



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

Magistrat Dr. Neville Camilleri B.A., M.A. (Fin. Serv.), LL.D.

**The Police
(Inspector Johann J. Fenech)**

vs.

Izuchukwu Nwakaeze

Number: 1135/2009

Today the 19th. of January 2017

The Court,

Having seen the charges¹ brought against the accused **Izuchukwu Nwakaeze**, twenty three (23) years old, son of Lambert and Fidelia Nwakaeze, born in Nigeria, on the 16th. of October 1987, residing at Gagu, Flat 1, Triq in-Naxxar, San Gwann, or Solaris Flats, Block C, No 15B, Triq il-Gwiebi, San Pawl il-Bahar, holder of Identity Card Number 48327A and Immigration Certificate No. 005675AA

accused of having on these Islands or abroad, on the 23rd. of October 2009 and during the preceding days:

¹ A fol. 2.

1. with another one or more persons in Malta, or outside Malta, conspired for the purposes of selling or dealing in a drug (cocaine) in these Islands against the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, or promoted, constituted, organised or financed the conspiracy;
2. had in his possession the resin obtained from the plant cannabis, or any preparations of which such resin obtained from the plant cannabis formed the base;
3. assaulted or resisted by violence or active force not amounting to public violence, persons lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority;
4. reviled, or threatened, or caused a bodily harm to persons lawfully charged with a public duty, while in the act of discharging their duty or because of having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty;
5. caused slight injuries on the persons of PS 1174 Adrian Sciberras and of PC 1319 Matthew Xuereb, public officers who were lawfully charged with a public duty or are or were employees of a body corporate established by law and the offence was committed because of these persons having exercised their functions;
6. disobeyed the lawful orders of any authority or of persons entrusted with a public service, or hindered or obstructed such persons in the exercise of their duties, or otherwise unduly interfered with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons.

The Court, besides awarding the punishment prescribed by law, was requested to order the accused to pay expenses related to the

appointment of experts in terms of Section 533 of Chapter 9 of the Laws of Malta.

Having seen the documents exhibited and all the acts of the proceedings, including:

(a) the certified true copy of the *Procès-Verbal* Number 975/09 drawn up by Magistrate Dr. Joseph Apap Bologna, containing the Sworn Statement of Brigitte Annemarie Malwal (*a fol. 17 et seq.*) and

(b) the certified true copy of the *Procès-Verbal* Number 1095/09 drawn up by Magistrate Dr. Silvio Meli regarding "*Dwar sejba ta' kapsoli allegatament kontententi droga tal-abbuz gewwa kamra numru 3315 fil-lukanda Topaz f' San Pawl il-Bahar, nhar it-22 t'Ottubru 2009*" (*a fol. 223 et seq.*).

Having seen the Order of the Attorney General in terms of Article 22(2) of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) (*a fol. 7*) wherein the Attorney General ordered that the accused be tried in the Criminal Court.

Having seen that, on the 23rd. of October 2014, the Criminal Court decreed the following: "*Having considered the role played by the accused, the amount of drugs involved (440.11gr @ 43.3%) and other circumstances, considers that this case should be tried by the Magistrate's Court and therefore accedes to the request*"².

Having seen that this case has been assigned to this Court as currently presided by means of a Decree dated 30th. of June 2015 (*a fol. 622 et seq.*).

Having seen that, during the sitting of the 20th. of January 2016 (*a fol. 646A*), both the Prosecution and the defence exempted this Court as currently presided from re-hearing once again all the witnesses who had already been heard by this Court as otherwise presided before this case was assigned to this Court as currently presided.

² *A fol. 111 - Loose Envelope.*

Having heard, during the sitting of the 25th. of May 2016, the testimony of the accused (*a fol. 656 et seq.*)

Having seen the written Note of Submissions filed by the Prosecution on the 22nd. of August 2016 (*a fol. 694 et seq.*).

Having heard, during the sitting of the 25th. of October 2016, the submissions of the defence (*a fol. 700 et seq.*).

Having considered

That reference will be made to the most salient testimonies heard and to the documents exhibited during these proceedings.

That, during the sitting of the 6th. of November 2009, **PS 1174 Adrian Sciberras** testified (*a fol. 36 et seq.*) that on the 23rd. of October 2009 he was at the Topaz Hotel when Brigitte Annemarie Malwal was brought to the hotel at which time she received a call from her contact abroad and she was instructed to go out from the hotel to meet an African guy wearing a black jacket with a blue backpack on his back. He says that when he exited from the hotel, he could see the accused and as soon as Malwal came out behind him, the accused started walking in front of the Topaz Hotel. He says that behind Malwal there were other police officers and that at one point the accused slowed his pace and started chatting with Malwal and she started showing the white bag she had. He says that both Malwal and the accused were stopped by the Police, specifying that the accused resisted the arrest and did not want to be handcuffed but was eventually handcuffed by being forced on the floor. He says that, as a consequence of the accused's resistance to the arrest, he (PS 1174) suffered slight injuries. He testifies that following a search in the accused's flat, the following were seized: a laptop, an amount of money, some substance suspected to be cannabis resin, a luggage with a torn double bottom and two mobiles.

PS 1174 Adrian Sciberras testified also (*a fol. 68 et seq.*) during the sitting of the 7th. of January 2010 during which sitting he confirmed

the contents of the receipts marked as Doc. "JFF 1" and Doc. "JFF 2" (a fol. 63 and 64).

PS 1174 Adrian Sciberras testified also (a fol. 137 et seq.) during the sitting of the 24th. of February 2010 and exhibited a medical certificate which was marked as Dok. "AS" (a fol. 140). He says that the injuries referred to in this certificate were sustained by him during the arrest of the accused whilst the accused resisted his arrest.

During cross-examination, held during the sitting of the 24th. of February 2010 (a fol. 138), when PS 1174 Sciberras was asked: "Would you say that it was an intentional injury to hurt you on your hand?" (a fol. 139), he replied: "It was not intentional. He resisted the arrest" (a fol. 139).

During cross-examination, which was continued during the sitting of the 5th. of May 2015 (a fol. 594 et seq.), he says: "Then we saw Izuchukwu Nwakaeze and exactly when she exited the hotel he just nodded, there was eye contact with her and him and he started walking and she started following him" (a fol. 598). He says that at this time he (PS 1174) was behind her. He says: "I didn't see her looking at him" (a fol. 600) and then says: "I cannot say eye contact because I didn't see her eyes where she was looking" (a fol. 600). He specifies that at one point both Malwal and the accused turned to the left at which point Malwal managed to catch up with the accused and the accused stopped and she came to him and they spoke, saying that he did not hear anything. He testifies: "Before we pounced on them they turned and started to walk together, side by side, not holding each other, just side by side" (a fol. 608). He says: "I grabbed him [the accused] from behind and PC 1310 went on her" (a fol. 608). He further testifies that the accused still resisted the arrest even though he was told to stop since it was the Police. He says that when the accused was managing to get out of his restrain, PC 1319, PC 230 and himself managed to put the accused to the ground to handcuff him during which time the accused kept resisting the arrest. He says that pepper spray had to be used to put the accused's hands together and handcuff him. He confirms that the accused was not shown anything to prove that they were Police.

