



Court of Criminal Appeal

Onor. Imħallef Consuelo Scerri Herrera, LL.D., Dip Matr., (Can)

Appeal Number: 171/2022

The Police

Vs

Aldam Natalie

Today, 1st November 2024

The Court,

Having seen the charges brought against the appealed, Aldam Natalie ,Maltese Identity Card number 174990A residing at 52, Flat 3, Triq J.Quintinus, San Pawl Il-Bahar, il-Qawra;

Whereas the accused was charged for having on the 23rd February 2022, while driving a car of the make Land Rover Freelander with registration number FGB 423, in Triq il-Madonna tar-Rummiena, Xewkija Gozo:

a. Driven, or having under her control, a vehicle whilst she was under the influence of alcohol or drugs under Article 15A(1) Chapter 65;

b. Refused or failed to submit to a breathalyser test even after she was informed that failing to do so was an offence under Art 15E(4) Chapter 65

The court was also requested to disqualify the appellant from driving by suspending her driving licence for a period the court deems appropriate.

Having seen the judgement of the Courts of Magistrates (Gozo) dated 29th July, 2024, after having seen the Articles 15A(1) and (2) of Chapter 65 of the Laws of Malta; Article 15E (4) of Chapter 65 of the Laws of Malta and Article 15H(1) of Chapter 65 of the Laws of Malta finds the accused guilty of all the charges brought against her and condemns her to pay a fine (multa) for the amount of one thousand and either one hundred Euro (€1800). Furthermore, after having seen article 15H(2) of Chapter 65 of the Laws of Malta, the court orders that any driving licence of the accused be suspended for a period of six (6) months, which period starts running from midnight of the date of this judgement." Whereas there was a stay or suspension of the execution of sentence pending appeal signed by the accused on the date of the sentence.

Having seen the application of the appealed Aldam Natalie where they are asking that this Honourable Court **reforms** the judgment proffered against the accused in these proceedings by:

- Thorough examination of the case record and consideration of all evidence and submissions presented by the accused, to amend the judgment delivered by the Court of Magistrates of Gozo, sitting as a Court of Criminal Judicature, on the 29th of July, 2024, by reversing said judgment and acquitting the accused of all charges brought against her.

That the grounds of appeal of the accused Natalie Aldam consist of the following:

1. The appellant's first Grievance is justified and is based on the first court's misinterpretation of evidence to prove the accusation under Article 15A of Chapter 65. It is humbly submitted that the court's conviction under Article 15A of Chapter 65 heavily relied on the subjective observations of the police officers, specifically their detection of an alcohol smell. This approach is fundamentally flawed because it does not adhere to the standard of proof required for such serious allegations. The law mandates the use of a breathalyser test to scientifically determine not only the presence of alcohol but also whether it exceeds the legal limit. Without this test, there is no objective measure of the

appellant's blood alcohol concentration, making the conviction speculative rather than evidence-based.

2. In this case, the prosecution failed to meet the standard of proof "*beyond reasonable doubt*." Surely the police officers' olfactory perceptions cannot substitute for the precise measurements provided by a breathalyser test. Reliance on smell alone is subjective and unreliable, as various factors, including environmental conditions and personal biases, can influence such perceptions. Thus, it is humbly submitted that the first court erred in convicting the appellant without the concrete, scientific evidence that a breathalyser would have provided.
3. Moreover, the first court followed the police's misinterpretation of disorientation. The police officers concluded that the appellant's disorientation was due to intoxication based on her behaviour and the smell of alcohol. However, this conclusion overlooks a critical aspect of the incident: the appellant suffered a significant head injury during the collision. Head trauma can cause symptoms such as confusion, disorientation, and impaired motor skills and verbal skills, which can mimic the signs of alcohol intoxication. Therefore, the police's assumption that the appellant was drunk was not only medically unsound but also factually flawed.
4. The testimony of David Debono shed a lot of light on this however unfortunately, the first court did not give adequate weight to his testimony, when it was he, who observed the appellant's condition after the accident. Mr. Debono's account highlighted that the appellant continued to exhibit symptoms of disorientation and slurred speech well after the accident, consistent with the after effects of a head injury. This testimony is crucial because it supports the appellant's claim that her condition was a direct result of the collision and not due to alcohol consumption, from the night before. The court's failure to properly consider this evidence led to an incomplete and unjust assessment of the appellant's state.
5. The court's attention is directed to article 15B of Chapter 65 which specifies that, "*The provisions of this sub-article shall apply **only** where the proportion of alcohol in the breath, blood or urine exceeds the prescribed limit by **eight micrograms or more in the breath** or by twenty milligrams or more in the blood or by twenty- three milligrams or more in urine.*"

