

Settled by the Honourable Justice David
25/02/2009

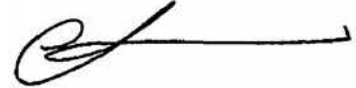
DAVID J

NO.301/2008

TUESDAY, 11 NOVEMBER 2008 AT 2.35 PM

R v WILLIAM JOHN KEITH ELLIS

RELATING TO P 71 OF TRANSCRIPT



HIS HONOUR: In this matter the defendant is charged with six counts of indecent assault and seven counts of buggery in relation to four different complainants. Counsel for the defendant, Mr Kane, made an application for severance. The basis of his application was that counts in relation to specific complainants should be heard separately. In particular, he argues that the counts in relation to the complainant Mr Rundle should not be heard with the counts in relation to the complainant Mr BMK. He argues that evidence on each count in relation to a particular complainant is not cross-admissible in relation to any other complainant and, therefore, consistent with authority, I should sever the Information accordingly.

The prosecution rely upon the test in relation to *Hoch v The Queen* (1988) 165 CLR 292 to establish cross-admissibility. They argue that on the material from the statements presented at the committal hearing, a jury should be instructed that the allegation by each of the complainants is of such a nature in its similarity that it would be inherently improbable that all complainants unrelated to each other would not be telling the truth. They also argue that they pass the test of contamination between complainants as set out in *Hoch* (supra), namely there is no real possibility of contamination between the complainants.

Insert name

2

I was provided with statements that each of the complainants had given leading up to the defendant being charged. I heard oral evidence from both Mr Rundle and Mr BMK concerning possible contamination. On the basis of the material before me and the evidence that I heard, I find that there is no reasonable possibility of contamination. It is inappropriate for me to give any further reasons at this stage, as there is a trial to follow. That is my ruling at this stage on the material that has been presented. However, I do point out that the position might change at trial. The defendant therefore has the right to renew his application at any stage.

I also rule that evidence of what I might call "violence and brutality" at the establishment at which the defendant worked in relation to other people, other than the complainants, will not be led in evidence. I make that ruling in the exercise of my discretion.

I will give full reasons for my decision, if and when required, after the trial has finished.

RULING COMPLETED 2.37 PM
