



SCA NO. 3 of 2010

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS

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4
5 BETWEEN: REGINA APPELLANT
6
7 AND: IAN MORRISON RESPONDENT
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10 Coram: The Hon. Mr. Justice Cooke

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12 Appearances: Mr. Shaun McCann for the Respondent

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14 Mr. John Masters for the Crown

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16 Heard: 23rd July 2010
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19 JUDGMENT
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22 1. Ian A. Morrison was charged in the Summary Court with driving a motor vehicle

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24 *"having consumed alcohol in such a quantity that the proportion*
25 *thereof in blood exceeds the prescribed limit of .100% to wit*
26 *.223%".*
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29 2. At his trial, in proof of its case the prosecution sought to tender in evidence a
30 certificate generated by a piece of equipment described as an Intoxilyser 5000
31 EN. There is no issue that the use of the Intoxilyser had been sanctioned by the
32 Commissioner of Police under the Traffic Law as an alcohol-in-breath measuring
33 devise. There is further no debate as to the proper functioning of the Intoxilyser
34 nor to the integrity of the results contained in the generated certificate. This
35 certificate pertained to the respondent's breath test.

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37 3. The prosecution sought to tender this certificate by virtue of section 74 (6) of the
38 Traffic Law (2003 Revision) ("the Law"). This states:

1 *"A certificate under the hand of the constable operating the alcohol-in-breath*
2 *measuring device as to the result of the breath test and countersigned by the*
3 *constable in whose presence it was made shall be receivable in evidence in any*
4 *court and shall be evidence in any court of the proportion of alcohol in the*
5 *breath."*

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7 The Learned Chief Magistrate ruled that the certificate was inadmissible.
8 Morrison was discharged.

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10 4. The prosecution feeling aggrieved by this ruling asked for a case to be stated and
11 subsequently filed the following ground of appeal.

12 *"1. Given the provisions of section 74 of the Traffic Law (2003 Revision), the*
13 *Learned Magistrate erred in law in holding that certificate produced by*
14 *the Intoxilyzer 5000 EN was not admissible to prove the proportion of*
15 *alcohol in blood."*

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18 5. In the case stated the Learned Chief Magistrate under the heading "Reason for
19 Dismissing the Charge" said:

20 *"The Court dismissed the charge against the defendant on a ground which*
21 *differed from the one advanced by Mr. McCann. The Court was satisfied that the*
22 *certificate produced by the Intoxilyzer 5000EN did in fact go to show that the*
23 *defendant was driving with excess alcohol in blood, and not excess alcohol in*
24 *breath as Mr. McCann advanced. I do not accept his assertion that it doesn't*
25 *show the proportion of alcohol in the defendant's blood.*

26
27 *The problem to my mind is one of the admissibility of the evidence. The*
28 *admissibility of the certificate is dealt with at s 73(6) of the Traffic Law which*
29 *states that,*

30
31 *"A certificate under the hand of the constable operating the alcohol-in-*
32 *breath measuring device as to the result of the breath test.... And shall be*
33 *evidence of the proportion of alcohol in the breath".*

34
35 *It is not admissible to prove the proportion of alcohol in the blood as measured*
36 *by a breath analyzing machine which is the only measurement for which a limit*
37 *has been prescribed by the Law."*

38

1 6. I must confess I have had some difficulty in appreciating the reasoning of the
2 Learned Chief Magistrate in the passage excerpted above. Earlier in the case
3 stated she said:

4 *"The statute doesn't provide a prescribed limit for alcohol-in-breath but only for*
5 *alcohol-in-blood as measured by an alcohol in breath measuring device".*
6

7 After much discussion with both counsel it would appear that the certificate was
8 ruled inadmissible as section 74 (6) spoke exclusively to "alcohol in breath" and
9 there was no prescribed limit as to that. Therefore the certificate was of no
10 evidential value in respect of the charge which stated that the defendant had
11 consumed alcohol *"in such a quantity that the proportion thereof in your blood*
12 *exceeds the prescribed limit"*. The hearing was conducted on that
13 understanding.

14
15 7. Section 71 of the Law makes it an offence to drive under the influence of
16 alcohol. A person would be guilty of this offence where such person

17 *"has consumed alcohol in such a quantity that the proportion thereof in*
18 *his breath, blood or urine exceeds the prescribed limit"*. (Section 71 (1)
19 (c) (ii))
20

21 This subsection sets out the alternative methods to be employed in determining
22 whether or not the prescribed limit has been exceeded. They are (a) breath test
23 (b) blood test and (c) urine test. This judgment will not be concerned with (b)
24 and (c).
25

26 8. Section 77 (1) of the Law defines a breath test as follows:

27 *"breath test" means a test for the purpose of obtaining measurement of the*
28 *proportion of alcohol in a person's breath by means of an alcohol-in-breath*
29 *measuring device or by a portable alcohol-in-breath measuring device".*
30

1 The "prescribed" limit in respect of the result of a breath test is set out in section
2 of the Law which is stated to be:

3 "(a) one tenth of one per cent weight/volume blood/alcohol concentration on a
4 reading of an alcohol-in-breath measuring device;"
5

6 (Section 2 also specifies prescribed limits as a result of blood and urine tests).
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9 9. The breath test would be meaningless unless the result of such a test is probative
10 concerning the issue of whether or not the defendant was driving under the
11 influence of alcohol. What the Intoxilyser does is to compute from the
12 defendant's breath the

13 "weight/volume blood/alcohol concentration".
14

15 consequent on its "reading" i.e. analysis. The certificate in this case was to the
16 effect that, the limit had been exceeded. It is conceptually impossible to accept
17 that there was

18 "no prescribed limit for alcohol in breath".

19 There could be none since it is the analysis of the breath which is the vital aspect
20 of the breath test. The

21 "proportion of alcohol in the breath" (74 (6))

22 is determined by the procedure mandated by the Law which is by the calculation
23 of the Intoxilyser. Accordingly the

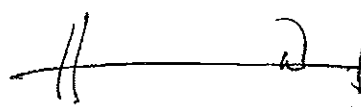
24 "proportion thereof in his breath" (71 (1) (c) (ii))

25 is to be calculated by reference to the manner designated, by the Law which is by
26 way of analysis by the Intoxilyser. The criterion is whether or not on such
27 analysis there is more than

1 13. Finally it is only left for me to say that the appeal is allowed. The matter is
2 remitted to Summary Court so that a trial according to law may take place.

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Dated: 30th July 2010


Hon. Justice Cooke
Judge of the Grand Court (Actg)