6. With all due respect this evidence is totally lacking in this case as there was no determination of any sort that the accused had exceeded this legal limit. PC2130 Margaret Azzopardi did not mention anything, PS 698 said that, "Aldam had huge smell of alcohol" and PC 1365 said, Aldam, "Dehret li ma kienetx f'sikkita tant li kienet tinxtam riha ta' xorb alkoholiku gejj minn go halqha x'hin tkellmet."
7. None of these officers said that she had exceeded the legal limit and surely none of them could determine this. In fact they reported requesting a breathalyser test to determine with precision their suspicion. Yet, saying that she refused, did not pursue this line of investigation any further by arresting her.
8. In summary, the court's conviction under Article 15A of Chapter 65 was unfounded and unjust as on the one part, the police required a breathalyser to confirm their suspicions and did not in fact obtain a result. Consequently the prosecution failed to produce objective data, to prove their suspicions and hence did not meet the legal requirement of proof beyond reasonable doubt which objective data is required for conviction purposes under section 15B. Furthermore, the court's oversight of critical testimony regarding the appellant's head injury compounded this error, resulting in an unjust verdict.
9. The second grievance is just and founded on the fact that the first Honourable Court, with all due respect, misinterpreted the dictates prescribed under article 15E(4) of Chapter 65 of the laws of Malta.
10. Section 15 E (4) states: A person who refuses or fails to provide the requisite specimen as provided under this article or regulations made under this Ordinance shall be guilty of an offence and unless the contrary is proved, it shall be presumed that the proportion of alcohol in that person's blood exceeds the prescribed limit: Provided that it shall be a defence for such person to prove that his failure to provide a specimen was due to physical or mental incapacity to provide it or because its provision would entail a substantial risk to his health.
11. The article and the regulation dictate in 15C that:

12. *"Where a Police officer reasonably suspects that*
13. *-(a) a person is driving or attempting to drive or is in charge of a motor vehicle or other vehicle on a road or other public place and has alcohol in his body or has committed an offence against the provisions of this Ordinance or against any regulations made thereunder whilst the motor vehicle or other vehicle was in motion; or*
14. *(b) a person has been driving or attempting to drive or has been in charge of a motor vehicle or other vehicle on a road or other public place with alcohol in his body and that that person still has alcohol in his body; or*
15. *(c) a person has been driving or attempting to drive or has been in charge of a motor vehicle or other vehicle on a road or other public place and has committed an offence against the provisions of this Ordinance or against any regulations made thereunder whilst the motor vehicle or other vehicle was in motion;*
16. *or*
17. *(d) a person was driving or was attempting to drive or was in charge of a motor vehicle or other vehicle on a road or other public place when that motor vehicle or other vehicle was involved in an accident, he may require that person to provide a specimen of breath for a breath test.*
18. Then, in 15D A Police officer may proceed to the arrest of a person if - b) that person fails to provide a specimen of breath for a breath test when required to do so in pursuance of the provisions of article 15C provided that such person had been warned that the failure or refusal to comply with such a request was an offence.
19. Therefore, article 15E has to be read and construed in line with the provisions above quoted.
20. In this case, the police officers testified that the accused was requested to take a breathalyser test which she refused and then having refused medical attention and the right to a lawyer was driven home. The facts as expounded by the police do not satisfy, the elements of proof required under article 15E

