

IN THE HIGH COURT OF BELIZE
CENTRAL SESSION – BELIZE CITY, BELIZE DISTRICT
IN THE HIGH COURTS OF JUSTICE

Indictment No. C6/2026

THE KING

and

[1] RUPERT CODD

Defendant

Appearances:

Ms. Maria Nembhard Santana for the Crown

Mr. Michael Peyrefitte for the Defendant

Date/s:

Trial date:	2026:	July 20
Judgment:	2026:	September 29

DECISION

- [1] **SYLVESTER, J:** Rupert Codd [hereinafter referred to as ‘**the Accused**’] twenty-five [25] years of age, male, was born on the 16th day of August 2001, and was indicted on the 10th day of March 2026, for one count of rape.
- [2] The offence was alleged to have occurred on the 2nd day of April 2023, at 4:00 am, while the virtual complainant [whose name will be anonymized] was moments away and *en route* to the Karl Heusner Memorial Hospital [“**KHMH**”], due to her feeling unwell.
- [3] The Accused was arraigned on the 30th day of April 2026 and pleaded not guilty. The trial was adjourned to the 20th day of July 2026, and concluded on the same

day, with a total of eleven [11] prosecution witnesses' evidence.

- [4] The offence of rape is prescribed in section 46 of the **Criminal Code**¹ [hereinafter referred to as "**the Code**"], and states as follows:

*"46. Every person who commits rape or marital rape shall on conviction on indictment be imprisoned for a term which **shall not be less than eight years**, but which may extend to **imprisonment for life**."*

- [5] However, rape is defined at section 71 of **the Code** which states:

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

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

- [6] Section 73 states:

"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."

1. The Accused's trial was conducted without a jury, pursuant to the provisions of section

¹ Chapter 101 of the Laws of Belize, Revised Edition 2020

2. 65A of the ***Indictable Procedure Act***, Chapter 96 of the Laws of Belize, as amended by **Act No. 3 of 2022**. The amendment was promulgated on the 22nd day of March 2022. Section 65A provides for the trial of persons indicted for any sexual offence, and certain other types of crimes, to be conducted as a Judge alone trial of the High Court, sitting without a jury.

Burden and Standard of Proof

- [7] The Court sitting in its capacity as judge alone², (without a jury), is both the assessor of the facts and the judge of the law. The Court will therefore direct itself and keep in its mind that throughout the hearing and deliberation of this matter, the prosecutor has the burden of proof in this case and that the Accused stands innocent before this Court. The Accused has nothing whatsoever to prove; and is presumed innocent. Rather, it is the prosecution that has the duty to prove each element of the offence.
- [8] The Court will therefore be guided by the principle that the Accused is presumed innocent and has nothing to prove; the obligation is on the Crown to satisfy the Court so that it is sure of the guilt of the Accused. The presence of any reasonable doubt shall result in the Court acquitting the Accused for the offence indicted.
- [9] Further, the prosecution must prove each element of the offence by providing the Court with the evidence of such a quality that it can feel sure of the respective elements. Ultimately, if the Court is sure of each element and has no reasonable

² Indictable Procedure Act Cap 96: 65D. Where a trial is conducted without a jury, the judge shall have all the power, authority and jurisdiction which he would have had if the trial had been conducted with a jury, including the power to determine any question and to make any finding which would have been required to be determined or made by a jury.

doubt, then it can be certain of the guilt of the Accused and may convict him. If, on the other hand, the prosecution's evidence fails to make the Court feel sure to the extent that it has a reasonable doubt of any of the elements of the offence, the Court will be obliged to acquit the Accused of the offence of rape.

Elements of Rape

[10] To ground a conviction for rape, the Crown is required to prove three [3] elements so that the Court feels sure of each element, as follows:

(a) that the Complainant, is a person.

(b) that it was the Accused who penetrated the vagina of the Complainant with his penis, and

(c) that when the accused did so, the penetration was without the consent of the Complainant.

[11] The Court in accordance with the principles emanating from the Caribbean Court of Justice, in ***Dionicio Salazar v R***³, shall start with analysing the evidence on the Crown's case, and if the evidence is strong enough to carry a conviction, it would consider the evidence of the defence. Thereafter, the Court will examine the totality of the evidence to reach a final decision.

³ [2019] CCJ 15 par. 35

[35] As a rule, the judge will consider the prosecution's evidence first. If that evidence seems strong enough to carry a conviction, the judge will consider the evidence of the defence. The judge will then look at the totality of the evidence to reach a final decision. It is there where the intercommunication and overlapping take place. It is after this polymorphic process that the judge needs to arrange his or her judgment in a logical order which will not always be able to reflect the complicating thinking process as such.

The Prosecution's Case

[12] The prosecution placed before the Court evidence from eleven [11] witnesses to prove its case against the Accused. Two [2] of the eleven witnesses were cross examined and the other nine [9] were read into the record as agreed evidence pursuant to section 106 of the **Evidence Act** Cap. 95.

