

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

NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF ANY COMPLAINANT/ PERSON UNDER THE AGE OF 18 YEARS WHO APPEARED AS A WITNESS PROHIBITED BY S 204 OF THE CRIMINAL PROCEDURE ACT 2011.

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA525/2022
[2024] NZCA 339**

BETWEEN MATIU ROBIN HETA
Appellant

AND THE KING
Respondent

Hearing: 15 May 2024

Court: French, Muir and Campbell JJ

Counsel: M J James for Appellant
H G Clark for Respondent

Judgment: 25 July 2024 at 10.30 am

JUDGMENT OF THE COURT

- A The application for an extension of time to file the appeal is granted.**
B The appeal against conviction is dismissed.
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REASONS OF THE COURT

(Given by French J)

Introduction

[1] A District Court jury found Mr Heta guilty of serious offending against his partner. The presiding Judge, Judge Harvey, convicted him and sentenced him to a term of imprisonment of 11 years and ten months with a minimum period of imprisonment of five years and 11 months.¹

[2] Mr Heta now appeals his convictions on the ground that propensity evidence regarding his conduct towards two former partners should have been excluded.²

[3] The appeal was filed some four and a half months out of time. Mr Heta's explanation for the delay is not particularly compelling. However, the Crown acknowledges the delay has not prejudiced it and does not oppose the appeal being heard. We accordingly grant an extension of time.

The Crown case

[4] Mr Heta and the complainant were in a relationship for approximately three months commencing in February 2020. At the time of the alleged offending, they were living together at Mr Heta's address. According to the complainant's evidence, the first incident occurred when Mr Heta slapped her for asking a male neighbour for a cigarette.

[5] Then on 7 April 2020, Mr Heta arrived home to find that the complainant's cousin was visiting. After the latter had left, he accused the complainant of being unfaithful. He is alleged to have kicked her with enough force that she was propelled into a wall and dented it. While she lay on the ground, he kicked various parts of her body with his shins. The complainant tried to crawl behind the oven to get away. Mr Heta went outside but returned, picked her up and threw her into the lounge where over the course of several hours he continued to assault her.

[6] The complainant testified that during the beating Mr Heta strangled her until she thought she was going to pass out. At one point, he also demanded she suck his

¹ *R v Heta* [2022] NZDC 7132.

² An appeal against sentence was also filed but abandoned.

penis which she did because she was frightened that otherwise the beating would continue. He then allegedly made her go to a bedroom where he raped her.

[7] Over the next eight days, Mr Heta prevented the complainant from being able to leave the house.

[8] During the eight days, he allegedly slapped her several times, which the complainant described in evidence as “fine tuning”, and also strangled her on at least nine separate occasions. The ordeal came to an end when after the last incident of strangulation and kicking her in the abdomen, Mr Heta pushed the complainant outside and said she had to go or he was going to kill her. The complainant ran naked to the house of a relative and stayed in emergency housing for a number of weeks.

[9] Mr Heta got back in contact with the complainant and on 6 May 2020, she returned to the house to collect her belongings. She stayed the night and the following morning, she discovered he was having an affair. An argument ensued. Mr Heta chased the complainant down the street, damaging a letter box and threatening to kill her. He was alleged to be carrying a knife.

[10] Mr Heta was charged with the following offences:

- (a) four charges of assault on a person in a family relationship, one of which was a representative charge;
- (b) two charges of assault with intent to injure, one of which was a representative charge;
- (c) three charges of strangulation, one of which was a representative charge;
- (d) one charge of sexual violation by rape;
- (e) one charge of sexual violation by unlawful connection;
- (f) one charge of kidnapping;

- (g) one charge of possession of an offensive weapon;
- (h) one charge of threatening to kill;
- (i) one charge of assault with a weapon; and
- (j) one charge of wilful damage.

[11] Mr Heta pleaded guilty to the wilful damage charge and some of the less serious charges of assault with intent to injure and assault on a person in a family relationship. The charge of assault with a weapon was withdrawn. Mr Heta defended the other charges and gave evidence to the effect that the complainants' allegations regarding the more serious domestic and sexual violence were fabricated.

[12] The jury acquitted Mr Heta of the charge of possession of an offensive weapon but found him guilty of all other charges.

[13] We turn now to the sole ground of appeal, which is that propensity evidence was wrongly admitted giving rise to the risk of a miscarriage of justice.

The propensity evidence

[14] The propensity evidence in question consisted of evidence of Mr Heta's previous convictions for violent offending against two former partners that took place in 2017 and 2010. It was adduced by way of an agreed statement under s 9 of the Evidence Act 2006. The statement summarised the underlying facts of each conviction, which were as follows.

2018 convictions

[15] Mr Heta was convicted in 2018 of two charges of injuring with intent to injure and one charge of assault with intent to injure against his then partner, A. In August 2017, an argument between Mr Heta and A about him taking her car led to him pushing the car against her and squashing her between the door and the body of the car. When A called out for help, he punched her with his hand striking her face. The

impact of the punch split her lip and caused one of her teeth to become loose. This formed one charge of injuring with intent.

