



COURT OF MAGISTRATES (GOZO)
AS A COURT OF CRIMINAL JUDICATURE

Magistrate Dr. Leonard Caruana LL.D., M.A. (Fin. Serv)

JUDGEMENT

Given today, 22nd June 2023

The Police
(Insp. Bernard C. Spiteri)

Vs

Hilary Clare Pinfold
(ID 35345A)

The Court,

Having seen the charges brought against the **Hilary Clare Pinfold**, holder of Maltese Identity Card number 35345A, born in the United Kingdom on the 8th February 1970 and residing at Hollins House, Triq San Blas, Nadur, having been accused that on the 12th September 2022 at 16:50hrs whilst in Triq Frangisk Portelli, Nadur:

1. You drove, attempted to drive, or was in charge of a motor vehicle, make Daihatsu, Reg No. KBF834 or other vehicle on a road or other public place after consuming so much alcohol that the proportion of it in your breath, blood or urina exceeded the prescribed limit.

The Court was requested to suspend the accused's driving licence in the event of a finding of guilt.

Having seen the evidence presented;

Having heard the witnesses;

Having heard the submissions of the parties;

Considered;

That from the evidence presented it results that on the 12th September 2022, the police received a report that in Triq Franġisk Portelli, Nadur the accused was driving a vehicle and crashed into a lamp post in the street. Joe Mercieca, who was in Triq Franġisk Portelli carrying out some works, saw the accused driving slowly the vehicle and crash into the lamp post. He went to the car to see whether the accused was well and immediately noted that she seemed to be drunk. She wanted to continue driving but he took her car keys and called the police. PS 2100 Lorraine Grech went to the site of the accident and saw the vehicle crashed into the lamp post. Mercieca immediately handed over the car keys to the police officer.

PS2100 had a suspicion that the accused could have been under the influence of alcohol and proceeded to give her her legal rights to which she refused to consult with a lawyer. PS2100 said that the accused consented to the breathalyser test from which she obtained a result of 172.8ug/100ml. The accused was then taken to hospital for further observation and the car keys were handed over to the accused's father.

Considered;

That in this case, the accused raised the following defence:

“that the breathalyser test was administered to the accused without the statutory procedures having been followed and legal precautions not having been taken and the caution not given to the prejudice of the accused’s legitimate rights.”

In her note of submissions, the accused refers extensively to the cross-examination of PS2100 since she was the police officer who went on site and administered the breathalyser test.

The accused submits that in her cross-examination, PS2100 confirmed that she failed to adhere to the procedure stipulated by Article 355AUA(6) of the Criminal Code when she informed the accused that she had a right to refuse to submit herself to a specimen of breath for a breath test and that she had a right of access to lawyer. The accused argues that according to Article 355AUA(6), when the accused refused legal assistance, the police should have recorded this fact in writing in the manner referred to in the same Article, something which was not carried out.

In order to amplify the above-mentioned defence, the accused further raises another subsidiary defence that PS2100 did not provide any details on what led her to have the “reasonable suspicion” required to ask the accused to submit to the breathalyser test.

This observation is based on Article 15C of the Traffic Regulation Ordinance which requires a police officer to have a reasonable suspicion that the person committed any the behaviours mentioned in paragraphs (a) to (d) of the same Article prior to requesting such person to undergo a breathalyser test.

From the affidavit of PS2100 it results that she noted the accused as being under the effects of alcohol¹. When cross-examining the police officer, however, the accused made no reference and no questions were asked on this detail.

¹ “*Ġewwa l-vettura kien hemm persuna li aktar tard ġiet identifikata bħala Hilary Claire Pinfeld, ID 35345A li kienet tidher taħt l-effett ta’ l-alcohol*”, vide dok A.

Then, in her submissions, the accused stated that PS2100 did not provide any details on her “reasonable suspicion”. The Court notes that Article 15C of Cap. 65 of the Laws of Malta does not require the police officer to provide details on the reasons behind what created the “reasonable suspicion” in his/her mind. The law only states that “Where the Police officer reasonably suspects that” and proceeds to describe certain actions in relation to the suspicion.

It is the Court’s view that the element of “reasonable suspicion” was satisfied by the police officer. Although PS2100 did not elaborate on the circumstances which led her to believe that the accused was under the influence, by the simple fact that she confirmed on oath that she noted the accused as being under the influence of alcohol, the element required by law for the carrying out of the breathalyser has been satisfied.

Moreover, the circumstances accompanying such suspicion, that is, the fact that the accused was in her car and had just crashed into a lamp post; the fact that Joe Mercieca had reported seeing the accused driving the car and retained the car keys so as to preclude her from driving any further, clearly promote the reasonable suspicion that the accused could have been involved in one or more of the scenarios listed in Article 15C of Cap. 65 of the Laws of Malta.

Considered,

Having established that the police officer had enough grounds to form a “reasonable suspicion” that the accused potentially was in breach of any of the actions listed in Articles 15C(a), (b), (c) or (d) of Cap. 65 of the Laws of Malta, the Court must examine whether Article 355AUA(6) is applicable to this case.

Upon a reading of Article 355AUA(6) of the Criminal Code it immediately results that its provisions apply to a **person detained** who chooses not to seek legal assistance. In such circumstances, the investigating officer shall record this fact in writing in the presence of two witnesses and **thereupon questioning may proceed immediately.**

From the acts of the case, it results that the accused was not detained at any time, in fact she was sent to hospital for further medical observations. Moreover, it also results that there was no questioning of the accused by PS2100 or any other investigating officer in respect to this accident.

Therefore, the Court finds that in relation to this case, Article 355AUA(6) is completely inapplicable as the ingredients for this Article do not subsist.

Therefore, the preliminary defence raised by the accused is being rejected.

Considered;

That Joseph Mercieca testified under oath that on the day of the incident he saw the accused, driving slowly into Triq Frangisk Portelli, Nadur and crashing into the lamp post. PS2100 testified that there were no visible damages to the lamp post. Moreover, Joseph Mercieca testified that the accused wanted to continue driving and that he had to remove the keys from the car, so as to preclude her from driving.

From the breathalyser test taken with the Alcovisor Jupiter machine, it results that the accused had an alcohol content of 172.8 ug/100mL. This instrument is recognised in the First Schedule of the Breath Tests Regulations² and therefore the result may be treated as the analytical results referred to in article 15E(1) of Cap. 65 of the Laws of Malta.

From the evidence produced, the Court is satisfied that the charge brought against the accused has been proven beyond reasonable doubt. The prosecution, however, did not provide any evidence that the accused has been previously convicted of an offence under Article 15E(4) of Cap. 65 and therefore the Court will treat this case as a first conviction, in terms of Article 15H(1)(a) of Cap. 65 of the Laws of Malta.

² S.L. 65.16

Decide:

Therefore, on the basis of the above, the Court, after having seen Article 15B(1) of the Traffic Regulation Ordinance, Cap. 65 of the Laws of Malta, finds **Hilary Claire Pinfold guilty** of the charge brought against her and after having seen Article 15H of Cap. 65 of the Laws of Malta, condemns her to a fine (*multa*) of two thousand three hundred Euros (€2,300).

Moreover, with the application of Article 15H(2) of Cap. 65 of the Laws of Malta, the Court is disqualifying the offender from holding or obtaining a driving licence for a period of six (6) months from today.

Dr. Leonard Caruana
Magistrate

Deputy Registrar