



MALTA

**QORTI TAL-MAGISTRATI (MALTA)**  
**BHALA QORTI TA' GUDIKATURA KRIMINALI**  
**MAGISTRAT DR.**  
**EDWINA GRIMA**

Seduta tal-25 ta' Marzu, 2014

Numru. 824/2011

The **Police**

**(Inspector Kevin Farrugia)**

**Vs**

**Jean Guy Legendre, 69 years, son of Bertrand and Marguerite Marie nee' Bergeron, born Port Alfred, Canada on the 22<sup>nd</sup> May 1944, temporary residence number 74, Gorg Borg Olivier Street, St. Julians and permanent residence abroad number 2079 Rue des Roses, Gargnan, Quebec, Canada, of Canadian passport bearing number JQ898828.**

The Court,

Having seen the charges brought against accused, Jean Guy Legendre, charged for having on the 16<sup>th</sup> July 2011 at about 12:15 hours at Infetti Road, Mdina and in the Maltese Islands:

- a) As he was driving vehicle EBK 454 make Chevrolet through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of regulations caused the death of Renee Pelland.
- b) And also, as he was driving vehicle EBK 454 make Chevrolet through imprudence, carelessness, unskilfulness in his art or profession, or non observance of regulations, caused greivous injuries on the person of Shanaia Buhagiar of I.D. 32004(L) as certified by Dr. John Cutajar M.D. of Mater Dei Hospital.
- c) And also as he was driving vehicle EBK 454 make Chevrolet through imprudence, carelessness, unskilfulness in his art or profession, or non observance of regulations, caused greivous injuries on the person of Anthony Buhagiar of I.D.664550(M) as certified by Dr. Mark Rosso Reg.No. 2079 of Mater Dei Hospital.
- d) And also as he was driving vehicle EBK 454 make Chevrolet through imprudence, carelessness, unskilfulness in his art or profession, or non observance of regulations, caused slight injuries on the person of Pauline Buhagiar of I.D.90556(M) as certified by Dr. Mark Rosso M.D. Reg.No. 2079 of Mater Dei Hospital.
- e) And also for causing involuntary damages to vehicle make BMW with registration number UVE333 for the detriment of Clayton James Fenech of I.D.104185(M) and other third parties.

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- f) And also for causing involuntary damages to vehicle make Chevrolet with registration number EBK454 for the detriment of Simon Azzopardi of I.D. 272861(M) and other third parties.
  
- g) And also for causing involuntary damages to vehicle make Toyota with registration number GLN 219 for the detriment of Pauline Buhagiar of I.D. 90556(M) and other parties.
  
- h) And also for driving recklessly and in dangerous manner in breach of the Traffic Regulations *et sequitur*.

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

Having seen the note containing the Articles of Law sent by the Attorney General in terms of Article 370(3)(a) of Chapter 9 of the Laws of Malta dated 23<sup>rd</sup> October 2013.

Having heard the accused declare that he does not object to the case being tried summarily by this Court.

Having heard the evidence.

Having heard submissions by the parties.

Considers,

That from the note of the Attorney General of the 23<sup>rd</sup> October 2013 it results that the accused has been sent for trial by this Court accused of the crime of involuntary homicide of his wife Renee Pelland and involuntary damages to the

vehicles involved in the collision, and this through negligent and reckless driving.

It must be stated from the very outset that this case has presented itself with conflicting evidence as to the dynamics of this fatal car accident. Although there is no doubt that the primary cause of the collision was a head on impact between the vehicle being driven by accused and that driven by injured party, however there is no evidence in the acts whether through primary evidence as well as through circumstantial evidence which indicate the exact spot of impact. The police officer investigating this incident unfortunately did not prepare a sketch immediately on arriving upon the scene and did not order that the road be closed to all traffic pending preliminary investigations. As a consequence the evidence present at the scene of this accident was unfortunately heavily tampered with both by vehicles which drove past, or rather between the cars involved in the accident, as well as due to the sand thrown over by Civil Protection Personnel upon being called on site to do so by the police due to a huge amount of oil that had trickled out of the vehicles involved. Civil Protection Personnel also moved to the side all debris that was found in the road. An *in genere* inquiry was ordered only at a later stage when it resulted that Renne Pelland, being the wife of accused and passenger in the vehicle driven by her husband, was certified as being in danger of loss of life.