That, during the sitting of the 6th. of November 2009, **PC 230 George Michael Briffa** also testified (*a fol. 41 et seq.*) saying that on the 23rd. of October 2009 Malwal went out of the hotel to meet the accused (who was carrying a blue satchel) who was constantly looking back with his eyes on Malwal. He confirms that the accused resisted the arrest. He says that Malwal did not hand over any plastic bag to the accused.

During cross-examination, which was held during the sitting of the 18th. of March 2015 (*a fol. 553 et seq.*), when he was asked where he was when he was told by Inspector Fenech that there was going to be an operation involving Malwal, he replies: *"I think I was inside the hotel"* (*a fol. 555*). He later says that he does not remember exactly where he was. He says that he had been inside the hotel and later exited with his colleagues from a back door of the hotel. He says that, together with his colleagues, he was following Malwal. He was not in a position to say whether Malwal exited from the front door or from the back door of the hotel. He says that he thinks that Malwal came out with him from the hotel since she was under arrest. Asked where he was when he saw the accused for the first time, he replies: *"Near the Topaz Hotel. He was in front of Malwal and he was constantly looking at her while she was walking and he was keeping eye contact like he knew her"* (*a fol. 563*). He says that at point both Malwal and the accused, who was in front of her, turned the corner and that both Malwal and the accused were making eye contact. He testifies that Malwal and the accused were together when she was going to hand him the bag. He does not remember if Malwal handed the bag to the accused. He confirms that the accused was struggling whilst being arrested.

That, during the sitting of the 6th. of November 2009 (*a fol. 45 et seq.*), **Prosecuting Officer Inspector Johann J. Fenech** exhibited a blue backpack carried on the back of the accused (Doc. "JF") and a black suitcase seized from his apartment (Doc. "JF 1").

During the sitting of the 13th. of November 2009 (*a fol. 48 et seq.*), **Prosecuting Officer Inspector Johann J. Fenech** exhibited the statement released by the accused, which statement was marked as Doc. "JJF" (*a fol. 51 et seq.*).

During the sitting of the 30th. of December 2009 (*a fol. 65 et seq.*), **Prosecuting Officer Inspector Johann J. Fenech** exhibited a bag marked as Doc. "JFF" containing the sum of €2910 in cash and some pieces of cannabis found in the flat of the accused and a brown purse which had €30 in cash. He also exhibited two receipts marked as Doc. "JFF 1" (*a fol. 63*) and Doc. "JFF 2" (*a fol. 64*).

During the sitting of the 24th. of February 2010, **Prosecuting Officer Inspector Johann J. Fenech** testified (*a fol. 141 et seq.*) that Brigitte Malwal was arrested from the Topaz Hotel on the 22nd. of October 2009 following a search in her room during which search some capsules with white substance in it were found. He says that Malwal assisted the Police and at Mater Dei Hospital she passed out an amount of capsules with the same white substance. He says that Malwal opted to assist the Police as per Article 30 of Chapter 101 to conduct a controlled delivery, further saying that while she was at Mater Dei Hospital she received several phone calls from a Nigerian guy who was living in Spain and was given orders to hand over all those capsules which she had passed out to another African guy in front of the Topaz Hotel on the 23rd. of October 2009. He says that the Malwal was escorted to the hotel and at one point he saw an African guy (the accused) who was wearing a black shirt and carrying a blue and black Nike backpack on his back and that as soon as Malwal was going to give him the decoy bag, the accused was arrested and some force had to be used to arrest him. He says that in the decoy bag there were no drugs and if he is not mistaken there were some large batteries. He specifies what was found during a search in the flat of the accused, including 2.8 grams of cannabis.

During cross-examination, which was held during the sitting of the 20th. of January 2016 (*a fol. 647 et seq.*), he confirms that in the second page of the statement of the accused (*a fol. 51 tergo*), it had been noted that the accused goes to work and that he meets Charlie once or twice a week and sometimes they go to work everyday, depending on the weather. He says that PC 733 and himself were on site prior to the accused's arrival on the scene. He confirms that during this operation another dark coloured guy was arrested and was later interviewed at the Police General Headquarters but was

released soon afterwards. He says that while Malwal was at Mater Dei Hospital, she had received several phone calls from a Nigerian guy and that Malwal had told him that this guy was living in Spain. He confirms that the accused was not arrested in front of the Topaz Hotel but in a side street.

That, during the sitting of the 13th. of November 2009, **PC 1319 Matthew Xuereb** testified (*a fol. 55 et seq.*) saying that Malwal had received a phone call where she was instructed to go outside the Topaz Hotel and follow a person in a black jacket. He says that Malwal had a plastic bag and she started following the person in the black jacket, who turned out to be the accused, and that the accused, who had a blue haversack, was looking back at her and that at one point they spoke together and they both got arrested at which point Malwal was still holding the bag. He says that the accused resisted the arrest.

During cross-examination, which was held during the sitting of the 5th. of May 2015 (*a fol. 611 et seq.*), he says that he was following Malwal with PS 1174 when she got out of the hotel. Asked if he had seen another dark coloured man in the area besides the accused, he replies: "*I don't remember*" (*a fol. 618*). He explains that when Malwal and the accused arrived in the corner of the street, they came near each other and at this time whereas PS 1174 pounced on the accused, he (PC 1319) got hold of Malwal. He says that when WPC 237 came over, he helped PS 1174 restrain the accused since the accused was giving a hard time to PS 1174.

That, during the sitting of the 7th. of January 2010, **Mr. Martin Bajada** testified (*a fol. 76 et seq.*) saying that he was appointed by the Inquiring Magistrate to extract the contents from a number of mobile phones, a digital camera and a laptop computer. He exhibited his report which was marked as Doc. "MB" (*a fol. 78 et seq.*).

Mr. Martin Bajada testified also (*a fol. 158 et seq.*) during the sitting of the 15th. of April 2010 during which sitting he exhibited another report marked as Doc. "MB 1" (*a fol. 160 et seq.*).

During the sitting of the 6th. of September 2010 (*a fol. 251 et seq.*), **Mr. Martin Bajada** exhibited another report marked as Doc. "MB" (*a fol. 253 et seq.*).

Mr. Martin Bajada testified also (*a fol. 406 et seq.*) during the sitting of the 9th. of September 2011 and exhibited another report marked as Doc. "MB 1"³.

That, during the sitting of the 7th. of January 2010, **PC 733 Joseph Galea** also testified (*a fol. 121 et seq.*) saying that on the 23rd. of October 2009 he went with Inspector Johann Fenech and parked the car about 200 metres away from the Topaz Hotel. He says that he could see an Afro man with a black jacket (the accused) standing right across the street from the main door and when a woman came out of the hotel with a plastic bag in her hand, the man started walking and she followed him. He says that after a while they received a call and they were informed that both persons had been apprehended. He says that the accused resisted the arrest and further on during his testimony he explains what was seized from the accused's apartment.

During cross-examination, which was held during the sitting of the 5th. of May 2015 (*a fol. 579 et seq.*), when he was asked if he had parked the car in the same road facing the hotel, he replies in the affirmative. He remembers the accused stopping twice. He says: "*This black person if I'm not wrong sir the information that Mr. Fenech had was that this person would be wearing black jacket and that's why the focus went on him, because this particular black person was wearing a black jacket*" (*a fol. 584*). He remembers seeing the accused stopping in front of the hotel. He says that at one point this man crossed the street and then stopped again and then this woman came out. He says that at one point both were walking: first the Afro man and then the lady behind him. He testifies that they kept walking and then turned the corner.

