5 of 1975

IN THE PRIVY COUNCIL (5) No. 15 of 1974

ON APPEAL
FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN :

EDWARD FRANCIS NAKHLA Appellant

- and -

HER MAJESTY THE QUEEN Respondent

# RECORD OF PROCEEDINGS

BLYTH, DUTTON, ROBINS, HAY,
9 Lincoln's Inn Fields,
LONDON WC2A 3DW.
Solicitors for the
Appellant.

ALLEN & OVERY,
9, Cheapside,
LONDON, EC2V 6AD
Solicitors for the
Respondent.

IN THE PRIVY COUNCIL

No. 15 of 1974.

ON APPEAL

FROM THE COURT OF APPEAL OF NEW ZEALAND

---

BETWEEN :

EDWARD FRANCIS NAKHLA — Appellant

- and -

HER MAJESTY THE QUEEN — Respondent

---

RECORD OF PROCEEDINGS

---

PART I - INDEX OF REFERENCE


| No. | Description of Document | Date | Page |
|---|---|---|---|
| | IN THE SUPREME COURT OF NEW ZEALAND | | |
| 1 | Indictment | Undated | 1 |
| 2 | Summing Up of Wild C.J. | 8th August 1973 | 2 |
| | IN THE COURT OF APPEAL OF NEW ZEALAND | | |
| 3 | Notice of Appeal or Application for Leave to Appeal by Person Convicted | 17th August 1973 | 18 |
| 4 | Reasons for Judgment of the Court | 12th October 1973 | 21 |
| 5 | Notification to Appellant of Result of Appeal | 12th October 1973 | 39 |
| 6 | Further Reasons for Judgment of the Court | 12th October 1973 (delivered on 13th November 1973) | 40 |

| No. | Description of Document | Date | Page |
|---|---|---|---|
| 7 | Order of Her Most Excellent Majesty in Council Granting Special Leave to Appeal | 3rd April 1974. | 43 |


PART II - EXHIBIT


| Exhibit Note | Description of Exhibit | Date | Page |
|---|---|---|---|
| "H" | Transcript of tape recording of a conversation between Basil Spartalis, Eddy Nakhla and Rosalie McIntyre in Oriental Terrace, Wellington on 2 May 1973 | Transcript not dated | 45 |


LIST OF DOCUMENTS OMITTED FROM THE RECORD

1. Notes of Evidence taken before Wild C.J.
2. Transcript of Exhibit "N".
3. Probation Officer's Report.
4. Notes on Sentencing by Wild C.J.
5. Petition for Special Leave to Appeal to the Queen's Most Excellent Majesty in Council

IN THE PRIVY COUNCIL

No. 15 of 1974

ON APPEAL
FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN :

EDWARD FRANCIS NAKHLA — Appellant

- and -

HER MAJESTY THE QUEEN — Respondent

RECORD OF PROCEEDINGS

No. 1

INDICTMENT

In the Supreme Court of New Zealand

No. 1

Indictment

IN THE SUPREME COURT
AT WELLINGTON

Police Offences Act 1927 (Section 52(1)(j)

THE CROWN SOLICITOR AT WELLINGTON CHARGES that EDWARD FRANCIS NAKHLA on or about 2nd May 1973 at Wellington is deemed to have been a rogue and vagabond in that being a suspected person he did frequent a public place namely Oriental Terrace with a felonious intent

10

PLEA: Not Guilty

VERDICT: Guilty

SENTENCE: Nine months imprisonment

(Chief Justice)
(17/8/73)

In the Supreme Court of New Zealand

No. 2

Summing Up of Wild C.J.

8th August 1973

No. 2

SUMMING UP OF WILD C.J.

IN THE SUPREME COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I. 34/73.

THE QUEEN v. EDWARD FRANCIS NAKHLA

(Frequenting with felonious intent)

Hearing: 6, 7, 8 August 1973

Counsel: Larsen for Crown
Gazley and Deacon for Accused

SUMMING UP OF WILD C.J.

10

11.37 a.m.

Mr. Foreman and gentlemen, there are three important preliminary matters that I wish to explain to you.

The first is as to the respective functions of yourselves as the jury and myself as the Judge in this matter. It is my duty to preside over the trial and to explain to you the legal principles that you have to apply. What I say about the law touching this matter and the legal principles I would ask you to accept as authoritative because, as you will understand, that is my province. But the decision on all the questions of fact and the ultimate decision as to whether or not the accused is proved guilty of the charge is for you and for you alone. The verdict is your responsibility and not mine.

20

The second point, gentlemen, is that in coming to that verdict you rely, of course, solely upon the evidence that you have heard and seen given and on the material put before you during this trial. You will, of course, consider the whole of that evidence, the evidence given on both sides, and in judging it you will no doubt pay attention to the submissions that have been made to you by the Crown Prosecutor and by Mr. Gazley on behalf of the defence. As I say, it is for you to consider the whole of the evidence and in weighing it up it is entirely for you to decide

30

what weight, what reliance, you place on the evidence that has been given, the oral evidence and the tangible evidence that is put before you in the shape of the tape recordings and the transcripts that have been made of them. It is entirely for you to decide what weight and what worth you put on the evidence and what inferences you feel you can safely draw from it. When you come to this Court, gentlemen, which may be a novel experience for some of you and a rare experience I am sure for all of you, you come here as good citizens of this community, but you do not leave behind you the commonsense and the powers of judgment of assessing situations and people that you build up over your lives. On the contrary, it is those very qualities of commonsense and good judgment that you bring to bear on this task because this is trial by jury.

Now, the third preliminary matter is this and it is of vital importance. The onus of proving the charge, the responsibility of proving the charge, rests upon the Crown which brings the charge. That responsibility rests on the prosecution from the beginning to the end of the case. Under our system of justice, and we are all proud of it, there is no responsibility on any accused person to prove his innocence. He does not even need to give evidence. In this case the accused has not given evidence and he is not obliged to do so. On his behalf there have been called, I think, some nine witnesses. You will consider their evidence along with that for the prosecution. But by calling that evidence the accused does not assume any responsibility or onus to prove his innocence. As I say, the boot is on the other foot. The Crown must prove the case and it must prove it beyond reasonable doubt. That phrase "reasonable doubt" needs just a word or two of explanation. It does not mean a vague doubt, a fanciful doubt, something that you conjure up out of the air, as it were, to justify you in your mind from declining to do something that in your consciences you know you should do. That is not a reasonable doubt. A reasonable doubt means just what it says, a doubt based on reason.

In the Supreme Court of New Zealand

No. 2

Summing Up of Wild C.J.

8th August 1973

It follows that before you can convict the accused of the charge that has been brought against him you have to be as satisfied from the evidence that you have heard that he is guilty as you would require to be satisfied on one of the more important matters that arises for consideration and decision in your own private affairs. If you are satisfied to that point, gentlemen, then it is your duty in accordance with the oath that you took on Monday morning to find the accused guilty. If, on the other hand, you are left with a reasonable doubt in the sense that I have described it then equally it is your duty to acquit. And on your return to Court, gentlemen, after you have considered the matter you, Mr. Foreman, will be asked to announce the jury's verdict which must be unanimous. 10

Those are three important matters that I would ask you to bear in mind throughout your consideration of the case. 20

The charge is set forth in that paper that has been handed to you, Mr. Foreman. It is that the prosecution charges that on or about 2 May 1973, at Wellington, Nakhla is deemed to have been a rogue and a vagabond in that, being a suspected person, he did frequent a public place, namely, Oriental Terrace, with a felonious intent. Now there are three elements there, each of which the Crown has to prove to the standard that I have described. First, that he was a suspected person. Now a suspected person, gentlemen, is such that people who know him suspect that when opportunity arises he will commit a crime of dishonesty. That is the first element. That he is such a person that people who know him suspect that when opportunity arises he will commit a crime of dishonesty. The second element is that he did frequent a public place, that is, Oriental Terrace. Now the law says that every street is a public place and so Oriental Terrace is a public place. Then there is the word "frequent". It does not mean that he must be proved to be there frequently. Action amounts to frequenting a place if it is proved that a man was in that place with a felonious intent. That is, if he is there long enough to exhibit a felonious intent then that can amount to 30 40

frequenting. The third element is that phrase "felonious intent". That, as Mr. Gazley has indicated, is perhaps an archaic or old-fashioned expression but its meaning is quite simple. It means an intent to commit a crime. Any act punishable as a crime. Here the crime that Nakhla is said to have the intent to commit, if the right goods had been there, was to receive stolen goods. Receiving stolen goods, of course, is a crime and that intent or intention must relate to that place, that is Oriental Terrace, and to that time - that is 2nd May - that evening when, according to the prosecution evidence, he was there.

Now you will realise from what I say, but I think I should emphasize it, that the prosecution is not charging Nakhla with receiving stolen goods. On the evidence he did not receive any stolen goods that night. So that is not the charge, as you may have thought some of the defence witnesses who gave evidence yesterday afternoon thought it was. That is not the charge. The charge is, to say it again, that Nakhla is a suspected person who frequented a public place, was in Oriental Terrace that night, with a felonious intent, that being that he intended to take or buy or acquire stolen jewellery from Spartalis if it was the kind that suited him. So much for the offence.

Now a couple of general points about this case. First, as you have heard, this is a second trial of this case, a retrial. Therefore, gentlemen, I have to tell you that you must decide this case not with reference to the fact that there was an earlier trial but upon what you have heard and seen in this Court at this trial, and not on anything else. The fact that there was an earlier trial is irrelevant to the decision that you have to make. Normally, as a matter of fact, where there is a second trial - and it is only rarely that it occurs - normally the jury is not even told at all that there was an earlier trial, it is not even mentioned. But in this case it has been mentioned and therefore I emphasize to you that you ignore the fact and decide the case on what you here have seen and heard. In fact, as you have also heard - and this is why I mention it - there are two features

In the Supreme Court of New Zealand

No. 2

Summing Up of Wild C.J.

