

IN THE HIGH COURT OF THE COOK ISLANDS

HELD AT RAROTONGA

(CRIMINAL DIVISION)

CR 479/92, 480/92

POLICE

v

J TAUFAHEMA

Defendant

Mr Appleby for Police

Mr Gibson for Defendant

Date: 30 June 1992

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JUDGMENT OF QUILLIAM J

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The Defendant is charged with indecent assault on Pauline Tomokino and also with assaulting her. The charges arise out of an incident on the early morning of the 14th of June 1992. The Complainant, Pauline, gave evidence that she was in bed asleep in a room in her house which she occupies alone. This is the room which is described as room number one on the plan which was produced. She was woken to find, she said, a man on top of her. He was kissing her on the cheeks and he put his hand on her left breast and was trying to remove her tee-shirt. She tried to call out but he put his hand over her mouth, her cousin Paul came into the room and the man stood up and then

went away and then the girl went to tell her grandmother what happened. It is not clear that what happened is exactly as she said. And it is understandable after having been woken like that there is some confusion in her mind. But for the most part I am prepared to accept her account as being reasonably correct.

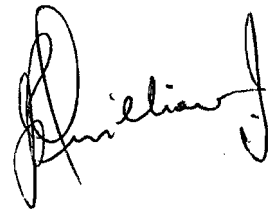
There is no doubt that the Defendant was at this home on that night and that he did go into Pauline's room and touch her in some way. If he did what she said that would be indecent assault. The defence however is that the Defendant thought that this was a different person and that it would be all right for him to be in her room.

The Defendant's evidence is that he had on two previous occasions been to that house with Pauline's aunt Tangianau. He said he had slept with Tangianau in this room number one which he believed to be her room. Tangianau agrees that they did sleep together in her room on one previous occasion - this was one week before. But she said that her room is not number one but the room opposite, number 4 on the plan.

There is confusion between them as to what happened earlier that night. The Defendant says that he met Tangianau at TJs nightclub and she invited him back to her room that night. He said he would finish his beer first and then go to her room. This he says is the reason why he went there and went into what he thought was her room. Tangianau's evidence was that she was not at that nightclub that night and had not invited him.

There is little doubt that on each of these occasions a considerable amount of alcohol was drunk and it is necessary to remember that impressions and memory of what happened could have become confused.

I am satisfied that the Defendant went to the wrong room to which he had not been in before but it was immediately opposite Tangianau's and having regard to the number of people who occupy that house the possibility of confusion cannot be avoided. This case depends entirely on what the Defendant's intention was that night when he went to the house. If he really believed that he was there invited by Tangianau and made a mistake about the room, then there would not be the necessary criminal intent. There are a number of differences in the evidence which make it hard to know exactly what happened. But it is clear to me, with the evidence, I have raised a reasonable doubt in my mind as to the intention of the Defendant. This applies to both charges. Accordingly the two charges against the Defendant will be dismissed.

A handwritten signature in cursive script, appearing to read "Quilliam J".