



COURT OF CRIMINAL APPEAL

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

Appeal Number 156/2016

The Police

vs.

Leighton Waine

Today 24th. of April 2025

The Court,

Having seen the charges brought against the appellant **Leighton Waine**, holder of Identity Card Number 114274(A), charged in front of the Court of Magistrates (Malta) as a Court of Criminal Judicature with having on the 27th. of November 2015 at about 03:15hrs, whilst in the residence “Cordoba”, Flat 6, Qawra Road, St. Paul’s Bay:

1. operated a loud speaker, gramophone, amplifier or similar instrument, made or caused or suffered to be made which

shall be so loud to have caused a nuisance to his neighbour John Abela;

2. on the date, time and place at night time disturbed the repose of the inhabitants namely John Abela by rowdiness or bawling or in any other manner;
3. on the same date, time, place and circumstances uttered insults and/or threats to PS 1157 B. Aquilina, WPC 333 A. Caruana, PC 374 J. Buttigieg and to PC 76 J. Cini all lawfully charged with a public duty while in the act of discharging such duty or because of both having discharged such duty.

Having seen the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 17th. of March 2016, wherein the Court, after having seen Articles 95 and 338 (m) of Chapter 9 of the Laws of Malta and Article 41(2)(b) of Chapter 10 of the Laws of Malta, found the accused guilty of all the charges brought against him and condemned him to the payment of a fine (*multa*) of eight hundred euro (€800).

Having seen the appeal filed by the appellant on the 30th. of March 2016 by which he requested this Court: *“to revoke the appealed judgement dated 17th. March 2016, in the above-mentioned names, delivered by the Honourable Court of Magistrates (Malta) as Court of Criminal Judicature, in so far as it found the applicant guilty of all the charges laid against him, and consequently acquits him from all guilt and revoke any consequent punishment inflicted.”*

Having seen all the acts and documents.

Having seen that this appeal had been assigned to this Court as currently presided by the Hon. Chief Justice Mark Chetcuti on the 9th. of January 2023.

Having seen that this Court as diversely presided adjourned the appeal *sine die* on the 3rd. of December 2018 (*a fol. 43*) and after it was re-appointed by the same Court as diversely presided, this

Court as currently presided adjourned the appeal *sine die* once again on the 9th. of March 2023 (*a fol.* 50) and it was re-appointed for the sitting of the 8th. of April 2025.

Having seen the Reply filed by the appellate Attorney General on the 7th. of April 2025, 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.

Having seen that during the sitting of the 8th. of April 2025 the appeal was adjourned for judgment.

Considers

That this is a judgment regarding an appeal filed by the accused Leighton Waine.

That the facts of the case are relatively simple in that on the 27th. of November 2015 the Police received a report that at Flat 6 in the block named "Cordoba", Qawra Road, St. Paul's Bay there was a lot of noise. When the Police went onsite, they spoke to the person who made the report who indicated that the noise had by then abated but he still wished that the Police to speak to the person who made the noise. When the Police went in the flat, they spoke to a third party who informed them that he was watching a film with his friend. At that moment the appellant appeared. The appellant allegedly started threatening the Police officers and refused to give his identification but after being informed that it was illegal, he collaborated.

That before delving into the merits of this case, this Court reminds that it is a Court of revision and it does not replace the discretion of the First Court where it transpires that from the evidence presented the First Court could reach the conclusion it reached. In this respect, reference is made to the judgment delivered on the 2nd. of March 2021 in the names **The Police vs. Ahmed Ahmar**

Mohammed (Number 283/2020), where the Court of Criminal Appeal stated that:

“Even if this court carries out an examination of what was said by each witness before the Courts of Magistrates the role of this court remains that of revision. In its ordinary function this court does not become one of retrial and thus does not hear the evidence brought forward again and decides the case afresh. The decision as to the guilt of the accused is taken by the Courts of Magistrates (Malta) as a Court of Criminal Judicature which is duty bound to analyse all the evidence and legal arguments brought forward so that it may reach its own conclusion.

