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

Criminal Case No. 21/2724 SC/CRML

PUBLIC PROSECUTOR
v
RODNEY WARSAL

Coram:	***Hon. Chief Justice V. Lunabek***
Counsel:	***DD Boe for the State*** ***AE Bal for the Defendant***
Date of Trial:	***11 July 2022***
Date of Reasons for Verdict:	***19 July 2023***

REASONS FOR VERDICT

I. Introduction

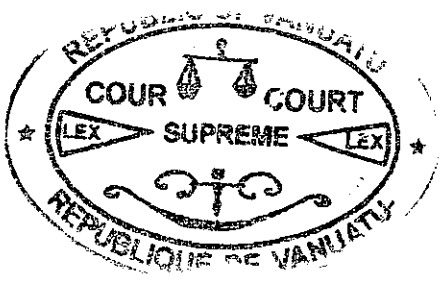
1. This is the trial of Defendant Rodney Warsal ("the defendant"). The defendant was charged and pleaded not guilty to the following charges:

   (i) Count 1
   Driving under the influence of alcohol drink contrary to Section 16 of the Road Traffic (Control) Act [CAP. 29];

   (ii) Count 2
   Causing death by reckless driving contrary to Section 12 of the Road Traffic (Control) Act [CAP. 29];

   (iii) Count 3
   In the alternative to Count 2, unintentional harm causing death, contrary to Section 108(c) of the Penal Code Act [CAP. 135];

   (iv) Count 4
   Unintentional harm causing temporary injury, contrary to Section 108(b) of the Penal Code Act [CAP. 135].



II. The Prosecution's case

2. On 30 July 2021, the defendant drove his red Kia Registration No. 8692 (Red Kia car). At about 9:00pm, on that day, he drove his red Kia back to his home village, Hoggarbour, North East Santo.

3. The defendant drove his red Kia car on the public road and arrived at Matevulu village.

4. A white transport truck Toyota Reg # 8799 was in front of the defendant. The defendant intended to overtake that Toyota truck. As a result, he hit the front of the Toyota truck and the red Kia collided with that White Toyota truck.

5. There were passengers inside the Toyota truck. They fell out of the Toyota truck. One of the passengers (a girl – Lavinia) died as a result of the collision and other passengers of the Toyota truck were seriously injured.

6. One of the passengers of the Toyota truck arranged with other transport truck to take the defendant, first, to the Northern Hospital. They then arranged for different transport truck to take the passengers of the Toyota truck Reg # 8799 to the hospital including one Raymond Maliu.

7. At the hospital, they medically examined the defendant and all the passengers of the white Toyota truck. They pronounced a passenger of the white Toyota Reg.# 8799 dead.

8. It is the prosecution case that on 30 July 2021, the defendant was drinking alcohol drinks at Daming Store, on the road in front of Hotel Santo and at the VMF Barracks Camp.

9. As a result of the effect of alcohol while driving his red Kia on the public road the defendant caused the collision with the white Toyota truck as a result of which, one passenger of the White Toyota truck died and others received serious injuries on their bodies. The defendant also sustained injuries on his body.

III. Standard of Proof and elements of offences

10. In this criminal trial, the burden of proof rests upon the prosecution from the start to the end of the trial. The prosecution has the burden to prove each and all the essential elements of each charge on beyond reasonable doubt. If there is a reasonable doubt that exist on the assessment of the prosecution evidence, I will interpret it in favour of the defendant and I will acquit him on that one charge or all the charges laid against him.

11. The following are the essential elements of the offences laid against the defendant. To secure the conviction of the defendant on each and all charges laid against the defendant, it is the duty of the prosecution to prove each and all essential elements of each charge beyond a reasonable doubt. I set the elements of each offence laid against the defendant:

(a) Driving under the influence of alcohol, contrary to Section 14 of the Road Traffic (Control) Act [CAP. 29]:

(i) The defendant drove a vehicle (Red Kia Reg # 8692) on the public road on 30 July 2021;

(ii) The defendant was under the influence of alcohol while driving his Red Gi Reg # 8692 on the public road;

(iii) The defendant was incapable of properly controlling his vehicle (Red Kia Reg # 8692).

(b) Causing death by reckless driving:

(i) The defendant drove a vehicle on a public road on 30 July 2021;

(ii) The defendant drove his vehicle (Red Kia Reg # 8692) recklessly; and

(iii) That reckless driving was the cause of the death of one passenger of the white Toyota Reg # 8799 (girl – Lavinia) on 30 July 2021.

(c) Unintentional harm causing death:

(i) The defendant unintentionally causes a damage to the body of another person;

(ii) The defendant was reckless or negligent or fail to observe the law when he drove his vehicle on 30 July 2021 on the public road;

(iii) As a result, the defendant caused the death of victim girl (Lavinia).

(d) Unintentional harm causing temporary injury:

(i) The defendant unintentionally causes a damage to the body of another person;

(ii) Through reckless or negligently or failure to observe the law;

(iii) As a result, caused temporary injuries on the bodies of the passengers of the White Toyota Transport truck Reg# 8799 at Matevulu village.

IV. <u>The Prosecution Evidence</u>

12. The Prosecution called 10 witnesses. Jerry Samson was the first prosecution witness. Jerry Samson gave evidence to this effect. He lives at Small Manioc village, East Santo. He is transport driver of the White Toyota transport Registration #8799. He is a married man and has 4 children (3 girls and 1 son).

13. In the morning of 30 July 2021, he was in his village. Then his children and his grandchildren asked him to transport them to Luganville so that they could take part in the Luganville Independence celebration activities of 30 July 2021. He took his White Toyota vehicle and drove them to Luganville. His 4 children and 6 grandchildren were in his vehicle at that time and he drove them to Luganville.

14. The deceased Lavinia in one of his grandchildren. She was in the vehicle with others. Once in Luganville, they watched celebration activities at Unity Park. At 5:30pm, they boarded the vehicle as they wanted to watch the fireworks at Chapuis Park. Fireworks programs started about 8:30pm. So, he asked his children and grandchildren that he drove them back to the village (Small Manioc).

15. When they were ready to return to the village, Reeman Lulu and James joined the passengers of his vehicle. They started to run back to the village at a speed of 60km/h.

16. When he drove his White Toyota and arrived at Matevulu village, he watched the interior mirror of the vehicle, he could see the torch of a vehicle that was running behind his White Toyota truck. He could hear the noise of the engine of that vehicle which was high.

17. He could hear and see that that vehicle was speeding. He then maintains his driving on his right side to allow that vehicle coming from behind to overtake him. When the vehicle which was coming behind his Toyota truck tried to overtake his truck, that vehicle did not drive pass him before he could overtake his white Toyota truck. That vehicle came back in on the right side of the road where this witness was with his Toyota truck and hit the forehead of the driving side of the Toyota truck. This caused the forehead of his Toyota truck to swing and hit some high ground. When the forehead of his Toyota collided with that vehicle, the rear of his Toyota swung and pointed back to the direction of the village.

18. He came out of his White Toyota truck and saw a Red Kia was on the side of the White Toyota Reg.#8799.

19. He checked the children and the grand children who were on the Toyota vehicle, they were all flying out from the Toyota truck. He was looking for all of them. He took them one by one and put them together at a place. Transport trucks arrived and took them back to the hospital.

20. They were all at the emergency room. Brian Boas, a VMF force member was there. He knew him. Brian told him that that boy who caused the accident was drinking alcohol together with him before the accident.

21. Two (2) of the passengers of the White Toyota vehicle who were at the hospital, were moved to the question room, Celily Samson and late Lavinia Joel. They both kept there for two days – Saturday and Sunday. In the early morning of Saturday, a nurse informed them that Lavinia Joel died as a result of the accident. Celily Samson was kept in the hospital for 2 weeks. The doctor released Celily on a wheelchair. This witness lodged a complaint to the police on Tuesday 3 August 2021.

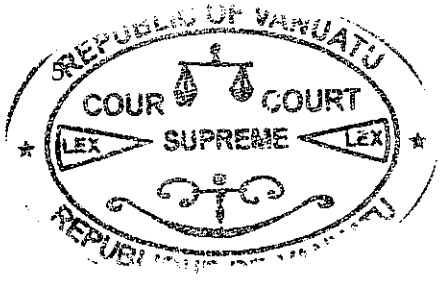
22. The Red Kia Reg# 8692 hit the forehead of the White Toyota Reg# 9799 on the driver side. He was not focusing or concentrated on the location of the Red Kia Reg# 8692. He was more focused on looking for his children and his grand children who he said "where flying out of the truck". The White Toyota vehicle stayed at the place of collision for about 3 days before it was pulled down to Asco Motors for assessment of the damage and repairs on it.

23. He felt bad and he was not happy as his children and grandchildren sustained serious injuries on their bodies as a result of the accident caused by defendant Rodney Warsal. He said defendant Rodney Warsal overtook his Toyota vehicle by driving in on his driving side and hit the wheel of his white Toyota on its forehead from his driving side. He was sad and upset because Lavinia Joel died as a result of an accident caused by Rodney Warsal. Lavinia Joel was a year 10 student at the Matevulu Senior Secondary College. She is from Manioc village. Lavinia's father is Thompson Joel, the Commander of VMF Santo. She died on Sunday morning as a result of the injuries she sustained from the accident caused by defendant Rodney Warsal.

24. This witness said he took his truck to Asco Motors as it sustained damages in the accident caused by Rodney Warsal. Rodney Warsal wanted to overtake his vehicle on the road, he did not overtake him but he hit the wheel of his White Toyota on the forehead and pushed or swung his Toyota to the bush. If Rodney Warsal did not overtake his vehicle, there will be no accident.

25. After the accident, Rodney Warsal did not come to his house. There was no reconciliation.

26. Jerry Samson was cross-examined. He confirmed his evidence that 2 additional passengers joined with the others who he drove them from the village including his wife making a total of 12 people in his Toyota vehicle. He knew the road signs and the lines on the center of the road. He was asked repeatedly and he confirmed his evidence that Rodney Warsal collided with the front wheel of his Toyota from his driving side. He did not overtake the Red Kia vehicle driven by the defendant. He was driving his Toyota truck on the road at Matevulu village and he was in front of Rodney Warsal. He did not overtake the Red Kia vehicle driven by Rodney Warsal.



27. It was suggested to him that he purchased some beers at Sunshine Store and consumed alcohol on his way back to Manioc village. He denied purchasing beers or any other alcohol drinks and he did not consume alcohol drinks while driving his children and grandchildren to Manioc village.

28. He repeated and confirmed his evidence that while he was driving his white Toyota in the evening of 30 July 2021, he was driving on the road, no trucks or car before him. But there was a torch of vehicle coming behind his white Toyota and that that vehicle was behind him and in high speed. There was no vehicle coming to the opposite direction of the road. Commenting on the "*noise blong truck ihigh*" he said he knew as he saw a vehicle was coming behind him in a high speed.

29. He was still running on his right side of the road and gave space on his left side of the road for that vehicle behind him and in a high speed to overtake his Toyota vehicle. He continued running and kept his speed at 60km/h he did not reduce that speed as there was no vehicle in front of his white Toyota at that time on the road.

30. Rodney Warsal overtook his vehicle. He did not apply the signals. He overtook his Toyota vehicle but came back inside quickly on the right side of the road while he was running and maintaining his speed at 60km/hour. He did not increase his speed. He did not collide with Rodney Warsal's vehicle. Rodney's vehicle overtook his Toyota vehicle but came back inside on the right side very quickly and hit the front wheel of his Toyota vehicle from his driving side.

31. He did not consume any alcohol liquor on 30 July 2021 he maintained. The defendant's truck hit the front wheel of his truck on his driving side causing the wheel of his Toyota vehicle swung or twisted towards the right side.

32. He confirmed he made a written complaint to the police on 3 August 2021. It was put to him that there was no mention in his statement of his evidence that "*Rodney ihittim wheel blong truck blong hem mo mekem wheel itwist igo long side*". This witness responded referring to his statement at page 4 he mentioned that Rodney Warsal hit the front wheel of his vehicle. He clarified that in his statement, he said Rodney hit his truck in its forehead. He said he told the police that Rodney hit the front wheel of his vehicle caused it to twist on the side but the police officer who wrote his statement did not write it down. He said Rodney hit his truck in its forehead and made it twist on the side. The wheel of the truck he referred to was in the forehead and that wheel can twist on the side. That was what happened.

33. It was suggested to him that he was in a high speed when he hit Rodney Warsal's truck at the point when it came back in the right side of the road. He responded he did not take over Rodney's truck. Rodney was in a high speed. He said he did not speed. When Rodney overtook him, he spared the forehead of his vehicle and the wheel of his vehicle twisted on the side. He maintained his evidence that because Rodney spared the front wheel of his vehicle causing his

vehicle to bounce on a high ground on the side of the road. Rodney's truck stopped next to his White Toyota vehicle at the collision.

34. He was asked again and he maintained that he did not drink any alcohol drinks. He was not drunk. He was running at a speed of 60km/hour. His Toyota vehicle did not spear Rodney's truck. Only Rodney overtook his vehicle and came back inside and spared the front of his vehicle on his driving side. He was driving at a speed of 60km/hour and he could see that inside his vehicle.

35. It was suggested that after the accident when he came out of his vehicle he and Reeman went and assaulted Rodney Warsal. He denied it was not true. He was concentrating on the look out of his children and his grandchildren and others. He was looking for 12 or 14 people so he concentrated on looking for them.

36. It was suggested to him one Johnny Riri found bottle of tusker in his white Toyota vehicle. He denied this. He maintained there was not bottle of tusker in his white Toyota vehicle. There was no one who drunk tusker beer in his truck. His children and grandchildren were in the vehicle but they never drink alcohol drinks.

37. He was asked he confirmed that at the hospital he saw Brian Boas and Brian Boas told him that Rodney Warsal drunk alcohol drinks together with them before the accident.

38. It was suggested Rodney's wife saw that this witness assaulted Rodney. He denied. He maintained he and Reeman Lulu did not assault Rodney.

