



**THE CENTRAL MAGISTRATES COURT)
OF SOLOMON ISLANDS AT HONIARA)
(Criminal Jurisdiction)**

Criminal Case No: 164/2020

REGINA

-V-

KEITH NAESOL TEAHANA

COURTS JUDGMENT

Date of arraignment: 13th Sept 2020
Trial dates: Monday 9th Nov 2020
Verbal Ruling: Mon 9th Nov 2020 at 130pm.
Written judgment: Tue 17th Nov 2020
Prosecutor: Mr. Tebakota of PPD
Defence Counsel: Mr. Taupongi for the Defendant
Accused: Appeared in court on bail.

CHARGE:

The Defendant in this case is Mr. Keith Naesol TEAHANA who will be referred to as the Defendant. He was charged for 1 count of domestic violence in the form of physical abuse. This was alleged to have been committed against his partner at the time of the offending which was 15th Dec 2019. The acts which prosecution alleged to have formulate this physical abuse are in 2 forms. One is a kick on the backside of the Victim and the other is a kick on her neck. These were said to have threatened her life and caused danger to her at the time.

TRIAL AND THE EVIDENCE FROM PROSECUTION:

In assessing the evidence before me, I started off by looking at the Prosecution's evidence before moving to defence.

PW1 is the alleged Victim in this case namely Jean KINI. She confirmed to court that she had a domestic relationship with the Defendant at the relevant time of the offending which eventually ended with a bitter ending.

PW1- Jean KINI:

1. On 15th Dec 2019, she drove to Alligator Creek to the Defendant's residence. She went there because she wanted to get her money from the Defendant who had borrowed money from her on an earlier date. She was also upset and expressed her disagreement over the Defendant's behavior towards her and particularly because she was upset he had used much of her finance during their relationship from 2015 to that relevant time. She stated in evidence the amount may have gone up to about 60,000-70,000.
2. When she got there at Alligator Creek, she went upstairs and found the Defendant with Alihi (who was the Defence witness DW2). She approached the Defendant and asked that he repays her money. The Defendant replied saying "me hard for changim back, me les lo u na". Those were the words she said he uttered in reply. Then she noted that he wanted to escape so she held on to him. This was the moment when they started struggling because she held on to him and did not want him to leave unless he replied positively to her request. After she grabbed him, he took her down on the floor and kicked her and hit her. However she did not let him go. She demonstrated how he took her down while she kept holding on to his trousers. She said he also kicked her right leg. She said that he kicked her and stepped on the back of her neck. She heard her neck made a sound from his step on her. She said she therefore had to bite his leg because of his step on her neck. After that the Defendant's uncle Ianny came over. He brought her up and told them "enough". Then the Defendant ran off with Alihi. She followed them. She wanted him to must change her money. Then a cousin of the Defendant told her to wait until the Defendant was normal then they can talk over it for him to change the money. She left and went to Henderson Police station. At the time her neck could not turn so she decided to file a case against him. After being at the police she went home.
3. She was cross examined. She confirmed that the Defendant and herself were never legally married (legal or custom) in any form since 2015 to 2019 when the incident occurred. She also confirmed how she came back from Australia and never updated the Defendant of her changed flight.
4. She was asked about the Rove incident meet up with the Defendant. She reiterated what she said in examination in chief. She confirmed having received about 5 missed calls from an unknown number. She noted it was the Defendant who said he was at the office. She went to check there but he was not there. Then he called again and said he was at Tinge. She went there but he was not there as well. She also said that she overheard the Defendant when they spoke and noted that the Defendant was with someone. So she went to Rove. She met him there and met Alihi as well. He had approached her when she got there and appeared drunk. She asked who he was with and he said 2 people from his workplace. She somehow noted he was with a female and told him off calling him a liar as he was with her than with 2 people. She did not recognize her but found out later and now know

her as Alihi. She told her off asking what she was doing with her hubby (refer to as olo in evidence). She was upset with her but Alihi said they were only workmates. She then got mad at the Defendant. Alihi told her it was the Defendant who lied to her as well. She complained about her expenses on the Defendant stating how she met his expenses while they were staying in Fiji. It was then put to her that because she was upset with the Defendant she threw Alihi's bag. She said she was not aware it was Alihi's bag and thought it was the Defendant's bag as it was black like his bag. She confirmed that she threw it into the sea. Then she took the Defendants hand and took him into the taxi. During that taxi trip they had an argument. They stopped at some stage as the Defendant was hungry. She agreed also to defence cross examination that she slapped (not hitim) the Defendant's eye causing it to be red. It was put to her that she bit him too but she refused and said she did not do so in the taxi. That day ended with them both going to her house at Kaibia.

