

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C103/2023

BETWEEN

THE KING

and

JEFFREY POTT

Defendant

Before: The Honourable Justice Nigel Pilgrim

Appearances:

Mr. Glenfield Dennison, Crown Counsel, for the Crown.

The Defendant pro se.

2024: November 26th, 27th, 28th.
December 2nd.
2025: January 21st.

JUDGMENT

UNLAWFUL SEXUAL INTERCOURSE-JUDGE ALONE TRIAL-DECISION

[1] **PILGRIM, J.:** Jeffrey Pott (“the defendant”) was charged in a three-count indictment for the offence of unlawful sexual intercourse contrary to sections 47(1) and (2) of the **Criminal Code**¹ (“the Code”). The allegation in summary is that on 3 separate occasions in 2021 and 2022 the defendant had sexual intercourse with S who was at those times between 13 to 14 years old.

History

[2] The defendant was first arraigned on 2nd February 2024 where he was informed of his right to counsel and other rights as prescribed by Rule 9.9(ii) of the **Criminal Procedure Rules 2016** (“CPR”). The matter was adjourned over several months as the defendant was given the opportunity to secure the services of counsel, which was ultimately unsuccessful. The Court noted that, (i) the case was entitled to a fair hearing² which could be stymied by excessive delay and the first offence indicted allegedly occurred in 2021; (ii) the defendant had more than sufficient time to retain counsel at his own expense and this matter, on the papers, was not complex relying wholly on S’s credibility and reliability; and (iii) the CPR³ also advises that the defendant does not have the right to endless adjournments to secure legal representation. It is in that context that the Court exercised its discretion to conduct this trial with the defendant without legal representation.

[3] The trial by judge alone began with the arraignment of the defendant on 26th November 2024 before this Court pursuant to section 65A(2)(g) of the **Indictable Procedure Act**⁴ (“the IPA”). The Court, on that date, (i) confirmed that the defendant had his disclosure; (ii) explained the charges to the defendant and summarized the Crown’s case; and (iii) explained the trial process to him. The Court also during the trial, (i) assisted the defendant in formation of his questions in cross-examination; (ii) advised him on the significance of challenging certain portions of the Crown’s case if he so wished; and (iii) advised him of his rights, such as to make a no-case submission, to remain silent, to make a dock statement and to call witnesses.

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

² **Bennett v R** (2019) 94 WIR 126 at para 4.

³ Part III, Note 2.

⁴ Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020, as amended by the **Indictable Procedure (Amendment) Act, 2022**.

The Legal Framework of the Charges

- [4] It would be helpful to firstly examine the elements of the crime of unlawful sexual intercourse for which the defendant stands indicted. The definition of that offence in the Code, where relevant, is:

*“47.-(1) Every person who, **with or without consent**, has **sexual intercourse** with a person who is **under the age of fourteen years** commits the offence of unlawful sexual intercourse...*

...

*(2) Every person who has **unlawful sexual intercourse** with a person who is **above the age of fourteen years but under the age of sixteen years**, commits an offence...*

...

53A(5) For the purposes of this Part—... “penetration” includes the continuing act from entry to withdrawal of the penis into the...vagina...

...

*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**.” (emphasis added)*

- [5] The Crown must establish for this offence: (i) the defendant by even the least degree penetrated S's vagina with his penis; and (ii) S was, at that time, under the age of 16 years old.

The evidence

- [6] The Court heard viva voce evidence from S; Myeisha Jones; Cpl. Jennifer Cruz; Elvis Medina; Ingrid Villamil; and Michelle Pott Brakeman. There was also agreed evidence from W, with redactions. The Court also received the evidence of Dr. Mauricio Navarette through a medicolegal report⁵. The defendant also made an unsworn statement from the dock.

⁵ Pursuant to section 36 of the Evidence Act, Chapter 95 of the Substantive Laws of Belize, Revised Edition 2020.

The Crown's case

S's testimony

[7] The Court did not hold a voir dire in relation to S's evidence as though she was 13 and 14 years old at the time of the alleged offences, she was 16 years old at the time of her testimony and is no longer of tender years. In that regard the Court relied on the decision of the Court of Appeal in Coyseme Salam v R⁶. There was also nothing that raised any concern in the Court's mind that S did not understand the nature of the oath nor that she was incompetent to give evidence.

[8] S testified on oath. Her evidence in chief was that she had known the defendant from her neighbourhood in Belize City having first seen him in 2018, and he had interacted with her family from time to time. Sometime in 2021 S saw a message on her mother's phone from the defendant. S subsequently, in July 2021, sent him a friend request on Facebook. After approximately 2 days the defendant accepted it.

[9] About 2 weeks later S and the defendant started talking. S posted a game on her Facebook story and the defendant replied and asked her if she wanted to play. The aim of the game was to get to know your friends better. S agreed and they started to pick certain questions to ask each other. One of the questions S chose and asked the defendant was what he would do to her if they were in a room alone together. The defendant replied to the question and said that if they were in a room alone together, he would kiss her, touch her, and make her orgasm. S replied to him with the fire emoji. The defendant asked if S would allow him to do that and she said that it depended on whether he could approach her properly and not in a disrespectful manner. The defendant said that he was "straight" with her mother and brother and assured he would not be disrespectful. The defendant asked S her age and she said that she was 13 years old. S testified that the defendant told her, "If I was any younger then he said he would not have any sort of conversation or communication."

[10] S and the defendant would then speak from time to time normally late in the night or early in the morning. On 24th August 2021, at around 7-8 p.m., S was outside her house on a cement structure on her tablet watching videos. The tablet needed charging, and she went inside and plugged it in. She then went back

⁶ Criminal Appeal No. 5 of 2002 at paras 32-36.

outside and while still on her verandah she noticed the defendant was coming downstairs. There was a nearby lamppost and a light on the verandah that illuminated the area. The defendant went in S's direction and motioned to her. She went to him, and they began talking. The defendant told her to come across with him through a hole in the fence. S complied and the defendant held her. She told him that he must have been waiting a long time to hold her.