39. He explained when he was re-examined that all of his children and grandchildren sustained injuries. He had no time to fight. He was focusing and looked after his children.

40. He also explained that he was watching Rodney overtaking his white Toyota vehicle and came back inside on the right side of the road and caused the accident.

41. Reeman Lulu was the second prosecution witness. He gave evidence to this effect. He is from North West Santo and live at Shark Bay area, East Santo. He is a sawmill operator. He is married with 2 children. His highest level of education is year 10. He came to Luganville town from his house at 9:10am o'clock on 30 July 2021. He watched the independence celebration activities at La Place and went to watch fireworks at Chapuis part until 8:00 – 8:30pm. He took Jerry Samson's transport to go back to his area.

42. The transport truck run to Matevulu village straight at the place Mathew subdivided the land, he saw the truck of Rodney Warsal sided there. He saw Rodney, and he described Rodney's head "*bangem steer*", his right hand on top of the steer, his left hand hanging down on the door of the car.

43. They run past. They did not overtake Rodney's vehicle as it was stopped there at the side of the road.

44. They passed Rodney's vehicle there they went as far as Oysters Island. They went down a little further on the road. No one drunk alcohol drinks. They told stories. Then he heard a sound like the sound of a rally truck. At the same time, he saw from the driver's side he witnessed Rodney Warsal's truck hit the front wheel of the Toyota transport truck which lifted the forehead of the Toyota truck and threw it to the bush. The collision occurred and the accident took place.

45. He came out of the truck. He tried to assist the passengers who were laying on the ground. A short period after the accident, a transport truck arrived and stopped where Rodney's vehicle was at the middle of the tar sealed road. He stopped that truck. He put in that truck Rodney and his wife first to go to the hospital.

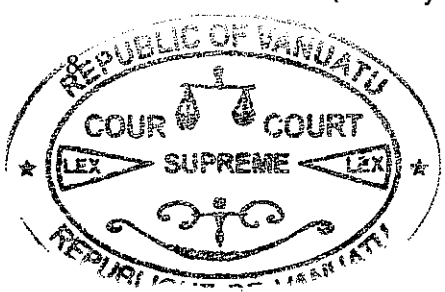
46. He then took Rodney's vehicle keys out his vehicle and gave them to the driver of the transport taxi which transported Rodney and his wife to the hospital. He saw green cans of beers and tusker inside Rodney's vehicle. He rang the police and ambulance but they did not arrive. He stopped transport trucks and divided them into the trucks for the hospital. They were at the hospital and some family members arrived and threatened them that they caused the accident but he said it was not true. He explained that he said that because they did not consume alcohol liquors. They witnessed Rodney overtaking them but before Rodney passed them, Rodney swung his truck on the right and caused the accident. That was how the accident took place.

47. He further said when the Red Kia vehicle of Rodney speared the forehead of the Toyota truck which caused it to swing or thrown towards the bush. He was with Jerry Samson in front of the Toyota truck. He was at the passenger seat at the time of accident. He put Rodney and his wife in the taxi first as the taxi was too small for all of the passengers of Toyota vehicle.

48. The forehead of the Red Kia vehicle was on the grass and the rear of the truck was on the side of tar-sealed road.

49. He decided to put all of them in the transport towards the hospital because some had serious injuries. Some had broken bones. He was informed by phone that one of the passengers of the White Toyota died as a result of the accident caused by Rodney Warsal.

50. Reeman Lulu was cross-examined when they left Chapuis Park after the fireworks in the evening of 30 July 2021, it was about 8:30 – 9:00pm o'clock. Jerry Samson was driving the White Toyota vehicle. They were plenty in the Toyota vehicle. He denied they came down to Sunshine Store at Luganville. He denied Jerry purchased 6 bottles of tusker beer. He was asked that "*hemi kiaman*". He responded he did not know what he (the lawyer) was talking about



because he maintained that what he knew was that when they went out of the Chapuis Park, they went straight to the road towards the village. The Toyota was fully loaded with passengers.

51. He confirmed and maintained his evidence that when they arrived on their way to Manioc Village, he saw Rodney Warsal was stopping his Red Kia there on the side of the road. He said he saw Rodney's head was down facing the steering wheel of his vehicle, his right hand was hanging up and his left hand was hanging outside.

52. This witness was shown the statement he made to the police a week after the accident. He was asked to turn he statement to page 3 and 4 and at top paragraph of page 4, it stated:

> *"... time mifala ipassem bridge blong Matevulu, mo stap run icome lo place we Mathew whiteman blong USA istap subdividem mo salem, mi luk Red Kia car ia iside istap, istap long side blong road. Mo mi luk Rodney we iholem steer blong truck mo head blong hem ifast stap long steer blong truck olsem se hemi silip mo mifala iron stap go ...".*

He confirmed he made this statement to the police. He accepted he did not mention that he saw Rodney's left hand was hanging outside. He did not specify or tell much and he understood the question asked of him and if he had stated all the details, the story would be clearer.

53. It was suggested to him and he disagreed with the suggestion that at Matevulu road, Rodney did not park or stop his vehicle but he continued running on the road. He disagreed that at Matevulu road, Jerry Samson run and overtook Rodney's car on the road as Rodney Warsal stopped his red Kia vehicle there on the side of the road.

54. Jerry was driving the White Toyota. He did not know if Jerry had seen Rodney in his vehicle at the side of the road at Matevulu. But he said he knew Rodney and he recognized Rodney's vehicle. He maintained his evidence.

55. He denied and he disagreed to the suggestion that he and Jerry were drinking alcohol.

56. When he heard the noise of a vehicle coming behind the White Toyota, he said the noise was like rally truck and when he turned his head, that vehicle collided with the White Toyota he was in.

57. He disagreed that Rodney had passed them, signaled to come back inside on the right side of the road and Jerry speared his truck. At that night, Jerry was running at a speed of 60km/hour and at the corner Jerry slowed down.

58. When Rodney arrived, he did not see his speed but he heard the noise of his speed and Rodney collided with their truck (White Toyota).

59. He saw Rodney's truck was in a high speed but he did not see the actual indication of that speed inside Rodney's vehicle. He was surprised of the collision. Mr Jerry was driving at the same speed of 60km/hour. He strongly denied that Jerry was drunk when he was driving his White Toyota Hilux.

60. He was taken to the content of his statement to the police at page 3 (paragraph 16) where it is read: "*Rodney idrivem car ia ipangem front blo truck long front driver side mo pushumaot mifala igo lo side road ...*". He accepted he told the police to write that as his statement.

61. It was put to him he did mention in his statement that Rodney speared the wheel of the Toyota truck. He answered he said this in his evidence because Rodney did actually spear the wheel of (the Toyota truck) at that place. He said he saw with his eyes that Rodney speared the wheel of the Toyota transport truck. He denied the suggestion that he made it up.

62. He denied the suggestion that he and Jerry assaulted Rodney after the accident. He saw Rodney's wife was sleeping inside the car crying with others whose bones were broken. He denied that Rodney's wife saw them assaulting Rodney. It was suggested that Rodney's wife was not and never cried at that time. He denied and maintained that she was laying in the car and was crying.

63. He was asked he maintained his evidence that he and Jerry did not assault Rodney. He denied ever kicking Rodney with his safety booths.

64. He confirmed his evidence that just after the accident, he saw Rodney was laying on the tar sealed road and, on the place, he laid down there, the first truck that arrived at the scene of the accident stopped at that place.

65. It was put to him that Rodney was laying on the road because he was assaulted by this witness and Jerry. He strongly denied that. He maintained his evidence that after he assisted Rodney and his wife by putting both in a taxi to go to the hospital, he took Rodney's vehicle keys and gave it to the taxi driver who drove them to the hospital. No one asked him to remove Rodney's keys from the car, he said he knew Rodney and he was concerned that somebody could steal Rodney's car so he removed the keys and gave them to the driver of the taxi who drove them to the hospital.

66. When he opened Rodney's car, he saw in the car green tins and 6 bottles tusker inside. That was the reason why he said Rodney was under the influence of alcohol. He was referred to his statement to the police. There was no mention of green tins and bottles of tusker but he said he told the police when he made his statement that Rodney was drunk and he pointed out that at page 5 of his statement, he mentioned that Rodney was completely drunk. He maintained part of his evidence that, although, he did not mention in his statement that he saw green tins and

bottle tusker, he said at page 6 of his statement, he mentioned that Rodney was having alcohol liquor at the time of accident.

67. He was asked and he maintained his evidence that Rodney was completely drunk. Rodney was smelling alcohol and Rodney's wife also was smelling alcohol liquor. He was asked again and he said he thought he told Jerry that there were lots of green tins and bottles tusker in Rodney's car.

68. He confirmed his evidence of the position of Rodney's car after the collision – its forehead was on the grass and the back of the car was on the tar-sealed road. He was asked to see the sketch map prepared by the police. He said the police made the sketch map 3 or 4 hours after the accident and when the police arrived at the scene of the accident, people who were involved in the accident were no longer there.

69. It was put to him again that the reason why it was not true was because he and Jerry were drunk. He strongly denied. He repeated his evidence that he was not drunk that night. The reason being that he does not drink alcohol nor kava.

70. Mr Lulu was re-examined. He was referred to his evidence that he saw green tins and bottles of tusker in Rodney's car and the reason he said he mentioned was because he saw them in Rodney's car.

71. He was referred to his evidence that while they travelled to Matevulu area, he saw Rodney's car was stopped on the side of the road and he saw Rodney's head laying on the steering wheel and his left hand was hanging outside that was true.

72. He confirmed his evidence that he did not assault Rodney because Rodney was one of his best friends and he knew him very well. He further explained they were all having an accident.

73. He repeated his evidence that the reason they did not go to the Sunshine Shop was because when they departed from Chapuis Park and went on the tar-sealed road, they went straight to the road leading to East Coast to their village.

74. He re-confirmed his evidence that at that night, he was not drunk. He was talking to Jerry, (driver of the transport) and they told stories. He could see the speed of the Toyota transport was running on a speed of 60km/hour.

75. He confirmed his evidence he had witnessed that Rodney's car was in a high speed, came and speared the forehead of the Toyota truck driven by Jerry.

76. Jackleen Samson was the next prosecution witness. She is from Manioc Village, East Santo. On 30 July 2021, they left Manioc Village, they went to La Place at Luganville to watch

independence celebration activities, the Mobile Force were matching. In the afternoon, her father (Jerry) drove them up to Chapuis Park to watch the fireworks. At about 7 – 8:00pm her father drove them back on the road to Manioc Village. Her father drove them straight to the road towards Manioc Village. Her father did not drive them to Sunshine shop.

77. She was sitting on the driver's side but on the cart of the Toyota transport truck. Her father drover on the road and when they arrived at Matevulu, she said she heard the noise of a truck coming behind the truck driven by her father. She could hear the engine of that truck was very high like it was at high speed. She looked behind she saw a Red Kia which was in high-speed coming behind them.

78. The Red Kia vehicle came behind them and started to overtake them but it did not completely overtake them and came back in on the right side of the road and speared the forehead of the Toyota transport driven by her father.

79. She said after the Red Kia speared the Toyota truck; she did not know anything more apart from the fact she realized she was in the hospital. The Red Kia which came behind them was running very fast. The Toyota transport which was running in front was not speeding.

80. At the hospital, her father told her that Lavinia lost her life as the result of the accident caused by Rodney. She said the reason she said that was because Rodney speared the Toyota truck, she and Lavinia and others were in that Toyota truck.

81. She saw Rodney's car was running in high speed behind them and speared their truck (Toyota truck) and the accident occurred.

82. She denied that her father speared Rodney's truck. She denied too that her father was drinking alcohol liquor at the time. She said her father does not drink alcohol liquor. She repeated that she said that because her father does not drink alcohol liquor.

83. When she was released from the hospital, she and other went and stayed at Pepsi area, Luganville when she heard about Lavinia's death, she was sad and cried. Lavinia was buried at Manioc village.

84. Jackleen Samson was cross-examined. She confirmed her evidence in chief that on 30 July 2021, they came down to Luganville to watch the independence celebration activities. In the afternoon, they went at Chapuis Park and watched fireworks. After the fireworks, her father drover them straight to the road towards Manioc Village. She accepted they were 14 passengers in the Toyota transport driven by her father on their way back to the village. She confirmed it was about 7 – 8:00pm o'clock.

85. She denied that her father drove them to Sunshine store after the fireworks at Chapuis Park. She did not agree that her father purchased 6 bottles of tuskers at Sunshine Store.

86. She was asked and she said she did not see Rodney's car on the side of the road. It was suggested to her and she denied that her father had overtaken Rodney's car at the entrance of Matevulu. She maintained her evidence that the first time that she saw Rodney's car was when she saw Rodney's care was running behind them. She saw the torch of Rodney's car behind them. She did not know whether Rodney signaled to overtake them.

87. She said the accident took place at their right side of the road. Rodney's car came behind them and started to overtake them but Rodney's car did not pass their Toyota transport but speared the Toyota transport.

88. She was asked that Rodney's car was already at the right side of the road before the accident occurred. She answered yes. She was asked that the accident was caused by her father because Rodney's truck was already on the right side of the road. She said no. She was not re-examined.

89. Jethro Samson was the next prosecution witness. He is from Manioc Village. He was a year 11 student at Santo East Secondary School. On 30 July 2021, his father (Jerry) drove them from the village to Luganville to watch the independence celebration activities. His father drove them in the afternoon to the Chapuis Park to watch fireworks there. About 5:00pm his father drove them again on the road towards the village. He denied that his father stopped somewhere else on their way to the village after the fireworks.

90. He sat behind at the cart of the Toyota transport. They run and arrived at Matevulu. He saw a vehicle coming behind them with its high beam on. That vehicle did not switch off his high beam torch light. Then he saw that vehicle was coming towards the cart of the Toyota transport. The vehicle started to take over them but it did not pass them yet and it swung to come back inside on the right side, then speared the forehead of the transport truck they were in. The Toyota truck (after the impact) swung and speared a high ground on the side of the road. He was then unconscious. He did not remember anything else. He was awakened in the hospital.

