

**IN THE DISTRICT COURT
AT AUCKLAND**

**CRI-2015-004-009856
[2016] NZDC 3805**

NEW ZEALAND POLICE
Prosecutor

v

RAZEEL RAHAT ALI
Defendant

Date of Ruling: 9 March 2016

Appearances: F Calliney for the Prosecutor
Ms Scally and S Cossey for the Defendant

Judgment: 9 March 2016

RULING OF JUDGE E P PAUL

[1] This is an application brought by the police seeking a ruling that the complainant in this matter, Bibi Ali, be found hostile so that the police can cross-examine her on her prior statement.

[2] Briefly, Ms Ali is a complainant in a matter where her husband, Mr Razeel Rahat Ali, is alleged to have assaulted her, giving rise to a charge of male assaults female. The alleged assault is by punches and also the use of a knife, presenting it to the victim/complainant's throat at a time when he was very drunk.

[3] Ms Ali today has given evidence in essence that the statement she gave to the police on the night of the alleged offending is false. That because of the argument that preceded the alleged assault she has in effect made up allegations against the defendant which were motivated by her being angry towards him because of the things he said to her that evening. Ms Ali was given an opportunity to refresh her

memory from her statement as she, on a number occasions, said she could not recall. Even after being directed to the relevant passages of her statement she either maintained she could not recall or gave inconsistent evidence. I should add, prior to being presented with the statement for the purposes of recall, her evidence was the defendant was between sober and drunk, contrary to the statement she made where she alleges he was very drunk.

[4] The police rely on s 94 of the Evidence Act 2006. Having called Ms Ali, they invite me to determine that she is hostile and seek permission to cross-examine her to the extent authorised by me. The police, in terms of assessment of whether she is hostile, rely on s 4(b) under the definition of “hostility”:

That the witness has given evidence that is inconsistent with a statement made by that witness in a manner that exhibits or appears to exhibit an intention to be unhelpful to the party who called the witness.

[5] The witness has acknowledged the statement presented to her was made that very same evening of the alleged assault, so I can certainly infer the contents of that statement must have been fresh in her mind at the time she gave it and there is a caution in that statement which records:

I confirm the truth and accuracy of the statement. I make the statement with the knowledge that it is to be used in Court proceedings. I am aware that it is an offence to make a statement that is known by me to be false or intended by me to be false.

and the complainant has signed so it would appear she, at least, acknowledged she made that statement immediately after the alleged offending.

[6] The police say, in terms of that statement, she has given inconsistent evidence in a manner that exhibits or appears to exhibit an intention to be unhelpful to the police who have called it. Ms Calliney for the police refers to the inconsistency about the levels of intoxication in the statement made at the time. She describes the defendant as drunk. Today her evidence was he was between sober and drunk, somewhat ambivalent but clearly quite different from what she said on the night.

[7] Secondly, the police say what the defendant did in the house to the complainant she either cannot recall or she said those things because she was angry.

Thirdly, the police say that, in terms of the knife, the statement records it was presented to her, to her throat. She now says she knew the knife was present in the property as the defendant used it for fishing. Finally, the police say in her statement at the time she described herself as being extremely scared. Today, although initially saying in evidence she was scared, she modified that to saying she was “pissed off” with the defendant.

[8] It seems to me at least three of the points that the police rely on do demonstrate inconsistency. First, this man’s level of intoxication. Secondly, the contrast in what she says the knife was used for and in fact she has now provided another version of the reason for the presence of the knife. And thirdly, that she has in fact departed from her original statement, describing herself as being extremely scared to one of being “pissed off”.

[9] The defence oppose the application. They say the witness has provided in explanation either there is an inability to recall which may be related to her alcohol consumption which she acknowledged she had consumed wine and also she has explained the reasons for the contrary evidence.

[10] Whatever her reasons are today, it seems to me at least there are three examples where she has gone out of her way to provide inconsistent evidence:

- (a) The defendant’s level of intoxication;
- (b) Her explanation for the presence of the knife and the knowledge of it;
and
- (c) Her feelings of being “pissed off” as opposed to being extremely scared of this man.

[11] I am satisfied almost from the commencement of the complainant’s evidence she has endeavoured to distance herself from the statement she made on the night. She has attempted to avoid confronting the statement she made that night but in those attempts she has gone further than simply failing to recall and provided

alternative explanations which demonstrate an intention on her part to be unhelpful to the police who have brought the prosecution.

[12] Accordingly, I rule that Ms Ali is now a hostile witness and the police are entitled to cross-examine her on the entirety of her statement.

E P Paul
District Court Judge