

15/84

IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL OF NEW ZEALAND

No \_\_\_\_\_ of 1982

BETWEEN

TAMAITIRUA KAITAMAKI

APPELLANT

AND

THE QUEEN

RESPONDENT

RECORDS OF TRIAL

APPELLANT'S SOLICITORS

WRAY SMITH & CO

1 KINGS BENCH WALK

TEMPLE

LONDON

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R. v. TAMAITIRUA KAITAMAKI

(14th March 1979)

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REGINA

v.

5

TAMAITIRUA KAITAMAKI.

(Rape and Burglary)

Hearing: From 14th March, 1979.

Counsel: Ruffin for Crown.  
B. McLean for Accused.

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NOTES OF EVIDENCE TAKEN BEFORE THE HON. MR. JUSTICE  
SPEIGHT AND JURY.

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MR. RUFFIN OPENS AND CALLS AT 10.37 A.M.

15

GARTH ASHBY WILLS BURLEIGH (Sworn):

I am a Police Constable stationed at Auckland Central as a photographer. At 8.30 a.m. on Sunday, 19th Nov. last, at request of and in presence of Det. Sgt Lynch and Det. Cantley I took a series of photos at flat 1, 91 Calgary St, Mt. Eden. From the negatives prints have been made. I now produce copies of these in book form as Ex. 5. I prepared an index affixed to the inside of the front cover which describes the photographs. (WITNESS EXPLAINS PHOTOS).

20

XXD McLean:

Photo 7, are you able to say looking at that photo whether there were fingerprints? I cant say whether it was, but I assume after the photos were taken an examn wd be made.

25

Can you say at the time that photo was taken? there was no fingerprint powder there.

Referring to photo 4, the entrance to the bedroom door to which you ref. that does not appear on the photo? In what way do you mean. You cant see inside the door but you can see the position where the door is.

30

Is the steel well around the door? To my knowledge there wasnt. The door to the bedroom is in the shaded area of the photo down there? No, this is the actual doorway here.

Is the bedroom the front room of the house? No, from my memory there was a lounge area to the lefthand side of the kitchen down towards the door. If you refer to photo 1, there is a set of three windows to left of photo, that wd be lounge, then the hall and then

35

the bedroom

1

MARGARET ROSE FOX (Sworn):

I live at flat 1, 91 Calgary st, Balmoral.

When did you first move to that address? About the 18th Nov.  
I think it was.

Which year? 1978.

5

Do you recall having a small gathering of people at yr flat on  
the 18th Nov. last year? Yes I do.

Was that soon after you moved into the flat? About 3 days. It  
was my third night there.

What time did the gathering finish? About 11 o'clock. I think.

10

What did you do after 11 o'clock? We took Teresa my girlfriend  
who was staying the night, Teresa Wulf. Her, Caroline Jones  
a friend of my girl friend's and Wally and myself, we took them  
down to a nightclub in the city. Wally is my boyfriend.

How long were you at the night club? We waited there until  
Teresa had gone to the night club. Teresa and Caroline intended  
going together but Caroline came back to the house with us.

There was Caroline, myself and boyfriend.

What time did you arrive back at the flat? 11.30 to 12 o'clock.

15

What did you do? We listened to the stereo for a while. We  
left Teresa's two children and my daughter, ~~ix~~ days old, with  
a friend. When we got back there was Wally, Ruby, Caroline and  
me. We listened to the stereo for a while. Then they left at  
about 2 o'clock.

How many persons were then in yr flat? Myself, my daughter and  
Teresa's two little children.

20

Was yr daughter asleep? Yes, she was at the time.

How old was she then? About 9 weeks old. She was in a pram  
right beside my bed.

What about Teresa's children? They were in the spare bed together.

What did you do? I had a bath, fed my baby, and got to bed.

As soon as I got to bed I fell asleep as I was really tired that  
night.

25

How long were you asleep for? I cant really remember. The next  
thing I remember I had a dream. Caroline the girl there previously  
but who had left, I had a dream....MR. MCLEAN OBJECTS.

You had anunpleasant dream or pleasant dream? An unpleasant dream.

What happened? I did go on sleeping until I had the dream.

Then did you wake up? Yes.

30

What did you find? I found there was a knife on the left side of my  
neck. The dream was unpleasant. I dreamt Caroline had a knife at my  
throat and was swearing and cursing at me. I stirred and when I  
turned around I felt a knife at my throat and somebody lying on  
the right side of me.

35

- 1 What position were you in? I was lying on my back and went to turn around and found the knife there.  
What was the position of this other person? He was sort of lying over the right side of me, not completely over me but on the right side of me.
- 5 Did this person say anything to you? When I woke I heard him say take yr pants off or all yr clothes. I cant remember which it was. I said No, and then he pressured my neck with the knife again. So I put them down to my knees, so they were off, and he took them down the rest of the way. After that he asked me to take his pants off. I cant remember if he had his over trousers on or just his underpants. I slid them down a wee bit and he took them down the rest of the way.
- 10 What was this person wearing? He had his top clothes on but I cant remember if he had his top trousers on or not, or whether he took them off before he got on the bed.  
Did he say anything? He did ask me to take his pants off and I refused and then he pressed the knife at my neck again so I slid them down a little way. I didnt take them down very far as I didnt want to, but I had my little girl next to me and the other
- 15 two children and I didnt want them to be harmed, so I felt I had to. Did this person lying alongside you take off his underpants? I slid them down a wee bit and he took them off the rest of the way. They were greens and yellows, they were bikini brief, a stretch nylon, something like that.  
After that he wanted me to insert his penis. He said "put me in".
- 20 I refused and he pressured the knife again so I had to do it. We had intercourse for a while. After a while he stopped and looked at me. His penis was still inside me.  
How long did he have intercourse with you before he spoke to you? A few minutes. I cant remember how long.  
Had he penetrated you? Yes.
- 25 Did he say anything to you then? After we had sex for a while he stopped and looked at me and he said "Oh my god you are the wrong girl, I thought you were Sue", and he went on to say this Sue he had lived with for a few years and they had broken up and he now lived with a man named Garth or gavin, I cant remember which name. Then he asked me if the baby was mine and I said yes. He also
- 30 asked me, I am not sure if it was then or later, to guess how old he was. I said about thirty, or in his early thirties, I cant remember if I said 30 or early thirties. He scowled. He asked me how old I was. I said 18. He said "Oh my God".



1 Had he finished having sexual intercourse when he said you were the wrong girl? I think he was still inside me but he sat up on his arms and looked at me.

How long did the sexual intercourse take place when he said you were the wrong girl? COURT INTERPOSED.

5 What were you wearing? Before he took my panties off I had a purple nightie. That was all I had on, the nightie and my panties.

Look at ex. 6, the nightie, recognise that? Yes that was the one I was wearing that night. (EX. 6)

And thepanties, Ex. 7, recognise those? Yes those were the panties (EX. 7)

10 What was this person wearing while he had intercourse with you? He had his top clothes on, I cant remember exactly, but he must ave had a shirt on as his arms were covered, but he didnt have his underpants on when we had intercourse.

What was yr position on the bed while intercourse was taking place? I think I was in the middle of the bed.

What position was yr body in? I was lying on my back.

15 What did you do while this person washaving sexual intercourse? I was crying, sobbing, and asking why he had picked on me, I hadnt done anything. I hadnt seen him in my life and he had no reason to come into the flat and have sex with me.

Recalll where the knife was at this stage? During intercourse I cant remember where it was, but I wasnt thinking about the knife. At that time I was really scared and I cant remember if the knife was at my throat or not, I am not sure.

20 Look at the knife Ex. 9, can you identify that? Yes, that was the knife he had at my throat.

Do you have any other knives like that at yr flat? No that is the only one that size and shape.

Is it a knife that came from yr place? Yes.

And you own it? Yes.

25 Wd you produce that as Ex. 9? Yes.

Look at this plan now shown to you, does that plan correctly show the layout and description of yr flat? Yes it does.

Look at the photos Ex. 5, photo 1, whereabouts is the entrance to yr own flat? There is one in the white porch. Th t is the kitchen entrance, and behind the stairs is the back entrance.

30 Look at photo 2, what does that show? The kitchen.

This door on the left of the photo what door is that? That is the door leading from the porch.

When you retired to bed that night was th t door locked? It was shut but not locked.

35 Why not? I had left the door open that night for Teresa to come in after she came from the nightclub. I expected her in by three so

1 it wd only be unlocked for an hour.  
Does photo 3 show the inside of the kitchen? Yes.  
Photo 4, what door is shown there? That is the door from  
the back entrance behind the stairs.  
In the photo 4 wd you point out the entrance to yr bedroom?  
The one on the lefthand side - sorry, the righthand side.  
5 Is that the bedroom you were asleep in th t night? That is right.  
What does photo 3 show? That is the bedroom I slept in that  
night.  
Whereabouts does yr baby usually sleep? In the pram beside the  
bed.  
Look at photo 6? Yes.  
Was yr young child asleep in the pram that night? Yes, she always  
10 sleeps thru the night.  
Where was the pram situated this night? In the same position  
as shown in the photo.  
Look at photo 7, during this incident recall when you first saw  
the knife? I saw the knife - when I came back from ringing the  
police, it was lying there but I didnt see him put it there and I  
didnt know when it was put there.  
15 After this first act of sexual intercourse did the accused talk  
to you? Yes he did. He talked about, when he said "Oh my God,  
you are the wrong girl". After that we were talking and then a  
knock came on the door.  
Before the knock came what had you been talking about? We had  
been talking about thins I stated, I was the wrong girl, he  
20 had been living with a girl Sue, she was now living with a guy  
Gavin or Garth. When the knock came I automatically got up to  
answer it, and he told me not to. During the convn he had  
asked me if Louise was my daughter and I said yes. I had also  
told him there were two other children sleeping in the other room.  
When the knock came I got up to answer it. I knew it wd be Teresa.  
He said no. I said if I didnt answer it she wd be worried. She  
25 knocked a few times so he said all right go and answer it. I went  
to the door and answered it and said good day and she said sorry  
I'm late I've been dancing all night. She looked pretty drunk,  
she wasnt sober. After that we went into the bedroom into her  
bedroom where she was to sleep with her two little girls. I said  
"For God's sake Teresa dont go to sleep. She said she was tired.  
30 I looked out the window and saw a Humber 80 with a young man in  
it. I asked if he had brought her home and she said yes. I said do  
you want to bring him in and she said if he comes to the door tell  
him I have gone to slee. I looked out the window again and the ca  
had gone. And when I looked back Teresa was asleep. So I went back  
to my daughter to seeif she was all right, if anything happened to  
35 her she was so little she wont have a chance.

- 1 I went back to my bedroom and he was stroking her face. I went to the end of the bed and looked at the baby and he grabbed my arm and pulled me on to the bed and went over the top of my stomach so I didnt move and put his hand over my mouth. I managed to tell him I wdnt scream and he took his hand away and said "You'd better bloody not". At this time he was fully erect. I cant remember if he got me to insert him or he did himself. At this
- 5 time it was hurting. I had had stiches from the birth of my baby and I was scared he wd tear them. He was hurting a lot. He said I am too big for you. I was crying again and he got excited, and he thrust harder and harder and I am sure he ejaculated the 2nd time as he got excited. We had sex. Before he had sex we had oral sex. He committed oral sex on me.
- 10 By that time he was fully erect and then we had sexual intercourse. How long did this 2nd act of sexual intercourse last? I cant really remember how long it lasted for. 15 to 20 minutes I guess. What happened then? While I was lying on the bed I looked over and saw his jacket there. He got up and got dressed and he asked me if he cd see me again. I said I havent got much choice have I. Then he asked me if he cd ~~back~~ come back at  $\frac{1}{2}$  to 11 and I said again
- 15 I havent got much choice. I was pretty shakey. After that he left, he walked out thru the kitchen door. I waited for a few minutes as I was scared he might be waiting to see if I rang anyone. I waited and looked out the lounge window but he was nowhere in sight. At this time Teresa's two little girls had woken up and came out. I told them to be good girls and that and went straight up to my next door
- 20 neighbour, a friend of mine. I went to knock on his door and I knocked on the next door people and after a while I realised I had knocked on the wrong door. So I went to the right door and went into his flat and told him what had happened. I was scared to ring the police as I was scared he might come back again, and I decided not to ring the police at first, but then I rang the police not soon after. The name of this person you went to? Mervyn McAlpine.
- 25 What did you tell him? I said some cofonut had broken into the flat. I just told him he had raped me, I was really shakey. I didnt want to go into every detail. Then we discussed whether I shd ring the police and I decided i had better ring them in case he came back. Then I had my baby crying again so I went down to the baby and he wasnt there, I was scared that he might have come back.
- 30 What did you do with the baby? I fed her, gave her her bottle, Do you feed yr baby at night? I fced her with her bottle and 11 o'x. and she usually sleeps right thru till 7 or 8. She has done that since she was a month old.

1 Remember what time it was you left the flat to go and see  
yr neighbour? I guess it was between 6.30 and 6.45.  
The only time I ever remember was glancing at the clock when  
Teresa came home. I didnt look at the clock, but I guess it  
was about 6.30 or quarter to seven.  
What was the time you last saw the clock when Teresa came in?  
It was ten past six.

