

ROBERTA M. BORJA, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 288

Trial Division of the High Court

Palau District

March 17, 1967

Defendant was convicted in Palau District Court of reckless driving in violation of T.T.C., Sec. 815(b), and on appeal contends evidence does not support finding. The Trial Division of the High Court, Associate Justice Joseph W. Goss, held that charge of reckless driving cannot be sustained, nor can lesser included offense of negligent driving be sustained where appellant's driving did not constitute substantial deviation from standard of care of reasonable man.

Reversed.

1. Reckless Driving-Fault

Where accused in criminal prosecution was not driving vehicle recklessly or with gross, wilfull or wanton disregard of lives or safety of public, charge of reckless driving cannot be sustained.

2. Reckless Driving-Fault

In criminal prosecution for reckless driving, where charge cannot be sustained and accused's driving does not constitute substantial deviation from standard of care of reasonable man, there can be no finding of guilt of lesser included offense of negligent driving.

3. Reckless Driving-Fault

It is possible for minor accident to occur without there having been substantial deviation from ordinary standard of care.

4. Criminal Law-Statutes

It is responsibility of all those concerned with District Court proceedings to determine whether statute involved in criminal prosecution has been amended or repealed.

BORJA v. TRUST TERRITORY

<i>Assessor:</i>	JUDGE FRANCISCO MOREI
<i>Interpreter:</i>	SINGICHI IKESAKES
<i>Counsel for Appellant:</i>	WILLIAM O. WALLY
<i>Counsel for Appellee:</i>	SGT. E. TERMETEET

GOSS, *Associate Justice*

Appellant had been charged with two counts: (1) violating Section 812(i) of the Trust Territory Code, driving without license in immediate possession and (2) violating Trust Territory Code, Section 815(b), reckless driving. Appellant entered a plea of guilty to Count 1 and the appeal is from a finding of guilty as to Count 2. The appeal is based on the contention that the evidence presented does not support the finding. Both counsel submitted oral arguments without submitting written arguments.

OPINION

The complaint alleges that on or about December 8, 1966, the Appellant violated Trust Territory Code, Section 815(b), by "driving . . . in a reckless and careless manner". Prior to September 2, 1966, Trust Territory Code, Section 815(b), by "driving. . . in a reckless and careless manner". Prior to September 2, 1966, Trust Territory Code, Section 815(b), read as follows:

"It shall be unlawful for any person to drive a vehicle upon a highway in such a manner as to indicate a wilful or a wanton disregard for the safety of persons or property or in such a manner as to be likely to endanger such safety:'

The section was amended by Public Law No. 2-6 at the Second Regular Session, 1966, Congress of Micronesia, so that at the time of the alleged offense Trust Territory Code, Section 815(b), read as follows:

"Sec. 815. (b) Negligent and reckless driving.

(1) *Negligent driving.* It shall be unlawful for any person to drive a vehicle upon a highway in such a manner as to constitute a

substantial deviation from the standard of care which a reasonable person would exercise in the situation.

(2) *Reckless driving.* It shall be unlawful for any person to drive a vehicle upon a highway recklessly or with gross, willful or wanton disregard of the lives or safety of the public."

[1] The Appellant had been charged, tried and convicted on the basis of the reckless driving statute as it was formerly worded. The gravamen of the Appellant's action was that she turned off of the road to stop in front of the high school and in doing so drove one wheel into a grassy ditch. No eye witness testimony of the accident was presented except for the evidence of the Appellant. She testified that at the time the wheel went into the ditch, she was "looking all over the place because I was afraid I might run over someone". From the facts presented in evidence it is clear that the Appellant was not guilty of driving a vehicle recklessly or with gross, willful or wanton disregard of the lives or safety of the public, and the charge of reckless driving cannot be sustained.

A more difficult question is whether the Appellant is guilty of the lesser included offense of negligent driving (see *Ngeruangel v. Trust Territory* (1960), 2 T.T.R. 620) so that on appeal the judgment should be modified to a finding of guilty under Trust Territory Code, Section 815(b) (2).

[2, 3] There is nothing in the evidence to indicate that Appellant's driving constituted a *substantial* deviation from the standard of care of a reasonable person. It is of course possible for a minor accident to occur without there having been a substantial deviation from the ordinary standard of care.

[4] It must be noted that all of those concerned with the District Court proceedings hereunder should have taken whatever steps are necessary to determine whether

TRUST TERRITORY v. HELGENBERGER

the statute involved had been amended or repealed by the Congress of Micronesia. The Court is aware of the delay until February, of 1967 in promulgating the laws of the 1966 Session, and of the reasons therefor, but it is not believed that these reasons can be relied upon where a criminal prosecution is concerned. There was a general awareness that the Congress had met and had amended, repealed and added to portions of the Trust Territory Code. It is the responsibility of each concerned public official to make notes in his Code to indicate which portions have been changed and to indicate the particular statute or executive order by which the change was effected.

JUDGMENT

The finding and sentence of the District Court of the Palau District with regard to Count 2 in its Criminal Case No. 5008 is vacated and set aside and a finding of Not Guilty is entered.

---

TRVST TERRITORY OF THE PACIFIC ISLANDS, Plaintiff

v.

ALVIS HELGENBERGER, Defendant

Criminal Case No. 90

Trial Division of the High Court

Ponape District

March 23, 1967

Petition for Modification of Judgment brought by wife of defendant found guilty of grand larceny in violation of T.T.C., Sec. 395, and sentenced to sixteen months in prison with the last seven months suspended on condition of restitution. Petitioner claims special hardship and requests clemency. The Trial Division of the High Court, Associate Justice Joseph W. Goss, held that sentence was not unreasonable and petition for clemency should be brought to High Commissioner of the Trust Territory.

Petition denied.