

BASIC COURT OF MITROVICĚ/MITROVICA

P 33/12

8 December 2014

IN THE NAME OF THE PEOPLE

THE BASIC COURT OF MITROVICĚ/MITROVICA, in the trial panel composed of EULEX Judge Roxana Comsa as Presiding Trial Judge, EULEX Judge Nuno Madureira and EULEX Judge Paulo Teixeira as panel members, with EULEX Legal Officer Asja Zujo as the Recording Officer in the criminal case:

Against:

1. **S. P.**, father's name _____, mother's name _____, maiden name _____, born on _____ in _____ where he also lives at the address _____, _____, _____, married, car mechanic, has completed secondary school, of poor financial means, with no previous criminal record and no other criminal proceedings against him, in detention on remand from 20.10.2011;
2. **S. N.**, father's name _____, mother's name _____, maiden name _____, born on _____ in _____ where he also lives at street _____, _____, _____ not married, worker, has completed special school, of average financial means, with no previous criminal record and no other criminal proceedings against him, in detention on remand from 20.10.2011;
3. **S. R.** _____, pseudonym _____, father's name _____, mother's name _____, maiden name _____, born on _____ in _____ where he also lives at the address _____, _____, _____, married, electrician by profession and a taxi driver, has

completed secondary school, of average financial means, allegedly with no previous criminal record and no other criminal proceedings against him;

indicted with:

Attempted Aggravated Murder contrary to Article 147 (7), in conjunction with Article 23 of the Criminal Code of Kosovo (CCK)¹, while the defendants S.P. and S.N. are also indicted with the criminal offence Unauthorized Ownership, Control, Possession or Use of Weapons from Article 328 (2) of CCK,

After having held the main trial hearings on 21, 22, 23 October 2014 and 3, 4, 5 December 2014, in the presence of the Defendants, their Defence Counsel and Prosecutor Tomas Skala. The Defence Counsel for S.R., Mr. Kapllan Baruti, was replaced by Mr. Ljubomir Pantović at the hearing on 4 December 2014. The injured party _____ was not present. The Main Trial sessions were open to the public.

Following the trial panel's deliberation and voting held on 5 December 2014;

Pursuant to Article 366 CPC, pronounced in public and in the presence of the defendants, their Defence Counsel and the Prosecutor;

In accordance with Articles 359 – 368 of the CPC;

¹ By CCK is meant the old Criminal Code of Kosovo

Renders the following:

JUDGEMENT

I.

1. **The Accused S.P.**, personal data as above,
is

FOUND GUILTY

Because

Before 20.10.2011 he entered into an agreement with the Defendant **S.N.** to go to Kosovo North area, take possession by force of a car and afterwards sell it and share the material benefits.

In executing this plan, on 20.10.2011, **S.P.** asked Defendant **S.N.** to take a taxi with registration plates _____ driven by the injured party _____, (who was a taxi driver for the company _____), to drive him from Kragujevac initially to Knj, then to Rashke; Defendant **S.P.** followed the taxi closely in another car. Before entering Novi Pazar, in the proximity of the railway, Defendant **S.N.** told the taxi driver to stop because he has to pick up a friend who is waiting by the road. This was the accused **S.P.**, who immediately entered the vehicle, placed himself into the back seat and told the driver to drive in the direction of Mitrovica. When they engaged in a dirty road in the village of Grabovc of Zvecan, the Defendant **S.N.** got out of the vehicle and **S.P.** who stayed inside the vehicle together with the driver, at around 00:10hrs shot in the direction of the injured party _____ with a fire weapon of unknown make, hitting him with a bullet in the back of the head. He then removed the driver from the

vehicle and threw him in a ditch by the road. Afterwards, the Accused **S.P.** together with **S.N.** drove the vehicle of the victim to Mitrovica. After a short meeting with the Defendant **S.R., P.** and **N.** continued their drive towards Leposavic. Before entering Leposavic they were stopped and arrested by the police.