This court, thus revises the judgment of the Courts of Magistrates by seeing if according to the evidence brought forward by the parties and the legal arguments debated before the first court are enough for the court to establish guilt as pronounced in its judgment. In order for this court to be able to carry out this exercise of revision this court has to examine thoroughly the evidence brought forward and analyse all the legal arguments brought forward and then move on to see as to whether on the basis of the evidence provided the first court could reach the conclusion it did in the given judgment and ascertain that it is according to law.”

That having established the above, this Court will proceed to examine the three grievances raised by the appellant. The Court notes that the first two grievances will be dealt with together since they are somehow related to each other.

Considers

That the first grievance of the appellant regards the first (1st.) and the second (2nd.) charges brought against him. He argues that from the evidence produced it results that at 3.15hrs he was not

operating a loud speaker, gramophone, amplifier or similar equipment so loud as to have caused a nuisance to his neighbour. He claims that from the evidence produced in front of the First Court it results that he was asleep at that time.

That by means of his second grievance the appellant complains that not even the Police referred to any excessive sound coming out of the flat when they approached the site. He says that it was a person in the balcony that indicated the flat in question and the Police did not state that they were hearing any sound. He explains that this incident had happened repeatedly with the injured party and the Police repeatedly going to his flat and asking him to keep the volume low without ever suggesting that the sound was being heard from the outside of the flat in question. He states that apart from the injured party, no other complaints had ever been lodged by the other inhabitants of the same block where he resides.

That regarding the grievances under examination this Court starts by noting that from the Police report (*a fol. 11 et seq.*) it results that the injured party John Abela made the report at 3.15hrs. From the affidavits of PC 374 Joseph Buttigieg (*a fol. 2 et seq.*), PC 76 J. Cini (*a fol. 4*), PS 1157 Bertly Aquilina (*a fol. 5 et seq.*) and WPC 333 Alana Caruana (*a fol. 7 et seq.*) it does not result that there had been any noise when they went on-site. Apart from this, it ought to be noted that from the evidence brought forward by the Prosecution it results that when the Police went on-site and they spoke to a certain Lee Grant Walrond he told them that he was watching a movie with his friend. It was some moments later that the appellant walked out from another room and, according to the Police, started shouting and threatening them.

That considering what results from the acts of the proceedings and from what has been stated above, this Court notes that the first two charges brought against the appellant were not sufficiently proven due to lack of evidence and hence the two grievances under examination are being upheld. As a consequence, the

appellant will be acquitted from the first two charges brought against him.

Considers

That the third grievance of the appellant regards the third (3rd.) charge brought against him. He argues that at the time the Police entered the flat he was asleep and it was Lee Grant Walrond who opened the door. He states that the statement that he smelled of alcohol is irrelevant since he was in his home and as long as he was not causing any nuisance to others, he was at liberty to stay drunk. The appellant explains that his reaction was the result of the fact that he had been woken up whilst finding four police officers inside his private residence. He contends that the explanation given in front of the First Court should suffice and that his behaviour could never be considered as threatening or insulting to the four police officers. Furthermore, he indicates that when he realised what was being requested, he co-operated immediately.

That since the grievance under examination regards the third (3rd.) charge brought against the appellant which charge emanates from Article 95 of Chapter 9 of the Laws of Malta, this Court notes that reference ought to be made at this point to the judgment delivered on the 11th. of February 2013 in the names **Il-Pulizija vs. Mario Camilleri** (Number 107/2012) wherein this Court stated the following:

“L-artikolu 95 japplika f’każ li jkun hemm

- (i) ingurja; jew
- (ii) theddid jew
- (iii) offiża fuq il-persuna.

