

NOT TO BE PUBLISHED
UNTIL TRIAL COMPLETED

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

T.9/93

R E G I N A

v.

PETER HUGH McGREGOR ELLIS

Hearing: 26th-30 April, 3rd-7th, 10th-14th, 17th, 24th and 25th
May 1993

Counsel: B.M. Stanaway and C. Lange for Crown
R.A. Harrison and Ms Siobhan McNulty for Accused

Oral Judgment: 25th May 1993

ORAL JUDGMENT (NO. 13) OF WILLIAMSON J.

A further dispute has arisen as to the admissibility of evidence which it is proposed to call from the witness Janice Virginia Buckingham in relation to a conversation which she had with the Accused. The evidence recorded in her deposition is that during a staff occasion at the Creche the Accused, when recounting previous sexual exploits to her, told her about his use of a polaroid camera to take photographs of those acts. The Crown desires to call that evidence, contending that it confirms in part the evidence of the complainant Child X. This child said during the course of his interview on the 4th August 1992, (Exhibit 6005, pages 31 and 32 that while a man called Robert was putting his penis in Child X's bottom Peter was watching and taking photographs with a camera which he had in his

hand. He described it as a normal sort of camera that you have to click. In another interview on the 6th August, (pages 9 and 40, Exhibit 6007), he describes how during one of the alleged sexual incidents at the Accused's house the Accused was taking photos with his mother. He said that they were taking photographs of the kids who were naked inside a circle which had been drawn on the floor.

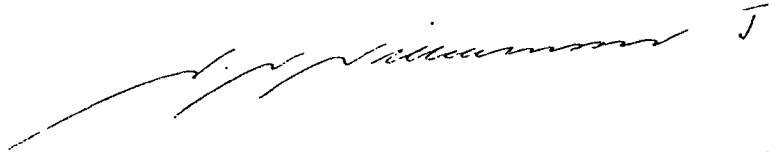
For the Accused, Counsel has submitted that this evidence should not be admitted because it is different in its nature from that alleged by the complainant witness and accordingly does not relate to or is not sufficiently relevant to any fact at issue in this trial. Alternatively, Counsel for the Accused submits that this evidence in its prejudicial effect is so great that it would outweigh any probative value that the evidence may have.

The decision required in relation to these submissions is similar to that that I have already made in previous pre trial applications. I do not intend to repeat those matters that are set out in my previous decisions, nor the references that have been made to the Court of Appeal decisions in the cases of *R v Te One* [1976] 2 NZLR 510 and *R v Harrison* CA 117/83 28th October 1983. Clearly on the facts there are differences between those cases and this one but the principles are similar. To my mind it is relevant in considering the issues related to the evidence of Child X to know that the Accused has told another person that at the time of sexual acts being carried out he had used a polaroid camera to take photos of those acts. Since one of the issues in this case concerns the evidence which has been given by Child X about the Accused's participation in sexual acts that matter is relevant not only to the general facts but to an issue in this case. It clearly is prejudicial as all evidence is prejudicial. In weighing its probative effect against its prejudicial effect, I am of the view that the strength of its

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probative effect is such that any prejudicial effect arising does not outweigh that. Accordingly I will not exercise my discretion to exclude it.

For the reasons I have given, albeit briefly while the jury is waiting, I rule that this evidence is admissible.

A handwritten signature in black ink, appearing to read 'D. J. Williamson', with a small 'J' at the end of the signature.

Solicitors:

Crown Solicitor, Christchurch, for Crown
R.A. Harrison, Christchurch, for Accused