

**IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU**  
(Criminal Jurisdiction)

Criminal Case No. 3481 of 2016

**PUBLIC PROSECUTOR  
V.  
FREDERICK PETER HOYLE**

Date of SENTENCE:  
Before:  
In Attendance:

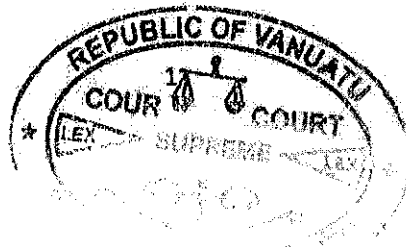
9<sup>th</sup> day of December, 2016 at 3:00PM  
Justice Daniel Fatiaki  
Counsel – Ken Massing for the State  
Counsel – Nigel Morrison for the Defendant

**SENTENCE**

1. The defendant Frederick Peter Hoyle pleaded guilty and was convicted of an offence of Unintentional Harm Causing Death contrary to Section 108(c) of the Penal Code Act [CAP. 135]. The particulars of the offence states:

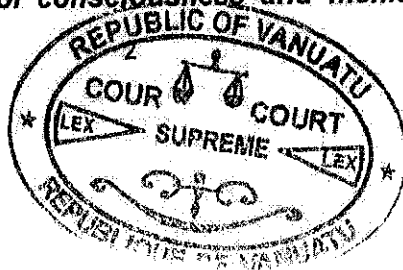
*"Peter Hoyle Frederick you are 76 years old and you are from NZ. On the 16<sup>th</sup> of April 2016, you did unintentionally caused the death of (a) woman Veronica Tangaga through your negligence (sic) driving at the time".*

2. The defendant is a long term Type 1 diabetic sufferer diagnosed in 1988 and currently on a self-medicated dosage of daily injections comprising short-acting insulin 3 times a day and one daily dose of long-acting insulin taken before meals. The defendant also suffers from "blood pressure" hypertension which he controls with anti-hypertension and diuretic medication.
3. On the 16 April 2016 at about 2pm the defendant drove his Hyundai truck registration No. 7671 into Luganville town.
4. On reaching near Unity Park, the defendant's truck was seen crossing a gravel part of the road heading past the petanque court towards Unity Point. The truck left the road went onto the grass and headed straight to where the deceased and two other women were resting in the shade of an oak tree. The truck ran over the sleeping women dragging them for a short distance before coming to a stop on the sand.



5. The deceased woman died at the scene from multiple serious injuries she sustained to the head and body including a skull fracture, a macerated left side skull and abdominal distension. Her two surviving companions were rushed to the hospital in an ambulance and admitted for treatment for less serious bodily injuries they sustained in the incident. The defendant was also taken to the hospital where he was given some sweets.
6. In the prosecution summary of facts the cause of the accident as amended at the defendant's request, is explained as resulting from the "(defendant's) *unconsciousness because his blood sugar level was low. He could no longer control his vehicle.*"
7. "*Low blood sugar*" or more correctly, Hypoglycemia, is a condition most commonly experienced by persons taking medications for the treatment of diabetes. Furthermore although the condition normally produces physical and neurological warning signs and symptoms such as hunger, sweating and palpitations or irritability, confusion, and slurred speech, these are not always present and such a phenomenon is known as: "*hypoglycemic unawareness*" which occurs mainly in people with long-standing Type 1 diabetes who take insulin.
8. On 18 April 2016 the defendant was medically examined at the Northern Provincial Hospital outpatients by Dr. Joanna Radcliffe whose report contains the following history provided by the defendant:
- "*Type 1 Diabetes diagnosed in 1988 for which he has been treated with insulin since. He reports no hospital admissions for hypoglycaemic episodes, however, does experience these episodes intermittently which respond to oral glucose therapy. The last episode occurred 3 months ago in which an ambulance was called but he was not taken to hospital. He currently takes short acting insulin 3 times daily and long acting insulin once daily. Today his blood sugar levels was 9.9mmol/L.*"
  - ~~*Hypertension. Currently controlled with anti-hypertensive and diuretic medication as reported by the patient.*~~
- (my highlighting)
9. On examination, the defendant showed no signs of cardiac failure and, as regards complications of diabetes, the defendant's sensation in his feet and hands were normal except for a reduced visual acuity in both eyes measured at "20/40" for which the defendant did not have corrective lenses. The report continues:

*"I did not find any injuries related to a Motor Vehicle Accident on Mr. Frederick. He reports intermittent loss of consciousness and memory loss prior to the*



*accident and reports symptoms of hypoglycaemia during the incident, which responded to oral glucose at the scene of the incident."*

(my highlighting)

The report ends with the following recommendations:

- *"I recommend that Mr. Frederick should refrain from driving a motor vehicle until his blood sugar levels are better controlled.*
- *I also recommend Mr. Frederick seek further eye examination from an optometrist to clarify his vision problems and the need for corrective lenses."*

10. On 20 April 2016 the police recorded a brief caution statement from the defendant who confirmed his "unawareness" in the following terms:

