

**IN THE DISTRICT COURT
AT NAPIER**

**CRN 15041002660
[2016] NZDC 3683**

NEW ZEALAND POLICE
Informant

v

MARK JEFFREY RUSSELL
Defendant

Hearing: 7 March 2016

Appearances: Sgt C Flood for Informant
Mr C Robertson for Defendant

Date of Decision: 8 March 2016

RESERVED DECISION OF JUDGE G A REA

[1] The Defendant is charged with assaulting the Complainant, Jenny Tanzer, at his flat in Wellesley Road, Napier on the night of 13 October 2015.

[2] According to the evidence given by the Complainant she was on her way to have an injured hand treated at the Wellesley Medical Centre when she met up with the Defendant and was invited to his home. The Defendant and Complainant know each other well and have previously been in a relationship.

[3] The Complainant met the Defendant's new flatmate. The Complainant and the Defendant left the address for a short time to purchase alcohol and when they returned they had a few drinks and some tea.

[4] It is accepted that around 9pm or 9.30pm the Defendant went to bed because he was not feeling well. The Complainant remained at the flat socialising with the Defendant's flatmate. On two occasions the Complainant went into the Defendant's bedroom to check on him as she was concerned about his health.

[5] According to the evidence given by the Complainant at about midnight the Defendant came out of his bedroom and was very angry and abusive towards her and towards the flatmate. He considered that they were making too much noise and he wanted them to either go to bed or leave the house. It is clear that this message was conveyed to the Complainant and the flatmate in abusive and unpleasant language.

[6] According to the Complainant the Defendant then grabbed at a cigarette or cigarettes she had in her hand and when she resisted him taking those items he punched her very forcefully above the left eye causing an injury.

[7] The Complainant says that following the blow the Defendant continued to "nut off". He was still swearing and abusive and both the Complainant and the flatmate then left the flat.

[8] There was a fence and a locked gate about six foot high securing the property from the street. There was a debate in the evidence as to whether that obstacle was at the back of the property or the front of it but for the purposes of this case the position of the fence and gate is irrelevant. The Complainant says that to escape she and the flatmate had to climb over the fence or the gate and after that had occurred she rang the Police and an ambulance and was taken to hospital.

[9] Acting Sergeant Power spoke with the Complainant shortly before 1am. She was bleeding heavily from a cut above her left eye. At that time the Complainant told the Officer she had been assaulted by the Defendant at his flat in Wellesley Road.

[10] Four days later Acting Sergeant Power spoke with the Defendant at his flat. He arrested him for assaulting the Complainant. In response to the allegation the Defendant told the Officer "there was no assault she jumped the fence".

[11] The Defendant gave evidence before me. He accepted a good deal of what the Complainant said but categorically denied assaulting the Complainant. He accepted that he had ordered the Complainant and the flatmate out of the flat because he was unhappy with their noisy behaviour. He said that while he did not actually see the Complainant climb the fence or the gate that would have been the only way she could have got out of the front of the property. It was his view that the injury that the Complainant suffered was caused as she left the property and had nothing to do with any assault.

[12] As often happens in cases like this the allegations are made by the Complainant and denied by the Defendant. There is no other independent evidence available as to what happened although there is clear evidence that the Complainant suffered some form of trauma in the area of her left eye. There was nothing in the way the Complainant or the Defendant gave their evidence that could lead to a conclusion that one was more truthful than the other. It was put to the Complainant by Mr Robertson that the complaint was false and borne out of the Complainant's frustration that the Defendant would not resume a relationship with her. This was denied.

[13] While it is highly likely that the Complainant's version is correct there was nothing in the Defendant's evidence or the challenges made to that evidence in cross-examination that could lead me to a conclusion that I was sure he was being untruthful.

[14] While the Complainant's version may well be true I cannot be sure beyond reasonable doubt that it is. In the end I simply do not know where the truth lies and on that basis the charge must be dismissed.

[15] When the Defendant is notified of this decision he is no longer required to comply with his bail conditions and he does not have to appear in Court on 14 April 2016.

G A Rea
District Court Judge