



In the Court of Magistrates (Malta)

as a Court of Criminal Judicature

Magistrate Dr Nadine Sant Lia

B.A., LL.M(Kent); LL.D (Melit); Barrister-at-Law (England & Wales)

Comp No: 65/2022

The Republic of Malta

vs

Penelope known as Penny Davies

Today, the 23rd July 2024

The Court after having seen the charges proffered against:

Penelope also known as Penny Davies of 74 years, daughter of Robert Mount and Doreen Olive née Sycamore, born in Gosport, United Kingdom on the 21-02-1947, residing at No. 13, Arcadia, Triq il-Kahli, San Pawl il-Bahar, Malta and holder of United Kingdom passport number 208297118 or a Maltese residence permit 42811A;

Charged with having on the 24th June 2020 and/or in the preceding months and/or years at No. 13, Arcadia, Triq il-Kahli, San Pawl il-Bahar, Malta and/or in other places in these Islands:

1. as a person who knew or ought to have known that Ernest Frederick Thompson, a 90 year old person, was an elder or a dependant adult and who, under circumstances or conditions likely to produce grievous bodily harm or death, wilfully caused or permitted Ernest Frederick Thompson to suffer, or inflicted on the person of Ernest Frederick Thompson unjustifiable physical pain or mental suffering, or having had the care or custody of Ernest Frederick Thompson, an elder or dependent adult, wilfully caused or permitted Ernest Frederick Thompson or his health to be injured, or wilfully caused or permitted Ernest Frederick Thompson to be placed in a situation in which his person or health is endangered;
2. as a person who knew or ought to have known that Ernest Frederick Thompson, a 90 year old person, was an elder or a dependant adult and who, under circumstances or conditions other than those likely to produce grievous bodily harm or death, wilfully caused or permitted Ernest Frederick Thompson to suffer, or inflicted on the person of Ernest Frederick Thompson unjustifiable physical pain or mental suffering, or having had the care or custody of Ernest Frederick Thompson, an elder or dependent adult, wilfully caused or permitted Ernest Frederick Thompson or his health to be injured, or wilfully caused or permitted Ernest Frederick Thompson to be placed in a situation in which his person or health is

endangered;

3. through imprudence, carelessness, unskilfulness in her art or profession, or non-observance of regulations, caused the death of Ernest Frederick Thompson of 90 years;

The Court was requested that in the case of guilt, in addition to the punishment in accordance to Law, orders the person convicted to pay the costs incurred in connection to the employment of any experts as provided in Article 533(1) of Chapter IX of the Laws of Malta;

Having seen that during the sitting of the 1st March 2022, the accused declared that she is not guilty of the charges proffered against her¹.

Having seen that the Attorney General consented to these proceedings being dealt with summarily².

Having seen that the Prosecution concluded its evidence during the sitting of the 9th May 2023³

Having seen that the Defence rested its case during the sitting of the 24th October 2023⁴

Having heard the submissions made by the Prosecution and the Defence.

¹ Folio 10 of the acts of the proceedings

² Folio 6 of the acts of the proceedings

³ Folio 218 acts of proceedings

⁴ Folio 898 acts of proceedings

Having Considered

Summary of facts of the case

This case concerns alleged neglect by the defendant in the care of her house-mate the deceased Ernest Fredrick Thompson, who was an elderly person.

Having Considered

Witnesses heard

That reference will be made to the most salient testimonies heard and documents exhibited during these proceedings

PC 330 Rodlyn Shawn Azzopardi testified during the sitting of the 1st March 2022⁵. He explained that on the 24th June 2020 at about 22:00hrs, the police station received a report from Dr Blackman, a medical doctor from Mosta Health Centre. He stated that he has examined Ernest Thompson and certified him as deceased. The witness together with PC 1412 reported on site at 13, Arcadia, Triq il-Kahlja, St Paul's Bay. The doctor said that no foul play was suspected and the deceased's carer, a certain Penelope Davies, took the officers to the bedroom where the deceased was lying on a mattress on the floor. The witness remained there on fixed point duty until the scene of crime officers arrived. He recognized the carer as being the accused Penelope Davies.

