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CASE COMMENTARY

THE CRIME OF RETRACTING A TRUTHFUL STATEMENT

R v A [2012] EWCA Crim 434

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BACKGROUND

On 13th March 2012, the Court of Appeal delivered its reserved judgement in *R v A*,[1] an appeal against conviction for the offence of perverting the course of justice. The appellant had made allegations of multiple rape and domestic violence perpetrated against her by her husband, allegations she later withdrew, thereby giving rise to the charge of and subsequent conviction for perverting the course of justice. The Court of Appeal upheld the conviction. This was the second time this appellant's case had been referred on appeal, the Court having already heard an appeal against sentence on 23rd November 2010, when it quashed a prison sentence of eight months, and substituted a community sentence and supervision order. Whilst justice has prevailed and corrected the error of the draconian sentence, the conviction for perverting the course of justice following the retraction of a truthful allegation because of fear and pressure still stands. At present the case is being appealed further to the Supreme Court.

The case of A, has generated national and international publicity[2] due to a widespread concern that the prosecution of a domestic violence victim for withdrawing an allegation, where that withdrawal was motivated by fear of further abuse and pressure, amounted to a gross miscarriage of justice which would deter victims of rape and domestic violence, under similar circumstances, from reporting such assaults to the police. The serious consequences that flow from the deterrent effect of this anomalous prosecution on victim's reluctance to report to police and the risk to victims of

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[1] *R v A* [2012] EWCA Crim 434.

[2] A Bershadski "Complainants who Stop Complaining: Being Prosecuted for Withdrawing an Allegation" (2011) 1 JCCLaw 153.

further assault and/or death must be considered against the background of the seriousness and prevalence of rape and domestic violence. Two women die at the hands of their partners every year.[3] In 2008, 101 women victims died following violence inflicted by a partner or ex partner. Seventy-six per cent of all domestic violence involves repeated incidents.[4] Fifty-four per cent of women victims of serious sexual assault were assaulted by their partner or ex-partner.[5]

Over the last three decades police, prosecutors and the courts have been working towards improving the criminal justice system response and (mindful of their obligations under the European Convention of Human Rights Art 2 - right to life and Art 3 - right to be free from inhuman and degrading treatment), encouraging women to report violence to the police in the anticipation that the prosecution of such offences will prevent an otherwise escalating spiral of seriousness in domestic violence.[6] The law of evidence has also introduced changes of benefit to victims of domestic violence. Wives are compellable witnesses against husbands,[7] special measures and support for victims has been provided.[8] Hearsay[9] and bad character [10] provisions have been extended, where propensity evidence includes previous convictions, cautions, acquittals, and offences for which the person has not been charged. It may also include findings in civil proceedings,

By 2009/10, 74,000 cases were prosecuted, and the conviction rate (which includes not guilty pleas resulting in conviction as well as pleas of guilt) was 72 per cent.

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[3] K Smith (ed), S Osborne, I Lau and A Britton *Homicides, Firearm Offences and Intimate Violence* 2010/11: Supplementary Volume 2 to Crime in England and Wales 2010/11 Table 1.05 p 38. See also http://bit.ly/NIGtQU.

[4] J Flatley, C Kershaw, K Smith, R Chaplin and D Moon (2010) *BCS - Crime in England and Wales* 2009/10, Home Office, accessed at http://bit.ly/Mb8X06 p 24.

[5] Stern (2010) *The Stern Review* accessed at http://bit.ly/R7wp4O p 9.

[6] *Opuz* v *Turkey* (2010) 50 EHRR 28; 27 BHRC 159. See also *Yildirim v Austria* (V) CEDAW 6/2005 (6 August 2007), where a wife who made repeated applications for restraining orders to protect her from a husband's repeated threats to kill was ultimately killed by him. The Committee on the Elimination of Discrimination against Women found a breach of Articles 2 and 3 of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). See also *Goekce v Austria*, UN Doc CEDAW/C/39/D/5/2005 (2007) para 12.1.4; the court held that Austria had not done enough to protect where a husband killed a wife when restraining orders were in place, but there was a failure to adequately protect. See also *Kontrovà v Slovakia* (no. 7510/04), *Bevacqua and S v Bulgaria* (no. 71127/01), *E S and Others v Slovakia* (no. 8227/04), *Hajduovà v Slovakia* (no. 2660/03).

