

ILF – West Bank

The International Legal Foundation – West Bank

CASE NOTES – June to November 2012

Editor's Notes: This edition of the Case Notes reports on the courts' vigilance in bring cases to a close, and recognizing well researched and analytical arguments from ILF-West Bank lawyers. However, the courts remain reluctant to subpoena police officers, despite legal authority to do so.

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While the Palestinian civilian court system in the West Bank still struggles with unreasonable delays, during this period courts clearly showed increased diligence in closing cases.

In the Matter of A.S. (ILF 23) (Attorney Nael Ghannam)

On August 29, 2010, a juvenile was arrested and charged with first degree murder under Article 328 of the Jordanian Penal Code. After being sexually assaulted, the accused attempted to run away from the decedent's house. The decedent threatened to write disparaging things on the walls of the village about the accused's sisters if he left, and attempted to sexually assault him again. A fight began, during which the accused fatally stabbed the decedent, and then went back to his house.

The accused suffered several stab wounds during the fight, and his parents took him to the hospital. At the hospital, the attending physician, having knowledge of the decedent's fatal injuries, became suspicious of how he received his injuries and called the police. The accused was taken into police custody at his home. At the police station, the juvenile was interrogated without a parent or guardian present, and without the opportunity to contact a lawyer. He made a full confession. He was transported to the prosecutor, still without a parent, where he made a second confession.

At trial, the prosecution presented the accused's statements to both the police and the prosecutor. The police officer who took the accused's statement testified that the he interrogated the juvenile alone after midnight, and that when he asked the accused what happened he gave a full confession. Several other witnesses testified about the scene of the crime: the decedent was found in his home with stab wounds all over his body, the house was in disarray, and that there was a large amount of blood on the floor. Finally, the doctor who treated the accused at the hospital testified that he informed authorities of the accused's injuries when he learned of the murder. The defense presented a psychologist who testified that the accused has very low ability to read and write, he suffers from low self esteem, anxiety, has difficulty with problem solving and has no logical reasoning ability. She testified that if faced with a high-pressure situation such

as sexual assault and threats, the accused does not have the same mental ability as juveniles his age to reasonably handle the situation. Furthermore, the psychologist testified that it would have been difficult for the accused to understand the severity and finality of his actions at the time. The defense rested after placing the accused's school records and other letters of achievement on the record.

At the pleading stage, the ILF-West Bank lawyer argued, among other things, that his client's statements to the police and the prosecutor should not be considered because they were taken in violation of his basic rights to counsel, as well as his statutory right as a juvenile to be free from interrogation without a parent present. The lawyer also argued that without his client's statements, there is insufficient evidence to connect the client to the crime. In addition, the lawyer argued that the prosecution presented insufficient evidence for the court to find that the murder was premeditated, as required by Article 329 of the Jordanian Penal Code, because there was no evidence presented that his client had the requisite intent to murder the decedent before the fight began. He also argued the affirmative defense that this incident involved rage and his client acted in self-defense.

The court decided that the client's statement given to police was the result of an illegal interrogation and did not consider it; however, it found that his statement given to the prosecutor was legal and it considered it along with the other evidence. The court found the client guilty of 2nd degree murder, and not guilty of premeditated murder. At sentencing, the ILF-West Bank lawyer argued properly that because his client was a juvenile, and because the charge of second degree murder does not carry a lifetime sentence of hard labor, the court must sentence him according to Article 13(7) of the Juvenile Reform Law, which requires of sentence of not less than 1 year and not more than 4 years. He also argued that the court should consider that the best interest of the child is to be with his family in a normal, healthy environment where he can attend school, and that prolonged detention may cause long-term psychological damage. The court agreed, sentencing the client to 3 years in the juvenile detention center and awarding him credit for the 2 years and 2 months that he had already served.

In the Matter of K. I. (ILF Jenin 6) (Attorney Nour Bustami)

The client was accused of an indecent act, pursuant to Article 320 of the Jordanian Penal Code. The complainant was a young woman who claimed that she did not know the accused, though he had admired her from afar. According to the complainant, the accused handed her brother a letter that said, "I will love you forever and follow you always," with his phone number and a request to call him. When she received the letter she went to the police and raised her complaint.

