

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)**

**CR NO's 36/19, 54/19
305-306/19**

POLICE

v

WILFRED DAUVOIS

Hearing date: 19 November 2019
Appearances: Messrs K Bell and J Epati for the Crown
Mr N George for the defendant
Date: 21 November 2019

**EVIDENCE RULING
OF THE HONOURABLE JUSTICE PETER WOODHOUSE**

[9:56:52]

[1] At the conclusion of the evidence in chief from Mr Dauvois, Mr George asked him essentially two questions to the following effect – and I note that I do not have the transcript in front of me:

“have you ever been charged with rape ... or with an offence like this one”

[2] I do emphasise that that is my recollection of what amounts to two questions. Ms Bell’s submission in support of her application to lead evidence to contradict the answers or the answer from Mr Dauvois – which was no – submitted that the questions were along the lines I have described. Mr George, in his submissions in opposition to the Crown’s application, acknowledged that, after asking Mr Dauvois whether he had ever been charged with rape he probably did say something along the lines – “or something similar”.

[3] The Crown has brought to my attention that Mr Dauvois, earlier this year, pleaded guilty to a charge of male assaults female. I have been given a copy of the Crown Summary of Facts. Mr Dauvois pleaded guilty on the basis of this summary of facts. For the record I will have this transcribed into this minute.

“On Friday 18 January 2019 the defendant, Wilfred Dauvois went on his motorcycle to Chris Manu’s residence at Tupapa.

When he arrived he walked straight into the house without permission, where he saw the female victim, a Philipino lady working inside the house.

At the time neither the owner of the house or his wife were at home.

The defendant walked into the house without knocking and approached the victim. He took off his shirt, went up to the victim and hugged and kissed her on the cheek. He was also touching her on her back and arms whilst saying please.

She ask him what he was doing and he then pushed her. She walked right out the door and to the road where she saw a member of the public at the water station across the road and asked for help.

In explanation for his explanation he said that he did it to scare her. When asked by the police whether he tried to have sex with her, he responded “I don’t know”.

The defendant has previously appeared before the Court.”

[4] At this point in my recording of my decision Mr George added to his submissions that the charge in question – the one to which Mr Dauvois pleaded guilty to earlier this year – is male assaults female, not indecent assault on a female. I acknowledge that. That, however, does not alter the conclusion I have reached.

[5] I have a discretion to admit this evidence. Normally, the Crown is not entitled to advance evidence of other charges in support of its evidence on the charge before the jury. However, Judges have the power under the s 3 of the Evidence Act, in exercise of a discretion, to permit evidence of other offences, or indeed charges, to be admitted.

[6] I fully understand the implications of admitting this evidence and I have necessarily had to consider with care whether the Crown's application should be granted. There is the requirement that always applies to ensure that there is no unfair prejudice to a defendant, from whatever source. I emphasise that what is necessary is to ensure that there is no "unfair" prejudice. It is not a question as to whether the admission of fresh evidence on the application of the Crown will be prejudicial. To admit this evidence undoubtedly will be prejudicial. That, of course, is the purpose of the application.

[7] Taking those considerations into account, I then need to weigh the tenor of the questions in issue and Mr Dauvois' negative answer. I am satisfied that the jury will have taken the questions followed by the answer in a broad way in relation to Mr Dauvois' past history in relation to conduct of a sexual nature; by interpreting the expression "sexual nature" in a broad and common sense way, rather than a lawyer's more technical analysis of a specific charge. Putting that another way, I am satisfied that the tenor of the questions and the following answer constituted fairly explicit evidence from Mr Dauvois that, given his past, or given the absence of any past history, would never have behaved in the way in which the Crown alleges he did in this case, and that he has never behaved in any broadly similar way.

[8] One further consideration, which is perhaps implicit in everything I have said, is that the defence itself has put these issues plainly on the table before the jury. The jury would be left with a false impression on an important matter if this other evidence is not admitted.

[9] For those reasons I allow the application subject to the qualification I mentioned – there can be no evidence relating to the fact that Mr Dauvois has previously appeared before the Court, apart from his appearances relating to the male assaults female charge to which he pleaded guilty.



Peter Woodhouse, J