



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

Magistrate Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)

Criminal Inquiry No.: 124/2016

**The Police
(Inspector Elton Taliana)**

-vs-

**Daniel Mebrahatu Tesfay holder of Maltese Identity Card Number
0037638A**

Today, the 15th day of June, 2020

The Court,

Having seen the charges brought against the accused **Daniel Mebrahatu Tesfay** for having:¹

On the 6th March, 2016, at around quarter to five in the morning (04:45hrs) in Lourdes Lane, St Julian's and in the vicinity:

- a) With the intent to kill or put the life in manifest jeopardy of Michael Abela have manifested such intent by overt acts which were followed by a commencement of the execution of the crime, which crime was not completed in consequence of some accidental cause independent of the will of the offender;

¹ Charges at fol.5-6

- b) On the same date, time, place and circumstances by means of arms proper, or with a cutting or pointed instrument, caused grievous injuries on the person of Michael Abela as certified by Doctors of Mater Dei Hospital;
- c) On the same date, time, place and circumstances by means of arms proper, or with a cutting or pointed instrument, caused slight injuries on the person of Sarah Nathalie Johansen;
- d) On the same date, time, place and circumstances at the time of committing a crime had on his person any arm proper (sharp object);
- e) On the same date, time, place and circumstances carried a knife or cutting or pointed instrument of any description without a license or permit from the Commissioner;
- f) Accuse him further for having on the same date, time, place and circumstances wilfully disturbed the public peace and order. (Article 338(dd) Chapter 9 of the Laws of Malta);
- g) Accuse him further for having on the same date, time, place and circumstances in any public place or place open to the public was found drunk or incapable of taking care of himself;

The Court was requested to apply Section 533(1) of Chapter 9 of the Laws of Malta, as regards to the expenses incurred by the Court appointed Experts.

The Court was also requested to issue a protection order as provided in Article 412C of Chapter 9 of the Laws of Malta, against the accused for the purpose of providing for the safety of the injured person or of the other individuals or for the keeping of the public peace or for the purpose of protecting the injured person or other individuals from harassment or other conduct which will cause a fear of violence, both during these proceedings and also in case of finding the accused guilty after such proceedings.

The Court may, where it deems it expedient, in order to provide for the safety of individuals or for the keeping of the public peace, in addition to, or in lieu of the punishment applicable to the offence, require the offender to enter into his own recognizance in a sum of money to be fixed by the Court as provided in Article 383 of Chapter 9 of the Laws of Malta.

Having seen the note by the Attorney General indicating the Articles of Law in terms of Article 370(3)(a) of Chapter IX of the Laws of Malta dated the **11th May, 2018**, namely:²

² Fol.458-459

- Articles 214, 215, 217, 218 and 221 of the Criminal Code, Chapter 9 of the Laws of Malta;
- Articles 17, 31 and 533 of the Criminal Code, Chapter 9 of the Laws of Malta;
- Articles 338(dd)(ff) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Articles 5, 6, 51(2) and 51(7) of the Arms Act, Chapter 480 of the Laws of Malta.

Having heard the accused declare that he does not object to the case being tried summarily by this Court.

Having heard witnesses.

Having seen all the acts and documents exhibited.

Having heard the prosecution and defence counsel make their final submissions.

Considered-

Michael Abela testified how on the night in question he was out with three friends.³ At around 4am, when they had approached the parking area at the top of the hill close to Baystreet and were close to Casino [recte: Casino Malta], situated at the end of that road, they saw the accused descend from his vehicle facing them.⁴ He was passing comments at the two girls who were amongst them and his friend told him to drive on. At that point he came out of the car brandishing a knife.⁵ He could not tell what words the accused uttered⁶ as he was further away from them going up the hill, but he thought the accused addressed his friend and told him “*I have a knife*”.⁷ Hearing these words he approached the accused’s car, “*X’hin smajtu jghid li ghandu sikkina, mort fejn il-karozza....u dak il-hin, jien ghidtlu ‘Come on on let’s go’, u qabad u tani daqqa ta’ sikkina go ghonqi*”.⁸ He only noticed his neck injuries when he got to the car park and had driven away from the parking area. As he was driving downhill, the accused was blocking the road with his car and he stopped to confront him and on this occasion the accused hit him with the same knife below the shoulder.⁹ At this stage he lost consciousness. Taken to hospital, he got stitches on his neck.

³ Fol.19

⁴ Fol.20

⁵ Fol.21

⁶ Fol.22

⁷ Fol.23

⁸ Fol.24

⁹ Fol.24-25

On both occasions that the accused waved his knife, the said accused was outside his car.¹⁰

On cross-examination he denied he had any argument with anyone else after he went back to his car but he may have accidentally hit a policeman during the brawl.¹¹ He admits that he had proceeded to Casino Malta to beat up the accused.¹² Asked to describe on what part of the road he was when he first saw the accused, he states “*konna ha naqbdu tilghin it-telgha*” on the left-hand side, on the driver’s side.¹³ He heard him teasing the girls with the words coming from behind. When he approached the car, the accused was out of his car arguing with his friend who had told him to drive on. The accused’s car was the only car on the road.¹⁴ The whole incident came about since the accused had lowered his window and said something to the girls. At first, he told the girls to keep on going “*ejja ha mmorru l’hemm*”.¹⁵ He understood that the accused was arguing with all of his friends as he had been teasing the girls. When this happened, he was metres away and his friend told the accused to leave “*Suq*”, thereby precipitating the incident.¹⁶ He had told his mate to leave as he did not want any arguments breaking out. The first time he argued with the accused, he was going up the road and this lasted for around two minutes.¹⁷

Whereas before Abela says he told the accused “Come on let’s go”,¹⁸ he now says that he addressed his friend with those words and just left without saying anything to the accused.¹⁹ **This will find contradiction by both Stanley Buhagiar and Lorraine Cutajar who both mention how Michael joined Sarah in exchanging offensive words with the accused!**

Abela denies saying anything to the accused causing him to emerge from his vehicle.²⁰ He denied that the accused had talked to them whilst still seated in his car or that he had pulled him out of the car. He insists that when he approached the accused’s car, he had already brought the knife out, “*X’hin jiena mort hdejh, il-mus kien diga hargu*”.²¹ When he walked back to see what had happened “*Dak il-hin il-mus kien ghadu hekk, fhimt? U ezatt kif wasalt magenbu*

¹⁰ Fol.25

¹¹ Fol.27

¹² Fol.28

¹³ Fol.29-30

¹⁴ Fol.30-31

¹⁵ Fol.32

¹⁶ Fol.32-33

¹⁷ Fol.33

¹⁸ Fol.24

¹⁹ Fol.34

²⁰ Fol.33-34

²¹ Fol.34

smajt lil siehbi "Ar'hemm ghandu sikkina" U mbghad pupp, qabad u tahieli mal-ewwel." 22

Reproduced in cross-examination he explains that together with his friend he had just bought a pizza and were heading to the car:²³ "kif konna telghin it-telgha konna qeghdin erbgħa, kien hemm tfajla miegħi u tfajla ma' siehbi li kien hemm miegħi tghidlu xi haga speci ta, qalilha xi haga u smajtha tghidlu xi haga.... naf li qbadt u ghidtilha ejja jahasra hallih ha nibqghu sejr in u qaltli ghax ma nafx x'qal u ghidtilha hallih u tatiex kasu, ghidtilha lanqas li ghamillek xi haga u ahna bqajna telghin u hu baqa' niezel bil-karozza. Warajja kien hemm siehbi l-iehor u tfajla ohra u l-ohra vera kellha d-dublett naqra qasir u nimmagina li qalilha xi haga wkoll... x'qalilha ma nafx ghax l-iehor semghu. L-iehor kif semghu jghidilha xi haga mar qisu jghidlu ghax qed tghidilha hekk u hekk. Dak il-hin jien dort lura hekk u kemm ghidtlu hallieh."²⁴ His friend had stopped next to the driver's window, "waqaf ma'genbu mat-tieqa...L-iehor kien fil-karozza ezatt... u jien kull ma ghamilt harist lura hekk u lill-iehor ghidtlu ejja jahasra ha noqghodu niggieldu, ghidtlu tlaqna lil hemm, dort ergajtFis-sens ejja ha mmorru lil hemm biex ma noqghodux niggieldu.... dan smajtu jghid xi haga lil din li kien hawn miegħi imma mbagħad qal xi haga lill-ohra u l-iehor ghidtlu qisu hallieh jien ghax dan meta jaqbdulek mat-tfajla jekk tmur biex tiehu ragun mhux ovoja li imbagħad jinqala' l-paroli, għallhekk bqajt tiela' fhimt. Jien nirragunaha la ma missewiex nibqa' sejjer u lill-iehor ghidtlu ejja jahasra lanqas għamlilha xejn jew xi haga, ha noqghodu nispiccaw noqghodu niggieldu."²⁵ That's when he heard his friend exclaim that the accused had a knife, "kif grat ma niftakarx sew, li naf zgur jien dak il-hin kif qal ara hemm ghandu sikkina, jien mort ma' genbu biex qisni nghidlu ara hemm u dan u dak il-hin lanqas indunajt li tani daqqa bis-sikkina."²⁶ Once in the car park he realised that he was wounded and as he was driving down he saw the accused stationary as if he was lying in wait for them. At that point he got out of his car and in going towards him he broke off the side mirror "qaccattilu²⁷.... Tajt xi daqqa l-mera zgur", although he cannot recall how the car was damaged in its interior. He persisted in going after the accused even when the latter was inside Casino Malta as he wanted to know why he slashed him.²⁸

Abela explains how he had been walking up the hill when he heard his friend say he has a knife and that's when he turned around and walked back down towards the car. He saw the accused get out of the car and a fight broke out: "rajtu niezel minn gol-karozza zgur u nahseb tajtu xi daqqa ta' zarbuna jista' jkun?

