



**IN THE MAGISTRATES COURT OF THE FALKLAND ISLANDS
MC/CRIM/10/25**

Trial dates: 29 and 30th January 2026

Before

HIS HONOUR JUDGE MALCOLM SIMMONS

BETWEEN:

REX

V

CRAIGY CHIPUNZA

MR. STUART WALKER, Crown Counsel, appeared for the Prosecution

MR. PHIL AXON appeared for the defendant

**Reporting restriction under section 459 of the Criminal Procedure and Evidence
Ordinance 2014**

JUDGMENT

1. The defendant stood trial on two counts:

Count 1

Craigy Chipunza, a person over the age of 18 years, between the 1st day of February 2025 and the 30th day of April 2025, intentionally touched AB, the touching was sexual, AB was under the age of 16 years and Craigy Chipunza did not reasonably

believe that AB was aged 16 years or over, an offence under section 211(1) of the Crimes Ordinance 2014.

Count Two

Craigy Chipunza, a person over the age of 18 years, between the 1st day of February 2025 and the 30th day of April 2025, intentionally touched AB, the touching was sexual, AB was under the age of 16 years and Craigy Chipunza did not reasonably believe that AB was aged 16 years or over, an offence under section 211(1) of the Crimes Ordinance 2014.

Introduction

2. The Complainant was born on [DATE]. At the time of the alleged offences, she was 14 years of age.
3. The Defendant was born on 5th September 2006 in Zimbabwe. At the time of the alleged offence he was 18 years of age.
4. On 25th May 2025, an achieving best evidence interview was conducted with the Complainant at the Achieving Best Evidence Interview Suite in Stanley, Falkland Islands.
5. The Defendant was arrested on 9th May 2025 and interviewed by police on 25th July 2025.

Directions

6. I have previously directed myself on how I should approach the evidence and how to approach my findings on the facts.
7. The burden is on the Prosecution to prove that the Defendant is guilty. The Defendant does not need to prove anything. The Defendant does not need to prove that he is innocent. The Prosecution will only succeed in proving that the Defendant is guilty if I am sure of the Defendant's guilt. If I am not sure, then I must return a 'not guilty' verdict.

8. In this case the defendant has chosen to give evidence. He was not obliged to do so but chose to do so. In making that decision, he does not take upon himself any burden to prove his case. He still does not have to prove anything. The burden of proof rests squarely upon the prosecution from start to finish.
9. I do not have to decide every point that has been raised in this case. I am entitled to draw inferences, that is to come to common sense conclusions based on the evidence which I accept, but I may not speculate about what evidence there might have been or otherwise allow myself to be drawn into speculation. I have not made any findings of fact unless I am sure and, although I might not preface each finding of fact with that point, it should be taken that I am sure on the evidence of any factual finding that I have made. If I have made a factual finding it is on the basis that the Prosecution has the burden of proving its case so I am sure.
10. I have not conducted any reading into this case beyond the evidence sought to be and in fact relied on by the prosecution and defence. I have not considered any material that was not placed before the court or referred to in questioning of witnesses. I have not discussed the case or the evidence with anyone. Accordingly, the reasons for my verdict are entirely based on the evidence, my assessment of it and of the witnesses and the conclusions that I have drawn from all the evidence.
11. Allegations of the type that arose in this case may be highly emotive. I have put aside any emotion and judged this case solely on the evidence.
12. There is no typical sexual assault or typical person that is sexually assaulted. Sexual assault can take place in almost any circumstance. It can happen between all different kinds of people, quite often when the people involved are known to each other or may be related. There is no typical response to sexual assault. People can react in many different ways to being sexually assaulted. Some people will show emotion or distress and may cry. But other people will seem very calm or unemotional. Victims and witnesses respond in different ways to the events they have experienced or witnessed. It is possible for someone to put on an act if they choose to. I took all of this into account in my consideration of the evidence.

