

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN
[SQUARE BRACKETS]

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**I TE KŌTI-Ā-ROHE
KI ŌTAUTAHI**

**CRI-2021-009-006508
[2023] NZDC 4646**

THE KING

v

[MARCUS BOURNE]

Date of Ruling: 6 March 2023

Appearances: J Whitcombe for the Crown
A Davis and M Brus for the Defendant

Judgment: 6 March 2023

RULING OF JUDGE T J GILBERT

[1] Mr [Marcus Bourne] was standing trial today in the Christchurch District Court in front of me. The allegation was of an aggravated burglary dating to 23 August 2021. On that occasion, it is alleged that he and another unknown person went to the complainant's house, whose name is [Hamish Lucas]. They were not welcome there. They were talking of stealing a car. In the event Mr [Lucas] was struck in the head with a hammer.

[2] The matter was first for trial some time ago at which point the complainant did not show up. The matter was rescheduled for today and, perhaps contrary to expectations, the complainant did come to Court, albeit an hour late.

[3] He was giving his evidence during which he was want to use some unfortunate language. But, given the stress of the situation, I was not overly concerned when that language was being used when describing the incident on the night in question.

[4] Mr Davis started to cross-examine and the Mr [Lucas]' attitude became more belligerent. On several occasions, I stopped him and asked him to control his temper and to use language which was appropriate for the courtroom. At one point, he referred to Mr Davis as a "fuckwit".

[5] I was concerned about where things were going so activated the duress alarm because a prior request to get the court security officers in here was taking some time.

[6] In any event, the jury went out and I spoke to Mr [Lucas] and explained to him that he needed to maintain control of his emotions and that the lawyers were doing nothing other than their jobs. Mr [Lucas] indicated he was aware of that having been involved in the system himself over the years.

[7] The jury came back and cross-examination resumed. Mr Davis asked a question to the effect that the defendant had been previously involved with the complainant's girlfriend. Mr [Lucas]' demeanour then went up a gear. He left the witness box and advanced on the defendant.

[8] Fortunately, by this point, there were two court security officers in court as well as two Corrections officers who were accompanying Mr [Bourne]. They intervened but Mr [Lucas] was right up in Mr [Bourne]'s face and but for the intervention, it seems to me, would have physically assaulted the defendant. In any event, he picked up the water jug and threw water on Mr [Bourne] before being forcibly removed back to the dock (usually the area that the defendant resides, not the complainant).

[9] I was forced to put Mr [Lucas] into custody and we will deal with him a little later on this afternoon under the Contempt of Court Act 2019.

[10] Given what had occurred, I discharged the jury. It seemed to me that it is completely untenable to continue the trial in the circumstances given the behaviour of

Mr [Lucas]. I then adjourned the matter over the lunchbreak to enable the parties to consider what should happen next.

[11] Mr Whitcombe says that the officer in charge has spoken to the complainant, who is in custody. He apparently is sorry for his outburst but does not know whether he would be able to control his anger should the matter come before the Court again.

[12] From what I observed, the prospect of a retrial being able to occur in an orderly fashion, and for the matter to get through to verdict, is, at best, very slim owing to Mr [Lucas]' volatility.

[13] The charge dates back about 18 months or so and, in the interim, Mr [Bourne] has largely been on e-bail.

[14] Under s 147 of the Criminal Procedure Act 2011, there is the ability to dismiss a charge at any time during the trial. This can be done on my own motion or on the application of one or other of the lawyers. The jurisdiction to dismiss a charge under s 147 is a general jurisdiction. It is true that subs (4) provides various examples, primarily related to evidential sufficiency, where a charge can be dismissed. However, that subsection is clear that those evidential scenarios are without limitation to the general jurisdiction to dismiss.

[15] In my view, the charge should be dismissed and I now do so under under s 147. That is, in part, because of the fact that this is already the second attempt at a trial but, more relevantly, because I think there is little if any chance of this matter being able to get through to verdict because of Mr [Lucas]' volatility. In a system that is so over-stretched already, I am not prepared to allow this matter to continue.

[16] Accordingly, Mr [Bourne], you are discharged on the charge of aggravated burglary and you are free to go.

Judge TJ Gilbert

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 15/03/2023