

**IN THE COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE
DR RACHEL MONTEBELLO B.A. LL.D.**

**The Police
(Inspector Sergio Pisani)**

vs

**MICHAEL ANTHONY CAHILL
(ID: 367510L)**

Today, 15th January 2020

The Court,

Having seen that **MICHAEL ANTHONY CAHILL**, holder of the Maltese document 367510L was arraigned and accused of having:

On the 23rd January, 2017 at around 12.00 hrs and in the preceding days, weeks, months and years, at Motor test services, Luqa and other parts of the island committed several acts that constitute violations of the same provision of the law, and are committed in pursuance of the same design as defined in Article 18 in addition to being an accomplice in the crimes described underneath as per Article 42 of the Chapter 9 of the Malta Laws;

- i) For having asked, received or accepted any offer or gave promise of any undue advantage for himself or for someone else in order to exert inappropriate influence, issued a certificate of VRT in breach of article 121A (2) of Chapter 9 of the Laws of Malta.

- ii) And more for the same date, time, place and circumstances to gain any advantage or benefit for himself or others, any document intended for a public authority, knowingly makes a false declaration or statement, or give false information, VRT certificate, in breach of article 188 of Chapter 9 of the Laws of Malta.

- iii) And more for the same date, time, location, and circumstances as a test person entrusted to test vehicles he issued a certificate showing that the vehicle has passed the test when the vehicle was not tested, in breach of Regulation 25 (b) of Subsidiary legislation 65.15, the Laws of Malta.

- iv) And more for the same date, time, location and circumstances as a tester he received a payment for vehicles other than the service rendered by the payment rights under these regulations, and that a breach of Regulation 25 (d) of Subsidiary legislation 65.15, of Malta Laws

- v) And more for the same date, time, location and circumstances as a person to test vehicles he did not abide, at all times, with the regulations and standards concerning the vehicle's roadworthiness test as stipulated in these regulations and approved by the Authority in breach of regulation 14 (1) (b) of Subsidiary legislation 65.15, of Malta Laws

- vi) And more for the same date, time, location and circumstances as a tester he endorsed a passed test result although a complete test was not undertaken in breach of regulation 14 (1) (d) of Subsidiary legislation 65.15, of the Laws of Malta.

vii) Moreover he is accused of relapsing after having been condemned for the crime with judgment given by the Courts of Malta, which judgment became final and cannot be changed this in terms of Article 49 of Chapter 9 of the laws.

Having seen the consent granted by the Attorney General in terms of Article 370(4) of the Criminal Code for these proceedings to be dealt with summarily¹;

Having seen that in virtue of a decree dated 2nd March 2017, the proceedings were ordered to be conducted in the English language;

Having seen that these proceedings were assigned to be heard by the Court as presided with effect from 18th July 2018;

Having been exempted from hearing afresh the testimony of those witnesses who testified before the Court as previously presided²;

Having seen and heard the evidence and seen all the documents exhibited in the acts of the proceedings;

Having seen all the acts of the proceedings;

Having heard the oral submissions of both the Prosecution and the defence during the hearing of the 6th November 2019;

Having seen that the case was adjourned for today for the delivery of judgement;

The Relevant Evidence

¹ Fol. 6.

² 15th January 2020.

Jean Claude Seisun testified³ that on the 23rd of January 2017 he was employed with Motor Test Services in Luqa, a VRT station where vehicles are tested. He confirmed that he knows the accused, Michael Cahill, as he was also employed with same garage as a tester who examines vehicles for the purpose of VRT. He recalls that while at his work place he had received a phone call from a third party regarding a van with registration number ABU-815 which required VRT testing, and during this phone call, the said third party mentioned money and that he was ready to pay more for the van to be approved for purposes of VRT. Witness stated that the fee for a regular VRT test on a vehicle such as the van in question is €26.32, and at least two testers are required in order to carry out a VRT test. Although he knows that the owner of this vehicle was Godfrey Formosa, witness confirmed that it was not Formosa who brought the van to the garage that same day for testing. Witness stated:-

“... I have to state that this person was not the owner of the van and eventually eighty Euro (€80) which were given to me. On a question being asked, I reply that the eighty Euro (€80) were given after. That the money was given upon the van entering the garage, that is before any testing was done.”

The witness also confirmed that he photographed the van and the money was given to him by the person who brought the van and he gave the accused €40 from the €80 that were handed to him. He also stated that at this point he left the garage in order to buy something to eat and that the accused was the only tester in the garage while witness was gone. Upon returning to the garage, the van was no longer there and witness stated that he was not present when the VRT certificate was issued in connection with the van ABU-815, although upon being shown the certificate during his testimony, he recognised the accused's signature on the said certificate.

Witness continued to state that he had subsequently contacted the owner of the van personally in order to see to the mirror and the rear bumper and return the van to the

³ 8th March 2017.

garage to be tested, and although the van was returned to the garage and duly tested, no certificate was issued on that second occasion since the certificate had already been issued previously and was not withdrawn. On this occasion, the van was visually inspected by the witness and the accused but according to the witness, the mirror and the rear bumper had not been fixed.

He also stated that when the van was subsequently brought to the garage by officials from Transport Malta and was tested yet again, it failed the test which was carried out by the accused, as it had the side window on the driver's side and part of the rear bumper, missing.

