



**Court of Magistrates (Malta)  
As a Court of Criminal Judicature**

**Magistrate Dr. Doreen Clarke LL.D.**

**The Police  
(Inspector Trevor Micallef)**

**VS**

**Aleksandar Stanojcic**

**Today 23<sup>rd</sup> October 2017**

The Court,

Having seen the charges against Aleksandar Stanojcic holder of Maltese Identity Card no 132598(A) and holder of Serbian passport no 012115765.

Charged with having in these islands:-

1. On the 11th August 2015 at about half past one in the morning (01:30am) in St. Julian's or in the vicinity, without the intent to kill or to put the life in manifest jeopardy, caused grievous bodily harm on the person of Yasin Ahmed H. Elhilali.
2. Charged further with having on the same date, time, place and circumstances provoked a tumult or an affray for the purpose of committing a homicide of a bodily harm to the detriment of Yasin Ahmed E. Elhilali.
3. Charged further with having on the same date, time, place and circumstances wilfully disturbed the police peace and order.

4. Charged further with having on the same date, time, place and circumstances operated as a private guard agency or acted as a private guard or offered his services as such, without a license in accordance with the provisions of Act 389.

The Court was requested to provide for the safety of Yasin Ahmed E. Elhilali according to Article 383, Chapter 9 of the Criminal Law, in case of the finding of guilt.

Having seen the note of the Attorney General whereby the acts were transmitted to this Court in order for the defendant to be tried summarily in terms of the following provisions:

- a) 214, 215, 217 and 218 of Chapter 9 of the Laws of Malta;
- b) 238(b) with reference to 218 of Chapter 9 of the Laws of Malta;
- c) 214, 215, 217 and 218 of Chapter 9 of the Laws of Malta;
- d) 338(dd) of Chapter 9 of the Laws of Malta;
- e) 3 and 25 of Chapter 389 of the Laws of Malta;
- f) 214, 215, 217 and 218 of Chapter 9 of the Laws of Malta;
- g) 383, 384, 385, 386, 387 and 412C of Chapter 9 of the Laws of Malta;
- h) 214, 215, 217 and 218 of Chapter 9 of the Laws of Malta; and
- i) 17, 31, 532A, 532B and 533 of Chapter 9 of the Laws of Malta.

Having seen that the defendant had no objection to his case being tried summarily.

Having heard the evidence of the parties.

Having seen the acts of the proceedings, including the written submissions of the parties.

Having considered

That this case refers to an incident which took place on the 11th November 2015 in Saint Julian's and in which Yasin Ahmed Elhilali was injured.

The said Yasin Ahmed Elhilali gave evidence before this Court. He explained that on the night in question he had been out with two friends for about four hours during which time he had consumed about ten bottles of beer. At the time of the incident Elhilali was walking down St Rita Steps in

Paceville where he said hello to a person manning a small outlet from where he sometimes buys food. The security man who was standing by that man however told Elhilali to keep moving. This security man, whom Elhilali identified as the defendant, insisted that Elhilali should not stop there; Elhilali asked why, and he explained to defendant that even he works as a security guard. At a certain point Elhilali saw defendant pressing his hand against his ear and he assumed that the defendant was calling some friends of his, more specifically other bouncers. Elhilali then saw two men running at him (one of them was he defendant) and he ran away towards Burger King where they caught up with him. Someone else come from his side and pushed him on the ground and at that point the defendant hit him on the head with a truncheon. Elhilali continued to explain that at that stage there were three men: one just stood there, the defendant hit him on the head with the truncheon, while the other man kicked him in the face and stomach. The police soon after. As a result of this incident Elhilali suffered various lacerations which were certified as grievous due to the fact that at least two of the lacerations required sutures and would scar permanently<sup>1</sup>.