²² Fol.35

²³ Fol.471

²⁴ Fol.472

²⁵ Fol.473

²⁶ Fol.474

²⁷ Ibid.

²⁸ Fol.475

Jista' jkun nahseb ghax ma niftakarx ezatt bejn naqa xurban u hekk....ghax lil dan siehbi ghidtlu ejja mmorru lil hemm u smajtu jghid arem ghandu sikkina...Le mhux qbadt u tajtu daqqa, jien inzilt fejn siehbi dak il-hin fhimt, u niftakar li kien niezel minn gol-karozza dan u kif kien niezel minn gol-karozza imbaghad peress li kellu s-sikkina...". He describes the knife as being around 30cm long.²⁹ He admits the accused got hit but only when he went after him; before that he does not know whether the accused got hit except by him after he had thrown shoes at him. He had proceeded to go towards his car leaving his friend behind on the road with the accused "*fil-parking ma' zewgt tfajliet tlajt. Filfatt niftakar li kif nizel fejn in-nizla fil-karozza jien, niftakar li rajtu tiela lil siehbi u ghidtlu ejja ha mmorru lil hemm, ghidtlu ejja lil hawn ghax laqatni bis-sikkina, qalli dak hawn isfel qieghed jistennik, dik niftakar."* When they drove down he believes the accused's car was further down the road, opposite Casino Malta, but he has no idea why the accused remained there.³⁰ He does not recollect whether he removed the car keys from the ignition since 3 years had passed since the incident and that night they had taken a few drinks and were tipsy.³¹ He states that he initially heard Stanley remark that the accused was carrying a knife.³² Abela continues that a fight broke out and he could foresee this happening as the accused had offended Stanley's girl who reacted by swearing at him.³³ He commented that she was bound to be commented upon if she wore short garments and told them to keep on going but Stanley approached the accused who pulled out a knife whilst he was still in the car.³⁴ Since they were walking up and the accused was descending the hill, Stanley was already rather close to the accused's window. Asked as to where Sarah was when Stanley remarked that the accused was carrying a knife, he replies that he does not recall.³⁵

Whilst Abela attempts to shift the focus on Stanley Buhagiar as being the one who confronted the accused, "*l-iehor mar ikellmu mat-tieqa hekk u dan tellahielu minn got-tieqa....qisu mar biex jiehu ...[is-sodisfazzjon]*".³⁶ Buhagiar in turn mentions that Sarah was Abela's date, not his, and that he had alerted Abela to the accused's advances thus causing Abela to come back and confront the accused.

The version given by Abela finds little corroboration.

²⁹ Fol.477

³⁰ Fol.478

³¹ Fol.479

³² Fol.480

³³ Fol.481

³⁴ Ibid.

³⁵ Fol.482

³⁶ Fol.480-481

Whilst Cutajar states that the accused was still in his vehicle when she heard him mention a knife, both Cutajar and Buhagiar testify that Abela and Sarah were arguing with the accused. Hence the accused's exit from his vehicle was not so sudden and immediate as Abela would have the court believe: "*X'hin smajtu jghid li gahndu sikkina, mort fejn il-karozza....u dak il-hin, jien ghidtlu 'Come on on let's go', u qabad u tani daqqa ta' sikkina go ghonqi*".³⁷. Nor was he extraneous to the argument urging the others to let it slide but an active participant who, upon being told by Stanley that the accused had passed comments at his girlfriend, he immediately confronted the accused and a verbal argument broke out; an argument which was serious enough to cause Cutajar to rush off and hide behind a vehicle in the car park!

It is also relevant to point out that whilst Abela states that he only approached the vehicle since he heard Staley mention that the accused had a knife, both Cutajar and Stanley state that Abela together with Sarah were both near the accused when he saw the knife. Lorraine goes further adding that the accused warned them of the knife whilst still seated in his car.

Thus, why does Abela try to lead the Court into believing that a person who first warns others of his carrying a knife, would then opt to use it indiscriminately for no reason?

Sarah Johanssen testified that she was in Paceville with Michael Abela, Stanley and Lorraine, the latter having left the scene as she got scared. They were going up the hill where a casino had opened. Lorraine and Michael were a small distance ahead. They had almost reached the top of the hill when she saw the accused driving downhill. As he approached her, he passed some remarks "*I don't know what they consisted in*".

The Court immediately notes that similarly to Michael, who when testifying the first-time states that he has no knowledge what the accused had said, Sarah too fails to mention what words the accused uttered that caused her so much upset! Interestingly, whilst in his first testimony Abela testifies that he had no idea what the accused said to Sarah, when reproduced in cross-examination three years later, he mentions that the accused said something which had to do with the short garments the girls were wearing.

This lack of consistency certainly undermines a witness's credibility, to say nothing of the fact that Sarah knows she was offended by the accused's words yet she does not know what these consisted in; another dent in one's credibility!

³⁷ Fol.24

Sarah goes on to explain that Stanley, who was behind her, addressed the accused and told him to keep on going. At this point, the accused remarked that he had a knife and proceeded to get out of the car hitting her with the car door in the process. The accused punched her and she fell to the ground. He was holding a “penknife”. She saw the knife when the accused slashed Michael’s neck. Michael, who was ahead of her, came running towards her presumably after seeing her on the ground and the accused who had gotten out of the vehicle. It was at this point that the accused slashed Michael’s neck. She suffered a small cut caused by the knife and a contusion where she was punched by the accused. At one point after getting hit, Michael retaliated and threw a shoe at the accused and the incident stopped there. They headed to where the car was parked. Michael had driven the car. They noticed the neck wound which was big and deep. Whilst they were in the car blood was splashing all over the car. Upon reaching the casino close to the Intercontinental Hotel, the accused and Michael came to blows again but she does not know what happened as she was panicked.³⁸

On cross-examination she mentions that **she does not know why the accused had felt the need to warn them that he had a knife**.³⁹ Her friends did not assault the accused although vulgar words were uttered by them.⁴⁰ She only saw Michael hitting the accused with a shoe after he got hit. When they left the parking and descended down the hill of Baystreet, the accused’s car was still at the bottom of the hill.⁴¹ The second part of the fight took place where the first incident had happened, by the Casino. Stanley warned the accused to leave but did not mention that he was in danger.⁴² Stanley had addressed the accused because the latter had passed some remarks to her.⁴³ Sarah denies seeing anyone cause damage to the accused’s car.⁴⁴ She does not recall seeing her friends attack the police as she was traumatized upon seeing Michael’s wound. Stanley and Michael intervened in the argument as they went to her defence and she also saw them pursuing the accused into the Casino.⁴⁵ She continues “*Ara dik konna qeghdin Paceville sew, issa tlaqna u kellna l-karozza pparkjata fit-telgha tal-casino, dak il-parking ma nafx x’jismu ezatt [fil-parking ta’ Bay Street]... Ehe ezatt u ahna u telghin kien hemm zewg nisa’ u Michael Abela kienu qeghdin quddiemi. Jiena miexja wahdi u Stanley tiela warajja u jien kont bla zarbun dak il-hin ghax kelli z-zarbun ghand Michael Abela. Jieqaf [Qorti:l-akkuzat].... Ghadda xi kummenti ... U jien*

