



## **Court Of Criminal Appeal**

Hon. Mr. Justice Giovanni M. Grixti LL.M., LL.D.

Appeal Nr. 386/2017

**The Police**

**(Inspector Edel Mary Camilleri)**

**Vs**

**Gary Raymond Beal**

Sitting of the 27 October, 2017

The Court,

Having seen the charges brought against Gary Raymond Beal, holder of identity card bearing number 143765A, charged with having:

1. On the 13th September 2017 at about 17.40hrs at Gajdoru Street Xaghra, Gozo, through imprudence, negligence or unskilfulness in his trade or profession, or through non-observance of any regulation, have caused any fire or any damage, spoil or injury to the detriment of the Commissioner of Police, by causing damage on vehicle with registration number GVP 812 and this in violation of article 328(d) of Chapter 9 of the Laws of Malta;
2. On the 13th September 2017 at about 17.40hrs at Gajdoru Street Xaghra, Gozo, and also on the 13th September 2017 at about 21.30hrs at

Calypso Street, Xaghra, Gozo, drove vehicle with registration number MQZ501 in a reckless, negligent or dangerous manner. And this in violation of article 15 (1) (a) (2), (3) of Chapter 65 of the Laws of Malta;

3. On the 13th September 2017 at about 17.40hrs at Gajdoru Street Xaghra, Gozo, and also on the 13th September 2017 at about 21.30hrs at Calypso Street, Xaghra, Gozo, in any public place or place open to the public, was found drunk and incapable of taking care of himself. And this in violation of article 338 (ff) of Chapter 9 of the Laws of Malta;

4. On the 13th September 2017 at about 17.40hrs at Gajdoru Street Xaghra, Gozo, and also on the 13th September 2017 at about 21.30hrs at Calypso Street, Xaghra, Gozo, drove or attempted to drive or was in charge of a motor vehicle or other vehicle on a road or other public, place when he was unfit to drive through drink or drugs. And this in violation of article 15 A (1) of Chapter 65 of the Laws of Malta;

5. On the 13th September 2017 at about 17.40hrs at Gajdoru Street Xaghra, Gozo, and also on the 13th September 2017 at about 21.30hrs at Calypso Street, Xaghra, Gozo, drove or attempted to drive or be in charge of a motor vehicle or other vehicle on a road or other public place after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeded the prescribed limit. And this in violation of article 15 B (1) of Chapter 65 of the Laws of Malta;

6. On the 13th September 2017 at about 17.40hrs at Gajdoru Street Xaghra, Gozo, and also on the 13th September 2017 at about 21.30hrs at Calypso Street, Xaghra, Gozo, refused or failed to provide the requisite specimen as provided, it shall be presumed that the proportion of alcohol in that person's blood exceeded the prescribed limit, and this in violation of article 15 E (4) of Chapter 65 of the Laws of Malta;

Also with having on the 13th September 2017 at about 21.30hrs at Calypso Street Xaghra, Gozo:

7. Disobeyed the lawful orders of any authority namely PS559 or of any person, entrusted with a public service, or hindered or obstructed such person in the exercise of his duties, or otherwise unduly interfered with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any other manner. And this in violation of article 338 (ee) of Chapter 9 of the Laws of Malta;

8. Through imprudence, negligence or unskilfulness in his trade or profession, or through non-observance of any regulation, have caused any fire or any damage, spoil or injury to the detriment of Glen Buhagiar, by causing damage on vehicle with registration number FBG 378 and this in violation of article 328(d) of Chapter 9 of the Laws of Malta;

The Court was also requested that in case of conviction, the Court decides the punishment established according to Law, and orders to disqualify any driving licence for that period of time required.

Having seen the judgement proffered by the Court of Magistrates (Gozo) as a Court of Criminal Judicature of the 15th September, 2017, through which it found respondent Gary Raymond Beal guilty of all the charges brough against him and discharged him with the specific condition that he does not commit any offence within a period of one (1) year in terms of article 22 of Chapter 446 of the Laws of Malta and ordered that his driving license be suspended for a period of one (1) month from date of judgement;

Having seen the application of appeal filed by the Attorney General, presented in the registry of this Court on the 11th October, 2017, whereby the said Attorney General requested this Court to **reform** the said judgement by **confirming** that part wherein the Court found respondent guilty as charged; that part wherein the Court,

conditionally discharged Gary Raymond Beal for a period of one year from the date of the judgement; and that part where Gary Raymond Beal bound himself to pay all damages sustained by the owners of the vehicles involved in the incidents within a period of one year from the date of the judgement; and by **revoking** that part of the judgement wherein the Court suspended the driving license of Gary Raymond Beal driving license for a period of one month and instead disqualifies Gary Raymond Beal from holding or obtaining a driving license for a period of not less than six months;

Having seen the records of the proceedings.

Having seen the updated conduct sheet of the respondent, presented by the prosecution as requested by the Court;

Having heard submission by the Attorney General and Counsel to respondent:

Considered:

1. That this appeal is limited to that part of the judgement by means of which the First Court, having meted out the punishment for the offences for which respondent was found guilty, ordered the suspension of his driving license for a period of one month. The Attorney General adduced one ground of appeal, namely that the First Court was not at liberty to order a period of suspension less than that which is indicated at law;
2. Respondent was found guilty, of his own admission, of all charges proffered against him including, *inter alia*, the charge of driving under the influence of alcohol or drugs under article 15A(1) of Chapter 65 of the Laws of Malta; driving a vehicle after having consumed so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit, article 15B; and having refused to provide a breath test in terms of article 15E. The punishment for these offences is laid out in article 15H (1) of the said

Chapter. Subarticle (2) then provides that in addition to the punishment, the Court **shall** disqualify the offender from holding or obtaining a driving license for not less than six months in the case of a first conviction and not less than one year in the case of a second conviction. The proviso to this subarticle, however, states that where a conviction relates to article 15B, the said period of suspension shall apply only where the proportion of alcohol in the breath, blood or urine exceeds the prescribed limit by eight microgrammes or more in the breath or by twenty milligrams or more in the blood or by twenty-three milligrammes or more in urine;

3. Respondent was charged with having breached articles 15A, 15B and 15E of Chapter 65 and since the applicable period of suspension from holding or obtaining a driving license for breach of article 15A and 15E are for a minimum of six months, the First Court was not at liberty to impose any lesser period. The First Court could have exercised its discretion for a higher period of suspension but definitely not for one shorter than the six months imposed by the said article 15H(2). The Attorney General is therefore correct in his plea;

For these reasons, the Court upholds the request of the Attorney General and proceeds by reforming the judgement subject of appeal by **confirming** that part wherein the Court found respondent guilty as charged; that part wherein the Court, conditionally discharged Gary Raymond Beal for a period of one (1) year from the date of the judgement; and that part where Gary Raymond Beal bound himself to pay all damages sustained by the owners of the vehicles involved in the incidents within a period of one year from the date of the judgement; and **revokes** that part of the judgement wherein the Court suspended the driving license of Gary Raymond Beal for a period of one (1) month and instead disqualifies Gary Raymond Beal from holding or obtaining a driving license for a period of six (6) from today which shall start to run from midnight. So however that, since an

appeal by the Attorney General does not stay the execution of the judgement of the First Court and since, therefore, driving license of respondent has already been in a period of suspension from midnight of the day of the judgement of the First Court, the lapse of time from date of first judgement shall be subtracted from the six month suspension imposed by this Court;

**JUDGE**

**D/REGISTRAR**