

POLICE

v

WILKIE RASMUSSEN

Hearing commenced: 9 and 10 June 2021 (via Zoom)
Appearances: Mr M Williams for the Crown
Mr J Wiles and B Mason for the Defendant
Date: 10 June 2021

ORAL DECISION OF WOODHOUSE J

[1] I have just heard evidence over the last two days or so in relation to two charges against Mr Rasmussen of indecent assault. At the conclusion of the evidence – and there was some evidence for the defence, perhaps at a slightly earlier stage, I asked counsel if they wished to make any closing submissions to me. I think it is fair to say they were a little surprised when the Judge in a criminal proceeding, who is the Judge of fact as well as law, generally does not invite submissions. But I thought it was appropriate in all the circumstances of this case to do so, and I did receive succinct and helpful submissions, briefly on the law – although there has been no issue on that – and on the main points being advanced for the defence and for the prosecution.

[2] It has been helpful to me, and I have taken those submissions into account as well as, of course, all of the evidence which I have really heard very recently. But I do not intend to

traverse all of the points made to me, even though they are taken into account; nor to traverse all of the evidence.

[3] The two charges, although they occurred sequentially in a very short space of time in terms of the factual allegations, are that on 15 July 2020, Mr Rasmussen indecently assaulted Ms Roimata Hosking twice, by forcing his tongue into her mouth. Mr Rasmussen denies that the acts occurred. The parties agree, given the area of dispute, that the charges will stand or fall on proof beyond reasonable doubt, or lack of it, of the central allegation or allegations of fact; and that is essentially the charge: Did those alleged acts of forcing his tongue into her mouth occur?

[4] For that reason, in addition, there is no issue of consent, and the question of whether the act, if it occurred, is an indecent act has not been contested. But, for the avoidance of doubt, I do make quite clear that I proceeded on the basis that if the particular acts alleged by Ms Hosking occurred, without her consent, they would undoubtedly be regarded as indecent by right-thinking members of the community, the usual test. Anyway, that is not in issue.

[5] I will provide what I hope is a fairly brief factual outline of the background to the alleged offending, and what is alleged to have occurred.

[6] Ms Hosking was aged 22 at the time. Mr Rasmussen is a well-known lawyer in the Cook Islands and his age now, based on the statement he made to the Police, I think is 63. On the day of the alleged offence, 15 July 2020, Mr Rasmussen appeared in Court on the sentencing of a young man named Steven Emile. Ms Hosking is Steven's aunt. Her evidence is that she was asked by Steven's mother, who was in New Zealand, to go to the Court to support Steven. At the Court at some point, and it does not matter precisely when it was, Mr Rasmussen asked Ms Hosking if she could wait for him, after the hearing of Steven Emile's case, as he wanted to talk to her. Ms Hosking said she would wait.

[7] The Court proceeding involving Mr Emile finished. Ms Hosking waited as requested, and Mr Rasmussen then asked her to go with him back to his office, which is very near to the Court. She did so. From the evidence of any discussion between the two of them up to that point, there is nothing material that bears on an assessment of guilt or innocence, beyond the fact that there is no material evidence [of the purpose of Mr Rasmussen's request]; there was

simply the request to wait and then a request from Mr Rasmussen to Ms Hosking to go with him to his office. She did not know the purpose, but did not take issue with the request and there has been some evidence, which I will come to, as to what she thought the purpose was.

[8] They went into Mr Rasmussen's office. To the extent I need to go, I will come to the physical layout of the office, the room in which he works and the entry to the office area, but I will not go into it now. Ms Hosking, in her evidence, says that there was some general chat between the two of them, which I do not need to go into; but it was just of a general nature. She then says that there was some discussion between them about her relationship with a young man named Jonathan Bailey. Jonathan Bailey had been Ms Hosking's partner – certainly in 2019, and I think the evidence is that the relationship came to an end in or about 2019, because of a serious breakdown in their relationship. I do not need to go into that.

[9] It is, I think, of really peripheral relevance, but part of the evidence is that Mr Rasmussen had acted for Mr Bailey in about 2019. Ms Hosking was aware of Mr Rasmussen's involvement and there was some evidence that she provided some useful evidence on the sentencing of Mr Bailey. But Ms Hosking's evidence is that she had not met Mr Rasmussen in any personal way prior to the discussion in Court. They obviously knew of each other.