[11] They went across into a cement structure in her yard. This was between 8-9 p.m. and there was no one else around. There was the light from the lamppost and verandah which allowed her to see and there were only a couple inches of space between them. She saw his face and body.

[12] The defendant pulled her close and kissed her and ran his hands up and down her back. S and the defendant's pants and underwear came down and the defendant took out a black and silver package. S however did not see the defendant put on a condom. S was wearing a white crop top and blue short pants. The defendant kissed S on her neck, bent her over and then put his penis in her vagina. S groaned and the defendant told her, "That is how it is supposed to feel." The defendant moved in and out of her while she was bent over. The incident lasted between 15-20 minutes. Afterwards the defendant told S that he loved her, and she replied that she loved him too.

[13] On 1st January 2022 S noticed the defendant and his family gathering and drinking. He looked at her but did not say anything. However, at some point between 7 and 8 p.m. the defendant motioned to S, and they went to an area and spoke. They made arrangements to meet at 3 a.m. the next morning. At the appointed time on 2nd January 2022 S snuck out her back door and went to meet the defendant. The defendant motioned to S, which she perceived as an instruction to wait. He walked out to meet her, and they went to the same concrete structure where they had previously had sexual intercourse. S was wearing a V-neck blouse and a cloth short pants. The defendant was wearing a black shirt and a blue long jeans. There was no one else around. She was able to see the defendant from head to feet with the assistance of the lamppost near the concrete structure. There were only a couple of inches between them.

[14] When they got into the structure the defendant kissed S, and she smelt alcohol on his breath. He kissed S's neck and turned her around placing her back to his chest. He pulled down her pants and underwear and did the same with his. The defendant bent S over and put his penis in her vagina. He did this for

about 5-7 minutes. The defendant then pulled her up and turned her around to face him. He placed her down and put his penis in her mouth. S sucked his penis for about 5-6 minutes. She then stopped and he pulled her back up and kissed her. They put back on their clothes, left the structure and went their separate ways. S and the defendant communicated with each other from time to time after that.

[15] On Saturday 19th February 2022 S and the defendant spoke at about 7:30 p.m. and made arrangements to meet the following morning at 3 a.m. On 20th February 2022 S went to sleep sometime after 1 a.m. and set her tablet to alarm at 3 a.m. S woke up and got her slippers and walked with it in her hand to the back door so that there was not any noise. She went to the door and went outside. She saw the defendant in the yard, and he motioned to her. She went by the fence, and he told her to come across. S went through the hole in the fence and the defendant took her hand and led her upstairs to his house. She noticed one silver sofa chair and a table when he led her to his room which did not have a door. There was a light on in the hall.

[16] S sat on the bed and the defendant went in the hall and locked the door. Then he came back into the room and turned off the light. However, S said she was able to see what was transpiring because light shone through the window in the room from the lamppost. She was able to see from the defendant's abdomen to his face and there were only a couple of inches between them. The room was blue and had a double bed with a full-length mirror and dresser. There was no one else at home at the time.

[17] The defendant sat next to her, and they eventually lay next to each other on the bed. The defendant kissed S and then he took off his black t-shirt, black and white Hawaiian cargo shorts and underwear. S took off her white crop top, white shorts and underwear. The defendant guided his penis to her vagina and moved her in an up and down motion. She was lying down, and the defendant was between her legs. They stayed in that position for about 5-10 minutes. Then he stopped and told S to come on top of him. She complied and he used his left hand to guide his penis inside her vagina. The defendant put his hands on her hips and guided her in an up and down motion. They continued like that for 5-10 minutes. S stopped and climbed off of him. She then lay beside him, and they hugged each other for about 2 minutes. S got up and the defendant then did the same. He put on his pants and underwear. S started to put on her clothes, but she could not see so she turned on the light and turned it back off to put on her clothes.

[18] On Monday 21st March 2022, at 3:00 a.m., S was outside and was going to see the defendant pursuant to an arrangement that both had made. She saw the defendant however they were unable to meet because S's stepfather had intercepted her. Her mother also beat her after her stepfather marched S home. Her mother cursed S. S cursed her stepfather and was beaten again by her mother. S later went to sleep.

[19] Later that day S went to school. She felt bad and guilty and sought the advice of Myeisha Jones, a counselor. They had a conversation, and S at the time felt sad, angry, guilty, ashamed and hurt. The Department of Human Services ("DHS") was later contacted. A report was later made to the police and S was medically examined.

[20] S testified that in her statement to the police she had said that the first sexual incident on 24th August 2021 took place at the defendant's home and not at the concrete structure. When asked why she said different things in her statement she testified:

"When I gave the statement, my mom was present, so I said some certain parts different in front of her...On the 24th August when I gave my statement, I said that we went to his room. I was in front of my mom, and I didn't want her to judge. The 24th was the first time I had sex, and it was with Mr. Pott and it was outside so when I gave my statement I felt guilty and ashamed to say that it was outside so I said that we went to his room."

[21] S identified the defendant's house in a photograph, EM1, which was tendered through Elvis Medina. She also pointed out her house in the background and the area that she would see him from. She also pointed out the concrete structure where two acts of sexual intercourse took place on the right side of the photograph EM4. She testified that the defendant's home, the defendant's cousin's home and his mother's home were in the same structure depicted in EM1 and EM4.

[22] S was cross-examined. She said that she was able to see the defendant on his railing from her verandah though she was not able to see his steps. She denied that her evidence that she and the defendant had sexual intercourse on 24th August 2021 was a fabrication. S confirmed that in relation to her statement she said about that date, "I then cross the yard through the opening. He then held my hand, and he took

me upstairs to his room” which was contrary to her in court testimony that that event took place in the concrete structure. She said she did not know if the defendant was living with his girlfriend at the time. S indicated that she was aware that the defendant was shot around June 2021 but that she did not observe any injury on him when they were in his room in February 2022. She denied the suggestion that the defendant did not have a phone and could not message her. It was suggested to S that the defendant’s Facebook account had been hacked and that the defendant was not the one messaging her. She insisted that it was the defendant she was messaging.

