

**IN THE DISTRICT COURT
AT HAMILTON**

**CRI-2017-019-002756
[2018] NZDC 296**

NEW ZEALAND POLICE
Prosecutor

v

EVELYN PATERSON
Defendant

Hearing: 11 January 2018

Appearances: Sergeant M Hepworth for the Prosecutor
S Youn for the Defendant

Judgment: 11 January 2018

ORAL JUDGMENT OF JUDGE N D COCURULLO

[1] Ms Evelyn Paterson is charged that on 2 May 2017 on three occasions she is alleged to have threatened to kill three different persons. The matter is ready to proceed to a hearing.

[2] The prosecuting sergeant makes application under the relevant statutory section to admit as a hearsay statement the written complaint made by one of the complainants, [name deleted – complainant 1]. That application is opposed.

[3] This matter came before the Court for its first scheduled defended hearing on 19 October 2017. There was no opposition to a request to adjourn by the police. As I understand it, it was based upon a then recent 27 September 2017 medical report that [complainant 1] is terminally unwell with cancer. The new date was set.

[4] Today the police are in exactly the same position. They rely upon that now somewhat dated 27 September 2017 medical report and make the position that that complainant is unavailable following the definition as is set out in the Evidence Act 2006.

[5] The sergeant points me to s 22(1)(c) indicating that I am able to dispense with the formal requirements of written notice for hearsay to be provided to the defence. In that regard he responsibly accepts that he has only just been seized with the file. There has been no written application to admit this statement but I observe that not only has the statement been provided to defence counsel, but in addition to that the statement has been initialled by the complainant and signed by her and I am inferring that Constable Fargher would be a witness to indicate that the statement was taken.

[6] I suspect that it is in the nature of the distribution of files with the police that has seen the written application for hearsay not be forwarded before now.

[7] I enquired of Mr Youn as to whether he is also mounting opposition to the request in addition to his contention that the complainant is not unavailable but also as to whether he is challenging the reliability of the statement. He is not. I think that that is a responsible position to take. I point to the signing of the statement made to a police officer and the ability for the police to le[a]d before the Court the making of the statement.

[8] The matter which concerns the Court is that the oral application has to be made given the way that it is presented together with the lack of any updating information in written form from the doctors about this complainant's unavailability. One might say as the sergeant has indicated that there is inevitability about the condition as disclosed on 27 September 2017 medical report but I am unaware of that and as I understand it the sergeant has only been seized with the matter of recent times.

[9] There is a pragmatic position in respect of the manner - if I allow the statement is as well and that is what do I make of the weight of the statement particularly if as is indicted by a not guilty plea, the allegation is denied.

[10] This is a finely balanced application in my view. On balance whilst I have a strong inference to be led that this witness is unavailable (I have a clear view that this statement is reliable) I am not in a position where I would dispense with the usual requirement some of the Evidence Act for written notification be given particularly given the circumstances is the same as it was in October and I could not get to the concluded position as to this witness being unable to give evidence. For those reasons the application for hearsay evidence is declined accordingly.

Judge ND Cocurullo
District Court Judge

Date of authentication: 12/01/2018

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