



**IN THE CENTRAL MAGISTRATES' COURT
OF SOLOMON ISLANDS**

CRIMINAL JURISDICTION

CMC-CRC No. 808 of 2019

REGINA

V

DANNY BALE

Date of Sentencing submissions: January 16, 2020

Date of Sentence Ruling: January 31, 2020

Mr Vaike, S. and Ms Ratu, O. for Prosecution

Mr Bosa, A. for the Defence

SENTENCE

INTRODUCTION

1. Police Constable, Mr Danny Bale, the Offender was convicted after trial for the count of careless or Inconsiderate Driving contrary to section 40(1) of the *Road Transport Act*, Cap. 131.

MAXIMUM PENALTY

2. The maximum penalty of the offence is '5000 penalty units'¹ or '6 months imprisonment'² or a fine and imprisonment term.

FACTS

3. The Offender works at the Henderson Police Station. At around 7 am on 16th May 2019, the Offender was ordered by his Superior In Charge, Constable Rolland Hou to pick up some members of the next shift team. The Offender was sleepy as had not slept since 6 pm on 15th May 2019. He worked on a 12 hours shift. The Offender then drove a White double cabin, Toyota Hilux that has registration number G4208 (hereinafter known as "Police Truck"). Police Constable Kelvin Kavora sat in the co-pilot chair to engage the Offender in conversation in order to keep the Offender from falling asleep whilst driving.

¹ As per the *Penalties and Miscellaneous Act 2009*

4. The Offender drove to Tinge Ridge but did not pick any Police Officer there. They drove to Kwaio Valley and picked Police Constable Tony Sasako. Tony Sasako sat behind the Offender. They drove down to the main highway and proceeded easterly direction to Henderson Police Station. As the Offender was driving, they were chatting.
5. They reached the Prince Phillip Highway at Ranandi and soon came to the roundabout next to the Branch of Bank South Pacific. The Offender slowed down to follow the semi-circle bend. At that time he was awake and they were still chatting. Immediately after passing the roundabout, the Offender drove along the outer lane and accelerated but he suddenly dozed off. Kelvin Kavora and Tony Sasako did not see the Offender dozing off. However, they noticed they were dangerously approaching at an accelerative manner towards the rear of a White Isuzu 3 Ton Truck with registered number MA6907 (hereinafter known as "3 Ton Truck") that was in front of them.
6. The 3 Ton Truck was driven by Charles Ramo who was a Driver of Bulk Shop. The Truck was travelling at a speed of 40km/hr. And several employees of the Bulk shop were at the back tray of the Truck.
7. Accelerating dangerously at a speed more than 40 km/hr, Kelvin Kavora and Tony Sasako looked to see the Offender asleep behind the wheels. Kelvin Kavora quickly tapped the Offender's left thigh awakening the Offender but the Police Truck had already rammed onto the rear of the 3 Ton truck.
8. The impact of the collision caused the rear bumper of the 3 Ton Truck to be detached at one side and fell. The Police Truck had its bonnet bent and raised upwards. Its radiator was also damaged.

AGGRAVATING FACTORS

9. Being a Policeman aggravates the offence. It is because Police enforce the law. Breaching the law destabilizes people's trust on the law and its enforcement. To provide assurance that enforcement and the rule of law is not to be abused, Law Enforcers must face the brunt of the breach of law heavily.
10. The Police Truck was damaged. Its Radiator was spoilt and bonnet being bent upwards. A cost for the Government to repair. And for a while, the Police Truck will sit at a workshop garage awaiting its repair. That wait will affect the RSIPF of a reduced number of Police Vehicle to run its business. I take judicial notice that RSIPF faces a problem of transport shortage, now the Offenders adds to that problem.

11. The rear bumper of the 3 Ton Truck was detached at one side and will cost the Bulk Shop Company. It is unfortunate that there are no costs provided for the damage.
12. Lives of the passengers and Driver of the 3 Ton Truck were at risk. The accompanying Police Officers in the Police Truck also share the life threatening situation. The accident, possibly, might have caused trauma to the persons that were in the two vehicles. Being traumatised, deteriorates ones enjoyment of life.

