

Kopja Informali ta' Sentenza



**QORTI TAL-MAGISTRATI (MALTA)  
BHALA QORTI TA' GUDIKATURA KRIMINALI**

**MAGISTRAT  
DOREEN CLARKE**

Seduta tat-23 ta' Settembru, 2010

Numru. 769/2008

**The Police  
(Inspector Alexander Grech)**

**vs**

**Perry Ingomar Toornstra**

Case Number: 769/2008

The Court,

Having seen the charges brought against

Perry Ingormar Toornstra, 32 years of age, born in Tiel (Holland) on the 16<sup>th</sup> of January, 1976, son of Piet and Henni, and residing in Corradino Correctional Facility holder of Passport Number 20565224.

Charged with having on the 9<sup>th</sup> August 2008 between 08:00pm and 09:00pm whilst at Triq tal-Borg and at the Corradino Correctional Facility, Paola, assaulted or resisted by violence or active force CO57 Francis Debono, CO124 Francis Meli, CO178 Daniel Cuschieri and CO103 George Falzon, persons lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority, in breach of article 96 of Chapter 9 of Laws of Malta.

In the same date, time, place and circumstances, in any other case, reviled or threatened, or caused a bodily harm to CO57 Francis Debono, CO124 Francis Meli, CO178 Daniel Cuschieri and CO103 George Falzon, persons lawfully charged with a public duty, while in the act of discharging their duty or because of having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty, in breach of article 95 of Chapter 9 of the Laws of Malta.

On the same date, time, place and circumstances, caused injuries of slight nature on the persons of CO57 Francis Debono, CO124 Francis Meli, as certified by Dr. Maria Stella Caruana M.D (Reg 2069) from Paola Health Centre in breach of Article 214, 221 and 222 of Chapter 9 of the Laws of Malta.

On the same date, time, place and circumstances, whilst under sentence, escaped from the custody of the person or persons charged with his custody, in breach of article 151 of Chapter 9 of the Laws of Malta.

On the same date, time, place and circumstances wilfully disturbed the public good order or the public peace in breach of Section 338(dd) of Chapter 9 of the Laws of Malta;

On the same date, time, place and circumstances uttered insults or threats not otherwise provided in the Criminal Code in breach of Section 339 of Chapter 9 of the Laws of Malta;

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And also for being deemed to be a recidivist, after being sentenced by a judgement dated 12<sup>th</sup> June 2003 which has become absolute.

The Court was requested, in case of guilt, to apply the provisions of article 33A of Chapter 9 of the Laws of Malta.

Having seen sections 33A, 49, 50, 95, 96(a), 151, 221, 222(1)(c), 338(dd) and 339(1)(e) of the Laws of Malta.

Having seen the consent given by the Attorney General for the case to be tried summarily and that the defendant had no objection to the case being so tried.

Having heard the evidence.

Having heard the oral submissions made by the parties.

Having seen the acts of the proceedings.

Having considered

That the facts of this case are relatively simple and may be outlined as follows. Defendant is serving a fifteen year prison term in the Corradino Correctional Facility. On the 9<sup>th</sup> August 2008 he was granted leave to meet his parents, who were in Malta for a short visit, for a couple of hours at the hotel where they were staying; defendant went to meet his parents accompanied by two Correctional Officers. On the way back when the car, in which defendant was being escorted, stopped near the outside prison gate until the gate opened defendant escaped from the car and ran towards Paola square. The two correctional officers who had been escorting defendant gave chase on foot; two other officers followed, initially on foot. A fifth officer followed in the vehicle that had been escorting defendant; arriving near the (second) two officers who were on foot these two also went into the vehicle and the three proceeded to where they thought they might find their colleagues and defendant. In the meantime the first two officers caught up with defendant in

one of the side streets abutting in the square (in the said corner there is the Paola branch of the HSBC Bank) and had even handcuffed him. Defendant was taken back to the prison.

Defendant is not contesting the fact that he escaped from the persons charged with his custody; he has actually admitted this charge. He is however contesting the other charges; in fact the conflicts in the versions given by the correctional officers on the one hand and defendant on the other hand refer to what happened from the moment Correctional Officer (hereinafter referred to as "CO") 124 Francis Meli apprehended defendant and handcuffed him.

All the correctional officers claim that defendant was physically aggressive in their regard; that he refused to go into the car pushing with his legs against the car in order to stop the officers involved from putting him in the car; that he continued using force whilst finally in the car until he was taken back to the prison; and that he continued being aggressive even when back in prison. CO57 Francis Debono and CO124 Francis Meli are also claiming that they suffered slight injuries as a result of defendant's violent behaviour; the relative medical certificates were filed. From these certificates it appears that CO57 Francis Debono suffered a contusion of his small toe while CO124 Francis Meli suffered a contusion on the palm of one of his hands and on his back. It is to be noted that none of the correctional officers who gave evidence mention any threats or insults in their regard by defendant.

Defendant on his part claims that from the moment CO124 Meli caught up with, and apprehended him, he gave up and surrendered enabling Meli to handcuff him. Defendant claims that it was the officers who were aggressive, saying that they repeatedly beat him until he was returned to the prison precincts. On being examined by the Court appointed forensic doctor it was established that defendant had injuries on his forehead, on both sides of his face, on his neck, on his chest, his shoulder, back and armpit, and on both knees; these injuries were mainly

bruises and abrasions and included two boot marks. Defendant also suffered a fractured rib.

On weighing the testimonies given by the parties, especially in the light of the injuries sustained by the defendant and two of the correctional officers, the balance tips in favour of defendant. It is very hard to believe that the aggressive and violent behaviour of defendant as described by the correctional officers resulted only in the (abovementioned) injuries sustained by CO 57 and CO 124. The Court will not comment at length on the injuries suffered by defendant since these are the subject matter of a lawsuit pending against the correctional officers. The Court will however refer to the conclusions reached by Dr. Scerri (the Court appointed doctor) that the injuries suffered by defendant were not compatible with a resisted arrest and that the injuries show that defendant did not offer resistance when he was handcuffed.

In view of the foregoing and in view of all the evidence brought before it, the Court cannot give credibility to the versions given by the correctional officers in their testimony.

Having also considered the charges brought against defendant and the constituent elements of each of the relative offences, and bearing in mind that the only fact that has been shown beyond reasonable doubt, in this case, is that defendant escaped whilst in custody the Court consequently finds that the prosecution has only proved the fourth charge brought against defendant. The prosecution did also show that defendant had been sentenced to fifteen years imprisonment in the year 2003 and that the present offence took place while he was still serving that prison term consequently it has also been proven that defendant is to be considered recidivist in terms of sections 49 and 50 of the Criminal Code.

In so far as the penalty to be meted out the Court took into consideration that in terms of section 33A of the Criminal Code the penalty established in section 151 shall be increased by one or two degrees and that in terms of

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sections 49 and 50 the prescribed penalty may be increased by one degree. Consequently the penalty prescribed in section 151 must be increased by one degree and may be increased by a maximum of three degrees. In the circumstances of this case the Court feels that the penalty should be increased by one degree.

For these reasons the Court, whilst not finding defendant guilty of the first, second, third, fifth and sixth charges brought against him, after having seen sections 33A, 49, 50 and 151 of Chapter 9 of the Laws of Malta finds defendant guilty of the fourth and seventh charges brought against him and condemns him to nine months imprisonment.

**< Sentenza Finali >**

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