[10] Getting back to the events in Mr Rasmussen's office. There was some discussion about Mr Jonathan Bailey. Ms Hosking told Mr Rasmussen that the relationship was at an end and it had ended some time before. She says that Mr Rasmussen asked her if she was at that time, that is to say July 2020, in a relationship with anybody else and she said she was. The gist of her evidence, as I recall it, is that it was not a strong relationship – this is probably the easiest way to put it. She says the question was put to her to the effect: Are you in a current relationship? This is the relevant background to her evidence. I will come to Mr Rasmussen's evidence.

[11] At about this point there is evidence from Ms Hosking that Mr Rasmussen said that he wanted to put something to her, which she, in evidence and in different statements that she made, variously recorded as – at one point, I think, 'silly'; at another point – and this is repeated – 'a bizarre request'. He made that observation to her, however it was precisely put, and then said, "Will you have sex with me?" And she said, "No". He said, "I will pay you", and she

said, "No". There are greater and lesser degrees of elaboration in statements by Ms Hosking as to other things said at this point, including in some statements – and I am talking about statements to other people or statements in writing to Police, and encompassing all the statements that have been put in evidence. These included statements from her that Mr Rasmussen offered her money for sex, and in some of her statements that he offered specific sums of money, \$2,000, and when she rejected that, \$4,000. There is evidence from a defence witness, Clare Piniata, of another sum. I will come to her evidence.

[12] These advances, and I use that word in a general way, Ms Hosking says were rejected firmly by her at all points. She says that Mr Rasmussen then – and they were facing each other, both seated, Mr Rasmussen sitting in his office chair – that he moved himself towards her, put his hand on her bare thigh – she was wearing shorts – and then forced his tongue into her mouth. She says at different points, in effect, she was absolutely taken aback and pushed him off. She got up to leave. She alleges that Mr Rasmussen then grabbed her by – I think the evidence is by her jacket or clothing – and did the same thing. He again forced his tongue into her mouth; she pushed him off and left.

[13] I do believe I have captured the essential points. There is a lot more evidence, but that is the evidence of the central acts that have to be proved beyond reasonable doubt.

[14] There is no direct evidence from Mr Rasmussen in this trial. He elected not to give evidence as, of course, is his right. But there is a statement from him taken by a Senior Police Officer. He denied the specific allegations when put to him by the Police officer at the end of the written statement – as is contained, in any event, within his pleas of not guilty. There are other aspects to the statement that I will need to come to because they are part of Mr Rasmussen's positive defence and they are evidence from him.

[15] I will deal with the defence case first. It is probably appropriate to say, since this is a decision by a Judge alone, that given the conventional direction that Judges give to juries – and I am giving it to myself – about the assessment of positive evidence from the defence, and the need to be satisfied beyond reasonable doubt either that the defence evidence is not reliable, or not credible; unless I can move beyond that, if I am left in some reasonable doubt about that positive evidence – (I come obviously in a moment to the defence challenge to the prosecution evidence) – if a reasonable doubt remains in respect of the positive contentions

advanced in evidence by the defence, in respect of Mr Rasmussen's own contention, then I must find him not guilty.

[16] I will expand on this, but my conclusion in relation to his own evidence in his statement is that it does not, in fact, contain anything which persuades me that I cannot move to consider Ms Hosking's evidence and the evidence that supports her.

[17] I am now looking at Mr Rasmussen's written statement. In my assessment of it I also take into account the fact that, whilst he is perfectly entitled not to give evidence – that is his right – what is contained in this statement has not been subject to cross-examination. But what strikes me in particular about this statement, beyond the specific denials of the allegation, is that there is no explanation in that statement as to why Mr Rasmussen asked Ms Hosking to go with him to his office. The statement is one in which Mr Rasmussen (and I do take into account that he is a mature lawyer with experience), made his own statement having voluntarily gone to speak to the Police; and the denials that I refer to are contained at the end in specific questions from the Senior Sergeant who took the statement. But the voluntary statement Mr Rasmussen made says nothing as to why – except perhaps implicitly, and that does not take it very far – he asked Ms Hosking to go to his office. He does not say anything beyond what Ms Hosking said. He said, "I said to her 'Can I have a word with you after the break?' She said, 'Yes'."