MITIGATING FACTORS

13. The Offender is a first time Offender. He has no prior convictions. First time Offenders have the benefit of being good and law abiding citizens before the conviction. Compared to second time offenders or more, penalty for first time offenders should be lower to promote rehabilitation and reformation of the Offender. Harsher penalties should be reserved for people who have not learnt any lesson.
14. The fact that the Offender was ordered to drive mitigates his case. The level of culpability can also influence the Offender's degree of sentence. Part of the blame is upon Constable Rolland Hou. Unfortunately, Drivers must be accountable for their own actions when such an accident can be avoided. In this case, the accident was avoidable if the Offender refused to drive under his sleepy state.
15. 29 years old and a Police man is not to be treated as a young man. The Offender was working to enforcing the law and was approaching 30 years old at that material time. The Offender is mature in his understanding on the law of careless driving compared to other lay people of the same age who do not work or are learned on law associated environment. The Offender does not have the benefit of a young person but as an adult.

SENTENCE OF THE OFFENDER

16. In deciding custodial or fine, the culpability of the Offender, prevalence and the circumstances of the offence are considered. Culpability of the Offender is one that falls at the lower end. This is mainly because the accident is partly blamed for a poor administrative order by the Offender's In Charge. Prevalence of such offending does not necessarily blanket all the offences to follow one pathway. No. In fact, this is a rare case whereby the Offender was trying to assist to get the next shift. But it was a wrong decision when he was under that sleepy state. The circumstances of the offence shows nothing very serious. The damages were minimal in the given condition, road, amount of vehicles on the road, speed, state of the Offender and number of people in the vehicles. The Police Truck was accelerating. There was no skid mark. It means, there was no sign of brakes. The Offender was conversing the whole time and through a slip of a second, he dozed off. The Police Truck did not go out of lane. The Offender, when he awoke, the accident already happened. Yet he quickly got the Truck

into control and parked the vehicle beside the road. But one cannot rely on such luck as it cannot always happen the same. It is only unfortunate that he cannot be exonerated as he have gone through trial and challenged the charge for his innocence. Given the factors, the appropriate sentence is a fine.

17. I appreciate the help from Counsels submissions. The case of *R v Daniel Hunikera*³ is similar but differs greatly because the Offender continues to work outside of his hours in order to assist the Police in its business. He was ordered to do that. The damage was small. The Offender was not drunk. Sentence in this case should be lower, very low, to that of the *Hunikera* case.
18. The Henderson Police should re-adjust how it operates its business. Overworking its Officers is an abuse and is hazardous. There are times, when overworking is necessary for the Police. However, in this case it was not necessary if the Royal Solomon Islands Police Force had done something to employ many Officers and make shifts with reasonable hours of work and have a lot of Drivers. Driving is necessary in the work of Police.
19. This is the second case where I have dealt with a Police Offender because he drove due to unavailability of Police Drivers to only result an accident. This must stop. The resources available, and, support by Government to Police is more than enough enable them to stop such.
20. With the sentence, this case falls in the lower range of sentence. After considering all the mitigating and aggravating circumstances, \$500 fine is appropriate. His driving licence will be suspended 6 months and it will not affect his employment. Instead it will send a message to the Royal Solomon Island Police Force to have many Drivers. If there are not any Drivers, then have the regular non-driving Police Officers to learn and have Driving Licences.
21. I also recommend that the Offender be reinstated back to employment immediately as the *part-fault* is from his In Charge and the Royal Solomon Islands Police Force. This is to conform to the case of *Regina v Sevoa*⁴ where the Accused was sentenced for careless driving and he was reinstated back to work as a Policeman. In *Sevoa's* case, it was serious than this case. The Offender was drunk and was told not drive but he disobeyed to drive a Police truck and caused an accident.

³ [2016] SBMC 11.

⁴ [2016] SBMC 28.

ORDERS OF THE COURT

- i. Mr Danny Bale is fined \$500 to be paid by 14th February 2020
 - ii. In default of the fine, he will spend 20 days in prison.
 - iii. Mr Danny Bale's Driving licence is suspended for six months.
 - iv. Order accordingly.
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THE COURT

Ishmael Kekou – Magistrate First Class