

the amount of force exerted, the means or instrument by which it is applied, the manner or method of applying it, and the circumstances under which it is applied are factors to be considered.

[5] Upon consideration of all the factors set forth above, it is the opinion of this court that the appellant, having thrown the victim on the ground, used force in excess of that which he was privileged to use in picking up a rock and striking the victim's head.

JUDGMENT

The finding of guilty and the sentence appealed from in Palau District Court Criminal Case No. 137 are affirmed.

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JOHN CHISATO, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 63

Trial Division of the High Court

Palau District

July 30, 1954

Defendant was convicted in Palau District Court of failing to comply with lawful order of policeman, in violation of T.T.C., Sec. 815(h). On appeal, the Trial Division of the High Court, Associate Justice James R. Nichols, held that instruction given defendant by constabularyman several months previous to alleged violation was not such "order, signal or direction" as contemplated by Section 815(h).

Reversed.

**Failure To Obey Lawful Order of Policeman—Generally**

Language of Trust Territory law regarding failure to obey lawful order of policeman contemplates signals or direction, immediately given in direction, control or regulation of traffic, and not general or specific instructions given operator an hour, day or month previously. (T.T.C., Sec. 815(h))

*Assessor:* JOSEPH TELLEI  
*Interpreter:* FRANCISCO K. MOREI  
*Reporter:* ZELLA L. MOORE  
*Counsel for Appellant:* ROMAN TMETUHL  
*Counsel for Appellee:* SGT. ULENGCHONG

NICHOLS, *Associate Justice*

At the trial of this case, the evidence showed that the appellant drove a truck past the Headquarters of the Insular Constabulary with a passenger lying on the fender. He was stopped and handed a citation charging him with a violation of Section 815(h) of the Trust Territory Code which provides "It shall be unlawful for any person to refuse or fail to comply with any lawful order, signal or direction of any policeman with authority to direct, control or regulate traffic". The appellant was convicted and fined the sum of \$3.00.

The appellant contends that he was not guilty of violating Section 815(h) of the Trust Territory Code in that no "order, signal or direction" of any kind was given to him at the time of the alleged offense.

The appellee admits that no "order, signal or direction" of any kind was given the appellant at the time of the alleged offense, but contends that the appellant, in taking instructions for an Operator's License several months previously was told by a constabularyman, among other things, not to permit passengers to ride on the fenders of vehicles which he might operate in the future.

#### CONCLUSIONS OF LAW

The court holds that the language of Section 815(h) of the Trust Territory Code contemplates lawful orders, signals or directions *immediately* given in the direction, control or regulation of traffic, and *not* general or specific instructions given an operator an hour, a day, or a month previously.

**LENGE v. TRUST TERRITORY**

Although the court expresses no opinion as to whether the accused was or was not driving properly, it finds that the appellant did not violate the provisions of Section 815(h) of the Trust Territory Code.

**JUDGMENT**

The judgment of the District Court for the Palau District is therefore reversed in Criminal Case No. 216, and it is ordered that the \$3.00 fine be refunded to the appellant.

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**LENGE, Appellant**

**v.**

**TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee**

**Criminal Case No. 64**

**Trial Division of the High Court**

**Palau District**

**July 30, 1954**

Defendant was convicted in Palau District Court of negligent driving in violation of T.T.C., Sec. 815(b), and on appeal contends that he did not know that vehicle he was driving had defect in steering mechanism and that incident was accident. The Trial Division of the High Court, Associate Justice James R. Nichols, held that there was no violation of Section 815(b), as there was no evidence of negligence.

**Reversed.**

**Negligent Driving—Generally**

Where appellant in criminal case had no previous knowledge as to defect in jeep, and there was no evidence of negligence on his part, incident out of which charge arose was accident and not violation of Trust Territory law regarding negligent driving. (T.T.C., Sec. 815 (b))