[18] He says that the sentencing finished, then he says, "I asked Roimata to come with me to my office. Steven stayed with Probation". And then he says they went back to the office. There is then, in the context of the entire statement – the reasonably long statement from Mr Rasmussen as to what happened back at the office – half-a-page in typed script. He said about 15 minutes of time was taken in a phone discussion with his daughter. It seems that he could have mistaken the length of that call with another call from his daughter, but it appears that it was probably shorter than that. But what he says was discussed is not significantly different from the sorts of things that Ms Hosking said were discussed at the beginning. It is sort of chit-chat: How did you get here? I came on my bike.

[19] I will read the entire statement in the context that I am now dealing with: What happened at the office? No explanation as to purpose.

"We got to my office. I sat at my chair desk and she sat opposite me. I logged onto my computer, checked my emails. Shortly after I received a call from my daughter, Anna, advising that Arthur Neil was trying to get in touch with me. This took at least 15 minutes of my time – and I interpolate here, obviously referring to Ms Hosking – while she was sitting there. After the phone call I turned to her – that is Ms Hosking – and asked her about Jonathan – and I interpolate, that is obviously Jonathan Bailey – and she said that they are no longer together, he ran away with a friend of hers. And I asked her whether she had a new partner. She said she has a Samoan partner. I asked her how did she come to Court. She said she came on a bike. Then I said, okay. I got up and she got up and we hugged and she left my office. Hang on, I think I did ask her whether she's working and she said she is on wage subsidy. I said to her it was a good thing she is not with Jonathan. She said he ran away from her – and he concludes – My attitude may have been too casual but I am always like that with people. I walked her to the main entrance and she walked to the other side and I came back to my office."

[20] It is apparent, from the time I have spent on this, I consider it is of importance – and the prosecution and defence obviously did also – that there is no statement, there is no evidence from Mr Rasmussen as to why he asked this young woman to go back to his office. In terms of what he has said in that statement, as to what was discussed, it is the sort of thing that could have been covered in two minutes while they were both standing on the Courthouse steps.

[21] The second strand of the positive defence case that I want to address – and it is me putting the defence case in my words – is a contention that it is implausible, given the office set up and semi-public setting, that what Ms Hosking alleges would have happened. I am unpersuaded by that and there has been quite a lot of evidence, and some questions from me of different witnesses, about the office set up. My conclusion is that it was not public; and bear in mind that this is not an element that has to be proved beyond reasonable doubt. But anyway, my conclusion is that it was not an open area.

[22] However, I also take into account the evidence of Ms Hosking, which I do in fact accept as reliable, and I will obviously have to come to this in dealing with the prosecution case. But her evidence as to what happened initially and then the hesitant, and then quite direct proposition from Mr Rasmussen – "Will you have sex with me" – and then the further evidence from Ms Hosking of what is an escalating situation, and evidence that I accept, of some sort of offer to try and induce her. And there is other evidence which is not effectively

challenged, which I accept as reliable, of statements that he was 'horny' and that he was – I think one piece of evidence from Ms Hosking that he was 'lusty', I think the word was.

[23] An invitation by Mr Rasmussen to Ms Hosking to come to his office to ask her if she will have sex with him makes the setting not implausible at all. He was not seeking to do anything of a sexual nature on that basis, in his office. But he has, and this is my conclusion on the evidence, worked himself up, made these requests, been rebuffed by this young woman, and then – and this is my conclusion, I am coming to the end of it now, but I have a lot more ground to cover – he has sexually assaulted her in the manner that she alleges.

[24] I have dealt with, and come to that conclusion, to address the defence argument that it is implausible that the indecent assault as alleged could have taken place in a room which was accessible to other people, or could be viewed through a window. And I will say here that I did not find the defence photographs particularly helpful, because they are photographs of Mr Rasmussen's office – I am not critical of the fact that they are of this nature – but they are photographs of his office as it is now; but it is not the office as it was in July 2020.

