



COURT OF CRIMINAL APPEAL

**THE HON. CHIEF JUSTICE
VINCENT DE GAETANO**

Sitting of the 28 th March, 2008

Criminal Appeal Number. 415/2007

The Police

v.

Sanjic Bosko

The Court:

Having seen the charges preferred by the Executive Police against Sanjic Bosko, ID card number 0202101(L), born in Yugoslavia on the 2 June 1963, son of Krsto Sanjic and Andja, to wit the charges of having on the 1 August 2006 at about 17:49hrs, at Pretty Bay, B'Bugia:

1. deposited, dropped, placed or thrown papers in an open place or a place to which the public has access;
2. driven vehicle No. CAQ 017 without making use of the "seat belt";
3. refused to give his particulars when he was requested to do so by the Police;

4. driven or attempted to drive or been in charge of a vehicle No. CAQ 017 on a road or other public place when he was unfit to drive through drink or drugs; and

5. driven, attempted to drive or been in charge of a vehicle No. CAQ 017 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;

Having seen the judgment of the Court of Magistrates (Malta) of the 14 November 2007 whereby the said Sanjic Bosko was found guilty as charged and sentenced to pay a fine of two hundred liri (Lm200) (today Euro 465.87); that court also disqualified the said Sanjic Bosko from all his driving licences for a period of three months;

Having seen the application of appeal filed (in the Maltese language) by the same said Sanjic Bosko on the 26 November 2007 whereby he requested that this court revoke the judgment of the first court or otherwise vary the same;

Having seen the record of the proceedings; having heard the evidence and counsel for the parties at the sitting of this Court of the 15 February 2008;

Considers:

Appellant's first two grievances are (1) that in its judgment the Court of Magistrates did not expressly state that he was being found guilty, and, moreover, (2) the said judgment does not indicate the provisions of the law creating the offence or offences of which he was found guilty. Both these grievances are unfounded as can be seen from the official copy of the judgment at pages 20 and 21 of the record of the proceedings.

Appellant's third grievance is that his plea of *res iudicata* [*ne bis in idem* for purposes of criminal proceedings] raised by him before the first court, should have been upheld and not, as it was in fact, dismissed. Appellant refers to a Traffic offence Ticket (TOT) for Lm10 issued to

him on the 1 of August 2006, which he duly paid at the Zurrieq Local Council on the 9 October 2006. At fol. 15 of the record of the proceedings, in fact, there is a copy of the relative receipt which indicates the amount of Lm10 being paid as being due to the Birzebbuga Local Council, and that the contravention occurred on the 1 of August 2006 at 17.49hrs. From the evidence heard by this Court it transpires that it is true that appellant was handed a TOT for parking in a prohibited place, which ticket he threw on the ground before proceeding to park somewhere else; but the fact of being parked illegally is a totally different fact from those which give rise to the various offences with which appellant stands charged in these proceedings. The first court was therefore perfectly correct in holding that this was not a case of double jeopardy and in rejecting the plea of *res iudicata*.

The fourth grievance is to the effect that the police provoked the whole incident. Frankly this grievance is quite frivolous. The police officers concerned in the whole incident were simply performing their duty in trying to establish some order in a situation where not only appellant but even others were parked illegally, but appellant saw fit to question and challenge what they were doing, and did everything possible to be uncooperative. This Court, having reviewed the whole evidence, finds that all the charges are sufficiently proven except for the fourth charge, since there is no evidence to suggest that appellant was unfit to drive in spite of the fact that the amount of alcohol in his breath was way above the limit prescribed by law. This court is therefore going to acquit appellant of the fourth charge (as indicated in the first paragraph of this judgment).

Appellant's fifth and final grievance is in connection with the punishment meted out to him. This court, however, cannot uphold this grievance, even though it is going to acquit appellant of the fourth charge. In fact the punishment for the offence under Article 15B of Chapter 65 – the offence referred to in the fifth charge – is a fine (*multa*) of not less than Lm200 or imprisonment for not more than three months (or both such fine and

imprisonment) (Art. 15H(1)(a)) together with a disqualification of the driving licence for a period of not less than six months (the first court erroneously disqualified appellant for only three months). The proviso to subsection (2) of section 15H does not apply in this case. Consequently there can be no change in the punishment as awarded by the first court.

For these reasons the court revokes that part of the judgment of the 14 November 2007 whereby appellant was found guilty of the fourth charge, but otherwise confirms the rest of the judgment, including the punishment awarded. The period of disqualification of the driving licence commences from to-day at 9.00 p.m.

< Final Judgement >

-----END-----