



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

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

Mosta Sitting

Today, the 9th April, 2019

**The Police
(Inspector Spiridione Zammit)**

-vs-

Danny James Palmer, holder of Identity Card number 0114316L

The Court,

Having seen the charges brought against the accused **Danny James Palmer** who is being charged with having:

In the month of August, 2018 and/or the days after around these Maltese Islands:

1. By means of an electronic communication network or apparatus you verbally threatened and/or insulted Melaine Cassar and/or her family members.
2. And also that on the same circumstances you made improper use of an electronic communication.

Having heard the prosecution withdraw the first charge given that this offence, which in terms of article 688(f) carries a prescriptive period of three months;

Having heard witnesses;

Having seen all the acts and documents exhibited;

Having heard the prosecution and defence counsel make their submissions;

Whereas the accused is charged with having used Facebook to write "*fic* the law when im there next I punch him in the face see how he like to be beat up*".

Whereas PS 1335 Duncan Schembri exhibited a report wherein it transpires that it was through investigations carried out with *Facebook* and *Melita plc.*, that the police identified the accused as the person who wrote the threatening message.

Whereas article 577(1) of the Code of Organization and Criminal Procedure, rendered applicable to criminal proceedings by article 520(1)(d) of the Criminal Code, provides:

577. (1) Save as otherwise provided in this Code, the witnesses shall be examined in open court at the trial of the action and *viva voce*.

Whereas no representative from Facebook or Melita plc. was called to testify *viva voce*;

Whereas no *affidavit* providing the requested information was presented by Melita plc.;

Whereas the information provided by *Facebook* was not obtained following a request for mutual legal assistance filed in terms of article 399 of the Criminal Code, which is rendered applicable to summary proceedings by article 525(2) of the said Code;

Whereas such evidence constitutes hearsay evidence and is thus inadmissible;

Considers,

Whereas, the statement uttered by the accused undoubtedly constitutes threatening language wherein by means of an electronic communications network he threatens the commission of a crime of bodily harm in terms of article 49(a) of the *Electronic Communications (Regulation) Act*, the prosecution only charged the accused with the crime of making improper use of an electronic communications network, as described under Article 49(c) of the same Act which is of far more generic application.

Nonetheless whilst the accused's conduct would most certainly qualify as sanctioned conducted in terms of this latter provision, no admissible evidence was produced to substantiate the said charge.

In view of the foregoing the Court, whilst abstaining from taking further cognisance of the first charge, acquits the accused from the second charge.

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