



**In the Court of Magistrates (Malta) as a Court of
Criminal Judicature**

**Magistrate Dr. Yana Micallef Stafrace LL.D., Adv. Trib.
Ecc.Melit**

The Police

(Inspector Eman Hayman)

Vs

Ivica Vasiljevic

Msida Sitting

Today, 29th November 2023

The Court

Having considered the charges brought against **Ivica Vasiljevic** son of Milisavic and Vidosava nee' Davidovic, born in Ljubovija on the 07/07/1977 and residing at Continental Flat 5, Triq San Alwigi, Msida holder of identity card number 29412 (A) charged with having on the 14/04/2019 at M. Anton Vassalli Street, Msida:

- 1) Caused slight injuries to Rian John Muscat as certified by Dr Gianluca Bezzina from Mosta Health Centre;

- 2) Willfully disturbed the public order or public peace;
- 3) Attempted to use force against Rian John Muscat with intent to insult, annoy or hurt such person;
- 4) Willfully committed any spoil, damage or injury to or upon any movable or immovable property belonging to Rian John Muscat not exceeding the value of € 250;
- 5) Drove or attempted to drive or was in charge of a motor vehicle with registration number GBZ 583 make Toyota on a road or other public place while unfit through drink or drugs;
- 6) Drove or attempted to drive or was in charge of a motor vehicle with registration number GBZ 583 make Toyota on a road or other public place after consumed so much alcohol that the proportion of it in your breath, blood or urine exceeded the prescribed limit.

Having seen that on the 23rd January 2020, the Court appointed Dr Alex Scerri Herrera as legal expert to listen to the witnesses and on the 7th July 2021, the Court notes that the expert is to listen to the witnesses and file a report.

Having seen that on the 10th November 2021 the legal expert Dr Alex Scerri Herrera gave evidence under oath and exhibited the report (Dok ASH) and the case was adjourned for cross-examinations and final submissions.

Having seen that on the 23rd March 2023 the Court notes that the Defence has not presented its note of submission as requested in the sitting of 16 February 2022. Therefore the Court rescinds its authorisation regarding the note of submissions, and puts off the case for the 6th June for the final note of submission. The Court notes that after that date the case will be adjourned for judgement.

Having seen that on the 20 November 2020 the accused declared that he will not give his evidence and that he has no further proof to present.

Having seen that on the 6th June 2023 the parties declare that they rest on the report of the legal expert;

Having seen articles 221(1), 338(dd), 339(d), 325 (e), of Chapter 9 of the Laws of Malta, Article 15A(1) and Art. 15 B(1) of Chapter 65 of the Laws of Malta;

Having seen all the evidence, documents and all the acts.

Considers

The incident happened on the 14 April 2019 at Triq Mikiel Anton Vassalli, Msida near the Skatepark before the flyover to San Gwann after the accused and the injured party Rian John Muscat were involved in a motor vehicle collision.

Evidence

1. **PC 1268 Ivan Caruana** tendered his evidence by means of an affidavit. He states that on 14 April 2019 at around 14:45 while on duty at the Msida Police Station, he was informed that there was an argument in Triq MA Vassalli, Msida. He stated that on the scene he found two vehicles in the middle of the road and two people next to them. He spoke to Irvica Vasiljevic who had some blood on his head. He explained that Mr. Vasiljevic stated that *"I was going straight and he came to my side, he started complaining why you come to my side. I told him leave me alone all I want is to go that's it. he told me I am going to phone the police cause you are a foreigner and I am Maltese. I did not hit him or the vehicle."* He was not aware of what caused the blood on his head. PC 1268 Ivan Caruana noticed that Mr. Vasiljevic had a smell of alcohol and seemed drunk and due to this a breathalyzer test was conducted. He was given his rights and subsequently conducted the relative test which resulted 095.7 ug/100 ML.