91. The engine of the vehicle behind them was strong and high. That vehicle was in a high speed. That vehicle was a Red Kia. He was awakened at the hospital on Saturday. They moved Celily Samson and Lavinia Joel to the question room (emergency room). On Sunday morning, his father informed him of the dead of Lavinia Joel as the result of the accident caused by Rodney Warsal. He said this because on their way to the village, Rodney Warsal speared the forehead of the truck they were in while they were running on their right side. The Toyota transport did not speed. He said they knew they will be safe on the road to the village. But they were not safe before they arrived at their house because Rodney Warsal speared the forehead of their truck

which resulted in an accident. He said if Rodney did not try to overtake them, there will be no accident.

92. Jethro Samson was cross-examined. He confirmed his evidence in chief. They were 14 passengers in the Toyota transport. From Chapuis Park, they went straight to the road toward the village. They did not go to any other place. It was suggested and he strongly denied his father drove them to Sunshine Store.

93. He did not see Rodney's car stopping at the side of the road. It was too dark. Reeman Lulu was sitting inside with his father at the passenger driving seat. He was sitting behind at the cart of the Toyota transport; they were telling stories and they did not pay attention to look on the side of the road.

94. He was asked he said his father did not overtake Rodney's vehicle. He was shown this statement to Police dated 10 September 2021 and he could not find a reference in it that he said Rodney's vehicle's noise was strong and high. But he said he told the police that the engine of Rodney's truck was the strong and high but the police did not write it down. He had no driving licence. He did not drive. He accepted he said his father's Toyota run at a speed of 60km/hour but he did not see the speed from where he was sitting at the cart of the Toyota. He explained that his father did not drive at a high speed.

95. He was asked he maintained his evidence that Rodney put the head light of his vehicle torching their eyes at the back of Toyota truck and he could not see whether Rodney signaled or not before he tried to overtake them. He described the approaching distance when Rodney overtook them at less than 1 meter. He was specifically asked and he replied that he was sitting at the end of the cart of the Toyota transport, the high beam of Rodney's vehicle torched his eyes. When Rodney's vehicle overtook them, he was focusing on that vehicle. The two vehicles collided on their right side of the road. The collision occurred inside the right side of the road but Rodney's vehicle speared the Toyota transport at the right side of the road. He was asked he disagreed that Rodney's car was already in the right side of the road before the accident occurred. He was asked he disagreed and did not accept that his father speared Rodney's car.

96. Jethro Samson was re-examined. He confirmed and maintained his evidence.

97. Michel Andre Moana Henderson is the next prosecution witness. He is a Vanuatu citizen and a farmer at South Santo. He resides at South Santo.

98. On 30 July 2021, he said he and his old father went from South Santo to Turtle Bay Resort. His old father drove the truck at that time. They arrived at Luganville at about 4:30pm (Sarakata Bridge). They drove on the back road. He saw two young persons who were drunk. A taxi stopped in the middle of the road at the road behind the court house. It was a Red Kia taxi. He did not take note of the number. But on it was a red taxi number 872. The taxi was on the main

road trying to pick up two (2) boys. The taxi stopped in the middle of the road and opened its doors in the middle of the road.

99. He saw the driver of the Red Kia taxi. He saw his eyes were red, slack half was not active as if he was weak. As they were on the road behind the Red Kia taxi, they waited. The Red Kia taxi did not move. So, they overtook the taxi and he looked at the driver and he recognized the driver of the Red Kia taxi who was Rodney Warsal.

100. He saw the driver was drunk. He said his old father reacted to the situation and told him that they went to report this to the police. He told his father that they had not enough time as they needed to drive to Turtle Bay. They did not go to police. They went to Turtle Bay. They had their dinner there at Turtle Bay. On their return, they passed the Matevulu Bridge, they saw the shining torch of the truck. He told his father that it was the same man who drunk again. After dinner, he drove. They did not expect to see an accident.

101. When they arrived at the scene of accident, they saw the same taxi was stopped there. He saw the passenger were laying everywhere. He realized that the passengers did not drink alcohol liquor but a road accident occurred. He recognized the same red taxi Kia and he told his father that it was the same taxi Red Kia they saw stopping in the middle of the road with the two doors open to pick up two (2) boys in the road at the court house (Luganville).

102. The Red Kia taxi was now on the tar-sealed road. The White Toyota was a little bit outside the road. The Red Kia taxi was the same he saw earlier on the day.

103. He stopped his truck. He stood up. He was not the first to arrive at the scene of accident. He told the people at the scene of the accident that if they waited for the ambulance, it was taken longer. He proposed to take the injured victims to the hospital. The first truck went. Then his truck was the second and he put three (3) boys behind in his truck and a girl inside at the back seat. He drove them to the hospital.

104. He did not see the driver of the Red Taxi Kia. He was informed that the driver of the red taxi Kia was the first to be transported to the hospital. After he arrived at the hospital, a big truck full of police officers arrived with the group of injured people and they assisted to put them in the hospital. He spent the night with his old father at Side River and he returned to South Santo the next day.

105. He helped because the ambulance vehicle could not take every injured so he helped the situation.

106. Michel Henderson was cross-examined. The confirmed his evidence that he saw the Red Kia taxi earlier stopped on the middle of the road at the court house area. The road towards Cinema Hickson and the same road to the bridge Damming Store was there. He confirmed he saw two

young persons were drunk. He saw how they walked and how they behaved. One of the boys was laying on the door of the Red Kia taxi. He was drunk. He saw. His face expression, he saw the colours of his eyes. There was weakness like hangover. He could not balance himself to find the handle of the door of the red taxi.

107. He did not see any bottle. He said he made a short statement and expected that he will explain the details to police. The police officer never asked him the questions. This witness was not re-examined.

108. Berry Simon was the next prosecution witness. He is a mechanic at Vanuatu Mobile Force (VMF). He served for 15 years. He was a corporal. On 30 July 2021, the Mobile Force at La Place, Luganville. He travelled with officers around. Some of the officers are at the VMF Barracks. On his way to the Barracks, he met Rodney at Shell Company. Rodney was drunk. Rodney was holding on the mirror of his car (the red Kia car he was driving). He met Rodney before he went to the Barracks.

109. At 4:15pm, he saw Rodney drove his red taxi Kia to the VMF Barracks. He was close to Rodney. He confirmed he was heavily drunken. He was in the car and he saw his appearances which confirmed he was drunk. He was about 8 meters from Rodney. He saw Rodney came to the Barracks because his girlfriend works at the VMF Barracks. Rodney came to see her.

110. Berry Simon was cross-examined. He confirmed his evidence that he saw Rodney was drunk at Shell Company at around 3:30pm. He was asked and he said he did not see Rodney holding any bottle of beer or alcohol liquor. There was a man with Rodney at Shell Company but he did not recognize that man. He accepted he made a statement to the police on 14 September 2021 but there was no mention of the man he saw with Rodney. He made the statement that he saw Rodney as he was focusing only on him. He was asked if he made up the distance he said yes as he knew the area, he knew the road where Rodney was and where he saw him. That is why he estimated that distance in his answer as 8 meters, he explained.

111. Henry Shem is another prosecution witness. He is the fireman inside the Vanuatu Mobile Force. He works as a fireman for 12 years and he is a corporal. He is second in command. He resides at Palon village. On 30 July 2021, he was at the Barracks to get ready to parade, they went back to the Barracks to return the riffles they used at the parade match. They stayed at the Barracks for the functions and in the afternoon, they went out. He was with Frederick, Brian and Done. They came to the fire station and then to Unity Shell.

112. He went to the Sunshine store to purchase an alcohol liquor for them to drink and he came back and joined the group at Unity Shell. He gave the alcohol drink to Done and they drunk that alcohol liquor. When the finished drinking that alcohol liquor, they called him to go inside a black double cabin and they came to Hotel Santo. There, the driver sided the truck and they waited

for Chilia to arrive so that they can go together with Rodney at Shelia's house at Chapuis. He met Rodney at Hotel Santo. Chilia is Rodney's girlfriend.

113. When he met Rodney at Hotel Santo, he saw his behaviour and appearances, Rodney was drunk. He could not stand up as he was laying and he could not balance himself. He saw Rodney less than 5 meters.

114. After Hotel Santo, the truck took them to Chapuis. Rodney was with them in the truck. They went to Chapuis at Shelia's house. Chilia introduced them to her parents. It was the first time they met her parents. He shook Shelia's hands and said some fun words and went back and joined the group and they continued to drink alcohol liquor.

115. He said Rodney came toward him with a can of beer and hit his chest as he could maintain his balance.

116. After that contact, a family member of Rodney came and pulled him away from him because he might have sensed that the contact that Rodney made on him might go further as he saw that Rodney was too drunk so he had to step in to move Rodney out of him.

117. He worked out and went to join Brian and the group and they continued drinking. Then they came back in the town. Rodney did no longer follow them when they went back to town.

118. Henry Shem was cross-examined. He confirmed his evidence in chief that he saw Rodney at Hotel Santo. He was with Brian Iavro. When they were in the double cabin they were sitting in the cart. At 7:30pm, they went up to Chapuis. They were drinking at Unity Shell. He saw Rodney coming out of the truck. He did not see Rodney holding a bottle of tusker and drunk from Hotel Santo to Chapuis at Shelia's house.

119. At Chilia's yard, there was a red car there. The red car was for Rodney. He was referred to the statement he made to the police on the 14th September 2021. In his evidence, he said he saw Rodney holding and drinking a tin of Woodstock alcohol. He accepted that in his statement, he did not mention that Rodney held a tin of Woodstock. He explained that the interviewing officer has never asked him whether or not Rodney held a drink or not, so he did not put in his statement. But he saw that Rodney had a tin of Woodstock alcohol drink on that day. Henry Shem was re-examined. He confirmed his evidence in chief.

120. Brian Iavro was the next prosecution witness. He is from Cole village, Santo. He is a VMF officer. He lives at Solomon Hill. On 30 July 2021, he was at the Barrack preparing for the parade at 8 – 9:00am o'clock. After the parade match, he returned back to the Barracks, changed his uniforms, put back his riffles and got lunch. At the Barracks they drunk wine and beer.

121. At late afternoon, they came down to Beach House at La Place. He was with Frederick, Done and Henry Shem. They then went to the fire station and then to Beach house. He then went to Unity Shell and met with the driver of the truck where Rodney was inside.

122. They picked them up at Unity Shell to pick up Rodney's wife at Beach house. He was with Frederick, Done and Henry Shem. They picked up Rodney's wife at Hotel Santo. They then went and dropped Rodney and his wife at the wife's parents' house. Rodney and his wife wanted to go back to the village. When they arrived at Chapuis at the house of the parents of Chilia, he noticed that Rodney was under the influence of alcohol when Rodney and his wife came out of the truck.

123. Witness Brian said he told Rodney and Chilia to rest first as they both were under the influence of alcohol and that they need not go to the village that night.

124. The same transport took them back to Beach House and they went on drinking there. Then he was informed that to go to the hospital and check on Rodney there as they had an accident. He took a taxi and went to the hospital. He went to the emergency unit; he saw Rodney was there. They treated him there. There were also the members of the family who were the victims of the accident, they were there. He tried to talk to them, they did not talk, they could not reply to him.

125. He then called his superior because the daughter of his superior also was a victim of the accident. He asked him to come hurry to the hospital.

126. His boss is the officer commanding VMF North, Thompson Joel. When his boss came in, he showed to him his daughter who had died already. He then went home and slept. He was concerned about the safety of the road users because Rodney was under the influence of alcohol. He did not understand why Rodney drove his car under such circumstances.

127. Brian Iavro was cross-examined. He confirmed his evidence in chief. He said there was no black double cabin but a grey double cabin at Unity Shell. From there, the grey double cabin went to take Rodney's wife at the Barracks, her place of work. Rodney was in that truck. Done, Henry and this witness sat in the cart of this truck. When they went to Chapuis at the house of the parents of Rodney's girlfriend, he said he observed Rodney was under the influence of alcohol liquor.

128. At the hospital, he confirmed he had spoken to Jerry Samson, the driver of the Toyota transport as Jerry was concerned about his son. Then he went to see Rodney who laid there on a bed. He was asked if he could remember what he told Jerry whether he told him that on the day of accident they were drinking alcohol liquor with Rodney. He answered that he was not sure. On 30 July 2021, he did not drink with Rodney but he observed Rodney and Rodney was drunk.

129. Max Wesly was the next prosecution witness. He is a VMF officer. He lives at VMF Barracks (Tyros). On 30 July 2021, he saw Rodney was holding a speaker (moved around with a speaker and danced at Hotel Santo. The speaker was loud and he observed Rodney was drunk. He recognized the action of a drunk man. He then returned to the Barracks. He was cross-examined. He maintained his evidence.

130. Joseph Javellier was the last prosecution witness. He is from Malekula Island. He is a police officer for 13 years. He works at the traffic section for 6 years. He is a sergeant. He dealt with the traffic, checked papers, dealt with drunk drivers. He assisted other police officers. He investigated the accident in particular when there was death resulting in the accident.

131. He was aware of the present case involving Rodney Warsal. Here, he attended the crime scene and investigated this case. The accident happened roughly about 9 – 9:15pm o'clock. The police attended the scene 2 hours after the accident occurred. He said the police operated by shift. He worked in the afternoon shift.

132. At the crime scene, he used meter, papers, board and a phone. The crime scene was at Matevulu just between the gate of Oyster Island.

133. When they arrived there, a different officer drove. He could see that the Red Kia car was pushed out from the place of the accident. There were 3 men at that time. Joseph, the principal of Hoggabour School, Stanley and a teacher who is from Banks Islands he did not know his name. he told them to leave the red car as he will need it to draw a sketch map.

134. He examined the red car. He looked at the front of that car he saw they already put back on the (bumper). He told them to leave it in the way it was. They said no. They have already put back the bumper and tied it up with cable. He referred to the 3 men he mentioned.