13. The Complainant gave evidence in the form of her ABE interview. That is entirely normal in cases such as this and is a process designed to elicit the best evidence from a witness. This does not reflect at all on the Defendant and did not affect my assessment of the evidence. I assessed this evidence in exactly the same way as I assessed other evidence in this case.
14. The complainant gave evidence through a video link. Giving evidence in this way is entirely normal in cases such as this. It is designed to enable a witness to be more at ease and to focus on their evidence and does not reflect at all on the Defendant and did not affect my assessment of the evidence.
15. The complainants father, CD, gave evidence about what the Complainant told him had happened. I recognise this is not independent evidence. It is evidence of what the Complainant told him about what she said happened. He was not present and did not see what did or did not happen. I also recognise that such witnesses may not accurately recall what they were told by the Complainant.
16. The reason why I have heard about what the Complainant said to this witness, is so that I can consider it in deciding whether or not the Complainant has been consistent in what she has alleged and whether or not she has told the truth. And when deciding this I should consider, inter alia, for example, the timescale between the alleged incident and what she said to each of them; how the version of events unfolded and whether there is any consistency or inconsistency in what she said.
17. Inconsistencies in accounts can happen whether a person is telling the truth or not. This is because if someone has experienced a traumatic event such as the kind alleged in this case, their memory may be affected in different ways. It may affect that person's ability to take in and later recall the experience. Some people may go over an event afterwards in their minds many times and their memory may become clearer or can develop over time. But other people may try to avoid thinking about an event at all, and they may then have difficulty in recalling the event accurately. I have considered all the evidence that has been presented in this case, including apparent inconsistencies in order to evaluate the truthfulness of each witness.

18. I also recognise that just because a person gives a consistent account about an event, that does not necessarily mean that account must be true, any more than inconsistent accounts must be untrue.
19. In deciding whether an account given by a witness is true, I have looked at all the evidence, including inconsistencies. If I am sure the account is true, I have relied upon it. If I am not sure, I have disregarded it.
20. The fact the Defendant is in the dock is not relevant. I have treated the evidence of all witnesses equally. I shall decide whether any witness, including the Defendant, has been truthful and accurate or not, by having regard to what they say, whether it is consistent with what they have said on other occasions, how they gave evidence and how it compares to other evidence and to common sense.
21. I heard speeches from both sides and I may wish to take account of the arguments in the speeches I have heard. I have to say they have been helpful from both sides, but I am not bound to accept them. Counsel and Solicitor for each of the parties ask me to look at the case from their respective position. Evidence is what I've heard from the witness box or what was read or the facts that have been agreed.
22. The defendant has no previous convictions. Good character is not a defence to the charges, but it is relevant in two ways:
 - (a) First, the defendant has given evidence. His good character is a positive feature which I should take into account in his favour when considering whether I accept what he told the court.
 - (b) Secondly, the fact that a person has not offended in the past may make it less likely that he has acted as the prosecution alleges in this case. What importance I attach to the defendant's good character and the extent to which it assists on the facts of this particular case, are for me to decide. In making that assessment I may take account of everything I have heard about the defendant.

23. I have considered each count separately.

24. I take all of these matters into consideration in my assessment of the evidence.

Elements of the Offence

24. The Defendant stood trial on two counts under section 211 (1) of the Crimes Ordinance 2014:

(1) A person aged 18 or over ('A') commits an offence if—

(a) A intentionally touches another person ('B');

(b) the touching is sexual; and

(c) either —

(i) B is under 16 and A does not reasonably believe that B is 16 or over; or

(ii) B is under 13.

The Evidence

The Complainant

25. On 9th May 2025, Police Constable Harada spoke with the complainant. That was the first account given by the complainant and was recorded on the body worn camera of another officer, Police Constable Ward. That evidence was agreed.

26. The complainant reported that she had asked the defendant to buy her vapes on two previous occasions.

27. The complainant described how, on the third occasion, she had met the defendant near the Chandlery Express and waited in an alleyway adjacent the supermarket while he went in to purchase the vape.