5 This person that had sexual intercourse with you wd you  
see him in court today? Yes, he is sitting over there, in a  
blue shirt. The Polynesian sitting over there (accused).  
Remember what he wore that night? I remember he had light blue  
trousers on, and a checkered blazer jacket. I cant remember the  
colour of his top clothing. He must have had a shirt on as his  
10 arms werent bare during the night. Also he had a gold ring on  
his finger.

Was there anything distinctive about the ring? No all I can say  
is it was a gold ring, I cant even remember which finger it was  
on, but it was a gold ring.

Did you subsequently make a formal complaint to the police? Yes.  
Some time after this incident can you recall seeing the  
15 accused somewhere? Yes a few weeks after it happened, Wally  
my boyfriend, his sister, and another friend of ours, was  
driving down Dominion Rd. He was at a bus stop outside Burnley  
Ice. I recognised him and I said to Wally my boyfriend that it  
was definitely him. MR. MCLEAN OBJECTS. OVERRULED.

After seeing the accused at the bus stop did you make arrgts  
20 for the police to come? Yes, what happened, we saw him there.  
I said to Wally it was def. the person and Wally turned the car  
around and he was at the bus stop still. When we passed it seemed  
as if he recognised me. We went down and turned around and came  
back and a bus pulled up. It was obvious he wd get on the bus.  
I was going to give Ruby some money to get on the bus and follw  
him but there wasnt enough time so we followed him to Symonds St.  
25 Ruby got out of the car and followed him at Symonds St. and I  
got out of the ~~car~~ car and phoned the police. He was about to  
get on another bus when the police arrived He knew that ~~the~~ we  
were following him and he seemed to recognise me. He had gone  
into a butcher's shop and after that he saw me. Ruby was on  
the same side as him. He saw me call Ruby over as I was going to  
30 give her the money to get on the bus to follow him. Just then  
the pet. arrived and pulled him o f the bus.

As I went to answer the door I put my robe on and during the 2nd  
intercourse it wasnt taken off, he just pulled me on the bed.  
I had my nightie and robe on. I produce the robe as Ex. 8.

1 MORNING ADJOURNMENT 11.30 A.M.  
RESUMED 11.45 A.M.

Look at photos Ex. 5, photo 1, on the right of the photo is that the entrance to yr flat? Yes.

The window on ground floor at the left what window is that?  
5 That is my lounge window.

What is that small window in between kitchen and lounge windows?  
This is the spare bedroom window.

The jacket Ex. 10, how does that compare with the jacket worn by the accused that night? That is the jacket.

The trousers Ex. 13, what about those? They are the trousers.  
10 And the underpants Ex. 14, how do those compare? They are the underpants.

Later on the day after this incident were you examined by Dr. Pearl? Yes, the police doctor.

After you had seen the accused this period of time later and arranged for the police, did you subsequently go to the police station? Yes.

15 What did you do when you arrived there? The Det. asked me if it was definitely the man, was I sure in my mind. He took me into the room where this man was, there was him and another Det.

Did you say anything? The Det. asked me if that was the man. I said yes that was the man who raped him. He said I havent seen you for a long time, but I hadnt seen him before in my  
20 life so I dont know why he said that. As I walked out there was some convsn but I dont remember what it was.

XXD McLean:

Putting aside any questions of force, were you capable of having sexual intercourse at the time of this incident? Yes I was.

25 Do you remember approx. what time it was when the accused woke you in yr bedroom? I guess it must have been about 4 o'clock in the morning.

This whole incident from the moment you woke till the moment he left the house, can you estimate how long elapsed? About 3 hours.  
What is the date of birth of yr baby? 21st Sept. 1978.

30 When you woke up were the bedclothes over you or not? They mustnt have been as he didnt take them away from me when I woke up. So the accused was under the bedclothes? No.

I think you said you werent sure if he had his trousers on? Yes. Is yr memory of the sequence of events this evening clear? Yes I do remember what happened.

35 Is the sequence clear in yr mind? As I explained to my lawyer,

1 things that happened I remembered later on which I hadn't told  
as they had happened.

When you gave yr evidence now and related what had happened, cd  
it be the sequence was out of order? Yes, it cd be out of order,  
but I mentioned everything that happened.

5 If evidence were given to the effect that accused got under the  
bedclothes when he initially entered the room? The bedclothes  
werent on me when I woke up.

When you woke did you hear the accused ask whether he cd have  
sexual intercourse with you? He didnt ask me. He told me to take  
my pants off.

cd he have said it and you didnt hear him ask if he cd have sexual  
intercourse? No. I didnt hear him ask.

10 Did accused stay in the bedroom throughout this incident? Yes.  
You say you left the bedroom in order to open the door? Yes that  
is right.

Did you leave the bedroom location? No.

While the man was there? No.

Wd you look at the photos Ex. 5, No. 4; is that a photo of the  
door which Teresa Wulf came thru? Yes.

15 That was not the door that was unlocked is it? No.

If you look at photo 1, is that door just referred to in photo 4  
under the stairwell on the lefthand side? That is right.

Is it possible to see the door in photo 4 from yr bed? No.  
Not from my bed.

20 Is it possible to see the spare room from yr bed? Yes, it was  
at that time where my bed was.

Photos 5 and 6 show the placing of yr bed? Yes.

Photo 6, the lefthand corner of that photo, does that show yr  
bedroom door? Yes.

Is it from yr bedroom or from any part of yr bedroom are you able  
to look out the spare room window? No.

25 The spare room window is shown in photo 1? That is right.

You say in yr evidence that you were crying the first time the  
accused had sexual intercourse with you? That is right.

I put it that it was the 2nd occasion on which accused had sexual  
intercourse with you that you were crying? I was crying both times,  
but more on the 2nd occasion.

30 When you say you were crying in relation to the first occasion,  
is it that you were merely having small tears from yr eyes? Not  
small tears, I was crying.

Were you sobbing? I wasn't sobbing, not really sobbing, but I was  
crying. I was scared, I didnt get too upset in case he started on  
me with the knife. The 2nd occasion I was sobbing, I was crying  
louder on the 2nd occasion than the first.

1 The first occasion were you trying to hide the fact you were crying? I was crying, I cdnt hide it very well.  
I thought you said you were upset and trying to hide your crying? No.  
Well was it you were trying to minimise yr distress? Yes I didnt want to show it, I cdnt very well do much with the knife at my  
5 throat and my baby daughter in the pram beside me. I didnt know what he wd do.  
Wd you agree on the 2nd occasion it was obvious you were upset? Yes I was crying more.  
And it was obvious you were crying and upset? Yes.  
Wd you agree on the first occasion it might not be obvious you were upset? It was obvious but I tried to keep myself as  
10 calm as I could. You can see if anyone is crying.  
Were the lights on in the bedroom? No they werent.  
What sort of lighting was in the bedroom? The blind was up.  
I always kept it up so that if baby woke up at all I cd always see her without putting on the like to wake her up completely.  
Also the light in the toilet was on which does show thru the  
15 house, but not brightly.  
When you first woke it was dark? Yes but there was a bit of light thru the house.  
Do I understand yr evidence that you were making a sobbing noise during the first act of sexual intercourse? I wasnt really sobbing, I was crying, but it wasnt sort of  $\frac{2}{3}$  how can I explain it. I was crying, I was making a wee bit of noise, but I wasnt sobbing  
20 loudly.  
Cd the noises you were making thru first act of sexual i/course be confused with noises of affection or enjoyment? certainly not. I didnt enjoy one moment of it.  
The question I asked cd the noises have been confused with noises of enjoyment? No, when tears are coming out of a person's  
25 face when having sex, well I didnt appear exited or anything like that. He knew I was crying, he knew I wasnt enjoying it, I really was scared, I had a knife at my throat.  
If it was said in evidence you appeared not to be objecting, or to appear to be enjoying the first act of sexual i/course, wd you disagree with that? Yes I wd. I ~~lie~~ lay there, I didnt do anything, I had to lie there with the knife there.  
30 In yr evidence in chief you said you had a convsn with the accused about the bab? Yes he did ask me if the baby was mine.  
I take it the baby is yours? Yes, most certainly.

1 Cd that convsn taking place after the 2nd act of sexual intercourse? No. During the time that he stopped having sex with me and he was talking about this, that sort of thing, I think it was then he asked me. He did ask me if Louise was my child before the knock on the door. I also said I had two other children in the flat as well.

5 At some stage he asked your age? Yes.  
Did you answer 18? Yes.  
Was that true? Of course. I am 18.  
I think you said in evidence that you believed the accused ejaculated on the 2nd occasion of sexual intercourse? Yes that is right.

10 Are you able to say whether he ejaculated the first time? No.  
Cd he have ejaculated th first occasion? I dont think so.  
As a result of these two acts of sexual intercourse were you worried about getting pregnant? I didnt think of that at the time. Those things dont come to mind when a person gets into yr flat and does those things to you.  
After intercourse did you fear you might become pregnant? I didnt think of that. I was very upset about the whole thing, I didnt think of getting pregnant. I did think of it a few weeks after, I did wonder whether I wd get pregnant.

15 Did you discuss the possib. or getting pregnant or otherwise with Mr. McAlpine? No.  
Didnt you discuss with Mr. McAlpine whether or not to call the police? Yes that is right.

20 I put to you one of the factors which decided you in favour of calling the police was the fact you might have got pregnant? I didnt think of getting pregnant at the time. It was the fact I wanted to catch the person.  
Was there anything in yr mind at any stage up until the time you saw the accused at the bus stop, was there anything in yr mind that you might need an abortion? No I had asked the police at the station, or they asked me if I did want to get a morning after pill in case anything happened, but I never did.

25 You said you answered the door to yr flat mate after the first act of i/course? Yes, she wasnt a flat mate, she was a girl who intended to stay the night.  
That was the girl Teresa? Yes.

30 At that time you said it was ten past six? That is right.  
So is it up to that point of time accused had been in yr flat some 2 hours? Yes, I only estimated the time as being 4 o'c.



1 Was Miss Wulf ~~assisted to her room?~~ <sup>assisted to her room?</sup> ~~assisted to her room?~~ No.  
When she came thru the front door did she need any  
assistance? No I walked to the bedroom with her. I tried to  
get her to stay away.  
You took her to spare bedroom? Yes.  
From spare bedroom you can see the door of yr room? Yes.  
5 Did you go to the window? No I didnt go right to the window,  
but it is a narrow ~~wind~~ room and you can see out the window.  
There was a car outside the window? Yes.  
Was it parked in the forecourt? Yes, parked about here.  
(Indicates).  
Were you able to estimate how many feet that is from the  
window of the spare bedroom? I dont know how far the case was  
10 from the spare bedroom but it was in the park lot and I cd  
see there was a European male there. He was young, but I didnt  
look that much to study his age, just an European male there.  
Young? Yes that is right.  
Wd he be under thirty? I guess he wd be under 30. He didnt  
have short hair, he had light coloured hair.  
Was it still dark at this time? No completely daylight.  
15 COUNSEL'S QUESTION INAUDIBLE? There wasnt at that time.  
So the person in the ~~park~~ car cd see in spare bedroom? Yes.  
He wd be able to see you in yr dressingdown? If he looked.  
How long were you in the spare bedroom? A couple of minutes I  
guess. I didnt time everything that happened.  
How long were you out of yr bedroom from the time you left to  
20 open the door to Miss Wulf? Not very long at all.  
How long wd you estimate? 3 to 4 minutes I suppose.  
Cd it be longer? I went to the door, I opened the door, let her  
in straight to her bedroom, and in the bedroom I was a couple of  
minutes. I looked out the window a couple of times and went  
straight to my bedroom as the baby was there.  
Cd you be out of yr bedroom 15 minutes? In no way.  
25 Are you aware when the person in the motor vehicle left? I think  
I heard him leave. It cd have been about 15 minutes.  
Where were you at that time? In the bedroom, in my bedroom.  
So for a period of 15 minutes this European young male was  
within a few feet of the spare bedroom window that had no  
curtains, is that right? Yes.  
30 From yr bedroom you cant see thru the window in the spare  
bedroom? No.  
I thought you said that accused never left yr bedroom, is that  
right? Not while I was in the bedroom and he didnt walk around  
while I was in Teresa's bedroom unless he tiptoed.

1 As far as I was in the spare bedroom accused didnt see me.  
I just didnt stay in the dcorway. When I went over to talk  
to Teresa I went right in the bedroom.  
He cdnt see you at that stage? No.  
Did you attempt to signal the man waiting outside in the car? I  
didnt think of it at the time.

