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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M.307/84

891

BETWEEN

CROSS

Appellant

A N D

MINISTRY OF TRANSPORT

Respondent

Hearing: 5 July 1984

Counsel: J.S. Fairclough for Appellant
G.K. Panckhurst for Respondent

ORAL JUDGMENT OF ROPER J.

This is an appeal against conviction and sentence on a charge of driving in a manner which, having regard to all the circumstances, may have been dangerous to the public. The Appellant seeks to have the conviction set aside and the matter remitted back to the District Court for a rehearing on the ground that he is now in a position to tender further evidence to the effect that he was not the driver of the vehicle at the relevant time.

For the purposes of this appeal the Appellant takes no issue with the identity of the vehicle or the manner in which it was driven, but simply denies that he was the driver. It is alleged that the real driver was the actual owner of the vehicle, one Dion Chammen.

The witness, Miss Williams, who at that time was the girlfriend of Chammen, has filed an affidavit to the effect that Chammen was the driver and not the Appellant. She was called as a witness at the lower Court hearing but failed to turn up because she slept in. The Appellant could have obtained an adjournment of the case at that point but the difficulty was that he had no counsel and was conducting his

own case, and may not have been aware of his rights to an adjournment which, in the circumstances, would probably have been granted.

I have to be satisfied that the fresh evidence was not reasonably available at the time of the earlier hearing and that that evidence is credible evidence. I have now heard evidence from Miss Williams. I am not prepared to say that that evidence is not credible. It appears that she has no real friendship with the Appellant and in a broad sense it could be said that that evidence was not reasonably available at the time of the hearing because of Miss Williams' inadvertent failure to turn up.

I am satisfied that justice requires a rehearing of the matter and it is remitted to the District Court for that purpose.

A handwritten signature in dark ink, appearing to be 'D. C. P.', is written on the right side of the page.

Solicitors:

Cavell, Leitch, Pringle & Boyle, Christchurch, for Appellant
Crown Solicitor, Christchurch, for Respondent