

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

**CR No: 369/14**

**POLICE**

**VS**

**Olivia Jay Johnston**

Date: 4 February 2015

Counsel: Ms. Cheryl King for Crown  
Mr. M. Mitchell for the Defendant

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**DECISION OF THE JUSTICE OF THE PEACE, CARMEN TEMATA**

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1. Defendant: Olivia Jay Johnston is charged with Excess Breath Alcohol.
2. It was alleged that on the 1<sup>st</sup> of August 2014 at 10.30pm at Pue, Tupapa. Mrs Johnston was stopped by the police who were attending to an accident. The police stopped her and asked her to reverse her car and to park behind the police truck on the side of the road. In doing so, she crashed her car into the rear of the parked police truck.

Constable Ingaua, at the instructions of Acting Sergeant Taruia Ringiao attended to Mrs. Johnston. She asked the defendant if she had been drinking and she replied, yes. She was then told that she is required to go to the Avarua Police Station with Constable Ingaua to undergo a breathalyser test to which she agreed. Due to the unavailability of a Police truck to take Mrs. Johnston to the police station, Constable Ingaua asked Mrs. Johnston if she, the constable could drive her to the Police Station in her car. She agreed to this request and moved into the passenger seat to allow the Constable to drive her car. At the police station, a breathalyser test for alcohol was conducted on Mrs Johnston which returned a reading of 1060ugl of alcohol in her breath.

3. The defendant is charged under section 28A (1) (a) & (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 her to be disqualified with or without conditions from holding or obtaining a driver's licence for a minimum period of 12 months.

4. **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 were not disputed and these are;**

- a. The person name in the charge is the same person who is appearing in court today, that is Mrs Johnston.
- b. There is a date or a period of time which is 1<sup>st</sup> of August 2014 at 10:30pm.
- c. There must be a place where the offence was alleged to have been committed which is on the main road at Pue, Tupapa.

5. **There are two specific element that the prosecution is also required to prove beyond reasonable doubt and that is;**

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

After taking into consideration all the facts and evidence provided in court, this court has come to the following conclusion;

**Matters not disputed:**

- The proportion of alcohol in Mrs. Johnston's breath did exceed the legal limit
- Mrs. Johnston was driving her own car on the road.
- Mrs Johnston was given the opportunity to call her husband from the Police station to mind her three children in the car while the Police conducted a breathalyser test on her inside the Avarua Police Station.
- Constable Ingaua had followed the check list for conducting the breathalyser test.
- Upon completion of the breathalyser test, Mrs Johnston was placed under arrest.

The Defense did not call any witnesses to give evidence, however, the D/C submitted submissions for the Defendant(s) outlining several issues on the constitutional and legislative positions with regards to the charge of excess blood alcohol against the defendant(s).

Furthermore, D/C Indicated in his opening remarks at the beginning of the hearing that he will be filing appeals for guilty decision(s) delivered today.



The Crown had two witnesses, the two Police Constables who gave evidence of the alleged incident.

In applying the facts to the two specific elements of the charge that prosecution is required to prove these beyond reasonable doubt, accordingly both elements have been proven. The receipt of Mrs. Johnston's reading from the breathalyser machine was provided as evidence and that it has exceeded the legal limit. The accused was driving a motor vehicle on the road when she was stopped by the Police.

The evidence given by the two Crown witnesses is reliable. Accordingly, I find that the prosecution has proven the charge beyond reasonable doubt. Therefore, I find the defendant, Mrs. Johnston guilty as charged.

This matter is adjourned to a date to be fixed by the Registrar as the D/C has stated earlier that he will lodge an appeal against the decision.



**Carmen Temata**

**Justice of the Peace**

**Am 3 February 2015**