

**IN THE DISTRICT COURT
AT BLENHEIM**

**CRI-2014-006-000997
[2016] NZDC 3375**

THE QUEEN

v

DAWSON RODERICK

Date of Ruling: 2 March 2016

Appearances: M A O'Donoghue for the Crown
A J McKenzie and M Starling for the Defendant

Judgment: 2 March 2016

RULING 1 OF JUDGE AA ZOHRAB

[1] The complainant, Ms Gray, was interviewed by police in Tauranga on 9 January 2014 by way of DVD interview. In the course of her DVD interview she mentioned that she had mentioned to a cousin, Stephania Barnet, whom we now know to be Stephania Adamson, about what had happened and that was very close to the time of the alleged offending by the defendant. So right from that date the police had been aware of a potential witness who could support the complainant's accounts and who could show allegedly a degree of consistency.

[2] What has happened subsequently is that the defence were very recently provided with a statement from Ms Adamson, taken on 25 February of this year, and that statement has very much caught the defence by surprise, because it was the first they knew of any statement taken in relation to her.

[3] The defence have raised objection to that because they have not been able to investigate, to any great degree, the contents of the statement. More particularly, their concern is that she should not be able to be called as a witness at this point because the police have known about her since January 2014, and it seems that the only real inquiries were relatively recently made with respect to calling her as a witness and, as a matter of fairness, she should not be able to be called. There are also some other concerns about her statement because the defence concern is that it goes further than recent complaint as such, and moves into the area of propensity evidence and the like.

[4] The Crown say that one has to be realistic about the position. Yes, the name was mentioned in January 2014, but this was a large investigation and it seems that Ms Gray was unco-operative for a period of time, and has only relatively recently provided contact information, with the detective already having made his own inquiries.

[5] It was thought best to deal with the matter by way of voir dire rather than by way of submission as to background, and Detective Irving gave evidence for the purposes of the voir dire. He confirmed that once Ms Gray's statement was taken, that there was a transcript and then there is a standard approach to then investigating the matters that arise out of that, and it is normal, obviously, to look to interview, my words not the detective's words, a recent complaint witness. He made checks on the NIA database, was looking for licence references and things like that, but could find no reference to Ms Adamson under that name or the name of Barnet. He could find no other files associated with either of those names.

[6] At some point he attempted to contact Ms Gray to obtain further information, so he could then look to contact Ms Adamson but, for a period of some six months or so, Ms Gray was not being co-operative and did not want to be contacted except for Court dates and the like. The detective indicated that there were a number of inquiries going on involving alleged sexual abuse at this time, Operations Alpha, Beta, Charlie, Delta Echo, and there seems to be some interrelationship with those. I am not familiar with the extent of the operations, but it seems that these involve allegations of sexual abuse and that there are some witnesses who are co-operative

and some who are not co-operative, and there seem to be some splits along family lines which sort of complicate the issue.

[7] The detective is not on Facebook, so he is not able to comment on how easy it would be to access Facebook and the like so as to be able to find Ms Adamson or Ms Barnet, so he made those inquiries and was not able to find the person.

[8] Then what happened was towards the end of last year it was a situation where they were compiling all of the transcripts for the interviews and reviewing matters and things of that sort, and then, by this stage, Ms Gray was on board with the investigation, and it was a situation whereby the detective was able to speak with Ms Gray on 19 January of this year. He was given Ms Adamson's contact details, contacted her on 20 January. She was at work. They made an arrangement to talk again shortly thereafter, but they were not able then to speak until 26 January. The detective prepared a formal written statement which was sent to Tauranga.

[9] Then what happened was that there was a delay in the matter being returned from the Tauranga police. The officer, Detective Farrell, apologised for that and explained that he had been under some work pressures. Also, he had been to speak to Ms Adamson and there had been some alterations to the original statement, so there had to be an extended brief, and eventually what happened was that Detective Irving eventually got a reply on 25 February. So the original draft formal written statement was sent by him on 2 February, based on the discussion from 26 January. We have got this period whereby he does not hear from the detective. The other detective apologises and explains why it was not possible to return it earlier, and then what has happened is, shortly after that, there is a disclosure to the defence of the formal written statement which was taken on 25 February 2016.

[10] The defence are concerned about a number of matters. There is a lack of disclosure of this contact and matters of that sort as between the detective, and also Ms Gray in terms of inquiries as to where Ms Adamson is, and also the development over recent times of Ms Adamson having been contacted and also then has spoken and an initial draft being prepared followed by the final written statement.

[11] One of the matters raised by the detective is that, as he has been leafing through his notebook looking for references in relation to this case, is that a number of the inquiries and contacts would not be in that book, they would actually be in electronic form in the NIA system. It was suggested to the detective that he could have made inquiries on Facebook or he could have, if he was really keen, made inquiries through WINZ records which is what they do on some occasions, but the detective's position was, well, he does not recall making WINZ inquiries. The reality of the situation is that there are a number of inquiries, with some people being co-operative, some being unco-operative, that some people were able to be contacted quickly, and he says he simply could not find Ms Adamson. So that is the factual background.

[12] Obviously, in terms of the fact that this statement is dated 25 February 2016 is not, on the face of it, very satisfactory because it is shortly before the trial and, on the face of it, this is a witness that the police have known about obviously since Ms Gray's interview of 9 January 2014. But given the officer's evidence I do not think that I can be too critical of the officer, given the reality of multiple sexual abuse investigations going on at the one time, given the reality of the situation that both Ms Gray and Ms Iti were reluctant at various stages of the investigation, given that he had looked for Ms Adamson, and given that as best I can ascertain from his evidence that he has acted in a timely fashion when he had the co-operation from Ms Gray as to the whereabouts of Ms Adamson. So in my view, whilst I appreciate that this has only been disclosed relatively shortly before the trial, it is not the fault of the police. It is more the reality of a multiple investigation with witnesses being reluctant, for obvious reasons and the reasons have been given by the witnesses in the witness box as to the ambivalence at various stages and their being torn in various ways for various reasons, and why they have not wanted always to co-operate.

[13] So the reality of the situation is that it is not the police's fault that this has been disclosed and prepared on a late basis as such. So whilst there is obviously a degree of prejudice to the defence, as there is always going to be with witnesses, the defence have obviously always known about this person as being a potential recent complaint witness. They have always had the opportunity, if they had wanted to, to

make inquiries and brief that witness and perhaps call that witness if they were so inclined to do so, and they have obviously had some time now to consider the contents of the brief.

[14] So I do not think it is appropriate to say, well, too late, so tough, you cannot call it. It seems to me that it is appropriate that the evidence be called, more especially what is at issue. It is just a question of the content of it.

A A Zohrab
District Court Judge