ILF-West Bank

The International Legal Foundation – West Bank

CASE NOTES — January to May 2012

Editor's Notes: ILF-West Bank apologizes for the delay in these Case Notes. In the future, these case notes will be published every four months. This edition of the Case Notes reports on the Appellate Court's ruling that clarifies the procedures for the police and prosecution in drug cases. Unfortunately, the court continues to question the conciliation courts' obligation to inform a defendant of his/her right to counsel. ILF-West Bank obtained several acquittals based on the prosecution's failure to prove their case. Finally, this edition includes some updates on cases where the court remains reluctant to issue a decision.

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In drug cases, courts are now asking the prosecution to test drugs that are seized by police officers. In the past, prosecutors presented the court with a substance representing that it was drugs without having it examined by an expert. Testing and examinations provide unbiased and scientific data on which the court can rely when deciding whether a substance is prohibited under the law.

In the Matter of I.H.I.R. (ILF-West Bank 25) (Attorney Nael Ghannam)

On December 31, 2010, ILF-West Bank's client was stopped and arrested because the police suspected him of being under the influence of drugs. He was searched, and suspected hashish was found in his pocket. The police seized the alleged drugs, wrote a seizure report, weighed the alleged drugs (1.9 grams) but did not run a laboratory test on the substance or have an expert examine it to determine what it was. The suspected hashish was kept in police storage and was turned over to the prosecution, who in turn kept the substance in storage until it was ultimately turned over to the court when the prosecutor submitted the investigation file.

The defendant was charged with possessing drugs in violation of a provision of Articles 7 and 8 of Israeli Military Order Number 558 of 1975. At the indictment, the defendant pled guilty and confirmed the prosecution's allegations. The court asked the defendant whether the substance was hashish and the defendant confirmed that it was. The court convicted our client because it deemed his confession voluntary and it ruled that the substance was a drug because of our client's confirmation before the court. All proceedings were conducted in the absence of counsel.

The defendant was convicted on January 2, 2011; ILF-West Bank began representing him the next day. On January 13, 2011, ILF-West Bank filed an appeal arguing that the conviction should be reversed because the defendant was never asked if he had chosen counsel, and therefore, the conviction was obtained in violation of the right to counsel. Taken together, Articles 244 and 307 of the Criminal Procedure Code require the Conciliation Court to at least ask an accused if he or she has hired counsel, thereby informing the accused of his/her right to counsel.

While the court did not rule on that issue in this case, as it still questions this obligation, the court did provide a very useful decision that clarifies the procedures that prosecutors must follow in drugs cases. The court ruled that the prosecution had a duty to test or examine the drugs that were seized in this case to determine whether they were a prohibited substance before indicting the accused on the charges of possessing and taking drugs. Since the prosecution failed to do this, the court acquitted ILF-West Bank's client of all charges.

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ILF-West Bank's repeated arguments against the prosecution's constant adjournment requests are resonating with the court's judges. Courts have issued final decisions.

In the Matter of I.H. (ILF-WB 116) (Attorney Nael Ghannam)

ILF-West Bank's client, a 16-year-old teenager, was arrested on July 9, 2011. He and his friends allegedly stole a speaker from a store, and they were all arrested some time later when one member of the group allegedly tried to sell the speaker to a third party who reported the stolen property to the police. He was charged with buying and selling stolen property under Jordanian Penal Code (JPC) Article 412. He was indicted on October 11, 2011 and pled not guilty. On that date, the prosecutor requested to notify the complainant, the only witness listed in the indictment, of the next court date. The court granted that request and the case was adjourned until January 18, 3012.

On that date, the complainant appeared in court along with the client and his guardian. The complainant testified that ILF-West Bank's client was not involved in the theft of the property. After the complainant's testimony, the prosecutor requested additional time to subpoena additional witnesses. The court denied the request and the prosecutor closed its case. The defense also rested. According to JPC Article 412, at trial, the prosecution had to establish that our client **knowingly** bought or sold stolen property or **facilitated** in the buying or selling of stolen property. The ILF-West Bank lawyer argued that because the prosecutor failed to establish that the client knew that the speaker was stolen they failed to prove the element of knowledge under the JPC Article 412; also, the prosecution did not present any evidence that ILF-West Bank's client was involved in the buying or selling of the speaker. The court agreed and the client was acquitted of the charges.