5. The Defendant slept over at her house on that date which was 8th Dec 2019. On the next date of 9th Dec 2019 defence proposed that the Defendant remained with her and then later on that date they went to Canoe Bar. However she denied and said it was on the next date of 10th Dec 2019. It was that date that they went to Canoe Bar.
6. They met at the Defendant's office and walked to find CD. Then they met her cousin and friend named Kathy. They proceeded to Canoe Bar after meeting her. It was put to her that they argued again at Canoe Bar but she denied and said Kathy called a taxi but the Defendant did not want to. It was put to her she got mad and threw the Defendants laptop. She denied and explained that they went to the taxi and she pulled the laptop then but it did not break. It only cracked. They had an argument which arose from a phonecall she received which the Defendant wanted to know the caller. This was why they argued then. After that incident they went to Lunga but the argument resulted in her dropping off at King George VI School while they left in the vehicle. They came back and she was still mad so she threw stones at them. It was when they were at Telekom recreation area that she threw the stones. She was so mad she did not follow them. They left her and she got on another vehicle and went back to her house. Then she got on a rav4 when she got to Kaibia where her house was. She went to Tinge where Defendant's house was. It was around 2am on 11th Dec 2019 when she got there. She called the Defendant and then she noted that the Defendant came around with Kathy on the car. She had an argument with Kathy and she shot them with empty solbrew bottles and they escaped from her. She went to Rove after that to wait for the rav4 to pay it off for her travels. She paid off the rav4 the next date.
7. On 12th Dec 2019 she did not meet the Defendant.
8. On 13th Dec 2019, she went to Central Police Station (CPS) but she had first met the Defendant at the Hong Kong Palace area. The Defendant was hungry so they went to Town Ground and bought meat pie for the Defendant. Then they went to the Defendant's front office area to collect his payment. Payment was given out at the

Central Police Station. She explained how on an earlier date the Defendant and his workmate at Census named David borrowed money from her. They were to repay her on that Friday. She stated that only David repaid her \$200 but the Defendant did not. She was also asked about the money she demanded from the Defendant and it was put to her that it comprised of all the money spent on him. She agreed. The Defendant did not wish to repay it. That was why they went to the Central Police Station to try and sort it out. She agreed as she went to the police to complain of the money for the Defendant to repay it. It was suggested to her that she actually was upset with the Defendant because of how much she had spent on him (which I take as accepted by defence and not disputed) and because he was now with another woman. She replied saying all along during that relevant time the Defendant had been coming to her home too as her partner. She also stated that all along the Defendant's properties with her as well.

9. She confirmed never meeting the Defendant on 14th Dec 2019.
10. Then she confirmed she went to Alligator to the Defendant on the 15th Dec 2019 date of incident around 1100hours and 1200hours as stated on the charge. She went to get money from the Defendant estimated about \$60,000- \$70,000 as she put that amount due to the time they were together, at Fiji and also his daily bus fare and others. Defence also assisted all by providing a sketch map of the areas around Alligator where the incident occurred. And this was exhibited as exhibit PW1a. It was tendered by consent as no one had issues.
11. She was questioned and agreed when proposed that Defendant was sitting near the door along with Alihi. It was put to her that she was mad ("cross") and insisted for the Defendant to repay her money. She walked towards the Defendant and he wanted to run away. She replied saying she spoke to Alihi and told her that as she was hanging out with the Defendant her children have been crying for her. She said this as she had met Alihi's mother at Green Valley before coming to them. It was when she spoke to Alihi that they tried escaping. Then the Defendant chased her away and told her he will not change her money. Alihi walked behind her and the Defendant wanted to follow her. So she held on to him when he tried escaping. She said that she held his shirt and broke it then she held on to his trousers. When she held his shirt he struggled. She used her two hands to hold on to his trousers. It was put to her that when she held his trousers it was to get the \$70,000 she claimed. She said that he did not say he would repay her. It was put to her that the trousers was slack and she said he held on to the trousers as well. Then they moved into the house. She knelt down holding on to the trousers. He tried swinging her to remove her hands and that was when he hit her. It was put that he only pushed her hand and head. She said he only wanted to take out her hand and then he hit her. It was put to her she was pushed only but she maintained she was hit. It was also suggested that Defendant did what he did because she held on to his trousers and she agreed. After that Ian (DW4) came along when they still struggled in the house. She still

held on to the trousers. She was on the floor when he came in. It was suggested that when she was on the floor it was impossible for her hands to be on his trousers at the same time. She said that they struggled and when she was on the floor, she let go and then held on to him again. When Ian came she let go of her hand. The Defendant left with Alihi and she noted that they went to Faith SIKUA'S house. She followed them through short cut. She had gone there and continued asking for the Defendant to repay her money. The Defendant repeated that he did not want her anymore and at some stage she grabbed his trousers again but was eventually handled by DW5 Judson LEAFASIA who took her off from the grip she had on the Defendant. She left thereafter. It was suggested to her that she had wanted to humiliate the Defendant when she held on to his trousers the way she had been doing. She denied this proposition.

12. She was reexamined and asked to verify the incidents at Rove. She confirmed having met Alihi there with the Defendant. She was upset as the Defendant had been calling her saying he was at the office but he was not, then at Tinge still he was not there and now she finds him there was another woman he says is his workmate. He even said there was another male as well but she could not find any other male then. Defence as I understand from cross examination did not ask her as to who called at the time as stated by the Victim.
13. At Alligator Creek she again confirmed what had occurred and how she saw the same woman Alihi there with the Defendant again. She had gone for her money but the Defendant did not want to repay it and never said anything to sort out her feelings on the finances she had been spending on him during their relationship. She also confirmed the physical abuses occurring during the incident subject to the charge against the Defendant in this case.