- (4). It is underlined that at the time the request was made to her by the police, this was being done in the context of a roadside interview and ergo she was not under arrest. This refusal in this context falls outside the ambits of section 15E (4).
21. If a person merely refuses to submit to a roadside breathalyser test, it was incumbent on the police officer to arrest her and take her to the police station where he has to formally request her again whilst informing her that refusing to submit to the tests amounts to a crime and it is only if she refuses at that point that it can be deemed that 15(E) (4) has been proved to the satisfaction of the court.
22. In the case **Il-Pulizija vs Julian Sciberras** decided 13.03.2001, case number 279/2000 the court of Appeal as per Imh. Vincent De Gaetano decided,
23. *"Fuq dawn il-fatti l-ewwel qorti ma setghetx legalment issib lil Sciberras hati tar-reat kontemplat fis-subartikolu (4) tal-Artikolu 15E tal-Kap. 65, u dan ghal raguni wahda u semplici. Il-ligi tiddistingwi bejn kampjun tan-nifs li jista' jintalab li jinghata ghall-finijiet ta' test tan-nifs (Art. 15C), u z-zewg kampjuni li jistghu jintalbu li jinghataw ghall-finijiet ta' l-analizi permezz ta' strument approvat (Art. 15E(1)(a)). Huwa biss jekk wiehed jirrifuta jew jonqos milli jaghti wiehed jew aktar minn dawn iz-zewg kampjuni (cioe' ghall-finijiet tal-analizi permess ta' strument approvat) li wiehed ikun qed jikkommetti r-reat kontemplat fl-imsemm subartikolu (4) tal-Artikolu 15E.*
24. *Dan huwa car mill-kliem adoperati fl-imsemmi subartikolu: "Persuna li tirrifuta jew tonqos milli taghti kampjun kif mahsub taht dan l-artikolu [u mhux ukoll taht 1-Artikolu 15C] tkun hatja ta' reat..."*
25. *Persuna li tirrifuta li taghti n-nifs ghall-finijiet tat-test tan-nifs, jigifieri ghall-finijiet ta' dak li komunement jissejjah ir-roadside test (ara d-definizzjoni ta' "test tan-nifs" fl-Artikolu 151(1)) tkun soggetta li tigi arrestata taht l-Artikolu 15D (basta li tkun inghatat it-twissija imsemmija fil-paragrafu (b) tal-imsemmi Artikolu 15D), mehuda d- Depot tal-Pulizija, u biss jekk hemm, cioe' fid-Depot, tibqa' tirrifuta jew tonqos milli taghti n-nifs kif mehtieg ghallanalizi, u minghajr raguni valida skond il-ligi, tkun hatja tar-reat kontemplat fl-Artikolu 15E(4). Fi kliem iehor, dak li kellu jaghmel il-Kuntistabbli Cristina kien li jarresta lil Sciberras u jiehdu d-Depot, u mhux semplicement jehodlu ddettalji u jhallieh sejjer. Ghalhekk fuq il-fatti kif irrizultaw, l-ewwel qorti ma setghet qatt issib lill-appellant hati kif effettivament sabitu, cioe' tar-reat kontemplat fl-Artikolu 15E(4) tal- Kap. 65. Dak li ghamel l-appellant kien*

jammonta ghar-reat minuri u kontravvenzjonali, izda kompriz u involut fit-tieni imputazzjoni, u cioe' li naqas li jobdi ordni legittima tal-pulizija bi ksur tal-Artikolu 338(e) tal-Kodici Kriminali. Fir-rikors tieghu ta' appell, l-appellant jikkontendi li hu ma nefaxx fil-pajp ghax kellu halqu migugh minhabba daqqa li kien qala' fuq halqu b'risultat ta' l-incident awtomobilistiku. Din il-Qorti, pero', bhall-ewwel qorti, tara li din kienet semplici skuza, anzi skuza banali, li l-appellant hareg biha wara biex jipprova jiggustifika n-nuqqas tieghu li jaghti nnifs kif kien qed jigi mitlub mill-pulizija."

26. In this case the police did not arrest the accused nor did they caution her that not taking the test could amount to the crime but instead informed her about her rights to a lawyer and drove her home.

Having seen the updated conviction sheet of the appellant marked as dok TT1.

