IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION) CR NOS. 91/2001,92/2001,109/2001

POLICE

V

KLAUS REIMANN

Defendant

Ms J Maki for Police
Mr B Gibson assisted by Mr A McDonnell for Defendant
Date of hearing: 2nd and 3rd May 2001.
Date of Decision: 7 May 2001

DECISION OF GREIG, CJ

The accused faces four charges after one was withdrawn, two of those remaining are in the alternative. In substance then the accused faces three charges in respect of three complainants, each at the relevant time a girl under the age of 12. The incidents involved occurred in 1997, 1999 and 2001.

The accused pleaded not guilty to all the charges. These are separate charges and therefore there are in effect separate trials proceeding at the same time. It is important however that I should consider each of the charges separately examining them on the evidence which relates to each of them and come to my decision accordingly. I have carefully done that and avoided coming to any conclusion on one charge based on what I believe is the truth or otherwise in any of the others. I am guided in this matter by the requirement that the onus of proof of each of the charges is on the Crown. Equally I am guided by the requirement that the standard of proof on the Crown is that of beyond reasonable doubt. That standard applies to each of the separate essential charges and each of the separate essential elements of each charge. I have to be satisfied then on each of these matters beyond reasonable doubt.

In the course of the trial, each of the complainants and her mother gave evidence. The mother's evidence was offered as some confirmation to some extent of the incidents and the circumstance of each charge. To some extent the mothers evidence amounted to recent complaint evidence that is to say evidence given by the mother that the complainant had told her about the alleged incident. That evidence is not available as confirmation or proof of what occurred but may tend to show that the complainant is consistent in her evidence.

While the complainants gave evidence I ordered that the Court be cleared except for those properly involved including representatives of the media. I had also made an order that all witnesses or intended witnesses were to be excluded from the Court until their evidence was given.

The result of this was that each witness gave evidence on her own and until the third mother gave evidence no other complainant or mother was in Court to hear the evidence of any of the others. The accused Klause Reimann is German. Because of his association and communication with the complainants and their families and others in Aitutaki I have assumed that he can make himself understood and can understand to some extent English. Clearly German is his first language and an interpreter has taken part throughout the trial to advise the accused of everything that has gone on. I am grateful to her for her attendance and her attendance today.

The accused is aged approximately 53 years, is described now as retired but for some 30 years worked in the German railways on train station work. That included among other things the cleaning of railway carriages. The accused as he has told the Court has lived all his life with his mother.

He gave evidence that at an early stage in his life he had a serious fall and as a result he spent a long time in hospital, it seems that it may have been some years. He attended a special school for handicapped children leaving that school at age 14. He has since been in hospital at least once for what is described as mental problems but as he said in his evidence that was a long time ago.

No defence of insanity has been put forward. An application was made at an earlier stage for an order that the accused was unfit to plead but that was not pursued. The accused gave evidence, I observed him in the witness box and heard him speak in German and his answers interpreted. My judgment from that is that he is a relatively fluent and articulate speaker. He certainly appeared to have a good recall of names, dates and events. He was able to deal, I thought, competently with cross examination and examination in chief.

Clearly he is not unfit to plead. He is not so disabled or handicapped as to prevent him from working and holding a job and from crossing the world and back to Aitutaki from Germany on his own on a number of occasions.

The accused first came to the Cook Islands and to Aitutaki in 1994. He stayed for 2 or 3 months on that occasion. He befriended some of the families who live on the island. It seems that he returned to Aitutaki each year after that except during the year 2000. On each occasion he stayed from some 1 to 3 months. On each occasion he stayed with different families, sometimes more than one family on a visit, sometimes with one family only. The families included the complainants families but also some other families.

While he stayed with the families he gave money to them for food and laundry and sometimes a payment for accommodation. He made presents to the children of those families or some of them of bicycles. Not merely on one year or one occasion but to some of the families repeatedly so that it appears some of the children received several new bicycles over a period of years. He sent or gave money in substantial quantity to families. On one occasion he enclosed in a letter $1200, and on another occasion he gave some $1500 to one of the families for a period of accommodation. He arranged to pay for the engine of a motor car for one of the families. He gave additional presents to the children in relatively small amounts said by him for ice cream and other such treats. Amounts of $10, $20 and even $50 at any one time were mentioned by the children.

In 2001 as a birthday present to one of the complainants he gave her a necklace with a pearl and in addition a sum of $200. He paid for the fare of one of the complainants in 1996 to go to Germany and back. She was then about 8 or 9 years old. He took her to Germany, she lived there with the accused and his mother. She returned in or about March 1997. It is then that the first complaint and charge arrived.

After his return with the child and shortly before he left towards the end of May 1997, the first complainant says that on one occasion he kissed her on the mouth putting his tongue in her mouth. The mother confirmed this saying that she saw this occur. Both were cross examined. Some doubt as to the precise date arose but neither the complainant or her mother departed in any essential terms from the version of the story told.

The second complainant raised a complaint of an occurrence in 1999. She is now about 11 and ¾ in age. I qualified her to give evidence and she made a promise in lieu of an oath. Her evidence was that on one occasion while she was playing cards with the accused and some other children, she left to go to the toilet. In the same room a group of adults including the complainant's mother were also playing cards at a separate table. The evidence that was given by a number of the witnesses indicated that the accused regularly played with the children and their families and had a particular friendship as I understood it with them. This complainant said that at the toilet the accused asked her for a kiss and made an offer of some money. In the event he took her to a bedroom, took her pants and underpants off, took his pants and underpants down to his knees, got her onto the bed and lay on top of her. It was her evidence that he attempted to put his penis in or towards her private parts. It was her evidence that he also kissed her on the body. The mother of this complainant confirmed this evidence because it was her evidence that she had walked into the bedroom and saw the accused partially undressed on top of her daughter.