Courts assessment:

14. In my assessment, I found the Victim as an honest and reliable witness. She actually admits to having done wrong things like slapping the Victim to cause the redness to his eye. She admits having damaged the laptop but agreed it only cracked and not broken. At Rove she admitted to throwing the laptop bag thinking it was the Defendants as it was black like his. She also admitted to having bitten the Defendant during the time they struggled at Alligator creek when she tried to be released from his step on her neck. She also admitted to throwing stones at the car Kathy was on with the Defendant. These are all clearly sensible as she did not make it appear being helpless but presented her evidence as sensible.
15. The incident at Rove also showed how the Defendant made a fool of the Victim in calling her and misleading her about being at the office then at Tinge. He has himself to blame for causing what occurred during that incident. The Victim maintained her position on this all throughout the cross examination and then reexamination.
16. As to the incident subject to the charge in this case, I would understand how the evidences would not be accurately laid out step

by step as it is an event with fast moving actions of struggle between the Victim and the Defendant. Clearly she would not recall every action from the first point of contact with the Defendant until the end. It would only make sense that she would recall the main actions occurring then like how she first tore the Defendant's shirt and then grabbed onto him when he wanted to escape with Alihi. And the main assaults on her body which was a kick on her, hit on her and step on her neck. These were clear assaults she maintained. I could only be satisfied with the neck as it was supported by the medical report while the others did not actually tell me which part of her body she was kicked at and which part the Defendant hit. I do not have evidence on where the hit was on her body and the kick as well. There was only a kick on her leg but which was not seen on the medical report as she only had a swollen feet which is vague in my view. This was also not confirmed through reexamination for verification purposes. Prosecution is reminded to ensure he focuses on his elements to prove and how best to prove them in court. Failure to do so results in such analysis by the court which is detrimental to his case.

PW2: Dr Maxson Lifigao KWAIANI

17. The doctor's evidence is clear. He was at the private Natal Clinic on 16th Dec 2019 when the Victim came in as a patient. This was around 430pm. He conveyed to court how the Victim explained what had happened between her and the Defendant. That she was kicked on her back so she fell, kicked on her abdomen, thighs and neck and was stepped on her head when she was on the ground. She felt so bad and could not sleep well because of the pain. He also explained the physical injuries he saw on her. She had a small swelling scalp, bruises on her neck, neck was stiff and could not turn right or left, she also had bruises on her chest and ribs. However her organs like the lungs and heart were fine. Her tummy was not big, bruises on her right thigh and her fingers were not flexible. He prescribed antibiotics as he was worried she may have secondary infections. Also prescribed pain killers for her. He also corrected the date on his medical report as it should have been 16th Dec and not 12th Dec.
18. In cross examination the injuries found on the Victim were put to him as those that may have been sustained through some other causes than the version given by the Victim. An example is: accidentally hitting the door during a struggle. The doctor agreed and explained that pressure must have been exerted to result in the bruises.

Courts assessment:

19. In my assessment the doctors report was well covered by him, explained well and he was a reliable and credible witness. This is because he gave his honest opinion without hesitancy to appear unreliable in any way. I therefore accept his evidence in whole for this matter.

20. There was never any proposition of the injuries having been sustained apart from the altercation between the Victim and the Defendant to put my mind to seeing the injuries being sustained outside the incident at Alligator Creek as the time of examination. The examination was also done a day after the incident on 15th Dec 2019 as confirmed by the Doctor. The only propositions put were injuries being sustained through other means during the struggle between the Victim and the Defendant at the time of the incident. These were only put to the doctor and not the Victim. I therefore viewed defence case as accepting that all the injuries found on the Victim were those sustained through the incident at Alligator Creek with the Defendant.
21. As the law requires, as long as the court is satisfied beyond reasonable doubt of the prosecutions allegations on this standard of proof (beyond reasonable doubt) then the court must convict the Defendant according.

DEFENCE CASE:

DW1- Keith Naesol TEAHANA

1. He testified under oath and stated that he was never legally married to the Victim. Thus they have been in a defacto relationship all along during the relevant time from 2015 to 2019 when the incident occurred. They had met at the market when putting esky chicken to sell. After that her husband demanded compensation from him so they started their relationship after payment of the compensation. His parents paid compensation.
2. He confirmed that in November last year the Victim was in Australia. He was not aware when she arrived as also stated by the Victim when she said she changed her return flight. At the time they were still in a relationship and communicated through messenger. He could not recall the exact day she returned but stated it was a week day and probably Friday. He was shocked that she came to his office at the Statistics. The Victim stated she came for her cousin sister and he did not follow her then.
3. It was a Sunday after that that they met. He was drinking with Alihi then and an uncle at the market at Rove. They drank and his version is those at his office told him she called for him. He stated that the Victim kept calling but he refused to answer and it was Alihi who answered and gave him. He admitted he did not turn it off so the Victim may have known where he was from overhearing him. This was an evidence that was never put to the Victim which is a breach of *Brown v Dunn*.¹ This rule is captured in our Evidence Act 2009 section 57 (The provision allows the court to make orders on how to deal with such matters. In my view since the defence and prosecution did not wish to recall the witnesses again like the Victim to answer to these aspects of the evidence, I would disregard them totally for fairness sake to prosecution which is the basis

¹ (1894) 6 R 67 (HL).

for having this rule.) The Defendant even explained that he was scared of the Victim as she may have heard from her cousin that he was hanging out with Alihi so he was fearful she would come and cause public drama. The Defendant at this stage also stated that Alihi and himself were not in a relationship until after the incident. These were also never put to the Victim for that point of time at Rove.

