NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF COMPLAINANT PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011.

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA79/2022
[2022] NZCA 484

BETWEEN	RAYMOND JOHN BELSEY Appellant
AND	THE KING Respondent

Hearing:	19 September 2022
Court:	Gilbert, Brewer and Moore JJ
Counsel:	J D Lucas for Appellant P A Norman and C J Flatley for Respondent
Judgment:	17 October 2022 at 9.30 am

JUDGMENT OF THE COURT

The appeal is dismissed.

REASONS OF THE COURT

(Given by Brewer J)

Introduction

[1] On 5 November 2021 a jury found Mr Belsey guilty on one charge of sexual violation by unlawful sexual connection. Mr Belsey appeals his resulting conviction.

[2] We must allow the appeal if we are satisfied that, having regard to the evidence, the jury's verdict was unreasonable, or a miscarriage of justice has occurred for any reason.

[3] "Miscarriage of justice" means any error, irregularity or occurrence in or relating to or affecting the trial that:[1]

(a) has created a real risk that the outcome of the trial was affected; or

(b) has resulted in an unfair trial or a trial that was a nullity.

Background

[4] Mr Belsey and the complainant shared a prison cell.

[5] The complainant said he took exception to sexualised comments made by Mr Belsey about a young girl on television. Mr Belsey then became angry and in the course of an assault on the complainant he penetrated the complainant's anus three times with a thumb.

The appeal

[6] There are three grounds of appeal:

(a) Mr Belsey's statement to a police officer should not have been put in evidence. It was inadmissible.

(b) The trial Judge's summing up was unbalanced and unfair to Mr Belsey.

(c) The trial Judge erred in not giving a "motive to lie" direction.

Mr Belsey's statement

[7] A police constable spoke to Mr Belsey about the incident some two months after it occurred. Having ensured Mr Belsey understood his rights, there was this exchange:

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1 Criminal Procedure Act 2011, s 232(4).

Question: "Tell me what happened with your cellmate [the complainant]."

Answer: "I have no idea. All I know is that someone has made a sexual assault complaint about me. I don't know what's happened or anything."

Question: "Tell me about how long you were in a cell with [the complainant]."

Answer: "Almost five months."

Question: "How did you two get along?"

Answer: "Very well."

Question: "So what happened on the evening of 27th of July 2020?"

Answer: "So we were watching TV. Then we got into an argument over something and I ended up smashing the TV and remote and pretty much went to bed."

Question: "Did you touch [the complainant] at any point in any way?"

Answer: "Definitely not, nor did he touch me."

Question: "Do you know what the actual allegation is?"

Answer: "No, I just know that it is sexual assault. That's all I know. This is the first I am talking about it with you."

Question: "Would you like me to read out briefly what it is about?"

Answer: "Oh, yep."

[8] The constable then read from her notebook notes she had made in the course of an interview with the complainant recording the account given to her by the complainant. When she finished, Mr Belsey responded: "It's all bullshit. What's the process from here? This makes me furious."

[9] The constable gave evidence at Mr Belsey's trial. She recounted her interview with Mr Belsey, including the notes she read to him (the notes).

[10] Mr Lucas, for Mr Belsey, submits that the evidence of the notes was inadmissible because it was an account of allegations by the complainant which were rejected by Mr Belsey. Accordingly, the notes had no probative value and putting them before the jury was unfairly prejudicial.[2]

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[2] Mr Lucas did not suggest that the earlier part of the constable's evidence was inadmissible.

[11] Mr Lucas submits that the unfair prejudice was increased because the complainant's evidence given at trial omitted some of the allegations contained in the notes.

[12] We agree with Mr Lucas that the constable should not have been permitted to read the notes to the jury. It has long been accepted that allegations which are not otherwise in evidence are irrelevant and therefore inadmissible unless a defendant accepts them.[3] The constable should simply have made a general statement to the effect that she read her notes to Mr Belsey, and then given his denial.

[13] The issue is whether the jury hearing the notes caused a miscarriage of justice in the sense that it created a real risk that the outcome of the trial was affected, or resulted in the trial being unfair.

[14] The complainant gave evidence via his recorded evidential video interview (EVI) and orally. Mr Lucas helpfully provided us with a table in which the differences between the EVI and the notes are set out. In our view, the only significant differences are that in the notes the complainant is recorded as saying:

> What led up to it was his sexual preferences. He was expressing things for about four months.
>
> …
>
> He always talks about young kids under 10 and, like, young females straddled the fence on TV and that.

