



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

**Magistrate Dr. Jean Paul Grech B.A., LL.D**  
M.Juris (Int. Law), Adv. Trib. Eccl. Melit

**JUDGEMENT**

Given today, Friday, the twenty-first (21<sup>st</sup>) of June 2024

Case Number 1601/2024

**The Police**

(Inspector Rachel Aquilina)

Vs

**Natalia Yurievna Atkinson Vella Gatt**

The Court,

Having seen the charges brought against **Natalia Yurievna Atkinson Vella Gatt**, born in Russia on the fourth (4<sup>th</sup>) of September 1972 and residing at number 10, “Amberley”, J.H. Newman Street, Naxxar, Malta holder of Maltese identity card number 223116(L) for having on the eighth (8<sup>th</sup>) December 2023 between half past one and twenty minutes to two in the morning (01:30hrs and 01:40hrs) in 21<sup>st</sup> September

Avenue, Naxxar, Malta while she was using vehicle bearing registration number plate NVG 108:

- (1) driven a motor vehicle or any other vehicle in a negligent manner;<sup>1</sup>
- (2) driven a motor vehicle or any other vehicle in a reckless manner;<sup>2</sup>
- (3) whilst driving a motor vehicle, entered into a road which prohibits entry from that side (No Entry);<sup>3</sup>
- (4) driven or attempted to drive or be in charge of a motor vehicle or other vehicle on a road or other public place while unfit to drive through drink or drugs;<sup>4</sup>
- (5) driven or attempted to drive or be in charge of a motor vehicle or other vehicle on a road or other public place after consuming so much alcohol that the proportion of it in the breath, blood or urine exceeds the prescribed limit;<sup>5</sup>
- (6) failed to immediately comply with any order, indication or signal given or made by the police or local warden, whilst driving or having charge of a motor vehicle;<sup>6</sup>

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<sup>1</sup> Article 15(1)(a)(3) of Chapter 65;

<sup>2</sup> Article 15(1)(a)(3) of Chapter 65;

<sup>3</sup> Reg. 2 Section II A(c) Subsidiary Legislation 65.05;

<sup>4</sup> Article 15A(1) of Chapter 65;

<sup>5</sup> Article 15B(1) of Chapter 65;

<sup>6</sup> Regulation 124(1) of Subsidiary Legislation 65.11;

(7) untruthfully given the Police Officer or Local warden in the exercise of their duty, her name, surname, identity card number, address and other particulars and, or document that may be lawfully required;<sup>7</sup>

(8) as a person she wilfully disturbed the public good order or the public peace.<sup>8</sup>

Having seen the sworn declarations and the documents which were filed;

Having heard submissions by the parties;

Considers:

The facts of the case are as follows: on the night between the seventh (7<sup>th</sup>) and eighth (8<sup>th</sup>) December 2023, 21<sup>st</sup> September Avenue, Naxxar was closed to traffic in view of ongoing road works. Two Police Officers on extra duty were in charge of traffic management as the works were being carried out. At one point a Nissan bearing registration number plate NVG 108 was seen attempting to enter 21<sup>st</sup> September Avenue from a side where no vehicles were allowed to enter. On seeing this the two Police Officers on duty PC 2451 Matthew Vassallo and PS 1349

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<sup>7</sup> Regulation 124(2) of Subsidiary Legislation 65.11;

<sup>8</sup> Article 338(dd) of Chapter 9.

Ranier Agius signalled the driver to stop. The driver failed to stop, stopping only later since the same could not proceed further as the road was obstructed by the on-going works.

The Police approached the driver who turned out to be a woman and she informed them that she wanted to go to San Pawl tat-Tarġa. The Police informed her that there was an alternative way to get to San Pawl tat-Tarġa. The driver appeared agitated and shouted back that there was no other way how she could arrive to her destination. There was also a smell of alcohol coming out of the vehicle. At that point PS 1349 who had approached the vehicle asked the driver for her personal details. She replied that she did not have her details with her. At one point the Police noted that the driver's hand reached for the gear handle and the vehicle reversed back around the Police Officers whilst they were still talking to her. At that point the Police Officers reached inside the driver's vehicle, switched off the vehicle, removed the keys from ignition and unbuckled the driver's seat belt. The two Police Officers escorted the driver out of her vehicle and informed her that she was being arrested.