4. Because of the above breach of *Brown v Dunn*, I am unable to accept the whole version of the Defendant in this case. Defence is reminded to always put his case to all relevant prosecution's evidence (in this case the Victim PW1) so they can have the opportunity to reply and state what they are able to then.
5. I now move on to the time she came around as this was put to her. In his version, she came and complained that he is her husband which is also confirmed by the Victim in her evidence. He stated she threw the laptop bag which was Alihi's but which was stated by the Victim as unknown to her it was Alihi's as it was black like his laptop bag. He stated that she also punched him and he fell because he missed a step on a small hole on the ground. After that he followed her to avoid public drama as people came around then.
6. They went into the vehicle and she was arguing the whole time. He said that she swore at him. He said he was silent the whole time while she continued to talk. She punched him on his left eye and bit him on his right bicep which he showed in court as having faded teeth mark. They got to the Airport motel and returned back. She suggested they go to Kaibia so he followed her. That was the Sunday. On the next day on Monday he was still with her at Kaibia as he said that she threatened to put him to shame if he goes to the office. This aspect of his evidence was also never put to the Victim. This is another breach of *Brown v Dunn* and must be disregarded as well.
7. On Tuesday he came down to the office. He said that the Enumerator called him to must go down to the office. The Victim said she will follow him. He told her he would get back to her after when he is done. He went to work. In the evening, he came out of his office and was shocked to see her at Tongs building. He said he did not hold any phone then as she broke it when they returned from the Sunday trip. She wanted to know his pin number but he refused so she broke it. She asked if he had finished, he said not yet. Later on he came out but she was still there. She asked for DVD so they walked to go get it and met her cousin Kathy. After meeting the cousin, Kathy suggested they go and discuss at Pacific Casino. They went there. He said they both drank alcohol but he did not. Then he stated that the Victim wanted to sit on his knee but he refused. He said his body was still sore and told her to sit on the chair. These evidences were never put to the Victim as well and a breach of *Brown v Dunn*. I therefore must refuse to accept them as it is not fair for prosecutions. The only part put to the Victim was the laptop incident which I will consider. At some stage during their sitting down at Pacific Casino that he claimed that the Victim was upset and she smashed his laptop bag. The Victim stated that it was

only a scratch or crack while he said the same but also used the word broke. This was on the side of the laptop. While there he also met a friend named David who lived at Lunga. Kathy suggested he pays fuel and they could drop him off. So they left and travelled eastward to Lunga. He stated that the Victim was still upset so walked away when they went towards the carpark.

8. They travelled eastward and an argument broke out between the Victim and him. He claimed that she must have got mad at a joke that Kathy stated. She wanted to jump out so at Uncle Alick at King George School area she got off as she did not want to follow them anymore. They returned after dropping off David. They saw the Victim opposite Tongs area at Jimmy Rastas stock painting area. Kathy tried calling her but she refused and threw stones at them which hit the windscreen. The Victim stated this as well in her evidence but she did not state where the stones reached. This was also sensible as it was dark time when this occurred. They left her and he asked to be dropped off at Tinge. He stated that Kathy and her boyfriend wanted to report the Victim to police on the damage to get compensation as the car was not theirs. During their travelling towards Tinge the driver (Kathys boyfriend) noticed a rav4 following them. They got to Tinge and noted the Victim coming out of it. She argued with Kathy and then went towards their house (Defendant's parents) and threw bottles back at them. They escaped from her suggested by Kathy. He told them to go westward and wait a while before he can be dropped off. They did so. They dropped him later at his parents' home. He called for his parents but they must have slept so he slept at the hammock. He slept until morning on the hammock. He said that his bag went missing while he was sleeping and it was later that the Victim admitted to taking it. Again this is new evidence never put to the Victim to answer to which is unfair as well and I must therefore disregard it for breaching *Brown v Dunn*.
9. On the next day being Wednesday he followed Kathy and her boyfriend to report the damage to police. He went to support them. He also never met the Victim.
10. On Friday he went down to collect his payment for his work. Then he met with the Victim at some stage. He said they drank abit. And at that stage she told him to move on if he desires so. He said he told her that he has decided to move on. Again this was not put to the Victim when she testified and therefore I will disregard again based on *Brown v Dunn* rule.
11. He then stated that they went to Town Ground and then to Central Police Station (CPS) which the Victim also stated in her evidence. They got there and according to his version, they took their payment and then they gave the Victim the \$200 they had borrowed from her. She left after that. He then met with Alihi and he stated that Alihi had been at Rove to collect her payment unlike them collecting their payment at CPS. Alihi had to wait on him to give identification for officers he worked with for their payment. After that they left to go to Henderson.