Under cross-examination⁴, **Jean Claude Seisun** stated that the phone call that he received in connection with the testing of vehicle ABU-815 from the owner of the vehicle, was received on his mobile phone which is not listed anywhere in connection with the VRT station where he was employed. He stated that subsequently the vehicle was brought to the station where he worked. Witness also confirmed that he often carried out VRT tests himself alone and would then ask the accused to sign the certificate. He denied having received an envelope in connection with the vehicle ABU-815, however he confirmed that he was given cash directly, which he then divided between himself and the accused after having told the accused to check the car. He denied being aware of what took place subsequently.

Godfrey Formosa testified⁵ that he is the licensed owner of vehicle ABU-815, but the vehicle belongs to the company Luxury Living Technologies of which he was a Director. He stated that he does not know the accused and never met him. He also denied having taken the vehicle for VRT testing himself since he engages an employee of his company, Ray Galea, in order to co-ordinate the testing of the vehicles. Witness recounted how initially, all the vans were taken by another employee Jean Carl Grech to a garage called XTC but since the van ABU-815 exceeds

⁴ 3rd December 2018.

⁵ 14th March 2017.

3 tons in weight, his employee was recommended to take it for testing to a garage in Luqa and Jean Carl Grech was the person who took the said van for testing. He confirmed that he gave the instructions for the vehicle to be taken for VRT testing and Jean Carl Grech asked for 100 Euro which were given to him by the Accounts Department of his company before the VRT certificate was in his possession, but witnesses denied knowing who the money was given to or between whom it was divided. Witness stated that he was not aware that the vehicle needed repairs to be carried out before it was taken for VRT testing however after the Police intervened and after the vehicle was tested for VRT, it was taken to a mechanic in order for repairs to be carried out.

Under cross-examination, Godfrey Formosa declared that the choice where to take company vehicles for VRT testing was left in the discretion of his employees although the vehicle belonged to him. However he stated that it was Jean Carl Grech who decided to take the vehicle ABU-815 to the VRT testing station where the accused was employed, however this was done without his knowledge and approval although Jean Carl Grech did mention to him the name of the VRT station where the car was taken. The accused was never mentioned to him by name.

Mario Buttigieg who was appointed as Court-expert on the 14th March 2017, presented report Dok. MB and testified⁶ that the VRT that was carried out on his vehicle at Motor Test Services Limited in Luqa, took thirty minutes in total.

Jesmond Calleja⁷ confirmed that he effected a service, repairs of number plate and rear bumper, and the replacement of a ball joint and mirror cover to vehicle ABU-815 on the 3rd February 2017. He was informed that these repairs were needed for purposes of an inspection. The vehicle as brought to him by Ray Galea and he communicated only with Ray Galea regarding the repairs carried out on this vehicle.

⁶ 21st June 2017.

⁷ 21st March 2017.

Melvyn Zammit confirmed that he works at Motor Test Services Limited together with the accused whom he has known for over seven years. He recognised VRT certificate Dok. SP⁸ issued in connection with vehicle ABU-815 as being a pass test of VRT issued on the 23rd January 2017. He also confirmed that the certificate is signed by the accused although not in his presence, as at that time witness stated that he was working on some repairs in another building and was not present when the first VRT was carried out, so he can only assume that this was carried out by the accused as he was informed of this by Jean Claude Seisun. Witness also recognised Dok SP1 as being a VRT certificate stating that vehicle ABU-815 failed the test, and this was issued when the Police together with Transport Malta officials came on site to request that a test is carried out on the vehicle.

Under cross-examination⁹, **Melvyn Zammit** confirmed that the person who is required to sign the VRT certificate is the person who actually carried out the VRT test and he also stated that assistants who are not certified VRT testers cannot carry out such tests or sign VRT certificates. He also confirmed that the accused and himself are the only two testers in the VRT station where they are employed, while Jean Claude Seisun was a helper at the garage and he was not certified to carry out VRT tests and nor did he ever carry out any such test in witness's presence. He also stated that it is the responsibility of the tester to check any work that may be carried out by the helper. Witness confirmed that the fee for VRT testing is fixed and that in the case of vehicle ABU-815, the amount of the fee would be that of €26.32.

Anna Maria Grech¹⁰, the owner of the VRT Station situated at 50, Industrial Estate, Luqa, confirmed that the accused is employed with her, together with another tester and a helper. She was not present when the vehicle ABU-0815 was tested the first time and when certificate Dok. SP which indicates an initial pass test, was issued by the accused, however she was present when the Police requested that the vehicle is tested again in their presence and she confirmed that the vehicle failed the test since it

⁸ Fol. 18.

⁹ 21st June 2018.

¹⁰ 21st March 2017.

had some faults. At the time when the VRT certificates in connection with this vehicle were issued, her employed helper was Jean Claude Seisun. She also stated that she was never asked for her helper's telephone number as clients usually call on the land line of the garage.

Lino Abela¹¹, a technical manager at Transport Malta stated that he was called by the Police on the 25th January 2017 to assist them in an investigation regarding vehicle ABU-815 and on the 27th January 2017 he was asked by the Police to go to Birkirkara to check the vehicle and after checking the vehicle found that it had the rear part of its bumper missing, faulty steering wheel and two rear tyres that were worn out. From the system it resulted that the vehicle had undergone VRT testing and was certified as having passed the test only few days before, on the 23rd January 2017 at 12:53h at Motor Test VRT Station, which test was conducted by Cahill with licence number 3898208 who the witness recognised as being the accused. The witness also explained that it is the tester himself who inputs the information in the Transport Malta system. Witness also declared that in that condition this vehicle could have never passed the test.

