



Criminal Court of Appeal

Hon. Judge Edwina Grima, LL.D

Appeal No: 171/2021

The Police

(Insp. Nicholas Vella)

vs

Marko Jovicevic

Today, the 29th day of October 2021

The Court,

Having seen the charges brought against appellant Marko Jovicevic, holder of identity card bearing number 186741A, wherein he was accused before the Court of Magistrates (Malta) as a Court of Criminal Judicature of having on the 25th January 2020, at around half past eleven at night (23:30) in Triq Dun Karm, Birkirkara:

1. Used, caused or permitted another person to use, or caused or permitted any other person to use a motor vehicle on a road, without policy of insurance being in force in relation to the user of the vehicle by that person or that other person, as the case may be, in respect of third party risks.
2. Drove a motor vehicle or any other vehicle without a vehicle license.
3. As the owner/driver of the motor vehicle, failed to ensure that the license was affixed on the left hand side of the windscreen.

Having seen the judgement of the Court of Magistrates (Malta) as a Court of Criminal Judicature dated the 1st of June 2021, wherein the same Court found the accused guilty of all charges brought against him (Chapter 104 Section 3(1), Chapter 65 Section 15 (1)(a), (3), S.L. 368.02 Section 17(2)(a)) and condemned him to pay the total fine of €2,400. Moreover the Court ordered that he also be disqualified from holding or applying for a driving licence for a period of 12 months and 8 days.

Having seen the appeal application filed by appellant Marko Jovicevic on the 10th of June 2021 wherein he requested this Court to:

1. Cancel and Revoke the same judgment where the appellant was found guilty of the charges and to instead go on to acquit the appellant of all charges and punishment.
2. Subsidiarily and without prejudice to the above, only should this Honourable Court not find sufficient grounds to Cancel and Revoke the judgement in its entirety, to instead go on to Reform the judgement by Cancelling and Revoking it insofar as the appellant was found guilty of the first charge and instead go on to acquit him of the first charge and its punishment in light of it's being time-barred, whilst confirming the remainder of the judgement.

Having seen the grievances put forward by appellant.

Having seen all the records of the case.

Having seen the updated conduct sheet of appellant, exhibited by the Prosecution as requested by this Court.

Having heard submissions by the parties.

Considers:

That, the appellant brings forward two grievances, the first being that the Prosecution failed to prove the charges brought against him beyond a reasonable doubt and the second being that the first offence is time-barred. In view of the nature of this second grievance the Court will first consider whether this grievance is well-founded before dealing with the grievances which concern the merits of the case.

In his second grievance appellant laments that there is no proof of service of the writ of summons in the records of the case, and in the absence of the same, it is the date of the first hearing before the Court, that is the 1st June 2021, which should be deemed as the day on which he was notified, thus rendering the offence in question time-barred.

Appellant is charged with the offence envisaged in Article 3 of Chapter 104 of the Laws of Malta. Now, in terms of sub-article 3 of the same, the prescriptive period of this same offence is set at six (6) months to be reckoned from the day of commission of the same. From an overview of the acts of the proceedings it results that appellant is being charged with having committed the offence on the 25th of January 2020. The first notice of summons on appellant, dated the 4th June 2020¹, was unsuccessful, as was the service attempted on the 9th of July 2020 and on the 10th of July 2020. On the latter date, the summons was left at appellant's residence, with the officer affecting service, however not indicating the name of any person who accepted notification on behalf of appellant, and therefore in terms of the proviso to Regulation 4 of Subsidiary Legislation 9.22², such service is deemed to have been unsuccessful.

The First Court then adjourned the sitting to the 1st of June 2021³. Service was again attempted on the 7th August 2020 and the 8th August 2020⁴, yet this was once again unsuccessful, the notice once again being left at his place of residence without any indication as to the person who accepted the said notification. However, the Court further notes that following these latter attempts of service upon appellant, notice of the date of hearing before the Court of Magistrates was published in a daily newspaper – the Malta Independent – on the 19th of August 2020⁵, and this in terms

¹ At folio 3a of the Acts of Proceedings.

