



MALTA

COURT OF MAGISTRATES
(GHAWDEX) AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR.
NEVILLE CAMILLERI

Sitting of the 30th September, 2014

Number. 59/2014

The Police
(Inspector Bernard Charles Spiteri)

vs.

Sabrina Albrecht

Number: 59/2014

Today 30th of September 2014

The Court,

Having seen the charge brought against **Sabrina Albrecht**, holder of German Identity Card Number 906009051, aged thirty (30) years, daughter of Renato Werner Albrecht and Silvia Trotz Geb neé Welzel, born in Gera, Germany, on the 28th. March 1984, and residing at Flat 6, 'Jofran', Triq is-Salini, Zebbug, Gozo charged with having on the 17th. June 2014 between 16.00hrs-18.00hrs, whilst she was in Marsalforn, limits of Zebbug, Gozo and in the vicinity:

1. abandoned or exposed her child Jeremias Leandro Uchenne Albrecht aged four (4) years and this in breach of Article 246 of Chapter 9.

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

Having seen the consent of the Attorney General of the 24th. June 2014 for this case to be dealt with summarily (Dok. "BCS 2" - a fol. 30).

Having seen that the accused did not object to her case being dealt with summarily (fol. 17).

Having heard all the witnesses brought forward by the Prosecution.

Having seen that the accused chose not to testify and having heard that she did not have any evidence to bring forward.

Having heard final submissions by the Prosecution and by the defence (*a fol. 118 et seq.*).

Considers

That, during the sitting of the 25th. of June 2014, **PS 342 Johan Said** gave his testimony (*a fol. 31 et seq.*) testifying that on the 17th. June 2014 at around 4.00pm he was instructed to go to Marsalforn because it was alleged that there was child crying in a field and calling his mother. He says that he proceeded on site and found the minor Jeremias coming out of a block of flats. He says that he proceeded upstairs in the block of flats where he met the accused and some other persons on the first floor. After talking to the accused for some minutes, he enquired where the child was and no one knew where he was. He exhibited ten photographs (marked as Doc. "JS 1" to "JS 10" (*a fol. 35 et seq.*)) and a police report (marked as Doc. "JS 11" (*a fol. 46 et seq.*)). He says that he went on site with PC 951, WPC 133, PC 584 and PC 781. He also testifies that when they arrived on site the child was proceeding down the stairs indicated in photograph marked as Doc. "JS 8" (*a fol. 43*). He says that there was no-one outside.

During cross-examination, PS 342 confirms that Triq is-Salini, where the child was found, is a dead-end but says that there is a main road just some meters away from the block of flats. He says that the child was found on the stairs on the outside of the flat. He says that the door of the flat on the first floor was completely open.

That, during the sitting of the 25th. of June 2014, **PC 951 David Xerri** also gave his testimony (*a fol. 51 et seq.*) testifying that he went on site with PS 342 and WPC 133 Sammut saying that on the pavement he saw a child, who he thinks was playing with some small stones. He says that PS 342 left the child in his presence and went upstairs. He says that when he eventually went upstairs himself, the accused acted like nothing happened and she did not even know where the child was, thinking that he was up on the roof.

During cross-examination he confirms that Triq is-Salini is a dead-end. He also confirms that one can access Triq is-Salini from Triq Santa Marija, which is a main road. He says that the entrance to Triq is-Salini, which abuts exactly on Triq Santa Marija, is about 150-200 metres away from the flat where the accused was living. He confirms that at the entrance to the flat where the accused was living there is a flight of steps, specifying that there are may be five or six steps and that the child was found on third or fourth step. He confirms that the child was not in the middle of the street but on the stairs, as indicated by himself on Doc. "JS 4" (*a fol. 39*).

That, during the sitting of the 25th. of June 2014, **Jutta Wiedekind** gave her testimony (*a fol. 54 et seq.*) testifying that there were about five children around the flat who were always in site of the parents who could watch the children from the balcony. She says that when the police arrived on site, she was in the balcony of the flat.

During cross-examination she confirms that she has a daughter who used to play with Jeremias, the accused's son, and that it was normal for the children to play inside and outside the flat,

precisely in the fields opposite the flat. She confirms that one of the balconies of the flat overlooks the field where the children normally play.

