

ORDER PROHIBITING PUBLICATION PENDING FINAL DETERMINATION OF  
COUNTS AGAINST THE ACCUSED

IN THE HIGH COURT OF NEW ZEALAND  
NAPIER REGISTRY

T 4/97

THE QUEEN

v

BOYCE DAVID HEREWANA TAUMATA  
TANYA KATRINA HARONGA  
JEROME SHAUN CHASE  
SAUL WAIHAPE  
AHERE GILLIES  
KAHU RANGI TE HIKO  
RICHARD KEIL  
HURAE MAKOIA WAIRAU

**NOT  
RECOMMENDED**

Hearing: 5 June 1997

Counsel: B.A. Morris for the Crown  
E.N. Bate for Taumata  
E.R. Fairbrother for Haronga and Gillies  
A.J. Snell for Chase  
E.J. Forster for Waihape  
L.P.F. Lafferty for Te Hiko  
N.C.H. Hewitt for Keil  
D.M. Madsen for Wairau

Ruling: 5 June 1997

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RULING NO. 5 OF DOOGUE J

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The Crown has applied under the provisions of s. 344A of the Crimes Act 1961 for a determination as to the admissibility of a voice identification of the accused Te Hiko. The identification was made by Detective Beattie in

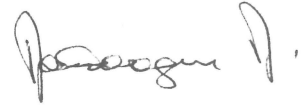
circumstances almost identical to those traversed in respect of the accused Gillies in the last ruling by me.

The only factual distinction relates to the order of events in respect of the accused. In this case Detective Constable Greville saw the accused just before 7.00 a.m., cautioned him and gave him his advice as to his rights under the New Zealand Bill of Rights Act 1990 ("the Bill of Rights Act"). The accused then accompanied the detective constable to the police station, where he was advised of the general situation. He was asked if he wanted to make a statement at approximately 7.15 a.m. He declined. Over an hour and a half later he was taken to a room where Detective Beattie was present. He was not re-cautioned or re-advised of his rights under the Bill of Rights Act. Detective Beattie spoke to him. The detective, being satisfied that he was a person whose voice he had heard upon the tape of intercepted telephone conversations, played to the accused a portion of the tape. The accused did not acknowledge that he was the person speaking.

To apply different reasoning to the present case from the Gillies case would require a distinction to be drawn because the accused had not requested a lawyer and had relied upon his own refusal to make a statement rather than upon having legal advice.

That must be a distinction without a difference. It is true that the accused was not relying upon his solicitor in the same way as Gillies did. Nevertheless, as for Gillies, there was no re-caution and no re-statement of rights under the Bill of Rights Act. For the reasons already given in respect of Gillies, I would regard it as unfair in the circumstances for the police to be able to rely upon the voice identification achieved by Detective Beattie in the circumstances outlined. To

that extent the evidence of Detective Beattie will be inadmissible. As in the Gillies case it does not follow that the police will be unable to obtain a voice identification by some lawful means.

A handwritten signature in black ink, appearing to read "P. J. ...".