[25] The third main element, or strand, of the defence case in terms of positive evidence, is the evidence of a witness that I heard this morning, Clare Piniata. I have to say, having listened to that evidence with care, and assessed the elements of it, I find that she is not a credible witness.

[26] The reason for calling her as a witness is evidence she gave of two discussions she had with Ms Hosking. The first, in chronological sequence, she said – and Ms Hosking did not contest this – that it was a family gathering of Ms Piniata to which Ms Hosking came. Ms Piniata said that Ms Hosking made extremely serious allegations of a sexual nature against Mr Rasmussen; far more serious than any other evidence she gave, or anything contained in any of her statements – and I do not need to go into that. The point of calling this evidence was to challenge Ms Hosking's evidence on a point of credibility: that she is a woman who would seek – to at least establish to a reasonable degree – that she – that is to say Ms Hosking – is somebody whose evidence simply cannot be relied on because she concocts fanciful stories.

[27] I do not need to expand on what Ms Piniata said because, as I have already indicated, I did not find her a credible witness; and this does not hinge on the unreliability of her recollection. She actually said, very positively in her evidence, that this discussion she is talking about occurred a year before the alleged events in question; that is to say, it occurred in 2019. Now there may be a mistake there, but she was very firm about that. But what troubled me about her evidence was other aspects of it. She was, in giving her evidence, unduly argumentative and she added detail in the course of her cross-examination quite unrelated to the questions being put to her. The essence of my conclusion in relation to Ms Piniata is that I simply cannot rely on her evidence. It does not advance the case. This applies to both pieces of evidence she gave in relation to two discussions she said she had with Ms Hosking.

[28] The final element of the defence case that I intend to traverse is a point that was raised initially in cross-examination of Ms Hosking; to the essential effect that she, Ms Hosking – and this is putting it in my words – had been put up to this allegation by Mr Norman George, another well-known lawyer, arising out of an issue between Mr Rasmussen and Mr George. It was given some emphasis, I believe, in the approach of the defence in dealing in particular with the evidence of Ms Hosking. As I understood it, in Mr Wile's concise submissions and conclusion, no particular weight was being put on this point any longer.

[29] In any event, I am satisfied that there is no foundation for a proposition that the allegations made by Ms Hosking are concocted allegations to support a completely separate dispute between Mr George and Mr Rasmussen.

[30] Notwithstanding my conclusions in relation to the positive elements of the defence case, I remind myself that I need to be satisfied beyond reasonable doubt on the basis of the remaining evidence – and that is to say, in essence, the prosecution evidence, that the two charges are established. And for the following reasons I am. And I would say, before seeking to summarise it, that some aspects of this might also apply to the positive defence case.

[31] The first point is that there is no explanation from Mr Rasmussen as to why he asked Ms Hosking to go to his office. Ms Hosking has given evidence as to why she thought she was asked to go there, and her speculation as to the reason may be wrong. But the fact that I have to consider is that she was asked by Mr Rasmussen to go back to his office, and there is

no explanation from Mr Rasmussen as to why. Certainly, propositions have been put, but I am unpersuaded that they mean that there is a reasonable doubt in Mr Rasmussen's favour. There is no explanation.

[32] The absence of any explanation does not establish what Ms Hosking positively alleges, but it raises a question which then has to be assessed by considering the positive evidence that comes for the prosecution. And in relation to that, which is the second and critical point, is the evidence from Ms Hosking herself in a series of statements. When I refer to statements I am talking about oral statements she made to people, and then a written statement of her own, which is a diary – or a diary entry, I suppose one could call it; then more formal statements to Police. I am talking about all of those things. I will tabulate, as best as I can recall it, the sequence of what I am calling statements which followed what Ms Hosking alleges occurred in Mr Rasmussen's office.

[33] There is what she said to her nephew, Steven Emile, for whom Mr Rasmussen was acting, and Vaine Tuteru, Steven's partner who had been at the Court. Mr Wiles understandably has contrasted the limited amount of information that Ms Hosking apparently imparted on that occasion, with more detailed information in other statements later made.