[23]She accepted that on December 30th, 2021, the defendant and his deceased brother had an argument. However, she rejected the suggestion that the defendant was not at his yard due to that argument on 1st January 2022 because the latter had left and was at a girlfriend in Corozalito Village. S also denied that her evidence about her and the defendant having sexual intercourse on 2nd January 2022 was a fabrication. It was suggested that she could not have observed the defendant at various points as she said she did in her evidence in chief, but she indicated that from her verandah, if persons stood on a cement platform near the defendant’s home, she could see the areas she spoke of. S denied the suggestion that the defendant never wore blue pants because of the neighbourhood that they were in and insisted that he was wearing blue jeans that night.

[24]S denied that her evidence about her and the defendant having sexual intercourse on 20th February 2022 was a fabrication. It was suggested to S that the defendant was not in Belize City at that time. S accepted that while she said in evidence in chief that she set her alarm sometime after 1 a.m. on her tablet to go off at 3 a.m. in her statement she said, “That night I went to sleep around 12:00 a.m. the Sunday morning. I had placed my stepfather’s phone to alarm at 2:50am which it did.” The defendant showed S a small scar on his stomach, and she testified that she did not see or feel any scar or injury on the 20th. S accepted that in her statement she said that the incident which occurred on the 20th took place in the cement structure while in evidence in chief she said that it happened at the defendant’s house.

[25]S was re-examined. She testified that it was the police that included the information about setting the alarm on her stepfather’s phone, because she never used that phone. S said that the police made an error in recording the times she went to bed and set the alarm for on 20th February. She explained the difference in her evidence about where the sexual intercourse took place on 20th February in this way:

“When I was giving my statement again my mom was in the room so certain things such as that part of my statement for February 20th. I was in front of my mom giving that part of the statement so that part I said differently because I didn’t want my mom to know that I went up to his house. Also, because I came to court to tell the truth, and I vow at the beginning to tell the truth.”

Dr. Navarette

[26] Dr. Navarette’s report was admitted without objection by the defendant who stated that he had no cross-examination for him. Dr. Navarette stated in his report that he examined S on 24th March 2022 and found her to have more than one complete hymenal tears with nodular scars. He opined that S had been carnally known.

W’s testimony

[27] W’s agreed evidence was that she was S’s mother. S was born on 13th January 2008.

Myeisha Jones

[28] Myeisha Jones is a counsellor. On 22nd March 2022, around midday, S came into her office, and they had a conversation which was cut short as she had to attend class. S returned to Ms. Jones’s office around 3:30 p.m. and they had another conversation. Ms. Jones then referred S to DHS. After that day S and Ms. Jones continued to have counselling sessions once per week for the entire school year. Ms. Jones was cross-examined and indicated that S willingly came to the office to have the conversation with her.

Elvis Medina and Jennifer Cruz

[29] Elvis Medina is a crime scene technician who photographed certain areas which S identified as the defendant’s home, the concrete structure where the sexual intercourse had taken place as well as her home in the background. The photographs were admitted as EM1-4.

[30] Jennifer Cruz is a police corporal and was the investigator of these reports. On 24th March 2022 she received information from DHS and later accompanied S and W to a medical examination performed by Dr. Navarette. She obtained a medicolegal report in favour of S which was admitted in evidence as JC1. She subsequently took a statement from S, where afterwards she issued a wanted poster for the defendant. Cpl. Cruz met the defendant at the Precinct 3 Police Station cell block located on Queen Street the next day. She told him of a report of unlawful sexual intercourse against him, cautioned him and told him of his constitutional rights. The defendant was charged with these offences on 27th March 2022. Cpl. Cruz later obtained a birth certificate for S, which was admitted without objection as JC2, that confirmed S's date of birth as 13th January 2008.

[31] Neither Cpl. Cruz nor Mr. Medina were cross-examined.

[32] The Crown closed its case, and the defendant made a no-case submission. He contended that the evidence was so tenuous and weak because of the inconsistencies in S's evidence, namely reversing the places where the first and third assaults took place, that the Court could not reasonably convict. The Court overruled the submission on the basis that though there were material inconsistencies in S's evidence they were matters which a reasonable tribunal of fact could possibly convict taking the case at its highest and that S's reliability was properly a matter for the Court's fact-finding function.

The defence case

[33] The defendant was told of his three options and elected to give a statement from the dock and call witnesses.

The dock statement

[34] In his statement he said:

"On August 24th, 2021, which I was accused of sleeping with [S] between the hours of 8:00 and 9:00 p.m., I will like to say that that was false and I can call someone to give account of my whereabouts on Aug 24th 2021. On January 2nd that I was accused of going through the

alley of [S] to an abandoned building between the hours of 3:00 a.m. I can say that that was false, and I can call someone to give account of where I was on that date and time. On 19th February and the 20th February, I was accused of going in the same abandon (sic) house with [S] at around 3 to 4:00 a.m. I can say that is false and I can call someone to give account of the date and time of my whereabouts...I take you back to between June and September...In June 2021 approximately, I don't know the exact time, but I would say between the hours of 6:00 and 9:00 p.m. I think it was the 24th of June where I received a gunshot injury to the right side of the abdomen. I was then hospitalized until early in July. I couldn't have done (sic) any straining or physical work for three months and I can call someone to say that where I was during the time. Between that time and who I was with. Which thing (sic) I then moved to Corozalito Village in November 2021 to Ingrid Villamil residence which was my common-law at that time and from there on I (sic) back and forth from Corozalito Village to Belize City for work. During those times, I can - - well they can give account of where I was and with whom I was with of all the date that [S] is claiming and time."

[35]It was agreed by both sides that the defendant had no relevant previous convictions.