5 I cdnt stay in the spare bedroom too long with my child in the  
room along with that man.  
If your story is true, you were subjected to a rape for almost  
two hours, and the accused then let you get up from the bed and  
open the door to some other person? Yes.  
He then let you go into another room where he cd not observe you?  
He let me go to the door to answer the door as I told him  
10 it was the children's mother and she wd get worried if I didnt  
anxwer the door. phat was the only reason he let me go.  
You wdnt know if Miss Wulf brought some friends back? No.  
From the convsn with Miss Wulf it seemed likely she might  
intend to bring someone back? I dont think so. Had she wanted to  
bring him in she wd have brought him to the door. She wdnt have  
told me she wanted to sleep otherwise.  
15 I didnt think of it at the time.  
The estimates of time you were out of the room is approx? Yes I  
didnt look a t the clock every 5 minutes.  
Did Miss Wulf go into bed and go to sleep? I cant remember if she  
got under the blankets or stayed on top.  
Did she undress? She <sup>didnt</sup> took her clothing off. She didnt take her  
20 shoes off. She was drunk when she got home.  
She was asleep fully clothed on top of blankets? Yes, I dont  
know if she took her shoes off.  
Were you mistaken about that? I cd be about her shoes, but I  
now she didnt take her clothes off/  
When she talked with you was she quite coherent? Did she talk  
25 clearly? I cd hear what she was saying but in a drunken state you  
dont talk how a sober person wd talk.  
I draw yr attention to the knife, did you actually see the knife  
at any stage throughout the rape or attempted rape? the knife was  
at my throat, I can remember it clearly at my throat during the  
first intercourse, but after that I cant remember it was.  
Did you see the knife at all? I saw the knife when I had been to  
30 ring the police and I noticed it on the table by my bed.  
Did you see the knife in hands of accused? I did see it in the  
hands of accused, I didnt see it but he must have had it tp push  
it in my thra t.

1 Is it a fact you felt something at yr throat? Yes.  
And assumed what it was was a knife? Well it is so thin and sharp.  
You assumed it was a knife? Yes.  
You didnt see the knife? I didnt see it....  
At any stage? Not until after I came back from ringing up.  
The only time you saw the knife then was after you had rung the  
5 police? That is right.  
So for the space of approx. 3 hours you did not see accused  
holding the knife at any stage, is that right? Yes.  
You gave evidence that when you woke up you felt something  
pressing yr neck? Yes.  
And also said that when you tried to resist you felt the  
pressure increase on yr throat? Yes.  
10 After the accused commence first act of sexual intercourse did  
you feel the knife pressed against you at any stage? No.  
You gave some evidence of the accused committing oral sex? Yes.  
When did he do that? Did he do that with the knife in his  
hand? No.  
You said there was a party at yr house earlier? There wasnt really  
a party, there were 9 people there, we had a few drinks.  
15 A small gathering? Yes.  
At that gathering...INAUDIBLE? They did after we dropped  
Teresa off. They had bread and butter and jam.  
You have a very small flat? Well not small.  
Wd it be possible for that knife to be placed beside yr bed  
by some person who was at this social gathering when eating food?  
20 No.  
Quite certain about that? Quite certain.  
In yr kitchen you have other knives? Yes.  
You have sharp knives? Not at the time I didnt no. I had only  
been there 3 days and I hadnt shifted in properly.  
Was there a bread knife there? No I dont think so.  
25 Cd there have been a bread knife? I very much doubt it.  
What about a carving knife? No carving knife, no.  
How many knives did you have? I had a cutlery set and a few odds  
and ends from other cutlery sets, that was all.  
That is not a very sharp knife is it? It is, it has a very thin  
blade and its jagged.  
When yr girlfriend Miss Wulf came home why did you not say to her  
30 that you were being raped? I cant say too much, I didnt have time  
and I didnt want to make too much noise as my daughter was alone  
with that person. I didnt want to raise his attention to what I  
was saying to her too much.

- 1 Is your flat adjoining another? It is almost on the corner.  
There is our flats, another section of flats and then there is  
Dominion Rd.  
When you ~~heard~~ <sup>heard the knock</sup> the front door, why didnt you say it was yr  
husband? I didnt think of it.  
Why didnt you say it was a man? I didnt think of it. I knew it  
was Teresa ~~knock~~ and it was the first thing that came to me.
- 5 During the 2 hours didnt you try to escape? My daughter was in  
the flat, the two little girls, I wasnt going to leave them  
alone. Had I done so God knows what he was done.  
Cdont you escape? There was no way I cd take the 3 of them and  
get away from him.  
Did you think to escape, yes or no? No.
- 10 When there was the knock at the door why didnt you pick up  
the baby and go to the front door with the baby? That wd have  
risen his suspicions straight away to pick up a sleeping baby  
and go to the door ans answer it.  
Did you think of doing that? No.  
You put on a dressinggown though to answer the door? That is right  
Where was the dressinggown? Hanging on my door.
- 15 Is your door open or closed when you got up to open the door to  
let Miss Wulf in? It was open.  
Was it open when Miss Wulf came inside the house? Yes.  
D id Miss Wulf go past yr open door? Yes.  
When you went back into the bedroom was the door still open?  
Yes it was open.
- 20 Did you close the door as you went in the bedroom? No.  
When accused left did he close the bedroom door? No.  
You say that yr dressinggown washanging on the door? Yes.  
Whereabouts on the door? On the door handle. The door was  
open against the wall and it was on the knob facing in the  
bedroom which wd be the outside door handle if you open the door.  
When you go to bed do you leave yr bedroom door open? Yes.
- 25 When you got up to open the door to Miss Wulf you had presence of  
mind to put on yr dressinggown? I am not in habit of running  
around the house with no pants on and a short nightie.  
If you had gone to the door just in yr nightie it wd be unusual?  
Awfully unusual.  
The nightie is very short isnt it? Yes that is right.
- 30 Well then why did you wish to conceal from Miss Wulf the fact  
that you had not got much clothing on? Perhaps because I dont  
like people looking at my almost naked body.  
But also, a rapist had been in yr room for approx. 2 hours? Yes.

1 And if you were still worried a girlfriend might see you in a semi naked state? Its an automatic reaction for me when I walk out of my bedroom to put a robe over.  
Did the accused tell you to put on a robe? No.  
Did he tell you what to say to the person at the door? No he just warned me that I had better not tell her what was happening.

5 On reflection do you think you cd have signalled yr distress to Miss Wulf in numerous ways? Sorry.  
On reflection do you think you cd signal yr distress to Miss Wulf in numerous ways? I tried to act as calmly as I could.  
My child was in the bedroom on her own with that bedroom. If I had upset anything I dont know what he had done to my child.  
Had accused made threats to yr baby? No.

10 After the initial stages did he make any threats against you? He did raise his hand to slap me a few times.  
Sure it was a few times? It wasnt only once.  
At what stage did he raise his hand and slap you? Was that before or after Miss wulf came home? So ry, I cant remember.  
You said in yr evidence when you came into the room the accused might have been stroking the baby? I know he was very close to her and looking at her.

15 Throughout the whole 3 hours of this incident did he ever make any move towards baby to cause you concern? No.  
On reflection do you think yr fears relating to the baby were groundless? During the time he didnt harm her or anything but I was naturally scared for her and Teresa's children. She was only 9 weeks old, she cd never defend herself.

20 After you went into the bedroom the 2nd time I think you said you had oral sex with accused? He had oral sex with me.  
How long did that take? I cant remember how long it took.  
I have asked if he had a knife at that stage? Yes.  
And you say you cant remember? I dont think he did have a knife.  
Your position on the bed with oral sex? I was lying on my back.

25 Was yr head towards the headboard? It wasnt towards the headboard.  
Where was yr head? I cant remember, I was moving from side to side, I was crying, I didnt lie there in one position.  
How long did the oral sex take roughly? A minute or so, I am not sure.

30 Was it that the defdit or accused was lying between yr legs so his feet were below yours? I dont think he was lying, he was crouching.  
Had you known the position of the knife, wasnt it possible to put out yr hand? I didnt know where the knife was at that stage.

1 Had you know the poem of the knife was it possible for you to put out yr hand and take hold of the knife? Had I know where it was perhaps I might have, I dont know. It didnt happen.

You said on the 2nd occasion you had sexual intercourse with accused you were hurt? Yes.

5 Was it the pain only commenced after the accused had inserted his penis? On the first occasion it did hurt but he wasnt fully erect, he was erect enough to be inserted, but on the 2nd time he was fully erect, and he was rough.

And he was able to insert himself? Yes, I dont know how he did it, he just did it.

Re-XD Ruffin:

10 Ex. 9, where do you normally keep that? It was normally in the kitchen. I dont usually take my knives or kitchen utensils all over the flat.

Were you aware where that particular knife was before you retired to bed? Probably on the kitchen table or the sink.

15 You have been asked about the possibility of escaping, when you went to answer the door did you think about what the accused might do to your child? COURT INTERPOSED.

Did you think about the other two children? I was scared for all of them but mostly for my daughter as she was in the same room.

20

LUNCHEON ADJOURNMENT 1 P.M.

25

30

35

1 RESUMED 2.15 P.M.

MAX PEARL (Sworn):

I am a duly qualified and registered medical practitioner in practice at 327 Manukau Road, Epsom.

On morning of 19th Nov. 1978, did you examine a person named Margaret Fox at Akid Central p.station? Yes.

5 What were yr findings? My findings were entirely normal except when it came to examining the genitalia. There was marked tenderness at the entrance to the vagina.

Was there anything else not normal? No.

XXD McLean:

10 From yr examn was there any reason why Miss Fox cd not have sexual intercourse? No.

Anything to prevent her having sexual intercourse? No.

Is yr recollection that from physical examn there was nothing wrong with her? Nothing except the quite marked tenderness at the entrance to the vagina.

15 Is it that when you examined her vagina she said ouch when you pressed it? Just the fact of examining her in the ordinary way she expressed considerable pain by flinching and saying it hurt her.

HENRY WILLIAMS (Sworn):

20 I now reside at Kingsland. I previously lived last year at flat 1, 91 Calgary St.

How long had you lived there? Almost one year.

When did you leave that address? The 11th Nov. 1978.

Who lived at that address with you? My wife and my baby.

What is yr wife's name? Philomen Kareka.

Did anybody else stay at yr flat while you were there? Yes.

25 Who was that? Tongaroa, a workmate of mine.

Was there ever a girl named Sue living at yr flat while you were there? No.

Do you know yr wife's girlfriends? Yes.

Does yr wife have any girlfriend named Sue? No.

30 Do you know the person sitting here (accused)? No I have never seen him in my life.

XXD McLean: No questions.

COURT: Look at the photos, that downstairs flat is where you were living? Yes.

- 1 MERVYN WILLIAM McALPINE (Sworn):  
I live at flat 6, 93 Calgary St.  
Did you know a Miss Margaret Fox? Yes.  
Where did she live? At the flat just down below mine.  
Were you living at that address in Nov. last year? Yes.  
Recall an incident in Nov. last year involving Miss Fox? Yes.  
5 Remember when that was? Nov. 19th.  
What happened? She woke me up about  $\frac{1}{2}$  to 7 in the morning. I  
heard a knock on the door and she said cd she use the phone.  
She said she had been done over. Before that she said something  
had happened that I wdnt believe her. I said what was that.  
She said she had been done over. I didnt believe her at first  
and all that, taking it as a joke, but after looking at her she  
10 seemed a bit pale around the face.  
Did she say anything else to you? That she had been done over.  
Was that all she said to you? It wd be about all I suppose.  
All I can remember anyway.  
How long was she at your flat? About ten mins. I presume, round  
about ten minutes.  
15 After she had told you this what did she do? She said, she  
thought for a moment and wondered if she shd ring the police or  
not and I said that was over to her.  
Were the police telephoned from yr address? Yes.  
And did Miss Fox leave yr flat after that? Yes.
- XXD McLean:  
20 Did you ring the police or did Miss Fox ring them? Miss Fox rang  
the police.  
Did she ring straight away? She thought for a moment.  
Did she say shall I ring the police or words to that effect? Yes,  
something like that.  
How long was she indecisive? Possibly a minute.  
25 Did she tell you any reason why she might not ring the police? No,  
not at all.  
When you opened the door how did she appear to you, was she  
excitable? J<sup>u</sup>st lightly sort of.  
Was she hysterical? No, not hysterical.  
Did she appear very upset? No, not very, just white about the gills  
I suppose.  
30 A little bit pale? Yes.  
In the other respects was her behaviour unusual? Well its hard to  
tell really.



1 Was there anything about her appearance at all which led you to believe that she had been assaulted or raped? Only by the paleness around the face.  
Did you see any physical injuries to her? No.

Re-XD Ruffin:

5 No questions.

TERESA MARY FRANCIS ANNE WOLE (Sworn):

I live at Mt. Roskill. I have two children.  
Do you know a Margaret Fox? Yes.  
Where does she live? 91 Calgary St.  
10 Recall in Nov. last year making arrgts to stay the night at her place? Yes.  
Were yr children to stay the night at Miss Fox's place? Yes.  
Remember what day that was? No I cant.  
What did you do that evening, did you go out somewhere? Yes.  
Where did you go? To a nightclub.  
How long were you at the nightclub for? What time did you  
15 leave the nightclub? When it finished. I got home about seven, I am not sure.  
Had you been drinking in the course of the evening? Yes.  
What had you been drinking? Beer and whisky.  
Remember how much you had to drink? No I dont.  
What sort of condition were you in when you went back to the flat?  
20 I was very drunk.  
How did you get back to Miss Fox's flat? A guy gave me a lift home as far as I remember and I must have crashed.  
Remember what sort of car he drove you home in? No.  
What race the person who drove you home? I dont remember that either.  
Did you have a key to the flat? No.  
How did you gain entry to it? Margaret opened the door.  
25 Which door did you enter the flat through? I feel it was the front door.  
Look at the photos Ex. 5, photo No. 1, wd you indicate which door you went in? Around the side.  
How did you attract Margaret's attention to open the door? I dont remember, I think I must have been banging on the door.  
30 What happened? I walked in and walked straight down to the last room and I must have crashed, that is all I know.  
Do you recognise this layout of the flat? Yes.  
Which bedroom did you walk straight to? I came in thru the front door, I saw somebody sitting on the side of the bed, kept on walking and went straight into the spare room.

