

POLICE

v

NAE WILLIAMS

Hearing: 15 February 2017

Counsel: Messrs T Koteka & A Mills for the Crown
Mr N George for the Defendant

Judgement: 12 April 2017

**DECISION OF HER WORSHIP MRS CARMEN TEMATA JUSTICE OF THE
PEACE**

INTRODUCTION

[1] The defendant, Nae Williams is charged pursuant to the Crimes Act 1969 Sec. 214 (b) with one charge of *assault on a female*.

BACKGROUND

[2] At about 2.30am on Sunday 2 October 2016, it was alleged that a female namely *Steele Cassidy Koronui* was assaulted by the defendant. The victim was on a social outing with friends & cousins visiting several night clubs in Avarua and was walking home alone in the early hours of the morning of the alleged incident. When she walked passed by the Raro Fried Chicken shop the defendant called out to the victim. He asked why she was walking by herself and after she explained her situation he offered her a ride home to which she agreed.

[3] Both the defendant and the victim walked together towards Bluesky where he claimed his bike was parked. It was at the Bluesky Fots Station hut that the defendant was alleged to have assaulted the victim by grabbing her and holding her against the wall of the hut and then kissed her.

GENERAL ELEMENTS

[4] Before the defendant can be found guilty of the charge, the prosecution is required to prove beyond reasonable doubt each of the following elements:

- a) The person named in the charge is the same person who is appearing in Court
i.e **Nae Williams**
- b) There is a date or period of time when the offence charged is alleged to have taken place i.e. **2.30am Sunday 2nd October 2016**
- c) There must be a place where the offence was alleged to have been committed
i.e. at **Bluesky Fots Station, Parekura, Avarua**

SPECIFIC ELEMENT

[5] There is one specific element that the prosecution is also required to prove beyond reasonable doubt i.e. **The accused assaulted a female**

[6] The matter in dispute is: **Whether the defendant assaulted a victim**

EVIDENCE

[7] **Steele Koronui**, the victim in her oral evidence told the court that it was on the night of 1 October 2016, she, her cousin and friends went to the Hula Bar where she had five glasses of white wine.

[8] They left at about 11pm and went to Rehab's nightclub but she did not have any drinks there. When it was time to leave her cousin could not find the keys for her truck. She

told the court if the keys were found her cousin would have taken her home. Rehab closes at 2am so they went out to the bus stop and sat there waiting to catch a taxi home.

[9] Her friend took her cousin home and she waited there for my taxi money but the person that I had given the money to, just left and did not return they just stole it.

[10] She submitted that she walked past people at Raro Fried place. There were four people/men on bikes as she walked past. She kept walking along when the defendant came past on a bike, jumped off and asked her what she was doing out by herself. His other friend drove away and left him with her.

[11] She did not know him therefore did not recognize him. He called out her name Stella but her name is Steele and told her that he worked at the Post Office and that he recognised her from coming into the Post Office about two months ago to collect a birthday parcel for her mother. He then offered to take her home after inquiring where and why she was walking by herself.

[12] She trusted him so she agreed to walk with him along the main road and then crossed over and walked past Hidies. She asked him where his bike was, and he told her that it is just up the road and they can walk there. At the time she really believed the defendant was going to take her home on his bike which he said was parked at Bluesky.

[13] As they walked towards Bluesky direction, she kept asking him where his bike is and he kept telling her that it is ahead, he replied *quote "it is just up the road"*. As they walked past a really dark driveway towards the Fots Station he said that his bike is just through there pointing to the driveway. And she asked him why did he park his bike in the dark for, he then grabbed her wrist and pulled her down the driveway to the Fots Station hut. He then grabbed and pinned her against the wall holding her by her throat and neck, then kissed her. She was struggling in trying to get away from him as she was squashed between his body and the hut. She tried to push him away but she could not because he was too big and far too strong for her. He held her arms down by her sides then held her by the throat with her head against the hut. She could feel that he was excited because she was struggling that is when she froze and realised that she had to do something to get away from him.

