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Feb. 21

[VASSILIADES, P., TRIANTAFYLIDIS, JOSEPHIDES, JJ.]

IOANNIS  
VRAHIMIS  
v.  
THE POLICE

IOANNIS VRAHIMIS,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(*Criminal Appeal No. 3064*).

*Criminal Law—Conviction and sentence in absentia—Failing to display vehicle's licence and to produce driving licence—The Motor Vehicles Regulations 1959–1968, regulations 24(1)(2)(b), 47(1) and 66—Sentence on second count reduced.*

*Criminal Law—Sentence—Failing to produce identity card for inspection—Registration of Residents' Law, Cap. 85 section 11(2)(5)—No sentence should have been passed in the absence of public statement drawing attention to the requirements of the law.*

*Police—Police duties and powers—Subject to judicial control.*

The facts sufficiently appear in the judgment of the Court.

### **Appeal against conviction and sentence.**

Appeal against conviction and sentence by Ioannis Vrahimis who was convicted on the 2nd December, 1968, at the District Court of Nicosia (Criminal Case No. 21090/68) on three counts of the offences of failing to display the vehicle's licence on the front windscreen of his motor vehicle, contrary to regulations 24(1)(2)(b) and 66 of the Motor Vehicles Regulations, 1959 to 1968, failing to produce his driving licence to a Police Officer, contrary to regulations 47(1) and 66 of the Motor Vehicles Regulations (*supra*) and failing to produce his identity card on demand for inspection, contrary to section 11(2)(5) of the Registration of Residents Law, Cap. 85, and was sentenced by HjiTsangaris, D.J., to pay a fine of £1 on count No. 1, £2 fine on count No. 2 and £3 fine on count No. 3.

*Appellant*, in person.

A. Frangos, Senior Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :—

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VASSILIADES, P.: The appellant, a medical practitioner in Nicosia, was driving his car when a policeman on traffic duty, at a busy town street, stopped the appellant, apparently having noticed that the vehicle's circulation licence was not exhibited on the windscreen.

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In reply to the policeman's enquiry, the appellant produced the circulation licence, offering some explanation why the licence was not exhibited as required by the Regulations. The policeman pointed out that it should be exhibited at the appropriate part of the car as provided in the Regulations.

But, the policeman did not confine himself there. He proceeded to ask not only for the doctor's driving licence but also for his identity card. The evidence on record does not show the reason for which the policeman considered it necessary to do that kind of checking, in the circumstances ; particularly, when that meant interference with the flow of traffic in a busy town street.

Be that as it may, however, appellant's reaction was to drive off without producing his documents. In fact, the appellant was the holder of a driving licence in force and of an identity card neither of which, he had with him at the time.

Another policeman who was called as a witness for the prosecution, stated that when he informed the appellant of the charges against him some time later, his reply was that the traffic policeman had stopped him at the entrance of Ledra Street to do the checking of his circulation licence and that when the policeman asked for his driving licence and his identity card the appellant drove off as his car was interfering with the traffic coming behind him.

The appellant was prosecuted ; and when charged on October 29, 1968, he pleaded guilty to the first count for failing to display his vehicle's licence ; but pleaded not guilty to the second count for failing to produce his driving licence to a police officer, contrary to regulations 47 (1) and 66 of the Motor Vehicles Regulations ; and not guilty to the third count for failing to produce his identity card for inspection contrary to section 11 (2) (5) of the Registration of Residents Law, Cap. 85.

On the day fixed for hearing the case was called according to the record—at 10.50 a.m. Accused and his advocate did not appear ; and the prosecution called two police wit-

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nesses to prove the case in appellant's absence. These were the traffic policeman on duty and the policeman who took appellant's statement in answer to the charge. Upon their evidence, the learned trial Judge convicted the appellant on all three counts and proceeded to sentence him with £1 fine on count No. 1 ; £2 fine on count No. 2 and £3 fine on count No. 3.

According to a note made by the trial Judge on the record, at 11 hours (that is to say, 10 minutes after the case had been called at 10.50) appellant's advocate appeared in the Judge's chambers to enquire about the case ; and was informed of the result of the proceedings. It was then that the Judge made the note. Against that conviction and sentence, the present appeal was filed in due course.

The appellant appeared before us in person today, to complain both against his conviction and the sentence imposed upon him in absentia, by the Judge. Learned counsel for the police very fairly, we think, and with the frankness always expected from counsel appearing in a public prosecution, conceded that the offences in counts No. 2 and No. 3 were rather technical matters of very little substance, in this particular case.

We find it unnecessary to go deeper into the question whether prosecution on counts No. 2 and No. 3, was really justified in the circumstances. The counts were in fact, there ; and the offences had been proved. We do not think that we should interfere with the conviction as recorded. But as regards sentence, we take the view that after the sentence on count No. 1, which was apparently a reasonable punishment for appellant's offence, the sentences on counts No. 2 and No. 3 were not justified.

The performance of police duties and the exercise of police power in the application of the law must be guided by the public interest, reasonably viewed in the circumstances of each case ; and the officers concerned must always remember that the exercise of their powers is subject to judicial control. This is a necessary safeguard, both for the proper application of the law and for maintaining the respect which the public must have for the law ; and for the officers whose duty it is to apply it. Such judicial control is often reflected in the result of actual cases before the Courts.

In the circumstances of this case we take the view that on count No. 2 the appellant should be required to sign a recognizance in the sum of £10 to come up for sentence if

called upon within the next six months ; and that on count No. 3 there should be no sentence, as there has never been issued recently any public statement drawing the attention of members of the public to the need to carry with them their identity cards, which were introduced as a means of identification for security purposes, in the circumstances then prevailing, over ten years ago.

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The appeal against conviction will stand dismissed. The sentence on count No. 1 will be affirmed ; the sentence on count No. 2 shall be varied accordingly ; and that on count No. 3 shall be set aside. There shall be no sentence on that count.

Judgment and order accordingly.

*Appeal against conviction dismissed ; appeal against sentence partly allowed.*