George Farrugia¹², principal technical officer at Transport Malta stated that he inspected vehicle ABU0815 while it was parked at Santa Venera together with other officers from his technical unit, since he was informed that it had been certified as having passed VRT but from a visual inspection it resulted that there were several irregularities including rear right bumper, faulty speedometer, steering noise and problems with the rear tyres. The vehicle was tested the following Monday at Motor Test in Luqa for which test, carried out by the accused, the witness was present. This test confirmed the failings noted by witness in his previous visual inspection of the car.

¹¹ 21st March 2017.

¹² 5th April 2017.

Jean Carl Grech testified¹³ that he was instructed by Ray Galea, his manager at Di Natura, to take company van ABU-815 for VRT testing and he took the vehicle to a VRT station in Luqa where he found a person of foreign nationality who he recognised as the accused, who took two photos of the van. Witness further stated that he handed an envelope containing €90 to him and was given a VRT certificate signed by the accused, all in a matter of five minutes. After a couple of days he returned to the same place with the same vehicle for a short while, as there was something wrong with the van. He also returned a third time with the vehicle where officials of ADT were present and this time he waited for around three quarters of an hour. Witness also confirmed that after the vehicle was taken for VRT testing, some repairs were carried out to the vehicle. While he also confirmed that the certificate at fol. 18 is the certificate that he was given when he took the vehicle for VRT testing, he declared that despite the price indicated on the certificate is of €26.32 he paid €90 for the test.

Under cross-examination, Jean Carl Grech¹⁴ reiterated that he was sent to the VRT station in Hal Luqa by Ray Galea who handed him an envelope, and as soon as he arrived at the station a young man, who is not the accused, emerged as though he recognised the van of Di Natura and the witness handed the envelope that he was given to him. He stated that this person passed on the envelope to the accused who opened it in his presence and there was 80 Euro which was divided between the accused and the other person.

Ray Galea testified who testified on the 9th January 2018 and on the 22nd February 2018 and stated that he is the Sales Manager at the company Luxury Living Technologies Limited, which is the owner of vehicle ABU-815. This company was previously known by the name Di Natura. The witness denied having ever given the sum of 90 Euro in cash in an envelope to Jean Carl Grech in order to take the vehicle

¹³ 9th January 2018.

¹⁴ 6th November 2018.

for VRT testing and obtain a certificate, and denied any knowledge about the VRT testing of this vehicle, stating that this does not fall within his competence.

Jean Carl Grech¹⁵, when confronted with Ray Galea's statement, declared that when he was instructed to take the vehicle for VRT testing, Ray Galea handed him an envelope containing cash. He stated that as he was employed as a salesman at the time, Ray Galea was his manager and the van was given to him by his manager Ray Galea.

Ray Galea denied this statement and stated that the van belonged to the company director, and it is possible that the director sent Grech directly to take the car for VRT testing. However, this statement was again denied by Jean Carl Galea who, when confronted, insisted that it was Ray Galea to sent him to take the vehicle for VRT testing.

PC 544 Darren Micallef¹⁶ confirmed that on the 23rd January 2017 he was present together with Inspector Sergio Pisani in Psaila Street Bikrikira when Ray Galea informed the Inspector in the witness's presence that he had sent his employee to carry out VRT Testing on Saturday.

The accused, Michael Anthony Cahill, chose to testify¹⁷ in these proceedings and gave the following version of events. He stated that he has been working as a VRT tester for around sixteen years and had been employed at Motor Test Services garage for about 14 months. Jean Claude Seisun was employed as a helper at the same garage, and would help out by taking photographs of the vehicles, checking the various parts of the vehicles and in general assisting the tester during the testing of the vehicles. He also stated that the actual test could be carried out by the helper alone although he is not licensed, but a licensed tester would need to sign the certificate. The accused however denied that there were occasions where the testing of the vehicle

¹⁵ 9th January 2018.

¹⁶ 22nd February 2018.

¹⁷ 21st May 2019.

would be carried out by Seisun and he, as the licensed tester, would merely sign the certificate. He also stated that Seisun would generally work in the class 3 section situated in another area of the garage while he worked in class 2 section. The accused also confirmed his signature on the VRT certificate exhibited at fol. 18 and stated that at time of issue of the certificate, that is 12:53h, he was taking his usual break at work between 12:30 and 13:00h. Accused also explained that the test is carried out and the VRT certificate issued, when the client actually pays.

He further stated that Jean Claude Seisun asked him for a favour, that is to sign the certificate in respect of a vehicle that was already tested, as the client, a mechanic, was coming to pay and collect the certificate. He stated that he did not recall having tested the vehicle when it was brought to the station by the Police and was tested in the presence of two VRT inspectors.