Ingrid Villamil

[36]Ingrid Villamil lives at Corozalito Village and was, at the material times in 2021 and 2022, in a relationship with the defendant. In July 2021 she was with the defendant at his home in Belize City and at the time he was in recovery with bandages and taking medication. Ms. Villamil testified that on 24th August 2021 between 8-9 p.m. the defendant would usually have been with her upstairs but would go downstairs for food at his mother's place. She said that on that date between 3-4 a.m. the defendant was in bed with her. She also testified that on January 2nd, 2022, the defendant was with her in Corozalito Village between 3-4 a.m. She also testified that on February 20th, 2022, at 3-4 a.m. the defendant was, similarly, with her in Corozalito Village.

[37]Ms. Villamil was cross-examined. She testified in court that she was in a common law relationship with the defendant but later accepted that in her statement to the police she said that their relationship was

“off and on”. She attempted to explain the potential difference by saying that “off and on” meant that though she lived with the defendant from time to time there would be arguments, and she would leave for a couple hours but come back home. Ms. Villamil testified that the most time she slept away from the defendant was 3 nights. She testified that she moved in with the defendant in July 2021 but accepted that in her statement she had said that they were living together since April 2021. Ms. Villamil testified that there were difficulties having sexual intercourse with the defendant owing to his injuries because he could not sustain an erection before July 2021. After that time, he was able to have erections, but they did not have “forceful” intercourse. Ms. Villamil said that she was still in love with the defendant. She indicated that Corozalito Village was about 1 hour drive from Belize City. She denied that her evidence of the defendant being with him at the dates and times of the alleged offences was fabricated.

Michelle Pott-Brakeman

[38] Mrs. Michelle Pott-Brakeman is the sister of the defendant. She testified that the defendant got his injury on either 25th or 26th June 2021. She indicated that on 1st January 2022 she was with the defendant at her home in New Road, Belize City and then went to the defendant’s mother, also in Belize City. The defendant told her he had to go home to Belize City because he had an event to attend with Ms. Villamil. She did not see him after that.

[39] Mrs. Pott-Brakeman was cross-examined. She indicated that the conversation with the defendant about going to Ms. Villamil in Corozalito occurred between 9-10 a.m. on 2nd January 2022. Mrs. Pott-Brakeman gave this evidence in relation to the defendant’s whereabouts between January 1-2nd 2022:

“Q. Ms. Pott, between the New Years Eve and the 2nd January, you were with Ingrid Villamil?

A: No.

Q. You were sure Jeffrey Pott was with you between those times? A: Yes.

Q. Ms. Pott, on the New Year’s morning after midnight, remember that time January 1st? A: Yes.

Q. Are you sure Jeffrey wasn’t in Corozalito? A: Yes, I’m sure.

Q. The New Year’s Day, the night going into 2nd January morning, you were saying that Jeffrey was with you at New Road? A: Yes.

...

Q. So between 3:00 a.m. and 4:00 a.m. on the 2nd you weren't in Corozalito? A: No."

[40] She denied that she was fabricating her evidence that the defendant was at her home in New Road on the morning of 2nd January 2022 and that he was at his home.

[41]The defendant made a closing submission which was carefully considered by the Court.

Analysis

General considerations

[42]The Court has directed itself that the defendant is presumed innocent with regard to all counts in the indictment and has absolutely nothing to prove. The Court has directed itself in relation to those counts that the obligation is on the Crown to satisfy it so that it is sure of the guilt of the defendant, and if there is any reasonable doubt the Court is duty bound to acquit him.

[43]The Court begins firstly by analysing the evidence on the Crown's case and if the evidence seems strong enough to consider a conviction it would consider the case for the defendant as is the required reasoning process noted by the apex court, the Caribbean Court of Justice ("CCJ") in **Dionicio Salazar v R**⁷. The Court, if it accepts the case for the defendant, or has a doubt about whether it is true, must acquit the defendant. It is only if the Court rejects the defendant's case that it returns to the Crown's case and considers the totality of the evidence and determines whether to convict.

[44]In assessing the evidence, the Court must make findings on its credibility and reliability. Credibility refers to a witness's honesty or sincerity. Reliability, meanwhile, is about the accuracy of the witness's testimony, referring to the witness's ability to observe, recall, and recount events⁸. In assessing credit and reliability, the Court must examine inconsistencies, discrepancies, and any implausibility in the evidence of witnesses. The Court notes however, on the authority of the Belizean CCJ decision of

⁷ [2019] CCJ 15 (AJ) at para 35.

⁸ **R v Kruk** 2024 SCC 7 (Supreme Court of Canada) at para 146.

August et al. v R⁹ that it need not comb the record for inconsistencies or contradictions. The Court directs itself that if there are inconsistencies and discrepancies the Court must look to see if they are material and if they can be resolved on the evidence. The Court must consider whether inconsistencies or discrepancies arose for innocent reasons, for example through faulty memory or lack of interest in what is transpiring, or if it is because the witness is lying and trying to deceive the Court. Unresolved inconsistencies or discrepancies would lead the Court to reject that bit of evidence or all of the witness's evidence entirely. The Court must also consider the cumulative effect of those inconsistencies or discrepancies on a witness's credit and reliability. If the Court finds the evidence of a witness implausible it will reject either that witness's evidence entirely or that bit. The Court must also consider the character, demeanour, capabilities of witnesses along with whether there is any supporting evidence¹⁰.

[45] 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 was 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**¹¹ in relation to evaluating testimony involving intentional lies.

[46] 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 case¹². 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 sense¹³ while avoiding myths and stereotypes.

[47] The Court will consider each count separately.

⁹ [2018] 3 LRC 552 at para 60.

¹⁰ *Kruk* at para 146.

¹¹ [2024] 2 LRC 176 at paras 33-38.

¹² *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.

¹³ *Kruk* at paras 151-156.

