



**IN THE CENTRAL MAGISTRATE'S COURT )  
OF SOLOMON ISLANDS AT HONIARA )  
(Criminal Jurisdiction)**

Criminal Case No. 667 of 2020

**REGINA**

-v-

**DEN DE QIANG**

**Date of plea:** June 30<sup>th</sup>, 2020  
**Date of hearing:** June 30<sup>th</sup>, 2020  
**Date of sentence:** July 8<sup>th</sup>, 2020

*Mr. Abel Maelanga for the Prosecution  
Accused in person*

**SENTENCE**

1. The accused person, Mr. Qiang appeared before this court and entered guilty plea to A count of presence of alcohol in person's blood contrary to section 43A (1) (a) of the Road Transport Act (Cap. 131) as amended as amended by the Police and Transport Legislation (Amendment) (Alcohol Testing) Act 2016. For first offender, it holds a maximum penalty of \$10,000 or 12 months' imprisonment or both. Subsequent offender, \$20,000 or 2 years' imprisonment or both.
2. The facts are admitted and I wish not to restate it, instead will use it to assist in the reasoning for his sentence.
3. As I can gather from the facts, these are the aggravating factors: -
  - o First, the offence occurred at mid-night or early hours between 11:23pm and 11:45pm. Night or darkness impairs any human vision compared to if it was daylight. Even worse when it involves drunkenness or intoxication. A human body is expected to go into its snoozing mode around that late hours, it is even more imminent when a person is drunk or intoxicated especially in such early hours. Therefore, the accused attitude to drive the said motor vehicle during nighttime while being under the influence of liquor is totally dangerous. If he had caught up with an emergency the damage to properties and any injuries to persons will be terrible.
4. Besides the above, I find the following mitigating factors to his favor: -
  - o Early guilty plea – He has entered an unequivocal guilty pleas to offence without any legal assistance or advice. I agree that his guilty plea alone demonstrate remorse and acceptance of his wrongs. First offender – The accused person holds a past clean criminal history and this is his first time to appear before court. He has demonstrate someone who have prospect of change.

- o Corporation with police investigation – the accused has since day one admitted to the offence and faithfully attend to his case until this day of sentence.
5. I can boldly state that all drivers must always hold an obligatory duty to maintain the safety and life of the public, pedestrians and other road users at high regard. This is the foundational basis for the notion of ‘drive safely’.
  6. Although it might be debated that some drivers are well experienced that they can control their driving even while under the influence of liquor and or while presence of alcohol in blood is above the prescribe percentage, there is no guarantee that the same vigilance, consciousness and coordination will be applied, compared to if the driver is sober. This view is of course bolstered in the case of *R v Cheffers*<sup>1</sup>, when His Lordship Ward CJ, as he then was, stated;

*“Driving whilst under the influence of liquor is an extremely serious offence. Anyone who drives in such a state has deliberately than a course of action that puts his own and far more seriously, other people's lives at risk. However carefully he may attempt to drive, his reactions if confronted with an emergency will not be as effective as when he has taken no alcohol”*

7. These are the case authorities which have exemplifies the sentencing methodology and tariff used by our courts in the offence involving presence of alcohol in person’s blood:-
  - (i) In *R v Soniluvu*<sup>2</sup> the accused pleaded guilty to a count of presence of alcohol in person’s blood. The facts of that case reveal that on 26<sup>th</sup> of September 2016 between 1pm -3pm, the accused drove a blue Toyota Rav-4 registered MB-3804 along the prince Philip Highway. When he reached Burns creek area on his way eastward direction, he crashed onto a rear side of another vehicle described as a Suzuki Escudo registered as MA-3426. As a result, both vehicles sustained damage. This incident resulted in the police attended to his vehicle at the scene. He was suspected of driving whilst under the influence of liquor. Police conducted a breathalyzer test with him at the road side to determine whether he has alcohol. The test result showed a reading of 0.329%. The final test was conducted at the Police Station and the result was 0.294% of alcohol present in your blood. Having considered all factors, the court imposed a fine of \$4,000 on the count of presence of alcohol in person blood.
  - (ii) In *R v Ogrady*<sup>3</sup> the accused pleaded guilty to a count of presence of alcohol in person’s blood, along with other traffic related offences. The facts show that in the early hours of 1<sup>st</sup> March 2018, he was drinking alcohol with some of his friends somewhere in the Honiara town. Towards 3:00am, he decided to return home and so he drove back to his residence in his private vehicle. As he drove up the Florence Young hill and reached a curve along the hill, his vision was distracted by a high beam light of an oncoming vehicle and this made him to run off the road and collided with an electric post situated at the roadside. His vehicle sustained damage as a result of the accident. Following the accident,