The police officers who intervened were produced as witnesses by the prosecution. PS 345 Mark Cremona explained to the Court that while on patrol in St George's Road together with PC1269, he noted a group of people all bouncers<sup>2</sup>, including the defendant, running down St George's Road; they also noted a man (later identified as Elhilali) on the ground. PS345 stopped the defendant while his colleague went to speak to Elhilali who pointed out the defendant as the man who had attacked him with the truncheon. PS345 specified that when he first saw defendant it appeared to him that he was trying to hide the truncheon. He also specified that he had seen defendant at various clubs in Paceville working as a bouncer. This version of events was confirmed by PC1269 Lewis Tabone.

WPC 30 Connie Apap gave evidence to confirm that from the records held by the police it does not appear that the defendant has the necessary license to work as private guard.

The prosecuting officer, Inspector Trevor Micallef, took a statement from the defendant which is exhibited in the acts of the proceedings. In this statement defendant admits to having punched Elhilali and to having hit him

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<sup>1</sup> This was confirmed by Dr Winston Bartolo who had treated Elhilali.

<sup>2</sup> He assumed they were bouncers because they were all dressed in black; in cross-examination he said there were about ten men in the group including the defendant.

with the truncheon but claims that he did this because Elhilali had hit him with glass on his shoulder. In this statement defendant also admits to having been working as a security guard at a club in Paceville.

Defendant produced one witness in his defence: Anthony Azzopardi, who managed a club in Paceville, opposite the club where the defendant worked as a security guard. On the night in question Azzopardi went to the club where defendant worked in order to get some alcohol; defendant was standing outside of the club. Azzopardi went on to say that while he was there an Arabic man walked up to the defendant, said hello, had a short conversation, proceed down the steps and immediately turn back, punch defendant in the face, and run off. Defendant ran after this man but at that point Azzopardi went back to his club and has no knowledge of what happened after that.

Having considered

That Azzopardi's testimony does not achieve the purpose for which it was intended i.e. that of corroborating defendant's assertion that he chased after Elhilali because he had hit him with a glass on his shoulder. In his statement defendant said that while Elhilali was going down the steps he said something to him in Arabic which he did not understand, Elhilali then turned back and (now speaking in English) verbally instigated him to fight. The version given by Azzopardi is very different in that he describes a friendly conversation between the Arabic man and defendant (as opposed to someone instigating another to fight), and the Arabic man punching the defendant (as opposed to hitting him with a glass on his shoulder). It is also relevant to point out that the version given by Azzopardi also contrasts with that of Elhilali in that even the conversation (with the defendant) described by him was not a friendly one.

On the other hand there is the testimony given by Elhilali who was always consistent in his version of events<sup>3</sup>. More than this he was corroborated in at least part of his version by what PS345 and PC1269 said in their testimony<sup>4</sup>. In view of this and after having had the opportunity of observing Elhilali giving evidence the Court is convinced that it can accept his version as the correct version of events.

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<sup>3</sup> He gave his version to the police officers on sight and during the investigation and before this Court.

<sup>4</sup> These two police officers saw only the latter part of the incident.

Having considered

That in terms of paragraph “a” of the note of the Attorney General the first charge brought against defendant is that of grievous bodily harm in terms of section 218 of the Criminal Code, aggravated in terms of section 217 of the said Criminal Code.

From the evidence brought before the Court and summarised above it has been sufficiently proven that after the defendant and Elhilali exchanged words, the defendant chased after Elhilali and hit him with a truncheon. Elhilali was chased and attacked by another person as well; this other person, who was never identified, kicked Elhilali who was able to specify which injuries he sustained as a result of defendant’s hitting him with the truncheon and which injuries he sustained as a result of the kicks the other person gave him. Consequently the defendant will only be held responsible for the injuries Elhilali sustained as a result of his hitting him with the truncheon.

