



MALTA

COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR.
AUDREY DEMICOLI

Sitting of the 30th April, 2015

Number 430/2014

Police
(Inspector Trevor Micallef)

VS

Susan Jenifer Firth-Bernard

The Court;

Having seen the charges brought against Susan Jenifer Firth-Bernard, daughter of John Firth-Bernard and Jennifer nee` Aitkem, born on the 03rd December 1968 in England, residing at 47, Neptune Crt., Fl 10, Main Street, St. Julian's and holder of identity card no.2013161(P)

And charge her with having in these islands on the 26th April 2014 at about three in the morning (03:00a.m) in St. Augustine Street, St. Julian's or in the vicinity:-

1. Assaulted or resisted by violence or active force not amounting to public violence PS 1543 Oliver Cassar, lawfully charged with a public duty when in the execution of the law or of a lawfully order issued by a competent authority.
2. Further accused with having on the same date, time, place and circumstances reviled, threatened or caused bodily harm on PS 1543 Oliver Cassar, person lawfully charged with a public duty, while in the act of discharging his duty or because of having discharged such duty, or with intent to intimidate or unduly influence him in the discharge of such duty.
3. Further accused with having on the same date, time, place and circumstances with the intent to commit a crime hence to commit wilful grievous bodily harm on the person of PS 1543 Oliver Cassar manifested such intent by overt acts which was followed by a commencement of the crime, which crime was not completed in consequence of some accidental cause independent of the will of the accused.

4. Further accused with having on the same date, time, place and circumstances committed slight bodily harm on the person of PS 1543 Oliver Cassar.

5. Further accused with having on the same date, time, place and circumstances drove, or attempted to drive, or was in charge of a motor vehicle bearing registration number LCB 396 make Fiat whilst she was unfit to drive through drink or drugs.

6. Further accused with having on the same date, time, place and circumstances drove vehicle registration number LCB 396 make Fiat:
 - a) recklessly (b) dangerous (c) negligent

7. Further accused with having on the same date, time, place and circumstances disobeyed the lawful orders of the police, persons entrusted with a public service, hindered or obstructed such persons in the exercise of his duties, or unduly interfered with the exercise of such duties, either by preventing such persons from doing what they lawfully enjoined or allowed to do, or frustrated or undid what has been lawfully done by other persons, or in any other manner whatsoever.

8. Further accused with having on the same date, time, place and circumstances drove vehicle registration number LCB 396 make Fiat in an excessive manner.

9. In a public place or place open to the public, was found drunk and incapable of taking care of herself.

The Prosecution requested that said person be disqualified from holding or obtaining a driving licence for a period that the Court deems appropriate.

Having seen all the acts of the proceedings, including the Attorney General's Note dated 27th April 2014 (exhibited at. folio 23) whereby he gave his consent for this case to be treated summarily.

Having seen the Note of Final Submissions filed by the Prosecution.

Having heard the final submissions made by the Defence Counsel.

Having considered:

That the facts of this case are briefly as follows. On the 26th April 2014 at around 3.00am Police intervention was requested the Eden Car Park in St. Julian's because of an argument between the car park attendant and a client of the said car park. The client in question had mislaid her parking ticket and was refusing to pay the relative parking fee and administrative charge. When PS 1543 Oliver Cassar and PC 1264 Sean Cumbo arrived at the Eden Car Park they managed to settle the issue in a matter of minutes whereby the person refusing to pay the administrative charge, who turned out to be the accused Susan Jennifer

Firth Bernard, accepted to pay and hence the Police officers left the car park and proceeded with their duties elsewhere. A few minutes later while the same Police Officers were issuing traffic tickets in St. Augustine Street, St. Julian's they noticed a vehicle bearing registration number LCB 396 being driven towards Swieqi in a dangerous manner and swerving from one side of the road to the other, and they therefore signalled for the vehicle to stop. The said vehicle which was being driven by the accused slowed down but did not stop and the Police Officers proceeded to go on the pavement and when the vehicle arrived beside PS 1543 the latter first tapped on the passenger window of the car but to no avail and subsequently grabbed the door handle and opened the passenger door where the accused's husband was seated at the passenger seat. PS 1543 who gave evidence in these proceedings during a sitting held on the 10th October 2014 explained to the Court that when he opened the passenger door to speak to the driver of the vehicle, the latter, whom he identified as the accused and whom he then recognised as being the same person who had had the argument with the car park attendant, accelerated and sped off thereby causing PS 1543 to lose his balance and fall to the ground and get injured. According to the medical certificate inserted at folio 16 of the acts of these proceedings PS 1543 was certified by Dr. Christian Zammit as having sustained slight injuries save complications. The Police managed to trace the owner of vehicle bearing registration number LCB 396, that is the accused and her address and when they went to her residence in St. Julian's they found the car parked outside but no one answered when they rang the doorbell of the residence. The car was eventually towed and taken to the St. Julian's Police Station and the accused was arrested outside the Police station where she had gone to lodge a report regarding the fact that her vehicle had gone missing. When the accused