135. As to the reason why they have tried to put back the bumper or moved the red car from its original place after the impact, they told him that they wanted to move the car into Ludovic's yard as it was fenced. He asked them to remove the cable tire so that he could examine and see how the car was damaged. So, they removed the cable tire and the bumper fell on the tar-sealed road. He asked them to leave it like this. He sketched and took pictures of the accident. When he finished, he asked them to move the truck.

136. The other truck (Toyota) speared the ground on the other side of the road. It turned and landed in the ground near a burao tree. Everything in the truck, chairs were out as they flew out. Some were broken. There is no skid after the impact to show that the truck spanned up in the air. The cabin of the truck was not damaged.

137. He was asked what caused the truck to move out. He answered when the red Kia car hit the front of the Toyota Hilux it caused the wheel of the Toyota truck to turn and speared the pile of ground which was there near the road.

138. He drew the sketch map on 30 July 2021 at about 9:15pm o'clock. The sketch at page 3 was the same with the first he made a proper one. The picture at page 2 was of the Red Kia (an X) was marked. There was an arrow there indicating the direction towards Turtle Bay. The arrow coming down indicated the direction to Matevulu area.

139. He explained the line there of 29 points and 60 meters meant the measurements between the fixed point and the vehicle. The fixed point (VUI pol) post light. The line is about 20.96 meters which meant that on a sketch map there are two (2) fixed points. He used the two points to measure towards the wheels of the truck. The reasons being that if the truck was moved one can go back to the fixed points and with the measurements one could find out whether the trucks were at that same position.

140. At page 2 of that document, the letter Y was the positioning of the White Toyota Hilux. The figure 1 indicates the travelling direction of the Red Kia car. He explained how Red Kia travelled after the point of impact (hit – collision). Figure No. 2 showed the travelling direction of the White Toyota Hilux single cabin. Arrow No. 2 was the direction the White Toyota followed before and after the accident.

141. The scale on the left side showed the Red Kia car pointed to the North direction. The circle there and a cross inside with letters POI meant the Point of Impact.

142. There was the first point of impact (POI) and on the second there was a second point of impact. He explained that there were two points of impact (POI). The first POI related to the Red Kia car hit the Toyota White Hilux. The second POI related to the Toyota White Hilux hit the pile of ground at the side of the road.

143. The arrow in full black was the travelling direction of the White Toyota Hilux. The next arrow (2) was the slow travelling direction of the Red Kia. The last arrow down showed the direction to a place – direction to Turtle Bay and direction from Matevulu to Luganville town.

144. After he drew up the sketch map, his findings were that Red Kia vehicle caused accident because the damage of Red Kia vehicle told him so. The Red Kia vehicle sustained damage on its front right side. Exhibit P1 containing 2 pages documents (exhibit. No. 1), the first page of the draft and the second page contained the sketch maps supported this evidence and findings.

145. He has also taken photographs after he drew the sketch map of the accident. There were 5 pages containing 10 photographs.

146. Photograph 1 showed the rear of the Red Kia vehicle. One could see the model and the plate number. Photograph 2 showed the front of Red Kia vehicle. On a closer look out, one can see the cable tire. The bumper fell down and they used cable tire to hold on (fasten) tightly the plastic bumper.

147. Photograph 3 showed the vehicle Red Kia driven by Rodney at the time of accident.

148. Photograph 4 showed the skid mark on the side of the road which was that of the Red Kia vehicle after it speared the White Toyota Hilux and skidded to the grass on the side. The Red Kia vehicle skidded to the side on the grass.

149. Photograph 5 showed the body of the vehicle where the other vehicle hit on.

150. Photograph 6 showed that when they removed the cable tire, the bumper fell down and particulars of grass also fell down there.

151. Photograph 7 showed the front of the White Toyota Hilux after the accident.

152. Photograph 8 showed the red paint of the red Kia vehicle which was on the left side front bumper of the White Toyota Hilux evidencing the First Point of Impact (POI) when the red Kia vehicle hit the white Toyota Hilux on the night of 30 July 2021 on Matevulu road.

153. Photograph 9 showed the forehead of the White Toyota Hilux after the accident.

154. Photograph 10 showed the second point of impact (2nd POI) when the White Toyota Hilux hit the pile of ground on the side of the road. The photograph showed some plastic part of the White Toyota Hilux. The White Toyota Hilux hit the pile of ground on the side of the road because the vehicle Red Kia hit or speared the front of the White Toyota Hilux causing the driver to lose the control of his vehicle and the White Toyota Hilux went and hit the pile of ground at the side of the road. Exhibit P2 was the series of the photographs referred to above.

155. Police officer Joseph Javellier conducted interview of the Defendant Rodney at the police station in the presence of another police officer James Daniel on 8 October 2021. There were 5 pages of interview which was signed by this witness (Joseph Javellier (sergeant), PS James Daniel and Defendant Rodney).

156. He described the process of conducting an interview with an accused person. He cautioned him. He informed the accused (Rodney) of his rights. Rodney understood. He asked Rodney to sign at the end of each page and he agreed. He asked to read back to him the questions and answers and the accused agreed. He read it back to the accused. At the end of the interview, he asked the accused if he wanted to change any of his answers the accused said no.

157. The records of the interview of the accused Rodney were shown to this witness. He recognized it and identified it with the name of Rodney Warsal on it as the suspect statement. Rodney said he will speak only in court [The suspect statement is tendered as Exhibit P3].

158. The next document was the record of interview. He said his name, the name of PS James Daniel and that of the Defendant Rodney Warsal were on this document. It was dated 8 October 2021 at 9:21 hours. It was made at the Traffic office. It was an interview of 5 pages bearing 43 questions. His signature was on this document. The signature of PS James Daniel and the Defendant Rodney Warsal were on this document [The record of interview was tendered as P4].

159. He was asked to explain the process of overtaking. He said the overtaking vehicle has to look ahead onto the opposite side direction, if there was no vehicle, the driver must indicate by signaling on the left side and proceed to overtake the vehicle which was in front. The overtaking vehicle has to pass the vehicle in front at a distance of 3 – 4 meters before the overtaking vehicle signaled to go back onto the right side of his way.

160. He asked for Rodney's driving licence. Rodney told him to bring his driving licence but he never did. He was shown a driving licence bearing the name of Rodney Warsal. It was issued on 10 January 2014 and to expire on 9 January 2023. It was a valid licence but it is not the licence the vehicle that Rodney was driving at the time of accident. At the back of that licence the category that was indicated was for common vehicle which allowed Rodney Warsal to drive Hilux, buses and camions less than 4 tons. But this licence is not to drive a car. The category of licence which allowed Rodney Warsal to drive a car is motor vehicle. Rodney Warsal did not and never give him any licence to drive motor vehicle on the public road.

161. Joseph Michel Javellier was cross-examined. The accident happened at 9:15pm. He arrived two hours after the accident. The people who were involved in the accident were no longer there at the scene of the accident. He confirmed his evidence that when he arrived at the scene of the accident, he saw Joseph Warsal, Stanley Warsal and another man he did not know pushed the vehicle Red Kia but that he did not see the place it stopped after the accident.

162. He was asked and he said that when he arrived Joseph, Stanley and the other man did push out the Red Kia. He confirmed that when he arrived the bumper of Rodney's vehicle was already clipped. He asked them to remove the clipper so that he could take photographs of the vehicle. He did not agree that the only time they pushed Rodney's vehicle away was after he had completed the enquiries at the scene of accident. He confirmed when he was at the scene of the accident, there was no keys in Rodney Warsal's vehicle.

163. It was suggested to him and he denied that he told Joseph and Stanley that the driver of the White Toyota Hilux was wrong as he was in an excessive speed.

164. He took all the details of the vehicles involved in the accident, the places the vehicles stopped. But he added that the actual positioning of Red Kia was not the place they pushed it to as he saw that they pushed Red Kia vehicle.

165. He was asked and he confirmed his evidence that when the Red Kia vehicle hit the wheel of the White Toyota Hilux, it caused the Toyota to swing and speared the pile of ground. He said the vehicle Red Kia caused the accident. He maintained his evidence that when the Red Kia vehicle hit the wheel of the White Toyota Hilux, the wheel turned. He explained that at picture 9, the wheel was not there. He denied he guessed when he said vehicle Red Kia speared the White Toyota Hilux. It was put to him and he denied that the accident occurred because of a collision in the fronts of the vehicles. He said the accident occurred because the forehead of the vehicle Red Kia came inside. The point of impact was on the right layer. It was suggested and he denied that he performed his duties at the crime scene to please Thompson Joel.

166. Joseph Michel Javellier was re-examined. Rodney's driving licence was valid to drive buses but not cars. He repeated his evidence that the sketch map only said that the driver of the vehicle Red Kia wanted to overtake a White Toyota Hilux, but the Red Kia did not pass over the White Toyota Hilux yet, but turned right and speared the left front side of the White Toyota Hilux.

167. He denied that the White Toyota Hilux speared the vehicle Red Kia. He explained that if Rodney Warsal overtook properly, then the driver of the White Toyota Hilux (Jerry) will hit or spear the Red Kia vehicle on the back (rear) which was not the case here.

168. This is the end of the prosecution evidence and case.

V. The case of the Defendant

169. It is the defence case that Defendant Rodney Warsal did not cause the accident which resulted in the death of Lavinia Joel. The defence has six witnesses. The defence said it will establish the cause of the accident which was caused by Mr Jerry Samson who was the driver of the White Toyota Hilux. The defence said that it will further establish that Mr Jerry Samson caused the accident because he was in high speed while he was under the influence of alcohol liquor. Mr Jerry Samson was not speeding at 60km/hour but more than that. As a result, he hit the front right corner of the vehicle Red Kia. This explained why the White Toyota Hilux flew and had serious damages at the time of accident.

VI. Defence evidence

170. The defence called six (6) witnesses. Rodney Warsal was the first defence witness. He gave evidence to the following effect. He is from Hoggabour, North East Santo. He is married and his wife words at the VMF Camp. He is a taxi driver. They have no children.

171. On 30 July 2021, in the morning he was at Hoggabour. Then he and his wife came to Luganville as his wife will parade with other VMF officers. They left the village at 6:30am. They drove the vehicle Red Kia taxi. It was for Rodney Warsal. They arrived at 6:45am. He drove and dropped his wife at the VMF camp. Then he came and did his taxi services in town. At Daming store a client stopped him. This was in the afternoon about 3:00pm. Two boys stopped him at Daming store. He took them both and dropped them at Chapuis. He said the two boys were drunk. He looked at the internal mirror of the car, there was no vehicle behind him, he called them to hurry as he did not stop at the side of the road as there were potholes on the side. He dropped them off at Chapuis and he came back to town.

172. He said he went to check his wife at her place of work at the VMF camp. It was 4:00pm in the afternoon. While on his way there, the mirror of his car from the driver's side were untied. He said he stopped at the Shell company on the side near the sea. He went down and took a screw driver and tied up the mirror. He then went to the camp. He waited and his wife was still at work. He said he went to Chapuis at Chilia's house (his wife). He was told by his brother-in-law that Chilia and others were still at La Place. He left his car there at Chilia's parents' house and went with his brother-in-law, William to take Chilia.

173. They ran come to the Unity Shell to get some fuel for the double cabin grey of his brother-in-law. He was at the passenger's driving seat in front. He said some members of the VMF saw the truck and they came on the cart of the truck. He mentioned Brian Iavro and others. They came down to Hotel Santo as his wife told him that she was at La Place so they came to Hotel Santo and waited for her. Brian Iavro went off of the truck and danced there. Chilia arrived and went in the truck. They returned to Chapuis at Chilia's house. It was 6:30pm. Brian Iavro and other members of the VMF officers followed them at his wife's house. There, he went and slept in his car as he said he was tired. It was 7:00pm. He was awoken by his wife. She told him that they will return to the village. It was about 8:45pm. He then drove his car on the road to the village at Hoggabour.

174. He said they went and when they arrived at Matevulu bridge, he looked at the interior mirror of his car and saw a vehicle truck coming behind them run at a high speed and passed them. It was a white transport with full of passengers.

175. He drove and reached the road towards Oyster Island reached that white transport. He made left signal of his car and overtook the white transport truck and he signaled on the right to indicate that he came back on the right side. He said he was speeding at 80km/hour. He said he came into the white line on the right side of the road, the forehead of his car did not fully come inside the lane on the right side, he saw the white transport which was speeding came and speared

his car on its forehead at the passenger driving seat. He also said that when he wanted to overtake that white transport, he saw that that transport vehicle also increased its speeding run.

176. When the white transport speared the forehead of his car, the transport went to the bush while he held on and controlled his car to avoid the car not stepping up into the bush and damaged. His head was clear and he was not drunk. He sat in his car and his wife opened the door of his car and he went outside. He recognized Jerry as the driver of the white transport. Jerry came and the first thing he did was assaulting him. He fell on the road. Reeman Lulu kicked him on his head with his safety boots. While he was laying on the tar-sealed road, he was unconscious until he was in the hospital. He sustained head injuries and broken teeth as the result of the assaults on his body. After hospital, he went back to the village.

177. Rodney was reminded of the evidence of Henry Shem that at Chapuis at Chilia's parents' house, he assaulted him on his chest with a bottle of Woodstock alcohol liquor. In that evening of 30 July 2021. Rodney said Henry Shem lied. He said Henry Shem lied that he was too drunk.

178. Rodney was reminded of the evidence of Berry Simon that he saw him drunk in that evening of 30 July 2021. Rodney denied. He said he was not drunk. He was reminded of Berry Simon's evidence that at the VMF camp at about 4:30pm, he saw Rodney drunk. He said he was not drunk. He went to the VMF camp to take his wife.

179. He was reminded of the evidence of Max Wesley that Rodney held a head speaker and dance at Hotel Santo. He denied.

180. He was reminded of Brian Iavro's evidence that at Chapuis he saw that Rodney was too drunk and that he had advised Rodney not to drive that night as Rodney was too drunk. Rodney denied and said Brian Livo lied.

