

**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: 3 September 2010

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

Ruling: 3 September 2010

RULING (NO. 2) OF HUGH WILLIAMS J

Solicitors:
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[1] The Crown applies for leave to recall a Mr Hazelwood on the issue of whether the deceased's body was moved by Mr Samuels, the security officer at nearby Club Raro who came to the scene when alerted by the noise of impact and the accused's passing truck, and who said that he moved the body with Mr Hazelwood's help.

[2] When Mr Hazelwood gave evidence - before Mr Samuels - he said nothing about moving the body. Indeed, he did not even mention Mr Samuels' presence at the scene. By chance Mr Hazelwood, though released as a witness, was sitting at the rear of the Courtroom when Mr Samuels gave evidence and Mr Samuels pointed him out as the man who had assisted in moving Mr Barrowman, at which point Mr Hazelwood stood up for the purposes of identification.

[3] The Crown has apparently spoken to Mr Hazelwood who, if leave is given, will deny that he participated in moving Mr Barrowman's body, and the Crown wishes to recall him to say that before the jury. In doing so Ms Saunders relies on s 10 of the Evidence Act 2006 and draws attention to a ruling of Simon France J in *R v Foreman*¹, where such an application was granted.

[4] Mr George opposes the Crown's application on the grounds that Mr Hazelwood's evidence has been given before the jury and the Crown should not now be permitted to repair any contradiction of any of its witnesses.

[5] This is a case where it is common ground that several of the Manukau Golden Oldies rugby team were walking back from the Fishing Club to Club Raro more or less in line astern. The Crown case is that the accused drove his truck from the Fishing Club, veered left off the road, at the critical point struck Mr Barrowman, returned to the carriageway and carried on until stopped by Mr Samuels at Club Raro. It has already been conceded by the Defence that Mr Barrowman died from injuries sustained when at least wing mirrors on Mr Williams' truck struck Mr Barrowman. It is largely common ground, though the position varies as might be expected, that Mr Barrowman after the impact was on the grass area to the left or

¹ *R v Foreman* HC Napier CRI-2006-041-1363 13 May 2008.

seaside of the carriageway as the Golden Oldies were walking down the road. There is no evidence as to whether Mr Barrowman was thrown any distance by the impact from the truck. All the evidence is roughly to the point that he ended up lying on the grass with his head towards the sea, with no part of his body on the carriageway. There is evidence that some of the Golden Oldies moved him to the extent of putting him in the recovery position, but no more.

[6] In those circumstances, Mr Samuels' evidence of moving the body must be seen as something quite distinct from all the other evidence to date. Those witnesses who dealt with the issue have denied moving Mr Barrowman except to place him in the recovery position. Where Mr Barrowman was when he was hit by Mr Williams' truck is one of the critical issues in the case. Where he finished up after being hit and whether he was moved in any substantial way by Mr Samuels, possibly with Mr Hazelwood's help, is not a critical issue.

[7] In those circumstances, given that Mr Hazelwood had been discharged from attendance and was only fortuitously still available to the Crown to recall, the Court's view is that no good purpose would likely be served by recalling the witness.

[8] The Crown's application is accordingly declined.

A handwritten signature in black ink, appearing to read 'H Williams', written over a dotted horizontal line.

Hugh Williams J