⁵ Fol. 11-12 acts of the proceedings

Inspector Ryan Vella testified during the same sitting⁶. He explained that he was handed over the case-file from then Inspector Paula Ciantar who left the Police Force. Charges were issued following recommendations made by the experts in the *in genere* inquiry owing to evidence of neglect which might have contributed to the death of Ernest Fredrick Thompson. The accused attended voluntarily at Qawra Police Station on the 22nd January 2022 and her statement was taken in the presence of PC 2375 after she was duly given her rights and opted to consult with legal aid lawyer Dr Benjamin Valenzia. Inspector Vella was cross-examined during the sitting of the 6th July 2022⁷. He explained that the case was handed to him in November 2021 after the inquiry had been concluded and the investigations which he made into the case were limited to taking the statement of the accused. At the time, he only had access to the final inquiry report drawn up by Magistrate Dr Ian Farrugia and not the actual expert reports. Whilst confirming that the accused was 73 years old, he denied asking what kind of medication she is on prior to taking her statement but asserted that he gave her the statutory rights and she did not raise any objection to giving the statement.

The witness exhibited a copy of the police report with reference number NPS 9/V/2575/2020.⁸ In this report there is indicated that the doctor on site could not certify the cause of death even though there were no signs of foul play and that is why an inquiry was opened.

Dr Mario Blackman testified during the sitting of the 24th May 2022⁹. He recalled that about two years prior, he had been called to a residence in Triq il-Kahli, St

⁶ Fol. 13-14 acts of the proceedings

⁷ Fol. 143-148 acts of the proceedings

⁸ Dok RV1, Folio 15-17 acts of proceedings

⁹ Fol. 25-26 acts of the proceedings

Paul's Bay, to certify a person as deceased. It resulted that this person was a certain Ernest Fredrick Thompson.

PC 1412 Paul Theuma testified during the same sitting¹⁰. He responded to the report of the 20th June 2020 and together with PC 330 and PS 343 attended at the indicated residence where there was present Dr Blackman, who made the report and the defendant, whom he recognized. The deceased was a certain Ernest Fredrick Thompson. Since Dr Blackman could not identify the precise cause of death, an inquiry was called.

Ex-Inspector Paula Saliba Ciantar testified during the same sitting¹¹. On the 24th June 2020 at night, whilst she was the inspector on duty, she was informed by PS 343 Glenn Carabott that there was a case of sudden death of an elderly person by the name of Ernest Fredrick Thompson. Whilst not being able to attend due to other duties at the time, she informed duty Magistrate Dr Ian Farrugia who appointed an inquiry. She was informed that the deceased was residing with the accused, whom she recognized in the Court Hall and it transpired that it may have been a case of neglect since the deceased had multiple bed sores.

Dr Mario Scerri, court appointed expert testified during the sitting of the 6th July 2022¹². He explained that he based his conclusion that the deceased had not been visited by a doctor for the previous year from what the accused herself said on site and therefore he felt no need to consult the hospital file at that time. He sustained that the body displayed evidence of personal neglect and it was actually one of the worst cases which he saw in a 35-year career. The lacerations presented indicate

¹⁰ Fol. 136-137 acts of the proceedings

¹¹ Fol. 140-141 acts of the proceedings

¹² Fol. 150-155 acts of the proceedings

that the deceased had been left in the same position for a very long period of time. Witness was not aware and could not be aware of any services received by the deceased from MMDNA as its a private entity. The testimony of Dr Scerri continued during the sitting of the 8th November 2022.¹³ He explained that after reviewing the deceased's medical file, it resulted that he had a long history of illness and since 2019, intellectually lost recognition and displayed signs of dementia and was not in a position to care for himself. He was hospitalized on various occasions and used to attend regularly at Mosta Health Centre as from 2015 up to February 2020. It did not result that from February 2020 any doctor or nurse had examined the deceased up until his death in June 2020. He was only visited occasionally by a phlebotomist whose only role was to draw blood for clinical investigation. The witness explained that from the examination carried out by himself on the corpse on the 24th June 2020, there was evidence of gross neglect, bed sores and a bad state of hygiene.