Under cross-examination the accused confirmed that in fact two persons are needed and must be present in order to carry out a VRT test on a vehicle and that at the time when the certificate Dok. SP was issued, there were only two other employees at the garage, Jean Claude Seisun who was inside the office, and Melyvn Zammit who was upstairs. Although he also confirmed that usually a test would take up to 15 or 20 minutes, he does not recall the initial test carried out on this vehicle. He did recall however that when the vehicle ABU-815 was brought in for VRT testing in the presence of the VRT inspectors, it had various faults and missing parts. He affirmed that he did not see the vehicle on the 23rd January 2017 and although he did not receive any money for the VRT certificate issued on that same date, he did sign the certificate. He denied also seeing any money or envelope containing money for the certificate and stated that it was Jean Claude Seisun who informed him that the client was coming to pay.

Factual Considerations

After having examined all the evidence tendered in the acts of these proceedings, the Court makes the following observations.

It is duly established from the evidence that a sum of money was indeed handed to Jean Carl Grech, an employee at Luxury Living Technologies Limited, and that he was instructed to take the vehicle ABU-815 owned by said company, for VRT.

The Court after examining and weighing the testimony of the various witnesses who testified in these proceedings, deems that the testimony of Ray Galea, who repeatedly denied having instructed Jean Carl Grech to take the vehicle for VRT testing and having handed him a sum of money in cash to pass onto the VRT station for the purpose of ensuring that the vehicle was duly certified, lacks credibility. After all, his version of events was contradicted by no less than three other witnesses: (i) Godfrey Formosa who expressly stated that he engaged Ray Galea specifically in order to coordinate the VRT testings of the company vehicles; (ii) Jean Carl Grech who consistently reaffirmed that it was Ray Galea, his manager, and not the company director or the Accounts section of the company, who instructed him to take the vehicle ABU-815 to be tested and who handed him the money in order to procure a VRT certificate for the said vehicle; and (iii) PC 544 Darren Micallef who declared that Ray Galea himself informed Inspector Pisani in his presence that he had instructed his employee to take the vehicle for VRT testing.

The Court also deems that it results satisfactorily that this sum of money in cash, varying between €80 and €100, was handed by Jean Carl Grech to the accused and to Jean Claude Seisun at the VRT station where the accused was employed. **The Court deems of particular relevance the fact that Jean Carl Grech in his testimony before the Court in the presence of the accused, clearly described the person at the VRT station who took photos of the vehicle, received the envelope containing €90 and handed him the VRT certificate, as a person of foreign nationality who he recognised as the accused.** Also significant is the following reference made by Jean Carl Grech in the following excerpt from his testimony:-

“... Naf li hadli zewg ritratti tal-vettura, tajtu envelope li kien fih id-disghin Euro, *tawni l-VRT certificate iffirmat minnu, u tlaqt lura ghax-xoghol bih.*” [enfasi tal-Qorti]

This testimony continues to convince the Court that the certificate was not only signed by the accused in the presence of Jean Carl Grech, but that it was handed to him in the presence of another person, presumably Jean Claude Seisun who after all, admitted most unequivocally that both himself and the accused were present when Jean Carl Grech brought the vehicle and handed over the money.

In any event, the Court is morally convinced on the basis of the entirety of the evidence produced, that the cash was ultimately received by the accused. The precise amount of money and whether the cash was in an envelope or otherwise, and whether it was handed to directly to Seisun or to the accused and how it was divided between them, is not in the Court’s view, of such relevance as to put into any doubt that a sum of money well in excess of the established rate for the test actually carried out on the vehicle in question (€26.32), was indeed passed on by third person through Jean Carl Grech, and ended up in the hands of the accused, for the ultimate purpose of procuring a VRT certificate in connection with the vehicle ABU-815.

It is also sufficiently proven that although the VRT certificate issued on the 23rd January 2017 affirms that the vehicle was duly tested and effectively passed the test, it does not result from the evidence that a VRT test was actually carried out on the vehicle on the day when it was first brought to the VRT station, that is on the 23rd January 2017. Indeed, all the persons connected with the VRT station in question, that is, the accused, Melvyn Zammit, Jean Claude Seisun and Anna Maria Grech, all denied any knowledge of the vehicle having been effectively tested on the date when the certificate Dok. SP was issued, that is on the 23rd January 2017. However, on the other hand, the issue of the said certificate is undoubted and uncontested, which in the Court’s view can only mean that the certificate was issued either without the vehicle

having been duly tested or, as would result from the evidence of Lino Abela and George Farrugia, in circumstances where although the said vehicle was in such a state that it could not have possibly been certified with a VRT pass, it was nonetheless certified as roadworthy by the accused.

It is true that from the evidence it does not result to have been the accused himself who agreed with Ray Galea or in any event with Jean Carl Grech, to receive a sum of money for the purpose of certifying the vehicle in question for VRT purposes: indeed it is admitted by Jean Claude Seisun that he had himself received a phone call from the person who was willing to pay more than the fixed rate for VRT certification of vehicle ABU-815. Nevertheless, it is sufficiently proven, in the Court's view, by both Jean Carl Grech and Jean Claude Seisun's testimony, that the accused ultimately received cash paid out by a third party and passed onto him and Jean Claude Seisun also by a third party, for the ultimate purpose of issuing or at least signing a VRT pass-certificate for vehicle ABU-815. It is indeed uncontested that the accused did sign the VRT certificate dated 23rd January 2017 which certifies that the vehicle had passed the test.