[14] At that moment she believed that she was going to be raped. She froze completely as he continued touching and kissing her. When he finally raised his head up she said to him not to do it there, as it is uncomfortable but offered to go to her house where there is light. She lied to him that she lives on her own. He then pulled her back to his bike which was where they had already walked past. She submitted that she did not kiss him with the intention of having sex with him. After he attacked her she realised that she had to do anything to get out of the situation by convincing him that she wanted this.

[15] She told the court that she started crying when they got to where the bike is when she realised that he had pulled her over to the Fots Station on purpose. They both got on his bike and he took her straight to her house. She did not tell him where she lived but he knew where she lived.

[16] She submitted that he took her to the front door, she got off the bike and her cousin opened the door and she became hysterical and the defendant just left. Her cousin then report the alleged incident to the Police who came to interview her at home. She also told the court that she went to see the Doctor on Monday 3rd October. She submitted that she received strangulation marks on her neck as a result of alleged assault by the defendant.

[17] The victim identified the defendant in court today.

UNDER CROSS-EXAMINATION BY DEFENCE COUNSEL

[18] The victim admitted to having consumed 5 glasses of white wine at the Hula Bar but did not have any at the Rehab because she only had \$20 on her as they only came there to meet a cousin who had just arrived from NZ. She also confirmed that her cousin had lost the truck keys which belonged to their place of work which they never found. She also submitted had the truck keys been found she would have been transported home and not stranded in town and in the situation that she got herself into.

[19] The victim confirmed that the defendant called out to her Stella instead of Steele which is her real name and that he inquired why she was out on her own at that hour of the morning. He told him why and he then offered to take her home, his exact words are: *quote*

he said *“I’ll get you home, one Atiuan to another, I’ll look after you”* She acknowledged and thanked him for his offer and told him that this is such a bad position to be in.

[20] The victim was asked if she agreed to walk with him she responded yes, because she believed that he was going to look after her and take her home, not that he was going to shove her against a hut like he told her. When asked if the defendant told him how he was going to take her home, she said defendant told him her that he has a bike parked up the road but did not tell her that it was parked at Bluesky. When asked if she agreed to be walked to the motorbike in order for her to be taken home, she responded that she agreed to get home safely hence she agreed to walk with the defendant because she trusted him.

[21] Victim admitted that she did have some doubts as they were walking especially when she kept asking defendant where he has parked his bike to which he replied it is just ahead. She also admitted that she is not really familiar with that road and Bluesky’s location but she trusted him. The victim when told that she may have made an error in marking on the Police drawing of the area around Bluesky, where she thought the defendant’s bike was parked she responded that she disproved that claim.

[22] Victim submitted that the defendant pulled her by the wrist and pulled her down the driveway to Fots Station and grabbed her and shove his face on hers. He had his mouth over hers so she couldn’t scream. She was scared and did try to struggle but defendant was too strong for her. Defence Counsel told her that the defendant will testify that she kissed him back to which she responded that if it had been consensual then why did he held the victim so hard that her neck had bruises on it.

[23] When asked if there were any photos of the bruises on her neck she responded that her cousin took some but she is back in NZ, however she advised that the Doctor who examined her the day after alleged incident saw her bruises and his diagnosis is in her medical report.

[24] Victim was asked if defendant touched her indecently and where, she responded that the defendant held her by the neck, by her face and pinned her arms by her side. When asked whether it was done in an aggressive or loving way, she responded that she was trying to push him off by also kicking him and in her opinion there is nothing loving about going

through that experience. It was completely traumatising and never experienced it before in her life.

[25] Victim was asked if she tried to stop the defendant when he dragged her down the driveway to the Fots Station she responded yes, for she was pulling back and asking the defendant what is trying to do that is when he grabbed her and shoved her against the hut and thrust his tongue down her throat. She could not even protest as she was fighting with her body which he has pinned against the hut and she could not move.

[26] Victim was also asked why she kissed the defendant that night she responded because she was gripped with fear and was trying to find a way to get away from the defendant, hence her suggestion to take her home because she lives on her own. Her idea is to have him believe that they will sex at her home and her cousin is at home but it's really for him to take her home. She added that it took quite a bit of convincing for the defendant to take her home as she kept telling him to just take her to her house, there's light there and it will be comfortable.

