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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 21753474

THE QUEEN

and

SAMUEL LINYIRRPA

(Sentence)

SOUTHWOOD J

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON WEDNESDAY 30 OCTOBER 2019

Transcribed by:
EPIQ

HIS HONOUR: Samuel Linyirra, the offender, has pleaded guilty to one count on an indictment dated 9 May 2019. The count charges, contrary to s 174F(1) of the *Criminal Code Act 1983* (NT), that on 9 July 2017 the offender drove a motor vehicle dangerously and caused the death of SG. The maximum penalty for this offence is imprisonment for 10 years.

The offender has also pleaded guilty to the following charges on complaint. While he was disqualified from holding a driver's licence he drove a motor vehicle, namely, the Toyota Landcruiser on a public street, namely the Central Arnhem Road; drive an unregistered motor vehicle on the Central Arnhem Road; and drive a motor vehicle that did not have a current compensation contribution on the Central Arnhem Road.

The offender grew up on Arnhem Land. He moved between Elcho Island, Milingimbi and Ramingining while he was growing up. He went to school in those communities and also attended Batchelor College, where he studied English and mechanics.

The offender normally resides at an outstation near Ramingining and up until recently, was working as a Gurruwilling ranger. That job included fire and crocodile management and involved him spearing or capturing the animals, which were sent to a crocodile farm. He was also responsible for passing on knowledge to the children in the community about land care.

The offender holds an important cultural role in his community. He attends ceremonies and passes on dancing and songs. He has a special role in men's business called *gunabibi*.

The offender and his wife, Amanda Garrawarra, have five children. She is currently pregnant with their sixth child. He has four daughters. The eldest is also a ranger. She is in her 20s and the offender ensured she had a good education. She was sent to boarding school in Melbourne.

The offender has a criminal record in the Northern Territory, which extends for six pages. Of significance, he has 17 prior convictions for driving offences, and on this occasion, he drove while he was disqualified.

The facts of the offending are as follows.

Late in the evening on Saturday 8 July 2017 the offender and nine passengers left Nhulunbuy in a Toyota Landcruiser and drove towards Lake Evella. There were six adults: SG, Elijah Malibirr, Susan Gaykamangu, Gabriel Gayula, Sibeon Darrunga, Sonia Maliburr, and three children: Bobby Malibirr, Julius Darrunga and Wendy Waratjarr, in the motor vehicle.

The vehicle was in an un-roadworthy condition: three of the four brakes did not work, there were no seatbelts, only one functional headlight and the motor vehicle was also defective in other ways. A number of passengers sat on the rear seat and

the three children sat in the rear load space of the motor vehicle. The deceased occupied the front left passenger seat and was not wearing a seatbelt.

The vehicle was driven from Nhulunbuy to a location near Gapuwiyak by SM, not the offender. At that point the offender was asked to take over the driving because SM was tired. That was the first time he drove the motor vehicle. He drove along the Central Arnhem Road towards Lake Evella. He drove through the night into the early hours of Sunday 9 July 2017 and commented to the passengers about the brakes only working a little bit. In the early hours of the morning there was extensive mist. It came in from the opposite direction to the direction of travel so that the offender could not use high beams due to reflection.

At 4 am the offender was travelling at a speed of approximately 83 kilometres an hour. One of the two adult passengers in the front seat of the motor vehicle saw in the mist reflections of buffalo eyes on the road and called out, "Buffalo."

The offender attempted unsuccessfully to apply the brakes. He called out, "Brake not working a little bit," and the motor vehicle collided with the buffalo, propelling it 44 metres down the road. The offender applied an excessive steering input to the right and the motor vehicle entered into a clockwise critical speed yaw before tipping and rolling over.

The motor vehicle rolled about 21 metres before it came to rest upright on the side of the road. The deceased man was ejected during the crash and died on the side of the road a short time later. All of the other passengers and the offender were able to get out of the motor vehicle and wait for help.

At 4:15 am Steven Stewart, who was driving along the Central Arnhem Road in the opposite direction, came across the crash site. Mr Stewart drove a number of passengers back to Lake Evella, where they got help from the local nurse.

On August 2017 Senior Constable Ryan Watkinson inspected the motor vehicle and found that the motor vehicle was in a dangerous mechanical condition. The lack of braking would have been obvious to the driver when the brake pedal was depressed.

At the time of his driving, the offender was disqualified from holding a licence and the motor vehicle was unregistered and uninsured. The offender drove the motor vehicle dangerously and his driving caused the death of the deceased man.

