

BETWEEN: REX

Prosecution

AND : MA'ATI VONI LINO

Accused

BEFORE LORD CHIEF JUSTICE PAULSEN

**Counsel: Mr. T 'Aho for the Prosecution
 The Accused in person**

Date of Hearing: 4-6 February 2019

Date of Ruling: 6 February 2019

RECORD OF VERDICT

- [1] Mr. Lino stood trial on 4-6 February 2019 on one count of reckless driving causing grievous bodily harm.
- [2] Following the opening of the Prosecution case I allowed time for Mr. 'Aho and Mr. Lino to prepare and sign an agreed summary of facts to be presented to the jury. This was on the basis that Mr. Lino, who is self-represented, would first receive legal advice, which he duly did. Once the document was prepared and signed it was presented to me. After questioning Mr. Lino I was satisfied that he fully understood the nature of the document, the admissions it contained and its implications for the trial.

- [3] The parties agreed in the summary of facts that the only remaining issue in the trial was whether the Prosecution could prove beyond reasonable doubt that Mr. Lino was the driver of the vehicle that hit the victim.
- [4] This morning Mr. 'Aho advised me that the Prosecution could not locate its one identification witness and that the Police had been searching for him since yesterday. I am told there was no one at his home nor did he answer his contact number.
- [5] I gave the Prosecution until 2pm today to find the witness and bring him before the Court to give his evidence.
- [6] Further efforts to locate the witness proved unsuccessful. Mr. 'Aho advised me of this in Chambers and then in open Court at 2pm. He candidly acknowledged that the Prosecution could not take its case any further at this time.
- [7] Although Mr. 'Aho did not formally apply for an adjournment I considered whether it would be appropriate to grant the Prosecution more time to find the witness. I decided that would not be appropriate for reasons I summarised to the jury under four broad headings but which were:
- (a) The trial had already begun and the Prosecution had made its opening address;
 - (b) The witness was aware of the trial and there is no explanation for his failure to appear;
 - (c) There is no guarantee that the witness will be found within any particular period of time;
 - (d) Mr. Lino is entitled to expect that the Prosecution will be ready to proceed on the days set down for his trial;
 - (e) The jury had already been inconvenienced by delays in this case. They have attended Court on three days and were yet to hear from any witness in person on behalf of the Prosecution;

(f) I was advised that the evidence to be given by the witness was of a fleeting glance of the driver when it was dark. In the circumstances there is some doubt that the evidence would have been put to the jury for consideration in any event (*R v Turnbull* [1977] QB 224)

[8] In the result, and notwithstanding the contents of the agreed summary of facts (which was produced as Exhibit 1), the Prosecution had not put forward any evidence to establish the identity of the driver of the vehicle. As that is an essential element of the offence and the Prosecution had no further evidence to offer it followed that the charge could not be proved.

[9] I withdrew the case from the jury and entered an acquittal in favour of Mr. Lino.

Result

[10] Mr. Lino is acquitted and discharged.



O.G. Paulsen
LORD CHIEF JUSTICE



NUKU'ALOFA: 6 February 2019