Having heard the parties make their oral submissions during the sitting of the 28th August 2024 in relation to the two grievances brought forward by the appellant.

Having seen its decree of the 30th September 2024 notified to the appellant and to the Attorney General wherein the court *ex officio* ordered the parties to present their submissions in relation to the plea of prescription in terms of article 688(e) of Chapter 9 of the laws of Malta.

Having seen that the Attorney General presented its note of submissions in regard to the decree of the court and stated that he was remitting himself to the decision of this Honourable Court.

Having seen the note presented by the lawyer of the appellant on the 3rd October 2024 wherein she asked the court to entertain the plea of prescription in terms of article 688(e) of Chapter 9 of the laws of Malta.

Considers further

From an examination of the acts of the proceedings it results that the two charges in relation to the Traffic Ordinance Chapter 65 of the laws of Malta were issued by the prosecuting officer on the 28th February, 2022 as per charge sheet. On the appointed date for hearing being 9th May 2022 the accused today appellant failed to appear and a negative notification was presented in the acts of these proceedings at fol. 4. Thereafter on the sitting of the 26th July 2022 the accused today appellant failed to appear in court and once again a negative notification was once again presented in court and exhibited at fol. 6. This was repeated for the sitting of the 3rd November 2022 and negative notification is found at fol. 8 for the scheduled sitting of the 3rd November, 2022. This was repeated for the sitting of the 31st January, 2023 and the negative

notification is exhibited at fol. 10 and again for the sitting of the 8th March 2023 where the negative notification is found at fol. 12.

On the 16th May 2023 the accused appellant was again summoned before the court though he was not notified as per negative notification exhibited at fol. 14. And again on the 26th July 2023 and the negative notification is found at page 16. This was repeated for the sitting of the 7th November 2023 and the negative notification is found at fol. 18 and again for the sitting of the 30th January 2024 where the negative notification is exhibited at fol. 20.

The first positive notification of the accused is when he appeared in court on the 5th March 2024. Regrettably the notification for this sitting was not exhibited in court so the court has no evidence that he was notified prior to this date. Thus in excess of two years when the alleged offences took place. It must be underlined that the alleged offences took place on the 23rd February 2022.

Now the offences that the accused is charged with are the following namely of driving a motor vehicle when unfit to drive as specified under **article 15A (1)** of Chapter 65 of the laws of Malta. This article provides the following:

15A.(1) No person shall drive or attempt to drive or be in charge of a motor vehicle or other vehicle on a road or other public place if he is unfit to drive through drink or drugs.

The second charge given to the appellant is that he failed to submit himself to a breath alcohol test. **Article 15 E (4)** of Chapter 65 of the Laws of Malta provides the following

(4) A person who refuses or fails to provide the requisite specimen as provided under this article or regulations made under this Ordinance shall be guilty of an offence and unless the contrary is proved, it shall be presumed that the proportion of alcohol in that person's blood exceeds the prescribed limit:

The punishment that could be given in case of guilt according to section 15H (1) of Chapter 65 of the laws of Malta is the following

15H.(1) Every person who contravenes any of the provisions of articles 15A and 15B shall be guilty of an offence and shall on conviction for such an offence or for an offence under sub-article(4) of article 15E be liable –

(a) in the case of a first conviction, to a fine (multa) of not less than one thousand eight hundred euro (€1,800) or to imprisonment not exceeding six months, or to both such fine and imprisonment;

Now according to article 688 (e) of Chapter 9 of the laws of Malta an offence is time barred *by the lapse of two years in respect of crimes liable to imprisonment for a term of less than one year, or to a fine (multa) or to the punishments established for contraventions*

Therefore, the prescriptive period for the offences given to the appellant are time barred by two years. Therefore due to the fact that the alleged offences took place on the 23rd February 2022 and the appellant was first notified on the 5th March 2024, that means that the criminal action is time barred and thus the Court declares the offences are time barred in terms of section 688 (e) of Chapter 9 of the laws of Malta and revokes the judgement delivered by the first Court and declares not to take further cognisance of this case.

Consuelo-Pilar Scerri Herrera

Judge