That, during the sitting of the 25th of June 2014, **Sonja Edith Bergfeld** gave her testimony (*a fol. 57 et seq.*) testifying that she used to live with the accused and her children and some other persons. She says that they were sitting on the balcony and that the children were playing outside in a field opposite the balcony. She says that when the police arrived, she was in the balcony with her husband and the Kelly family. She says that when the police arrived, Jeremias was inside the flat. Asked if she was sure about this, she says she does not know saying further that she was on the balcony and she saw the child on the pavement when the police arrived. She does not know with whom the boy was when he was playing in the field. She also says that the door of the flat is always open.

During cross-examination she says that it was normal for the children to play together and that they used to play inside and outside the flat and in the field opposite the entrance to the flat. She confirms that one of the balconies of the flat where they live overlooks the field where the children normally play. She also confirms that the street which is adjacent to the field where the children were playing is a dead-end.

That, during the sitting of the 25th of June 2014, **Margaret Patricia Kelly** gave her testimony (*a fol. 63 et seq.*) testifying that she became aware that Jeremias had gone outside on the field and that she was still watching out for him and that the accused did not know that he had gone outside. When the police went on site and asked the accused where Jeremias was, she says that

the accused's son was already inside upstairs with them. At first she says that she is not sure about this but then she says that she is sure.

During cross-examination she says that it was normal for Jeremias to play with her daughter and that they had only played once together in the field opposite the entrance to the flats. She says that the field where Jeremias was is very close to the place where they were playing and that the street is a dead-end.

That, during the sitting of the 25th of June 2014, **Markus Udo Bergfeld** gave his testimony (*a fol. 67 et seq.*) testifying that they were at the flat, the accused's son went out to play and at one time the accused asked where her son Jeremias was and she went down and she found her son playing in the field. He says that there were no cars driving. Asked where Jeremias was when the police went onsite, he says that the child was inside the flat. Asked if he is sure about this, he says that when the police arrived, he was on the roof and he was coming down and he saw the police.

During cross-examination he confirms that, apart from Jeremias, there were a number of children living in his flat and that it is normal for these children to play together. He also confirms that at times the children play in the field opposite the entrance of the block of flats. He says that one of the balconies of the flat is directly in sight of the field. Asked if there was someone in the balcony when Jeremias went outside, he replies in the affirmative. He confirms that the street where the flat is situated is a dead-end.

That, during the sitting of the 25th. of June 2014, **Isabelle Kelly** gave her testimony (*a fol. 72 et seq.*) testifying that she was inside the flat, other persons were on the balcony and the accused was in her room. She says that at one time the accused left the flat looking for her son since they did not know where he was and later the police arrived. She says that she cannot say who exactly found the accused's son. Asked where the accused was when the police arrived on site, she replies that, as far as she can remember, she was outside the flat, on the street.

During cross-examination she confirms that Jeremias and the other children used to play together. She says that at some point she realised that Jeremias was missing. Asked if there was someone in the balcony at that point in time, she replies in the affirmative, specifying that this balcony overlooks a number of fields and that the street where the flat is situated is a dead-end.

That, during the sitting of the 9th. of July 2014, **WPC 133 Althea Sammut** gave her testimony (*a fol. 91 et seq.*) testifying that she went on site in Triq is-Salini, Marsalforn and that on the outside of the flat there was a boy alone on the outside stairs of the block of flats, specifying that PS 342 instructed other police to stay out with the said boy and to proceed in the common area of the flat. She says that upon reaching the flat, they found the accused who was stating that her son was in the field and that now he was with her. She says that the accused seemed confused and she began searching for the boy and she went upstairs and then went down again.

During cross-examination she says that when they arrived on site they found the child outside the block of flats on the stairs. She confirms that the street is a dead-end. She says that the door of the flat was half open.

During re-examination she testifies that the accused could not see her child from where they were in the common area, but could only see him from the balcony. Asked if they were any people in the balcony at the time they arrived, she says that she does not know and then says: *“At that time we didn’t see any persons in the balcony”* (a fol. 96).

That, during the sitting of the 9th. of July 2014, the Prosecuting Officer **Inspector Bernard Charles Spiteri** also gave his testimony (a fol. 97 et seq.) regarding the investigations carried out by him following an anonymous report that a child was roaming alone in the fields. He says that the accused released a statement (Doc. “BS 1” - a fol. 6 et seq.). He also confirms Doc. “BS 2” (a fol. 8) which shows the age of the child.