It is submitted by the defence that because Seisun would often carry out the testing of vehicles even when he was not licensed to do so, this is also what occurred in this case and that the only involvement of the accused in the events on which the present charges are based, was to naively sign the certificate stating the vehicle ABU-815 passed the VRT test on the 23rd January 2017, without having however confirmed that the test was indeed carried out. **In fact, it is uncontested by the defence that the accused signed a certificate for a vehicle which he did not test.**

The accused goes on to claim that he did not received any money for this certificate, despite having claimed that certificates are only issued when the client pays. In this regard, the Courts reiterates its observation that the accused was positively identified by Jean Carl Grech as the person who received the money at the VRT station, while Jean Claude Seisun confirmed and re-affirmed in his testimony that the money was

passed onto accused. Consequently, the Court has no reservations and is morally convinced that accused received money in order to certify a vehicle that if indeed tested, should have failed the test, whether or not the test was indeed carried out and whether it was carried out by accused or by a person who was not licensed to do so.

In actual fact, the Court is satisfied that the evidence reveals quite unequivocally that the vehicle ABU-815 was not, indeed, tested on the 23rd January 2017 when taken by Jean Carl Grech to the VRT station and that the initial pass certificate issued after five minutes on that occasion, was improperly issued. After all, both George Farrugia and Lino Abela affirmed in their testimony that in the condition in which it was found a few days after the purported test was carried out, the vehicle ABU-815 could have never passed a roadworthiness test. This conclusion is reaffirmed by the fact that while Jean Carl Grech stated in his testimony that the certificate was issued and handed to him after five minutes, court expert Mario Buttigieg testified that a regular vehicle roadworthiness test takes approximately 30 minutes to carry out. Moreover if, as Jean Claude Seisun stated in his testimony, after receiving the money from Jean Carl Grech and passing it onto the accused, he left the vehicle at the station in order to buy himself some lunch, the only person who could have issued the certificate was the accused who in any event, could not have carried out the test since, by his own admission, at least two persons are needed in order for the vehicle to be tested. The Court on the basis of the relevant testimony, categorically excludes the involvement of Melvyn Zammit in the facts giving rise to the present charges.

Having considered;

After having reached the aforementioned conclusions on the basis of the evidence adduced in the acts of the proceedings, the Court will now proceed to determine upon application of these facts to the charges brought against the accused, the guilt or otherwise of the accused of the offences he is charged with having committed.

Trading in Influence

The first charge brought against the accused imputes the commission of the crime contemplated in Article 121A (2) which provides thus:-

Any person who requests, receives or accepts any offer or promise of any undue advantage for himself or for anyone else with the object of exercising any improper influence as is referred to in sub-article (1) shall on conviction be liable to the punishment laid down in that sub-article.

(3) The offences referred to in sub-articles (1) and (2) shall be complete whether or not the alleged ability to exert an improper influence existed, whether or not the influence is exerted and whether or not the supposed influence leads to the intended result.

The scope of this legal provision is rather wide, with the definition of this crime comprising the acceptance, receipt, and even the request or promise of an offer, of any undue advantage for the purpose of the exercise of an improper influence. Although the offer, request, promise or indeed acceptance of an undue advantage is an essential element of this offence, the Court considers that is immaterial whether this undue advantage is intended for the active subject of the offence or for another person, so long as the undue advantage is accepted, requested or promised with the object of the active subject exercising any improper influence over the decision-making of any person. It also emerges from the provisions of paragraph (3) of Article 121A that the offence is consummated even if the capacity of the active subject of the offence to exert undue influence is inexistent or is not exerted or does not produce the desired result.

It is evident that the active subject of this offence must be the person who is tasked with exercising the undue influence over a third party, whether or not he is in effect in a position to do so but provided that he requests, is promised or accepts an undue

advantage for doing so whether for himself or for the person over who he undertakes to exercise an improper influence.

This in effect means that the legal definition of this crime does not extend to the hypothesis where the undue advantage is intended for the active subject of the offence to exercise an improper influence exclusively over his own decision-making. It therefore also follows that the requirement of the involvement of a third person over whom the active subject intends to, or effectively exercises an improper influence in consideration of an undue advantage, is an essential constitutive element of the crime with which the accused has been charged under Article 121A(2).

A well-defined interpretation of this legal provision was provided by the Criminal Court in its judgement of the 13th July 2006 in the names **Ir-Repubblika ta' Malta vs Dr. Noel Arrigo** and also by the Court of Criminal Appeal in its judgement of the 17th September 2008 in the names **Il-Pulizija vs Gino Zammit** where it was held:-

“Illi minn ezami ta’ l-artikolu gdid 121A jemergu zewg reati separati. Dak kontemplat fis-subartiklu (1) huwa dak ta’ persuna li twieghed, taghti jew toffri, xi vantagg mhux xieraq lil xi persuna ohra li tasserixxi jew tikkonferma li huwa jew hija jkunu kapaci li jaghmlu xi influwenza mhux xierqa fuq il-mod kif tiddeciedi xi persuna li hemm imsemmija fl-artikoli precedenti. Mela hawn ghandha il-kaz fejn A is-soggett attiv, qieghed iwieghed, joffri jew jaghti lil B xi vantagg mhux xieraq biex B jinfluwenza kif jiddeciedi C., sija jekk dak il-vantagg mhux xieraq ikun ghal C jew ghal xi hadd iehor, prezumibbilment D.”

