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

CR: 246-247/09

BETWEEN	**POLICE**
AND	**GREER SOLOMON**

Hearing Date:	19 April 2010
Court:	Weston J
Appearances:	Ms Catherine Evans for Police Mr Norman George for Defendant

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ORAL JUDGMENT OF WESTON J

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[1] Greer Solomon is before the Court facing 2 charges, the first in relation to Section 26 (1) of the Transport Act that she carelessly used a motor vehicle causing bodily injury to Mr Viviwa. The second is that she did not stop and ascertain following an accident for which she said to be in breach of Section 37 (1) of the Transport Act.

[2] At the commencement of the hearing I raised a procedural issue with Mr George concerning the late receipt of the depositions which appeared to breach Section 99, Criminal Procedure Act, in that they were not delivered 28 days prior to the commencement of the trial. Mr George took instructions and formally waived compliance with that provision saying that the matter was relatively straight forward and he was ready to proceed. I told him that without that waiver the matter would need to be adjourned. He said his client was anxious to have the charges resolved. As a result of his waiver we were able to proceed and did so.

[3] The Crown called 6 witnesses. The defence, as it is entitled to, did not call any evidence. The Crown briefly opened and at my invitation both parties briefly closed particularly by reference to several questions that I put to counsel.

The Essential Facts

[4] The essential facts are, as Mr George said, straight forward. There was a motor vehicle accident which occurred at approximately 10:30 pm on Sunday 15th March 2009, just short of the main road where it intersects with the side road at the Blackrock Dairy on the corner. I do not believe I was told the name of the side road itself. The side road is slightly less than 5 metres wide. At the point of the accident it is 4.8 metres wide. A sketch plan was handed up which shows dotted lines down the middle of the road but I am advised that there are no such road markings on this side road.

[5] The evidence of the Officer in Charge was that, from his general experience, he would estimate the width of the main road as somewhat in excess of 6 metres wide at the point of the intersection with the side road. There was, however, no formal measurement taken.

[6] The evidence clearly establishes that on the night in question the defendant was driving a Subaru Forester of a grey or silver colour and approached this intersection driving on the main road. She then turned left into the side road.

[7] At the same time as she was turning left into this road, two Fijian men were riding a motor cycle towards the main road down side road. The driver of the motor cycle was a Mr Laudola and his pillion passenger Mr Viviwa.

[8] It is common ground that there was then an accident in that the car and the motor cycle struck each other. The major factual dispute, as I understand it, is exactly where that accident occurred. Issues of speed also were raised and will need to be discussed.

Careless Use

[9] The test for careless use was agreed between counsel as being a standard of driving falling below that of a careful and prudent driver. Counsel did not have any formal authority to present to the Court although the Crown did refer to the earlier decision of *Chilwell* as supporting such a definition. A copy of the decision was not made available.

[10] During the course of the evidence, Mr George raised a number of factors by way of cross examination. Some of these concerned the environment that night, for example, whether it was raining, the quality of lighting, the width of the side road, and so on. There is some confused evidence on these points which I will discuss shortly.

[11] Mr George raised these issues against an implicit argument that these factors justified the standard of driving on the part of his client. However these factors cut both ways because if it is a dark night, for example, then a driver must take extra care.

[12] The evidence as to whether it was raining is slightly confused. Mr George emphasized that the driver of the motor bike and his passenger had different evidence on the score and he is right in that. However, where there are such differences I prefer the evidence of Mr Laudola. I found him to be a credible witness. He clearly appreciated the nature of the evidence that he was giving and he gave the impression of answering carefully and honestly when he did give his evidence. He said that there was what he described as spitting rain and gave the impression that there was light rain. He also accepted that, while there was some light around, it was not a moonlit night.

[13] These factors are relevant to the standard of driving that the defendant should have been applying. That is, if there is some rain and it is dark, that is cause for a greater standard than if those circumstances are not present. But those factors themselves clearly do not point to this being careless use of a motor vehicle. The key factor appears to me to assess where the

accident occurred. If the accident did occur on the left hand side of the side road, that is the left hand side as one looks at the sketch plan, that would show that the defendant was on the wrong side of the road. While the Court would need to account for all other evidence to assess whether that was then careless, that is a strong pointer to the standard of driving being careless.

[14] Mr George made much of the fact that this road was narrow and was in effect a single lane road. He is quite right that the road does appear to be narrower than the main road and it certainly does not seem to have lane markings on it. Nevertheless, that does not prevent me from finding that that defendant's car might have ended up on the wrong side of the side road and having been the contributing cause to the accident.

[15] Having heard the evidence I conclude that is what in fact happened. I find that the point of impact was on that side of the road shown on the sketch plan as being the left hand side of the road. There was evidence from the Investigating Officer that he saw damage in what was described as the flower bed on the side of the road near what he understood was the point of impact. The evidence from Mr Laudola was that he was driving on the left hand side of the road shortly prior to the point of impact and I accept that evidence.

