

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN
[SQUARE BRACKETS]

**NOTE: PUBLICATION OF NAME(S), ADDRESS(ES), OCCUPATION(S) OR
IDENTIFYING PARTICULARS, OF COMPLAINANT(S) PROHIBITED BY S
203 OF THE CRIMINAL PROCEDURE ACT 2011.**

**IN THE DISTRICT COURT
AT WELLINGTON**

**CRI-2017-085-001546
[2018] NZDC 4708**

THE QUEEN

v

[DAMION BOONE]

:

Appearances: S Carter for the Crown
P Knowsley for the Defendant

Ruling: 13 March 2018

RULING 1 OF JUDGE C N TUOHY

[1] During the cross-examination of the complainant and in the absence of the jury, Mr Knowsley, counsel for the defendant has made an application under s 44 Evidence Act 2006 for permission to put questions to the complainant relating directly or indirectly to her sexual experience with a person other than the defendant. Pursuant to s 44 Evidence Act that can only be done with the permission of the Judge.

[2] Section 44(3) provides that in an application to the Court for permission the Judge must not grant permission unless satisfied that the evidence or question is of such direct relevance to facts in issue in the proceeding that it would be contrary to the interests of justice to exclude it. That is quite a high hurdle. The purpose of this

section is to prevent a complainant having her sexual history unnecessarily trawled through during the course of a trial in relation to her or him.

[3] In this case, it is clear from counsel's opening that the defendant's case is that there was a consensual sexual relationship between himself and the complainant, although it may be his case that there was no sexual intercourse on the night which is the subject of the charge.

[4] The complainant, in her evidential video interview, which was made some seven months after the date of the alleged offence, indicated quite firmly that she was not interested in a sexual relationship with any male at the particular time. She gave reasons for that relating to her personal history. This explanation was given to support or explain her assertion that she was not interested in any consensual sexual relationship with the defendant.

[5] Last night or maybe this morning, a statement was made available to the defendant's counsel and to the Court about what she had said to two police officers on [date deleted] 2016, that is about two months after the date of the alleged offence and about five months before the date of her evidential video interview.

[6] In paragraph 34 of the formal written statement, the officer records that she had told them that she was currently pregnant and does not know how, and had been having sex with one person for a year but does not know whose it is, "*whose*" meaning whose baby it is.

[7] It has already come out through her evidential video interview at the Crown's request and without opposition that she did become pregnant at some stage and was pregnant within a relatively short time after this event. That in itself is not relevant from the information thus far given. It is plain that that pregnancy may have been initiated, the baby may have been conceived, after the event in question so therefore has no relevance. However, the statement that she had been having sex with one person for a year directly contradicts what she said in the evidential video interview about not having any relationship with a male at the relevant period, and before the

relevant period. That assertion helps to support her assertion that she did not have any consensual relationship with the defendant and was not interested in having one.

[8] Therefore, I consider that a question or questions designed to put to her the statement recorded by one of the two officers, are of such direct relevance to a fact in issue in the proceeding, the fact in issue being whether there has been a consensual relationship with the defendant, that it would be contrary to the interests of justice to exclude it.

[9] So, I permit questions confined to that. It is unnecessary to establish with whom she might have been having a relationship, nor is there any basis for questioning the complainant about her pregnancy or about any other form of sexual experience she might have had with anyone apart from the defendant.

C N Tuohy
District Court Judge