³⁸ Fol.62

³⁹ Fol.64-65

⁴⁰ Fol.65

⁴¹ Fol.66

⁴² Fol.67-68

⁴³ Fol.68

⁴⁴ Fol.499

⁴⁵ Fol.500

offendejtu bil-Malti ovojament u qabez Stanley, kif rah qed jabqad mieghi u hekk qallu bhal speci halliha u ibqa' suq Imma waqaf, waqaf bil-karozza, mhux ser niftakar il-kliem ezatt imma int tinduna li bniedem qed jittantak⁴⁶...[Qorti: Ittantak jigifieri] Jien daww l-affarijiet idejquni jigifieri ovojament li I had to fhimt, imbaghad kif hareg Stanley qed jaqbez ghalija, la naf qallu ghandi sikkina jew xi haga...Qallu leave her alone ux".⁴⁷

She recalls that she was near the accused's car door when he flung it open hitting her in the process. She screamed and fell to the ground "*Hareg u lili tani daqqa ta' bieba ovojament la qed noffendih nimmagina nahseb forsi fehمني, jien naf...Baghttu *****ghandu, insomma hafna hekk ux. ... U hareg mill-karozza orrajt, kif ser niftakar jiena ha nghidilkom, jigifieri l-verzjoni tieghi, fetah il-bieba tal-karozza, tani daqqa u waqajt mal-art jiena....Issa ma nafx ux apposta imma li kiek u laqatni ha taghmel tnejn hekk u daqshekk. U jien ma xrobtx dakinhar ghax jien ma nistax nixrob."* Until the moment the accused opened the car door there was only a verbal exchange between Stanley and the accused.⁴⁸ However Michael, who was walking ahead of her, turned around when he heard her scream and ran towards the accused "ovojament li tawh hux".⁴⁹

In her initial testimony Johanssen testifies that "*The accused, had, or was holding the knife in his hand....I would describe it as a penknife more than a knife. At this stage I want to clarify that I noticed the knife being held by the accused, when he used this knife on Michael and slashed his neck. I hadn't seen the accused holding this knife*".⁵⁰ However, when interviewed by the medical expert Dr. Mario Scerri, she stated otherwise: "*Konna telghin it-telgha meta f'daqqa wahda rajna wiehed ta' karnaggjon skur u beda jaqbad mieghi bil-kliem. Beda jghidli kliem li ma stajt nifhimhom. Michael qallu "Isma minni siehbi, itlaq l'hemm" u l-iehor qallu "F*** you". Michael qallu "F*** you x'jigifieri" u l-iehor li kien fil-karozza hareg u ta daqqa lil Michael. Jien ma rajt l-ebda mus jew sikkina f'id dan ir-ragel...Nispjega li meta dan hareg mill-karozza u beda jghati lil Michael jien dhalt bejniethom u laqatni wkoll fuq wicci u fuq idejja."⁵¹*

Sarah goes on to make another important statement which corroborates what the accused stated, namely that he couldn't drive off as the key had been removed from the ignition. Johanssen states "*Michael startja l-karozza, nzilna n-nizla u ergajna rajna li kien ghadu fil-karozza quddiem il-casino fin-nizla*".⁵² More importantly she mentions that the accused felt the need to warn them he had a knife and thus he did not immediately use it without notice.

⁴⁶ Fol.501

⁴⁷ Fol.502

⁴⁸ Fol.502-503

⁴⁹ Fol.504

⁵⁰ Fol.62

⁵¹ Fol.342

⁵² Ibid.

Why would a person feel the need to warn others he had a knife unless he felt threatened and in need to protect himself?

Stanley Buhagiar gave his evidence and explained that the incident happened in St. Augustine Street, in front of the Casino, below The Intercontinental Hotel. They left Havana and as they walked towards the parking, he went to buy a pizza. The others had already walked up the hill and as turned the corner of the hill, opposite The Casino, he saw the accused trying to get Sarah into the car “*jaqbad ma tfajla biex jghabbiha gol-karozza*”.⁵³ Michael had already gone up a considerable distance and since Sarah was his [Michael’s] date, he called out to him. At this point Sarah was on her knees and Michael came over to see what happened, “*u dak il-hin rajtu jaqla sikkina min hawnhekk minn fejn il-parti tieghu...[fejn hemm il-kuzakk]..min gol-qalziet kienet mghottija bil-flokk.*”⁵⁴ As Michael came back, Sarah who was on the ground rose up and thus ended up coming between Michael and the accused. She was facing Michael and her back was turned towards the accused.⁵⁵ “*U sadanittant jien kont qieghed magenbu u rajtu jaqlaghha s-sikkina u dak il-hin ghedtlu Mike, Mike jien ghedtlu sikkina imma dak il-hin iktar kien mohhu fit-tfajla ghax kienet qeghda mieghu. U dan zgur tah wahda hekk u carrtu mal-ewwel f’ghonqu....F’ghonqu l-ewwel wahda li tah...u rajt il-ferita tinfetah...Ghedtlu ‘Mike, Mike, sikkina’ baqa’ jirrezisti l-iswed jigri warajh jigri, u jien ma stajt naghmel xejn b’sikkina mhux ser nidhollu ...imbghad telaq jigri, dahal gol-Casino dan u Mike sa dak il-hin ma kienx jaf li gahndu ferita...Imbghad dahal Mike gol-Casino baqa’ jirrezisti ghalfejn jaghmel hekk irid ikun jaf l-affarijiet ghalfejn graw...Mike qala tlieta bis-sikkina...wahda f’ghonqu, ohra f’idejh u ohra fl-istess id....[tahomlu] il-barrani*”.⁵⁶

Buhagiar described the knife as one bigger than a ruler “*kienet pogguta bejn zaqqu l-isfel lejn il-parti tieghu u kienet mghottija bi flokk....rajt refgha l-flokk u qalaghha mill-ewwel u hu qisu ghama fuqu qisu ried lilu biss.*”.⁵⁷ Strangely the witness says that the accused threw the knife in a patch, “*giardina*”, on the corner in front of the Casino, when the evidence clearly shows that the knife was still in the accused’s car when the police arrived. He excludes that the knife shown to him was that used by the accused and insists Tesfay used a bread knife.⁵⁸

Buhagiar’s testimony shows that the whole incident did not break out after the situation escalated as the accused offended Buhagiar’s date, as Abela would

⁵³ Fol.432

⁵⁴ Fol.432

⁵⁵ Fol.433

⁵⁶ Fol.433-434

⁵⁷ Fol.434

⁵⁸ Fol.437

have the Court believe! It was Michael's date who was offended by the accused's words (albeit she can't remember what they consisted in) and this led Buhagiar to call Michael who immediately walked back down and confronted the accused. Contradicting Abela's version, that he was still a distance ahead when he heard Stanley exclaim that the accused had a knife, Buhagiar's testimony instead indicates that he saw the knife and brought it to Michael's attention when Michael was already in close proximity to the accused together with Sarah and himself.

This corroborates Tesfay's statement, released only hours after the incident, that he brought out the knife after he was attacked whilst still in the car!

Buhagiar's testimony also corroborates what Sarah told the medical expert and contradicts her testimony *viva voce* when she states she was punched by the accused when he testifies that Sarah was only hit when she came between Abela and the accused.

What reason could Sarah possibly have for attempting to incriminate the accused when testifying *viva voce* yet told a different story to the medical expert, if not to try and bolster Michael Abela's version of events?

Another inconsistency on Sarah's part was that whilst she told the medical expert she never saw the accused hold a knife, in court she says she saw it when he slashed Michael.