The accused was arrested without an arrest warrant and taken to the police station. Once there, he was interrogated without an opportunity to contact an attorney and made a statement to the police. The next day, the police referred his case to the prosecutor, where the accused made another statement and apologized for his note.

Article 320 of the Jordanian Penal Code sanctions anyone who “commits an indecent act, makes an indecent gesture in a public place or community in such a way that could be seen by any person in a public place.” The penalty is a fine or up to six months prison.

At trial, the complainant testified that she no longer wanted to pursue her personal right of action against the client. Through cross examination of the police officer who took the client’s statement, ILF-West Bank’s lawyer elicited that the client was not advised of his rights before the interrogation. The prosecutor, over the objection of ILF-West Bank’s lawyer, submitted all of the reports in the prosecution file without calling any of the individuals who created the reports as witnesses.

In pleadings, ILF-West Bank’s lawyer successfully argued that the judge should exclude the client’s statement because it was taken in violation of his right to counsel, as well as the reports because the prosecution offered them without bringing witnesses to testify about them in open court. The lawyer also argued that a close analysis of “Indecent Act” as defined in Article 320, and previous court decisions, indicates that the law was not meant to encompass speech, particularly private speech to an individual. Under this article, an overt act other than speech is required to sustain a conviction.

The court agreed with ILF-West Bank’s arguments and acquitted the client of the charge against him.

In the Matter of M. D. (ILF Ramallah 68) (Attorneys Nour Bustami and Nael Ghannam)

On April 26, 2011, after an alleged fight involving rival families, the police arrested six people, including ILF-West Bank’s client, charging them all with Public Brawl. In court, the client pled not guilty. The prosecution pursued the case even though none of the victims filed an individual complaint of assault or claimed an injury.

At trial, the prosecution did not call any witnesses and presented the entire investigation file to the court. The ILF-West Bank lawyer objected to the entire case file being admitted without witnesses to introduce the records, citing Article 207 of the Criminal Procedure Code, which requires evidence to be discussed in open court.

At the next session, after reviewing the investigation file, the ILF-West Bank lawyer argued that the public brawl statute was informed by the jurisdictional limits of the misdemeanor assault statute, Article 334(2), which requires an individual complainant to pursue the charges whenever an assault does not result illness or absence from work lasting more than 10 days. Therefore, the client could not be charged without evidence of injuries. The court concurred with this argument and dismissed the charges against the client.

In the Matter of M. A. (ILF Jenin 10) (Nour Bustami)

The complainant accused the client of cursing him and his religion, as well as using indecent language and threatening to “slaughter” him while they were standing in an open market. At the indictment, the client pled not guilty to charges of making threats, insulting religious feeling, and humiliation, which carry a penalty of up to seven months in jail.

At trial, the prosecution presented the testimony of the complainant and his neighbor. The complainant testified that the client tried to attack him, and was prevented from doing so only because bystanders held him back. The neighbor, however, contradicted this testimony, explaining that while he heard the client curse in general and curse against God, he did not hear or see any threats against the complainant. The prosecution did not present any evidence regarding the words that the accused allegedly used.

The ILF-West Bank attorney argued that the prosecution failed to prove that the alleged threat “severely affect[ed] the victim’s mental status,” as required by Article 354. Also, because the content of the statement was not presented, the evidence was insufficient to prove that the word or sound was “calculated or tending to insult the religious feelings” as required by Article 278(2). Moreover, the court could not rely on the conflicting testimony presented by the complainant and his neighbor to prove humiliation under Article 360 because there was no credible evidence presented that the accused words were directed at a “person.”

The court agreed in part, acquitting the client of the threat and humiliation charges, but convicting him of insulting religious feelings; however, his conviction resulted in no imprisonment or fine.