The defendant Penelope Davies testified voluntarily during the sitting of the 10th January 2023¹⁴. She explained that she is 75 years old and had met the deceased in 2007 in the United Kingdom. She met him in church and a lady said that she had found him wandering the streets after being kicked out by his daughter. She took him in for some days in her house in the UK but then, when she wanted to return to Malta, he wished to come over too. The defendant insisted that there was no relationship between her and the deceased other than sharing accommodation. In Malta, they found and bought a house together. She confirmed that the deceased suffered from a plurality of medical issues such as blood issues and prostate

¹³ Fol. 158-162 acts of the proceedings

¹⁴ Fol. 199-214 acts of the proceedings

problems. She confirmed that the deceased used to attend various hospital appointments and she used to accompany him. Transport was provided by the hospital itself. According to the defendant, the deceased was visited by a doctor some weeks prior to his death. She vehemently denied the accusation of neglect and rebutted that she did everything for the deceased including washing, dressing, feeding and changing his nappies and his catheter. On the day he died, she had been asleep and when she went to his room to check his nappy and catheter, she found him dead and called for a doctor to visit. The defendant sustained that the deceased had not suffered any injuries under her care and that he had maintained consciousness up until he died. She explained that the deceased was sleeping on a mattress on the floor to avoid a situation where he would roll off a high bedframe and fall to the ground.

Doris Vella Cassia, from Mater Dei Hospital testified during the sitting of the 19th June 2023¹⁵. She presented a copy of the deceased's medical file.

Considerations

The Statement released by the Defendant

The defendant had her statement¹⁶ taken by Inspector Ryan Vella on the 22nd January 2022 in the presence of PC 2375 Mary Vella after having consulted with the legal aid lawyer on duty that day, Dr Benjamin Valenzia. It results that the accused was given the due caution in terms of law.

In the statement, the defendant explained that her relationship with the deceased was platonic and that she knew that he had instituted her as heir. On the 24th June

¹⁵ Fol. 220-221 acts of the proceedings

¹⁶ Fol 18-19 acts of the proceedings

2020 in the morning, she had tended to the deceased as usual including emptying his catheter bag, changing nappies and fed him breakfast. Later in the day she washed him and fed him lunch. In the afternoon they rested and in the early evening, when she went to check on him, she found him dead. The doctor and police arrived on site much later as it was dark. She explained that the deceased was on a mattress on the floor to avoid him falling off the bed and that the last time he had been examined by his Doctor Dr Ellul was in 2019 but since, he had been attending regular hospital visits. She denied neglecting the deceased and concluded by saying that caring for him was very hard work. The defendant also explained that she had been taking care of the victim since 2007 when he moved to Malta and had been living together platonically for the last fourteen years. She had been more hands in her care in the last six or seven years when his health started deteriorating.

The defendant reiterated that she had to care for the victim on her own and did the very best she could and that it was hard work being his sole carer.

*"I don't see neglect, I was on my own and I did the best I could. Everything that I did was for Ernest."*¹⁷

Having Considered

Magisterial Inquiry

Due to the uncertainty of the cause of death a magisterial inquiry was opened on the 24th June 2020 by duty Magistrate Dr. Ian Farrugia LL.D about the death of

¹⁷ Folio 19 of the acts of the proceedings

Ernest Fredrick Thompson who was certified deceased in his residence at 13, Triq il-Kahli, St Pauls Bay on the 24th June 2020.

The final inquiry was exhibited by the Deputy Registrar during the sitting of 24th May 2022 whereby all the court experts were reconfirmed by the presiding Court.¹⁸

The Inquiring Magistrate appointed several experts to examine and determine the cause of death amongst whom were Dr David Pisani and Dr Ali Safraz to carry out a medico-legal post mortem examination of the deceased, PS 122 Arthur Borg as a Scene of the Crime Officer, Dr Mario Scerri as a forensic expert and Dr Anthony Cutajar as a technical expert.

From the conclusions of the inquiry it results that the last time that the deceased who was 90 years old at the time saw a doctor was about a year previous to his death and therefore had not been examined in a while. The deceased had also made a will leaving all his universal inheritance to the defendant. There were no signs of violence on the cadaver but there was evidence of excoriations and bed sores in different stages of healing and these ulcers where acute and chronic. These lesions and ulcers were a reflection of neglect on the deceased. It was resulted that the deceased had not been visited or examined by any other health professionals including other medics, doctors or nurses. From the autopsy it resulted that the deceased died of pneumonia which was left untreated.