Lorraine Cutajar describes how on the date of the incident, she was proceeding together with her friends towards the car park, walking up the hill. In front of Casino, near Baystreet, the accused stopped his car and started saying "*bad words*" to Sarah.⁵⁹ Michael turned around and told them what happened. She freaked out, not knowing what to do and heard the accused say "*I will kill you with a knife. And then I continued walking up the road. I don't know what was happening at that moment. I ran and went hiding after a car in the parking. At that moment I said 'Someone is going to get killed'. I saw him coming down of the car but then I ran and went hiding After a few minutes, I saw them coming back with Sarah and Michael injured. As we went into the car to go to hospital, we went down the street...and we saw that man again in front of Casino. All of us went out of the car, I ran.... then I went and got a taxi and went back home*". Sarah was injured in her hands and Michael in his neck and hands. Michael had his neck widely opened and they feared the worst.⁶⁰ She never saw the accused inflict the wounds on Sarah and Michael.⁶¹ She had already left when the fight continued at the end of

⁵⁹ Fol.239-240

⁶⁰ Fol.241

⁶¹ Fol.242

the road. She maintains that as they were walking up the hill, there were no obstacles in the road preventing the accused from driving on.⁶²

In cross-examination Cutajar says that as they were walking up to the Baystreet parking she heard bad words being spoken by the accused and this led to an argument with **more bad words being uttered by Sarah and Michael**.⁶³ When the argument broke out she realised Michael was holding Sarah's shoes.⁶⁴ When the car approached them *"we were all with each other on the pavement"* and **both Michael and Sarah were shouting and using offensive words when they were very close to the car window**. She continued walking up the road as the argument did not involve her: *"I haven't turned to the parking but I was walking back just to see that nobody would hit me, that is all I remember, I heard shouting, Stanley was going to run after me at one point but Sarah and Michael where still there."*⁶⁵ By the time she approached the Baystreet carpark, **the shouting was continuing and she saw the accused come out of the vehicle**. It took less than two minutes between the time when the shouting started and when the accused came out of his vehicle. She saw no-one damaging the accused's car. **When the accused said "I will kill you with a knife" he was still in his vehicle** and she does not recall to whom those words were directed. She then ran and hid behind a car in the car park.⁶⁶ When they drove down the road the accused's car was still on the same road, further down. *"Michael stopped the car and he started to shout that man was in front of the car because I did not notice that he was in front of them. And at that same time Michael went out of the car, Stanley I think went to help him something like that, I don't know and Sarah as well and me went out of the car as well but I thought that the best thing was to get away from the place because I did not want to get involved"*.⁶⁷

Cutajar's testimony corroborates what Buhagiar said when he mentions that **when the argument broke out Michael was already near the accused's car**. It clearly demonstrates that Michael was immediately involved in the ensuing argument and did not merely involve himself upon hearing Stanley remark that the accused was carrying a knife as he testifies! In his testimony Abela makes no mention of his addressing the accused, indeed he denies saying anything to him⁶⁸, and gives the impression that upon reaching Stanley and the accused, he was immediately slashed for no reason at all!

⁶² Fol.243-244

⁶³ Fol.488

⁶⁴ Fol.489

⁶⁵ Fol.490

⁶⁶ Fol.492

⁶⁷ Fol.494

⁶⁸ Fol.34, Abela: *"I do not remember saying anything to the accused"*.

To the contrary, Lorraine Cutajar's version gives context to the unfolding events. **Michael was already addressing the accused and arguing with him together with Sarah and Stanley when the accused was still seated in his car.** More importantly, her testimony that the accused was still in his car when he said he had a knife, **corroborates the accused's statement that he took the knife out after two men opened his car door and punched him in the face going on to remove the car's key from the ignition**⁶⁹.

Medical certificates were exhibited indicating that Abela had suffered various lacerated wounds which were classified as grievous.⁷⁰ Sarah Johanssen had suffered bruising and abrasions which were classified as slight.⁷¹ Defence exempted the prosecution from producing the doctors issuing these certificates as witnesses.⁷²

Dr. Mario Scerri presented his report⁷³ and testified that he had examined Sarah Johanssen and Michael Abela. Abela had suffered an incised wound which was inflicted by a sharp pointed instrument. The wound was long and will remain a permanent scar on the back of the neck. Abela also suffered an incised wound on his left arm inflicted by a pointed instrument; this lesion should heal completely with minimal formation of scar tissue. Another incised wound was sustained on the middle aspect of the left arm, also inflicted by a sharp pointed instrument; this too would heal completely. Abela also suffered abrasions and bruises on his left hand. Sarah Johanssen had told the medical expert that *"she went to separate her boyfriend Michael Abela, from being hit, sustained some bruises and abrasions. And these are of a slight nature. Mebrahatu had a haematoma on his forehead, a result of a direct blunt trauma."* The accused had also suffered an abrasion on his lower back, a result of a blunt trauma and he had abrasions on the posterior aspect of his left first finger, inflicted by a sharp pointed instrument.⁷⁴

Mention has already been made that the version given to the forensic physician by Sarah Johanssen contrasts with that given viva voce. In that testimony nowhere does she mention that she sustained the injuries as she was separating Abela from the accused. In fact, she had stated that the accused punched her and that when he opened his car door, she got hit by it and fell to the ground.

⁶⁹ Fol.11

⁷⁰ **Doc.ET5** a fol.13

⁷¹ **Doc.ET6** a fol.14

⁷² Vide minutes of the 4th June, 2018, a fol.460

⁷³ **Doc.MS** a fol.295 et seq

⁷⁴ Fol.292

More importantly she states that it was upon seeing her on the ground that Michael ran towards her and thus, towards the accused!⁷⁵

Why did Johanssen not disclose the fact that she was injured as she was intervening between Michael and Daniel if not in a bid to corroborate her boyfriend's version of events, namely that he was hit by the accused as he approached his friends: "*Dak il-hin il-mus kien ghadu hekk, fhimt? U ezatt kif wasalt magenbu smajt lil siehbi "Ar'hemm ghandu sikkina" U mbghad pupp, qabad u tahieli mal-ewwel.*"⁷⁶

Inspector Elton Taliana gave an overview of the investigations into the incident which led to these proceedings. He recounts that Abela was very aggressive and agitated. They had told the police that the accused uttered disparaging remarks to Sarah. The accused had maintained that he was attacked for no reason and had sought protection in a Casino. Police found the accused's vehicle **parked in the middle of the road** and upon searching the vehicle found a knife. Another knife was found in Abela's car but it resulted that this wasn't used in the fight which ensued. **The accused was interrogated and gave the same version he had given the sergeant on site a tempo vergine.** He confirmed the knife was his and he keeps it in his possession as he works as a carpenter.⁷⁷

In cross-examination whilst having the accused's statement read out to him, the inspector confirmed that the accused's car was found parked in the middle of the road where the Baystreet car park is found⁷⁸ and indeed one needs to stop at the end of the road as it opens up onto the road which leads down to the bay. The accused had mentioned that he was beaten up by a group of people after he hooted the horn as they were crossing in front of his vehicle and indeed he had **suffered injuries**.⁷⁹ Confirming that Abela was still aggressive even in police presence, Taliana mentions that the accused's car was **towed** to the CID yard but could not recall if the key had been taken out of the ignition:⁸⁰ "**He said that they blocked his way so obviously he couldn't move from where he were. And then they went near his door, obviously he went out of his vehicle**⁸¹...the police found it in the middle of the street".⁸² He could not confirm whether the accused

⁷⁵ Fol.62

⁷⁶ Fol.35

⁷⁷ Fol.463

⁷⁸ Fol.464

⁷⁹ Fol.465

⁸⁰ Fol.466

⁸¹ Ibid.

⁸² Fol.467

was attacked by the two males with an advertising pole.⁸³ Reproduced as a witness for the defence, Taliana confirms that the accused had explained the presence of the knife as being part of the tools he had in his car although he admits that he never searched the vehicle.⁸⁴

The Court notes that nowhere in his statement does the accused mention he had other tools in his vehicle. He merely said he kept the knife in his car's glove box as he uses it in connection with his carpentry job.⁸⁵

In the **Current Incident Report**⁸⁶ one finds that upon being informed of a brawl where a knife was used, police went on scene. There they found a youth who was swearing and blaspheming and who told them he had been hit with a knife by another man who was inside the casino. In vehicle bearing registration number ROS407 pertaining to the alleged victim a penknife was found.⁸⁷ Police proceeded to search the accused's car as **the accused himself had told the police about it**, Abela began punching and kicking anyone who approached him hitting also PC1045 on his lips and causing him slight injuries. **The knife used by the accused was found beneath the carpet on the passenger's side in vehicle bearing registration number LCQ874.** One finds: "*Skond Stanley Buhagiar...l-aggressur waqaf bil-vettura tieghu f'tarf sqaq Lourdes u beda jittanta lil Sarah Johannsen u skond hi, ma taghtux wicc u beda jghidilhom 'I kill you'. Michael qallu 'Why you kill us?' u dan hareg is sikkina u ta daqqa ta' sikkina lil Mihael..... Ghandu jipprovidi certifikat is-security tal-casino Raymond Mangion...wara li dan gie migdum minn Michael Abela meta pprova jzommu milli jkompli jhebb ghall-aggressur". Christos Charistas was asked to present an estimate of the damages caused on Casino Malta's door.⁸⁸*

The report was confirmed on oath by **PS1540 Edmond Fenech**.⁸⁹ PS Fenech explained that **it was the accused who had informed him the knife was under the seat and under the carpet.** He was then taken to hospital since he was feeling dizzy.⁹⁰ The accused was first spoken to whilst he was inside Casino Malta and was being kept there to prevent him from being attacked and hit any further.⁹¹ The other party "*tried to assault and attack him and in fact one of the policemen was hit*". PS Fenech confirmed that security from the casino as well as

⁸³ Ibid.

