



MALTA

**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR. GABRIELLA VELLA B.A., LL.D.**

Case No. 438/18

**The Police
(Superintendent Trevor Micallef)**

Vs

Michael Caruana Turner

Today, 15th June 2021

The Court,

After having considered the charges brought against Michael Caruana Turner, son of Nicholas and Deborah neè McNamara, born on the 21st February 1998 in Pietà, residing at 6, Sqaq il-Maghada, Birkirkara, and holder of Identity Card Number 85898(M), of having in these Islands on the 6th July 2018, at about ten to four in the morning, in Gorg Borg Olivier Street, St. Julian's, and/or in the vicinity, driven vehicle Registration No. OKW-356, make Subaru:

1. Through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations caused the death of Tim Scholten;
2. Of further having on the same date, time, place and circumstances, through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations, caused slight bodily harm on the persons of Thom Hubertina Jacobus Van Golde, Roy Leonardus Swanenberg, Ryan Knowles and Maximilianus Van Elten;
3. Of further having on the same date, time, place and circumstances through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations caused involuntary damages on vehicle Registration No. OKW-356 make Subaru, to the detriment of Nicholas Caruana Turner and/or other persons and/or other entities;
4. Of further having on the same date, time, place and circumstances through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations caused involuntary damages on benches, railing, electricity pole and other outdoor furniture to the detriment of the Director and

Infrastructure Department, St. Julian's Local Council and/or other persons and/or other entities;

5. Of further having on the same date, time, place and circumstances driven vehicle Registration No. OKW-356 make Subaru in: (a) a dangerous manner, (b) reckless manner, (c) negligent manner;
6. Of further having on the same date, time, place and circumstances driven or attempted to drive or was in charge of vehicle Registration No. OKW-356 make Subaru, on a road or other public place when he was unfit to drive through drink or drugs;
7. Of further having on the same date, time, place and circumstances driven, attempted to drive or was in charge of vehicle Registration No. OKW-356 make Subaru on a road or other public place after having consumed so much alcohol that the proportion of it in his breath, blood or urine exceeded the prescribed limit;
8. Of further having on the same date, time, place and circumstances, after being involved in an accident involving personal injury to other persons or damage to any vehicle, animal or other property, as the driver of vehicle Registration No. OKW-356 make Subaru, he did not stop, and if required did not give to the police officer, local warden or another person, who had reasonable grounds for so requiring, his name and address, the details of the vehicle, the details of the insurer of the vehicle;
9. Of further having on the same date, time, place and circumstances driven vehicle Registration No. OKW-356 make Subaru in an excessive speed;
10. Of further having on the same date, time, place and circumstances driven vehicle Registration No. OKW-356 make Subaru, on a road without having a valid driving licence, or drove said vehicle when said vehicle was unlicensed to be used on the road;
11. Of further having on the same date, time, place and circumstances driven vehicle Registration No. OKW-356 make Subaru when there was not in force in relation to the user of the vehicle a policy of insurance in respect of third party risks;
12. Of further having on the same date, time, place and circumstances altered, rearranged or defaced a vehicle registration mark on a motor vehicle or otherwise tampered with the registration plates of a motor vehicle¹;

After having considered the request by the Prosecution for the accused to be disqualified from holding or obtaining a driving licence for a period that the Court deems appropriate;

After having considered that the accused declared that he is not guilty of the charges brought against him²;

After having considered the documents submitted by the Prosecution on the 12th July 2018 marked Doc. "TM1" to Doc. "TM12" at folios 9 to 35 of the records of the proceedings;

¹ Folios 321 to 323 of the records of the proceedings.

² Folio 324 of the records of the proceedings.

After having heard testimony by PS850 Steven Micallef³, Nicholas Caruana Turner⁴ and Inspector Trevor Micallef⁵ during the sitting held on the 19th July 2018, after having considered Doc. “SM1” submitted by PS850 Steven Micallef, after having heard testimony by Dr. Luana Formosa⁶, PS345 Mark Cremona⁷, PC1461 Alfred Bray⁸ and PS1540 Edmond Fenech⁹ during the sitting held on the 1st August 2018, after having considered the Procès-Verbal bearing No. 646/18 at folio 110 of the records of the proceedings, after having heard testimony by the Scene of Crime Officer PS186 Kristian Mintoff¹⁰, Dr. Gillian Pace Moore¹¹, Paul Cini on behalf of MTIP¹², Karen Cremona on behalf of Transport Malta¹³ during the sitting held on the 5th September 2018, and after having considered the Report submitted by Scene of Crime Officer PS186 Kristian Mintoff marked as Doc. “KM” at folios 118 to 142 of the records of the proceedings, the document and photographs submitted by Paul Cini marked Doc. “PC1” and Doc. “PC2” at folios 146 and 147 of the records of the proceedings and Doc. “P3” to Doc. “PC6” at folios 156 to 159 of the records of the proceedings, and the document submitted by Karen Cremona marked Doc. “CC” at folios 149 to 154 of the records of the proceedings, after having heard testimony by Paul Spiteri on behalf of the St. Julian’s Local Council during the sittings held on the 24th September 2018¹⁴ and on the 18th June 2020¹⁵ and after having considered documents submitted by him marked Doc. “PS1” to Doc. “PS4” a folios 166 to 171 of the records of the proceedings, after having heard testimony by Christian Vella on behalf of Gasan Mamo Insurance¹⁶, Expert Pathologists Professor Marie Therese Camilleri and Dr. Ali Salfraz during the sitting held on the 24th September 2018 and after having considered the document submitted by Christian Vella marked Doc. “CV” at folios 174 and 175 of the records of the proceedings and the Report submitted by the Expert Pathologists marked Doc. “MT” at folios 177 to 179 of the records of the proceedings, after having heard testimony by the Technical Expert Mario Buttigieg during the sittings held on the 5th September 2018¹⁷, the 23rd October 2018¹⁸ and on the 9th May 2019¹⁹ and after having considered the Report submitted by the said Technical Expert marked Doc. “MB” at folios 192 to 264 of the records of the proceedings, after having heard testimony by the Medical Expert Dr. Mario Scerri during the sittings held on the 23rd October 2018²⁰ and the 12th November 2018²¹ and after considering the Report submitted by him marked as Doc. “MS” at folios 267 to 303 of the records of the proceedings and the Medical File pertinent to Tim Scholten marked as Doc. “MS1” a folios 333 to 442 of the records of the proceedings, after having heard

³ Folios 70 to 76 of the records of the proceedings.

⁴ Folios 77 and 78 of the records of the proceedings.

⁵ Folios 79 to 81 of the records of the proceedings.

⁶ Folios 98 and 99 of the records of the proceedings.

⁷ Folios 100 and 101 of the records of the proceedings.

⁸ Folios 102 to 105 of the records of the proceedings.

⁹ Folios 106 to 108 of the records of the proceedings.

¹⁰ Folio 117 of the records of the proceedings.

¹¹ Folios 143 and 144 of the records of the proceedings.

¹² Folio 145 of the records of the proceedings and folio 155 of the records of the proceedings.

¹³ Folio 148 of the records of the proceedings.

¹⁴ Folio 164 of the records of the proceedings.

¹⁵ Folios 552 to 555 of the records of the proceedings.

¹⁶ Folios 172 and 173 of the records of the proceedings.

¹⁷ Folios 116 and 117 of the records of the proceedings.

¹⁸ Folios 189 to 191 of the records of the proceedings.

¹⁹ Folios 480 and 481 of the records of the proceedings.

²⁰ Folios 265 and 266 of the records of the proceedings.

²¹ Folio 332 of the records of the proceedings.

testimony by Charles Clarke²² and Ryan Knowles²³ during the sitting held on the 23rd October 2018 and after considering the medical certificate submitted by Ryan Knowles marked as Doc. “RK” a folio 315 of the records of the proceedings, after having heard testimony by the Technical Expert Dr. Martin Bajada during the sitting held on the 12th November 2018²⁴ and considered his Report marked as Doc. “MB” at folios 327 to 331 of the records of the proceedings;

After having considered that during the sitting held on the 11th December 2018²⁵, Defence Counsel for the accused declared that the accused is renouncing to the translation of all the Expert Reports submitted in the records of these proceedings and is also renouncing to re-hear the witnesses who already gave testimony before the Court;

After having considered the Note by the Attorney General dated 9th June 2020²⁶ by virtue of which he sent the accused to be tried by this Court, subject to no objection being made by the accused in terms of Section 370(3) of the Criminal Code, Chapter 9 of the Laws of Malta, for an offence or offences under the provisions of:

- Section 225(1)(2) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Section 226(1)(c) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Section 328(a) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Section 328(a) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Section 15(1)(a),(2),(3) of the Traffic Regulation Ordinance, Chapter 65 of the Laws of Malta;
- Section 15A(1) of the Traffic Regulation Ordinance, Chapter 9 of the Laws of Malta;
- Section 15B(1) of the Traffic Regulation Ordinance, Chapter 9 of the Laws of Malta;
- Regulation 67(1) of the Motor Vehicle Regulations, S.L. 65.11 of the Laws of Malta;
- Section 127 of the Motor Vehicle Regulations, S.L. 65.11 of the Laws of Malta;
- Sections 17, 31, 533 and 532A of the Criminal Code, Chapter 9 of the Laws of Malta;

After having heard the Prosecution declare that it has no further evidence to submit in these proceedings and after having heard the accused declare that he has no objection to his case being dealt with summarily, the Court proceeded to read out the Sections of the Law put forth by the Attorney General in his Note dated 9th June 2020²⁷;

After having considered the document marked Doc. “A”, submitted by the accused by means of a Note filed on the 5th October 2020, at folios 557 and 558 of the records of the proceedings;

After having noted that by a Decree dated 18th September 2020²⁸, the Court ordered that a Social Inquiry Report be drawn up with regard to the accused and after having heard testimony by Probation Officer Joanna Farrugia, who was entrusted with

²² Folios 304 to 310 of the records of the proceedings.

²³ Folios 311 to 314 of the records of the proceedings.

²⁴ Folios 325 and 326 of the records of the proceedings.

²⁵ Folio 446 of the records of the proceedings.

²⁶ Folio 543 of the records of the proceedings.

²⁷ Minutes of the sitting held on the 17th June 2020, folio 545 of the records of the proceedings.

²⁸ Folio 551 of the records of the proceedings.

drawing up the Social Inquiry Report with regard to the accused, during the sitting held on the 5th November 2020²⁹ and after having considered the Social Inquiry Report submitted by her marked as Doc. “JF” at folios 563 to 577 of the records of the proceedings;

After having heard oral submissions by the Prosecution and the Defence Counsel;

After having considered all the records of the proceedings;

Considers:

The accused is being charged of having in these Islands on the 6th July 2018, at about ten to four in the morning, in Gorg Borg Olivier Street, St. Julian’s, and/or in the vicinity, driven vehicle Registration No. OKW-356, make Subaru: (1) Through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations caused the death of Tim Scholten; (2) Of further having on the same date, time, place and circumstances, through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations, caused slight bodily harm on the persons of Thom Hubertina Jacobus Van Golde, Roy Leonardus Swanenberg, Ryan Knowles and Maximilianus Van Elten; (3) Of further having on the same date, time, place and circumstances through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations caused involuntary damages on vehicle Registration No. OKW-356 make Subaru, to the detriment of Nicholas Caruana Turner and/or other persons and/or other entities; (4) Of further having on the same date, time, place and circumstances through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations caused involuntary damages on benches, railing, electricity pole and other outdoor furniture to the detriment of the Director and Infrastructure Department, St. Julian’s Local Council and/or other persons and/or other entities; (5) Of further having on the same date, time, place and circumstances driven vehicle Registration No. OKW-356 make Subaru in: (a) a dangerous manner, (b) reckless manner, (c) negligent manner; (6) Of further having on the same date, time, place and circumstances driven or attempted to drive or was in charge of vehicle Registration No. OKW-356 make Subaru, on a road or other public place when he was unfit to drive through drink or drugs; (7) Of further having on the same date, time, place and circumstances driven, attempted to drive or was in charge of vehicle Registration No. OKW-356 make Subaru on a road or other public place after having consumed so much alcohol that the proportion of it in his breath, blood or urine exceeded the prescribed limit; (8) Of further having on the same date, time, place and circumstances, after being involved in an accident involving personal injury to other persons or damage to any vehicle, animal or other property, as the driver of vehicle Registration No. OKW-356 make Subaru, he did not stop, and if required did not give to the police officer, local warden or another person, who had reasonable grounds for so requiring, his name and address, the details of the vehicle, the details of the insurer of the vehicle; (9) Of further having on the same date, time, place and circumstances driven vehicle Registration No. OKW-356 make Subaru in an excessive speed; (10) Of further having on the same date, time, place and circumstances driven vehicle

²⁹ Folios 561 to 562 of the records of the proceedings.

