IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CRI-2024-404-682
[2025] NZHC 732

BETWEEN	RENEE WARU Appellant
AND	NEW ZEALAND POLICE Respondent

Hearing: 11 March 2024

Appearances: R Roy for Appellant
C Best for Respondent

Judgment: 1 April 2025

JUDGMENT OF BECROFT J
[Appeal against costs]

This judgment was delivered by me on 1 April 2025 at 2pm.

Registrar/Deputy Registrar

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Solicitors/Counsel:
R Roy, Manukau
Kayes Fletcher Walker, Manukau

What this appeal is about

[1] Ms Renee Waru appeals against a decision of Judge J C Moses[1] declining to award her costs against the prosecutor under the Criminal Procedure Act 2011 (the Act).

[2] Section 364 allows a court to award costs against the prosecutor (or a defendant or their lawyer) if the court is satisfied there has been a "procedural failure" that is "significant" and for which "there is no reasonable excuse".

[3] Ms Waru faced a charge of common assault under the Summary Offences Act 1981.[2] Approximately 17 months later, she pleaded guilty to a (fine only) charge of disorderly behaviour.[3] In the long progression of her case, Mr Roy, appearing for Ms Waru, identifies two procedural failures by the prosecution which he says are "significant".

[4] The first was the prosecutor's admitted and ongoing failure, lasting six months and 22 days, to disclose to the defence a highly relevant video of the incident. Mr Roy argues that pursuant to s 13(1) of the Criminal Disclosure Act 2008, the police failure to disclose the video as soon as reasonably practicable after Ms Waru pleaded not guilty, caused her prejudice. In this judgment I refer to this as the "disclosure failure".

[5] The second was the prosecutor's now admitted failure to respond, on two separate occasions, to detailed case management memoranda prepared by Mr Roy with the result that two subsequent case review hearings were rendered ineffectual. Mr Roy argued that contrary to s 55(1) of the Act, the police failed to engage in case management discussions and to jointly complete the two case management memoranda. Thus, the police were in no position to respond to Mr Roy's concerns, or to consider whether it was reasonable, on the evidence available to the police, to proceed with the assault charge. I refer to this as the "case management failure".

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1 *Waru v New Zealand Police* [2024] NZDC 25445 [Judgment under appeal].
2 Summary Offences Act 1981, s 9, maximum penalty six months' imprisonment or a fine not exceeding $4,000.
3 Summary Offences Act 1981, s 4(1)(a), maximum penalty a fine not exceeding $1,000.

[6] Mr Roy submits that the learned Judge erred in not identifying or sufficiently engaging with these two procedural errors. He submits those procedural failures, individually and jointly, are "significant" and that there is no reasonable excuse for them. Consequently, he says the prosecutor should have been ordered to pay costs.

[7] Appeals such as this are carried out by way of rehearing. After carrying out my own assessment of the matter, as is required,[4] I have come to the view that an award of costs against the prosecutor is not justified. Neither procedural failure was "significant". What follows are my reasons for confirming Judge Moses entirely appropriate and principled decision.

Ms Waru's charge and its progression through the District Court

[8] The following chronology (laden with detail) sufficiently identifies how Ms Waru's case progressed through the District Court. It identifies and describes the two procedural failures (in bold) and explains why the case was eventually resolved. In my view, when the chronology is understood, it becomes clear that neither of the two procedural failures can be described as "significant".

22 January 2023	Police attended a residential address in Papakura to investigate a violent incident arising from a short-lived neighbourhood/wider family dispute. One of the occupants alleged that Ms Waru had "straight punched her" in the mouth causing a cut to her lip that did not bleed.
23 January 2023	Police charged Ms Waru, jointly with another person who was involved in the incident, with common assault under s9 of the Summary Offences Act 1981. Ms Waru appeared at the Papakura District Court and was granted bail with conditions.
24 January 2023	Ms Waru appeared at the Papakura District Court and entered a not guilty plea.
25 January 2023	**Police received a video of the incident from the victim which had been recorded by another family member. The officer who received the video sent it to the Criminal Justice Support Unit (CJSU) for disclosure. It was not actioned.**

[4] Section 271 of the Criminal Procedure Act provides a right of appeal against a decision to make or refuse to make a costs order under s 364 of the Act. Section 274 sets out the options available to the court, on appeal. See also *Bublitz v R* [2019] NZCA 379 at [23]–[25] citing *Taipeti v R* [2018] NZCA 56, [2018] 3 NZLR 308 at [49].

