



The Court of Criminal Appeal

His Honour the Chief Justice Mark Chetcuti

The Hon. Mrs. Justice Edwina Grima

The Hon. Mr. Justice Giovanni Grixti

Sitting of the 25th January 2023

Bill of Indictment No: 7/2022

The Republic of Malta

Vs

Viktor Dragomanski

The Court,

1. Having seen the bill of indictment bearing number 7 of the year 2022 filed against Viktor Dragomanski, before the Criminal Court wherein he was charged with having:

In the First Count - On the eighteenth (18) of August of the year twenty-twenty (2020), in Sliema, Malta, maliciously, with intent to kill or to put the lives of Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI in manifest jeopardy, by knowingly aiding or abetting the perpetrator/s of the crime in the acts by means of which the crime is prepared or completed, by strengthening the determination of the other perpetrators to commit the relative crimes and/or by promising to

give assistance, caused the death of the same Christian Pandolfino and Ivor Piotr Maciejowski and/or put the lives of Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI in manifest jeopardy.

In the Second Count - On the eighteenth (18) of August of the year twenty-twenty (2020), in Sliema, Malta, committed theft of jewellery and/or other items, which theft was accompanied with wilful homicide hence therefore aggravated by 'Violence', and also aggravated by 'Means', by 'Amount' that exceeds the amount of two thousand and three hundred and twenty-nine euros and thirty-seven cents (€2,329.37), by 'Place' and by 'Time' to the detriment of Christian PANDOLFINO, Ivor Piotr MACIEJOWSKI and/or other persons and/or entity or entities.

In the Third Count - In light of the circumstances, timeframe, reasoning and facts which have already been mentioned above in this Bill of Indictment, of having made use of an identification number ('JET 082' and 'CCB 042') other than that allotted by the police or by an Authority in relation to a particular motor vehicle, and therefore on the eighteenth (18th) of August of the year two thousand and twenty (2020) in Sliema, and in the preceding days, made use of an identification number other than that allotted by the police or by an Authority in relation to a particular motor vehicle.

In the Fourth Count - On the eighteenth (18th) of August of the year two thousand and twenty (2020) and in the past days and/or weeks, in the Maltese islands, with several acts committed at different times and which constitute violations of the same provision of the law, and committed in pursuance of the same design, knowingly received or purchased property, that is a vehicle of the make Volkswagen Tiguan, which had been stolen, or obtained by means of any offence, whether committed in Malta or abroad, or, knowingly took part, in any manner whatsoever, in the sale or disposal of the same vehicle of make Volkswagen Tiguan.

2. Having seen the preliminary pleas filed by accused Viktor Dragomanski on the 17th of May 2022.

3. Having seen the judgment of the Criminal Court of the 6th of September 2022, wherein the Court rejected preliminary pleas number two (2), three (3), four (4), five (5), six (6), seven (7), nine (9) and ten (10) in their totality. Rejected also the first (1) preliminary plea brought forward by the accused but ordered a correction in both the first (1st) and third (3rd) counts of the bill of indictment and therefore the name of 'Daniel Muka' should be replaced with the name of 'Viktor Dragomanski'. Furthermore, the Court rejected the eighth (8th) preliminary plea brought forward by

the accused but ordered a correction to the bill of indictment and therefore where there is mentioned 'WPC 140 Christine Cremona' this should be replaced with the name 'WPC 140 Kristy Cremona'. The Court partially rejected the accused's eleventh (11th) preliminary plea regarding the removal of Mr. Zampa's first report presented on the 14th of May 2021 and marked Dok FZ1 a fol. 1907 et seq. of the acts of the proceedings but acceded to it partially by ordering the removal of the second report presented by Mr. Zampa on the 12th of August 2021 and marked Dok FZX1 a fol. 1947 et seq. of the acts of the proceedings.

4. Having seen the appeal application filed by the Attorney General on the 13th of September 2022 wherein this Court was requested to vary that part of the judgment whereby the Criminal Court acceded partially to the accused's eleventh (11th) preliminary plea, and instead reject the eleventh (11th) plea in its entirety, whilst confirming the rest of the said judgment in the best interest of justice.

5. Having seen the reply of appellee Victor Dragomanski filed on the 12th of October 2022 wherein he requested that the Court reject the appeal of the Attorney General and confirm the judgement delivered by the Criminal Court on the sixth (6) of September 2022.

6. Having heard oral submissions by the parties.

7. Having seen all the acts of the case.

Considers,

8. That this judgment is limited to the decision of the Criminal Court which upheld appellee's eleventh (11th) preliminary plea regarding the inadmissibility as evidence of the second report filed by court appointed expert Mr. Francesco Zampa, which report contained a valuation of the jewellery allegedly stolen from the residence of the victims Cristian Pandolfino and Igor Maciejowski. The Attorney General feeling aggrieved by this decision which ordered the removal from the acts of this second report, laments that, contrary to the findings of the Criminal Court, the second report was filed in accordance with the appointment decreed by the Court of Criminal

Inquiry which authorised the said expert to prepare a valuation of the said jewellery, the second report being merely an extension of the first.