² *Provided that notification in terms of paragraph (b) shall only be valid if the summons is left with some member of his family or household, or with a person giving him a service in that household.*

³ At folio 5 of the Acts of Proceedings.

⁴ At folio 7 of the Acts of Proceedings.

⁵ At folio 9 of the Acts of Proceedings.

of Regulation 8(1)(b) of Subsidiary Legislation 9.22⁶. Following this, in terms of Sub-Regulation (4) of Regulation 8 of Subsidiary Legislation 9.22 – *“Notification effected in terms of sub-regulation (1) shall, in all cases, be deemed to have been made three days following the publication”*. Thus, the Court concludes that appellant was successfully notified on the 22nd of August 2020. In fact appellant did eventually appear for the sitting held in front of the Court of Magistrates on the 1st of June 2021 and thus, the provisions of Sub-Regulation (2) of Regulation 4 of Subsidiary Legislation 9.22 comes into play – *“No objection may be raised on the grounds of irregularity of the notification for any of the reasons stated in the above provisos if it results that the summons has actually reached the person to be served therewith or if the person appears before the Court”*.

Thus taking into account that appellant is being charged with having committed the offence preferred in the first charge on the 25th January 2020, the six-month prescriptive period of the same elapsed on the 25th July 2020. It therefore follows that when appellant was successfully notified with the writ of summons, the prescriptive period had already elapsed thus rendering the criminal action contemplated in the first charge time-barred.

Therefore, on the basis of the above considerations, this Court accedes to the second grievance brought forward by the appellant and will proceed to acquit him of the same.

Considers:

The first grievance put forward by appellant centres around the merits of the case. He laments that the Prosecution failed to adduce sufficient evidence to prove, beyond a reasonable doubt, the charges levied against him. According to appellant, the only evidence brought forward by the Prosecution was that tendered by Transport Malta’s representative Stephen Cachia, the affidavit of PS 1010 being inadmissible at law since

⁶ Moreover abstracts of the judicial acts shall be published once in the Gazette or one daily newspaper, which abstracts shall contain the name and surname of the offender, a legally valid identification document number of the offender, the respective Court where the sitting is going to be held, the sitting date and time, and the charges.

the copy filed in the Acts constitutes a non-authenticated photocopy of the same affidavit, PS 1010 never testifying under oath with regards the same.

Now, Article 360A of the Criminal Code, which deals with affidavits exhibited in summary proceedings, reads as follows -

(1) In summary proceedings for offences within the jurisdiction of the Court of Magistrates as a court of criminal judicature under article 370(1) the police may, together with the summons or at any time thereafter, serve upon the accused copies of any affidavits made by a public officer or by an employee or officer of a body corporate established by law or by a representative of an undertaking as defined in terms of article 2 the Electronic Communications (Regulation) Act and who is to be produced as a witness for the prosecution in those proceedings as well as any document to be produced in evidence in the same proceedings and if the accused desires to cross-examine any person whose affidavit has been served upon him as aforesaid he shall, not later than fifteen days before the first sitting following the service of the affidavit, give notice thereof to the Commissioner of Police by registered letter whereupon the person to be cross-examined shall be summoned to give evidence in the proceedings:

...

That, in his oral submissions, appellant contends that he was never notified with such affidavit and was therefore never in a position to cross-examine the Police officer who compiled the same affidavit. However, this Court notes that the proviso to the above quoted article provides for a similar situation -

Provided further that where it results that it was not possible for the accused to give notice to the Commissioner of Police within the time provided aforesaid such notice of the desire to cross-examine may be given during the first sitting immediately after the service of the affidavit in which case the person to be cross-examined shall be summoned to give evidence in the following sitting.