181. He was reminded of the evidence of Michel Henderson that he saw Rodney drunk and stopped his car in the middle of the road near the court house. He did not answer the question but he said the two (2) passengers who stopped his taxi, stopped him. He told them to hurry up as he was not stopping his taxi properly on the road.

182. Jerry was the driver of the white transport at that time. He was also reminded that Reeman gave evidence that he removed Rodney's keys and saw green tins and lots of bottle tusker in Rodney's car. Rodney said Reeman Lulu lied.

183. Rodney Warsal was cross-examined. He accepted that the accident happened at Matevulu village area. A death occurred as the result of the accident.

184. He denied that as the result of the accident some of the passengers of the White Toyota Hilux sustained injuries. But he had sustained injuries.

185. He was challenged that he claims he sustained injuries but he has no medical report to prove his injuries before the court. Rodney just said he has.

186. He was challenged that if he claimed that he has injuries as a result of assault on his body by Jerry Samson and Reeman Lulu, he did not lodge a complaint to the police against them. Rodney did not answer the question. He said he had just come to the court and he had just talked in the court.

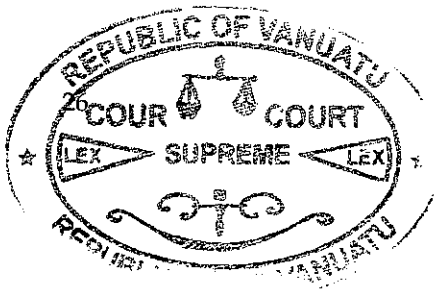
187. It was put to him because he has no medical report of his injuries Jerry and Reeman did not assault him. He said he saw the two of them assaulting him at the area of the accident.

188. He was asked that on 30 July 2021, he drove his Red Kia car at Matevulu area, he did not intentionally hit the left side of the White Toyota Hilux when he tried to overtake that white transport. Rodney answered that he had already overtaken the white transport and he was on his right way ahead. He denied he hit the white transport truck. He said the accident was caused by the white transport as he had already overtaken and on his right way.

189. He was questioned about his driving licence and he admitted he did not have a motor vehicle licence to drive cars. In relation to his common vehicle licence which will expire in 2023, he said it is not a valid licence.

190. Rodney was asked that if he accepted and followed the advice given to him at Chapuis at his wife's house that evening before he drove his Red Kia, there will be no accident. He answered he could not accept because Brian did not tell him that. He was questioned that in that evening, Brian Iavro told him that he could not drive as he was under the influence of alcohol. Rodney answered that at that time, he was not drinking alcohol. He accepted that Brian Iavro was part of the group of VMF officers who were with him (Rodney) and his wife at Chapuis. He also accepted Henry Shem was part of that group there in that evening. Rodney denied hitting Henry Shem's chest with a tin of Woodstock. He said Henry Shem lied. He was challenged that his answers to the questions in court were not true as Henry Shem was also part of that group at that time. He answered Henry Shem lied.

191. He was taken back to Daming takeaway. He was asked and he admitted he did stop on the right side but in the road because of the poor condition of the road. He called on the two passengers to come to his car. He was asked he said he did not see vehicle behind his car. It was put to him the reason he could not see was because he was too drunk. He said he looked into the mirror there was no vehicle behind him. Rodney was reminded of the evidence of Henderson that he stopped in the middle of the road, causing Henderson's father to force his passing him (Rodney). He accepted that there was a truck overtaking him.



192. He moved back on the road and stopped at Shell Company. He denied that Berry saw Rodney there and he described as "*stap lay lay ...*". The second time Berry saw him was at the gate of VMF camp (Tyros, and that Rodney was too drunk. Rodney denied, Berry lied as he went to get his wife.

193. He was taken back to the scene of accident, he was reminded that five (5) prosecution witnesses (Jerry, Reeman, Jackleen and Jethro) saw him overtaking the White Toyota Hilux, and that he did not completely overtake the white transport yet and he speared the forehead of the white transport. Rodney said he had already overtaken the white transport.

194. It was put to him that these passengers from the White Toyota Hilux were not drunk, they had clear vision at that time. Rodney answered he had overtaken them already.

195. It was suggested to him that the police sketch map showed that he caused the accident. He said no. it was again suggested to him that the story of the police officers in the sketch map was consistent with the evidence of Jerry, Reeman, Jackleen and Jethro. Rodney said no. he was asked, and he did not accept that Reeman assisted him putting him in a car to the hospital. He said Reeman lied. He denied Reeman saw green cans and bottles of tuskers in his car at that time. He said Reeman lied. He was asked if his evidence was that on 30 July 2021, he was not drunk. He said he was not drunk.

196. It was put to him that his answers that he was not drunk on that date was not true. He said yes, he was not drunk on that date. It was put to him that six (6) prosecution witnesses observed him on 30 July 2021 that he was too drunk. He denied.

197. Rodney Warsal was re-examined. He told the court that his common vehicle licence to drive buses and lorries will expire in the year 2023.

198. Chilia Kalret was the second defence witness. She is from Cole Village, Santo. She is the wife of Rodney Warsal. She is a VMF force member. She works at the VMF camp. She is a private VMF officer. She is now a permanent VMF officer. On 30 July 2021, in the morning she was in her village of Hoggabour, North East Santo with her husband, Rodney Warsal. She told her husband to drive her down to the town of Luganville at the VMF camp as they will have a parade that day. Rodney drove her to VMF camp. They arrived there at 7:00am. She was prepared and ready for parade match at the Unity Park, Luganville. The parade will start at 9:00am. Rodney went back and served people as a taxi driver. She returned to the camp after the parade. They had lunch, and after 3:00pm she went to La Place to watch other activities until 6:30pm. At 6:30pm his big brother called her that he was with Rodney in his grey double cabin and they will go back at the house at Chapuis.

199. She came and met them at Hotel Santo. They were in the truck of her brother. She said Rodney was not in the truck. He was outside. When they were ready to go back to Chapuis, Brian Iavro,

Max Wesley and Henry Shem went with them to Chapuis. They reached Chapuis at 7:30pm. Rodney went to sleep in his car. She went to sleep. She got up at 8:30pm and she went awoke Rodney. They left Chapuis to return to their village Hoggabour.

200. At the entrance of Matevulu School, a White Toyota Hilux passed them. There were lots of passengers in that white transport. The white transport was speeding at the time. She said the white transport was in a high speed when it passed them at Matevulu.

201. When they arrived at the road towards Oyster Island, they went closer to the White Toyota Hilux. Rodney applied the left signal to overtake the White Toyota Hilux and overtook the White Toyota and applied signal to come back to the right side but the White Toyota Hilux speared them in the forehead of the Red Kia car. At that time, she sat in front at the passenger's seat.

202. She said when they overtook the White Toyota Hilux, she saw that the White Toyota Hilux was in a high speed. She said they stopped on the road but the white transport went into the bush.

203. She said she came out. She went to see the passengers of the white transport. She then went behind the taxi Red Kia; she saw the driver of the White Toyota assaulted Rodney Warsal and she saw Reeman kicked Rodney with his shoes. She said she told them not to move as she was trying to sort things out, calling the ambulance but she called, there were too many noises at the time.

204. Then she saw the torch light of a vehicle coming. At that time Rodney laid down on the tar-sealed road because Jerry and Reeman assaulted him.

205. She saw the torch light of a vehicle coming. She said she stopped that car driven by Japhet who saw Rodney falling down. Japhet and Reeman took Rodney and put him in that taxi. They went to the hospital.

206. At the hospital, they put Rodney into the emergency room. She went to the police station and informed the police of the accident. She said she called the pro-medic, and she returned to the hospital. She said Reeman did not stop Japhet's car. She did. Reeman lied. She said Reeman lied about the green cans and bottles of tuskers in the Red Kia. She said when they both went to the East, there were no cans or bottles of beers inside the taxi.

207. Rodney sustained injuries. There was cut on his head and front of his teeth. His teeth were broken.

208. Chilia Kalret was cross-examined. She was asked she accepted that Rodney is her husband. She denied that she gave evidence to support Rodney. It was suggested to he that she came to Court to tell the truth. So, on 30 July 2021, at 7:30pm when they went to her parents' home at Chapuis with others, Rodney went to sleep because he was too drunk. She answered she

could not answer straight. She was not sure. All of 30 July 2021, she accepted she was not with Rodney. She accepted that if Rodney drank alcohol liquor, she would not know.

209. She was taken to her evidence in court that she said at the time of accident, Red Kia had already overtaken the White Toyota Hilux. She confirmed.

210. She accepted she made a statement to the police on 27 September 2021 about this case to the following effect at page 2 she stated to the following effect:

> *"Taem mifala iron long Matevulu area, white Toyota Hilux, a single cabin, came putim mitufala long place we whiteman isubdivide and Rodney ibehind long Toyota Hilux ia, taem mitufala ikam closap long White Hilux ia ale Rodney iovertake long Hilux ia be mitufala ino passem white hilux ia yet be mifala ibang. Mi no save se accident ihappen olsem waenm from mi panis tumas long time ia".*

211. She accepted and admitted that what she told the court in her evidence is not the same as what she told the police in her statement of 27 September 2021. She accepted that what she stated in her statement to the police was just 2 months after the accident, and what she told the court now in her evidence was almost 1 year after the accident. She also accepted that what she told the police in her statement was close to the date of the accident.

212. She was also referred to her evidence in court that she saw Jerry Samson (the driver of the White Toyota Hilux) assaulted Rodney Warsal just after the collision on 30 July 2021 and Reeman Lulu a passenger of the Toyota Hilux kicked Rodney Warsal with his security boots. She accepted it was a serious offence.

213. She was taken back to her statement of 27 September 2021 she made to the police. She was invited to read the following part of her statement:

> *"Mi wantem talem olsem se Rodney idrive mi, me staon long front passenger seat, mo me bin smelem alcohol long Rodney be mi no save talem se hemi drong tumas or nogat, from long time ia mi fraet blong askem question long hem or tok long hem from se nogut hemi kilim me. Hemia nomo.".*

214. She was asked and she confirmed that she did not mention in her statement to the police of 27 September 2021 that Jerry assaulted Rodney and Reeman kicked him. She further added that she wanted to tell the police of the assaults but she said the police officers stopped her and told her that she made statement only on the accident.

215. She accepted and admitted that there was no formal complaint made to the police on the incident of assault.

216. She was taken back to the crime scene, she was asked that if there was no overtaking, there will be no accident. She answered that when the Red Kia car overtook the White Toyota Hilux, the White Toyota Hilux was speeding too much.

217. She was asked to answer the question which was that because Rodney overtook the Toyota Hilux, the accident occurred. She admitted that an accident will occur because the White Toyota Hilux was too close to their right-side way. She was asked and she added that they were driving on their right side and, the White Toyota Hilux was too fast in its speed and hit the Red Kia car.

218. She was asked and she accepted she did not mention that in her statement to the police on 27 September 2021 because she said when she talked police officers were against the statement she made.

219. She was asked that what she told the police officers in her statement on 27 September 2021 was different from her evidence in court. She answered no. it was Joseph only who wrote what was in her statement. She did not tell him.

220. It was suggested to her that what she tried to tell the court was not true. She accepted and admitted it was not true at the ending of her statement.

221. She was referred to the last part of her statement to the police when she said she was afraid Rodney will assault her. She replied that Joseph made that statement, and Joseph told her to put that as part of her statement to the police.

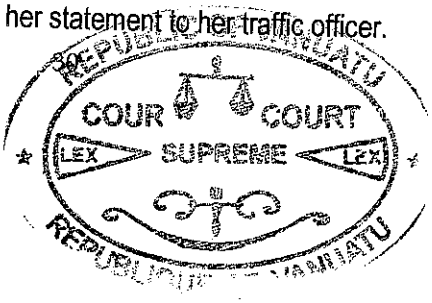
222. She was asked that the statement she said Joseph wrote it down was not true. She answered: "*yes, hemi no true*".

223. She accepted that Reeman Lulu and the driver of a taxi were the one who put Rodney Warsal into the taxi. She further said that when Rodney said that Reeman Lulu did not put him in the taxi it was wrong because at that time Rodney "*hemi black out*". Rodney did not know who put him in the taxi.

224. She was asked that Rodney "*hemi black out*" because they had an accident, she answered because Rodney was assaulted though there was an accident. She denied that Rodney was taken to the hospital not as a result of the accident.

225. She was asked that in her statement to the police on 27 September 2021, she smelt alcohol drinks on Rodney. She answered that she did not make that statement. The police did.

226. Chilia Kalret was re-examined. She clarified that when she said the statement written by Joseph was not true because she noticed that there was statement inside her statement to be police on 27 September 2021 which was not her statement to her traffic officer.



227. She said they took Rodney to hospital not as a result of the accident but because they assaulted him.

VIIA. <u>Prosecution rebuttal evidence of Chilia Kalret on the three (3) following specific points by recalling Michel Joseph Javellier:</u>

(i) Chilia's evidence that the statement "*hemi smellem alcohol drink long Rodney*" in her statement to the police on 27 September 2021, was not her statement. It was written down by the police;

(ii) Chilia's statement to the effect that when Red Kia car overtook the White Toyota Hilux, they (Rodney and Chilia) did not yet pass the White Toyota Hilux and they collided with the White Toyota Hilux. She said she did not make that statement. The police officer wrote that down;

(iii) Chilia's statement to the effect that: "*Hemi fraet se Rodney bae hemi kilim hem*". She said she did not state that. The police officer wrote down that statement on his own free will.

228. Michel Joseph Javellier's evidence on rebuttal was to this effect. He was first questioned on the evidence of Chilia Kalret when she said that the statement which was in her police statement (27 September 2021) to the effect that she smelled alcohol drink on Rodney was not her statement. She said you wrote down that statement in her statement of 27 September 2021. What do you have to say about that?

229. Joseph Javellier answered: when he questioned Chilia to obtain her witness statement, he asked her if she saw Rodney Warsal drinking alcohol liquor at that time or when she went inside Red Kia car, whether she saw some bottles of alcohol liquor inside the Red Kia car. She said no. She only smelled alcohol drinks on Rodney Warsal.