[15] The complainant's evidence does not contain these passages. However, in his EVI the complainant does say that the argument arose because of Mr Belsey's comments that a young girl on a television advertisement was "hot", the girl was under 10, it sounded like Mr Belsey at the time was masturbating, the complainant said "that's not right" and "you watching kids on TV … you're into, the wrong stuff".

[16] Further, the complainant was cross-examined on his relationship with Mr Belsey and on the complainant's account of Mr Belsey's behaviour. Some relevant questions and answers are:

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3 *R v Halligan* [1973] 2 NZLR 158 (CA) at 161–162.

Q. So did you want a break from him?

A. Yeah, I just wanted to be in a different cell, you know, that felt normalised and that because you're living in an environment where you're sorta, gotta adapt to something, you've got no choice, like you do but, you know, and *I'd brought it up that I was uncomfortable with the behaviours* and nothing was taken serious and I didn't know how to, just didn't know, I didn't know what to do.

…

Q. I'm going to just talk to you now about the argument that you had with Mr Belsey. Did you and Mr Belsey joke about a young girl on the TV?

A. It wasn't, it wasn't really joking, it was just in a conversation, 'cos *we had a few conversations with things brought up around – like him into younger girls and it was just*, (inaudible 14:47:24) *weird, you know, I'd had enough* like 'cos, you know, waking up and he'd quietly masturbated above the bed and it was just not nice waking up, you know, with watching (inaudible 14:47:42) come on and they had flipped between channels and ads and, you know, it was just –

…

Q. … did you get into an argument with him that night?

A. Well, it was spontaneous and I didn't see it as an argument at the time. *I just said that it's sick and disgusting that he seems to think it's okay to masturbate over kids* and it just went from that to smashing everything up and doing that.

…

A. … I just turned round and said like: "You know all your core values have gone out the window," you know and *you* (inaudible 14:50:22) *masturbating over kids and talk about how hot like young girls are, like on like the news and stuff so* (inaudible 14:50:32) *and I just got sick of hearing it* and I just, you know, (inaudible 14:50:41) and that's what happened and the result of this here.

(Emphasis added.)

[17] We conclude this is not a case where material was put before a jury which would otherwise not have come before it, and which was then used to bolster the complainant's credibility. The notes should not have been read to the jury because Mr Belsey's denial of the allegations means the notes have no probative value. But the complainant's evidence (which the jury heard before it heard the notes) was substantially the same as the notes. There is nothing in the notes, either in detail or emphasis, so different to the evidence of the complainant that unfair prejudice arises. There is no miscarriage of justice arising from the jury hearing the notes.

[18] Mr Lucas, additionally, objects to evidence given by the constable that Mr Belsey became aggressive after the interview such that the overall evidence "created a real risk that the jury may find that [Mr Belsey] was an angry, aggressive person with prurient and persistent paedophiliac [sic] views or beliefs".

[19] In her evidence-in-chief the constable said:

> 8. BELSEY became aggressive and tried to smash through the glass window separating us, so the interview was terminated.
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> 9. The statement was therefore not signed by BELSEY. I produce an unsigned copy of what he told me and which I recorded.

[20] As we have said, we do not see unfair prejudice to Mr Belsey arising from the jury hearing the notes. Nor does the evidence of his aggression raise significant unfair prejudice. The evidence was led to explain why the record of the constable's interview with Mr Belsey was not signed by him.

[21] Further, in cross-examination it was put to the constable that "it was when he heard the specific details of the allegation being made against him that he lost his temper". The constable accepted that proposition and agreed that "[h]e was furious about the allegation".

[22] We agree with Mr Lucas that it would have been better if the constable had not mentioned the aggressive behaviour. It would only have become relevant and of probative value if the fact that Mr Belsey did not sign the constable's record of the interview became an issue. But, in context, and in conjunction with the reading of the notes, Mr Lucas's objection is not made out.

[23] It follows that this ground of appeal does not succeed.

The summing up

[24] Mr Lucas submits the Judge's summing up was unbalanced and unfair to Mr Belsey.