9. Appellee, Viktor Dragomanski, disagrees with this line of reasoning since he is of the firm opinion that the second report is a separate and different report which was never authorised by the Court, the expert having never been tasked with filing a fresh report, but simply to clarify the original valuation carried out by him in Document FZ1, and this in terms of the request of the Attorney General outlined in his note of remittal of the 23rd of June 2021.

10. The Criminal Court stated thus in its judgment on this issue:

“The accused also argues that Mr Zampa’s decree¹ extending his nomination for him to re-testify and re-qualify his report presented on the 12th August, 2021 is not in the acts of the proceedings. Mr Zampa testified again on the 12th August, 2021 and was asked the following question by the prosecution: ‘Mr Zampa, you were requested to present the value of the jewellery you examined in August two thousand twenty (2020). Are you in a position to provide us with this information please?’. The incident surrounding this case took place in August 2020, and Mr Zampa was asked to present the value of the jewellery he examined when it was allegedly stolen from the victims. However, it does not transpire from the acts of the proceedings that his task was extended by means of a decree to re-testify, requalify and present another report. Therefore, Mr Zampa was not legally authorized to present another report and this because his nomination was limited to present ‘a report with his evaluation’. This was done on the 14th May, 2021 and following that the Court should have extended his nomination to present another report with another valuation. For these reasons, the Court is rejecting the accused’s preliminary plea regarding the removal of Mr Zampa’s first report presented on the 14th May, 2021 and marked Dok FZ1 a fol. 1907 et seq. but accedes partially to the same preliminary plea by ordering the removal of the second report presented by Mr Zampa on the 12th August, 2021 and marked Dok FZX1 a fol. 1947 et seq. of the acts of the proceedings.”

11. In order to address this grievance put forward by the Attorney General, the Court examined the acts of the compilation of evidence wherein the Court expert was tasked to carry out a valuation of the jewellery, which was allegedly stolen from victims’

¹ Recte: the Court’s decree

residence, and seized by the police in its investigations, which jewellery was exhibited in the proceedings. It transpires from the said court record that in the sitting of the 11th of May 2021, the Court of Criminal Inquiry appointed Mr. Francesco Zampa in order *“to examine all the exhibits which are mentioned in the application by the heirs and to present a report with his evaluation”*². Subsequently in the sitting of the 14th of May 2021, Court appointed expert Francesco Zampa testified and presented his report marked as Document FZ1³. In the said report, after making a valuation of all the jewellery exhibited in the acts, which jewellery was also photographed, the expert declared that the valuation, amounting to €106,103, was based *“on today 11th May 2021 gold market price at USD 1505/oz.”* In the note of remittal of the 23rd of June 2021, the Attorney General requested that the Court *“hear again the court appointed expert Francesco Zampa in order to provide necessary clarifications and supplementary information with regards to his testimony and/or Doc.FZ1.”*⁴ On the 12th of August 2021, Mr. Francesco Zampa took the witness stand once again and gave evidence on oath. Together with his testimony the witness filed a written report which was marked as Document FZX1⁵. In his testimony he is asked the following question by the Prosecution:

“Mr. Zampa, you were requested to present the value of the jewellery you examined in August two thousand twenty (2020). Are you in a position to provide us with this information please?”

The witness answers as follows:

“Yes, the valuation I have done is on the eighteenth (18th) August two thousand and twenty (2020) where the price of gold was at highest peak, so basically from the last valuation we did to this, there was an increase. So, the valuation of August two thousand twenty (2020) was at hundred and nineteen thousand two hundred and twenty-eight (119,228).”

² Vide Volume 10 fols. 1849 of the compilation of evidence

³ Vide Volume 10 fols. 1907 et sequitur of the compilation of evidence

⁴ Folio 1929

⁵ Fols. 1944 et seq.

The witness then presents a written report with his findings marked as Document FZX1, and asked what the difference between the two reports is, he states:

“It is the same report, the difference is the revaluation on August two thousand twenty (2020).”

12. It is clear, therefore, from the acts of the proceedings before the Court of Criminal Inquiry that the two reports filed refer to the same appointment, the expert having been tasked to present a valuation of the jewellery exhibited in the acts of the case. The second report does not refer to a fresh task entrusted to the expert but a clarification with regards to the values submitted in his report, since erroneously the expert submitted the value as on the date of the filing of the report when the value to be established had to refer to the date of the commission of the offence with which appellee is charged, the Court’s decree appointing the said expert having failed to indicate that the jewellery items had to be valued as at the date of commission of the crime. In fact, article 655 of the Criminal Code cited by the defence falls fairly and squarely within the parameters of the testimony of expert Zampa, contrary to the argument brought forward in the defence’s reply to the appeal. Article 655 of the Criminal Code in fact states as follows:

The parties, the court, and, in cases within the jurisdiction of the Criminal Court, the jurors, may require the experts to give further elucidations on their report as well as on any other point which they may consider useful in order to make the opinion of the experts clearer.