The Police Officers informed the Naxxar Police Station of the arrest and with the driver's permission they searched through her wallet. From an identification document found inside the driver's wallet it was established that the driver was Natalia Yurievna Atkinson Vella Gatt.

PS 1154 from the Naxxar Police Station reported on site. He informed her that charges were going to be issued against her and he informed her of her legal rights to speak to a lawyer before speaking to the Police and to remain silent. Natalia once again became agitated and started shouting again. In the meantime upon instructions from Inspector C Camilleri, the driver was released from arrest. She was also informed that a breathalyser test was going to be performed. This because her behaviour, the fact that she had violated a no entry-sign and the fact that the Police had smelled alcohol had led the Police to reasonably suspect that she was driving under the influence of alcohol. Natalia was given her usual legal rights before performing the breathalyser test. She said that she did not know any lawyer. Attempt was made by the Police to contact the legal aid lawyer on duty but to no avail. The driver then contacted Dr Elena Fenech who suggested to the accused that she performs the test. The test was carried out and Natalia was informed that she had exceeded the limit established by law.

The Police informed her that she could not drive her vehicle. The Police proceeded to park the vehicle in a safe parking spot and called a taxi so that she could return home.

Natalia was informed that the Police still required her version of events. She was instructed to report at the Naxxar Police Station. She was reminded of her legal rights.

Natalia reported at Naxxar Police Station on the 18<sup>th</sup> December 2023 at around 09.50hrs. She informed the Police that she had consulted Dr Elena Fenech. Natalia explained that a friend of hers who lives in Naxxar had called her because her dog had escaped. She drove to her friend's house, picked her up and went driving around the area until they found the dog. She then stayed for some time at her friend's house. She went on to explain that she went through a stop sign because she did not know any other way around and some people stopped her and instructed her to go back. She then placed the gear on reverse to obey the instructions given. She rejected the claim that she had reversed her car in an attempt to run over the Police. She insisted she could not see how close the Police was to the car because it was very dark.

Considered:

In its submissions the Defence raises doubt as regards the time when the alleged incident took place. The Court will therefore delve into this initial argument before going into the specific charges which have been brought against the accused.

The Court examined in detail the sworn declarations of the Police Officers involved. It is quite clear from these sworn declarations that the case took place between 01.30hrs and 01.40hrs. The CCTV footage is indicating a different time because as pointed out by PS 1154 who extracted the video footage, the same CCTV had a discrepancy of one

hour and seven minutes. Hence the Court considers that there is no issue regarding the timing of the incident. The evidence submitted confirms that the incident happened during the time period indicated in the charge sheet. Hence this initial argument of the defence is being dismissed.

- **The First (1<sup>st</sup>) and Second (2<sup>nd</sup>) Charges**

In the first (1<sup>st</sup>) and second (2<sup>nd</sup>) charges the accused is being charged with having driven a vehicle in a negligent and reckless manner. These charges are based on the allegation that the accused reversed her car whilst she was being spoken to by Police Officer PC 2451 Matthew Vassallo and PS 1349 Ranier Agius. The Court examined in detail the CCTV footage exhibited by PS 1154 C Sciberras. It is clear that in the moments before the driver of the Nissan is seen reversing the car, there were at least one (1) or two (2) persons talking to her. There were also other persons in the car's proximity. The fact that there were people in the proximity of the car is confirmed by the fact that as soon as she started the reverse manoeuvre a person is seen stepping backwards. Hence it was irresponsible for the accused at that particular point in time and whilst she was being talked to, to reverse the vehicle. For the Court this amounts to reckless driving on the driver's part. The circumstances called for caution on the driver's part as her manoeuvre could have caused injuries to the persons who were in the immediate vicinity of her vehicle. It appears however that she was totally indifferent to the harm

which she could have caused to the people present. The version of the accused given to the Police on the 18<sup>th</sup> December 2023 – after that she had consulted her lawyer – that she could not see how close the policeman was to her car because it was too dark should to say the least be taken with a pinch of salt. At that point in time, the Policemen were definitely very close to her car as at least one or both of them were speaking to her, so much so that as soon as she attempted to drive away they managed to switch off her vehicle and take away the ignition keys. The second charge has therefore been proven.

Reckless driving also incorporates negligent driving since the latter is a lesser form of inappropriate driving which is also criminalised in article 15(1)(a) of Chapter 65. Hence the first charge also results. However, for the purposes of punishment the Court shall consider the first charge as being comprised and involved in the second charge.