- 1 Which room are you referring to when you saw somebody sitting on the side of the bed? The first room.  
Whose room was it? Margaret's room.  
What cd you see of the person sitting on the bed? Remember what they looked like or what they were wearing? No I just remember someone sitting there.
- 5 What did you do when you arrived at the spare room? Fell asleep.  
Did Margaret Fox say anything to you from the time she opened the door and the time you went to sleep? She was mumbling about something. I cdnt understand it. I was too tired, too drunk.

XXD McLean:

- 10 When you got home did you get out of the motor vehicle and go to the door without assistance? Yes I think I did.  
Did you walk down the hallway to the spare bedroom with assistance? No I dont think so.  
When you got to bed did you get undressed? No I think I had my clothes on.  
Did you take yr shoes off? I dont remember.  
Do you recollect saying to Miss Fox about not asking the man who brought you home inside? No.
- 15 Cd you have said that without remembering? Possibly I dont know.  
Wasnt it the case that you were very tired? Yes.  
And you had something to drink/as well? I dont remember.  
Wdnt you be more tired than drunk, or more drunk than tired?  
I think I was more drunk. I am not sure.
- 20 If Miss Fox had said to you I have been raped or I am being raped, wd you have reacted to that and assisted? Probably not, I was too gone.  
When ~~you~~ she answered the door was she crying? No.  
Was she hysterical? No, I didnt take much notice.  
Was there anything about her appearance or manner which caused you concern? No.
- 25 You say you saw somebody in her bedroom? Yes.  
Was that person lying on the bed or seated on the bed? He was seated.  
Remember whether the person was dressed or undressed? I cant remember.  
Recollect if it was a male or a female? It was a male.
- 30 That didnt cause you concern? I thought it was her boyfriend so I didnt take any notice..  
The motor vehicle you came home in, remember where it was parked?  
No I dont remember.

1 Are you able to say or give an estimate of the time it took for  
you to come in the front door until you went to sleep on  
the bed? I cant, no.  
Cd that have been some minutes, say ten minutes? A few  
minutes maybe.  
Wd ten minutes be in the vicinity of the time you wd come in and  
go to sleep? Maybe, yea.

5

FXD Ruffin:  
No questions.

CHRISTOPHER JOHN SLAVEN (Sworn):

10

I am a Detective Constable attached to Ak District CIB. At  
approx. 7.05 a.m. on Sunday, 19th day of Nov. 1978, I was on  
patrol when I was directed to flat 1, 91 Calgary St, Balmoral.  
Upon my arrival at the address I spoke to the complainant and as a  
result of what she told me I made my way to a bedroom to the  
right of the front door. Inside the bedroom was a double bed.  
The bed clothes were pulled back to the foot of the bed. The  
bottom sheet was still intact on the mattress. I made an examn  
of the bottom sheet for seminal stains but found none.

15

I then made an examination of the bedclothes at the foot of  
the bed and under these bedclothes on the lefthand side of the  
bed I found a pair of women's underpants which were inside out  
and twisted at the sides.

20

Look at Ex. 7? Those are the ones I found in the bedclothes.  
Did you also seize some further clothing? Yes prior to taking Miss  
Fox to the p.station she changed her clothing and gave me her  
nightgown and dressinggown and I recognise the exhibits as the ones,  
Ex. 6 and Ex. 8.

25

Look at the photos Ex. 5, photo No. 5, is that the double bed you  
refer to? It is.

Was the bedding on the mattress as shown in that photo in the same  
condition as you found it? No it was not. I rolled up the bedding  
prior to the photo being taken.

Did you examine the table next to the bed? Yes I made an examn  
of the table on the lefthand side of the double bed and upon this  
I found a small butterknife.

30

Look at photo No. 7, does that correctly depict the dressingtable  
as you found it? Yes it does.

Look at Ex. 9, recognise that? Yes that is the knife that was on  
the dressingtable.

1 In what condition was the knife Ex. 9? It was lying on the table as in the photograph.  
In what condition was the knife? It appeared to be clean.

XXD McLean:

5 Were you present in the house when there were tests for fingerprints? I was in the kitchen when fingerprints were tested on the door.

Was the knife fingerprinted? I have no knowledge myself.  
Cd you tell us if the knife had been tested by looking at it? Not myself no.

10 Did you talk to anyone else in the flat? I also spoke to the witness Miss Wulf.

Where did you speak to her? In the 2nd bedroom,  
What was she doing? When I first went in she was asleep.  
What time was that you went in? Approx. 7.25 a.m.

Was she in bed or on the bed? She was fully dressed. From memory she was underneath the bedspread.

Was she wearing shoes or not? I cannot honestly recall.

15 Did you speak to her? Yes. I first woke her and then obtained her name and address and other particulars.

Did she talk to you coherently? I was only speaking to her for a minute or so, she appeared to be speaking coherently.

Did she tell you how long she had been in bed? I honestly cant remember.

20 You dont remember her saying she had only been in a short while?  
~~Sorry~~ I dont remember.

The only observation I made at the time was that she appeared to be a bit slow in her reactions which I put down to her just waking up.

There was nothing unusual about her? Not really.

Did you observe a telephone in the flat? No I did not.

25 Re-XD Ruffin:  
No questions.

EDWARD WILLIAM JOHN CIURLIONIS (Sworn):

30 I am a Detective in the Akld CIB. On the 8th December, 1976, I accompanied the accused who is in the back of court in blue shirt to his home address, flat 7, 65 Burnley Tce, Mt. Eden. I asked him to show me the clothing he was wearing on the night of the 18th Nov. that year and he handed me the following clothing which I now produce.

1 Did accused hand you the blue and white jacket? Yes he did. I  
 produce that as Ex. 10.  
 The blue shirt Ex. 11? Yes.  
 The multicoloured tie, Ex. 12? Yes.  
 A pair of blue trousers Ex. 13? Yes.  
 Multicoloured underpants Ex. 14? Yes.

5 Did you prepare a plan of the complainant's flat? Yes.  
 With her boyfriend this morning.  
 Look at this plan, is that the plan you prepared? It is.  
 Will you produce that as Ex. 4? Yes.  
 Do you know whether the knife Ex. 9 was tested for fingerprints?  
 It was tested but not by myself. There were no prints suitable  
 for comparison.

10

XXD McLean:  
 No questions.

JAMES ANGUS LYONS (Sworn):

15

I am a Detective attached to the Akd CIB. On the 8th Dec.  
 1978, Resulting from information received I spoke with the  
 accused Kaitamaki seated in court at the Akld Central p.station.  
 I cautioned him telling him he was not obliged to say anything  
 unless he wished to do so and anything he did say wd be taken  
 down and writing and given in evidence. MR. MCLEAN OBJECTS TO  
 THE FURTHER EVIDENCE TO BE GIVEN.

20

JURY RETIRE (3.02 P.M.)

25

MR. MCLEAN OBJECTS TO SOME OF THE EVIDENCE OF DET. LYONS  
 PARTICULARLY THE SECOND HALF OF P.2 and the top of P.3.  
 AND ALSO TO WHAT HE CLAIMS TO HAVE BEEN CROSS-EXAMINATION BY  
 DET. IN BREACH OF JUDGES RULES. HE DOES NOT OBJECT TO  
 PRODUCTION OF WRITTEN STATEMENT BUT OR EXCE T FOR THE SECOND  
 PARA. CONTAINING THREE LINES WHICH HE CLAIMS OUGHT TO BE  
 EXCLUDED AND ~~XXXXXXXXXXXX~~ HE CLAIMS THAT THESE WERE THE DET'S  
 WORDS AND NOT ACCUSED'S? AND IT IS AGREED THAT IT IS NECESSARY  
 FOR SOME EVIDENCE TO BE GIVEN CANVASSING THAT PARAGRAPH ONLY.  
 ACCORDINGLY DET. LYONS VOIR DIRE EVIDENCE RELATES ONLY TO  
 THAT ASPECT OF THE STATEMENT.

30

When you took the statement from accused, what course did the  
 interview take? The whole interview as was clearly pointed out  
 to the accused at the start of the interview concerned a matter  
 of rape. And the whole interview was based on the matter of the  
 offence of rape.

35

- 1 Right up to the taking of the statement.  
The first para. of the statement, did accused volunteer information? The first paras. of the written statement right down as far as the caution, are police procedure which is practised and I think just about every statement taken off any person which outlines his personal details and exactly what he is making the statement about.
- 5 The words in the 2nd para. "sexual intercourse with a girl against her will"? I put that to accused so he wd know exactly what the statement was about.  
How did you put it to him? I cant remember my exact words but it wd go along the lines. I wd say to accused what I am typing, I am making a statement to the police about what I was involved in on night of 19th Nov. and I wd write that.
- 10 I wd say then you had sexual intercourse with a girl against her will, and I wd type that down.  
You described that, those are the words of an admission by accused? Accused had already admitted to me certain details of the offence and these were words I put to him.
- 15 COURT: Police statement usually start off with particulars of identity of the person being interviewed? Yes.  
Then "I am being interviewed about" and a sentence or two which gives allegation about a complaint that "I have burgled" for instance? Yes.  
Then there is a warning? Yes.
- 20 Then you get him to give an account? Yes.  
Was para. 2 the allegation a record of the allegation made or was he admitting he had done it? This was in relation to the allegation being made.  
So really you missed out "I am being interviewed about an allegation made"? Yes.
- 25 When you come to give yr evidence on this statement you will have to say what you put down there was the accusation you were telling him was the allegation against him and not an allegation accepted by him? Yes sir.
- 30 AGREED BY COUNSEL THAT MR. LYONS CONCESSION CLEARS THE OBJECTION PROVIDED THE STATEMENT BEFORE GOING TO THE JURY IS APPROPRIATELY MARKED TO SHOW THAT IT WAS THE ALLEGATION NOT AN ADMISSION WHICH WAS BEING RECORDED IN THE SECOND PARAGRAPH.

ADJOURNED 3.25 P.M.

RESUMED 3.45 P.M.

CONTINUING WITH THE JURY:

Detective attached to Akld CIB. On 8th Dec. 1978, resulting from information received I spoke to accused at Akld Central I cautioned him by telling him he was not obliged to say anything unless he wished to do so and anything he did say wd be taken down in writing and given in evidence. I told him I was making enquiries into an allegation of rape on a girl called Fox taken place on 19th Nov. 1978. May I now refer to my notes recorded at the time of my interview. I jotted them down while I talked to him. I said where were you on night of Sat. 18th Nov. He said Cook Isaldns Democratic Hall. I said remember the night quite well it seems. He said Yes, the Rugby test was on I was going to watch it. I said where is the Hall. He said Trillos. I said what time did you leave there. He said about 1.30 when it closed. I said what did you do then. He said went home. I said how and who with. He said By cab, with my girlfriend. I said where is yr girlfriend now. He said at work, she works at Hannahs in K. Rd. I said what did you do when you got home. He said We went to sleep. We were going to watch the test but cdnt stay awake. I said where did you fall asleep. He said on the bed. I said is the TV in the bedroom, and he said No, wait a minute we went out to her inlaws, somewhere behind the Manhattan. I said what are their names. He said Southworth. His missus is my girlfriend's sister. I said what did you do out there. He said Had some drinks and waited for the game. In fact there was a game on that night, the Barbarians. I said did you watch all of the game. He said no, I had had an argument with my missus at Trillos. He and Southworth had talked to two of my cousins and we had an argument with our Missus about it. We went out to his place and we argued again so I went home. I said what time was that. He said about two o'clock or somewhere. I said where did you go and how. He said I walked to Sandringham Rd. and caught a cab. I then referred to a map of the area and said can you show me whereabouts on the map and he indicated he walked down Sandringham rd. to approx. Balmoral where he caught the cab. I said what time did you get the cab. He said about 3 or something, it was a woman taxi driver. I said were you drunk or sober at the time. He said I was sober. So I said you can remember quite clearly what you were doing. He said yes.

1 I then ref. to the map again and indicated Calgary St. where  
the offence had taken place.

Look at the map Ex. 3? Is that the map you ref. to accused? Yes,  
this is Calgary St. here (indicates).