[25] The first criticism relates to the Judge's treatment of evidence that the complainant made a claim for Accident Compensation Corporation (ACC) compensation immediately after the alleged incident. The defence case was that getting ACC compensation was a motive for the complainant to make false allegations against Mr Belsey.

[26] The complainant accepted he made an ACC claim but said he told the prison officer responsible that he did not want compensation. The prison officer said that if a prisoner did not want to make a claim then the claim form would not be completed. Defence counsel referred to this in her closing address.

[27] The Judge in his summing up made three references to the ACC issue:

> [51] Secondly there was a ... it was put to [the complainant] that he was motivated to obtain a payment from ACC. He accepted that an ACC claim form had been submitted but you have heard from [the medical practitioner] that she completed the form as part of the standard protocol of the prison in circumstances where an accident or any injury had occurred. And [the complainant] denied that he was motivated to seek money. He said … "There's nothing like that you can make up. It's the humiliation I had to deal with as well. You know you just can't make up that stuff." Well that will be for you to consider.
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> …
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> [79] [The prosecutor] also submitted that making an ACC claim was denied or in order to obtain money and described it as a red herring. Also to the suggestion that [the complainant] could have pushed the emergency button after the event.
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> …
>
> [92] Next [defence counsel] submitted that there was an inconsistency between [the complainant's] evidence about the ACC claim and that of [the prison officer] who completed the form. It was submitted that an ACC payment was a motive for [the complainant] to fabricate his allegation but the evidence indicates that [the complainant] denied that he was seeking compensation when in cross-examination the allegation was put to him. There was no evidence to the contrary and there the matter must end. And [the prison officer's] evidence did not touch on the issue of compensation itself in relation to the ACC form she filled out. She said that it was protocol, practice, simply to fill out a form when someone had been injured. And we know from our general knowledge and experience that ACC is not just about money, not just about compensation. It also provides mechanisms for a therapeutic response to those who have suffered an injury or trauma.

[28] Mr Lucas submits that the first reference by the Judge "seems to be suggesting that merely because the complainant had answered in the negative around his reasons why he filled in the ACC, that had to be accepted as gospel". Mr Lucas submits further that by quoting the complainant's response the Judge was endorsing the response as truthful, compelling and an answer to the defence's proposition. Mr Lucas characterises the Judge's comment "[w]ell that will be for you to consider" as coy.

[29] As to the third passage, Mr Lucas submits:

(a) The Judge should not have said "[t]here was no evidence to the contrary and there the matter must end".

(b) The Judge misconstrued the evidence when he remarked: "She said that it was protocol, practice, simply to fill out a form when someone had been injured."

(c) The Judge told the jury matters not in evidence when he said: "And we know from our general knowledge and experience that ACC is not just about money, not just about compensation. It also provides mechanisms for a therapeutic response to those who have suffered an injury or trauma."

[30] It is, of course, the law that a judge in summing up must be fair and balanced as between the Crown and the defence and make it clear to the jury that decisions on the facts are for it and not for the judge.

[31] When a complaint is made that a judge in summing up was not fair and balanced as between the parties it is important to analyse the complaint against the summing up as a whole.

[32] In this case the Judge gave orthodox directions making it absolutely clear what the jury's role was, and distinguishing his own role. We found the following compilation of the Judge's comments in the Crown's submissions useful:

Matters of fact

- You are the judges in this case and you are judges of the facts. You have sole responsibility for determining all facts in this case. It is for you and you alone to decide what evidence you accept, what evidence you reject and what weight, what significance you give to any part of the evidence. So if the course of this summing up I appear to indicate a view of the evidence or of any witness which [does] not accord with your view then you must disregard what I say because findings of fact and findings of credibility of the witnesses are entirely for you and not for me.

- I give directions on the law which you must follow. I may comment on the evidence but those comments you are free to ignore.

- As I have previously noted in these remarks, if in directing you on these matters, I appear to take a view of the evidence which does not sit comfortably with your view, then you must disregard what I say.

- How you assess a witness is entirely up to you.

- And it is entirely for you.

- So it is for you to decide what weight, what level of significance you put on each witness when taking account of those types of matters.

- So it is entirely for you to decide.

- So in summary about assessing the witnesses evidence and its weight and worth and any inferences that you chose to draw from it, you will apply as I have said your collective common sense and knowledge of human nature because you are here as representatives of this community to apply your fair and wise judgment.

