

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CRI-2018-085-000433
[2019] NZHC 122**

THE QUEEN

v

PADDY JONATHAN WOODS

Hearing: 12 February 2019
Counsel: S C Carter and A R van Echten for Crown
K F Preston and D A Ewen for Defendant
Judgment: 12 February 2019 at 12 noon

**JUDGMENT OF COLLINS J
[Application (No. 2) under s 147 Criminal Procedure Act 2011]**

Introduction

[1] Mr Woods is charged with murdering Zenith (Zena) Campbell on 11 February 2018.

[2] On 8 October 2018, Mr Woods applied to have the charge dismissed pursuant to s 147 of the Criminal Procedure Act 2011 (the Act). Section 147 of the Act sets out the jurisdiction of the Court to dismiss a charge. The Court must be satisfied that, as a matter of law, a properly directed jury could not reasonably convict the defendant. I

dismissed that application on 23 November 2018 because, at the time, the evidence satisfied me that the test for dismissing the charge had not been satisfied.¹

[3] In issuing my judgment, I observed that my decision did not prevent a further application being made under s 147 “should the evidence change in any material respect”.²

[4] Since my decision of 23 November 2018, the defence has disclosed to the Crown witness statements from two experts, Dr Kolar, a forensic pathologist and Ms Tarrant-Wooding, a forensic toxicologist. Upon receiving Dr Kolar’s report, Dr Spark, a forensic pathologist, who is to be a key Crown witness, reviewed her earlier evidence. Dr Spark’s opinion about the cause of death of Ms Campbell has evolved so that now she is more firmly of the view that there is considerable uncertainty about whether Mr Woods caused Ms Campbell’s death.

[5] Upon receiving Dr Spark’s revised opinion, the Crown properly acknowledged that the new evidence constituted a material change from when I delivered my first s 147 judgment and that it would be appropriate for the Court to consider a further s 147 application. The Crown, responsibly, now makes no submissions in opposition to granting the s 147 application. My reasons for now granting the application are explained in the following paragraphs.

Background

[6] At about 12.30 pm on Sunday 11 February 2018, Ms Campbell was reported dead by her boyfriend, Mr Woods. Mr Woods said that he and Ms Campbell had fallen asleep in his vehicle in the early hours of 11 February 2018. He said that when he woke up at about 12.30 pm he was in the driver’s seat, in a reclined position and that Ms Campbell was partially draped over him but was mainly positioned in the front passenger seat and footrest area of the vehicle.

[7] The key post-mortem findings, made by Dr Spark, may be summarised in the following way:

¹ *R v Woods* [2018] NZHC 3061.

² At [30].

- (1) Bruising to Ms Campbell's neck and a fracture of the right side of the hyoid bone in her neck with associated petechial-type haemorrhaging.
- (2) A blood alcohol reading of 170 mg/100 ml and a urine alcohol level of 264 mg/100 ml.
- (3) The presence of methadone, oxazepam, Ritalin and cannabis in her blood.
- (4) A fracture to her nose caused by a "sharp force" and other bruising to areas around her eyes and lower lip.

[8] Ms Campbell was on a methadone programme. She had been warned on 29 and 30 January 2018 about the risks of overdose caused through using methadone with alcohol and other medications, such as sedatives. Ms Campbell had been administered methadone on Saturday 10 February 2018. The level of methadone found in her blood was reported by the ESR to be in the "overlap range" associated with both normal use of methadone, such as administered through a methadone programme, and quantities consistent with "methadone related deaths".

[9] Ms Campbell was born as a male and was in the process of transitioning to become a woman. At the time of her death, she was 21 years old. Mr Woods, who is about 10 years older than Ms Campbell, explained to the police that on the night of 9 February 2018, Ms Campbell had encouraged him to place her in a choke hold as part of their sexual activity. Mr Woods said the choke hold lasted about five seconds and that he had a "brief" go but stopped because of the obvious dangers.

[10] The couple attended a party together on 10 February 2018 at a home in Aro Valley, Wellington. Ms Campbell became involved in altercations with two men at the party over some comments she made that were perceived as racist. As a consequence of those altercations, Ms Campbell sustained injuries after being punched and hit in the face with a bottle. In particular, she suffered a laceration and fracture to her nose, which caused bleeding. Ms Campbell was then asked to leave the party, which she did.