12. They walked out and saw the Victim at Mendana side of the road. They tried avoiding her but she eventually caught up with them. She approached him and demanded \$1000 for visa payment on an earlier date. This was again never put to the Victim which should have been done. I also disregard this. It was only put that she asked for money. Defence should have specified that it was Visa money to the Victim so she could fairly respond to it.
13. They got to CPS again and tried sorting out the problem. They left after she left the station first.
14. After that Alihi and he left for Alligator together.
15. On Saturday he was at Alligator and never met the Victim. He said he stayed at Alligator the whole day.
16. On Sunday 15th Dec 2019 he confirmed also being at Alligator. Alihi was still with him. He saw Victims rav4 coming around. She parked at the ladder and walked up to them. She came and asked if they live together but they were quiet. Then she demanded for repayment of her money. Also told Alihi to go back to her mother. He told her to go back and not come to cause problems as it was a private area. She then approached him and punched his chest, and grabbed his shirt and tore it. After that she grabbed his shorts which had rubber on the waist. She grabbed at the Defendants hips. He struggled and told her she would pull down his shorts while she told him to kill her or bash her up. (this was again never put to the Victim to answer to it on how he claimed she told him to bash her up or "killim" as he said) He asked her why. After that they continued struggling. He wanted to come out of her grabbing so took her to the inside of the living room. Whilst inside he tried taking out his hands on him while the other hand held on to his trousers. He was unsuccessful. The Victim was sitting down on the floor then. In that position she used her body as the weight to hold herself down. That was when Ian BOBBY (DW4) came around. It was about 3 ½ minutes estimated from the time she first held his trousers to when BOBBY came. BOBBY told him to leave with Alihi and go to his house. It was asked of him if he hit her at the time she grabbed his trousers but he denied it. He said that it was her who bit his right thigh above knee cap.
17. The Victim followed them and kept saying she would follow them unless a restraining order was in place. He continued telling her to leave and returned to her house. During that time she followed them he claimed that she grabbed his trousers again. He pulled her towards Faiths house. He asked for help. Judson who is Faiths husband came along and he helped in pulling the Victim out. He did this from his back so the defendant could not see how he released her from him. Judson is DW5. The Victim left after that.
18. He later went to get a Doctor's report on his injuries. This was about 2 days after the incident. This was for the 2 bites he received from the Victim from the Rove incident and the one at Alligator. And also for the eye she had punched. His doctor was at the National Referral Hospital (NRH) named Dr Paul AIRAU and is DW3.

19. In cross examination prosecution suggested that he had lied to the Victim saying during Rove incident that Alihi was a workmate. He denied and said she is a workmate.
20. He also stated he had been living at Tenaru with a grandparent so not always with Victim. Prosecution also put his case again to the Defendant about how he wip the Victim because she had grabbed him. He denied and said only held on to her wrist and tried to pull those out. He used force to take out the grip on him. He maintained this version and said he forgot if he stepped on her neck or not. He also confirmed again the bite on him by the Victim.
21. In reexamination he stated that he never wip the Victim nor did he ever step on her neck.
22. I asked a question on the mobile he stated Victim broke on Sunday after being at Rove with Alihi and following the Victim. This is because he had also said that the Victim broke it then but then on Tuesday of that new week the Enumerator called him. When I asked, he answered saying the Victim broke it on Sunday and then he took it back at the Victims house. This is quite a confusing evidence from him.

Courts assessment:

23. I found the defendant to have several new and shocking evidence which were never put to the Victim to be fair and comply with *Brown v Dunn* rule. I have highlighted his aspects of evidence based on these. With these reoccurring incidents of new evidence elicited though him in court it appeared to me that he is an unreliable witness whom I cannot trust the honesty of his evidence. Other aspects of his evidence which causes more concern to me are those whereby he said Alihi took her payment at Rove while Alihi said it was at Central Police Station. It is quite difficult to note how this difference can be accepted and can come about in such manner as Rove and CPS are totally two different locations that should be easily remembered as compared to events and incidents like the struggle he had with the Victim.
24. Another area of concern I have for his evidence is how he continuously make it appear in court as being the Victim in the whole scenario of the situation. For instance how he stated that he never harmed the Victim in any way at Alligator creek and that it was the Victim who did that the whole time. The injuries sustained on the Victim from her medical report was not disputed as well. He also argued self defence to justify that it was because the Victim did not let him go. This was quite confusing as the Victim actually does not appear older than him and stronger. They appear to be of equal physical posture in court. If he could pull or drag her into the living room from outside and can also swing her around to try and get her grips off from her, then surely he is still strong enough to counter her grabbing on his trousers to release himself.
25. His unreliability has made me rule out most of his evidence and have cautious approach over him.