26 January 2023	Police sent initial disclosure documents (but not the video) to Ms Waru's lawyer, Mr Roy.
30 March 2023	**Mr Roy invited the prosecution to discuss his draft case management memorandum (CMM) for Ms Waru. He asked for a response by close of business on Monday, 10 April 2023. It was precisely and constructively formulated.**
10 April 2023	**No response had been received and that evening Mr Roy filed his CMM noting that "unfortunately, as usual, the police declined to respond to counsel, so the memorandum is only signed by the defence".**
18 April 2023	First Case Review Hearing (CRH). Mr Roy did not have up-to-date instructions from his client. He had no reason to doubt she maintained her not guilty plea. Mr Roy understood that three other defendants were now jointly charged with his client. His CMM identified several technical problems with the form and content of the charge and the police summary and inadequacies in disclosure. Lawyers for the other co-defendants weren't as prepared as they might have been. It was accepted that another case review would be "useful".
2 May 2023	**Mr Roy invited the prosecution, for a second time, to discuss his updated CMM. He sought a response by close of business, Monday, 8 May 2023. The CMM was even more detailed and focussed and raised several issues**.
9 May 2023	**Mr Roy filed his second case management memorandum. He added, as with his first filing, "unfortunately, as usual, the police declined to respond to counsel, so the memorandum is only signed by the defence".** His memorandum identified issues including the lack of statements from six of 10 prosecution witnesses; failure to identify relevant photographs; no disclosure of the 111 call mentioned by a witness; other documentary problems; and a note that "counsel invited the police to take part in case management discussions, but this got no response".
16 May 2023	The second CRH took place. There were discussions regarding unresolved problems with provision of statements, photographs, 111 call etc. Mr Roy also advised the court, as per CMM, that police notes recording questioning of Ms Waru are considered inadmissible. As a result, Judge Sharp set the matter down for a pre-trial hearing on 29 August 2023 and for the resolution of any other issues. Some frustration as to lack of police preparation.

16 August 2023	**The video of the incident is first disclosed to Mr Roy, nearly seven months later.**
29 August 2023	Hearing of prosecution application for pre-trial order that policewoman's notebook questions and answers was admissible. Evidence ruled inadmissible on grounds of irrelevance.
7 December 2023	Ms Waru's application to dismiss the charge under s 147 of the Act declined. Judge Lovell-Smith reviewed the video of the incident and found that: (a) the video did not consistently show Ms Waru. It focussed from time to time on one person and was taken from a distance; (b) the combination of those factors meant the view of what happened was incomplete; (c) the trial issue was one of credibility, and given the victim's statement that Ms Waru punched her in the face, the video recording did not provide a complete defence to the charge; (d) Ms Waru appeared to be acting "in a manner that could be construed as being part of the melee and acting aggressively".
25 January 2024	Case callover: Dates were set to proceed to 8 July 2024 Judge-alone trial (JAT).
14 May 2024	Prosecution applies to lead evidence in an alternative way.
20 June 2024	At a callover, the police file records that the prosecutor who appeared phoned the complainant that day and she told the prosecutor: (a) that she was not sure about what the appellant had done and was not confident in the clarity of her memory; (b) that Ms Waru had called her and apologised to her following the death of a family member and that she had accepted Ms Waru's apology. Following that phone conversation, the police offered to resolve the matter with a charge of disorderly behaviour, to which Ms Waru pleaded guilty and she was convicted and discharged without any penalty.
29 June 2024	Mr Roy files an application for costs.
6 December 2024	The application was heard with leave for the police to file further submissions regarding the second case review hearing.
31 October 2024	Costs decision released.