That, during the sitting of the 24th. of February 2010, **Pharmacist Mario Mifsud** testified (*a fol. 135 et seq.*) saying that on the 23rd. of

³ During the sitting of the 9th. of September 2011 (*a fol. 405*), the Court minuted the following: "Court orders that Doc. "MB 1" be removed from the records of the case since it refers to another accused".

October 2009 he was appointed by the Inquiring Magistrate to carry out analysis on white substance that were found in a number of capsules. He says that the total weight of the white substance was 440.11 grams which substance contained the substance cocaine, the purity of which was 42.3%. He says that the retail price of the white substance for the cocaine amounted to €33,448.

Pharmacist Mario Mifsud testified also (*a fol. 177 et seq.*) during the sitting of the 23rd. of April 2010 where he exhibited his report marked as Doc. "MM" (*a fol. 179 et seq.*).

Pharmacist Mario Mifsud testified also (*a fol. 297 et seq.*) during the sitting of the 21st. of December 2010 during which sitting he exhibited a second copy of his report which was marked as Doc. "MM" (*a fol. 299 et seq.*).

Pharmacist Mario Mifsud testified also during the sitting of the 4th. of August 2011, which testimony was not recorded, and during which testimony he exhibited his report which was marked as Doc. "MM" (*a fol. 388 et seq.*). On the 5th. of January 2012, **Pharmacist Mario Mifsud** (*a fol. 450 et seq.*) confirmed the contents of Doc. "MM" (*a fol. 388 et seq.*). He confirmed the conclusion reached in the mentioned report. When asked about the value, he replied: "No and I think the reason was because it was a small amount of 2.79 grams" (*a fol. 451*).

That, during the sitting of the 3rd. of June 2010, **Dr. Maria Cardona** testified (*a fol. 195 et seq.*) during which testimony she exhibited the translation into the English Language of the *Procès-Verbal* drawn by Magistrate Dr. Joseph Apap Bologna, which translation was exhibited and marked as Doc. "MC" (*a fol. 197 et seq.*).

Dr. Maria Cardona testified also (*a fol. 371 et seq.*) during the sitting of the 4th. of August 2011 during which sitting she exhibited once again what she had already exhibited. This was marked as Doc. "MC" (*a fol. 373 et seq.*).

Dr. Maria Cardona testified also (*a fol. 411 et seq.*) during the sitting of the 28th. of September 2011 during which sitting she exhibited a

translation into the English Language of the *Procès-Verbal* drawn by Magistrate Dr. Silvio Meli, which translation was marked as Doc. "MC 1" (*a fol. 413 et seq.*).

That, during the sitting of the 11th. of June 2010, **Joseph Bugeja** (Chief Operations Manager at Globe Ground Malta Limited) testified (*a fol. 215 et seq.*) saying that he was asked to provide a list of passengers travelling on flight FR 9012 from Girona to Malta on the 22nd. of October 2009. He exhibited this list which was marked as Doc. "JB" (*a fol. 217 et seq.*). He says that the name of the accused is not in this list. Asked if a person by the name of Brigitte Malwal or Nicole Bittrich-Mbah was on the flight, he says that the name Nicole Bittrich-Mbah is on the list.

That, during the sitting of the 24th. of June 2010, **WPS 12 Andrea Grech** testified (*a fol. 235 et seq.*) saying on the 2nd. of October 2009 she, together with PC 1013, entered Room 3315 at the Topaz Hotel where Malwal was staying and they found several small white capsules and another larger white coloured capsule which they suspected was cocaine.

WPS 12 Andrea Grech testified also (*a fol. 260 et seq.*) during the sitting of the 6th. of September 2010 saying that the search and arrest at the Topaz Hotel was effected on the 22nd. of October 2009.

That, during the sitting of the 24th. of June 2010, **PS 1220 Chris Baldacchino** also testified (*a fol. 237 et seq.*) specifying what was seized from the accused's residence following a search.

That, during the sitting of the 4th. of August 2010, **PC 1013 Raymond Debono** testified (*a fol. 245 et seq.*) that on the 22nd. of October 2009 the Police had received information that a female person named Nicole Bittrich-Mbah had arrived from Girona and it was suspected that she was carrying drugs. He says that together with WPS 12 they went to the Topaz Hotel and they asked if there was anyone with the name Nicole Bittrich-Mbah and they were informed that they was only Nicole Bianca [Bittrich-Mbah] who had checked in that morning at about 9.00am and was staying in Room 3315. He says that it later transpired that this person was

Annemarie Malwal and when they went to her room and they asked her if she had anything illegal, she pointed to the wardrobe where they found a big capsule with white powder suspected containing drugs and twelve other capsules. Malwal also informed them that she had more capsules in her body.

That, during the sitting of the 22nd. of September 2010, **WPS 120 Caroline Marmara** testified (*a fol. 263 et seq.*) saying that she was detailed more than once to perform fixed duty with Brigitte Malwal at Mater Dei Hospital and testifies that she had been handed over capsules passed by Malwal which capsules were handed over to another colleague. She also says that during her duty, Malwal excreted one white coloured capsule.

That, during the sitting of the 22nd. of September 2010, **WPC 23 Geraldine Buttigieg** testified (*a fol. 265 et seq.*) that even she had been on fixed duty with Malwal who had excreted some capsules.

That, during the sitting of the 29th. of October 2010, **Dr. Noel Caruana** testified (*a fol. 271 et seq.*) saying that on the 23rd. of October 2009 he had examined Adrian Sciberras at the Health Centre who complained of pain in his middle finger and thumb of the left hand, of pain in his right knee and of pain in his right shoulder due to an abrasion. He classified the injuries as being of a slight nature unless there are complications. He confirms that he issued the medical certificate found *a fol. 140* and confirms also that he had issued the affidavit *a fol. 241*.

That, during the sitting of the 29th. of October 2010, **PS 186 Kristian Mintoff** testified (*a fol. 274 et seq.*) during which testimony he exhibited as Doc. "KM" (*a fol. 276 et seq.*) a certified true copy of the original of the report which was exhibited in the case against Brigitte Annemarie Malwal.

That, during the sitting of the 29th. of October 2010, **PC 1253 Frederick Brincat** also testified (*a fol. 281 et seq.*) during which testimony he exhibited a copy of his report which copy was marked as Doc. "FB" (*a fol. 283 et seq.*).