DW2 - Martha Moana Alihi TUHAIKA

1. She lives at Alligator and is 28 years old. She confirmed being at Rove with the Defendant drinking with an uncle of the Defendant. The Victim came along and argued with them. She grabbed the laptop bag and threw it into the sea. She also stated that the Victim assaulted the Defendant by also stating that she hit his chest, she also shot at them with a stone when the Defendant went to stand beside her. Then the Victim approached Defendant and grabbed him behind the market house using her arm to squeeze the neck of the Defendant and said "this 1 hem husband blo me hem paym me".
2. At this stage I noted the extra assaults she indicated which the Victim and Defendant never stated in court. This was also never put to the Victim by the defence counsel which clearly must have meant that she never instructed him on it thus never put these to the Victim. This is a breach of *Brown v Dunn* as well and I must disregard.
3. After the Rove incident she also described the incident at CPS when they took their payment. She said it was at CPS while the Defendant stated it was at Rove that she took hers. This must have been obviously stand out to defence so he asked her again when she got her payment for work on that day and she maintained it was at CPS. Clearly this is contradictory to the Defendants own version and in my view it is quite unbelievable that they would both have different versions on this as Rove is clearly different from CPS.
4. She further elaborated on how she took her money and waited on the Defendant to take his. After that she saw the Victim and told Defendant to go see her or they will encounter problems. Defendant came later and they walked to the art gallery and museum area when they met the Victim who came from the front area of Mendana, she came to ask for the Defendant to repay her money. They went to CPS to sort it out. After being with police the Victim left first before they left to Alligator.
5. We now move on to the Alligator incident on 15 Dec 2019. She confirmed being with the Defendant on Saturday before that incident. And she was still with him on the date of incident. Her version is very much similar to the Defendant. However she indicated that the Victim pulled the Defendant into the house while the Defendant stated he swung or drag the Victim into the living room. She also stated that Vicky came around. She is a cousin of the Defendant. She stated as well that if the Defendant didn't stop the Victim he would have had his trousers down and would be naked. This again was never put to the Victim and the Defendant. It's quite confusing as to the line of questioning the defence did to her, the Defendant and cross examination of the Victim. These theories should have been gathered from all these witnesses so we could hear all their independent and individual explanations on such matters.
6. On her evidence of the Defendants cousin Vicky coming along and also watching the Defendant and the Victim when they struggled in the living room while they stood at the door, it was confusing as these were never put to the Defendant and the Victim to see if they had seen Vicky at the time or not. They only confirmed having had

Alihi around at the time. This Vicky aspect of the evidence should also be disregarded as explained above.

7. She also stated that the Defendant never punched the Victim at that relevant time.
8. She left with Vicky and DW4 came through to the Defendant and the Victim. She never saw how DW4 parted the Defendant and the Victim as she had left already. With the Defendant's version, he had said that Ian BOBBY told him and Alihi to go to his house.
9. Alihi then stated that the Defendant came after her and told her that DW4 had instructed that they go to Wendy CHARITY'S house. This is definitely not Ian's house as stated by the Defendant. Ian was never asked this aspect of the incident. The map which is PW1a confirms these houses are different from each other.
10. On other aspects of her evidence of the incident they were exactly mirror image of what the Defendant had said. For instance, the Victim continuously followed them after the incident where the charges allegations occurred. Alihi stated that the Victim followed the Defendant and her and though Defendant chased her away, the Victim said only if they have restraining order against her will she stop following him. This was also what the Defendant had said. The words uttered by the Victim at CPS after they met police to sort out their issues when she said "feelim yet ia" was also similar to what the Defendant had said "ba ufala feelim". Her description of what the Defendant did to the Victim of pushing her away to try and have her losen her grip is also nearly exactly similar to the Defendants version.

Courts assessment:

11. My assessment of DW2 is that she is an unreliable witness. This is clearly understandable as she is now the current partner of the Defendant. They had started their affair at that relevant time and would make sense as to how her version would be very much similar to the Defendant as compared to the Victim for some aspects of her evidence. There are also some aspects of her evidence which have breached *Brown v Dunn* as well and therefore I disregarded them. Other aspects of her evidence had extra actions and assaults of the Victim against the Defendant as well which I have highlighted. Because of these I have ruled her out as not credible and truthful.

DW3, DW4 and DW5:

1. The rest of the defence witnesses DW3, DW4 and DW5 have also been assessed. I note the dynamics of relationships between all these people and have weighed their evidences in accordance to this factor.
2. The doctor's medical report is all fine and well presented with the photographs attached. I note the injuries sustained by the Defendant as well which were found on the medical report. His evidence is independent and relied upon and accepted.

3. DW4 and DW5 are family members of the Defendant and I also take cautious approach on their evidence. However most of their evidence is clear and understandable.

DEFENCE CLAIM FOR SELF DEFENCE:

1. I also note this being advanced by defence to justify his client's case.
2. The case of *Bolea v Regina*² has also been assessed.
3. In applying that case to the present scenario, I must first look at Victim's attack on the Defendant that provided legal justifications for self-defense to take place from the Defendant.
4. All I see is continuous grabbing of shorts after she came to the house and told Defendant of her disagreement over the money she has spent on him.
5. Both parties especially Defence has agreed that the Victim and the Defendant were in a domestic relationship at the time of the incident so this element has been made out through evidence. My reading of the evidence from the trial is that the Victim and the Defendant had disagreements and issues which were not discussed thus they entered into arguments every now and then that led to the time of the incident. They were in an on and off relationship at the material time that is why they would be together at Pacific Casino, Kaibia and then meet up every now and then leading to the incident date. The Defendant continuously told the Victim it's over while he continuously spent time with her willingly example at Canoe Bar, Kaibia and also borrowed money. It's never put in evidence that he went to the Pacific Casino for instance under duress or threat or other manner involuntarily.
6. This confusion between parties on their relationship and their behavior was what I found as one of the major contributing factor of what ultimately transpired on 15th December 2019 at the time of the incident.
7. The physical abuse complained of by the Victim is in two folds as found on the particulars of the charge. First is that the Defendant kicked her backside and the second assault was a kick on her neck.
8. As assessed through each crucial witness of this matter particularly the PW1 and PW2, DW1-Defendant and his doctor as well as others, I have ruled that I can only accept prosecution witness because of how she presented her evidence and her demeanour in court.
9. Her doctor was an independent expert evidence and his evidence was largely accepted by defence which I also find is credible and reliable. Defence on the other hand had evidences that were recent inventions in court as they were never put to the prosecution's witnesses when they came to testify. There were also essential parts of their evidence which did not make sense in my view as well thus I could not rely on their evidences and disbelieve the prosecution's evidence.