28. When the defendant returned, he gave her the vape and they began to walk towards the street. She described the defendant picking her up and slapping her bottom. She said he slapped it “a lot”. She said he put her down and they continued walking. She said she felt uncomfortable.
29. She said that, as they walked, the defendant had grabbed her breast and then tripped her, catching her as she fell. She described feeling “really scared”.
30. She said she began walking towards her home and the defendant followed her, suggesting they go for a walk. She said he wanted to sit and talk.
31. When they arrived in the park it was dark. She thought around 8 – 8.30pm. She said that, as she sat crossed-legged, the defendant put his head between her legs, on her knees, facing upwards. She said: “...*then he got up and he laid on the grass and then he pushed me down and made me sit on his arm, like cuddling me and then he started touching my arse again and my breasts as well, and just all over my body.*” She said “*he grabbed me and he rolled himself on top of me and when he rolled himself he pressed really hardly on my elbow and I had three bruises there from him grabbing me.*”
32. She said the defendant had stared at her and that he was talking about her bottom. She said the defendant then “...*flipped me over so I was on top of him and he put his hands on my waist and then made down to my arse again and then he rolled over one more time and then after that he stopped and then he was beside me.*”
33. She said she had told the defendant “*Craigy, stop*”.
34. She said the defendant had tried to put his hands under her clothes but that she had stopped him before making an excuse that she had to go home to do homework.
35. She said the defendant had walked her “...*just outside of the park gate and then he hugged me goodbye and when I was walking he said “why were you wearing such baggy clothes you should wear something a bit tighter so you don’t hide the best view which is your arse*”.
36. She said she later blocked the defendant “*on everything*” and had not spoken to him since.
37. The Complainant gave an ABE interview to police on 25th May 2025.

38. She said that in or about February/March 2025 she had heard from friends at school that the defendant had bought vapes for other people. She said she was curious. She said she contacted the defendant on Snapchat and asked him to buy her vapes. She said she would meet the defendant in an alley near the Chandlery Express on Sapper Hill, give him money and he would go into the store, purchase the vape and return with it. She said the defendant had done this on previous occasions.
39. She also told police about an occasion when, wearing a long outdoor coat, the defendant had referred to the coat 'blocking the best view'. This was a reference to her buttocks.
40. Referring to the events in question. She had met the defendant as previously arranged. She said that when the defendant returned with the vape he had picked her up and put her over his shoulder. She said he had then proceeded to slap her buttocks. She said she had asked the defendant to put her down but that he had failed to do so, instead slapping her buttocks repeatedly. She described feeling uncomfortable and scared. She said the defendant eventually put her down.
41. When she gave evidence she said that, as the defendant put her down, she accepted that she had stumbled and that the defendant had steadied her to stop her falling.
42. She said that, as they walked along the passageway towards the street, the defendant had grabbed her breasts before pushing her to the ground. She said the defendant had caught her, stopping her from falling and they had continued walking.
43. The Complainant said that when they reached the street she turned to walk towards her home when the defendant suggested they go to a local park in Sappers Hill. It was approximately 8 – 8.30pm.
44. It was dark in the park. There was no one in the vicinity of the park. She said that she sat crossed-legged and that the defendant had put his head between her legs, facing upwards. She described the defendant then lying on the grass and pulling her towards him. She said the defendant began touching her. She said he touched "...my arse...my waist and on my legs and my stomach and he just keeps kind of rubbing his hands on me." She said he had touched her breasts and that he attempted to put his hand under her jumper but that she had grabbed his hand and pushed it away. She also described the defendant grabbing her

and rolling her on top of him, holding her waist before rolling on top of her. She described the defendant pinning her arms to the ground. She said she could not move. The defendant then rolled her back.

45. The complainant said the defendant told her about his various sexual encounters. He asked her if she was a virgin, stating that he had lost his virginity at her age. She said she tried to get up whereupon the defendant had grabbed her and began touching her again “*in the same places as before.*” She said the defendant had touched her everywhere, her hair, face, shoulders, waist. She described feeling really uncomfortable and scared.
46. When she did eventually get off the ground and began to walk home, the defendant accompanied her. She said he had told her to get on his back and that she had complied because, in her words, she “*was scared he was going to hurt me.*” She said that when they got close to her house the defendant had put her down and told her not to say anything about her “interactions” with him and that , were she to do so, she could get into really big trouble because she should not have been buying vapes. She said the defendant had said “so if he was going down, I'd be going down with him as well.”
47. She subsequently blocked the defendant on Snapchat and Instagram.