[16] The following month, Mr Heta became angry with A when she asked to leave an address where they were visiting. He struck her causing her to black out. She also sustained a bleeding nose, a black eye and blurry vision. This was the basis of the assault charge.

[17] Four days later, in the early morning while A was still in bed, Mr Heta removed the blankets off her and jumped on the upper half of her abdomen, winding her. He then grabbed her with one of his hands and squeezed her neck rendering her unable to breathe. After he released his grip and she was coughing to catch her breath, he began punching her in the face and body. This incident formed the other charge of injuring with intent.

2011 convictions

[18] In 2011, Mr Heta was convicted of one charge of assault with intent to injure and one charge of male assaults female against his then partner, B. Mr Heta was also convicted of aggravated burglary and unlawful possession of a firearm.

[19] In April 2010, Mr Heta and B were at his house. He became angry with her and threw shoes at her, hitting her in the arm. As she walked away, he yelled at her to return and take her clothing. He ripped her sweatshirt in half, threw her belongings outside and pushed her in the back. This incident formed the intent to injure charge.

[20] In June 2010, Mr Heta and B were at a residential address. B was sitting on the front steps of the address when Mr Heta grabbed her legs and threw her onto the front lawn. This was the basis of the male assaults female charge.

[21] In August 2010, in breach of a bail condition not to contact B, Mr Heta went to B's address with a BB style pistol. He gained entry to the house and began to yell at B, accusing her of cheating on him.

[22] He then jumped on top of B and pinned her to a bed with both hands. He produced the pistol and put it to her head, asking her if she wanted him to shoot her. After a third person yelled at him to leave B alone, Mr Heta grabbed B and dragged her into the hallway. Other people arrived and Mr Heta then left. These events formed the aggravated burglary and unlawful possession of a firearm charges.

Pre-trial ruling

[23] The admissibility of this propensity evidence was the subject of a pre-trial ruling by Judge Tomlinson.³ Both the prosecutor and Mr Heta's then counsel agreed that the propensity evidence was admissible in relation to the index violence charges, but not the kidnapping and rape charges.⁴ The focus of the argument was therefore whether it was realistic to expect the jury to be able to place the propensity evidence to one side when considering the rape and kidnapping charges or whether because the evidence would so blacken Mr Heta's character, the jury would engage in illegitimate reasoning.⁵ The Judge said he was satisfied the jury would follow directions and only use the evidence offered in relation to each charge that they were permitted to use.⁶ He therefore ruled the evidence was admissible in relation to the violence charges.⁷

[24] Mr Heta did not appeal that ruling. The propensity evidence was duly admitted and a strongly worded direction given by the trial Judge about its limited relevance and the use to which the jury could put it.

Analysis on appeal

[25] On appeal, there was no challenge to the Judge's direction on the propensity evidence. Rather the argument was that the evidence should not have been admitted even in relation to the violence charges. Counsel for the appellant, Ms James, submitted that any probative value the propensity evidence had in relation to the violence charges was limited and significantly outweighed — indeed “overwhelmed” — by its unfairly prejudicial effect.

³ *R v Heta* [2021] NZDC 17534.

⁴ At [4]–[8].

⁵ At [14].

⁶ At [15].

⁷ At [17].

[26] In support of that central submission, Ms James argued that while there were similarities between the past and present violent offending, there were also considerable differences. In particular, the past offending involved two former partners and none of the index charges involved unlawful entry and possession of a pistol. The latter offending was, she argued, a different and distinct type of offending.

[27] We do not agree with those submissions.

[28] The propensity evidence clearly demonstrated a propensity on the part of Mr Heta to inflict violence, including serious violence, on females with whom he is in an intimate relationship when he becomes jealous or wishes to assert control. It was therefore, in our assessment, highly probative in relation to the issue at trial as to whether any of the serious violence alleged had actually happened. We accept there were some differences between the previous sets of offending and the index charges. However, it is well established that in assessing probative value, the focus should be on the similarities.⁸ And as will be evident from [14]–[22] above, the similarities here were significant. Further, in our view, far from weakening the probative value of the propensity evidence, the fact it involved two other victims actually strengthens it. The fact of there being two other victims was prejudicial to Mr Heta, but not unfairly so.

[29] We conclude that the propensity evidence was properly admitted. The appeal against conviction is accordingly dismissed.

Outcome

[30] The application for an extension of time to appeal is granted.

[31] The appeal against conviction is dismissed.

Solicitors:
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent

⁸ See for example *R v Hall* [2021] NZCA 274 at [21]; *B (CA114/2014) v R* [2014] NZCA 244 at [20]; *Hetherington v R* [2012] NZCA 88; and *R v O (CA465/2017)* [2017] NZCA 472 at [9].