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

IN THE DISTRICT COURT
AT KAIKOHE

CRI-2016-088-002435
[2018] NZDC 3822

THE QUEEN

v

RAWDEN JAMES YATES

Date of Ruling:	28 February 2018
Appearances:	J Wall for the Crown N Leader for the Defendant
Judgment:	28 February 2018

PRE-TRIAL RULING 1 OF JUDGE N J SAINSBURY

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[1] This is a pre-trial hearing in regard to admissibility of evidence. This case involves a charge of attempting to pervert the course of justice.

[2] The essence of that charge is found in a telephone conversation between the defendant and [the complainant]. She is the complainant in one of the charges the defendant faces, that is the charge of injuring with intent to injure. The charge of attempting to pervert the course of justice arises from comments the defendant makes in the course of a telephone conversation with her where he asks her the following about this particular charge, "You are going to have to come to Court and tell them how you, how you dived into the wall on your own," her response, "I'm sorry I'm not doing that." His next comment, "How you jumped, how you jumped on my back and then flew off and dumped yourself, her response, "I don't want any part of it sorry."

His response, “Eh?”, her, “I don’t want any part of it,” and then from him, “(inaudible) another couple of years, probably two years for injuring with intent to injure,” her response, “Don’t say that.” The Crown argue that that is an attempt to persuade her to give false evidence.

[3] In the same telephone conversation there is a further passage which the Crown have deleted and the defence wish to have admitted. The context of this telephone conversation is that it is from prison where Mr Yates was on remand. He was in fact not supposed to be speaking to the complainant and witness, but managed to arrange a way of being able to phone her.

[4] The passage that is proposed to be deleted by the prosecution and the defence want admitted is as follows. Defendant, “Probably not now, got this new statement from [name deleted], fuck he’s a lying piece of shit,” complainant, “Oh aye?” Defendant, “Fucking scum bag,” complainant, “Shall I get someone to waste him?” Defendant, “Don’t even talk like that on these phones,” complainant, “Oh.” Defendant, “(inaudible) longer I’ll get,” complainant, “Oh I miss you so much.” Defendant, “Fuck yeah, statement what a cunt, fuck he’s a liar,” complainant, “Blatant lies in it?” Defendant, “Blatant lies, says all sorts of shit.”

[5] The statement that is being referred to is in relation to charges of kidnapping and aggravated robbery. The defence want to have this admitted for two purposes. First, it shows that the defendant understood that these phones were being monitored. The defence argues that given that knowledge it is unlikely that he would have deliberately tried to pervert the course of justice as alleged later on. Second, when the complainant suggested doing something potentially illegal to assist him, he put a stop to it. In essence, the complainant appears to be saying she will either have this witness beaten up or killed and presumably that is to assist in dissuading him, or preventing him, from giving evidence. The defendant’s response is to tell her not to do that. The defence argues that that shows that the defendant is not someone who would attempt to pervert the course of justice.

[6] In addition to those reasons, another feature of this evidence, while not relied upon by the defence, but which is relevant to my assessment of whether it should be

admissible is this. The fact that the complainant was willing to suggest that she should assist the defendant by getting someone to waste a witness who's apparently made a false statement, says something somewhat unsavoury about the complainant. In essence, it is a piece of information that a jury might find distasteful and might cause them to think less of the complainant. It is an indirect attack if you like on her character, potentially her credibility. The difficulty with that is that it is difficult to see how that properly would be admissible. It is an oblique attack on her character. It would have to fit into either the veracity or propensity rules and it is hard to see how that would work.

[7] Coming back then to the reasons put forward to admit this evidence. The fact that the phones are monitored should be obvious from other evidence. The phone call itself has a warning automatically placed at the beginning of it to both the defendant and the complainant that indeed the phone call is recorded. Evidence could be called to show that it is a matter of course that these calls are recorded and that inmates are told about that.

[8] As to the second argument, it seems to me that there are difficulties with this. It is, in essence, saying that the defendant has a propensity not to pervert the course of justice, as is exemplified by this incident. I would have difficulty seeing that it would meet the test of propensity. In any event, the real problem is that even if it was admissible for that purpose, it would invite a counter from the prosecution. They may legitimately wish to call evidence as to the circumstances of this other charge, how serious it is and the nature of it. There may be other evidence in terms of the dynamic between the defendant and the complainant. There may be reasons why the defendant would not want the complainant to go off trying to get someone to waste a witness. That may be something she is not capable of; it may be work that perhaps could be more readily arranged through more competent people. Before long, issues of gang involvement, criminal involvement, criminal history, other charges, all come out in front of the jury. I do not see that that would help the defendant in any way, shape or form. It would derail the trial away from the actual issues.

[9] In essence, the probative value of this evidence is not high and the risk of a legitimate prejudice is high. Accordingly, I would not rule that this evidence should not be admitted.

N J Sainsbury
District Court Judge