- [summary of the closing addresses] It is not to be seen as a substitute, it is intended to simply highlight matters as I noted them to be. There may be other matters that you noted and if my comments do not accord with yours, feel free to ignore what I say.

[33] Accordingly, we do not accept Mr Lucas's submission on the first reference. In context, the Judge simply juxtaposed the defence allegation as to motive with the complainant's response. His concluding comment was not coy. It was one reminder of many to the jury of the primacy of its role.

[34] As to Mr Lucas's criticisms of the third reference, it is again useful to set out the relevant compilation of the Judge's comments in the Crown's submissions:

Decisions based on evidence

- Now I mentioned to you at the start of the trial that your verdicts must be based solely on the evidence that you have heard in this courtroom…;

- Now what counsel have said to you in their addresse[s] a short time ago, they are submissions and you should carefully consider what they have said to assist you in your deliberations but what counsel say is not evidence in itself and of course what I say is not evidence.

- Mr Belsey is entitled to be judged only on the evidence you have heard and seen in this case.

- Evidence is what a witness says in answer to questions. It is not the question itself. *So it follows that a proposition put to a witness but not accepted by the witness, is not evidence of the proposition unless there is other evidence on the same topic*. So if something is put to a witness, "this happened" and the witness says "no" and there is no other evidence on that topic, the matter ends there. It is not evidence. It is simply a proposition.

- And on that theme I ask that you not speculate on matters which have not been led in evidence. Your task is to decide the case only on what has been led in evidence before the Court. An example of that might be the Department of Corrections reclassification process or their procedure for disciplining prisoners who have misbehaved. There has been some comment on that but not a lot of evidence. So do not speculate on other matters. Your task is to decide the case on the evidence you have heard and the evidence you accept.

- When you are assessing a witness consider everything a witness has said, evidence-in-chief, cross-examination, re-examination.

(Emphasis added.)

[35] The Judge was correct to tell the jury there was no evidence to contradict the complainant's denial that he was seeking compensation. There was acceptance from the prison officer that the purpose of filling out the form was so that the complainant could claim "full cover or entitlements from ACC". But the prison officer was not asked whether the complainant said that he wanted, or did not want, compensation. Nevertheless, we accept that telling the jury that "there the matter must end" was incorrect. It was still up to the jury to decide whether the inference the defence asked it to draw was available to it on the evidence. However, the point has no significance in the context of the trial. There was no evidence as to whether ACC might pay compensation to victims of sexual assault. There was no evidence as to whether the complainant sought or received financial compensation. Defence counsel raised the issue, but for the jury to give it weight would have been speculative.

[36] The other criticisms of the third reference are likewise of no moment. The Judge's comment that the prison officer said that it was "protocol, practice, simply to fill out a form when someone had been injured" was correct. The Judge did not go on to say that if a prisoner did not want to get help from ACC then the form would not be filled out. But that evidence was before the jury, it had been addressed by counsel and the Judge had made it clear that it was the evidence that must be considered.

[37] We accept that the Judge's comment that ACC "is not just about money" was not based on evidence. But defence counsel's submission that the complainant was motivated to lie so as to get compensation was not based on evidence either. There is no evidence that compensation might be available. All the Judge was trying to do was provide balance. He was not wrong to do so in this context.

[38] The next criticism of the Judge's summing up relates to a defence theory that the complainant wanted to get Mr Belsey out of his cell and this was a motive for making up his allegation.

[39] The theory was advanced in cross-examination of the complainant:

> Q. You'd asked to be moved and you weren't moved, were you …?
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> A. Hey, I could have waited 'til his classification. His classification was, like, three days away and he would have been gone down to low security and that's what I was waiting for, because there was no way I could move. So why would I make this up if he was going down to low security in a few days? It's not a very viable option to make up a load of bullshit.

[40] The complainant's account of the incident included that in his anger Mr Belsey broke the television in the cell. Defence counsel developed a theory that breaking the television might threaten Mr Belsey's reclassification, that the complainant would know that, and so the motive to make up the allegation so as to get Mr Belsey out of his cell remained. But this was not put to the complainant.

[41] Defence counsel did try to broach the matter with a police officer who was called by the Crown. But all she could say was that prisoners could be reclassified up or down as a result of behavioural issues.

