



**Court of Magistrates (Malta)  
As a Court of Criminal Judicature**

**Magistrate Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)**

**The Police  
(Inspector Maurice Curmi)**

**-vs-**

**Andrew John Lindsay holder of British passport number 518197337**

**Case no: 252/15**

Today the 4<sup>th</sup> July, 2016,

The Court,

Having seen the charges brought against the accused Andrew John Lindsay who is being charged:

**1)** with having on the 19 December 2014 at about 01:00 hrs in St Paul's Bay reviled or threatened, or caused bodily harm to a person lawfully charged with a public duty, that is, PS 419 Anton Buttigieg while in the act of discharging his duty or because of his having discharged such duty, or with intent to intimidate or unduly influence him in the discharge of such duty, according to article 95 of Chapter 9 of the Laws of Malta;

2). with having on the same date, time and circumstances with having assaulted or resisted by violence or active force not amounting to public violence, a person lawfully charged with public duty, that is, PS 419 Anton Buttigieg when he was in the execution of the law or of a lawful order issued by a competent authority, according to article 96 of Chapter 9 of the Laws of Malta;

3) with having on the same date, time and circumstances, refused to give, or untruthfully gave PS 419 Anton Buttigieg in his capacity as a person entrusted with a public service in the actual exercise of his duties, his name, and other particulars, according to article 338(g) of Chapter 9 of the Laws of Malta;

4) with having on the same date, time and circumstances, wilfully disturbed the public good order and or peace, according to article 338(dd) of Chapter 9 of the Laws of Malta;

Furthermore, the Court was requested that should the accused be found guilty, apart from the punishment prescribed by law, it orders the person convicted to the payment of the cost incurred in connection with the employment in the proceedings of any expert or referee, according to articles 532A, 532B u 533 Chapter 9 of the Laws of Malta.

Having seen the Attorney General's consent so that this case be tried summarily and having heard the accused declare that he has no objection that the case be so tried.

Having heard witnesses.

Having seen all the acts and documents exhibited;

Having heard the prosecution and defence counsel make their submissions.

Considers:

The accused stands charged with crimes against of outrage and violence against a public officer, namely those of vilification, threats, or bodily harm against a public officer, assault or resistance on Police Sergeant 419 Anton Buttigieg, as well as of contraventions affecting public order. The said offences were committed in the early morning of the 19<sup>th</sup> December, 2014, outside a bar in Bugibba wherein the accused had been drinking for some hours. He was reported to the Police for beating up his partner, Lorraine Suzanne Harrison.

PS 419 testified that the accused had failed to give them his details when requested to do so and replied on several occasions that his name was "Cindy". This caused the officer to suspect that the accused was refusing to give his

particulars as ordered and thus proceeded to attempt to arrest him. *"...when I took out my handcuffs to arrest him and take him to Qawra Police Station he turned violent, he started waiving his hands to my face and even pushed me.... It was at the time he saw my handcuffs that he turned aggressive...he wasn't aggressive before he saw my handcuffs...he pushed me..."*<sup>1</sup>

Lorraine Suzanne Harrison, the accused's partner, testified that the accused was merely argumentative as he refused to go with the police when ordered to do so but wasn't threatening. Harrison maintained that the accused never acted aggressively and denied seeing the accused push any of the police officers on site.

PC1425 Adrian Ciappara stated that when he requested the accused to give his details, Lindsey was not keen to divulge same and after several attempts he said his name was *"Sydney Lindsey"*.<sup>2</sup> Once suspicion arose that such details were false, PS419 was informed and thus proceeded to ask himself for the said details. He also informed the accused that he was about to be arrested until his details could be confirmed. *"upon hearing this Mr Lindsey pushed PS 419 and some force had to be used in order for him to be arrested."* Asked by the Court as to the amount of force the accused use to push away PS419, the witness replied that as PS419 is largely built it took some force to push him away.<sup>3</sup>

