

IN THE HIGH COURT OF NEW ZEALAND  
WHANGAREI REGISTRY

T.15/83

281

R E G I N A

v.

B

RANKIN

Hearing : 26 March 1984

Counsel : P.J. Smith for Crown  
K. Ryan and K. Deane for Accused

After the luncheon adjournment counsel saw me in Chambers and Mr Smith made an application for leave to put to Mr Thomas a statement previously made by him on 22 July 1983 at the Police Station at Kaitaia, the day after the events we are concerned with.

The accused is charged with murder by stabbing his brother C with a knife. Before me, Mr Thomas gave evidence that the accused had been knocked to the ground by his brothers, hit on the head with a chair and kicked. He said that the brothers then left the accused and walked towards the pool table. He said that the accused got up and went towards the pool table and at this stage, the brothers were behind the pool table. He said that the accused tipped the pool table over towards the brothers. He said that the accused had a knife and that he saw the accused with the knife before the accused got to the pool table somewhere between where he got off the

floor and the pool table itself. Mr. Ryan cross-examined on this point and put to Mr Thomas (at the bottom of p.5 of the evidence - the evidence before me) that the evidence he had given was not what he had given in the High Court previously, some weeks ago. He put it to Mr Thomas that in the High Court he had said that he did not see the accused with the knife until after the accused had tipped the pool table over. He then said:-

Question: Have you discussed this evidence with anyone?

Answer : No.

Question: Discussed it with nobody at all?

Answer: No I'm sorry.

After further questions (which appear at p.6 of the evidence) he said:-

Question: Why would you say it was after he tipped the pool table over that you first saw the knife if that was not your thought at the time, on oath, why say that to the Court? Someone discussed it with you before coming to Court?

Answer : No.

Mr Ryan came back to the matter at the bottom of p.7 of the evidence:-

Question: You say he was holding it in his hand when he pulled up the pool table?

Answer : Yes.

Question: You haven't been told to say these things?

Answer : No.

At this stage Mr Smith objected and I ruled that Mr Ryan was entitled to ask that question. Mr Ryan went on:-

Question: Because on the evidence you gave at the first trial you said you saw the knife after the table was upturned, didn't you, or can't you remember?

Answer : No.

My impression is that the answer "No" referred to whether the witness could remember giving evidence at the first trial but the question undoubtedly was ambiguous.

On that evidence and on that line of cross-examination Mr Smith submits that he is entitled to put the statement I have previously referred to dated 22 July 1983 to Mr Thomas. In that statement Mr Thomas, after referring to the accused getting up off the floor after being struck by his brothers said:-

"B was chasing the other two brothers and he had a knife in one of his hands. I don't know which hand it was now but he did have one. The other two brothers ran around behind the pool table. One went one side and the other ran around the other and then I saw B come up to the pool table and tip it up towards his brothers pinning them against the wall. He still had the knife in his hand."

At a later stage of his statement he said:-

"After the knifing had taken place, I can't remember anyone saying anything about who knifed who. I only know that I did see Brad with the knife in his hand before I ran out of the bar.

Earlier in his statement he said that he ran out of the bar after the words previously quoted, "He still had the knife in his hand".

Mr Smith submits that because Mr Ryan has suggested that Mr Thomas has invented his story since the first trial, he is entitled to put the statement to show that the story he is now telling is consistent with the statement. Mr Ryan submits that all he did was cross-examine as to whether Mr Thomas is saying something different at this trial from what he said at the first trial. I think it clear that Mr Ryan has suggested that the witness has changed his story and has even suggested that that was as a result of someone telling him to say these things. In those circumstances I am of the view that under the doctrine that previous consistent statements may be admitted to rebut a suggestion of recent invention, the statement is admissible and I so rule.

The matter is dealt with in Cross on Evidence (3rd Ed.) p.227 where the learned author says:-

"If it is alleged that a prisoner's story is a recent concoction, a previous statement concerning the nature of his defence becomes admissible. So too does a statement made by an accused's wife to a solicitor before she had seen her husband after his arrest if it is suggested in cross-examination that her evidence was the result of collusion with him, and an allegation that a policeman is fabricating his testimony allows his notebook to put into evidence."

I have considered the statement by Dixon, C.J. referred to at p.288 in Cross and am satisfied not only that the account given by the witness in his testimony has been attacked on the ground of recent invention but also that the contents of the statement are in fact to the like effect as his account given in his evidence and that having regard to the time and circumstances in which it was made, it rationally tends to answer the attack.

Mr Ryan has asked that his objection be noted and I hereby do so. Mr Ryan asks that it be made clear that the statement that is being produced is not the statement on which he cross-examined Mr Thomas. He examined him on the statement that Mr Thomas previously made on oath in the High Court. Mr Smith will make that clear in his production of the statement.



26.3.84  
Hillyer, J.