

JOHN DAY, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 40
Trial Division of the High Court
Marshall Islands District

April 16, 1963

Defendant was convicted in Marshall Islands District Court of reckless driving, driving with defective brakes, and driving with expired license, in violation of T.T.C., Secs. 815(b), 813(b) and 812(a). On appeal, the Trial Division of the High Court, Associate Justice Paul F. Kinnare, held that mere negligence is insufficient to constitute offense of reckless driving; that knowledge of defective brakes is not essential element of offense of driving with faulty brakes; and that defendant acted within definition of statute that valid driver's license issued by driver's country and in his possession meets licensing requirements.

Reversed in part and affirmed in part.

1. Reckless Driving—Negligence

Ordinarily something more than mere negligence in operation of automobile is necessary to constitute offense of reckless driving. (T.T.C., Sec. 815(b) (2))

2. Reckless Driving—Generally

Under terms of statute or ordinance, reckless driving generally denotes operation of automobile under such circumstances as to show willful or reckless disregard of consequences. (T.T.C., Sec. 815(b) (2))

3. Motor Vehicles—Brakes

Neither intent to violate law nor knowledge of defective brakes is essential element of offense of driving with faulty brakes, and court must only determine whether or not defendant operated vehicle with defective brakes. (T.T.C., Sec. 813(b))

4. Criminal Law—Strict Liability

Legislature may declare an act criminal irrespective of intent or knowledge of one who acts, and question then becomes whether defendant did forbidden act.

5. Torts—Negligence

Even in civil actions, one cannot be held responsible on theory of negligence for injury from act or omission, unless he is reasonably chargeable with knowledge that act or omission involved danger to another.

6. Reckless Driving—Negligence

Rule in some jurisdictions that violation of statute is negligence per se is not applicable in criminal prosecution for reckless driving, since issue of contributory negligence is not involved. (T.T.C., Sec. 815(b) (2))

7. Residence—Generally

In construction of legislation using term "residence," courts look primarily to legislative purpose as well as to context.

8. Residence—Generally

"Residence" may mean something from mere temporary presence to the most permanent abode.

9. Residence—Generally

When "residence" is used to denote something more than mere physical presence, intent is material.

10. Residence—Generally

Terms "domicile" and "residence", although often used synonymously, are more frequently held not to be convertible, and have been distinguished.

11. Residence—Generally

Whether "residence" and "domicile" are synonymous depends on purpose and intent with which word is used, including context in which it is employed.

12. Motor Vehicles—Operator's License

American employee of Trust Territory is "non-resident" within meaning of statute permitting such persons to drive motor vehicles upon highways of Trust Territory under authority of license from home state when it is in his immediate possession. (T.T.C., Sec. 812(b))

<i>Assessor:</i>	JUDGE SOLOMON
<i>Interpreter:</i>	BUJON JACOB
<i>Counsel for Appellant:</i>	OSCAR DEBRUM
<i>Counsel for Appellee:</i>	ARON

KINNARE, *Associate Justice*

Appellant, an American employee of the Trust Territory, pleaded not guilty in the District Court to charges of Reckless Driving (T.T.C., Sec. 815b), Driving with Defective Brakes (T.T.C., Sec. 813b), and Driving with Expired Li-

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cense (T.T.C., Sec. 812a et seq.). This appeal is from the judgment finding him guilty on all three counts, fining him \$10.00, and prohibiting him from operating any vehicle for a period of three months from the date of the judgment. Appellant contends the evidence offered at the trial was not sufficient to support the findings.

When appeal came on for bearing, it appeared the record of trial was incomplete in that there was no transcript of the testimony offered by either side, nor was there even a summary of such testimony. The court suggested to both sides that they prepare a summary of the testimony offered at the trial, but both sides requested that they be allowed to recall their witnesses. The case was therefore tried de novo.

FACTS

On the afternoon of January 4, 1963, the appellant was driving a flat bed truck (a Trust Territory vehicle) and ran into a pole supporting electric wires in front of the Administration Building. The Sheriff, who was in the building at the time, heard the noise and came out, observing that the bumper of the truck was still against the pole, which had been forced over to a sharply leaning position.

The appellant told the Sheriff that his brakes had failed, and that this was the reason he hit the pole. The Sheriff asked to see appellant's driver's license and appellant exhibited to him a card commonly referred to as an "I.D. card" (which bears the words "U.S. Government Motor Vehicle Operator's Identification Card, Form SF 46") and a Motor Vehicle Operator's License, T.T. Form No. 252. It was apparent from the date on both forms that they had expired before January 4, 1963.

The appellant testified that the above forms were in his wallet, which he handed to the Sheriff, together with his Government of Guam Motor Vehicle Operator's License,

#60744, which was valid at the time. This license was offered in evidence by the appellant, and it appears from its face that it is still valid, expiring March 2, 1964.

The Sheriff testified that appellant did not show him the Guam license at the time of the accident, and did not call it to his attention.

The appellant testified that his speed, at the time he hit the pole, was about four miles per hour; one of his witnesses, in the front seat with appellant at the time of the collision, testified that the truck was "moving slowly" when it hit the pole. The prosecution offered no evidence as to speed.

The prosecution offered evidence that the damage done to the pole and wires in the accident was in excess of \$20.00.

OPINION

It is the contention of the appellee that the fact that the appellant ran into the pole in broad daylight is ample circumstantial evidence to show that he was driving recklessly, that he stated himself that his brakes were defective, and that the licenses he exhibited to the Sheriff were invalid because it was plainly evident they had expired.

