



MALTA

QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI
MAGISTRAT DR.
DOREEN CLARKE

Seduta ta' l-10 ta' Dicembru, 2014

Numru. 1097/2014

The Police
(Inspector Caroline Fabri)

VS

David Bertram Frame

Case Number: 1097/2014

Today, the 10th December 2014

The Court

Having seen the charges against David Bertram Frame, 21 years of age, son of an unknown father and Sharon Frame, born in Scotland on the 28th April 1993, residing at St. George's Park Hotel, Room No. 540, St. Julian's, holder of British passport number 801802619.

Charged with having on the 9th November, 2014 at about 21:25hrs at Wied Ghomor Street, St. Julians:

- 1) Wilfully committed any spoil, damage or injury to or upon any movable or immovable property belonging to Mrs Amanda Micallef Decesare, registration number BBI 851 make Fiat Punto, which amount of damage does not exceed two thousand and five hundred Ewro (€2,500) but exceeds two hundred and fifty Ewro (€250);
- 2) Accused further with having on the same date, time, place and circumstances been, in a public place or place open to the public, found drunk and incapable of take care of himself or being in any public place or place open to the public;
- 3) Accused further with having on the same date, time, place and circumstances at night time, disturbed the repose of the inhabitants by rowdiness or bawling, or in any other manner;
- 4) Accused further with having on the same date, time, place and circumstances uttered insults or threats not otherwise provided for in this Code, or being provoked, carried his insult beyond the limit warranted by the provocation;

5) Accused further with having on the same date, time, place and circumstances frightened or terrified any other person, in a manner that might cause harm to such person although it be done in jest.

The Court was requested to provide for the safety of Ms Amy Micallef Decesare according to article 383, Chapter 9 of the Criminal Law.

Having seen sections 325(1)(b), 338(i)(m)(ff) and 339(1)(e) of Chapter 9 of the Laws of Malta.

Having seen the consent of the Attorney General for this case to be tried summarily and that the defendant had no objection to the case being so tried.

Having heard the evidence and the submissions of the parties.

Having seen the acts of the proceedings.

Having considered

This case refers to an incident which took place on the 9th November 2014 in St Julian's when Amanda Micallef Decesare was driving her car¹ in Wied Ghomor Street; at the time (about 21.25hrs) there were cars parked on both sides of the road. As she was driving she noted the defendant and some other persons walking in the street, not on the pavement but on the road, alongside the parked cars; defendant was drunk at that time.

¹ The car was bought by, and is registered in her mother's name but is to all intents and purposes Amy's car.

As soon as Micallef Decesare drove past these persons the defendant kicked her car, she and her passengers got a fright but she continued on her way up Wied Ghomor Street which is a dead end. Defendant ran after the car and caught up with it as Micallef Decesare was trying to make a three point turn at the end of the street. There defendant was insisting that Micallef Decesare open the car windows, but she and her friends were scared and rather than open the windows she continued to manouver her car out of the road. She parked some distance away from that road and when she got out of her car she saw the damage caused and decided to report the matter to the police.

These facts are not being contested by the defendant.

In her testimony however Amy Micallef Decesare alleges that defendant kicked (or hit her car) in two instances, when she first drove past him and then when she was trying to effect the three point turn. Defendant on the other hand claims that he only hit the car as it was driving past him and that when he caught up it at the end of the road he was only asking Micallef Deceasre to open the window and that at that point in time he did not hit the car.

In reality defendant is not contesting the incident; he is not contesting that he was drunk, that he hit the car once as it drove past him, and that he ran after it and insisted that Micallef Decesare open the window. What he is contesting is Micallef Decesare's assertion that he repeatedly hit on the car, and the quantum of damages alledely caused.

It should be pointed out that from the testimony of all the other witnesses (the passengers in the car and the defendant's friend) what can be definitively ascertained is one kick: i.e. the kick defendant gave

when the car drove past him. It appears from the said testimonies that when defendant caught up with the car at the end of the road he was knocking on the drivers' window and not on any other part of the car.

It should be also pointed out that in the incident report drawn up by the police it is stated that when Micallef Decesare was giving her version of events to the police she said that when she was trying to to the three point turn defendant started hitting her window without causing any damage.

From the estimate exhibited in the acts it appears that Micallef Decesare is claiming €699.13 in damages; this estimate refers to the repairs required to fix two dents: one in the door and one in the wing. In this regard it is worth noting that the car being driven by Micallef Decesare (a FIAT Punto) had been on the road for fourteen years and in 2012 had a book value of €1,800. Furthermore the estimate refers to the outright replacement of the door with a second hand door and the outright replacement of the wing with a new wing; also included are costs for spray painting the new door and wing, as well as the cost of care hire for a few days.

Having considered

The Court has no doubt that defendant kicked the car as it was being driven past him (an action for which there was no justification), however it has not been shown, beyond reasonable doubt, that defendant caused any damage to the car in the second part of the incident. Neither is the Court convinced that defendant caused all the damages which the estimate refers to.

Having regard to the fact that it has been shown that defendant caused one dent and having regard to the contents of the estimate exhibited the Court is satisfied that the cost of the repairs for the damage caused by defendant will exceed €250 consequently the first charge brought against defendant is sufficiently proved².

As to the other charges brought against defendant there can be no doubt that defendant was drunk, that he disturbed the repose of the residents and that he frightened Micallef Decesare and her friends; however there is no evidence showing that at any point in the incident defendant threatened or insulted the Micallef Decesare or her friends. Consequently all the other charges brought against defendant except the fourth one have also been sufficiently proven.

With regards the penalty to be meted out the Court is taking into consideration the nature of the offences of which the defendant is being found guilty on the one hand, and on the other hand his cooperation with the police and his clean conviction sheet.

Wherefore the Court whilst finding defendant not guilty of the fourth charge brought against him and discharging him therefrom, after having seen sections 325(1)(b) and 338(i)(m)(ff) of Chapter 9 of the Laws of Malta, finds defendant guilty of all the other charges brought against him and by application of section 22 of Chapter 446 of the Laws of Malta is discharging him on condition that he does not commit an other offence in the period of one year. Furthermore and by application of section 24 of the said Chapter 446 the Court is ordering defendant to pay the injured party the sum of €250; payment is to be effected within a week.

² The Court is not convinced however that the damages caused by defendant can be quantified at €699.13.

The Court explained to the defendant in ordinary language the significance of this judgement and of the consequences should he commit an other offence in the period of one year.

< Sentenza Finali >

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