Registration No. OKW-356 make Subaru, on a road without having a valid driving licence, or drove said vehicle when said vehicle was unlicensed to be used on the road; (11) Of further having on the same date, time, place and circumstances driven vehicle Registration No. OKW-356 make Subaru when there was not in force in relation to the user of the vehicle a policy of insurance in respect of third party risks; (12) Of further having on the same date, time, place and circumstances altered, rearranged or defaced a vehicle registration mark on a motor vehicle or otherwise tampered with the registration plates of a motor vehicle.

The accused declared that he is not guilty of the charges brought against him.

By means of a Note filed on the 9th June 2020³⁰, the Attorney General sent the accused to be tried by this Court, subject to no objection being made by the accused in terms of Section 370(3) of the Criminal Code, Chapter 9 of the Laws of Malta, for an offence or offences under the provisions of:

- Section 225(1)(2) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Section 226(1)(c) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Section 328(a) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Section 328(a) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Section 15(1)(a),(2),(3) of the Traffic Regulation Ordinance, Chapter 65 of the Laws of Malta;
- Section 15A(1) of the Traffic Regulation Ordinance, Chapter 9 of the Laws of Malta;
- Section 15B(1) of the Traffic Regulation Ordinance, Chapter 9 of the Laws of Malta;
- Regulation 67(1) of the Motor Vehicle Regulations, S.L. 65.11 of the Laws of Malta;
- Section 127 of the Motor Vehicle Regulations, S.L. 65.11 of the Laws of Malta;
- Sections 17, 31, 533 and 532A of the Criminal Code, Chapter 9 of the Laws of Malta.

During the hearing of these proceedings, a number of witnesses, including Court-appointed Experts, gave their testimony, namely:

- **PS850 Steven Micallef**³¹, who declared that: *On the 6th July 2018, I was working first watch duty which means between 5 a.m. and 1:00 p.m. and at 04:50 hours when we were changing shifts we were informed by PS 1540 that there was a collision and there were lot of people injured in Triq Borg Olivier, St. Julians. Obviously we went on site half of my shift and half of the other shift, and the Police numbers are listed in the report. At the time we tried to sort out the matter, there were lot of people injured, there were a lot of people under shock, a lot of people tried to help and a lot of people were just there watching and they weren't helping. Three ambulances were called on site, two doctors from the Emergency Department Dr. Joslin and Dr. Michael Spiteri reperred on site as well and they informed that one of the persons injured was in danger of loss of life. I closed the street and posted a police at every entry so that the scene could not be disturbed. I reperred at the hospital to see the extent of the injuries, how many people entered from that accident and so on and so forth and who were the doctors who were taking care of the patients. At around six o'clock PS1540 and PC1461 reperred at*

³⁰ Folio 543 of the records of the proceedings.

³¹ Testimony given during the sitting held on the 19th July 2018, folios 70 to 76 of the proceedings.

the hospital were they told me that they found the person who was driving the vehicle. I didn't mention before that the driver of the vehicle was never on site. Obviously I contacted St. Julians Police Station where they checked the ownership of the vehicle and it resulted it was of Nicholas Caruana Turner who lives in Birkirkara. ... the owner, as I did not know who was using the vehicle at the time. He lives in Birkirkara and we contacted Birkirkara Police Station to reper at his home to check who was using the vehicle. I was never informed by Birkirkara Police Station but I was informed later that they had contacted the father Nicholas Caruana Turner who informed us that his son was using the vehicle. At around approximately six o'clock I was at hospital and PS1540 and PC1461 who were sent on patrol to see whether they could find this person who was driving the vehicle. At around 6:00hrs PS1540 and PC1461 reperred at the hospital and they informed me that they had arrested the person who was driving the vehicle. He was in a drunken state which means there was smell of alcohol coming out of his mouth. I got inside the police vehicle and told them to reper to St. Julians Police Station to make the breathalyser test. His first words to me were, "how is he?" and I informed him that he was going to die as informed by Dr. Joslin. He was in danger of loss of life and he was going to die within days or hours. So he knew what was going on but seemed without emotion. Anyway I reperred to the Police Station and when I told him that he was going to die, he told me, "I should never have drove, I was not in a state to drive." I told him, "listen did they give you your rights?" but he didn't respond and I gave him his full rights of arrest. We reperred at the Police Station and this time I gave him - the accused whom the witness recognised during the course of his testimony - the rights for the breathalyser test to be carried out. I informed him everything of what can happen and his rights to abstain from doing the breathalyser test, but abstaining would mean that he would be guilty. He chose to do the breathalyser test which I did on 06:11hrs and I can present the test. The test came up to 78.7, if I am not mistaken, which is over the limit by three times, nearly four. This is the print out of breathalyser test - submitted as Doc. "SM1" at folio 66 of the records of the proceedings - ... I did the breathalyser test and he chose to sign the breathalyser test himself. There is my police number and everything written down, his details and the vehicle registration number, the time and the alcohol content. ... The test time is 06:11:47 seconds. ... From then on I informed Inspector Trevor Micallef with what we had and he appointed a Magisterial Inquiry. I checked for CCTV cameras and there were none that would indicate the accident that I saw. ... The vehicle in question was on the side walk which means it was literally parked between the part where there are trees and the barrier from then on there is the sea. It was parked blocking the road completely. Asked if the vehicle was blocking the road or the side walk, he replied: The side walk, but I found the victim was in the road but he could have been moved by people, I don't know. ... From what I investigated, it was going towards Sliema. Further back from the site where the people were injured there was like a brush on the side walk which indicates that a vehicle mounted the pavement. It was quite a long way towards St. Julians, it was around twenty to thirty meters I think. So it indicates that the vehicle mounted the kerb whilst it was being driven towards Sliema. ... The other victims were all around the place. There were two people that were giving us hassle. There was an English national who tried to jump and we had to force him down and arrest him as well. ... He was eventually one of the victims. ... Before he had some sort of tour in Afghanistan

and there was a flashback but he was injured. ... There were other people that were in shock who weren't injured, just in shock. Asked who was the person who tried to jump, PS850 Steven Micallef stated that it was a certain Charles Clarke.

Asked about the make and registration number of the vehicle involved in this incident, PS850 Steven Micallef answered that the vehicle is a Subaru bearing Registration No. OKW-356. He also stated that on site there was total destruction. ... An overturned lamp post with a slab of concrete at the bottom. It comes out more outside the pavement so within the case that there is a lamp post. The slab of concrete was overturned completely and it didn't fell in the sea because when it overturned it was held by the upper part of the lamp post. Two benches were destroyed and a couple of trees. The vehicle too had extensive damage, including damage to the tyres.

PS850 Steven Micallef stated that persons involved as victims in this incident are: Tim Sholten who eventually passed away, Roy Leonardus Theodorus, Andrea Kapelina, Thom Hubertina, Maximilianus Van Elten, Kristina Tomic, Charles Clarke and Ryan Knowles. On site we took the details of a certain Maria Escalada who was helping the victim, Tim Sholten.

- **Nicholas Caruana Turner**³², the accused's father and the owner of the vehicle involved in the incident forming the merits of these proceedings, confirmed that he is indeed the registered owner of the vehicle Subaru Impreza bearing Registration Number OKW-356 and that he is aware of the fact that it was involved in a road traffic accident on the 6th July 2018. Under cross-examination he declared that *I am not going to press charges regarding the damages caused to the car.*
- **Inspector**³³ **Trevor Micallef**³⁴, declared that: *On the 6th July of this year at about 05:30 in the morning, I was informed by PS850 Steven Ryan Micallef that at about five to ten, about 05:00 a.m. there was a traffic accident in Gorg Borg Olivier Street, St. Julians. The sergeant informed me that PS1540 who had just finished from duty from St. Julians Police Station was going home and when he was going towards Sliema, he noticed a male person in the middle of the road. Then he noticed a vehicle Subaru Impreza Registration Number OKW356 which was on the pavement on his left hand side therefore on the side where there is the sea. There were several damages such as benches, an electricity pole and trees and also there were other persons who were injured. In fact it was being alleged that eight people in total who had been run over by this vehicle. At that time when PS850 reperred on site, obviously ambulances were called because there were these several persons injured but the driver of this vehicle was not on site. Sergeant 850 then informed me that PS1540 and PC 1461 who were going to take one of the victims who was slightly injured to hospital, on their way to hospital in St. Julians Road, San Gwann which is one of the roads leading to Mater Dei Hospital, they notice a young male person walking towards Mater Dei Hospital who acted suspicious for them. They stopped him and checked his details and eventually they noticed that he could have been the driver driving this vehicle*

³² Testimony given during the sitting held on the 19th July 2018, folios 77 and 78 of the proceedings.

³³ Now Superintendent.

³⁴ Testimony given during the sitting held on the 19th July 2018, folios 79 to 81 of the records of the proceedings.

registration number OKW 356 which was involved in this incident. ... Subsequently I was also informed that on his arrest and while he was taken to St. Julians Police Station, the driver whom I can recognise in this Court room Michael Caruana Turner, a breathalyser test was made which was positive and more than supposed to be. He was held in St. Julians Police Station for further investigations. I therefore then proceeded on site, informed Magistrate Francesco Depasquale who nominated several Court experts to assist him in the inquiry. I went to hospital where two of the Court experts were speaking to the victims, five of the victims because two had already left hospital. I was also informed that one of the victims, the person who was found by PS1540 in the middle of the road Tim Scholten, was in danger of loss of life. The other persons were Thom Hubertina Jacobus Van Golde, Roy Leonardux Swanenberg, Maximilianus Van Elten, Kristina Tomic, Andrea Kapelina and the other two Charles Clarke and Ryan Knowles had already left hospital. Apart from Tim Scholten, the others were all slightly injured but two of them, although they had certificates, they did not sustain any injuries. ... One of the Court experts Dr. Mario Buttigieg, then reperred at St. Julians Police Station, the accused which at that time had his lawyer Dr. Gianella Caruana Curran was spoken to and he seemed obviously in state of shock and he was requested to be taken to hospital and a medical certificate was forwarded to the police where it stated that he could be investigated and if necessary placed in a cell. The next morning he did not have any sleep and on that day I did not want to speak to him so he could have a clear conscience and state exactly what happened. The next day in the morning, there was Dr. Gianella for the accused, spoke to him where he released in oath his statement of event. ... I was informed that most probably, Tim Scholten would die. He was at the ITU, he was going to die and therefore I did not want to arraign Michael Caruana Turner because if so he could have pleaded guilty and if pleaded guilty obviously he would be given a sentence and therefore I could have not arraign him afterwards when Tim Scholten died. Therefore I gave him a police bail for the 12th July, after a few days to see if Tim Scholten would pass or not. In fact on that day Saturday/Sunday early in the morning at about midnight I was informed that he lost his life. ... On the 12th July the accused came together with his lawyer Dr. Giglio, where I asked him some questions and he released a written statement - Doc. "TM9" at folios 29 to 32 of the records of the proceedings. Inspector Trevor Micallef stated further that: I can also recognise a document on folio 33 which is the declaration where I gave him his right for a lawyer to be present. I can identify my signature, of WPC 166 Claire Amato and that of RPC 3107 Mary-Rose Brincat.