*"I drove into town and normally when my blood sugar is low, there's always warning but that day there is no warning at all and that's why it causes the accident and am terribly sorry for what had happened."*

(my highlighting)

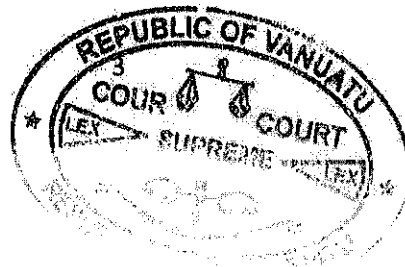
11. Later in a caution interview that same day the defendant in answer to several questions about the incident variously answered:

- *"I was not conscious of what was happening";*
- *"Don't know where I was driving to didn't know I was in Unity Park area";*
- *"Didn't know where I was at";*
- *"No, I didn't see them";*
- *"I didn't know what had happened";*
- *"I didn't know how it happened";*
- *"I didn't know what was happening"; and*
- *"I remember somebody helping me out of the car and I remember I said I'm in trouble I need sugar".*

12. There is not the slightest doubt in my mind that immediately prior to the incident the defendant suffered a severe hypoglycemic episode which quickly and progressively led to a loss of orientation, co-ordination, and consciousness as evidenced by the description of eye-witnesses to the incident including a taxi driver who describes what he saw of the defendant in the following graphic terms:

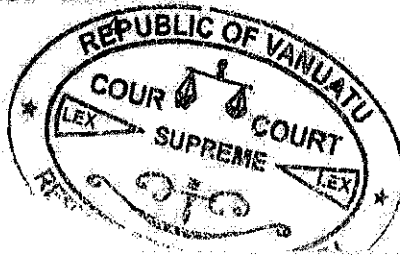
*"... hemi no staon stref long car, hemi lay long window blong truck taem hemi stap run ikam down long park"*

And later after helping the defendant out of his truck:



"... mi wantem talem too, se long taem ia mi bin toktok wetem Mr. Peter Frederick and mi luk se hemi no normal mi bin askem long hem se, Peter yu oraef, hemi no tok blong some few minutes".

13. Upon the defendant's conviction and at the request of counsel a pre-sentence report was prepared by a Probation Officer. Sentencing submissions were also ordered from counsels. I am grateful for the assistance provided to the Court in the report and in counsel's submissions.
14. From the report and defence counsel's submissions I extract the following personal details:
- The defendant is 76 years of age and came from New Zealand in 1996 to live and work in Vanuatu;
  - The defendant is a qualified veterinarian and worked in that capacity for the Vanuatu Government within the Department of Livestock until he retired in 2010. He now runs his own rental care business;
  - The defendant has two daughters from a previous marriage of 20 years duration which ended when his wife passed away. He has 3 grandchildren;
  - The defendant now lives in a defacto relationship with no children. He is the sole provider and carer in the relationship;
  - In 1988 the defendant was diagnosed as a diabetic and has self-medicated daily with injected insulin since then. He has no recorded history of hypoglycemia episodes;
  - The defendant holds both New Zealand and Vanuatu drivers licences and has maintained a clean driving record for over 50 years until the present incident;
  - The defendant expresses his deep regret and sorrow for the tragic incident;
  - The defendant has already paid the family of the deceased victim a sum of VT1 million by way of custom compensation and VT50,000 and other expenses to another victim who sustained a broken leg;
  - The defendant is a first offender and pleaded guilty to the charge;
  - He cooperated fully with police investigations and has always accepted responsibility for his actions;
15. Although all sentencing options are available the Probation Service considers "a lesser sentence can be imposed" and recommends a discharge. Defence counsel

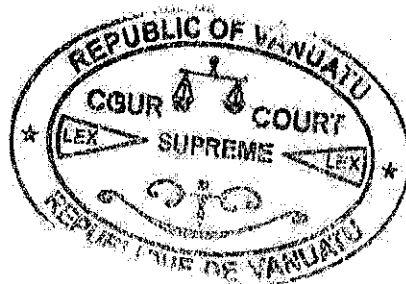


seeks "a sentence at the low end of the scale" and counsel accepts a 2 years suspension as appropriate if the sentence is imprisonment. Prosecuting counsel for his part submits an end sentence of "between 10 to 18 months suspended for 2 years would be appropriate in this case".