- **Third Charge – Violation of the No-Entry Sign**

The Court considers that this charge has also been proven. It is quite evident from the affidavit of PC 2451 Matthew Vassallo who was on site that the accused violated a No-Entry sign. PC 2451 reports that: *“At around 01.40hrs, a black vehicle of make Nissan bearing registration number NVG 108 was noticed entering from the opposite lane to pass along the mentioned road as the other entry was closed with plastic*



*barriers.*"<sup>9</sup> The road was closed in view of on-going roadworks as confirmed even by the CCTV footage. Notwithstanding the signage and the barriers, the accused proceeded to drive along the closed road nonetheless. To secure access to this road as her lane was closed, the accused even drove on the wrong sign of the road. Indeed it was for this reason that the Police originally approached the driver.

- **Fourth (4<sup>th</sup>) and Fifth (5<sup>th</sup>) Charges – Drink Driving**

The fourth (4<sup>th</sup>) and fifth (5<sup>th</sup>) charge relate to drink driving. From the breathalyser chit exhibited, it is quite clear that the accused was driving her vehicle whilst she was under the influence of alcohol. In fact her alcohol levels were more than three times the limit established by law: her levels stood at seventy-six (76) microgrammes per one hundred (100) millilitres of breath when the limit is at twenty-two (22) microgrammes. The defence attempts to discard the validity of the breathalyser test on the basis that the accused was not given her legal rights properly. In fact in its submissions the defence argues that: *"the first point is whether the accused was given and we need to make sure she understood the right not to do the breathalyser. Evidently, I ran through the documentation that that was not offered, step number one, number two whether she understood, it was explained to her whether she had a right to remain silent."*<sup>10</sup> However, on examination of the

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<sup>9</sup> Page 1 of sworn declaration of PC 2451 Matthew Vassallo exhibited as Document B.

<sup>10</sup> Submissions made during the sitting of the 17th May 2024.

sworn declarations of the Police officers involved it transpired that as soon as the accused was informed that charges were going to be issued against her she was given her legal rights to speak to a lawyer before speaking to the Police and the right to remain silent.<sup>11</sup> Once again when the Police informed her that they had a reasonable suspicion that she was driving a vehicle under the influence of alcohol and that a breathalyser test was going to be performed, the Police immediately gave **“her usual legal rights before performing the breathalyser test”**.<sup>12</sup> The Court considers this as implying that the accused was informed both of her right to consult a lawyer and also with the consequences should she fail to perform such test. The accused clearly understood the warnings given to her, so much so that she informed the Police that she wanted to talk to a lawyer but did not know one. Indeed the Police attempted to call the legal aid lawyer on duty who did not respond. Subsequently, the accused managed to speak to and consult Dr Elena Fenech. So much so that the accused proceeded to do the breathalyser test after that she was instructed so by her lawyer. Finally even when she was informed that she had to report to the Police Station to give her version of events, she was once again informed of her legal rights before releasing any statement.<sup>13</sup>

Taking into account all this, the Court does not have any doubt that the accused had all the opportunity to discuss the situation she found

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<sup>11</sup> Vide sworn declaration of PC 1154 C. Sciberras, page 3.

<sup>12</sup> Ibid page 3.

<sup>13</sup> Ibid page 3.

herself in with her lawyer and to obtain the necessary guidance. The Court does not consider that the accused's position was prejudiced in any way as the accused was given the opportunity to obtain all legal advice which she required. Hence the Court considers that the breathalyser test was properly obtained and is not seeing any valid reason at law why this test and its findings should be discarded. Hence the fifth (5<sup>th</sup>) charge has been proven.

A finding of guilt under article 15B(1) of Chapter 65 (that is the fifth charge) necessarily implies also a finding of guilt under article 15A(1), which is the fourth (4<sup>th</sup>) charge. This because the latter is comprised and involved in the offence laid down in article 15B(1) – a person who exceeds the limits of alcohol established in the law is *ipso jure* presumed that he is unfit to drive or be in charge of a motor vehicle. The fact that the fourth (4<sup>th</sup>) charge is comprised and involved in the fifth (5<sup>th</sup>) charge will also be taken into consideration when meting out punishment.

- **Sixth (6<sup>th</sup>) Charge – Failure to Comply with an Order Given**

In this sixth (6<sup>th</sup>) charge, the Prosecution is claiming that the accused failed to immediately comply with any order, indication or signal made by the Police. This charge has also been proven. PC 2451 Matthew Vassallo explains in his sworn declaration how he and his colleague made a signal to the accused to stop when she entered the road which was closed for roadworks. But she ignored this order. From the CCTV

footage it appears that she only stopped because she could not go further up the road in view of the ongoing roadworks.