In the statement released by the accused on the 12th July 2018³⁵, in the presence of his lawyer, the accused, in answer to the question tell me what you have to say? declared: I have dyslexia when I was young at school they took me out of the Maltese class as they told me that it was difficult for me to learn two languages. My mum does not speak Maltese and my father used to work night shifts when I was young. I was in year 4 when they told me this at school. On that day I was in Paceville, I do not know at what time I was going home. I drank when I arrived at about midnight or 01:00a.m., I had beer and shared a tray of Tequila with

³⁵ Folios 29 to 32 of the records of the proceedings.

another person, so I had 6 shots. I did not drink anything else. I do not drink that much. I stopped drinking, I would say at around 02:00a.m. When I was going home I felt tired, I was hungry and I was a fool that I thought that I could drive, because I always hear that you should not drink and drive. At that time I thought I was able to drive. It was only a two minute drive because I was going to go and sleep at my Nanna at Balluta and that is why I felt that I was up to it. I do not remember much about the accident, all I remember is that I found myself in a state of confusion and shock. I did not know where I was and what was happening. I found myself running, I went to lay down on the pavement and when I came back to reality I realised that I must have crashed with my car. Then I thought I should go back and see what happened, I did not see the car, I saw a lot of blue lights in the distance. I saw a police woman near the City of London. I went to ask her what had happened and she told me that I should keep on moving. I did not tell her that I was the driver because at that point I did not know how serious the accident was and I was still in a state of shock and for some reason I decided to walk home to tell my dad what happened because at that point I was scared because I drank. I had a mobile but I did not have any credit to call my father. If I knew I hit people I would have informed the police straight away. At that time I was not thinking rationally as I should have walked to Balluta and called my father from my Nanna's house rather walking to B'Kara to go home. The Police stopped me when I was on the way home and I went with them. I realised that someone got hit when one of the police officers took someone who was in the car with them to Mater Dei Hospital and asked me whether I wanted to see what I had done. From there I was taken to St. Julian's Police Station and then to Mater Dei Hospital before I gave my statement because I was still in a state of shock.

In his statement the accused declared further that he doesn't remember much about the accident, neither whether he was driving at an elevated speed nor that he ended up on the pavement where he hit eight people and damaged various items, amongst which three benches and an electricity pole. In answer to the question since the Court Expert spoke to you last Saturday, one of the victims, Tim Scholten, died, do you have something to say about this? the accused declared I hate myself because he died because of me. I cannot imagine what his family is going through as they must be devastated. If he was my brother, I do not know what I could do. I am heart broken because he lost his life because of me, I like to give his family compensation, I know it won't bring him back but that is the least I can do even if I have to work for the rest of my life for them. He did not deserve to die, if somebody died, it should have been me. I am not somebody who shows my feelings as it is hard for me to express myself. I am a quiet person, apparently he was also a quiet person. I saw his photo, he looked like a good kid and I am destroyed that he has no life now. ... I went to a psychologist Dr. Sammut. I cannot clear my conscience and I cannot forgive myself. ... I am sorry for everyone else involved. Sorry I put my family through this and in the first statement I mentioned that I suffered from high blood pressure and although I do, I do not think that this had anything to do with the accident and I do not want to look that I am making up excuses.

Other witnesses who testified during these proceedings were:

- **Dr. Luana Formosa**³⁶, who confirmed the medical certificate submitted as Doc. “TM1” at folio 9 of the records of the proceedings and stated that: *At that time it was Mr X because we didn’t have the proper name but the identity card coincides and it was the identity card which was given from Mater Dei. ... It was carried out on the 6th July 2018 at 05:00 a.m. in the morning. There as a CT scan report which showed that there was a 9mm left subdural spanning practically all the left hemicranium. Left to right midline shift in the brain with diffuse oedematous parenchymal changes. Fractures of the superior wall of the left orbit which extends into the left frontal sinus and interior aspect to left frontal bone. Evidence of bilateral aspiration right more than left and there were no rib fractures and spinal fractures and no cervical spine fractures. The impression was that there were extensive intracranial injuries as described above. She further stated that the person in question was certified as being in danger of loss of life.*
- **PS345 Mark Cremona**³⁷, declared that: *on the 6th July 2018, I was duty first watch morning from 05:00 a.m. till 01:30 p.m. At around 06:00 a.m. I was informed that around 05:00 a.m. that there was an incident in Triq Gorg Borg Olivier. Before that I was in Paceville and then I went down to the Police Station to assist my colleague PS850. At that time when I went to the Police Station, PS850 was taking the breathalyser test to Mr. Michael Caruana Turner. Eventually I went on site because my colleague told me that there were around eight people who were injured and taken to hospital. We corded the scene of crime with two vehicles and apart from me there were other two police officers on site. I waited for the Court expert Dr. Mario Scerri and SOCO PS186 and 1491 who took all the evidence from site. What I noticed from the site was that there was the grey Subaru which was on the pavement and there were lots of debris around the street and also I could notice even shoes and flip flops in the middle of Triq Gorg Borg Olivier. There was also one bench smashed and an electrical light pole along the same street which by the hit of the vehicle went down stairs by the sea. I could also notice from the scene of crime that further down the road there was a hit which we think was by the vehicle at the end of the pavement because if you see the road there is like a bend and we could see the direction of the debris along where the vehicle was parked and we started from this dent and I also spoke to the Court expert about it. That was my only involvement in this case. ... Eventually the car was towed from the scene and also we had to take care of the area which had to be cleaned for the inquiry. We also had to bring Enemalta personnel because there were broken light poles. ... The only update that I made was that we informed the British Embassy because there were two British nationals and at that time we didn’t know exactly their identity. I confirm that later on that day on the 6th July I made an update to whom I spoke to from the British High Commission regarding Ryan Knowles and Charles Clarke.*
- **PC1461 Alfred Bray**³⁸, declared that: *On 6th July I was on first watch duty at the St. Julian’s police station. At 5 a.m. we received a telephone call to go to Borg Olivier’s Street in St. Julian’s where there was an incident. PS1540 phoned us who was already on site. Me together with police sergeant 850 went on site were we*

³⁶ Testimony given during the sitting held on the 1st August 2018, folios 98 and 99 of the records of the proceedings.

³⁷ Testimony given during the sitting held on the 1st August 2018, folios 100 and 101 of the records of the proceedings.

³⁸ Testimony given during the sitting held on the 1st August 2018, folio 102 and 103 of the records of the proceedings.

saw a vehicle on the pavement. It was a Subaru with registration number OKW-356. We saw a person in the middle of the road and another person on top of him giving CPR. The sergeant gave me instruction to go and close the road and after a few minutes an ambulance came on site to assist the person who was lying on the ground. The driver of the vehicle was not on site and we were given a description that he was wearing a black shirt and a jeans. When the ambulance took the person who was lying on the ground, his name was Tim Scholten, they took him to hospital and PS1540 told me to go round a bit to see if we could see that person. When we were in St. Julian's Road in San Gwann we saw a person who was wearing a black shirt and a jeans. We stopped to talk to him, we asked what was his name and he told us George Pace, we asked him if he had a Subaru car and he said no and when we asked him where he was going he told us that he was going home to sleep because he was tired. We were not convinced by his version so we took him to the police station to check who he was because he had no documents whatsoever with him. After a while it resulted that he was the owner of the Subaru that was involved in the accident on the road. ... from our system it resulted who the vehicle belonged to. It was registered on his father's name and he had a number of children and the driver was his son. PC1461 Alfred Bray confirmed that the person stopped by him and his colleague was the accused, Michael Caruana Turner, whom he recognised whilst giving his testimony. Under cross-examination PC1461 Alfred Bray stated that after being apprehended, the accused was taken to the Floriana Health Centre so that the injuries, mainly scratches, he sustained following the accident could be seen to.

- **PS1540 Edmond Fenech³⁹**, declared that: *On the 6th of July 2018 at about 4.50am my shift was over and I was going home. As I was passing from George Borg Olivier's Street going to Sliema, near the corner where there is the Park Towers I noticed brown smoke or dust. I could barely see anything so I had to reduce the speed. When I was slowly driving I noticed a person running on the road and shouting and made a sign for me to stop. When I stopped about 2 metres away from me when this brown dust settled I saw a person lying on the ground a few metres away from my car. I parked my car on the side, I went down from the car and I saw this person on the ground with blood coming out from his mouth. I immediately noticed with the gravity of the case and I immediately phoned an ambulance and I also phoned the St. Julian's police station so that they could come and help me. Apart from the person lying on the ground with blood coming out from his mouth there was another person with a head injury and basically more persons injured and panicked with what had happened. I was on site approximately seconds after the incident happened.*

PS1540 Edmond Fenech declared that he didn't see the accident actually happening but that it had just happened and I was going round the corner. Until the police and the ambulance came on site, this person was administered CPR and we tried to calm the people. I noticed a vehicle (a grey Impreza) that was on the pavement that bumped. I asked who was the driver but no one answered and I did not give much notice to the driver until the ambulance came. After the ambulance came on site and took all the persons to hospital we made contact with

³⁹ Testimony given during the sitting held on the 1st August 2018, folio 106 to 108 of the records of the proceedings.

the police station to see the registration number of the vehicle to whom it was registered on and it was registered on Mr. Caruana Turner but it was being driven by Michael Caruana Turner on that day who is son of Nicholas. ... Nicholas Caruana Turner with id card number 813756M and the car was being driven by Michael Caruana Turner id card number 85898M. Since he resided in Birkirkara, PC1461 and I went around the surroundings from St. Julian's to Birkirkara where we noticed a person with his description in St. Julian's Road in San Gwann where we stopped him and we confirmed that it was him and we took him to the police station for a breathalyser test. That was basically my work on that day. ... He was wearing a black shirt and he was skinny. That was the basic description that we had. But when we talked to him at first he started to give us another name and afterwards we confirmed that it was him. We also confirmed on the picture we have from the police system and he asked us how the police have his picture.

PS1540 Edmond Fenech recognised the accused during the course of his testimony and with regard to what he saw when he arrived on site, he declared further that there was a person who started to give CPR. The first person who started administering CPR was a man who was also injured. At the moment I cannot remember his name but he was of British nationality. Afterwards another person came down and continued to give the CPR.

- **Technical Expert Mario Buttigieg⁴⁰**, declared that: *I have been appointed by the Inquiry Magistrate to do the reconstruction of the accident plus to establish how much damages the car had sustained. Basically to quantify the amount, the chassis number has to be established first and foremost. Due to the fact that the car sustained a frontal impact, the bonnet of the car cannot be opened just by pressing the lever therefore it has to be forced open so that the latch be released. So I am pleading to the Court whether I am allowed to force the latch to open so that I can establish the serial number of the car. ... There was a frontal impact and what happened is that the bonnet and the grid literally went inside and they are welded next to each other so they have to be forced open. ... I was also informed that I had to take also the testimony of any party who was involved and I took the testimony of Mr Turner in the English language. ... there were several witnesses who were involved in the accident who were walking by, there were a couple of witnesses.*

He further declared that: I have been nominated by the inquiring magistrate to investigate a case which occurred on the 6th of July of this year where Tim Scholten was knocked down by a car bearing registration number OKW-356. Basically what happened was that during that night (early morning) there were 8 pedestrians walking on the promenade side of the pavement ... In George Borg Olivier Street in St. Julian's, when Michael Caruana Turner was driving a Subaru Impreza bearing the registration number OKW-356, lost control of the vehicle, went up on the pavement, travelled a good distance of over 136 metres where he knocked down 8 pedestrians where 5 of them sustained slight injuries while Tim Scholten had suffered grievous injuries and after a couple of hours passed away.

⁴⁰ Testimony given during the sitting held on the 5th September 2018, folios 116 and 117 of the records of the proceedings, testimony given during the sitting held on the 23rd October 2018, folios 189 to 191 of the records of the proceedings and testimony given during the sitting held on the 9th May 2019, folios 480 and 481 of the records of the proceedings.

During the investigations I was also nominated to carry out to take the testimony of all the parties involved which I did under oath and they all endorsed in this report. Furthermore I also inspected the car and I found a damage (a dent) between the roof and the top part of the windscreen which basically it was done by one of the pedestrians that was walking on that pavement. After carrying out the necessary research which I did to establish also the velocity that he was travelling, it was established from the various authors that I have carried out in this research that he was travelling over 100 kilometres per hour. Furthermore I had informed the court as I always did to check the chassis number which when I opened the door and I have to say that there was no need to do extraneous to take out the lutch because basically what happened was that I got three police officers from the mechanical division where one was in the car and the rest of us did a counter and the lutch was released. ... basically when I inspected the chassis number it gave a different reading from that of the licence which is on the vehicle licence. In fact the chassis number which I also photographed was JF1GDAKD32GO2O914. That was found on the chassis number of the car whilst that of the licence was reading JF1GF and that is the year, that is a different year because the F and the D they specify on the chassis number the year of the car 3DRoEB007515 which does not have to do anything with the original chassis number which is registered with Transport Malta. I also went to Transport Malta to establish what type because these basically every two years they go for a VRT test so basically I needed to establish exactly which vehicle was taken to establish the exact car where the car transpired to be when they went for the VRT was a Subaru Impreza but the variant was an LS and not a WRX. Now there is a huge difference between an LS and a WRX. First and foremost a WRX is a sports car and it is used for rallies etc whilst the LS is a normal car and even the horse power is different. ... Now basically what I am thinking because I did not take testimony or anything what happened was that either the owner or the driver has 2 cars and he is swapping the registration plates from one car to another but that is my suspicion. In fact I have concluded that the police will investigate further on this matter.