*Is-subartikolu (2) invece johloq ir-reat ta’ min jircevi jew jaccetta xi offerta jew weghda ta’ xi vantagg mhux xieraq ghalih innifsu jew ghal xi hadd iehor bil-ghan li jezercita xi influwenza mhux xierqa bhal ma hemm imsemmija fis-subartikolu (1). **Me-la hawn is-suggett attiv huwa A li qed jaccetta jew jircevi minnghan B xi vantagg mhux xieraq ghalih innifsu jew ghall xi hadd iehor, bil-ghan li jezercita influwenza mhux xierqa fuq C. (sottolinear tal-Qorti).***

Is-subartikolu (3) mbaghad jiddisponi li r-reati msemija fis-subartikoli (1) u (2) ikunu saru ghal kollox sew jekk il-kapacita' allegata li ssir influwenza mhux xierqa kienet jew ma kienetx tezisti, sew jekk l-influwenza tkun jew ma tkunx saret u sew jekk l-influwenza pretiza twassal jew ma twassalx ghar-rizultat intiz.

Illi ghalhekk jidher car li biex jissussisti r-reat imsemmi fl-art. 121A (2) ikun hemm bzonn li s-soggett attiv A ikun accetta jew irceva l-vantagg mhux xieraq, bil-ghan li jezercita influwenza fuq kif jiddeciedi C, ossia terza persuna, u mhux semplicement ikun accetta vantagg biex jinfluwenza lili nnifsu. [enfasi ta' din il-Qorti]

This therefore means that in order for the crime of trading in influence to subsist under sub-article (2) of Article 121A, there must feature in the scenario: the active subject (A) who undertakes in favour of the person who provides, offers or promises to provide the undue advantage (B), that he (A) will influence on (C)'s decision-making process.

The inevitable corollary of this is that the active subject of this offence must be a person who has undertaken to exercise an improper influence over the manner in which yet another person takes a decision, upon the receipt, promise of receipt or acceptance of an undue advantage from yet another person. However, although in this case, the evidence reveals the participation of B (the person who provided the undue advantage), of A (the person who has undertaken to exercise improper influence on another person's decision-making process), and of C (the person whose decision-making process was effectively influenced), the accused evidently is not the person (A) who has undertaken to exert an improper influence on a third party but is actually the party (C) who results to have indeed been influenced improperly by a third person. Although it is true that it has been proven that the accused accepted and received an undue advantage for his improper action, that is a sum of money for the issue of a VRT certificate in respect of a vehicle which was not tested and which could have not

passed a roadworthiness test, he does not possess the elements of the active subject of this particular offence with which he has been charged.

As already established, while it is immaterial whether the active subject of this offence requests or receives the undue advantage for himself or for another person, **it is necessary to prove that the active subject, in this case alleged to be the accused, undertook to influence a third party.** This means that guilt in respect of the commission of the particular offence under Article 121A(2) cannot be established if it results that the person accused of this offence accepted an undue advantage to influence himself. The Court considers that this element of the *actus reus* of the offence, however, might have resulted on the part of Jean Claude Seisun or whoever else might have undertaken to improperly influence the accused in his decision to certify vehicle ABU-815 as being roadworthy when it evidently was not.

However, the evidence is clear in that the accused, even though he accepted an undue advantage, results to have accepted this undue advantage in order to influence himself and no-one else: it is proven that Jean Claude Seisun was not licensed and could have not issued and signed a valid VRT certificate and the only other person who was licensed to and could issue and sign VRT certificates, and who moreover, was present in that section of the garage at the time when the vehicle was brought over, was in fact the accused.

Also relevant in this regard is the judgement of the Criminal Court dated 26th November 2009, which with regard to the crime contemplated under paragraph (1) of Article 121A, held:-

“Ikun hati ta’ dan ir-reat kemm (i) min jagħmel wegħda jew offerta lil persuna oħra li turi li hi għandha influwenza mhux xierqa fuq kif tiddeïedi terza persuna li jkollha funzjoni pubblika, bħal ma hu gudikant, biex tingqeda b’dik l-influwenza, u jkun hati wkoll (ii) min, wara li jkun wera li għandu dik l-influwenza, jaccetta l-offerta li

ssirlu bil-għan li jinqeda b'dik l-influwenza fuq it-terza persuna; ma huwiex biżżejjed li jkun laqa' l-offerta biex jinfluwenza lilu nnifsu.” [enfasi ta' din il-Qorti]

Consequently the accused cannot be held to be guilty of the crime under Article 121A(2) of the Criminal Code, which he was charged as having committed, and must consequently be acquitted.

Falsification

The accused is also charged with the offence under Article 188 of the Criminal Code, which punishes:-

(1) Whosoever, in order to gain any advantage or benefit for himself or others, shall, in any document intended for any public authority, knowingly make a false declaration or statement, or give false information ...”