The Court also notes that from the Acts of Proceedings, it results in an evident manner, that during the first and only sitting held before the Court of Magistrates, the affidavit of PS 1010 was exhibited and it was subsequently recorded in the minutes of the proceedings that “For all intents and purposes the defence declares that it does not require a translation of affidavit submitted by PS 1010”. This clearly shows that the defence, during that first sitting held, were notified with the affidavit and its contents, so much so that

appellant registered his non-objection to the same being in the Maltese language, given that the proceedings at hand were being conducted in the English language. Thus, the defence had ample opportunity during that same sitting, to request the Prosecution to bring forward PS 1010 for cross-examination during a subsequent sitting, should they have wished to do so. Given that the same was however never requested, sub article (2) of Article 360A, above quoted, comes into effect –

The person whose affidavit was served on the accused as provided in sub-article (1) shall not be summoned to testify in the proceedings if the accused fails to give notice of the intention to cross-examine that person as provided in that sub-article and the said affidavit shall be admissible in evidence as proof of its contents in those proceedings in the same way as if it had been testimony given viva voce in the presence of the accused.

That, this Court notes that although it is desirable that the original affidavit be exhibited and not a photocopy of the same, the defence had a remedy afforded to it by Law, which could have been easily resorted to. However, as this was not done, the Court deems that the same affidavit is admissible in evidence as proof of its contents in the same way as if PS 1010 had testified *viva voce* in the presence of the accused.

That, furthermore, the second contestation brought forward by the appellant in his first grievance is with regards the photo of the licence plate disc exhibited in the acts of the case. He laments that the same photo bears the signature of PS 1010 but was never confirmed under oath in any way. The Court immediately notes that this is not the case, as the records of the case clearly indicate that during the sitting of the 1st of June 2021 – *“The Prosecution also submits under oath a copy of the accused’s driving licence as well as a copy of the circulation licence of the vehicle in question, reference to which is made by PS 1010 in his affidavit”*. Consequently even this grievance is unfounded.

Having rejected appellant’s objections to the validity of the evidence brought forward by the Prosecution, the Court noted that from the testimony tendered by Stephen Cachia as a representative of Transport Malta, it transpires that the road licence of the vehicle bearing registration number ICC-776 which appellant was driving, expired on the 30th September 2019 and was later renewed on the 28th January 2020. Therefore,

it is amply proven that on the date of the incident – that is on the 25th January 2020 – the road licence of the vehicle in question was indeed expired. Thus this Court fully concurs with the decision of guilt handed down by the First Court in respect of the second charge put forward against appellant.

The third charge preferred against appellant is envisaged in Regulation 17 of the Subsidiary Legislation 368.02, which reads as follows –

(1) The licence disc issued in respect of a vehicle shall be carried on the vehicle at all times when the vehicle is used, parked or otherwise kept at any time in a public place.

(2) (a) In every motor vehicle fitted with a glass windscreen the licence disc shall be fixed in a frame on the left hand side of the windscreen in such a position as to be visible from the front ...

That, given that it was amply proven that the road licence of the vehicle in question, which appellant was driving on the date of the incident, was expired, it follows that he could have never have a valid licence disc affixed to the windscreen of the same vehicle. This is, in fact, corroborated fully by the affidavit of PS 1010, the testimony tendered by Stephen Cachia and the photo of the said licence disc exhibited in the records of the case. Thus this Court fully concurs with the decision of guilt handed down by the First Court also in respect of the third charge preferred against appellant.

Consequently, for the above-mentioned reasons, the Court accedes, in part, to the appeal filed by appellant, thus reforms the judgment of the First Court by –

- 1) Confirming it wherein appellant was found guilty of the 2nd and 3rd charges brought against him, and**
- 2) Revoking it wherein appellant was found guilty of the 1st charge brought against him, declares the said charge time-barred and consequently acquits appellant from the said charge, and**
- 3) Revoking it wherein appellant was ordered to pay a fine of €2,400 and instead orders appellant to pay a fine of three hundred euro (€300), and**

- 4) Revoking wherein appellant was disqualified from holding or applying for a driving licence for a period of 12 months and 8 days and instead orders that appellant be disqualified for holding or applying for a driving licence for a period of ten days from today.

Edwina Grima.

Judge