

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)

656
CR No: 628/14

POLICE

VS

TAINA TIMOTI

Date of Hearing: 17 February 2015

Date of Decision: 8 May 2015

Counsel: Ms S. King and Ms. P. Dengate-Thrush for Crown
Mr. W. Rasmussen for the Defendant

DECISION OF THE JUSTICE OF THE PEACE, CARMEN TEMATA

1. Defendant: Ms. Taina Timoti is charged with Excess Breath Alcohol (222.0 mg)
2. The defendant is charged under section 28A (1) (a) & (2) and Sec 28F (2) Transport Amendment Act 2007. This charge carries a maximum of imprisonment for a term not exceeding 12 months or for a fine not exceeding \$1000 or both and in addition to any other penalty, order him/her to be disqualified with or without conditions from holding or obtaining a drivers licence for a minimum period of 12 months.
3. It was alleged that on the 17 September 2014 at about 1.00am, on the main road at Tupapa the defendant crashed her car onto a man on his motorcycle. The vehicle she was driving then continued on to the lamp post where it finally came to a halt. She was admitted to the emergency division at the Rarotonga hospital, wearing a neck brace as she was feeling pains in her neck. At the hospital, a blood specimen was taken from her. However, before this was done, the Doctor on duty on the morning in question explained to her the reasons for taking a blood specimen for evidential purposes.

The emergency division was dealing with two casualties from the same crash on that morning. The other was an older man who suffered significant injuries to his upper and lower limbs.

- 3. Before the defendant can be found guilty of the charge, the prosecution is required to prove beyond reasonable doubt each of the following elements.**

The three general elements are as follows and they are not disputed:

- a. The person named in the charge is the same person who is appearing in court today, *i.e Ms. Taina Timoti*
- b. There is a date or a period of time which is **17 September 2014 at 1.00am.**
- c. There must be a place where the offence was alleged to have been committed which is on the main road at **Tupapa.**

There are two specific elements that the prosecution is also required to prove beyond reasonable doubt and they are as follows and they are also not disputed.

- a. The proportion of alcohol in the accused blood exceeded the prescribed limit.
- b. The accused drove a motor vehicle on the road.

The issue to be determined is:

Whether the taking of the blood specimen from the defendant is in compliance with the provisions of the law

- 4. Facts of the matter:**

Dr. Vaikaola Mafi told the court that he was on duty the morning the defendant was brought to the Rarotonga Hospital by the ambulance and admitted to the emergency division of the hospital as an accident patient for further examination. He could not recall whether the defendant walked into the emergency room or whether she was wheeled in on a trolley from the ambulance. As a precautionary measure

she was fitted with neck braces at the accident site after complaining of pains in her neck. She had no visible injuries.

He could not identify the defendant in court as the person that was admitted into the outpatient on the morning of the alleged incident as she appeared fair, taller and in her early 20s.

During his examination of Ms. Timoti in the treatment room he continued talking to her mainly inquiring how she was feeling. She replied that she was fine except for the pains in her neck. He also noted that she appeared drowsy. The doctor's report of the defendant's condition after his examination of her noted one of his diagnosis was that of alcohol intoxication. **(Exhibit2)**

Dr. Mafi also told the court that he sent Ms. Timoti for an x-ray on her neck to ensure that her neck bones are fine and that whether it is well aligned or not.

Dr. Mafi submitted that a consent form was given to him by the Police requiring him to take a blood specimen from Ms. Timoti for evidential purposes. It is noted that the Police Constable filled and signed the form. Ms. Timoti also signed the consent form confirming that she has been informed by the Doctor that she is required to permit a blood specimen to be taken from her for evidential purposes. **(Exhibit 1.)**

The Doctor also submitted that he took 2-3 mls of blood specimen from the defendant and poured it into one bottle/test tube, labelled it and sent to the hospital laboratory for analysis. However, before he did that he explained to the defendant the reason for taking the blood test.

He discharged the defendant from the hospital because he has completed his examination of her and concluded that she was not as sick as he first thought.