The dynamics of this car accident is straight forward and not contested. What is contested by the parties involved is the spot wherein the collision occurred, namely whether this happened on the carriageway leading downwards from Rabat towards Mosta or on the other side of the road. On the date of the accident accused, being a Canadian on holiday in Malta with his wife Renne Pelland, was driving a vehicle make Chevrolet Kalos bearing registration number EBK454, down Infetti Road beneath Mdina towards Mosta. Vehicle Toyota bearing registration number GLN219 being driven by Pauline Buhagiar was driving some distance behind it. On the opposite carriageway, therefore driving up from Mosta toward Rabat, was BMW Z3 being driven by Clayton Fenech bearing registration number UVE333. As the BMW approached the last

bend in this road before reaching the main road to Rabat a violent impact occurred with vehicle Chevrolet driven by accused. The impact between the two vehicles occurred on the driver side, being the front right side of both vehicles. Upon impact, the vehicle Chevrolet made a rebound due to the force thrust onto into by the BMW and was pushed backwards thus colliding with its left back side onto the frontal part of the Toyota being driven behind it. The car then spun round on itself and ended up facing upwards towards Rabat and smashed into the right hand side of the Toyota. As a result of this collision all three vehicles suffered considerable damage and although injured party and his passenger Mark Camilleri luckily escaped unhurt, however both accused and his wife suffered serious injuries with Renee Pelland losing her life around two months later. Pauline Buhagiar, her husband Anthony and their three grandchildren, who were seated at the back of the vehicle, suffered slight injuries.

Post impact accused, who was in a state of shock, initially stated to the police, without having been duly cautioned, and without being given the right to consult with a lawyer, that he was disorientated and that he was not sure whether he had been driving in his carriageway or on the opposite side of the road. Although the Court will discard such statement since the same is obviously an unsafe and unsatisfactory piece of evidence, accused having made such a declaration without having been given his rights at law, however it seems that on the basis of such a declaration and somewhat prematurely, accused was arraigned in court charged with being responsible for this collision.

In the course of the magisterial inquiry, legal procurator Mario Buttigieg was appointed as a traffic expert in order to establish the dynamics of this car accident and who was responsible for the same. The expert filed his report during the hearing of the 2<sup>nd</sup> August 2011 wherein he concludes that he does not find accused at fault and as the person being responsible for this accident. The Court will reproduce his conclusions in the Maltese language, since the

report was filed in Maltese although proceedings against accused were carried out in the English language:

***“Illi fl-opinjoni tal-esponent jirrizulta b’mod car li l-habta sehhet fuq in-naha tal-lemin tat-triq u cioe’ fejn kien ghaddej fil-karreggjata tieghu Jean Guy Legendre.***

***Illi jidher illi l-vettura ta’ Fenech kellha tant forza qawwija illi bid-daqqa li tat lill-vettura ta’ Legendre, ix-Chevrolet mxiet lura u konsegwentement daret, fejn giet milquta bil-vettura ta’ Pauline Buhagiar li kienet ghaddejja wara Legendre. Illi sabiex il-vettura waqfet l-istess vettura habtet go cint baxx. ...***

***Illi fl-opinjoni tal-esponent huwa car illi l-incident gara minhabba illi Clayton James Fenech ma baqax isuq fil-karreggjata tieghu. Illi jidher car minn kif spiccaw il-vetturi illi l-vettura Chevrolet qalet daqqa tant kbira illi daret u mxiet lura u dahhlet fil-vettura Toyota. Illi dan sar konsegwenza tal-velocita gholja tal-vettura BMW li biha habtet fil-vettura Chevrolet fil-mument tal-incident metaq qatghet il-liwja ghad-dritt. Il-velocita tal-BMW kienet qawwija bizzjed li bid-daqqa il-vettura Chevrolet mxiet lura waqt li l-momentum tal-BMW kien tant qawwi li l-vettura waqfet biss meta habtet f’cint baxx li hemm biswit it-triq.<sup>1</sup>”***

