



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

MAGISTRATE DR. AUDREY DEMICOLI LL.D.

Today 30th of September, 2016

**Police
(Inspector Elton Taliana)**

vs

Matthew Stephen Douglas-Fryer

The Court;

Having seen the charges brought against Matthew Stephen Douglas-holder of Maltese identification card no. 67624(A) accused that on the 1st of January, 2015 at about 05:45hrs in St Julian's, or in the vicinities:-

1. Assaulted or resisted by violence or active force not amounting to public violence, any person lawfully charged with a public duty when in execution of the law or of a lawful order issued by a competent authority;
2. Reviled, or threatened, or caused a bodily harm to a person lawfully charged with a public duty, while in the act of discharging their duty or because of them having discharged such duty, or with the intent to intimidate or unduly influence them in the discharge of such duty.
3. Disobeyed the lawful orders of any authority or of any person entrusted with a public service, or hinders or obstructs such person in the exercise of his duties, or otherwise unduly interferes with the exercise of such duties.
4. In any matter willfully disturbed the public good order or the public peace.
5. In any public place or place open to the public, was found drunk and incapable or taking care of himself.

Having seen all the acts of the proceedings, including the Attorney General's Note dated 2nd of January, 2015 (exhibited at folio 15) whereby he gave his consent for this case to be treated summarily.

Having seen the note of final submissions made by the Prosecution and the Defence Counsel.

Having considered that:

The facts of this case relate to an incident which took place in the early hours of the 1st January, 2015 at the St Julian's Police Station between the accused and PS 848, PC 875, PC 1111 and PC 901 whereby PS 848, PC 875 and the accused all incurred injuries which were certified as being of a slight nature¹. It transpires that on the said date the accused was celebrating New Year's Eve at Cork's Pub in Paceville accompanied by his girlfriend Giulia Manduca and his sixteen year old brother William Fryer. The three of them left the party in the early hours of the morning in Ms Manduca's car where she was driving and the accused was in the front seat. Whilst they were heading home but still in St Julian's three men crossed on front of the vehicle and proceeded to encircle it and one of them slammed the car top and smashed the front passenger window with a bottle and Julia Manduca raised her hand instinctively and was hit in the arm. The accused got out of the car and sought the intervention and assistance of several police officers who were in the area and was punched in the face by the one of the three men in front of the Police Officers. After the latter had calmed down the situation they instructed Ms Manduca and the accused to proceed to the St Julian's Police Station to file a report regarding the damages sustained in Ms Manduca's vehicle.

¹ Vide Certificates at fol 29 and 35 and medical expert's report at folio 93

When the accused and his girlfriend entered the Police Station and explained briefly what had just happened to them to the officer at the front desk and stated that they wanted to file a report the accused was asked to wait outside because the station was very busy. The accused insisted that he wanted to remain with his girlfriend while she filed the report because she was very distressed and when he was again told to leave and he re-iterated that he wished to remain with her because she was so upset the Sergeant proceeded to push the accused out and slammed the door and crushed the accused's finger in the process. The accused re-entered the station and then an incident ensued between him and three police officers whereby the latter are saying that he attacked them whilst the accused is saying that the three Police Officers leapt on him and he was forcibly dragged to the area at the bottom of the stairs near the lockers where he was grabbed at the throat and punched three times by one of the Police Officers. The accused was then handcuffed and arrested.

The Police Officers involved when they gave evidence in these proceedings (vide fol 25 to 28 PS 848 Lawrence Gabriel, Fol 32 to 34 PC 874 Wayne Briffa, fol 36 to 39 PC 1111 Braydon Borg and fol 42 to 47 PC 901 Christopher Attard) said that the accused was impatient and agitated when he went into the Police Station to make the report and that he did not want to wait. They also maintained that he threatened them that he was going to hit them with a bottle and insulted them and later on said that he was going to kill them and he was thus arrested.

They also said that the accused tried to resist the arrest by becoming very violent whereby he started banging his head on the wall and on an iron bench beneath the stairs. The Police Officers also maintain that the injuries which the accused had on his lip and finger were sustained in the argument which he had just had with third parties.

The accused stated (at folio 64) that when he was asked to leave the Police Station and refused the Police Officer came within one inch away from his face and shouted "*I make the f_ _ _ _ ng rules*" *spitting in his face while talking and pushing him out and the accused states further that he replied "Sir if this was your wife who had been attacked with a bottle, wouldn't you want to stay with her to make a report"*. Always according to the accused the Police Officer then proceeded to shout that the said accused was threatening him and to tell him that he would break him and then pushed him out and slammed the door crushing the accused's finger in the process.

