

Court of Criminal Appeal

Judge

The Hon. Vincent De Gaetano LL.D.

Today Tuesday, 4 June 2002.

Appeal no. 35/2002

The Police

v.

Morgan Eriksson

The Court:

Having seen the charges preferred by the Executive Police against Morgan Eriksson, to wit the charge of having (1) on the 21 December, 2001, at about 11.40 pm in Church Street, Paceville, St. Julian's, driven, or of having been in charge of, vehicle no. LAR-317 on a road or other public place when he was unfit to drive through drink or drugs, and (2) the charge of having driven or of having been in charge of said vehicle LAR-317 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; the prosecution requested that Section 15H of Chapter 65 of the Laws of Malta be applied and that the said Eriksson be disqualified from holding any driving licences for a period of not less than six months;

Having seen the judgement of the Court of Magistrates (Malta) of the 12 February, 2002¹, whereby that court found the said Morgan Eriksson guilty of both charges brought against him and sentenced him to the payment of a fine (*multa*) of two hundred liri (Lm200), and further ordered that his driving licences be suspended for a period of six months;

Having seen the application of appeal of the same said Morgan Eriksson, filed by him on the 13 February, 2002, whereby he requested that this Court revoke the judgement of the first court by acquitting him of all charges brought against him;

¹ The copy of the judgement at pages 4 to 7 of the record of the case gives the date as being the 12 Fenruary, **2001**. This is clearly a typing error, as can be seen from the minute of the sitting of the 12 February, 2002 (fol. 2) which states that judgement was delivered on that date.

Having seen the records of the case, and having heard the evidence and submissions by counsel for the defence and for the prosecution at the sitting of the 31 May, 2002; considers:

There is not the slightest doubt from the evidence heard that on the day and at the time stated in the charges appellant was driving a motor vehicle while under the influence of alcohol, and that the level of alcohol in his breath was well above the limit prescribed by law. Although appellant had given evidence before the first court, he chose not to give evidence before this Court.

What, one may therefore ask, is appellant's grievance? Appellant contends that from the evidence it transpires that he was driving a vehicle with registration number **LAG-317** and not **LAR-317**, and that therefore the charges, in so far as they refer to a vehicle with the number **LAR-317**, should have been declared by the first court to have been not proven. Appellant points in particular to the fact that the prosecution had the opportunity to request a correction in the charges before the first court and before judgement was delivered, but failed to do so.

Now, whereas it is true that according to Section 360(2) of the Criminal Code the summons is to contain "a clear designation of the person summoned and a brief statement of the facts of the charge together with such particulars as to time and place as it may be necessary or practicable to give", the indication of the car number was not essential for the determination of guilt or innocence with respect to the offences disclosed by the charges; neither was the indication of the car number necessary for a proper defence in respect of those charges, and nor can it be said that the wrong designation of the number prejudiced the accused in the preparation or exposition of his defence. The car number was, in this case, an entirely irrelevant detail. The two charges could well have referred simply to "a motor vehicle" instead of to "vehicle no. **LAR-317**". Nor did the identification of appellant, as the person driving a motor vehicle in breach of the law, depend in this case in any way on whether the vehicle's number was **LAR-317** or **LAG-317**.

For these reasons the appeal is dismissed, and the judgement of the first court is being confirmed. The period of suspension of the driving licences of appellant commences from 3.00 pm this afternoon.

A. Testone
Deputy Registrar