The expert therefore concludes that the impact occurred when the BMW invaded the carriageway where the Chevrolet was being driven and this at high speed. He states that the velocity of the BMW can be determined by the application of the principles of physics wherein the force was so great that it caused a backward thrust on the Chevrolet which then hit another car and spun round. The BMW had such a high momentum that it stopped only when it pivoted and collided with the low boundary wall at the side of the road.

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<sup>1</sup> Vide report at folios 131 and 132

The expert reaches these conclusions from evidence found on the scene being:

1. A skid mark left by the BMW veering from the carriageway of traffic leading downwards to Mosta onto the lane of traffic proceeding upwards towards Rabat<sup>2</sup>.
2. The force of the impact made by the BMW onto the Chevrolet thrust backwards onto the Toyota.
3. The damages sustained by the vehicle Toyota in the front middle part of the same as indicating that upon impact the Chevrolet was in front of the Toyota being driven in its proper carriageway and consequently hit it in the middle.
4. Consequently the Chevrolet suffered also substantial damage to its rear side.
5. The damage sustained by the BMW on its left rear mudguard and side indicate that the car impacted the boundary wall when it pivoted off the Chevrolet until it reached a halt against the said wall.

Upon filing his report, injured party contested immediately the validity of the said report alledging that the Court expert was in collusion with Gasan Mamo insurance which insured accused's vehicle. It is alledged by injured party that Mario Buttigieg had a conflict of interest since he worked for the said insurance company. Injured party also alledges that the expert had initially informed him and his defence counsel that Legendre was solely reponsible for this accident and could therefore not explain this change of heart made by the expert upon filing his report. When being questioned by the Court following this allegation, Court expert Mario Buttigieg categorically denies such collusion and although admitting rendering services to Gasan Mamo insurance and to

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<sup>2</sup> Expert indicats the said skid mark as appearing in photograph marked MB11 at folio 108

other local insurance companies, confirms on oath that he had no knowledge of the fact that the vehicle being driven by accused was insured by GasanMamo insurance. The Court after having examined the acts of the case in minute detail and compared the same with conclusions reached by Mr. Buttigieg finds nothing to censure in the conclusions reached by the said court expert as they are nothing but the application of common sense to the dynamics of this accident.

As already pointed out there is conflicting evidence in the acts by the eye witnesses to this accident. When being interrogated by the police after having been duly cautioned and after having consulted his lawyer, accused states:

**“I was going up the road towards Rabat then I stopped the car, in the crossing in order to turn on the road towards Mosta. As I turned I thought I was on the proper side of the road and suddenly the collision happened with the BMW. I think that the BMW was driving fast as I saw it suddenly. The BMW crashed in my car.”<sup>3</sup>**

Accused wife Renee Pelland, unfortunately was not in a position to give her version of events due to the grievous injuries suffered by her. Injured party Clayton Fenech testifies in these proceedings, however the Court cannot but discard his evidence due to the fact that he is charged in separate criminal proceedings as being responsible for this accident, which criminal proceedings are still pending. Mark Anthony Camilleri being a passenger in the car driven by accused affirms that accused was not driving at high speed and that at no point in time did he drive onto the opposite lane. He states that as they approached the bend in the road they found the vehicle of accused exactly opposite their vehicle and the collision occurred. He further states that Fenech tried to move to the side but he could not avoid the impact. Camilleri statements however are not compatible with the circumstantial evidence found on the scene. He states that accused's vehicle was right in front of them completely in their lane

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<sup>3</sup> Vide statement at folio 19



and that from the passenger side where he was seated, being therefore on the left hand side of the car close to the wall, he saw the car right in front of him. Had this occurred the vehicles would have suffered frontal damages and not damages to the front right hand side. In fact when confronted with these facts upon cross-examination he replies with a supposition and not a fact stating:

