



MALTA

COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE
ANTONIO GIOVANNI VELLA

Sitting of the 3rd April, 2014

Number. 826/2013

The Court;

After seeing the charges brought against:

Henri Gerald Giovanni Pio Xmun Sant cassia 36 years, son of Louise Joseph and Antoinette nee` Ferro born in the United Kingdom on the 24th of February 1977, residing at 40 St Paul's Street, St Paul's Bay, holder of identity card with number 359905L.

Charged for:

Having on the 25th of August 2013 at about 07:00am and during the following hours, whilst being in St. Julian's;

- 1) Reviled, or threatened, or caused bodily harm to any 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 intent to intimidate or unduly influence them in the discharge of such duty.
- 2) Furthermore, with having on the same date, time, place and circumstances, assaulted or resisted by violence or active force not amounting to public violence, any person lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority.
- 3) Furthermore, with having on the same date, time, place and circumstances wilfully committed any spoil, damage or injury to or upon any movable or immovable property, which the amount of damage does not exceed one thousand one hundred sixty four Euros and sixty nine cents (€1,164.69) but exceeds one hundred sixteen Euros and sixty seven cents (€116.67) to the detriment of Ryan Grech.
- 4) Furthermore, with having on the same date, time, place and circumstances wilfully disturbs the public good order or the public peace.
- 5) Furthermore, with having on the same date, time, place and circumstances, disobeyed the lawful orders of any authority or of any person entrusted with a public service.
- 6) Furthermore, with having on the same date, time, place and circumstances was found drunk and incapable of taking care of himself.

After having heard the evidence and the documents exhibited;

After having examined all the acts of the proceedings;

Considers:

The facts of the case were as follows. The accused, together with his partner, was at Paceville in the early hours of the morning of the 25 August, 2013. At around 6.30am, they went to call a taxi from the cab stand in the vicinity. For some reason, an altercation between them and the taxi drivers ensued, and the police were summoned on site. The accused asked the Police for assistance, and ended up being arrested by the officers and taken to the St Julian's Police Station, where he was kept under arrest and interrogated. He was subsequently charged in court with violently resisting arrest, causing damages to a taxi, disobeying police orders, being drunk in public, and breaching the peace.

From the evidence submitted by the parties, there is a clear conflict in the two versions given. The Prosecution produced a number of police officers who had appeared on the scene. They all gave the same version of events. They testified that when they arrived at the scene of the incident, the accused and his partner were both very agitated. They said that the taxi drivers had claimed that the accused had damaged one of the taxis, and had had an argument with them. The officers tried to calm the accused and his partner, but could not

communicate with them. The accused kept on arguing with the police, at which point the officers therefore placed both the accused and his partner under arrest and took them to the nearest police station. The accused tried to resist being arrested, but was apprehended.

The accused, on the other hand, maintained that he was the victim in this whole incident. He testified that he was at a taxi stand in Paceville in the morning in question when, for no apparent reason, he was attacked by a number of men, presumably taxi drivers, and was beaten by them. He managed to get away from them and called a police car over for assistance. Instead of offering him any help, the police officers proceeded to arrest him and his partner without asking them any questions and took them both to the St Julian's Police Station, where he was kept under arrest for several hours until he was taken to hospital to have his injuries seen to, and subsequently charged in court under arrest the following day. He said that the police officers were very rude with him, and manhandled him and threatened him throughout the time he was under arrest in their custody.

These two versions are clearly in conflict with each other. The court may understand that in an incident such as this, there may be slight variations in the way an incident is perceived by the parties involved, especially when a person is attacked and suffers injuries. However, these two versions portray two scenarios diametrically opposite each other. The police describe how the accused was behaving during the incident, stating that he refused to give his particulars to them, threatened them, appeared visibly drunk, and resisted

being placed under arrest, whereas the accused stated that he was purposely treated very badly and unjustly by all the police officers involved, to the extent that they were in collusion with the taxi drivers who beat him up and that the police refused him medical treatment while he was under arrest.

The only two pieces of evidence that are, so to say, independent in this case, are the CCTV recording of the incident, and the medical report of the injuries sustained by the accused. Starting from the latter, it is obvious that the accused sustained a number of injuries in this incident. The medical report notes all the injuries down and classifies them as slight, also placing them as compatible with injuries sustained in a fight or scuffle. In this respect, the accused appears to be right in claiming that he had been beaten up by a number of men, who he claims were the same taxi drivers present at the taxi stand that morning. The other piece of evidence, on the other hand, shows the details of what ensued during the whole incident. It appears clear that the first police car to arrive on site was an RIU unit. This appears on the scene at approximately 6.43am. The second police car, a Police Station vehicle, appears at around 6.49pm, six minutes after the first car arrived. This corroborates the version given by the police officers, that the first vehicle was a mobile squad car on the scene, and that the officers requested an additional car to assist them. The accused is then arrested and taken to the second vehicle at around 6.52am, three minutes after the second vehicle arrives, and nine minutes after the first patrol car is on the scene.

In this time lapse, the Court did not see any of the behaviour as alleged by the accused on the part of the police officers. At no point is there any wrong or incorrect behaviour from the police officers present, which the Court finds quite hard to believe on the basis of the evidence submitted. This can only lead the Court to accept the version of facts as submitted by the Prosecution as being closer to the truth, than to accept the accused's version of facts.

With regard to the charges brought against the accused, there are a number of them which, according to the Court, were not sufficiently proven. There was, for example, no sufficient evidence that the accused actually caused any wilful damage on one of the taxis. Ryan Grech, the taxi driver who the accused claims to be the one who attacked him, chose not to give his evidence in this case, as he has been issued with criminal charges against him on this incident. The alleged damages to his taxi could not be proven without his testimony. The accused was also charged with wilful disturbance of the public peace, and with being drunk in public. There was no sufficient evidence brought on these two charges, and although the accused admits in his statement given to the police that he had around six or seven drinks, this alone is merely indicative that he may have been drunk at the time, but is not conclusive enough.

Now, therefore, for the above reasons, the Court;

Informal Copy of Judgement

After having seen Articles 95, 96, 325, 338(dd), 338(ee), 338(ff) of Chapter 9 of the Laws of Malta;

This Court finds the accused not guilty of the third (3), fourth (4) and sixth (6) charges, and consequently acquits him of these charges.

Finds the accused guilty of the first (1), second (2) and fifth (5) charges, and instead of punishment, discharges him from punishment unless he does not commit another offence within the period of one (1) year from today, under the Article 22 of Chapter 446 of the Laws of Malta.

The Court explained in clear words the terms of the judgement to the accused.

DR ANTHONY G VELLA BA. LL.D. M.A.

MAGISTRAT

< Final Judgement >

-----END-----