That, during the sitting of the 4th. of February 2011, **Brigitte Annemarie Malwal** testified (*a fol. 311 et seq.*) after being duly cautioned that she had the right not to testify since criminal proceedings against her had not yet been concluded. She says that she had to come to Malta with the capsules and she was told by persons she knew in Spain, who instructed her what she had to do, that when she excretes these capsules, someone will come and pick them up. Asked who these Spanish people were, she says: *"One was Iyke and Ifanye and Inusend (or Innocent) and Inusend always was calling me and told me if the capsules have come out or not and I said not yet"* (*a fol. 313*). She says that she saw the accused for the first time when she came to Malta. She recounts what happened when she was in Spain and Inusend and Ifanye had told her to swallow the capsules. She says that she was given a mobile phone and that they had told her that they would call her on this phone. She testifies that when she came to Malta, she had to call them and tell them that she had reached Malta. She went to the Topaz Hotel and around three hours later the Police knocked on her door asking her if she had anything illegal. She says that by this she had already passed around twelve capsules. She was taken to Mater Dei Hospital and at this time the persons in Spain did not know that she had been arrested. She testifies that Inusend had called her from Spain and told her that in front of the hotel there was a person waiting for her. She testifies: *"And I said how can I recognise him because I do not know him? He said he is black and he is wearing black clothes and has a backpack. So this was at the time I was already downstairs in the hotel. And when they called me again and I said ok I am coming out in 10 minutes time"* (*a fol. 319*). She says that then she went out of the hotel, she saw a dark skinned coloured man who was wearing black clothes and was carrying a backpack. Later in her testimony, she testifies that this person was the accused. She says that the accused was alone across the street and she could not see any other coloured persons. She says that when she went to him, he did not talk much and he just said *"come"* and hence she followed him. She testifies that she asked where they were going and he told her that they were not going far. She explains that the accused was walking in front of her and that they were around half a metre distant. She says: *"then he was asking what I have in my bag and I said this is for you. And then we went around and around and at one point the Police came*

and arrest us both" (a fol. 320). She says that the bag she had in hand was a white bag. Asked about the backpack of the accused, she says that this was coloured all blue. She says that prior to the arrest, she did not hand over the bag to the accused since the Police intervened before. When she was asked if she had received any money for what she was did, she replies: "No they give me only €200 to pay the hotel and for my food and they me before €300 to pay the cost for my passport and everything and they said when I am coming back they give me another €200" (a fol. 324). To the question: "[I]n your mobile phone we found a contact number which also recurred in the mobile number of the accused. In fact it was saved of Upo. Have you ever heard of that name?" (a fol. 325), she replies: "No but it is obviously the African call themselves different names. It is possible that they have another passport and they have another name and they are calling each other brothers and they are calling nick names. They have an English name and then a native name so may be Inusend (or Innocent) was his English name and this Upo was his native name" (a fol. 325). She says that her Spanish counterparts are Nigerian. She says that she had received threats and she was forced to ingest the capsules. She also says that she was raped.

At this point, the Inspector read out to her the statement released by her to the Police, which statement (Doc. "JF" - a fol. 28 et seq.) was confirmed on oath in front of Magistrate Dr. Joseph Apap Bologna⁴. She confirmed this statement once again in Court. The contents of this statement are along the lines of what she testified in Court. In the statement she also says that her second boyfriend of three weeks, who is Nigerian, and whom she knows by the name of Ifanye, had sent her to Malta to bring the capsules she had swallowed. She confirms that on the 21st of October 2009, a certain Inusend (or Innocent), who she supposed was the boss, went to Iyke and Ifanye's house and brought these capsules. She confirms saying that Inusend in particular gave her the instructions of where she had to stay and that at one point he told her that a guy in Malta, whom she did not know, was meant to meet her in front of the Topaz Hotel so that she could give him the capsules. She confirms saying that Inusend had told her that when everything was ready,

⁴ Vide certified true copy of the Procès-Verbal Number 975/09 (a fol. 17 et seq.).

she would call him and he will arrange everything for her to go back to Spain. She confirms that she came to Malta with the Identity Card of a friend because she had tried to escape.

During cross-examination she confirms that when she met the accused, the Police arrested another person in her presence. She says: "Yes he came by at the time, a minute before the Police took over" (*a fol. 339*). She says that she does not know who this person was but says he was dark too. She says that this person did not speak to her. To the question whether the word "drugs" was ever mentioned when the accused spoke to her, she replies in the negative. She says that she did not open the bag to show him what was inside.

During re-examination, when she was asked whether this second person was arrested in front of the Topaz Hotel, she replies in the negative, specifying that he was arrested where they were arrested. Asked if this second person was carrying a backpack, she replies in the negative.

That, during the sitting of the 11th. of May 2011, **WPC 297 Reanne Spiteri** testified (*a fol. 352 et seq.*) saying that on the 24th. of October 2009 she had been handed over two capsules by WPC 23. She testifies regarding what happened thereafter.

That, during the sitting of the 20th. of May 2011, **PC 1525 Patrick Farrugia** testified (*a fol. 355 et seq.*) during which testimony he exhibited his report which was marked as Doc. "PF" (*a fol. 357 et seq.*).

PC 1525 Patrick Farrugia testified also during the sitting of the 19th. of January 2012 (*a fol. 457*) during which testimony he exhibited his report drawn up in the English Language which was marked as Doc. "PF 1" (*a fol. 458 et seq.*).

That, during the sitting of the 28th. of June 2011, **WPC 149 Ruth Sammut** testified (*a fol. 366 et seq.*) saying that she was on duty with Brigitte Malwal at Mater Dei Hospital. She says that Malwal had

excreted two capsules and specifies to whom these were handed over.

That, during the sitting of the 19th of July 2012 (*a fol. 516 et seq.*), **Deputy Registrar Francis Xavier Mangion** testified during which testimony he exhibited K/B/517/2010 already exhibited in the case **The Republic of Malta vs. Brigitte Anne Marie Malwal**.⁵

That, during the sitting of the 25th of May 2016, **Izuchukwu Nwakaeze** testified (*a fol. 656 et seq.*) that whilst he was walking on the pavement in St. Paul's Bay, a man, who came from in front of him, threw his hand on his neck as a consequence of which he had to go down with him and others went along (all of them wearing plain clothes) and they said "*Police! Police!*" (*a fol. 656*). He says that another guy was arrested and that when he was on the ground he was beaten with spray. When asked what he was wearing on the day he was arrested, he replies: "*I was wearing a yellow T-shirt and a black jacket and jeans and a backpack and leather slippers*" (*a fol. 658*). He says that the backpack was blue and black. He testifies that he was going to meet his friend Charlie to go to work, further saying that he had been going to work with Charlie for more than three months. He says that Charlie used to pick him up with his van from near the bus stop which is not far from where he was arrested. He says that he had a backpack to put things in it, like food. He says that he lived in St. Paul's Bay not far from the place where he was arrested and this was not far from where he had to meet Charlie. He says that the other person who was arrested was African like him and that he was even dressed in black and also had a bag. When he was asked whether he had seen somebody else besides this African person, he replies: "*I saw a man sitting in front of the Topaz Hotel and people walking into the hotel. I don't know that people were moving around*" (*a fol. 664*). He remembers seeing a white coloured woman and when he was asked if anything happened, he replies: "*I don't see anything. I don't remember anything happening. I just walked passed [passed this woman] and that's it*" (*a fol. 665*). He

⁵ During the sitting of the 19th of July 2012 (*a fol. 515*) Dr. Martin Fenech for the accused objected to the testimony of Francis Xavier Mangion for this reason: "*[D]ue to the fact that accused was never in possession of these drugs and it is only an allegation that third party, who had an interest due to admission of guilt in her case, to co-operate with the Police*".

says that this woman was standing by herself on the pavement and when he passed her, he continued walking. He says that the Police did not mention to him the name "Upo" and that he informed the Police that he did not know what the bag contained. He says that the Police had told him that somebody called this lady and then they found Upo's number on his mobile as well. He says that he told them that this number is registered under the name "Upo". Asked if this was the real name of this particular person, he says that that is how he used to call him, adding that Upo is a friend of the family. He says that he had met Upo when he was still in Nigeria around ten or eleven years before he was arrested. He testifies that he came to Malta in 2006 and that he started contacting Upo in 2009 and that Upo had told him that he was living in Spain. Asked how he got Upo's number, he says: *"It comes with another relative from Nigeria as well"* (a fol. 669).