Witnesses

48. The complainants father, CD, made a report to police on 9th May 2025. His statement was agreed.
49. He said that, approximately two weeks earlier, while on holiday in [COUNTRY], the Complainant had told him that she had been sexually assaulted by the defendant. She told him that 2 – 3 months earlier, she had asked the defendant to buy her a vape and that the defendant had asked her to go with him to a “forest” where he had proceeded to touch her buttocks and that he had put his hands under her clothing to touch what he described as her “intimate parts”. The complainant told him that she did not consent to the touching.

The Defendant

50. The defendant was arrested on 9th May 2025 and interviewed on 25th July 2025.

51. He said he knew the complainant was 14 years of age. He admitted that he had purchased vapes for her.
52. The defendant said the complainant had sent him a friend request on Snapchat that he had accepted. They would exchange messages. He said the complainant would contact him on Snapchat if she wanted him to purchase vapes and that they would agree to meet for that purpose. He denied they were friends or that they shared any close relationship. He denied being sexually attracted to her.
53. The defendant admitted that he had picked the complainant up and that he had put her over his shoulder. He described this as banter. He denied that he had slapped the complainants buttocks or touched her as alleged. He said that he had put her down when she had asked him to do so, that she had been unsteady on her feet and that he had grabbed her arm to stop her falling.
54. The defendant said the complainant would ask him to meet for walks and that they had previously gone to the same park. The complainant said that she had only walked with the defendant when they had met for the purpose of him buying vapes.
55. While the defendant admitted that he had gone to the park with the complainant, he denied that it was on the same day as the incident in the alleyway adjacent the Chandlery Express.
56. He said they had gone to the park and that he had put his head in the complainants lap. He said he didn't know why he had put his head in her lap. He denied that he had touched the complainant in a sexual way.
57. The defendant denied that he had carried the complainant on his back.
58. The defendant said that, while in the park, he had told the complainant he would no longer buy vapes for her. He said too many people were asking and that it was "getting annoying". It seems there was no other reason. He said he had continued to buy vapes for other people.
59. The defendant admitted that he had told the complainant not to tell anyone. He said that was for his benefit because he did not want to get into trouble for buying vapes.

Assessment of the Evidence

60. I remind myself that the burden is on the Prosecution to prove that the Defendant is guilty. The Defendant does not need to prove anything. The Defendant does not need to prove that he is innocent. The Prosecution will only succeed in proving that the Defendant is guilty if I am sure of the Defendant's guilt. I have not made any findings of fact unless I am sure and, although I might not preface each finding of fact with that point, if I have made a factual finding it is on the basis that the Prosecution has the burden of proving its case so I am sure and that I am sure on the findings that I have made.
61. There was a delay in the complainant reporting to an adult what she said had happened. She said she had told a friend soon after the alleged incident and that her friend had told her to stay away from the defendant. She did not tell her father until approximately May 2025. I have taken that into account. I recognise that the complainant was a 14 year old girl. The defendant had warned her against telling anyone. A late complaint does not mean the allegation is untrue. Similarly, an allegation is not necessarily true just because complaint was made about it immediately. I have taken all of that into account in my assessment of the evidence.
62. Count 1 represented alleged sexual touching in the passageway near the Chandlery Express. Count 2 represented alleged sexual touching in the park area.
63. The defendant and complainant had arranged to meet for the purpose of the defendant buying her vapes. They had met on three occasions between 1st February and 30th April 2025.
64. The defendant had known the complainant for approximately three months. He told police that they had exchanged messages on Snapchat. The defendant knew the complainant was 14 years of age.
65. It was put to the complainant that she had gone with a friend to the defendants house. It seems they were doing something to his hair. The complainant said that was during the time the defendant was buying her vapes.

