

**IN THE DISTRICT COURT
AT LEVIN**

**CRI-2016-031-000127
[2016] NZDC 9399**

NEW ZEALAND POLICE
Prosecutor

v

DAVID JOHN BOOTH
Defendant

Hearing: 23 May 2016

Appearances: V K Sagaga for the Prosecutor
K Campbell for the Defendant

Judgment: 23 May 2016

ORAL JUDGMENT OF JUDGE S B EDWARDS

[1] David John Booth is charged with assaulting his former partner and intentionally damaging her property during an argument at her home on the evening of 2 February this year.

[2] The couple were in an on again off again relationship at the time but were not living together.

[3] The prosecution case is that the defendant went around to Ms Knight's home that night after work, as he did often.

[4] They argued and Mr Booth then damaged some items of Ms Knight's property, both outside and inside the house. Ms Knight believed he had taken her cellphone and put it in his car so she went to retrieve it. He pulled her away from the

car and pushed her back into the house. The prosecution case is that the defendant then grabbed Ms Knight by the throat with one hand and squeezed hard for around 10 seconds.

[5] The defendant, who gave evidence, denies assaulting the complainant at all. He denies intentionally damaging any of her property. He accepts he upended an outdoor table, but says that was when he jumped up quickly after she threw a cup of coffee in his lap. The defendant contends that Ms Knight damaged her property herself and that any red marks to her neck were self-inflicted.

[6] This is a criminal prosecution. The onus is on the prosecution to prove the elements of the charges beyond a reasonable doubt. The fact the defendant gave evidence does not change this. I remind myself that if I accept his evidence, or if it leaves me unsure, then I must acquit. Even if I disbelieve his evidence that he did not assault Ms Knight at all or intentionally damage any of her property, then I must still reassess the prosecution's evidence and ask myself is it evidence I can rely on to prove the charges to the required standard of beyond reasonable doubt?

[7] I found Ms Knight to be an honest and reliable witness. Her account of events was matter of fact, she did not seem to me to try and exaggerate what happened. She frankly acknowledged she swore at and verbally abused the defendant. She accepted the argument started when she tried to persuade him to withdraw his complaint about damage done to his motorbike, an offence with which she had been charged and appeared in Court for that day.

[8] She conceded that he had a right to some property in her possession, in particular a tablet his mother had given him.

[9] She also agreed in evidence that after he took his hand away from her throat, she attacked him and pushed him out of the house.

[10] There were no significant inconsistencies between what she told Sergeant Hessel when he took her statement around an hour to an hour and a half later, and her evidence in Court. In particular she said that the defendant put one

hand, his right hand, around her throat and squeezed for about 10 seconds. It was not for long, but it was tight enough that she was unable to talk.

[11] At one stage, Ms Knight corrected the prosecutor when Ms Sagaga said he had his hands around her throat. Ms Knight said, “No, it was only one hand.”

[12] I take into account the evidence of Sergeant Hessel who attended the incident and took Ms Knight’s statement. He said that after he took her statement, he went to photograph the items of property she alleged Mr Booth had damaged. It was at that stage she pointed out the umbrella in the backyard and said that he had thrown it at her and it was also at that stage she pointed out the broken ceramic dragon on the floor of the lounge and the damage to the door.

[13] I am satisfied Sergeant Hessel’s evidence explains why her written statement does not refer to all of the alleged property damage.

[14] More importantly, Sergeant Hessel has 18 years’ experience as a police officer, during which time he has dealt with numerous family violence incidents which have involved allegations of strangulation.

[15] When questioned about the overall red skin tone in the photos he took of Ms Knight on his iPhone, his evidence was that he saw visible marks and a difference in skin tone, consistent with marks made from a hand around the throat.

[16] I do not accept the defendant’s evidence that he did not assault Ms Knight or damage any of her property, nor does his evidence leave me unsure. I found his evidence to be evasive and self-serving. Even his acceptance that he upended the table outside was qualified by his saying it was because the complainant threw a cup of coffee in his lap. However, this was not put to the complainant at any stage when she gave her evidence.

[17] When it was established under cross-examination that the defendant had taken her cellphone, Mr Booth said he had not taken it off the property. This was because he had left it on the gatepost at the end of the driveway.

[18] When spoken to by Sergeant Hessel on the night of the incident, Mr Booth refused to make a statement, which of course is his absolute right, but then went on to deny being at the property at all. When he did eventually accept he was there, he denied driving there, saying that he had someone else drive him. I understand this was because Mr Booth was forbidden to drive at the time. He has since acknowledged he drove there himself.

[19] The defendant had the opportunity when questioned by Sergeant Hessel to say the allegations were fabricated but he elected not to do so. I do not accept his contention that the allegations were fabricated by Ms Knight.

[20] While it appears from the evidence I heard that their relationship was volatile, and there have been previous incidents involving physical assaults where both parties may well have been at fault, that is not the issue for me to decide today. My role is to decide the charges and the allegations that are before the Court relating to the evening of 2 February.

[21] Having rejected the defendant's evidence, I turn back to the prosecution evidence and I am satisfied that prosecution has proved elements of these two offences to the required standard of beyond reasonable doubt. The particulars of the assault are strangulation by applying one hand to the throat for the period of around 10 seconds.

[22] The particulars of the intentional damage charge are that the defendant wilfully and not by accident, damaged an umbrella, a ceramic dragon and various items of property belonging to the complainant which were on the outdoor table.

S B Edwards
District Court Judge