[16] I now address the question of speed. There was evidence from Mr Laudola that the defendant's car appeared to be driving fast towards him. He was not able to estimate the speed. He gave evidence that the car appeared to loose some control as it went around the corner, before turning into the side road and that is consistent with the point of impact being on the wrong side of the road so far as the defendant is concerned. I accept that evidence.

[17] I have also had regard to the statement made by the defendant to Senior Sergeant Kavana. In that statement the defendant said that as she approached the Blackrock Store, she indicated to turn left intending to drive on the road going towards the back road. She then says "As I turned, I

collided against a motorcyclist but I don't know where it came from, whether it came from behind me".

[18] The evidence was, and I accept it, that the motorbike had its light on and was travelling at no more than 40 kilometres an hour. It should have been visible to the defendant if she had been travelling at a speed appropriate to the circumstances. So while I cannot find the speed at which she was travelling, I do find that she was travelling at a speed greater than the circumstances called for and as a result she ended up on the wrong side of the side road and caused the accident.

[19] Viewed in that way, I find the defendant to have been in breach of Section 26 (1). However, before making a final finding on that I address a number of other matters raised by Mr George. In addition to those I have already addressed, he put it to the driver of the motor cycle, Mr Laudola, that he was speeding. I reject that evidence. It was also put to the driver and the pillion passenger that they had been drinking. Both said they have not and I accept their evidence. Mr George also said there was no evidence as to the state of the motor bike and that might have caused the accident. He was right to criticize the Police investigation for failing to examine the motorbike but at the same time there were no questions put to Mr Laudola on this topic, for example, that his wife's bike was in someway defective. Indeed, I did not gain any impression from Mr Laudola's evidence to the effect that the bike, at least prior to the accident, was in some way faulty.

[20] The second component to a breach of Section 26 (1) is that there shall be bodily injury. In this case there was clear evidence that Mr Viviwa had been injured in the accident. I accept Doctor Jacobs's evidence that there was a deep scratch on his right angle. The injury, fortunately, was not a significant one. That may well be relevant at the sentencing stage but it is not relevant to the conviction. Consequently I find the second component of Section 26 (1) satisfied.

[21] I reject the various arguments raised by Mr George and, taking in to account the reasoning set out above, I find that the defendant was in breach of Section 26 (1) of the Transport Act as charged. The Police have proved this beyond reasonable doubt.

Failing to stop and Ascertain

[22] I now turn to the second charge which is that of failing to stop and ascertain. It is common ground that the car did stop for a few moments after the impact and then drove on. Mr George submitted that stopping in that way was compliance with the statutory provision. The statute, however, also goes on to require a driver who is involved in a relevant accident to ascertain whether any person has been injured. It is common ground that the defendant did not ascertain whether there had been such injury. Indeed in her statement she explained her conduct in these ways, "I was shocked and scared and didn't know what to do. I slowed down and stopped and because I was scared I drove off. I am sorry I didn't stop to see if anyone was hurt".

[23] Mr George did not seriously contest that evidence. Rather, he argued there were good reasons why the defendant failed to stop and he put to a number of witnesses this was because the defendant might have been scared of two, large Fijian men at about 10.30 at night when she had just knocked them off their motor bike.

[24] I accept there may be circumstances in which a woman driver of a car might well hold these sorts of fears. Whether they are rational or not, doesn't matter. They strike me as being reasonable fears.

[25] In this case there were two places where one might have expected to see these fears ventilated by the defendant. The first was when she had discussions with her cousin, Memory Heather. Ms Heather said that that issue was not raised with her. The other occasion when one might have expected to see it mentioned was in the statement made to the Police. There was no express mention of it there.

[26] This leaves me with a suspicion that this is an argument that has been dreamed up after the event to explain the conduct. I think, however, there is a more substantial problem with this defence which is that the Act does not appear to admit of such a defence. Section 37 (1) appears to speak in absolute terms of requiring the driver of a motor vehicle involved in an accident to stop and then to ascertain injury.

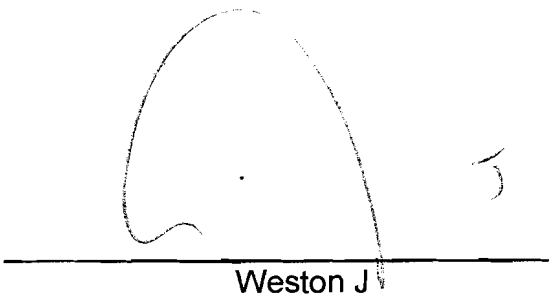
[27] There is no doubt in this case that there was a relevant accident. There is an argument that the driver stopped but there is no possible argument that she then ascertained whether there had been an injury.

[28] I asked Mr George whether there was any authority that supported his argument that this defence was available and he was not able to point me to any. I asked the Crown as well and I was advised that from the Crown's perspective this was an offence of strict liability. Certainly on the face of the section that appears to be the case.

[29] Accordingly, I find the Police have proved a breach of this section as well. It seems to me that the arguments raised by Mr George must, however, go to the question of any penalty and that is a matter that will need to be addressed in due course.

Conclusion

[30] I find you, Ms Solomon, guilty of both of these charges described in paragraphs [1] and [2] above.



Weston J