COURT OF CRIMINAL APPEAL

Hon. Mr. Justice Dr. Neville Camilleri
B.A., M.A. (Fin. Serv.), LL.D., Dip. Trib. Eccles. Melit.

Appeal Number 2338/2023/1

The Police

vs.

Benjamin Busby

Today 26th. of September 2024

The Court,

Having seen the charges brought against the appellant **Benjamin Busby**, holder of Identity Card Number 238922(A), charged in front of the Juvenile Court with having on the 19th. of December 2022 at 13.00hrs in Saint Claire College, Pembroke Secondary, Pembroke:

1. voluntarily caused slight bodily harm on Webster Rylee;

2. wilfully disturbed the public good order or the public peace.

The Court was requested to provide for the safety of Webster Rylee in accordance with Article 383 of the Criminal Code, if found guilty.

Having seen the judgment delivered by the Juvenile Court on the 25th. of July 2024 wherein the Court, after having seen Articles 17(d), 37(2), 222(1) and 338(d) of Chapter 9 of the Laws of Malta, found the accused guilty of all the charges brought against him and condemned him to a period of two (2) years imprisonment, which term of imprisonment in terms of Article 28A of Chapter 9 of the Laws of Malta was not to take effect unless during a period of four (4) years from the date of the judgment, the offender committed another offence punishable with imprisonment and thereafter, the competent court so ordered under Article 28B of Chapter 9 of the Laws of Malta, that the original sentence shall take effect. In terms of Article 28A(4) of Chapter 9 of the Laws of Malta, the Court explained to the accused in plain language his liability under Article 28B of Chapter 9 of the Laws of Malta if during the operational period of the suspended sentence he committs an offence punishable with imprisonment. The Court also placed the offender under a Treatment Order in terms of Article 412D(1) of Chapter 9 of the Laws of Malta, in order for him to address his anger, under those terms and conditions set out in the decree attached to the judgment, which decree formed an integral part of the same judgment. The Court ordered that a copy of the judgment, together with the Treatment Order, be sent to the Director Probation Services and Parole so that he assigns a probation officer to be responsible for the supervision of the probationer and who had to report back to the competent Court as to his progress every three (3) months. In terms of Article 382A of Chapter 9 of the Laws of Malta, the Court issued a Restraining Order to safeguard Rylee Webster for a period of twelve (12) months from the date of the judgment. Finally, in terms of Article 383 of Chapter 9 of the Laws of Malta, the accused was bound by a personal guarantee of one thousand Euro (€1000) for a period of twelve (12) months from the date of the judgment from molesting, speaking or contacting whether directly or indirectly Rylee Webster.

Having seen the appeal filed by the appellant on the 31st. of July 2024 by which he requested this Court: *"to declare that the judgment of 25 July 2024 [sic!] varies or revokes the judgment by acquitting the appellant from all charges and in case guilt is reconfirmed to vary or revoke the punishment to make it more equitable considering the circumstances of the case and that the appellant is a minor."*

Having seen all the acts and documents.

Having seen the Reply filed by the appellate Attorney General on the 11th. of September 2024, which reply was filed as regards the appeal filed by the appellant.

Having seen the updated conviction sheet of the appellant exhibited by the Prosecution as ordered by the Court.

Considers

That this is a judgment regarding an appeal filed by the accused Benjamin Busby.

That the appellant was charged in front of the First Court with two charges: the first one being that he voluntarily caused slight bodily harm on Webster Rylee and the second one being that he wilfully disturbed the public order or the public peace.

That even though the appellant listed three grievances in his appeal application, at this stage this Court deems that it is essential to make reference to Article 382 of Chapter 9 of the Laws of Malta which establishes the following:

> "The court, in delivering judgment against the accused, shall state the facts of which he has been found guilty, shall award punishment and shall quote the article of this Code or of any other law creating the offence." [emphasis added]

That this Court notes that when the First Court found the appellant guilty of all the charges brought against him, the First Court stated the following in the appealed judgment: "*Consequently, this Court, after having seen Article 17(d), Article 37(2), Article 222(1) and Article 338(d) of Chapter 9 of the Laws of Malta,* ***finds the accused guilty of all charges brought against him***".

That the appellant was charged with causing slight bodily harm to Webster Rylee in terms of Article 221(1) of Chapter 9 of the Laws of Malta. It ought to be noted that Article 222(1) of Chapter 9 of the Laws of Malta (i.e. the article made reference to by the First Court) lists the aggravating circumstances which lead to an increase in the punishment to be meted out and is not in effect the article that creates the offence.

That it is an obligation established by law that when delivering the judgment, the Court must quote the Article that creates the offence which in this case is Article 221 of Chapter 9 of the Laws of Malta. This emanates from Article 382 of Chapter 9 of the Laws of Malta which has been quoted above.