[7] Police and Criminal Evidence Act 1984 (PACE), s 80(2).

[8] Youth Justice and Criminal Evidence Act 1999 (YJCEA 1999), s 17.

[9] Criminal Justice Act 2003, s 116. See also *R v Boulton* [2007] EWCA Crim 942.

[10] Criminal Justice Act 2003, ss 101 and 112.

In addition, the introduction of independent domestic violence advisers (IDVAs) offering support to women through the process has resulted in a successful outcome in 73 per cent of the domestic violence cases where an IDVA is present.[11] In 2005/06 there were 25 specialist domestic violence courts in 2011 this number had increased to 143.

Given all this progress the prosecution of A for perverting the course of justice will undoubtedly undermine the confidence of women in the criminal justice system and deter them from reporting incidents of domestic violence which will have devastating consequences for women's safety. With regard to the CPS, the DPP has stated that since 2001 clear guidance had been issued to prosecutors on prosecuting domestic violence cases and that during 2005-2008, there was a "huge training exercise training all of our prosecutors on domestic violence."[12] So what happened in A's case? In 2009/10 over 6,500 domestic violence cases failed because the victim either failed to attend court or retracted her evidence. This has been a perennial problem which is being addressed in several ways including supporting victims throughout the prosecution process (with IDVAs), and allowing the admission of hearsay[13] and bad character[14] evidence. It has been a grave error of judgement to have prosecuted A for retracting a truthful statement.

FACTS

'Sarah' as the anonymous victim is referred to[15] was subjected to domestic violence and rape. On 28th November 2009, she made a police statement alleging that she had been raped by her husband. She was relocated to a Women's Refuge with her four children. Her husband was subsequently arrested and remanded in custody. On 10th December, at a preliminary hearing, he was released on conditional bail, with a specific condition that he should not directly or indirectly contact any prosecution witness. On 21st December Sarah said she wished to withdraw the allegation and on 7th January 2010, she stated that she wished to withdraw the complaint although she still maintained that it was true. On 18th January 2010, a plea and case

[11] IDVAs are trained specialists who provide a service to victims, who are at high risk of harm from intimate partners, ex-partners or family members, with the aim of securing their safety and the safety of their children. See http://bit.ly/OIOZOn.

[12] See http://bit.ly/OCpRKz speech by the director of public prosecutions, Keir Starmer QC, accessed June 3rd 2012.

[13] Criminal Justice Act 2003, s 116.

[14] Criminal Justice Act 2003, ss 101 and 112.

[15] A victim of rape is entitled to anonymity since Sexual Offences Amendment Act 1976 (see House of Commons *Anonymity in Rape Cases* Standard Note SN/HA/4746, last updated: 7 February 2012).

management hearing took place, and the husband entered 'not guilty' pleas. On 7th February in a telephone conversation with the police she said that her original statement was not true and on 11th February she went to the police station and made a statement that her original allegation was also untrue. On 12th February, at Mold Crown Court, no evidence was offered against her husband in connection with the six counts of rape and not guilty verdicts were recorded. This sequence of facts and subsequent withdrawal of allegations of violence by women are typical in these cases. It is usual in the UK jurisdiction, and in others, that the case ends there, and as has already been stated the prosecution case fails.[16]