He acted intentionally with the purpose of taking possession of the car and taking the life of the driver and by this preventing him from recognising or later identifying him. He wanted to secure the successful appropriation of the car.

S.P. was fully mentally competent.

By doing so, **S.P.** committed and is criminally liable for the criminal act of attempted Aggravated Robbery in violation of Article 329 paragraph 5 of the CCRK ²in conjunction with Article 28 CCRK and Article 31 CCRK and with the application of Article 3 paragraph 2 CCRK,-/Count 1/

According to Article 360 paragraph 2 CPC, the Court **requalifies** the criminal offence of “Attempted Aggravated Murder” and

Therefore the Accused **S.P.** is **CONVICTED** for the criminal act of attempted Aggravated Robbery in violation of Article 329 paragraph 5 of the CCRK SENTENCED to 9/nine/years and 6 /six/ months of imprisonment.

The Accused S.P. is

FOUND NOT GUILTY and is ACQUITED

for the criminal offence of “Attempted Aggravated Murder” contrary to Article 147 (7), in conjunction with Article 20 and 23 of the CCK.

² By CCRK is meant the new Criminal Code of Republic of Kosovo

The Accused **S.P.** is also

FOUND GUILTY

Because from an unknown date and until 20.10.2011 **S.P.** had a fire weapon of unknown make containing bullets, without authorization and he used it to shoot the injured party _____ as described above. The event happened in a taxi driven by the injured party; the taxi was stopped in vicinity of the village of Grabovc of Zvecan. He later drove to Leposavic and at the bridge leaving Zvecan he disposed of the weapon. He was later stopped and arrested by the police in the circumstances described above.

S.P. was fully mentally competent.

By doing so, **S.P.** committed and is criminally liable for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 374 Paragraph (1) of the CCRK with the application of Article 3 paragraph 2 CCRK. – /Count 2/

THEREFORE, the accused **S.P.** is **SENTENCED** to 1/one/year of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons in violation of Article 374 Paragraph (1) of the CCRK.

The aggregate punishment for criminal offences under Count 1 and Count 2 is therefore determined in 10/ten/ years of imprisonment, pursuant to Article 80 Paragraph (2.2) of the CCRK.

The time served in detention on remand from 20 October 2011 until 8 December 2014 is to be included in the punishment of imprisonment pursuant to Article 83 Paragraph (1) of the CCRK.

2. **The Accused S.N.** , personal data as above,

is

FOUND GUILTY because

Before 20.10.2011 he entered into an agreement with the Defendant **S.P.** to go to Kosovo North area, take possession by force of a car and afterwards sell it and share the material benefits.

In executing this plan, on 20.10.2011, **S.N.** took a taxi with registration plates _____ driven by the injured party, _____, (who was a taxi driver for the company _____) and asked him to drive him from Kragujevac initially to Knjq, then to Rashke; Defendant **S.P.** followed the taxi closely in another car. Before entering Novi Pazar, in the proximity of the railway, Defendant **S.N.** asked the taxi driver to stop because he has to pick up a friend who is waiting by the road. This is when the accused **S.P.** immediately entered the vehicle and told the driver to drive in the direction of Mitrovica. When they engaged in a dirty road in the village of Grabovc of Zvecan, the Defendant **S.N.** got out of the vehicle and **S.P.** who stayed inside the vehicle together with the driver, shot in the direction of the injured party _____ with a fire weapon of unknown make, hitting him with a bullet in the back of the head. After **P.** removed the driver from the vehicle and threw him in a ditch by the road, the two accused, with **S.P.** driving, headed to Mitrovica. After a short meeting with the Defendant **S.R.**, **P.** and **N.** continued their drive towards Leposavic. Before entering Leposavic they were stopped and arrested by the police.

He acted intentionally with the purpose of taking possession of the car by force.

S.N. was mentally competent.