The main conclusions of the inquiry were that the Inquiring Magistrate emphasised the point that the deceased suffered neglect and it was the motivating factor that led to his death.

¹⁸ Folio 20 and 30-137 acts of proceedings

From the report of Dr Mario Scerri¹⁹ it results that the deceased was in a very bad state. From a simple visual examination of the photos in this report and in that of the Malta Police Forensics one can see open wounds, sores and ulcers which must have been considerable painful and uncomfortable. These wounds are all over the deceased's body and in the photos it is also possible to see how frail and weak the body was at the time of death. It is also clear to see that the wounds were left untreated and open giving rise to infection and an inability to heal.

The Court also cannot express that it found these images disturbing and can appreciate the comment made by the expert Dr Mario Scerri in his testimony where he stated he never saw such neglect over a thirty-five year career.

In his final conclusion the expert concludes that the final cause of death was pneumonia which had been left untreated.

From the autopsy report the same graphic images are available in close up and it is clear that the deceased must have suffered before his death.

From the report of expert Dr. Anthony Cutajar it results that after having inspected the property where the deceased was living that it was not being kept in good condition or in a good state. In the same report it also resulted that the defendant is the universal heir of the deceased Thompson.

Having considered

That in addition to the above reports the expert Dr. Mario Scerri was tasked with carrying out a subsequent examination by obtaining any other relevant medical

¹⁹ Dok MS, Page39-56 acts of proceedings

information regarding the condition of the deceased Ernest Fredrick Thompson and a report was subsequently exhibited.²⁰

From this report it established that at around the April 2019, the deceased was in Karen Grech hospital and his Barthel Index upon admission was 6 on 20 and when discharged it was 7 on 20. The Barthel Index is a measure of function score which assesses several factors including faecal continence, urinary continence, self grooming, use of bathroom, ability to feed oneself, ability to transfer on and off a chair, mobility, ability to dress oneself, ability to climb a set of stairs and ability to bathe. The fact that the deceased scored an index of 7/20 typically represents severe disability, requiring a high degree of care.²¹

Another assessment consisting of the RUDAS score (Rowland Universal Dementia Assessment Scale) resulted in him scoring 15/30 indicating a significant cognitive impairment and any score less than 22/30 indicates a degree of mental impairment.

When these scores are combined it suggests that when the deceased was discharged in April 2019 he was heavily dependent on help from third parties for his activities of daily living. The report states and emphasises *“his care is clearly not restricted to dosing of INR’s and involves far more, including mobilization to avoid bed sores, changes of his catheters, dressing, feedings etc.”*²².

From the same report it resulted that the deceased was having regular visits at the Mosta Health Centre at intervals of about three weeks up to 19th February 2020

²⁰ Dok MS1, Pages 163-197 acts of proceedings

²¹ Page 168 act of proceedings

²² Page 168 act of proceedings

after which date he was given an appointment for the 24th June 2020 which date coincided with his passing away.

It also resulted that a phlebotomist had drawn blood from the deceased on the 20th June 2020 a few days before his passing.

The expert also stipulates that all INR results were persistently high and in dangerous levels from the date the warafin started to be administered after Thompson was found to be in atrial fibrillation. It is therefore evident that the dose of warfarin had not been reduced according to instructions being given. In his conclusions the expert also states that Thompson could not take care of himself or did not have the capacity to administer drugs to himself according to the low Barthel Index and low RUDAS score and therefore had to rely completely on whoever was responsible to take care of him.

Having considered

Submissions

The prosecution and the defense made their oral submissions²³ during the sitting of the 25th January 2024²⁴. The prosecution stated that in its opinion, the charges issued under Articles 257A and 257C of the Criminal Code, that is charges one (1) and two (2) were not proven beyond reasonable doubt. On the other hand, it contends that the third (3) charge, that being involuntary homicide, was adequately proven and based this argument on the conclusions of the post mortem report and also the reports of Dr Mario Scerri, particularly owing to the presence

²³ Fol. 217-219 acts of the proceedings

²⁴ Fol.900-903 acts of the proceedings

of severe bed sores and also that the deceased was not being seen regularly by a doctor in the final stages of his life.

