

File

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

T.7/84

THE QUEEN

v

H'

Hearing 2-6 July 1984

Counsel C. H. Toogood for the Crown
J. V. B. McLinden and M. S. Okkerse for the Accused

RULING OF ONGLEY J.

UNIVERSITY OF OTAGO
23 OCT 1984
LAW LIBRARY

Wednesday 4 July 1984

(Objection to Detective Senior Sergeant Plucknett's Evidence)

Mr McLinden has raised an objection to the admission of certain evidence proposed to be given by Detective Senior Sergeant Plucknett who is the officer in charge of the Police case. The statement made for the purpose of the lower Court hearing, which I take it is accepted as being the evidence which is proposed to be given in this trial, consists largely of an interview alleged to have been conducted by the Detective Senior Sergeant with the accused on 3 November 1983 which was the date of his arrest.

The interview was conducted in a question and answer form over quite a lengthy period and both questions and answers were recorded by the Detective Senior Sergeant.

Mr McLinden indicated that the nature of his objection to the admission of certain parts of that interview was based on the ground that it was not voluntary. On further exploration of that submission it appeared that his objection was based on the allegation that some questions and the answers which had been asked and given during the interview were not recorded in the evidence as given by the Detective Senior Sergeant and that other material in the account of the interview was not accurate. Mr McLinden therefore wished to have a voir dire conducted as to the admissibility of the evidence with the intent that the Detective Senior Sergeant be called and be available for cross-examination by him and that he then call his client, presumably with a view to contesting the accuracy of the interview which had taken place. In order to reach any conclusion about that matter I would have to form an opinion not as to whether the evidence was admissible but whether in fact it was true. There is no material raised by the defence which goes to the question of voluntariness at all. It relates to the question of whether the account given by the Police officer of the interview is complete and to the extent that the material has been recounted by him whether it is accurate.

That is not a matter which in my experience is generally investigated in a voir dire procedure. It is a question of fact for the jury to determine as to the completeness of the account of the interview and the accuracy of the account. I therefore do not intend to

embark on a voir dire in relation to those issues and will permit the evidence to go before the jury so that its weight may be assessed by them.

There is another question raised by Mr McLinden on a different sort of objection. That relates to the introduction by the Police officer into his evidence of a discussion of the accused's appearance and conduct at certain important parts of the interview. At p.11 of the statement of the Police officer he says, "while I was playing the tape the accused appeared physically shaken and he was wringing his hands". At another point he said on p.13 "the accused was visibly shaken, he was wringing his hands and shuffling his feet" and finally on p.30 where the question was put to him about his fingerprints being on an envelope the statement recounts in brackets the words "(licking lips)" which relates to the accused who is then alleged to have said "did you find my prints on it?". In my view those passages of evidence are inadmissible. The physical reaction of a person to something that is said to him is a highly subjective matter taking its colour I believe from what the observer may already know about a matter, what he may suspect and what he may believe to be the truth of a matter where questions are being asked of a suspected person. To give a description of the accused in a case such as this in a way which tends to indicate that he was anxious or uncomfortable or exhibited other physical signs which could indicate that the nature of the questions had an

4.

unsettling effect upon him would be prejudicial I believe, in the eyes of the jury who would be asked to regard the answers, otherwise neutral in context, as having a particular flavour indicating that while the suspect gave a certain answer it might be taken to be unreliable by reason of the physical indications which he showed in the course of giving it. All those passages to which I have referred will therefore be excluded but the other evidence of the Detective Senior Sergeant will be admitted.

John A. P. T.