Douglas Tou, Rarotonga Hospital Laboratory Manager, also designated as Analyst in Charge, told the court that he received one bottle/test tube of blood specimen belonging to the defendant on the morning of the alleged incident. He analysed it and produced a Certificate – Blood Alcohol Level of 222.0 milligrams. **(Exhibit 4)**

He told the court that the Laboratory have received one bottle of blood for the defendant and confirmed that it was sufficient for the analysis requested.

He also submitted that blood specimen is preserved by storing it in the fridge. Sometimes anti-coagulant preservative is added, however it does not guarantee life of the blood cells. Life span of blood lasts up to 72 hours.

- **Raewyn Samatua**, teacher from Blackrock Pre-school told the court that she had just arrived home from NZ and as she came to Chillis she saw an old man driving past. Immediately, she then saw a car driving at high speed when the accident happened. She actually witnessed the accident.

She stopped her car and went to check if the old man was alright and saw a lady sitting not far from the car. There was no one in the car. She also submitted that she did not see the defendant being thrown out of the car.

She also asked the defendant if she is okay and she said that she is. Ms. Samatua identified the defendant in court.

- **Tehapai Marsters**, Probationary Constable told the court that he was the first to arrive at the scene of the accident. There were several bystanders at the scene, including one of the witnesses. He also saw the old man who was injured.

At the time he did not know who the driver of the car was and he did not see anyone in the car either.

He noted the damages on the left side of the car and he also saw some the damages on the lamp post.

He told the court that he spoke to the defendant after he had attended to the old man who had sustained significant injuries. He also asked Ms. Timoti if she is okay and she replied that she is.

He identified the defendant in court.

- **Fa'arii Moekapiti** told the court that when he arrived at the scene of the accident, he spoke to the defendant first and to the victim who was lying by the side of the road. He asked the defendant if she required medical attention, she told him that she is feeling pains in her neck.

He also submitted there were many bystanders at the scene of the accident including two police officers.

He also saw the damaged vehicle and the defendant next to the vehicle with one of the Police Officers.

He followed behind the ambulance transporting both the victim and the defendant to the Rarotonga Hospital. Upon arrival he went into the emergency treatment room and gave the consent form to the Doctor and advised him take blood specimens from the defendant and victim.

He submitted that he was standing with the Doctor, when the defendant was advised that she is required to permit a blood specimen to be taken from her for evidential purposes. She agreed by signing the consent form.

He told the court that he collected the blood test result from the Rarotonga Hospital Laboratory on 30th October 2014. He confirmed that **Exhibit 4** is the document he collected from the laboratory. He then contacted the defendant advising her the purpose of his calling. An appointment was made on the same day but the defendant did not make it. He called her at home and she told him that her lawyer had advised her not to go to the Police Station.

Constable Moekapiti identified the defendant in court.

- **Ms. Timoti**, the defendant told the court that she had been out at the Rehab where she had a few white wine and after dropping a friend off she returned to town to pick up her cousin when the motor accident occurred.

She recalled waking up and there were people around her. Due to her condition she couldn't remember being spoken to by the Police at the scene of the accident.

The victim on the motorcycle was being attended to before her. She confirmed that although she had no visible abrasions but she had a bruised lower back.

As a result of the motor accident she was admitted to the hospital on the morning of the alleged incident. She submitted she had a sore back, a headache and also confused and afraid.

She was at the hospital for about half an hour before a blood specimen was taken from her. She was sure that the blood specimen was taken

about 10-20minutes before she taken for an x-ray to her neck. The defendant submitted that the Doctor did not explain to her why the blood specimen is being taken.

She was later discharged from the hospital.