PC979 Daniel Mohr gave a detailed account of the events surrounding the incident, leaving little room for interpretation as to the amount of force used by the accused against PS419 in resisting his arrest. *"At this point when he was informed that he will be coming with us to the police station, he started getting much more aggressive in his tone of voice, he started swaying all his arms around and also suddenly he pushed the sergeant...He used both his hands as he pushed him against his chest.....He was resisting quite aggressively"*.<sup>4</sup> WPC340 Abigail Farrugia also confirmed that she saw the accused resisting arrest.<sup>5</sup>

The witness had managed to take note of the accused's date of birth, and parent's names which later transpired to be true.<sup>6</sup> It is also possible that both the names *"Cindy"* and *"Sydney"* were mistaken for his actual surname *"Lindsey"*,

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<sup>1</sup> Fol.20, 22

<sup>2</sup> Fol.36

<sup>3</sup> Fol.37

<sup>4</sup> Fol.45-46

<sup>5</sup> Fol.54

<sup>6</sup> Fol.38

whilst the fact that he had been drinking beer for over four hours, could have accounted for his slurry speech which could have given rise to the confusion in comprehending his name. Inspector Maurice Curmi also took the witness stand declaring that once the accused had been taken to the Police Station he had noted that most of his details had been taken down, adding that what appeared to have been a case of a refusal to give one's details to the police turned out to be a misunderstanding. On the basis of this declaration and having seen a copy of the notebook's page purporting to reproduce the said details the court is acquitting the defendant from the third charge brought against him.

From the evidence brought before this Court, the Court is likewise acquitting the accused from the first charge since there was no evidence of any bodily injuries, vilifications or threats made against the public officers involved. However with respect to the offence envisaged by Article 96 of the Criminal Code, witnesses agree that the accused pushed away PS419 once it became evidence that the said officer was about to proceed with his arrest. Reference is made to a recent judgement delivered by the Court of Criminal Appeal (Inferior Jurisdiction) in the names **Il-Pulizija vs Sean Sinclair Pace**:<sup>7</sup>

"L-artikolu 96, imbaghad ghalkemm ukoll ghandu bhala vittma, l-ufficjal pubbliku, jikkontempla tlett elementi essenzjali ghal kostituzzjoni ta' dana ir-reat:

1. Fl-ewwel lok, irid ikun hemm l-attakk jew resistenza. Illi meta ikun hemm biss disubbidjenza tal-ligi jew ta' ordni moghtija minn xi awtorita', ma tistax tissussiti r-reita taht din id-disposizzjoni tal-ligi. Il-Mamo ikompli ighid: "*It is only when the insubordination or defiance goes so far as to obstruct the execution of the law or of lawful orders of the competent authority that the crime of attack or resistance can arise. The purpose of the agent in this crime, therefore, must be precisely that of obstructing or frustrating the execution of the law or the lawful orders of the competent authority, by opposing the action of those charged therewith.*"

Inoltre l-attakk jew resistenza trid tkun necessarjament akkompjanta bl-uzu tal-forza, vjolenza jew bil-hebb.

2. Fit-tieni lok ir-reat irid jigi komess fil-konfront ta'ufficjal pubbliku jew kif tghid testwalment il-ligi "persuna inkarigata skond il-ligi minn servizz pubbliku".

3. Fl-ahharnett huwa necessarju illi l-attakk jew resistenza kontra l-ufficjal pubbliku irid isir filwaqt illi huwa ikun qieghed jagixxi ghall-esekuzzjoni tal-ligi jew ta' ordni moghtija skond il-ligi minn awtorita' kompetenti. Il-Mamo ikompli ighid: "*Therefore, any violence committed after the law or the order has already been executed, even though it may be on account of such execution, would not give rise to this crime.*"

Fis-sentenza **Il-Pulizija vs Joseph Zahra** deciza mill-Qorti ta'l-Appell Kriminali fid-9 Settembru 2002 gie deciz:

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<sup>7</sup> Appeal No. 519/2015. Decided 26<sup>th</sup> May, 2016, per Hon. Judge Dr Edwina Grima

*“Dana l-artikolu (b’referenza ghall-artikolu 96) jirrikjedi mhux biss li l-vittma tkun persuna inkarigata skond il-ligi minn servizz pubbliku” (l-istess bhalma jirrikjedi l-Artikolu 95(1)), izda wkoll li r-reat ikun sar filwaqt li dik il-persuna hekk inkarigata minn dak is-servizz pubbliku “tkun qed tagixxi ghall-ezekuzzjoni tal-ligi jew ta’ xi ordni moghti skond il-ligi minn xi awtorita` kompetenti”.*

The emphasis made by that Court finds application to the facts before this Court since PS419 was lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority. In fact he was proceeding to arrest the accused and it is at that moment that the accused reacted aggressively by pushing him away.