The defense, on the other hand, sustains that Article 257 of the Criminal Code finds no application because the accused was not in any way obliged to care for the deceased but decided to do so out of her own free will and was actually doing very much to help him. The defense explained that the presence of bedsores is not the accused's fault but a direct consequence of the deceased being bedridden. It was also emphasized that the accused was an elderly person herself and was not a medical professional – she was only doing her best to help the deceased who was afflicted by many medical issues and the fact that he died is a natural consequence of such illnesses and the fact that he was 90 years of age.

Having Considered

Legal Considerations

The defendant was accused of having breached article 257A of the Criminal Code which states:

257A. (1) A person who knows or ought to know that a person is an elder or a dependent adult and who, under circumstances or conditions likely to produce grievous bodily harm or death, wilfully causes or permits any elder or dependent adult to suffer, or inflicts on such person unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, wilfully causes or permits the person or health of the elder or dependent adult to be injured, or wilfully causes or permits the elder or dependent adult to be placed in a situation in which his person or health is endangered, shall be guilty of an offence and, without prejudice to any other punishment to which he may be liable under

any other provision of this Code or of any other law, shall be liable to the punishment of imprisonment for a term from two to five years.

The defendant was accused of having breached article 257C of the Criminal Code which states:

A person who knows or ought to know that a person is an elder or a dependent adult and who, under circumstances or conditions other than those likely to produce grievous bodily harm or death, wilfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, wilfully causes or permits the person or health of the elder or dependent adult to be injured or wilfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, shall be guilty of an offence and, without prejudice to any other punishment to which he may be liable under any other provision of this Code or of any other law, shall be liable to the punishment of imprisonment for a term from one to three years.

The defendant was also accused of having breached article 225(1) of the Criminal Code which states:

Whosoever, through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of regulations, causes the death of any person, shall, on conviction, be liable to imprisonment for a term not exceeding four years or to a fine (multa) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (€11,646.87).

The Court here makes reference to the writing of **Mario Codagnone** from his book **“Casi Pratici in Materia di Circolazione Stradali”** where at page 51 there is stated:

“Riteniamo che allo stato attuale delle cose, si imponga anzi tutto un'affermazione di principio: la strada è di tutti. Essa è un bene a cui utenza i cittadini tutti sono ammessi

con parita' di diritti e di doveri ed oseremo anzi dire con maggiori doveri da parti di coloro che la dominano alla guida di mezzi che, per le loro intrinseche caratteristiche di velocita' e potenza, possono costituire, anche solo per questo, un imminente pericolo per la circolazione."

The Court also makes reference to **Archbold** in his book "**Criminal Pleading Evidence and Practice**" where he said:

"Where death results in consequence of a negligent act, it would seem that, to create criminal responsibility, the degree of negligence must be so gross as to amount to recklessness . . . probably, of all the epithets that can be applied, reckless most nearly covers the case . . . but whatever epithet be used, and whether an epithet be used or not, in order to establish criminal responsibility, the facts must be such that . . . the negligence of the prisoner went beyond a matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the state and conduct deserving punishment.."

The Court also makes reference to **Blackstone's Criminal Practice**²⁵ where it is stated:

*"It should be noted that danger to the person is not qualified by any adjective and therefore, as long as it is not de minimis, any danger to any person, even though slight, if obvious to the 'competent and careful' driver, would suffice. In **Hennigan** [1971] 3 All ER 133, a case of causing death by reckless driving under the TRA 1960, the recklessness consisted mainly of the speed at which the defendant was driving; the driver of the other car, which contained the two persons who were killed, may well have been substantially to blame for the accident. The court held that there was nothing in the legislation which required the*

²⁵ 2006

*manner of the accused's driving to be a substantial or a major cause of the accident, as long as it was 'a cause and something more than de minimis.' Similarly, it was said in **Skelton** [1995] Crim LR 635 that no particular degree of contribution to the death, beyond a negligible one, is required. An acceptable direction to the jury is that they do not have to be sure that the defendant's driving 'was the principal, or a substantial, cause of the death, as long as [they] are sure that it was a cause and that there was something more than a slight or a trifling link' (**Kimsey**) [1996] Crim LR 35).*

The standard of driving must fall 'far below' that expected of a 'competent and careful' driver and it must be obvious to a 'competent and careful' driver that the manner of driving is dangerous."