And this is exactly what happened in this case with the expert clarifying the valuation submitted, by indicating the values at the time of the commission of the offence rather than that originally determined by him. In fact, Document FZ1”, is identical to Document FZX1, with the expert altering the values of each and every piece of jewellery evaluated to reflect the price of the same in August 2020.

13. Consequently, the Court cannot agree with the conclusions reached by the Criminal Court since the second report does not refer to a task which is completely outside the scope of the Court decree of the 11th of May 2021, which would have rendered such report *ultra vires* the expert’s appointment. Nor does it refer to a

valuation of items other than those already evaluated by the expert, but it refers to the same identical items with an adjustment in value as requested by the Attorney General, such valuation thus not falling outside the remit of the expert's appointment.

14. The Law empowers the courts to order a reference to experts “**in all cases where for the examination of any person or thing special knowledge or skill is required**”, with sub article 650(5) of the Criminal Code stating that “the court shall, **whenever it is expedient**, give to the experts the necessary directions, and allow them a time within which to make their report”, thus signifying that a specific direction is only necessary at the discretion of the Court and this “whenever it is expedient”. Now in the present scenario, this specific direction by the Court was not necessary since the decree of appointment of the expert was very wide worded empowering said expert to carry out a valuation, within which remit, the said expert therefore could clarify or add to his conclusions without necessitating further directions from the court. This Court concurs with the considerations and conclusion made by this Court in the below cited case in similar circumstance when it stated:

“8. Din il-Qorti żżid tgħid, pero`, li l-Qorti (jew il-maġistrat fil-kors ta' l-inkjesta dwar l-in genere) li tinnomina espert fi branka ta' ħila jew sengħa speċjali m'għandhiex għalfejn tispeċifika bid-dettalji kollha dak kollu li dak l-espert għandu jagħmel. Infatti l-Qorti taġti d-direttivi meħtieġa lill-esperti kull meta jkun hemm bżonn (“... whenever it is expedient ...” fit-test Inġliż)(artikolu 650(5), Kap. 9). L-esperti hekk nominati, proprju minħabba l-expertise taġħhom, jibqagħllhom ukoll margini ta' diskrezzjoni sabiex jagħmlu “ix-xogħol u l-esperimenti li titlob il-professjoni jew is-sengħa taġħhom (artikolu 653(1), Kap. 9).”⁶

24. Issa, l-eċċezzjoni ta' inammissibilita` tippresupponi xi disposizzjoni tal-liġi li teskludi dik il-prova milli tingieb 'il quddiem fil-proċess. Fil-każ odjern in-nomina ta' l-esperti saret mill-Maġistrat Inkwirenti a tenur ta' l-artikolu 548 tal-Kodiċi Kriminali. Imbagħad is-subartikolu (5) ta' l-artikolu 650 – reż applikabbli għall-in genere mill-ewwel proviso ta' l-imsemmi artikolu 548 – jipprovdli li: “Il-qorti, kull meta jkun hemm bżonn, taġti lill-periti d-direzzjonijiet meħtieġa” (sottolinear ta' din il-Qorti). Naturalment sabiex ma jkunx hemm ekwivoċi hu desiderabbli li jkun hemm deskrezzjoni ta' l-inkarigu

⁶ Ir-Repubblika ta' Malta v. Martin Dimech mogħtija fit-28 ta' Frar 2012 – App.Sup

mogħti lill-esperti rispettivi fid-digriet tan-nomina. Fil-każ in eżami m'hemm l-ebda ekwivoku, peress illi kull wieħed mill-esperti ndika fir-relazzjoni tiegħu l-inkarigu speċifiku li kellu. Barra minn hekk, id-difiża jibqagħlha dejjem id-dritt li tikkontrolla dak li jiġi konstatat mill-esperti prodotti billi jekk hekk jidhrilha timpunja l-kompetenza, l-kredibilita` u l-affidabilita` tal-istess esperti u tal-konklużjonijiet tagħhom."

15. Finally, from a further examination of the acts and more specifically from what transpired throughout the sitting of the 12th of August 2021, it does not appear that the defence filed any objection to this testimony or to the filing of the second report. Nor did it file any objection to the competence of the said court appointed expert. In any event, during the trial, the defence may exercise all the rights conferred to the accused person at law by cross-examining the said expert and challenge his findings, if it deems it necessary so to do. For the above reasons, the grievance put forward by the Attorney General is being upheld.

16. Consequently, for the above-mentioned reasons, the Court upholds the appeal filed by the Attorney General, varies the judgment of the Criminal Court of the 6th of September 2022, revokes that part of the judgment wherein the Criminal Court acceded partially to the accused's eleventh (11th) preliminary plea, thus denies the eleventh (11th) plea in its entirety, and confirms the rest of the said judgment.

The Court orders that the acts be remitted to the Criminal Court so that the case against accused Viktor Dragomanski may proceed according to law.

The Chief Justice Mark Chetcuti

Mrs. Justice Edwina Grima

Mr. Justice Giovanni Grixti