[27] Victim was asked if she agreed to go with him when the defendant finally said that he will take her home she responded yes, because she was crying when she realised that they had already passed the place where he parked his bike. Furthermore, she was scared and frightened because she thought she was going to be raped and all she wanted was to end this situation and be taken home. Victim was also asked about the defendant knowing where she lived. Defense counsel told her that his client will testify that it was the victim herself who told him where she lives to which she responded no, that she did not tell him where she lives. The victim emphatically denied the allegations that she made up her story of the alleged incident.

[28] She added that she just wanted the real truth to be known what really happened to her on the morning of the alleged incident at the hands of the defendant. The defendant did wrong and the right thing to do is for her to tell the truth.

[29] The Crown re-examined the victim by asking her the level of her intoxication to which she responded that she did not feel drunk at all.

SERGEANT REBECCA ELLIS – CROWN WITNESS

[30] In her oral evidence she confirmed after receiving a complaint from Timena Myra Nolan they went to Ruatonga to investigate. Upon arrival she was told by the complainant that her cousin, the victim has been assaulted and is resting in the room. Sgt Ellis told the court that when the victim came out of the room to talk to them, she noticed that she was traumatised and has been crying and she led her to a chair and sat down.

[31] Under cross examination, Sgt Ellis told the court that the victim is intoxicated because she smelt of alcohol. Her eyes are also bloodshot, in her view as a result of crying or drinking.

POLICE CONSTABLE TEVEKA TARU – CROWN WITNESS

[32] In her oral evidence she explained her involvement in this matter. She accompanied Sgt Ellis and two other Police Officers to investigate the complaint received from Ruatonga about an alleged assault on a female. She confirmed that the victim was in the room resting when they arrived and they called her to come out of the room as they wanted to talk to her about the alleged incident.

[33] Police Constable Taru told the court that her observation of the victim when she came out of the room to talk to her and Sgt Ellis, is that she is definitely intoxicated and frightened.

[34] Police Constable Taru, also told the court that she visited the defendant on Monday 3 October to ask him to come into the Police Station for an interview with regards to the alleged incident of assault on the victim. She interviewed him on Tuesday 4 October because she had to complete the inquiries before she could interview the defendant and subsequently arrested him. She identified the defendant in court today.

[35] The defendant's statement dated 4/10/17 taken at 4.40pm was read out by Police Constable Taru. The statement was submitted as *Exhibit 1* for prosecution.

[36] Under cross-examination, Constable Taru confirmed that the victim was intoxicated and crying, her speech was slurred but walked in a straight line.

[37] Defence Counsel advised the court that the defendant will give his evidence of rebuttal for accusations against him.

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[38] **The defendant** in his oral evidence submitted that he was at a Bluesky function until about 11pm when he and his friends left for Hadies and Rehab nightclubs. He left his bike parked at Bluesky. He said that he had 1 can of Woodstock at Hadies and about 6 glasses of Jack Daniels with coke at Rehab. After that he and his friends decided to go to the Avatiu Clubhouse to eat. Afterwards he returned to town with Strickland on his bike and stopped at Raro Fried Chicken. He was there when he saw the victim walking along the bridge. He claimed to know the victim and also recalled her name as Stella.

[39] The defendant then called out to the victim and offered to take her home but claimed that his bike is parked at Bluesky for he came to town on a friend's bike.

[40] He told the court that the victim looked a bit intoxicated. He offered to take the victim home after she told him why she is in that situation and she agreed. They walked along the road towards CITC main store and turned left towards Bluesky where he said that his bike is parked.

[41] He submitted that as he and the victim were walking along the road, they were having a good conversation and trying to get to know each other. Victim appears to be in a friendly mood.

[42] He told the court that when they walked passed CITV he led the victim down a driveway to the Bluesky Fots Station to try and hook up with her. He thought that he will get lucky that night. He claimed that when he kissed the victim she kissed him back too and said to him that the area they are in is too dark and asked him for a date and furthermore did not protest or screamed or cried.

[43] He submitted that the victim said to him that it's better to do it in the light that she could see his face and asked him to take her home. The defendant told the court that he believed the victim when she said that they can go to her place. However, the victim's body

language signalled to him that she is not interested to take it any further and that he had to take her home.

