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

IN THE DISTRICT COURT
AT WAITAKERE

I TE KŌTI-Ā-ROHE
KI WAITĀKERE

CRI-2019-090-003084
[2020] NZDC 458

NEW ZEALAND POLICE
Prosecutor

v

JACKIE MIDGET RANGI LANGDON
Defendant

Date of Ruling: 15 January 2020

Appearances: Sergeant D McKenzie for the Prosecutor
G English for the Defendant

Judgment: 15 January 2020

RULING OF JUDGE K J GLUBB

---

[1] Jackie Langdon, you appear before the Court today in a Judge Alone trial on three charges: One of injuring with intent to injure (I will refer to that as the thumb incident); assault on a person in a family relationship (that is the train station incident) and, finally, breach of a protection order.

[2] There is no dispute in this case that you and the complainant in this matter were in a family relationship. You have each variously described the other as being your partner and it seems clear that you were living at her home at that time, albeit with her consent.

[3] There is also no dispute that there was a protection order in place at the time of the events in question and that protection order had as the standard conditions that you

were not to physically or psychologically abuse the applicant. You were the respondent in that particular order.

[4] On 6 July 2018 the pair of you had been at her home address and an argument had ensued. That argument had started between you and a flatmate on the complainant's account and you also speak of that too; something to do with a budgie getting out. In any event that gave rise to a significant degree of tension and that tension flourished it would seem when you and the complainant left to go to Parrs Park to watch her [child] play soccer. You said in your evidence that you did not particularly want to go, but you went, nonetheless, and she also confirmed that she thought that you were less than a willing attendee at that game.

[5] When you got there, tension was clear. You both separated. She went one way, you went another. You said she walked off without even turning to say goodbye and went to the other side of the park. She said she was not entirely sure where her [child] was playing, there were a number of games on at the time and she went in search of it, and also, she suspected that her ex-partner was going to be there, and she was a little bit concerned and anxious about that because she thought that might cause tension to rise even further. He was there it would seem, and she went and spoke to him across the other side of the pitch.

[6] In your evidence you said that the game was in fact happening right in front of you and she just simply walked off. Thereafter she returned, and you said that she walked past you and said one word and then went and sat down at a seat. She also confirmed that she did come back around, and the game was effectively over by that time and she sat down, her son came and spoke with her and she was there with her puppies at the time. She had taken those puppies to the ground.

[7] Thereafter you got into the car and it seemed that the argument then materialised in a more significant way. You drove to the WINZ address and it was for the purpose of getting some papers relating to these puppies from her mother who was across the road at the place where she was staying. The complainant did not get out of the car, you did, you went across and the concern, you said, for the pair of you getting out was that

it would have blown up if that had occurred. That highlights the state of angst in the car at that time.

[8] After picking up those papers you then drove off. You were driving the ute and she was in the passenger seat. It is a two-seater utility, a V8 by description. As you drove seemingly towards the netball courts she said that the argument continued, and you also confirmed that you were angry, and you were calling her names. You said you called her a bitch and she took exception to that. She also confirmed that she was saying things to you and you were saying things to her, but that she could not remember exactly what was being said at the time as these events unfolded. However, she did confirm that you continued to drive, and that you had your hands on the wheel.

[9] You said that having called her that name that she then punched you twice to the face and then effectively launched at you and grabbed you with both hands, grabbing at your face, grabbing at your eyes. You demonstrated in Court how that was done, how she pulled you down from where you were sitting in the driver's seat and you said that in the course of that somehow her thumb got into your mouth, but that you were blinded and you had no option but to bite her thumb to regain control of that car.

[10] Clearly when you bit that thumb it was a heavy bite. It broke the skin, it caused it to bleed and it caused significant injury to the back of the nailbed as shown in the photographs. It subsequently became infected and she needed a tetanus injection and an antibiotic course and was under treatment by a doctor for some time. Thereafter had to have some months of physiotherapy, although she said she had sort of stopped that after about four months, and although she should have continued with it she has not. She also made some reference to the fact that the bite had exacerbated an earlier injury to that thumb at the time.

