

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

**IN THE DISTRICT COURT
AT WHANGAREI**

**I TE KŌTI-Ā-ROHE
KI WHANGĀREI-TERENGA-PARĀOA**

**CRI-2019-088-001258
[2020] NZDC 117**

NEW ZEALAND POLICE
Prosecutor

v

MICHAEL ADAM HUTCHINSON
Defendant

Hearing: 8 January 2020

Appearances: Sergeant C Goodall for the Prosecutor
J Young for the Defendant

Judgment: 8 January 2020

ORAL JUDGMENT OF JUDGE D G HARVEY

[1] The defendant, Michael Adam Hutchinson, is charged that on 25 April 2019 at Whangarei he intentionally impeded the normal breathing of [complainant name deleted] by applying pressure on her throat. The defendant entered a plea of not guilty to this charge on 3 May and I have today heard evidence from the police and from the defendant. Prior to the defendant giving evidence, I heard from Ms Young a submission of no case to answer and, in refusing that application, I have already traversed much of the evidence.

[2] The sole issue for me to determine is whether or not, during what was clearly a violent altercation, the defendant put his hands on [the complainant's] throat. There is no doubt that on the day of this incident, [the complainant] made a statement to the

police and in the course of that statement she gave quite some detail about what had occurred in the bedroom and she said:

At this point, I was crying and scared. Michael then pushed me up against the wall and placed two hands around my neck, one over top of the other. He squeezed hard around my neck with his fingers. I couldn't breathe at all. Michael let go briefly but then also immediately grabbed me around the neck again and squeezed. Both times I couldn't breathe, and I was really scared.

[3] [The complainant] goes on to make a comment that this is not the first time the defendant has done this, but I put that comment to one side. It forms no part of the case against the defendant and must not be taken into account by me.

[4] On 20 May, [the complainant] went back to the police. She had initially been trying to contact [Constable A] but without success, so eventually she made a statement to [Constable B]. In that statement, she refers to her original statement and she said:

In my original statement, I said that Michael strangled me. This is not true. We were just arguing. I said this because he made me so angry.

[5] Well, clearly, that paragraph does not in fact accurately reflect [the complainant]'s evidence today. In evidence today, she said:

We ended up in the bedroom. He grabbed me, my clothes, and pulled me into the room. He wanted to talk to me. He was grabbing my arms and stuff, my upper arms. I was upset and scared. We were yelling at each other and arguing. He pinned me up against the wall. I fell to the ground.

[6] There was certainly a lot more going on in that room than arguing.

[7] The defendant has given evidence. Now I remind myself immediately that the defendant had no obligation to give evidence. The fact that he has done so does not mean that he has taken on the responsibility of proving anything. The burden remains with the police. It is for the police to prove their case beyond reasonable doubt. So far as the defendant's evidence is concerned, that simply falls into the pool of evidence for me to consider.

[8] In his evidence, he has admitted the altercation in the bedroom. He said he did drag [the complainant] into the bedroom. He said he did that because he wanted to talk to her in private. He accepted that he had trashed the bedroom but in answer to a

question from me, he said that he did not pin [the complainant] up against the wall. That is in direct contradiction to what [the complainant] told me in her evidence today.

[9] I am now left in a situation where the complainant on the day of the incident gave a statement to the police where she alleged the defendant put his hands around her throat, then on 20 May she made a further statement to the police withdrawing her accusation of strangulation but for some reason said in that statement that they were just arguing when clearly of course that is not correct. I have had the defendant's evidence who also says that he was not strangling her. In my view, the key to this case lies in fact in the evidence of [Constable C].

[10] [Constable C] was the first officer to see what was going on in that bedroom. He told me about the defendant's behaviour. There is absolutely no doubt that he was very angry indeed. He was puffed up, his fists were clenched, his jaw was clenched, he was stood over [the complainant] who was on the floor and she was clearly frightened, crying and distressed.

[11] [Constable C] first ensured her safety by getting the defendant out of the room but then he took the opportunity of speaking to [the complainant] while she was still in that bedroom, while she was still crying and while she was still upset. He told me that she said that they had had an argument that morning, the argument had got out of hand, that he had placed his hands around her neck, he said she was very hesitant on details and clearly she was concerned for both herself and him. He also said that he noticed bruising to her neck.

[12] When I look at the photographs that have been produced, and in particular photographs 15, 16 and 17, I can see injuries to [the complainant]'s neck. There are injuries on both sides. I do not lose sight of the fact that the defendant in evidence said that one of the marks, the mark below the neck tattoo, is in fact a hickey. I make no criticism of Ms Young when I observe that that was not put to [the complainant].

[13] I am also interested in the positioning of that knife. In her statement to the police immediately after this incident, [the complainant] outlined what she said the defendant did with a knife, that he grabbed a knife from the pack that he keeps in the bedside. The defendant confirmed he keeps a knife at the bedside. She then said:

He held the knife in his hands with the blade facing his stomach. He then grabbed both of my hands and was trying to make me force the blade into him.

[14] Now, there are no charges in relation to that knife and that is not the point. The point is that in photograph 18, a knife can clearly be seen in the photograph, and that knife is in the bedroom. That rather supports what the complainant was saying in her initial statement. I know that in the statement dated 20 May she withdraws that allegation as well, but the photographs do not lie.

[15] I am not prepared to say that [the complainant] is lying. Given what was going on in that bedroom, I have absolutely no doubt that she was absolutely terrified. [Constable C] gives evidence about what he observed as he walked up the drive. He could hear [the complainant] screaming, screaming for help and screaming for the police. When he saw the defendant, the defendant was clearly enraged, and his behaviour once he got outside the house simply confirmed that he was, at times at least, almost out of control.

[16] Had I simply been confronted with these two written statements and [the complainant]'s evidence on oath, I would have been left a little uncertain about what exactly occurred, but it was what she said to [Constable C] immediately after the defendant was removed from the bedroom that convinces me that she was telling the truth. She simply did not have time to think about telling a lie to get the defendant in trouble. He was obviously already in trouble. She was so upset she blurted out to [Constable C] exactly what had happened in that room. I prefer that evidence to the evidence given to me today under oath by [the complainant].

[17] Looking at the photographs, the photographs confirm what [the complainant] has said, that this defendant did have his hands around her throat, and I am satisfied to the required standard that the police have proved their case and the defendant will be convicted.

D G Harvey
District Court Judge