

NLR

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IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY

T.1,2,3/85

REGINA

220 (a)

v

G RAKETE
J RAKETE and
R TAHERE

Hearing : 19th - 21st March 1985
Counsel :

Ruling : 21st March 1985

ORAL RULING OF CHILWELL J.

Objection is taken to the prospective evidence of the witness R at page 21 of the signed statements included with the depositions. Two passages are objected to in regard to Detective Rickit's interview with the accused G Rakete.

1. "He also said that T had told him that he had killed that fella. He said that T had woken him up in Saturday morning and said 'I killed one of them.'"
2. "I asked the Accused 'How do you know that R T killed the guy.' The Accused replied 'I was there, I know he did it, he was the only one standing when the fight stopped. Me and J were out. J in the Whangarei Hospital I think.'"

Although, in a sense, those oral statements may tend to assist the accused G Rakete, his counsel supports the application by counsel for Tahere to have the evidence excluded.

The essential submission for exclusion is that the probative value of the evidence is far outweighed by its prejudicial effect so far as the accused T is concerned. In support of that contention is the observation that what T is supposed to have said is something said after the event.

Counsel for the Crown support the admissibility of the evidence on the basis that while the occasion was some time after the end of the alleged common venture, the contents of the conversation between the detective and Geoffrey Rakete are relevant to the existence, as distinct from the content, of the alleged common intention.

I am satisfied that the conversation cannot advance the substance of common purpose because the conversation was

held after the completion of the criminal act. As to the value of the evidence to support the existence of a common intention and to support the Crown contention of G Rakete's involvement in the affair, it is plain to me that the prejudicial aspects as against the accused T outweigh the probative value of the evidence objected to when regard is had to the whole of the evidence so far adduced.

Accordingly, in the exercise of my discretion, I rule that Detective R cannot give evidence of those two conversations. It follows that he can, however, carry his evidence through to the point of explaining how people got down from Dargaville to Auckland and Rakete's knowledge or otherwise as to where T lived.

MEMORANDUM

Counsel for the Crown inquired if I intended to exclude the whole of the second statement or only the parts in which reference is made to the accused Tahere. I ruled that the statement was not divisible and ought to be wholly excluded.

M. B. Curran