During cross-examination he says that he never went on site himself. He recognised Triq is-Salini from the map exhibited by the defence, which map was marked as Doc. “JPG 1” (a fol. 102).

That, during the sitting of the 23rd. of July 2014, **Ilona Mercieca** (social worker at *Agenzija Appogg*) gave her testimony (a fol. 104 et seq.) regarding her involvement following a phone call from the CID section in Gozo. Asked whether she was present when the child was allegedly abandoned, she replies in the negative.

During cross-examination she confirms that the accused told her that the child was playing.

That, during the sitting of the 4th. September 2014, **Superintendent Antonello Grech** gave his testimony (*a fol. 115 et seq.*) testifying that on the 17th. June 2014 he received a phone call from a person who wanted to remain anonymous where he told him that in Marsalforn, in the fields behind Qolla s-Safra, there was a child who was running in the fields crying. He says that he contacted Victoria police station and ordered that they dispatch police to find this child saying further that afterwards he was informed that the child was found and that he turned out to be the accused's son.

During cross-examination he says that he did not go on site himself. He also says that the person who phoned him could not see the child because he was not there. It was his cleaner who phoned.

Considers

That in the statement (Doc. "BS 1" - *a fol. 6 et seq.*) released by the accused to the Prosecuting Officer, which statement was released after the accused was given the right to consult a lawyer, when the accused was asked whether she had left her child aged four playing alone in the fields and streets in the vicinity of her flat in Marsalforn, she replies in the affirmative. Asked why she had done so, she replies because the child had told her that he wanted to go out to play with other children.

Asked where was she at that time, she says that she was upstairs.

Considers

That the accused is being charged of having on the 17th. June 2014 abandoned or exposed her child Jeremias in breach of Article 246 of Chapter 9 of the Laws of Malta. Although the charge brought against the accused specifies that her son was aged four years, from document marked as Doc. "BS 2" (*a fol. 8*) it transpires that Jeremias was born on the 19th. June 2010, hence he was not yet four years old on the 17th. June 2014.

That Article 246 of Chapter 9 of the Laws of Malta states the following:

"Whosoever shall be guilty of abandoning or exposing any child under the age of seven years shall be liable to imprisonment for a term from seven months to one year".

That there is no doubt that Jeremias was under the age of seven years on the 17th. June 2014 and hence the Court will proceed with its considerations in this case.

That, according to the Prosecution, when the accused left her child playing alone in the street, which street is also surrounded by fields in a public street, the accused abandoned

or left her child exposed to danger. The defence, on its part, denies this.

That the Court will at this point make reference to the salient evidence which was brought forward:

- PS 342 Johan Said (*fol. 31 et seq.*) says that when he proceeded on site, he found the minor Jeremias coming out of a block of flats, precisely on the stairs indicated in photograph marked as Doc. "JS 8" (*a fol. 43*). According to him, when he proceeded upstairs in the block of flats and enquired where the child was, no one knew where he was. PC 951 (*a fol. 51 et seq.*) testified on the same lines. Even WPC 133 Althea Sammut (*fol. 91 et seq.*) was clear in her testimony, saying that when they arrived on site, they found the boy alone on the outside stairs of the block of flats.
- As regards the other witnesses brought forward by the Prosecution, the Court notes that some of these witnesses were not clear and some of them gave conflicting versions. Jutta Wiedekind (*a fol. 54 et seq.*) says that when the police arrived on site, she was in the balcony of the flat. On her part, Sonja Edith Bergfeld (*a fol. 57 et seq.*) says that they were sitting on the balcony and that the children were playing outside in a field opposite the balcony, specifying also that when the police arrived she was on the balcony and she saw the child on the pavement. Margaret Patricia Kelly (*fol. 63 et seq.*) says that when the police went on site, the accused's son was already inside the flat with them. Markus Udo Bergfeld (*fol. 67 et seq.*) says that when the police arrived on site, Jeremias was inside the flat. Isabelle Kelly (*a fol. 72 et seq.*) testifies says that she cannot say who exactly found the accused's son saying further that as far as she can remember when the police arrived on site, the accused was on the street.