⁸⁴ Fol.524

⁸⁵ Vide fol.11

⁸⁶ Fol.74 et seq.

⁸⁷ Fol.81

⁸⁸ Fol.83

⁸⁹ Fol.90

⁹⁰ Fol.90-91

⁹¹ Fol.92

police officers were shielding the accused from further attacks by the other party.⁹²

PC1045 Noel Carabott described how he had escorted the accused out of Casino Malta. He had arrived on the scene after the fight had ended. The victim had suffered an injury to the neck and was waiting outside Casino Malta for an ambulance to arrive. *“This person suddenly stood up and went for the accused. He came for him punching and kicking.... the victim hit me, particularly on my lips.... I am not in apposition to say whether the victim actually hit the accused.”*. A search in the accused’s car yielded a knife. Michael Abela was the victim.⁹³ Sarah Johanssen also suffered injuries, yet he did not know whether the accused inflicted same.⁹⁴ When he arrived he found the accused inside Casino Malta and three people trying to gain access to Casino Malta but security personnel of the same establishment were keeping them out.⁹⁵ RIU personnel were also holding them back.⁹⁶ The victim was being told to calm down by the RIU officers as he was agitated and continuously swearing. The accused cooperated with the police and exited offering no resistance.⁹⁷ He did not speak to the accused, his sergeant did. The accused was escorted to allow a search in is vehicle to take place.⁹⁸He did not verify whether the accused suffered any injuries.⁹⁹ He recalls being hit more than once and confirmed a medical certificate he had been issued.¹⁰⁰

PV No.336/2016 was exhibited. Amongst pictures forming part of the scene of crime officers’ report¹⁰¹ there are images of the penknife found in the accused’s car on the passenger’s side; the **penknife is closed**.¹⁰² The vehicle bring driven by Abela carries an expired road licence!¹⁰³ Blood stains appear outside the Vodafone establishment which is found across the road opposite Baystreet’s main entrance.¹⁰⁴ **PC385 Emanuel Dalli**¹⁰⁵ and **WPC363 Caroline Meilaq**¹⁰⁶ confirmed their report

⁹² Fol.93

⁹³ Fol.274-275

⁹⁴ Fol.275

⁹⁵ Ibid.

⁹⁶ Fol.276

⁹⁷ Fol.277

⁹⁸ Fo.278

⁹⁹ Fol.279

¹⁰⁰ Fol.280-281. Certificate a fol.282

¹⁰¹ **Doc.DM** a fol.106 et seq.

¹⁰² Fol.126-129

¹⁰³ Fol.1--21

¹⁰⁴ Fol.130-131

¹⁰⁵ Fol.352-353

¹⁰⁶ Fol.429

Karen Cremona in representation of Transport Malta testified that vehicle bearing registration number LCQ874 was registered in the name of the accused and had been so registered since April, 2012.¹⁰⁷

Dr. Marisa Cassar had carried out DNA extractions of garments, two pen knives and a piece of tissue.¹⁰⁸ In her report¹⁰⁹ it is stated that the pen knife with a black and red handle (which the Court can determine was the one found in the accused's car) there was a mixed profile, whilst on the pen knife with a blue handle no DNA profile was extracted.¹¹⁰ Both pen knives tested negative for blood.¹¹¹ The trousers worn by the accused also tested positive for blood¹¹² as were the garments worn by Abela.¹¹³ Reproduced she testifies that the pen knife with a black and red handle (that found in the accused's vehicle)¹¹⁴ carried the genetic profiles of both Abela and the accused.

Also forming part of the Proces-Verbal is a report by digital forensic consultant Mr. Kurt Mahoney.¹¹⁵

Mario Buttigieg testified how he had been appointed as an expert and tasked with inspecting the accused's vehicle. He states "*the radio control and the wiper control were damaged, in fact the radio control was found lying on the floor and the wiper was found lying on the driver's seat*". This meant that expenses for such damage amounted to €457.¹¹⁶ In his report the damage described is evident.¹¹⁷

WPC59 Abigail Couldrey declared that the accused was not licensed to carry any weapons.¹¹⁸

PS430 Andrew St. John described how the police from Paceville district were requested to assist RIU officers at Casino Malta. On the scene they found two male youths and a female youth amidst a commotion. Securities from The Casino requested assistance as they were keeping a man of African nationality

¹⁰⁷ Fol.267 et seq

¹⁰⁸ Fol.367

¹⁰⁹ **Doc.MC** a fol. 369 et seq

¹¹⁰ Fol.376

¹¹¹ Vide fol.370-371

¹¹² Fol.372

¹¹³ Fol.373-374

¹¹⁴ Exhibit **16AMO201** in **Doc.MC** a fol.369 et seq

¹¹⁵ **Doc.KM** a fol.147 et seq

¹¹⁶ Fol.219. Vide report **Doc.MB** a fol.221 et seq.

¹¹⁷ Vide images a fol. 228-230

¹¹⁸ Fol.413

inside their establishment, which man he recognised as being the accused.¹¹⁹ Damages had been sustained by Casino Malta. Abela had said he was attacked with a sharp instrument by the accused. A search in Abela's car yielded a pen knife which was found in the dash board. Whilst police were searching the accused's vehicle Abela had punched PC1045. A pen knife was found in the accused's car.¹²⁰ He clarifies that Casino Malta personnel were protecting the accused for further aggression by the persons outside, *"jilqugh gewwwa l-casino...jaghtu protezzjoni"*.¹²¹ Casino Malta personnel had informed the sergeant that those people were trying to enter the premises to continue attacking the accused, so they intervened and kept the accused protected inside.¹²² Abela was continuously hindering the police, blaspheming, shouting, punching and kicking. He punched PC1045 in the face.¹²³

Joseph Mifsud testified that he is a carpenter with ten employees amongst which the accused, who had been employed as a carpenter for three years before the incident. He operates from Zebbug.¹²⁴ The accused lived in Qormi with his partner and daughter and goes to work with his own car.¹²⁵ Mifsud describes Daniel as a very good carpenter and he had never known him to lose his temper nor had he ever seen him angry.¹²⁶ Reproduced as witness for the defence, he confirmed that the accused still works for him. At times the accused uses his vehicle to go to work and occasionally goes straight to a job from his home without first going to the workshop.¹²⁷ Mifsud explains, *"Sometimes if he have to take the tools he can, even let say I'm not going on work he can take the tools himself in his car. Or even I can give him my car and go with the car and there is the tools in the car.....braces....chasers... hammers, there is saws that could be a knife, maybe a Stanley knife to cut the sealer to open the sealer or these kind of cans."*¹²⁸ He recognised the blue Peugeot as the accused's vehicle¹²⁹ Shown the knife found in the accused's car he says it *"Could be a Stanley knife, we have different kind because we changed them"* although it is compatible to what one would use on the job.¹³⁰

¹¹⁹ Fol.416

¹²⁰ Fol.417

¹²¹ Fol.419

¹²² Fol.420

¹²³ Fol.421

¹²⁴ Fol.52-53

¹²⁵ Fol.55-56

¹²⁶ Fol.57-58

¹²⁷ Fol.515

¹²⁸ Fol.616-517

¹²⁹ Fol.517; Photos a fol. 116-117

¹³⁰ Fol.518

Daniel Mebrahatu took the stand confirming his statement. In his statement the accused mentioned that he worked as a carpenter; a job he still held to date. On the night in question, he was having drinks in various establishments in Paceville and at 4am he was heading for his car in the Baystreet carpark.¹³¹ As he was descending the hill and stopped at the stop sign, he saw 4-5 people crossing the road in front of his vehicle. They said something to him in Maltese and he hooted the horn and exclaimed "*what the f****" or words to that effect. "*Then two or three men came aggressively towards my car and started punching me in the face. They opened my driver's door and took my key out of the ignition and the car stopped. At that time I took a knife which I keep in my glove compartment...(because I use it for my work for carpenting purposes). And I went out of my car with the knife in my hand. Then I don't remember what happened next.*". He explains that it was a jack knife, a folding knife with a 5cm circa blade. He adds that **he moved away from these persons to give him time to open the knife and warned them to keep away from him "but they still kept coming and hitting me and at that moment I slashed the one that came in front of me and I ran away and went straight into the casino that was on the other side of the road,"** across the street. The scuffle took around 30 minutes as he was chased into Casino Malta but the securities did not allow them to get it. He suffered injuries on his fingers, his head and rectum with one of his assailants using an advertising metal post to hit him with.¹³² He ends his statement by stressing that he was never involved in a fight before and this incident was out of character.¹³³

Wilful Bodily Harm: Offences (b) & (c)

An examination of the salient facts resulting from the evidence brought forward shall now be undertaken in the Court's considerations regarding the offences of wilful of bodily harm.

