

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

**NOTE: PUBLICATION OF NAME(S), ADDRESS(ES), OCCUPATION(S) OR IDENTIFYING PARTICULARS, OF COMPLAINANT(S) PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011.**

**NOTE: PUBLICATION OF NAME(S), ADDRESS(ES), OCCUPATION(S) OR IDENTIFYING PARTICULARS, OF APPELLANT(S)/RESPONDENT(S)/ACCUSED/DEFENDANT(S) PROHIBITED BY S 201 OF THE CRIMINAL PROCEDURE ACT 2011.**

**IN THE DISTRICT COURT  
AT HAMILTON**

**CRI-2016-072-000064  
[2017] NZDC 23991**

**THE QUEEN**

v

**[WARREN ARCHER]**

Date of Ruling: 24 October 2017

Appearances: T Clark for the Crown  
C Bean for the Defendant

Judgment: 24 October 2017

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**RULING 1 OF JUDGE R L B SPEAR**

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[1] The Crown applies for permission to cross-examine the complainant pursuant to s 94 Evidence Act 2006. That application is advanced on the basis that the complainant is hostile to the prosecution.

[2] Section 4 of the Evidence Act defines what is meant by “hostile” for the purposes of s 94.

[3] What is advanced here is that the complainant alleges that nothing untoward occurred between her father and herself. In particular, that the allegations made in her formal statement of indecent touching while her father was showering her when she was a young girl did not happen. Furthermore, that she had been forced into making these statements to the police alleging not just indecent touching but also sexual violation by rape and assault; all as detailed in the charges and expanded upon in the statements that she has signed.

[4] Ms Clark for the Crown has carefully taken the complainant through some of her family background, offered her the opportunity to have regard to the statements that she made to the police and the formal statements signed by her but with the response that the complainant is not prepared to look at those statements. Furthermore, she asserts effectively that the prosecution of her father has cost her a relationship with him, that she loves him. Where she is somewhat indefinite is where she says that she was forced to make those statements without being specific as to who might have forced her and what sort of circumstances may have seen her felt compelled in that respect.

[5] The complainant made two statements to the police, both statements were taken by a specialist interviewer and recorded. Those statements were taken on 24 February 2015 and 10 March 2015. I do not have any material that relates to those statements. However, statements were then prepared and subsequently signed by the complainant on 17 March 2016 and 9 August 2016. Those were subsequently transformed into formal statements which are the documents that I have before me.

[6] It is abundantly clear that the complainant is now disavowing that this activity occurred and demonstrating a complete reluctance to answer any questions about it. In relation to the earlier offending that is alleged to have taken place while she was a young girl her consistent answer is that she does not remember.

[7] Mr Bean has indicated that he has nothing to say one way or the other about the application. He neither opposes it nor consents to it and leaves it clearly for the Court.

[8] This is one of those sad situations where it is abundantly clear that a relatively young woman, now only [age deleted] years of age, finds herself in difficulty articulating complaints that she has made quite expressly and exactly against her father that allege the offending detailed in the charges. For reasons that are unknown she has had a change of mind and it is clear that she is not prepared to answer questions truthfully.

[9] I consider that she should be accordingly declared hostile and the Crown has permission to cross-examine her based upon the allegations raised in the formal statements presented to the Court. Ms Clark has indicated that she will not present statements taken from the complainant at an earlier time, either the evidential interviews or the subsequent police statements and only the formal statements. So permission to cross-examine the complainant in that way is granted.

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Judge RLB Spear  
District Court Judge

Date of authentication: 27/11/2017

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