16. My own limited researches confirms defence counsel's submission that this Court has regularly imposed suspended prison sentences for convictions under Section 108(c) of the Penal Code not only in cases involving firearms and motor vehicles and where the defendant pleaded guilty but also in cases after trial (see: PP v. Noel [1998] VUSC 79; PP v. Obed [2003] VUSC 90; and PP v. Tari [2013] VUSC 155). In some instances fines were imposed and in others wholly non-custodial measures were adopted such as supervision and community work (see: PP v. Poilapa [2012] VUSC 20 and PP v. Nakat [2014] VUSC 121). In only one instance however, was a discharge ordered after conviction and that was in the brief reported decision in PP v. Iati [2012] VUSC 196.
17. Plainly judges do differ in sentencing for an offence of Unintentional Harm Causing Death and is reflective of the different circumstances in each case as well as the absence of a guideline tariff and perhaps, as observed by the Court of Appeal in Newel v. PP [1998] VUCA 2 (a firearms case):

*"Dealing with cases of this sort creates some of the most difficult sentencing tasks in any Court. This is a matter which in general conversation would be described as an accident. In the laws terms it is a situation where death results from an unlawful act. That in law is not an accident but is unintentional harm causing death. A criminal court in determining sentence on this sort of charge cannot put a value or an appreciation of the life which has been lost. It is unfortunate (particularly when people are grieving and hurt) that sometimes there is a suggestion that the Court minimize the value of the life which was taken what the court is concerned to do is to assess the criminal culpability of the wrong doer."*

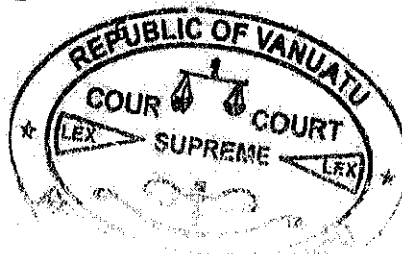
18. Notably in Newel's case the Court of Appeal quashed suspended sentences of imprisonment and imposed in lieu thereof an order under Section 42 (now 56) that the defendant come up for sentence if called upon within a period of 2 years. The Court also ruled out the possibility of a discharge under Section 43 (now 55) saying: "... it is not an appropriate course of action when a life has been taken".
19. The offence of Unintentional Harm Causing Death is capable of being committed in one of three ways – "recklessness", "negligence" or "failure to observe any law". In this case the prosecution has charged negligence which is explained in Section 6(4) in the following terms:



"A person is negligent if he fails to exercise such care, skill or foresight as a reasonable man in his situation should exercise".

The standard is clearly an objective one albeit imbued with the personal "situation" of the offender.

20. In your case Frederick Peter Hoyle you are a long term sufferer of Type 1 diabetes on a daily course of insulin injections. As such you should be fully aware of your medical condition and the danger(s) of hypoglycemia as well as the phenomenon known as "*hypoglycemic unawareness*" and the very real danger of that occurrence for insulin takers. The literature is readily accessible and I am in no doubt that you are fully conversant with it. Certainly a reasonable man in your situation would make it his business to know and to exercise such "*care*" and "*foresight*" whenever driving a motor vehicle to ensure yours and the public safety. In this regard and notable by its absence was any sweets or soda drink being carried on your person or in your vehicle at the time of the incident. This is not convenient hindsight or a "*counsel of perfection*", these are commonly carried items for careful and prudent diabetes sufferers.
21. Low blood sugar is not something that you are totally unaware of or inexperienced with as your caution statement clearly reveals. Whatsmore it is not an external condition that happens suddenly and unexpectedly. In your case, defence counsel's written submissions records instances of "*fleeting recalls*" and even an awareness of unusual engine revving very close to Unity Park where the incident occurred. A reasonable man in that situation would at least suspect that there was something amiss and would have immediately stopped his vehicle. You did not, and, although it is unknown whether your vehicle has a manual or automatic transmission the fact is your vehicle continued for some distance even after you claim to have lost consciousness.
22. Having said that prosecuting counsel in his submissions identifies the resulting death as an aggravating factor, I disagree. Any death in these circumstances is tragic but where proof of death is an essential ingredient of the offence charged then its existence (however unintentional) is not an aggravating factor. I am satisfied that there are no aggravating factors in this case. Conversely there are many mitigating factors already identified including the defendant's guilty plea; his clean driving record of 50 years; and the voluntary payments of "*custom compensation*" made to the deceased's family and the other seriously injured victim.
23. Frederick Peter Hoyle I am mindful that nothing I say or do today and no sentence that I impose on you will bring back the life of Veronica Tangaga and that is a



heavy burden that you must personally bear for the rest of your life knowing that by your negligence a human life was tragically and prematurely lost.

24. The starting sentence of this Court is one of 15 months imprisonment. I reduce it by 4 months for your plea of guilty and deduct a further 4 months for mitigating factors making an end sentence of  $(15 - 8) = 7$  months imprisonment which is ordered to be fully suspended for a period of 18 months. This means that you will not have to go to prison today but if you re-offend and are convicted within the next 18 months you will be required to serve this 7 months prison sentence along with any other sentence you may receive for your re-offending.
25. In addition you are to serve under a Supervision Order for the operational period of the suspended sentence namely 18 months with the following 2 special conditions:
- (1) That you provide to the court a medical report every 3 months from a public hospital of your blood sugar readings; and
  - (2) That you refrain from driving a motor vehicle for a period of 12 months with immediate effect.
26. You may lodge an appeal within 14 days if you do not agree with this sentence.

DATED at Luganville, Santo, this 9<sup>th</sup> day of December, 2016.

BY THE COURT

  
D. V. FATIAKI  
Judge.