He spoke to the other party r party Rian John Muscat who stated that *"Jien kont gej mill-bypass direzzjoni lejn San Giljan u dak gie fuqi, jiena paqpaqtlu ghax ghal naqra ma laqatnix u kif ghamilt hekk waqaf u rriwersja ghal go fiha u waqaf quddiemi u ma fhimtx x' beda jghid. Dan hareg mill-karozza ghalija u jien hrigt ukoll, jien ghedtlu li laqatni u beda jghid li mhux vera dan qabad jaghtini u kissirli l-mera u qabadli l-wipers u qabad jaghtini bihom. Jiena dhalt gol vann biex insuq u dan qadli fin-nofs u jiena cempilt lil pulizija. Nixtieq nirranga l-verzjoni u nghid li dak il-hin li waqaf quddiemi qacatli l-wipers."*

Both parties were sent to be the Medical Centre to be medicated and to be provided with a medical certificate, it resulted that both were suffering from slight bodily harm.

Rian John Muscat, the injured party, tendered his evidence on 10th November 2020 in front of the legal expert appointed by the Court. He stated that on 14 April 2019 he was driving next to Mater Dei Hospital towards St Julians. When he pulled out of the inner carriageway next to the skatepark roundabout, a vehicle that was driving up from Valletta towards St Julians turned into his own vehicle. Said vehicle then passed from the passenger's side and came in front of him. It stopped in the middle of the road and reversed into him. The witness says that that he went out of his vehicle to see the damages suffered. The time was around 15:00.

He did not see any substantial damages due to the fact that what was hit was the rear bumper of the vehicle. When he saw this he proceeded to the vehicle of the other party and knocked on the window. The other person descended from the vehicle and alleged that the accident was caused by the witness. The person said that there was CCTV that indicates that. On the other hand the witness stated that the accused was drunk on account that he was uttering words that did not make sense.

When the witness went back to his van, the accused proceeded to the windscreen of the witnesses' van and started banging his hands. The witness stated that he hooted the horn so that the accused leave but it was all in vain. The accused broke the side mirrors of the van. When the witness descended in order to defend himself, the accused started hitting him with the wipers, however he managed to dispossess said wipers from the accused and in turn started hitting him by means of the latter.

With respect to damages the witness states that he sustained damages to both lateral mirrors as well as the wipers. He paid € 53 due to the fact that he had extra wipers that he was able to use as a replacement.

WPC 322 Alesisa Costanzo tendered her evidence on the 10 November 2020 in front of the legal expert. She exhibited copies of stills from CCTV camera that were handed over to her personally by PS 1268 [Doc AC 1 – AC 10]. Also presented were the breathalyzer test results of both the accused and the parte civile marked Doc AC 11 as well as an estimate of the financial damages sustained by the parte civile amounting to the value of € 53.90 [Doc. AC 12]

Considers

The Court notes that both the prosecution and the defense declared that they will rest on the conclusions reached by the legal expert.

With respect to the first imputation the accused is being charged with causing slight injuries to Rian John Muscat as certified by Dr Gianluca Bezzina from the Mosta Health Centre. This certificate, which was exhibited by the police was not confirmed on oath by the doctor.

Reference is made to a judgement namely, *Il-Pulizija vs Roderick Vella*, Court of Criminal Appeal [Inferior Jurisdiction], 1 June 2021 Appell Nru: 336 / 2019 wherein the court considered amongst other that

“Ghalkemm ma tressaqx biex jixhed it-tabib li irilaxxa dan ic-certifikat u lanqas ma gie kkonfermat bil-gurament, ma hemmx il-htiega sabiex dan isir sakemm ma jkunx hemm dubju ragonevoli li verament sehhew il-griehi. Huwa bizzejjed li jigi prezentat ic-certifikat u li l-Qorti ikollha konvinciment li l-parti leza verament tkun soffriet griehi. Kif meqjus fis-sentenza fl-ismijiet 'Il-Pulizija kontra Generoso Sammut'¹:

'L-ewwel aggravju tal-appellant hu, bazikament, li ma ngabitx l-ahjar prova tal-offiza hafifa fuq il-persuna u tal-hsara volontarja fin-nuccali. Din il-Qorti ma taqbilx. Id-deposizzjoni tal-parti leza - Joseph Deguara - kienet prova sufficjenti kemm tal-offiza fuq il-persuna kif ukoll tal-hsara fin-nuccali. Hi zbaljata l-idea, spiss ventilata quddiem din il-Qorti, li biex issir prova skond il-ligi u sal-grad li trid il-ligi ta' offiza fuq il-persuna hemm bzonn ta' certifikat mediku jew tad-deposizzjoni ta' tabib. Tali certifikat jew deposizzjoni jistghu jkunu mehtiega jekk mid-deposizzjoni ta' xhieda ohra, inkluza l-parti offiza, jibqa' xi dubbju ragjonevoli dwar jekk verament kienx hemm offiza fuq il-persuna u/jew tat-tip jew natura ta' dik l-offiza. Filkaz in dizamina, id-deposizzjoni ta' Joseph Deguara, korroborata mill-ufficcjali tal-pulizija li kienu fil-ghassa, hi prova sufficjenti kemm tal-offiza (f'dan il-kaz offiza hafifa) fuq il-persuna, kif ukoll tal-hsara volontarja.'

The Court considers that the medical certificate exhibited in this case as well as the evidence tendered by the parte civile and the affidavit of PS 1268 Ivan Caruana do not cast doubt that the parte civile sustained injuries which according to medical certificate were classified as slight.

The first charge under article 221 (1) of chapter 9 of the laws of Malta has been proved.

With respect to the second imputation the accused is being accused that he willfully disturbed the public order or the public peace as contemplated under article 338 (dd) of Chapter 9 of the Laws of Malta.

¹ 4 Deciza mill-Qorti tal-Appell Kriminali fit-2 ta' Awissu, 1999 (Appell Numru: 33/99)

Reference is made to the judgement in the names Il-Pulizija vs Monica Pullicino, decided by the Court of Criminal Appeal [Inferior Jurisdiction] on the 25 June 2001 (Appell Nru 56/2001)

“Kif din il-Qorti kellha okkazzjoni tfisser f’diversi sentenzi taghha (ara, fost ohrajn, Il-Pulizija v. Joseph Spiteri App. Krim. 24/5/96), bhala regola jkun hemm il-kontravvenzjoni kontemplata fil-paragrafu (dd) ta’ l-Artikolu 338 tal-Kap. 9 meta jkun hemm ghemil volontarju li minnu nnifsu jew minhabba ccirkostanzi li fihom dak l-ghemil isehh inissel imqar minimu ta’ inkwiet jew thassib f’mohh persuna (li ma tkunx l-akkuzat jew imputat) dwar l-inkolumita` fizika ta’ persuna jew dwar l-inkolumita` ta’ proprjeta`, kemm b’risultat dirett ta’ dak l-ghemil jew minhabba l-possibilita` ta’ reazzjoni ghal dak l-ghemil. Ghandu jinghad ukoll li ghalkemm il-ligi taghna tipprovdi ghad-difiza tallegittima difeza f’kaz ta’ aggressjoni diretta biex tikkaguna offiza fuq il-persuna (Art. 223, Kap. 9), kif ukoll tippermetti r-ritorsjoni proporzjonata fil-kaz ta’ lingurja kontravvenzjonali taht l-Artikolu 339(1)(e) tal-Kodici Kriminali (ara Il-Pulizija v. Joe sive Joseph Vella App. Krim. 7/12/95), fil-kaz tar-reat ta’ ksur tal-bon-ordni u l-paci pubblika il-ligi ma tipprovdi ghal ebda difiza specifika. Fi kliem iehor, wiehed irid jara fil-kaz konkret jekk dak li sar kienx inevitabli tenut kont tac-cirkostanzi kollha tal-kaz. Hu evidenti, per ezempju, li persuna li tigi aggradita u li tkun fil-fatt qed tiddefendi ruhha (mhux semplicement tirritalja ghal offiza fuq il-persuna li tkun diga saritilha) necessarjament ser tagixxi b’mod li tnissel f’mohh persuna ohra dak l-inkwiet jew thassib aktar ‘l fuq imsemmi. Pero` l-agir ta’ dik il-persuna jkun, f’dawk ic-cirkostanzi, inevitabli, u ghalhekk ma jistax jammonta ghal breach of the peace. L-istess ikun il-kaz jekk persuna tingurja animus retorquendi fil-limiti tal-Artikolu 339(1)(e) imsemmi – ikun kontrosens li wiehed jghid li dik l-ingurja ma tammontax ghal reat pero` l-fatt fih innifsu jammonta ghal reat iehor (taht l-Art. 338(dd)).