At this point, the statement (a fol. 8 et seq.)⁶ released by the accused was read out by the defence lawyer. The accused confirmed⁷ the contents of this statement the contents of which are along the same lines of the deposition given by himself in Court. When in the statement he was asked if he smokes cannabis everyday, he replied in the negative saying that he cannot afford it. He said that the last time he smoked cannabis was a day before he released the statement. In the statement he says that Upo's real name is Inusend (or Innocent). He says that he does not know if Upo deals with drugs. He confirms that the lady who was metres away from the Topaz Hotel never spoke to him. In the statement, to the question: *"The same mobile number saved as Upo in your mobile phone was also found in one of the mobile phones which were found on the lady. How can you explain this?"*, he replies: *"I don't know anything"* (a fol. 9 and 673). In the statement he says that Upo lives in Spain and when he was asked by his lawyer how does he know this, he replies: *"this is the number we used to speak with....a Spanish number"* (a fol. 674). He further says that Upo had told him that he is living in Spain. In the statement, the accused says that he did not let the Police arrest him because he did not know that they were Police. In the statement, he was asked if the cannabis which was found by the Police in his

⁶ This is same as Doc. "JJF" (a fol. 51 et seq.).

⁷ A fol. 680.

apartment was his and he replied in the affirmative. He confirms also that the €2910 found in his apartment were also his. He says (during his testimony) that part of this money originates from his work. In his statement, he also says that at times a certain Mora Bartholomen sends him money. Asked (during his testimony) if he had documents relating to this transfer of money received by Western Union, he replies: *"I was ... at my apartment but after this incident happened I couldn't find any of them probably they had been taken even there was some of the documents were taken by the Police"* (a fol. 677). When the accused was asked (in his statement) if, between the day when he released his statement and the day before, Upo had called him several times on his mobile phone, he replies that they did speak. He says that they spoke about life in general. He denies that Upo had told him to meet a lady near the Topaz Hotel and that this lady was going to give him a bag with drugs and that he was carrying a backpack to put the drugs which the lady would give him.

When he was shown photos a fol. 119 and 120, he was asked who are the persons in these photos and he replies by saying that he can recognise himself in these photos. He was asked about the numbers stored in his phone and says that sometimes he stores numbers not to forget them, saying further that he has a lot of numbers on his phone he does not normally call. Asked about the Spanish numbers, he says that he met some of his friends here in Malta. He says that amongst the numbers there is one of Upo which is 0034672941755. He says that this is the only one he has of Upo (Inusend (or Innocent)) registered. He testifies that he has never spoken to any of the contacts in his phone about drugs and that they never spoke to him about drugs. He confirms that at the time he used to smoke cannabis.

During cross-examination (a fol. 685 et seq.), he says that on the day of his arrest he was beaten up by the Police. He says that on the day of the arrest he was wearing a yellow t-shirt, a blue jeans and a black jacket. To the question: *"If I say to you that you were in fact actually wearing yes that yellow shirt but a black jacket as well over that shirt confirmed?"* (a fol. 687), he replies: *"Yes"* (a fol. 687). He says that the other person who was arrested was also wearing black with

a black bag as well. He says that even though Inspector Fenech told him that his time of arrest was recorded at 11.00am, this did not make sense because the arrest took place at 9.00am at which time he was going to work. To the statement: *"you in fact made contact with this Upo on the 23rd of October of 2009 at 11.14am and 11.11am. So you made contact on that day not five days before you were arrested..."* (a fol. 689), he replies: *"For me I say no"* (a fol. 689). He does not how Upo's number was also found on Malwal's phone. When asked: *"This Upo also tried to call you at around midnight of the 23rd. of October. It is in the night between the 22nd. and the 23rd. of October, are you aware of this? It was a missed call so he tried to call you on your phone but you did not answer for some reason or another..."* (a fol. 689-690), the accused replies: *"I don't know as I was not with the phone"* (a fol. 690). He says that he used to speak with Upo at any time and that if he is available he can answer anybody. He testifies that Malwal did not give him any bag and that: *"I was walking on my own and I was the first person who got arrested not just arrested but I was gripped by him"* (a fol. 691). He says: *"I walked passed her and I kept going. If she was coming behind me I was not aware of it. I was just going on my own and when I was on the ground after her grabbed me then I start to know that"* a fol. 691). He denies that at one point he turned round to accept anything from Malwal.

Having considered

That on the 22nd. of October 2009 a certain Nicole Bianca Bittrich-Mbah arrived in Malta on a flight from Girona and was suspected to have been carrying drugs. It later resulted that the true identity of this person was Brigitte Annemarie Malwal who excreted a number of capsules from her body which capsules contained cocaine. Malwal informed the Police that Inusend (or Innocent - Upo) had instructed her to deliver the drug consignment to a dark skin coloured man wearing a black jacket and carrying a backpack. It transpires that the Police instructed Malwal to deliver the drug consignment to the person who was waiting for her in front of the Topaz Hotel and as soon as she went out of the Topaz Hotel, she saw the accused standing across the street and she followed him and eventually the accused was arrested (together with Malwal). On his part the accused denies knowing anything about this drug

deal and insists that on the day he was arrested he was on his way to meet a certain Charlie to go to work. The accused is being accused of several charges, which charges will be considered separately below.

The First (1st.) Charge
(Association):

That Article 22(1)(f) of Chapter 101 of the Laws of Malta states the following:

“Any person -

[...]

(f) who with another one or more persons in Malta or outside Malta conspires for the purposes of selling or dealing in a drug in these Islands against the provisions of this Ordinance or who promotes, constitutes, organises or finances the conspiracy,

shall be guilty of an offence against this Ordinance”.

That Article 22(1A) of Chapter 101 of the Laws of Malta states:

(1A) The conspiracy referred to in paragraphs (d) and (f) of the preceding subarticle shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between such persons”.

That in the judgment **The Republic of Malta vs. Steven John Caddick et** decided on the 6th. of March 2003, the Court of Criminal Appeal (Superior Jurisdiction) held the following:

“As pointed out by appellants, the First Court correctly stated that the three elements that had to be proved for the crime of conspiracy to result were the agreement between two or more persons, the intention to deal in drugs and the agreed plan of action; and, as

also correctly stated by the First Court, “it is irrelevant whether that agreement was ever put into practice”. [...]

This Court believes that the position at law was in fact misstated by the First Court, as although it is true that for the crime of conspiracy to subsist it does not have to be proved that the agreement was put into practice, the converse is not true, that is that evidence of dealing does not necessarily point to a conspiracy.

Under our law the substantive crime of conspiracy to deal in a dangerous drug exists and is completed “from the moment in which any mode of action whatsoever is planned or agreed upon between” two or more persons (Section 22(1A) Chapter 101). Mere intention is not enough. It is necessary that the persons taking part in the conspiracy should have devised and agreed upon the means, whatever they are, for acting, and it is not required that they or any of them should have gone on to commit any further acts towards carrying out the common design. If instead of the mere agreement to deal and agreement as to the mode of action there is a commencement of the execution of the crime intended, or such crime has been accomplished, the person or persons concerned may be charged both with conspiracy and the attempted or consummated offence of dealing, with the conspirators becoming (for the purpose of the attempted or consummated offence) co-principals or accomplices. Even so, however, evidence of dealing is not necessarily going to show that there was (previously) a conspiracy, and this for a very simple reason, namely that two or more persons may contemporaneously decide to deal in drugs without there being between them any previous agreement”.