The law: when can costs orders be granted?

[9] Section 364 of the CPA provides:

> **364 Costs orders**
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> (1) In this section, —
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> …
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> (2) A court may order the defendant, the defendant's lawyer, or the prosecutor to pay a sum in respect of any *procedural failure* by that person in the course of a prosecution if the court is *satisfied that the failure is significant and there is no reasonable excuse for that failure*.
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> (3) The sum must be no more than is just and reasonable in the light of the costs incurred by the court, victims, witnesses, and any other person.
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> (4) A costs order may be made on the court's own motion, or on application by the defendant, the defendant's lawyer, or the prosecutor.
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> (5) Before making a costs order, the court must give the person against whom it is to be made a reasonable opportunity to be heard.
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> (Emphasis added)

[10] Section 364(1) of the Act defines a procedural failure as:

> … a failure, or refusal, to comply with a requirement imposed by or under this Act or any rules of court or regulations made under it, or the Criminal Disclosure Act 2008 or any regulations made under that Act.

[11] The Court of Appeal in *R v Lyttle* confirmed that not all procedural failures will meet the threshold of "significant".[5] When considering whether a procedural failure is "significant", the Court "will need to carefully assess the impact of the failure on the proceeding".[6]

[12] The Court elaborated:[7]

> [11] A significant procedural failure is one that causes avoidable delays in the administration of criminal justice. Such delays:
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> (a) risk undermining confidence in the criminal justice system;

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5 *R v Lyttle* [2022] NZCA 52, [2022] NZAR 117 at [12].
6 At [12].
7 At [11].

(b) may cause incalculable stress and inconvenience to participants in the criminal justice system, including defendants and victims;

(c) cause the wasting of judicial and court resources that might otherwise be deployed on other cases; and

(d) waste preparation and hearing time of counsel, the parties, witnesses and other participants in the criminal justice system.

[13] Moreover, relevant factors in assessing the significance of a failure include its effects and consequences, whether it resulted in delays or added costs, and whether it was inadvertent, in bad faith or intended to gain an advantage.[8]

[14] There are other relevant indicia which may also make a failure "significant". These include the court's involvement being repeatedly required, assurances given to the court being shown to be wrong, obviously relevant material being withheld, involvement of senior officers in errors, failures of audit processes, inadequate systems, the potential for further failures and the seriousness of the underlying charge and potential sentence.[9] In particular, this Court has expressly found that a failure to engage in case management discussions and not filing case management memoranda could constitute a "significant" failure, depending on the circumstances.[10]

[15] Additionally, given the relatively minor nature of a charge of assault under the Summary Offences Act, even a short delay, risks being "significant" in terms of s 364. In many situations, cases involving only minor charges could be reasonably expected to find a more expeditious resolution than serious or complex cases. In other words, when "significance" is viewed against the context of the case, proportionality of the delay becomes a relevant consideration.

The District Court decision

[16] Judge Moses noted that s 364 of the Act was the relevant statutory provision and referenced the court's comments in *R v Bublitz*.[11]

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8 *R v Bublitz* [2018] NZHC 373 at [71].
9 *R v Lyttle* [2020] NZHC 488 at [68].
10 *McLean v Auckland District Court* [2018] NZHC 552, [2018] NZAR 684 at [30].
11 *Waru v R*, above n 1, at [7] citing *R v Bublitz*, above n 8 at [71].

[17] In respect of the disclosure of the video, he accepted the police submission that the late disclosure was an oversight.[12]

[18] He held that the late disclosure did not cause any delay to the eventual determination of the case and was insufficient to warrant an award of costs.[13]

[19] When considering the issue of the case management discussions, his Honour held that it was difficult to establish from the information who did what and when. He noted that it did not seem that there were any defence witnesses who would be required to be called at the Judge-alone trial scheduled because of a lack of engagement.[14] A pre-trial admissibility hearing was appropriately scheduled. Overall, the police had sufficient evidence to proceed with the assault charge and it was appropriate to do so.[15]

[20] His Honour then went on to find that there was no fault or wrongdoing on the part of police by proceeding against the appellant on the charge of Summary Offences Act assault, and for the matter resolving in the way it did.[16] Moreover, the eventual resolution was not a result of, or delayed by, the procedural failures. Judge Moses also noted that the delay in hearing the matter was in part due to the two pre-trial hearings initiated by the defence and which "added little to the defence case."