That this Court makes reference to the judgment delivered on the 27th. of April 2006 in the names **Il-Pulizija vs. Stephen Bonsfield** (Number 327/2005) where the following was stated:

> "Li skond l-Artikolu 382 tal-Kap. 9 tal-Liġijiet ta' Malta, il-Qorti tal-Maġistrati, meta tagħti s-sentenza kontra l-imputat, għandha tgħid l-fatti li tagħhom dan ikun ġie misjub ħati, tagħti l-piena u ssemmi l-Artikolu tal-Kodiċi Kriminali jew ta' kull liġi oħra li tkun tikkontempla r-reat;
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> Fil-kaz in eżami, l-Ewwel Qorti f'ebda ħin ma ddikjarat espressament ta' x'hiex kienet qed issib lill-appellant ħati u għalkemm "*passim*" fis-sentenza appellata kkummentat dwar kif skondha ġraw il-fatti, b'mod li wieħed jista' jkollu indikazzjoni vaga ta' x'hiex seta' nstab ħati, dan jibqa' alkwantu inċert, partikolarment

meta ssir riferenza għall-artikoli ċitati mill-Qorti bħala l-artikoli li suppost jikkontemplaw ir-reati li tagħhom suppost instab ħati, li in parti huma differenti minn dawk indikati mill-Avukat Ġenerali u huma jew ineżistenti jew manifestament mhux relatati mal-każ. Meta l-liġi isemmi li l-Qorti *"għandha tgħid il-fatti li tagħhom dan ikun ġie misjub ħati"*, dan ma jfissirx li dan il-vot ikun sodisfatt bil-fatt li l-Qorti tkun għaddiet in rassenja – anki b'mod eżawrjenti bħal f'dan il-każ – il-provi. Imma dan ifisser li l-Qorti trid tgħid eżattament u espressament ta' liema reati sabitu ħati billi tgħid fil-qosor f'hix jikkonsisti r-reat li rriżulta pruvat.

Illi skond ġurisprudenza kostanti ta' din il-Qorti n-nuqqas li jiġi rispettat strettament il-vot tal-liġi fl-Artikolu 382 jimporta n-nullita' tas-sentenza appellata. Dan għaliex dan-nuqqas jammonta għal nuqqas ta' formalita' sostanzjali fis-sens tal-Artikolu 428(3) tal-Kodiċi Kriminali. F'każ simili dan jintitola lil din il-Qorti li tħassar is-sentenza appellata. (ara f'dan is-sens l-Appelli Kriminali: **"Il-Pulizija vs. Paul Cachia"** [25.9.2003]; **"Il-Pulizija vs. Joseph Zahra"** [9.9.2002]; **"Il-Pulizija vs. Benjamin Muscat"** [10.7.2002 u 28.6.2002]; **"Il-Pulizija vs. Donald Cilia"** [24.4.2002], **"Il-Pulizija vs. Mark Portanier"** [14.9.2004]; **"Il-Pulizija vs. John Axiaq et"** [19.5.2005]; **"Il-Pulizija vs. Stefan Abela"** [2.2.2006] u oħrajn).

Illi ġie ukoll ritenut li l-indikazzjoni tal-artikolu ħażin jew addirittura l-indikazzjoni tal-liġi skorretta hu ekwiparat ma' n-nuqqas ta' ċitazzjoni tal-artikolu tal-liġi li taħtu tkun instabet ħtija. (ara **"Il-Pulizija vs. Mario Agius"** [3.2.1995] u oħrajn).

Illi ġie ukoll ritenut li l-Qorti tista' dejjem tirrileva tali nuqqas *"ex officio"* għalkemm ma hemm ebda aggravju dwar dan. (ara. App. Krim. **"Il-Pulizija vs. Anthony**

> **Zahra"** [26.5.1994]; **"Il-Pulizija vs. Vincent Cucciardi"** [6.1.2005] u oħrajn).
>
> Għaldaqstant l-aggravju tal-appellant dwar in-nullita' tas-sentenza għandu jiġi akkolt mhux biss għaliex l-Ewwel Qorti naqset li ssemmi l-fatti li tagħhom l-appellant instab ħati, imma ukoll għaliex, kif irriskontrat din il-Qorti *"ex officio"*, fis-sentenza appellata l-Ewwel Qorti ċċitat artikoli li mhux biss ma ġewx indikati lilha mill-Avukat Ġenerali fin-Nota tiegħu, imma artikoli li jew huma ineżistenti jew manifestament żbaljati."

That despite the fact that what is stated in the above-quoted judgment is not exactly identical to the present case, this Court notes that the failure of the First Court to make reference to the Article which creates the offence in terms of which the appellant has been found guilty vis-à-vis the first charge, leaves this Court with no option other than embracing what has been quoted above. Hence, there is no need for this Court to make the considerations regarding the grievances brought forward by the appellant in his appeal application.

That as stated in the above-quoted judgment in the names **Il-Pulizija vs. Stephen Bonsfield**:

> "Illi pero' dan ma jwassalx għall-annullament tal-proċedura kollha li saret quddiem l-Ewwel Qorti kif qed jippretendi l-appellant fl-istess aggravju tiegħu. In-nullita' hija limitata biss għas-sentenza u kull parti oħra preċedenti tal-proċeduri kontra l-appellant tibqa' bla mittiefsa u għalhekk kull ma jrid isir hu li l-Ewwel Qorti terġa' tippronunzja s-sentenza billi ssegwi l-vot tal-Artikolu 382 u xejn aktar u konsegwentement l-appellant irid jitpoġġa mill-ġdid fil-pożizzjoni li kien immedjatament qabel ma ġiet ippronunzjata s-sentenza appellata."

That this Court shall implement the above-quoted extract which has been implemented in numerous other judgments delivered by this Court differently presided amongst them the judgment delivered on the 1st. of June 2011 in the names **Il-Pulizija vs. Jeffrey Savage** (Number 464/2010).

Decide

Consequently, for all the above-mentioned reasons, this Court *ex officio* revokes the appealed judgment and, in order not to deprive the parties from the right of double-examination, orders that the acts be remitted back to the First Court so that the appellant is placed in the same situation he was before the appealed judgment was pronounced and a judgment is delivered afresh according to law.

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Dr. Neville Camilleri
Hon. Mr. Justice

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Alexia Attard
Deputy Registrar