That in the judgment delivered by the Criminal Court on the 5th. of January 2004 in the case **Ir-Repubblika ta’ Malta vs. Simon Xuereb**, the Court held the following:

“Issa skond il-gurisprudenza kostanti tal-Qrati taghna l-elementi kostituttivi tar-reat ta’ assocjazzjoni kontemplat fil-Kap. 101 dejjem gew ritenuti li huma erba’ u senjatament: 1. iz-zmien li fih ikun sar ir-reat; 2. li jkun hemm mill-inqas persuna ohra, kienet minn kienet f’Malta jew barra minn Malta, li tkun involuta, 3. sabiex tigi traffikata d-droga; u 4. li jkun hemm il-ftehim dwar il-mod kif din id-droga ser tigi traffikata. It-traffikar ghandu definizzjoni wiesgha u din tinkludi mhux tfisser kwalsiasi moviment ta’ droga minn id ghal id kemm versu korrispettiv kif ukoll b’mod gratuwitu. U ma hemmx ghalfejn elementi ohra bhal per ezempju prova li d-droga tkun effettivament ghaddiet minn id ghal id jew li giet importata, ghax anki semplici offerta hija bizzejjed”.

That reference ought also to be made to the judgment in the names **The Republic of Malta vs. Steven John Lewis Marsden** decided by the Court of Criminal Appeal on the 2nd. of November 2009 where the Court held the following:

“Furthermore, as **Timothy Jones** and **Michael Christie** point out in the second edition of **Criminal Law**⁸:

“Proof of the agreement essential to a criminal conspiracy will generally be inferential. Sometimes overt acts will have been committed by some or all of the accused, but this will not always be the case. But even if there have been some such overt acts, the existence of *mens rea*, in the form of an agreement and commitment to the criminal purpose of the conspiracy, will have to be proved by inference. For example, if a group of men is apprehended wearing masks and carrying weapons while sitting in a car outside a bank, there is a clear inference to be drawn that there is an agreement to rob the bank. The group is unlikely to be there for any other purpose.

Lord Justice-Clerk Grant pointed out to the jury in **H.M. Advocate v. Wilson, Latta and Rooney** (1968):

⁸ Greens Concise Scots Law (Edinburgh), 1996, page 140, paras. 7-46 to 7-48.

“You won’t often get eye-witnesses of the agreement being made or eavesdroppers who actually hear it being made. Accordingly, in many cases it is a question of judging from the acts of the alleged conspirators whether in fact there was a conspiracy between them in pursuance of which they are acting.”

The evidence derived from such decisional process will not always be as unambiguous as the example in the previous paragraph. An individual who may appear at an early stage of the ‘conspiracy’ to be involved might not be firmly committed. This problem is raised in a crucial form by the absence of any requirement of proximity such as is to be found in the law of attempt.

The cynical view of proof in conspiracy cases would be that the apparent difficulty in proving the agreement is to the advantage of the prosecutor. There is the danger that in stressing to the jury that a conspiracy can be proved inferentially, the judge may neglect to emphasise the necessity of proof *per se*”.

That, as regards the first charge brought against the accused, the Prosecution rests its case on what Malwal had told them and on the sequence of events which occurred after she went out of the Topaz Hotel and started walking behind the accused coupled with a number of other issues which according to the Prosecution are sufficient to prove that the accused is guilty of the first charge brought against him. The defence contends that this Court should not find the accused guilty of the first charge for the detailed reasons mentioned by the said defence in its final submissions.

That the Court notes that the following result from the acts of the proceedings:

- Malwal informed the Police that she had to come to Malta with the capsules and she was told by persons in Spain, who instructed her what she had to do, and that when she passes them out someone will come and pick them up. She says that

Inusend (or Innocent) (Upo) called her several times asking her if the capsules had been excreted or not and that he had even told her that in front of the Topaz Hotel there was a person wearing a black jacket and carrying a blue backpack on his back waiting for her. She confirms that as soon as she got out of the hotel she saw the accused who she says was wearing black clothes and was carrying a backpack. She further says that the accused did not talk to her much and told her “*come*” and hence she started following him. She then says that the accused asked her what she had in her bag.

- Inspector Fenech states that he could see the accused carrying a blue and black Nike backpack on his back.
- PS 1174 Adrian Sciberras confirmed that as soon as he came out of the hotel, he could see the accused nodding at Malwal and once the accused) started walking, she started following him. PS 1174 Adrian Sciberras says that at one point the accused slowed his pace and started chatting with Malwal and she started showing him the white bag she had.
- PC 230 George Michael Briffa confirms that when Malwal exited from the Topaz Hotel, the accused was near the mentioned hotel and that the accused, who was in front of Malwal, was constantly looking back at Malwal. He says that when Malwal was going to hand the bag to the accused, they were together. PC 230 Briffa testifies that the accused was carrying a blue satchel.
- PC 1319 Matthew Xuereb testifies on the same lines of PC 230 George Michael Briffa specifying that the accused was wearing a black jacket and had a blue haversack.
- PC 733 Joseph Galea remembers seeing the accused stopping in front of the Topaz Hotel and standing right across the street from the main door. He also remembers that the accused was wearing a black jacket and that when Malwal came out of the hotel, the accused started walking and she followed him.

- The blue backpack which the accused was carrying was exhibited by Inspector Johann J. Fenech during the sitting of the 6th. of November 2009 and was marked as Doc. "JF".
- Pharmacist Mario Mifsud concluded that the total weight of the white substance that was found in one big white coloured capsule and in thirty small white coloured capsules was 440.11 grams and that the substance contained the substance cocaine, the purity of which was 42.3%. He says that the retail price of the white substance for the cocaine amounted to €33,448 (*Vide* Dok. "MM" - *a fol. 179 et seq.*; Dok. "MM" - *a fol. 299 et seq.*).
- The other dark coloured guy who was arrested was released afterwards. On her part, Malwal says that this person did not speak to her and that he was not carrying a backpack and specifies that he was not arrested in front of the Topaz Hotel but where the accused and herself were arrested. On his part, the accused says that the other person who was arrested was wearing black and was carrying also a black bag.
- The accused testifies that when he was arrested he was wearing a yellow T-shirt and a black jacket and confirms having a blue and black backpack. He also confirms that Upo is a friend of his and that Upo had told him that he was living in Spain. On oath, the accused confirms speaking to Upo the day before he was arrested but denies that Upo had told him to meet a lady near the Topaz Hotel who was meant to give him a bag with drugs.
- On her part, when Malwal was asked about a contact number found in her mobile phone saved as "Upo", she says that Africans call themselves different names and that Upo may be the native name of Inusend (or Innocent).

That, after considering what has been outlined above, the Court notes that the accused's version that he was not involved in this drug deal and that when he was arrested he was on his way to meet Charlie is not credible.

After the Court takes cognizance of all that has been outlined above and after considering what results from the acts of the case, the Court notes that all these point to the direction of the accused in the sense that he was involved in this drug operation and knew what had happened and what was going to happen and what was planned to happen. It clearly results that a detailed plan to import drugs in Malta was in place, who had to meet who, how, where, and who had to wear what, and that Malwal had to get paid. It results that there was an agreement between two or more persons to import drugs in Malta and that the accused was actively involved.