[11] As I say in your evidence you described driving near the netball courts and that you said there was a lot of traffic around and that she did not necessarily agree that there was a lot of traffic; she thought it was average. You said that you had bit her hand after she had launched at you, as I have described. You said that she grabbed at your face with both hands and that she was pulling your head down and she had her fingers like that, and you demonstrated how she was holding you, as I have already referred, and

somehow the thumb got in your mouth. You said that you were being blinded. You said you had no choice but to bite her thumb and essentially that you did this not intending to injure her, but rather to prevent a crash as you were trying to control the vehicle. She said in her evidence that she screamed and pulled her hand back and that she was really upset.

[12] A short time later and the pair of you continued to drive you pulled into the carpark at the train station. She said that you were both continuing to argue. She was clear that she was not taking a backwards step, but that at some stage you took her phone and it had been on the charge and that got her upset and she said she tried to get it back and when she did so she says that you grabbed her by the back of the neck (and she just demonstrated with two hands the back of her neck) and you forced her head down onto the centre consul of the vehicle numerous times. She said she was having trouble breathing at that time, and she spoke of subsequent pain to her neck and the injuries apparent in the photos.

[13] She says that she reached up as she was trying to stop you from holding you in that way and although she does not have nails, her rings scratched your face and she said that is what gave rise to the injuries that were apparent in the photographs visible too. She said that eventually she got hold of your necklace that you had around your neck, she pulled that tight and she noted when she looked at you that your eyes were popping and so she stopped that and both of you released one another. She said at that stage she had managed to open the door and started to slide out. She also said that she was scared at the time.

[14] She spoke of you getting out of the car and going for a walk. She said she knew where you were going. She said you had a friend that lived nearby, and she realised what you were doing, you were going to calm yourself, and she remained in the car while that happened.

[15] When you returned to the car she said that you had calmed and you said it was all good, but she was not ready for that, she was still upset and essentially said, “Fuck you,” was her evidence. However, still in that state of upset she said that you then drove

home, and you got out of the car and went inside. With that she moved a second car, [model deleted], into the driveway behind the V8 and she locked herself inside the car.

[16] Somehow the police were called, and they arrived at the address. I have read the evidence of [Constable 1] and [Constable 2], both of which were admitted by consent and read by the Court. No issue was taken with their evidence. However, she made a point that she did not call them, so from that I infer that somebody else must have and in consequence they attended the address.

[17] In your evidence you said that there was no physical confrontation between the pair of you before you returned from the walk after having arrived at the train station. You said you could not remember taking her phone, but that she always said that you did that. You also said that when you came back that she lunged at you and all you did was take her in a bear hug and you did that until she ran out of energy and calmed down. You deny holding her down by the neck.

[18] When that was put to the complainant specifically that you had bear hugged her in that way she said she did not recall that, but she said you might have, it might have happened, and if it did happen it would have been after she was trying to get out of the car after having slid out the door. But she did not recall that when the "hair thing" was happening, as she referred to it.

[19] In terms of the account given by the defendant about the way the thumb got bitten and specifically the thumb in your mouth and the fingers up by your eyes, the complainant accepted that she could not remember specifically how that happened and she said that you would be telling the truth in that regard. She also volunteered in her evidence-in-chief that you had not been holding her hands in any way at the time that the thumb got bitten. I infer from that if you were driving the car then somehow that hand got over in front of your mouth to be bitten in that way.

[20] I remind myself that it is the prosecution that have the burden and onus of proving beyond reasonable doubt that the charges have been proven. The fact that you gave evidence does not shift the burden at all; it remains on the prosecution from start to finish. The fact that you have given evidence can, however, have three effects: First, if I was to accept what you have said then that would be a complete answer to the

prosecution case and I would find you not guilty. If I am left unsure having heard the evidence that you have given, then that would also be the same result, not guilty, because I cannot guess if I am left unsure. If, however, I am satisfied that you have lied whole or in part in the evidence that you have given I would not leap to a finding of guilt simply on the basis of that lie, rather I would go back to the evidence that I accept as reliable and determine if the charge or charges have been proven.

[21] In addition, I must take into account the provisions of s 48 Crimes Act 1961 and in that I observe that everyone is justified in using in defence of himself or another such force as in the circumstances he believed them to be it is reasonable to use. If raised, and I am satisfied on the facts of this case that it is raised at least in relation to the thumb incident, then it is for the prosecution to prove beyond reasonable doubt that you were not acting in self-defence.

