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**IN THE SUPREME COURT OF TONGA
CRIMINAL JURISDICTION
NUKU'ALOFA REGISTRY**

CR 01 of 2017

BETWEEN: R E X - Prosecution

AND: TAUHEANGO FILOHEVALU MA'AKE - Defendant

BEFORE THE HON. JUSTICE CATO

Mrs Langi for the Prosecution

Mr Tu'utafaiva for the Defendant

VERDICT

1. The accused was charged with reckless driving causing death contrary to section 25(5) of the Traffic Act particulars of which were that, on or about the 18th September 2016 at Pahu, he did drive his motor vehicle recklessly by driving in a speed and manner dangerous to the public. The gravamen of the charge was that he had been racing with another vehicle and that he had caused it to swerve off the road and collide with a cargo container causing the death of the driver a Mr Iteni Maile.
2. The only witness called by the Crown who was in the vicinity of the accident was Ha'ahao Soane. She was travelling East along the Bypass road in the early hours of the morning when she saw two cars approaching her at speed. She said they were overtaking each other repeatedly. She had to pull over to the side as the cars passed by her. She stopped and then drove on.

She then said she heard a bang from behind but she did not stop or drive back.

3. The accused's car which was a smaller vehicle than the other vehicle which was a red four wheel drive van, was on the left hand side as the cars travelled in a westerly direction towards her. The red van was on the other side of the road and it was this vehicle that she had to avoid. She said from about a 100 metres she had seen them zigzagging, and overtaking one another. She admitted that the only lighting came from the cars lights. She estimated the time would be 3.30am. She agreed that the cars had proceeded around a bend that was behind her before the crash. She said, under cross-examination, that she saw two sets of lights coming towards her at speed occupying both sides of the road. She maintained that there was criss-crossing. As they went to pass, she said the red car was trying to pass the back car at speed. She was asked if it was overtaking, and her reply was that she did not know about that. She said that she was scared or afraid. She could not pay attention to them because she was paying attention to her safety.
4. The accused was interviewed on the 20th September after he had voluntarily come to the police station. He had decamped with his car left in the middle of the road after the accident he said because he was afraid people in the van might try to beat him up and he did not know what to do. He went to sleep on a beach and then when in the afternoon he woke up he, he went straight back to the police station. He denied he was racing with the deceased.
5. He said that he was driving home along the Bypass road when a vehicle was travelling behind him at a fast pace. He noticed it first when they were about 80 metres apart. He said he was travelling about 55 K/per hour. He said he had reached a curve

when this vehicle tried to overtake him. He turned in front of his vehicle but he had not gone past when the left side of the wing and wheel of the other vehicle smashed into the right side of his car and he had tried hard to stop but could not control his car. The vehicleslid off together to the left hand side of the road and the passing vehicle smashed into the container, sprung back and hit his car which turned northwards.

6. Officer Likiliki who took the record of interview also produced a video from a security camera taken from a nearby shop that showed the passing movement as the vehicles passed out of the corner and proceeded to slide. He agreed when it was put to him by Mr Tu'utafaiva that what the video pictured was very similar to the explanation the accused had given for the accident. The video had not been shown to the accused before his interview.
7. One further witness was called who had been at a "drink up" with the accused. He had been, however, in another vehicle at the drink-up and was not able to say what the accused was drinking. He lost sight of the accused when driving away down the Bypass Road. He saw his car next after the accident had happened. He was unable to add materially to the evidence given earlier.
8. The accused did not give evidence.

FINDINGS

9. I do not consider that the evidence of the witness Ha'ahao Soane that the vehicles were ziggzagging was a reliable basis for a finding that the accused had been driving recklessly. Her observations were based simply on lights coming from the oncoming cars and she herself admitted understandably that her focus was on taking evasive action to avoid the car coming towards her which I find was a red van which later collided with

the container. She had very limited opportunity (only a short period in difficult circumstances) in my view to observe the passage of the vehicles towards her along the Bypass road at about 3am. The accused denied racing the vehicle. There was no evidence that the accused and the deceased were known to each other, or that either had reason to be racing or interfering with each other's passage along the road.

10. The video tends to confirm the accused's explanation that the van which was a four wheel drive went past him at speed and then from the video the two cars are seen to travel off the road with the van colliding first with the container and then the accused's car colliding with it and then spinning around in a northerly direction where it stopped in the road, showing the accused leaving the vehicle. From the way in which both cars left the road before the red van collided with the container, I infer that the van must have collided with the right side of the accused's vehicle causing it also to shift to the left.
11. I am not satisfied beyond a reasonable doubt that the accused was driving recklessly and in such a manner as to have caused or materially contributed to the accident and the unfortunate death of Mr Maile. I cannot draw any adverse inference against the accused because he left the scene, in the light of his explanation.

VERDICT

Not Guilty. The accused is discharged.



C. B. Cato
**C. B. Cato
JUDGE**

DATED: 25 OCTOBER 2017