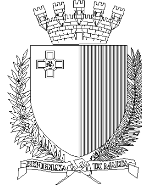

Court of Criminal Appeal

Hon. Mr. Justice Dr. Giovanni M. Grixti LL.M., LL.D.

Appeal Nr: 74/2017

The Police

vs

Travis Leigh Brannon

Sitting of the 26 of March, 2018.

The Court,

Having seen the charge brought against **Travis Leigh Brannon**, holder of Maltese identification card number 26679A, before the Court of Magistrates (Malta) as a Court of Criminal Judicature, with having on the 10/10/2016 at around 18:55hrs at Zebbug, refused to allow access to a child to Sylvana Brannon, as ordered by a Court or bound by contract, without just cause to give such access.

Having seen the judgment of the Court of Magistrates (Malta) as a Court of Criminal Judicature delivered on the 8th February, 2017,

whereby the Court found the said accused guilty and condemned him to a fine (ammenda) of €100;

Having seen the appeal application presented by appellant Travis Leigh Brannon in the registry of this Court on the 16th February, 2017 whereby this Court was requested to revoke the said judgement;

Having heard the witnesses under oath and having examined the documents exhibited by the parties;

Having seen the grounds of appeal as presented by the appellant;

Having seen the updated conduct sheet of the appellant, presented by the prosecution as requested by this Court;

Having seen the records of the case;

Considered:

1. That the Court notes that although the proceedings before the First Court were done in the English Language and the judgement was delivered in the same language, appellant submitted his appeal in the Maltese Language. This judgement, however, will be delivered in the English Language;

2. From a reading of the appeal application, this Court can conclude that appellant felt aggrieved by the judgement of the First Court on the ground of a wrong interpretation of the facts of the case and appellant puts forward none other than seven reasons in defence of this ground. A summary of the facts of the case are therefore warranted;

3. The injured party testified before this Court stating that on the day in question, she sent a text message to appellant at 16:11 informing him that she will be picking up her children at 17:30 and this in accordance with the stipulated time in her visitation rights.. Appellant

did not answer but that has become customary between the parties. At 17:36 she again messaged to say that she arrived and again at 17:42 and at 17:56. At 18:20, with a six year old, brother of the other children, in the car, she decided to leave and at 18:22 she received a reply but was driving and read it at 18:24 by which time she was in traffic between Zebbug and Fgura and it would have been pointless to turn around through all the traffic, collect the children and return them by 20:30.;

4. Complainant testified that this is the norm with regards to appellant in that he never answers the text messages and that he is always late in delivering the children. He has instructed her never to ring the door bell. Furthermore, she has not seen her daughter for more than ninety five days and she decided to put a stop to all this by lodging a formal complaint to the Police leading to the case at hand;

5. Appellant testified that on that day he was cleaning the house together with his children who informed him that complainant was abroad. He did not realise that complainant had sent her a text message and when he did notice he messaged her immediately. Appellant has no recollection of ever telling complainant not to ring the door bell;

6. The Court will now deal *seriatim* with the arguments brought forward by appellant who *in primis* states that he was under the impression that his wife was abroad. It is the opinion of this Court that if appellant was truly misinformed by the children then he should have verified this with complainant before the established time once he received no notification from complainant herself. Going abroad and forfeiting the right of visitation to appear again at will asking for the children is an uncertainity which no parent would want to go through especially when he needs to get the children ready to be picked up and logic would dictate that upon receiving that information from the children it would be duly verified;

7. Appellant then argues that he immediately proposed a solution by offering complainant to take the children at that point, that is at 18:22. Her reply that it was too late is perfectly understandable since she had left from Haz Zebbug on her way to Fgura and that returning would have left her with just a few moments with the children, apart form the fact that her six year old had been in the car all that time and crying;

8. The third argument brought forward by appellant is that complainant admitted that she did not even try to phone her husband or make a missed call or ring the door bell. In this regard, complainant explained that she was always told not to ring the door bell and appellant testified that he has no recollection of ever making such instruction. However, the text message sent by appellant for her to ring the door bell next time was answered with another by complainant stating that: "you specifically told me not to and I didn't want you making another scene in front of the kids". The subsequent message reads: "Not replying anymore by the way so don't bother. Don't need explanations". Appellant refrained from answering to this accusation and before this Court stated that he had no recollection of giving such instruction. The first Court was legally within its rights accepting one version from another and this Court has no reason to substitute the discretion bestowed up it;

9. Appellant also brought forward the argument that this was all due to an oversight as stated at the time to the Police Officer who called him at 18:55 on the same day to ask why he had refused to give her access to the children. The reasoning of the Court in paragraph 6 is also applicable in this regard and does not hesitate to state that it was the decision of appellant to leave his mobile phone either on low volume or none at all which conclusion is derived from the fact that he did not realise that he received a message;

10. It is also appellant's opinion that the failure on his part in this case does not amount to a refusal within the terms of article 338(ll) of the Criminal Code. With due respect, this reasoning is frivolous in that there need not be an outright and express refusal and a no show in such matters and that the actions of appellant can be interpreted as a refusal. This Court does not agree with the assertion that it was complainant who refused to take the children once offered by appellant;

11. The judgement of the First Court appears to be based on its acceptance of the version of events as given by complainant. Based on that decision and having examined in detail the version of both parties, this Court is of the opinion that there is reason for it to substitute this discretion and that such decision could have been reached both legally and reasonably;

12. For these reasons, the appeal is not being upheld.