CROWN COURT TRIAL

Unusually, the CPS and police in North Wales decided however to proceed against Sarah. On 16th April 2010, she was formally arrested and interviewed under caution and told the police that her original allegations had been false. She was then charged with two counts of perverting the course of justice that, "... between the 7th day of February 2010 and the 30th day of July 2010, with intent to pervert the course of public justice, did a series of acts, namely made and pursued a false retraction of her complaints of rape against … her spouse which had a tendency to pervert the course of public justice."[17] On 15th October 2010, she was arraigned on two counts of perverting the course of justice (Count one that she had made a false allegation and Count two that she had made a false retraction). She pleaded 'not guilty' to the first count, and 'guilty' to the second count. In cases involving allegations of rape and domestic violence charges of perverting the course of justice will only be brought where it is considered that the complainant has made a false allegation or else against the perpetrator of the violence for witness intimidation. Few, if any cases proceed against victims where it is the retraction of a complaint of rape or domestic violence which is considered to be false. In Sarah's case the determination of the prosecutors to secure a conviction against her is self evident since both her statements were made the subject of separate counts ensuring that a conviction would be inevitable since one statement was certainly false.

Following her conviction for perverting the course of justice in relation to Count 2 - retracting a true statement and declaring it to be false, there was a public outcry in which the DPP, Keir Starmer, went on public record as saying that "I do not consider justice was done or was seen to be done"[18]

[16] Case attrition in domestic violence case is much researched.
[17] *R v A* [2012] EWCA Crim 434.
[18] Keir Starmer, *The Guardian* 16 Dec 2010.

paraphrasing the aphorism of *McCarthy* 1924.[19] Following this the CPS instituted a consultation exercise, and subsequently published what it considered to be fresh guidance to prosecutors on how to deal with what it called "double retractions" in such cases. I will comment on this in detail below.

COURT OF APPEAL - APPEAL AGAINST SENTENCE

On 23rd November 2010, the Court of Appeal before the Lord Chief Justice of England and Wales (Lord Judge), Mr Justice Calvert-Smith, Mr Justice Griffith Williams, considered Sarah's appeal against sentence and quashed the sentence of imprisonment that had been imposed at Mold Crown Court,[20] substituting instead a community sentence with a supervision order. However, as the Court of Appeal made clear, in her later appeal against conviction,[21] the only reason a supervision order was made instead of a conditional discharge was that as she had spent three weeks in prison the care of her children needed regularising and supporting. Counsel for the appellant argued that the sentence was manifestly excessive pleading that insufficient account had been taken of: "(i) her age; (ii) her good character; (iii) her admissions; (iv) the fact that she was the mother to four young children; and (v) the fact that her husband had placed her under great pressure to withdraw the complaint." In considering each of these points the Court of Appeal acceded that the sentence was manifestly excessive, and made considerable comments in relation to the fifth ground. The Court of Appeal said this:

> "... the difference between the culpability of the individual who instigates a false complaint against an innocent man and the complainant who retracts a truthful allegation against a guilty man will often be very marked. Experience shows that the withdrawal of a truthful complaint of crime committed in a domestic environment usually stems from pressures, sometimes direct, sometimes indirect, sometimes immensely subtle, which are consequent on the nature of the individual relationship and the characters of the people who are involved in it. [21] Where a woman has been raped, and raped more than once by her husband or partner, the father of her children, the man in whom she is entitled to repose her trust, those very actions

[19] *R v Sussex Justices, Ex p McCarthy* [1924] 1 KB 256.
[20] *R v A* (false retraction of allegation of rape) [2010] EWCA Crim 2913. See also S Edwards "The Duplicity of Protection—Prosecuting Frightened Victims: An Act of Gender-based Violence" (2012) 76 JCL 29-52.
[21] *R v A* [2012] EWCA Crim 434.

> reflect, and are often meant to reflect, manifestations of dominance, power and control over her. When these features of a relationship between a man and a woman are established, it is an inevitable consequence that the woman who has been so ill-treated becomes extremely vulnerable."