From the acts of the case and evidence submitted including the CCTV camera stills exhibited, it transpired that the behavior of the accused who went on the defendant’s vehicle and started banging on the windscreen and tore the side mirrors effectively installed an element of fear into the accused. This imputation has been proved.

With respect to the third imputation, the accused is being charged with attempting to use force against Rian John Muscat with intent to insult, annoy or hurt such person in accordance with article 339 (d) of Chapter 9 of the Laws of Malta.

in order for this charge to be proven there is no need for physical contact between the victim and the accused to occur, it is enough to prove that there is a possibility that such physical contact to occur.

This charge has been proved.

With respect to the fourth imputation, the accused is being charged with willfully committing any spoil, damage or injury to or upon any movable property belonging to Rian John Muscat not exceeding the value of € 250.

From the evidence, supported by receipt it results that by his actions the accused caused damages to the parte civile for the amount of € 53.90. This charge has been therefore proved.

With respect to the fifth and sixth imputation, whereby the accused is being charged with having driven or attempted to drive or was in charge of a motor vehicle with registration number GBZ 583 make Toyota on a road or other public place while unfit to drive through drink and drugs in accordance with article 15A(1) of Chapter 65 of the Laws of Malta as well as having driven or attempted to drive or was in charge of a motor vehicle with registration number GBZ-583 make Toyota on a road or public place after consumed so much alcohol that the proportion of it in your breath, blood or urine exceeded the prescribed limit in accordance with article 15B(1) of Chapter 65 of the Laws of Malta,

In the case Il-Pulzija vs Mathhew Vella, Criminal Appeal (Inferior Jurisdiction) dated 6 February 2020 it was stated that:

26. Din il-Qorti diversament preseduta, fl-appell fl-ismijiet *Il-Pulzija vs. Raymond Grech Marguerat* deciza nhar it-28 ta' Ġunju 2017 iddecidiet li

Illli l-Qorti tqies illi t-twissija meta jkun ser jigi issomministrat t-test tan-nifs ghandha tigi spjegata car u tond. Dan ghaliex din mhijiex is-solita twissija li hija ikkontemplata fil-ligi ghaliex il-ligi tippresuponi l-htija meta jkun hemm ir-rifjut u allura l-pulizija investigattiva ghandha tkun attenta doppjament meta jinghata l-caution f'dawn il-kazijiet fejn allura l-persuna suspettata ghandha tinghata d-dritt li tikkonsulta ma' avukat qabel ma taghti t-twegiba taghha billi b'tali twegiba tkun tista' tinkrimina ruhha. Fil-fatt il-Qorti Ewropeja dwar id-Drittijiet tal-Bniedem testendi it-tifsira ta' "criminal charge" mill-mument illi persuna tkun ser tigi affetwata minn xi att investigattiv tal-pulizija (ara Alexander Zaichenko vs Russia – 18/02/2010): "The Court reiterates that in criminal matters, Article 6 of the Convention comes into play as soon as the person is "charged"; this may occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when the preliminary investigations were opened. 'Charge' for the purposes of article 6(1) may be defined as the official notification given to an individual by the competent authority of an allegation that he has

committed a criminal offence” a definition that also corresponds to the test whether the situation of the person has been substantially affected.”

