

## COMMENTS AND LETTERS

# Misguided expert evidence in diving fatality court case

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The court of criminal appeal quashed the verdict of manslaughter in the case of Arthur Castillo, a diver found guilty of causing his buddy's death three years ago.

Central to the appeal judgment is the report of one of the court-appointed experts, a doctor specialising in hyperbaric medicine. He was appointed by the court as a 'diving fatalities' expert.

The judgment of February 22 confirms that this doctor's report contained statements that went beyond his field of expertise and had the capacity to misadvise the court.

### EXPERT EVIDENCE

Kristy A. Martire and Gary Edmond, both professors, specialise in researching court expert evidence. In an academic article on the need to rethink expert opinion evidence, they argue: "Where the evidence is of a scientific, medical or technical nature, there appear to be very few credible reasons for exempting experts from the need to identify the scientific research supporting their practices and claims and, where appropriate, evidence of their own proficiency or ability in the specific domain."

Upon reading the judgment of the appeals court, it seems that some of the medical expert's conclusions in the Castillo case fell short of this requirement. In fact, the report submitted by this expert focused on two areas that he was not professionally competent to comment on – diving procedures and jurisprudence.

It also contained no references to past studies in the field of diving fatalities.

### BUDDY SYSTEM

The first court erroneously gave the buddy system too much importance. This is because it formed an integral part of the medical expert's report, which stated that "the whole scope of the diving buddy system is for the two divers to be close to each other to assist each other in any untoward event during the dive".

The appeals court noted that the fact that two divers are meant to be there



Christine Gauci died in a diving accident three years ago and her buddy, Arthur Castillo was found guilty of causing her death before being acquitted on appeal. This is a photo from her Facebook.

for one another and help when necessary does not mean that they are fully responsible for each other's safety. The literature on the buddy system produced by competent authorities (such as diving certification agencies) confirms this.

In addition, the appeals court also clarified that Castillo and the victim were friends who occasionally dived together; he was not in a position of an instructor guiding a client.

The medical expert's lack of knowledge with respect to technical diving practices and procedures led him to give the first court the impression that the buddy system is universal to all forms of diving. In reality, technical divers are trained to be self-reliant despite diving in teams.



*The medical expert gave the first court the impression that the buddy system is universal to all forms of diving*

Since they are expected to eschew the practice of relying on one another, they master self-rescue procedures and espouse the principle that they can abort a dive for any reason at any time. Technical divers are taught to assume responsibility for their own safety and never to shift this responsibility onto their teammates.

### NEGLIGENCE AND OMISSION

Despite lacking proficiency in legal matters, the medical expert affirmed that "negligence and omission are still evident" in Castillo's behaviour during the dive. In his report, he concluded that, besides the victim's own contributory negligence, there was also "a negligent omission of a rescue attempt and assumption of safety when no assumption could or should have been made".

These views go beyond the expert's medical credentials and encroach on legal matters that he was not qualified to comment on.

Even though the appeals court explained that the first court's sentence was not entirely based on the legal views provided by the medical expert, it did concede that the latter should have refrained from ever expressing such views in his report.

Castillo's appeal pointed out that this expert's report was given undue

weight by the first court, so much so that the opinion of the legal expert was not allowed to affect the proceedings.

In fact, the appeal court's ruling agreed with the court-appointed legal expert's conclusion that criminal proceedings should never have been initiated against Castillo.

This is because his behaviour during the dive was not characterised by negligence. He helped the victim deal with several problems during the dive including providing her with assistance when she got entangled and when she felt too buoyant.

However, when she shot to the surface, he would have put his own life in danger if he had immediately followed her, especially since this would have entailed disregarding his decompression obligations.

This was also confirmed by the court-appointed expert tasked with preparing a report on the diving equipment.

### APPOINTING EXPERTS

The decision of the appeals court confirms that the medical expert overstepped his professional remit in some of his pronouncements. This led the first court to issue a verdict that unjustly convicted an innocent man of manslaughter and potentially damaged Malta's diving industry.

Even though justice prevailed in the end, a steep price was still paid.

It is vital that in future cases, courts appoint experts in the field of diving not simply based on academic qualifications but also on the basis of competence and experience. This is something that I hope will be taken up with the competent authorities by the Professional Diving Schools Association.

Moreover, clear remits and instructions must be issued by an appointing magistrate to a) ensure that the submitted report covers all bases and b) to guarantee that experts do not take the liberty to wade through areas for which they are, at best, ill-prepared.

Most importantly, crucial claims made by experts must be substantiated with references to case studies and relevant literature (as is done by judges, for example, when compiling a sentence).

Lastly, justice can only be served if experts stick to producing reports that are a manifestation of factual accuracy rather than undertaking flights of fancy.

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