

JUDGMENT

It is therefore,

Ordered, adjudged, and decreed:—

That plaintiff have and is hereby granted judgment against the defendant for the sum of \$250.00 with interest thereon at the rate of 6% per annum from date of judgment until paid, together with costs as provided by law upon filing an itemized claim.

KESNER HADLEY, Appellant

v.

**TRUST TERRITORY OF THE
PACIFIC ISLANDS, Appellee**

Criminal Case No. 125

Trial Division of the High Court

Ponape District

September 29, 1970

Appeal from conviction for operating motor vehicle in violation of Ponape District Law which required that every motor vehicle be equipped with a muffler in good working order and in constant operation. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that although appellant's muffler was in good condition it was not in constant operation where the delivery system was broken.

Judgment affirmed.

1. Criminal Law—Statutes—Construction

Traditionally penal statutes have been strictly construed in favor of the defendant, which is to say that they must give fair warning of what the law intends, in language which is commonly understood; there must be no reasonable doubt as to the intention of the legislature.

2. Statutes—Construction—Strict Construction

The rule of strict construction confines an offense to the words of the statute, but it permits the words not only to be read naturally, but to be given a meaning in harmony with the purpose and intent of the law as far as it may be done without distortion of language.

3. Motor Vehicles—Mufflers

A muffler functions only upon delivery of exhaust gasses to it and when the delivery system is defective, whether because the pipe is missing, disconnected or broken, it cannot be said that the muffler is in constant operation. (Ponape District Law No. 2L-203-70)

HADLEY v. TRUST TERRITORY

4. Motor Vehicles—Mufflers

Under Ponape District Law No. 2L-203-70, the Legislature intended to require that a motor vehicle be equipped with a muffler, installed so that it might perform its purpose.

Counsel for Appellant: YOSTER CARL
Counsel for Appellee: MIGUEL MARQUEZ,
IOANES KANICHY

BURNETT, *Associate Justice*

Appellant was convicted in the District Court of a violation of Ponape District Law No. 2L-203-70. Section 1 of that law reads, in pertinent part, as follows:—

“Section 1. *Motor vehicles: muffler requirements.*

a. Muffler requirements. Every motor vehicle shall at all time be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke, and no person shall use a muffler cut-off, by pass, or similar device upon a motor vehicle. . . .”

It is undisputed that the muffler on appellant’s car was in good condition, and that the excessive noise which led to his being cited resulted from a broken exhaust pipe.

Appellant contends that there was no violation of the law, since his muffler was not defective. The prosecution takes the position that the exhaust pipe is within the meaning of the law and, when broken, causes as much noise and smoke as would a muffler not in good working order.

[1, 2] Public Law No. 2L-203-70 is, of course, a penal statute. Traditionally penal statutes have been strictly construed in favor of the defendant, which is to say that they must give fair warning of what the law intends, in language which is commonly understood; there must be no reasonable doubt as to the intention of the legislature.

“The rule of strict construction confines an offense to the words of the statute, but it permits the words not only to be read naturally,

but to be given a meaning in harmony with the purpose and intent of the law as far as it may be done without distortion of language." *Hightower v. Detroit Edison Co.*, 262 Mich. 1, 247 N.W. 97, 86 A.L.R. 509.

For an excellent discussion of the interpretation of penal statutes, see Chapter 56, Sutherland, *Statutory Construction*, Vol. 3.

The purpose of the statute here is clear: ". . . to prevent excessive or unusual noise and annoying smoke . . ."; to accomplish that purpose it requires ". . . a muffler in good working order and in constant operation . . ."

It being conceded that appellant's muffler was in good condition, and recognizing that an exhaust pipe is not a component part of the muffler, the question then is whether the muffler was "in constant operation" at the time appellant was cited for the alleged violation.

On trial, defendant's witness described the exhaust pipe as a pipe running from the engine to the muffler; its obvious function is to carry exhaust gasses from the engine to the muffler, which is a device for silencing excessive exhaust noises.

[3] A muffler functions only upon delivery of exhaust gasses to it. When the delivery system is defective, whether because the pipe is missing, disconnected, or broken, can it be said that the muffler is in "constant operation"? The District Court, in finding appellant guilty, answered that question in the negative; I agree.

[4] It requires no strained reading of the statute to conclude that the Legislature intended to require that a motor vehicle be equipped with a muffler, installed so that it might perform its purpose.

The Judgment of the District Court is affirmed.