In the Matter of S.M. (ILF Ramallah 80) (Attorney Nael Ghannam)

The accused was arrested in 2005 and charged with abduction and indecent acts. He was accused of abducting a boy from an outdoor market and sexually attacking him in a room above a bus station. The boy allegedly ran home and told his father and uncles that someone took his clothes off and touched him sexually. The boy’s father then went to the room above the bus station, where he found the accused hiding under a bed and called the police. At the first remand hearing the court continued his detention. Subsequently, without adequate legal representation, he was held for three years in pre-trial detention before the court finally released him in 2008. He was then taken into Israeli custody on unrelated charges and, consequently, could not appear for his court sessions in Ramallah. In 2010, he was tried in absentia, convicted on both charges, and sentenced to 10 years for abduction and 15 years for indecent acts. He was released from Israeli custody shortly thereafter and re-arrested to begin serving his sentence for this case in 2011. At that time, ILF-West Bank entered the case.

The ILF-West Bank attorney filed an appeal of the court's conviction and sentence, requesting a new trial and presenting evidence to the court that the client was in Israeli prison when he was tried and convicted in absentia. A new trial was granted on June 6, 2011.

At trial, the complainant testified that the client did not abduct him. He explained that the client offered him money in exchange for assistance carrying bottles of water, and that he went willingly with our client to his room above the bus station in downtown Ramallah. During the defense case, the ILF-West Bank lawyer introduced evidence of a reconciliation between parties in the case.

At the pleading stage, the ILF West Bank lawyer argued that the prosecution failed to prove the charge of abduction because it failed to establish that the client forced the complainant to go with him to his room, as required by Article 302 of the Jordanian Penal Code. To the contrary, the complainant testified that he went willingly. The lawyer also presented the mitigating argument that the parties reached a reconciliation and that over the course of this case the client had been in detention for more than three years, and that he should receive credit for time served. On June 20, 2012, the court acquitted the client of abduction. He was convicted of Indecent Act, pursuant to Article 297 of the Jordanian Penal Code, and was sentenced to three years. The court granted the lawyer's request and gave him credit for time served, so he was not required to return to jail.

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During this period the courts have shown willingness to notify police officers to appear by sending notices to the police department, but have continued to show hesitancy to exercise their powers to subpoena police officers. The prosecution also seemed to display an awareness of the difficulty of securing police witnesses in Ramallah.

In the Matter of S.R.D. (ILF Ramallah 168) (Attorney Nael Ghannam)

The accused, a juvenile, was accused of entering the front garden area of the complainant's property and throwing stones at his house. At indictment, he pled not guilty to charges of trespass and disturbing the peace.

During the prosecution's case, the complainant testified that he did not see who threw stones at his house and, more specifically, that he had not seen the accused at the time of the incident at all. The complainant also dropped his private right of action against the client. The prosecution adjourned the case to notify the police witnesses. At the next hearing, the police witnesses failed to appear or respond to the notification. The ILF-West Bank lawyer began to request that the court subpoena the police witnesses, but the prosecution decided to rest its case, acknowledging that the effort to get the police witnesses to appear in court would take "too long."

ILF-West Bank submitted a final pleading, arguing that the prosecution lacked sufficient evidence for a conviction. The court accepted ILF-West Bank's arguments in the pleading and acquitted the client of all charges.

In the Matter of N.J.B. (ILF Ramallah 130) (Attorney Nael Ghannam)

The police arrested the client along with other juveniles, accusing them of throwing stones at a nearby supermarket. At the indictment, the client pled not guilty to the charges of Disturbing the Peace and Destroying the Property of Others.

While the complainant and a witness have already testified for the prosecution, the case has been adjourned twice for the police officer witness. Despite a notification sent to the officer through a lieutenant in the department, he has thus far failed to appear.

At the last court date, the ILF-West Bank lawyer requested that the court issue a subpoena for the police officer pursuant to Article 231 of the Criminal Procedure Code. He argued that the witness notification procedures in the Code do not differentiate between civilians and police officers, and that a police officer who fails to appear after being issued a notice should be subpoenaed in order to ensure the officer's appearance in court. The lawyer further argued that the court should subpoena the police officer to avoid unnecessary delay, particularly since the accused was a juvenile high school student.

Despite the arguments of the ILF-West Bank lawyer, the court refused to issue a subpoena for the officer, explaining that it does not believe that a police officer can be summoned via subpoena.