I said have you ever been to this street before. He said No.  
I said Never. He said Never. I said do you know anyone who  
5 lives in that street. He said No. I said do you know a girl  
called Sue who used to live in that street. He said No.  
I said do you know a girl called Sue at all. He said No.  
I said did you go to that street on the night of the Erillos Ball  
and he said No. I said, I have a girl here at the station  
who says she knows you. She lives in that st. and on the morning  
of the 19th she was raped by a man answering yr description.  
10 She says that was you. He said  
COURT: He had been located and pointed out to you by Miss Fox  
at the bus stop? Yes.  
COUNSEL: He said where is this girl have her say it to me.  
I then left the room and returned with the witness Fox and in  
the accused's presence and hearing I said to Fox, Have you  
15 ever seen this man before. She said Yes, he is the man who  
raped me. The accused said to Fox, I havent seen you for a  
long time. I said, when did you see him. She said when he  
raped me 2 or 3 weeks ago. I said how do you recognise him.  
She said by his face. I will never forget that face.  
I said you are quite sur about that and she said Yes, positive.  
COURT: Cd he hear her saying this? He was in hearing all the time,  
20 only about 2 or 3 ft. away. She then left and I said what do you  
say now you have seen her. He said she is wrong I am not the man.  
I said what were you wearing on that night. He said my blue trousers.  
I said what sort of tip. He said blue shirt, red tie, white and  
check blue shirt. I then indicated a ring on his finger and said  
whose is the ring you are wearing. He said My girlfriend's, she  
25 gave it back to me that night we had the argument.  
Did you then refer accused to the map again? Yes sir.  
Ref. to the map again I said have a look at the map, this is where  
you say you were and this is where the girl was raped and indicated  
the vicinities. He did not reply. I continued and said, I put it  
to you that it was you who broke in and raped her, the reason why  
is what I want to know. He said it wasnt me. At this stage I left the  
30 room for 10 or 12 minutes. I consulted my superiors.  
I returned and I said to him, we are going out to yr place, we want  
that jacket of yours as evidence, also the trousers. I then  
handed him an authority and said I wd like you to read this, it is an  
acknowledgment saying you allow us to take a blood sample from you.  
You dont have to give it if you dont want to. It is for DSIR analysis.



1 Accused read the document and waited about ten minutes.  
Then he agreed to sign it. I said right, lets go and get this  
clothing, are you quite happy about us taking it. He said yes.  
I then stood up and was about to leave and he said look, if I  
tell you what happened what will happen to me. I said you  
will be charged, there is no doubt about that. We have enough  
5 to charge you with. However if you want to tell me yr side of the  
story I am happy to listen. Accused sat for ten or 12 minutes in  
silence and then looked at me and said OK I did it. I said why.  
He said because I had an argument with my missus I suppose. I then  
continued a verbal discussion with accused and concluded by taking  
a statement from the accused which I produce as Ex. 1.  
He wrote at the bottom "I have read this, it is true and  
10 complete" and he signed it and it was signed by myself.  
That is his signature on page 2. STATEMENT READ.  
COURT: You said there was a discussion about what happened and then  
it was put in writing? Yes.  
The material put in writing did it follow in broad outline what  
he talked to you about? Yes.  
He gave it to you verbally and then it was put on the typewriter?  
15 Yes.  
COUNSEL: Map produced as Ex. 3. and also Ex. 2? Yes.

XXD McLean:

What time was it you commenced yr interview with accused? The  
actual interview wd be around midday.  
20 What time was the statement completed? It was started at 2.35 and  
it wd be completed round about threeish.  
You have a record of the time you commenced the interview? No sir.  
What makes you think it was midday? As I recall accused came to  
the station t around 11 o'clock and then he arrived the officer in  
charge of this enquiry Det. Ciurlionis was working on a homicide.  
25 I was the only other officer who had worked on rape and indecency  
squad in the past and I was asked to take control of interview.  
It took me approx. an hour to read thru the whole file before I  
cd start and I started about midday.  
Know which officer brou ht accused to the station? Yes sir, but I  
cant recall his name at the moment. Const. Bill Ferguenn.  
You say that you asked the complainant Fox to come to the room to  
30 identify the accused? Yes sir.  
Do you know if complainant was at the station with a man friend or  
associate? I dont.  
Did she come to the station with a man friend or associate? I didnt  
see a man friend or associate there, but she may have done.

1 Did complainant come into the room where accused was to identify him or just at the door? Just at the door entrance, half in and half out.

Accused was in the room? Yes.

Standing or seated? Seated.

Anyone else in the room? No.

You were in the room? Standing by the doorway.

5 Was anyone else in the doorway? No sir.

Anyone else behind the complainant? There cd well have been sir, I am not sure.

So there cd have been someone behind you too and the complainant in the accused's sight? If I might indicate where we were.

10 We were in a major office, and at the lefthand corner is an interview room office type of arrgt and the accused was seated in that interview office area. It is completely surrounded by wall and doorway and complainant and myself were standing in th t doorway.

Cd there have been other people in accused's line of vision when the complainant was identifying him as the person who raped him?

15 There wd be other people in the room, the big room, but whether he cd see them or not over my shoulder I dont know.

Cd one of those people be a friend or friends of Miss Fox?

I cant honestly say. The only person I was interested in was Miss Fox.

Cd that be a possibility? It cd be, I dont know.

20 When accused said I havent seen you for a long time, he was directing that remark to Miss Fox? He was definitely directing it at Miss Fox.

What did that remark - what if that remark was directed at another friend of complainant ~~at~~ standing approx. to her? No that is wrong, he looked straight at her and said I havent seen you for a long time. That was after he had identified him. Immediately before she said, that is the man who raped me.

25 Did you say in yr evidence just before making the statement accused said to you OK it was me, I did it? Yes sir.

What did you take him to mean by that remark? We were talking about the rape.

Did you mention the word rape throughout yr interview with accused?

30 As I started I told him that the reason for the interview was about the rape, and you might recall during my evidence I put it to him that he was the person who broke in and raped the girl. Earlier on I said to accused have a look at map again, this is where you say you were, this is where the girl was raped. I was quite satisfied he was referring to the rape.

1 You were using the word rape throughout the interview? I can only reiterate, I ref. to the word rape 3 or 4 times, I didnt use it in every sentence.

When putting a question to the accused you used the word rape rather than ~~sexual intercourse~~? Yes.

5 Did you ask the accused whether he had sexual intercourse with the complainant? In the evidence I have given I only ref. to rape as far as I can ascertain.

So you wd<sup>not</sup> have given an opportunity of either admitting or denying sexual intercourse? Rape is sexual intercourse sir.

So you wd agree will you that you never asked the accused whether he had had sexual intercourse with the complainant? I referred to rape all the way during the interview sir.

10 Isnt it rather like asking a person when did you stop beating yr wife, I mean didnt it occur to you that he might not be denying sexual intercourse, but merely denying rape? I am sorry sir, you have lost me to some extent.

When you put to him he had committed rape, is it that he denied it all the time save for the admission or the words you have said just prior to your asking questions before the statement, that is the words "Ok it was me I did it"? Yes he denied everything, knowing the girl, being in the street, being to the house. He denied it all up to then.

15 It didnt cross yr mind that the words I did it might have ref. to sexual intercourse? Sir, he was ref. to rape and I think that is reiterated and I asked him straight after why and he said because I had an argument with my missus I suppose. In my mind he was admitting the rape.

20 Did you explain to him what rape was? No sir, he knew what rape was. Were you acting on the assumption throughout this interview that rape was sexual intercourse with a girl against her will as in your preamble? Yes sir.

The preamble in the statement that is? Yes sir.

25 When he made the statement which accused signed, was that in his own words? Starting from the para. we went to the Ball on that Sat. night, yes sir.

Was it done in response to yr questions? It was more like sir, when accused makes his statement it has to be in his own words, but I wd ask what happened, where were you that night, what happened next and so on.

30 So it was in his own words and you put it in a readable form? No that is just about how it said it.

Look at the last 3 lines of the statement? Yes sir.

1 "Starting "I assume"? Yes sir.  
Wd you read the last 3 lines starting "I assume that"?  
On page 1, the last 3 lines? Yes sir. (read).  
Is that in essence what the accused was telling you throughout  
the interview? Well he actually denied everything right up to  
the part he made the admission and then he said OK it was me,  
5 I did it. It doesnt really wrap up the whole interview as it  
were.  
I out it once again, it was an assmption on yr part then that  
he denied it, wasnt it in fact that he denied rape?  
He was denying rape as distinct from sexual intercourse which  
he wd be prepared to admit? Well sir, when he said to me  
OK it was me I did it, he was referring to the rape.  
10 How do you know? From the whole tone of the interview to that  
stage, it was based around the rape.  
In the statement you record he thought she was willing? That is  
what he said in the statement.  
You agree that it was the complainant when she identified the  
accused in the room who said that was the man who raped me? Yes.  
Not that had sexual intercourse with me? That is right.  
15 He again denied the rape? He said I havent seen you for a  
long time to her.  
If you go on from that point "I havent seen you for a long  
time...." you turned to accused and asked what he had to say  
about that he said it wasnt me? He said she is wrong, I am  
not the man.  
20 So for something like 3 $\frac{1}{2}$  hours the accused was in yr presence?  
Approx. sir, yes.  
And apart from that one occasion you point to he never admitted  
to rape? He denied everything including being at the house,  
knowing the girl, being in the street, and the rape.

25 Re-XD Ruffin:  
No questions.

COURT: You were in the witness box and questioned in absence  
of the jury? Yes sir.  
Concerning the 2nd para. in the statement were you not? Yes sir.  
And you acknowledge that the 2nd para. in the statement was  
merely what you told the accused was alleged? Yes sir.  
30 It was not a confession by him at that stage that he had done  
it? No sir.  
And the document wd fairly record what he was or what was  
happening, it was made clear that 2nd para. was merely you  
putting to him what is alleged against him? Yes sir.

35 It is a trifle misleading at first reading? Yes sir.

1 EVIDENCE FOR THE CROWN CONCLUDED AT 4.45 P.M.

MR. RUFFIN OPENS AND CALLS AT 4.47 P.M.

TAMATTIRDA KAITIHIAKI (Sworn):

I live at flat 7, 65 Burnley Terrace, Mt. Eden. Printer.

I live at that address with my de facto wife.

5 On the 19th Nov. - on the evening of 18th Nov. did you go out with yr wife to a special function? Yes sir.

Was that a ball? Yes.

Where? It was being held at Trillos.

Were there others with you? Yes, my de facto missus, her sister and her husband.

10 Did you have an argument with yr missus at the ball? Yes.

When you left the Ball where did you go? To my inlaws place.

I went with my girlfriend, her sister and her husband.

Why did you go to yr inlaws place? Because they asked us to go there.

Was there a football match on that evening? Yes there was.

Did you want to watch the football match? Yes.

15 Were you going to watch it? We were going to watch the football.

Did you watch the football? Yes part of it.

How much did you watch? I think up to about the half time.

Then what happened? That is when I decided to leave.

Why? Because when we got there after having a few drinks more, the argument that had started at Trillos flared up again.

20 Did that argument involve yr missus? Yes.

How did you leave? First of all I walked down from that area to Mt. Albert Rd. and went to Sandringham rd. where the lights were. And a couple of streets from that place I hailed a cab to take me home.

You went back to Burnley Terrace? Yes.

25 What did you do there? After entering the place I decided to go back and fetch my missus.

How did you go about that? Well I walked back on Dominion Rd. to get back to the place I left.

Are you familiar with Calgary St. at all? No sir.

I presume you know it now? I know it now.

Did you know it prior to the activities of 18th/19th Nov? No sir.

30 Have you been down Calgary St. on any other occasion? No sir.

What happened when you came to Calgary St? I just went in to the flat.

You went in to the house? That is right.

How did you get in? Through one of the doors which was unlocked.

1       Wd you look at Ex. 5, photo 1: the door that w s unlocked  
are you able to point out where that door was to the jury? I  
think its about here (indicates).  
Were there <sup>no</sup> lights in the house? There was not.  
Did you ~~was~~ know anybody in the house? No sir.  
Had you been there before? No.

5       Why did you go in the house? I dont know.  
Where did you go? I think it was the kitchen or lounge on entry.  
Did you go to the bedroom where Miss Fox was? Yes.  
What did you do? I got on the bed. I was fully dressed.  
Did you wake ta complainant? I did.  
What did you say to her? Did you say anything? Yes. I sked  
her if we can have sexual intercourse.

10       Were those the words you used, the words sexual intercourse?  
Not really.  
Tell us what you said? I asked the girl if we can make love.  
Then what happened? She took off her panties.  
Did she reply? No sir.  
Did you press anything in her neck? I cant remember.

15       Were you armed with a knife? I cant remember.  
Was she willing or unwilling? I thought so.  
You thought what? I thought that she was willing.  
You say she took off her panties? That is right.  
Did you ~~ax~~ hear her say she took off her panties after you  
pressed a knife to her throat, is that right or not? No.

20       What is not right about it? About the knife.  
About pressing the knife at her throat.  
What is wrong about that? Because I am sure I didnt do it.  
What happened then? we had sexual intercourse.  
Did you get undressed? Yes.  
How was it you came to be undressed? I undressed myself,  
personally.

25       Did the complainant Miss Fox help to undress any part of you? No.  
Did she assist in taking down yr underpants? I cant remember.  
You say you then had sexual intercourse with complainant? Yes sir.  
How long did this continue approx? The first time? I shd say  
about 3 to 5 minutes.  
Was the act of sexual intercourse completed? I cant remember.  
I mean by that, did you ejaculate? Yes.