[44] Defendant submitted that he did not at any stage threaten the victim. When asked if the victim was scared that night he responded (quote) “*No she was normal.*”The defendant disagreed with the victim where she said that he held her by the neck buthe claimed that he only held her to kiss her and not to strangle her. He also said that victim was intoxicated.

[45] In his statement to the Police, the defendant apologised to the victim if she is thinking wrong about him. He claimed that he only took her down the Fots station to try and get with her, but she seems not interested to take it any further so he took her home He said that he is not sure whether the victim was crying when he dropped her at home in Ruatonga. Defendant claimed that the victim did tell him where she lived.

UNDER CROSS-EXAMINATION BY THE CROWN

[46] The defendant confirmed his movements in the early hours of 2nd October 2016 up until he saw the victim walking along the bridge and offered her a ride home. He agreed that the victim was a stranger to him when he offered to take her home but they ended up at the Fots Station so he can hook up with her.

[47] He also confirmed that he also took her there so no one can see what he will do to her. Defendant said that his intention was to walk with her to where his bike is parked so he can take her home. Defendant confirmed what he told the Police that he forced the victim against the wall and kissed her. Defendant also confirmed that the victim did try to resist him but did not struggle. The defendant also confirmed that he told the Police that he grabbed her around the upper body, just like how a man holds a woman to kiss.

[48] He admitted that the victim was scared because they were alone and that he told the Police that he knew all along that victim was not interested in him.

[49] Defendant admitted that he led the victim to the Fots Station instead of to his bike and that he did intentionally took her there to be alone with her.

UNDER RE-EXAMINATION BY MR GEORGE

[50] The defendant was asked to point out on the drawing of the scene by the police officer where he parked his bike on the night of the alleged incident which is not in agreement to the victim's mark where she says the defendant's bike was parked on the night of the alleged incident.

[51] The defendant also submitted that the reason for parking his bike in front of Bluesky where he marked on the drawing is because it is under security surveillance 24/7. Defendant admitted to have been drinking alcohol.

[52] Re-examination by Defence Counsel pointing out the victim's parked spot of the defendant's bike outside Bluesky is disputed by the defendant

[53] When Def was asked whether the victim resisted his advances, his response is the victim said "not here". Def claimed that the victim did not struggle from his advances but tried only to resist him.

ANALYSING THE FACTS

[54] Victim in her oral submission told the court that she accepted the defendant's offer to take her home on his bike because she trusted he will do what he said he will after he said **"I'll get you home, one Atiuan to another, I'll look after you"** and she believed him.

[55] Victim also said that after the defendant attacked her at the Fots Station she realised that she has to find how to get away from that situation hence her invitation for the defendant to take her home where there is light and comfort because her cousin will be at home.

[56] Victim claimed that the Def grabbed her wrist and dragged towards the Fot Station despite her protest, he grabbed her and shoved her against the hut and kissed her.

[57] Victim disputed the allegation that she consented to be kissed by the defendant.

[58] Victim also submitted that she received bruises to her neck as a result of the defendant holding her by the neck and throat when kissing her.

[59] She also claimed that despite her weak attempts to free herself from his grip, he was too strong for her hence she had no choice but to surrender to him.

[60] Victim also submitted that when he finally agreed to take her home she broke down and started crying.

[61] Victim claimed that getting on his bike was the only way for her to get out of that situation when he took her home.

[62] The defendant in his oral evidence submitted that he and the victim were complete strangers to each other and that she accepted for him to take her home on his bike.

[63] Defendant admitted that he told the Police that he grabbed her around the upper body, just like how a man holds a woman to kiss.

[64] Defendant claimed that the victim kissed him back when he kissed her.

[65] Defendant admitted that he led the victim to the Fots Station instead of to his bike and that he did intentionally took her there to be alone with her and to try his luck with her.

[66] Defendant submitted, the victim's body language signalled to him that she was not interested to take this any further hence his agreement to take her home, which he did.

CLOSING SUBMISSIONS BY CROWN

[67] The general elements are not disputed and are accepted as proven by all parties

[68] The specific element of the defendant being a male person did assault a female, the victim, has been proven

[69] Crown depended on the victim's oral evidence that there was an assault on the victim, a female by the defendant, a male.

