

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN,
MARIANA ISLANDS,

Plaintiff,

vs.

KYUN LEE KUN,

Defendant.

) Traffic Case No. 98-2226
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ORDER

I. PROCEDURAL BACKGROUND

This matter came on for a bench trial on May 12, 1999, in Courtroom D at 1:30 p.m. Assistant Attorney General Elaine A. Paplos, Esq. appeared on behalf of the Commonwealth. Antonio M. Atalig, Esq. appeared on behalf of the Defendant, Kyun Lee Kun. The Court, having heard the arguments of counsel and having considered the evidence and the testimony of the witnesses, now renders its decision.

II. FACTS

Department of Public Safety (DPS) Officer Charles Patris testified that on March 3, 1998, he was dispatched to the campus of Northern Marianas College (NMC) to respond to a possible Driving Under the Influence violation.

Upon arriving at NMC, Officer Patris spoke with a private citizen who claimed that he witnessed Defendant driving erratically on Middle Road and that he had followed Defendant from [p. 2] Middle Road to NMC where he forced Defendant to pull over by repeatedly flashing his headlights. The private citizen stated that Defendant pulled into the NMC campus parking lot, exited his vehicle, and began walking towards one of the campus buildings.

Officer Patris located Defendant with the aid of a spotlight and instructed Defendant to come forward to answer some questions. Defendant failed to respond at first, but then complied. Officer Patris testified that when Defendant was within a close proximity he could smell an odor of alcohol on Defendant's breath. Officer Patris asked Defendant if he had been driving that night and Defendant

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admitted that he had been driving. Defendant was then arrested for alleged: (1) Reckless Driving, in violation of 9 CMC § 7104; (2) Driving Under the Influence, in violation of 9 CMC § 7105; (3) Refusal to Submit to an Alcohol Breath Test, in violation of 9 CMC § 7106; and (4) Driving Without a Driver's License, in violation of 9 CMC § 2201.

Officer Patris informed Defendant of his Miranda rights and asked Defendant if he had been drinking that night. Defendant admitted that he had consumed two glasses of "Soju" (Korean liquor). Officer Patris also requested that Defendant produce a valid driver's license but Defendant did not have a valid driver's license in his possession.

Officer Patris brought Defendant to DPS headquarters where Defendant was asked to submit to a field sobriety test. Defendant submitted to the test, but failed to perform the coordination and balance tests adequately. Defendant was asked to submit to an alcohol breath test, but Defendant refused. Officer Patris showed Defendant the standard DPS form used to inform persons of the Commonwealth's implied consent law and again requested that Defendant submit to an alcohol breath test. Defendant again refused to submit to the alcohol breath test and also refused to sign the implied consent form, saying that he did not understand what he would be signing.

At trial, Defendant testified that he has been diagnosed as having diabetes and that he believes his inability to successfully accomplish the field sobriety test was due to his intake of insulin prior to drinking. Defendant further testified that prior to submitting to the field sobriety test he felt "dizzy and disoriented" and was experiencing "chest palpitations" due to low blood sugar levels. **[p. 3]**

III. ISSUES

1. Whether the Government presented testimony and evidence proving beyond a reasonable doubt the essential elements of the offense of Reckless Driving in violation of 9 CMC § 7104.

2. Whether the Government presented testimony and evidence proving beyond a reasonable doubt the essential elements of the offense of Driving Under the Influence in violation of 9 CMC § 7105.

3. Whether the Government presented testimony and evidence showing reasonable grounds to believe that Defendant was driving under the influence of alcohol sufficient to support the charge of Refusing to Submit to an Alcohol Breath Test in violation of 9 CMC § 7106.

4. Whether the Government presented testimony and evidence proving beyond a reasonable

doubt the essential elements of the offense of Driving Without a License in violation of 9 CMC § 2201.

IV. ANALYSIS

A. Reckless Driving.

9 CMC § 7104 states that “[e]very person who drives or operates any vehicle upon a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving which is a misdemeanor.” 9 CMC § 7104.