With regard to the testimony of the other victims involved in this accident, Technical Expert Mario Buttigieg declared that they testified under solemn declaration, as indicated in his Report, and that the persons who testified before him at the Emergency Department at Mater Dei Hospital were Tom Van Golde, Max Van Elten, Roy Swanenberg, Kristima Tomich and Andrea Kapelina.

Technical Expert Mario Buttigieg submitted and confirmed his Report, marked Doc. "MB" at folios 192 to 264 of the records of the proceedings, and with reference to the accident forming the merits of these proceedings he concluded that: *dan l-allegat incident stradali seħħ għ Triq Gorg Borg Olivier, San Ġiljan, meta Michael Caruana Turner kien qed isuq il-vettura ta' missieru li jismu Nicholas Caruana Turner, ta' għamla Subaru mudell Impreza li għandha numru tar-registrazzjoni OKW-356. Illi kien is-sitta (06) ta' Lulju tas-sena elfejn u tmintax (2018) għall-ħabta ta' ħamsa neqsin għaxra (4:50hr) ta' filgħodu u skond l-evidenza li l-esponent kellu fidu u anki meta l-esponent għamel l-aċċess it-temp kien tajjeb u ċar u minn dak l-att il-visibilità kienet tajba, waqt li t-triq kienet xotta. Illi waqt l-allegat incident is-sewwieq kien sejjer lura lejn għand in-nanna tiegħu peress li*

skond hu kien ma kienx kapaċi jsuq peress li kien għamel xi ħin jixrob gewwa Paceville. Illi minn naħa l-oħra Tim Scholten kien qed jimxi fuq il-bankina flimkien ma' diversi ħbieb tiegħu u anke nies oħra li dak il-ħin kienu fuq btala gewwa Malta. Dak inhar Scholten flimkien ma' ħbiebu kienu kważi waslu fejn il-ħanut uffiċjalment magħruf bħala City of London meta Michael Caruana Turner kien qed isuq l-imsemmija vettura u tajjar diversi nies inkluż Scholten. Illi b'konsegwenza ta' l-inċident il-vettura soffriet ħsarat kbar kemm quddiem, gemb u anki fuq wara. Illi bid-daqqa li Scholten miet f'tit siegħat wara gewwa l-Isptar Mater Dei fejn gie ċċertifikat mejjiet mit-Tabib Dott. Luana Caruana, waqt li Clarke, Tomic, Van Golde, Van Elten u Swanenberg gew iċċertifikati li sofrew griegħi ta' natura ħafifa mit-Tabiba Dott. Andrea Fenech u mit-Tabiba Dott. Gillian Pace Moore rispettivament. Illi dak il-ħin kien għaddej is-Surgent 850 Stephen Ryan Micallef peress li kien spicċa mix-xogħol. Illi kif kien għaddej go Triq Gorg Borg Olivier hu ra kommosjoni sħiħa u meta ra lil Tim Scholten ma' l-art f'nofs ta' triq hu informa l-Għassa ta' San Ġiljan u l-Pulizija bdew bl-investigazzjonijiet tagħhom. Paramediċi gew fuq il-post u Dr. Jonathan Joslin ċertifika li Scholten kien fil-periklu tal-mewt. Illi meta l-Pulizija kellha din l-infomrazzjoni, is-Surgent 1540 Edmond Fenech li daħal xogħol fil-ħamsa (05:00) ta' filgħodu nforma l-Ispettur investigattiv li minn naħa tiegħu informa lill-Magistrat Inkwirenti illi għoġbu jornda Inkjesta. Illi l-esponent flimkien ma' esperti oħra gie nnominat sabiex jgħin fl-Inkjesta u jipprepara r-Relazzjoni tiegħu. Illi waqt l-aċċess meta l-esponent kien fuq il-post osserva li l-vettura ħalla diversi sinjali ta' tires u anki brixx kemm fuq il-kurduna u anki tul il-bankina. Illi ħareġ manifestament ċar minn evidenza miġbura u minn studju li sar minn esperti li fit-tali inċident is-sewwieq tal-vettura kien qed isuq il-vettura tiegħu b'veloċità għolja ħafna u cioè dik ta' aktar minn mitt (100kph) kilometru fis-siegħa. Dan qed jingħad li minn riċerki li għamel l-esponent ma' diversi awturi joħroġ illi sabiex vittma tolqot is-saqaf tal-vettura u taqbiżha, is-sewwieq irid ikun qed isuq b'veloċità ta' aktar minn mitt kilometru fis-siegħa. Illi gie wkoll ikkonstat illi l-vettura telgħet fuq il-bankina u l-inċident fil-fatt seħħ fuq il-bankina. Illi sabiex tela u mexa fuq il-bankina kisser diversi għamara ta' triq fejn il-ħasart telgħu għas-somma ta' ħamest elef seba' mija sitta u tmenin Euro u sittax-il ċenteżmu (€5,786.16) għad-detriment tal-Gvern ta' Malta u tlett mitt Euro (€300) għad-detriment tal-Kunsill Lokali ta' San Ġiljan. Illi hija l-opinjoni umli ta' l-esponent illi Caruana kellu jħares u jadopera iktar kawtela fis-sewqan tiegħu speċjalment meta hu kien qed isuq meta din tintuża minn ħafna nies u meta kien taħt l-influenza tax-xorb. Illi hija għaldaqstant l-opinjoni umli ta' l-esponent, hemm biżżejjed elementi prima facie sabiex jittieħdu passi kriminali kontra Michael Caruana Turner u dan għar-raġunijiet suesposti⁴¹.

- **PS186 Kristian Mintoff**⁴², who was appointed as a Scene of the Crime Officer in the Magisterial Inquiry, submitted and confirmed under oath his Report, exhibited as Doc. "KM" at folios 118 to 142 of the records of the proceedings.
- **Dr. Gillian Pace Moore**⁴³, declared that: *On the 6th July I have seen five patients with Dr. Michael Spiteri and their names are the ones written on the paper that*

⁴¹ Folios 235 to 237 of the records of the proceedings.

⁴² Testimony given during the sitting held on the 5th September 2018, folios 116 and 117 of the records of the proceedings.

⁴³ Testimony given during the sitting held on the 5th September 2018, folios 143 and 144 of the records of the proceedings.

you've sent me, two of which had no external injuries and three others who were the males had a safe but slight complications. ... There was Thom Hubertina Jakobus Van Golde who had a small abrasion on the right ankle, Roy Leonardus Theodorus Swanberg who had a small haematoma which is a bruise on the front of his knee and also an abrasion on his left ankle. As I said before, Andrea Kapelina and Kristina Tomic had no external injuries which were observed and Maximilianus Van Elten had a small abrasion over his right shoulder, another small abrasion over his right elbow and a small abrasion over his right flank.

Dr. Gillian Pace Moore confirmed the Medical Certificates issued for each one of the persons mentioned in her testimony, which certificates are exhibited as Doc. "TM2" to Doc. "TM4" a folios 10 to 12 of the records of the proceedings and Doc. "TM6" and Doc. "TM7" at folios 14 and 15 of the records of the proceedings.

- **Paul Cini**⁴⁴, Director at MTIP, declared that: *The Director General sent me with a bill of the costs. I was not present for the incident and the following morning I was instructed by the Director General to go and remove the danger because there was a lamp post which was hanging. ... In St. Julians.* He, that is Paul Cini, stated that he didn't know the exact spot of the accident but was informed that it was *next to the love before the City of London Pub, just before the Neptunes Waterpolo*. Paul Cini also submitted estimates regarding costs for the repair of damages caused as a consequence of the accident and he also submitted photos which show the damage caused as a consequence of the said accident. These documents are marked Doc. "PC1" and Doc. "PC2" in so far as concerns the estimates, at folios 146 and 147 of the records of the proceedings and Doc. "PC3" to Doc. "PC6" in so far as concerns the photos, at folios 156 to 159 of the records of the proceedings.
- **Karen Cremona**⁴⁵, on behalf of Transport Malta, declared that the vehicle Subaru Impreza, silver in colour and bearing Registration Number OKW-356 is (or at least was at the time of her testimony) registered in the name of Nicholas Caruana Turner, Identity Card No. 813756(M), and had been so registered in his name since the 22nd February 2018. She submitted the Vehicle Details Document, marked as Doc. "CC" at folios 149 to 154 of the records of the proceedings.
- **Paul Spiteri**⁴⁶, Executive Secretary St. Julian's Local Council, exhibited estimates of the costs for repair works to be carried out at the site of the accident, Doc. "PS1" to Doc. "PS4" at folios 165 to 171 of the records of the proceedings, and declared that the repair works were carried out by the Works Department, which didn't charge the Local Council for such works, whereas the material itself, mainly the items that had to be replaced, were paid for by the Local Council at an expense of €2,700.

The accused submitted a receipt which indicates that he reimbursed the St. Julian's Local Council the sum of €2,700 - folio 558 of the records of the proceedings.

⁴⁴ Testimony given during the sitting held on the 5th September 2018, folios 145 and 155 of the records of the proceedings.

⁴⁵ Testimony given during the sitting held on the 5th September 2018, folio 148 of the records of the proceedings.

⁴⁶ Testimony given during the sitting held on the 24th September 2018, folios 164 of the records of the proceedings and testimony given during the sitting held on the 18th September 2020.

- **Christian Vella**⁴⁷, on behalf of GasanMamo Insurance, submitted the insurance certificate pertinent to the vehicle involved in the accident forming the merits of these proceedings, that is of vehicle Subaru Impreza bearing Registration Number OKW-356 - Doc. “CV” at folios 174 and 175 of the records of the proceedings.

He confirmed that according to the insurance certificate the registered owner of the vehicle is Nicholas Caruana Turner and that the vehicle was insured third party only. The vehicle could be driven by the Policy holder, that is Nicholas Caruana Turner, by Michael Caruana Turner and by any person over 25 years of age. Asked whether it is normal for the Insurance Company to insure, as a driver of the vehicle, a person under 25 years of age, Christian Vella replied: *the vehicle which we insured is a normal vehicle, 1994 model, 1.6 litre petrol engine and it's within our risk capital and yes it is normal. ... According to the type of vehicle, the specific model which we insured this 1994 model with a 1.6 litre petrol engine, 88bhp ... is within our risk capital so it was ok for us to insure and include and authorised driver who is under 25.*

- **Pathologists Professor Marie Therese Camilleri and Dr. Ali Salfraz**⁴⁸, exhibited and confirmed the Report of the autopsy carried out on the body of Tim Scholten - Doc. “MT” at folios 177 to 179 of the records of the proceedings. From the autopsy Report is results that Tim Scholten died due to a fractured skull and intracranial haemorrhage following a motor vehicle accident.
- **Medical Expert Dr. Mario Scerri**⁴⁹, declared that *in the acts of the inquiry regarding a motor vehicle accident at George Borg Olivier Street in St. Julian's on the 6th of July 2018, I examined Van Golde Thom Hubertina Jacobus, Knowles Ryan, Scholten Tim (who unfortunately died a few days later), Tomic Kristina, Swanlenberg Roy Leonardus, Van Elten Maximilianus and Kapelina Andrea. Van Golde Thom Hubertina Jacobus had lesions of a slight nature, Van Elton Maximilianus had lesions of a slight nature consisting most of abrasions compatible with blunt trauma, Swanlenberg Roy Leonardus had lesions in his right ankle and on his gluteal region compatible with blunt trauma, Kristina Tomic was under the effect of shock and she did not have any fresh traumatic lesions, Andrea Kapelina was under the effect of shock and did not suffer any lesions, Tim Scholten had evidence of traumatic lesions in the brain which eventually led to his death so the cause of death of Tim Scholten was directly related to the accident in question.*

Medical Expert Dr. Mario Scerri submitted and confirmed on oath his Report - Doc. “MS” at folios 267 to 303 of the records of the proceedings - which essentially confirms that declared by Dr. Scerri during his testimony. He also submitted the Medical History File pertinent to Tim Scholten, marked as Doc. “MS1” at folio 333 to 442 of the records of the proceedings.

⁴⁷ Testimony given during the sitting held on the 24th September 2018, folios 172 and 173 of the records of the proceedings.