By doing so, **S.N.** committed and is criminally liable for the criminal act of Robbery in violation of Article 255 paragraph 1 of the CCK in conjunction with Article 23 CCK and with the application of Article 2 CCK,

Therefore, according to Article 360 paragraph 2 CPC, the Court **requalifies** the criminal offence of “Attempted Aggravated Murder” /Count 1/ and

The accused **S.N.** is **CONVICTED** for the criminal act of Robbery contrary to Article 255 paragraph 1 of the CCK in conjunction with Article 23 CCK and SENTENCED to 3/three/years and 6 /six/ months of imprisonment.

The Accused **S.N.** is

FOUND NOT GUILTY

It was not proven beyond reasonable doubt that the Accused agreed with the defendant **S.P.** or was aware of his intentions (P.'s) to deprive the injured party of his life in order to take possession of his vehicle and sell it.

Therefore the accused **S.N.** is **ACQUITED** for the criminal offence of “Attempted Aggravated Murder” contrary to Article 147 (7), in conjunction with Article 20 and 23 of the CCK.

The Accused **S.N.** is

FOUND NOT GUILTY

Because it was not proven beyond reasonable doubt that on 20.10.2011 after the accused **P.** had shot the injured party _____, the defendant **N.**, without having a valid permit to carry weapons issued by the competent body -MIA of Kosovo- he had in his possession a pistol of unknown make and caliber, bronze color, property of the defendant **S.P.**, and while they were driving towards Leposavic in the robbed vehicle, at the bridge leaving Zvecan he threw the gun in a ditch near the road.

Therefore, according to Article 364 paragraph 1.3 CPC the accused **S.N.** is **ACQUITED** for the criminal offence of **Unauthorized Ownership, Control,**

Possession or Use of Weapons contrary to Article 328 (2) of CCK /Count 2/.

The time served in detention on remand from 20 October 2011 until 8 December 2014 is to be included in the punishment of imprisonment pursuant to Article 73 Paragraph (1) of the CCK,

3. **The Accused S.R.**, personal data as above,

is

FOUND NOT GUILTY

Because it was not proven beyond reasonable doubt that he was in any way involved in the agreement between the Defendants **P.** and **N.** that on 20.10.2011 the last two Defendants would get into the vehicle VW Golf VI with registration plates _____ driven by the injured party _____ with the purpose of taking possession of it by force and afterwards sell it and share the material gains. It was also not proven beyond reasonable doubt that the Defendant knew about the **P.**'s plan of shooting the injured party.

Therefore, according to Article 364 paragraph 1.3 CPC the accused **S.R.** is **ACQUITTED** for the criminal offence of "Attempted Aggravated Murder" contrary to Article 147 (7), in conjunction with Article 20 and 23 of the CCK.

II. The Court takes act that the vehicle VW Golf 6 identified with the registration plates _____ is temporarily confiscated by Police.

According to Article 60 CCK the four unfired cartridges of small calibre and one shell of small calibre found on Defendant **S.P.** shall be confiscated.

III. The Accused **S.P.** and **S.N.** shall pay 150 (one hundred and fifty) Euros each as part of the costs of criminal proceedings, but they are relieved of the duty to reimburse the remaining costs in accordance with Article 453 Paragraphs (1) and (4) of the CPC. The Accused must reimburse the ordered sum no later than 30 (thirty) days from the day this Judgment is final.

Basic Court of Mitrovicë/a

Roxana Comsa

Nuno de Madureira

Paulo Teixeira

Presiding Judge

Panel Member

Panel Member

Asja Zujo

Recording Officer

LEGAL REMEDY: A Defendant, their legal counsel, the Prosecutor or an Injured Party have 15 days from service of this judgment to appeal in accordance with Articles 380 Paragraph (1) and 381 Paragraph (1) of the CPC. Any appeal must be filed with the Court of first instance under Article 388 Paragraph (1) of the CPC.