The accused's version of events, which remained consistent both when he released the statement² and when he gave evidence during a sitting held on the 2nd October 2015, was corroborated by both Julia Manduca and William Fryer when they gave evidence on the 29th January, 2016 and the 11th March, 2016.

² Inserted at folio 11 et seq of the acts of the proceedings

Before proceeding to analyse the charges brought against the accused this Court would like to point out that after having heard the evidence of all the parties concerned and after having read all the acts of these proceedings it deems that there is no reason not to believe the accused's version of the events as corroborated by Julia Manduca and William Fryer. The Court is of the opinion that the whole incident escalated and was mishandled by the police officers involved because of an improper or perhaps lack of profound knowledge of the English language. Thus when the accused insisted that he wanted to remain with his girlfriend in the Police Station while she filed her report and asked the Police Officer ordering him to go out whether he would not have wanted to remain with his wife had she just been hit with a bottle, the Police Officer in question misunderstood and interpreted this question as being a threat and proceeded to push the accused out of the Police Station and whilst slamming the door crushing the accused's finger in the process. This Court could not fail to note the evident difficulty encountered by the Police Officer in question when giving evidence in the English Language during these proceedings which are being held in the English language and it is therefore very plausible to conclude that the said Police Officer misunderstood or misinterpreted the question put forward by the accused, who was probably agitated because of what and just happened to him and his girlfriend in the incident with third parties. This Court could not fail to note that the medical expert's report further corroborated the accused's version of events where it is certified that the accused sustained injuries in his left small finger which injuries were caused by a crush injury. This particular injury could not have been sustained during the incident with third parties because in this case the accused said that he was punched in the face by one of the men who caused damage to his girlfriend's car.

There is also a great inconsistency between the statements that were made by PS 848 and PC 874 who testified during the sitting held on the 6th February, 2015. PC 874 stated that PC 901 was trying to calm down the accused while his girlfriend was making the report. PC 874 then said that Mr. Douglas was gently told to leave the station and that the Sergeant followed him outside to calm him down following which he says that he saw them both on the floor.

PC 874 continued by stating that the accused tried to hit his head the wall and that they handcuffed him once they were inside. Following this he allegedly started hitting his head against the bench. *“But before he tried to kick the bench. I managed to put my hand between his leg and the bench and I hurt my finger. But nothing serious”.*

The First Charge

The first charge brought against the accused is that he assaulted or resisted by violence or active force not amounting to public violence, any person lawfully charged with a public duty when in execution of the law or of a lawful order issued by a competent authority. This charge refers to Article 96 of the Criminal Code.

For this crime to subsist the act of resistance must necessarily be accompanied by violence and not mere inaction.

With reference to this offence, Prof Mamo in his Notes on Criminal Law, in citing Cheveau et Helie states as follows:

“It is only when the insubordination or defiance goes so far as to obstruct the execution of the law or of lawful orders of the competent authority that the crime of attack or resistance can arise. The purpose of the agent in this crime, therefore, must be precisely that of obstructing or frustrating the execution of the law or of the lawful orders of the competent authority, by opposing the action of those charged therewith”.

As was stated by the Court of Appeal in the case Pulizija vs Carmel Abela, decided on the 14th November, 1949:

... Meta l-imputat irrifjuta persistenetment li imur l-Ghassa, beda jezercita grad mhux riprovevoli ta' koazzjoni fizika, allura l-imputat, partikolarment, barra li jinthabat, beda jaghti lill-kuntistabbli b'minkbu fuq sidru ghamel rezistenza skond il-ligi, li hija kristalizzata fil-massima antika imsemmija mill-Carmigniani fl-“Elementi”, pag.865 “resistere est cum lictoribus pugnare” u “pugnare” ghandha tigi interpretata precizament fis-sens li ghall-forza fizika ta' l-awtorita pubblika l-privat jikkontraponi forza fizika kuntrarja.