230. Secondly, Joseph Javellier was questioned about the statement of Chilia Kalret to the police of 27 September 2021 when she said that at Matevulu, they overtook the White Toyota Hilux but that they did not yet pass the White Toyota Hilux and they collided with the White Toyota Hilux. She said she did not statement that in her statement to the police but you Joseph Javellier wrote it down in her statement of 27 September 2021. What do you have to say?

231. Joseph Javellier replied: He asked her to tell him her version of her husband's driving till the accident. Chilia told him about what he wrote it down in the statement of Chilia of 27 September 2021.

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232. The prosecutor told Joseph Javellier that in his cross-examination of Chilia, he put to her that in her statement to the police of 27 September 2021, she did not say that she was afraid Rodney Warsal will assault her. Chilia said she did not state that in her statement of 27 September 2021, but that you Joseph Javellier wrote it down in her police statement of 27 September 2021. What you have to say about that?

233. Joseph responded that he asked Chilia why she did not stop Rodney Warsal to drive when she smelled alcohol drinks on Rodney. He said Chilia answered and he wrote it down as it was in Chilia's statement to the police of 27 September 2021.

234. Joseph was also referred to Chilia's evidence that she said the police officer stopped her from making statement about the assaults on Rodney Warsal to the effect that "*Jerry assaulted Rodney and Reeman Lulu kicked Rodney with his boots*". What he has to say?

235. Joseph answered that he did not stop her as she stated. He clarified that every time when a police statement is obtained from a witness, he read the statement back to the witness. If the witness agrees with the statement the witness signed the statement. If the witness does not agree with what was read back to him or her, the witness did not sign the statement. Joseph confirmed that to his recollection, Chilia signed her statement of 27 September 2021 after he had read it back to her.

236. Cross-examination of Joseph Javellier on his rebuttal evidence. He was asked and he denied he told Chilia to put in her statement that she smelt alcohol liquor on Rodney.

237. He was asked and he denied that when Chilia explained to him of the overtaking of the Toyota Hilux by the Red Kia car, he stopped her and told her to say that they did not pass the Toyota Hilux yet but the Red Kia hit the Toyota Hilux.

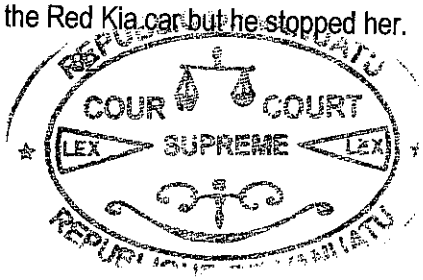
238. He was asked and he denied that he told Chilia to stop only at the place of the accident because he wanted to help the prosecution case.

239. He was asked and he denied that he told Chilia to put in her statement that she was afraid Rodney will assault her.

240. He was asked and he denied that the story about overtaking, smelling of alcohol liquor, Chilia has to say those statements otherwise she will lose her job.

241. He was asked and he denied that Chilia signed a police statement on 27 September 2021 as Chilia said it was not her statement.

242. He was asked and he denied that during the interview, Chilia wanted to explain further the overtaking of the Toyota Hilux by the Red Kia car but he stopped her.



243. Joseph Javellier was re-examined on his rebuttal evidence. He was referred to the question asked of him of Chilia to put specific statements in her police statement of 27 September 2021 if not she will lose her job. He was referred to his answer when he said no. He was asked to clarify why she said no?

244. He answered that he answered no because he did not tell Chilia of these; he said he told Chilia that, as an officer, she could tell him of what happened.

245. He further clarified that he did not stop Chilia to explain how the accident occurred because Chilia's statement and what she said was in her statement of 27 September 2021.

246. His name is Joseph Javellier. He is a sergeant police officer.

VIIB. <u>The defence case is re-opened.</u>

247. Mr Kenneth Toto was the next defence witness. He gave evidence to this effect. He is from Champagne Beach. He is a bus driver.

248. On 30 July 2021 at 7:30pm, he was at home drinking his bus, to Sunshine store close to Nemo Guest House in Luganville to do shopping. He said he saw Jerry Samson purchased 6 bottles of tusker beer and went back to his White Toyota Hilux. There were over 10 passengers in Jerry's truck. He drove his bus back to his house on the eastern side.

249. Mr Kenneth Toto was cross-examined. He was asked about which Sunshine store he went to shop on 30 July 2021 at 7:30pm. He said at Nemo on the other side of the road.

250. He was asked that Sunshine shop close to Nemo was the one close to the refill station. He said no.

251. He was asked again the Nemo guest house, there is a Sunshine shop there. He replied yes on the opposite side of the road. He was asked again so it was Sunshine store at the refill station. He answered no. He was questioned that the other Sunshine shop was close to the market house. He said no.

252. He was asked that the day before the defence counsel put to the witnesses the Sunshine store referred to was the one close to the refill station. He answered no.

253. It was put to him that Jerry Samson did not come down to Sunshine store he referred to. Mr Toto said Jerry come down to Sunshine store he referred to. Mr Toto said Jerry came down to the Sunshine store.

254. He was challenged as the defence lawyer when he asked questions to prosecution witnesses, he made reference to the Sunshine store at the refill station. Mr Toto said no. He was challenged and questioned about the truthfulness of what he said and it was put to him that he lied Jerry Samson left Chapuis with his passengers and drove straight away on the road to the East.

255. Mr Kenneth Toto was not re-examined on his evidence.

256. The next defence witness was Johnny Riri. He is from Mavea Island. He lives at Matevulu. He is a gardener.

257. On 30 July 2021 in the evening, he was at home with his wife and their two (2) children. They heard the noise of the collision of the two trucks causing the accident. He came on the road about 5 minutes from his house. He helped putting injured passengers in the vehicles to the hospital.

258. He said when they put passengers in the vehicles for hospital, he saw the torch light of the White Toyota Hilux was on. He tried to open the door of the Toyota Hilux he could not. But when he opened the door of the Toyota Hilux, he said he saw empty bottles of tusker at the driver's seat and at the front passenger's seat. He was cross-examined. He did not see how the accident occurred. He did not see how the tusker bottles were insider he White Toyota Hilux. He accepted that if the bottles of tusker he saw were close to the Toyota Hilux or they removed them from Rodney's Red Kia car, he would not know.

259. Mr Johnny Riri was not re-examined.

260. Mr Stanly Warsal was he last defence witness. He is from Hoggabour village, Santo. He is the principal of Hoggabour Secondary School. He was a teacher for 6 years. He was appointed as Principal two (2) years ago.

261. On 30 July 2021, at 10:00pm he celebrated the independence activities at Pele village (watching boxing tournament). The activities ended at 10:00pm o'clock. He was ready to leave when Joseph told him there was an accident on the road. He said "*Rodney hemi accident*".

262. He tried to go and help. He went in a white taxi to the place of the accident. He arrived at the place of the accident at 11:00pm o'clock. He described the two vehicles involved in the accident. The forehead of the Red Kia taxi pointed to the East. It stopped on its right side. The other vehicle, its forehead was on the opposite. The other vehicle was the White Toyota Hilux. He went and looked around of the two vehicles. Not long after, the police truck arrived.

263. He said he went to the White Toyota, there were bottles of tusker at the passenger's seat and at the driver's seat. He said when the two police officers measured the distance and identified

the marks, he heard over their conversations to the effect that the White Toyota Hilux was in high speed that was why there was white paint of the White Toyota Hilux on the Red Kia car.

264. Then the two police officers pulled the truck into the yard of one of his sisters.

265. He was questioned that Joseph's evidence was that when the police arrived, they saw Stanley and others pushing the Red Kia car. He said the police officer can tell lies. Only the bumper of the Red Kia was falling down and he and others clipped it back. The police arrived 10 minutes after he arrived. They did not do anything. They pushed the Red Kia car. They pushed it into a yard.

266. Mr Stanley Warsal was cross-examined. He was asked and he said yes that Joseph told him that Rodney had caused the accident. He accepted he arrived 2 hours after the accident. He did not see the accident occur.

267. He was asked that before he arrived at the scene, if a man removed the bottles of tusker from the Red Kia car and put them inside Jerry's White Toyota Hilux and put these bottles outside Jerry's vehicle, he would not know. He answered he did not know. He saw the bottles insider the White Toyota Hilux. He accepted that within 2 hours' time if something happened at the scene at that time he would not know.

268. He was questioned on his evidence that the police told him Jerry caused the accident but the findings of the police officers were that Rodney Warsal caused the accident.

269. He answered that Rodney collided with the other man. Rodney was not alone in this collision. He denied the evidence of police officer Joseph that Stanley and others were pushing the Red Kia car of Rodney.

270. Stanley Warsal was re-examined. He confirmed his evidence that Joseph told him when he was at Pele that Rodney caused an accident.

271. That is the end of the evidence of the defence and the end of the trial.

VIII. Assessment of Evidence

272. How then I assess the evidence? I do this by assessing the credibility and accuracy of the respective witness' evidence on how the witness appears in court and how his accounts are consistent. I need to assess the consistency when I compare that account with the accounts (versions) of other witnesses, and when there are documentary evidence or exhibits, I will compare witnesses' accounts with relevant exhibits or documents produced. I will also consider the inherent likelihood of the various situations which were then prevalent.

273. The following exhibits are provided by the prosecution in this case.

Date	Exhibit No.	Items
13/07/22	P1	2 Pages of sketch map. - Draft of first page; - Clean copy on second page.
13/07/22	P2	5 pages containing 10 photographs
13/07/22	P3	Suspect's statement
13/07/22	P4	Record of interview of the suspect Rodney Warsal
14/07/22	P5	Rodney Warsal's driving Licence
14/07/22	P6	Death Certificate of late Lavinia Joel due to unsuvivable injuries following a motor vehicle crash with suspected solid organ injuries which resulted in her death.
14/07/22	P7	Medical report of Dorothy Samson
14/07/22	P8	Medical report of Jacklyn Samson
14/07/22	P9	Medical report of Sue Ansen
14/07/22	P10	Medical report of Jethro Samson
14/07/22	P11	Medical report of Celily Samson

274. Exhibit P1 showed the White Toyota Hilux Reg. # 8779 running on its right side of the road while the Red Kia car was coming behind the White Toyota Hilux and trying to overtake the White Toyota Hilux and come back inside the road on its right side and the first point of impact between the two (2) vehicles on the right side of the road.

275. Exhibit P2 contained the photographs of the two (2) vehicles involved in the road accident. Photographs 1, 2, 3, 4, 5 and 6 showed the photographs of the Red Kia car driven by Defendant Rodney Warsal, damage the Red Kia car received at the time of impact or collision between the Red Kia car and the White Toyota Hilux.

276. Photographs 7, 8, 9 and 10 showed the photographs of the White Toyota Hilux driven by Jerry Samson, its status after the accident.

277. Photograph number 8 was the picture of the left side front bumper of the White Toyota Hilux single cabin of Jerry Samson after the first impact. One could see the red paint of the Red Kia car on the left bumper of the White Toyota Hilux which was the material evidence the red Kia car driven by Defendant Rodney Warsal hit the left side front bumper of the Toyota Hilux single cabin driven by Jerry Samson on that night of 30 July 2021.

278. Photograph 9 showed the status of the White Toyota Hilux single cabin of Jerry Samson after the accident. Photograph 10 showed the second point of impact when the White Toyota Hilux hit the heap of ground at the right side of the road.

279. Exhibit P6 is the Death Certificate of Lavinia Joel. Lavinia Joel died on 01 August 2021 at Surgical Department of the Northern Provincial Hospital (NPH). The cause of her death was that she received: -

(a) Unsurvivable internal solid organ injuries;
(b) Fractured Pelus, and (R) Femur;
(c) Unrestrained passenger (at the cart of the White Toyota Hilux single cabin).

280. The death certificate was issued by Dr Basil Leodoro on 18 August 2021.

281. Exhibits P7, P8, P9, P10 and P11 contained injuries received by respective patients as a result of the accident occurring on 30 July 2021 at Matevulu public road, Santo East. They are not disputed. They are self-explanatory.

282. Exhibit P5 was about the driving licence of defendant Rodney Warsal. At the time of the accident Rodney Warsal has a licence to drive the following categories: common vehicle.

283. Defendant Rodney Warsal did not have or was not licensed to drive the following categories: motor vehicle. The Red Kia car of Rodney Warsal did not fall in the categories of common vehicle he was licensed to drive on 30 July 2021 at the time of accident.

284. I deal first with the common facts, events not in dispute before I venture to fact findings on disputed matters or issues.

A. <u>Common facts, events of 30 July 2021 not in dispute</u>

285. 30 July 2021 was the independence celebration day in whole Vanuatu including Luganville, Santo.

286. In Luganville, Santo the Members of Vanuatu Mobile Force (VMF) and police officers participated at a Parade at Unity Park, Luganville.

287. Chilia Kalret is the defendant's wife. She is a member of the Vanuatu Mobile force stationed at Luganville, Santo.

288. In the early morning of 30 July 2021, defendant Rodney Warsal drove his wife in his Red Kia car Reg. # 8692 from their village Hoggarbour, East Santo, to Luganville at the VMF Barrick

Camp for Chilia to be prepared for the parade exhibition that took place on 30 July 2021 at 9:00am o'clock at the Unity Park, Luganville.

289. People and members of the families like Jerry Samson, his wife, children and grandchildren left their village (Manioc village) at East Santo and went to Luganville town to watch or participate in the various activities that were organized for that special day. Jerry Samson drove them there in his White Toyota Hilux Reg. # 8799.

290. In Luganville, Santo, the activities of fireworks took place at Chapuis stadium. The fireworks on 30 July 2021 closed all the activities of that day of 30 July 2021 at Luganville, Santo.

291. After fireworks, people and members of families like the defendant and his wife, Jerry Samson and his family returned back to their respective villages.

292. On their way home, an accident occurred, at the Matevulu area, Santo on 30 July 2021 at 9:15pm o'clock in the evening between the Red Kia taxi car driven by Defendant Rodney Warsal and the White Toyota Hilux driver by Jerry Samson.