² [2013] SBCA 15; SICA CRAC 18 of 2013 (8 November 2013).

10. Since I have accepted prosecution's evidence, I must now assess if the Victims continuous grabbing of the Defendants shorts/trousers would validate or justify the Defendants actions in assaulting her and particularly stepping on her neck (self defence).
11. Looking at the grabbing she did at the relevant time which was done at the balcony and then ended up in the living room which is away from the balcony, I note that this is not a life threatening action against the Defendant as is usually required for self defence to arise. Defence has accurately addressed this too in his closing address in paragraph 8.5. As I understand him, he suggested that the injuries on her medical report may have been sustained during the heat of the moment by the Defendant due to self defence. This suggestion should have been put before the Victim so we could hear from her. These should have been advanced to put to her that she had injuries on her medical due to that incident. However these were never put to her. Nor were they suggested in any way to allow her to answer on the possibility of being injured due to the heated moment with the Defendant and he may have done those to try defend himself from her. The failure to do so makes me see this as a none self-defensive act by the Defendant. Furthermore there could have been other optional avenues for the Defendant if what his counsel is saying is genuine. He should have called for help knowing they are around his family relatives at the time. The exhibit PW1a shows that his relatives' houses are around where they struggled. This may have avoided any potential assaults from him and also assist to break her off from him. There could have been questions put to him as well to explore his state of mind then to fully understand him. For instance his patience and feeling at the time she was grabbing his shorts all throughout. If he had stated he was under immense stress at that point of time wanting to be free and disappointed she was just grabbing him like that, it would have also made sense for him to act in self defence then to justify his reactions.
12. This however never got to be elicited. All we have is the grabbing and then the injuries sustained whereby the Victim stated she was kicked, hit at and stepped on the neck.
13. Therefore her version supported by the undisputed medical report of PW2 confirms to me beyond reasonable doubt that she was assaulted. The kick and hit on her were never confirmed with the locations of these assaults on her thus I cannot be certain beyond reasonable doubt as to where the kick and hit landed on her so would not be able to have those made out in accordance to prosecution's case based on his particulars of the charge.
14. I am only satisfied that the Defendant stepped on her neck as she stated throughout her evidence, supported by the bruised neck and stiff neck found on her medical report confirmed by the doctor PW2. These injuries are consistent with how she described the Defendant assaulted her. And in my view could not have been done out of self defence as well as she only grabbed the Defendants trousers at the relevant time.

15. Defence as I stated had never put to her of other possibilities of sustaining the injuries during the struggle between herself and the Defendant. This was only put to the doctor which is quite confusing as she is the one with the injuries and with the Defendant at the time. So it would have been fair if defence place these before her as well so she could provide her version on these aspects of injuries sustained.
16. As the Court of Appeal case of *Bolea* stated, some acts could be easily avoided than using force which is disproportionate.
17. This is a case in my view that provides a scenario fit for the Defendant to have easily avoided it than assault the Victim the way he did which included stepping on the neck. The neck is a vulnerable place of the human body and having the Victim down and stepping on her neck the way she described it is a helpless situation that I have found in this matter. This is life threatening.
18. I am of the view as well that the grabbing alone could not have resulted in the stiff neck and bruises on the Victims neck. The grabbing was done by both of her hands on the Defendants trousers therefore how could she sustain the neck injuries through that action alone? The Defendant said he tried loosening her grip on his trousers as well by gripping her hands and trying to also hold on to his trousers at the same time. He denied having hit her, kick her or step on her neck as well. He only said he swung her and tried loosened her grip on his trousers. These actions are not directly done to the Victims neck and or indirectly to have possibly caused the neck injuries she sustained as well. This is why I have stated that the only possible cause would be as the doctor stated pressure exerted on those parts of her neck resulting in the bruising on the neck and the stiff neck.
19. This would be from the Defendant who had stepped on her neck as she said in court and could not have been from any accidental causes which were never put to her by defence.
20. This is the only particular aspect of the charge that has been made out. The kick and hit are not confirmed by the prosecution as to the exact location of where they landed on her boy. Therefore I am not satisfied that the Defendant did any other injuries on her apart from the stepping on the neck. The other injuries on her body had been sustained from the struggle but she had not provided specific evidence as to how she sustained them thus I could not have them proven beyond reasonable doubt. There was also the particulars on the charge that prosecution alleged that the Defendant kicked her backside. However these were never confirmed through evidence and I found no medical report to support it either. Thus that fails.

COURTS ASSESSMENT OVER ALL THE EVIDENCE BEFORE ME

1. Due to the analysis I have made relating to all evidence presented in this trial, I am left with the Victim whom I have assessed as credible and reliable because of the reasons I have provided already.