According to Judge William Harding presiding over the Criminal Court in the case *Il-Pulizija vs John Mallia* decided on the 21st May 1960:

“Jekk wiehed jindahal fid-doveri tal-pulizija u juza mhux biss “vie di fatto”, imma vjolenza effettiva allura hu jkun hati ta’ attakk u rezistenza lill-Pulizija a differenza tal-kaz, fejn ikun hemm semplici kliem oltragguz jew semplici minacci jew “mera inazione”. Fil-kaz tal-persuna li tkun f’ idejn il-Pulizija jista’ talvolta jkun hemm certa tolleranza, billi dik il-persuna tkun qeghda tirrezisti lill-Pulizija ghax tkun spinta mix-xewqa naturali tal-liberta’ propja: imma din it-tolleranza tispicca malli dik il-persuna tispingi jdejha fuq il-membri tal-Pulizija li jkunu qeghdin izommuha biex toffendihom fil-persuna taghom u tmur oltre s-semplici sforz biex tevadi l-arrest”.

The Court also refers to a judgement of the Court of Criminal Appeal in the case *Il-Pulizija vs Lawrence Attard* decided on the 12th September 1996 whereby it was held as follows:

“biex jissussisti – reat ikkontemplat fl-artikolu 96 tal-Kodici Kriminali (re: attakk jew rezistenza kontra ufficjal pubbliku) irid ikun hemm mhux biss attakk jew oppozizzjoni ossia rezistenza kontra persuna inkarigata skond il-ligi minn servizz pubbliku, izda ukoll li dana l-attakk jew rezistenza isir bi vjolenza jew b’ hekk u jsir waqt li dik il-persuna tkun tagixxi ghall-ezekuzzjoni tal-ligi jew ta’ ordni moghti skond il-ligi mill-awtorita’ kompetenti. Meta ufficjal tal-pulizija jintima li jkun ser jarresta lil xi hadd, jew ikun effettivament qed jipprocedi biex jarresta lil xi hadd, jew ikun

effettivamente qed jipprocedi biex jarresta lil xi hadd, jew ikun ga' arresta u qed izomm lil xi hadd arrestat, huwa jkun certament qieghed jezegwixxi l-ligi. Izda meta ufficjal tal-pulizija jkun qieghed jipprova jipperswadi lil xi hadd bil-kelma t-tajba sabiex iwarrab minn fuq il-post u ghalhekk minghajr ma dak il-pulizija jezercita s-setgha tieghu li jarresta, ma jistax jinghad li dak il-pulizija jkun qed jagixxi "ghall-ezekuzzjoni tal-ligi" fis-sens ta' l-artikolu 96, ghalkemm huwa jkun qieghed jaghmel is-servizz pubbliku tieghu fis-sens ta' l-artikolu 95.

The Court also refers to a judgement of the Court of Criminal Appeal in the case Pulizija vs Joseph Zahra, decided on the 9th September, 2012 whereby it was stated as follows:

"Dana l-artikolu (referring to Article 96) jirrikjedi mhux biss li l-vittma tkun persuna inkarigata skond il-ligi minn servizz pubbliku (the same as Article 95(1)), izda wkoll li r-reat ikun sar filwaqt li dik il-persuna hekk inkarigata minn dak is-servizz pubbliku "tkun qed tagixxi ghall-ezekuzzjoni tal-ligi jew ta' xi ordni moghti skond il-ligi minn xi awtorita' kompetenti". Din l-espressjoni hi differenti minn dik uzata fl-Artikolu 95(1) – "waqt illi jkun jaghmel jew minhabba li jkun ghamel dan is-servizz, jew bil-hsieb li jbezzghu jew li jinfluwixxi fuqu kontra l-ligi fl-ezekuzzjoni ta' dan is-servizz".

Reference is made to a recent judgement delivered by the Court of Criminal Appeal (Inferior Jurisdiction) in the names Il-Pulizija vs Sean Sinclair Pace (26th May 2016):

“L-artikolu 96, imbaghad ghalkemm ukoll ghandu bhala vittma, l-ufficjal Pubbliku, jikkontempla tlett elementi essenzjali ghal kostituzzjoni ta’ dan ir-reat:

- 1. Fl-ewwel lok, irid ikun hemm l-attakk jew resistenza. Illimeta ikun hemm biss disubbidjenza tal-ligi jew ta’ ordni moghtija minn xi awtorita’, ma tistax tissussti r-reita’ taht din id-disposijoni tal-ligi. Il-Mamo ikompli jghid: “It is only when the insubordination or defiance goes so far as to obstruct the execution of the law or of lawful orders of the competent authority that the crime of attack or resistance can arise. The purpose of the agent in this crime, therefore, must be precisely that of obstructing or frustrating the execution of the law or the lawful orders of the competent authority, by opposing the action of those charged therewith.” Fin-nuqqas ta’ dana jista jissussiti biss ir-reat ikkontemplat fl-artikolu 95 biss. Inoltre l-attakk jew resistenza trid tkun necessarjament akkompjanta bl-uzu tal-forza, vjolenza jew bil-hebb.*
- 2. Fit-tieni lok ir-reat irid jigi kommess fil-konfront ta’ Ufficjal Pubbliku jew kif tghid testwalment il-ligi “persuna inkarigata skond il-ligi minn servizz Pubbliku”.*
- 3. Fl-ahharnett huwa necessarju illi l-attakk jew resistenza kontra l-ufficjal Pubbliku irid isir filwaqt illi huwa ikun qieghed jagixxi ghall-ezekuzzjoni tal-ligi jew ta’ ordni moghtija skond il-ligi minn awtorita’ kompetenti. Il-Mamo ikompli ighid: “Therefore, any violence committed after the law or the order had already been*

