

**BETWEEN:** John Manu  
Appellant

**AND:** Public Prosecutor  
Respondent

**Date of Hearing:** 4 May 2021

**Before:** Chief Justice V. Lunabek  
Justice R. Asher  
Justice R. White  
Justice O. Saksak  
Justice D. Aru  
Justice G.A. Andrée Wiltens

**In Attendance:** Mr N. Morrison for the Appellant  
Mr S. Blessing with Mr P. Sarai for the Respondents

**Date of Decision:** 14 May 2021

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## JUDGMENT

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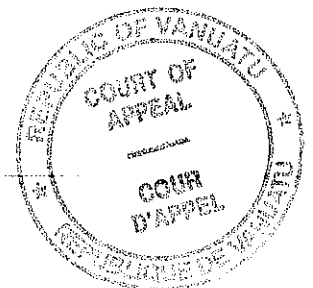
### A. Introduction

1. Mr Manu was convicted after trial of unintentional harm causing death, contrary to section 108(c) of the Penal Code [Cap 135]. That provision reads as follows:

***"108. Unintentional harm***

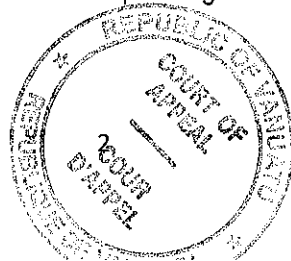
*No person shall unintentionally cause damage to the body of another person, through recklessness or negligence, or failure to observe the law."*

2. The trial arose following a motor vehicle accident which occurred in the early hours of the morning (perhaps at 5.30am) of 19 May 2019 at Elluk Road in the Nambatu area of Port Vila. A passenger on Mr Manu's truck was thrown off Mr Manu's vehicle as a result of a collision with an oncoming vehicle driven by Mr Kelep which had the right of way. The passenger suffered head injuries which were the primary cause of the passenger's death a few hours later that same morning.
3. The issue at trial centred on whether Mr Manu was required to have given way to Mr Kelep's on-coming vehicle, or whether the decision by Mr Manu to make a left turn across the oncoming traffic into a side road was negligent in the prevailing circumstances.



**B. The Decision**

4. The primary judge considered section 6(4) of the Penal Code set out that the criteria by which to determine the case involved an objective test of the driving involved. The evidence was accordingly analysed in accordance with that premise. There is no challenge to that.
5. In order to make the final determination the primary judge had the assistance of a sketch (Ex P. 3) drawn by a Police Constable who attended the scene at 6.45am, as well as three independent witnesses to the accident who were waiting for transport so as to commence their work shifts. Mr Kelep, the driver of the oncoming truck also gave evidence – he admitted to speeding prior to colliding with Mr Manu's vehicle, a fact adverted to by all the witnesses.
6. The owner of Mr Manu's truck was also called but admitted to being drunk and not seeing the lead up to the accident. His evidence was therefore not particularly helpful.
7. Mr Manu gave evidence in his own defence.
8. Mr Morrison accepted that the primary judge's summary of the evidence received was an accurate portrayal of the evidence presented.
9. The primary judge concluded that Mr Manu's explanation that he had seen the on-coming vehicle 100m down the road and accordingly considered that it was safe for him to make his planned manoeuvre was inherently implausible, given the contrary evidence from the other independent witnesses who were found to be reliable. Instead, the primary judge concluded that Mr Manu had pulled out in front of the oncoming truck, forcing it to swerve in an attempt to avoid a collision. Despite there being some room behind Mr Manu's truck, the oncoming truck crashed into the rear right tray of Mr Manu's vehicle. The primary judge determined that whether there was room behind Mr Manu's truck was not a material consideration, as Mr Manu's vehicle, having embarked on its left turn, was still partly blocking the path of the on-coming traffic.
10. Mr Manu had conceded that he had been consuming alcohol earlier the preceding evening. It was his evidence, accepted by the primary judge, that he had subsequently vomited and sobered up - although he did not go to sleep at all that night. Those matters were considered by the primary judge as a possible explanation for Mr Manu's lack of proper observation prior to embarking on the left turn across the on-coming vehicle's right of way.
11. The primary judge concluded that Mr Manu had not exercised the care that a reasonable person in his situation should have done.
12. His negligence was to have under-estimated the speed of the oncoming vehicle and over-estimated the distance it was away from the intersection. Mr Manu's critical decision to proceed was accordingly made in error and was negligent. The decision was also contrary to section 4(1) of the Road Traffic (Control) Act [Cap 29] requiring drivers to give way at intersections to all traffic to their right.
13. That negligent decision and breach of the road traffic laws ultimately led to the unintended consequence of the death of Mr Manu's passenger.