Appellant contends that this was an unavoidable accident; when his brakes failed he had a choice of hitting the pole or one of two buildings, and that he did the obviously sensible thing. He further contends that he had no grounds to believe his brakes were bad until they actually failed, and that he had in his possession at the time of the accident a valid Guam operator's license which was plainly displayed in the wallet he handed to the Sheriff.

[1, 2] This court has previously held that, ordinarily, something more than mere negligence in the operation of an automobile is necessary to constitute the offense of reckless driving; generally, the offense, under the terms

of the statute or ordinance, denotes operation of an automobile under such circumstances as to show a wilful or reckless disregard of consequences. (See Am. Jur., Vol. 5A, Automobiles and Highway Traffic, § 1180).

[3] The court has also held that neither intent to violate the law nor knowledge of defective brakes is an essential element of the offense of driving with faulty brakes. The only question to be determined by the court is whether or not the defendant operated a vehicle with defective brakes.

[4-6] The case of *Iteno Senip v. Trust Territory of the Pacific Islands*, 2 T.T.R. 227, so closely parallels the case before us that the opinion in that case disposes of two of the points at issue here. In that case the appellant, operating a vehicle on which the brakes failed, caused both personal injuries and property damage. The court held:

“Section 813 (b), Trust Territory Code, reads as follows: “Every motor vehicle when operating on a highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle. . . . All brakes shall be adequate to stop the motor vehicle within a safe distance and shall be maintained in good working order.”

“Undoubtedly it is within the power of the legislature to declare an act criminal irrespective of the intent or knowledge of the doer of the act”. Am. Jur., Vol. 14, Criminal Law, § 16.

“At common law a criminal intent is an essential element of a crime, but is not always a necessary element of statutory crimes. Under many statutes making noncompliance with motor vehicle regulations a penal offense, neither an intent to violate a regulation nor knowledge that it is being violated constitutes an element of the offense. The only question is whether the defendant did the forbidden act.” Am. Jur., Vol. 5A, Automobiles, § 1122.

As it is indisputable that appellant did operate the truck while its brakes were inadequate to control its movement, and as this was the only question necessary for the court to determine under

count two, the finding of "guilty" as to count two must be sustained

As to the charge of reckless driving, count three, we believe appellant stands on stronger ground. Section 815 (b), Trust Territory Code, forbids driving any vehicle on a highway "carelessly and heedlessly in wilful or wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property".

We do not think the record in this case supports a finding that appellant drove a vehicle either "carelessly and heedlessly in a wilful or wanton disregard of the rights or safety of others" or "without due caution and circumspection".

Even in civil cases, "a man cannot be held responsible on the theory of negligence from an injury for an act or omission on his part unless it appears that he had knowledge or reasonably was chargeable with knowledge that the act or omission involved danger to another." Am. Jur., Vol. 38, Negligence, § 23.

"The rule in some jurisdictions, applied to civil actions, that the violation of a statute is negligence per se is not applicable in a criminal prosecution for reckless driving where the issue, which is between the state and the accused, is confined to the conduct of the accused and contributory negligence is not involved." Am. Jur., Vol. 5A, Automobiles, § 1181.

As to the charge of driving with expired license, the court considers it clear from all the evidence that the Government Motor Vehicle Operator's Identification Card and the T.T. Operator's License were no longer valid at the time of the accident. It is equally clear that the Guam license was still valid. As the Government clearly failed to prove beyond a reasonable doubt that the Guam license was not in the appellant's immediate possession at the time of the accident (T.T.C., Sec. 812i), the only question to be determined is whether or not the possession of the Guam license precludes a conviction under Section 812 of the Code paragraph b of that section reads:

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Exemption from license. Every person in the service of the Army, Navy, or Marine Corps of the United States, when furnished with an official driver's permit and when operating an official motor vehicle shall be exempt from license under this Chapter. A non-resident over the age of sixteen years who has been duly licensed as an operator in his home state, territory or country and who has in his immediate possession a valid operator's license shall be permitted without examination under this Chapter to drive a motor vehicle upon the highways of the Trust Territory."

It must be decided, then, whether or not the appellant is a "non-resident" as the term is used in this section.

[7-11] "As in construing other statutes, in the construction of legislation using the term 'residence' the courts look primarily to the legislative purpose as well as the context. 'Residence' has many shades of meaning—from mere temporary presence to the most permanent abode. Generally, however, it is used to denote something more than mere physical presence, in which event intent is material Sometimes the terms 'domicil' and 'residence' are used synonymously, but more frequently the words are held not to be convertible and have been distinguished. Whether the word 'residence' is synonymous with 'domicil' is a question of some difficulty, and the ultimate decision must be made from a consideration of the purpose and intent with which the word is used, including of course, the context in which it is employed". Am. Jur., Vol. 17A, Domicil, § 9.

[12] We hold that an American employee of the Trust Territory is a non-resident within the meaning of the term as it is used in Section 812b of the Trust Territory Code. Therefore, as appellant was a non-resident at the time of the offense charged, and as he had in his possession at the time a valid operator's license issued by his country, he was not driving without a valid license.

As to the sentence of the court, it is well within the limits specified by Sections 812k and 816, Trust Territory Code, and we see no reason to substitute our judgment for that of the court which originally tried the case.

JUDGMENT

The findings of the District Court for the Marshall Islands District as to the charges of Reckless Driving and Driving with Expired License in its Criminal Case No. 431 are vacated, and findings of not guilty entered. The finding and sentence as to the charge of Driving with Defective Brakes are affirmed.