293. As a result of the accident, a girl student of 17 years old (**Lavinia Joel**) who travelled on the White Toyota Hilux of Jerry Samson was transported to the Northern Provincial Hospital (NPH) with other injured passengers. Lavinia Joel was declared dead on 1 August 2021. Exhibit P6 is her death certificate dated 1 August 2021. The cause of death was: unsurvivable due to (or as a consequence of) multiple internal solid organ injuries and fractured Pelus and (R) Femur. Lavinia Joel was one of the unrestrained passengers in the White Toyota Hilux that drove off the road. In a report of 27 September 2021 attached to Exhibit P1, Dr Basil Leodoro MBBS DCH MMedSurg, a senior consultant general surgeon, provided the details of Lavinia's injuries, her treatment at the NPH Emergency on 30 July 2021 at 22:00hrs and her death as sustained multiple solid internal organs injuries on 30 July 2021.

294. Other unrestrained passengers on the cart of the White Toyota Hilux single cabin also sustained serious injuries:

(i) **Dorothy Samson** is a female patient of 40 years old. She was medically examined on 30 July 2021. Her medical report (exhibit P7) was made on 25 October 2021). The findings were:

- Right eye Hematoma, Ecchymosis and subconjunctival hemorrhage;
- Mild chest pain;
- Pain at both hip joint when ambulating.
- Findings consistent with road traffic accident "Moving vehicle collusion"

(ii) **Jacklyn Samson** is a female patient of 22 years old. She was examined on 30 July 2021. A medical report (Exhibit P8) was made on 25 October 2021. The finding was:

- Generalized Musculo-skeletal pain.
- Findings consistent with road traffic accident "Moving vehicle collusion"

(iii) **Sue Ansen** is a female patient of 17 years old. She was medically examined on 30 July 2021. A medical report (Exhibit P9) was provided. The findings were:

- Tenderness on Pelvic compression;
- X-ray results on 2 August 2021 were –
    - Closed fracture through Antero-posterior right pelvic Rami and Subluxed right Sacro – IUAC joint;
    - Patient had several reviews at the Northern Provincial Hospital.
    - Findings consistent with road traffic accident "Moving vehicle collusion"

(iv) **Jethro Samson** is a male patient of 19 years old. He was medically examined and a medical report (Exhibit P10) was made on 30 July 2021. The findings were –

- Hematemesis;
- Wound noted at base of nasal region;
- Abrasion noted at occiput region.
- Findings consistent with road traffic accident "Moving vehicle collusion"

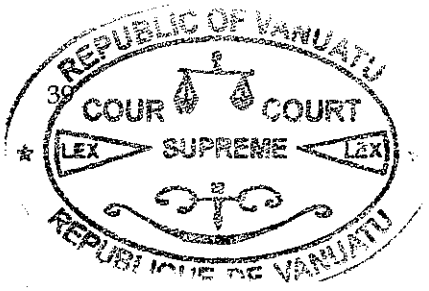
(v) **Celily Samson** is a female patient of 24 years old. She was admitted to the surgical ward on 31 July 2021 with the following conditions (Exhibit P11):

- Left closed ulnar and radial fracture with neurovascular intact;
- Open book pelvic fracture. She underwent rehabilitation with physiotherapist and later discharged when feeling better and able to mobilize with aid from wheelchair. She was discharged on 20 August 2021.
- Findings consistent with road traffic accident "Moving vehicle collusion"

(vi) **Sonia Ansen** is a female patient of 19 years old. She was medically examined on 30 July 2021. The findings were:

- Left leg abrasion;
- Findings consistent with road traffic accident "Moving vehicle collusion"

B. <u>Credibility and fact findings</u>



295. I assess the evidence of witnesses on the offence of driving under the influence of alcohol liquor on 30 July 2021. I, then, assess the evidence on the offence of causing death by reckless driving. If I am satisfied beyond a reasonable doubt that the prosecution has proved each and all essential elements of the offence of causing death by reckless driving in Count 2, the offence of unintentional harm causing death in Count 3 will also be proved on the criminal standard. The elements of the offence of unintentional harm causing temporary injuries in Count 4 were not disputed. They were admitted. They are proved on the criminal standard of beyond reasonable doubt.

B1. <u>Driving under the influence of alcohol liquor on 30th July 2021</u>

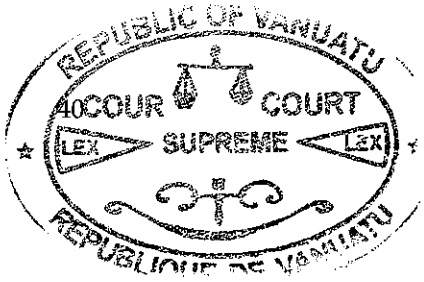
296. I consider the evidence of Michel Henderson. On 30 July 2021, he travelled from South Santo with his father to go to Turtle Bay Resort for a dinner. When they came to the road on the Bridge Takeaway opposite Daming Store, on the road down to Tropicana resort, they met with a red Kia taxi car which was stopped in the road on the right side.

297. Two boys were trying to hold on the door of that red Kia taxi car. They could not properly hold the door. They appeared to be drunk. Mr Henderson and his father were waiting behind that red Kia taxi car in the road to move away. The red Kia taxi car did not move so they decided to take over that red Kia taxi car. Mr Henderson looked through the window of his truck, he recognized and identified defendant Rodney Warsal as the driver of that red Kia taxi car. He saw Rodney's eyes were red, weak he knew that Rodney was drunk.

298. They were not happy when Rodney blocked the road. Mr Henderson's father suggested that they went and reported this incident to the police. Mr Henderson advised his father not to go to the police as they have a program that day and they did not have time. So, they run past the defendant Red Kia taxi on the opposite side of the road while the Red Kia car was stopping there.

299. After dinner at Turtle Bay, Mr Henderson and his father returned and, on their way, back home, they met again with the red Kia taxi car on the public road at Matevulu, and this time in an accident. Mr Henderson told his father that it was the same red Kia taxi car which stopped earlier in the road at the bridge Takeaway.

300. Mr Henderson stopped his truck, came out of his truck and assisted the injured passengers transported the injured passengers from the White Toyota Hilux (3 boys and a girl) to the hospital as he knew the ambulance will be slow to arrive at the accident scene of the accident. He transported the injured passengers to the Northern Provincial Hospital (NPH) in emergency room. The police arrived. He drove his father to his house at Side River. He returned to South Santo the following week.



301. He was cross-examined. He was challenged that he did not see the defendant drink alcohol. He maintained his evidence that he looked the status of the defendant and his appearances, the defendant must be drunk. Mr Henderson accepted he made a short statement to the police in his statement but that in Court he gave detailed evidence of what he saw. Mr Henderson's evidence is a powerful, independent witness and he is a creditworthy witness.

302. I reject the evidence of the defendant Rodney Warsal that he stopped his red Kia taxi on the road because there were loopholes on the right side of the road. I also reject his evidence that he was not drunk on that day while he was driving his red Kia taxi as observed by Mr Henderson in the morning of 30 July 2021.

303. Witness Berry Simon saw the defendant on the side of the road at Shell Company, the defendant was laying over the glass of his red Kia taxi. He saw the defendant as he was drunk. Mr Berry Simon, later in the afternoon, again saw the defendant at the Barracks Camp. He was about 8 meters from the defendant. Defendant Rodney Warsal was there to take his wife Chilia Kalret. He observed the defendant was drunk. Under cross-examination, Mr Berry maintained his evidence as he saw and observed the defendant's behavior and actions at the time. Mr Berry Simon is a reliable and trust worthy witness.

304. The evidence of Rodney Warsal that he was not drunk at that time as he took a screw driver to repair the glass of his Kia car taxi could not be believed.

305. Witness Henry Shem's evidence was that he was part of a group of VMF officers who came to Unity Shell and, they took a transport to Hotel Santo. At Hotel Santo, he saw the defendant coming out of the truck, the defendant was laying around as he was drunk. This witness was part of the group who waited for the defendant's wife there.

306. At Hotel Santo, the defendant came out of the truck there. This piece of evidence was also confirmed by the evidence of Chilia Kalret as she also saw the defendant coming out of the truck when she arrived there at the Hotel Santo to a group who waited for her in her brother's grey double cabin vehicle.

307. Mr Henry Shem's evidence was that when the defendant's wife came at Hotel Santo and went into the truck, he also joined the group of VMF officers and others including the defendant who were with Chilia in Chilia's brother's vehicle from Hotel Santo to the defendant's wife (Chilia) at Chapuis.

308. Mr Henry Shem's evidence was that when they arrived at the defendant's wife's house at Chapuis, the truck stopped. He approached the defendant's wife and her family and he shook their hands. The defendant also came out of the truck. He described the defendant that "*hemi laylay mo hemi holem 1 tin blong Woodstock*" alcohol drink.

309. He said the defendant approached him and hit him on this chest and a member of the defendant's wife's family intervened and took the defendant Rodney out of him. He said the defendant was drunk because of the defendant's reactions of approaching him, holding a can of Woodstock, hitting him on his chest, he saw the defendant was drunk. Then he and others took the truck back to the main town of Luganville.

310. Witness Henry Shem was cross-examined. He maintained his evidence and he was not shifting from his evidence. He did not agree that the defendant did not approach him and hit him at that time. He did not agree that the defendant was not drunk at that time. Mr Henry Shem's evidence was based on his observations of the defendant at that time.

311. Mr Henry Shem is an honest and trust worthy witness.

312. Mr Brian Iavro was part of the group with the defendant Rodney Warsal from the Hotel Santo to the defendant's wife's house (Chilia Kalret) at Chapuis. He was with the defendant that evening.

313. At Chapuis before they came back to town, he told defendant Rodney Warsal not to drive home at Hoggarbour. He told the defendant to sleep and to drive home the next day. The reason he told the defendant not to drive was because on his observations of the defendant that he was under the influence of alcohol.

314. Mr Brian Iavro was cross-examined. He maintained his evidence that he told the defendant not to drive to Hoggarbour because he was under the influence of alcohol.

315. Mr Brian Iavro is an honest, powerful and reliable witness.

316. Witness Max Wesley directly saw defendant Rodney Warsal dancing in front of Hotel Santo with a walk- taking speaker. He saw the defendant was drunk. He was cross-examined, his evidence has never shifted. This evidence supported the other pieces of evidence that Rodney Warsal was under the influence on 30 July 2021.

317. The evidence that defendant Rodney Warsal was drunk and was under the influence of alcohol when he drove his red Kia taxi car on the public road at Matevulu area, Santo was supported by the evidence of Lulu Reeman who saw green cans of beer and bottle of tusker in the red Kia taxi car of the defendant just after the accident when he opened the door of the red Kia car and removed the keys of that car and gave it to the driver of the transport truck which transported the defendant Rodney Warsal and his wife to the hospital.

318. The evidence of the defendant's wife (Chilia Kalret) who was with the defendant at the time of accident, said she smelt alcohol on defendant Rodney Warsal.

319. The evidence of the wife went further than that. She did not ask Rodney Warsal questions because she was afraid Rodney Warsal will assault her.

320. Police Sergeant Joseph Javellier explained when he was recalled on rebuttal that he asked Chilia Kalret why she, as an officer, she did not stop the defendant to drive. Chilia said she did not ask questions otherwise; he will assault her.

321. Those pieces of evidence were all direct evidence which were all together at the time of accident pointed to the status of Defendant of being heavily under the influence of alcohol while driving his Red Kia car on the public road on the night of 30 July 2021.

322. On 30 July 2021, around 9:15pm, defendant Rodney Warsal was driving his red Kia taxi car on the public road at Matevulu area, at the time of accident while he was heavily under the influence of alcohol.

323. It is accepted that if the defendant was not under the influence of alcohol there would be no accident on 30 July 2021.

324. I reject defendant Rodney Warsal's account of the events that he did not consume alcohol drinks on the 30 July 2021 and that he was not under the influence of alcohol when he drove his red Kia taxi car on the public road at Matevulu area.

325. The evidence is overwhelmingly against defendant Rodney Warsal that he drove his red Kia car under the influence of alcohol on the night of 30 July 2021. All the essential elements of the offence of driving under the influence of alcohol were proved beyond reasonable doubt.

B2. <u>Causing Death by Reckless Driving</u>

326. The following witnesses, Jerry Samson, Reeman Lulu, Jacklyn Samson and Jethro Samson gave direct evidence of what happened resulting in the accident that occurred on 30 July 2021 at 9:15pm o'clock at Matevulu area, East Santo. The Sergeant Police Officer Joseph Javellier took his independent assessment using his tools and found out the cause of the accident. He provided a sketch map of the scene of the accident with photographs in support. The findings confirmed that Defendant Rodney Warsal caused the accident.

327. I set out the findings of the cause of the accident more in details. Jerry Samson was the driver of the White Toyota Hilux. The essence of his testimonies was that, there were 14 passengers in his White Toyota Hilux, including his wife, children and grandchildren. He drove on the public road direct to the eastern coast of Santo Island, he arrived at Matevulu area, at a speed of 60km/hour. A vehicle which was at a high speed was coming behind his vehicle. He could hear the noise of the engine of that vehicle, the torchlight of that vehicle was bright. The vehicle applied signals to overtake his vehicle but the driver of that vehicle did not pass his White Toyota

Hilux Single Cabin, but, swung to the right side of the road and hit the left side front wheel of his Toyota Hilux. The wheel of his truck twisted and caused the accident.

328. In cross-examination, his evidence never shifted. He maintained he did not drink alcohol and on 30 July 2021 after the fireworks, he drove his children, grandchildren and others directly on the road towards his village, Manioc. He maintained his evidence he did not go to the Sunshine Shop and purchased tusker beers. Witness Jerry Samson is a credit worthy witness. I accept his evidence as truthful.