executed, even though it may be on account of such execution, would not give rise to this crime.”

Having considered:

This Court noted that although the Police Officers involved stated that they had been threatened by the accused none of them actually indicated that any physical force had been used against them, or explained how they had sustained the injuries of a slight nature. The Police Officers infact say that the accused tried to hurt himself by banging his head against the wall and other hard surfaces. Although PC 901 mentioned as an afterthought that the accused allegedly kicked and punched them, none of the other officers who testified mentioned this. Moreover PC 874 indicated that the minor injury sustained by him was caused when he put his hand between the accused's leg and the bench when the accused tried to hit his head against the wall.

As to the violence that was allegedly used against PC 848 one must point out that there is conflicting evidence as to the actual physical force that was used by the accused. This Court deems that the physical injuries sustained by the Police Officers allegedly during this altercation were not the result of an intentional or wilful violent act of the accused at the moment in time when he was being arrested. The level of force that was being used by the accused can also be deducted from the so called

injures that were allegedly sustained by the police officers. PS 848 testified to the effect that as a result of the incident he had a problem with my [left] ankle and had some bruises on my fingers and exhibited a medical certificate doc. LG1 at fol 29. Despite this the said report attests to some swelling on the left elbow with no obvious fracture and with the injuries specifically described as being not grievous/slight. Thus it is not at all clear how, if any violence was allegedly used by the accused, this affected PC 848.

As to the injuries sustained PC 1111 was also somewhat vague, whereas PC 848 didn't say anywhere in his statement that he got pushed by the accused, this was PC 1111's version of events. When asked about the question of the injuries at cross-examination stage the accused testified as follows:

“Court: Did you see the injuries?”

W: Ah no, did I, no absolutely not. I was too busy with my face squashed against the floor struggling to get people to get off me and stop hurting me”.

Having considered that:

From Dr Mario Scerri' s report it transpires that the accused suffered a number of injuries in his head, face, neck and the aforementioned crush

injury to his finger. Defence Counsel legitimately raised the question – Is it possible for the accused to have sustained those head and neck injuries from having tried to punch and kick the Police Officers as alleged by PC 901, or is it indeed far more likely that these injuries were the result of an actual unprovoked assault on the accused by the Police Officers?

Thus whilst it is apt to note that the Officers who testified were somewhat concordant in stating that they felt threatened within the police station by a man of little stature, who asked them a hypothetical question which they completely misunderstood, none of them testified to the effect that the accused was being violent. All the Police Officers who testified stated simply that the accused was struggling as he was arrested – but none of them stated that any force was at any point being used against them.

In addition to the absolute lack of any evidence showing the use of active force by the accused, it is also pertinent to highlight the fact that for the purposes of Article 96 it must result that the Officers have been assaulted whilst they were executing a law or a lawful order. None of the Officers who testified stated that the accused had used any force against them whilst they were executing a law, or a lawful order. There was clearly no arrest warrant issued against the accused at the time, which the officers were trying to execute. In view of this, this element of the offence has also not been adequately proven.

In view of the foregoing this Court deems that due to the lack of any evidence which shows that the accused used any active force in resisting the Officers lawfully charged with a public duty, and in view of the fact that as confirmed by PS 848 himself, the person against whom the assault or resistance was allegedly perpetrated he was not executing any law, or any lawful order, but had simply asked the accused to move out of the station, then the elements of this crime cannot be deemed to subsist.

The Second Charge

The second charge brought against the accused is that on the date of the incident he reviled, or threatened, or caused a bodily harm to a person lawfully charged with a public duty, while in the act of discharging their duty or because of them having discharged such duty, or with the intent to intimidate or unduly influence them in the discharge of such duty. This charge relates to the offence indicated in Article 95 of the Criminal Code.