Count 1: Unlawful sexual intercourse (24th August 2021)

[48] In the Court's view, the Crown's case of unlawful sexual intercourse in the first count against the defendant, indeed on all counts in the indictment, is based largely on the credibility and reliability of the evidence of S. The Court notes that the evidence of S is uncorroborated. The case stands or falls on her evidence. The Crown also relies on the unchallenged evidence of W and JC2 as to S's age at the material times on the indictment.

[49] The Court would begin by considering S's testimony. The Court will firstly consider S's honesty.

A. Is S an honest witness?

The context of S's evidence

[50] As noted before S was 16 years old when she testified, and still a child¹⁴. She was testifying about events which occurred when she was a younger child aged 13 and 14. The Court directs itself that the fact that a witness is young does not mean that her word is any more or less reliable than that of an adult and that it should assess S's evidence in the same fair way as it assesses any other evidence in the case.

[51] The Court will bear the following in mind, which are matters of common sense and human experience¹⁵:

- i. 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.
- ii. 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.

¹⁴ Section 2(1) of the **Families and Children Act**, Chapter 173 of the Substantive Laws of Belize, Revised Edition 2020: " "child" means, unless provided otherwise in any law, a person below the age of eighteen years;"

¹⁵ **The Crown Court Compendium, Part I, Jury and Trial Management and Summing Up**, (Eng.) June 2023, ps 10-28 and 10-29.

- iii. 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 later in life.
- iv. 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.
- v. 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.
- vi. All these things may go to a child's level of understanding rather than to her credibility and so the Court should be cautious about judging a 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.

[52]S is also testifying to an alleged sexual assault committed against her as a child. The Court must also be wary of making certain assumptions, which are again, matters of common sense and human experience, and notes, generally speaking, that a child may:

- i. be confused about what has happened or about whether or not to speak out.
- ii. blame herself for what has happened or be afraid that she will be blamed for it and punished.
- iii. be afraid of the consequences of speaking about it.
- iv. feel that she may not be believed.
- v. may be embarrassed because she did not appreciate at the time that what was happening was wrong, or because she enjoyed some of the aspects of the attention she was getting.
- vi. simply blank what happened out and get on with their lives until the point comes when they feel ready or the need to speak out.
- vii. may feel conflicted: loving the abuser but hating the abuse¹⁶.

¹⁶ Ibid *Crown Court Compendium* at p 10-29.

[53] This matter involved S's admission of telling deliberate falsehoods about where the sexual intercourse took place in Counts 1 and 3. This was not a matter of misunderstanding or mistake. S admitted that she told lies to the police in her witness statement and indicated her reason for lying was to avoid her mother's shame and judgment. The Court will exercise the statutory discretion, under section 92(3)(a) of the **Evidence Act**¹⁷, to warn itself of the special need for caution before accepting the evidence of a witness who has admittedly told lies which is not corroborated. The Court makes clear that it is not issuing this warning based on S's status as a virtual complainant in a sexual case but that there is a basis in the evidence for doing so, namely the lies, pursuant to the judgment of the Court of Appeal in **Jimmy Jerry Espat v R**¹⁸. The fact that S has told lies to the police raises the obvious danger that she also has told lies to the Court while giving evidence. The telling of lies is not a trifling thing. The fact that there is no other evidence that implicates the defendant, but S's must be of great concern to the Court. However, the Court is nevertheless entitled, even without corroboration, to rely on the evidence of S if, having taken into account the need for caution and the absence of any independent supportive evidence, it is sure that S is telling the truth on the material matters to establish the facts alleged in the indictment¹⁹.

The Court's findings

[54] The Court found S to be highly intelligent, articulate, mature and direct.

[55] The Court found S to be an honest witness in relation to the material particulars of the indictment, despite her admitted lies to the police.

[56] The account given by S in relation to the first count, in the Court's view, is not inherently implausible. It is not unusual, as a matter of Caribbean human experience, for 13- and 14-year-olds girls or boys to be sexually precocious particularly in the context of the highly sexualized music and media content with which they are bombarded. The defendant was someone from her area who knew her family and would seem an appropriate target for S's sexual experimentation. He may have seemed a safe choice to S. S seemed infatuated with the defendant and her obvious intelligence would have led her to devise the rendezvous schemes with the defendant to meet him at places and times that would draw the least

¹⁷ Chapter 95 of the Substantive Laws of Belize, Revised Edition 2020.

¹⁸ Criminal Appeal No. 3 of 2009 at para 17.

¹⁹ *Crown Court Compendium* at p 10-8.

attention. S may have enjoyed the attention of the defendant as she seemed somewhat isolated on the evidence, exemplified by the fact that she first disclosed the incidents to the counsellor instead of her parents. She was, the Court surmises, shown the error of her ways at the end of a beating from her mother which may have created a swirl of emotions for 14-year-old S to process about probable feelings of genuine love for the defendant as she had professed her love to him after their first sexual encounter. Also, she may have considered she was causing shame to her parents and the love deficit that her relationship with the defendant might cause them to show to her. The emotional response and feelings that S described on the day of her conversation with the counsellor is entirely consistent with her evidence. There is also the unchallenged evidence, accepted by the Court on all of the evidence, of the opinion of Dr. Navarette that S was sexually active. This of, course, is not proof that the defendant was the person that was having sexual intercourse with S.

[57]What also struck the Court was the detailed nature of S's evidence. It was not broad strokes, generic evidence that lent itself easily to attract claims of fabrication. For instance, in the January 2nd, 2022, incident, she did not just say the defendant took down my pants inserted his penis and we had sex in the concrete structure. She detailed that she was held with her back to his chest, that the defendant used his left hand to hold her head and he used his right hand to guide his penis to her mouth. She was able to recall details about positioning and which hand did what during the events in February and August as well. At times the Court observed that S was almost visualizing the events that occurred while giving her evidence. Her description of seeing the black and silver wrapper but limiting herself by saying that she did not see him put on a condom spoke to her reciting exactly what she saw and did, no more and no less. Her description of the sex acts between herself and the defendant were extremely vivid and detailed which led to the Court viewing the accounts as true. The Court considers that it must have been difficult and embarrassing for S to detail that she lost her virginity in an abandoned, old, concrete structure in the yard, however as she said in re-examination she had vowed to tell the truth, warts and all.