30       The complainant in her evidence said she was crying, did you  
notice that? No sir.  
Did she give you any indication at all that she was unwilling  
during this first act of intercourse? No sir.

- 1 After it was completed, what happened? There was when the other girl came back or arrived.  
How did you know about the return of the other girl? There was a knock on the door.  
Were you aware where the knock was coming from? Not really.  
~~Was~~ Were you worried about who it might be? No sir.
- 5 Did you get up to have a look at who it might be? No sir.  
At this stage did you know whether or not there was a baby in the bedroom? No.  
At some later stage did you become aware a baby was in the bedroom? No.  
Before you left the house did you know whether the complainant Miss Fox had a baby? That is when I realised there was a baby in there.
- 10 The complainant got out of bed to answer the door? That is right.  
How long was she out of the room for before she returned? About ten to 15 minutes.  
Did you see anybody walk past the door of complainant's bedroom? I had a glimpse of two women walking past.
- 15 Where were you at the time they walked past? I was lying back in bed.  
Do you know where they went to in the flat? No, not until the girl came back and told me.  
That was the complainant? That is right.  
Did you ~~see~~ while complainant was out of the room, did you get out of the bed? Not at all.
- 20 The complainant came back into the room? Yes.  
Why did she come back in the room did you think? I dont know.  
Where did she go when she came into the room? She came back on the bed.  
Then what happened? She hop on the bed with me.  
Then what happened? Then I ask her if we can make love again.
- 25 That is when I went into the act.  
You went thru some preliminaries? Yes.  
What you might call foreplay? Yes.  
Did you have oral sex with the complainant? That is right.  
Was the complainant willing or unwilling at that point? I dont know.
- 30 Did she give you any indication that she objected to what you were doing? No.  
After the foreplay what did you do? I went into the act of having sexual intercourse with her.  
Did she object or protest at all? Not at first.

1 Did she object when you tried to put yr penis in her? She didnt object but she said I was hurting her on penetration. That was after you had yr penis inside she said you were hurting her? That was when I was inside her. Did you stop intercourse at that stage? No sir. What happened after that? That is when the baby woke up and that is when I realised there was a baby there. She said that she had to feed the baby. What did you do? When I found there was a baby there I went and patted her cheek and went back on the bed. She came round the bed and took the baby in her arms. Th t is when she said she wd feed the baby. Th t is when I decided to go back to my own flat instead of going to get my missus. 5 10 What did you do? I got dressed and went back home. Which door did you leave by? The same door as I entered. Do you remember holding a knife at any stage? No sir. Up until the time when complainant said that you were hurting her, did she ever ask you to stop or desist or go away? I cant remember. 15 Did she give you any indication that she was unwilling? I didnt notice sir.

ADJOURNED 5.06 P.M.

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1 RESUMED THURSDAY, 15th MARCH, 1979, AT 10 A.M.

TAMAITIRUA KAITAMAKI (Continuing):

XXD Ruffin:

How long have you lived in NZ? Just over 5 years.

Does yr de facto wife - is she pregnant? Yes.

You remain living in NZ? That is right.

5 Do you consider NZ as being your home? Yes.

Is the Manhattan Lounge on the corner of Dominion Rd. and Jellicoe Rd? I cant honestly answer you that.

Your de facto wife's inlaws live somewhere near Manhattan Lounge? It is not by Manhattan Lounge, it is behind, somewhere there.

10 Is Calgary Rd. half way between the area by the Manhattan Rd. and your address? When I was shown where it is I know where it is now.

It is half way between those two points? Yes, approximately.

Did you watch any of the football on TV at yr inlaw's place? Part of it.

15 What time did the game start on Tv? From my memory the kick off was at about 3 o'clock as it was televised on the TV.

Did you watch all of the first half of the match? Not all of it.

How much did you watch? About three-quarters of the first half.

Then is it yr evidence that you returned to yr home at Burnley Terrace? That is right.

20 Why didnt you walk home? When I went home I walked up to Mt. Albert Rd. initially to look for a cab as that was the nearest main road from the area where I was.

Why didnt you walk all the way to your home at Burnley Terrace? It is proper for me to catch a cab to go back home.

When you say you left Burnley Terrace to go back to pick up yr wife, why didnt you get a cab then? I didnt bother at that time.

25 Why is it you get a cab one way and not on the way back? I cant actually explain that to you.

Look at the photos Ex. 5, photo No. 1, is that the house you stopped outside at Calgary St? Yes.

Do you say when you got in front of that house after walking from Burnley Terrace you were going to see yr wife? Yes that is right.

Which way had you walked from Burnley Terrace? Down Dominion Rd.

30 Why did you turn off half way down Dominion Rd. instead of going to where the Manhattan Lounge is? I dont know.

What did you do when you stood outside this house and looked at it? I cant remember.

1 What did you see when you stood outside the house in the early hours of the morning? I cant remember.  
Did you look thru any of the windows? No.  
Which door did you walk up to first? Just the one door that I entered.  
Which door was that? Well, from memory, that one (indicates).  
Do you not just point to the window? Did you climb in thru a window? I think I am mistaken, I went thru there (indicates).  
5 What made you decide to go up to one of the doors in this building? I dont know.  
What were you thinking when you opened the door and walked inside? I cant remember.  
What made you pick this house rather than the house next door? I dont know.  
10 Do you have a clear recollection of what went on this evening? Part of it.  
What parts dont you remember? Of going out to the Ball and having an argument down there, I remember that.  
Do you remember going to this house? I cant remember.  
Do you remember standing outside the house shown in the photo or have you forgotten all about it? Yes, up till now I have forgotten all about it.  
15 Why did you forget standing outside that house, havent you a good memory? No.  
How much had you had to drink that night? I should say about \$10 or a little bit more over \$10, as I paid \$22 to get in.  
20 Did you consider yourself still to be sober? No.  
In what sort of condition were you? Just drunk.  
Were you so drunk you cdnt remember what happened that evening? I dont know.  
Were you so drunk you didnt know what you were doing that evening? I was drunk.  
You told Det. Lyons in yr written statement that you had \$10 worth of drink and were just happy, you werent very drunk, did you say that? Yes, I was happy in such a way and I was drunk.  
25 I enjoyed my drink.  
Cd you still remember what you were doing that evening even though you had been drinking? I cant really explain it.  
You mean you cant explain it or you wont explain it? I cant explain it.  
30 Remember going to Miss Fox's bedroom? I dont know.  
Remember lying on her bed? I dont know.  
Remember having sexual intercourse with her? I dont know.

1 COURT: You remembered yesterday afternoon, do you know or are  
you just dodging? I was worried about my missus that evening.  
COUNSEL: Remember someone knocking on the door? I think so.  
Do you remember anything about a knife being in the bedroom?  
No.  
Did you have a knife with you that night? I dont recall.  
Do you remember having a second act of sexual intercourse with  
5 Miss Fox? Yes.  
When do you remember that taking place? I have just got over  
my drink problem at the moment.  
When do you remember the second act of intercourse? I was a  
bit sober then.  
Your memory then was restored half way thry yr time in the  
10 bedroom? I wdnt say restored, I wd say clearer.  
Do you remember saying anything to Miss Fox when you went into  
her bedroom in the early hours of the morning? No.  
Didnt you tell us yesterday that you asked her if you cd make  
love to her? From my recollection I said yes yesterday about that.  
Are you just making that up now after a period? No.  
How is it you remembered that yesterday and today you dont  
15 remember saying that to Miss Fox when you entered her bedroom?  
How is it today you dont remember things that yesterday you  
swore on oath to? The reason I keep forgetting about it is,  
I have a problem concerning my missus as she is having a hard  
time in her pregnancy.  
Do you remember what took place on that evening or are you  
20 just making it up? As I said I remember part of it.  
Can you tell us what part of the early hours of the morning that  
you remember? No answer.  
Lets see if we can jog your memory of this night, the knife, recall  
seeing a knife like that in Miss Fox's flat? Not at all.  
Is it that you dont remember anything about the knife or that you  
25 distinctly recall never seeing the knife that night? About the  
knife, I dont recall that. I am sure I didnt see it there.  
Are you just guessing at that or do you remember at the time you  
went in the flat and the time you left you didnt touch that  
knife? I am sure I didnt touch any knife or I didnt see any  
knife there.  
What is the first thing you remember after you walked into the  
30 flat, tell us in yr own words what you remember? I didnt quite  
remember it at the time until my memory was refreshed by the  
interviewing officer.  
How did the interviewing officer refresh yr memory? He told me  
how the incident occurred.

1 Do you remember yourself what you did that morning in the flat,  
or do you go by what other people have told you, including  
Det. Lyons? Do you understand the question? Not quite.  
I am asking you whether you remember what you did in Miss Fox's  
flat in the early hours of the morning, or your~~xxx~~ only  
recollection of what took place is because Det. Lyons has told  
you what the allegation against you is, now which is, remember  
5 what happened or are you just guessing or assuming from the  
evidence you heard in court? From recollection only.  
Forget what other people have said about what they say took  
place, when you went thru the door of Miss Fox's flat what was  
yr reason for going inside? I dont actually know why I went in  
there.

10 You said before you do remember going into her bedroom, laying on  
the bed and having the first act of intercourse with her;  
putting aside what you heard in court or what Det. Lyons told you,  
do you remember yrself doing those things? I didnt remember at  
that time but when the officer told me about at the time that is  
when I made the statement thru that recollection.  
Why wd you not remember some 3 weeks later what you had done in  
15 the early hours of that morning? Because I never thought about it.  
Having arguments with yr wife is a daily occurrence? As far as I  
knew every time we go out with her older sister and her husband,  
there is always an argument between the two of us.  
You told Miss Fox you thought she was a girl named Sue? I dont  
think I said any word like that to her, and I dont know any  
20 girl or woman by the name of Sue.  
Is it yr evidence that you did not think she was a girl named Sue  
or is it that you cant remember? I dont think I said I knew any  
girl named Sue as I didnt know any girl named Sue.  
Remember everything that was said to Miss Fox in her bedroom  
that morning? I dont know, not every word I said to her.  
Do you recall when you were with Det. Lyons he pointed out the  
25 street on the map? Yes I remember that as I was at Central at  
that time.  
Did you first of all tell Det. Lyons you had never been there? Yes,  
because I didnt know the place at the time.  
Remember Miss Fox coming into the room when you were with another  
Detective? At that time, yes.

30 Dod you recognise Miss Fox then? No, I recognised the man with her.  
Before you went to the police station did you see Miss Fox in  
Symonds St. watching you? I never saw her when I was up there.  
At the police station Miss Fox said in yr presence 'that's the man  
who raped me'? Yes she did.

1 And you didnt recognise her at that stage? I saw her at that stage. That is when I saw her.  
Remember her as the same person as having been in the bedroom in this flat? No I dont remember.  
After she had said that did you say "I havent seen you for a long time"? Yes, that sentence was directed at her boyfriend as I know the boyfriend by sight.

5 Then the Detective once again showed you the mpa, and I put it to you that you had broken into Miss Fox's place and raped her? Yes, that is what he said. I said it wasnt me as I cant remember being at that address.  
After Det. Lyons asked for yr permission to go and pick up some of yr clothing did you then tell him "OK I did it because I had an argument with my missus"? That was when he asked me for permission to go and get my clothes. It was after the statement had been taken. I agreed to him picking up my gear.

10 Did you say to Det. Lyons "OK I did it"? Yes, I said I did it for one reason only. Prior to the taking of the statement the officer whom I understand is Mr. Lyons, I was threatened with 3 other charges if I dont own up. It gave me a fright and the 3 charges concerned was, murder, threatening to kill, and the possession of a weapon. That sounded worse when he say that to me.

15 What were the words Det. Lyons said to you? If I dont admit that I have done the offence I will be charged with more charges. What were the charges? I said before. First murder, threatening to kill and presenting of a weapon.

20 What was the murder? It was attempted murder. Who was it you were supposed to have made an attempt on? That was concerning the girl complainant.  
Is that why you said "OK I did it"? Yes.  
When you said "OK I did it" were you saying you raped Miss Fox because you were under pressure? I was under pressure that is why I said it.

25 You didnt say OK I had sexual intercourse with Miss Fox? No I was under pressure, it also involved another officer I cant remember his name. He came up later on, I cant remember exactly, I think the officer that was involved when he first went down for the photographs. I think his name if I remember it was Slaven.

30 He came up later to where I was and Det. Lyons, because I remember his words quite clear and these words were, "Yes, that's him, we will go for the lot."  
You say when you said OK I did it, you meant to say OK I had sexual intercourse with Miss Fox? I had sexual intercourse but I didnt rape her.

1 When you said I did it, did you mean you had sexual intercourse, or OK I was guilty of rape? I had to say something or else face the other charges.

COURT: Do you say that you admitted raping the girl because they threatened you that if you didnt you wd be charged with attempted murder? Yes.

5 COUNSEL: Wd you look at yr written statement, when did this convsn with the Det. Lyons about the attempted murder take place? Before I make this statement. It was during the interview only.

Det. Lyons wasnt XKD about this, are you making it up to day? No I am not, I know when they threatened me. I spoke to my counsel about it.

10 Am this written statement you made, was that as you remembered how it happened or did you sign it because Det. Lyons suggested to you what happened? Suggested.