The two procedural obligations – and their breach

[21] The police unreservedly accept the disclosure failure and the case management failure, both of which arise from statutory obligations, which I now briefly discuss.

[22] Regarding the *disclosure failure*, s 13 of the Criminal Disclosure Act 2008 required the prosecutor to disclose defined information to Ms Waru as soon as reasonably practicable after she pleaded not guilty. That obligation is an ongoing one. The defined list,[17] described as "standard information", includes all exhibits the prosecutor proposes to introduce as evidence as part of the prosecution case. The

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12 At [8].
13 At [8].
14 At [11].
15 At [12].
16 At [17] and [18].
17 Criminal Disclosure Act 2008, s 13(3).

mobile phone video of the incident would almost certainly fall under that category. In any event, the fact it was required to be disclosed under s 13 is not disputed.

[23] The codification of prosecution disclosure obligations in 2008 constituted a significant step forward in the conduct of criminal justice in New Zealand. An aim of the Act was to promote "fair, effective and efficient disclosure of relevant information between the prosecution and the defence".[18]

[24] As to the *case management failure*, the relevant obligations arise under s 55 of the Criminal Procedure Act 2011. When a defendant is represented by a lawyer, a prosecutor and defendant must engage in case management discussions to ascertain whether the proceeding will proceed to trial and, if so, to make any arrangements for its fair and expeditious resolution. Furthermore, the parties must jointly complete a case management memorandum addressing the information that is statutorily specified.[19] The subsequent case review hearing must deal with matters identified in the case management memorandum.[20]

[25] This new case management procedure did not correspond to any previous provisions in the prior legislation. Its purpose was to place an onus on the parties to progress the case as much as possible outside the courtroom, and required a high level of cooperation between all parties in order to move cases from filing to disposition in a timely, efficient and appropriate way.[21]

[26] The Prosecution Guidelines expand on the importance of prosecutors engaging in the Act's process, describing an obligation to:[22]

> … use their best efforts to engage in case management discussions with defence counsel for the purpose of completing the Case Management Memorandum…

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18 Section 3(1).

19 Criminal Procedure Act 2011, s 55(1)(a) and (b).

20 Section 56 specifies what information must be provided in the case management memorandum.

21 See Matthew Downs (ed) *Adams on Criminal Law – Criminal Procedure* (looseleaf ed, Thomson Reuters) at [CPA55.01].

22 Crown Law Office *Solicitor-General's Prosecution Guidelines – Case Management* (1 January 2025) at [7]–[8].

> Where a CMM has not been filed, prosecutors should not file one unilaterally. However, in some cases it may be useful to provide the court with a separate memorandum outlining the matters which require judicial intervention from the prosecution's perspective, and advising the court of the efforts made to engage with defence counsel.

[27] Frankly, the legislation does not regard case management processes as mere "nice-to-haves". They are obligations, in the full sense of the word.

[28] As to the case management failure here, this Court now has more information before it than was available to Judge Moses. The police now accept that the case management memoranda were almost certainly not completed, and if they were, they were certainly not sent or discussed with Mr Roy at all. Also, there was an admitted total failure to engage in case management discussions prior to the two case review hearings. It is also accepted that Mr Roy's record of the two case review hearings is correct and that the first hearing (and from his point of view the second also) proved futile.

[29] As I say, the police accept full responsibility for both failures, which are explained as an oversight — a clear lapse in police practice — but without bad faith.

Were the two procedural failures significant?

[30] This is the issue at the heart of this appeal. I can well understand Mr Roy's frustration, given the apparent ongoing negligence by the police in failing to adhere to their prosecutorial obligations. However, not all failures will result in an award of costs, because not all procedural failures are "significant".