[58]Even the surrounding details, such as the defendant motioning her to pause before the January encounter adds to the conclusion that she was recalling things that actually happened. The in-depth nature of S's evidence significantly enhanced the credibility of the accounts she gave, and her overall credit, to the Court.

[59]The Court will now examine the material inconsistencies in S's evidence:

- i. **The place where counts 1 and 3 occurred**: The evidence as it unfolded in Court essentially swapped the places where the sexual intercourse took place in counts 1 and 3 as compared to her police statement. S contended that the reason for swapping the first act from the concrete structure to the defendant's house, which would be where, according to her, she lost her virginity, was "I said that we went to his room. I was in front of my mom, and I didn't want her to judge. The 24th was the first time I had sex and it was with Mr. Pott and it was outside so when I gave my statement I felt guilty and ashamed to say that it was outside so I said that we went to his room." The Court understands the reasons for this lie by S. It would not be easy for a confused and emotional 14-year-old girl to admit in front of her mother that she willingly gave away her virginity in what was virtually an outhouse. This difficulty would be heightened by the fact of the beating she received at the hands of her mother a few days before giving the statement for merely sneaking out.

Her answer for switching the concrete structure for the defendant's house in the February incident makes less sense though to the Court. Her answer in re-examination that she did not want her mother to know she had sex in his house as opposed to the concrete structure on the third occasion after she had already mentioned that in the police statement in the first account seems illogical and inconsistent. However, the Court appreciates that it is considering the evidence of a child of 16 relating her thought process when she was 14. At their best teenagers are not the greatest sticklers for logical and consistent reasoning and thought.

The sum total of the Court's conclusion on this point is that though the Court is concerned that S practiced a deliberate deception and has considered the possibility of that deception creeping into other aspects of the evidence, the compelling, cogent and detailed nature of S's evidence leads the Court to find that S is an honest witness in the material particulars.

- ii. **The setting and timing of the alarm on February 20th**: There was a clear inconsistency between what she said in testimony and what she said in her statement as to what device she set the alarm on, tablet or stepfather's phone, and what time she had set the alarm. In the Court's view this is a highly immaterial inconsistency which could have been generated by lack of attention to something S may not have considered important. This inconsistency does not shake S's credibility.

- iii. **Blue jeans and vantage points**: The defendant suggested that the evidence of S was a fabrication because she described him as wearing blue jeans during the January encounter. The defendant suggested that because of their neighbourhood, and presumably the sad but notorious fact of colour coding in different gang affiliated areas of Belize City, blue was unlikely to be a colour that he would wear. S accepted that he wore red, white and black shirts, but maintained he was wearing a blue jeans. The Court finds that there was no inconsistency and even if the defendant had an aversion to wearing blue jeans, he may have been willing to take the chance to do so for a sexual rendezvous at after 3 a.m. when he was unlikely to be seen by anyone else.

Also, in relation to the vantage points the Court accepted the proposition of the defendant that it is limited by the small number of photographs taken during the investigation and that they have not captured the positioning of the parties when the signaling for the rendezvous would have taken place, as well as the interior of the house of the defendant. However, again due to the compelling, cogent and detailed nature of S's evidence the Court is willing to accept her evidence that she could have seen the things she said she saw from the positions she was in.

[60] There are no discrepancies between S's evidence and any other evidence on the Crown's case.

[61] The Court finds that even looked at cumulatively it does not view the inconsistencies identified above as making S's evidence not credible.

[62] The Court having found S an honest witness considers her reliability.

B. Is S a reliable witness?

[63] The issue the Court would consider in terms of the reliability of S's evidence is the correctness of her identification of the defendant as the person who had sexual intercourse with her on 24th August 2021.

[64] The Court is well aware of the dangers of visual identification. It can very easily be mistaken and lead to miscarriages of justice. This may also be so in cases of a purported recognition by close friends or relatives. Also, there may be several purported identifications by different persons which could all be

wrong. The Court must closely examine the circumstances of S's purported recognition of the defendant as the person she had sexual intercourse with in August 2021 as the first count alleges, particularly as the defendant alleges that he was at his home with Ms. Villamil at that time.

The Court's findings

[65]The Court has carefully considered the circumstances of the identification:

- i. **Recognition**: S said that she knew the defendant from seeing him around the neighbourhood since 2018. They lived in close proximity to each other. He would come to S's yard to do work for her mother or grandmother. She said she would have seen him many times, more than 10 times before he started doing the yard work. The defendant also did not dispute that he knew S. This evidence was unchallenged and consistent thus the Court accepted that S and the defendant were well known to each other.
- ii. **Period of observation**: S testified that the incident lasted between 15-20 minutes. Having regard to the activities described, such as the kissing and caressing, the disrobing, the unwrapping of what was presumably a condom, and the actual sexual act, this period does not seem to be an exaggeration. S was also consistent in her estimate. The Court finds that this would have been a sufficient period of time for S to make a proper identification.
- iii. **Lighting**: This incident took place, at latest, at 9 in the night. There was however a lamppost and light from the verandah illuminating the area on S's testimony. The Court has found that S was an honest witness, so it accepts the evidence of the presence of a lamppost on that basis. However, even if the lighting was not ideal, the closeness of the parties would compensate for any deficiency in the Court's view.
- iv. **Distance**: S and the defendant were only inches apart on S's evidence and the encounter began with kissing, inferentially, on the lips and then on the neck. The nature of the sexual penetration described by S would make that estimate of distance correct in the Court's view.
- v. **Obstruction**: S said that she was able to see the face and body of the defendant. They would have even spoken to each other when professing their love. The Court, accepting S as an honest witness, finds that S would have had an unimpeded view of the defendant.

