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Singapore

Drink driver claims Bonjela oral gel affected his breathalyser test reading, appeals against conviction

Simon Tham Saik Mun claimed he had been applying the gel all day to treat his mouth ulcers and toothache, and this affected the reading.



A tube of Bonjela gel. (File photo: CNA)



[Lydia Lam](#)

07 Feb 2023 11:31AM | (Updated: 07 Feb 2023 02:05PM)



jail, a fine of S\$6,000 and four years' driving ban.

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Tham is appealing against the conviction and sentence, and is on bail pending appeal.

In a judgment published on Tuesday (Feb 7), District Judge Teoh Ai Lin set out her reasons for convicting Tham, who is a repeat drink driver.

The prosecution's case was that Tham drank beer in a pub on the night of Jun 13, 2019.

In the early hours of the next day, he drove his van home and parked in an open-air car park at Block 146, Yishun Street 11.

A passer-by was nearly knocked down by Tham, and the pair began arguing. The passer-by called the police saying, "drunk driver wants to hit me".

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Two police officers went down and found Tham smelling of alcohol. He failed a mobile breathalyser test and was arrested for driving under the influence of alcohol.

Tham was given a breath test at Woodlands Police Division HQ and the machine recorded a failed blow with the message "alcohol concentration not stable".

The second blow yielded a test result of 75 micrograms of alcohol per 100ml of breath, above the prescribed limit of 35 micrograms.

THAM'S DEFENCE

Tham, who was represented by Adrian Tan and Theenan Narendra Mudaliar, testified that he had consumed less than half a jug of beer and there was "no way" his alcohol level could be 75 micrograms per 100ml of breath.

He said he had been suffering from ulcers on both sides of his inner cheeks the week before his arrest.

A few days before the incident, he was eating chicken rice when a bone damaged his upper molar. Tham said he tried to make an appointment with a dentist but could not secure a slot.

As he experienced acute pain whenever he drank cold water, he bought some Bonjela oral gel for pain relief. He said he had been regularly applying the gel all day on his ulcers, including when he was in the pub, before his arrest.

This elevated the breathalyser reading, Tham claimed.

He called his own expert witness to testify on the effects of Bonjela gel ingestion on the breath alcohol concentration.

Mr Ben Chang Keng Peng, a specialist from medical equipment supplier Alcotech, testified for Tham's case, saying that ingestion or application of Bonjela gel had an effect on a person's breath alcohol concentration.

According to a report he tendered, a breath test conducted immediately after applying Bonjela gel showed a positive breath alcohol reading above the prescribed limit.

Tests conducted at one-minute intervals continued to show positive breath alcohol readings for 10 minutes before dropping to zero.

However, after an episode of belching, positive breath alcohol readings were again detected for another nine minutes, despite the earlier zero breath alcohol readings that had been recorded.

THE PROSECUTION'S EXPERT WITNESS

In contrast, the prosecution's expert witness, Dr Yao Yi Ju from the Health Sciences Authority, said that the breathalyser test was measured close to two hours after Tham's last application of Bonjela gel.

The amount of alcohol left in the mouth or stomach under normal circumstances would be minimal to cause any significant elevation of the breathalyser reading, even if Tham had belched, she said.

She concluded that it was unlikely that the Bonjela gel would have made any significant contribution to the breathalyser reading. She also said it was irrelevant that Tham had applied the gel many times throughout the day, as the gel would have been eliminated along the way and would not accumulate.

However, she said that the possibility of the gel contributing to the breathalyser reading could not be totally ruled out with a single breathalyser reading, as it was unclear if Tham had applied the gel onto his cracked tooth, where some gel could have become trapped.

The main issue was whether Tham's alcohol breath test would have exceeded the limit had he not applied the Bonjela gel after he stopped driving.

It was on Tham to prove that his breathalyser reading would not have exceeded the prescribed limit, had he not applied the gel after he stopped driving.

The judge said she did not find Tham to be a credible witness and did not believe his claims as to how much alcohol he had drunk.

"In court, he had made various attempts to embellish his defence," she said. "For example, in his police statement, he said he drank half a jug of beer and he last applied Bonjela gel while seated in his vehicle checking his handphone, but in court, he claimed that he drank less than half a jug of beer and that he could have applied Bonjela gel after his altercation (with a passer-by) and his arrest."

She said Tham had failed to show that his application of the gel more than two hours before he gave his breath sample had any effect on the breathalyser readings.

He also did not address how any residual Bonjela gel could have contributed to his excess breath alcohol concentration.

As Tham was convicted before in 2016 of drink driving, he was liable for enhanced punishment.

Source: CNA//

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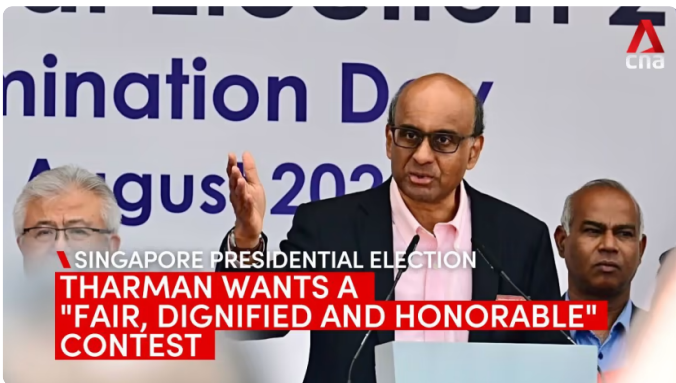
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