[31] There is no statutory definition of "significant". The descriptor has been discussed in the cases. There is no need for me to restate that analysis. Mr Roy referred to the Collins Dictionary definition as "large enough to be important or affect a situation to a noticeable degree". As the cases make clear, the word is to be applied with reference to the context of the procedural failure. It must be examined in light of the progress of the case, the effect of the failure, and the eventual outcome. Were it otherwise, virtually all failures would qualify because in the abstract sense most failures in my view could be classified as significant.

The disclosure failure

[32] I accept that had the video been disclosed to Mr Roy earlier, it might have potentially enabled him to discuss with the police an earlier resolution to the case. Late disclosure, he said, deprived him of that opportunity. However, I am quite sure that had there been that earlier discussion, in the circumstances of this case, there would have been no resolution. Even with the video, the police were justified in proceeding to trial on the evidence they had and that was clearly the police position throughout. This was Judge Lovell-Smith's subsequent perfectly reasonable conclusion.

[33] With respect, Mr Roy overstated the position in his submissions that the video could be considered a "slam dunk" which, when properly considered by the police, would have inevitably resulted in the dismissal of the charge or the prosecution choosing to withdraw the charges for want of evidential sufficiency. I can understand, so far as Mr Roy's submission goes, that the video would have the potential to cast doubt over the complainant's credibility. However, as the s 147 decision shows,[23] the video was not a complete depiction of the event. Obviously, the complainant's statement would be challenged in light of the video as it did not show the complainant's allegations. However, in my view, the evidence available to the police, including the video, was sufficient to proceed to trial.

[34] Undeterred by what I indicated to Mr Roy was this reality, he drew a distinction between the "no case to answer" test under s 147(4)(b), and the test for evidential sufficiency as required by the Prosecution Guidelines, which provide as follows:[24]

> The prosecutor should be satisfied there is sufficient evidence to prove the charge beyond reasonable doubt.
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> …
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> In assessing whether the Evidential Test is met, the prosecutor should consider all the available evidence, including exculpatory evidence. However, there are some types of evidence that should either be excluded from consideration or should be treated with care, to ensure that the evidence founding the prosecution is available, admissible, credible, and reliable.

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23 *R v Waru* [2023] NZDC 27719.

24 Crown Law Office *Solicitor-General's Prosecution Guidelines – Decisions to Prosecute* (1 January 2025) at [7] and [9].

[35] For what it is worth, I agree with Mr Roy that the evidential sufficiency limb of the Prosecution Guidelines may constitute a lower bar for bringing a prosecution than the s 147 test for dismissing a charge. The difference between the tests is not a matter I need to determine in this case.

[36] Here, I accept that both the evidential tests were met and there was sufficient evidence to proceed to a Judge-alone trial given that:

(a) The formal statement from the complainant was clear and unambiguous as to an offence having been committed.

(b) Despite the video showing an incomplete view of the incident, it did show Ms Waru acting in a way that "could be construed as being part of the melee and acting aggressively".

(c) The available photographs show injuries sustained by the complainant.

[37] I also observe that it would have been highly unlikely, given the s 147 decision, that any prosecutor would from that point on have concluded that there was not sufficient evidence to prove the charge beyond reasonable doubt. And, as I have observed, at any point before that decision the police would, quite justifiably, not have withdrawn the charge — despite Mr Roy's hypothesising to the contrary.

[38] All of this is simply to say that the late disclosure of the video did not materially affect the police decision to proceed with the case. The reality is Ms Waru's charge was going to a Judge-alone trial, video or no video.

[39] I also emphasise the disclosure failure was clearly inadvertent. It was not intended to provide the police with an advantage in the prosecution. Had the video been the "slam dunk" that Mr Roy suggested it was, then of course the situation would have been quite different. In that case, Ms Waru would have been subjected to months of court involvement, and the attendant stress and anxiety, that would have been quite needless and unjustified as the case would have been resolved earlier. But on the facts of this case, there has been no injustice.