[42] Defence counsel addressed the jury on this matter:

> The Crown say well why would he make this up to move cells when he knew that Mr Belsey was likely to reclassified to low security in a few days? Well, we only have [the complainant's] opinion on that, we do know there was going to be consequences for smashing the TV. [The complainant] told us Belsey was going to go to the pound at page 28 of the notes of evidence. Now [the constable] explained that if a prisoner got a misconduct, one way that they might get punished would be to go to the pound. So you may consider that smashing the TV by Mr Belsey would have resulted in a misconduct and [the constable] confirmed that prisoners can have their classification changed as a result of behavioural issues.
>
> Now, we just don't know if he did go to the pound, we don't know if he was due to be reclassified, or if he received a misconduct for smashing the TV and if he did, what if any effect that would have had on his reclassification, but you might think that these are all questions that were running through [the complainant's] mind in the 10 hours that he was waiting in silence, at night for his cell to be unlocked in the morning. [The complainant] was clearly of the view that he only had to put up with Mr Belsey for a few more days until he thought that he was going to be moved out of his cell. He said he was going to the pound, so it's possible isn't it that [the complainant] was worried that this incident might have an effect on Mr Belsey's reclassification, and his impending move out of [the complainant's] cell.

[43] The Judge, in outlining the defence case, said:

> [87] … The principal one is that [the complainant] was tired of being Mr Belsey's cellmate, did not enjoy double bunking with him and viewed Mr Belsey as someone who was "into the wrong stuff". The defence submits that [the complainant] used the opportunity of the argument to construct an allegation which would result in the two of them no longer sharing a cell.

[44] The Judge then directed:

> [88] Although [defence counsel] submitted to you that there was only [the complainant's] opinion as to Mr Belsey being re-classified in a few days' time, I remind you that his evidence was not challenged on that point nor was it put to [the complainant] that in the 10 or 12 hours between the alleged offending and [the complainant] leaving the cell, that he ruminated on matters and what might happen to Mr Belsey for smashing the TV, that he could be re-classified or would receive some punishment. So I direct you to put that submission to one side. There is no evidence on that at all. That is speculation.

[45] Mr Lucas submits the Judge was wrong to direct in this way:

> 89. The direction to disregard that motive was erroneous. The complainant had given evidence essentially that he was stuck in the cell with [Mr Belsey]. That there was no way out but there was a reclassification coming up. It is a reasonable inference to draw that the complainant would be worried about [Mr Belsey's] impending

> move would be affected by the misconduct of breaking the TV. While it was not explicitly put, [Mr Belsey] was asked directly that he had made this up to put himself in a better position and that he wanted [Mr Belsey] gone from the cell.
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> 90. It was a valid inference for a jury to draw – that the complainant was keen for the appellant to leave by any means necessary. That the breaking of the TV might put that at risk.

[46] We do not accept Mr Lucas's submission. The Judge had put the defence theory that the complainant wanted Mr Belsey out of his cell and this gave him a motive to lie. The complainant had denied he had such a motive and referenced the reclassification. There was no other evidence that Mr Belsey was due to be reclassified, no evidence that breaking the television might affect any reclassification and no evidence that this was a factor that might induce the complainant to make up his allegation. The Judge was correct to direct the jury that to consider that line of submission would be to speculate.

[47] Finally, Mr Lucas submits the Judge was wrong to direct the jury:

> [52] And finally it seemed to be suggested that [the complainant] was annoyed that the television had been broken and he would not be able to watch a TV programme. Again that was denied by [the complainant] and perhaps you may think the matter ends there.

[48] We do not accept the submission. The Judge was entitled, on this very minor matter, to make the suggestion he did.

[49] We have discussed individually Mr Lucas's criticisms of the Judge's summing up. We have also considered their collective weight. In our view no miscarriage of justice arises from them. This ground of appeal does not succeed.

A "motive to lie" direction

[50] As is evident, the ultimate issue for the jury was whether it could be sure that the complainant's account of being sexually violated by Mr Belsey was true. Mr Belsey's defence was that the violation never happened; the complainant lied about it.