**“It may be the other driver was trying to avoid, maybe he realized<sup>4</sup>?”**

Eye witness to this accident also was Pauline Buhagiar, an independent third party who had no interest in supporting one party to the detriment of another. She recounts exactly what happened on the day of the accident, giving the same version of events recounted to court expert Mario Buttigieg. Pauline Buhagiar recalls seeing accused driving downwards towards Mosta right in front of her car at the same velocity she was driving her car since the same distance was maintained between the two vehicles all along the road. Consequently she affirms and re-affirms upon further questioning that accused was driving continuously on his lane and at no point in time did he drive his car onto the opposite carriageway. She recalls that at the bend she noticed the BMW appearing suddenly on their side of the road and colliding with the vehicle in front of her. Upon impact the vehicle was thrust backwards and at this point she screamed out to her husband that the car was going to hit their car. In fact she states that the Chevrolet hit her car right in the front as she tried to drive sideways to avoid the collision. The Chevrolet then spun round and ended up colliding with the right hand side of her vehicle facing upwards towards Rabat.

In his testimony Ian Buhagiar, her son who had driven down the same road ahead of her, states that prior to the accident he had observed a BMW being driven up Infetti Road at high speed and cutting straight round the bends in the same road. He instantly thought that the car would collide if it continued being driven in this manner and proceeded towards his garage in Naxxar. Upon reaching his garage in Naxxar he received a telephone call from his mother

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<sup>4</sup> Evidence of Camilleri at folio 212 of the court records

explaining to him that a collision had occurred and he immediately realized that it must have been the BMW he had seen earlier being driven at high speed. In fact he returns to the scene and immediately informs the Police what he had observed<sup>5</sup>.

This evidence however contrast with that given by Josephine Soler who affirms that prior to the accident she had been driving up the road towards Rabat behind the BMW of injured party. She affirms that at no point in time did she see injured party driving at high speed, however loses sight of the vehicle prior to the bend and therefore does not witness the collision. She arrives on the scene after impact and cannot consequently testify regarding the dynamics of the same. The Court observes that although Soler states that injured party was driving at normal speed, however in a short distance she managed to lose sight of the vehicle and was still proceeding uphill prior to the sharp bend in the road thus neither witnessing the accident nor hearing any sounds compatible with a car crash. This confirms that Soler was too far off from the incident and that although it is plausible that injured party had been driving ahead of her at the foot of the road, however in an instant she managed to lose sight of him and only caught up with it minutes later when this collision had already taken place<sup>6</sup>.

The other witnesses brought forward by the Prosecution shed no light on the dynamics of this accident.

Considers,

That the Court points out at the outset of its considerations that it was faced not only with conflicting evidence in this case but also the circumstantial evidence was so heavily contaminated that any relevant and valuable

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<sup>5</sup> Vide evidence of Ian Buhagiar at folio.253

<sup>6</sup> Vide evidence of Pauline Soler at folio 418

information which could have been derived from the scene was not preserved. This lack of evidence and conflicting proof cannot but benefit accused who cannot be found guilty of the charges brought against him if the slightest doubt exists with regard to his guilt. However the Court had at its disposal several photographs indicating the scene after impact and applying the basic principles of physics it could establish the dynamics of this accident being a typical inelastic collision between two bodies probably of the same mass. The factor which determines the force of the impact lies in the backward thrust of the car Chevrolet which necessarily indicates that the velocity of the BMW must have been greater than that of the Chevrolet. The Court therefore agrees fully with the conclusions reached by expert Mario Buttigieg that the BMW must have necessarily been driving at a high velocity pushing back the Chevrolet with great force upon impact. The momentum was so great that the BMW managed to reach a halt only upon impacting the boundary wall found at the side of the road by hitting the same initially with the left back mudguard and then resting finally against the said wall on its left side. This fact can therefore be easily established and this without any doubt. Not only, but it further corroborates what Ian Buhagiar witnessed when seeing the BMW driving at high velocity minutes before impact.