Professor Anthony Mamo in his notes opined:

"In these definitions the essence of negligence is made to consist in the "possibility" of foreseeing the event which has not been foreseen. The agent who caused the event complained of did not intend or desire it, but could have foreseen it as a consequence of his act if he only had minded: so his negligence lies in his failure to foresee that which is foreseeable."

Reference is also made to the jurist **Francesco Carrara** who explained "*Il non aver previsto la conseguenza offensiva sconfina la colpa dal dolo. Il non averla potuto prevedere, sconfine il caso dalla colpa*"

Antolisei, in his book *Manuale di Diritto Penale (Parte Generale)*, makes reference to Carrara, and states:

"Secondo la dottrina tradizionale che vanta origini antichissime e in questi ultimo tempi torna a prevalere, la colpa consiste nella prevedibilita' del risultato non voluto. Scrisse il Carrara: La colpa si definisce la volontaria omissione di diligenza nel calcolare le

conseguenze possibili e prevedibili del proprio fatto. Dicesi conseguenza prevedibile, perche' l'essenza della colpa sta nella prevedibilita'"

With regards to the level of diligence that the law requires, Professor Mamo states:

"The amount of prudence or care which the law actually demands is that which is reasonable in the circumstances of the particular case. This obligation to use reasonable care is very commonly expressed by reference to the conduct of a 'reasonable man' or of 'an ordinarily prudent man', meaning thereby a reasonable prudent man: "negligence" it has been said "is the omitting to do something that a reasonable man would do, or the doing something that a reasonable man would do"

Having considered

From the evidence it results that there was a level of care by the defendant since it results he was being seen regularly at the Mosta Health Centre and a few days before blood was drawn from the deceased. The Court is somewhat perplexed how the bad state of Thompson was not brought to attention of the medical professionals and equally how these professionals themselves did not observe and treat his wounds and lacerations which are large and evident. When the medical professions would have assisted the deceased the considerable wounds he had would have been apparent and this also owing to the obvious pain he would be feeling since they were untreated.

From the evidence presented it was established that Thompson was attending regular visits to medics for various reasons in the months leading up to his death. It also results that when the deceased was discovered he was not being neglected in terms of his catheter and his nappy had been changed and he was not found to be soiled. The defendant explained that the fact that he was on a mattress on the

floor was to avoid a situation whereby the deceased might have potentially rolled off the bed. Whilst this is a plausible explanation there is still no excuse for making an elderly person sleep on a mattress on the floor when this could have easily been solved with simple and inexpensive bed guards. The fact that he would have been in a raised bed away from damp and humidity and the indignity of being on the floor would have added to his comfort and care.

It is also clear that the defendant, despite her best efforts as she explained let the situation get out of control and beyond her ability to properly care for him. The deceased needed more round the clock care, which care could have been applied for and acquired through the various government services available. The defendant could have also acquired help to manage their home, ensures its cleanliness and make it more adequate for the deceased who was housebound.

Whilst it is commendable for any person to take on the singular care of any person, that also means that the person is assuming responsibility for their welfare and placing them at their mercy. Therefore the deceased was in a situation where he was singularly relying on the defendant to ensure his welfare. The Court considers that the defendant cant simple plead that she was not the responsible person. The defendant was cohabiting with the deceased, had a long running relationship with him, albeit platonic, but whatever the nature of the relationship the defendant was left as his heir in his will. Therefore there was a relationship of trust and care between them to the extent that the deceased upon his death left her an opportunity to gain.

The Court also takes note that the defendant was aware that the deceased required significant help and was dependant on carers and therefore the defendant cannot

claim ignorance of his extensive needs. Whilst one can appreciate that for the defendant it was hard and complex taking care of the defendant alone, this was also her singular choice since she chose to leave his care only to her and not get more hands on help. Furthermore, by not allowing third parties to participate in the deceased's care and enter their home, the deceased was entirely in the control and care of the defendant. The defendant had no way to reach out to others for help or address the state of neglect he was in if not through the defendant.