The private citizen who forced Defendant to pull off the road testified that he witnessed Defendant driving erratically. Officer Patris, however, testified that he never personally observed Defendant driving a motor vehicle and testified that Defendant made no admissions as to such driving behavior.

The Court finds that the testimony of the private citizen is insufficient to find beyond a reasonable doubt that Defendant was operating a vehicle in willful or wanton disregard for the safety of persons or property. As such, the Court finds that the evidence presented by the Government is **[p. 4]** insufficient to sustain a conviction for the offense of Reckless Driving in violation of 9 CMC § 7106.

B. Driving Under the Influence.

9 CMC § 7105(a) states, in pertinent part:

(a) A person shall not drive, operate or be in actual physical control of any vehicle while:

- (1) Having a Blood Alcohol Concentration (BAC) of 0.08 percent or more as measured by a breath or blood test; or
- (2) Under the influence of alcohol; or
- (3) Under the influence of any drug or combination of drugs to a degree which renders the person incapable of safely driving; or
- (4) Under the combined influence of alcohol and any drug or drugs to a degree which renders the person incapable of safely driving . . .

9 CMC § 7105.

In the present matter, Defendant admitted to Officer Patris at the scene and in his testimony before the Court that he had consumed alcohol and had been driving on March 3, 1998. Defendant contends, however, that he was not “intoxicated” and that he was unable to perform the field sobriety test successfully because of his diabetic condition. Defendant also contends that the present action should be dismissed because Defendant was pulled over by a private citizen who lacks the authority to enforce the Commonwealth’s traffic laws.

The Court is disturbed by the circumstances leading to the arrest of Defendant because a

private citizen lacks authority to enforce the Commonwealth's traffic laws and may only make a "citizen's arrest" in narrow circumstances not present here. The Court is reluctant to find reasonable grounds for Defendant's arrest based solely on the testimony of the private citizen and points out that the action taken by the citizen in pulling over Defendant was dangerous and should never be encouraged. However, pursuant to 6 CMC § 6103(c), "[w]hen a criminal offense has been committed, and a police officer has reasonable grounds to believe that the person to be arrested has committed it, the police officer may arrest the person without a warrant." 6 CMC § 6103(c). As such, although Officer Patris never personally observed Defendant driving a motor vehicle on March 3, 1998, such personal observation was not required. In Commonwealth v. Palacios, 4 N.M.I. 330, 331 (1996) the Commonwealth Supreme Court affirmed a Driving Under the Influence conviction where the arresting officer never saw the defendant "driving" the vehicle, but rather only observed that the defendant's car [p. 5] was "parked in the middle of the road." The defendant in that instance was arrested because the officer observed a strong odor of alcohol on the defendant's breath, the defendant admitted that he had consumed alcohol, and the defendant failed a field sobriety test. Id.

The present situation is distinguishable from Palacios because in that case there were no external factors to aggravate the defendant's condition. In the present matter, Defendant is a diabetic who was pulled over by a private citizen after an extensive pursuit. Furthermore, Defendant was placed in fear of attack by conduct that was unwarranted and to which no citizen of the Commonwealth should be subjected.

It is settled that in a criminal trial, the Government bears the burden of proving each essential element of its case beyond a reasonable doubt. In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L.Ed.2d 368 (1970). Therefore, pursuant to 9 CMC § 7105, the Government must prove beyond a reasonable doubt that on March 3, 1998, Defendant was driving, operating or in actual physical control of a motor vehicle and that Defendant had a blood alcohol concentration of 0.08 percent or more as measured by a breath or blood test, or that Defendant was under the influence.

The Court finds that the private citizen's pursuit of Defendant and the fear induced by such pursuit, in addition to Defendant's diabetic condition, provides sufficient doubt as to whether Defendant was driving under the influence on March 3, 1998. As such, the Court finds that the Government failed to present testimony and evidence proving beyond a reasonable doubt the essential elements of the

offense of Driving Under the Influence in violation of 9 CMC § 7105.