Inspector Taliana stated that when the accused was interrogated, he gave the same version he had given the sergeant on site *a tempo vergine*. He confirmed the knife was his and he keeps it in his possession as he works as a carpenter.¹³⁴ This shows **consistency** on the accsued's part.

Taliana confirms that the accused had explained the presence of the knife as being part of the tools he had in his car although he never searched the vehicle;

¹³¹ Fol.10-11

¹³² Fol.11

¹³³ Fol.12

¹³⁴ Fol.463

and thus one cannot ascertain whether he was also carrying other tools.¹³⁵ Joseph Mifsud, the accused's employer, also confirmed that a Stanley knife would be amongst tools the accused would have if he was on a job. Notwithstanding these confirmations, nowhere in his statement does the accused state that he was carrying any tools but merely that he **keeps the knife** in his glove compartment because he uses it for work.¹³⁶

The inspector also testified that the accused's car was found parked in the **middle of the road** where the Baystreet car park is found¹³⁷ and indeed one needs to stop at the end of the road as it opens up onto the road which leads down to the bay, "the police found it in the middle of the street".¹³⁸ This shows that the accused's version had corroborating circumstances as well as showing that the accused's vehicle had **abruptly stopped** in the middle of the road. In his statement Tesfay had said that: "Then two or three men came aggressively towards my car and started punching me in the face. They opened my driver's door and took my key out of the ignition and the car stopped."¹³⁹ At that time I took a knife which I keep in my glove compartment....(because I use it for my work for carpenting purposes). And I went out of my car with the knife in my hand. Then I don't remember what happened next....It's a jack knife. It's a folding knife with a spring....I moved from them to have the chance to open the knife and I told them I have a knife to move away from me but they still kept coming and hitting me and at that moment I slashed the one that came in front of me and I ran away and went straight into the casino that was [on] the other side of the road. I had to cross the street."¹⁴⁰

There is no contestation that instead of driving off the accused **remained on the scene**. Who in his right mind, after being involved in a physical altercation, would remain on the scene and not drive off? This corroborates the accused's version that he was prevented from doing so when the key was removed from its ignition.

Abela suffered grievous injuries. Dr. Scerri in his report states that the lesion on Abela's neck was an incised wound inflicted by a cutting instrument "Michael Abela shall remain with a permanent scar on the posterior aspect of the neck, extending to the left side of the neck."¹⁴¹ The wound on his left arm was caused by a similar instrument. The bruise caused to his left arm was compatible to blunt trauma

¹³⁵ Fol.524

¹³⁶ Fol.11

¹³⁷ Fol.464

¹³⁸ Fol.467

¹³⁹ Fol.11

¹⁴⁰ Fol.11

¹⁴¹ Fol.344

and gripping.¹⁴²Johanssen suffered slight injuries consisting in bruises to her face and left arm as well as abrasions all compatible with blunt trauma and marks inflicted compatible with a pointed instrument.¹⁴³

Tesfay's injuries on his forehead and lower back were caused by blunt trauma. The abrasions on the left finger and right hand caused by a sharp pointed instrument.¹⁴⁴

Although the witnesses to the assault are all able to recall that the accused had **warned** them that he was carrying a knife, yet none mention why a man in his car, instead of driving off, had deemed it fit to warn them of this only to exit his vehicle moments later and assault Michael by slashing his neck.

Similarly lacking are consistent details as to what caused the accused to leave the comfort of his vehicle and how comments to one of the girls accompanying Abela and Buhagiar evolved into this aggression.

The Court has had already occasion to point out a number of inconsistencies in the versions given by Abela, Johanssen and Buhagiar. Undoubtedly details of the altercation itself may prove hazy but strangely it is with regards to the moments preceding the altercation that details vary.

It is strange that none of the persons on the scene recall how the accused's vehicle sustained damages. Only Lorraine Cutajar is credible in this regard as she admits having immediately ran off to hide behind a parked car in the Baystreet car park. This witness is the most credible and finds no hesitation in stating that **Michael and Sarah were already near the accused's vehicle, with the accused still seated therein, when the latter warned them that he had a knife**. Buhagiar himself states, on more than one occasion, how **Michael immediately proceeded to confront the accused** who had made a pass at his girlfriend.

On her part, Sarah testifies that the accused had also punched her after she had fallen to the ground when he descended from his car hitting her with his door. She also mentions she saw him with the knife. Yet, before the medical expert, she says that she was **only hit after intervening** between the accused and her boyfriend, Michael; Buhagiar also confirms this.¹⁴⁵

¹⁴² Fol.345

¹⁴³ Fol.345-346

¹⁴⁴ Fol.346

¹⁴⁵ Fol.433: "*it-tfajla kienet qeghda mal-art, allura gew il-barrani, t-tfajla u Mike...fin-nofs it-tfajla u Mike...wiccha lejn Mike u darha lejn il-barrani kienet*"

It is the same witness who in court mentions seeing the accused carrying a knife yet denies seeing the knife when giving her account to the medical expert.

The testimony by Lorraine Cutajar indicates that the whole incident came about after the accused offended Sarah by something he had said as she passed by. This caught Stanley's attention who chose to alert Michael to this fact. Michael, together with Sarah and Stanley, confronted the accused.

It is here that versions differ.

On the one hand, the accused says that he was assaulted leading him to inform the persons attacking him that he was carrying a knife and eventually, after realising he couldn't drive away because the key had been taken out of the ignition, he came out of his car and fought his assailants off.

On the other hand, the versions given by Sarah, Michael and Buhagiar all state that following a merely verbal argument, the accused hit Michael with the knife wounding him.

The Court deems the accused's version as being the more credible of these two conflicting versions.

The accused admits to using the knife only after being assaulted and having the key removed, thus being prevented from driving off. His facial injuries are compatible with blunt trauma and he does state that he was punched whilst still in his vehicle. It is also relevant to point out that under interrogation that same morning, the accused had given his version to the Police; a version which is corroborated not just by other evidence, as has been pointed out, but more importantly by dictates of logic, reasoning and common sense!

The fact that a person deems fit to warn others that he was carrying a knife, should then chose to use it for no reason at all, definitely begs logic! This is what makes his version more credible. In fact, **the accused was the one that pointed police to the knife** which was found **closed** on the carpet beneath the driver's seat! The fact in itself that the accused had proceeded to close the knife (scene of crime officers photographed a closed knife), clearly shows that **he thought he had averted the danger** posed by his assailants. It is unlikely that a man who had no qualms about using a knife on innocent passers by would take the time to close that knife once he perceived, albeit mistakenly, that he was no longer in danger! Yet even when the accused opened his knife, he admits to moving away from his assailants to give him time to open it, clearly trying to defend himself but anxious not to use it: *"I moved from them to have a chance to open the*

knife and I told them that I have a knife to move away from me but they still kept coming and hitting me".¹⁴⁶

The damages sustained to his vehicle continue to corroborate his account. The car wasn't driven to the Police HQ but had to be towed, an indication that the key was still missing. The **damages** are sustained in the vehicle's interior clearly indicate that at some moment the altercation became physical, again corroborating the accused's statement.

Also to be underlined is that coming upon the accused the second time, the accused did not use the knife again, choosing instead to run towards the safety he perceived could be found within the precincts of Casino Malta. The knife was left in the car where it was found by **PS1540 Edmond Fenech** who states "**He told me it was in the car, under the seat and under the carpet**".¹⁴⁷

Nonetheless, the fact remains that the accused retaliated by using a weapon. This lead learned counsel for the accused to maintain that the provisions of Article 223 of the Criminal Code find application.

