

Supreme Court Apia
Ryan CJ
8 April 1992

CRIMINAL PROCEDURE - Re-hearing application pursuant to S108
Criminal Procedure Act 1972.

Application for new trial on grounds of evidence available which
was not available at the time of trial, dismissed.

Edwards for Prosecution
Fepulea'i for Defence

RYAN CJ. The Defendant applies for a re-hearing on the grounds
that there is evidence available now which was not available at
the time of the Trial which would go to show that the evidence of
the prosecution witnesses was perjured, and that the Defendant
was innocent.

The evidence referred to is (a) evidence from the Defendant's
wife and (b) from the Defendant.

The trial took place on 19th February. On 8 January the trial
documents required pursuant to S.89 of the Criminal Procedure Act
1972 were forwarded to the Court. I must assume in the absence
of any submissions or evidence to the contrary that the Defendant
received his copies of same well before the trial date. Those
trial documents contained statements made by the girl concerned
and her mother but did not contain a statement from a witness by
the name of Netini Stowers who was also called. The statement of
the girl in particular should certainly have alerted the
Defendant to exactly what case the prosecution would attempt to
prove.

The Defendant's wife was available as a witness had he made even
the most minimal effort to locate her and it certainly cannot be
said that her evidence is new and was not available at the time.

As to the evidence of the witness Stowers as I said in my
decision she was cross examined as to whether she was ever at the
scene. I went on to say "I reached the conclusion that she was
the least convincing witness with some of the evidence that she
gave and I reached a further conclusion with my assessment of her
and the other 2 witnesses that none of them was particularly
bright intellectually".

It can be seen therefore that I placed no great reliance on Stowers evidence and whether evidence is available now or not that she was not at the scene is of little significance. In any event even if she had given birth to a child in Upolu on 14th May 1991 that date is not crucial of itself. This was a case where the incident was alleged to have occurred between 1st and 31st May and while there was clearly a doubt in my mind at the trial as to the value of Stowers' evidence and the truthfulness or otherwise thereof, the evidence of the mother and child was quite convincing as to an incident as described by them having taken place in May.

I am accordingly not satisfied that any of the evidence now set out in the affidavits is sufficient to warrant the ordering of a new trial and the application is dismissed.