<sup>1</sup> Unrep. Criminal Case No. 11 of 1989

<sup>2</sup> [2016] SBMC 25; Criminal Case 613 of 2016 (27 September 2016)

<sup>3</sup> [2018] SBMC 7; Criminal Case 289 of 2018 (29 March 2018)

Police was called to attend the scene and apprehended him. He appeared drunk and hence was conveyed to the Kukum Police Station to undergo a breathalyser test. His final test reading was 0.209% which was above the permitted level for driving. The Court having considered the totality of factors and the accused being a sworn police officer, imposed a fine of \$4,000 for the count of presence of alcohol in person's blood.

- (iii) In the case of *R v Marau*<sup>4</sup> the accused pleaded guilty to a count of presence of alcohol in person's blood. The facts reveal that during the night of 4<sup>th</sup> March 2017, Kukum Traffic officers were conducting a Random Breath Test traffic checks along the Mendana Avenue Road in front of the Central Police Station. At about 9:48pm, they stopped a Grey Toyota RAV4 driven by the accused and pulled him at roadside for a breathalyzer test. He voluntarily participated and following the preliminary test, police found the level of alcohol concentration present in his blood was 0.145% which exceeded the permitted level of 0.049%. He was escorted to Central Police Station for the final breathalyzer test where his final test result showed 0.132% of alcohol present in his blood. Having considered the factors of the case more significantly that the accused was a parliamentarian and legislator, the court imposed a fine of \$5,000 and in default 6 months' imprisonment.
- (iv) In the case of *R v Kimi*<sup>5</sup>, the accused person pleaded guilty to a count of presence of alcohol in person's blood and driving unlicensed motor vehicle. The facts show that on the on the 1<sup>st</sup> May 2020, between the hours of 6:00am to 6:30am, the accused was driving a Toyota Hiace motor vehicle registration number MB-5722 along the Mendana Avenue road in front of BSP, Heritage Park Hotel, heading easterly direction. An officer who was on foot beat exercise sighted the said motor vehicle and contacted the central police patrol to assist in arresting the said vehicle. Upon responding to him, a police chase ensued and the accused motor vehicle was apprehended. Thereafter, he was then escorted to the Central Police Station. He was later being transported from Central Station to Kukum Police station. On his arrival, he undergoes a preliminary breath test and a result shown was 0.168% which was over the prescribed level. After 10 minutes' observation time, he undergoes a further breath analysis with a test result of 0.168%. He was formally arrested for the offence of presence of alcohol in person's blood. A further investigation was carried out through JIMS record and it revealed the vehicle licence expired on 30<sup>th</sup> April 2020. He was then formally charged for the two counts. The Court imposed \$3,000 fine or in default of 6 months' imprisonment.

8. Having outlined the above case authorities and comparing all their circumstances to the case at hand, it is my view that this case falls below to those cited above. While I agree that it is akin to that of *Kimi*, *Kimi's* case involve a police chase on the accused, that is distinct and serious compared to this case. This case merely involves the police stopping him at check point. He is an ordinary citizen compared to *Ogrady* and *Marau*, who are persons affiliating and working in the discharge of the law and justice.

<sup>4</sup> [2017] SBMC 7; Criminal Case 255 of 2017 (29 March 2017)

<sup>5</sup> CMC-Criminal case 547 of 2020

9. For the sentencing method today, although I acknowledge the available alternate imprisonment terms, I am more persuaded to impose fine sentence for him. This fine sentence must be taken as a strong message to him and the public at large, that those who contravene our traffic rules with utter ignorance must expect no leniency from our courts, especially for offences involving driving whilst under the influence of liquor.

**Sentence Order**

1. I hereby sentence the accused person, Mr. Den De Qiang to fine of **\$3,000**.
2. He must pay the amount of **\$3,000-00** before or by 5<sup>th</sup> August 2020 at 4:30pm. A sufficient time considering the financial impacts and effects of covid-19.
3. In default of payment, 6 months' imprisonment.
4. By virtue of my powers under Section 29 (1) of the Road Transport Act<sup>6</sup>, order disqualification of accused driver's licence for 12 months or until **8<sup>th</sup> July 2021**. The Traffic Department of Royal Solomon Islands Police Force and Licensing Division of Ministry of Finance and Treasury shall facilitate to effect this order 4.
5. 14 days right of appeal applies.
6. Order accordingly.

**THE COURT**

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**MR. LEONARD. B. CHITE**  
Principal Magistrate



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<sup>6</sup> Cap. 131