The natural consequence of driving at such a high velocity in a road characterized by various bends is that the driver cannot control fully his vehicle and necessarily drives at an angle rather than round the bend thus trespassing onto the lane of oncoming traffic. How can the spot of impact, however, be determined in this case which is presented with various difficulties and question marks? Tyre marks and roadway evidence are extremely important in determining how vehicles moved in to the impact point, and from impact to final resting locations. In collision investigation tyre marks are the equivalent of a fingerprint in a criminal investigation, and just as important. Both in the report exhibited by court appointed architect Richard Aquilina and in the photographs exhibited in the acts, there is a set of tyre marks on the right hand lane proceeding downwards in front of the BMW. One is slightly longer than the other and extends further down from the BMW's final resting point and

not as indicated in Architect Aquilina's report<sup>7</sup>. Mario Buttigieg, on the other hand, observes skid marks extending from the left hand lane onto the right hand lane ending up behind the BMW's resting point. The parties are contesting the relevance of these marks as evidence in this case, injured party contesting the skid marks behind his vehicle as having been left by other vehicles trampling onto the scene and accused contesting the brake marks in front of the BMW as being incompatible with the dynamics of this accident. Had the Court however to discard both sets of marks, from the various photographs presented in the acts it is possible to elicit important information as to the dynamics of this accident.

The Court deems that the position of the third car involved in this accident, the Toyota sheds a lot of light as to the position of the vehicles involved prior to impact. From an accurate study of photograph AA4 it is possible to establish the exact spot where the Toyota impacted with the Chevrolet. Right behind the Toyota there is a trickle of oil leading beneath the car. Next to it there are two skid marks also leading towards the Toyota. The Court necessarily concludes that this is where the Toyota and the Chevrolet collided when the Chevrolet was pushed backwards by the BMW. This necessarily implies that the Chevrolet must have been on that same carriageway then rotating leaving the other semicircular mark extending from the right hand lane onto the left hand lane.

Had the Chevrolet been on the lane where the BMW was being driven the impact between the Chevrolet and the Toyota would have been to the side and not completely frontal as happened in this accident. This circumstantial evidence is a corroboration of Pauline Buhagiar's testimony that accused was driving continuously at a moderate speed on his side of the road and that at no point in time did he step into the lane of oncoming traffic. Also the Court cannot agree with the theory put forward by injured party that the oil and debris is indicative of the spot of impact since this evidence resulted completely post impact. Even if the Court had to consider the allegation that

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<sup>7</sup> Vide photograph Dokument AA4

this could be indicative of a spot of impact, the resulting positions of the vehicles post impact would discredit this theory since the other two vehicles would have ended positioned further up the road and not exactly parallel to the BMW.

It is obvious that the Toyota did not make any backward movements after impact with the Chevrolet and consequently the spot of impact between the Chevrolet and the BMW must have necessarily occurred further down the road as indicated by court appointed expert Mario Buttigieg and not as indicated by injured party.

Therefore from all the evidence found in the acts, the Court cannot but accept the findings of court appointed expert as being safe and satisfactory. This cannot but mean that there is no evidence in the acts which suggests that accused Jean Guy Legendre was driving on the wrong side of the road, other than the evidence tendered by Mark Camilleri which in the opinion of the Court is a contradiction in terms, the witness stating that the collision occurred head on, right in front of him when the damages resulting in the vehicles indicate otherwise. Also although Josephine Soler states that injured party was driving at moderate speed in front of her vehicle, this does not reflect his velocity prior to impact since Soler had lost sight of the vehicle to the extent that she reached the scene of the collision after the collision had actually occurred without witnessing the same.

All this therefore leaves no doubt in the mind of the Court that accused was driving diligently, with moderate speed and on his side of the road and could never be held responsible for the collision between his car and that of injured party.

Consequently in view of the above-made considerations the Court cannot but acquit accused of all the charges brought against him.

**< Sentenza Finali >**

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