



Court of Magistrates (Gozo)
AS A COURT OF CRIMINAL JUDICATURE
Magistrate Dr. Jean Paul Grech B.A., LL.D
M.Juris (Int. Law), Adv. Trib. Eccl. Melit
JUDGEMENT

Today, Tuesday the sixteenth (16th) of July 2024

Case Number 81/2024

The Police
(Inspector Josef Gauci)

VS

Nikolai Xuereb Conti

The Court,

Having seen the charges brought against **Nikolai Xuereb Conti**, son of Oliver and Mariella Maria nee Conti, born in San Ġiljan, Malta on the twelfth (12th) May 1979 and residing at Block 4, Flat 3, Triq il-Mungbell, Żebbuġ, Gozo holder of Maltese identity card number 222879(M) for having on the fourth (4th) November 2023 at around half past ten in the morning (10:30hrs) while in Triq Marsalforn, Xagħra, Gozo:

- (1) with his behaviour, he caused Katie Jean Jordan to fear that violence will be used against her or against her property or

against the person or property of someone from her ascendants, descendants, siblings or some other person;¹

In case of a finding of guilt, the Court was requested to apply the provisions of article 383(1) of Chapter 9 of the Laws of Malta as it deems fit.

The Court was requested to issue a protection order so as to provide for the safety of the injured party or other individuals in terms of article 412C of the Criminal Code.

The Court was requested to treat this case as a domestic violence case in terms of Chapter 581 of the Laws of Malta.

Having seen the documents exhibited and all acts of the proceedings;

Having heard the evidence and final submissions of the parties;

Considers;

The facts of the case are as follows:

On the sixth (6th) of November 2023 Katie Jean Jordan went to the Victoria Police Station and reported that she was not feeling safe because of her former partner Nikolai Xuereb Conti. She specified that on the fourth (4th) of November 2023 at around half past ten in the morning (10:30hrs) she parked her vehicle in front of her residence in Xagħra, Gozo. As she was doing so she noted that Nikolai was parking his vehicle opposite hers. As he exited his vehicle, he started filming using his mobile phone. He told her that he had come to pick up his daughter since he was due to see her. Katie Jean Jordan specified

¹ Article 251B(1) of Chapter 9 of the Laws of Malta.

further that she had told him that Nina was not ready yet and that she was going to be ready by eleven o'clock when he was supposed to pick her up.

Katie said that he kept on filming and this was not okay. Eventually the accused picked up his daughter at eleven o'clock. Katie continued saying that she was not feeling safe because of her husband's behaviour.

The accused was requested by the Police to report at the Victoria Police Station in connection with this report. The accused informed the Police that he lives in Għargħur, Malta and consequently he was instructed to report to the Naxxar Police Station. After he was given all his legal rights including the right to consult with his lawyer, the accused told the Police that on the fourth (4th) of November 2023 he had taken the quarter to ten (09.45hrs) ferry from Cirkewwa and at half past ten (10:30hrs) he was in Xagħra, Gozo. He had to pick up his daughter at 11:00hrs. As he was parking his vehicle, the parte civile and her daughter arrived and since he saw that his daughter was already out, he got out of his vehicle, started recording the scene and requested that he take his daughter with him as his daughter seemed ready. Katie Jean Jordan asked him why he was recording. He replied that he was doing so as he was afraid that she would allege that he was being violent or aggressive and he wanted to have proof showing that this was not the case. Katie Jean Jordan proceeded to enter her residence with her daughter. She only handed the daughter to him later on at eleven o'clock (11:00hrs).

- **The Charge – Articles 251B(1) of Chapter 9 of the Laws of Malta**

Article 251B(1) provides that a person whose course of conduct causes another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters or any person mentioned in article 222(1) shall be

guilty of an offence if he knows or ought to know that **his course of conduct will cause the other so to fear on each of those occasions**. This is the charge which has been filed against the accused.

From a reading of the relative article of law, it is quite evident that the course of conduct element is fundamental for a finding of guilt: at least there must be two separate incidents so that one can possibly speak of a “*course of conduct*”. Archbold opines that: “*Two incidents can constitute a ‘course of conduct’ but the fewer the incidents and the greater their separation in time, the less likely it is that they should be described as ‘a course of conduct.’*”²

In the 2012 Edition of Blackstone’s Criminal Practice it was pointed out that: “*Establishing a course of conduct, rather than a series of unrelated acts, is crucial to the success of any prosecution for harassment, and it is the course of conduct which has to have the quality of amounting to harassment, rather than individual instances of conduct.*” In the 2008 edition of Blackstone’s Criminal Practice, it was also noted:

“How separate the two occasions must be, remains to be seen. The nature of stalking, the activity which primarily created the need for the new offences, might mean that the occasions are likely to be on separate days, although it may be possible to differentiate activities on one day where they can be viewed as not being continuous. The further apart the incidents, the less likely it is that they will be regarded as a course of conduct...It was recognised, however that circumstances can be conceived ‘where incidents, as far apart as a year, could constitute a course of

² (Lau v DPP (2000) 1 F.L.R. 799 DC)

conduct'. The type of incidents would be those intended to occur on an annual event such as a religious festival or a birthday..."

As regards this charge, the Court also refers to a judgement it delivered on the 4th June 2024 in the names **Il-Pulizija vs Raymond Buttigieg** wherein this Court referred to the Court of Criminal Appeal Judgement in the names **Il-Pulizija vs Raymond Parnis**³ and commented as follows:

"ir-ratio legis tar-reat ikkontemplat fl-artikolu 251B imur oltre semplicement theddida jew it-twettieq ta' fatt li jwassal lil xi ħadd biex iħossu mhedded. Il-Qorti għamlitha ċara li irid ikun hemm regolarita b'fatti diversi, fuq perijodu ta' żmien u r-reat mhux intiż għall-okkażżjoni waħda jew għal akkuża li tirisali għall-incident partikolari iżda għall-okkażżjonijiet li fihom iseħħ "course of conduct" li jwassal biex persuna tibza' kif imfisser fl-istess artikolu."

With reference to the specific case at hand, the Court notes that the charge is referring to a one-off incident. Indeed, all the evidence submitted related to this case, in particular the evidence contained in Document NCX 1, confirms that this was one single alleged incident which only spanned a couple of minutes. Hence both the evidence submitted as well as the charge as formulated is excluding the course of conduct element required for a finding of guilt.

Furthermore, after having seen the video file marked as Document NCX 1, the Court fails to note the aggressive behaviour which the parte civile referred to her testimony. The accused approached the parte civile

³ Decided on the 24th April 2009 per Mr Chief Justice Vincent De Gaetano (Appeal Number 337/2008).

simply because the parte civile and her daughter arrived at their residence at the point in time the accused was already waiting for his daughter. The conversation between the two was a normal one and on seeing that the parte civile did not hand over the girl to him as it was not yet eleven o'clock, the accused waited till eleven o'clock (11:00hrs). Besides if the behaviour of the accused was so aggressive, one questions why the parte civile decided to file this report more than forty-eight (48) hours after the alleged facts took place.

Hence the Court cannot find the accused guilty as charged both because the course of conduct element is missing and also because the accused did not do anything which could have led the parte civile to fear that violence was going to be used against her.

- **Decide**

Consequently, for the reasons outlined above the Court **is acquitting** the accused from the charge brought against him.

(sgd) Dr. Jean Paul Grech
Magistrate

(sgd) Joseph Grech
Deputy Registrar

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For The Original