The court considers that the defendant was the carer of Thompson and the fact that she was not formally remunerated or employed is not a valid argument. The defendant herself states that she lived with Thompson from the moment he moved to Malta and they had bought a house together. Furthermore he had made her his universal heir and from the time he moved to Malta acted as his carer. Therefore whilst they were never married they entered into commitments whereby they chose to live together, purchase a home together and be responsible for each other. By becoming the heir of Thompson the defendant also became entitled to his inheritance and financial wealth upon his death. It is not uncommon in that the circumstances of Thompson would have meant that in making the defendant his universal heir that a consideration would have been taken whereby the defendant would care for him for the remainder of his life.

The conclusions in the reports state that the deceased died of untreated pneumonia. Since the defendant was the only carer for Thompson it would have necessarily fallen on her to get him the necessary medical care required.

The Court however whilst it considers the actus reus to be sufficiently proven in terms of article 257A and 225(1) of the Criminal Code and that this has been

achieved to a level of beyond reasonable doubt is uncertain if the mens rea of the defendant has been sufficiently proven. The defendant lacked in her ability to care for the defendant but the Court cannot also ignore that the defendant did carry out acts that show she made efforts to assist the deceased. The fact that those efforts were not enough substantiate the actus reus element of the crime. However the Court is not entirely convinced that the defendant had the intent to willingly neglect him. In the days leading up to his death, the defendant took action so that the deceased is assisted at a medical facility. The defendant took action to make sure that the defendant attended and had a routine blood withdrawal.

The Court therefore considers that the defendant that when it comes to intent of the defendant her actions fall within the parameters of imprudence, carelessness and unskilfulness in her art or profession. Whilst the Court agrees that the defendant was not taking care of the deceased in a professional capacity, the Court considers that her role as his carer is suitably defined in the elements of article 225(1) of the Chapter 9, Laws of Malta.

The Court therefore cannot but proceed with a finding of guilt in terms of article 257C and whilst liberating her from the charge under article 257A and 225(1) of the Criminal Code considers that the prosecution have sufficiently proven their case in accordance with article 225(1) of the Criminal Code.

Having considered

Considerations for the punishment

In addition to all the circumstances surrounding the facts and the charges the Court also took into consideration the following when evaluating the appropriate punishment.

- The criminal record of the accused²⁶ was exhibited in the acts of the proceedings. The Court notes that said document, which covers the period during which the “subject lived in Malta” does not attest to any criminal convictions whatsoever.

Decide

Therefore, after having seen Articles 31, 257A, 257C and 225(1) of the Criminal Code, Chapter 9 of the Laws of Malta, the Court hereby finds Penelope Davies known as Penny Davies **not guilty** of the first and second charges against her from which she is being acquitted entirely but **guilty** of the third charge proffered against her and accordingly condemns her to a punishment of two years imprisonment which with the application of article 28A of the Criminal Code are being suspended for four (4) years from today.

The Court explained to the offender in ordinary language her liability under article 28B of the Criminal Code if during the operational period she commits an offence punishable with imprisonment.

Furthermore, in view of the fact that experts were appointed in this case, the Court in addition to the punishment orders the defendant to pay the costs incurred in connection to the appointment of experts in terms of Article 533 of Chapter 9 of the Laws of Malta and pays to the Court Registrar the global sum of **€2,102.98c** representing the work of the following experts:

²⁶ Fol. 8 of the acts of the proceedings

- a. Dr. Ali Safraz in the amount of €256.23,
- b. Dr. David Pisani in the amount of €217.79,
- c. Mr William Atanasio in the amount of €42.50,
- d. Mr David Grima in the amount of €42.50,
- e. Mr Clive Lanzon in the amount of €23.76
- f. Mr John Cassar in the amount of €23.76²⁷,
- g. Dr Anthony Cutajar in the amount of €710.84²⁸,
- h. Malta Police Forensics in the amount of €70.90²⁹,
- i. Dr. Mario Scerri in the amount of €369.70³⁰ and €345.00³¹ respectively.

Communication: Registrar of Criminal Court

Delivered today the 23rd July 2024 at the Courts of Justice in Valletta, Malta.

Dr. Nadine Sant Lia
Magistrate

Oriana Deguara
Deputy Registrar

²⁷ Page 43 acts of proceedings

²⁸ Page 96 acts of proceedings

²⁹ Page 61 acts of proceedings

³⁰ Page 56 acts of proceedings

³¹ Page 197 acts of proceedings