

**IN THE DISTRICT COURT  
AT NELSON**

**CRI-2014-042-000737  
[2016] NZDC 3871**

**THE QUEEN**

v

**CELIA AFIOGA**

Date of Ruling: 8 March 2016  
Appearances: S K O'Donoghue for the Crown  
A J D Bamford for the Defendant  
Judgment: 8 March 2016

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**RULING 1 OF JUDGE D C RUTH**

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[1] At the point where Ms O'Donoghue is to re-examine the current witness, Senara Aiesi, a complainant in this case, she has raised with me, in light of answers given in cross-examination to Mr Bamford, an apparently conflicting statement in the written statement he made to police on 4 March this year. I firstly observe that of course 4 March this year is some four years after the actual event about which the statement is being made, and that would immediately raise in anyone's mind matters of memory and reliability. However, leaving that aside, I do accept, having read the statement, that in one part of it the witness does say that once he had arrived in Blenheim [details deleted], he no longer authorised either this defendant nor [details deleted], Jeff Tamatua, to take any money out of his account.

[2] There has been some discussion around the effects on this case of the comments in *Hannigan v R* [2013] NZSC 41. I have clearly indicated to Ms O'Donoghue that I would not countenance any application that this witness be

made hostile. It does not seem to me that there is any basis for such an application. However, I think it is encompassed within the *Hannigan* (supra) decision that it is possible to raise with a witness called by a party an apparent inconsistency in a prior statement. With that I have no difficulty. In fact, I think it would be helpful for the jury to have Mr Aiesi in fact explain, if there is an explanation, why this discrepancy arises.

[3] In particular, during the course of cross-examination, Mr Bamford took Mr Aiesi through a number of withdrawals in what is termed as the “withdrawals book”, a document yet to become an exhibit. Taking Mr Aiesi through those transactions, Mr Bamford has, I think, taken Mr Aiesi to the point where he accepts that he was then in Blenheim, that a number of withdrawals or transfers that have been referred to him were or may at least possibly have been at his instigation through, in all likelihood, Jeff Tamatua.

[4] Ms O'Donoghue, however, wants to go further than that, and she wants to draw upon that part of the statement made by Mr Aiesi where he comments as follows:

If Celia and Jeff had not stolen from me, then I would come back [details deleted]. Before they stole from me I thought that they were good people, honest people.

The basis for that submission is that it is further explanation and confirmatory of the fact that it was in Blenheim where things were discovered to have gone wrong and would seem, on its face, contrary to the concessions made in cross-examination to Mr Bamford.

[5] The difficulty I have with that proposition is that Mr Jeff Tamatua has previously pleaded guilty to his part in all of this and, as I understand it, was sentenced to a substantial term of community work. I accept Mr Bamford's submission that one has to be very cautious with the statement at hand. It is in brief terms, as I have already indicated, four years after the event and there is the real hazard, in my view, that when Mr Aiesi talks about being “stolen from” by both of [the defendants], there is a real danger that he is lumping both of those persons together when, in fact, Ms Afioga has pleaded not guilty to those matters, and

whether or not there has been a theft from him, in terms of the charges in the charge list, is very much at large and a matter yet to be determined by this jury.

[6] I will not have the jury influenced in any way, shape or form by the opinion of the complainant. That opinion, in my view, is irrelevant, is overly prejudicial in terms of its nature, and far outweighs any slight probative value that it might have.

[7] My ruling is that Ms O'Donoghue may certainly take up with Mr Aiesi, without having him declared hostile, the passage in the statement regarding the Blenheim issue. I, however, refuse the application that matters relating to his view of who stole from him be put.

D C Ruth  
District Court Judge