[66]The specific weakness in S's identification of the defendant is the diminished lighting which an observation at 9 p.m. would provide. However, even with that weakness, as said above the closeness of the parties supplemented by the light the lamppost provided along with the other factors identified above assists this Court to make the determination that S had a proper opportunity to correctly identify the defendant as the person she had sexual intercourse with on 24th August 2021.

[67]The Court consequently finds that S is both an honest and reliable witness.

[68]The Court also accepts the unchallenged evidence of W, supported by the birth certificate, JC2, that S was born on 13th January 2008 which meant at the time of sexual intercourse in Count 1 she was 13 years old.

[69]The Court thinks that there may be evidence sufficient to convict the defendant so it will then consider the case for the defendant.

C. The Defence Case

[70]The Court again reminds itself, in relation to all counts, that the defendant 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 defendant'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 defendant then it returns to the Crown's case and considers whether on all the evidence the defendant is guilty.

[71]The Court has considered the defendant's effective good character in the general consideration of the defendant's case on all counts. The defendant has minor previous convictions that are not of a similar nature and on that basis the Court treated him as a person of effective good character. Good character is not a defence to the charges in the indictment, but it is relevant in this case in this way, namely, the fact that the defendant has not committed any sexual offence in the past may make it less likely that he acted as the Crown alleges in this case. However, what importance the Court attaches to the defendant's

effective good character and the extent to which it assists on the facts of this particular case is for the Court to decide after a consideration of all of the evidence.

[72] The defence of the defendant on this count, and indeed all counts, is fabrication and alibi. He outlined a dock statement which set the groundwork for Mrs. Pott-Brakeman and Ms. Villamil to provide evidence of his alibi for the different days in the indictment. There was also the indication of his gunshot injury which may have made his ability to have vigorous sexual intercourse with S improbable, for which Ms. Villamil provided the evidence.

The general findings on the defence's case

[73] The Court rejected the defendant's case as being deliberately deceptive. The clearest indication of this was the massive discrepancy between the evidence of Mrs. Pott-Brakeman and Ms. Villamil as to the whereabouts of the defendant on 2nd January 2022. Ms. Villamil said that the defendant was in Corozalito, on her evidence, 1 hour's drive out of Belize City at the material time while Mrs. Pott-Brakeman, the defendant's sister, swore that she was with him at New Road in Belize City. The Court understands that witnesses may make genuine mistakes about dates, but Mrs. Pott-Brakeman was clear and consistent, and after having several opportunities to change course, that the defendant was not in Corozalito as Ms. Villamil testified. Ms. Villamil was similarly strident during her testimony that the defendant was in Corozalito saying in cross-examination, "I can stand by that". The Court was left with the stark reality that this was not a matter of mistake. It was either Mrs. Pott-Brakeman was lying, Ms. Villamil was lying, or they both were.

[74] The Court was also not impressed at all by the evidence of Ms. Villamil. Now the Court can accept that a witness would be clear about their whereabouts and who they were with at significant time periods. For instance, it is easier for the Court to accept that the witnesses recalled who they were with on January 2nd as it is close to New Years Day which is a significant time in the Caribbean diaspora for family gatherings and recreating. It would be the same for Easter, Independence Celebrations, or the birth of a newborn. However, days and times of no particular significance like 3-4 a.m. on 24th August 2021 it strikes the Court as incredible that a witness can recall with clarity that the defendant was with her at that time.

[75]The Court also had difficulty with what it found as an inconsistency in her evidence in her statement and her evidence at trial between whether she and the defendant were in an “off and on” relationship as opposed to a “common law” relationship. In the Caribbean context, and certainly the Belizean one, those terms are worlds apart in that the former would be someone that Ms. Villamil would go out with from time to time and meet up on certain occasions, but the relationship would have no permanence or exclusivity. While the latter would be all but in a legal title a situation of husband and wife, where Ms. Villamil would be perennially with the defendant and be expected to know all of his whereabouts. The shift from “off and on” in statement to “common law” at trial, when considered in the context of the aforementioned January 2nd discrepancy, seemed to the Court to be an attempt to shore up the basis of Ms. Villamil’s knowledge of the movements of the defendant to strengthen his alibi. This is separate from the obvious motive of Ms. Villamil to lie in that she is still in love with the defendant.

24th August 2021

[76]The Court rejected entirely the evidence of Ms. Villamil on the basis of the discrepancies and inconsistencies above. Consequently, the Court prefers the vivid and cogent evidence of S that the defendant was able to have vigorous sexual intercourse in and around 24th August 2021. Also, the alibi of Ms. Villamil for that date on its face is not persuasive as at the material time though she said that the defendant would usually be with her upstairs she said he would go downstairs sometime for food at his mother’s house which would have given him opportunity to commit the offence.

[77]The Court appreciates that an innocent defendant may foolishly generate a false alibi in the misguided belief that he needs to prove his innocence and bolster a genuine defence. The Court also notes that it does not follow that because it finds that the defendant led false alibi evidence that he is guilty of the offence charged.

[78]However, the Court found that the combination of the inconsistencies and discrepancies in Ms. Villamil’s evidence, the strength of S’s evidence, its overall consistency and cogency, would lead it to reject the defendant’s case²⁰.

²⁰ **Bally Sheng Balson v The State** (2005) 65 WIR 128 (PC Dom.) at para 38 and **Hamilton et al v R** [2013] 4 LRC 188 (PC Jam.) at para 66.

D. Findings

[79] The Court returns to the Crown's case and has looked at the totality of the evidence. The Court is satisfied so that it is sure:

- i. **The defendant by even the least degree penetrated S's vagina with his penis:** The Court accepts as true and reliable the evidence of S that the defendant placed his penis in her vagina.
- ii. **S was under the age of 14:** The Court accepts the unchallenged evidence of W, supported by JC2, that S was 13 years old at the time of this offence.