66. The complainant described the defendant having made lots of comments about her “arse”, choosing to walk behind her. She said she felt uncomfortable and subsequently wore bigger clothes and deliberately walked beside him, rather than in front of him. She said she felt uncomfortable. It seems that, despite apparently feeling ‘uncomfortable’, she had, nevertheless, met the defendant for the purpose of him buying her a vape.
67. The defendant said that he would buy the vape and give it to the complainant and that they would then walk and talk. He said they had gone to a park together and sat, him lying on the ground, the complainant sitting or, on occasion, also lying.
68. On his evidence, it appeared the complainant was a mere acquaintance and someone he might meet for a walk if he had nothing better to do. He denied that they shared a close friendship.
69. Referring to each count, in most material respects, the accounts of the complainant and defendant are similar. Where the accounts diverge is in relation to the alleged sexual touching.
70. Before turning to the specific allegations, I will address the complainants credibility and reliability.
71. I remind myself that victims of offences of the type alleged in this case can react in different ways. This complainant was no exception. She gave an ABE interview on 25th May 2025. I watched her carefully as she gave her evidence. She was a surprisingly articulate young girl. She appeared uncomfortable describing where she said the defendant had touched her. Her evidence did not appear rehearsed.
72. CD, gave evidence about what he said the complainant had told him during a trip to [COUNTRY] some 2 – 3 months later. He reported those allegations to police on 9th May 2025. His statement was agreed.
73. His statement was light on detail. However, that is not unusual in cases such as this.
74. There were obvious inconsistencies between the complainants account of events and what CD said in his statement. He had referred to a “forrest”, the vape having been purchased at the “West Store”. He did not mention the alleged slapping of the buttocks and he told police the defendant had put his hands under the complainats jumper. When the

complainant was asked about these inconsistencies she said her father had got “a few details wrong or muddled-up”. I have considered the significance of these inconsistencies. While the father may have given an inconsistent account, it does not automatically follow that what the complainant told him was inconsistent with her other evidence.

75. I watched and listened to her carefully as she gave her first account to police that was recorded on a body worn camera, in her ABE interview and when she gave evidence before this court. I have taken all of this – including inconsistencies – into account in my assessment of the evidence.

76. I have very carefully considered all of the evidence – including obvious inconsistencies – and I have come to the very clear conclusion the complainant is a credible, reliable and consistent witness. Her account of events was detailed and, ultimately, compelling.

Count 1

77. The defendant admitted that he had purchased a vape for the complainant. He admitted that he had picked her up. He said that he had picked her up, his hands around her knees, before spinning her around and carrying her in what he described as a “firemans lift”.

78. The complainant said she had to ask the defendant several times to put her down. The defendant denied he had touched the complainants buttocks.

79. When the defendant was asked in police interview what the complainant was doing as he picked her up and spun her around, he responded “mostly giggling, I think.” He thought the lift lasted for only one or two seconds and that, when the complainant had asked him to put her down, he had immediately complied.

80. That the defendant had picked up the complainant was not in dispute. That the complainant told the defendant to put her down was also not in dispute.

81. Picking the complainant up and putting her over his shoulder involved a degree of physical contact that is inconsistent with his account that he viewed the complainant simply as an acquaintance. It is entirely consistent with the actions of someone seeking close physical contact.

82. If, as the defendant told police, the lift lasted only one or two seconds, that suggests that, almost immediately upon being picked up, the complainant had asked him to put her down. The complainant clearly did not wish to be picked up and that should have been obvious to the defendant.
83. It was the complainants evidence that upon being picked up and thrown over the defendants shoulder, he had proceeded to slap her buttocks. She said he was laughing as he did so. While the defendant denied slapping the complainant, I am sure that is precisely what happened.
84. On her evidence, the defendant had previously shown particular interest in her buttocks, several times commenting on her bottom. I am sure the defendant had a sexual interest in the complainant and I am equally sure he was seeking close physical contact. That was obvious from his actions and contradicted what he told police. His picking up the complainant and throwing her over his shoulder demonstrated a degree of primal entitlement.
85. There was no dispute the defendant had picked up the complainant and put her over his shoulder. I am sure he used that opportunity to repeatedly slap the complainants buttocks.
86. After the defendant had put her down, the complainant said that, as she and the defendant walked along the passageway towards the road, he had grabbed her breasts before pushing her to the ground, catching her as she fell.
87. The complainant admitted that, as the defendant put her down, she had stumbled and the defendant had steadied her to stop her falling. The defendant said he had taken hold of her arm.
88. The complainant has consistently stated the defendant grabbed her breasts in the alleyway.
89. I have considered whether the touching of the complainants breasts on that occasion might have been accidental. I am sure it was not. It was intentional and part of a pattern of behaviour: first the slapping of her buttocks and then grabbing her breasts. His purpose in so doing was further physical contact.