In the Matter of M.M. (ILF-WB 3) (Attorney Ali Bazzar)

ILF-West Bank's client in this case was acquitted when the court found that the prosecution failed to establish its burden. The accused was arrested on December 20, 2010, and charged with deception under Article 417 of the JPC. The allegation was that he entered into a purchase agreement with the complainant but failed to transfer the property as agreed. The client entered into an agreement to purchase a car from the Estate of R.A. The verbal agreement between the client and the Estate of R.A. was that the car would be transferred following the Determination of Inheritance (DOI), which was scheduled to occur on October 10, 2010. In September 2010, while waiting for the DOI, our client sold his right to the vehicle to the complainant. Although there was no bill of sale produced, the two parties did sign a contract stating that the car would be transferred from the Estate of R.A. directly to the complainant on October 10, 2010. On October 9, 2010, our client called the complainant's wife and informed her that the DOI was delayed and that the transfer of the car would not take place until October 11, 2010. On October 10, 2010, the complainant filed a complaint with the police stating that the client deceived him. On October 11, 2010, the car was transferred to the complainant.

The accused was indicted on October 18, 2010. The case was adjourned eight times due to the failure of the complainant to appear.

On March 14, 2012, the complainant failed to appear yet again and the prosecution requested another opportunity to subpoena him. ILF-West Bank's attorney objected, arguing that the prosecution failed to present evidence. The lawyer also affirmatively argued that the prosecution's evidence would have failed to establish the elements under JPS Article 417. Under that article, the prosecution has the burden of establishing that the accused had made another person deliver to him moveable or immovable property, or

any documents through the disposition of moveable or immoveable property, while knowing that he has no capacity to do so. During this session, ILF-West Bank submitted a written application, prepared in anticipation of the complainant's failure to appear, which included copies of the contract signed by the accused and the complainant, the notice of transfer dated October 11, 2010, and a copy of the car's license. The lawyer argued that the prosecution would not have been able to establish that ILF-West Bank's client had "no capacity" to dispose of the "moveable property" (the car). The prosecution's objection was denied.

The court took three days to review the application and supporting documentation, and on March 18, 2012, our client was acquitted for lack of evidence.

In the Matter of K.W. (ILF-WB 51) (Attorney Ali Bazzar)

A similar result was obtained in this case. Our client, a juvenile, was arrested and charged with buying stolen property (an audio mixer) under JPC Article 412. He was indicted on March 6, 2011, he pled not guilty, and the matter was adjourned many times over defense counsel's objection to March 15, May 17, September 8, December 4, and December 29. The matter was finally adjourned until January 19, 2012.

On January 19, 2012, on cross-examination, the complainant testified that ILF-West Bank's client was his neighbor and that he was told (by an unidentified person) that our client bought the mixer from an individual by the name of Brahim. He explained that he bought the mixer from our client's cousin, not our client, for around 30-40 NIS and, most importantly, that he never saw our client with the mixer. According to JPC Art. 412, "Whoever knowingly buys or sells stolen property or is an intermediate in the buying or selling of such preempts, shall be punished by imprisonment up to six months." ILF-West Bank's attorney argued, and the court agreed, that the prosecution failed to prove not just that the accused had no knowledge that the mixer was stolen but also that there was not any connection between the accused and the mixer at all. Generally, the court requests pleadings from both parties or time to review the file before deciding on a case. In this case, it was clear from the cross-examination that the complainant was not credible, and the court acquitted our client of the charges for lack of evidence within the same session.

In the Matter of Q.A. (ILF-WB 92) (Attorney Ali Bazzar)

Another client, a juvenile, was acquitted for lack of evidence after ILF-West Bank entered the case. Our client and a co-accused allegedly stole a video camera that the complainant was using for security in the front of her home. The complainant came out of her home and found the camera on her steps broken into many pieces. ILF-West Bank's client was charged with theft under JPC Article 406 and with damaging the property of others under JPC Art. 445. He was indicted on December 12, 2010, in the presence of his guardian, but was unrepresented by a lawyer, and he pled not guilty. Although subpoenaed, the complainant failed to appear. At the prosecution's request, the session was adjourned until December 21 and then to January 2, 2011.

On that date, the complainant testified before the court. She explained that she lived near our client's house for approximately four months. She stated that she did not see our client steal the camera but that a neighbor told her that our client stole it and that he told our client to give it back to her. The next day she found the camera broken into pieces on her front steps. The accused was unrepresented and did not have the opportunity to cross-examine the witness. The prosecution ended its case by submitting a detective report but without calling the detective to substantiate it. The neighbor did not testify. The session was adjourned several times until July 6, 2011. Before this session, ILF-West Bank began representing the accused.

The ILF-West Bank lawyer interviewed the client and reviewed the court file including the prosecution's evidence. An analysis of the information showed that the prosecution's evidence failed to establish identification, which is an implied element in all crimes, and is stated specifically in JPC Art. 445. According to JPC Art. 406, in relevant part, the prosecutor must prove that the theft took place, "during the night and there are two or more perpetrators" or "during the day light and there are two or more perpetrators and the offence happens in an inhabited place or a place of worship." Also, according to JPC Art. 445, the prosecutor must prove that the accused willingly inflicted damage to the immovable property of others. On July 6, 2011, the ILF-West Bank lawyer closed the defense case and argued that the prosecutor failed to establish that our client was involved in the theft and damaging of the video camera. The court agreed, ruling that it was not certain from the prosecution's evidence that our client was involved because no one saw him steal the camera and there was no other evidence presented that connected our client to the crime. Our client was acquitted of all the charges for lack of evidence.