Reference is being made to the judgement by the Court of Criminal Appeal in **Il-Pulizija vs Clint Zammit** wherein the doctrine of self-defence was examined *funditus*:¹⁴⁸

"46. Illi it-tlett elementi ta' dritt li huma dottrinalment mehtiega sabiex tigi applikat dina l-iskriminanti ghad-delitt tal-omicidju jew tal-offiza fuq il-persuna, huma illi l-minaccja jew l-aggressjoni affaccjata trid tkun wahda gravi, ingusta u inevitabli u wkoll illi r-reazzjoni trid tkun wahda proporzjonata ghal din il-minaccja/aggressjoni kif hekk ikkwalifikata :-

"Id-dritt ghall-legittima difesa jitwieled u huwa konsegwenza naturali mid-dritt fundamentali ta' kull bniedem li jipprotegi lilu nnifsu minn xi aggressjoni jew dannu anke bl-uzu ta' forza. Izda il-ligi timponi certi kundizzjonijiet biex din l-eccezzjoni tigi milqugha. Cioe' t-theddud ta' xi aggressjoni jew dannu jew perikolu irid ikun ingust, gravi u inevitabli. Id-difiza trid tkun saret biex jigu evitati konsegwenzi li jekk jaffettwaw ruhhom jikkagunaw hsara irreparabli lid-difensur jigifieri hsara jew offizi fil-hajja, gisem u/jew partijiet tal-gisem tad-difensur. L-imputat difensur irid jipprova li dak li ghamel, ghamlu stante li fl-istat psikologiku li kien jinsab fih f'dak il-mument biex jevita xi perikolu li ma setghax jigi evitat b'xi mod iehor. Jigifieri il-perikolu ghandu jkun attwali, istantaneju u assolut u ma jridx ikun xi perikolu anticipat. Il-perikolu ghandu jkun attwali jigifieri ta' dak il-hin u mhux xi theddida ta' perikolu li tkun saret hinijiet qabel ghax dan jista jaghti lok

¹⁴⁶ Fol.11

¹⁴⁷ Fol.90

¹⁴⁸ Per Hon. Mdme Justice Dr. Edwina Grima; Decided 20th March, 2019; Appeal Number 223/2014. Vide also by the same Court as presided **Il-Pulizija vs Zachary Vella**; Appeal No. 46/2017; Decided 3rd May, 2019

biss ghal provokazzjoni u mhux difesa legittima. Il-perikolu irid ikun assolut cioe' li f'dak il-mument li qed jsehh ma setghax jigi evitat b'xi mod iehor.¹⁴⁹"

47. Illi l-Artikolu 223 tal-Kodici Kriminali ighid hekk dwar din l-iskriminanti:

Ma hemmx reat meta l-omicidju jew l-offiza fuq il-persuna huma ordnati jew permessi mill-ligi jew mill-awtorita' legittima, jew mehtiega mill-bzonn attwali tad-difiza legittima ta' wiehed innifsu jew ta' haddiehor.

48. Illi d-decizjoni ta' spiss iccitata fejn saret esposizzjoni legali ta' din l-iskriminanti hija **Repubblika ta' Malta vs Domenic Briffa** deciza minn din il-Qorti diversament komposta fis-16 ta' Ottubru 2003 fejn inghad hekk :-

"Sabiex wiehed jista' jtkellem fuq legittima difiza li twassal ghall-gustifikazzjoni jew non-imputabilita' (a differenza ta' semplici skuzanti - art. 227(d)), iridu jikkonkorru, kif diga' nggad, l-elementi kollha li dottrinalment huma meqjusa necessarji, cioe' l-bzonn li l-minaccja tkun gravi, tkun ingusta, tkun inevitabli u fuq kollox li r-reazzjoni tkun proporzjonata ghall-minaccja jew ghall-aggressjoni.

Dwar l-element ta' l-inevitabilita' il-Professor Sir Anthony Mamo, fin-noti tieghu "Lectures in Criminal Law, Part I", ighid hekk (pagna 104):

"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 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."

Dwar il-kwistjoni ta' l-inevitabilita' tal-perikolu jew minaccja, din il-Qorti, diversament komposta, fis-sentenza tat-23 ta' Gunju, 1978 fl-ismijiet Ir-Repubblika ta' Malta v. Frangisku Fenech, wara li accennat ghall-kontroversja klassika bejn dawk li jghidu li jekk l-aggredit seta' jahrab kien tenut li jaghmel hekk u dawk li jghidu li l-aggredit ma ghandu qatt jirtira, komplet hekk:

"Din il-Qorti hi tal-fehma li llum ma tistax izjed taccetta bhala proposizzjoni assoluta illi (barra, naturalment, mill-kaz tal-"*commodus discensus*") jekk l-aggredit seta' jevita l-hsara, allura kien tenut jahrab u illi jekk ma jahrabx ma jistax minhabba f'hekk jinwoka din l-iskriminanti; izda fl-istess hin ma tahsibx li tista' taghti salvakondott ghall-ispavalderija zejda. Dawn huma l-limiti gusti tal-kwistjoni u pjuttost milli tifformalizza proposizzjoni rigida applikabli ghall-kazijiet kollha, din il-Qorti tippreferixxi li l-kwistjoni tigi risolta kaz b'kaz, u fuq l-iskorta tal-principji salutari li jiggovernaw dan il-kaz klinikament tipiku ta' gustifikazzjoni."

¹⁴⁹ Qorti tal-Appell Kriminali 20 ta' Jannar, 1995, fl-ismijiet '**Il-Pulizija vs Joseph Psaila**'

Din il-Qorti, kif issa komposta, tazzarda zzid li l-mod kif il-kwistjoni ta' l-inevitabilita` tal-perikolu jew minaccja ghandha tigi affrontata hu li wiehed jistaqsi: l-agent (ossia l-aggreddi) seta', tenut kont tac-cirkostanzi kollha, ragjonevolment jevita dak il-perikolu jew dik il-minaccja? Jekk il-buon sens jiddetta li l-agent seta', billi jaghmel manuvra jew pass f' direzzjoni jew ohra, jew anke billi semplicement ma jiccaqlaqx, facilment jevita l-periklu jew minaccja li kien qed jara fil-konfront tieghu, allura, jekk ma jaghmelx hekk jigi nieqes l-element tal-inevitabilita` tal-perikolu jew minaccja. Jekk, pero`, mill-banda l-ohra, tenut kont tac-cirkostanzi kollha, il-buon sens jiddetta li l-agent ma kellu jaghmel xejn minn dan jew, anzi, kellu jibqa' ghaddej fit-triq li twasslu aktar qrib dak il-perikolu jew dik il-minaccja, allura b'daqshekk ma jigix nieqes l-element ta' l-inevitabilita`¹⁵⁰."

Mela l-agent irid ikun qed jirreagixxi (ghall-aggressjoni jew minaccja minnu ga` percepita bhala ingusta u gravi) proprju biex ma jhallix il-hsara mhedda ssehh. Jigifieri s-sitwazzjoni trid tkun wahda fejn l-aggressjoni jew minaccja x'aktarx issir wahda verament inevitabli, u mhux semplicement prezunta li hi inevitabli. A propozitu tar-rekwizit ta' l-attwalita`, il-gurista Taljan Francesco Antolisei jghid hekk:

"Il codice Zanardelli parlava di pericolo 'imminente', dando luogo a molte incertezze. Con la nuova formula [pericolo attuale] si e` voluto porre in rilievo che la situazione pericolosa deve esistere nel momento del fatto. Pericolo attuale e` pericolo presente. Pertanto, un pericolo meramente futuro, e cioe` la probabilita` che in seguito si verifichi una situazione pericolosa non basta; e se ne comprende la ragione, giacche` in tale caso l'aggreddito ha la possibilita` di invocare efficacemente la protezione dello Stato"

49. Illi r-ratio legis wara l-istitut tal-legittima difiza huwa d-dritt ghal awto-tutela ta' persuna jew tal-gheziez taghha, b'tali mod illi qtil isir gustifikat. Dan issehh meta persuna tkun sabet ruhha wicc imb'wicc ma` agressjoni ngusta tant illi ma tkunx tista' tirrikorri ghal mezzi ohra biex tahrab minn jew tevita dak il-periklu jew inkella li tirrikorri lejn l-Istat sabiex iharisha mill-periklu. Tispicca ghalhekk kostretta tuza mezzi hija stess biex thares lilha innifisha minn dak il-periklu li jkun attwali, gravi u inevitabli. Id-dritt penali Taljan fil-fatt isemmi bhala zewg rekwiziti ghall-awto-tutela dik tan-necessita` u tal-kostrizzjoni :-

"La necessita` di difendersi e la costrizione sono due elementi diversi ma tuttavia connessi. Necessita` di difendersi significa che la reazione deve essere difensiva, e quindi non aggressiva, nel senso che deve essere un'azione che si contrappone ad un'altra azione uguale e contraria, o perlomeno analoga.