That, after considering what has been outlined above and after considering what is required to prove the first charge brought against the accused, as outlined in the judgment **Ir-Repubblika ta' Malta vs. Simon Xuereb** here-above quoted, the Court is satisfied that these elements have been proven. Hence, the first charge brought against the accused has been sufficiently proven and the accused will be found guilty of the said charge.

The Second (2nd.) Charge

(Possession of Resin Obtained from the Plant Cannabis):

That PS 1174 Adrian Sciberras testifies that the substance suspected to be cannabis resin was seized following a search in the flat of the accused. This was exhibited during the sitting of the 30th. of December 2009 (*a fol. 65 et seq.*) by Inspector Fenech. Even PS 1220 Chris Baldacchino confirms what was seized following a search from the accused's residence. In his report marked as Doc. "MM" (*a fol. 388 et seq.*), Pharmacist Mario Mifsud reaches the following conclusion:

"From the above results Court Expert, Mario Mifsud, can conclude that the pieces of brown substance having a total net weight of 2.79 grams, which were in exhibit 171/11/01, were found to contain the substance *Tetrahydrocannabinol* (THC). The mean parity of the pieces of brown substance for the substance *Tetrahydrocannabinol* was found to be circa 6.3%. It was also concluded that the brown substance was Cannabis resin which is scheduled under the

Dangerous Drugs Ordinance, Chapter 101, Part III, Section 8a of the Laws of Malta" (*a fol.* 391).

That the accused, on his part, confirms the contents of his statement (Doc. "JJF" - *a fol.* 51 *et seq.*) released to the Police, which statement was confirmed on oath by himself when he testified in these proceedings⁹. The accused did not deny smoking cannabis so much so that when he was asked if he smokes cannabis everyday, he replied in the negative since he said he cannot afford it and when he was asked when was the last time he smoked cannabis, he replied saying a day before he released his statement.

After considering all this, the Court has no doubt whatsoever that even the second charge brought against the accused has been sufficiently proven and that the accused will be found guilty of the said charge.

The Third (3rd.) and the Fourth (4th.) Charge

(Assault or Resistance):

(Vilification, Threats, or Bodily Harm against other Public Officers):

That in his notes, Professor Mamo, whilst dealing with Article 95 of Chapter 9 of the Laws of Malta, refers to the authors Cheveau et Helie who states the following:

"Quando l'oltraggio si verifica nel corso delle funzioni, il motivo che lo determina é indifferente; la legge vede soltanto il turbamento, l'ingiuria fatta all'esercizio delle funzioni, l'insulto che degrada la loro dignità; avesse pure quest'ingiuria una causa determinante estranea alle funzioni, il turbamento all'esercizio di esse sussisterebbe sempre."

In his "Notes on Criminal Law", Professor Mamo further states that:

"This offence arises even though the person charged with the public duty may not at the time of discharging such duty be wearing his uniform or badge etc. of office,

⁹ *A fol.* 680.

provided the offender was aware of his status as such person.”

In the judgment **Il-Pulizija vs. Giuseppe Borg** delivered on the 2nd. November 1917, the Court of Criminal Appeal noted the following:

“Nel reato di oltraggio ad ufficiale od impiegato pubblico, oltre il dolo specifico desunto dal fine dell’agente, é necessario ad integrare l’elemento morale od intenzionale del reato, la scienza della qualità ufficiale dell’oltraggiato, ma questa scienza può sussistere indipendentemente dalla questione se il pubblico ufficiale portasse o no la divisa della sua carica al tempo dell’oltraggio; di guisacché il reato può avverarsi anche se l’ufficiale non indossasse tale divisa a patto, ben inteso, che risulti della scienza nell’oltraggiante della qualità ufficiale dell’oltraggiato.”

That, as in the case of Article 95 of Chapter of the Laws of Malta, Article 96 of Chapter 9 of the Laws of Malta, refers to a person lawfully charged with a public duty. In his Notes mentioned above, Profs. Mamo states the following as regards Article 96 of Chapter 9 of the Laws of Malta:

“The first element of this crime consists in an attack or resistance. [...]. It is only when the insubordination or defiance goes so far as to obstruct the execution of the law or of the lawful orders or the competent authorities that the cases of attack or resistance with which we are now dealing can arise. The purpose of the agent of this crime must be precisely that of obstructing or frustrating the execution of the law or of the lawful orders of the competent authority by opposing the action of those who are charged therewith. If this purpose is absent, though there may have been acts of violence, threats or insults, the crime in question cannot subsist; we could have the crime under (the old) Sections 92 or 94.

Such attack or resistance must be made with violence or active force. The opposition we have mentioned does not,

therefore, constitute the material element of this crime unless it is made with such means. In other words the law requires the use of private force, which is alone calculated to offer a serious obstacle to the action of the officers concerned with executing the law or the orders there under and to impede such action. If, therefore, a person makes opposition to a warrant of seizure merely by refusing to open the door of his house, he does not commit the crime.

The law would have exacted heroism had it expected anyone to submit cheerfully to an unpleasant execution of the warrant against him. The same may be said where a person avoids the execution of a warrant of arrest by running away at the arrival of the Police, or, by freeing himself from their hands without, however, using any violence whatever. The law respects the natural instincts of every man and does not pretend that he should renounce a way which appears open to him to maintain his liberty. Indeed, we shall see that the law does not even punish the simple escape from prison of a person under arrest or trial. Likewise a mere passive resistance to arrest is not punishable.....

The slightest use of force, however, when accompanying the attack or resistance is sufficient to constitute this crime. It has been held that for a man to lay his hands in a hostile manner upon a public officer is enough to constitute a *voie de fait* (**The Police vs. Debono** 3rd. of November 1945).

On the contrary mere insults or threats without the actual use of force would not be sufficient. With regard to threats, however, it seems that this proposition holds good only where they are merely by words of mouth or writing and not where the threats are accompanied with such circumstances of fact (e.g. show of weapons, aggressive attitude) as are calculated to impede the execution of the law or a lawful order.

The second element of this crime refers to the condition or the capacity of the person against whom the attack is directed. The law speaks of any person lawfully charged with a public duty.

In the third place it is necessary that the attack or resistance against the said persons should take place in the act of the execution by them of the law or a lawful order from a competent authority”.

Reference ought to be made to the judgment in the names **Il-Pulizija vs. Stephen Borg** decided on the 26th. of January 1999 as per Mr. Justice Vincent Degaetano¹⁰ where the Court held:

“L-att li bih tali forza tigi ezercitata jrid ikun tali li jkun tendenti, ossia li jkollu l-potenzjalita’ li jikkaguna xi hsara lill-persuna tal-ufficjal pubbliku, zghira kemm hi zghira dik il-hsara, anke jekk bhala fatt ebda hsara ma tkun ikkagunata, u anke jekk l-agent ma jkollu ebda intenzjoni li jikkaguna tali hsara; hekk, per eżempju, jkun il-kaz ta’ min simpliciment jimbotta bil-goff jew ostili lill-ufficjal pubbliku li jkun intimalu li ser jarrestah jew ta’ min jibda jithabat meta jkun f’idejn l-ufficjal pubbliku, propju biex jehles minn idejh. [...]