[70] The defendant grabbed her hand and pulled her down a dark alleyway. The act of grabbing the victim's body constitutes an assault

[71] Defendant then held her by the neck, putting her against the wall and kissed her. Victim consented to being kissed out of fear which is not voluntary.

[72] Not a genuine consent for the defendant to assault the victim.

[73] Victim said that she mentally tried to plan a getaway.

[74] Yes victim believed that defendant will take her home when he offered her a ride. The offer was an excuse for him to try his luck with her

[75] Defence may argue that the fact is consent. Getting on the bike with the defendant was the only escape for the victim from the situation she found herself in.

[76] Victim was crying when she arrived home and immediately reported the alleged incident to the Police. Both Sgt Ellis and Police Constable Taru confirmed this in their oral evidence

[77] Crown agrees that victim was intoxicated but defence never suggested that she was too drunk. Victim had a clear understanding of what is happening to her

[78] Doctor's medical report dated 3 October 2016 confirmed his findings after examining the victim that (quote) "***alleged assault with strangulation and resulting contusion/ bruising to neck***"

[79] No consent to an assault has been established

[80] Defendant admitted to having the victim against the wall which is enough to establish an assault has been committed.

DEFENCE FINAL SUBMISSIONS

[81] Defence objected to the case studies from NZ submitted by Crown in support of the ***no consent argument***. Defence claims that this is not a sexual charge therefore is not relevant to this case.

[82] Defence questions why was the complaint to the Police laid by the cousin and not the victim herself

[83] Defence submits that the victim consented to the assault by volunteering to be kissed by someone.

[84] Looking at the circumstances of the alleged incident the victim allowed herself to be in that situation *where the knight in armour came to the rescue of a damsel in distress.*

[85] Defendant did try his luck but knew that the victim is not interested to take it any further.

[86] Victim offered no resistance when defendant kissed her

[87] Defence questions the credibility of the victim's evidence here she consented to walk with the defendant

[88] Defendant and victim both had a friendly conversation as they walked towards Bluesky premises.

[89] Victim had the opportunity to breakaway if she had fear and doubts.

[90] Defendant kissed her which is not an act of violence

[91] Victim appears to be a confident person and in control hence her offer to the defendant to go to her place. This is the action of a person who knows what she is doing and not that of a person under duress

[92] Defence claims that part of the victim's evidence is not truthful

[93] Medical evidence of bruises – victim does not even know that she got bruises

[94] Defence claims that there is no evidence of any physical contact around the victim's neck area. She did not show Police her injuries because she was not aware she has injuries.

[95] Defendant agreed that he grabbed victim by her wrist then led her down the drive way to Fots Station hut.

[96] Victim is definitely intoxicated.

[97] Defendant did finally take victim home.

CONCLUSION

[98] Based on the evidence heard and submitted to the Court , with regards to the specific element, prosecution is required to prove beyond reasonable doubt:

- a) The accused assaulted a female

The matter in dispute is:

- b) Whether the defendant assaulted the victim

[99] Sec 2 of the CA 1969 defines “assault” as the act of intentionally applying , or attempting to apply, force to the other person, directly or indirectly, or threatening by any act or gesture to apply such force to the person to another, if the person making the threat has or causes the other to believe on reasonable grounds that he or she has the ability to effect his or her purpose.

[100] The first assault occurred when the defendant grabbed the victim’s hand and dragged her down the driveway to the Fots Station. The second assault is when he forced the victim against the hut and kissed her against her will.

[101] The Doctor’s medical report on his diagnosis of the victim’s injuries to her neck is the evidence of the assault.

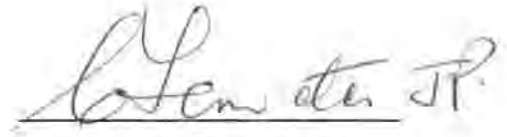
[102] I am satisfied that Crown has proven beyond reasonable doubt that the defendant assaulted a female, the victim.

[103] Therefore I find the defendant guilty as charged.

[104] Matter is adjourned for sentencing to the 16th May at 9.00am in Avarua

[105] Probation report is Ordered

[106] Victim Impact Report is ordered to be ready before the sentencing date.

A handwritten signature in cursive script, appearing to read 'Carmen Temata JP', is written over a horizontal line.

Carmen Temata, JP