⁴⁸ Testimony given during the sitting held on the 24th September 2018, folio 176 of the records of the proceedings.

⁴⁹ Testimony given during the sitting held on the 23rd October 2018, folios 265 and 266 of the records of the proceedings and testimony given during the sitting held on the 12th November 2018, folio 332 of the records of the proceedings.

- **Charles Clarke**⁵⁰, declared that on the 6th July 2018 at around 4:00a.m. or 5:00a.m., *I was just walking home from a night out with my friend Ryan. ... We were walking from Paceville to Balluta Bay because we were staying in a hostel and we were just walking along the pavement. ...with Ryan, Tim and a few other girls. ... I don't know the girls but I know Tim and Ryan obviously. ... I was walking along and I heard this car coming because it was a loud car, it was a sports car so you could hear it coming and I turned to look, couldn't see the car so I carried on walking and less than you know you can hear it get louder, I could hear it hit a car, I looked round and as I looked round I pushed the girls to the left of me, then the car hit me here, I went over the top and then it hit Tim and Ryan.*

Charles Clarke declared that he was hit on his right hip at the back and that Tim and Ryan were hit too. He declared further that: *Ryan got hit, he was more to the right hand side and Tim was more to the left. Ryan went up in the air and Tim went under.* Asked about the vehicle he recalled that it was a silver Subaru Impreza but he didn't take any notice of who was driving it since: *as soon as I got up I went straight over to Tim to give him CPR because he was dying in the road. I was not worried who was driving the car, I did not care about the driver as I was more interested in making sure that he was saved. ... He had swallowed his tongue so I put my fingers down his throat and pulled his tongue out, cleared his airways and blood was coming out of his mouth so I cleared it all and gave him CPR. ... I called Ryan and shouted for him and I was saying "Ryan, Ryan, Ryan" and as soon as he responded if you can talk you are alright and I called Tim and he said nothing so I went straight to Tim. ... I tried to give Tim a CPR and I continued administering it until the ambulance turned up, then the ambulance turned up and doctors took over and then that was when I was then put in an ambulance because my leg was mugged up and Ryan and I got taken to I think it is Mater Dei Hospital. ... I had to have a blood test because I swallowed Tim's blood from doing the CPR and I was given morphine for the pain and x-rays.*

Charles Clarke further declared that he was discharged from hospital the following day, that is the 7th July 2018, at around 12 in the morning. With regard to injuries sustained by him, Clarke said that he suffered a cracked rib and bruises and a few cuts on his leg and that since the accident he experiences pain in his left leg, which he had broken prior to this accident. He also stated that on the day of the accident he and his friends were walking along Gorg Borg Olivier Street on the left hand side going towards Balluta, that is on the side of the sea, where the pavement was wide, with a raised curve, about a foot high, with trees and railings. He declared that *he came straight on the pavement, wheels on the pavement and he just drove around the curve and he hit us* and that after the impact the vehicle ended up about 100 metres further down from where they were, facing the bay.

Under cross-examination, Charles Clarke declared that: *we, that is Tim Scholten, Ryan Knowles and himself, were literally shoulder to shoulder but like that so I was here and he was there so it just went bang, bang, bang.* He stated that on impact he didn't fly over the car because *I went to the left. I saw Ryan going up in the air.* He also confirmed that on the pavement there were *the 3 of us and then*

⁵⁰ Testimony given during the sitting held on the 23rd October 2018, folios 304 to 310 of the records of the proceedings.

there's the girls to the left hand side of us. ... Ryan was closest to the street and Tim was closer to the left and I was sort of hanging back. On being asked by the Court: So you were like in between them and slightly backwards from them right? and So first you've got hit and then they got hit after correct?, in both instances Charles Clarke replied: Yes that is correct.

- **Ryan Knowles**⁵¹, declared that: *I remember walking home with my friend Charles and we were on the left side of the pavement and then I remember Charles shouting "Ryan" because he heard it before I did and I just looked to my right and I just remember moving my front leg so I just got at the moment and moved my front leg and I was underneath so I went over and then Tim was stuck to my left in the front and then I remember waking up. After it initially happened for some reason my automatic reaction was to stand up so I remember just all of a sudden jumping up and wiping the blood over my eyes and then I just seen Tim laid down and a couple of other people about and then I just looked around and I just sort of fell on the floor to realise what happened and there were a few people around me and then the ambulance came. Asked why Tim was on the floor Ryan Knowles stated because he got hit by a car, which he said was a Silver Subaru Impreza. He stated further that: I looked around and there were already quite a lot of people around at the time. ... I remember about 4 people and maybe more, with Tim lying down with blood coming out of his foot. I had a head injury, an elbow injury and a foot injury. ... Then I went to the hospital and we went to different rooms.*

Ryan Knowles declared that he was discharged from hospital the next day at around 8:00a.m. He also stated that before the accident he was walking with his friends on the left hand side pavement facing Spinola to Balluta and that after the accident the car ended up sideways on the pavement. He also recollected that after the accident, one of the trees on the pavement ended up at a forty-five degree angle. He also confirmed that he was injured during this accident, which injuries are certified on the Medical Certificate submitted by him marked Dok. "RW" at folio 315 of the records of the proceedings.

- **Technical Expert Dr. Martin Bajada**⁵², declared that: *the only CCTV in operation for the area where the incident took place was the Skyline Webcam which operates from Italy and basically they do not retain data, it is a view only. Otherwise there were no CCTVs in the area that captured the incident. Referring to the cameras which overlook the area where the accident took place, Dr. Martin Bajada declared: they are on a hotel and it captures the whole bay. If you go on the internet it's Skyline Webcam and it gets the St. Julian's area. It was something that was suggested by Magistrate Francesco Depasquale [the Inquiring Magistrate] to obtain that information because he had checked it himself but when I checked it's just a view only thing and there are resident in Italy. There are webcams all over the world and their head office is in Italy and there is the address. With regard to other CCTV cameras in the area, Dr. Martin Bajada declared: The CCTV cameras are on the other side further down and most of them*

⁵¹ Testimony given during the sitting held on the 23rd October 2018, folios 311 to 314 of the records of the proceedings.

⁵² Testimony given during the sitting held on the 12th November 2018, folios 325 and 326 of the records of the proceedings.

capture the pavement and part of the road not the other side of the road, it's the road going to Paceville.

Dr. Bajada submitted his Report which is marked Doc. "MB" at folios 327 to 331 of the records of the proceedings.

- **Probation Officer Joanna Farrugia**⁵³, submitted and confirmed on oath the Social Inquiry Report regarding the accused - Doc. "JF" at folios 563 to 576 of the records of the proceedings - and declared that: *I can say that Michael Caruana Turner comes from a stable family, had a good education despite having some difficulties due to his dyslexia, he is an active person who enjoys training and going on hikes as opposed to going out and partying, he's got a stable employment and he has been working as an operations manager at an eCommerce shop for the past few months, he cooperated throughout the whole compilation of this report, attended all appointments and he also submitted 3 urine samples that were negative for illicit substances. In recent months he has also been seeing a therapist in order to deal with the issues related to the accident, I contacted the therapist and is also an expert who I spoke to her and she indicated that he is engaging well in the therapy and working on his feelings. I tried to contact the victims of the case as well as the parents of the deceased but since they reside abroad it was not possible.*

The first and second charge brought against the accused:

This case clearly revolves around a road traffic accident which occurred in Gorg Borg Olivier Street, St. Julian's, on the 6th July 2018 at around 4:50a.m., involving a silver Subaru Impreza, bearing Registration Nol. OKW-356, driven by the accused, in which a person lost his life and other persons were slightly injured. The accused is in fact being charged of having: (1) Through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations caused the death of Tim Scholten; and (2) Of further having on the same date, time, place and circumstances, through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations, caused slight bodily harm on the persons of Thom Hubertina Jacobus Van Golde, Roy Leonardus Swanenberg, Ryan Knowles and Maximilianus Van Elten.

The accused is clearly being charged with the offence of involuntary homicide and involuntary bodily harm in terms of Section 225(1) and (2) of Chapter 9 of the Laws of Malta. These are in fact the Sections of the Law indicated by the Attorney General in his Note dated 9th June 2020⁵⁴.

Section 225 of the Criminal Code, Chapter 9 of the Laws of Malta, provides that: *(1) whosoever, through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations, causes the death of any person, shall, on conviction, be liable to imprisonment for a term not exceeding four years or to a fine (multa) not exceeding eleven thousand and six hundred and forty-six euro and*

⁵³ Testimony given during the sitting held on the 5th November 2020, folios 561 and 562 of the records of the proceedings.

⁵⁴ Folio 543 of the records of the proceedings.

eighty-seven cents (11,646.87). (2) Where the offender has caused the death of more than one person or where in addition to causing the death of a person the offender has also caused bodily harm to another person or other persons the punishment shall be that of imprisonment of a term of up to ten years.

With reference to this Section of the Law, the Court refers to the judgement in the names **Il-Pulizija v. Magdalen Abela**, delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 3rd September 2015, wherein the Court observed that: *kif ingħad fis-sentenza Il-Pulizija v. Saverina sive Rini Borg et*⁵⁵: “Skond l-Artikolu 225 tal-Kodiċi Kriminali, sabiex jirriżulta d-delitt ta’ omiċidju involontarju (jew ferita gravi kif inhu il-każ in deżamina), hemm bżonn li tirrikorri kondotta volontarja negligenti, konsistenti generikament f’nuqqas ta’ ħsieb (imprudenza), negligenza jew traskuraġni, jew ta’ ħila (imperizja) fl-arti jew professjoni, jew konsistenti speċifikament fin-nuqqas ta’ osservanza tal-liġijiet, regolamenti, ordnijiet u simili, li tkun segwita b’ness ta’ kawżalità, minn akkadut dannuż involontarju”. Sabiex tipprova dan il-Prosekuzzjoni ma tistax tistrieħ fuq dak li l-Qorti tista’ taħseb li ġara, għaliex il-ġudikant irid neċessarjament jiddeċiedi iuxta allegata et probate. Id-dover tal-Prosekuzzjoni hu allura li jippreżenta quddiem il-Qorti, każ konvinċneti u pprovat li adegwatament jistabilixxi l-ħtiġa ta’ l-imputat għall-akkadut, li tipprova kondotta volontarja, negligenti, konsistenti generikament f’nuqqas ta’ ħsieb, “imprudenza”, “negligenza” jew “traskuraġni” jew ta’ ħila, ta’ “imperizja” fl-arti jew professjoni jew konsistenti speċifikament fin-nuqqas ta’ osservanza tal-Liġijiet, regolamenti, ordnijiet u simili li tkun segwita b’ness ta’ kawżalità minn akkadut dannuż u involontarju. Dan ifisser li fil-materja tal-kolpuż hemm neċessarjament l-element t’ attività diretta għal xi fini partikolari, li minħabba nuqqas ta’ ċertu prekawzjoni jistgħu jiġu leżi jew danneġġjati jew impregjudikati l-interessi ta’ terzi. Il-konnotat karatteristiku tal-kulpa huwa l-prevedibilità ta’ l-event dannuż, li kondotta illegali ta’ xi ħadd tista’ iġġib. Din hija l-kupla normali jew l-hekk imsejha “colpa incosciente” a differenza minn dik imsejha “colpa cosciente”, li hija l-kupla bl-element fiha tal-previst ta’ l-akkadut. Hemm diversi forom ta’ kondotta kolpuża derivanti minn att ta’ negligenza, imprudenza, imperizja u non osservanza tal-liġijiet, regolamenti, ordnijiet u simili. Fil-kawża fl-ismijiet “Il-Pulizija v. Leonard Grech” deċiża mill-Qorti ta’ l-Appell Kriminali fill-5 ta’ Settembru 1990, dik il-Qorti daħlet fid-dettal dwar in-natura tal-kolpa f’dawn il-każi u ċċitat il-ġurist Francesco Carrara li jgħid hekk daw il-culpa:- “... il tripode sul quale si asiede la copla sarà sempre questo - 1. volontarietà dell’atto; 2. mancata previsione dell’effetto nocivo; 3. possibilità di prevedere.”⁵⁶ Bl-istess mod, il-Professur Anthony J. Mamo, fin-noti tiegħu, jgħid hekk: “In these definitions the essence of negligence is made to consist in the ‘possibility of foreseeing’ the event which has not been foreseen. The agent who caused the event complained of, did not intend or desire it, but could have foreseen it as a consequence of his act if he only had minded: so his negligence lies in his failure to foresee that which is foreseeable”⁵⁷. U fis-sentenza fuq ċitata ta’ Rini Borg et, ġie ritenut hekk dwar il-kondotta kolpuża: “kondotta kolpuża hija definita bħala kondotta volontarja li tikkaguna event dannuż, mhux volut, iżda prevedibbli, li seta’ jiġi evitat bl-użu ta’ attenzjoni jew prudenza fi grad ta’ persuna normali”. L-imprudenza tekwivali għal

⁵⁵ Delivered by the Court of Criminal Appeal on the 31st July 1998.