Mhux bizzejjed attakk bil-kliem, anke jekk dak il-kliem ikun iebes, ingurjuż jew minatorju. Mhix bizzejjed ir-rezistenza passiva (bhal meta wiehed jintelaq mal-art) jew l-uzu ta’ forza applikata fuq oggett. Differenti hu l-kaz ta’ min, biex jirrezisti arrest, iwaddab xi oggetti fil-konfront ta’ ufficjal pubbliku ghax hawn ikun involut l-uzu ta’ forza illegittima li tkun qed tigi diretta lejn il-persuna u permezz tal-att li ghandu l-potenzjalita’ li jikkaguna hsara lill-persuna”.

Hence, in order to find guilt under Article 96 of Chapter 9 of the Laws of Malta, the following three elements must be proven:

- There should be an assault or resistance and this should necessarily be accompanied by violence or active force.

¹⁰ LXXXIII.IV.165.

- The crime should be committed vis-à-vis any person lawfully charged with a public duty.
- The assault or resistance against the public officer should occur when there is the execution of the law or of a lawful order by a competent authority.

That our Courts have various times outlined the differences between the two crimes under Articles 95 and 96 of Chapter 9 of the Laws of Malta. In the judgment **Il-Pulizija vs. Joseph Zahra** delivered on the 9th. of September 2002, the Court of Criminal Appeal stated the following:

“Dana l-artikolu (b’riferenza ghall-Artikolu 96) jirrikjedi mhux biss li l-vittma tkun persuna nkarigata skond il-ligi minn servizz pubbliku” (l-istess bhalma jirrikjedi l-Artikolu 95(1)), izda wkoll li r-reat ikun sar filwaqt li dik il-persuna hekk inkarigata minn dak is-servizz pubbliku “tkun qed tagixxi ghall-ezekuzzjoni tal-ligi jew ta’ xi ordni moghti skond il-ligi minn xi awtorita` kompetenti”. Din l-espressjoni hi differenti minn dik uzata fl-Artikolu 95(1) – “waqt li jkun jagħmel jew minhabba li jkun għamel dan is-servizz, jew bil-hsieb li jbezzghu jew li jinfluwixxi fuqu kontra l-ligi fl-esekuzzjoni ta’ dan is-servizz”.

That the following result from the acts of these proceedings:

- PS 1174 Adrian Sciberras testified that the accused resisted the arrest and did not want to be handcuffed even though he was told it was the Police.
- When the accused was managing to get out of the restrain of PS 1174 Adrian Sciberras, PC 1319 Matthew Xuereb and PC 230 George Michael Briffa helped PS 1174 Sciberras and they managed to put the accused to the ground and he was eventually handcuffed. The accused kept resisting the arrest and pepper spray had to be used to put the accused’s hands together and handcuff him.

- As a consequence of the accused's resistance, PS 1174 suffered slight injuries. PS 1174 testifies that he injured himself when the accused was struggling whilst being arrested.
- PC 230 George Michael Briffa confirms that the accused resisted the arrest and was struggling whilst being arrested. Even PC 1319 Matthew Xuereb and PC 733 Joseph Galea testify that the accused resisted the arrest. Inspector Johann J. Fenech confirms that some force had to be used to arrest the accused.
- Dr. Noel Caruana confirms the contents of his medical certificate (*a fol.* 140). He classified the injuries sustained by PS 1174 Adrian Sciberras as being of a slight nature unless there are complications.

That, after considering what has been outlined above, it clearly results that the accused has reviled, caused slight injuries on PS 1174 Adrian Sciberras and resisted the arrest. Although the accused testifies that he was surrounded by people wearing plain clothes, yet he confirms that the Police had identified themselves as police officers by saying: "Police! Police!". As a consequence, the third and fourth charges brought against the accused have been sufficiently proven and hence the accused will be found guilty of the said charges.

The Fifth (5th.) Charge

(Slight Bodily Harm including Aggravating Circumstances):

That under this charge the accused is being charged of having caused slight injuries on PS 1174 Adrian Sciberras and PC 1319 Matthew Xuereb. The Court notes at the outset that the acts of the case are lacking as regards any injuries sustained by PC 1319 Matthew Xuereb. As regards the injuries sustained by PS 1174 Adrian Sciberras, the Court makes reference to the considerations as regards the previous two charges and to the testimonies given by PS 1174 Adrian Sciberras and Dr. Noel Caruana and to the medical certificate issued by Dr. Caruana. As a consequence, there is no doubt whatsoever that the fifth charge brought against the accused which makes reference to the slight injuries on the person of PS

1174 Adrian Sciberras has been sufficiently proven and hence the accused will be found guilty of this part of the mentioned charge.

The Sixth (6th.) Charge
(Disobeyed Lawful Orders):

It results from the acts of the case that the accused disobeyed lawful orders given by the police officers whilst being arrested. Hence, there is no doubt whatsoever that the accused will be found guilty of the above-mentioned charge.

Considered

That it results that all the charges brought against the accused, except for that part of the fifth charge which makes reference to PC 1319 Matthew Xuereb, have been sufficiently proven.

With regards to the punishment to be inflicted against the accused, the Court will be taking into consideration various factors, including, on one hand, the clean conviction sheet of the accused (*a fol. 6*) and, on the other hand, the serious nature of the charges brought against the accused, particularly (but not solely) the first charge (which deals with the importation of drugs from abroad to Malta), the amount of drugs involved and its value, and the agreement regarding the drug deal.

Therefore, the Court, for the above-mentioned reasons, whilst finding the accused not guilty of that part of the fifth (5th.) charge brought against him regarding PC 1319 Matthew Xuereb and hence acquits him from this part of the mentioned charge, after having seen Articles 8(a), 22(1)(a), 22(1)(f), 22(2)(b)(i) and 22(2)(b)(ii) of Chapter 101 of the Laws of Malta, Regulation 9 of Subsidiary Legislation 101.02 of the Laws of Malta, Articles 95, 96, 221(1), 222(1)(c) and 338(ee) of Chapter 9 of the Laws of Malta finds the accused Izuchukwu Nwakaeze guilty of the first (1st.), second (2nd.), third (3rd.), fourth (4th.), that part of the fifth (5th.) charge which makes reference to PS 1174 Adrian Sciberras, and of the sixth (6th.) charge brought against him and condemns him to a period of nine years and six months imprisonment and to the payment of a fine (*multa*) of ten thousand Euro (€10,000).

After having seen and considered Article 533 of Chapter 9 of the Laws of Malta, the Court condemns the accused to pay the amount of one thousand, seven hundred and forty Euros and thirty two cents (€1740.32) within a period of three (3) months from today which amount represents the costs incurred in connection with the employment of experts in this case.¹¹

Finally, the Court orders the destruction of all the objects exhibited in Court, consisting of the dangerous drugs or objects related to the abuse of drugs, which destruction shall be carried out as soon as possible under the direct supervision of the Court Registrar who shall be bound to report in writing to this Court when such destruction has been completed, unless the Attorney General files a note within fifteen days declaring that the said drugs are required in evidence against third parties.

Dr. Neville Camilleri
Magistrate

Ms. Christine Farrugia
Deputy Registrar

¹¹ Mr. Martin Bajada (€683.69) (*a fol. 81 tergo*); Mr. Martin Bajada (€224.20) (*a fol. 162 tergo*); Dr. Maria Cardona (€69.90) (*a fol. 210 tergo*); Mr. Martin Bajada (€265.50) (*a fol. 256 tergo*); PC 1525 Patrick Farrugia (€76.86) (*a fol. 362*); Pharmacist Mario Mifsud (€420.17) (*a fol. 391 tergo*).