was interrogated on the 27th April 2014¹ she indicated that she had attended a gala dinner at the Intercontinental Hotel accompanied by her husband and that when they went to retrieve their vehicle from the Eden car park she realised that she had mislaid the parking ticket which ticket would have entitled her to complimentary parking and she therefore initially refused to pay but accepted to do so after the Police were called to intervene. The accused also told the Police that on driving off from the car park they noticed someone trying to stop their car but the accused claims that she did not realise that the persons asking them to stop were indeed Police Officers. The accused also maintained that when her husband told her that these people were trying to break into their car she sped off. The accused stated that she did not recall that her vehicle was swerving from one side to another immediately before she was stopped by the Police.

The accused is hereby being charged with several offences and the Court after having examined the acts of these proceedings deems that only the second (2), fourth (4), sixth (6) and seventh (7) charges can be deemed to have been proven to a level of beyond reasonable doubt as required by law. This Court has absolutely no reason to doubt the version of facts as recounted by the two Police Officers in question and furthermore does not believe that the accused did not realise that the persons signalling for her to stop and who subsequently opened the passenger door of her vehicle in order to speak to her were in fact Police Officers. The said Police Officers were wearing their uniform and the accused could not have failed to realise that they were officers especially when one considers that she had just encountered the same two officers a few minutes beforehand during the incident with the car park attendant.

¹ Vide. Statement at folio 17 to 19 of the acts of the proceedings.

This Court therefore cannot but conclude that at that moment in time that the accused failed to stop as requested by the Police Officers and at the moment that she opted to speed off when PS 1543 opened the passenger door of her vehicle she was disobeying the orders given to her by a Police Officer lawfully charged with a public duty thereby causing him bodily harm. This Court however is of the opinion that at no point in time did the accused attempt to cause grievous bodily harm to the Police Officer in question or otherwise attack or resist him. Furthermore the Court would like to point out that despite the fact that the 'actors' involved in the car park incident and in the subsequent incident in St. Augustine Street happen to be the same this is accidental and the two incidents cannot be deemed to be connected. This Court cannot therefore accept the submission made by Defence Counsel whereby it maintains that once the Police Officers allowed the accused to drive off from the car park they could not stop her a few minutes later. The Police Officers clearly indicated that they attempted to stop the accused's vehicle in St. Augustine Street because of the dangerous manner in which she was driving her vehicle where she was swerving from one side of the road to the other and this obviously had nothing to do with the incident in the car park and with the fact that they had not stopped her from driving her vehicle at the car park.

In relation to the charges of drunk driving the Court would like to point out that the Police failed to prove to a level of beyond reasonable doubt that the accused was drunk whilst driving. No tests were carried out and moreover none of the two Police Officers in question at any point indicated that they had detected a smell of alcohol when speaking to the accused or that she had refused to have a breathalyser test to be carried out.

After having noted that the accused has a clean criminal record the Court deems that a suspended jail term and a suspension of the driving licence would be the most adequate form of punishment.

After having seen sections 17, 95, 221 and 338(ee) of the Criminal Code as well as sections 15(1)(a) and (2) of Chapter 65 of the Laws of Malta the Court finds the accused guilty of the second (2), fourth (4), sixth (6) and seventh (7) charges brought against her and condemns her to three (3) months imprisonment which in terms of Section 28A of the Criminal Code are being suspended for a period of twelve (12) months from today. Furthermore the Court disqualifies the accused from holding a driving licence for a period of three (3) months from today. The Court declares the accused as not guilty of the rest of the charges brought against her and consequently acquits her from the said charges.

< Final Judgement >

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