**C. The Appeal**

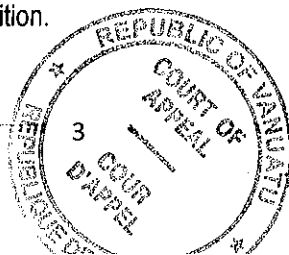
14. Mr Manu raised several initial grounds of appeal. He considered that the verdict was unreasonable and was not supported by the evidence. He considered that there was insufficient evidence of negligence, and further that the primary judge did not give sufficient weight to the fact that the on-coming vehicle driven by Mr Kelep was speeding. Finally, the fact that the primary judge had accepted that the on-coming vehicle was 100 metres away when Mr Manu commenced his turn was said to be inconsistent with the verdict.
15. These grounds were condensed by Mr Morrison at the appeal hearing.
16. Mr Morrison submitted that there was evidence that at the material time Mr Kelep was speeding significantly and "hugging the kerb". Those factors, he submitted, negated the space left behind Mr Manu's vehicle for Mr Kelep to use to drive around behind Mr Manu's truck and avoid an accident. He submitted that Mr Kelep had not been keeping a proper lookout while driving, as evidenced by the lack of any skid marks to demonstrate hard braking prior to the collision.
17. In contrast, Mr Morrison pointed to the fact that Mr Manu had slowed down prior to making the left turn. Mr Manu had seen Mr Kelep's lights at a distance of around 100 metres away and determined that it was safe to proceed to turn across the on-coming traffic lane and into the driveway. Mr Manu had almost completed the manoeuvre and had left sufficient space behind his vehicle for Mr Kelep to get past without an accident resulting. Mr Morrison submitted that the fact that there was an accident should accordingly not be attributed to Mr Manu.

**D. Response**

18. Mr Blessing stressed that the road ahead of Mr Manu was straight and flat, and that Mr Manu had an unobstructed view of on-coming traffic. Due to the time of day, both vehicles had their lights on, which should have aided Mr Manu's ability to observe the traffic conditions.
19. Mr Blessing submitted that Mr Manu should have seen that Mr Kelep was speeding, taken that into account and accorded Mr Kelep the right of way as required by the traffic laws. That was especially so as Mr Manu's manoeuvre was likely to be slow and cumbersome, as his vehicle had to not only negotiate the left turn, but then had to slow down prior to mounting the kerb and entering the driveway.
20. Mr Blessing supported the primary judge's findings leading to the conviction.

**E. Discussion**

21. We do not consider the evidence of Mr Kelep's vehicle "hugging the kerb" is as compelling as Mr Morrison submitted. The primary judge recorded that one witness had stated it was driving close to the footpath when it hit the rear of Mr Manu's car. Mr Morrison's submission, in our view, over-states the position.



22. This Court does not need to determine whether Mr Kelep's vehicle was 100 metres away when Mr Manu was contemplating his left turn, or whether it was closer than that. We accept there was competing evidence as to this, and we note the primary judge considered this estimate to be inherently implausible. However, we consider that the actual distance is but one consideration. That is because in such situations, a prudent driver must always also factor in the speed at which the approaching vehicle is travelling. The two factors must be considered together when deciding whether it is safe to proceed or whether the appropriate step is to give way to any on-coming vehicle.
23. There is conflicting evidence regarding how much room there was in Mr Kelep's lane for him to swerve and pass behind Mr Manu's truck. The primary judge was of the view that this was a non-issue. We respectfully agree. For Mr Manu to have discharged his obligations to the on-coming Mr Kelep, he would have had to complete his left turn and get his vehicle out of the on-coming traffic's lane, effectively off the roadway, before Mr Kelep's vehicle arrived. He clearly failed to do that. Accordingly, Mr Manu's legal obligation was to stop and allow Mr Kelep the right of way before commencing on his left turn.
24. We agree with the primary judge that Mr Manu under-estimated the speed of the on-coming vehicle and over-estimated the distance it was away from the intersection. It could be put alternatively that Mr Manu incorrectly assessed how long it would take him to cross the road in time for him to get out of the way of the on-coming vehicle. It follows that we also agree with her conclusion at the end of her judgment that Mr Manu failed to exercise the care that a reasonable person in his situation should have observed, that he was negligent, and that he failed to comply with the law which required him to give way.
25. Mr Manu's decision and driving were a direct cause of the collision between the vehicles which led to the unfortunate death of Mr Manu's passenger.

**F. Decision**

26. The appeal against conviction is dismissed.

**Dated at Port Vila this 14<sup>th</sup> day of May 2021**

**BY THE COURT**

**Chief Justice V. Lunabek**