[40] My only remaining concern is the potential additional delay arising from the s 147 application which perhaps would have been filed earlier, had the video been disclosed when it should have been. I add that, tactically, Mr Roy may have required the admissibility hearing regarding the police officer's notebook to have been resolved first, so there may not have been a delay in scheduling the s 147 application in any case. I have no information as to what delays were then being experienced in the Papakura District Court in terms of hearing s 147 applications and, more importantly, the delays in obtaining a date for the Judge-alone trial. That is not to say that any delays are not significant to a defendant such as Ms Waru, or that they can be readily excused, as mentioned in *McLean*.[25] But it is to say, that in the circumstances of this case, I am not satisfied that the disclosure failure was "significant".

The case management failure

[41] While the police did not engage with Mr Roy prior to the first case review hearing, Mr Roy accepted that the case review hearing itself was also affected by the varying degrees of inadequate preparation by the lawyers for the three or four co-defendants. At that stage, a meaningful case review hearing for the joint proceedings could not take place, and it was plain that the matter was not ready to proceed to trial for other reasons, additional to, but unrelated to the case management failure.

[42] The failure to engage with Mr Roy on a second occasion, prior to the second case review hearing, was considerably more inexcusable and unacceptable. It defeats the whole purpose of the legislation. One would have thought given the preceding failure, the police might have "prioritised" or "red flagged" the matter. That said, the presiding Judge at the second case review hearing accepted the realities of the situation and ordered that the case be set down for a pre-trial admissibility hearing regarding the police officer's notebook record. At that next hearing, the Judge made clear that all other unresolved case review issues could be sorted out. There was no further delay caused by the case management failure.

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25 *McLean v Auckland District Court*, above n 10.

[43] Mr Roy suggests that, but for the case management failure, the matter may have been resolved at an earlier stage. That is entirely speculative. As I have already outlined, what is known is that later discussions confirmed that the police would proceed. There is nothing to suggest that an earlier resolution would have occurred. Indeed, given what we do know, a resolution at an earlier stage just wouldn't have happened.

[44] The principal reason for the eventual resolution in June 2024 was the memory degradation and unwillingness of the complainant to be involved in the trial.

[45] As identified by Judge Moses, "a complainant's attitude will change after a period of time". And, as required by the Prosecution Guidelines, the assessment of evidential sufficiency and public interest must be, and was, a matter of ongoing assessment. That new assessment, in light of the complainant's new position, required the police to take a different approach.

[46] In the circumstances of this case, the case management failure cannot, by itself, be said to have caused avoidable delays or costs. The one delay that Mr Roy points to, that is the scheduling of a second case review hearing, was necessitated not only by the police procedural failure in respect of Ms Waru, but also because the other co-defendant(s) were not in a position to proceed.

Conclusion as to the two procedural failures

[47] In my view, although the police procedural failures were inexcusable, and even accepting Mr Roy's evident frustration, the identified failures in these circumstances cannot be classed as "significant". I accept that costs are primarily punitive, to punish non-compliance, rather to compensate a party.[26] But this is not the case to discipline the police.

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[26] *Bublitz v R*, above n 4, at [44].

[48] The reality is that, if costs were awarded in this case, then they ought to be awarded in every case where there was human oversight or inadvertent mistake which did not greatly prolong the proceeding and where there was no disadvantage to the defendant, other than experiencing the frustration of non-compliance with the process.

[49] I also need to say, albeit cautiously, that any delays attributed to the two process failures in this case in fact may have advantaged the defendant. With the passage of time, the complainant's memory had dimmed. There was time for an apology, which was accepted, and the complainant had by that stage lost interest in the matter and moved on. It was that, rather than any evidential weaknesses in the Crown case to begin with, or any procedural failure, that brought about the favourable resolution for the defendant.

[50] As I said to Mr Roy during submissions, he has hitched his argument (and his frustrations about the case management procedure failures) to the wrong facts. It would have been quite a different story had the video been the "slam dunk" that Mr Roy said it was, or if it was plain that the charge would have been resolved in Ms Waru's favour if the required discussions with the prosecution had taken place.