8th August 1973.

of this trial which are different from the earlier trial. First, the boy Wolzak, a young fellow of 16 who committed the burglaries, gave evidence in person from that witnessbox at the first trial. At this trial he has not been present. But with the consent of the defence the record of the evidence he gave in the Magistrate's Court, including the cross-examination by the defence, has been read to you. And, subject to the fact that you have not seen the boy Wolzak, you can take as fully into account as any other evidence that record of what Wolzak said. In point of fact you may think that there is no challenge to Wolzak's evidence anyway. There is no dispute about his evidence. Everyone accepts that he committed the burglaries. That is one feature. 10

The second is that at the first trial Spartalis - and this has been emphasized to you - was not present. There was no evidence from him. He was out of the country. But at this trial he has given evidence, and you have had the advantage of seeing him and hearing what he said and hearing him ably cross-examined at very considerable length. So you can judge his evidence. I will say something a little later about his evidence. 20

Now I said there were two features, two general features, about this trial that I would mention. I have dealt with the first, that this is a re-trial. The second is this, that Nakhla has been brought up on this charge as the result of a police trap. Now, gentlemen, there is no point in mixing words about it, it was a police trap. The prosecution has not attempted to deny that and the defence, understandably, and they are quite entitled to do it, have made as much as they can of the fact. Spartalis was used to get the accused into the car at Oriental Terrace where the tape recording was made, and that tape recording, as you may think, is the key to this case, the most important part of the prosecution evidence. Now the evidence of the tape recordings is quite properly before you to weigh up and judge. In obtaining the tape recording of the telephone conversation from the police station there was no breach of the law which 30 40

In the Supreme Court of New Zealand

No. 2

Summing Up of Wild C.J.

8th August 1973.

makes the tape and the transcript inadmissible as evidence at this trial. And, as to the tape recording made with the tape recorder in the car, there is no suggestion that there was anything illegal at all about that. As you know, gentlemen, the job of the police in our community is to prevent crime and, so far as they can, to detect people who commit crime and to bring them to trial, to bring them to justice, in a Court of law. Now if you think of it, I have no doubt you will quickly agree that people who commit crime do not stick by the rules of fair play in the community. If they did they would not commit crime. They do not stick by the rules. And in coping with such people who commit crime the police do not have to stick to what counsel have called the Marquis of Queensberry rules. They are fully entitled to use modern techniques and devices to carry out their job. Therefore, as I have told you, the tapes before you are quite properly there as evidence for you to take into account and judge as you think fit.

Now, gentlemen, there is quite a volume of evidence before you but you may think when you reflect on it that this is really quite a simple case with no complexities in it. It may assist you if I just recall to your minds the chronology, the timings of the matter.

First, there were four burglaries carried out within quite a short space of time of jewellery shops in Wellington. On Friday, 13 April, 131 Manners Street was burgled - $2,474.30 worth of jewellery was stolen. That is the wholesale value.

The next night, Saturday, 14 April, the Mall Jewellers was burgled - $1124.90 wholesale value was taken from there.

On 29 April Simpson's Jewellers was burgled - $7,899.94 wholesale value of jewellery was taken from there.

Then the next night, 30 April, a second burglary took place - again at 131 Manners Street - $4949 wholesale value of jewellery was taken from there,

In the Supreme Court of New Zealand

No. 2

Summing Up of Wild C.J.

8th August 1973.

So those four burglaries took place over a period of just over a fortnight. The last of them on 30 April.

Now the evidence is that on 1 May, the next day, Wolzak was arrested. And as a result of what he said and what the police ascertained from him the very next morning, 2nd May, the police swung into action and at 8 o'clock in the morning they went to 9 Brougham Street, Wellington, where Spartalis was living. As a result of that they picked up Spartalis at his fish shop and in the early afternoon from the police station he made a telephone call to Nakhla. The record of that is before you. You remember that that is a one-sided conversation. You have the voice of Spartalis identified. Then there was a later conversation and you have that one, too. Bear in mind that the evidence is that the voices there were those of Spartalis and Nakhla. There is no challenge to that, is there, from the defence?

Then at 6 o'clock the same evening the girl McIntyre was given a tape recorder and taken by car and left at Oriental Terrace. And at 7 o'clock, just an hour later, Nakhla, according to the evidence, went to the fish shop of Spartalis - went somewhere else first and then into Spartalis' shop - was seen by Det. Burt to do that, and he picked up Spartalis and drove him in Nakhla's car to Oriental Terrace. The evidence is that they then got into the Valiant car where the girl was sitting with the tape recorder, unknown of course to Nakhla, and the tape recording was made. That is before you and the evidence that identifies the voices again is not challenged by the defence. Well, that is the timing of the matter. It was all done you may think pretty swiftly - all within the course of a day.

Now, having given you that chronological outline, I want to say a word about the Crown case and then a word about the defence case before leaving it to you to decide the matter. As I said, there are three elements the Crown must prove. The first is that Nakhla was a suspected person. As to that you have the

In the Supreme Court of New Zealand

No. 2

Summing Up of Wild C.J.

8th August 1973.

evidence of Det. Sgt. Fitzharris who said that in June 1971, that is two years ago, Nakhla was charged with receiving a stolen television set. He was discharged from that alleged offence. Det. Sgt. Toomey interviewed him in March 1973, that is a couple of months before the events we are concerned with, interviewed him on another matter ......

Mr Gazley:

10 Sir, Toomey did not interview Nakhla. He interviewed Spartalis.

Chief Justice:

I am obliged to you, Mr. Gazley. Ignore what I just said.

What Det. Sgt. Toomey said was that in March (two months before the events we are concerned with) he interviewed Spartalis and as a result of what he said - and it was in connection with another matter - he formed the opinion that Nakhla was a 20 suspected person who, if opportunity arose, would receive stolen property. Well, there are those two police officers and, as well, there is Det. Sen. Sgt. Holyoake who gave evidence of having the same opinion. Now thatis the Crown case on that point.

As against that you have had a number of witnesses for the defence, some of them business associates of Nakhla, some personal friends. The effect of their evidence, you will remember 30 it, was generally that they could not believe that Nakhla would act as a receiver. They regarded him as a man of integrity. Well, it is for you to weigh up that evidence. You may, of course, gentlemen, well accept that people who have ordinary business dealings or personal dealings with a man would indeed be surprised at a suggestion that an apparently honest man was on the quiet a receiver of stolen goods. On the other hand, you may think it is characteristic 40 of dishonest persons that they can and they do put on a straight front in their normal dealings with people, and that criminal activities are conducted furtively and secretly so that it is quite possible for people to think a man is honest when in fact he is not. To establish

In the Supreme Court of New Zealand

No. 2

Summing Up of Wild C.J.

8th August 1973.

that a person is a suspected person it is not necessary for the prosecution to prove that everyone who knows him suspects him. It is sufficient to prove that he has that reputation with some people. It is a matter for you but you may think that police officers, having regard to what their job is, are the people best able to form that opinion about people. Well, that is the first element. 10

The second is frequenting a public place, Oriental Terrace. Well, you have the tape recording which was made from Miss McIntyre's handbag, and you have the evidence of Detective Burt who says he saw the accused go into Spartalis's fish shop and come out with him and drive to Oriental Terrace, and that Burt followed them there and kept an eye on the Valiant car and saw the accused there. And, of course, you have the evidence of Sgt. 20 Stretton who approached him, that is Nakhla, at his car just after he came out of the other car. Well you may think on that, and there is no challenge to it, the fact that he was in Oriental Terrace at that time is established. It is for you to judge.

Third, the element of felonious intent. Spartalis's evidence is that, before the taped telephone conversation, he rang the accused Nakhla to tell him he had some 30 jewellery to see if he was interested in it. And then the arrangement was made to meet at the fish shop and then to go round to Oriental Terrace where the discussion took place.

Now, gentlemen, I must tell you that Spartalis is a person obviously whose evidence you must consider with great caution. He has a substantial list of convictions for crime, including crimes of dishonesty. He has admitted before you that he told lies in 40 order to get his passport. He has admitted that he decamped from his bail and got out of the country. You must take into consideration all that has been said by defence counsel in criticism of his general character. You will take into account that obviously he was mixed up with the lad Wolzak who committed the burglaries, and that he received stolen property from him. Take all that into

account. You may, of course, on the other hand think it is to his credit - it is for you to judge - that he has come back to New Zealand and faced the music. And you will take into account that just the other day, on the very day this trial started, he appeared before a Magistrate and was sent to gaol for two years for his part in this matter, receiving stolen property and burglary. Now it is perfectly obvious that he was in this matter an accomplice with Nakhla in so far as Nakhla was to receive or buy stolen goods. Whenever an accomplice appears as a witness for the prosecution it is the duty of the judge to warn the jury, as I am warning you now gentlemen, that it is dangerous to convict on the uncorroborated evidence of an accomplice, the reason of course being that an accomplice may hope to gain something for himself by giving evidence against the man he was associated with. So I give you that warning. I use that word "corroboration", and I must explain that corroboration means evidence from some independent source which tends to show that the accused is guilty of the offence that is charged. But nevertheless, despite the warning I have given you, it is competent for you, if you think it safe to do so, to act on the evidence of Spartalis or to act on such part of it as you think reliable. You can weigh it up. As I have already said Spartalis was cross-examined at considerable length and very closely. You saw him and you heard him. You watched as he underwent that cross-examination. It is entirely for you to judge, gentlemen, but you may think that, despite his criminal record and despite all the bad things that have been said about him, that in this matter at this time, in giving evidence before you, he was forthcoming and straightforward. But that is entirely for you to judge. The question that you have to judge is whether on the evidence he gave here, whatever else he has done, he was telling the truth.