90. The complainant was a credible and reliable witness. In all material respects, her evidence has been consistent.

91. In respect of Count 1, I am sure the defendant, a person over 18, touched AB by touching her buttocks and breasts. I am sure the touching was intentional. I am sure the touching was sexual. I am sure AB was under the age of 16 and I am sure the defendant did not reasonably believe that she was aged 16 or over.

92. Therefore, I find the defendant guilty on count 1.

Count 2

93. There was no dispute that the complainant and defendant had gone to a local park. What was in dispute was when this had occurred.

94. The defendant said the complainant would ask him to go for walks and that they had been to the park on other occasions. The complainant said that she had only walked with the defendant when they had met for the purpose of him buying her a vape.

95. They arrived in the park at approximately 8 – 8.30pm. It was dark.

96. The complainant sat with her legs crossed. The defendant accepted that he had put his head in the complainants lap. He said they had just sat and talked.

97. The defendant denied that he had touched the complainant as alleged.

98. When he was asked why he had put his head in the complainants lap, the defendant said he did not know. He accepted that putting his head on the lap of a 14 year old girl might look, in his words, “off”.

99. The defendant lying with his head in the complainants lap is inconsistent with his account that he viewed the complainant as an acquaintance and someone in whom he had no sexual interest. I am sure that he had an interest in the complainant and I am equally sure that it was a sexual interest.

100. The complainant gave a detailed account of sexual touching. She described the defendant touching her buttocks, breasts, waist, legs and stomach. She said “He touched the entirety of my body, my hair, my face, my shoulders, my waist. Everywhere.” She said she felt really uncomfortable and scared.
101. The defendant said that when he began refusing to buy vapes for the complainant, they no longer spoke very much. When he gave evidence before this court, he said too many people were asking him to buy vapes and that it was “getting annoying”. When he was interviewed by police, he said too many people were asking him to buy vapes and he was concerned that it was “getting [him] into trouble”. In evidence he said that, in fact, nothing had happened to make him believe that was the case. While he might have been concerned that he might get into trouble, on his evidence, he nevertheless continued to buy vapes for his brother and some of his friends.
102. The defendant said that he had exchanged ‘Snaps’ with the complainant after their meeting in the park. The complainants account was quite different. She said that after what had happened in the park she had immediately blocked the defendant on Snapchat and Instagram. That would be entirely consistent with her account of events.
103. The defendants explanation why he had not spoken with the complainant after those events was a lie. I am sure the complainant had not tried to contact the defendant and I am equally sure that she did not contact him because of what had happened in the park. The defendant was trying to explain why the complainant had suddenly severed communication.
104. The complainant said the defendant had warned her about saying anything about their “interactions” and that, were she to do so, she could get into trouble, adding “if he was going down, I'd be going down with him.” The defendant said in evidence that he had warned the complainant against saying anything for “his benefit” because he did not want to get into trouble for buying vapes. While the defendant might have been concerned that he could get into trouble for buying vapes for the complainant, I am sure the real reason he did not want the complainant saying anything about their ‘interactions’ was because the defendant did not want her to report what he had done.
105. The complainant was a credible and reliable witness. In all material respects, her evidence has been consistent.

106. In respect of Count 2, I am sure the defendant, a person over 18, touched AB by touching her bottom, breasts, waist, legs and stomach. I am sure the touching was intentional. I am sure the touching was sexual. I am sure AB was under the age of 16 and the defendant did not reasonably believe that she was aged 16 or over.

107. Therefore, I find the defendant guilty on count 2.