

POLICE

v

IOVANE LANGATULE PAERAU

Date: 9 August 2019

Counsel: Ms K Bell for the Crown
Mr N George for Defendant

DECISION OF THE HONOURABLE JUSTICE COLIN DOHERTY

[12:50:40]

[1] There are two applications before the Court. The first relates to an application to call propensity evidence in respect of the defendant Paerau. The particular evidence is the fact of a guilty plea and conviction in relation to one burglary that Mr Paerau has faced. He is to be tried in the next session on six other burglary matters.

[2] Counsel have agreed since the filing of the application that that matter is best dealt with by the trial judge who will be in a better position to do so, depending on how the case runs. I think that is a sensible approach and that application is adjourned until trial.

[3] The second application relates to a charge where Mr Paerau's partner, Ms Apaipo, is also charged with aiding abetting in relation to one of the alleged burglaries.

[4] This is an allegation that there was a burglary at the Aroa Nui ATM where the Crown alleges there was a breaking into the premises and then an attempt, using a grinder, to break open an ATM machine.

[5] The allegation is that Mr Paerau was the burglar and he was aided and abetted by his partner in that she is alleged to be the lookout. The Crown's case will rely in respect of her at least and probably him, on the existence and evidence of text messages from her phone to a phone the Crown will allege was owned or operated by Mr Paerau.

[6] The text messages might be found by the jury to contain warnings and information about the ATM and the presence of others around it. The text messages also carry an intimacy which the Crown will say shows that the recipient phone was that of Ms Apaipo's partner.

[7] The starting point is s 43 of the Criminal Procedure Act 1980-81 which says that any number of defendants may be tried together. There is a proviso to that section that the Court can order separate trials if it is "satisfied the interests of justice so require". Interest of justice cut both ways.

[8] Mr George for the defendant says that there is a risk that Ms Apaipo will under cross-examination be forced to give evidence which is prejudicial to Mr Paerau in not only the ATM case but the other burglary charges for which he is to be tried. That will prejudice him. He also says that there is the potential prejudice for Ms Apaipo.

[9] The Crown accepts that there is a potential prejudice for Mr Paerau in respect of his partner being opened up for cross-examination in relation to the burglaries other than the ATM. The Crown proposes instead of severing the defendants between themselves in the ATM case that that burglary be severed from the others and be a standalone joint trial at a later date.

[10] The issue for the Crown is that if when that is done and there is then a severance between the two defendants, then witnesses will need to be called twice and the evidence will effectively be duplicated in each Crown case.

[11] The question is whether or not the interests of justice require that the trial affecting the two defendants be severed. I am prepared to say that it is in relation to the ATM charge viz a viz the other cases. And I think that that trial ought to be severed at this stage.

[12] As between the two as co-accused, there are always potential difficulties when there are co-accused or in this case accused closely related or alleged to be in respect of each other. I

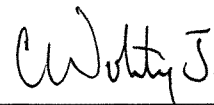
have had a brief discussion with counsel about the question of one counsel acting for both defendants in this situation.

[13] The Crown has referred me to a statement of the New Zealand Court of Appeal in the case *R v Fenton*¹. And that Court said: “What the New Zealand cases show and indeed most of the cases from other jurisdictions, is that there is a substantial public interest in having a joint trial of those who are said to have jointly committed a crime. The reasons are primarily to avoid the risk of inconsistent verdicts, to have all aspects of the joint enterprise considered at one and the same time, and to prevent duplication of time and effort for the witnesses in the court system generally. This public interest will ordinarily outweigh the interest of an individual accused in not having inadmissible evidence before the jury. That is the usual problem in a joint trial from an accused perspective. When given proper directions juries are to be regarded as capable in most cases of understanding and applying the distinction between the admissible and inadmissible evidence.”

[14] It seems to me that applies here in the Cook Islands and to this case.

[15] I make an order that the ATM case be severed from the others and that there be a separate trial in respect of it. The trial judge in that separate trial can protect the interests of both accused as between themselves and between them and the Crown by proper direction.

[16] I dismiss the application that the Apaipo defendant be severed from the Paerau defendant in relation to that ATM trial.



Colin Doherty, J

¹ Court of Appeal, 223/00.