Dan ifisser allura illi mill-mument ta’ l-arrest ta’ l-appellat meta ittiehed mill-post tal-incident lejn l-ghassa tal-pulizija huwa kellu jigi moghti l-jedd jikkonsulta ma’ l-avukat tal-fiducja tieghu qabel ma jinkrimina ruhu bir-rifjut tieghu li joqghod ghat-test tan-nifs li kien qed jigi mitlub jagħmel, iktar u iktar meta kollox kien qed jindika illi l-appellat ma kienx qed jifhem dak li kien qed jinghad lilu. Għal dawn il-motivi għalhekk din il-Qorti issib illi ma tistax taqleb id-decizjoni liberatorja moghtija mill-Ewwel Qorti.

27. Illi x-xenarju maħluq minn din il-Liġi huwa wieħed kumpless. Kwistjoni dwar id-dritt tal-assistenza legali apparti, jekk is-sewwieq jagħżel li joqgħod għal test tan-nifs, huwa jkun jista’ jkun qiegħed jagħmel azzjoni li r-riżultat tagħha bis-saħħa tal-Liġi innifisha jkun jista’ jittiehed bi prova kontra tiegħu fi proċeduri kriminali.⁷ Mill-banda l-oħra jekk is-sewwieq jagħżel li jirrifjuta li jagħmel it-test tan-nifs, jew li jagħti kampjun meta mitlub, ikun qiegħed, għall-dan ir-rifjut tiegħu, jiġi meqjuż li jikkommetti reat kriminali. Apparti li joħloq prezunzjoni iuris tantum li l-proporzjon ta’ alkoħol fid-demm ta’ dik il-persuna ikun iżjed mil-limitu preskritt.⁸

28. F’dan ix-xenarju kumpless din il-Qorti taqbel ma’ dak imsemmi fl-appell Grech Marguerat dwar il-ħtieġa tat-twissija da parti tal-Pulizija jew Uffiċjal tal-Komunita lis-sewwieq għad-dritt tal-assistenza legali qabel ma huwa jiġi mitlub li jagħti kampjun tan-nifs jew kampjun għall-analiżi.

. . . . *omissis* . . .

30. Għaladarba ma hemmx prova li qabel ma gie magħmul it-test tal-breathalyser VELLA kien gie mogħti d-dritt li jikkonsulta ma avukat u għaladarba ma hemm ebda prova dokumentarja jew prova oħra relattiva għall-fatt jekk dan avalixxiex minn dan id-dritt jew le, din il-Qorti ma tistax tqis li jkun safe and satisfactory li tistrieħ fuq il-konklużjoni ta’ test tal-breathalyser magħmul mill-appellant f’dan ix-xenarju probatorju.

In the case under examination, there is no proof that the accused was provided with the right to consult a lawyer of his choice before taking the breathalyzer test and hence the test is deemed to be inadmissible and as a consequence the accused will be acquitted from the fifth and sixth charges brought against him

Decision

Consequently for the above-mentioned reasons, the Court, after having seen articles 221 (1), 338 (dd), 339 (d), 325 (c) of Chapter 9 of the Laws of Malta and Articles 15A(1) and 15 B(1) of Chapter 65 of the Laws of Malta finds the accused **Ivica Vasiljevic** guilty of the first, second, third and fourth charges and acquits him with respect to the for the fifth and sixth charges and condemns him to a fine of Three hundred Euro (300) on all charges.

DR. YANA MICALLEF STAFRACE LL.D.

MAGISTRATE

Doris Serpina Sciberras

Deputy Registrar