The driving was dangerous because it involved: (i) continuing to drive at night-time on an unsealed remote road with only one functioning headlight and one functioning brake; (ii) continuing to drive while knowing that the motor vehicle was in a dangerous condition; and (iii) driving with nine unrestrained passengers, of whom three were children and were in the enclosed load space.

Ms Wild, who appears on behalf of the offender, told the court that the offender admits the truth and accuracy of the facts to which I have referred. I find the facts

proven and I convict the offender of the charge on the indictment and the three charges on complaint.

A victim impact statement of WW was tendered in evidence. WW states that it made her feel very bad, very sad. She lost her husband. He was with her husband for a very long time. It still pains her to talk about him. Her children and grandchildren remind her of the times she had with him.

Offences such as these, unfortunately, are prevalent and any offence which causes the death of a person is a serious offence. However, the offending is qualified by the following factors.

It is unclear whether in the circumstances of the driving even a roadworthy vehicle would have collided with a buffalo in the mist coming out on to the road in the early hours of the morning. Although the offender organised the use of the vehicle, it was not his vehicle and he did not initially have knowledge of the extent of its defectiveness. In particular, he was not aware that the brakes were defective until he drove the motor vehicle. The offender only became aware of the extent of disrepair of the motor vehicle after he took over the driving, which he was asked to do in a remote place some distance from anywhere.

The collision occurred as a result of an unexpected and unforeseen appearance of a buffalo. It did not appear that the offender lost control and collided with the stationary object by virtue of his poor driving or inattention. He was simply unable to bring the motor vehicle, which was in a state of disrepair, to a stop in time.

As I have said, the collision occurred on a remote road between Nhulunbuy and Gapuwiyak in the early hours of the morning. However, what placed the passengers at risk and caused the death of the deceased man was the continued use of a clearly unsafe motor vehicle.

I accept that the offender is remorseful. The deceased man stood in the position of a grandfather. He has had the victim impact statement read to him by Ms Wild and has acknowledged through her the grief and loss suffered by the deceased's family members. He participated in the funeral and has expressed his regret to the family for his driving on that morning.

The offender also suffered injuries himself, including a depressed skull fracture and a fracture to his right arm.

In all of the circumstances, it seems to me that these matters can be disposed of by taking into account the seriousness of what has occurred and imposing an appropriate head sentence, but by wholly suspending the sentences to take into account the qualifications to the driving in these particular circumstances and to take into account the remorse which has been shown by the offender, and the fact that he also lost a relative and was seriously injured.

For the offence on the indictment, that is the offence of drive a motor vehicle dangerously and causing the death of the deceased, I impose a sentence of 18 months' imprisonment. I have reduced the length of that sentence by 25 per cent to reflect the offender's plea of guilty.

For the drive while disqualified from holding a driver's licence, I impose a sentence of 14 days' imprisonment. That sentence of 14 days' imprisonment is to be served wholly concurrently with the sentence of imprisonment that I have imposed for the count on the indictment.

For driving an unregistered motor vehicle and driving a motor vehicle that did not have a current compensation contribution on a public street, I impose an aggregate fine of \$800. I specify a time of 28 days in which to pay the fine.

Under s 98 of the *Sentencing Act*, I impose a further suspension or cancellation of licence, during which the offender is not to drive of 2 years. That period of suspension is to run from 23 February 2020 until 22 February 2022.

The sentence of 18 months' imprisonment is to be suspended forthwith on the following conditions.

1. For a period of 18 months, the offender is to be under the supervision of a Probation and Parole officer and is to obey all reasonable directions as to reporting, employment and residence.
2. The offender is not to drive a motor vehicle during that period of supervision, being a period of 18 months.
3. In addition to the suspension under s 98 of the *Sentencing Act*, I make it a condition of his suspended sentence that he is not to drive for a period of 2 years, commencing on 23 February 2020.

Under s 40(6) of the *Sentencing Act*, I impose an operational period of 2 years from today.

Madam Interpreter, what that means is he is free to go from court today, he has a period of 18 months supervision and he cannot drive until 22 February 2022.

I say to his father, it is most important that the family and community support him not driving. Otherwise he will end up back before me and he will go to prison.

It is most important he understands that. He has got a bad driving record. He has been extended leniency because of the particular circumstances of this case. But if he drives again in any circumstance, it does not matter who asks him. If any member of his family asks him to drive, he says no. Otherwise he will end up back before me and he will go to prison.