[13] The evidence as presented by the prosecution both agreed and not agreed are as follows:

Not Agreed: [Cross examination]

[i] U R [Virtual Complainant]

[ii] Eugenio Gomez [Forensic Analyst- Expert]

Agreed: [No cross examination]

[i] Robert Henry [Scenes of Crime-SOC] [Photos tendered RH1-10]

[ii] Elsa Perez PC 2276

[iii] Nester Cantun PC 2174

[IV] Catherine Mc Kenzie JP

[V] Insp Henry Thomas [Notes and Disc recording of interview tendered as HT 1 and HT 2]

[VI] Shaheed Franklin DC# 1832

[VII] Daniel Daniels CST- [DD1-3 photos tendered]

[VIII] DC 1946 Dorian Richards

[IX] Dr Tracy Nicholas [Expert]- Medical Report tendered pursuant to section 36 of the Evidence Act.

Prosecution's Evidence – [Not agreed and was cross examined]

- [14] The prosecution's case depends largely on the credibility of U R [the Virtual Complainant- hereinafter referred to as the 'VC']. In this case there was the absence of DNA testing, recent complaints and corroboration. The merit of this case stands or falls with the competing credibility of the VC's verses the Accused's versions of events.

[U R [the Virtual Complainant -VC]

- [15] The VC can be described as a simpleton, slow in speech and demeanor and appears lethargic. Her evidence is that she attained sixth standard and didn't further 'March Up'. She also stated, when asked by the Crown what she does, that she doesn't do anything right now.
- [16] Her evidence paraphrased was that, on the 2nd day of April 2023, at about 4:00 a.m., she was at home not feeling well, she could not eat or swallow. She decided to go to the hospital; she was wearing a black dress. While she was walking to the hospital, she saw someone on a bridge on her right side, and she was on the left side. The lighting condition was not dark or clear, but she could see the person on the bridge, there were about two [2] lights there. She observed the person taking out a phone and made a call; she then proceeded to cross the pedestrian walk; she did this because the other side of the pedestrian walk was dark. When she looked back it was the same person behind her. At that time, she was close to the hospital; she was therefore hurrying to get to her destination.
- [17] The person came behind and grabbed her, she tried to fight and screamed shouting, Help! Help! But to no avail. The person then pushed her onto a table by a 'Coca Cola' spot close to 'Social Security'. The assailant pulled out a knife at her, placed it in her throat, and enquired whether she had her period or was sick, and she begged him, 'Please! please! I

have a daughter! He then proceeded to have unprotected, non-consensual sexual intercourse with her on the table, for about fifteen [15] minutes. She was able to see clearly, since there was light by the picnic table and a nearby school.

- [18] The VC stated she was able to identify the assailant at the police station, and she also identified him as the person sitting in the dock. After the sexual encounter, she sought help from someone whose phone she used to call both the police and her sister.

Cross-examination

- [19] In cross-examination the VC consistently maintained that she was raped, and the Accused ejaculated inside of her.
- [20] However, defence Counsel in cross examination was able to elicit parts of her statement given to the police on the day of the incident, which were inconsistent with her evidence in chief, for example; in her statement to the police, she did not state she changed her clothes and then went to the hospital. In her statement she said she left from her mother's house then went to the hospital, but in her evidence, she said she left from her home to go to the hospital. She was also cross-examined as to her inconsistency in relation to the time she left her mother's house and the time she left her house to proceed to the hospital, and further that both versions cannot be true.
- [21] The VC denied the Defence's case in its entirety during cross examination. She refuted the following assertions; that she followed the Accused while he was speaking on his phone, that when he stopped to urinate and he put his phone and wallet down on the counter she took his phone and walked away, that the Accused shouted to her three [3] times, he met her by the coca cola shop and grabbed her from behind and demanded his phone and wallet be returned, and he reached in her pants and grabbed her phone and blouse and took the wallet. The VC also denied that the allegation of theft had anything to do with the reason she

reported the Accused for raping her. She denied all the above assertions and maintained she was forced to engage in non-consensual sexual intercourse.

Eugenio Gomez MSc- [Expert in serology]

[22] The witness Eugenio Gomez MSc, was deemed an expert in Serology which as was stated by him, is the examination of body fluids such as semen, blood, saliva and examination on trace evidence, which includes hairs, fibers and debris amongst others. The witness' report was tendered into evidence without objection and marked '**EG 1-6**' pursuant to *the Evidence Act* Cap 95 section 36 of the Laws of Belize.

[23] The witness' evidence was that on the 3rd of April to 30th of August 2023, numerous items in relation to this matter were submitted to the laboratory. Analysis was requested for blood, semen and trace evidence. The method for the Forensic Identification of Semen: ABA card p30 Test Immunological Test and Trace Evidence Examination: Fluorescent Magnifying Lamp, were conducted.

[24] The results of the tests showed positive for semen on the perineal and vaginal swabs taken from the VC, and blood was collected from the blue jeans' pants belonging to the Accused. Hairs were also collected from the Accused's Nike shoe, T-shirt and Jeans pants.

Cross-examination

[25] In cross examination the witness stated that he prepared an irregularity report, since to some extent he was not happy with the way the police submitted its report. No DNA was found on the vaginal and perineal swabs, as the case was not sent for DNA analysis. DNA analysis was not done as there was no reference sample from the suspect.

[26] The witness testified that since no DNA analysis was carried out, there is no evidence that the suspect's DNA profile was found on the vagina, or cervical perineal swabs of the victim/VC. Nowhere in his report was the victim's DNA profile found on the long blue jeans' pants submitted for testing. No DNA testing was done therefore there was no DNA link between the Accused and the victim.

