

GAYIOS NEDLEC, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 99

Trial Division of the High Court

Ponape District

January 17, 1969

Appeal from conviction of crime of negligent driving. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that there was no evidence in the record of negligence on the part of the appellant and thus the conviction of crime of negligent driving should be reversed.

Reckless Driving-Negligence

Where evidence showed that driver was travelling within the speed limit and that person injured had dashed out into the road there was no evidence of negligence on the part of the driver and no violation of the Code section relating to negligent driving. (T.T.C., Sec. 815(b))

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BURNETT, *Associate Justice*

Appellant was found guilty in Ponape District Court Criminal Case No. 1556 of the crime of Negligent Driving in violation of Section 815b(I) of the Trust Territory Code, and sentenced to pay a fine of \$20.00 or, in the alternative, to serve 40 days in jail. The sentence was stayed pending decision on this appeal.

Under Section 815b(1) of the Trust Territory Code it is unlawful for any person to drive a vehicle "in such a manner as to constitute a substantial deviation from the standard of care which a reasonable person would exercise in the situation". Appellant contends that no evidence was offered which would support a finding of negligence on his part.

Viewed in the light most favorable to the prosecution, the evidence shows that the appellant, at a time when the street was crowded with people, drove his scooter and col-

lided with a child who ran out into the street. An eye witness for the prosecution testified that he was about twenty feet away when the collision occurred in the middle of the road, that appellant was not driving at a high speed but was going within the speed limit, and that the injured child had "dashed out into the road". There was no testimony whatever that appellant was driving in an erratic fashion or that there was any evidence that he was inattentive to his driving or to traffic conditions. I am unable to find from the record any evidence of negligence on the part of the appellant and am, consequently, unable to sustain the judgment of the District Court.

The judgment of conviction in Ponape District Court Criminal Case No. 1556 is hereby reversed.