

It is, therefore, ordered, adjudged, and decreed:-

1. The boundary between the land NEMOK, owned by the plaintiff, and the lands FAITOU and NEURARENG, owned by the defendant Anipich, is as shown on the Master's sketch marked "CA 318 'A'".

2. The boundary between that portion of the land NISOK owned by the plaintiff and that portion of Nisok owned by the defendants Nikochon and Wesen, and the land NEEP owned by the intervenor Kurur, is as shown on the Master's sketch designated as "CA 318 'B'".

3. The boundary between the land NISOK, owned by the plaintiff, and the land EPINKACHAU, owned by defendant Anipich, is as shown on the Master's sketch designated "CA 318 'C'".

4. No costs are assessed against any party.

JUAN C. TUDELA, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 225

Trial Division of the High Court

Mariana Islands District

January 31, 1969

Appeal from decision of District Court finding appellant guilty of charge of driving a vehicle without the consent of the owner. The Trial Division of the High Court, R. K. Shoecraft, Chief Justice, held that although ownership of the vehicle and lack of consent of the owner were essential elements to be proved in order to support a conviction it was sufficient to show that the automobile taken did not belong to the appropriator but was intentionally taken from and without the permission of the person entitled to possession, and failure to produce evidence of ownership and lack of permissive use through the legal or registered owner of the vehicle was not necessary.

1. Motor Vehicles-Operation Without Owner's Consent

Ownership of the vehicle and lack of consent of the owner are essential elements which must be proved in order to support a conviction for

violation of the statute relating to driving a vehicle without the owner's consent or proper authorization. (T.T.C., Sec. 815(e))

2. Motor Vehicles--Operation Without Owner's Consent

Title of specific ownership of a wrongfully taken automobile was not made an essential factor in the prima facie establishment of the joy-riding offense, and it is sufficient to show that the automobile taken did not belong to the appropriator but was intentionally taken from and without the permission of the person entitled to possession. (T.T.C., Sec. 815(e))

3. Motor Vehicles--Operation Without Owner's Consent

Although the testimony showed that appellant was not the original taker of the vehicle, under the circumstances surrounding the event, it was permissible for the trial court to draw the inference that the appellant knew he was operating a motor vehicle not his own and without the owner's consent. (T.T.C., Sec. 815(e))

SHOECRAFT, *Chief Justice*

This matter was submitted without oral argument to the Trial Division of the High Court on an appeal from a decision of the District Court rendered in Criminal Case Number 161-68 on July 19, 1968, the court finding the defendant (appellant herein) guilty of the charge of "driving a vehicle without the consent of the owner."

The appellant was charged with violation of Section 815(e) of the Trust Territory Code, which reads as follows:-

"Driving vehicle without owner's consent or proper authorization. Any person who shall drive a vehicle, not his own, without the consent of the owner thereof or a vehicle belonging to the United States or the Trust Territory without proper authorization, without intent to steal the same, shall be guilty of a serious misdemeanor."

[1,2] Ownership of the vehicle and lack of consent of the owner are essential elements which must be proved in order to support a conviction for violation of the above statute. Appellant contends that since Molly George, the alleged owner, was not presented in court to testify as to

ownership and that the vehicle was driven without her consent, the elements of the said crime were not proved by the Government. We agree that possibly the best evidence as to these elements could have been provided by the alleged owner of the vehicle, but we do not agree that this is the only way said elements may be proved. There is authority for the proposition that it is sufficient to show that title was not in the appropriator of the vehicle. *State v. Nelson* (1963), 63 Wash.2d 188, cited in 9 A.L.R.3d 646. In the cited case the defendant was appealing from a conviction of taking a motor vehicle without the permission of the owner or person entitled to possession of the vehicle. The defendant contended that the state, by failing to produce evidence of ownership and lack of permissive use through the legal or registered owner of the car, had not established an essential element of the crime charged It was held that title of specific ownership of a wrongfully taken automobile was not made an essential factor in the prima facie establishment of the joyriding offense, and that *it was sufficient to show that the automobile taken did not belong to the appropriator, but was intentionally taken from and without the permission of the person entitled to possession. . . .*"

[3] Although the testimony shows that appellant was not the original taker of the vehicle, under the circumstances surrounding the events of June 26, 1968, it was permissible for the trial court to draw the inference that appellant knew that he was operating a motor vehicle not his own and without the owner's consent. This knowledge could be established by circumstances as well as by direct proof and circumstances such as testimony that appellant and several others were riding in an automobile taken from the Saipana Bar by one of their number, that while riding in said automobile they stopped at the Donnie Hill

BOQ where another one of the group took the automobile described in the Complaint, that appellant and others of this group followed the auto taken from the parking lot of said BOQ, and defendant's own admission that he drove the said auto about 100 yards to a farm, were apparently sufficient to satisfy the trial court beyond a reasonable doubt of the guilt of the defendant (appellant). We must decline to substitute as to the facts our judgment for that of the trial court. Accordingly, the decision of the District Court in this matter is affirmed.

WELSIN SALMON, Plaintiff

v.

TOHTER NORMAN, ITOSI and STELLA, Defendants

Civil Action No. 322

Trial Division of the High Court

Ponape District

January 31, 1969

Action for specific performance. The Trial Division of the High Court, H. W. Burn'ett, Associate Justice, held that plaintiff failed to establish existence of alleged agreement and that his claim to land in question or alternative money damages would be denied.

1. Real Property-Sales

If parties had agreed that one would receive real property, pursuant to an exchange upon that party's receiving right to such property as the result of a successful court action, only following date of entry of judgment would any rights accrue to the person receiving the real property in the exchange.

2. Civil Procedure--Damages

Where plaintiff had no rights in land in question he could not receive money damages for compensation for working the land.