[27] Despite semen being found on the perennial swabs, blood being found on the blue jeans' pants, and hair was collected on the Yellow T Shirt and Nike Shoe, the witness was unable to determine to whom they belonged. No DNA analysis was conducted on the hair found on the clothing belonging to the Accused.

Agreed Evidence

[28] The agreed evidence, which was not challenged and formed part of the prosecution's case are as follows:

Rober Henry [SOC- Photos]:

[29] Through the evidence of Robert Henry, Advance Crime Scene Technician [**hereinafter referred to as the scene of Crime Officer – 'SOC'**], [10] photographs were exhibited to the Court, depicting the area of the alleged incident including items of clothing. The photographs were entered into evidence and marked **RH1-10**, without objection from the defence.

[30] The SOC stated that he is mandated pursuant to the National Forensic Science Service Act # 13 of 2024, section 4 (1) (b) to assist law enforcement agencies in criminal investigations by providing scientific evidence. Pursuant to his statutory mandate, on the 2nd April 2023, he assisted Constable # 2276 Elsa Perez attached to Precinct #2 – Raccoon Street Police Station, who requested his assistance in photographing a building and clothes in respect of an alleged rape report. He proceeded to a location at mile 4 Phillip Goldson Highway, where he met and spoke with Constable # 1946 Dorian Richards who took him to a green and yellow wood and concrete two-story building. There he was taken to the upper flat and he took photographs of a pair of yellow and black tennis shoes, grey multi-coloured long jeans pants and a multi-coloured shirt with the marking 'HUSTLE' on the front.

[31] His findings were documented and he used his Nikon 610 digital camera to photograph the items of clothing and the green and yellow building. The items

retrieved were brought to the Scene of Crime Office, the photos were printed, numbered, dated and labelled. This formed the exhibits abovementioned.

Elsa Perez PC # 2276

- [32] Police Constable Elsa Perez #2276, evidence disclosed that on the 2nd day of April 2023, at 3:48 a.m., the 'VC' attended at Precinct #3 Investigation Branch and made a report that while she was proceeding to the Karl Heusner Memorial Hospital [KMH] to seek medical attention, she met a male person who had sex with her without her consent. He grabbed her by her throat, placed an object resembling a knife to her stomach, pulled her on a picnic table located on the right side of the street and proceeded to have sex with her against her will. She was then taken to the KMH to seek medical attention, which included an examination.
- [33] On the 2nd day of April 2023, at 9:00 a.m., the VC was attended to by Dr. Tracey Nicholas who conducted a medical examination and wrote her finding on a Medico Legal Form that was handed to her, which certified injuries to the VC as 'Harm'. Further exhibits were provided to her in a sealed envelope which included vaginal swab, buccal swab, oral swab, perineal swab and a sealed bag with a black tights.
- [34] While at the hospital with the VC, she got information that video surveillance camera evidence was able to identify a suspect resembling the Accused, and an 'All Point Bulletin' [APB] was sent out to all mobile patrol units to apprehend the suspect if spotted. On the 2nd day of April 2023, at 2:00 p.m., the Accused was apprehended. At 3:30 p.m., on the said day a search warrant was conducted at the home of the Accused where items of clothing were retrieved for analysis.
- [35] On the 3rd of April 2023, a video recording interview was conducted with the Accused, and he was arrested and formally charged with the offence of rape. The VC identified the Accused at the police station as the person who raped her, and

she refused the police request to conduct any further identification as she was convinced it was not necessary as it was the Accused.

- [36] On the 6th April 2023, the witness sought assistance of Scenes of Crime [SOC] Technician Daniel Daniels to photograph the surrounding area where the alleged incident occurred. The photos included a red painted coca cola shop and its environs.

Nester Cantun PC# 2174

- [37] A succinct version of the evidence of Police Constable Nester Cantun # 2174 states that on Monday 29th of May 2023, at about 8:00am, Inspector Henry Thomas requested her assistance to retrieve a video footage from his phone relating to an alleged 'Rape' that occurred on the 2nd day of April 2023 wherein the investigating officer was Elsa Perez DC # 2076. Inspector Thomas then handed her a black Samsung Galaxy A12 phone bearing serial number R58RI22BE8L. She then connected the phone to her work issued computer using a black Type C Universal Serial Bus (USB) Cable and extracted one video footage from the Samsung Galaxy A12 Phone. The video footage was titled VID-2023060 - WA0000.mp4 and had the size of 6.48 megabytes, copied unto illusion 1 I 6X Speed DVD-R, burning a total of two DVD's, one of the DVDs which was the master one was labeled as, 'Rape 2nd April 2023'. The master DVD was sealed inside a DVD Sleeve and was handed over through a chain of custody form to the investigating officer Elsa Perez DC# 2076 along with the copy.

Catherine Mc Kenzie JP

- [38] Justice of the Peace Catherine Mckenzie's evidence was that she was requested by Inspector Henry Thomas on the 3rd of April 2023, at 11:40 a.m., to witness the interview of the Accused at the Queen Street Crime Investigation Branch, which she did. Prior to the video interview, she spoke to the Accused privately who stated he was not beaten and had no visible marks. The interview was conducted and the written version was signed by the

Accused. The witness also signed and there was a total of thirty-two (32) questions. The statement was exculpatory.