It has been held consistently that Article 188 of the Criminal Code contemplates the legal concept of ideological falsity of a document, which was defined by the Court of Criminal Appeal in its judgement **Il-Pulizija vs Paul Galea**¹⁸ and distinguished from the concept of material falsity of a document, in the following terms:-

“Id-differenza bejn il-falz materjali u l-falz ideologiku hi spjegata mill-awturi b'dan il-mod: fil-waqt li fil-kaz tal-falz materjali d-dokument jigi ffalsifikat fl-essenza materjali tieghu, fil-falz ideologiku d-dokument ikun iffalsifikat biss fis-sustanza u cioe` fil-kontenut ideali tieghu (Antolisei, F., Manuale di Diritto Penale – Parte Speciale II (Giuffre`, Milano, 1986), p. 604). Fi kliem Manzini (Trattato, v. VI, n.2296, p. 829) ikun hemm falsita` materjali meta d-dokument ikun wiehed mhux genwin (jigifieri jew meta l-awtur apparenti ma jkunx l-awtur reali tad-dokument jew meta d-dokument ikun issubixxa alterazzjonijiet wara l-formazzjoni definittiva tieghu),

¹⁸ Deciza 17 ta' Ottubru 1997.

mentri fil-falz ideologiku, ghalkemm id-dokument ikun genwin “non e` veridico, perche` colui che lo ha formato gli fa dire cose contrarie al vero”.

In the case at hand, the VRT certificate issued or at least signed by the accused as a licensed VRT tester, certifies that vehicle ABU-815 passed the roadworthiness test carried out by the accused on the 23rd January 2017 at 12:53:23h¹⁹. Although the certificate is genuine, having been issued and signed by a licensed tester, the accused, it is undoubtedly false in its substance since, as already determined by the Court in the considerations made on the basis of the evidence adduced, vehicle ABU-815 was not, in fact, tested by the accused on the 23rd January 2017 and even if it was so tested, it has been duly proven that the vehicle could not have, in its evidently poor condition, qualified for a pass result. The only test which the said vehicle is proven to have undergone is the VRT carried out on the 30th January 2017 where it was certified to have failed the test²⁰. The certificate therefore, despite being genuine, is false in its substance since it is declaratory of a state of fact which is untrue.

In the Court's view, there is no doubt that the accused's actions in this case demonstrate all essential elements of the crime envisaged in Article 188, since he issued or signed a certificate that despite being materially genuine, contained false particulars and purported to be a certificate of a vehicle that is roadworthy when such vehicle was proven to have been otherwise.

It is also undoubted that the VRT certificate issued on the 23rd January 2017 in respect of vehicle ABU-815 was intended to be produced to a public authority, that is Transport Malta, for the purpose of renewing the vehicle's road licence and moreover was effectively produced to the said Authority when the false pass result was also uploaded on the Authority's system and made accessible to the said Authority as confirmed by the technical officers who testified in these proceedings²¹.

¹⁹ Dok. SP fol. 18.

²⁰ Dok. SP1 fol. 19.

²¹ Lino Abela and George Farrugia.

Although the defence argued in its final submissions to the Court, that the accused did not possess the required criminal intent *dolus* in order to be found guilty of the offence under Article 188, the Court, as already considered and determined in the light of all the evidence produced, is hardly convinced of the accused's version of events. In particular, it finds no credibility in his allegation that he merely signed a pass certificate of a vehicle roadworthiness test purportedly carried out by his helper Jean Claude Seisun because he was negligent and did not carry out the necessary verifications. After all, the said helper was not even licensed to carry out such tests and issue certificates and moreover, it is duly established from the evidence that Jean Claude Seisun, and indeed any person acting alone, could not have physically carried out the test on his own without the help of another person. All this, in addition to the fact that Jean Carl Grech affirmed in his testimony that it was the accused who received the money which was paid for the issue of the certificate, continues to reinforce the Court's conviction that the accused knowingly issued or signed the pass VRT certificate when no test was carried out.

The accused must therefore be found guilty of the offence under Article 188 of the Criminal Code.

Offences Under Subsidiary Legislation 65.15

The third, fourth, fifth and sixth charges attribute to the accused various offences under the Motor Vehicle Roadworthiness Test Regulations, namely the offences under Regulation 25(b),(d) and Regulation 14(1)(b),(d):-

Regulation 25 makes it an offence for a tester, that is, an individual duly qualified to carry out testing on vehicles for the purposes of these regulations and who is registered with the Authority for Transport in Malta, to (b) issue a pass certificate without actually testing the vehicle, and (d) receive any payment other than that for the services rendered in accordance with fees stipulated in these regulations.

Now in this case, it is uncontested that the accused is a duly licensed tester and moreover, it has been amply proven that he issued a pass certificate on the 23rd January 2017 (Dok. SP) in respect of vehicle ABU-615 without having actually carried out the test. In any event, the accused himself admitted that he did not carry out the test himself and claims that it was his helper who carried out the test. The Court however reiterates that it is morally convinced on the basis of the evidence, that the vehicle in question was not tested at all on that date notwithstanding the issue of the pass certificate. Either way however, even if *ex gratia argomenti* it is accepted that the test in question was carried out by the helper Jean Claude Seisun and the accused merely signed the pass certificate, accused must still be found guilty of the offence envisaged in Regulation 25(b) since by his own admission, as tester he did not test the vehicle.

It is also amply proven that the accused received a payment of more than the stipulated fee of €26.32 as established in the Eighth Schedule to the Regulations for the issue of the VRT certificate in respect of Category I and other vehicles. Although a discrepancy exists in the testimony of Jean Claude Seisun and Jean Carl Grech with regard to the actual amount of money that was handed to Jean Claude Seisun and the accused, it is evident that the amount exceeded the fixed rate of €26.32 that was due for the test, as the said witnesses mentioned sums ranging between €80 and €100. Consequently, the accused is also guilty of the offence envisaged in Regulation 25(d).