[80] The Court consequently finds the defendant guilty of having unlawful sexual intercourse with S on 24th August 2021.

Count 2: Unlawful sexual intercourse (2nd January 2022)

[81] The Court does not find that S's account in relation to the second count implausible for the same reasons identified in Count 1. The vividness of her account and its detail, similarly as in Count 1, led the Court to find it truthful. There were, also, no inconsistencies in her evidence on this count.

[82] The Court also warned itself similarly as the last count in relation to the pitfalls of visual identification and closely examined its surrounding circumstances:

- i. **Period of observation:** S testified that the incident lasted between 10-13 minutes. Having regard to the activities described, such as the kissing, the disrobing, the vaginal and then oral sex, this period does not seem to be an exaggeration. S was also consistent in her estimate. The Court finds that this would have been a sufficient period of time for S to make a proper identification.
- ii. **Lighting:** This incident took place around 3 a.m. There was, however, the lamppost illuminating the area on S's testimony. The Court has found that S was an honest witness, so it accepts the evidence of the presence of a lamppost on that basis as in the last count. However, even

if the lighting was not ideal, the closeness of the parties would compensate for any deficiency in the Court's view.

iii. **Distance**: S and the defendant were only inches apart on S's evidence and the encounter began and ended with kissing on the lips. The nature of the sexual penetration both vaginally and orally, described by S, would make that estimate of distance correct in the Court's view.

iv. **Obstruction**: S said that she was able to see from the head to the feet of the defendant. They would have kissed each other twice. The Court, accepting S as an honest witness, finds that S would have had an unimpeded view of the defendant.

[83]The Court finds that, even with the weakness of natural lighting being unavailable at the time of S's interaction with the defendant, S had a proper opportunity to, and correctly, identified the defendant as the person she had sexual intercourse with on 2nd January 2022. Her evidence is reliable.

[84]The Court rejects the evidence of the defendant's witnesses for the discrepancy between the evidence of Ms. Villamil and Mrs. Pott-Brakeman as to the whereabouts of the defendant at both Corozalito and Belize City at the same time on January 2nd 2022 as mentioned in the analysis of the previous count.

[85]The alibi of Mrs. Pott-Brakeman is also weak on its face as she accepted that she went to sleep at 10 p.m. or earlier on the night of 1st January and consequently could not say where the defendant was at 3-4 a.m. on 2nd January. She also accepted that her home at New Road was only 5 minutes from where S was.

[86]The Court would prefer the cogent and compelling evidence of S and reject the defence's case.

A. Findings

[87]The Court has looked at the totality of the evidence. The Court is satisfied so that it is sure:

- i. **The defendant by even the least degree penetrated S's vagina with his penis**: The Court accepts as true and reliable the evidence of S that the defendant placed his penis in her vagina.

- ii. **S was under the age of 14:** The Court accepts the unchallenged evidence of W, supported by JC2, that S was 13 years old at the time of this offence.

[88]The Court finds the defendant guilty of having unlawful sexual intercourse with S on 2nd January 2022.

Count 3: Unlawful sexual intercourse (20th February 2022)

[89]The Court does not find that S's account in relation to the third count implausible for the same reasons identified in Count 1. The vividness of her account and its detail similarly, as in Count 1, led the Court to find it truthful. It was clear, compelling and cogent. The Court has also resolved the inconsistency about where the sexual intercourse took place as in its findings in the first count.

[90]The Court also warned itself similarly as the first count in relation to the pitfalls of visual identification and closely examined its surrounding circumstances:

- i. **Period of observation:** S testified that the incident lasted between 12-22 minutes. Having regard to the activities described, such as the kissing, the disrobing, the sex act and changing of positions, and the hugging afterwards, this period does not seem to be an exaggeration. S also did not deviate from her estimate. The Court finds that this would have been a sufficient period of time for S to make a proper identification.
- ii. **Lighting:** This incident took place around 3 a.m. There was, however, the lamppost illuminating the area on S's testimony. The Court has found that S was an honest witness, so it accepts the evidence of the presence of a lamppost on that basis as in the first count. However, even if the lighting was not ideal, the closeness of the parties would compensate for any deficiency in the Court's view.
- iii. **Distance:** S and the defendant were only inches apart on S's evidence and the encounter began with kissing on the lips and ended with an embrace. The nature of the sexual penetration described by S would make that estimate of distance correct in the Court's view.

iv. **Obstruction**: S said that she was able to see from abdomen to the face of the defendant. They would have kissed and embraced for 2 minutes after the sex act. The Court, accepting S as an honest witness, finds that S would have had an unimpeded view of the defendant.

[91]The Court finds that, even with the weakness of natural lighting being unavailable at the time of S's interaction with the defendant, S had a proper opportunity to, and correctly, identified the defendant as the person she had sexual intercourse with on 20th February 2022. Her evidence is reliable.

[92]The Court rejects the evidence of the defendant's witness on this count, Ms. Villamil for the reasons outlined in the first count. Her evidence is in the Court's view not credible. The Court would prefer the cogent and compelling evidence of S and reject the defence's case.

A. Findings

[93]The Court has looked at the totality of the evidence. The Court is satisfied so that it is sure:

- i. **The defendant by even the least degree penetrated S's vagina with his penis**: The Court accepts as true and reliable the evidence of S that the defendant placed his penis in her vagina.
- ii. **S was under the age of 16**: The Court accepts the unchallenged evidence of W, supported by JC2, that S was 14 years old at the time of this offence.

[94]The Court finds the defendant guilty of having unlawful sexual intercourse with S on 20th February 2022.

DISPOSITION

[95] The Court finds Jeffrey Pott guilty of all counts in the indictment. The matter is adjourned for a separate sentencing hearing as advised by the CCJ in **Linton Pompey v DPP**²¹.

Nigel Pilgrim
High Court Judge
Central District
Dated 21st January 2025

²¹ [2020] CCJ 7 (AJ) GY at para 32.