The third complaint occurred in 2001 during the period in February that the accused was in Aitutaki. This child was again under the age of 12, I qualified her to give evidence and she gave a promise in lieu of an oath. This was the girl who had received the present on her birthday on the 17th of January 2001. Her evidence was

that shortly or some time after her birthday a number of incidents happened in which the accused kissed her on the mouth. There was an incident in the sitting room of the house, the kitchen of the house, the bedroom and in the are kikau. In each of these cases other children or adults were present. The complainant in her evidence did not mention any tongue or tongue insertion. It was simply on each occasion a kiss on the mouth.

The mother gave evidence about these matters. In cross examination it appeared she asserted in her evidence seeing only one of the incidents; the one in the kitchen as she moved past from one room to another.

The accused denies all the incidents and confirmed his denial in the witness box. He has maintained that denial since he was first interviewed by the police. This is a situation in which the accused can do little but deny the charges.

The defence was of course that the accused was telling the truth and that his denial should be accepted. It was suggested that the children in effect had concocted the story or the evidence that each gave. There was in addition or as well as that a suggestion that the parents or some of the parents had forced or guided the children into giving these stories. It was suggested that that was out of some resentment. That some of the families or one in particular had been preferred in the generosity of the accused and that one particular family who had failed to receive some benefit by way of accommodation allowance and other gifts had then complained, made trouble and raised the matter. The answer to that seems to be that as was given in evidence by the Police Sergeant involved that the matter was first raised through the school and an investigation was begun some time after that. None of the children or the mothers made any originating complaint. After the investigation had begun, the parents and the children were brought to the police station and were then interviewed. There was complaint about that, that the interview of the complainant and the mother in each case occurred at the same time, thus the child and the mother heard each other's evidence or statement which the police then took down. It was also suggested that the children and some of the parents had been brought to the police station at about same

time and that at least one of the children had told the others before the police interview what had occurred to her or something of what had occurred to her.

The defence also emphasized the long delay between the date of the alleged incidents and the time at which the matter came to light before the police. The dates are obvious, but it is a long time from May 1997 to February 2001. Delay on the part of complainants can be explicable. It is not to be assumed that because a complainant has failed to make an immediate complaint that it is untruthful.

In each of these cases there was some explanation made as a matter of shame or embarrassment, as a matter in which the family in each case wish to keep it to themselves. It is however somewhat remarkable that the earlier complainant did not pass on some information to others in the community, others with small children who were then giving accommodation to the accused to the knowledge of those earlier complainants.

On the one hand there is in this case a simple man, fond of children, generous and liked by the children who it is suggested falls out with one or more of the family and there is then a conspiracy or malicious agreement among the persons to put forward this damaging and false story.

On the other hand the children have come forward with their evidence. It is not in itself evidence which shows similarities such as to show a concoction or conspiracy. There are separate events, separate kinds of incidents. There are clearly some discrepancies between the stories that have been told. The children have difficulty as I accept in remembering dates and the relativity of dates and events. It has to be remembered that at the relevant times these were all young children.

Having listened with care I believe that the children's version of events has the ring of truth in it and that they were in essence telling the truth. It is a curious thing in this case that the parents and the families still feel some regard for the accused. They have visited him in prison while he has been in custody on remand. They have sent

him letters, they have asked for benefits. All the families have obtained in what is relative terms considerable benefits in the way of gifts and money from the accused.

It seems to me not just extraordinary but incredible that the families would get together to put forward a story which must certainly terminate all the benefits in the future. It is not even as in the story of the killing of the golden goose when it was thought that the killing might provide some benefit. Clearly in this case what happened brought any possible benefit to an end.

I accept therefore the children's evidence as essentially truthful and accurate, I accept that in the first case the child was kissed and the accused tongue was inserted in her mouth. I have no hesitation and doubt in saying that that conduct is indecent.

In regard to the second child and incident, I am satisfied that the incident involved a sexual content and that what has been proved before me is an attempt on the part of the accused to penetrate the child, that is to say, to have sexual intercourse.

In the third case I am satisfied that the child was kissed on the mouth on one or more of the occasions mentioned. This is one which creates somewhat more difficulty in my mind. Clearly a kiss can be an indecent assault. What is indecent is what is indecent in the minds of the general population. What is indecent in the minds of ordinary right thinking people.

The evidence that I have received is that, as one might expect and is customary elsewhere, kisses on the cheek are usual and acceptable. A kiss on the mouth from a stranger even though a friendly stranger to a young child such as this on more than one occasion does in my estimation amount to indecency.

I am satisfied then that in each case and beyond reasonable doubt that the accused behaved indecently and that he did attempt sexual intercourse as charged. On the charges 91,92 and 109, the accused will be convicted and will be reminded to Friday

week for sentence, and I request a Probation Officer's report for that. I make a final and continued order for the suppression of the names of the complainants and anything which might identify them. I make no order for the suppression of the name of the accused.

CHIEF JUSTICE