⁵⁶ Francesco Carrara “Programma Del Corso Di Diritto Criminale” Vol. 1 (Parte Generale), p. 99.

⁵⁷ Prof. Sir A.J. Mamo Lectures in Criminal Law, p. 67.

“un atto inconsiderato e rischioso” magħmul b’ “leggerezza” jew “sconsideratezza” u kif jgħid Antolisei⁵⁸, “L’imprudenza è propriamente l’avventatezza, l’insufficiente ponderazione ed implica sempre una scarsa considerazione per gli interessi altrui”. U kif insibu fin-Novissimo Digesto Italiano “Si comporta con imprudenza che tiene una condotta positiva dalla quale occorre astenersi perchè capace di cagionare un determinato evento di danno o di pericolo, o che è stata compiuta in modo non adatto, così da essere, pericolosa per l’alturi diritto penalmente tutelato. È, quindi, una forma di avventatezza, un agire senza cautela”⁵⁹. Bl-istess mod, fis-sentenza fl-ismijiet “Il-Pulizija v. Saverina sive Rini Borg et, fuq citata, ingħad illi “L-imprudenza tiġi mill-aġir ta’ xi ħadd mingħajr ma jieħu l-opportuni kawteli”. In-negligenza tiġi mid-disattenzjoni u disakkuratezza ta’ l-aġent fil-kondotta tiegħu, fil-waqt illi “l-imperizja hija l-forma speċifika tal-kulpa professjonali cioè, kif jgħid il-Manzini: inettitudine e insufficienza professionale, generale e specifica, nota all’agente di cui egli vuole non tener conto”. Skond l-imsemmija sentenza, “Il-kulpa tista’ tkun dovuta wkoll għal non osservanza tal-liġijiet, regolamenti, ordnijiet u simili, bħal ma huma l-assjem ta’ regoli predisposti mill-awtorità pubblika dwar xi attività determinata u speċifika bl-iskop li jiġi evitat il-possibilità ta’ ħsara u dannu lil terzi, cioè, dawk li jkollhom l-element tal-prevenzjoni”. Il-kulpa tista’ tkun dovuta wkoll għalhekk għal non osservanza tal-liġijiet u regolamenti bħal ma huma l-assjem ta’ regoli predisposti mill-Ordinanza tat-Traffiku (Kap.65 tal-Liġijiet ta’ Malta) u l-High Way Code - Motor Vehicle Regulations, fost regoli oħrajn. Dwar id-diligenza rikjesta fil-kamp kriminali, il-Professur Anthony Mamo jgħid illi “The amount of prudence or care which the law actually demands is that which is reasonable in the circumstances of the particular case. This obligation to use reasonable care is very commonly expressed by reference to the conduct of a ‘reasonable man’ or of an ‘ordinarily prudent man’, meaning thereby a reasonable prudent man: “negligence”, is has been said, “is the omitting to do something that a reasonable man would do, or the doing something that a reasonable man would not do” ... What amounts to reasonable care depends entirely on the circumstances of the particular case as known to the person (Carrara, Programme, §87n) whose conduct is the subject of enquiry. Whether in those circumstances, as so known to him, he used due care - whether he acted as a reasonably prudent man - is in general a mere question of. Fact as to which no legal rules can be laid down.”⁶⁰

From the evidence submitted by the Prosecution it transpires that in the early hours of the 6th July 2018, the accused was out drinking in Paceville. The accused himself acknowledged that he had beer and six shots of tequila. When he eventually decided to leave and go home, he opted to drive to his grandmother’s house in Balluta to go and sleep there since he did not feel up to driving all the way to Birkirkara, where he lives⁶¹. Even though the accused felt he was not fit to drive he got into his car and drove from Paceville towards Balluta, passing through Gorg Borg Olivier Street, St. Julian’s. He was driving at a speed of around 100kph and at a certain point he clipped the pavement on the left hand side of the road, mounted the pavement, destroyed street furnishings and trees that were on the said pavement and mowed down a number of pedestrians who were walking on the pavement on their way home. The

⁵⁸ Manuale di Diritto Penale: Parte Generale, Edizzjoni 15 (Giuffrè, 2000), p. 366.

⁵⁹ Novissimo Digesto Italiano, Vol. III, p. 548.

⁶⁰ Lectures in Criminal Law (First Year), p. 71.

⁶¹ Statement given by the accused to the Executive Police, folios 29 to 32 of the records of the proceedings.

vehicle continued moving forward until it eventually stopped some distance further down from the point of impact, completely blocking the pavement⁶². The vehicle left 12.09mts brake marks before clipping the pavement, once it clipped the pavement it continued moving forward on the road for about 13.20mts and then it mounted the pavement where it continued on its course, crashing into whatever was in its way, including pedestrians, for a distance of 103.06mts⁶³. From the breathalyser test carried out on the accused on the 6th July 2018 at around 6:11a.m., Doc. “SM1” at folio 66 of the records of the proceedings, it resulted that the accused had a level of 78.7µg per 100mL of alcohol in his breath, a level which is well over the prescribed limits in terms of law, namely in terms of Section 15I(1)(a) of the Traffic Regulation Ordinance, Chapter 65 of the Laws of Malta.

The evidence put forward in these proceedings therefore proves that on the date and at the time of the accident, the accused was driving under the influence of alcohol and, to boot, at a speed of around 100kph. The accused’s actions and driving therefore cannot but be considered to be negligent, imprudent and totally reckless and clearly in violation of driving laws and regulations, as set out in the Traffic Regulation Ordinance, Chapter 65 of the Laws of Malta, and Subsidiary Legislation relative to, namely the Motor Vehicles Regulations, Subsidiary Legislation 65.11.

The Prosecution also proved beyond reasonable doubt that Tim Scholten, one of the pedestrians who was mowed down by the accused, died as a direct consequence of this incident, and this as clearly results from the Autopsy Report⁶⁴ and from the Report by the Medical Expert⁶⁵. It also proved beyond reasonable doubt that other pedestrians, also mowed down by the accused, suffered slight injuries as a consequence of this incident. This clearly results with regard to Thom Hubertina Jacobus Van Golde, Roy Leonardus Swanenberg, Maximilianus Van Elten from testimony by Dr. Gillian Pace Moore and from Medical Certificates Doc. “TM1” to Dok. “TM4”⁶⁶, and with regard to Charles Clarke and Ryan Knowles, from their testimony⁶⁷ and from Medical Certificates Doc. “TM5”⁶⁸ and Doc. “RK”⁶⁹.

In the light of the above there is no doubt that the accused, who, it is reiterated, was driving at an excessive speed and under the influence of alcohol, was clearly negligent and imprudent and acted in a way, in complete violation of driving laws and regulations, in which no reasonable person would have acted under the same circumstances. The accused should have foreseen that in his state, where he himself felt he was not fit to drive, he was a clear danger both to himself and others, but instead he opted to drive to Balluta simply because it was a shorter, two minute drive rather than longer drive to his home in Birkirkara. Quite frankly the accused should have realised that if he was not fit to drive, he was not fit to drive at all, irrespective of the distance to his ultimate destination. Furthermore, and to make matters worse,

⁶² Technical Report marked Doc. “MB” at folios 192 to 264 of the records of the proceedings and the SOCO Report marked Doc. “KM” at folios 118 to 142 of the records of the proceedings.

⁶³ Technical Report marked Doc. “MB” at folios 192 to 264 of the records of the proceedings.

⁶⁴ Dok. “MT” at folios 177 to 179 of the records of the proceedings.

⁶⁵ Doc. “MS” at folios 267 to 303 of the records of the proceedings.

⁶⁶ Folios 10 to 12 of the records of the proceedings.

⁶⁷ Testimony given during the sitting held on the 23rd October 2018, folios 304 to 310 and folios 311 to 314 of the records of the proceedings.

⁶⁸ Folio 13 of the records of the proceedings.

⁶⁹ Folio 315 of the records of the proceedings.

in his clear state of inability to drive, the accused chose to drive his vehicle at a speed of 100kph, way in excess of the speed limit for the area in question and definitely not advisable for a person who was under the influence of alcohol. These voluntary but negligent, imprudent and careless decisions on the part of the accused caused total devastation and cost a nineteen year old youth, who was simply walking home with his friends, his life.

The Court deems that the Prosecution proved beyond reasonable doubt that the accused is guilty of the offence of involuntary homicide and bodily harm, and is therefore to be found guilty of the first and second charges brought against him.

In his Note dated 9th June 2020, the Attorney General also quotes Section 226(1)(c) of Chapter 9 of the Laws of Malta. However, in view of that observed above and the conclusion reached regarding the guilt of the accused for the first and second charges brought against him, the Court abstains from considering any guilt on the part of the accused in terms of Section 226(1)(c) of Chapter 9 of the Laws of Malta.

The third and fourth charge brought against the accused:

The accused is also being charged of having: (3) on the same date, time, place and circumstances through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations caused involuntary damages on vehicle registration no. OKW-356 make Subaru, to the detriment of Nicholas Caruana Turner and/or other persons and/or other entities; (4) of further having on the same date, time, place and circumstances through imprudence, carelessness, unskillfulness in his art or profession, or non-observance of regulations caused involuntary damages on benches, railing, electricity pole and other outdoor furniture to the detriment of the Director and Infrastructure Department, St. Julian's Local Council and/or other persons and/or other entities.

The charges brought against the accused fall under the provisions of Section 328(d) of Chapter 9 of the Laws of Malta, which provides that: *Whosoever, through imprudence, negligence or unskillfulness in his trade or profession, or through non-observance of any regulation, shall cause any fire or any damage, spoil or injury as mentioned in this Sub-title, shall, on conviction, be liable: ... (d) in any other case, to imprisonment for a term not exceeding three months or to a fine (multa) or to the punishments established for contraventions: Provided that in the cases referred to in paragraph (d), except where damage is caused to public property, other than a motor vehicle, proceedings may be instituted only on the complaint of the injured party...*

In his Note dated 9th June 2020 however, the Attorney General indicates Section 328(a) of Chapter 9 of the Laws of Malta and makes no mention of Section 328(d) of the said Chapter of the Law. In these circumstances the Court is precluded from considering the guilt with regard to the third and fourth charges brought against him since it is bound to abide by the Note of the Attorney General, which however does not reflect that said charges.

In this regard reference is made to the judgement in the names **Il-Pulizija v. Michael Carter**, delivered by the Court of Criminal Appeal on the 7th January 2001, wherein the Court observed that: *meta Ir-rinviju għall-ġudizzju jsir skond is-subartikolu (3) ta' l-Artikolu 370 (u allura wieħed qed jitkellem fuq għall-inqas reat wieħed, fost dawk imputati, li huwa ta' kompetenza tal-Qorti Kriminali), in-nota ta' rinviu għall-ġudizzju tassumi rwol simili għal dak ta' l-att ta' akkuża quddiem il-Qorti Kriminali. Fin-nota ta' rinviu għall-ġudizzju skond l-Artikolu 370(3) ma jistgħux jiżdiedu reati li dwarhom ma tkunx saret il-kumpilazzjoni; l-Avukat Ġenerali, naturalment, jista' jnaqqas reat jew reati u anke jżid skużanti. Bħal fil-każ ta' l-att ta' akkuża, jekk fin-nota ta' rinviu għall-ġudizzju taħt l-imsemmi Artikolu 370(3) l-Avukat Ġenerali jakkuża lil xi hadd bħala awtur ta' reat, il-Qorti tal-Maġistrati, wara li tkun akkwistat il-kompetenza bil-kunsens ta' l-akkużat (Art. 370(3)(ċ), tista' ssibu ħati ta' tentattiv ta' dak ir-reat, jew ta' reat ieħor inqas gravi iżda kompriż u involut f'dak ir-reat, jew bħala komplici f'dawk ir-reat.*

This therefore means that the Court can only consider and pronounce itself on those charges as reflected in the Note of the Attorney General dated 9th June 2020 and must ignore those charges which are not so reflected in the said note.