However, in so far as punishment is concerned, by application of the rule in Article 17(h) of the Criminal Code, that the punishment for the graver offence shall apply, it is obvious that the punishment for these minor offences must be deemed to be absorbed in the graver crime that is the crime envisaged by Article 188 of the Criminal Code, subject to the mandatory application of the provisions of Regulation 25 of Legal Notice 126 of 1998 in so far as removal of tester's name from the register is concerned.

Having considered further;

That as far as the provisions of Regulation 14(1) are concerned, the Court considers that these are rules of an administrative nature that if breached, would amount to a breach of licence conditions and as such are not enforceable by the Courts but by the Transport Authority in terms of Regulation 21 *et sequitur* and by application of the power to cancel from the register the name of a tester if the tester is in breach of any of the conditions laid down *inter alia* in Regulation 14(2).

Regulation 14, in sub-regulation (2), which contains the text reproduced in the fifth and sixth charges, provides:-

(2) Every tester so employed shall also comply with the following conditions:-

...

(b) the tester shall abide, at all times, with the regulations and standards concerning the vehicle's roadworthiness test as stipulated in these regulations and approved by the Authority;

...

(d) the tester shall, under no circumstances, endorse a passed test result unless a complete test has been carried out and all the testable items have been found to be satisfactory, or endorse a passed test result of a re-test unless the re-test confirms that the necessary repairs to the testable items have been carried out.

The relevant parts of Regulation 21 then provide:-

“... where a tester fails to comply with the conditions set out for testers under these regulations [including in terms of Regulation 14], the Authority shall give to the operator or to the tester, as the case may be, a notice in writing which shall specify the breach of the conditions, the appropriate number of penalty points to be endorsed on the operator's or tester's entry, and the administrative fine being imposed in the case of breaches...”

In these circumstances, it is clear that the offence with which the accused is charged in the fifth and sixth charge are administrative and not criminal in nature and could not therefore, have been prosecuted before the Court which consequently must abstain from taking any cognisance of such charges.

The Seventh Charge

The accused is also charged with being a recidivist. However the Court immediately points out that although the Prosecution produced the accused's criminal conduct certificate²², this certificate *ut sic*, even if it results that the accused was indeed convicted of one or more criminal offences, is deemed not to be sufficient for the purposes of proving a charge of recidivism. The charge of recidivism in the Court's view, must be proven by means of the production of the judgement delivered by a court of criminal jurisdiction which convicts a person who is identified by the relative prosecuting officer as being, or a person having the same personal details as, the person accused in the proceedings where a charge of recidivism is brought.

*"Ghalkemm il-fedina penali tista' tittiehed in konsiderazzjoni mill-Qrati ta' Gustizzja Kriminali biex ikunu jistghu jikkalibraw il-piena, l-imputazzjoni tar-recidiva dejjem tinnessita li ssir il-prova tal-kundanna jew kundanni precedenti; tali prova ssir permezz ta' kopja legali tas-sentenza jew sentenzi precedenti kif ukoll billi jigi ppruvat a sodisfazzjoni tal-qorti - permezz ta' xhieda jew minn ezami tal-istess sentenza jew sentenzi (jekk din jew dawn ikunu jaghtu l-konnotati mehtiega tal-persuna kkundannata) jew minn ezami tal-atti tal-kawza ta' dik is-sentenza jew ta' dawk is-sentenzi precedenti - li dawk is-sentenzi jirreferu ghall-persuna li tkun qed tigi akkuzata bir-recidiva".*²³

²² Fol. 9.

²³ **Il-Pulizija vs Paul Abela** decided by the Court of Criminal Appeal 10th September 2004, reaffirmed by that same Court in **Il-Pulizija vs Joseph Grech**, decided on 28th June 2017.

However in this case, no judgements which unequivocally affirm the convictions indicated on the criminal conduct certificate pertaining to the accused, were exhibited in the acts of the proceedings. The Court therefore considers that the Prosecution failed to bring sufficient evidence to discharge the burden of proof required for a successful charge of recidivism and consequently must acquit the accused of this charge.

Decide

For these reasons, the Court while abstaining from taking cognisance of the fifth (v) and sixth (vi) charges and while finding the accused NOT GUILTY of the first (i) and seventh (vii) charges thus acquitting him from such charges, after having seen Article 188 of the Criminal Code and Regulation 25(b) and 25(d) of the Motor Vehicle Roadworthiness Test Regulations (Subsidiary Legislation 65.15), finds MICHAEL ANTHONY CAHILL GUILTY of the second (ii) charge that is of having, in order to gain any advantage or benefit for himself, knowingly made a false declaration or statement or gave false information in a document intended for a public authority, and finds him also GUILTY of the third (iii) and fourth (iv) charges that is of breaching Regulation 25(b) and (d) of Subsidiary Legislation 65.15, and consequently condemns him to a fine *multa* of five hundred Euro (€500) and, for the purposes of said Regulation 25 of the said Motor Vehicle Roadworthiness Test Regulations, orders the removal of MICHAEL ANTHONY CAHILL'S name from the testers' register for a period of ten (10) years.

**DR. RACHEL MONTEBELLO
MAGISTRATE.**