Dwar l-elementi tad-delitt ta’ oltraġġ ikkontemplat fl-Artikolu 95, din il-Qorti diversament preseduta qalet hekk:

“L-elementi tad-delitt ta’ oltraġġ ikkontemplat fl-Artikolu 95 tal-Kodiċi Kriminali huma s-segwenti:

- (i) li l-kliem allegatament ingurjuż ikun ingħad lil wiehed li għandu l-kwalifika ta’ uffiċjal pubbliku;
- (ii) li l-kliem allegatament ingurjuż ikun ingħad *officio durante nel contemplationer officii*;
- (iii) li l-kliem allegatament ingurjuż ikun ingħad fil-preżenza tal-uffiċjal in kwistjoni;
- (iv) li l-kliem allegatament ingurjuż fil-fatt fih innifsu jkun kliem ingurjuż;
- (v) li jkun hemm l-element intenzjonali li wiehed joffendi uffiċjal pubbliku.”¹

It-tifisira tat-termini ‘theddid’ u ‘offiża fuq il-persuna’ toħroġ mill-Kap. 9 innifsu.”

That in the appealed judgment, the First Court stated the following (*a fol. 16*):

“[...T]he offender, *ex admissis*, confirmed on the night in question he was at St. Julians drinking whereby he got drunk, returned home, fell over something and hurt his head. He confirmed on oath that it is true that he told the police officers that he is going to report them to the Minister, but according to him this was not a threat since they had no right to enter his property.”

That in his appeal application, the appellant says that whilst he was asleep, Lee Grant Walrond gave access to the Police to enter the apartment. He says (*a fol. 22*):

¹ “**Il-Pulizija versus Joseph Fenech** 25 ta’ Frar 1999. LXXXIII Vol.IV page 236.”

“It was the noise of the talking in the living room, that woke up the applicant, and since he had consumed alcohol before, privately at his home, he was taken by surprise finding four (4) police officers at his home, and his reaction was that of complaining with them, that they have entered the property without any reason or permission, and simply stated to them that he was going to lodge a complaint with the sergeant, whilst the sergeant (possibly being PS 1157 Aquilina), replied to him “I am the Sergeant”, to this the applicant stated that so he will be lodging a complaint to the Minister. When the Police asked the applicant to produce identification, the applicant refused because in his opinion he had not committed any crime, but as soon as the Police informed him that it is an offence to refuse to give any identification details to the Police, he immediately identified himself, by giving them his driving licence. Following that the Police simply asked him to keep the volume down, and that court action will be taken against the applicant, and they left. After the Police left, the applicant went straight to bed again.”

That it is amply clear from the above that the appellant was so surprised finding four (4) police officers at his home that he complained with them and that he threatened that he was going to file a complaint with the Minister. The appellant admits that at first he refused to produce identification but then he obeyed.

That it is also clear from the affidavits of all the Police that went onsite, namely PC 374 Joseph Buttigieg, PC 76 J. Cini, PS 1157 Bertly Aquilina and WPC 333 Alana Caruana that at first the appellant refused to give them his identification and it was only after the Police reminded him that such a conduct was illegal that he acceded to such a request. As regards the statement made by the appellant to the Police that he would be lodging a complaint to the Minister, this Court does not consider what the appellant said to the Police as being tantamount to a breach of Article 95 of Chapter 9 of the Laws of Malta. This Court reaches this

conclusion after considering what results in the acts of the proceedings of this case and what the Police said in their affidavits and keeping in mind what the above-quoted judgment stated. Hence the third grievance of the appellant will also be upheld and as a consequence he will also be acquitted from the third (3rd.) charge brought against him.

Decide

Consequently, for all the above-mentioned reasons, this Court accedes to the appeal filed by the appellant Leighton Waine, revokes the appealed judgment and instead declares the appellant not guilty of all the charges brought against him and hence acquits him from all the charges.

Dr. Neville Camilleri
Hon. Mr. Justice

Alexia Attard
Deputy Registrar