- **Seventh (7<sup>th</sup>) Charge – Giving the Wrong Details/Documents**

This offence definitely does not result since the accused did at no point in time provide to the Police personal details which turned out to be false. Nor did she submit any document providing false information. As evidenced by the wording of the same charge, criminal liability results when wrong personal details are given either to a police officer or a local warden or else a document is provided which does not contain correct personal details. In the case under examination, the accused simply told the Police that she did not have any personal documentation with her. It is true that this proved to be false since her identification document was in her wallet; however the Police officers who testified do not indicate that the accused provided them with wrong personal details. The offence in question does not contemplate a scenario where the accused fails to provide an identification document when required. Hence, the Court will be acquitting the accused from this charge.

- **Eighth (8<sup>th</sup>) Charge – Disturbance of Public Good Order and Public Peace**

As pointed out in the judgement **Il-Pulizija vs Rocco D' Alessandro**,<sup>14</sup> for a finding of guilt under article 338(dd) of Chapter 9 it is important to prove that a sense of alarm was generated by the commotion caused by the accused:

*“Minn dana kollu din il-Qorti tara li, bħala regola, ikun hemm il-kontravvenzjoni kontemplata fil-paragrafu (dd) ta' l-art. 338 tal-Kap. 9 meta jkun hemm għemil volontarju li minnu nnifsu jew minħabba c-cirkostanzi li fihom dak l- għemil iseħħ inissel imqar minimu ta' inkwiet jew thassib f'moħħ persuna (li ma tkunx l-akkużat jew imputat) dwar l-inkolumita` fiżika ta' persuna jew dwar l-inkolumita` ta' proprjeta`, kemm b'rizultat dirett ta' dak l-għemil jew minħabba l-possibilita` ta' reazzjoni għal dak l-għemil. Naturalment dawn iċ-ċirkostanzi jridu jkunu tali li oġgettivament inisslu l-imsemmi nkwiet jew thassib.”*

From an examination of the CCTV footage, apart from the Police officers there were other persons present for the incident and who were in the

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<sup>14</sup> Decided by the Court of Criminal Appeal on 20<sup>th</sup> May 2013 (Criminal Appeal Number: 223/2012). Also reported in the case **The Police vs Joseph Feilazoo** (Appeal number 44/2019) decided by the Court of Criminal Appeal on the 16<sup>th</sup> May 2019.

immediate vicinity of the accused's car. From the CCTV footage, the Court did at no point get the impression that these people were alarmed by what was happening. In fact they continued watching passively the events unfolding before their eyes as the Police were talking to the accused and then proceeded to her arrest. The Police Officer who was on site and who testified in these proceedings did not suggest that there was some commotion which generated a sense of alarm. Hence, the Court will also be acquitting the accused from this charge.

- **Decide**

Therefore, for the reasons expounded above the Court:

- (a) **is not finding the accused guilty** of the seventh (7<sup>th</sup>) and eighth (8<sup>th</sup>) charges and is therefore acquitting her from these two (2) charges;
  
- (b) after having seen articles 15(1)(a), 15(2), 15A(1), 15B(1), 15H(1)(a) and 15H(2) of Chapter 65, Regulation 2 of Part IIA(C) of Subsidiary Legislation 65.05 and regulation 124(1) of Subsidiary Legislation 65. 11 **is finding the accused guilty** of the first (1<sup>st</sup>), the second (2<sup>nd</sup>), the third (3<sup>rd</sup>), the fourth (4<sup>th</sup>), the fifth (5<sup>th</sup>) and the sixth (6<sup>th</sup>) charges brought against her.

As regards the first (1<sup>st</sup>), second (2<sup>nd</sup>), fourth (4<sup>th</sup>) and fifth (5<sup>th</sup>) charges the Court is condemning the offender to a fine *multa* of one thousand and nine hundred euro (€ 1,900).

As regards the third (3<sup>rd</sup>) and sixth (6<sup>th</sup>) charges the Court is condemning the offender to a fine *ammenda* of fifty euro (€ 50).

Finally the Court is disqualifying the offender from obtaining or holding a driving licence for a period of six (6) months from today.

**Dr. Jean Paul Grech**

**Magistrate**