Inspector Henry Thomas

[39] The statement of Inspector Henry Thomas states that on Sunday the 2nd day of April 2023, about 4:01 a.m., based on information received from Elsa Preez of an alleged rape that occurred on Princess Margaret Drive Belize City, he visited 'Brads Store' located on Central American Boulevard where he viewed a video footage on a monitor that was in Technicolor, which showed the Accused being present around the time that the VC was allegedly raped. He then retrieved the video by recording it on his Samsung Galaxy A12 cell phone. The footage was in colour and lasted thirty-seven (37) seconds. It showed a brown skin male person with 'natty afro' hair style that was shaved around his head above the ear, walking in front of 'Brads Store' on Central American Boulevard from the direction of Belcan Bridge heading towards Freetown Road wearing a yellow in color t-shirt with design, a light blue in color long jeans pants with design and a red in color tennis shoes.

[40] On Sunday the 2nd day of April 2023, at about 8:49 a.m., he contacted Shaheed Franklin D.C. # 1832 who is attached to Precinct three Special Branch and identified the male person as Rupert Codd of #4 Phillip Goldson Highway.

[41] The Accused was subsequently detained. On Monday the 3rd day of April 2023, about 7:30 a.m., Elsa Perez DC # 2276 requested his assistance to interview the Accused for an alleged rape that occurred on Sunday the 2nd day of April 2023. Whilst inside the office speaking to the Accused the VC

pointed out the Accused as the person who raped her. On the 3rd of April 2023, at 11:40 a.m., he sought assistance from Justice of the Peace Catherine McKenzie to assist with the interview process which she did. The JP spoke to the Accused in private and thirty-two [32] questions and answers were video recorded from the Defendant, written, and later downloaded on a compact disc. The written recorded interview was signed by all of them.

- [42] The notes of interview and the compact disc of the recorded interview were tendered and marked as exhibits **HT1 and HT2**.

Shaheed Franklin DC # 1832 [Identified the Accused on the video]

- [43] Detective Constable Shaheed Franklin # 1832 was attached to Precinct 3, Special Branch, Eastern Division. On Sunday 2nd of April 2023, at about 9:00 a.m., she visited the Precinct 3 Crimes Investigation Branch office where she met Inspector Henry Thomas who showed her a short video footage on his Samsung Galaxy A12 phone. The video was in colour and lasted thirty-seven [37] seconds. The entire video showed a male person who she immediately identified as the Accused with whom she went to school at Queen Square Primary School, located at the corner of Dolphin and Armadillo Streets, Belize City. She knew that he lived at # 4 Phillip Goldson Highway, Belize City.

Daniel Daniels CST

- [44] The statement of Daniel Daniels Scene of Crime Technician states that on the 6th of April 2023, in the presence of Detective Constable # 2276 Elsa Perez he took photographs of the scene of an alleged rape, at Princes Margaret Drive. He took photos of a picnic table, and the general area around the picnic table. The

photographs were downloaded, printed and labelled.

- [45] A total of three [3] photographs were taken and were duplicated. These were tendered and marked as exhibits **DD1- DD3**.

Dorian Richards DC # 1946

- [46] Dorian Richards, Detective Constable # 1946 states that on the 2nd day of April 2023, at 2: 00pm he detained the Accused and brought him to the Queen Street Police Station. He subsequently placed him under arrest wherein the Accused was informed of his rights and reason for his detention. On Monday 3rd April 2023, at 2: 45 pm the witness, at the request of DC# 2276 Elsa Perez, obtained a search warrant wherein he escorted the Accused to his home at # 4 Phillip Goldson Highway wherein a search was executed along with other officers. Robert Henry SOC took photographs and items of clothing were retrieved from the house, labelled and placed in a bag with an exhibit label along with a chain of custody form. This was then handed over to DC # 2276 Elsa Perez.

Dr Tracey Nicholas [Expert]- Tendered pursuant to section 36 of the Evidence Act

- [47] Dr. Tracey Nicholas' report stated that she conducted a medical examination on the VC on the 2nd day of April 2023 at 8: 45 am at the Karl Heusner Memorial Hospital [KMH]. The VC was thirty-five [35] years of age.
- [48] On physical examination she observed bruises on the neck of the VC, and a 1.5 cm laceration to the right big toe. An examination of the anus and vagina was normal. A pictorial diagram was presented which showed the bruises on the neck which ran horizontally. The summary of findings was classified' as harm because of the

bruising to the neck. Upon a genital examination swabs were retrieved.

[49] The Court will now examine the evidence of each element of rape.

[i] The complainant is a person

[50] The evidence to prove and the conclusion drawn that the complainant is a person and is female, comes from the Court's observation of the complainant, the complainant's evidence, and seeing and hearing the complainant testify over an extended period. The Court therefore concludes that the VC is a person as required by the definition of rape in the Criminal Code. There is therefore no doubt in the Court's mind that the complainant is a female person.

[ii] Did the Accused penetrate the vagina of the complainant with his penis and

[iii] Whether if or when he did so, was it without consent.

[51] The Court will deal with elements [2] and [3] together as they are intertwined.