La costrizione implica che la legittima difesa non possa essere invocata tutte le volte che il soggetto aggreddito aveva altre modalita` di difesa (ad esempio quando poteva sottrarsi al pericolo con la fuga, oppure chiamando un agente nelle vicinanze). Il soggetto infatti deve essere costretto, cioe` trovarsi in una situazione implicante impossibilita` di scelta. Si ha costrizione quando il soggetto subisce l'alternativa tra il reagire o tollerare l'attacco esterno senza esserne l'artefice. Cio` si verifica quando tale alternativa non e` causata o accettata dall'aggreddito o quando egli non possa sottrarsi senza pregiudizio. Non e`, pertanto configurabile la costrizione se il soggetto agente abbia agito non per scopo difensivo, ma per risentimento o ritorsione (Sez. 1, n. 3200 del 18 febbraio 2000) o in un contesto di sfida reciproca (Sez. 5, n. 7635 del 16 novembre 2006; Sez. 1, n. 365 del 24

¹⁵⁰ Deciza mill-Qorti tal-Appell (Sede Inferjuri), preseduta mill-Imhallfin Vincent Degaetano, Joseph A. Filletti u David Scicluna u deciza fis-16 ta' Ottubru, 2003.

settembre 1999). La legittima difesa non è neppure invocabile da parte di colui che accetti una sfida o si ponga volontariamente in una situazione di pericolo dalla quale è prevedibile o ragionevole attendersi che derivi la necessità di difendersi dall'altrui aggressione.¹⁵¹”

50. Jekk allura l-aggređit ikollu l-ghazla fil-mument tal-agressjoni u cioe' jekk ikun possibbli ghalih li jevita dak il-perikolu jew ikun jista' jfittex l-ghajnuna mill-awtoritajiet u jonqos milli jagħmel dan, izda jaffaccja l-periklu huwa stess, allura jigi nieqes il-kuncett tal-awto-difeza.

51. Fil-fatt id-dritt penali Taljan jippresupponi zewg rekwiziti għall-applikazzjoni ta` din l-iskriminanti :-

L'accertamento della legittimità va infatti operato in due momenti differenti, il primo avendo riguardo all'offesa e al pericolo da questa generato, il secondo avendo riguardo invece alla difesa vera e propria.

La legge richiede in primo luogo che si agisca per difendere un diritto contro un'offesa ingiusta. Il significato di questo punto è sufficientemente chiaro e univoco da non richiedere specificazioni.

Secondo e ultimo requisito per potersi legittimamente difendere è che il pericolo causato dall'offesa sia attuale, escludendo così tutti i casi in cui questo sia già esaurito o debba ancora verificarsi.¹⁵²

52. Sabiex l-att difensjonali jkun ġustifikat, l-att ta' aggressjoni jrid jkun ta' ċertu portata u ta' periklu u jrid jammonta għal reat vjolenti jew li jseñh f'tali ċirkostanzi li jqajmu biża raġjonevoli tal-periklu tal-ħajja jew tas-sigurta` personali ta' dak li jkun jew ħaddieħor. Dan għandu jkun determinat minn min hu imsejjah biex jiggudika billi jigi applikat it-test soggettiv li jfisser illi l-gudikant irid jidhol fiż-żarbun tal-gudikabbli skont il-każ sabiex iġharrbel il-hsibijiet u l-emozzjonijiet tiegħu fil-mument illi huwa jkun ġie rinfaccjat bil-periklu.¹⁵³”

It has been adequately proven that upon learning that the accused had caused offence to Sarah Johanssen, Abela and Buhagiar decided to join Sarah and **confront the accused who was still in his vehicle.** Thus, there is nothing to suggest that the accused provoked this incident. His only wrong doing was of having passed comments which apparently caused offence to Sarah, when he drove past her; comments which none of the witness can describe what they consisted in.

Indeed, **it is the accused that suffered the aggression** and not the other way round. The Court is perplexed by the fact that notwithstanding the clear footage and having the accused's statement less than 8 hours after the incident, charges

¹⁵¹ <http://www.altalex.com/documents/news/2017/07/03/legittima-difesa-o-licenza-di-uccidere>

¹⁵² <http://www.altalex.com/documents/news/2017/07/03/legittima-difesa-o-licenza-di-uccidere>

¹⁵³ App. Sup – **Ir-Repubblika ta' Malta vs Mariano Grixti** deciza 03/10/2018

were only brought against the accused and not his assailants, primarily Michael Abela, with criminal action in relation to the said assault now being time-barred!

Notwithstanding the clear threat which was perceived by the accused, he did not immediately brandish the knife but informed his assailants that he was carrying a knife! He even moved away from them when opening it warning them *“that I have a knife”*.¹⁵⁴ It was only after they chose not to relent and continued assaulting him, he who was clearly outnumbered and prevented from driving away, chose to use the knife. For some time his reaction seemed to have the desired effect as the three of them left and continued walking up the hill; something they should have done all along when they ought to have ignored comments made to Sarah and not react with such senseless aggression towards a person sitting inside a vehicle.

On the basis of the evidence brought forward, the Court finds that the accused’s reaction was one truly spurred by considerations for his own safety. Who would not fear for his life being attacked by three individuals while in the confines of a vehicle with no means of driving off?

When attacked the first time, the accused used the only available instrument which he had at hand in a bid to scare the three aggressors away; no other instruments which may have served the purpose appear in the vehicle. Also relevant is the angle and nature of the wounds suffered by Abela and Johanssen; the type of wound suffered by Abela is consistent with the haphazard and random slashing movements of a knife. Had the accused intended to willingly injure those attacking him, the Court deems that one would have encountered stab wounds, where the instrument is thrusted into the victim rather than a wound compatible with a swiping movement such as one would make when attempting **to ward off an assailant**. It is also pertinent to point out that it results that the injuries suffered by Johanssen were accidental and she suffered the said abrasions and bruises only when she intervened in the physical altercation coming between Abela and the accused. She said as much to Dr. Mario Scerri *“Nispjega li meta dan hareg mill-karrozza u beda jghati lil Micahel jien dhalt bejniethom u laqatni wkoll fuq wicci u fuq idejja.”*¹⁵⁵ Buhagiar also confirms this *“it-tfajla kienet qeghda mal-art, allura gew il-barrani, t-tfajla u Mike...fin-nofs it-tfajla u Mike...wiccha lejn Mike u darha lejn il-barrani kienet”*.¹⁵⁶ This shows that wounding Sarah was no deliberate act on the accused’s part.

¹⁵⁴ Fol.11

¹⁵⁵ Fol.342

¹⁵⁶ Fol.433

This leads the Court to find that had the accused's actions not been limited to merely defensive actions, the type of injuries would have been far graver. Moreover, when the aggression resumed after Abela and his friends had seen the accused again as they drove down, instead of the accused standing his ground and using the same knife, the accused saw an opportunity to flee the scene and took it, leaving the knife behind.

Article 55 of the Arms Act

The defendant was further charged with offences against the Arms Act, Chapter 480 of the Laws of Malta. The fourth charge (d) is the offence envisaged by Article 55 of the Act. However, the Attorney General in indicating the Articles of Law in terms of Article 370(3)(a) of Chapter IX of the Laws of Malta, failed to indicate the said article.

Notwithstanding this evident oversight, it has already been indicated that the accused's actions are not tantamount to an offence due to their being imposed by actual necessity in lawful self-defence.

Article 6 of the Arms Act

This charge has been adequately proven. There remains no doubt that the accused was carrying a knife without being duly licenced to do so by the Police Commissioner.

Article 338(ff) of the Criminal Code

This contravention against public order sanctions an individual who in any public place or place open to the public, is found drunk and incapable of taking care of himself.

No evidence was brought forward to substantiate such a charge. In fact, the facts of this case prove otherwise as it has been amply shown that the accused sought to defend himself in the first instance and upon being approached by Abela and Buhagiar, who in the words of Sarah Johanssen "*ovvjament li tawh hux*",¹⁵⁷ avoided a second aggression by fleeing the scene and seeking refuge and protection within the confines of Casino Malta.

¹⁵⁷ Fol.504

Article 338(dd) of the Criminal Code

Given that the accused found himself in a brawl which he had no part in instigating, the accused cannot be found guilty of the last charge which sanctions the disturbance of the public good order or the public peace.

Punishment

In its considerations on punishment the Court noted the accused's clean criminal record, the nature of the offence upon which he is being found guilty and the circumstances of the case.

Decide

For the said reasons the Court, after seeing Articles 6 and 51(7) of the Arms Act, Chapter 480 of the Laws of Malta, finds the defendant guilty of the fifth charge (charge (e)), and whilst acquitting him of all other charges, condemns him to a fine, *multa*, of €116.47c.

In terms of Article 23 of the Criminal Code and Article 56 of the Arms Act, orders the forfeiture of the knife documented as Exhibit 16 AMO 201.¹⁵⁸

**Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)
Magistrate**

¹⁵⁸ Report by Dr. Marisa Cassar, **Doc.MC** a fol.369. Date exhibited: 14/03/2017