[51] In short, I reach the same conclusion as Judge Moses. The brevity of his decision is to be admired. However, before me, the case was much more comprehensively argued with voluminous submissions. The essential conclusion is however the same.

Some wider concerns

[52] I pause before making some general comments about the case management procedure prescribed in the Criminal Procedure Act 2011. I hope the following comments area helpful.

[53] This procedure, according to counsel appearing before me, seems bedevilled by delays, inconsistent responses and sometimes haphazard engagement by both prosecution and defence. This frequently leads to cases taking more, not less, time to resolve. This is the very opposite of what the legislation intended.

[54] As this appeal was argued, it became clear that the two failures identified by Mr Roy in this case were, in his experience, by no means uncommon within the Papakura police prosecutions department. Indeed, Mr Roy went so far as to submit:

> Counsel has checked all of his Papakura case reviews where there was an opportunity for discussions, from 2022 to the present. In 36 of 42 matters, the police did not engage in case management discussions, or jointly complete a case management memorandum, before the filing deadline (an 86 per cent failure rate). It is submitted that there is a culture of non-compliance.

[55] Mr Roy also informed the Court that, in his experience, the position in the Manukau District Court is marginally better that in Papakura, but still of concern. He contrasted that to what he said was the much more positive situation in Pukekohe District Court. Mr Roy was speaking as an officer of the Court, so I have no reason to reject his comments. From his point of view, they are a rather damning indictment of the procedure which supposedly is designed to speed up the resolution of charges.

[56] Ms Best for the Crown could, understandably, make no meaningful response given she is not a police prosecutor. However, she did note that when the Crown is involved, a specific counsel is appointed for each file and is responsible for its progress. Mr Roy immediately acknowledged that this was an infinitely superior position which did not cause the types of problem that he suggested pervade some District Court police prosecution teams. Mr Roy submitted that in a District Court case review hearing list, a prosecutor may have charge of 30 to 40 cases for the day — having received the files only a day or so before the hearing with no time for meaningful preparation.

[57] I cannot make specific findings as to the compliance with procedural obligations by the South Auckland police prosecution services generally. It would be quite unfair to do so without more evidence and without hearing from the police.

[58] I can say that, from my own experience as a former District Court Judge, I know something of the frustrations of the case review hearing process. On too many occasions hearings needed to be adjourned so that either the police or defence counsel (or both) could comply with their obligations.

[59] In practice, I rather get the impression from counsel (and my own experience), that the regime that was introduced with high hopes of efficiency and speeding up the process[27] has, in fact, sometimes slowed down the process. It has introduced extra steps that, too often, do not bring about any meaningful progress or resolution, while providing another opportunity for adjournments which further clog already jammed District Court schedules.

[60] All case management systems depend on human interaction and co-operation. The old system had its problems too. Judge-alone trials were simply set down for hearing after a not guilty plea. Defended hearing lists were artificially overloaded. This was done because experience showed that most cases were resolved just before the hearing. It was only the cold reality of a defended hearing that really caused the police to effectively review the matter and consider an alternative resolution. And similarly, for the defendant to realise that the case was undefendable or could be resolved by alternative charges. Often the entire defended hearing list, sometimes with up to 15–20 scheduled hours of cases, would collapse. Sometimes it wouldn't — in which case it would be impossible to hear all the scheduled defended cases. Delays (and frustrations for complainants in particular) became endemic. As a result, Judge-alone trials couldn't be set down quickly because all the available dates were used up. Backlogs grew and grew.

[61] The current system is designed to avoid all that. But it depends on constructive and robust upfront discussion, and it perhaps overlooks that adjournments and delays in themselves are often an advantage to the defence.

[62] This decision, I imagine, will be referred to the police prosecutions department in South Auckland. It could also usefully be referred to the National police prosecutions service, and the Chief District Court Judge. I so direct. Any further action is for them. I say no more.

Becroft J

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[27] See *Bublitz v R,* above n 4, at [33].