2. The only problem with her evidence is it is unclear as to where the Defendant kick her and hit her on her body. The neck area was the only aspect she confirmed as being stepped on and supported by the medical report. Defence never cross examined her that she had sustained the injuries due to the struggle and possibly hitting the door or other hard objects around her at the time. This was only put to the doctor.
3. I refuse to accept defence proposition that the Victim had abused court process in filing a complaint against him. This is because her medical report supports her allegations and this report was largely undisputed by defence as he stated so in his closing address paragraph 7.18 and 7.19.
4. Defence failure in doing this has enabled me to be satisfied beyond reasonable doubt of the following facts as proven by evidence:
 - a. The Victim had gone to Alligator Creek to the Defendant's house (confirmed by the Defendant to be his mother's house) between 1100hours and 1200hours.
 - b. When she got there she climbed up the ladder and met the Defendant and Alihi at the balcony area. She asked for repayment of her money from the Defendant and made comments against Alihi as she had met her mother earlier at Green Valley where Alihi's mother indicated to her that Alihi had been neglecting her children.
 - c. She also was upset with the Defendant as he chased her away instead of addressing her issue of the money being spent on him during their relationship. This aspect of the evidence was never disputed by defence. They have never disputed this which means the claim she made was based on a reasonable and proper cause (spent so much on the Defendant reaching about \$60,000-\$70,000). If defence agreed to this, the Defendant should have at least provided some proper reasons to her to ease her stress over it at the relevant time. Its absence only allows for me to accept her evidence on this.
 - d. She then noted that he tried to escape so she grabbed his shirt and tore it. After that she grabbed his shorts/trousers. She did this to disallow him to escape and answer her on how he will repay her. He objected as well and therefore during that struggle of the Defendant wanting to escape and the Victim holding on to his trousers, the Defendant took her down, kicked her (not known as to the location of her body), hit her (not known and not satisfied beyond reasonable doubt as to the location as well). And also stepped on her neck as supported by the Doctors evidence (PW2).
 - e. After that she continued holding on to him on his trousers. They got to the living room from the balcony. The struggle continued and then DW4 Ian BOBBY came. He stopped the altercation between them. The Defendant and Alihi left the house. They went out toward Wendy CHARITY'S house on the map exhibit PW1a.

- f. The Victim followed and still asked for the repayment of her money. The Defendant did not give in and still chased her away. She grabbed his trousers again but was eventually taken off by Judson LEAFASIA who is DW5.
- g. She left the scene after being handled by DW5.
5. On other vital aspects of the case but not crucial as the above evidences being established beyond reasonable doubt, the following are also established:
6. That the Victim was affected by the Defendant who would spend time with her (Pacific Casino, miss call her several times misleading her before she reached Rove and saw him with Alihi-DW2, stayed with her at Kaibia, borrowed money from her \$200 during that material time) and then would humiliate her by chasing her away like that at Mendana area meet up just after having borrowed money from her in the amount of \$200 with another workmate of his named David, deny allegations of affair with Alihi when he had been with her all along during the material time as well:
 - a. At Rove with her drinking with his uncle (as stated by Alihi in her evidence as well as his). The Victim however stated that he told her that the other is a workmate;
 - b. Met up with her at CPS after collecting their payment and going together to Alligator from that Friday;
 - c. Saturday he was together with Alihi at Alligator;
 - d. Sunday date of incident still together at Alligator.
7. I understand defence position that the claim for the amount of \$60,000-\$70,000 is unreasonable but putting a reasonable person's perspective over this would make some sense. She had spent so much which is undisputed and now as they are breaking away, the Defendant is acting in such manner that is unacceptable as well. He had confirmed still being in touch with the Victim as in a relationship when she was in Australia. And spending time with her after she arrived as well at the Pacific Casino, Kaibia and then borrowing money from her. All these actions showed he had not acted out that he had wanted that break out from her totally.
8. Because of what I have assessed the Defendant on and satisfied beyond reasonable doubt, I therefore disregard his evidence extent and would accept the Victims version more than his for the reasons provided already.
9. I have also been satisfied beyond reasonable doubt that both the Victim and Defendant's injuries supported by their respective medical reports were sustained during the time they were together at the material time from when the Victim arrived from Australia to time of incident.
10. DW3 is also independent medical evidence which I do not think was tarnished in any way. I sympathize with him for these injuries found on his body but in this case, the focus is on the Victim whom I have to assess in light of the charge laid against him.

CONCLUSION:

1. If I am satisfied beyond doubt that the Victim and Defendant struggled as they described particularly the Victim and find Victim as a more reliable witness because of her honest acknowledgement on things she did;-
 - Laptop thrown
 - Slap Defendant
 - Bite Defendant
 - Charge says kick backside and neck.
2. Then I therefore am also satisfied beyond reasonable doubt that the Defendant did step (and not kick) the Victim's neck at the relevant time and did not kick her on her backside as placed on the charge against the Defendant. That is the only aspect of the charge I found as being made out. The Defendant is therefore convicted for the charge of domestic violence, by physically assaulting the Victim Jean KINI on 15th December by stepping on her neck.

COURT ORDERS:

1. Satisfied beyond reasonable doubt that the Defendant is guilty as charged.
2. He is guilty for the domestic violence in the form of physical abuse by stepping on the Victim's neck on 15th Dec 2019 which is found on the charge for him.
3. His sentencing hearing will be on the 30th Nov 2020 at 130pm.
4. Prosecution to file and serve defence with his sentencing submissions by 23rd Nov 2020 and;
5. Defence to reply and mitigate by 30th Nov 2020 when we will come back to court.
6. Bail extended for the Defendant.

