

## Absence of Complainant's Motive to Lie

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### Commentary

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* [2018] QCA 219; [2019] 2 Qd R 320 as follows at [50] – [61] (footnotes omitted, emphasis added) –

When a complainant alleges that an accused has committed a sexual offence it is natural for a jury to ask whether or not the complainant had any motive to make a false allegation. The law does not require that the jury be directed not to ask why a complainant would lie. Indeed, as Pincus JA said in *R v Taylor* a jury would, reasonably enough, regard such a direction as an impermissible intrusion into their function. The inquiry is permissible because the proven existence of a motive in a complainant to make a false allegation makes it more likely, but does not prove, that the allegation actually made is false. The corollary is that the proven lack of any motive in a complainant to make a false allegation against an accused renders the allegation more credible.

However, the mere absence of evidence that a complainant has a motive to lie does not prove the non-existence of any motive to fabricate an allegation. The mere absence of proof will, therefore, usually be neutral on the question of the existence of a motive to lie, although one cannot foreclose the possibility that there may be cases in which the rejection of a particular suggested motive leaves no room to conclude that there might be any other motive. However, generally the complainant's credibility is neither enhanced nor reduced by a jury's rejection of a motive that is proffered by the defence.

The raising of an issue whether a complainant, or another witness, has a motive to make and maintain a false allegation creates a potential for the jury to be misled into engaging in illogical reasoning in several ways.

First, a jury's rejection of the suggested motive may lead it to conclude from that rejection alone, that there can be no motive to lie and that the complainant's credibility is thereby enhanced. That would be a mistake. Such a rejection will not establish the actual absence of any motive to fabricate the allegation but only the absence of the suggested motive.

Second, an inquiry into a complainant's motive to lie might wrongly imply to a jury that, since it might be thought that the accused should be well placed to identify the complainant's motive to fabricate the allegation if one exists, the accused's failure to identify or prove such a motive tends, by itself, to prove that there is no motive. That would also be a mistake. An inquiry into a motive to make a false allegation is an inquiry into a person's state of mind. A person's state of mind will usually be proved by inference from facts. The accused may not be in a position to know any facts from which such a motive might be inferred. That an accused person does not know any reason why the complainant would make a false allegation proves nothing and it would be wrong for a jury to infer anything from such lack of knowledge.

Third, the process of reasoning would involve the jury in unwittingly placing the burden of proving the absence of motive upon the accused contrary to the fundamental proposition that the onus of proof is always on the prosecution. Consequently, it is prone to distort the process of a fair trial.

Nevertheless, motive to make a false allegation and, more rarely, the proved non-existence of a motive to make a false allegation, are matters that are relevant to the

assessment of a complainant's credibility. The defence and the prosecution are entitled to litigate that issue. However, such litigation must not be allowed to lead the jury, expressly or implicitly, to engage in the invalid processes of reasoning referred to above.

**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 need to give a warning arose in *R v F* because the trial judge had informed the jury that "the central theme" of the trial was the complainant's motive to lie. It also did so in *Palmer v The Queen* and in *R v T* because the prosecutor had cross-examined the accused about whether he could offer any explanation for the complainant's making a false allegation against him. It also did so in *R v PLK* because the issue had "been made a significant issue by the unusual circumstances of the case, the cross-examination of the complainant and the entirely understandable emphasis placed on the issue by the prosecutor... [a]pproximately on quarter of the prosecutor's address to the jury was in fact devoted to this issue". *The Queen v Cupid* was another case in which a direction should have been given because the complainant's motive to make the allegation "had assumed more than the usual importance by the end of the trial".

In *R v W* and in *R v Taylor* it was held that the directions given were adequate to protect against the jury engaging in erroneous reasoning. In *R v W* the judge had directed the jury that it was open to ask what motive the complainant might have to fabricate the allegation against the accused, but having said that, the judge went on to warn the jury that they must not reason from a rejection of the proffered motive that there could be no motive at all. In *Taylor* the judge also raised the rhetorical question as to why the complainant might fabricate an allegation if there was no motive to do so. In each case, the trial judge did not regard it as necessary to warn the jury about other potential errors in reasoning by the Court of Appeal did not find any fault for that reason.

**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 at [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.

**Sample direction**

**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 necessarily mean that the complainant is truthful. It remains necessary for you to satisfy yourselves that the complainant is truthful.**