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IN THE SUPREME COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

REPUBLIC OF THE MARSHALL ISLANDS,)	S. Ct. Criminal No. 2007-008
)	
Plaintiff-Appellee,)	High Court Criminal No. 2005-046
)	
vs.)	OPINION
)	
THOMAS KIJINER, JR.,)	
)	
Defendant-Appellant.)	
_____)	

BEFORE: CADRA, Chief Justice; SEABRIGHT* and KURREN,** Acting Associate Justices.

SEABRIGHT, Acting Associate Justice:

BACKGROUND AND PROCEDURAL HISTORY

Thomas Kijiner, Jr. appeals his October 17, 2007 High Court conviction for Negligent Driving. On appeal, Kijiner contends that his conviction is not supported by sufficient evidence. For the reasons set forth below, we **AFFIRM** the High Court’s judgment.

Kijiner was charged with reckless driving, negligent driving, and

* Honorable J. Michael Seabright, District Judge, District of Hawaii, sitting by designation of the Cabinet.

** Honorable Barry M. Kurren, Magistrate Judge, District of Hawaii, sitting by designation of the Cabinet.

driving under the influence in connection with a hit-and-run accident that occurred early in the morning on September 26, 2005. On October 10, 2007 through October 17, 2007, a jury trial was held on the reckless driving charge.

At trial, the evidence showed that Ranny Lomout, after an evening of drinking, left the Long Island Club between 3 a.m. and 4 a.m. and began walking home along the drain outs on the lagoon side of the road. Lomout saw a vehicle's lights approaching, but the vehicle was going so fast that Lomout was "unable to jump or avoid being hit." Lomout later testified that he saw two men inside the vehicle and that he "d[id]n't really know what type or what kind of vehicle it was but it looked like a Ford." After he was struck by the vehicle, Lomout lay beside the road until Joanna Rilang saw him and sought help shortly after 6 a.m. A little more than five minutes after Rilang called for help, both an ambulance and police officers arrived.

Both Rilang and the police officers noticed broken car parts -- including pieces of a right side mirror, a signal light, and a headlight cover -- in the area immediately around Lomout. After collecting the broken parts and spending less than twenty minutes at the scene of the accident, the police officers drove toward the airport looking for a vehicle with corresponding damages. After driving for five to ten minutes -- making the time approximately 7 a.m. -- the

police officers spotted Kijiner's Isuzu pickup truck with no right side mirror parked outside of a house in Long Island. Police officers approached the pickup and found Kijiner asleep behind the wheel. Kijiner smelled of alcohol and it took police officers ten to twenty minutes to wake him. Upon waking, Kijiner could not walk straight and required assistance moving. While examining Kijiner and the vehicle, the police officers determined that the broken headlight cover found at the scene of the accident matched the missing headlight cover on Kijiner's pickup. The Isuzu was registered to Kijiner as of September 26, 2005.

After hearing the evidence, the jury returned a not guilty verdict. Thereafter, the High Court ruled on the two remaining charges -- finding Kijiner guilty of negligent driving and not guilty of driving under the influence. The High Court sentenced Kijiner to four months imprisonment, and ordered him to pay a \$200 fine and restitution in the amount of medical and travel expenses for Lomout.

STANDARD OF REVIEW: SUFFICIENCY OF THE EVIDENCE

We review Kijiner's conviction to determine if it is supported by the sufficiency of the evidence. A conviction is supported by the sufficiency of the evidence when "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319

(1979) (emphasis in original). In viewing the evidence in the light most favorable to the prosecution, the court “may not ask whether a finder of fact could have construed the evidence produced at trial to support acquittal.” *United States v. Nevils*, 598 F.3d 1158, 1164 (9th Cir. 2010). Instead, the court must construe evidence “in a manner favoring the prosecution.” *Id.* at 1167. “Only after we have construed all the evidence at trial in favor of the prosecution do we take the second step, and determine whether the evidence at trial, including any evidence of innocence, could allow *any* rational trier of fact to find the essential elements of the crime beyond a reasonable doubt.” *Id.* at 1164-65.

DISCUSSION

Kijiner contends that there is insufficient evidence that (1) his pickup was the vehicle that struck Lomout; (2) the vehicle that struck Lomout was driven negligently; and (3) that Kijiner was driving. We disagree.

First, the broken car parts link Kijiner’s pickup to the accident. The parts were found in the area immediately around where Lomout was struck. The parts found on the scene also “matched” the damages on Kijiner’s pickup -- the pickup was missing a right side mirror, which the police officers found at the scene, and had a broken headlight cover, the edges of which lined up with the broken headlight cover found at the scene. Although Lomout’s testimony that the

vehicle looked like a Ford is some evidence of innocence, any rational trier of fact could find this testimony unpersuasive based on Lomout's drunken state, the darkness of night, the speed of the accident, and Lomout's additional testimony that he "[d]idn't really know what type or what kind of vehicle it was." Thus, any rational trier of fact could conclude beyond a reasonable doubt that Kijiner's pickup was the vehicle that struck Lomout.

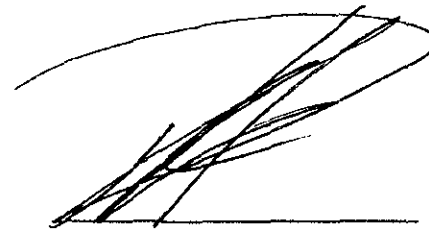
Second, on the issue of negligent driving, Lomout was struck while walking along the drain outs by a vehicle traveling sufficiently fast that Lomout was unable to jump out of the way or avoid being hit. A reasonable driver in the darkness of night would drive at a prudent speed and look out for pedestrians in the drain outs, an area where pedestrians commonly travel. Thus, when viewing the evidence in the light most favorable to the government, any rational trier of fact could find beyond a reasonable doubt that the driver of Kijiner's vehicle substantially deviated from the necessary standard of care when he struck Lomout.

Third and finally, the evidence is sufficient to show that Kijiner himself was driving when his pickup struck Lomout. When the evidence is viewed in the light most favorable to the government, police officers found Kijiner asleep and intoxicated behind the wheel of the vehicle that struck Lomout just three hours after the accident took place. Although Lomout's testimony that he

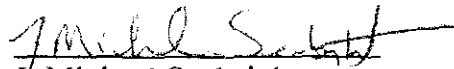
saw two men in the pickup that struck him is some evidence of innocence, any rational trier of fact could nevertheless conclude beyond a reasonable doubt that Kijiner was driving based on the fact that he was seated behind the wheel, intoxicated, the registered owner of the pickup, and found approximately three hours after the early morning hit-and-run accident.

In sum, there is sufficient evidence that Kijiner's pickup struck Lomout while being driven negligently by Kijiner. Accordingly, the court **AFFIRMS** Kijiner's conviction and sentence for negligent driving. Because Kijiner is on release pending appeal, we **REMAND** to the High Court to insure compliance with its sentencing order.

Dated this 2 day of August, 2010.



Daniel Cadra
Chief Justice



J. Michael Seabright
Acting Associate Justice



Barry Kurren
Acting Associate Justice