The material element of this charge is the vilification or the threat. This can take a verbal, written, gesticular or visual form intended to disparage

the honour or the reputation of the person against whom these actions would have been directed.

The victim of this offence can only be a public officer and the insult or threat must happen either (i) whilst the said officer is in the act of discharging his duties; or (ii) as a result of the said officer having carried out his duty; or (iii) with intent to intimidate or unduly influence him in the discharge of his duty.

In relation to the alleged threats and vilifications made by the accused towards the Police Officers the Court noted various discrepancies in the testimonies of the said Police Officers. PC 848 testified to the effect that at one point *“Mr Douglas said that he will grab a Police Officer, he will destroy a glass bottle on his head to see what will be any reaction... While he was out he threatened us that he said I kill you and I fuck you all”*. With regards to the alleged threats, PC 874 only stated that I didn't hear him exactly but I only heard that he was going to hit someone. PC 901 testified during the sitting held on the 30th April, 2015 and stated the following: *“F' hin minnhom dan prova jtina daqqa ta' flixkun, at one moment he tried to hit us with a bottle”*. When questioned about this in cross examination PC 901 stated the following:

“Q: Ok. So Mr. Douglas was being questioned and the just started shouting?”

A: He threatened us with this bottle to see how we were going to react

Q: *So he just started threatening for no reason*

A: *To see how we were going to react with those threatens [sic]*

Q: *So he started threatening you for no reason. He started threatening you personally?*

A: *No not personally, all of us.*

Q: *Ok. How many police officers were there?*

X: *We were 4"*

The Court noted that despite what was alleged by the Police Officers the accused confirmed that at the time of the incident he wasn't carrying anything in his hands. Moreover it was also noted that whereas according to PC 848 the alleged life threats and verbal insults were being made when the accused was first told to gently leave the premises, somehow PC 1111, who was not even at the station at that point, heard him utter these threats.

As already indicated above this Court firmly believes that the whole incident arose because of a hypothetical question posed by the accused to the Police Officer who misunderstood the said question and perceived it as a threat or vilification. The Court agrees with Defence Counsel that by posing the said question the accused did not intend to vilify and threaten the Police Officer in question. Furthermore in view of the inconsistencies and discrepancies indicated above in the testimonies of the Police Officers in question, this Court deems that the Prosecution

cannot be said to have proven the second charge to the level of beyond reasonable doubt required by law. The accused therefore cannot be found guilty of the said charge.

The Third Charge

The third charge relates to the contravention stipulated in Section 338(ee) of the Criminal Code which entails disobeying the lawful orders of any authority or of any person entrusted with a public service. On the hindurance or obstruction of such person in the exercise of his or her duties, on the otherwise undue interference with the exercise of such duties.

The Court believes that the only time when the accused could have been deemed to have had the opportunity to disobey an order made by a person entrusted with a public service was when he was told to wait outside the police station whilst his girlfriend filed the report when he subsequently uttered the hypothetical question which was misconstrued as a threat whereby he was then forcibly pushed out of the station. This Court is of the opinion that once the accused was forcibly removed he cannot be deemed to have had time to actually disobey the order to go out and he therefore cannot be found guilty of this offence.

The Fourth and Fifth Charges

The fourth charge refers to the contravention contemplated in Section 338(dd) i.e. – the wilful disturbance of public good order and public peace whilst the fifth charge refers to the offence of being drunk and incapable of taking care of oneself in a public place (Section 338(ff) of the Criminal Code).

Regarding the fourth charge the Court agrees with the submissions made by the Defence that there is conflicting evidence in the acts of this case as to whether any such breach of public peace did in fact occur. Whereas PS 848 and PC 874 stated that the accused was being loud when Ms. Manduca was being told to wait outside, both the accused and Ms Manduca testified the contrary. Regardless of this, no evidence was produced by the Prosecution to the effect that the accused's behaviour could have caused a shred of worry in any third party within earshot that the accused was about to voluntarily cause any damage to any person or property. As to the fracas that ensued during the accused's arrest, any shouting or noise that was being made by the accused was hardly voluntary as this was the result of how he was being manhandled at the time.

The Court is also of the opinion that the fifth charge cannot be deemed to subsist since none of the Police Officers who testified in this case said

that the accused looked drunk or that they could smell alcohol on his breath or that he was incapable of taking care of himself. Moreover no breathalyzer test was carried out.

For the abovementioned reasons the Court declares the accused as not guilty of any of the charges brought against him and consequently acquits him from the said charges.

Magistrate