In the light of these circumstances, the Court cannot consider the third and fourth charges brought against the accused and therefore abstains from considering them.

The fifth charge brought against the accused:

The accused is also being charged of having: (5) on the same date, time, place and circumstances driven vehicle registration no. OKW-356 make Subaru in: (a) a dangerous manner, (b) reckless manner, (c) negligent manner.

The accused is evidently being charged with the offence provided for under Section 15(1)(a) of the Traffic Regulation Ordinance, Chapter 65 of the Laws of Malta, which provides that that: *(1) Any person who - (a) drives a motor vehicle or other vehicle without a licence or an unlicensed Moto vehicle or other vehicle, or in a reckless, negligent or dangerous manner provided that no licence shall be required in relation to a bicycle ... shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) not exceeding one thousand and two hundred euro (€1,200) or to imprisonment not exceeding one year. Sub-sections (2) and (3) of the mentioned Section of the Law provide that: (2) Where the offence consists in driving a motor vehicle or other vehicle in a reckless manner, the Court shall, in addition to the punishment under sub-article (1), disqualify the offender for holding or obtaining a driving licence, in the case of a first conviction for a period of not less than three months, and in the case of a second or subsequent conviction for a period of not less than one year; (3) In the case of any other offence under sub-article (1), the Court shall, in addition to the punishment under that sub-article, disqualify the offender for holding or obtaining a driving licence for a period of not less than eight days.*

Section 15(1)(a),(2),(3) of the Traffic Regulation Ordinance, Chapter 65 of the Laws of Malta, is the section of the law reflected in the Note of the Attorney General dated 9th June 2020.

In so far as concerns this particular Section of the Law, reference is made to the judgement in the names **Il-Pulizija v. Michael Grech**, delivered by the Court of Criminal Appeal on the 20th February 2007, where that Court observed that: *kif ġie ritenut minn din il-Qorti ripetutament u kif intqal fl-Appell Kriminali Il-Pulizija v. Alfred Mifsud, deċiż fis-6 ta' Mejju 1997 (Vol. LXXXI.iv.157) din il-Qorti diversament presjeduta qalet: Sewqan traskurat (negligent driving) hu kwalsiasi forma ta' sewqan li jiddipartixxi minn, jew li ma jilhaqx il-livell ta' sewqan mistenni minn sewwieq raġonevoli, prudenti, kompetenti u ta' esperjenza. Bħala regola, il-ksur tar-regolamenti tat-traffiku kif ukoll in-non-osservanza tad-disposizzjonijiet tal-Highway Code li jincidu fuq il-mod jew il-kwalità ta' sewqan ta' dak li jkun, jammonta wkoll għal sewqan traskurat. Sewqan bla kont hu deskritt ... bħala sewqan "bi traskuraġni kbira". Din it-tieni ipotesi, jiġifieri sewqan bla kont, tikkontempla s-sitwazzjoni fejn il-grad ta' traskuraġni tkun kbira u tinkludi l-kazijiet fejn wieħed deliberatament jieħu riskji fis-sewqan li m'għandux jieħu minhabba l-probabbiltà ta' ħsara li tista' tirriżulta lil terzi, kif ukoll kazijiet fejn wieħed ikun indifferenti għal tali riskji. Sewqan perikoluż (dangerous driving) jirrikjedi li fil-kaz partikolari s-sewqan kien ta' perikolu għal terzi jew għall-proprjetà tagħhom. Biex wieħed jiddeċiedi jekk kienx hemm dana l-perikolu, wieħed irid jara ċ-ċirkostanzi kollha tal-kaz, inkluż il-ħin u l-lokalità ta' l-inċident u l-presenza o meno ta' traffiku ieħor jew ta' nies għaddejjin bir-rigel. ... U kif qalet din il-Qorti diversament presjeduta fl-Appell Kriminali Il-Pulizija v. Mario Gellel, deċiż fid-19 ta' Frar 2004: "kif ġie ritenut minn din il-Qorti diversament presjeduta, jekk sewqan hux (i) negligenti, jew (ii) bla kont, jew (iii) perikoluż hi kwistjoni ta' 'degree' ... u kif jidhru wara xulxin huma fl-iskala tas-serjetà tagħhom. ... Ġie wkoll ritenut li biex jintegra ruħu r-reat ta' sewqan perikoluż, hemm bżonn ta' ċertu grad ta' 'recklessness' (App. Krim. Pul. Vs. Charles Farrugia [Vol. XXXIX.iv.978]). "Recklessness" ġiet definita bħala wilfully shutting one's eye". (App. Krim. Pul. Vs. Joseph Aquilina, 20.4.ċ963). Invece sewqan negligenti jew traskurat ifisser nuqqas ta' prudenza ordinarja li wieħed għandu jadopera biex jevita sinistri stradali (App. Krim. Pul. vs Antonio Spiteri [Vol. XLIV.iv.892]).*

When the facts of this case are considered in the light of the above-mentioned judicial principles, it clearly results that the accused did indeed drive in a dangerous manner.

It must be here reiterated that from the evidence submitted in these proceedings, and as already detailed further up in this judgement, it results that even though the accused was under the influence of alcohol and did not feel up to driving, he nonetheless decided to drive just the same to his grandmother's house in Balluta⁷⁰. Not only did the accused decide to drive whilst under the influence of alcohol - the Court here reiterates that if the accused didn't feel up to driving, he should not have driven at all irrespective of the distance to his destination - but he was driving at a speed of around 100kph, a speed which is already in itself very high, particularly for

⁷⁰ Statement by the accused to the Executive Police, folios 29 to 32 of the records of the proceedings.

the area where the accident happened, and is surely fatal when the driver is under the influence of alcohol and therefore not fully in control of his reflexes.

In fact whilst driving from Paceville towards Balluta, passing through Gorg Borg Olivier Street, St. Julian's, in this state and at this speed, the accused at a certain point clipped the pavement on the left hand side of the road, mounted the pavement, destroyed street furnishings and trees that were on the said pavement and mowed down a number of pedestrians who were walking on the pavement on their way home. The vehicle continued moving forward until it eventually stopped some distance further down from the point of impact, completely blocking the pavement⁷¹. The vehicle left 12.09mts brake marks before clipping the pavement, once it clipped the pavement it continued moving forward on the road for about 13.20mts and then it mounted the pavement where it continued on its course, crashing into whatever was in its way, including pedestrians, for a distance of 103.06mts⁷². The total destruction left and caused by the accused and his dangerous driving can be clearly seen from the photos taken by the Technical Expert Mario Buttigieg⁷³ and by the Scene of Crime Officer PS186 Kristian Mintoff⁷⁴.

In the light of the above and in the light of that already considered and observed further up in this judgement, the Court deems that the Prosecution proved beyond reasonable doubt that the accused is guilty of dangerous driving and is therefore to be found guilty of the fifth charge brought against him.

The sixth and seventh charge brought against the accused:

The accused is further charged of: (6) having on the same date, time, place and circumstances driven or attempted to drive or was in charge of vehicle registration no. OKW-356 make Subaru, on a road or other public place when he was unfit to drive through drink or drugs; (7) Of further having on the same date, time, place and circumstances driven, attempted to drive or was in charge of vehicle registration no. OKW-356 make Subaru on a road or other public place after having consumed so much alcohol that the proportion of it in his breath, blood or urine exceeded the prescribed limit.

The accused is being charged with the offences provided for under Sections 15A(1) and 15B(1) of the Traffic Regulation Ordinance, Chapter 65 of the Laws of Malta - which sections of the law are reflected in the Note of the Attorney General dated 9th June 2020.

Section 15A(1) of the Traffic Regulation Ordinance, Chapter 65 of the Laws of Malta, provides that: *no person shall drive or attempt to drive or be in charge of a motor vehicle or other vehicle on a road or other public place if he is unfit to drive through drink or drugs*. Subsection (2) of the said section of the Law provides that: *for the*

⁷¹ Technical Report marked Doc. "MB" at folios 192 to 264 of the records of the proceedings and the SOCO Report marked Doc. "KM" at folios 118 to 142 of the records of the proceedings.

⁷² Technical Report marked Doc. "MB" at folios 192 to 264 of the records of the proceedings.

⁷³ Doc. "MB" at folios 192 to 264 of the records of the proceedings.

⁷⁴ Doc. "KM" at folios 118 to 142 of the records of the proceedings.

purposes of this article, a person shall be deemed to be unfit to drive if his ability to drive properly is for the time being impaired.

In so far as concerns this particular provision of the Law, the Court refers to the judgement in the names **Il-Pulizija v. Martin Zammit, Appell Kriminali Nru. 461/11**, delivered by the Court of Criminal Appeal on the 12th February 2013.

In the said judgement the Court of Criminal Appeal observed that: *sabiex wiehed ikun jista' jinstab hati ta' tali imputazzjoni jehtieg li fl-ewwel lok jigi ppruvat li hu kien ikkonsma l-alkohol, u fit-tieni lok, li l-alkohol ikun kkonsmat f'ammont li influenzah tant li rrendih mhux f'kundizzjoni li jsuq. ... Illi sabiex tirrizulta tali imputazzjoni - kuntrarjament ghal dik kontemplata mill-artikolu 15B tal-Kap.65 - mhux necessarju illi jsir xi test sabiex jigi determinat il-kontenut tal-alkohol fin-nifs, fid-demm jew fl-urina tas-suspettat, u allura, huwa bizzejjed li jingiebu provi cirkostanzjali. Izda madanakollu, il-fatt li mhux mehtieg li jsir test xjentifiku sabiex jigi determinat jekk kienx ikkonsmat xorb alkoholiku, u jekk iva, li kien bizzejjed biex itellef persuna milli jkollha kontroll totali fuq il-vettura minnha misjuqa, ma jfissirx li ma trid tingieb l-ebda prova sabiex din l-imputazzjoni tigi ippruvata. Illi f'dan is-sens il-Qorti ta' l-Appell Kriminali qalet li biex tirrizulta tali imputazzjoni: Bizzejjed li jirrizulta mill-osservazzjoni ta' xhieda prezenti li s-sewwieq ikun qed juri sinjali ta' xorb ta' alcohol, bhalma huma sewqan inspjegabbilment erratiku jew spavald izzejjed, ir-riha ta' xorb man-nfis, xengil jew nuqqas ta' ko-ordinazzjoni tal-movimenti tal-gisem tas-sewwieq meta johrog mill-vettura, tkarkir tal-kliem, ecitament zejjed u sinjali ohra komunement riskontrabbli f'persuna xurbana.*

In this particular case the accused himself acknowledged that on the day in question he consumed alcohol while out in Paceville. In the statement released to the Executive Police⁷⁵ he stated that *on that day I was in Paceville, I do not know at what time I was going home. I drank when I arrive at about midnight or 1:00a.m., I had beer and I shared a tray of Tequila with another person, so I had 6 shots. I did not drink anything else. I do not drink that much.* He also confirmed that he consumed beer and tequila in the testimony given to the Technical Expert Mario Buttigieg⁷⁶. Apart from the this, PS850 Steven Micallef, the Police Officer who did the breathalyzer test on the accused - which test as already pointed further up in this judgement gave a reading of 78.7µg/100mL - testified that when he was close to the accused he could smell a smell of alcohol coming out from his mouth⁷⁷.

That the accused was unfit to drive due to consumption of alcohol is also acknowledged by the accused himself, particularly in his decision of driving to Balluta to his grandmother's house, since in his own words *it was only a two minute drive*. Another aspect which shows that the accused was under the influence of alcohol, to an extent that his ability to drive was impaired at the time, is the fact that he does not remember anything from after starting his car until he woke up after the accident happened. In the testimony given to the Technical Expert Mario Buttigieg, the accused stated *I left [from Paceville] on my own and was going to Balluta to my nana's apartment. It was just two minutes away from Paceville. To go to Balluta I*

⁷⁵ Folios 29 to 32 of the records of the proceedings.

⁷⁶ Folio 264 of the records of the proceedings.

⁷⁷ Testimony given during the sitting held on the 19th July 2018, folios 70 to 76 of the records of the proceedings.

*had to pass through Gorg Borg Olivier Street. I do not remember the velocity that I was travelling because I do not remember anything from after I started the car till when I was getting out of the car. The only thing I remember is waking up, I do not recall where I was*⁷⁸.