You said earlier this morning that yr memory started to clear up about the 2nd act of sexual intercourse? That is right, because I said so this morning.

15 In your statement on p.2, you say when Miss Fox got back into bed you say "I decided to finish....anyway"? I said those words because of pressure I was under. At the moment of taking the statement.

So you are saying those words are not true? No I wont, because I didnt say it, sure enough.

20 At the bottom of p.2, is there something written in yr own writing at the bottom? That is right. I have read this, it is true and complete.

Is that in yr handwriting? That line is.

And you signed it underneath? Yes.

Are you now saying the statement wasnt true and complete? I dont think I said it is not true.

25 What about the passage I have just referred to, "she objected, I cdnt wait", is that untrue? I cant say that because the Det. referred the matter to me and it might be and it might not be and that is why the Det. put it in.

Are you saying this statement is what Det. Lyons told you bout as he threatened you with more serious charges? He more or less told me to say it in my own words.

30 And yr recollection is almost non-existent? That is right. I cant remember fully the extent of the evening.

Why cant you remember? No answer.

Did you get drunk on \$10 worth of drink? Yes.

1 In yr statement you say you were drunk, you were happy drunk?  
When I drink I get happy.

MR. MCLEAN RAISES OBJECTION.

In the statement it says "That night I had~~nt~~ been drinking.....  
I was just happy, I wasnt very drunk", is that part true? Yes.  
Are those words Det. Lyons? No, concerning the drink, I wasnt  
5 drunk at the time, but later on I was drunk when I went to  
this place.

Is that why you cant remember? I think so because I was  
drinking more at this other place.

If you cant remember the amount you had to drink why did you  
say you werent drunk? I remember how much I had.

10 At the flat you say you cant remember, are you making up  
lies? No answer.

Re-XD McLean:

Where d o you come from? Raratonga, Cook Islands.

About the events of 18th/19th November, do you remember  
entering that house as shown in photo 1 of Ex. 5? Yes I think  
15 so.

At some stage do you remember having intercourse with the  
complainant? Yes, later.

Do you remember whether or not you threatened complainant with  
a knife at any stage? No.

Did you threaten the complainant with a knife? I dont know.

20 When you had sexual intercourse with complainant at the time you  
remember, did complainant resist you? I understand it the 2nd  
time she objected.

The 2nd time did she object before or after you had put yr penis  
inside her? When I was inside her.

Did she object before you put yr penis inside her? Put it this  
way. On penetration.

25 Do you remember the complainant leaving the room at all? Yes I  
think so.

Remember ~~t~~ the knock at the door? Yes I think so.

Remember someone else coming in the house? I had an idea  
it was a boarder or some person who stayed there.

Do you know if that person was male or female at the time? After  
being told I knew it was a female.

30 Did you leave the bedroom at any stage before you went home?  
No.

Did you leave the bedroom when you heard the knock at the door? No  
Do you have any recollection of the first act of sexual  
intercourse? Not very much.

1 Do you remember whether a first act of sexual intercourse took place? I dont know whether it happened for not. I cant remember.

Do you know anything about what legally constitutes rape? No sir.

5 COURT: You said that while having intercourse with her on what you know now as the 2nd time she objected? Yes. What did you do? I didnt stop. Although she was objecting? Can I have the question again. When she objected during intercourse what did you do? I just couldnt stop.

10 So you continu ed to have intercourse with her? Yes.

CASE FOR THE ACCUSED CONCLUDED AT 11 A.M.

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REGINA

v.

TAMAITIRUA KAITAMAKI.

Hearing: 14th and 15th March, 1979.

Counsel: Ruffin for Crown.  
B. McLean for Accused.

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SUMMING-UP OF SPEIGHT, J.

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Mr. Foreman and Members of the Jury:

As I said earlier my function at this stage is to give you such directions in law as are relevant to a case of this sort and then the task passes to you people and you judge the guilt or absence of guilt of the accused upon your assessment of what you believe has been proved. Please do not think that I hold any views about the facts of the case which I would want to communicate to you, because it is you and you alone who assess the allegation against him. I am merely telling you the general rules under which Courts operate and some special rules which apply in rape and indecency cases. The rule is, as both counsel have correctly said, that in all criminal cases the Crown undertakes to prove to the satisfaction of the jury beyond a reasonable doubt that the accused is guilty of that with which he is charged. It is not for the accused, even if he gives evidence, to prove that he is innocent. If he gives evidence it might have one of three effects. It might prove to the jury that he is innocent - so much the better for him. It might raise doubts in the mind of the jury when previously they did not have doubts. So much the better for him. Or it might even

help to convict him. You will undoubtedly pay regard to the evidence which he gave, but in doing so you will remember that throughout the case the question is, the onus being on the Crown, Has the Crown proved his guilt? That question can be resolved from the whole of the evidence of the witnesses, including, if it is so, anything that he himself may have said.

There are two charges. One is, as you will see Mr. Foreman, that he broke and entered the house with an intent to commit a crime. That is the offence of burglary. The second one is of committing rape. Where there are separate charges you assess his guilt or absence of guilt independently on each charge. You can convict him of both. You can acquit him of both, or you can convict him of one and acquite him on the other. The first one of burglary is defined as the offence which is committed if someone breaks and enters a building intending to commit a crime. Breaking is smashing some part of the building. Entering is merely going in, and, as I understand it, no challenge is made but that he opened the door of this lean-to alongside the kitchen and walked in. If you accept that that is what he did, that is breaking and entering, but it does not amount to the crime of burglary unless he did so intending to commit a crime once he got inside the building. This is what is called burglary. It is usually associated with people who intend to commit crimes of dishonesty like stealing. The person who opens the window of a house and climbs in and looks around to see what he can steal commits the crime of burglary. It does not matter that in fact he does not find anything worth taking and goes out empty handed, or that he gets caught before he has time to make a get-a-way. If he broke and entered and it was his intention to see if he could commit a crime such as stealing something, then he has committed the offence of burglary. It is nearly always going in to steal, but it does not have to be. If a person breaks and enters a house intending to commit any crime inside,

then he has burgled the place, and sometimes a person breaks and enters a house with the intention of committing an indecent offence, assaulting a woman or a girl or a child. In this case you might think - and it is entirely for you to say - that when the accused went in the door he was intending in his own mind to commit some crime in there, perhaps steal something, and perhaps he got diverted from his intention of stealing by finding a young woman in bed. On the other hand, of course, it is not burglary merely to break and enter a house. If he was stupid with drink and just wandered in there but with no particular intention of illegality, then he is not burgling the place. There can be instances, of course, where a person might open the door and go inside to get out of the rain. That is not burglary. He may be stupid with drink and blundered in there looking for somewhere to lie down and sleep it off. That is not burglary. So you will consider in respect of the first charge whether or not when he broke and entered, and indeed there does not seem to be any challenge about that, that his mind had the intention of committing an illegality such as theft, or committing an indecency. If you think that those ingredients are proved you convict him of burglary.

The second charge is rape. Rape is the act of a male having sexual intercourse with a woman who is not his wife without her consent, or with consent obtained by force or by threats which forced her to give in. A woman who permits the man to have intercourse is not consenting if that consent is forced out of her by the circumstances in which the offender is threatening her, as a result of which her will to resist is overborne. In this case the girl concerned says that she was threatened and scared both for herself and for her baby and that she gave in but unwillingly. She says that she demonstrated her unwillingness by crying and sobbing. She says that she said to him such things as "Why pick on me? I have done nothing to you". So that is what the second charge of rape is about. Did he have

intercourse with her when she was unwilling, that is to say, she was not consenting because whatever she did to permit it was done because she was overborne? And - as I shall come on to later - not only need it be that she was unwilling but you have to be satisfied that he realised that because, where a woman was unwilling but the man made a mistake and thought that she was willing, then he is not guilty of rape. The ingredients of the offence must always be proved by the Crown, so the Crown has to show both that she was not consenting and that he knew it.

Now there are one or two special matters which need to be mentioned because of the nature of this case. In cases where there is only the word of the woman or girl concerned, the Judges tell juries to be especially careful. In this case there is some material, according to the view which you take of it, which can constitute very strong support of the girl's story. But that will depend upon the view that you take. You might not think that the other material does in fact back her up. If you come to the conclusion that it is her word and nothing else, will you please bear in mind that it is always dangerous, unwise in the extreme, to accept the unsupported evidence of the woman alone if she says she was raped. I have heard many people say that is a fairly harsh rule. Maybe it is. But it is a rule that I am obliged to tell you, as does every Judge tell every jury in cases of this sort. If it is the girl's word alone, there is reason to be extra cautious, and we use the words that it is dangerous to convict on uncorroborated evidence. Nevertheless you are entitled to accept it if it is the girl's word alone, and I do not know what view you will take of any of the evidence. Let us say that you put aside all the other evidence and must depend on what you think of the girl. Even though I have told you what juries are always told in cases like this, you are entitled to say to yourselves, if you think it proper, "We remember that girl; we remember the story she told, the way she answered all the questions. We are quite sure that she is telling the truth and

we can have confidence in her when she says that she was unwilling and that from all the circumstances that was made clear to the accused". I will not comment one way or the other on what I thought of her as a witness. You will remember her sitting there for quite a long time giving the account to Mr. Ruffin and then answering Mr. McLean's questions. If there was no other evidence in the case, and if, bearing in mind what I have said, you can each say to yourself "I am sure that she is telling the truth, that she was forced, and by her conduct she had made it clear that she was unwilling" then you convict on that evidence alone. Whether you do so or not is entirely for you to say.

There is some evidence which, according to the view you take, is of assistance to you in approaching your task. First of all, something which is not what we call corroboration but which is of interest to you is the complaint that she made shortly afterwards to Mr. McAlpine. It is not corroboration because it does not come other than from her mouth, but you are entitled to be told by Mr. McAlpine that not only has she said what she said yesterday, but that she went up to his flat that morning, around about 7 o'clock, knocked him up, and told him. You will remember his words. I think he used the more colloquial expression that she had said she had been "done over", which you might well think was her complaint that somebody had had sexual intercourse with her in circumstances that she was complaining about it. Now that does not amount to what we call corroboration because it is not from a source other than her own mouth. The fact that a person tells something untrue does not become more acceptable because she tells it on two or three occasions. You still have to decide if she is truthful. In a case like this when you are asking yourself, Is she telling us the truth when she says she was unwilling, it is always interesting to see how she behaved immediately afterwards. If a woman comes along and

says "I was raped" and you say When? and she says "about a month ago", you might say that is an unlikely story, why did you not make a fuss about it at the time? That is the commonsense approach that the Courts have accepted when they let you listen to the evidence of Mr. McAlpine. If a woman has been outraged and if she was unwilling you would expect her to make a fuss about it, whereas if she had been willing, especially in circumstances which she might be ashamed of, you would expect her to keep it to herself. So it is perfectly relevant for you people to say to yourself in considering this question as to whether she was willing or not: If she was not willing why would she have behaved the way she did by telling Mr. McAlpine? Certainly he describes her as being reasonably composed, although I think he said - to use his words - "white about the gills", but she then said to him "Do you think I should tell the police?" He said that was for her to decide, and she thought for a bit and then rang the police up and made a complaint. That is ~~material~~ which shows that she behaved in a way which is consistent with the way you might think a woman who has been outraged would behave. If she had, as is suggested, been willing and had indulged in sexual intercourse quite willingly with a man who is a stranger, who just wandered into her bedroom, would she have done that or would she, being ashamed of herself, have not said a word to anybody? Of course, Miss Wulf knew about this man who had been in the room, and you might think perhaps she had to square herself off in the eyes of Miss Wulf. But, on the other hand, Miss Wulf had been pretty drunk - in her own words she "crashed". Thinking about Miss Wulf, one wonders if she would have been concerned if Miss Fox had had a nocturnal visitor or whether that is something that would not have ruffled Miss Wulf's conscience very much. One suggestion was put to Miss Fox in evidence that she was only complaining to the police so that if she was pregnant she might be able to sustain an argument for getting an abortion. Well, she denied that. She said that

thought did not occur to her and she says that the police asked her if she wanted to go to the doctor and have the morning-after pill, but she declined that. So when you are thinking of the motives of a woman making a complaint, do not dismiss those matters from your mind. If in fact her story to the police was untrue and she was fabricating it, there is the additional fact that two or three weeks later, if it was untrue, she might have repented about it and decided to do no more about it as the police had not found the alleged offender. However, seeing him at a bus stop she and her girlfriend chased him in a motor-car and she rang the police. That is not a crucial factor in the case, but it is part of her conduct you might think about when it is asked: Do you believe her when she says she was unwilling?

Now that is not corroboration because it is merely more of her conduct. It does not come from an independent source, but it is worth thinking about.

