

X

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)

CRN's 154-156/13
157-158/13

CROWN

v

PUAI WICHMAN

&

TEOKOTAI WICHMAN

Hearing commenced: 2 December 2013
Counsel: Ms S McKenzie & Ms M Henry for the Crown
Mr S Perese for the Defendants
Date: 3 December 2013

RULINGS OF GRICE J

- (1) Suppression of names (complainant & husband)
 - (2) Forbidding the publication of parts of the evidence (complainants evidence)
 - (3) Accompanying person for complainant
 - (4) Order excluding witnesses
 - (5) Directions on empanelling jury
 - (6) Leave for person to assist Counsel (administration)
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Introduction

- [1] This ruling reproduces a number of orders and directions made at pre-trial conference with counsel prior to the trial's commencement and prior to counsel's opening statements on Monday 2nd December 2013.

Suppression of Name

- [2] Ms McKenzie applied for a continued suppression of the complainant's name, address, occupation and details likely to lead to her identity. She also sought a suppression order in relation to the name, address, occupation and details likely to lead to the identity of the complainant's

husband who is to be a witness as the publication of his identity would lead immediately to the identity of the complainant.

- [3] Mr Perese did not object to this application. An order was made to that effect under s 25 of the Criminal Justice Act and s 76(1) of the Criminal Procedure Act.
- [4] Such orders are required in relation to complainants in sexual offense cases in New Zealand. There is no specific provision in the Cook Islands for this to occur. The primary reason for the order is to protect the reputation of the complainant, a specific consideration under s 76 of the Criminal Procedure Act.

Direction excluding persons from the Court during the complainant's evidence

- [5] The Crown also sought an order that all persons be excluded from the Court for the hearing of complainant's evidence, under s 76(1).
- [6] I note that in New Zealand the Court is cleared, as required by s 375A, Crimes Act (NZ). There is no corresponding provision in the Cook Islands however the practice has been to clear the Court.
- [7] In the Cook Islands the specific provision is s 76 which allows a direction to exclude witnesses

"in the interests of justice or of public morality or of the reputation of any victim of any alleged sexual offence ..."

s 76(1) and (2) provided the power cannot be exercised to exclude:

"prosecution or the defendant or his agent, or any barrister or solicitor, or any accredited new media reporter."

- [8] The reputation of the victim or complainant weighs against the Court being opened. In this case the interests of justice would not be furthered by refusing the order.
- [9] Accordingly I make an order that during the complainant's evidence all persons shall be excluded from the Court except those who are allowed to remain under s 76. To that list I add Ms Koteka who is a law graduate but not yet admitted and has been granted leave to assist Mr Perese together with the support person referred to below.

Direction on accompanying support person

- [10] The Crown has also sought that the complainant have an accompanying person to support her when she gives her evidence. Under New Zealand law (s 375A of the Crimes Act) the complainant has this right.
- [11] I consider such an order is appropriate and will contribute to the efficient conduct of the trial. Counsel have agreed on arrangements in the Courtroom for the accompanying person to sit near the witness box.
- [12] I grant leave for an accompanying person to be present for the complainant during her evidence.

Order excluding all witnesses

- [13] Order excluding all witnesses except the Detective Sergeant Ingaua, the officer in charge of the case.

Directions on empanelling the jury

- [14] The empanelling of a jury in this case proved difficult due to the Defendants and various witnesses having extensive family and business connections in the Cook Islands. An unsuccessful attempt was made to empanel a jury in the first week of the sitting. The matter was then remanded to 2nd December to empanel a jury from a new ballot.
- [15] Insufficient jurors were empanelled in the first call through from the new ballot. Some of those summoned but not called had been given less than the 3 clear days notice required under s 8 for the service of a summons to juror. Those prospective jurors were initially stood by. They were persons qualified for jury service and on the jury list required to be kept under the Juries Act 1968.
- [16] When it appeared there might be insufficient numbers to complete selection of 12 jurors, counsel indicated that they would consent to those jurors who had been given short notice being called. Counsel waived any general objection in relation to the short notice to those jurors.

- [17] Section 18 of the Juries Act which provides for the challenges and directions to stand provides:

18. Challenges and directions to stand by - (1) Every prosecutor and every accused person shall be entitled to any number of challenges for cause on any of the following grounds, that is to say:

(a) That any juror's name does not appear in the jury list:

....

- [18] Section 37 preserves verdicts where there has been an informality:

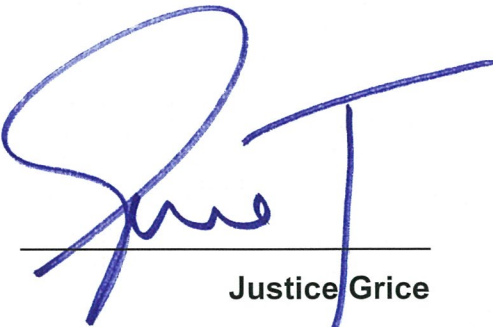
37. Verdicts not affected by informalities - No verdict shall be in any way affected by reason of any error, omission or informality in or with respect to any jury list or jury panel, nor by reason that any person not qualified or not liable to serve on any jury, served on such jury.

- [19] Therefore with counsels' consent those panellists were called. They were each asked if they wished to be excused from serving on the jury given the short notice and were subject to the normal challenge procedure.

- [20] As it happened those jurors were called but for one reason or the other, including challenges, none of them were selected. The jury was finally empanelled following selection from the standby jurors being recalled.

Leave for person to assist Counsel

- [21] Mr Perese, counsel for both defendants, did not have a junior counsel to assist him in this trial. He sought leave for Ms Koteka to assist him administratively. Ms Koteka is employed by Mr Perese's instructing solicitors, she has a law degree from Otago University, but is yet to be admitted to the bar.
- [22] Ms McKenzie for the Crown indicated she did not oppose leave being granted.
- [23] I am satisfied that this is appropriate to assist the efficient running of the trial. I grant leave for Ms Koteka to assist Mr Perese in an administrative capacity and to sit beside him for that purpose.



Justice Grice