329. The prosecution second witness, Reeman Lulu's evidence reinforced the evidence of Jerry Samson. Reeman Lulu gave evidence of the accident that occurred at Matevulu area. Lulu gave evidence that while Jerry Samson drove his vehicle on the road at the area where a Whiteman (an American) subdivided lands there, he saw Jerry Samson run past the Red Kia taxi car of Defendant Rodney Warsal because the defendant's red Kia car was stopped on the side of the road there. He saw Rodney's head on the steering wheel and his right hand on the steering wheel while the left hand was hanging on the car's door. He saw as if defendant Rodney Warsal was drunk.

330. Reeman Lulu's evidence established how the accident occurred on 30 July 2021 at the Matevulu area on 9:15pm that night. He was with Jerry Samson in the front of the Toyota Hilux on the passenger seat. He could hear clearly the noise of the engine of a vehicle coming behind them in a high speed. That vehicle was overtaking the White Toyota Hilux. In the process of its overtaking, that vehicle did not pass the White Toyota Hilux and swung to the right side again and speared the front left side of the White Toyota Hilux causing an accident that took place on 30 July 2021 at 9:15pm o'clock.

331. He came out of the White Toyota Hilux and put defendant Rodney Warsal and his wife in a taxi to the hospital. He opened the door of the Red Kia car and removed its keys and gave them to the driver of the taxi which drove defendant Rodney Warsal and his wife to the hospital.

332. He maintained his evidence in his cross-examination. The defence questions assisted and confirmed the evidence of this witness when he was asked to refer to his police statement made just a week after the accident to the following effect: "*Time mifala ipasem bridge blong Matevulu, mo stap run icome long place we Matthew whiteman blong USA istap subdivide mo salem, mi luk Red Kia car ia istap, istap long side blong road. Mo mi luk Rodney we iholem steer blong truck mo hands blong hem ifas stap long steer blong truck olsem se hemi silip mo mifala iron stap go ...*".

333. He disagreed and maintained that they ever went to purchase tusker beer at the Sunshine shop in town. He did not agree that he assaulted defendant Rodney Warsal. He confirmed his evidence that he was the one who rescued the defendant and put him on a taxi with his wife to

NPH. He maintained at that time they did not consume alcohol drinks. They were clear in their mind when the accident took place. Reeman Lulu is a powerful and honest witness.

334. Jethro and Jacklyn gave evidence to the similar effect. They both sat at the cart of the White Toyota Hilux driven by their father. They confirmed the evidence of the first and second prosecution witnesses (Jerry Samson and Reeman Lulu). Jethro and Jacklyn saw directly what happened at Matevulu village area at the time of accident. They both observed the defendant's vehicle come behind the White Toyota Hilux. They confirmed the defendant's vehicle was in a high speed. Jethro said "*Rodney ispeed icome high bim nomo mo come behind to high bim nomo lo has blong Toyota Hilux. Mo hemi overtake mo lo cause blong overtaking hemi swing long right-side mo hittim front left side blong Toyota Hilux mo accident ihappen*". Jethro and Jacklyn were both aware of the accident after they were awoken at the hospital. What they both saw was similar to what the first and second prosecution witnesses saw.

335. Jethro and Jacklyn disagreed and denied they went to Sunshine shop to purchase tusker beers. They both maintained that their father (Jerry Samson) did not consume alcohol drinks at the time of accident. They said when they came out from Chapuis Park after the fireworks, they went straight away on the road leading to the village on the eastern coast. They both did not agree in their cross-examination that Jerry Samson speared the Red Kia car vehicle of Rodney Warsal. The reason why they disagreed was that they both saw what happened. They both accepted that if Rodney did not try to overtake, there would be no accident. The accident took place because Rodney Warsal tried to overtake their vehicle but he did not pass the White Toyota Hilux yet, then, swung his steering to the right side and hit the left front side of the White Toyota Hilux. Their evidence was not shifted. They re-enforced the evidence of the first and second prosecution witnesses.

336. There were no major inconsistencies to the testimonies of the four (4) main prosecution witnesses. There were just minor inconsistencies about the signals – indicators – to the effect that Jerry Samson, the driver of the White Toyota Hilux saw the defendant's signal to overtake and Reeman Lulu also saw the signal for the defendant to overtake them but they did not. Apart from those minor inconsistencies, Jethro and Jacklyn's evidences were not shifted. They both re-enforced the evidence of the two first prosecution witnesses. The inconsistencies on whether Defendant Rodney Warsal applied signals before he overtook the White Toyota Hilux was not a decisive fact of this case. This might be explained by the fact that Jacklyn and Jethro were on the cart outside while Jerry Samson and Lulu Reeman were inside the white Toyota Hilux and they saw the signals from the internal mirror and they saw the speed of their vehicle from the indicators inside the white Toyota Hilux.

337. The evidence of police officer Michel Joseph Javellier made an independent assessment of the accident of 30 July 2021 at Matevulu road, East Santo at that night. He was not witnessing the accident. He used his own tools (rules, meters, pen and papers...) to drawn a sketch map (Exh. P1), took photographs of the two (2) vehicles involved in the accident. He made findings which

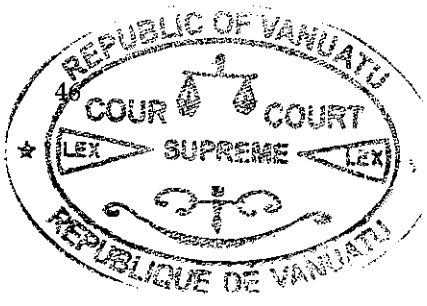
confirmed the prosecution evidence that Defendant Rodney Warsal caused the accident of 30 July 2021 at 9:15pm at the Matevulu road.

338. It was accepted as a matter of common sense that Mr Javellier completed his findings at the accident scene before he went to the hospital and spoke to others there including Jerry Samson. The evidence of Mr Javellier re-enforced the evidence of the following prosecution witnesses: Jerry Samson, Reeman Lulu, Jethro and Jacklyn Samson as to how the accident occurred that night of 30 July 2021 at Matevulu road.

339. The prosecution evidence which was accepted by the court was that, the White Toyota Hilux single cabin driven by Jerry Samson was running on the road on the right side of the road at Matevulu area. The Red Kia car driven by Defendant Rodney Warsal was running and coming behind the White Toyota Hilux on the Matevulu road that night. The Red Kia car was in a high speed with high beam light and attempted to overtake the White Toyota Hilux but did not completely overtake and swung back to the right side of the road and hit the left front side bumper or wheel of the White Toyota Hilux causing the Toyota Hilux to hit the hip ground on the side of the road and causing the Red Kia car to came back on the road (Exhibits P1 and P2 – see in particular photograph No. 8 showing the red paint of the Red Kia vehicle on the left bumper side of the White Toyota Hilux single cabin).

340. This prosecution evidence was confirmed by the evidence of Mr Javellier in rebuttal of Chilia Kalret's changed versions of the accounts when she later told the court that Mr Javellier wrote what was in her statement to the police. The court accepted Mr Javellier's evidence in rebuttal and rejected the changed versions of accounts of the events by Chilia Kalret. The Court accepted Javellier asked Chilia Kalret as to what happened. Chilia told him that defendant Rodney Warsal tried to overtake the White Toyota Hilux but he did not completely overtake the White Toyota Hilux but swung back to the right side of the road and the accident occurred. The Court rejected the evidence that the police officer (Javellier) wrote that statement on his own. It was accepted the statement made was read to Chilia Kalret and she accepted it was her statement and she signed it as her own.

341. Further Chilia Kalret is an officer (member of Vanuatu Mobile Force). She was asked as to why, as an officer, she did not stop her husband, Defendant Rodney Warsal, to drive the Red Kia vehicle that night as she smelt alcohol on Rodney Warsal while she was sitting in the passenger seat with Rodney in the Red Kia vehicle on the night of 30 July 2021 at Matevulu road. Chilia's response was that she was afraid that Rodney Warsal will assault her so, she did not ask any question to Rodney. Chilia Kalret was with Defendant Rodney Warsal before, during and after the accident. Chilia's evidence supported the prosecution case. The Court rejected Chilia Kalret's second version of the accounts as an attempt to assist her husband without factual support.



342. The Court did not accept the defence case that the road accident of 30 July 2021 at Matevulu road at 9:15pm was caused by Jerry Samson. Defendant Rodney Warsal denied being drunk on 30 July 2021. The evidence was overwhelmingly against him. This evidence against Rodney Warsal included the evidence of his wife Chilia Kalret who smelt alcohol drink on Rodney Warsal while he was driving his Red Kia vehicle on that night of 30 July 2021 before the accident at Matevulu road.

343. On observations, Rodney Warsal was unable to answer simple questions. He took time to answer these simple questions. The court directed him to answer them. He contradicted himself also in his answers. The court rejected part of his evidence which was contrary to the cause of accident of 30 July 2021 at 9:15pm on the Matevulu road.

344. The Court rejected the evidence that the Defendant Rodney Warsal was assaulted by Jerry Samson and Lulu Reeman just after the accident causing him to be lying unconscious on the road and transported to the hospital. There was no evidence of a complaint of the assault by the defendant or his wife.

345. Chilia Kalret's evidence in trying to change what she told the police in her statement initially could not be accepted as it was a makeup story to assist her husband. The statement she made to the police initially were facts that lead to the accident of 30 July 2021 at Matevulu road at 9:15pm.

346. Mr Kenneth Toto's evidence that he saw Jerry Samson purchasing 6 bottles of beer on 30 July 2021 before driving his White Toyota Hilux single cabin, cannot be accepted as truth for the reason that he contradicted himself by pointing to different Sunshine shop he said he saw Jerry Samson purchasing beer. Kenneth Toto's evidence is rejected as it could not be believed as it was not consistent with itself. It did not point to factual foundation but based on fabricated evidence and, thus, based on lies.

347. Mr Johnny Riri's evidence of seeing bottle tuskers (beer) inside the White Toyota Hilux single cabin could be not relied upon. Mr Riri did not see how the accident occurred. He accepted that if the empty bottle of tuskers that were seen earlier in the red Kia car were put inside or near the White Toyota Hilux, he would not know. He also accepted that if the empty bottles of tusker were removed from the Red Kia Vehicle and put inside the White Toyota Hilux single cabin he would not know. These empty bottles were the ones testified by Reeman Lulu found in the defendant's Red Kia vehicle. Witness Chilia Kalret, the defendant's wife, confirmed she smelt alcohol liquor on Rodney Warsal while he drove his Red Kia vehicle before the accident took place that night. This piece of evidence could not be relied upon. It was weak. It did not support the consistency of the overwhelming evidence in support of the accident. It is rejected.

348. The evidence of Stanley Warsal, the last defence witness did not support the defence case. After the accident happened, he said he heard two police officers said Rodney Warsal was

involved in an accident. He arrived 2 hours after the accident at the scene of the accident. He did not play any positive step. That evidence did not establish any value. There was no basis for the court to rely on it. It is rejected.

349. The Court found that on 30 July 2021, defendant Rodney Warsal was grossly reckless when he caused the accident at Matevulu road, East Santo, at 9.15 PM, in that: - he was reckless when he drove the Red Kia vehicle on 30 July 2021 when he tried to overtake the White Toyota Hilux but did not complete the overtaking process of his Kia vehicle and swung the Red Kia vehicle back to the right side of the road and collided with the left front side of the White Toyota Hilux causing the accident of 30 July 2021 at Matevulu road at about 9.15 PM. If it was true, as the Defendant alleged, that the White Toyota Hilux hit or speared the Red Kia car as the Defendant had already overtaken the White Toyota Hilux, then, the evidence would clearly show that the White Toyota Hilux would hit or spear the back (rear) of Red Kia vehicle. It was not the case here.

350. Defendant Rodney Warsal 's reckless actions were aggravated by the fact that he was not licensed to drive the vehicle of the categories of motor vehicle of the type of the Red Kia vehicle he drove on 30 July 2021 causing the accident (Exhibit P5); and further he was heavily under the influence of alcohol as found earlier (in count 1) when he drove his red Kia vehicle on Matevulu public road on 30 July 2021.

351. The prosecution has proved each and all essential elements of the offence in Count 2 of Causing death by reckless driving beyond reasonable doubt.

B3. <u>In the alternative of count 2, Unintentional Harm Causing death</u>

352. The essential elements of this alternative charge of Unintentional Harm Causing Death are proved beyond reasonable doubt.

B4. <u>Unintentional Harm Causing temporary injuries</u>

353. The essential elements of the offence of unintentional harm causing temporary injuries are proved on beyond reasonable doubt.

IX. <u>Application of law to Facts</u>

354. Based on the facts as found by the Court, the prosecution has proved beyond reasonable doubt the essential elements of the following offences charged against Defendant Rodney Warsal:

(1) Driving under the influence of alcohol drink, contrary to Section 16 of the Road Traffic (Control) Act [CAP. 29];

(2) Causing death by reckless driving contrary to Section 12 of the Traffic (Control) Act [CAP. 29];

(3) Unintentional harm causing death contrary to Section 108(c) Penal Code Act [CAP. 135];

(4) Unintentional harm causing temporary injuries contrary to Section 108(b) Penal Code Act [CAP. 135].

(5) As a result of the grossly reckless driving of Rodney Warsal on the night of 30 July 2021 on the Matevulu Road, an unrestrained passenger of the White Toyota Hilux single cabin, Lavinia Joel, sustained very serious injuries and died on Sunday 01 August 2021 (Exh. P6) and, other unrestrained passengers of the White Toyota Hilux single cabin also sustained temporary injuries on their bodies (Exhibits P7, P8, P9 P10 and P11) as a result of the accident caused by the defendant on the night of 30 July 2021 on the public road at Matevulu area, east Santo.

X. Verdict

355. Defendant Rodney Warsal was found guilty of following offences:

- Driving under the influence of alcohol;
- Causing death by reckless driving;
- Alternatively, unintentional harm causing death;
- Unintentional harm causing temporary injuries.

Dated at Luganville, Santo, this 19th day of July 2023

BY THE COURT

REPUBLIC OF VANUATU COURT SUPREME COURT LEX LEX

.....

Vincent LUNABEK
Chief Justice