Another judgement delivered by the Court of Criminal Appeal in the names **Il-Pulizija vs Lawrence Attard**<sup>8</sup> had found:

“Meta ufficjal tal-pulizija jintima li jkun ser jarresta lil xi hadd, jew ikun ga’ arresta u qed izomm lil xi hadd arrestat, huwa ikun certament qieghed jezegwixxi il-ligi. Izda meta ufficjal tal-pulizija ikun qieghed jipprova jipperswadi lil xi hadd bil-kelma t-tajba sabiex iwarrab minn fuq il-post u ghalhekk minghajr ma dak il-pulizija jezercita s-setgha tieghu li jarresta, ma jistax jinghad li dak il-pulizija jkun qed jagixxi ‘ghall-esekuzzjoni tal-ligi’ fis-sens ta’l-artikolu 96, ghalkemm huwa jkun qieghed jaghmel is-servizz pubbliku tieghu fis-sens ta’l-artikolu 95.”

On the basis of the evidence before it and established jurisprudence the Court finds that the the offence envisaged by Article 96 of the Criminal Code, has been proven by the prosecution.

The fourth charge, namely the contravention of wilfully disturbing the public good order or the public peace, has also been proven to this Court’s satisfaction. In **Il-Pulizija versus Maria Concetta Green**<sup>9</sup> the Court of Criminal Appeal held:

“L-artikolu 338(dd) tal-Kodici Kriminali jikkontempla r-reat komunement imsejjah ‘breach of the peace’. L-elementi ta’ dan ir-reat gew ezaminati funditus f’diversi sentenzi u gie ritenut li, bhala regola, ikun hemm din il-kontravvenzjoni meta jkun hemm ghemil volontarju li minnu nnifsu jew minhabba c-cirkostanzi li fihom dak l-ghamil isehh inissel imqar minimu ta’ nkwiet jew thassib f’mohh persuna (li ma tkunx l-akkuzat jew l-imputat) dwar l-inkolumita’ ta’ persuna jew dwar l-inkolumita’ ta’ proprjeta’, kemm b’rizultat dirett ta’ dak l-ghamil jew minhabba l-possibilita’ ta’ reazzjoni ghal dak l-ghemil.

L-iskambju ta’ kliem, anke jekk ingurjuz jew minaccjuz fih innifsu u minghajr ma jkun hemm xejn aktar x’jindika li dak l-argument jista’ jizviluppa fih, jew iwassal ghal, xi haga ohra u aktar serja (bhal glied bl-idejn jew hsara fil-propjeta’) ma jammontax ghall-breach of the peace fis-sens tal-artikolu 338(dd) tal-Kodici Kriminali.”

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<sup>8</sup> 12<sup>th</sup> September, 1996 per Hon. Judge Dr. Vincent DeGaetano

<sup>9</sup> 19<sup>th</sup> November, 1999, Volum LXXXIII Part IV pagina 441

For these reasons, the Court whilst not finding the accused guilty of the first and third charges brought against him and acquitting him from the said charges, after having seen article 96 and 338(dd) of Chapter 9 of the Laws of Malta finds him guilty of the second and fourth charges and condemns him to imprisonment for a term of 10 months which by virtue of Article 28A of Chapter 9 of the Laws of Malta are being suspended for 18 months, and to a fine, *multa*, of four thousand Euros.

The said fine shall be payable within 2 years and in default of payment or of any part thereof, shall be converted to an additional term of imprisonment in terms of law.

Since no experts were appointed in the acts of these proceedings, the Court is not taking further cognisance of the request for payment of experts' fees in terms of Article 533 of the Criminal Code.

**Dr Donatella M. Frendo Dimech LL.D., Mag.Jur. (Int. Law)**  
**Magistrate**