[34] In relation to the evidence as to what was said by Ms Hosking on that first occasion, that is to Steven Emile and Vaine Tuteru, I do not find the absence of some detail persuasive, in support of the defence contention that I cannot rely on to the necessary standard everything that Ms Hosking said; and everything that she said over what is in fact a very short period of time following what she alleged occurred in the middle of the day on the 15th of July.

[35] I should have perhaps provided a brief indication of timing. The assaults that Ms Hosking alleges took place in Mr Rasmussen's office were around 1.00 pm in the afternoon, and over a period of time which on the evidence I have heard – I am not saying the assault occurred over this period – but it was over a period of time in his office of around about maybe 20 minutes. That really is not a matter in contention and that was at around 1.00 pm on the day, 20th July 2020. The discussion with Steven Emile and Vaine Tuteru – I cannot recall the time as I am sitting here – but it was not very much later in the afternoon.

[36] At around 3.20 pm – this is the next discussion – Ms Hosking managed to contact her best friend, Roimata Tangaroa, by phone, having rung her earlier and asked her to call back. What Ms Hosking said to her best friend is, in the context, or in the manner that I have described, consistent; not necessarily all the detail, maybe new pieces of evidence, but they do not persuade me that the evidence, because of the differences in detail, taken as a whole is unreliable, let alone lacking in credibility. These are statements, particularly the one to her best friend, when, according to Ms Tangaroa's evidence, which I accept, her friend was in distress.

[37] Later in the day she spoke to her father and made the essence of the allegation to him. He wanted to take action and get advice from a relation, Mr Norman George. There is a diary entry made by Ms Hosking that evening, which is much more detailed. But the fact that there is more detail there – for example, contrasting it with the discussion, first, with Steven Emile at around about 2 pm in the evening, or whenever it was; the expansion of the detail does not provide an indication of unreliability, let alone indicate to me an absence of credibility.

[38] The next day, 16 July, there is a reasonably detailed statement to a Police officer. I do not intend to go into all of this, but my broad conclusion, considering it in its totality, does not persuade me that the evidence that was then given by Ms Hosking is unreliable evidence.

[39] In coming to the conclusion about the critical evidence that the Crown must rely on, and that is to say, of course, the evidence of Ms Hosking; I have, as I am required to do, taken into account all of the other evidence that I have heard, including the careful cross-examination of other prosecution witnesses by Mr Wiles. Taking all of that evidence into account does not diminish the conclusion I have reached that the critical evidence in this case – and it ultimately turns on the evidence of Ms Hosking and that of Mr Rasmussen in respect of the events that occurred in his office, because no one else can give any direct evidence of that – does not diminish, in my judgment, the credibility and reliability of what Ms Hosking said herself.

[40] I just want to come back and indicate that, in addition to the critical evidence of the complainant herself, I consider the evidence of Ms Tangaroa, her best friend, is of some considerable importance because of the timing of it. It was within two to two-and-a-half hours of the alleged assaults, and it is detailed. It occurred long before others were spoken to by

Ms Hosking, and which led to the defence contentions of a growing elaboration – these are my words, not the way the defence put it – a growing elaboration by Ms Hosking of the allegations she was making against Mr Rasmussen.

[41] I am very conscious of the fact there is a reasonably substantial body of other evidence. And when talking about evidence I am always including the cross-examination by Mr Wiles, on behalf of Mr Rasmussen, as well as the positive evidence advanced by the defence; which, of course, includes, critically, Mr Rasmussen's own statement to the Police. Having weighed all of this I am satisfied, as I must be, that Mr Rasmussen is guilty of the two charges he faces. [See addendum].

[42] I am very conscious, as a Judge always has to be, of the care that is required to be taken in relation to the central parties to a case. And I have to constantly remind myself of the need for the prosecution to prove a charge beyond reasonable doubt. I am satisfied to that standard, taking account of all of the circumstances and, at the heart of it, the people involved in this case.

ADDENDUM

[43] This is an addendum to paragraph [41]. At this point in my oral remarks there was reference to conviction. There had been no discussion with counsel as to whether formal entry of conviction should be deferred. In discussions that followed my decision, Mr Wiles requested that conviction not to be entered. There was no opposition from Mr Williams and I agreed. Conviction has not been entered.



Peter Woodhouse, J