C. Refusal to Submit to an Alcohol Breath Test.

9 CMC § 7106(a) states, in pertinent part:

(a) Any person who operates a motor vehicle upon the highways within the Commonwealth shall be deemed to have given his or her consent . . . to a test of his or her breath . . . The test shall be administered at the request of a police officer having reasonable grounds to believe the person operating or in actual physical control of a motor vehicle is under the influence of alcohol or drugs only after:

- (1) A lawful arrest and
- (2) The police officer has informed the person of the sanctions provided in this section.

9 CMC § 7106(a) (emphasis added). [p. 6]

The Government bears the burden of proving that Officer Patris had reasonable grounds to believe that Defendant was operating a motor vehicle under the influence of alcohol. “Reasonable grounds” are shown “if a reasonable person in the position of the officer viewing the facts and circumstances as they appeared at trial could have concluded that the motorist had operated the vehicle while under the influence of alcohol.” Menosky v. Commonwealth of Pennsylvania, 550 A.2d 1372 (Pa. Commw. Ct. 1988).

As stated, the Court finds that the private citizen’s pursuit of Defendant and the fear induced by such pursuit, in addition to Defendant’s diabetic condition, provides sufficient doubt as to whether Defendant was driving under the influence on March 3, 1998. As such, Defendant’s refusal to submit to a blood alcohol test was not in violation of 9 CMC § 7106.

D. Driving Without a License.

9 CMC § 2201(c) states, in pertinent part:

No person may operate any motor vehicle upon a highway in the Commonwealth without having on his person or in his immediate possession a valid license issued by the bureau or a valid operator’s license from outside the Commonwealth . . .

9 CMC § 2201(c). Regardless of the intervening actions of the private citizen, Defendant testified that he did not have a valid driver’s license on his person or in his immediate possession on March 3, 1998. As such, the Court finds that Defendant was in violation of 9 CMC § 2201(c).

V. CONCLUSION

The Court finds the testimony of the private citizen that Defendant was driving erratically is insufficient to find beyond a reasonable doubt that Defendant was operating a vehicle in willful or

wanton disregard for the safety of persons or property. As such, Defendant is acquitted of the charge of Reckless Driving in violation of 9 CMC § 7104 and a finding of **NOT GUILTY** is hereby entered.

The Court finds that the private citizen's pursuit of Defendant and the fear induced by such pursuit, in addition to Defendant's diabetic condition, provides sufficient doubt as to whether Defendant was driving under the influence on March 3, 1998. As such, Defendant is acquitted of the charge of Driving Under the Influence in violation of 9 CMC § 7105 and a finding of **NOT GUILTY** is hereby entered. [p. 7]

As stated above, the Court finds that the facts provide sufficient doubt as to whether Defendant was driving under the influence on March 3, 1998. As such, Defendant's refusal to submit to a blood alcohol test was not in violation of 9 CMC § 7106. Defendant is therefore acquitted of the charge of Refusing to Submit to an Alcohol Breath Test, in violation of 9 CMC § 7106 and a finding of **NOT GUILTY** is hereby entered.

Regardless of the actions of the intervening actions of the private citizen, Defendant testified that he did not have a valid driver's license on his person or in his immediate possession on March 3, 1998. As such, a verdict of **GUILTY** is hereby entered as to the charge of Driving Without a Licence, in violation 9 CMC § 2201.

In conclusion, the Court reiterates that the circumstances leading to the arrest of Defendant are disturbing. The conduct of the private citizen in pulling over the Defendant was dangerous and is not to be encouraged. Private citizens do not have the authority to enforce the traffic laws of the Commonwealth and such measures should be left to those trained in protecting public safety. Private citizens should not be discouraged, however, from reporting criminal acts which they have observed and are encouraged to contact the Department of Public Safety whenever such activity is witnessed.

SO ORDERED this 10 day of June, 1999.

/s/ Juan T. Lizama
JUAN T. LIZAMA, Associate Judge