In the matter of S.T. (ILF - WB 10) (Attorney Ali Bazzar)

The client, a 16-year-old juvenile, was arrested on September 18, 2010, and charged with violating the sanctity of a home by threat of weapon under JPC Articles 347 and 349. He was indicted on September 19, 2010, and he pled not guilty.

The complainant in this case was a minor less than 15 years old. At trial, her testimony was that while she was home alone, the client forced his way into her house, knocked her to the floor, held a knife to her throat and threatened to kill her and have her brother put in prison. He then released her and ran away. According to Criminal Procedural Code (CPC) Article 226(1), "Persons below the age of fifteen may be heard for information only, without taking the oath," and Article 226(2), "A statement taken for information purposes only is not sufficient in itself to establish guilt unless it is substantiated by other evidence." The only other evidence that the prosecution presented was the complainant's brother who testified about his sister's emotional state when he returned home.

In the initial interview, the client explained that he was en route from work at the time of this incident and that he went right home after work. Considering this, during the investigation of the case, the ILF-West Bank lawyer traveled the distance from the client's place of employment to the complainant's home and then to the client's home. The lawyer discovered that based on the distance, the information that was obtained from our client's employer regarding the time he left work, and from our client's mother regarding what time he arrived home, it was logistically impossible for him to have made a detour to assault the complainant.

The ILF-West Bank lawyer submitted the testimony of these witnesses as well as a Google map showing the distance between our client's job, the complainant's house, and our client's house, and was able to successfully argue to the court that the prosecution failed to establish its burden under JPC Art. 347(1) "Whoever enters somebody else's place of residence…against the will of the person" and JPC Art. 349 "Whoever threatens a person by pulling out a weapon." The key element that the prosecution must always prove is that the accused is the person who committed the illegal acts.

On June 13, 2011, the prosecutor and the ILF-West Bank lawyer submitted their pleadings. The ILF-West Bank lawyer argued that: 1) in accordance with CPC Art. 226, the defendant could not be convicted based on the testimony of the complainant, a minor, because her testimony was unsubstantiated, and 2) the affirmative alibi defense established that it was impossible for the client to be present inside of the complainant's home at the time that the incident occurred and therefore the prosecution failed to establish the client as the individual who assaulted the complainant. On April 18, 2012, based upon the ILF-West Bank lawyer's well-developed defense theory and his written pleading, the court acquitted the client of all charges for lack of evidence.

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Repeated adjournments continue to postpone the disposition of cases in the West Bank. The following provides updates of cases discussed in the last edition and additional instances of unreasonable delays. Courts remain reluctant to make decisions.

In the Matter of L.J.Y.D. (ILF-WB 94) (Attorney Nael Ghannam) (8-month delay)

This matter has been pending since May 2011. The simple question the court must answer is whether an injury requiring one stitch under the eye can justify a 20-day absence from school. The court could easily infer that such an injury does not require a 20-day absence, but it refuses to do so.

Our client, a juvenile, was accused of throwing a rock in the eye of the complainant during a fight in a schoolyard in May 2011. He was charged with assault pursuant to Article 333 of the Penal Code. Article 333 provides that "whoever intentionally assaults a person through beating or injuring or harming him/her by any effective act of violence, and the assault resulted in an illness or that the victim is prevented from carrying out the duties of his/her work for a period more than twenty days, he/she shall be punished by imprisonment from three months to three years."

The defendant admitted to throwing a stone, and the only question remaining is whether the complainant missed 20 days of school. A medical report shows that the complainant suffered a minor cut under the eye requiring one suture. For months, the court has been waiting for the complainant to see the court doctor to get a document showing the number of days the complainant was out of school. The complainant never came to court, and therefore never saw the court doctor. Aside from the questionable reliability of such a document, it is clear that an injury requiring one suture would not justify staying out of work or school for 20 days. ILF-West Bank asked the court to draw this simple inference and dismiss the charges, but the court has refused.

Since September 6, 2011, the court has been adjourning the matter to get a medical report specifying the number of school days missed. The next court date is June 27, 2012.

In the Matter of L.R. (ILF-WB 27)(Attorney Nael Ghannam) (17-month delay)

The case involves a simple assault. It has been pending since January 13, 2011 when our client pleaded not guilty. The next court date is now set for October 10, 2012.

In the Matter of S.D. (ILF-WB 5)(Attorney Ghadanfar Kumanji) (19-month delay)

The case involves a petty theft. It has been pending since November 10, 2010. The next court date is set for September 16, 2012.

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