5. Analysing the facts I note the following:

- Dr. Mafi told the court that he examined the defendant when she was brought into the emergency room at the Rarotonga Hospital. In his oral evidence, he stated that defendant appeared drowsy and was possibly suffering from shock as a result of the accident or she was suffering from concussion. He confirmed that the defendant was conscious when he was talking to her in the emergency treatment room.
- Dr. Mafi submitted the document marked Exhibit 2, about the accident involving the defendant on the morning in question was prepared by him. It outlined his findings of the defendant's condition after examination. He noted alcohol intoxication under diagnosis.
- Dr. Mafi also stated that he took 2-3mls of blood specimen from the defendant and poured it into one bottle and sent it to the laboratory for analysis. Prior to taking the blood specimen, he explained to the defendant why he was taking a blood specimen from her which he always does when processing similar cases. She consented by signing the consent form. The blood specimen was taken before the defendant was x-rayed.
- Dr. Mafi admitted that he was not aware of the requirement on how blood specimen is to be taken as prescribed under Sec 28D of the Transport Amendment Act 2007, hence he only filled one bottle. He understood that this has been the practice and he just followed it. He sent the defendant for x-ray to determine whether her neck bones are damaged or not and that they are well aligned.
- **Douglas Tou**, Rarotonga Hospital Laboratory Manager confirmed that only one bottle of blood specimen for the defendant was sent to the

laboratory for analysis. He confirmed that the one bottle of blood specimen taken from Ms, Timoti was sufficient for the analysis. He said that in the past the laboratory have always received one bottle of blood specimen for analysis and do not recall receiving any request for a second bottle, for a second analysis. He further submitted that he cannot understand why two bottles of blood specimen is required for analysis.

Mr. Tou confirmed that result of the analysis of the defendant's blood indicated a reading of 222.0mg of alcohol in the blood.

- **Raewyn Samatua** told the court she actually witnessed the accident and stopped to assist the victim and the defendant. She further submitted that the vehicle was traveling at high speed and she witnessed the accident. She did not see the defendant thrown out of her vehicle.
- The identity of the defendant in this matter was confirmed by three of the five prosecution witnesses.
- One the witnesses for prosecution in his oral evidence stated that he was standing next to the Dr. When he was explaining to the defendant the reason for taking the blood specimen.
- **Ms. Timoti**, the defendant in her oral evidence told the court she cannot recall being spoken to by the Police, asking if she has injuries and whether she was the driver of the vehicle involved in the alleged incident.

Furthermore, she submitted that she could not recall what the Doctor was doing and how long he took in his examination of her at the hospital.

The defendant denied that the doctor explained to her the purpose of the taking of the blood specimen from her.

She also denied signing the consent form requiring her to permit a blood specimen to be taken from her for evidential purposes. In her oral evidence she told the court that she does not believe that is her signature on the consent form because she does not sign like that.

The defendant was adamant that she was not drunk as she only had a few glasses of wine.

6. Conclusion:

The issue to be determined here is:

Whether the taking of the blood specimen from the defendant is in compliance with the provisions of the law

In my opinion there is a flaw in the procedure in the taking of a blood specimen from the defendant in the early hours of the morning in question. Section 28 D clearly provides how blood specimen is to be taken. Sec 28D (2) (a) and (b) states:

'When a blood specimen is taken from a person, the medical officer shall cause the specimen to be divided into 2 parts and –

- (a) Each part must be placed in a separate bottle and the bottle must be sealed; and
- (b) Each part is a blood specimen for the purposes of this Act."

We heard the oral evidence of Dr. Mafi who attended to the defendant at the hospital that he was not aware that there is such a legislative requirement on how blood specimen is to be taken, otherwise he would have abided by it. He further stated that this has been the practice and he just followed suite.

In his oral evidence, the Laboratory Manager who analysed the defendant's blood specimen, submitted that there has always been one bottle of blood specimen sent to the laboratory for analysis for such cases. He did not understand the need for two bottles of blood specimen. He could not recall receiving any request for a second analysis ever.

In my opinion there is a lack of understanding of the legislative requirements for the taking of blood specimens by the medical professions.

I am satisfied that the taking of blood specimen from the defendant is unlawful because it was not taken according the provisions of the Act. Similarly, I ruled the analysis of the blood specimen invalid. Clearly, the procedure has been breached.

Prosecution has not proven all the elements of this case beyond reasonable doubt therefore, I find the defendant, Ms. Timoti **not guilty**.



Carmen Temata

JP