Now I mentioned corroboration, and it is my duty to point out to you matters that you can, if you think fit, take into account as corroborating what he says. Well, the fact that Spartalis and Nakhla went together from the fish shop to Oriental Terrace is, of course,

In the Supreme Court of New Zealand

No. 2

Summing Up of Wild C.J.

8th August 1973.

independently verified by the Detective Burt. The fact that they were at Oriental Terrace is independently verified by the same policeman and by Sgt. Stratton. Then the accused, when he was interviewed by Det. Sen.Sgt. Holyoake, also made some admissions which you may think tend to corroborate what Spartalis said. The accused said to Holyoake that he did see two or three bags of jewellery in that car, and that he might have told Spartalis to get rid of them. He did not make any admission as to any earlier conversation with Spartalis. 10

Also you should take with caution the evidence of the girl McIntyre. She is not charged with any offence nor, so far as we know, has she been guilty of any but she obviously is associated with the same kind of person. As a matter of commonsense you take her evidence with great caution. So much for those witnesses. 20

But, gentlemen, you may think that the principal piece of evidence in this whole case does not depend on oral testimony from witnesses but is the tape recording itself, the recording of the two telephone conversations and the recording of what took place in the motorcar. It is for you to decide how you go about the matter but you may think it wise to look carefully through those records, the transcripts, to look at them together and see as a matter of commonsense what they come to. You may think - it is for you to judge - that in the words used there by the accused - and the fact that they were his words is not disputed - that in the words he used in what he thought was a private, secret conversation there lies the naked truth of this matter which reveals what was really in his mind. 30 40

I turn to the defence case, and the first point that I make is to remind you that the responsibility of proving the case rests on the Crown; that there is no onus on the accused. Turning then to the three elements of the offence charged. First, that Nakhla was a suspected person. You take into account and give such consideration as you

In the Supreme Court of New Zealand

No. 2

Summing Up of Wild C.J. 8th August 1973.

think fit to the several witnesses who have been called, all of whom say that he is not a person they suspect. Secondly, frequenting a public place. Now I know Mr. Gazley will correct me if I am wrong but I think it is right to say that there is no challenge made by the defence to the fact that Nakhla was at Oriental Terrace that night at that time. Mr. Gazley made a submission to you that there is 10 no evidence of any meeting or contact between the accused and Spartalis before the telephoning from the police station which was the initiation of the plan or plot, if you can call it that. But I should remind you of a passage in the evidence given by Spartalis (p.22) which reads as follows: This is when he was being examined at the end of his evidence:

"You were asked this question, 'You were also in the conversation (that is the 20 conversation on the telephone with Nakhla) to indicate were you not that you had had previous discussions with Nakhla prior to that day? Had you had such previous discussions?
About the jewellery, yes.
When had you had that previous discussion?
Just before I made the telephone call.
How had you spoken to Nakhla in that previous discussion - face to face, by 30 telephone?
I rang him up.
You rang him up, what for?
I wanted to let him know what I had.
What did you have?
Jewellery.
Did you tell him that?
In a sort of way.
Before you spoke to Nakhla from the police office on the telephone had you spoken to 40 Nakhla? Yes.
You had rung him up to tell him as you said what you had?
Yes.
Which was jewellery?
Yes.
What was the purpose in ringing him up?
To see if he was interested in the jewellery.
I had met him after that.

In the Supreme Court of New Zealand

No. 2

Summing Up of Wild C.J.

8th August 1973.

"And had that happened before you rang Nakhla by arrangement with the police from their office?
Yes. "

Now as part of the defence on this second element, that is frequenting a public place, you will bear in mind the defence that Nakhla only went in the car with Spartalis because Spartalis wanted a ride. And you can judge that against the whole background. 10

Now the third element, the felonious intent. As I have said, you will probably best judge this, though it is for you to say, by your consideration of the tapes. And you will bear in mind the point emphasized to you by Mr. Gazley that, on a proper consideration of that record and that transcript, Nakhla was saying he wanted none of it, wanted none of the jewellery, did not want any stolen goods and in fact what he was really doing was advising 20 Spartalis to throw the stuff in the sea and have nothing to do with it. That is the version the defence put before you. It is for you to judge.

Now the defence also through Mr. Gazley's address has made strong criticism of what was called the "operation mounted by the police." You give consideration to what is said there. Of course, it is for you to judge. As a matter of commonsense you may think that the 30 police, in going about the job that they are given by the community, are the best judges of what is necessary in the particular circumstances of a case. Criticism was also made of Spartalis and I remind you again of this. He has been called "a pimp", "a miserable hypocrite" - I think that was the phrase. The fact that he jumped his bail is stressed, the fact that he went overseas, the fact that he has that substantial list of 40 convictions, the fact that some of the evidence given here does not tally with what he had earlier told the police as to his being in Kelburn, and so on. You take all that into account. But there is one other factor that perhaps I should mention to you in weighing up his evidence. That is, whatever he thought he might have to gain by joining

in the police plan, in coming here to give evidence before you now he has been finally dealt with for his part in this matter. He has been before the Court and he has received his sentence of two years. So you may think he has got nothing to gain by telling anything but the plain truth at this stage. And, as I say, you may think that the most important piece of evidence in the whole case is not what anybody says but the record of that tape recording.

This case is one of some importance. It is, of course, an important case for the accused who stands charged with this offence, not the offence of receiving but of frequenting with that intention. But, of course, it is also an important case for the community. This is where as citizens you can apply your commonsense to the situation. You have evidence of four burglaries and you may think it is a matter of commonsense that people who commit burglaries, especially of goods of this description, face a problem in disposing of their gains. One of the most difficult things is to get rid of the goods and to earn the rewards or the profits from the burglary. That means they must have contacts with people who will buy them, or receive them, as the law says. There is that element in it, and that is the reason why the matter is important from the point of view of the community. Remember that the accused is not charged with receiving. There is no evidence that he did receive. The charge is that that was his intention if he had got the kind of goods that he wanted.

Now, gentlemen, I do not think I can assist you further and, when the constables have been sworn to escort you, I would ask you to retire and consider your verdict.

---

MR. GAZLEY (To His Honour):

In my respectful submission the jury have not been correctly directed on the matter of frequenting, sir. I have Your Honour noted as saying if he was there long enough to exhibit a felonious intention that that was

In the Supreme Court of New Zealand

No. 2

Summing Up of Wild C.J.

8th August 1973.

enough but when you dealt with the evidence, sir, you indicated there was no challenge as to his being in Oriental Terrace and there you were directing the jury on the matter of frequenting which to my mind, with respect sir, indicated that being in Oriental Terrace was adequate for frequenting. On that point, sir, in my respectful submission even to say that being there long enough to exhibit a felonious intent is not in my respectful submission, sir, the correct direction to the jury. And, secondly, sir, you said that there was no breach of the law to make the telephone tapes being unlawful. May I respectfully ask whether the jury could be directed as to whether or not the attachment of the implement to the telephone is or is not unlawful. Thirdly, sir, having regard to the importance you attach in your direction to the jury to the third tape may I respectfully ask whether that tape, accepting it at its worst, goes far enough to constitute an intention to commit a crime or to establish frequenting?

10

20

HIS HONOUR:

I will try to deal with those, Mr. Gazley. As to the first point, is there any dispute that Nakhla was in Oriental Terrace?

MR. GAZLEY:

It has never been questioned, sir.

HIS HONOUR:

30

Gentlemen, on the first point raised by Mr. Gazley, as you have just heard him say there is no dispute that he was in Oriental Terrace on the night in question. You are entitled to find that he was frequenting a place if you consider it is proved that he was in that place with a felonious intent.

The second point related to the tape recordings. I have already said and will say again that in obtaining the tape recording of the telephone conversation there was no breach of the law which makes the tape and the transcript inadmissible as evidence before you, and therefore that evidence is properly before you.

40

As to the third point, that is the content of the third tape. All I wish to say further on that is that it is there for you gentlemen to judge with the transcript, subject to the criticisms of the transcript that have been made by the defence counsel. But it is for you to judge, and there is material there from which you can, if you think fit, judged along with the other evidence, draw
10 the conclusion that Nakhla had a felonious intent.

The constables will now be sworn to escort you.

I think I should say before you go - I do not want to suggest that you do hear the tape recording again but if you wish to, it may be preferable, if you think you want to do that, to come back to Court and arrangements will be made for somebody who knows how to operate
20 it in the presence of the accused and counsel.

12.27 p.m. JURY RETIRE

NOTES:

(1) Chambers: 7 August 1973 - 3.40 p.m. :

Mr Gazley said that the identification of the voices on the tape recordings, as given in Crown evidence, is not disputed.

Exhibits H. and N., with the amendments made at the request of the defence, are submitted by the prosecution as correct
30 transcripts of the recordings.

It is open to the defence to dispute the accuracy of those transcripts.

(2) After the jury retired to consider their verdict the Registrar reported that, on returning from lunch at 2 p.m., the jury said they wished to hear the recordings again and that one of their number (who worked with the Broadcasting Corporation) could work the machine if that was in order. The Chief
40 Justice instructed the Registrar to ask counsel whether they consented to this. The Registrar reported that counsel were quite content, and the Registrar informed the Foreman accordingly.

No. 3

In the Court of Appeal of New Zealand

No. 3

Notice of Appeal or Application for leave to appeal by person convicted

17th August 1973.

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL BY PERSON CONVICTED

IN THE COURT OF APPEAL OF NEW ZEALAND

C.A. 85/73

The Crimes Act 1961

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL BY PERSON CONVICTED

Name of Appellant: EDWARD FRANCIS NAKHLA

Offence of which convicted: Rogue and Vagabond in that being a suspected person did frequent a public place with a felonious intent 10

Place of conviction: Wellington Supreme Court

Date of conviction: 8th August 1973.

Date when sentence passed: 17th August 1973.

Sentence: Nine months imprisonment

Name of penal institution (or if not in penal institution, full postal address of appellant):

Wellington Prison.

TO THE REGISTRAR OF THE COURT OF APPEAL. 20

I, the above-named Appellant, hereby give you notice that I desire to appeal to the Court of Appeal against my conviction and sentence on the grounds set forth below, and I give answers as follows to the following questions:

1. Did the Judge before whom you were tried grant you a certificate that it was a fit case for appeal? No.

2. (a) Do you desire the Court of Appeal to assign legal aid? No. 30

(b) If so, -

(i) what was your occupation and what wages, salary or income were you receiving before your conviction?

N.A.

(ii) Have you any means to enable you to obtain legal aid for yourself?

N.A.

(iii) If so, state particulars: N.A.

3. (a) Is a solicitor acting for you on this appeal? Yes

(b) If so, give his name and address;

W.V. Gazley, P.O. Box 12217,
Wellington and
D.S.G. Deacon, P.O. Box 3507,
Wellington.

4. (a) If you are in custody do you desire the leave of Court of Appeal to be present at the hearing for your appeal? No.

(b) If so, what reasons do you submit for seeking leave to be present? N.A.

5. (a) Do you desire to apply for leave to call any witnesses on your appeal? No.

(b) If so, then state -

(1) Name and address of witness:

N.A.

(2) Whether witness was examined at the trial:

N.A.

(3) If not, reason why he was not so examined:

N.A.

(4) On what matters you wish him to be examined:

N.A.

In the Court of Appeal of New Zealand

No. 3

Notice of Appeal or Application for leave to appeal by person convicted

17th August 1973.

(5) Shortly, what evidence you think he can give:

N.A.

6. If your appeal or application is out of time, what grounds do you submit as a reason why the Court should nevertheless entertain your appeal or application? N.A.

7. (a) If you are not on bail, do you desire to be admitted to bail? Yes.

(b) If so, what reasons do you submit for being admitted to bail? This is my first conviction. I operate a one man business. I have been on bail for three months prior to the commencement of my trials. 10

8. What are the grounds of your appeal or application for leave to appeal?

(You are informed that you may present your case and argument in writing instead of oral argument if you so desire, and any case or argument so presented will be considered by the Court. If you desire to present your case and argument in writing, set out here as fully as you think right your case and argument in support of your appeal. Additional sheets may be attached to this form.) 20

1. That (interalia) the Learned Trial Judge misdirected the jury; or failed, or failed adequately, to direct the jury:

(a) On the requirement of "frequenting"
(b) On the requirement of "felonious intent" 30
(c) On the requirement of "suspected person"
(d) In directing that the car tape recording could express (in whole or in part) a felonious intent; and could constitute frequenting
(e) On the legality or otherwise of police phone-tapping
(f) On the credibility of Spartalis having regard to conflicting statements by him 40

2. That the verdict of the jury was unreasonable, or cannot be supported having

regard to the evidence, in that (inter alia):

(a) There was no sufficient evidence to support a finding of "frequenting"

(b) There was no sufficient evidence to support a finding of "felonious intent"

(c) There was no sufficient evidence to support a finding that the Appellant was a "suspected person"

3. That the sentence of the Learned Trial Judge was manifestly excessive having regard to all the circumstances of the case.

Dated this 17th day of August 1973.

'E.F. Nakhla'

REASONS FOR JUDGMENT OF THE COURT OF APPEAL
(Delivered by McCarthy P.)

No. 4



IN THE COURT OF APPEAL OF NEW ZEALAND

C.A. 85/73

R E G I N A

v.

EDWARD FRANCIS NAKHLA

Coram: McCarthy P.
Richmond J.
Beattie J.

Hearing: 10 September 1973

Counsel: W.V. Gazley and D. Deacon for Appellant
J.H.C. Larsen for Crown

Judgment: 12 October 1973

JUDGMENT OF THE COURT DELIVERED BY McCARTHY P.

This appeal necessitates close consideration of the factors involved in a "rogue and vagabond"

In the Court of Appeal of New Zealand

No. 4

Reasons for Judgment of the Court

12th October 1973.

charge as that ill-styled term is used in the Police Offences Act.

The appellant was convicted in the Supreme Court at Wellington on 7 August 1973 before the Chief Justice and a jury on a charge that on or about 2 May 1973 at Wellington he was deemed to have been a rogue and vagabond in that being a suspected person he did frequent a public place, namely Oriental Terrace, with a felonious intent (Police Offences Act 1927, s.52(1)(j). He was sentenced to nine months' imprisonment. 10

The Crown case was presented in this way. Over a period of approximately two weeks, namely from 14 to 29 April 1973, there were four burglaries of jewellers shops in Wellington. A substantial quantity of rings, watches and jewellery of a total value of approximately $16,500 was taken. A 16-year-old youth named Wolzak pleaded guilty to 20 these four burglaries and was sentenced to Borstal training. He said that a man named Basil Spartalis had been present with him on the first three burglaries and that he had given the total proceeds to him, being given back a paltry few dollars for his part. On 1 May Wolzak was arrested. He implicated Spartalis. On the following day the Police searched the premises where Spartalis was living with a Miss McIntyre. In the 30 bedroom two empty ring pads, watch price tags and ring identification tags were found. These were concealed in a box wrapped up in a mattress underneath the bed. Both Spartalis and Miss McIntyre were taken to the Police Station.

Shortly after midday, Dectective Senior Sergeant Holyoake spoke to Spartalis and as a result of that conversation the Detective formed the opinion that appellant was a 40 person who would receive stolen property and was, in fact, in the process of negotiating to buy some stolen jewellery. At approximately 1 p.m. Detective Sergeant Lines attached a suction type microphone to his telephone and plugged it into a tape recorder. Arrangements were made for Spartalis to make a telephone call to the appellant at 1.15 p.m. as part of a Police trap, no doubt

with the intention of catching the appellant in the crime of receiving stolen goods. After Detective Sergeant Lines had left the office, Spartalis phoned appellant and had a conversation with him. Later the tape was played back, but it conveyed a one-sided conversation, recording what Spartalis had said but not the voice of appellant. This tape and two subsequent tapes were played to
10 the jury who were also given transcripts of the recordings.

It is important now to refer to some earlier matters so that the effect of the tape recordings can be properly understood. First, the appeal is from a re-trial; an earlier jury had failed to agree. At the time of the first trial earlier this year, Spartalis, who had been charged with receiving and had been given bail, had broken the conditions of
20 bail and left this country. Although he was obliged to appear in the Magistrate's Court on 15 May, he had hid himself for a period of approximately four weeks in Auckland and Wellington waiting until his passport was ready. He then flew to Greece, arriving there on 13 June. While in that country he communicated with his lawyer in New Zealand and, no doubt as a result of advice from him, returned to this country and surrendered to
30 the Police. On 6 August, that is the date of commencement of the second trial of appellant, Spartalis was sentenced to two years' imprisonment on one charge of burglary and two charges of receiving. Consequently at appellant's second trial he was available and gave evidence.

Spartalis said that some time in April, before he spoke to appellant on the telephone from the Police office, and unprompted by the
40 Police, he rang appellant to see if he was interested in the jewellery. A meeting was arranged and took place in the Kelburn area. Spartalis claimed that appellant accepted some $800 worth of jewellery etc. from him and paid him $400-$500. When cross-examined at length on this alleged transaction, Spartalis stated he thought he had told the Police that it was at Kelburn that he had met appellant but he could not really remember. However, this

contradicted what he had told the Police, namely that the meeting had taken place at Oriental Bay on 16 April. No mention had been made to the Police of a meeting at Kelburn. He had also told the Police that no money changed hands as appellant had had no cash with him.

We return to the first taped one-sided telephone conversation. In evidence Spartalis identified his voice on the tape and said that the conversation was with appellant. Reading the transcript of that conversation, we find that Spartalis told appellant that he had a good deal of watches, jewels and rings and is recorded as saying "You said rings and that remember" and, against the apparent protestations of appellant, suggested that appellant had a look at the articles as he, Spartalis, needed some money. The conversation concluded with an arrangement to meet on the following night at 7 o'clock. Approximately an hour later the recording apparatus being by then correctly assembled, Spartalis made a further call to appellant, the conversation this time being recorded as a two-sided one. The pretence adopted by Spartalis for ringing again was that he had not been able to have a full conversation previously as his father was in the shop at the time. Spartalis mentioned that he had about 400 rings and some 100 watches. Appellant told him to throw the latter in the sea. He further said, after a reference had been made to cameos, that they too were no good. Spartalis then said that he was prepared to sell the goods dead cheap, because he needed money, and asked how much appellant would offer as there was "about 20 grand of stuff available". Appellant said "No, no I don't want, I don't want the other stuff". The conversation continued :

Spartalis — Alright, well just the rocks and stuff. Well what would, what would you think

Nakhla — I don't know

Spartalis — I tell you what, give us a grand for the lot, if you haven't got it

| | |
|---|---|
| | give us half. You can have the bloody lot. |
| Nakhla | I'll see if I can see you tonight. |
| Spartalis | Yeah, what time? |
| Nakhla | Seven ... |
| Spartalis | At the shop |
| Nakhla | Yeah. |
| Spartalis | You'll be in your car or what? |
| Nakhla | Yeah, I'll be around. |
| Spartalis | Okay, seven o'clock outside the shop. |
| Nakhla | I'll find you. You don't know how to find me, I'll find you. |
| Spartalis | Listen, I'll have the goodies with me. |
| Nakhla | No, no, don't do that, I don't want none, I don't want any trouble. |
| Spartalis | Okay, you'll find me at the shop. Ta-ta. |

In due course transcripts were made of these recordings. Later in the day, Detective Sergeant Lines gave Miss McIntyre a tape recorder, instructing her in the use of it. She was willing to assist the Police in their efforts concerning appellant. She put the recorder, which had a cassette tape, in her handbag and picked up the stolen jewellery from her accommodation. In the meantime at approximately 7 p.m., appellant arrived at the fish shop where Spartalis was working. They then travelled to Oriental Parade in appellant's car, meeting Miss McIntyre, who by then was in a Valiant car. Both joined her. Miss McIntyre had the jewellery in two plastic bags. Three people were now in the car. Miss McIntyre switched on the tape recorder and handed over the jewellery to Spartalis. The conversation that followed was substantially recorded and played to the jury at the trial. After Miss McIntyre

In the Court of Appeal of New Zealand

No. 4

Reasons for Judgment of the Court of Appeal

12th October 1973.

had been introduced to appellant, Spartalis referred first to certain goods that were made of gold, receiving the comment from appellant after he had felt it, that it was 9 carat. Spartalis was then reprimanded for producing cameos; he was also told that the wedding rings were only junk, that he should dump the watches in the sea. Generally there was disapproval of what was there. The conversation reached the point when certain men's rings must have been handled; provoking the comment from appellant that they had no diamonds. Appellant then said to Spartalis "When you do something you only need five or six pieces. That's all. Pick on a place where you got a nice piece of diamond." Appellant then told Spartalis that the rings and the bracelets were no good to him and continued, "I got a hundred thousand dollars lying dormant dere. In that. In that thing in Manners Street, in Willis Street .... All diamonds. Can't even do anything with it yet." Appellant again reiterated that he wouldn't touch the lighters, the watches and the wedding rings, and told Spartalis to throw them away. The conversation then proceeded, and we record it verbatim :

Spartalis What about the rings?

Nakhla The rings, there is nothing in them. There is nothing. All I want is not gold. All I want is diamond. You got diamond I take it. You got a million quids worth of diamonds I will get it, but not gold. Gold is no good. All this is got to be melted. I got a hulluva job just to melt the bloody thing. That's the biggest job we got. You got to melt it. And when you melt the 9 carat gold, what you going to get out of it. That's what I have been trying to tell you boys all the, all the bloody time. Don't, don't kill yourself over this stupid bloody rubbish. I don't even know where, where I can put you onto someone. See Joe Newton.

Further advice was then proffered by appellant about smelting gold and how to get rid of stones and get diamonds out so they cannot be traced. Spartalis pleaded with appellant to take the lot as he needed some money. Appellant told him to come to the office where he would give him some money without taking the articles. Spartalis reminded him of the other times when appellant had bought articles from him, but was again told that what he had was just junk and rubbish. The conversation ended by appellant suggesting that they be kept until the following day, that Spartalis should ring him and the appellant would see what he could do.

During these activities the Police had the group under observation and when appellant got out of the Valiant car to get into his own vehicle, he was surrounded by policemen. When taken back to the Valiant car in which the recorded conversation had taken place and after being shown the plastic bags, appellant was asked whether he knew what was in them. Appellant replied he had never seen them. No jewellery was found on appellant.

Approximately an hour later at the Police Station, in answer to further questions, appellant said he went to Oriental Parade at Spartalis' suggestion, he had not seen any jewellery in the car, he denied receiving a telephone call from Spartalis earlier in the day setting up the meeting, and stated that he had met Spartalis purely by chance. After 11 o'clock, in the presence of his solicitor, appellant was charged with receiving stolen goods. The charge of frequenting was added when depositions were taken. No indictment was proffered on the receiving charge.

The Crown evidence led to establish that appellant was a suspected person came from three Police officers. The first was Detective Sergeant Fitzharris who in the course of his testimony detailed a charge brought against appellant in June 1971 of receiving a stolen television set, but on which appellant was discharged. We shall say more of this officer's evidence later. Another Detective Sergeant expressed an opinion (as a result of

In the Court of Appeal of New Zealand

No. 4

Reasons for Judgment of the Court of Appeal

12th October 1973.

interviewing Spartalis on 11 March 1973) that appellant, given the opportunity, would receive stolen property. Finally, Detective Senior Sergeant Holyoake gave a similar opinion as a result of interviewing Spartalis on the morning of 2 May 1973, that is earlier in the day of the charged offence. Though appellant did not give evidence, he called several witnesses who were either business associates or personal friends. They said they could not believe appellant would act as a receiver. They spoke in high terms of his integrity.

With regard to the requirement of frequenting, the prosecution relied solely on the visit by appellant to Oriental Bay for the purpose of inspecting the jewellery, contending that that requirement was satisfied by appellant being long enough at that place to effect the particular object aimed at.

What was relied on to establish felonious intent was the evidence of the alleged earlier meeting at Kelburn, the inferences to be drawn from the two telephone conversations from the Police Station, appellant's denials when interviewed by the Police, and the transcript of the tape recording of the conversation at Oriental Parade.

Appellant was charged under s.52(1)(j) of the Police Offences Act 1927. That reads:

> "(1) Every person shall be deemed a rogue and vagabond within the meaning of this Act, and be liable to a fine not exceeding four hundred dollars or to imprisonment .... for any term not exceeding one year, -
>
> (j) Who, being a suspected person or reputed thief, frequents any port or harbour, river, canal navigable stream, dock or basin, or any quay or wharf, or any other public place, or any house, building, or other place adjacent to any such

port or harbour, river, canal, navigable stream, dock or basin, or quay or wharf, with a felonious intent."

Section 81 is important in the proof of criminal intent:

"In proceedings under this Act, in proving a criminal intent it shall not be necessary to show that the person suspected was guilty of any particular act or acts tending to show his purpose or intent, and he may be convicted if, from the circumstances of the case and from his known character as proved to the Justices or Court before whom or which he is brought, it appears to such Justices or Court that his intent was to commit a crime."

We now consider the arguments of counsel for the appellant under these heads.

Suspected Person

Ledwith v. Roberts [1937] 1 K.B. 232, a judgment of the Court of Appeal, is generally accepted as the leading authority on the apprehension of suspected persons or reputed thieves. It was so described by Goddard L.C.J. in R. v. Fairbairn [1949] 2 K.B. 690 and by Humphreys J. in R. v. Clarke [1950] 1 K.B. 523. It was adopted by this Court in R. v. Wilson [1962] N.Z.L.R. 979. Its importance lies in its emphasis that a person cannot be apprehended unless he was at the time of arrest by reason of his previous conduct a suspected person or reputed thief. But there are at least inferences in the judgments of the members of the Court that a person must have done a number or succession of suspected acts before he qualifies. However, as Cleary J. commented in R. v. Wilson, there have been later English decisions which limit the apparent scope of Ledwith's case, presumably in this latter aspect. In one, Rawlings v. Smith [1938] 1 K.B. 675, Lord Hewart C.J. at 684 said :

In the Court of Appeal of New Zealand

No. 4

Reasons for Judgment of the Court of Appeal

12th October 1973.

> "The defendant ... must be shown to be a person who belongs to the class of suspected persons, but ... it is not necessary that he should have acquired the status or have fallen into the category of suspected persons upon some day earlier than the day which is charged in the information. It is enough if the acts antecedent to the act occasioning the arrest were of such a kind as to provoke suspicion." 10

Another is Pyburn v. Hudson [1950] 1 All E.R. 1006, 1007 when Lord Goddard said :

> "If they have acted thus for a length of time, or in such a way that the court thinks that they have by their conduct brought themselves within the category of suspected persons, it matters not whether their acts have been done a quarter of an hour, or half an hour, or, I would say, even five minutes before another act takes place which causes the constable to arrest them." 20

It is, we think, now well established that although the matters giving rise to suspicion must be antecedent to the frequenting episode, they can occur earlier in the same day. Two recent illustrations are Cosh v. Isherwood [1968] 1 All E.R. 383 and Fitzgerald v. Lyle [1972] Crim. L.R. 125. Nevertheless, we believe it should be required that there be a positive and sufficient separation of time between the acts relied upon to create the suspicion and those relied upon to prove frequenting to make the former plainly anterior. Cussen J. in Olholm v. Eagles [1914] V.L.R. 379 and later in Hockey v. Foster [1931] V.L.R. 285 stresses, to our minds correctly, the necessity for demarcation, and we have some difficulty in finding such a sufficiently positive separation in the very short report available to us of Fitzgerald v. Lyle. But the point is not important in the present case, for the conduct 30 40

relied upon here was plainly anterior.

The Chief Justice directed the jury in the familiar words of Jordan C.J. in Ex parte King. Re Blackley (1938) 38 S.R. (N.S.W.) 483 that a suspected person is such that people who know him suspect that when opportunity arises he will commit a crime of dishonesty. Counsel for the appellant do not take issue with that, but they do contend that the Chief Justice misdirected by failing to add that only conduct antecedent to the commencement of frequenting could be considered, and to make it abundantly clear that antecedent conduct was relevant for no other purpose, and, in particular, could not be used by the jury in determining whether appellant had the required felonious intent. This last matter arose especially out of some observations of the Chief Justice made at the close of the summing-up when Mr Gazley asked for a further direction.

Two points are involved in these criticisms. It is true that the Chief Justice did not tell the jury in express terms that the matters giving rise to suspicion must antecede the frequenting. The references he made to the evidence on this topic were, however, plainly directed to antecedent material which emerged in the evidence of Detective Sergeant Fitzharris, relating to June 1971, in that of Detective Sergeant Toomey, relating to March 1973, and in that of Detective Senior Sergeant Holyoake, relating to the day of the crime but to an earlier point of time. We think it was unnecessary for the Chief Justice, on the facts of this case, to enter into an explanation of the time element sometimes involved in the applicable principle. A trial Judge cannot be required to give a direction on all the law relating to a particular offence: "it is wrong for a Judge to confuse the jury with a general if learned disquisition on the law. His summing-up should be tailor-made to suit the circumstances of the particular case". Lord Hailsham of St. Marylebone L.C. in D.P.P. v. Kilbourne [1973] 1 All E.R. 440, 447.

The second point arises out of what the Chief Justice said in response to Mr Gazley's

request for a further direction. The Chief Justice said :

> "As to the third point, that is the content of the third tape. All I wish to say further on that is that it is there for you gentlemen to judge with the transcript, subject to the criticisms of the transcript that have been made by defence counsel. But it is for you to judge, and there is material there from which you can, if you think fit, judged along with the other evidence, draw the conclusion that Nakhla had a felonious intent."

It is the words italicised which form the basis of this part of Mr Gazley's criticism, for, so he says, they imply that the evidence of antecedent events which was admissible to prove suspicion, could be used by the jury in determining felonious intent also.

It is important in relation to this point to remember that the evidence of antecedent events was adduced to establish that the appellant was a "suspected person", and not to prove "known character" in terms of s.81 (quoted above) which enables known character to be invoked in the proof of intent. R. v. Child [1935] N.Z.L.R. 186. We agree with Mr Gazley that this evidence of antecedent events could not be used by the jury on intent, but we think that Mr Gazley here unduly elevates the importance of a particular phrase in the direction. Regard must also be had to what the Chief Justice had said earlier in the main body of his summing up. There he emphasised the importance of the transcript of the tape taken in the motor vehicle on the issue of intent, and of appellant's explanation. He said :

> "As I have said, you will probably best judge this though it is for you to say, by your consideration of the tapes. And you will bear in mind the point emphasised to you by Mr Gazley that, on a proper consideration of that record and that transcript Nakhla was

> saying he wanted none of it, wanted none of the jewellery, did not want any stolen goods and in fact what he was really doing was advising Spartalis to throw the stuff in the sea and have nothing to do with it. That is the version the defence put before you. It is for you to judge."



We do not accept that the few words selected by Mr Gazley from the additional direction of the Chief Justice could have misled the jury in the way Mr Gazley suggests and we are not prepared to hold that there was there a material misdirection.

Mr Gazley next submitted under this heading that the Chief Justice had misdirected the jury with regard to Detective Sergeant Fitzharris' evidence that appellant had been charged in 1971 with receiving a stolen television set but was discharged. Relying on R. v. Harris [1951] 1 K.B. 107, counsel contended that this evidence was inadmissible. We cannot agree. In Harris, a certificate of conviction was tendered notwithstanding the accused had been conditionally discharged. Humphreys J. held that the document was inadmissible to prove known character (see our s.81 (supra) relating to intent), though evidence could be given by a person present in Court to establish an admission of guilt made in the course of the earlier hearing. Detective Sergeant Fitzharris' evidence in this present case did not conflict with this ruling for he did not advance the charge or the discharge as a foundation for his suspicion: it was on what the Detective Sergeant ascertained in the course of his investigation of that matter that he relied, and his reference to the prosecution and its lack of success was included in fairness to the accused. This emerges patently from his evidence:

> "I was instructed to undertake enquiries into reported burglary of Mr Bradley's house in Raumati South. Amongst property taken - said to have been taken on that occasion was there a television set? Yes. As result of enquiries the accused Nakhla was

In the Court of Appeal of New Zealand

No. 4

Reasons for Judgment of the Court of Appeal

12th October 1972.

subsequently arrested and charged with receiving television set stolen from Mr Bradley's home. He elected trial by jury - he appeared in Wellington Magistrate's Court. Depositions taken and he was committed for trial in this Court. He stood trial but was later discharged under s.347 of Crimes Act. As I understand it that is equivalent to an acquittal. As a result of my enquiries, because of that incident and also from what I have been told by other persons I would suspect accused Nakhla to be a receiver of stolen property."

Mr Gazley next made a number of associated submissions. First, that the Chief Justice should have directed the jury that the Police officers who gave evidence of suspicion were not persons who knew appellant. Secondly, that there were misdirections in failing adequately to include the defence evidence we have already referred to in the direction on this part of the case and in saying that a reputation with some people was sufficient. Thirdly, that any statement by Spartalis on which Police officers formed their cuspicion could afford no ground for suspicion. Fourthly, that there was insufficient evidence to establish that appellant was a suspected person. We can deal with all these together by saying that to be a suspect, it is not obligatory that the person be generally suspected, nor that those who suspect need be in any special relationship to the suspected person. In Cosh v. Isherwood (supra) the observers knew nothing of the offender, while in Fitzgerald v. Lyle the suspicion was formed by a single constable who knew that the accused was in breach of a bail term. In Ex parte King, Re Blackley (supra) Jordan C.J. comments that the knowledge of matters a constable has learned from Police officers or others concerning an accused's reputation can be given in evidence if his bald statement that the accused person is a suspected person is challenged as insufficient. Furthermore, it was not incumbent on the Chief Justice to give any instruction concerning the defence witnesses as part of his direction

In the Court of Appeal of New Zealand

No. 4

Reasons for Judgment of the Court of Appeal

12th October 1973.

on intent for their evidence was strictly irrelevant on that issue, but in fact he did, and urged the jury to weigh that evidence. Nor do we see any valid complaint concerning the direction relating to what Spartalis told the Police, for they were plainly told what he said should be regarded with great caution. We therefore consider that the evidence from the Police officers as to their belief and their sources of information was properly placed before the jury, and was sufficient to enable the jury to conclude that appellant was a suspected person.

Felonious Intent

The Chief Justice first directed the jury as follows:

"That, as Mr Gazley has indicated, is perhaps an archaic or old-fashioned expression but its meaning is quite simple. It means an intent to commit a crime. Any act punishable as a crime. Here the crime that Nakhla is said to have the intent to commit, if the right goods had been there, was to receive stolen goods. Receiving stolen goods, of course, is a crime and that intent or intention must relate to that place, that is Oriental Terrace, and to that time - that is 2nd May - that evening when, according to the prosecution evidence, he was there.

Now you will realise from what I say, but I think I should emphasise it, that the prosecution is not charging Nakhla with receiving stolen goods. On the evidence he did not receive any stolen goods that night. So that is not the charge, as you may have thought some of the defence witnesses who gave evidence yesterday afternoon thought it was. That is not the charge. The charge is, to say it again, that Nakhla is a suspected person who frequented a public place, was in Oriental Terrace that night, with a felonious intent,

In the Court of Appeal of New Zealand

No. 4

Reasons for Judgment of the Court of Appeal

12th October 1973.

> that being that he intended to take or buy or acquire stolen jewellery from Spartalis if it was the kind that suited him."

Later, he referred to Spartalis' evidence of an alleged telephone conversation and meeting with appellant, before the calls from the Police Station, and to the arrangements to go to Oriental Terrace. He then outlined the defence submission that on a proper consideration of the tapes, appellant wanted nothing to do with stolen goods. We have set out that passage earlier. 10

In essence, Mr Gazley submits that overall the direction was inadequate, for the jury should have been told plainly that there must have been actual intent to commit the crime of receiving as opposed to mere contemplation of that crime. We do not agree that the direction was inadequate 20 in that way. Mr Gazley relied in particular on some words of Scott L.J. in Ledwith v. Roberts (supra) at p.263, but as the Lord Justice points out only a little later in his judgment that particular passage dealt with the position before the section was amended by an equivalent of our s.81 (supra). There is ample authority that a conditional intent, that is an intent to commit a crime should the circumstances prove 30 suitable, will suffice to establish an attempt to commit that crime. R. v. Ring, Atkins and Jackson (1892) 61 L.J.M.C. 116, an old authority from a bench of five Judges, referred to with approval by the Court of Appeal in R. v. Easom [1971] 2 Q.B. 315, see Edmund Davies L.J. at p.320. We think that, without any doubt, a like conditional intent is, especially in view of the terms of s.81 sufficient for the charge we are 40 dealing with.

We recognise, however, that different considerations can apply where there has merely been a reconnoitring to see if an offence is feasible, as in Lyons v. Owen (1962) 106 Sol.J. 939. There, Lord Parker C.J. commented that a fine line had to be drawn between that situation and one

where the reconnoitre had developed into an intention to commit a felony in the future, if circumstances were favourable. In the present case the Chief Justice recognised this distinction and he expressly reminded the jury that the defence which they must consider was that appellant was seeking to avoid being involved in a receiving and was merely placating Spartalis. We do not see any misdirection in this part of the case and there was evidence before the jury entitling them to hold that appellant whilst he was at Oriental Bay had arrived at the state of mind that he would receive if the goods offered to him were of a particular kind.



There remain several miscellaneous grounds. The first is that the Chief Justice failed to direct the jury on a defence allegation of Police illegality in the recording of two telephone conversations. As to that, the Chief Justice said that no breach of the law was involved. Whether there was or not we have not investigated, for the decision of the Privy Council in Kuruma v. Reg [1955] A.C. 197 rendered the evidence admissible as being relevant to the matters in issue, and no application was made to the Court for it to be excluded in the Court's discretion on the ground that its admission would operate unfairly to appellant.

It is next said that there was a failure to direct that the evidence of Spartalis could not be accepted because he had made a previous statement inconsistent with his evidence at the trial. R. v. Golder [1960] 3 All E.R. 457, R. v. Carrington [1969] N.Z.L.R. 790 were relied on. But these cases do not go as far as that. They decide that previous inconsistent statements are not to be treated as evidence, but they do not say that the evidence of a witness, such as Spartalis, should be entirely disregarded when he has made inconsistent statements. As already stated the jury were told to regard Spartalis' evidence with considerable caution in view of all the circumstances. That was all that was necessary.

In the Court of Appeal of New Zealand

No. 4

Reasons for Judgment of the Court of Appeal

12th October 1973.

The final ground of alleged misdirection concerns corroboration. The jury, having first been warned to treat Spartalis as an accomplice, was instructed about corroboration, and about such material as was, in the Chief Justice's opinion, capable of being so considered by the jury. We have examined these instructions carefully. The evidence of a detective that appellant and Spartalis went to Oriental Terrace together, of admissions by appellant to Detective Senior Sergeant Holyoake, and the material in the three tapes were, we think, properly placed before the jury for consideration as being capable of confirmation of the evidence of Spartalis.

There was a final submission that the verdict was unreasonable and cannot be supported having regard to the evidence, especially that relating to the issue of intent. The case in essence turned on what the jury made of the conversations recorded in the tapes. It was manifestly open to them to take a highly unfavourable view of these.

The appeal against conviction is, for these reasons, dismissed. But before leaving this part of the case we should refer to the repeated criticisms made by Mr Gazley of the rogue and vagabond sections of the Police Offences Act, as being antiquated, no longer necessary and unfair in modern social circumstances. This criticism is not new. Scott L.J., a great Judge, protested about similar legislation in Ledwith's case in 1937 and urged a reconsideration by the Legislature of words in the relevant sections, for in his view they were vague, indefinite, and inapplicable to modern conditions. He saw the retention of such provisions as "inconsistent with our national sense of personal liberty or our respect for the rule of law". At least one New Zealand Judge has of recent years also urged reconsideration and the definition in better language of such powers as should

properly be given the Police to prevent in advance the commission of crime. But the legislation remains and this Court must enforce it.

In the Court of Appeal of New Zealand

No. 4

Reasons for Judgment of the Court of Appeal

12th October 1973.

With regard to the appeal against sentence, for the reasons given by the Chief Justice, we are satisfied this was an appropriate sentence and that appeal is likewise dismissed.

The appeals against conviction and
10 sentence are dismissed.

Solicitors for Crown: The Crown Solicitor, Wellington.

Solicitor for Appellant: W.V. Gazley, Wellington.

NOTIFICATION TO APPELLANT OF RESULT OF APPEAL

No. 5

In the Court of Appeal of New Zealand

No. 5

Notification to Appellant of Result of Appeal

12th October 1973.

IN THE COURT OF APPEAL OF NEW ZEALAND

THE QUEEN v. EDWARD FRANCIS NAKHLA

20 THE CRIMES ACT, 1961

NOTIFICATION TO APPELLANT OF RESULT OF APPEAL

To the above-named Appellant.

THIS is to give you notice that the Court of Appeal has considered the matter of your application for leave to appeal and has finally determined the same and has this day given judgment to the effect following namely - appeal against conviction and sentence
30 dismissed.

DATED at WELLINGTON this 12th day of October 1973

'D. Jenkin'
Registrar of the Court of Appeal

In the Court of Appeal of New Zealand

No. 6

Further Reasons for Judgment

12th October 1973.

(Delivered 13th November 1973.)

FURTHER REASONS FOR JUDGMENT
OF THE COURT OF APPEAL

No. 6

IN THE COURT OF APPEAL OF NEW ZEALAND

R E G I N A

v.

EDWARD FRANCIS NAKHLA

Coram - McCarthy P.
Richmond J.
Beattie J. 10

Hearing - 10 September 1973

Counsel - W.V. Gazley and D. Deacon for Appellant
J.H.C. Larsen for Crown

Judgment - 12 October 1973

FURTHER REASONS FOR JUDGMENT

The motion filed on appellant's behalf for a review by this Court of our judgment delivered on 12 October 1973 dismissing the appeal, which motion was itself dismissed 20 last Friday, drew our attention to a feature of the record of our reasons for judgment handed down when we dismissed the appeal. That feature is that in the course of preparing the reasons for judgment from the draft originally settled by the Court, the typist omitted a page which dealt with one of the many arguments submitted in favour of the appellant, namely that relating to "frequenting". The omission of this part 30 of the draft reasons which, let me say quite firmly and unequivocally, appeared in the draft originally prepared, and which was intended to be included in the reasons of the Court, was not noticed until the Court had occasion to consider the final transcript in relation to the appellant's motion which

was to come before us last Friday. This having been observed, counsel were invited to see the Court in Chambers before Friday's hearing, when counsel were told what had happened and were offered copies of the omitted passage, so that they and their clients could be aware of the reasons which actuated the Court in rejecting the submission relating to frequenting. But Mr Gazley immediately rejected that offer and claimed that the Court is not entitled to add to the record of the reasons handed down. We do not accept that for a moment. The formal judgment of a Court and its reasons for arriving at that judgment are different things. The judgment of the Court was that the appeal should be dismissed. The reasons given were merely explanatory. The Court may if it wishes supplement such reasons later. There are plenty of precedents for that course.

There are two principal purposes for recording correctly and completely the reasons for a Court's judgment. They are -

(a) to provide the material upon which a party can attack the judgment on appeal;

(b) To provide a statement of principle which is binding as a precedent.

For these reasons it is plainly desirable that all of our reasons be available for these purposes, especially as the case is one which may be reported in the Law Reports. Therefore we propose now to hand the omitted page to the Registrar for inclusion in the reasons of the Court delivered when the appeal was dismissed on 12 October. It should take its place in the reasons for judgment following the passages dealing with "suspected person" and preceding those dealing with "felonious intent".

In conclusion it should be noted that the judgment as given on 12 October is

unaffected. It remains precisely as it was when delivered.

13 November 1973

Solicitor for Crown: The Crown Solicitor, Wellington

Solicitor for Appellant: W.V. Gazley, Wellington.

Frequenting

Here, it was contended that it was a misdirection to tell the jury as the Chief Justice did that "action amounts to frequenting a place if it is proved that a man was in that place with a felonious intent, that is, if he is there long enough to exhibit a felonious intent, then that can amount to frequenting." In Clark v. The Queen (1884) 14 Q.B.D. 92 Hawkins J. held on the facts of that case that one visit to a street was not enough. This decision was quoted in argument in Airton v. Scott (1909) 25 T.L.R. 250 where Lord Alverstone C.J. without referring to Clark's case said: "As to the word 'frequent', it was plain that being long enough on the premises to effect the particular object aimed at was 'frequenting'." There, the object of frequenting was to lay bets, which was prohibited by a by-law. The test in Airton v. Scott was extended by Lord Goddard C.J. in Clark v. Taylor (1948) W.N. 410 to an unsuccessful attempt at pickpocketing. He described the Airton test as being in a place long enough for the purpose in hand. These cases were considered by this Court in R. v. Child [1935] N.Z.L.R. 186 where one visit was treated as sufficient and the statement of Hawkins J. in Clark v. The Queen that what amounts to frequenting must depend on the circumstances of each particular case was approved. Then in Goundry v. Police [1954] N.Z.L.R. 692 North J. decided that although the accused was on his way to a legitimate appointment, he "frequented" a road when he interrupted his journey to intercept a

In the Court of Appeal of New Zealand

No. 6

Further Reasons for Judgment

12th October 1973.

(Delivered 13th November 1973.)

boy, the time involved being sufficient to gain the boys' confidence and to make an appointment for a subsequent meeting. We think that the direction of the Chief Justice in the present case conformed with these authorities, and plainly the appellant was in Oriental Parade sufficiently to achieve the felonious objective alleged if he was so minded.

Order of Her Most Excellent Majesty in Council granting Special Leave to Appeal

No. 7

3rd April 1974.

10

ORDER OF HER MOST EXCELLENT MAJESTY IN COUNCIL GRANTING SPECIAL LEAVE TO APPEAL

No. 7

AT THE COURT AT WINDSOR CASTLE
The 10th day of April 1974

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

WHEREAS there was this day read at the Board
20 a Report from the Judicial Committee of the Privy Council dated the 3rd day of April 1974 in the words following viz.:-

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Edward Francis Nakhla in the matter of an Appeal from the Court of Appeal of New
30 Zealand between the Petitioner and Your Majesty Respondent setting forth that the Petitioner prays for special leave to appeal from a Judgment of the Court of Appeal of New Zealand delivered on the 12th October 1973 which dismissed an Appeal by the Petitioner against his conviction in the Supreme Court of New Zealand on a charge laid under section 52(1)(j) of the Police
40 Offences Act 1927 upon conviction of

Order of Her Most Excellent Majesty in Council granting Special Leave to Appeal

No. 7

3rd April 1974.

which he was sentenced to imprisonment for nine months; And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Judgment of the Court of Appeal of New Zealand dated the 12th October 1973:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Court of Appeal of New Zealand dated the 12th October 1973: 10 20

"AND Their Lordships do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same." 30

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of New Zealand and its Dependencies for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly. 40

'W.G. Agnew'

EXHIBIT "H"

Transcript of tape recording of a conversation between Basil SPARTALIS, Eddy NAKHLA and Rosalie McINTYRE in Oriental Terrace, Wellington on 2 May 1973.

In the Supreme Court of New Zealand

No. 8

Exhibit "H"

Transcript of Tape Recording

---

<u>Basil</u> Gooday. Rosie this is Eddy. Eddy - Rosie.

<u>Rosie</u> Hello.

<u>Eddy</u> How are you

10 <u>Rosie</u> Good .....

<u>Eddy</u> I told you ......

<u>Basil</u> ....... All this is gold. Bracelets. Gold bracelets. The lot.

<u>Eddy</u> It's 9 ct.

<u>Basil</u> All right. You right now.

<u>Eddy</u> No I just feel

<u>Basil</u> Its cameos, that stone. They are sets. Different stones ..... thats cameo, good cameo. No good?
20 I tell you what I want to get rid of the fucking lot. You can have it all ......

<u>Eddy</u> Why you touch it, bloody cunt for you mad. I told you million times.

<u>Basil</u> Is all the loose watches here?

<u>Rosie</u> Yes I suppose so. I just got at it .....

<u>Basil</u> Where's the rings.

<u>Rosie</u> .........

30 <u>Basil</u> .........

<u>Eddy</u> I am very disappointed with that light.

In the Supreme Court of New Zealand

No. 8

Exhibit "H"

Transcript of Tape Recording

Basil — The what

Eddy — I thought it going to be coloured

Basil — ...... It does have colours

Eddy — Those all whites

Basil — They are not rings. ...... I have got some more with stones here. Some of them are cheap, some of them are bloody expensive. Opal ones you know. They are the gold and wedding rings and some here hundred ...... I have got another parcel. 10

Eddy — These only junk, these only what you call it - wedding rings.

Basil — Yeah but some are worth plenty you know, they are aren't they.

Eddy — Plenty workmanship cost plenty ..... Go by the gold. The gold is nothing. It is all 9 ct. ........

Basil — You got another plastic bag there? It should be the watches. 20

Eddy — Forget about the watches

Basil — ....... bag here.

Eddy — You take my advice. Take those watches and go to the bloody sea there and dump them. Dump them in the water where someone drowns. I am telling you. You will get in trouble .....

Basil — There are some expensive ones.

Eddy — I don't give a damn if they worth a million quid each. 30

Basil — ....... rings. These are the men rings aren't they.

Rosie — Don't know.

**Basil** Eddy these are the mens rings. All these are mens rings.

**Eddy** They got no diamond at all.

**Basil** No, red stones and everything, wait on.

**Eddy** No good. Red stones are no good.

**Rosie** I am going to turn on the light.

**Eddy** I can see. I know. I know.

**Basil** You can feel them

10 **Eddy** They all all ah ......

**Basil** ........ Cameo rings. Cameos .....

**Eddy** You come one day with me and I show you how they bring those things by the big cases there. In Lambton Quay.

**Basil** Yeah

**Eddy** My mate is an importer

**Basil** Yeah

**Eddy** Brings them by the big cases. They
20 all under the custom jewellery. I always told you when you do something you only need five or six pieces. That's all. Pick on a place where you got a nice piece of diamond. All you got a do is. It is better than all that junk. Forget about watches.

**Basil** Oh yes.

**Eddy** Forget about .......

**Basil** ...... All the rings there Eddie and
30 everything else. I need the bread. You can have it. Just ..... you bring out what you need mate. I need the bread, honest Eddie, we need it don't we. Fair dinkum Eddie, I would appreciate it if you help me.

In the Supreme Court of New Zealand

No. 8

Exhibit "H"

Transcript of Tape Recording

<u>Eddy</u> There is nothing I can do with that. You should use your head the next time .....

<u>Basil</u> Well take the rings and the bracelets will ya.

<u>Eddy</u> They no good to me. Honest true they no good.

<u>Basil</u> .......

<u>Eddy</u> I got a hundred thousand dollars lying dormant dere. In that. In that thing in Manners Street, in Willis Street. 10

<u>Basil</u> Yeah.

<u>Eddy</u> All diamonds. Can't even do anything with it yet.

<u>Basil</u> How much?

<u>Eddy</u> Hundred thousand dollars and that's a, that's a wholesale price. You know that big job in ah, in ah Willis Street, on top of Woodcraft. 20

<u>Basil</u> In Willis.

<u>Eddy</u> Didn't you hear about it.

<u>Basil</u> Oh yeah, yeah, yeah. Jesus Christ, no wonder you don't want .... bloody shit.

<u>Eddy</u> ....... There is not even a piece of diamond in it. You get these junks there. They are all, they are all starving those those jewellers like that fellow in Farish Street and a, 30 they got nothing there. What they got is in the safe. Fancy going around taking a chance to get bloody locked up. What the use for bloody lighters and watches and a, and a wedding, what you call it, weddings rings. The wedding rings. You know how much there is in every ring.

In the Supreme Court of New Zealand

No. 8

Exhibit "H"

Transcript of Tape Recording

Basil — No.

Eddy — There wouldn't be 50 cents worth and it's all tax, it's all sales tax and workmanship and retail and all this rubbish. And they sell them for fifteen dollars and twelve dollars and ten dollars. Only, only cost them 50 cents worth of gold. There is only 9 ct gold.

10 Basil — You don't want none of it ...... Look you can have, the bloody bag and everything just, I tell you what, I am desperate, give us a $150 ....

Eddy — I wouldn't even touch them. You could have a watch in there worth even $500 dollars I wouldn't even touch. They no good, useless. For your own good take the bloody watches and the lighters. Throw
20 them into the bloody water. Throw them somewhere but don't leave your fingermarks or any ......

Basil — What about the rings?

Eddy — The rings, there is nothing in them. There is nothing. All I want is not gold. All I want is diamond. You got diamond I take it. You got a million quids worth of diamonds I will get it, but not gold. Gold
30 is no good. All this is got to be melted. I got helluva, got a helluva job just to melt the bloody thing. That's the biggest job we got. You got to melt it. And when you melt the 9ct gold, what you going to get out of it. That's what I have been trying to tell you boys all the, all the bloody time. Don't, don't kill yourself over this
40 stupid bloody rubbish. I don't even know where, where I can put you onto someone. See Joe Newton.

Basil — Joe Newton. I haven't seen him. Will he buy it

In the Supreme Court of New Zealand

No. 8

Exhibit "H"

Transcript of Tape Recording

Eddy — Oh well seen its got such a small price like that he might get into it.

Basil — .....

Eddy — He's got the bread too. He's got money, he's got plenty. He's got that bloody much he's going round the world trip. He doesn't know what to do with his bloody money and that's extra, extra bloody expenses for him. $150 bucks thats bloody cheap. 10

Basil — I'll

Eddy — See, every, every bit of that gold there, it's got to be melted. Every jewellers shop got a manufacturer. You know how many manufacturer jewellers in this town. There is over 25 of them. Each one of them deal with one jeweller. And every jeweller he's sort of got a contract with them and they got their trademark in. 20

Basil — Well how you going to get rid of your stones then.

Eddy — The stones that's alright. We going to undo the stones and throw the rings away and get, and get the diamond out.

Basil — A hundred thousand, that's a bloody lot of money ...... shit.

Eddy — You undo the rings then throw the rings away and keep the diamonds. There is no trace on diamonds. You can't trace diamonds. There is nothing they can do. Its an open market for diamonds too. You can import diamond without a licence now. The only thing you've, your, your biggest, I am teaching you now, your biggest danger is watches, rings, cameos, things like that because they got the pattern. Every, every manufacturer got his own pattern. 30 40

Basil — Oh yeah.

Eddy — And you can't sell it because the simple reason as soon as you go on the market to sell it they going to find out straight away that thats the pattern of the jewellers shop thats been stolen. You see, but then you get the diamond out of the rings. You throw the rings away and you got the diamond. No jeweller can tell that's my diamond. Diamond is a diamond. All the, all the bloody same. Diamond is a diamond. And gold is gold as long as you melt it. They can't trace gold once it is melted. Nodoby can come and say that's my gold. See what I mean. Not watches. You can't do nothing with them thats that. That what I am trying to tell you all the time, keep away from them.. What is Jocker going to do if he, if he bloody pinch my watch for argument sake. Now is $600 dollars watch in here. What he's going to do with it. He can't wear it in his hands. He can't do nothing. He can't have it insured, he can't do nothing. That's what I'm trying to say, well that's the same with these watches.

Basil — What about the rings ..... at least take them off my hands will you.

Eddy — But the rings, is nothing in them Basil. I just gotta have the job of bloody melting the bloody things, is nothing in it.

Basil — Aw look, just do this last favour will you. Just take them off my hands. Will you, honestly we need the bread. Give us 50 bucks you can have the bloody lot. There you are. There's over 400, 500 rings there,

Eddy — I don't want them. Basil you come in the office, I'll give you, I'll give you some money without these things. I just, you know, want to look after you. I'm just telling you, I told you many times, don't do that. You are only wasting your fucking time and .... fuck it.

Basil — ....... What about the other times you bought stuff off me. 10

Eddy — Yeah, but they just, you know, they junk, just rubbish. I don't want to, you know I feel embarrassed, you know. Basil you don't want to get in trouble again for bloody shit like that. You got a nice girl, you got a good job now, you got a good position. Forget about this bloody shit you know. Am I right 20 or wrong. Am I right, you are agreeing with me. Even you know your father will give you anything now. He told me himself ......

Basil — Bullshit. He doesn't .......

Eddy — Yeah, but you got to prove yourself to him a little bit more, that's all. Listen can you keep it till tomorrow. We'll see what ah, I'll give you, give me a call in the morning and 30 I'll see what I can do.

Basil — Okay, thanks very much Eddy.

Eddy — Alright, I do my best, I'm just telling you I've already had bloody trouble with the Police yesterday.

Basil — Yeah

Eddy — And even if they see you with me, even if you clean, they gonna think something bad about it

| | |
|---|---|
| Basil | I'll give you a ring tomorrow. |
| Eddy | Give me a ring. |
| Basil | Okay, thanks Eddy. |
| Eddy | Goodnight. |
| Rosie | Bye bye Eddy |
| Basil | Yeah I see, I'll just put this stuff away. |

IN THE PRIVY COUNCIL

No. 15 of 1974

ON APPEAL
FROM THE COURT OF APPEAL OF NEW ZEALAND

---

BETWEEN:

EDWARD FRANCIS NAKHLA    Appellant

- and -

HER MAJESTY THE QUEEN    Respondent

---

RECORD OF PROCEEDINGS

---

BLYTH, DUTTON, ROBINS, HAY,
9 Lincoln's Inn Fields,
LONDON WC2A 3DW.
Solicitors for the
Appellant.

ALLEN & OVERY,
9, Cheapside,
LONDON, EC2V 6AD
Solicitors for the
Respondent.