NOBUO OTIS, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 241

Trial Division of the High Court

Truk District

February 16, 1971

Appeal from conviction of reckless driving and driving without a license in possession. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that mere fact that vehicle was found in a roadside ditch did not, without more, establish that driver was guilty of reckless driving; however, conviction of driving without license in possession would be sustained where driver could not produce it on request, even though it was later discovered to have been in vehicle.

1. **Criminal Law—Evidence—Exculpatory Statements**

   The trial court can believe all, part or none of an exculpatory statement.

2. **Reckless Driving—Negligence**

   The mere fact that a vehicle wound up in a roadside ditch was not sufficient to establish the conclusion that it got there because of negligent driving. (83 T.T.C. § 551)

3. **Reckless Driving—Negligence**

   A car in a ditch does not automatically invoke the doctrine of res ipsa loquitur, "it speaks for itself" as to the conclusion that the car got in the ditch as the result of negligent driving. (83 T.T.C. § 551)

4. **Torts—Negligence—Res Ipsa Loquitur**

   The doctrine of res ipsa loquitur only gives rise to an inference or presumption which may be overcome by testimony explaining the circumstances of an incident.

5. **Reckless Driving—Generally**

   As the core of the offense of reckless driving lies not in the act of operating a motor vehicle, but in the manner and circumstances of its operation, then the mere circumstance that a car went into a ditch is not sufficient to establish negligent driving. (83 T.T.C. § 551)

6. **Motor Vehicles—Operator's License—Possession**

   The requirement of the Trust Territory Code that a license be in the driver's possession means that it shall be knowingly in possession and that the driver be able to produce it at police request or other appropriate times. (83 T.T.C. § 159)

Counsel for Appellant: KESKE MARAR, *Public Defender's Representative*

Counsel for Appellee: F. PETER, *District Prosecutor*

TURNER, *Associate Justice*

Appellant was convicted in Truk District Court of reckless driving and driving without a license in his possession.

[1] Appellant testified he drove his vehicle, which he was operating as a taxicab, into a ditch at the side of the road to avoid a collision with a truck. This statement was an attempted explanation of the appellant's innocence. It was an exculpatory statement and the trial court could believe all of it, part of it or none of it. *Yamashiro v. Trust Territory*, 2 T.T.R. 638, 644.

The prosecution's theory was that the admission by the appellant that he drove the vehicle into the ditch was sufficient to sustain the charge of negligent driving. But this ignores the appellant's explanation that his action was necessary to avoid serious accident.

The weakness, actually the fatal defect, in the prosecution's case is that no witness was called to contradict appellant's explanation. If anyone saw the car driven into the ditch, he was not called by the prosecution.

[2] The mere fact the vehicle wound up in the roadside ditch is not sufficient to establish the conclusion it got there because of appellant's negligent driving. This is particularly true when the only testimony as to the nature of the appellant's driving—that is, whether it was reckless or careful—came from the appellant only and from no other witness.

[3, 4] A car in a ditch does not automatically invoke the doctrine of res ipsa loquitur, "it speaks for itself", as to the conclusion the car got in the ditch as a result of negligent driving. The doctrine only gives rise to an infer-

ence or presumption which may be overcome by testimony explaining the circumstances of an incident.

The police did not see the event occur and the only explanation of the incident was given by appellant. In this respect the case is similar to *Ridep v. Trust Territory*, 5 T.T.R. 61, in which this Court held it was reversible error to admit hearsay testimony from police officers who did not see the accident but testified as to what others told them.

[5] Because no one apparently saw the defendant driving his car, at least the prosecution called no witness as to the driving, the mere circumstance the car went into the ditch is not sufficient to establish negligent driving. In *Buikespis v. Trust Territory*, 5 T.T.R. 135, this Court said:—

"The core of the offense of reckless driving lies not in the act of operating a motor vehicle, but in the manner and circumstances of its operation."

Because there was no evidence showing the appellant operated his vehicle negligently, his conviction may not be sustained. The charge of failing to carry a license is another matter.

The Trust Territory Code, Section 812(i) requires:—

"Every person licensed as an operator shall have such license in his immediate possession at all times when driving a motor vehicle."

After appellant's car had been lifted from the ditch and as he was driving away, he was stopped by police sent to investigate the accident. The police asked to see appellant's driver's license. Appellant searched his pockets but couldn't find it.

[6] Appellant testified he subsequently discovered his license in the glove compartment of the car. The requirement of the statute that the license be in the driver's possession means that it shall be knowingly in possession and

that the driver be able to produce it at police request or other appropriate times. This the appellant was unable to do and his conviction on the license charge was warranted.

It is the Judgment and Order of the Court that the verdict of guilty entered by the District Court for violation of Section 815(b)(1), Trust Territory Code, Negligent Driving, be and the same hereby is reversed.

It is further ordered that the verdict of guilty entered by the District Court for violation of Section 812(i), Trust Territory Code, License in Possession, be and the same hereby is affirmed.