[52] The Court, in considering these elements of the offence shall consider all the facts with the aim of arriving at a dispassionate and fair evaluation of the evidence. Further, in assessing credibility and reliability of the witnesses, it shall examine inconsistencies, discrepancies, and implausibility of the witnesses' evidence. Where there are any inconsistencies and or discrepancies, the Court shall first determine whether it can be resolved on an assessment through the evidence. The inconsistencies or discrepancies which cannot be resolved would result in the Court rejecting that bit of evidence, or all of the witness's evidence.

[53] The Court is also guided by the principles emanating from the Apex Court's decision in **James Fields v State**⁴, that the credibility of a witness is not a seamless robe

⁴ [2023] CCJ 13

where one lie, or even several, automatically strips the witness of all believability. However, 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.

[54] Further, the Court will address the essential issues in this case and is not obliged to give its findings on every disputed factual issue throughout the case. The Court will accordingly analyse the evidence devoid of any biases and adopt a common sense, evaluative approach to the evidence.

Analysis of the VC's evidence

Demeanour

[55] The Court found there were inconsistencies in the testimony of the VC. The issue is whether these inconsistencies were material.

[56] The Defence submitted that the inconsistencies were material and ought to be taken into consideration in determining whether the VC was untruthful and ought not to be believed. The inconsistencies as submitted by the defence are as follows:

- a. The VC stated in court that she went to the Raccoon Street Police Station to give her report yet had to admit that in her statement she said she went to Queen Street Police station.
- b. In her viva voce evidence, the VC said that when she was on Belcan Bridge, she noticed the Accused for the first time, for about 2 to 10 minutes, but in her statement to the police, she said that she had him in her view for only 10 seconds.
- c. There was a timeline inconsistency in the time the VC said she left for the

hospital and was subsequently raped, the evidence led by the crown suggested the 2nd of April 2023, at about 4:15 a.m. However, the VC stated at about 4am that morning she left for the hospital [KMHM] and was raped by the Accused. By this account then, she is claiming that she got raped between 4:00 a.m. and 4:30 a.m. However, in cross-examination it was put to her that she told the police she left at 3:00 a.m., to go to the hospital, but she insisted it was 4 am and did not accept the 3:00 a.m. timeline. The agreed evidence of Officer Elsa Perez made it clear that the VC arrived at the police station on 2nd of April 2023, at 3:48 a.m., to make a report about her being raped. There were other minor inconsistencies, which would not all be listed. However, the Court concludes they were not material or germane to the issue as to whether the VC was raped.

[57] The pivotal issue is whether these inconsistencies when grouped together were material to a finding that the VC was not speaking the truth. The Court had the opportunity to look at and examine the VC extensively through its lens of common sense, practicality and human relations. The VC was not fluent in speech and appeared to have a lisp, and at times incoherent. On occasions the Court had to request the VC repeat her answers. The VC, despite her obvious impediment, was consistent in her evidence that the Accused was the person who had sexual intercourse with her against her will. She was able to identify him on the night he was brought to the police station and then again in court. She even refused an identification parade at the request of the investigating officer. Despite the fact that the Case Management form of the defence relied heavily on the issue of identification, at trial, the Accused placed himself at the scene and agreed there was a struggle with the VC, but he disputed having sexual intercourse with her. The issue

of identification does not arise and will be dealt with later. The pertinent issue is whether the evidence of the VC can be believed over that of the Accused. Is the prosecution's case strong enough to convict the Accused? Tis the question.

[58] The Court finds that the inconsistencies were not material to affect the credibility of the VC's evidence. An alleged victim of a violent encounter will hardly focus on timelines, which police station a report was made or minor inconsistencies in relation to peripheral matters. These matters are not germane to the issue as to whether the VC was raped by the Accused. For example, the VC said in her statement the Accused had a knife to her stomach and in evidence in chief she stated it was to her throat. These are not material inconsistencies. The Accused also agreed he had a knife on his person but denied using it. The inconsistency of the VC in the Court's mind is immaterial and does not go to the thrust and substance of the matter.

[59] The demeanour of the VC while giving evidence was hesitant, delayed and on occasions not fluent. This in and of itself is not a deciding factor as to her credibility. The Court of course, has taken that into consideration and found that her demeanour does not bear much weight, but will examine the content of her evidence. The Court of Appeal of the Eastern Caribbean Supreme Court [ECSC] in the matter of **Lamond Barker v O'Garro**⁵ per Baptiste JA at par. 25-29 on the issue of determining one's credibility in reference to their demeanour stated thus:

"[26] Demeanour, relating as it does, to the appearance and behaviour of a witness while giving oral evidence, rather than to the content of the evidence, is in general, no longer regarded as a reliable indicium in

⁵ SVGHC VAP2015/0021 per par. 29

assessing the credibility of a witness. As Legatt JA explained in ***R (on the application of SS (Sri Lanka)) v The Secretary of State for the Home Department*** at paragraph 36:

“... it has increasingly been recognized that it is unusually unreliable and often dangerous to draw a conclusion from a witness’s demeanour as to the likelihood that the witness is telling the truth. The reasons for this were explained by MacKenna J in words which Lord Devlin later adopted in their entirety and Lord Bingham quoted with approval:

‘I question whether the respect given to our findings of fact based on the demeanour of the witnesses is always deserved. I doubt my own ability, and sometimes that of other judges to discern from a witness’s demeanour, or the tone of his voice, whether he is telling the truth. He speaks hesitantly. Is that the mark of a cautious man, whose statements are for that reason to be respected, or is he taking time to fabricate? Is the emphatic witness putting on an act to deceive me or is he speaking from the fullness of his heart, knowing that he is right? Is he likely to be more truthful if he looks me straight in the face than if he casts his eyes on the ground perhaps from shyness or a natural timidity?’”