[51] Mr Lucas submits:

> 102. There was an intense focus on [Mr Belsey's] reasons put forward why the [complainant] was making it up in the closing addresses by both the Crown and defence. As such, the jury should have been reminded and given a what is sometimes called a "motive to lie" direction. Namely:
>
> a. That while the defence have raised motives or reasons as to why the [complainant] is making it up, they do not have to prove that there is a specific reason why the victim is making it up;
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> b. That if the jury find that there was no motive to lie then the jury should not just conclude guilt but rather go back and assess the evidence presented by the Crown as the Crown has to prove the charge beyond reasonable doubt.

[52] It is common in criminal trials for a defendant to submit that the complainant lied about what happened. Or that a significant Crown witness lied about what happened. Conversely, it is common for the Crown to submit that a defendant, or a defence witness, lied about what happened. When lies become a significant issue in a trial the judge is expected to direct the jury on how to regard evidence of lies.

[53] If the focus is on whether the defendant lied, the judge should tell the jury that if it finds that a lie was told it may give the fact of the lie such significance as it thinks just. But the jury should bear in mind that a lie can be told for many reasons and the jury must not jump to the conclusion that because a lie was told the defendant must be guilty. The jury should also be told that if it finds the defendant lied, then it must still decide whether the Crown has proved the charge beyond reasonable doubt. That is because the onus of proving guilt is always on the Crown.

[54] If the focus is on whether a complainant lied then the judge may be required to direct the jury that the onus is on the Crown to prove that the complainant's account is true and not on the defendant to prove that it is untrue. Whether such a direction is necessary may depend on how evidence of the alleged lie is adduced. A direction may well be necessary if the evidence is given by the defendant or a defence witness. It may not be necessary if the evidence arises from cross-examination of Crown witnesses.

[55] There can also be situations where there are indicia of unreliability that cause a judge to warn the jury of the need for caution in deciding whether to accept evidence

or the weight to be given to evidence.[4] A judge must consider whether to give such a warning if evidence is given by a witness who may have a motive to give false evidence that is prejudicial to a defendant.[5]

[56] In this case, Mr Lucas does not submit that the Judge was required to warn the jury that the complainant had a motive to lie such that there was a particular need for caution. His submission is that the Judge needed to direct the jury that it was for the Crown to prove that the complainant was telling the truth and that there was no onus on Mr Belsey to prove the complainant lied.

[57] However, the Crown did not say that the complainant had no motive to lie. All it did was respond to defence counsel's identification of motives to lie. The Crown never departed from the orthodox, and required, acceptance that it bore the onus of proving guilt.

[58] Likewise, the Judge gave the orthodox, and required, direction on the Crown's onus:

> [15] The starting point in this trial is the presumption of innocence and counsel have referred to that during the course of the trial. You must treat Mr Belsey as innocent until the Crown has proved his guilt. *The onus of proof is on the Crown from the beginning of the trial to the end of the trial. There is no onus on Mr Belsey at any stage to prove his innocence. So the presumption of innocence means that Mr Belsey does not have to give or to call evidence and he does not have to establish that he is innocent of this charge. The Crown must prove Mr Belsey guilty beyond reasonable doubt*. I am sure you have heard that expression before. Proof beyond reasonable doubt is a very high standard of proof which the Crown will have met only if at the end of the case you are sure that Mr Belsey is guilty. It is not enough for the Crown to persuade you that Mr Belsey is probably guilty or even that he is very likely guilty but on the other hand it is virtually impossible to prove anything to an absolute certainty when dealing with the reconstruction of past events and the Crown does not have to do so.
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> (Emphasis added.)

[59] The Judge referred to this again when summarising the defence case:

> [85] [Defence counsel] correctly reminded you of the burden and [standard] of proof being on the Crown and that Mr Belsey is not required to

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4 Evidence Act 2006, s 122.
5 Section 122(2)(c).

> prove anything, and furthermore the fact he gave a statement to the police did not change that position.

[60] Finally, the Judge returned to the point when discussing the motives to lie raised by the defence:

> [87] She said to you that as Mr Belsey is not required to prove or disprove anything in this trial, he does not have to suggest a motive but the defence did raise with you a number of possibilities for consideration as to why [the complainant] would fabricate the allegation.

[61] In our view, in the circumstances of this case, the Judge was not required to do more. There is no risk that the jury might have thought there was an onus on Mr Belsey to prove that the complainant had lied.

[62] This ground of appeal does not succeed.

Result

[63] The appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent