

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)

CR NO. 519/09, 518/09, 417/09 & ORS

QUEEN

v

PAUL WILLIAMS

Date: 31 August 2010

Counsel: K Saunders and C Evans for Crown
N George for Offender

Ruling: 31 August 2010

RULING (NO. 1) OF HUGH WILLIAMS J

Solicitors:

C Evans, Crown Law, PO Box 494 Avarua, Rarotonga, (kimsaunders@crownlaw.gov.ck
Catherine@crownlaw.gov.ck)

G Norman, Norman George & Associates P.C. Takuvaine, Rarotonga (lawman@oyster.net.ck)

[1] In a telephone conference before this trial began and again in the usual discussion with counsel before the jury was empanelled, the Crown indicated that at a suitable time during the Crown case it proposed taking the jury on a view of the scene where the incident occurred. At that stage Mr George for the accused was supportive of the application, but on the basis that the bus taking the jury would also follow the route the accused will say he took after the impact with the deceased, by driving up the road to the fishing club and turning around and coming back to the area. It appears there will be a dispute as to where his truck parked on its return and whether it was moved after it was parked.

[2] However, at the end of day one of the trial the Crown has had second thoughts concerning the application and Ms Saunders has all but abandoned it. Mr George too is having a reconsideration of the wisdom of the view.

[3] There are two competing considerations in play here. One is for the jury to have a view of the area where the incident occurred; that is essentially the Crown application. The other is for the jury to become involved in a reconstruction of the path the accused will say he followed on the night in question.

[4] As far as the view application is concerned it now appears likely, almost certain, that the rubber tree and other foliage in the vicinity of the street light at or near the site of the impact will have been trimmed, to what extent is unknown. There are also other possible variables including, as Mr George says, we do not currently know the phase of the moon at the time. Although it seems common ground that the weather was fine, the moonlight is another issue which might impact on whether the jury will get a valuable impression of the visibility conditions at the time of the impact.

[5] As far as the reconstruction matter is concerned, this type of evidence is always contentious, particularly where there is apparently to be a real dispute as to the accused's stoppage or stoppages after he returned to the scene. A minor matter bearing on that is that his truck is very much smaller than the bus proposed for the jury's travel and that would distort the view the jury may reach

[6] All in all, it was sensible for the Crown to be no more than lukewarm in pursuit of its continued application for a view. The variables in combination seem unlikely to assist the jury to any great degree as to the visibility in the area on the night and at the time in question. It is also sensible of Mr George to express his misgivings about the expedition for the reasons already outlined.

[7] In those circumstances the jury will be told in the morning that the Judge has directed that no jury visit will take place. That leaves no possibility of an inference taken by the jury for or against the Crown or Defence.

A handwritten signature in black ink, appearing to read 'H Williams', written in a cursive style.

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Hugh Williams J