[29] ‘The position then is, demeanour is no general indicium of honesty and in general, an unreliable guide to reliability and credibility. The focus should be on the content of the testimony, rather than the manner of giving the

*evidence. In assessing credibility, contemporaneous documents, admitted or incontrovertible facts, consistency, motive and overall probabilities are all key criteria and are more important than demeanour. As Dunn LJ stated in **Armagas Ltd v Mundogas SA; The Ocean Frost** at page 822, it is frequently very difficult to tell whether a witness is telling the truth or not and where there is a conflict of evidence, reference to objective facts and documents proved independently of their testimony, to the witness's motive and to the overall probabilities are of very great assistance to the judge in ascertaining the truth."*

Whether the VC is an honest witness and therefore credible

- [60] This Court shall adopt a common sense, methodical approach in assessing the evidence of the VC. And will also dispassionately, critically and fairly utilise a common sense and human experiences approach in its deliberation, while avoiding any possible biases, stereotypes or other extraneous matter.

Immediate reporting

- [61] The VC immediately upon the incident occurring proceeded to the police station to make a report and has maintained throughout that she was forced to have sexual intercourse without her consent. She was constant in relation to the Accused identity and not giving consent to the sexual encounter. The Accused placed himself on the scene at the material time and his defence was that the VC stole his phone and he had to accost her, then got into a physical altercation with her to retrieve his phone from her person. The VC was consistent throughout and had no animus against the Accused as she didn't know him prior to that incident.

Accused present at the scene

[62] The VC maintained she had sexual intercourse with the Accused against her will, and the Accused placed himself at the location and encounter, however disputing any sexual encounter. The VC did not waiver in her testimony as to the nature of the encounter, the location or how the incident unfolded by the Accused following her and thereafter accosting her, and forcibly having sex with her, against her will. The defence in cross examination suggested that it was when the Accused went to urinate, and he left his phone on a counter, upon his return he didn't see his phone, and the VC was the only person in sight. Hence, he concluded she was the pilferer and physically took his phone which was tucked away in her clothing. This version the Court finds incredible, both on an objective assessment in examining the evidence and accused in totality. The explanation lacks, cogency and credibility.

Medical evidence/Distress

[63] The Medical evidence of Dr. Tracy Nicholas was tendered in support of the Crown's case. The Court is mindful that with Expert Evidence 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 arriving at any conclusion. Further, the Court is cognisant that medical evidence cannot answer the pivotal issue, that is whether the Accused raped the VC. The medical evidence however can determine whether there was penetration of the vagina as alleged by the VC.

[64] The Court will also decide what weight, if any, to attach to the expert's evidence, by examining the qualifications, experience, credibility, and whether the opinion is based on established facts or assumptions. Dr Tracey Nicholas on physical examination

observed horizontal bruising on the neck of the VC and laceration to the big toe. The Doctor also observed on general inspection, as per her report that the VC was distraught and crying due to distress. There is no demur that the VC was sexually active, and swabs were collected that had the presence of semen, which as Eugenio Gomez had indicated can be present up to seven [7] days prior.

Identification Evidence

[65] The Court, in an effort to be thorough in its deliberation, despite this is not an identification case, will apply the *R v Turnbull*⁶ guidelines. The Crown in examination in chief detailed to the VC the lighting conditions, the distance between her and the Accused, the time she spent with the Accused, and her ability to observe her assailant as the Accused. The length of time the VC saw her attacker is a key factor to analyze according to the *Turnbull* guidelines. The Accused did not dispute he was with the VC at the material time and the VC confirmed same, the only issue is whether there was sexual intercourse and without the VC's consent. The Court is therefore confident in relying on the identification aspect of the evidence elicited from the VC, despite the Accused in his filed CMC form stated identification was in issue.

Special Caution Warning

[66] The Court must also consider section 92 (3) (a)⁷ of the *Evidence Act*⁸ which

⁶ (1977) QB 224

⁷ (3) Where at a trial on indictment,

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

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

⁸ Chapter 95 of the Laws of Belize, R.E. 2020

mandates a need for special caution before convicting an accused on the evidence of the victim alone, in cases of a sexual nature. This is because sexual offences almost always happen with no witnesses, it is usually the accused and the complainant. Even in this case where, according to the VC, it was only her and the Accused together in the early hours of the morning. Hence, this matter comes down to a determination of the evidence of one person's word against the other.

[67] The Court will exercise the above caution.

Lack of DNA Testing- [Needham's Point Declaration]

[68] The Defence strenuously argued in its submission that the lack of DNA testing when there was evidence of semen, hair and blood was a colossal failure on the part of the prosecution to prove its case. Therefore, the burden and standard of proof cannot be met to the criminal standard to convict the Accused. The Court has already stated that this is a case that would be decided on the credibility of the VC and the Accused. Despite this, the Court must state its dissatisfaction in not having the DNA test results in this matter.

