IN THE COURT OF APPEAL OF NEW ZEALAND 22/4 C.A. 428/93

400

THE QUEEN

v.

JAMES HENRY WILSON

Coram: Gault J
McKay J
Fisher J

Counsel: Ex parte - written submissions received

Judgment: 20 April 1994

JUDGMENT OF THE COURT DELIVERED BY FISHER J

The appellant appeals against his conviction on 1 July 1992 on charges of aggravated robbery, kidnapping (2), applying acid with intent to injure (2), causing grievous bodily harm with intent to cause grievous bodily harm and indecent assault following a jury trial in the High Court at Rotorua.

The Crown case was that with three others the appellant had gone to the farmhouse of the two complainants, Field and Farnworth, for the purpose of stealing their cannabis. Wearing balaclavas and gloves the appellant and two others had allegedly entered the house where they tied up the two complainants and subjected them to various forms of torture and indecent assault for the purpose of gaining from them information as to the location of the complainants' cannabis.

The appellant and his associates were allegedly successful in locating the cannabis which they then stole along with various other items of property.

At trial the sole issue was that of identity. The jury rejected the appellant's evidence of alibi. It accepted the evidence of two members of the group, Collier and Moorcroft, directly implicating the appellant and his co-accused Barnett. In addition the Crown was able to rely upon an oral admission of the crimes by the appellant to a co-prisoner Bolt and more indirect but supporting evidence from others including the two complainants.

On appeal we have had the advantage of reading the detailed grounds originally filed by the appellant together with his written submissions of 16 March 1994 and accompanying documents. The principal ground advanced is that the evidence was not sufficient to support the verdicts against the appellant. This must be rejected in view of the direct evidence of Collier and Moorcroft, the admission to Bolt and the other supporting evidence. Questions of credibility relating thereto were squarely matters for the jury.

A complaint is made as to late disclosure of material documents and information by the Crown. Non-disclosure by the Crown would, of course, have been a significant matter. With one exception the appellant does not suggest how late disclosure, rather than non-disclosure, prejudiced the defence. The exception is his argument that had certain statements by witnesses concerning descriptions of those who entered the house been disclosed earlier this could have provided an opportunity effectively to cross-examine those witnesses at the preliminary hearing rather than merely at the trial. However, the question of prior inconsistent statements by Crown witnesses was fully traversed at the trial. It is difficult to see

how the opportunity to cross-examine on the same matters at the preliminary hearing could have made any significant difference.

The appellant's next ground is that the Crown witnesses Collier and Bolt may have been influenced in their evidence by an understanding with the Crown with respect to their own sentencings. These were matters fully traversed at the trial. On appeal, nothing new has been raised on that subject.

The appellant then raises arguable inconsistencies in certain details of the identification evidence of the complainants Field and Farnworth. It must be borne in mind that these two witnesses were viewing the offenders under circumstances of personal difficulty and in circumstances where the offenders were disguised with balaclavas and (with one exception) gloves. In those circumstances it was open to the jury to take the view that the impression of the complainants that one or more of the offenders were Maoris was of no real consequence. The important evidence as to identity came from others - Collier, Moorcroft and Bolt.

The appellant has raised other points on matters of detail but we are satisfied that these either lack substance or could have had no effect upon the outcome. This was a strong Crown case resting upon a range of independent sources any one of which would have been sufficient to support convictions turning upon a very simple issue. The appeal is dismissed.

RL Fisher J