For all intents and purposes the Court feels that it should point out that even if it had to lend credibility to the version given by Azzopardi<sup>5</sup>, it would still be unable to uphold the plea of self defence being raised by the defendant in the note of submissions. Both the defendant and Azzopardi claim in their version that Elhilali hit the defendant when they were still at St Rita Steps. They also agree that after this one punch or slap on the shoulder with the glass (depending on the version being given) Elhilali ran away. It was defendant who chose to chase after him and beat him with the truncheon rather than go to the nearest police officer of the many who would be on patrol in the area.

For a plea of self defence to be successful it has to be shown that the danger that the accused was trying reacting to danger which sudden, actual and absolute. According to Professor Sir Anthony Mamo:

*The accused must prove that the act was done by him to avoid an evil which could not otherwise be avoided. In other words the danger must be sudden, actual and absolute. For if the danger was anticipated with certainty, a man will not be justified who has*

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<sup>5</sup> Something which it cannot do as explained above.

*rashly braved such danger and placed himself in the necessity of having either to suffer death or grievous injury or to inflict it. In the second place the danger must be actual: if it had already passed, it may, at best, amount to provocation or, at worst, to cold-blooded revenge, and not to legitimate defence; if it was merely apprehended, then other steps might have been taken to avoid it. Thirdly, the danger threatened must be absolute, that is, such that, at the moment it could not be averted by other means.*<sup>6</sup>

In this present case there can be no doubt that when defendant chased after Elhilali and when he caught up with Elhilali further up in St George's Road he, i.e. defendant, was in no danger whatsoever. Consequently the plea of self defence cannot be upheld.

From the evidence brought forward it has been shown that the defendant suffered a grievous bodily harm which falls under a definition of section 216(1)(b) of the Criminal Code, however it cannot be said that the scars on his face and the consequent disfigurement fall under a definition of section 218(1)(b) of the Criminal Code which provides for the more grievous form of bodily harm. This results from the photos exhibited and it has also been ascertained by the Court after having seen Elhilali when he gave his deposition.

As stated above the defendant used a truncheon to hit Elhilali and cause the injuries described above. A truncheon falls under the definition of arms proper in section 64 of the Criminal Code consequently the offence under the first charge is aggravated in terms of section 217 of the Criminal Code.

The second charge brought against defendant is that contemplated in section 238(b) of the Criminal Code, i.e. provoking a tumult or affray for the purpose of causing a bodily harm.

According to the version of events given by Elhilali he was chased and attacked by two persons although there was a third person close by at the time of the assault. The police officers who gave evidence before this Court claim to have seen a group of people, all bouncers, running in the same vicinity where they also saw the defendant running; one of the police

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<sup>6</sup> Ref Notes on Criminal Law Part I Pagna 20.

officers actually specified that there were ten persons participating in the chase.

This however is not proof beyond reasonable doubt that those persons were in fact participating in the assault on Elhilali. Neither is there sufficient proof that those persons had been called by the defendant who is consequently not being found guilty of this second charge.

The third charge brought against defendant refers to his having disturbed the public peace and good order, whilst the fourth charge refers to his having been employed as a security guard (a bouncer) without having the necessary license. There is sufficient evidence to substantiate both these charges.

With regards to the penalty to be meted out the Court took into consideration the nature of the offences of which the defendant is being found guilty on the one hand, and on the other hand his clean conviction sheet. This Court believes that it should follow the principles set out by the Court of Criminal Appeal that violence, especially gratuitous violence, resulting in bodily harm should be penalised with an effective prison sentence.

Consequently the Court, whilst not finding the defendant guilty of the second charge brought against him and discharging him therefrom, after having seen sections 214, 215, 216(1)(b), 217, and 338(dd) of Chapter 9 of the Laws of Malta, and sections 3 and 25(b) of Chapter 389 of the Laws of Malta, finds the defendant guilty of all the other charges brought against him and condemns him to six months imprisonment for the first and third charges, and condemns him to a fine (multa) of five hundred Euro for the fourth charge.

**DR. DOREEN CLARKE**  
**MAGISTRAT**