[69] At the CCJ's Academy of Law Seventh Biennial Law Conference held in Barbados from 18-20 October 2023, numerous countries including Belize adopted by acclamation the **'Needham's Point Declaration on Criminal Justice Reform: Achieving a Modern Criminal Justice System'**. This declaration endorsed the best practices, and recommendations which included but were not limited to legislative intervention and the use of DNA testing and analysis in the prosecution of criminal offences. The results of DNA testing and analysis are self-explanatory, and the Court need not go into its benefits. Article 18 of the Declaration states as follows:

"18. That police and prosecution make greater use of forensic, scientific, digital and expert witness

evidence, digital recording of confessions and interviews, and DNA testing on the basis that this is preferable to prosecutions based solely on admissions and confessions.”

[70] The parties are encouraged to take heed in relation to the above, as DNA testing could result in the speedy disposition of criminal matters. This salutary call is not germane only to the prosecution but also the defence.

[71] Although no corroboration is required in these types of cases, special caution should be exercised. The Court therefore undertakes to exercise such special caution before reaching a verdict.

Conclusion on the evidence of the VC

[72] In conclusion and based on the credible nature of the evidence of the VC, the Court is sure that the Accused raped the VC. The credible evidence from the VC, the immediate reporting, the neck injury, the early identification of the Accused who confirmed his presence at the scene, and her recall of the sexual encounter with cogency. There is no plausible reason for the VC to make up a story on the Accused, someone she has never met before. The allegation of the stolen phone and the circumstances of its retrieval shall be dealt with when dealing with the Defence's case.

[73] Therefore, the Court believes and feels sure that the Accused penetrated the vagina of the complainant with his penis, in the early morning hours of the 2nd day of April 2023, without the VC's consent.

[74] The Court will now consider the Defence case.

The Defence

Rupert Codd – Sworn testimony

- [75] The Defence case was a blanket denial of sexually assaulting the VC. The Accused stated in summary that he was walking, he wanted to urinate, then he placed his phone and wallet down on a table and went to urinate, behind a building. When he returned, his phone was missing. He accosted the VC who was the only person in sight, and he retrieved his phone and wallet from her person, upon a search.
- [76] As the Judge of the facts, the Court has the duty to accurately and faithfully consider the defence, as was done with the prosecution's case⁹. At the close of the prosecution's case, the Accused was informed of the three options that he was entitled to as an accused person in a criminal trial, and how the Court, under law, looks at each option. The Accused elected to exercise his right to testify. He was advised of his right also to call witnesses on his behalf and chose not to call any witnesses.
- [77] The testimony of the Accused included a denial of the rape and a denial that he engaged in sexual intercourse with the complainant at all. The Court understood the Accused to be saying that the complainant deliberately lied about him raping her, because he caught her when she stole his cell phone and wallet.
- [78] The Accused's evidence is as stated hereunder:
- i. The Accused stated in evidence in chief that he is 24 years of age having been born on the 16th day of August 2001.
 - ii. On 2 April 2023, at about 3:00 a.m. to 3:30 a.m., he was coming from a club named Shisha' with two [2] friends. They dropped him off by a pedestrian bump close to 'Brads Store', close to Belcan bridge, it was approximately 3:10 a.m. He

⁹ *R v Nelson* (1977) Crim L.R. 234 as cited in *Gomez v the Queen*, Criminal Appeal No. 17 of 2012.

proceeded to the ATM at Atlantic Bank. He passed 'El Paso' food shop and next to that shop was an ice cream shop and an open area. He stopped there to urinate, he placed his phone and wallet on the countertop of the food shop, and he went behind the shop to urinate. When he returned his phone and wallet were missing.

- iii. He looked both ways and saw no one, until he walked towards a 'curve' and he saw a female crossing the street from alongside the barricade to the sidewalk, and she started to walk middle street. When she got across the street she jumped across the barricade to the sidewalk. He found that strange, so he tried to get her attention, but she ignored him. He then asked her three [3] times if she saw his phone and his wallet, she didn't answer. He caught up with her, and she said she didn't know what he was talking about and appeared as if she wanted to run.
- iv. He then grabbed her by the hand and put her to sit down on the table by the Coca Cola shop. He asked her to take off the jacket that she was wearing, and he saw the wallet stuck in the **bra area strap close to her bosom**, and when she got up, he realized **she had the phone on her side**. He then took both his wallet and phone and walked away, to St Joseph Street, St Thomas, Free Town Road. He crossed the bump, walked through a narrow street behind Brads Store,

and he came back out from crossing the pedestrian and went home. He did not bother to go to the ATM as he got thrown off by what had occurred.

- v. He testified that he got a good look at that female. She was the VC that testified against him, and he did not take off the VC pants and rape her, neither did he have sex with her.

Cross-examination:

- vi. In cross examination he stated he was wearing a yellow shirt and long pants that morning. That he did not see a woman walking along the street in the overpass. He never saw that the person before the phone was stolen, and he didn't see anyone physically take up his phone.
- vii. He stated the VC acted suspicious and strange when she crossed the street and scaled the barricade. It was then he suspected she was the one who took the items. That he approached her from behind, when she was walking away from him, and the wallet was stuck in her bra, and the phone was stuck on her side.
- viii. He admitted that he pulled the VC onto the picnic table and forced her to sit on it while he searched her body and recovered the items. He also told the police what happened and it is also in his statement.