Significantly, in considering the appeal against sentence the Court of Appeal was most influenced by the pressure she was placed under and also her fear of her husband and said this:

> "She stated, as recorded in a pre-sentence report, that her relationship with her husband had been an abusive one and that she had been under immense pressure to drop the complaint against him. She further stated that she had issued the retraction statement in fear of repercussions from her husband and in an effort to enable her children to enjoy Christmas with him... The sentencing court, when assessing culpability, should allow for the pressure the defendant would necessarily be exposed to and be guided by large measure of compassion for a woman already victimised. The instant case was very exceptional. The sentence for an offence of perverting the course of justice was normally custodial. But the instant case, which was exceptional, was not one such a case. The appropriate sentence was a community sentence with a supervision order."

The Court of Appeal added that, "the sentence for perverting the course of justice normally is, and will normally continue to be, a custodial sentence". This is not entirely true and it is worthy of note, perhaps, that from 1991-2000 of a total of 16,925 defendants for trial at the Crown court, 13,245 were convicted, and of those 5,595 were sentenced to a term of imprisonment, and of those imprisoned 50 per cent were sentenced to up to four months imprisonment.[22] In 2000, 9,763 offences of perverting the course of justice were recorded. In the same year 5,107 cases of perverting the course of justice were proceeded with in the magistrates' courts, of which 2,312 were dealt with in the Crown Court (Table 2). In 2009/10, a total of 7,997 offences of perverting the course of justice were recorded.[23]

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[22] Source: Data on defendants tried and/or sentenced compiled from Criminal Statistics: England and Wales, Supplementary Tables, Vol 2, Proceedings in the Crown Court, Table S2.1(A) for the respective years.

[23] R Chaplin, J Flatley and K Smith *Crime in England and Wales 2010/11 Findings from the British Crime Survey and police recorded crime* (2nd Edition) July 2011 HOSB:10/11 Table 2.04 (contd) Recorded crime by offence, 1997 to 2010/11 and percentage change between 2009/10 and 2010/11 p 45.

COURT OF APPEAL - APPEAL AGAINST CONVICTION

On 15th February 2012, in the Court of Appeal, before Lord Judge CJ, Silber, Maddison JJ, Sarah's counsel advanced the following arguments, (i) that she had been suffering from post traumatic stress at the time of retracting her true statement, (ii) that she had a defence of duress or marital coercion and (iii) that prosecutorial discretion was not exercised properly and under these circumstances a case should not have been brought. The Court of Appeal summarised the pressure, fear, guilt, isolation, responsibility for the children, and her desire to keep up a facade for their sakes that all was normal between her and their father. The court said **"**we can see no reason for concluding that in the context of the ingredients of this offence, the victim of a crime is entitled to be treated differently from any other witness to a serious offence who falsely retracts truthful evidence."[24] There is every reason. This point I will address in the commentary. The Court of Appeal, on the duress point abided by the further limitations on the law of duress laid down by the House of Lords in *Hasan*,[25] and accepted prosecution argument that "that duress should not and cannot be confused with pressure,"[26] concluding that there is inconsistency between what the appellant said she was subjected to (in the appellants words) "this mixture of pressure" and what her counsel argued existed as pressure in that there was violence. In this, the Court of Appeal misses the complexity of pressure for a victim of rape and domestic violence and the difficulty she has in describing her coercion in precise legal niceties.[27] The Court of Appeal with regard to sentencing did not consider itself powerless and stated "The court is not powerless. In an appropriate case an order for absolute or conditional discharge will convey its distinct message."[28] But with regard to a finding of abuse of process it said, **"**even if it can be shown that in one respect or another, part or parts of the relevant guidance or