[22] In this instance you complain that you bit her hand to prevent the crash and that she does not dispute that version of events. It is clear on the evidence that you did injure her with the bite to her thumb, although you deny any intention to injure. I infer to cause an injury of that extent then significant force would be necessary in that bite, although equally in the moment and when confronted with what was essentially an emergency situation for you and then attempt to regain control of that vehicle and avoid a crash, as you said, that you had no other option and that it is not possible to measure the degree of force used in that set of circumstances to a nicety.

[23] Whilst I accept that an intention and your intention can be shown by inference from the outcome, I am also satisfied that it is very difficult to measure a degree of force in that set of circumstances that I have already said. In the end I am satisfied on the evidence that you were acting in defence of yourself and in doing so that you did cause that injury. But I am equally satisfied that the prosecution has not proven beyond reasonable doubt the force used in the circumstances was not reasonable. Accordingly, on charge CRN 387, which is the injuring with intent to injure charge, I find you not guilty.

[24] Turning then to the railway station incident. There is a divergence in the evidence. It is clear that something happened in that car, such that the complainant

received some injuries and that in the process she also scratched your face. That is clear from the photographs that I have seen. In the end I am not satisfied that there was any bear hug situation after the return from the walk.

[25] On that incident I prefer the evidence of the complainant. I find that she was a truthful witness, if somewhat confused in terms of just exactly what happened in that set of circumstances. She was in no doubt about the timing, nor about what in fact led up to that physical altercation. It was the fact that you took that phone and you said that you did not remember that, although you accepted she often said that.

[26] I am satisfied her attempt to recover that phone sparked violence and it resulted in you grabbing her by the back of the neck with two hands and forcing her down on to the centre consul numerous times as described. I am equally satisfied that her account is consistent with the injuries that (a) she sustained and (b) that you also sustained. However, I am satisfied that the bear hug account that you proffer is inconsistent with the mutual injuries received.

[27] I also factor in, in my assessment of your evidence in general, your somewhat belated attack on the veracity or honesty of [Constable 2]. His evidence came before the Court without needing to be called. It was accepted as accurate and handed up in that way. And in that specifically he said that when he spoke to you and asked you about the injuries that you had sustained that were clear on your face you said that you had gotten them from falling over, as recorded in his evidence. You took exception to that when it was put to you by the prosecuting sergeant. You said for some reason he was telling lies there and that you had said nothing of the sort and that he was effectively trying to set you up and in fact egg you on in the way he dealt with you on that day. I prefer the uncontested evidence of the constable on that score and I am satisfied the evidence that he gave is accurate.

[28] In the end it comes to me to determine this charge and I am satisfied beyond reasonable doubt that you did simply lose your temper and it was around the time that you took her phone and she tried to get it back, and in that state you did precisely what the complainant has described. I also reject as inconsistent the claim of this bear hug.

[29] I am satisfied that you did apply force to the person and other and deliberately so, and that the complainant was a person with whom you were in a family relationship, albeit by her consent. Please stand, Mr Langdon. Accordingly, on the charge of assault on a person in a family relationship, I find that charge proven beyond reasonable doubt.

[30] Finally, I turn to the charge of breach of a protection order. As I have already recorded there was one in existence and it did have standard terms. As you accepted in evidence when it was put to you in cross-examination, that your conduct had breached that protection order by being violent and abusive on that day, you said, "That's correct, I did that." You accepted that what you did on that day had in fact breached that order. Well, of course, it is a matter for me to determine but, nonetheless, you were in agreement with the prosecution when that proposition was put to you.

[31] In terms of the charge, I am sure that there was a protection order at the time. I am also sure that it contained the standard conditions. I am also satisfied that you in fact breached that order by verbally abusing the complainant, such that it would amount to psychological abuse of her.

[32] I am also satisfied when I read the accounts of the constables, which supports this notion of the breach of the protection order, it is the state in which she was when they found her; shaking in the car and clearly very scared, and I factor that in as well.

[33] It has not been raised that there was a reasonable excuse for you to act in that way, but had it been, and I deal with it, I would be satisfied that her behaviour on that day does not provide a reasonable excuse for you to abuse her or, for that matter, to be violent to her in that way. Accordingly, I also find that that charge is proved beyond reasonable doubt, even noting my finding on charge 1. Specifically, in finding that charge proven I am referring to the events that occurred after the thumb incident and including the time that you were at the train station.

_____
Judge KJ Glubb
District Court Judge

Date of authentication: 22/01/2020
In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.