serious crime is of course the jury. But to achieve it in some cases the jury must be alerted to the options open to it. This is not ultimately the responsibility of the prosecutor, important though his role as a minister of justice undoubtedly is. Nor is it the responsibility of defence counsel, whose proper professional concern is to serve what he and his client judge to be the best interests of the client. It is the ultimate responsibility of the trial judge. (see Von Starck v R [2000] 4 LRC 232 at 237, [2000] 1 WLR 1270 at 1275; Hunter v R [2003] UKPC 69 at [27], [2004] 2 LRC 719 at [27])."*

[106] On a consideration of the Crown's case and subject to the Court's evaluation of the case for the Accused, this Court is satisfied so that it feels sure that the Crown has proven that the Accused had unlawful sexual intercourse with KT, who was then a child under the age of fourteen years.

[107] In examining the Crown's case, the Court accepts that the Crown has advanced evidence capable of supporting a conviction of unlawful sexual intercourse contrary to **Section 47(1) of the Code** based on the following portions of KT's account:

i. **Sexual Intercourse-** Evidence of three incidents of sexual intercourse comes from the account given by KT in which he stated that the Accused penetrated his anus with his penis. Evidence of sexual intercourse on the last two occasions has been corroborated by the evidence of BA. There is also supportive evidence from the medico-legal report that Dr. Chulin's opinion was that the VC was carnally known and that he observed dilation and laxation of KT's anus.

ii. **The VC was Under the Age of Fourteen Years**

Evidence that KT was 11 years old at the time of each act of sexual intercourse comes from the combined evidence of the testimony of DL, who testified to giving birth to the Virtual Complainant on 25th October 2008 and **SP 1**- the Birth Certificate of the VC, which also recorded the VC's date of birth as 25th October 2008.

Analysis of the Defence Case

[108] The Court reminds itself that the Accused has nothing to prove and that it is the Crown that has brought this case against the Accused, and it is the Crown that bears the legal burden of proving that case beyond a reasonable doubt throughout his trial.

[109] 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 Accused then it returns to the Crown's case and considers whether on all the evidence the Accused is guilty.

[110] 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.

[111] There is no burden on the Accused to prove and it is the Prosecution that must prove its case beyond a reasonable doubt.

[112] The thrust of the Defence case is that KT and his brother fabricated these allegations. I reject that Defence for the reasons already advanced.

Conclusion

[113] Having looked at the totality of the evidence and the strength of the case for the Crown, the Court is satisfied so that it is sure that on three occasions between 14th February and 6th April 2020, the Accused penetrated the anus of KT, who was at the time a person under the age of fourteen years to wit eleven years old.

Findings/Disposition

[114] The Court finds the Accused NOT GUILTY of the offence of Rape, but GUILTY of the offence of 'Unlawful Sexual Intercourse' contrary to **Section 47(1) of the Criminal Code.**

[115] The Court will adjourn this matter for a separate sentencing hearing as advised by the CCJ in **Linton Pompey v DPP**[14].

Candace Nanton
High Court Judge
Senior Courts of Belize
Dated: 18th December 2025

[14] [2020] CCJ 7 (AJ) GY at para 32