[24] Para 58.
[25] [2005] 4 All ER 685.
[26] Para 63.
[27] It is worth noting that Sections 11 and 12 of the Matrimonial Causes Act 1973 which itemise the grounds for nullity. Specifically, ground (c) in Section 12 states that a marriage shall be voidable if: "…either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise." The leading cases are *Hirani v Hirani* [1982] 4 FLR 232, CA; *Mahmud v Mahmud* 1993 SCLR 688; *Sohrab v Khan* 2002 SLT 1255. And the test is whether the threats or pressure were such as to overbear the will of the individual and not the earlier test of threat to life and limb. And the Forced Marriage (Civil Protection) Act 2007 recognises the complexity of coercion s 63A states "(6)In this Part— 'force' includes coerce by threats or other psychological means (and related expressions are to be read accordingly)".
[28] Para 83.

policy have not been adhered to, it does not follow that there was an abuse of process... Accordingly, we are not entitled to interfere with this conviction."[29]

COMMENTARY

The CPS was entirely wrong in bringing charges of perverting the course of justice against the appellant. Instead, the case against Sarah's husband should have proceeded. The Court of Appeal, whilst sympathetic with the predicament of the appellant, both at the appeal against sentence and the appeal against conviction seemed more willing to entertain pressure and duress arguments in mitigation of sentence than when they were advanced in support of a defence of duress. In this latter regard the opportunity to develop the law on duress was not seized by the Court of Appeal.

This is all very disappointing as the CPS has been working on understanding domestic violence and how to prosecute in such cases since its guidance in 1993. This U turn suggests a lack of case management and a lack of understanding of domestic violence and the need for a new concerted drive to raise awareness of domestic violence within the organisation. The issuing of new guidelines to prosecutors should ensure that where these circumstances arise again, as indeed they undoubtedly will, victims will not be prosecuted and the CPS will consult with the DPP over such cases. However, the new guidelines merely echo the previous guidelines and suggest more of a public relations exercise to conceal serious failings within the organisation.

Perverting the course of justice

Perverting the course of justice, an offence at common law, is triable on indictment only. Three types of conduct are most commonly indicated including, fabrication or disposal of evidence or inducing others to do so, intimidating a juror, witness or person assisting an investigation and harming or threatening to harm a witness, juror or person assisting an investigation.[30] Intimidating jurors[31] causing death by dangerous driving[32] concealing incriminating evidence[33] driving offences,[34] and making false allegations of

[29] Paras 84 and 88.

[30] Perverting the course of justice is a charge that should be used where there is witness intimidation. See for example the case of the man who pressured his wife into withdrawing an allegation against him *Grimsby Telegraph* May 25 2012.

[31] *R v Curtis (Stephanie)* Court of Appeal (Criminal Division) [2012] EWCA Crim 945.

[32] *R v Gray (Barry Paul)* Court of Appeal (Criminal Division) 03 May 2012, *R v Afzal (Mohammed)* Court of Appeal (Criminal Division) [2012] EWCA Crim 10.

[33] *R v Yaman (Tolga)* Court of Appeal (Criminal Division) [2012] EWCA Crim 1075.

assault,[35] provide such examples. The person who retracts a truthful statement because of fear is not usually proceeded against. Indeed the CPS, in its own public information, point to the concern with perverting the course of justice, as involving cases where "there is a possibility that what the suspect has done 'without more' might lead to a wrongful consequence, such as the arrest of an innocent person (*Murray* (1982) 75 Cr. App. R. 58) or a false allegation has been made". The CPS has only proceeded against a victim who retracts a truthful allegation in less than a handful of cases in the last three decades. The use of such proceedings to manage the frightened domestic violence witness is an oppressive and vindictive abuse of the victim. In 1989, Michelle Renshaw was assaulted by her boyfriend Michael Williams and was proceeded against for contempt of court for refusing to give evidence at the trial stage. Pickles J went on to say that it was Michelle Renshaw who failed the 'court of women'. The CPS in its new guidance it states:

> "8. The offence of perverting the course of justice in the context of rape and domestic violence covers the following situations:
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> - Where someone makes a false allegation of rape or domestic violence. (See paragraph 10 and paragraphs 26-28 below.)
> - Where a complainant of rape or domestic violence retracts an allegation, whether false or true, an offence of perverting the course of justice may be committed. However, there may be credible reasons why a complainant of rape or domestic violence may retract a truthful allegation and prosecutors will need to ensure that the reasons for the retraction are fully explored and understood. (See paragraphs 12-16 and paragraph 24 below.)
> - Where a complainant of rape or domestic violence withdraws an earlier retraction (referred to in this guidance as a "double retraction"). (See paragraphs 17-19 and paragraph 29.) [36]

The new guidance 'so called' actually did no more than to restate the relevant parts of existing CPS policy and reflected an effort to quell the

[34] *R v Jason Langley* No: 2011/5738/A5 [2011] EWCA Crim 2716 2011 WL 5828799.

[35] *R v Clarke* Criminal law – Sentence – Appeal against sentence – Defendant charged with perverting the course of justice – Defendant pleading guilty and sentenced to 15 months' imprisonment – Whether sentence should have been suspended, [2010] EWCA Crim 2076, (Transcript: Wordwave International Ltd (A Merrill Communications)).

[36] http://bit.ly/Qo6KCU accessed 1 June 2011.

rightly indignant public reaction to the treatment of the victim in the immediate case. The Court of Appeal neither at the hearing against sentence nor at the hearing against conviction made any comment on the exercise of discretion by the CPS. Yet, in the earlier case of *R* v *Bird and Holt,*[37] where the victims of domestic violence were too frightened to give evidence against the perpetrator the Court of Appeal was indeed critical of the CPS and asked why the original statements of the two women had not been admitted under the hearsay provisions. In the immediate case one must ask why Sarah's husband was not prosecuted and why Sarah's contradictory statements were not tested in court and the jury left to decide which of the two inconsistent statements was true especially as the police were inclined to believe that the first statement was the true statement. There is authority for this approach.[38] In *R* v *Smith (Rocky)*,[39] the victim of domestic violence retracted her original police statement because of fear; the judge granted the prosecution application to treat her as a hostile witness. She was cross-examined by the prosecution who put in evidence her earlier statement. In ***R v Bashir*,[40]** a wife was treated as a hostile witness.

The Court of Appeal was correct however on their view that a conditional discharge would have been appropriate. Sentencing principles are articulated in *R v Livesey (John)*[41]as laid down in *R v Tunney*,[42] where Stanley Burnton J, said:

> "10. In our judgment the sentence which is appropriate for offences of this nature depends effectively on three matters … The particular factors which the court must have regarded to are, first, the seriousness of the substantive offence to which the perverting of the course of justice relates. Here the offence in question, murder/manslaughter, was at the most serious end of the spectrum. The second matter which the court must have regard to is the degree of persistence in the conduct in question by the offender. Here there was a degree of persistence, although ultimately the appellant ceased to persist in his lies. Thirdly, one must consider the effect of the attempt to pervert the course of justice on the course of justice itself.

[37] (1997) 161 JP 96, *The Times* (31 October 1996), Roch LJ, Jowitt J and Judge Ann Goddard QC.
[38] L Ellison "Prosecuting Domestic Violence without Victim Participation" (2002) 65 *Modern Law Review* Volume 834.
[39] [2009] EWCA Crim 2461.
[40] [2011] EWCA Crim 2763.
[41] Court of Appeal (Criminal Division) 2nd May 2012.
[42] [2006] EWCA Crim 2066 and [2007] Cr App R (S) 91.

> Here it was unsuccessful. Nonetheless, the substantive offence of murder or manslaughter could scarcely have been more serious."

