



**COURT OF MAGISTRATES (MALTA)  
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR.  
CONSUELO-PILAR SCERRI HERRERA**

Sitting of the 12 th February, 2007

Number 67/2007

**The Police**  
**Inspector Martin Sammut**  
**Inspector Carmelo Abdilla**  
**V**

**BRANKO MARKOVICH**

**The Court**

Having seen that the accused **BRANKO MARKOVIC**, son of Dragoslav and Miriana nee Djordjevic, born in Serbia on the 12<sup>th</sup> May 1978 and residing at Flat 11, 'Sunbeam Flat', Gort Street, Paceville, St. Julian's, holder of passport number 004549543 issued by the Federal Republic of Yugoslavia was arraigned before her accused with having in these Islands, on the 23<sup>rd</sup> January 2007 and in the previous weeks, in St. Julian's by means of several acts, committed at different times in pursuance of

the same design and which constitute violations of the same provisions of the law:

1. Committed theft of several alcohol bottles and other items from the outlet of Arcadia Supermarket of Church Street, St. Julian's to the detriment of Noel Mario Pace and Pierre Pace which theft does not exceed one hundred maltese pounds and is aggravated by time.

2. For knowingly, received or purchased any property which had been stolen, misapplied or obtained by means of any offence, or knowingly took part, in any manner whatsoever, in the sale or disposal of the same.

Having seen all the documents exhibited in the acts of these proceedings by the Prosecution in particular the consent given by the Attorney General in order that this case be dealt with summarily which document is exhibited at fol 6 of the records of proceedings, the statement released by the accused on the 24<sup>th</sup> January 2007 and the police report.

Having heard the accused declare that he has no objection for his case to be dealt summarily as registered during the sitting of the 25<sup>th</sup> January 2007.

Having heard the accused plead guilty to the **the first charge brought forward against him and this independently to the advise given to him by his lawyer, during the sitting of the 7<sup>th</sup> February 2007.**

Having heard the **prosecution declare during the sitting of the 7<sup>th</sup> February 2007, that the second charge was not given to the accused as an alternative charge but relates to other objects found in his possession which were not stolen from the Arcadia Shop.**

The Court explained to the accused the consequences of his plea of guilt and after having given the accused

sufficient time to reconsider his plea of guilt and saw that the same accused insisted on registering in the acts of these proceedings his plea of guilt, had no alternative but to register such plea.

In the light of the above plea of guilt which guilty plea was made voluntarily, expressly and unconditionally, the Court is satisfied that the accused is to be found guilty of the first charge as brought forward against him, in that of theft aggravated by time.

Having heard the oral submission brought forward by both parties with regards to the second charge, the Court has the following comments to make.

According to the judgment delivered by the **Court of Criminal Appeal** in the names **Police v Filippa Fenech** on the **8<sup>th</sup> May 1937**, it was stated that the following elements have to be proven for the existence of the crime as envisaged in article 334 of the Criminal Code that is receiving stolen property:

1. primarily the goods received have their origin from the commission of a crime;
2. that the accused either received or bought the objects in question [although at times the receipt of the objects in question is enough];
3. that the accused **knew** that they had an illegitimate origin [however, the dolo can be deduced from the circumstances of the case in review].

The prosecution in its oral submissions made reference to the judgment delivered by the **Court of Appeal on the 26<sup>th</sup> August 1998** in the names **Police v Emanuel Seisun et**, whereby the doctrine of recent possession was discussed. In fact, that Court held that the theory of unlawful possession of recently stolen goods is nothing more than the application of good judgment with regards to the particular circumstance of the case which would have been proved, in the sense that when certain facts are proven, then they may lead to the natural result that the person receiving those goods, knew of their

illegitimate origin. In fact that Court made reference to what was said by the English author **Archbold**:

“If someone is found in possession of goods soon after they have been missed and he fails to give a credible explanation of the manner in which he came by them, the jurors are satisfied in inferring that he was either the thief or was guilty of dishonesty handling the goods, knowingly or believing them to have been stolen. The absence of an explanation is equally significant whether the case is being considered as one of theft or handling, but it has come into particular prominence in connection with the latter because persons found in possession of stolen goods are apt to say that they acquired them innocently from someone else. Where the only evidence is that the defendant on a charge of handling was in possession of stolen goods, a jury may infer guilty knowledge or belief:

- a. if he offers no explanation to account for his possession **or**
- b. if the jurors are satisfied that the explanation he does offer, is untrue.”

This same reasoning of that Court is also elaborated upon in the judgment delivered **on the 1<sup>st</sup> November 1996** by the same Court in the names **Police v Carmel Debono**.

According to the English authors **Jack English** and **Richard Cole** in their book **Butterworth Police Law**, under the heading '**Handling stolen goods**' it was held that:

*“This knowledge or belief that the goods were stolen must exist at the time that the person committed the act of handling in question.”*

With regards to the case under review, it results from the acts of the proceedings that in the flat where the goods were found, lived the accused, another Serbian national Dejan Cidic and a Russian named Miki.

Informal Copy of Judgement

The prosecution failed to prove that the said items exhibited in Court, actually belonged to the accused. The accused who is not duly bound to prove anything, stated that such items were not his and he found them in the flat when he took up residence there a month ago. This evidence was not contested at any stage.

It is true that the items had price tags hanging to them but this does not in any way mean that these were stolen.

The Court feels that the prosecution failed to prove this charge to the degree requested at law.

**Consequently, the Court having seen the relative articles at law in particular Section 270 of Chapter 9 of the Laws of Malta decides to find the accused BRANCO MARKOVIC guilty of theft aggravated by time and condemns him to a period of six [6] months imprisonment and find him not guilty of the second charge and acquits him from it.**

**< Final Judgement >**

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