[11] Ms Campbell was in the company of Mr Woods and several others after she left the party. At 1.12 am that night, Ms Campbell went to Aro Park with Mr Hill for approximately eight minutes. At 1.56 am, Ms Campbell walked with Mr Hill and Mr Woods to his vehicle, which was parked nearby. Throughout this time, the witnesses describe Ms Campbell's mood as fluctuating between euphoric and deep depression. Her behaviour included wailing loudly and sobbing inconsolably. At 2.28 am, Mr Rawls arrived at the vehicle. He described Ms Campbell as incoherent and "next level wasted". He says it took six attempts at telling Ms Campbell who he was before she recognised him. At 2.40 am, Mr Rawls and Mr Hill left Ms Campbell and Mr Woods alone in the vehicle. This was the last time Ms Campbell was seen alive by anyone other than Mr Woods.

Evidence concerning the cause of death

[12] Professor Drummer, a forensic pharmacologist and toxicologist, who has prepared a brief of evidence for the Crown, describes in the following way the role of the intoxicants in Ms Campbell's death:

It is impossible from toxicology and prescription data alone to be certain over the role if any of the drugs detected at death. It is possible that the deceased died from toxicity (largely) from the alcohol and methadone through the development of respiratory depression. When this occurs, which it invariably does in susceptible individuals at night in their sleep, they lapse into a steadily increasing coma. If not awakened and resuscitated they will die in their sleep.

[13] Dr Ferguson, an otolaryngologist and head and neck surgeon, also a Crown witness, states that the "most common cause of a fractured hyoid bone is manual strangulation (throttling or homicidal ligature)", but there are other causes such as "intense muscle contractions in vomiting", "consensual choking" and "external blunt impact to the neck". She goes on to say that:

In my expert opinion, it is unlikely but possible that Ms Campbell's hyoid bone was fractured prior to her getting into Mr Woods vehicle with him at around 2am. My reason for this is that there are no reports of any complaints of neck pain and no observed difficulty swallowing or reported pain on swallowing. However, Professor Drummer's report comments on the high levels of alcohol and methadone, as well as other substances, in Ms Campbell's blood which could reduce the degree of pain experienced by Ms Campbell.

In my expert opinion, there is a reasonable possibility that Ms Campbell's fracture hyoid bone was not a substantial and operative cause of death if:

- i) the injury occurred prior to her getting into the vehicle with Mr Woods
- ii) but if the injury occurred after she got into the vehicle with Mr Woods on the morning of 11 February 2018, it would have been a contributory factor, combined with respiratory depression caused by the combination of alcohol and methadone. However, the detailed post mortem report describes bruising in the anterior right neck and an 8mm subcutaneous haemorrhage in the left neck, without any evidence of swelling or bleeding into the deeper tissues or strap muscles and no evidence of petechial haemorrhage in the tissues of the airway that might be expected if strangulation was the primary cause of death. This may need comment from the pathologist as this is not my area of expertise.

[14] Dr Spark made four key observations in her first brief of evidence:

- (1) She agreed that it was unlikely but possible that Ms Campbell's hyoid bone was fractured prior to her getting into Mr Woods' vehicle with him at about 2.00 am.
- (2) The fracture to the hyoid bone did not in itself cause Ms Campbell's death. The fracture to the hyoid bone "is merely an indication that pressure was applied to the neck".
- (3) "Whilst strangulation may result in bleeding in the deeper tissues and strap muscles, and petechial haemorrhage within the airways, it does not always cause this. [That is to say] the lack of these findings does not mean that strangulation did not occur, and does not mean that strangulation could not be entirely responsible for death." Dr Spark also said that if strangulation was the primary cause of death, then that would fit with her findings in this case.
- (4) Dr Spark also said in her first report:

Death is likely due to methadone and alcohol toxicity, or neck compression, or some combination of the two. The relative

contributions of each factor are unable to be determined by pathological and toxicological examination alone.

[15] On the basis of this evidence, I concluded that whatever caused the hyoid bone in Ms Campbell's neck to fracture was also likely to have played a "not insignificant part" in Ms Campbell's death. I also concluded that if the jury was satisfied that the hyoid bone fracture occurred in Mr Woods' vehicle, then it would have been reasonable for a jury to infer that Mr Woods inflicted that injury by strangling Ms Campbell. Dr Spark's first report therefore led me to conclude that a properly directed jury could be satisfied Mr Woods' conduct caused Ms Campbell's death.