PRESSURES, FEAR AND LEGAL NICETIES IN THE DOMESTIC VIOLENCE CONTEXT

At a time when the Coroners and Justice Act 2009 introduced a new offence of fear - loss of control manslaughter - it seems anomalous that the complexity of domestic violence and the factors which affect retraction of allegations is so little understood elsewhere in the criminal law. Sarah listed the pressures "She said that everything had been done for her children so they could enjoy their Christmas" including withdrawing the allegation.[43] The Court of Appeal noted, "In the statement the Appellant asserted that she had been subjected to domestic abuse and had indeed been raped on three occasions. As to her reason for retracting her allegations to this effect, she said that her husband "persuaded" her to do so on the basis that if she did not "any punishment (she) would suffer would be considerably less than that he would be subject to. She added that her husband was able to control her."[44] And yet they did not consider that her situation amounted to a duress defence nor were they willing to explore the current limitations of a duress defence and explore the issue of domestic violence within the current law. Nor did they consider her prosecution an abuse of process.

All this happened at a time when the CPS published its *Violence against Women and Girls Crime Report* for 2010-11,[45] in which it reports that the CPS has, improved its handling of cases of violence against women and girls (VAWG) in terms of both quality and quantity and that since 2006-07, prosecutions have risen from just under 69,000 to 95,000 - an increase of 38 per cent. The DPP said: "Crimes against women include some of the most pernicious and degrading offences that we prosecute. It is important for victims of these crimes that we continue to improve the service that we deliver, both within the CPS and with our partners in the criminal justice system." Prosecutors in the UK at least in this immediate case have certainly demonstrated a U-turn in approaches to domestic violence and victims who because of fear and other pressures withdraw allegations. This is also sadly the case elsewhere where prosecutions for perjury may also be brought. The case of *Dushkar Kanchan Singh v The Queen,*[46] before Elias CJ, Blanchard, Tipping, McGrath and William Young JJ, where the victim withdrew her

[43] Para 16 Court of Appeal 13th March.
[44] Ibid, at para 31.
[45] Violence against Women and Girls Crime Report for 2010-11. CPS, London.
[46] [2010] NZSC 161. See also IJEP 15 2 (170)1 April 2011. See also [2011] NZLJ 98.

original allegation[47] against her partner who was charged with nineteen counts of violence against her, is instructive. At the trial, the complainant contradicted what she had said in her original statement and was subsequently treated as a hostile witness. The victim then invoked the privilege against self-incrimination. The judge rejected this claim. Her partner was convicted of assault. On appeal he contested the judges' refusal to accept her claim to the self-incrimination privilege. The appellants case was that her inconsistent statements might later form the basis for a prosecution for perjury should she give evidence that supported the defence. The New Zealand Supreme Court per William Young J, stated that the privilege against self-incrimination belongs to the witness and can only be invoked in relation to information which, if provided, would be 'likely' to incriminate the person claiming the privilege and that a defendant cannot object to a prosecution witness waiving privilege. He went on to say that there was no realistic risk of the Crown using the prior inconsistent statements to prosecute her, if the evidence she gave at trial incriminated the defendant. However this was not the case if the evidence she gave at trial was not incriminatory explaining that the only substantial risk of prosecution was in relation to any evidence exculpating the defendant. He said this:

> "[33] A complainant in a domestic violence case who defeats a prosecution by reneging on prior statements might, conceivably, be prosecuted. For instance, if she acknowledges that her original complaint was false, she might be prosecuted for making a false complaint (but presumably only if the police are satisfied that the complaint was indeed false). Alternatively, she might be prosecuted for attempting to defeat the course of justice (if the police take the view that the alleged offending took place)."[48]

In addition, the new plans to criminalise forced marriage[49] have stated that victims will be guaranteed that they will not be forced to support a prosecution against their wishes, presumably that also means they will not be proceeded against for perverting the course of justice should they withdraw the allegation.

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[47] Ibid "[6] The appellant and Ms D met in early 2006 and became engaged. The appellant was a police officer and had many years experience as a policeman both in New Zealand and overseas. Ms D is not a New Zealand citizen. She moved to New Zealand a few months after she met the appellant and began living with him. She was on a visitor's permit and dependent on the appellant's sponsorship to remain in New Zealand".

[48] Ibid.

[49] See http://bit.ly/MiBu9W accessed June 12th 2012.