However, there is some material which could be corroboration to be found in the statement of the accused. You will read that statement with care. You will remember to look at the original copy. He says there that on the first occasion he assumed she was willing, but that the second time when she came back into the bedroom she got back in the bed. "I decided to finish what we were doing before when the girl entered. She objected that time. But I couldn't wait, so I got back on top of her anyway. She said to me that I was hurting her. I just ignored her". Well, that is not a complete admission by him that she was unwilling both times. It certainly is not an admission by him that he used the knife to threaten her, but it is partial support for her. Whether it is the absolute truth or whether he was admitting as much as he was prepared to admit, there is the statement there by him that before the second act of intercourse she objected, but he could not wait and got back on top of her and ignored her protests. Well, if

you believe what he said to the policeman, and if you believe he meant to say it and it was not being bullied out of him, that is powerful confirmation, is it not, of the girl's story, at least in part, when she says she objected both times, and that he had in fact held a knife to her throat. So that on this question of whether she was willing or not, it is for you to consider the evidence, primarily on what she says and what she did shortly afterwards, and whether you think it is supported in the written document.

While on that document, let us remember that he now says in the witness box that it was bullied out of him by threats and that he made admission only because the Detective had threatened him with something very much worse, namely, that he would be accused first of all of murder, or attempted murder of the girl. Well, of course, if it was bullied out of him and he did not mean to say that at all, and he did not really subscribe to the truth of it, the statement loses such weight as you might otherwise put on it. It is for you to say what you thought of him in the witness box this morning when he came to light with that explanation when pressed by Mr. Ruffin as to why he had written what he did. You will remember that no question was asked of the Detective. Our rules require counsel, if a man is going to put up that sort of story, to give the Detective a chance when that accusation is to be made to answer it. It is for you to say what you think of such a suggestion which the Detective never had a chance to answer, which was never even put to him. Lawyers know it is part of their duty if their client is going to say such a thing to put it to the man and give him the chance of answering it. Now I am not making any criticism of Mr. McLean at all. You will have judged him to be a very competent young lawyer, and you will have been, I am sure, very impressed with his very helpful and persuasive address that he gave this morning. But it raises a question, because Mr. McLean apparently did not have any reason to put it to the Detective,



whether or not this is just something that has been snatched out of the air this morning when he was being cornered by Mr. Ruffin. It is for you to say. Mr. Ruffin wanted to recall the Detective into the witness box, and I said we wouldn't bother about that. One of my main reasons for not protracting the matter further was this. If the Detective is so corrupt as to try and put that sort of trick across a man and bully him into admitting something he did not mean to admit, he did not make much of a job of it because he recorded at the bottom of the first page "I assumed that because she didn't say anything that she was willing". What sort of bullying is this? Is this threatening a man to confess something when this really tends to excuse him? So you people will weigh it up for what you think of it.

Now so far I have been talking to you on the question of whether or not it has been proved to your satisfaction that the girl was unwilling and was bullied into it by threats. If you think that she may have been willing then, of course, it is not rape. If you are in doubt about it and think she may have been willing, the accused is entitled to the benefit of the doubt and entitled to be acquitted because it is not rape, and you cannot convict unless you are satisfied beyond reasonable doubt that she was unwilling. That is the first part of the case. You will then recall that Mr. McLean put to you that even if she was in fact unwilling, the accused may have mistakenly thought that she was willing. Now I do not know whether you followed it but a couple of years ago there was quite a to-do in our papers about a case reported in England known as Morgan's case, where several accused were acquitted upon the basis that they thought that the woman was consenting although in fact she was not. It was an extraordinary case. There was a man who must have been an absolute scoundrel, who was married at the time, a man named Morgan, and he must have been a sexual deviate of a very unpleasant sort. I think his wife subsequently divorced him,

nothing else could have been expected in the circumstances, he being sexually obsessed I fancy. He was an Air Force man and he with three other much younger airmen got themselves under the influence of liquor one night and he invited them to come home and have intercourse with his wife. He told them that although she would appear to struggle she was, as he described it, kinky and that was her form of enjoyment, and although she would be giving the appearance of resistance that was only a pretence on her part and they could go ahead. She was a decent woman and struggled and protested, but misled by what the husband had said these young fellows, partly affected by liquor, had intercourse with her despite her protestations. Well there was no doubt about it, she was not consenting, but the Court had to consider whether, if persons mistakenly believe that the woman is willing, it is rape or not. Let us not bother about the result of that case. It illustrated that if a person makes a mistake and thinks she is willing, he is not guilty of rape. We have to accept that as the law and I tell you that it is the law. Mr. McLean raises it here, but of course it is a very unusual case when that arises. Morgan's really was an unusual case but it is still a matter that you are obliged to consider, whether in all the circumstances of this case, even if the girl was not willing, this man might have thought that she was, because only if you are satisfied that he realised that she was not consenting can he be convicted of rape. I have said that it would only be an unusual situation because you might think that a man who was wishing to have intercourse with a girl, especially somebody not his wife, would be paying some attention to her reactions to see whether she was going to permit him or not. Ordinarily in a case of this sort I suppose once you were satisfied the woman did not consent in most cases you would think a man would realise that, because a man having intercourse with a woman not his wife will ordinarily be on the lookout for the signs as to whether he is

welcome or not. So in a case like this you will have to consider all the circumstances to see whether or not you think it is a reasonable possibility that this person may have been mistakenly thinking that she was willing. He says that he just walked in off the street into a stranger's flat, not really intending anything in particular, does not remember much about it, saw somebody in bed, got in with her, which would seem to be an extraordinary action anyhow for a man to come in off the street. You might think at least that he would be on the lookout for something to indicate whether or not such unusual conduct was welcome. It is a question as to whether you can accept it as a possibility that you would entertain, that if this girl was unwilling any man - but in particular this man - could have made a mistake about it. If the knife was used, well I would imagine that is the end of it. How could a person who has taken a knife to the girl have possibly thought that she was consenting? If the knife was not used, from what she described could this man perhaps have mistakenly believed that she was agreeable? In this connection you will particularly, I imagine, pay regard to his statement because there were apparently two acts of sexual intercourse, and if either of those acts was against the girl's consent, and he knew it, that is rape, and you can convict him for the first or the second act, it does not matter which. If you look at his statement he said that on the first act of intercourse "I assumed because she did not say anything she was willing", and there is a somewhat different story for the second act of intercourse is there not. There is perhaps room for the view that he may have been mistaken the first time but knew perfectly well the second time that she was objecting. To-day he has a different version and says that she only objected after he had penetrated her. You will remember that I thought it my duty to ask him was it only after penetration and part way through the second act of intercourse that he realised she was objecting. He said he did not stop, he carried on.

Now you might ask this question, and it really is a rather unusual one, what happens if part way through an act of intercourse a man who had previously thought that the girl was willing realises that she is unwilling and he continues? I tell you, as a matter of law, the answer to that is that if, having realised she is not willing, he continues with the act of intercourse, it then becomes rape, because rape is the act of a person having sexual intercourse without her consent. If there is an act of intercourse which takes perhaps some minutes, that is a genuine act of intercourse, they are still having intercourse are they not? So if part way through he realises that she is not willing and he continues, from that point on he is, to his knowledge, having intercourse with her without her consent. That then becomes rape although prior to that it might not have been because of his belief as to her attitude over the matter. Now that is important in this case because he says right at the end of his cross-examination this morning that she objected but that he did not stop. Well, if you take that on its face value, and that is what happened, that she was unwilling and he has realised it, that is rape. It may be, of course, that you think that that is too favourable a view. He had said in his statement that she objected before the second act of intercourse, so that it may be that the whole of the second act of intercourse was rape. On the girl's story, she says that she was unwilling right from the beginning, and she describes circumstances from which you might conclude that he realised that. You have listened with great attention to all these matters and, in particular, you have listened with great attention to what Mr. McLean has said, and you must bear in mind all his criticisms of the case. He said with regard to the knife, the girl never saw it, she only claims to have felt it, and there are no fingerprints sufficient for identification purposes on it. Was that knife ever used or was that a carry-over from the dream she had been having? What do you think of the situation where, when her

girlfriend arrived home she did not raise the alarm, and what do you think of her going back into the room? She says it was because she was scared for her baby's sake. You have listened with care to what Mr. McLean has said as to what inferences you think you should take from the fact that she returns to the bedroom. Is it perhaps that she had been agreeable to this perfect stranger having intercourse with her? Mr. McLean points out that the accused did not run away when Miss Fox went out to the other girl's bedroom, which perhaps he could have done, and is that consistent with a man who knew he had done wrong? Might it be that the accused thought that this was surprisingly good luck to blunder into a house and by good fortune suddenly find a girl prepared to have intercourse with him. If it may be that that is a reasonable explanation, and that is what he thought, well then in respect of such act of intercourse when he was under that impression, that is not rape.

You have listened with very great care to everything that has been said to you, and I am confident you have a very good grip of the issues involved. I repeat that although counsel have talked to you, and I have spoken to you about the evidence, the views which we may hold as to proper inferences to be drawn one way or the other are quite irrelevant. It is for you people, the twelve representatives of the community, with your combined experience of life, to say whether you are of the view that it has been proved beyond reasonable doubt that he is guilty of one or other or both of the offences with which he is charged. If you are so satisfied, it is your duty to convict him. If the proof falls short of that, the accused is entitled to be acquitted.

MAGISTRATE'S COURT  
AUCKLAND

Re: T. Kaitamaki

Exhibit No: 1

Dated: 19 78

[Signature] S.M.

444

SUPREME COURT

7/26/78

Auckland Central Police Station T. Kaitamaki

8/12/78 02:35 p.m.

3179

Rua Kaitamaki states:

I am a married man, seperated from my wife, I live in a De Facto relationship at 7/65 Burnley Tce, Mt. Eden. I am a Printer for U.E.B. Mono Ltd., Ellerslie.

I am making this statement to the Police about an incident I was involved in on the night of the 19th November 1978, in which I had sexual intercourse with a girl, against her will, at her home in Calgary Street, Sandringham.

I have been warned that I am not obliged to say anything unless I wish to do so and that whatever I do say will be taken down in writing and may be given in evidence.

We went to the ball on the Saturday night, that was the 18th of November, we went there at a bout 7:30 p.m. Half way through the ball there, the arguement started, that was between the two misses and the two of us. That was myself and my girl friends sisters husband, Southworth. The arguement was about us two me, talking to my two girl relations. My misses and her older sister didn't like it. We had the arguement and decided to leave because it was pack up time anyway.

The incident was forgotten anyway, and we caught a cab and went to the in laws place. I cant remember the name of the street, I think it is around Hadley Ave in Sandringham. We had a few more drinks over there and we were waiting for the test with Wales or England to start. And the arguement started to boil up again. Anyway, the game had started and I decided to come home. Just to get away from the arguement. I walked up to Mt. Albert Road and then to Sandringham Road, there I caught a cab to go home. When I got home, I decided to go back and get my Misses. On the way back, I walked back, and I walked down Dominion Road and turned down that street on the map, Calgary Street. It was there that the thought came to me to call into that girls house. I entered through the door that was unlocked, closed the door behind me. Then I went into that girls bedroom. She was sleeping on the bed, I got into bed with her. I had my clothes on. Well the girl woke up and I asked her if we could make love. But she didn't say anything. I assumed that because she didn't say anything that she was willing. She took her panties off and we had sex. She didn't cry or anything the first time.

I He was still in the act when the other girl came home. She got up and we to that girls room. I just lay back in the bed. Then she came back into the bedroom. I did ask her who the other girl was and she said that she stays here. When she got back in the bed, I decided to finish what we were doing before the girl entered. She objected that time. But I couldn't wait, so I got back on top of her anyway. She said to me that I was hurting her. I just ignored her. When we finished having the act, I decided to go back home in stead of getting my misses to come home.

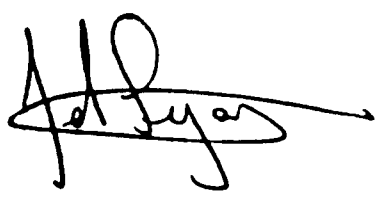
The girl was crying during the second time, I think I was hurting her. The baby woke up once, thats when I noticed that it was in the room. When the baby woke up I went to the baby and tried to put the baby back to sleep by patting its cheek. The girl got bout and said she had to feed the baby, she fed the baby and I patted the baby again on the cheek and then thats when I left.

I cant remember saying anything when I left. I dont remember having a knif in my hand.

That night I had been drinking I would say about \$10 drink, I was just happ I wasn't very drunk. I think the reason why this happened was because of the arguement with my misses. Because this wasn't the first time we had an arguemen when we go out, I get upset when I ask her to leave she wants to stay and carry on drinking. She started behaving like this when she knew that she was pregnant

I HAVE READ THIS IT IS TRUE AND COMPLETE.

R. Rafanadi



IN THE SUPREME COURT AT AUCKLAND

Section 128  
Crimes Act,  
1961

1. THE CROWN SOLICITOR AT AUCKLAND charges that  
TAMAITIRUA KAITAMAKI on the 19th day of November  
1978 at Auckland did rape MARGARET ROSE FOX.

Section 241(a)  
Crimes Act,  
1961

2. THE said Crown Solicitor further charges that  
TAMAITIRUA KAITAMAKI on the 19th day of November  
1978 at Auckland did break and enter a building,  
namely the dwellinghouse of MARGARET ROSE FOX  
situated at Flat 1, Calgary Street, Balmoral  
with intent to commit a crime therein.

PLEA: NOT GUILTY  
VERDICT: GUILTY  
SENTENCE: Count 1 - 6 years imprisonment  
Count 2 - 2 years imprisonment