In the light of all these facts, the Court deems that the Prosecution proved beyond reasonable doubt that the accused was driving his vehicle - Subaru Impreza bearing Registration No. OKW-356 - whilst he was unfit to drive in terms of law through drink, and that he is therefore to be found guilty of the sixth charge brought against him.

Section 15B(1) of the Traffic Regulation Ordinance, Chapter 65 of the Laws of Malta, provides that: *no person shall drive, attempt to drive or be in charge of a motor vehicle or other vehicle on a road or other public place after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit.*

Section 15I(a) of the Traffic Regulation Ordinance, Chapter 65 of the Laws of Malta, provides that: *For the purposes of this article and of articles 15A to 15H, unless the context otherwise requires - “the prescribed limit” means as the case may require: (a) with regard to driving or attempting to drive all vehicles except those mentioned in paragraphs (b), (c) or (d): (i) 22 microgrammes of alcohol in 100 millilitres of breath; or (ii) 50 milligrammes of alcohol in 100 millilitres of blood; or (iii) 67 milligrammes of alcohol in 100 millilitres of urine.*

In this case, as results from testimony given by PS850 Steven Micallef⁷⁹, which testimony was in no way contested and/or overturned, the accused gave his consent to a breathalyser test which gave a result, exhibited as Doc. “SM1” at folio 66 of the records of the proceedings, of 078.7µg/100mL. This reading is clearly over the prescribed limit in terms of law and therefore shows that the accused was indeed driving the vehicle Subaru Impreza bearing Registration No. OKW-356 on the road after consuming alcohol in excess of the prescribed limit.

The probatory value of the breathalyser test performed on the accused is specifically detailed in Section 15E of the Traffic Regulation Ordinance, Chapter 65 of the Laws of Malta, namely subsection (1)(a), which provides that: *in order to determine whether a person has committed an offence under articles 15A and 15B(1), a Police officer may require such person - (a) to provide a breath specimen or specimens for analysis by means of the approved device, according to regulations made under this Ordinance, and the result so obtained shall be admissible in evidence in any proceedings for an offence under articles 15A or 15B(1). The results of the analysis shall be presumed correct unless the contrary is proved* - proof which in this case did not result. In fact even though in his testimony given to the Technical Expert the accused stated that he suffers high blood pressure and there were times when he blacked out, in the statement give to the Executive Police he stated *in the first statement I mentioned that I suffered from high blood pressure and although I do,*

⁷⁸ Folio 264 of the records of the proceedings.

⁷⁹ Testimony given during the sitting held on the 19th July 2018, folios 70 to 76 of the records of the proceedings.

I do not think that this had anything to do with the accident and I do not want to look that I am making up excuses⁸⁰.

In the light of the above, the Court deems that the Prosecution proved beyond reasonable doubt that the accused was driving the vehicle Subaru Impreza after consuming so much alcohol that the proportion of it in his breath exceeded the prescribed limit, and is therefore to be found guilty of the seventh charge brought against him.

The eighth and ninth charges brought against the accused:

The accused is also being charged of having: (8) of further having on the same date, time, place and circumstances, after being involved in an accident involving personal injury to other persons or damage to any vehicle, animal or other property, as the driver of vehicle registration no. OKW-356 make Subaru, he did not stop, and if required did not give to the police officer, local warden or another person, who had reasonable grounds for so requiring, his name and address, the details of the vehicle, the details of the insurer of the vehicle; (9) of further having on the same date, time, place and circumstances driven vehicle registration no. OKW-356 make Subaru in an excessive speed.

The accused is being charged with the breach of Regulation 67(1) and Regulation 127 of the Motor Vehicle Regulations, Subsidiary Legislation 65.11 - also reflected in the Note of the Attorney General dated 9th June 2020.

Regulation 67(1) of the Motor Vehicle Regulations, Subsidiary Legislation 65.11, provides that: *if in any case, owing to the presence of a motor vehicle on a road, an accident occurs involving personal injury to another person or damage to any vehicle, animal or other property, the driver of the motor vehicle must stop and, if required to do so by a police officer, a community officer or by any person having reasonable grounds for so requiring, give his name and address, the name and address of the owners of the motor vehicle, the details of the insurer of the vehicle as well as its registration mark or number.*

From testimony given by various police Officers who were on site in the aftermath of the accident, namely PS850 Steven Micallef⁸¹, PC1461 Alfred Bray⁸², PS1540 Edmond Fenech⁸³, it transpires that the accused was not on the site of the accident. The accused himself acknowledged, in his testimony given to the Technical Expert Mario Buttigieg and in his statement given to the Executive Police⁸⁴, that as soon as the accident happened he ran away from the site and it was only at later stage that he returned to the site which by then was cordoned off by the Police. Even though he returned to the accident site, he did not inform the Police Officer who was a fixed point at the Police cordon about his involvement in the accident but left the site once again.

⁸⁰ Folio 31 of the records of the proceedings.

⁸¹ Testimony given during the sitting held on the 19th July 2018, folios 70 to 76 of the records of the proceedings.

⁸² Testimony given during the sitting held on the 1st August 2018, folios 102 to 105 of the records of the proceedings.

⁸³ Testimony given during the sitting held on the 1st August 2018, folios 106 to 108 of the records of the proceedings.

⁸⁴ Folio 264 of the records of the proceedings and folios 29 to 32 of the records of the proceedings.

Furthermore, from testimony given by PC1461 Alfred Bray, it transpires that when the accused was eventually found and stopped by the Police, upon being asked to give his details, he gave them false details. PC1461 stated that: *PS 1540 told me to go round a bit to see if we could see that person. When we were in St. Julian's Road in San Gwann we saw a person who was wearing a black shirt and a jeans. We stopped to talk to him, we asked what was his name and he told us George Pace, we asked him if he had a Subaru car and he said no and when we asked him where he was going he told us that he was going home to sleep because he was tired. We were not convinced by his version so we took him to the police station to check who he was because he had no documents whatsoever with him. After a while it resulted that he was the owner of the Subaru that was involved in the accident on the road. ... from our system it resulted who the vehicle belonged to. It was registered on his father's name and he had a number of children and the driver was his son*⁸⁵.

From the above it results, beyond reasonable doubt, that the accused violated Regulation 67(1) of Subsidiary Legislation 65.11 and is therefore to be found guilty of the eighth charge brought against him.

Regulation 127 of Subsidiary Legislation 65.11 provides that the velocity of a vehicle in towns and villages is not to exceed 50kph. As already observed further up in this judgement it has been determined that the accused was driving at a velocity of around 100kph, which velocity is evidently way in excess of the allowed velocity in the area.

Therefore, once again it has been proven beyond reasonable doubt that the accused violated Regulation 127 of Subsidiary Legislation 65.11 and is therefore to be found guilty of the ninth charge brought against him.

The tenth, eleventh and twelfth charges brought against the accused:

The accused has also been charged with having: (10) on the same date, time, place and circumstances driven vehicle Registration No. OKW-356 make Subaru, on a road without having a valid driving licence, or drove said vehicle when said vehicle was unlicensed to be used on the road; (11) of further having on the same date, time, place and circumstances driven vehicle Registration No. OKW-356 make Subaru when there was not in force in relation to the user of the vehicle a policy of insurance in respect of third party risks; (12) of further having on the same date, time, place and circumstances altered, rearranged or defaced a vehicle registration mark on a motor vehicle or otherwise tampered with the registration plates of a motor vehicle.

The Sections of the Law pertinent to these charges are not reflected in the Note of the Attorney General dated 9th June 2020⁸⁶. In such circumstances, as in the case of the third and fourth charges brought against the accused, the Court cannot consider and pronounce itself on these last three charges so brought against the accused.

⁸⁵ Testimony given during the sitting held on the 1st August 2018, folios 102 to 105 of the records of the proceedings.

⁸⁶ Folio 543 of the records of the proceedings.

The Court therefore abstains from considering the tenth, eleventh and twelfth charges brought against the accused.

Punishment:

With regards to punishment to be imposed on the accused, the Court will be taking a number of factors into consideration, namely: the nature of the charges brought against the accused, particularly the first, second, fifth, sixth, seventh, eighth and ninth charge brought against him, the fact that Tim Scholten passed away as a consequence of the accident and that Thom Hubertina Jacobus Van Golde, Maximilianus Van Elten, Roy Leonardus Swanlenberg, Charles Clarke and Ryan Knowles were slightly injured as a consequence of this accident, the fact that the accused was positive to the breathalyser test, the accused's manner of driving and the fact that he ran away from the accident site and that when approached by the Police he gave them false details.

The Court will also be taking into account the fact that the accused has a clean conviction sheet, and that the fifth, sixth, seventh, eighth and ninth charges brought against the accused are absorbed in the first and second charges brought against him. The Court will also consider the Social Inquiry Report pertinent to the accused drawn up by Probation Officer Joanna Farrugia.

The Court cannot but point out that the accused driving under the influence of alcohol and additionally at an excessive speed, cannot but be considered to have effectively used his vehicle as a weapon of offence, a weapon which not only injured a number of pedestrians who were walking on the pavement on their way home but but also caused the death of a nineteen year old youth who, with the other pedestrians, was also walking on the pavement on his way home.

Even though an effective jail term should not be imposed whenever a person is killed in a traffic accident and others are injured, since all cases have to be considered on the basis of their own merits, in this particular case, in the light of all the facts that came to light in these proceedings, which not only clearly show but prove beyond reasonable doubt negligence, recklessness and dangerous driving on the part of the accused, the situation is different. The fact that the accused himself was relatively young when the accident happened and that he has a clean conviction sheet do not in any way minimise the effect of what he did. The fact that the accused comes from a stable family and also seems to have a stable job and is also seeking help to come to terms with what happened, do not in any way render him less responsible and culpable for his negligence, recklessness and dangerous driving.

The fact that the Prosecution is not seeking an effective imprisonment term for the accused, too is not something which must bind the Court in its ultimate decision regarding punishment, particularly when, as already stated above, in this case negligence, recklessness and dangerous driving have been proven beyond reasonable doubt.

The Court refers to Archbold Criminal Pleading, Evidence & Practice, 2006, which makes reference to R. v. Gray (2005) 149 S.J. 576, CA, which stated the following: *"The Court said that general considerations were, first, that whilst the test of*

dangerous driving was objective, the requirements that the driving should be far below the standard of the competent and careful driver, and that it would have been obvious to the same careful and competent driver that driving in that way would be dangerous, meant that it would usually be obvious to the offender that the driving was dangerous and he therefore deserved to be punished accordingly; secondly, the fact that Parliament had chosen to provide for a much heavier maximum sentence where death resulted as compared with where death did not result showed that Parliament regarded the consequences as a relevant sentencing consideration; thirdly, whilst Courts should take account of the anguish of the victim's family it had to be remembered that no sentence will reconcile a family to their loss nor cure their anguish; fourthly, it was important for Courts to drive home the message as to the consequences that could result from dangerous driving; drivers must know that if as a result of their dangerous driving a person was killed, no matter what the mitigating circumstances, normally only a custodial sentence would be passed; that was because of the need to deter other drivers and because of the gravity of the offence. In assessing the seriousness of an offence, the Court said that culpability must be the dominant factor."

Human life is not cheap and taking away of a life, even if involuntarily, but as a consequence of negligence, recklessness and dangerous driving, should be considered as being very serious and the only punishment which effectively meets out justice, in particular to the victim who passed away, is the imposition of an effective jail term.

Therefore, the Court, for the above-mentioned reasons, whilst declaring that it is abstaining from considering the third, fourth, tenth, eleventh and twelfth charges brought against the accused, after having considered Section 225(1)(2) of Chapter 9 of the Laws of Malta, Sections 15(1)(a)(2), 15A(1)(2), 15B(1), 15H(1)(a)(2), 15I(a) and 55 of Chapter 65 of the Laws of Malta and Regulations 67(1) and 127 of Subsidiary Legislation 65.11, finds the accused guilty of the first, second, fifth, sixth, seventh, eighth and ninth charges brought against him and condemns him to three (3) years effective imprisonment.

The Court further orders that the accused be disqualified from holding or obtaining a driving licence for a period two (2) years, which period is to run from the day when the accused serves his term of three (3) years imprisonment.

In terms of Section 533 of Chapter 9 of the Laws of Malta, the Court condemns the accused to pay the total sum of €3,398.36 representing costs in connection with the employment of Experts.

Since the Court abstained from considering the third and fourth charges against the accused, it is also abstaining from considering Section 532A of Chapter 9 of the Laws of Malta.

DEPUTY REGISTRAR