New evidence

[16] Dr Ferguson has now supplemented her evidence by advising that there are two reports in the literature of persons suffering fractures to their hyoid bone, who did not exhibit any symptoms of that fracture. In one of those cases, the fracture appears to have gone undetected for about six months.

[17] After reviewing Dr Kolar's evidence, Dr Spark provided the Crown with a supplementary brief of evidence. Dr Spark's revised opinion is encapsulated in the following paragraph:

Whilst the injuries do indicate likely manual application of force to the neck, there are several features which are not in keeping with this application being severe, prolonged, and responsible for death. Forensic pathologists see multiple cases of neck compression almost daily, in the form of hangings. Within this group of cases, we have what we call full suspension hangings and partial suspension hangings. Full suspension hangings may often leave no asphyxial signs, however the mechanics are quite different to manually applied pressure to the neck, and are therefore not useful to compare. Partial suspensions, however, are functionally more similar to manual neck compression. In these partial suspension cases, we usually see florid facial congestion, and copious petechiae (pin-point bruises), in the face, around the eyes, within the eyes, around the ears and on the inside of the mouth. None of these signs were present. In cases of sustained, severe, manually applied pressure to the neck, sufficient to result in death, these asphyxial signs are usually present. In such cases, there is also usually significant deep injury to the neck. In this case, there is a hyoid fracture, some superficial haemorrhage to the structures of the neck, and a single fleck of haemorrhage within one of the muscles of the neck. This does not sufficiently reflect the level of sustained neck compression normally required to result in death, and given the toxicological findings, and history of recent apparently consensual neck compression, cannot confidently be attributed to being related to death.

[18] Dr Spark also gave oral evidence at the hearing of the second s 147 application. I explain the effect of her evidence at [22] and [23].

Governing principles

[19] The provisions of s 147 of the Act substantially replicate s 347 of the Crimes Act 1961. As a consequence, the leading authorities decided under s 347 continue to apply to applications brought under s 147 of the Act.

[20] The following principles can be extracted from the authorities:

- (1) It is for the jury to determine whether evidence is, or is not, sufficient to establish guilt; it is not for the Judge to predict what the jury will find.³
- (2) If the evidence is sufficient in law, if accepted, to prove the case, the Judge should leave the case to the jury and not withdraw it on evidentiary grounds.⁴
- (3) Questions of credibility and weight must, in all but exceptional cases, be determined by the jury. For the purposes of argument, the Crown case must be taken at its highest.⁵
- (4) Where the Crown case depends on inferences, the focus is on whether the evidence, if accepted by the jury, establishes facts that are capable of supporting those inferences. Whether those inferences should be drawn, or not, is also a matter for the jury.⁶

[21] The law does not require the defendant's conduct to be the sole cause of death, it must merely be a "substantial and operative cause of the death".⁷ A substantial and

³ *R v Flyger* [2001] 2 NZLR 721 (CA) at [13].

⁴ *Parris v Attorney-General* [2004] 1 NZLR 519 (CA) at [10].

⁵ *R v Flyger*, above n 3, at [17] and [25].

⁶ At [18] and [25].

⁷ *R v Myatt* [1991] 1 NZLR 674 (CA) at 682—683.

operative cause is one that played a “not insignificant part” in the death of the deceased.⁸

Analysis

[22] Dr Spark confirmed in her oral evidence that any manual strangulation of Ms Campbell by Mr Woods in his motor vehicle in the early hours of 11 February 2018 was not severe and not prolonged enough to constitute a “substantial and operative cause” of Ms Campbell’s death.

[23] Dr Spark also explained that in light of the apparent consensual compression of Ms Campbell’s neck the previous night, and the potentially fatal concoction of drugs and alcohol in her system, it is not possible to say that any compression of Ms Campbell’s neck immediately before her death was a “substantial and operative” cause of her death.

[24] In these circumstances, inviting the jury to find that Mr Woods’ actions were a “substantial and operative” cause of her death would amount to asking the jury to speculate about the cause of Ms Campbell’s death.

[25] Bearing in mind the high standard of proof to which the Crown is put, I am driven to the conclusion that a jury, properly directed, could not reasonably be satisfied that Mr Woods’ actions were sufficient to be a “substantial and operative” cause of her death. He could therefore not properly be convicted of murder or manslaughter.

Conclusion

[26] For these reasons, Mr Woods has been discharged pursuant to s 147 of the Act.

⁸ *R v Tomars* [1978] 2 NZLR 505 (CA) at 510.

D B Collins J

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