- ix. He denied grabbing the VC from behind her neck and putting a knife against her, forcing her unto the picnic table, and lifting her dress and raping her.
- x. He denied concocting a story about the phone and wallet to justify why his hands were on the VC.

Re-examination:

- xi. In re-examination he stated there was no one else around other than him and the VC.

[79] The defence of the Accused is a blanket denial of the charge and in effect the VC is a liar, who made up an allegation of rape after she stole his phone and wallet. He asserted that he placed his cell phone and wallet on a table to go to urinate, and when he returned the items were gone, and there was no one in sight. However, he later saw the VC whom he accosted and found his items on her person.

Good Character

[80] The Court will take into consideration and apply the full good character direction to this matter, in relation to both the credibility and propensity limb, as the Accused gave sworn testimony and therefore placed his good character in issue. The fact that the Accused is of good character, he is more likely to be speaking the truth and the fact that the Accused has not offended in the past may make it less likely that he acted in the manner that the Prosecution alleged in this case. The absence of prior convictions is obviously not a defence to the charge, but it may make it less likely that the Accused has committed the offence of rape wherein he stands charged.

Assessment of the Testimony of the Accused

- [81] This court is unable to accept the Accused's version of events; the Court is unable to comprehend why the Accused would remove his wallet and relieve himself of his phone to urinate. Taking a biological and a common-sense approach, it does not lend any rational thinker to believe that a male and in this case the Accused will have to relieve his cell phone and wallet from his person to go to urinate. The act of a male urinating does not equate to complete extraction of clothing and other items, and even if the Court is wrong on that point, the Accused did not say or explain it that way. This bit of the testimony of the Accused is unbelievable, untenable, suspect and the Court concluded that even while examining the Accused and the contents of his story while he was giving his testimony, he cannot be believed.
- [82] The Accused admitted to material aspects of the testimony of the Crown under cross examination, save and except the sexual act. The Accused admitted to material elements of physical force preceding the assault. He admitted the following, he admitted the VC was walking away from him and "wanted to run", he grabbed her by her hand, he forcibly pulled her to the picnic table, and he forced her to sit on the table and searched her person.
- [83] The Accused attempted to justify his use of force by claiming the VC had stolen his phone and wallet while he was urinating nearby. The Court finds that story inherently flawed, unbelievable and lacks credibility. The Court is not convinced that the Accused relieved himself of his wallet and phone to urinate and even if he did that, he would have noticed someone taking and concealing his wallet and phone from off the counter. He was standing merely a few feet away.

[84] Even though the Court has concluded that the Accused is not being truthful, he cannot be convicted on that basis, since an accused person may fabricate a defence for reasons other than guilt¹⁰. Further, it is the prosecution that has the burden of proof and must convince this Court with evidence of a quality that makes it sure of their case.

Closing Submissions

[85] The Defence submitted, in its closing submissions, that the only evidence for the Crown is the testimony of the VC and that she is not credible, there is no DNA or other evidence from the Crown and there is no corroboration. However, this is not a flaw in the Crown's case; there are many sexual offence cases and others in which the victim provides the main prosecution evidence. The Criminal Justice System would be severely hindered if it could not rely on the evidence of a single witness, if believed. It is for the Judges of the facts to ultimately determine the credibility of the witness, to ground a conviction or acquittal.

[86] The fact that the VC did not go immediately for a medical examination does not affect the ultimate conclusion of the Court in this matter, as the case rests on the credibility of the parties. Unless a rape results in physical injury, a medical exam will not reveal much, if anything, where the victim is a sexually active adult female. This, in the circumstances does not mean a rape did not occur. The VC does not have to be found *en deshabelle* or elicit a *hue and cry*¹¹ as was the requirement in days of old to prove rape.

Revert to the Prosecution Case

[87] The Court is convinced so that it is sure, that the prosecution's evidence was of good quality on the three elements of rape, that the complainant is a person, that the Accused penetrated the complainant's vagina with his penis, and that when he did so, it was without her consent.

¹⁰ *Broadhurst v R* (1963) UKPC 28

¹¹ Henry de Bracton (De Legibus et Consuetudinibus Angliae, c 1250)

Verdict

[88] Based on the evidence and the applicable law, the Court is sure that the Accused raped the complainant. Therefore, this Court finds the Accused guilty of rape contrary to section 46 of the ***Criminal Code***.

Future sentencing

[89] The matter is adjourned for a separate sentence hearing in accordance with the principles provided by our Apex Court in ***Linton Pompey v DPP***¹². The Court therefore orders the following reports:

- i. Social Inquiry Report
- ii. Victim Impact statement
- iii. Criminal Antecedent History
- iv. Prison Report
- v. Character witnesses

[90] The parties are to file submissions on sentencing on or before the **30th day of October 2026**.

[91] The sentencing hearing shall be conducted on the **9th day of November 2026, at 9:00 am**.

Hon. Justice Derick F. Sylvester
Judge of the High Court

¹² [2020] CCJ 7