

## 45. Absence of Complainant's Motive to Lie

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### 45.1 Legislation

[Last reviewed: January 2025]

Nil.

### 45.2 Commentary

[Last reviewed: February 2025]

*Palmer v The Queen* (1998) 193 CLR 1 explained a defendant should not be asked in cross-examination whether there is a reason why the complainant would invent the allegations because to do so risks a jury wrongly using the defendant's inability to provide evidence of the complainant's motive for fabricating the events as lowering the standard to be met by the prosecution of proving those events.

Nonetheless, absence of apparent motive to make a false allegation may emerge in addresses as an issue at trial and directions guarding against invalid reasoning by the jury may therefore be required. The principles that must guide a trial judge about whether a direction must be given on the subject of a Complainant's motive to fabricate an allegation were comprehensively summarised by Sofronoff P in *R v Bevinetto* [2019] 2 Qd R 320 at [50]–[61], including the following (footnotes omitted, emphasis added) –

Consequently, any submission made by the prosecution upon the issue of proof of motive to make false allegations must be made in a way that does not lead the jury into such erroneous paths of reasoning and the trial judge must be alert to ensure that the way the issue had been dealt with by the parties does not lead to such errors. It is the trial judge's responsibility to determine whether a risk of error has arisen and to determine how to direct a jury so that the error does not crystallise.

It is not a judge's function to tell a jury how to reason to a conclusion but a judge has a duty to warn a jury appropriately how to avoid irrational or impermissible modes of reasoning. In appropriate cases, therefore, a judge will need to warn a jury against engaging in the kind of erroneous reasoning to which this issue is prone to give rise. That is not to say that it is necessary to burden the jury with such warnings if they are not necessary. *Alford v Magee* remains good law. The only law that is necessary for the jury to know is so much as to guide them to a decision on the real issues in the case and it is for the judge to decide what are the real issues in the case. Consequently, it will not be in every case that the issue of motive to lie will give rise to the risks to which I have referred. ...

The principle that must guide a trial judge about whether a direction must be given on the subject of a Complainant's motive to fabricate an allegation is that a direction is necessary if, having regard to the real issues in the case and having regard to how the parties have conducted their respective cases, there is a risk that the jury might:

- a) reason, from a rejection of the motive suggested by the defence, to a conclusion that there is in fact no motive, thereby wrongly enhancing the Complainant's credit;
- b) reason, from such a rejection, that the Accused's failure to offer a plausible motive is probative of the absence of motive and of the truth of the Complainant's allegation.

In *R v Van Der Zyden* [2012] 2 Qd R 568, [32], Muir JA (with whom the Chief Justice and Margaret Wilson AJA agreed) held that '... the prosecutor having elevated the absence of any motive to lie on the part of the complainants to a matter "central" to the jury's assessment of the case and having positively asserted the absence of such a motive, it was appropriate that the trial judge' specifically direct the jury on the issue along certain 'lines' which appear in the sample direction below.

### **45.3 Suggested Direction**

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**The prosecution has submitted that the Complainant does not have any motive to lie.**

**You must bear in mind that any failure or inability on the part of the Defendant to prove a motive to lie does not establish that such a motive does not exist.**

**If such a motive existed, the Defendant may not know of it.**

**There may be many reasons why a person may make a false complaint.**

**If you are not persuaded that any motive to lie on the part of the Complainant has been established, it does not mean that the Complainant is truthful. It remains necessary for you to satisfy yourselves that the Complainant is truthful.**