- On her part, in the statement (Doc. “BS 1” – a fol. 6 et seq.) released by the accused to the Prosecuting Officer, the accused confirms that she had left her child playing alone in the fields and streets in the vicinity of her flat in Marsalforn, saying also that the child had told her that he wanted to go out to play with other children.

Considers

That, in the judgment in the names **Il-Pulizija vs. Jonathan Micallef** delivered on the 2nd. February 2012, the Court of Criminal Appeal stated the following:

*“Huwa minnu illi jista’ jkollok sitwazzjoni fejn numru ta’ xhieda qeghdin jaghtu verzjoni differenti minn oħrajn illi xehdu qabel. B’daqsekk ma jfissirx illi ghax hemm xhieda differenti bil-fors hemm konflitt li ghandha twassal ghal liberatorja. Fil-kawza **Pulizija vs. Joseph Thorn** deciza mill-Qorti ta’ l-Appell Kriminali fid-9 ta’ Lulju 2003, il-Qorti qalet ‘... mhux kull konflitt fil-provi ghandu awtomatikament iwassal ghal liberazzjoni tal-persuna akkuzata. Imma l-Qorti f’kaz ta’ konflitt ta’ provi, trid tevalwa il-provi skond il-kriterji annuncjati fl-Artikolu 637 tal-Kap. 9 u tasal ghal konkluzzjoni dwar lil min trid temmen u f’hiex trid temmen jew ma temminx’ (ara wkoll **Repubblika ta’ Malta vs. Dennis Pandolfino** 19 t’Ottubru 2006).”*

(Vide also **Il-Pulizija vs. Patrick Mangion et** (decided on the 17th. September 2012), **Il-Pulizija vs. Michele sive Michael Fenech** (decided on the 17th. September 2012), **Il-Pulizija vs. Mohammed Mansur Ali** (decided on the 24th. January 2013), **Il-Pulizija vs.**

Mario Pace (decided on the 6th. February 2013) and **II-Pulizija vs. Hubert Gatt** (decided on the 11th. July 2013)).

That, considering what has been outlined above, it results that the versions given by the police officers, that is PS 342 Johan Said, PC 951 David Xerri and WPC 133 Althea Sammut are more clear and credible than the testimonies given by the other witnesses mentioned above. The Court has no doubt whatsoever to believe that when the police arrived on site, the child was not in the flat but he was alone on the stairs leading to the flat.

Hence, the Court has to analyse whether Article 246 of Chapter 9 of the Laws of Malta has been proven or not.

Considers

That the Court notes the following:

- Superintendent Antonello Grech (*a fol. 115 et seq.*) testifies that he received a phone call from a person who wanted to remain anonymous where he told him that in Marsalforn, in fields behind Qolla s-Safra, there was a child who was running in the fields crying. This person remained anonymous so much so that he was not called to testify in these proceedings. Apart from this, the mentioned witness says further: *"this person who phoned me couldn't see, wasn't there; his cleaner phoned"* (*a fol. 116*).

- It has been amply proven that the child was found on the stairs leading to the flats and that he was not found roaming around in the street.
- It has also been amply proven by the various witnesses brought forward that Triq is-Salini, where the child was found, is a dead-end street. PC 951 David Xerri confirms also that the entrance to Triq is-Salini, which abuts exactly on Triq Santa Marija, is about 150-200 metres away from the flat where the accused was living.
- One of the balconies of the flat overlooks the field where the children normally play, which field is adjacent to the street in question.
- PS 342 Johan Said testifies that the door of the flat on the first floor was completely open. On her part, WPC 133 Althea Sammut says that the door of the flat was half open.

That the Court, apart from noting what has already been noted above, also notes that this Court is not satisfied that the accused had any intentional element whatsoever to abandon her child or in any way expose him as required by Article 246 of Chapter 9 of the Laws of Malta. It results that when the police arrived on site, they found the child on the steps outside leading to the flats and that he was not roaming around in the streets. Apart from this, it has not been proven that the child in question was at some stage in some sort of danger. Hence, there is no doubt whatsoever that the charge brought against the accused has not been proven and, for the reasons mentioned above, the Court will be acquitting the accused from the charge brought against her.

Consequently, the Court, due to lack of sufficient evidence at law, does not find the accused Sabrina Albrecht guilty of the charge brought her and hence acquits her from the said charge.

< Final Judgement >

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